

TO: SLG Committee
FROM: LD 1513 Discontinued Roads Subcommittee
Representative Ann Matlack, Chair
DATE: January 24, 2022
SUBJECT: Report Back

The Presiding Officers of the 130th Legislature authorized the formation of the LD 1513 Subcommittee on Discontinued Roads to meet during the interim to examine issues and recommend legislation related to [LD 1513](#), An Act to Require Maintenance of a Discontinued Public Road that Provides the Sole Access to One or More Residences.

PROCESS

The Subcommittee met four times during the interim (September 22nd, October 26th, December 14th and January 3rd) and one time after session started (January 12th).¹ The first 2 meetings of the subcommittee focused on collecting and considering relevant information from a variety of interested parties, including the Maine Municipal Association, Maine ROADWays, Maine Woodland Owners Association, Maine Department of Transportation (MDOT) and Maine 9-1-1. At the end of the subcommittee's second meeting, the interested parties were asked to work together to develop a proposal for consideration by the subcommittee at its next meeting.

The Maine Municipal Association, Maine ROADWays and the Maine Woodland Owners Association attended remote meetings facilitated by the OPLA analyst on November 4th and November 9th.² At the first meeting, each participant was invited to identify one specific problem for resolution by the subcommittee and the statutory change proposed to address the identified problem. The proposals are as follows:

1. Maine ROADWays proposed that a town be required to provide sufficient maintenance to support use of a discontinued road on which a public easement is retained if the town grants a residential building permit and/or assess taxes on property located on the road. This proposal is similar to LD 1513. (See Attachment A)
2. Maine Woodland Owners Association suggested clarifying the scope of public easements on discontinued and abandoned roads, particularly with respect to use by recreation vehicles. (See Attachment B)
3. Maine Municipal Association suggested state funds be appropriated to assist municipalities in repairing damage caused by the public's use of a public easement. MMA did not propose any statutory changes stating that a specific problem to be solved was not identified making a statutory solution unnecessary and potentially ill advised. (See Attachment C).

During the interested parties' 2nd meeting considerable time was spent seeking unanimous consensus on a single proposal. The suggestions to appropriate state funds to assist in the maintenance of public easements was the only area of agreement among the parties. However, consensus on specific conditions around use of the funds was not achieved.

¹ Materials from the subcommittee are located at <https://legislature.maine.gov/slg-roads-subcommittee-2021>

² MDOT and Maine 9-1-1 did not participate in the interested parties' discussion but were kept informed of the process.

On December 14th, the subcommittee was informed that the interested parties agreed state funds were needed to support maintenance of public easements, but were unable to agree upon implementation details. Further discussion by the subcommittee reflected the longstanding difficulty faced by this committee and the Legislature in finding legislative solutions to the varied and multifaceted issues related to discontinued and abandoned roads. Some of the barriers to finding solutions include the steep learning curve each new legislature must meet, the overlapping committee jurisdictions involved, and the fact-specific nature of the issues. In response to these continuing difficulties and barriers, the subcommittee reconsidered an early proposal, and ultimately voted to recommend a variation of that idea, a permanent commission.

To allow adequate time to draft details for a permanent commission, the subcommittee held two additional meetings, one with approval of the Presiding Officers and one with approval of the SLG Committee. In drafting the proposed amendment, which is attached to this report, the subcommittee sought input from two state agencies with involvement in, and therefore expertise on, on matters related to abandoned and discontinued roads, the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry. Representatives from these two departments provided information to the subcommittee but time was not available for the department commissioners to weigh in on this idea. The department representatives briefed their respective commissioners on this proposal and any written comments received from the commissioners prior to the SLG Committee meeting on this report will be added in a separate attachment to this report.

RECOMMENDATIONS

1. The LD 1513 Subcommittee on Discontinued Roads recommends that the SLG Committee amend LD 1513 in a manner substantially similar to the proposal attached to this report.

The proposed amendment establishes the Maine Abandoned and Discontinued Roads Commission.

A. Members of the commission include representatives from MDOT, IFW, DACF, Maine Municipal Association, Maine County Commissioners Association, Maine Woodland Owners Association, the Maine Bar Association, the Office of the Attorney General, a land trust organization, a statewide ATV or snowmobile club, and two members of the public, one of whom owns property abutting a discontinued or abandoned road.

B. The commission is charged with:

(1) prioritizing matters related to abandoned and discontinued roads that have a significant negative impact, qualitatively or quantitatively, on:

- a. owners of property abutting the road;
- b. recreational users of the road;
- c. members of the public;
- d. municipal, county or state governments; or
- e. the physical integrity of the road and surrounding land

(2) developing recommendations to address the prioritized matters;

(3) recommending statutory changes to resolve problems related to these roads; and

(4) reviewing legislation related to these matters submitted to future legislatures.

C. The commission is required to submit a report to the ACF, IF&W and SLG committees by December 15, 2023, and every other year thereafter. The committees are authorized to introduce legislation based on the commission's recommendations.

2. The subcommittee recommends the SLG Committee submit a request to the Presiding Officer to hold a 2nd public hearing on LD 1513 as the subcommittee recommends it be amended. This amendment proposes a significantly different solution to the one proposed in LD 1513. Information and comment from all interested parties affected by and interested in abandoned and discontinued roads is essential to create a useful statutory solution to the complex and persistent matters related to discontinued and abandoned roads.

An Act To Establish the Maine Abandoned and Discontinued Roads Commission

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>
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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 appointed by the President of the Senate and the Speaker of the House 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 resident of the State who owns real property abutting an abandoned and discontinued road appointed by the President of the Senate;

(6) One member of the public not directly affected by matters related to abandoned and discontinued roads appointed by the Speaker of the House;

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

(8) 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.

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, 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 by the commission:

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

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

(3) Statutory terminology; and

(4) Current statutory process for abandonment and 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 and discontinued roads and provide information to joint standing committee 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 Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry shall alternate providing staff support to the commission alternating every 3 years.

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. By February 1, 2023, and thereafter by December 15 of every even-numbered year, the commission shall submit a report of its activities and any recommendations for changes to laws 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 commission recommends changes to law, the committee with jurisdiction over that law may report out a bill related to the recommended changes to the Regular Session of the Legislature meeting in the odd-numbered year.

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 the general public; and
6. The member representing a statewide organization representing all-terrain vehicle users or snowmobile users.

SUMMARY

This bill establishes the Maine Abandoned and Discontinued Roads Commission. The Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry shall provide staff support to the commission alternating every 3 years. The commission is charged with: (1) prioritizing matters related to abandoned and discontinued roads that have a significant negative impact, qualitatively or quantitatively, on owners of property abutting the 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) developing recommendations to address the prioritized matters; (3) recommending statutory changes; and (4) reviewing legislation. The commission must report 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, 2023, and thereafter by December 15 of every odd-numbered year. The committees have authority to report out a bill in response to the report.