



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

Testimony of The Maine Municipal Association

In Opposition To

LD 461 - *An Act Regarding Private Roads*

March 28, 2023

Sen. Nangle, Rep. Stover, and distinguished members of the State and Local Government Committee, my name is Rebecca Graham, and I am submitting testimony in opposition LD 461, *An Act Regarding Private Roads*, on behalf of the Maine Municipal Association, which represents the interests of municipal government before the Legislature.

While I understand there are amendments in the works, these comments pertain to the language in the printed bill.

As drafted, the bill seeks to require municipalities inventory all roads in their communities both private and public, and those that are private with easements. As we have indicated previously, this is not simply making a list of roads and whether or not they are maintained. It is determining the legal status of those roads, which not only requires a legal review but is subject to appeal and judicial processes to protect the interests of all involved parties. This is akin to a municipality drawing the legal property boundaries on a parcel of land, and determining that which the town owns and that which the owner retains. As with all property boundary line establishments, it is subject to challenge, often doesn't reflect the ways in which current abutters use their property and often results in challenges.

These legal conditions are necessarily protective processes that are not only expensive, but should be initiated only when necessary to avoid unnecessary public expenditure to create problems where there are none currently. As such, the bill would require a mandate preamble and 90% of the costs for that activity to be shouldered by the state should the activity be mandated. A low-ball estimate of the legal fees that would be necessary for the review is around \$7,000-\$10,000 per community, excluding dispute costs.

Most communities also have road standards established in their subdivision ordinance and as a requirement for accepting any new roads that are built. There is no need for an additional ordinance to establish that establishes a standard for private roads as they would apply if there was a desire for a newly built road to be accepted or maintained. Historic roads often cannot be brought up to that standard without a takings process, as they have grown organically often in a pre-vehicle reality.

Roads that are currently maintained have a state database already available to the public through the Local Roads Assistance Program and the Department of Transportation is working to make a list of

roads by name publicly available. These roads are reported to the state by the municipality through the E-911 reporting system- which shares that information with the Local Roads Assistance program. Officials believe that this process is a low barrier for town reporting, requiring an addressing agent to report to only one entity, and leverages the appropriate sharing of the information between state agencies that use the information in two different ways. Additionally, the process also provides the public access to the necessary information about what they most care about—if the road is publicly maintained. The information does not change frequently and the department has offered to update the list periodically and make it available through the same map viewing website.

With regard to the definitions of private road, private way, and public easement, these terms are used in different sections of law differently because of the functionality of the statute that is intended. For instance, the definition of “Private way” in title 29-A is intentionally all encompassing of the ways in which the term has been used in title 23 or title 12 because the purpose of the statute is to provide law enforcement authority to charge for operation offenses on any road or easement that has public access, not address the legal status of a road. The definition here does not supersede or change the fact-finding ways in which the court determines if an easement is subject to gates and bars, or cannot be gated and barred, it is exclusively to allow moving violations on those ways to be enforced. This creates confusion for someone simply reading the statute.

For these reasons, and for the confusion in the general public between which definition is applied when, officials and the Association feel the work of the Abandoned and Discontinued Roads Commission is vital to unpick and unify the appropriate definitions sensitively. This will prevent residents on a private road or a private road with an easement, from being disenfranchised from the enforcement tools used against risky drivers in title 29-A, or damage until title 17-A, which could occur with a blanket change to the definitions, while also clarifying the intent uniformly across all statutes. To do this, the Commission needs time and support. Alternatively, the unintended consequences will continue to be addressed on an ad hoc basis further confusing the rights of all parties based on arbitrary changes in law at different points in time.

Officials ask that you table or carry over the definitional changes in the bill until the Commission has had enough time to review and make appropriate recommendations on those changes informed by all stakeholders. They also ask that the provisions in the bill placing mandates on municipal government be removed unless there is clear intent from the state the resources will be dedicated not from the property taxpayer’s pocket for the activity if it is truly of state-wide importance.