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February 20, 2023

Senator Timothy Nangle, Chair
Representative Holly Stover, Chair
Members, Joint Standing Committee on State and Local Government
100 State House Station
Augusta, ME 04333-0100

Re: LD 2201 – *“An Act Regarding the Approval for the Placement of Portable Toilets.”*

Senator Nangle, Representative Stover and members of the Joint Standing Committee on State and Local Government:

Thank you for the opportunity to provide information related to LD 2201, *“An Act Regarding the Approval for the Placement of Portable Toilets.”*

Maine CDC is opposed to the bill as drafted due to the concerns outlined below. However, we are grateful to Senator Libby for reaching out to the Department and welcome the opportunity to discuss with him alternatives to this proposal that could address the concerns he brings forward while maintaining the protections important to public health. We share the information below for the record, but hope to be able to identify a compromise proposal for the Committee ahead of a work session.

LD 2201 specifies that a person is not required to obtain a permit from a local plumbing inspector to place for use a prefabricated toilet designed for temporary use.

This legislative proposal would prevent the Maine CDC from implementing an adopted rule of the Subsurface Wastewater Disposal Rules (10-144 CMR Chapter 241, Section 5.I.6), which states that “temporary portable toilets” (i.e., Port-a-Potties) cannot be used as permanent alternative toilets and left in place for more than seven days (other than at construction sites) unless written approval from a Local Plumbing Inspector (LPI), who is an agent of the municipal jurisdiction, is obtained.

This provision was promulgated as part of a rule change package that became effective in September 2023. The purpose of this routine technical rule change is to make sure that LPIs know where temporary portable toilets are placed and is a way to ensure that public health measures are being maintained. Under Department’s rule chapter 241, the Maine Center for Disease Control and Prevention (Maine CDC) Health Inspection Program (HIP) can monitor a business licensed by HIP (e.g., restaurant, motel, campground) and whether the licensee is using a temporary portable toilet in a way that compromises public health, and may deny the continued use of temporary portable toilets. Passage of this bill would undermine HIP’s authority to protect human health; therefore, the Department opposes LD 2201.

Prior to adopting rule changes, the Department considered the burden this could put on portable toilet rental companies or local businesses. No “permits” are required by the current Subsurface Wastewater Disposal Rules; it is only when the use of a portable toilet extends beyond seven days, that written approval by the LPI is required, which can be as informal as an e-mail. When associated with the HIP program operations, a HIP licensee must also be approved by HIP and HIP may ultimately deny the extended use for public health reasons. The Department’s partners, including the LPIs, have supported the provisions as currently written. The Department has previously observed and documented many instances of egregious and dangerous neglect of portable toilets and, therefore, included this provision in the rule revisions to improve public health. This newly adopted rule will help eliminate the use of portable toilets where public health is compromised and, as such, the protocol in place for monitoring the use of portable toilets should be retained in rule enforced by the Maine CDC.

Maine CDC appreciates the Committee’s considerations of the risks associated with long-term use of portable toilets and the public health benefits from the current requirements within the Subsurface Wastewater Disposal Rules for temporary portable toilet use. We furthermore appreciate the opportunity to continue discussing this proposal in more depth with the sponsor and stakeholders ahead of a work session.

Please feel free to contact me if you have any questions during your deliberation of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dr. Puthiery Va', written in a cursive style.

Dr. Puthiery Va
Maine Center for Disease Control and Prevention
Maine Department of Health and Human Services