

Office of Policy and Legal Analysis

Date: March 2, 2022

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 1616, An Act To Ensure That Municipalities and Multimunicipal Regions of Every Size and Capacity Have Guidance on Climate Adaptation and Resilience Strategies for Policy, Implementation and Investment Decision Support (Blume)

Summary of bill

The original bill is a concept draft. The sponsor proposed at the hearing an amendment that replaces the bill. For the purpose of protecting or restoring a great pond, current State law authorizes municipalities, subject to certain specified conditions, to appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching the great pond. The amendment expands that law to authorize municipalities, subject to similar conditions, to appropriate such funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a threatened natural resource.

Under the amendment, the term “threatened natural resource” is defined to mean a coastal bluff or a protected natural resource. Under the Natural Resources Protection Act, the term “protected natural resource” is defined to include coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Representative Blume, Friends of Casco Bay.

Opponents – Maine Municipal Association.

Neither for nor against – Department of Environmental Protection, The Nature Conservancy.

Issues, proposed amendments and additional information

1. **DEP comments** – amendment would significantly expand type of road projects that could be funded by municipalities. DEP has been administering grant programs over the last few years, particularly with respect to stream crossing projects proposed by municipal applicants. This proposal would increase the number of projects eligible for those grants but DEP still only has a limited amount of funding available.
2. **MMA comments** – larger discussion of municipal authority with respect to maintenance and repair of private roads with public funds is already underway in SLG, which voted to support an amended version recently of LD 1513 (amendment distributed separately), which establishes a permanent statutory commission to review these sorts of issues. Per MMA, the issues raised in this bill should be addressed there.

3. **Scope of “threatened natural resources”** – at the hearing, Representative Boyle raised some questions regarding the applicability of the proposed expanded law to “threatened natural resources,” which includes “coastal bluffs” and “protected natural resources.”

Under the State’s NRPA, “protected natural resources” includes:

- Coastal sand dune systems;
- Coastal wetlands and freshwater wetlands;
- Significant wildlife habitat – means any of the following areas mapped by DIFW/conform to DEP criteria as applicable or are within another protected natural resource
 - Habitat for endangered or threatened animal species (state and federal lists);
 - High and moderate value deer wintering areas and travel corridors;
 - Seabird nesting islands;
 - Critical spawning and nursery areas for Atlantic salmon;
 - Significant vernal pool habitat;
 - High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and
 - Shorebird nesting, feeding and staging areas;
- Fragile mountain areas;
- Community public water system primary protection areas;
- Great ponds; and
- Rivers, streams or brooks.

Fiscal information

Not yet available from OFPR.

Committee: SLG

LA: LC

LR (item): 070302

File name: G:\COMMITTEES\SLG\Bill Amendments-SLG\130th 2nd\070302.docx

New Title: Yes

Add Emergency: No

Date:

COMMITTEE AMENDMENT “ . “ to LD 1513, An Act to Require the Maintenance of a Discontinued Public Road the Provides the Sole Access to One of Ore Residences

Amend this bill by striking out the title and substituting the following:

An Act To Establish the Maine Abandoned and Discontinued Roads Commission

Amend the bill by striking out everything after the title and inserting the following:

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-I, sub-§74-M is enacted to read:

74-M.

<u>Roads</u>	<u>Maine Abandoned and Discontinued Roads Commission</u>	<u>Expenses Only</u>	<u>23 MRSA §3036</u>
--------------	--	--------------------------	----------------------

Sec. 2. 23 MRSA §3036 is enacted to read:

§3026. Maine Abandoned and Discontinued Roads Commission

The Maine Abandoned and Discontinued Roads Commission, referred to in this section as "the commission," is established by Title 5, section 12004-I, subsection 74-M.

1. Members. The commission consists of the following 12 members:

A. One member who is an employee of the Department of Inland Fisheries and Wildlife, designated by the Commissioner;

B. One member who is an employee of the Department Agriculture, Conservation and Forestry, designated by the Commissioner

C. One member who is an employee of the Maine Department of Transportation, designated by the Commissioner;

D. One member who is an employee of the Office of the Attorney General, designated by the Attorney General; and

E. Eight members as follows:

(1) One member of a statewide association representing municipalities appointed by the President of the Senate who shall consider any recommendation made by the association;

(2) One member of a statewide association representing county governments appointed by the Speaker of the House who shall consider any recommendation made by the association;

(3) One member of a statewide association representing Maine’s woodland owners appointed by the President of the Senate who shall consider any recommendation made by the association;

(4) One member of a statewide association of attorneys who has expertise in real estate law appointed by the Speaker of the House who shall consider any recommendation made by the association;

(5) One member of a land trust organization appointed by the President of the Senate who shall consider any recommendation made by the organization;

(6) One member of a statewide organization representing all-terrain vehicle users or snowmobile users appointed by the Speaker of the House who shall consider any recommendation made by the organization;

(7) One member of a statewide association, appointed by the President of the Senate who shall consider any recommendation made by the association, representing Maine residents who live on and own property abutting an abandoned or discontinued road or who live on and own property that is accessible only by traveling over an abandoned or discontinued road; or, if no such association exists, a Maine resident who lives on and owns property abutting an abandoned or discontinued road or lives on and owns property that is accessible only by traveling over an abandoned or discontinued road; and

(8) One resident of the State not directly affected by matters related to abandoned or discontinued roads appointed by the Speaker of the House;

2. Duties. The commission shall:

A. Prioritize matters for consideration by the commission by determining which matters related to abandoned and discontinued roads have a significant negative impact, qualitatively or quantitatively, on owners of property abutting the road, owners of property accessible only by traveling over the abandoned or discontinued road, recreational users of the road, members of the public, municipal, county or state governments and the physical integrity of the road and surrounding land

B. Include the following as priority matters for consideration:

(1) Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;

(2) Public easement retention over an abandoned or discontinued road, including scope of permitted and actual public use;

(3) Statutory terminology related to abandoned or discontinued roads; and

(4) The statutory process for abandonment or discontinuation of a road, including, barriers to determining the legal status of a road.

C. Develop recommendations on matters prioritized by the commission pursuant to paragraph

A.

D. Review legislation affecting abandoned or discontinued roads and provide information to joint standing committees of the Legislature upon request.

E. Recommend statutory changes on matters prioritized by the commission pursuant to paragraph A.

3. Chair. The members of the commission shall elect from among themselves a chair who serves a three-year term. The chair continues to hold the office until a successor is elected and may serve multiple terms. The chair calls and presides over meetings of the commission. In the absence of the chair, the member representing the Department of Inland Fisheries and Wildlife or the member representing the Department of Agriculture, Conservation and Forestry may preside over meetings.

4. Term of office. Members of the commission serve a 3-year term except that a member may serve after the expiration of their term until a successor has been appointed. Members may serve multiple terms.

5. Meetings. The commission shall meet at least 3 times, but no more than 6 times each year.

6. Subcommittees. The commission may approve subcommittees to meet to conduct the work of the commission. Subcommittees may invite persons who are not members of the commission to participate in a nonvoting capacity.

7. Remote participation. The commission may conduct meetings using telephonic, video, electronic or other means of remote participation if agreed to by a majority of members.

8. Public comment. The commission will accept public comment during its meetings.

9. Support Staff. The Legislative Council shall provide staff support to the commission, except that the Legislative Council staff may not provide staff support during any regular or special session of the Legislature.

10. Bylaws. The commission may, by a majority vote of the members, adopt or amend bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes or exercise the powers of the commission. Prior to adoption or amendment of bylaws, the commission shall ask the member representing the Office of the Attorney General to review the bylaws and provide comments to the commission.

11. Report. Beginning February 1, 2023, the commission shall submit a report annually listing its activities and any recommended statutory changes to the Joint Standing Committee of the Legislature having jurisdiction over state and local government matters, the Joint Standing Committee of the Legislature having jurisdiction over agriculture, conservation and forestry and the Joint Standing Committee of the Legislature having jurisdiction over inland, fisheries and wildlife matters. If the report includes recommended statutory changes, the committee with jurisdiction over that law may report out a bill related to the recommendation.

Sec. 3. Initial meeting. The member representing the Department of Inland Fisheries and Wildlife shall call the first meeting of the commission within 60 days of the effective date of this Act.

Sec. 4. Initial terms. Notwithstanding Maine Revised Statutes, Title 23, section 3036, subsection 4, the following members of the Abandoned and Discontinued Roads Commission serve an initial term of 2 years.

1. The member representing the Maine Department of Transportation;

2. The member representing the Office of the Attorney General;
3. The member representing a statewide association representing county governments;
4. The member representing a statewide association of attorneys who has expertise in real estate law;
5. The member representing a statewide organization representing all-terrain vehicle users or snowmobile users; and
6. The member representing the general public.

SUMMARY

This amendment replaces the bill. It establishes the Maine Abandoned and Discontinued Roads Commission. The commission has 12 members who are charged to: (1) prioritize matters related to abandoned and discontinued roads that have a significant negative impact, qualitatively or quantitatively, on residents owners of property abutting the road, **owners or property accessible only by traveling over an abandoned or discontinued road**, recreational users of the road, members of the public, municipal, county or state governments and the physical integrity of the road and surrounding land; (2) develop recommendations to address the prioritized matters; (3) recommend statutory changes; and (4) review legislation. The commission must report **annually** to the Joint Standing Committee of the Legislature having jurisdiction over state and local government matters, the Joint Standing Committee of the Legislature having jurisdiction over inland fisheries and wildlife and the Joint Standing Committee of the Legislature having jurisdiction over agriculture, conservation and forestry by February 1. The committees have authority to report out a bill in response to the report. **The Legislative Council shall provide staff support to the commission except during regular and special sessions of the Legislature.**