



**Legislative Committee
Meeting
February 24, 2020**

AGENDA

I. Call to Order

II. Approval of minutes

- a. February 10, 2020

III. Legislative Update

- a. Bernstein Shur update
- b. LD 1403 (An Act to Amend the General Assistance Laws Governing Reimbursement)
- c. LD 2091 (An Act To Amend the Marijuana Legalization Act and Make Other Implementing Changes)
- d. LD 1415 (An Act To Improve the Laws Regarding Discontinued and Abandoned Roads)

IV. Other Business

- a. Review of Committee Flow Chart / Process

V. Adjournment



Legislative Committee February 10, 2020 Meeting Minutes

The February 10, 2020 meeting was called to order by Chair Pious Ali at 8:08 a.m. in Room 209, Portland City Hall, Portland, Maine.

I. Attendance/Introductions

Councilor Pious Ali (Chair), Councilor Jill Duson, Mayor Kate Snyder, Dena Libner (staff), Danielle West-Chuhta (Counsel), Kate Knox (Bernstein Shur), Chris Feeney (Bernstein Shur)

II. Approval of Minutes

Motion to approve the January 21, 2020 meeting minutes made by Councilor Duson, seconded by Mayor Snyder; minutes approved 3-0.

III. Legislative Update

Kate Knox presented a broad legislative update for Committee discussion and review. Topics included the State's release of the supplemental budget the prior week; the possibility of bonding for State transportation projects; the possibility of a hotel bed tax.

Kate Knox mentioned a report issued by a statewide stakeholder group tasked with evaluating the distribution of and processes related to general assistance. The Committee requested that City staff provide a comparative analysis of the proposal included in the report and LD 1403. The Committee also flagged the issue as a priority to track.

The Committee discussed various pieces of legislation related to labor management. Councilor Duson noted that Portland has a good relationship with unions, and questioned whether it's necessary to legislate bargaining issues. The Committee asked Kate Knox to provide staff with the legislation for review.

The Committee confirmed that its next meeting would occur on February 24 at 8:00am.

IV. Other Business

The Committee asked Kate Knox to gather information from the Augusta delegation about the level of engagement they would find most useful, after which a lunch in Augusta would be scheduled for March 2020.

The Committee postponed discussion of its workflow process until its next meeting.

V. Adjournment

Councilor Ali made a motion to adjourn, seconded by Councilor Duson; vote 3-0. The meeting adjourned at 9:25 a.m.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1403

H.P. 1018

House of Representatives, March 26, 2019

An Act To Amend the General Assistance Laws Governing Eligibility and Reimbursement

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BRENNAN of Portland.
Cosponsored by Senator CHIPMAN of Cumberland and
Representatives: CRAVEN of Lewiston, FARNSWORTH of Portland, GRAMLICH of Old
Orchard Beach, MADIGAN of Waterville, MELARAGNO of Auburn, MOONEN of Portland,
PERRY of Calais, TALBOT ROSS of Portland.

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

2 **Sec. 1. 22 MRSA §4309, sub-§5** is enacted to read:

3 **5. Presumptive eligibility.** The overseer shall presume eligibility to receive general
4 assistance of a person who is provided shelter in an emergency shelter for the homeless
5 located in that municipality. At the expiration of the period of eligibility, the person's
6 eligibility may be redetermined.

7 **Sec. 2. 22 MRSA §4311, sub-§1**, as amended by PL 2015, c. 267, Pt. SSSS, §1,
8 is further amended to read:

9 **1. Departmental reimbursement.** When a municipality incurs net general
10 assistance costs in any fiscal year prior to July 1, 2015 in excess of .0003 of that
11 municipality's most recent state valuation relative to the state fiscal year for which
12 reimbursement is being issued, as determined by the State Tax Assessor in the statement
13 filed as provided in Title 36, section 381, the Department of Health and Human Services
14 shall reimburse the municipality for 90% of the amount in excess of these expenditures
15 when the department finds that the municipality has been in compliance with all
16 requirements of this chapter. If a municipality elects to determine need without
17 consideration of funds distributed from any municipally-controlled trust fund that must
18 otherwise be considered for purposes of this chapter, the department shall reimburse the
19 municipality for 66 2/3% of the amount in excess of such expenditures when the
20 department finds that the municipality has otherwise been in compliance with all
21 requirements of this chapter.

22 ~~The department shall reimburse each municipality and each Indian tribe 70% of the direct~~
23 ~~costs incurred by that municipality or tribe on or after July 1, 2015 for the general~~
24 ~~assistance program granted by that municipality or tribe. For the purposes of this~~
25 ~~subsection, "Indian tribe" has the same meaning as in section 411, subsection 8-A.~~

26 **Sec. 3. 22 MRSA §4311, sub-§1-D** is enacted to read:

27 **1-D. Departmental reimbursement.** The department shall reimburse each
28 municipality and Indian tribe for the costs of a portion of the direct costs incurred by that
29 municipality or Indian tribe for the general assistance program granted by that
30 municipality or Indian tribe if the department finds that the municipality or Indian tribe
31 was in compliance with all requirements of this chapter during the fiscal year for which
32 reimbursement is sought. The department shall reimburse to each municipality and
33 Indian tribe an amount equal to 70% of all general assistance granted by the municipality
34 or Indian tribe below the .0003% of all state valuation amount. When a municipality
35 incurs net general assistance costs in any fiscal year in excess of .0003 of that
36 municipality's most recent valuation relative to the state fiscal year for which
37 reimbursement is being issued, as determined by the State Tax Assessor in the statement
38 filed as provided in Title 36, section 381, the department shall reimburse the municipality
39 for 90% of the amount in excess of these expenditures. For the purposes of this
40 subsection, "Indian tribe" has the same meaning as in section 411, subsection 8-A.

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SUMMARY

This bill establishes presumptive eligibility for general assistance for persons who are provided shelter at emergency shelters for the homeless. It also reestablishes the 90% reimbursement rate for municipalities that incur net general assistance costs in any fiscal year in excess of .0003 of that municipality's most recent state valuation, which was amended in Public Law 2015, chapter 267, Part SSSS. It retains the 70% reimbursement rate for other municipalities and Indian tribes for costs below the .0003% of all state valuation amount.

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

January 23, 2020

Senator Geoff Gratwick, Chair
Representative Patricia Hymanson, Chair
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333-0100

Senator Gratwick, Representative Hymanson, and Members of the Joint Standing
Committee on Health and Human Services:

Please find attached a summary of the work of the stakeholder group established by Resolve 2019, Chapter 41, which was tasked with determining more efficient methods of distributing general assistance benefits to individuals, reviewing differential effects of providing general assistance on service center municipalities and other municipalities, devising equitable methods of establishing the municipality of responsibility, and developing services to reduce homelessness and reliance on homeless shelters. As the report states, the Department has not taken any position on the recommendations made by the stakeholder group.

It should be noted that the Legislature did not provide any resources to the Department for the convening, research, and writing of this report.

Sincerely,

A handwritten signature in cursive script, reading "Jeanne M. Lambrew".

Jeanne M. Lambrew, Ph.D.
Commissioner

Report to the Legislature pursuant to Public Law 2019, Chapter 515

January 2020

Introduction and Background

The 129th Maine State Legislature passed legislation, LD 459, P.L. Chapter 515: An Act Regarding Presumptive Eligibility and Homelessness under the General Assistance Laws. The new statute directed the Department of Health and Human Services (DHHS) to convene a stakeholder group to determine more efficient methods of distributing general assistance benefits to individuals, review differential effects on service center municipalities and other municipalities of providing general assistance, devise equitable methods of establishing the municipality of responsibility and develop services to reduce homelessness and reliance on homeless shelters. The stakeholder group was directed to examine ways to make General Assistance administration uniform, while reducing dependency on service centers and decreasing the number of clients experiencing homelessness or other emergency situations. The statute also directed the Department to submit a report, no later than January 2, 2020, to the Joint Standing Committee on Health and Human Services with its findings, and any legislative recommendations. The Legislature did not provide any resources to the Department for the convening, research, and writing of this report.

This report summarizes the stakeholder group activities as it was convened to review and conduct analysis of administration, education, and enforcement of the General Assistance program.

The Department convened the following individuals who testified on the bill or otherwise expressed interest in the conversation:

- Frank D'Alessandro, Maine Equal Justice
- Chris Hastedt, Maine Equal Justice
- Joby Thoyalil, Maine Equal Justice
- Kate Dufour, Maine Municipal Association
- Aaron Geyer, City of Portland
- Jay Feyler, Maine Welfare Director's Association and the Town of Union
- Rindy Fogler, Maine Welfare Director's Association and the City of Bangor
- Harrison Deah, City of Westbrook
- Kristin Barth, City of Biddeford
- Mayor Kristen Cloutier, City of Lewiston
- Deborah Lymneos, City of Augusta
- Denise Murray, City of Waterville
- Ellen Moore, Town of Minot
- Allison Gallagher, Maine State Housing Authority
- Lauren Busten, Maine State Housing Authority
- Kate Varney, Family Medicine Institute

DHHS staff assigned to support and convene the stakeholder group include:

- Sara Russell, Maine DHHS, Office for Family Independence, General Assistance Program Manager
- Molly Bogart, Maine DHHS, Director of Government Relations

Stakeholder meetings were held on September 24, October 22, November 19, and December 10, 2019.

The stakeholder group reviewed financial data regarding the expenses and reimbursements for all municipalities who have requested reimbursement from the Department for General Assistance benefits within the last 10 years and compared those to the population in each municipality. The stakeholder group also reviewed the current process for Department audits of the General Assistance program within

municipalities, and discussed opportunities to provide education to address the four areas identified in PL 2019, Ch. 515, including: determining more efficient methods of distributing General Assistance benefits to individuals, review of differential effects on service center municipalities and other municipalities of providing General Assistance, devising equitable methods of establishing the municipality of responsibility, and developing services to reduce homelessness and reliance on homeless shelters. To facilitate discussion, the Department distributed copies of financial assistance data and statutes as a discussion tool. Stakeholder group members reviewed the spending trends amongst municipalities and discussed the impact of assistance provided in service centers for some of Maine's larger communities, as well as the state overall. The stakeholder group made suggestions for improvement regarding the four areas of concern they had been tasked to review, however stakeholders did not reach consensus regarding any recommendations or conclusions.

Stakeholder Group Discussion

A summary of discussion for each area of review listed in the statute follows. For each area of review, the group discussed current statute, guidance provided by the Department, and the current impact for recipients and administrators of the General Assistance program.

The summary of these discussions reflects statements and recommendations of stakeholder group members only with input from Department representatives. After several formal meetings, a subgroup of stakeholders, including the Maine Municipal Association, representatives of the municipal general assistance administrators, and Maine Equal Justice, continued to meet and prepared a proposal for the Department. This is attached as Appendix A.

I. More Efficient Methods of Distributing General Assistance Benefits to Individuals:

The current methods of distributing assistance were discussed within all four categories of group discussion.

Stakeholders discussed the need for assistance to be appropriately and uniformly administered in accordance with law in all communities around the state. Several group members noted that by improving the other three areas of concern, the efficiency of the administration of the General Assistance program would be improved.

Stakeholders agreed that increasing the Department's capacity to more adequately perform its statutory duty to oversee the administration of the GA Program would be a valuable investment to ensure fair and uniform administration of the Program. Currently, DHHS operates the General Assistance program with one program manager, two field examiners, and a part-time office administrator. Were the responsibility for administering GA to individual clients to be turned over to DHHS, for some or all municipalities, and folded into the responsibilities of the Office for Family Independence, an assessment of resources would be critical before any program changes. To this end, the stakeholders unanimously recommended funding for additional staff for the Department for this purpose (see Appendix A).

The group discussed alternative mechanisms for the administration of the GA program, including educating municipalities about the option in current law to contract with a third party to administer the program. Since that option already exists the group concluded that additional staff to enforce program law would be the most effective mechanism to improve program administration at this time.

The stakeholder group did not provide a final recommendation regarding more efficient methods of distributing General Assistance. The group hopes that by improving other areas of concern, assistance will be provided more efficiently to applicants in need.

II. Differential Effects on Service Center Municipalities

The stakeholder group discussed concerns that municipalities which expend the most General Assistance funds are Maine's service centers, including our larger cities and suburban areas. Top spending municipalities are Portland, Bangor, Westbrook, Augusta, Lewiston and Auburn.

The current rate of Department reimbursement for municipalities expending General Assistance who request reimbursement for expenditures is 70% for all municipalities. This means, 70% of expenditures for General Assistance issued to clients will be reimbursed to the municipality by the state. Prior to 2015, the Department reimbursed municipalities for 50% of general assistance issued. If a municipality exceeded 0.003 of the municipal state valuation, municipalities were eligible to receive reimbursement for 90% of their expenses beyond that valuation threshold. Stakeholders discussed whether the current reimbursement mechanism is appropriate considering the outsized role that services centers play in the provision of General Assistance. The Department noted that partial reimbursement is intended to create some financial liability for municipalities so as not to incent overspending within the General Assistance program.

Legislation passed in 2019 defined "homelessness" and qualified it as an emergency for the purposes of GA. In an "emergency," the municipality is authorized to exceed the maximum level assistance that would otherwise be provided, and instead pay what is needed to relieve the emergency. For example, if a person is homeless and the cost of securing housing is \$700, but the maximum for housing in that municipality is only \$500, the municipality is allowed to provide a voucher for the full \$700 to relieve the emergency.

The stakeholder group recommends reimbursing municipalities for 100% of the assistance provided "over and above" the maximum level of assistance as needed to remedy an emergency. For example, in the case described above, instead of reimbursing the municipality \$490 (70% of \$700), it would instead receive \$550 (70% of the \$500 maximum, and 100% of the \$200 over the maximum). Stakeholders argue that this will help service center municipalities that disproportionality see emergency cases, and that it would assist smaller communities help meet any additional costs associated with the recent changes to the State General Assistance Statute that define homelessness as an emergency.

III. More Efficient Methods of Determining the Municipality of Responsibility

Stakeholder members were charged with determining the best way to handle disputes and complaints regarding the municipality of responsibility for General Assistance. This is a longstanding issue in the General Assistance program and there was considerable discussion about the inequities that it causes.

Some stakeholders felt that reporting violations of neighboring communities would create tension between communities. The group also felt that increasing penalties for violations could negatively impact their own communities and may target a community for which it was not originally intended.

The stakeholder group agreed that modifying the reimbursement rate as recommended in section II would help with the differential impact of General Assistance on service center communities. The cost of this recommendation has not been estimated at this time.

Department representatives recommended that municipalities contact the Department if they are ever aware of any General Assistance office that has failed to uphold General Assistance law.

As noted, stakeholders agreed that increasing the Department's capacity to enforce all aspects of the GA law, including this one, along with current enforcement tools like penalties is the best solution to address this issue at this time.

IV. Department-provided Education

Stakeholders discussed options for having Department required trainings. One stakeholder suggested more visible posters with contact information to report issues to the Department. Representatives from the Department recommended updated applicant rights pamphlets and signage directing applicants to call the Department with any grievances. A stakeholder suggested a video training module be required of all General Assistance administrators. One stakeholder felt that training from the Maine Welfare Director's Association should suffice for the proposed requirement. Stakeholder group members recommend a video module training integrated with a certificate of completion. All stakeholders agreed that everyone in the system would benefit from increased training and education for administrators and municipalities, but that a lack of capacity at DHHS limits the ability to do that within current resources.

In their proposal, representatives of Maine Municipal Association, Maine Equal Justice and general assistance administrators agreed that the Legislature should encourage the Department of Health and Human Services to continue to work with the Maine Welfare Directors' Association, Maine Municipal Association, Maine Equal Justice and other interested parties in the development of educational materials and training programs designed to support state and municipal officials tasked with administering, implementing and enforcing the program. These groups provided proposed bill language concerning education and training (Appendix A).

V. Enforcement of General Assistance Statute

A significant topic of discussion among the group was that GA is not administered uniformly throughout the state. The group agreed that most municipalities work to administer the program with fidelity and in good faith, but nonetheless there are several that either do not administer the program in good faith or lack the capacity to appropriately implement the program. Municipalities shared frustration with the Department about a perceived failure to adequately enforce rules. Several noted that this perception, along with concern about reporting their peers, leads to limited complaints about municipalities by other municipalities and clients.

Concerns about not following statute include refusal to accept an application and/or sending individuals to service centers rather than their home municipalities, variable access to resources, lack of an interpreter available, lack of appropriate response time to emergency situations, lack of adequate knowledge about the program and/or training on obligations of the towns. These fall into two categories: one being municipalities that choose not to implement the program based on a lack of buy-in to the value of GA, and the other being small municipalities for whom the GA administrator is a volunteer or other less formalized position who may only encounter 1-2 clients a year. The Department noted that

legislative changes made in 2019 should help clarify the responsibilities of municipalities to serve individuals in emergency situations and for individuals experiencing homelessness.

VI. Developing Services to Reduce Homelessness

The Department notes that homelessness may be reduced by a recent GA rule change which requires homelessness to be considered an “emergency,” authorizing additional assistance to remedy the emergency. Stakeholders believe that this new provision along with the enhanced reimbursement rate for emergencies recommended above, would have a measurable impact on reducing homelessness.

Conclusion

Although consensus recommendations were not proposed during the formal meetings of the stakeholder group, as noted, representatives of Maine Municipal Association, Maine Equal Justice and the Maine General Assistance Administrators reached a consensus on their proposed changes to the general assistance statutes. These proposals include (1) State reimbursement of municipalities for 100% of the amount provided by the municipality in emergency assistance that exceed the municipality’s maximums, (2) adding an education component to the general assistance statute, and (3) increased sharing of data. The group also recognized that additional staffing resources are and would be needed in the General Assistance program to achieve their goals.

The Administration supports participation in task forces and commissions and, when possible, offers information and technical assistance. For recommendations from task forces and commissions, agencies follow a formal administrative process to evaluate proposals, provide views on legislation, and engage on policies with budget implications. As a result, the Department does not take a position on the recommendations of the stakeholders as described in this report.

Appendix A

To: Senator Gratwick
Representative Hymanson
Members of the Health and Human Services Committee

From: Rindy Fogler, Maine Welfare Directors Association
Kate Dufour, Maine Municipal Association
Frank D'Alessandro, Maine Equal Justice

Date: January 15, 2020

Re: General Assistance Program Working Group (PL 2019, c. 515 (LD 459))

On behalf of our respective organizations, we would like to thank the members of the Health and Human Services Committee for including administrators and advocates in the Municipal General Assistance (GA) Program Working Group and for the opportunity to meet with representatives of the Department of Health and Human Services to discuss and explore avenues for improving the administration and enforcement of this important program.

During and after the working group process, municipal officials and representatives from Maine Equal Justice continued to meet to discuss common goals and areas of consensus. At this point the municipal representatives on the working group and Maine Equal Justice support passage of four recommendations. For your reference, attached as Appendix B are proposed statutory changes to implement the following recommendations.

1. Investment in Technical Assistance/Enforcement Efforts. The Legislature should dedicate additional financial resources to the Department of Health and Human Services, Office of Family Independence's General Assistance division. We believe that in order to ensure the equitable administration of the program statewide, additional financial resources, including but not limited to increased staff, state employee training, improved program oversight, and "in the field" visits, are necessary. This state level investment will help ensure that the department has the resources necessary to provide reliable and consistent technical assistance to GA administrators and expeditiously and fairly enforce all program statutes, rules and regulations.

This recommendation is a priority for municipal officials and advocates, as we have concerns with the consistency of the technical assistance currently provided by the Department. This observation, however, should not be interpreted as a criticism of existing staff, but rather as evidence of the need for increased state financial support to provide additional resources to the Department for this purpose. We strongly believe that improved training, outreach and enforcement activities, including the assessment of penalties when warranted, will only serve to strengthen the efficacy of the program.

2. State Financing of the New Homelessness as an Emergency Requirement. We recommend that municipalities be reimbursed for 100% of the assistance provided "over and above" the statutory maximum that is necessary to remedy an emergency. For example, an administrator takes an emergency application and determines that \$1,500 is needed to cover temporary housing, but the maximum level of assistance allowable under state law is only \$1,000. Under current law, the administrator provides \$1,500 in assistance and only recovers \$1,050 in state reimbursement

(70% of \$1,500). If enhanced reimbursement was available as we recommend, the community would instead receive \$1,200 (70% of \$1,000 plus 100% of \$500) in state reimbursement.

The need for increasing reimbursement under this limited scenario is highlighted by the recent enactment of legislation that clarifies that homelessness is an emergency. While we support this statutory clarification, it does mean that municipalities have and will continue to experience increases in the amount of aid provided to eligible applicants. We believe that homelessness is a statewide crisis and rather than relying on property taxpayers to fund the increase in aid, broad based taxes (e.g., state sales and income) should be used to address this issue. The need for increased state funding is further exacerbated by the fact that the enacted change will have a disparate impact on service center communities, whose property taxpayers already host a variety of tax-exempt social service organizations and fund the provision of services necessary to support daytime populations that far exceed resident populations.

3. Education and Training. The Legislature should encourage the Department of Health and Human Services to continue to work with the Maine Welfare Directors' Association, Maine Municipal Association, Maine Equal Justice and other interested parties in the development of educational materials and training programs designed to support state and municipal officials tasked with administering, implementing and enforcing the program.

4. Data Sharing. The Legislature should instruct the Department of Health and Human Services to make certain data which it already collects publicly available on a regular basis. The department reports monthly on the number of individuals it serves and expenditure data for various programs it administers, but not for general assistance. We believe that increasing transparency in this way would only serve to strengthen the transparency of this program and assist stakeholders in identifying inequities or other systemic issues that should be addressed.

Again, thank you for the opportunity to provide feedback. If you need additional information, please do not hesitate to contact Rindy Fogler (rindy.fogler@bangormaine.gov), Kate Dufour (kdufour@memun.org) or Frank D'Alessandro (frank@mejp.org). We look forward to participating in your discussions on the working group's recommendations.

§4311. State reimbursement to municipalities; reports

1. Departmental reimbursement. When a municipality incurs net general assistance costs in any fiscal year prior to July 1, 2015 in excess of .0003 of that municipality's most recent state valuation relative to the state fiscal year for which reimbursement is being issued, as determined by the State Tax Assessor in the statement filed as provided in Title 36, section 381, the Department of Health and Human Services shall reimburse the municipality for 90% of the amount in excess of these expenditures when the department finds that the municipality has been in compliance with all requirements of this chapter. If a municipality elects to determine need without consideration of funds distributed from any municipally-controlled trust fund that must otherwise be considered for purposes of this chapter, the department shall reimburse the municipality for 66 2/3% of the amount in excess of such expenditures when the department finds that the municipality has otherwise been in compliance with all requirements of this chapter.

The department shall reimburse each municipality and each Indian tribe 70% of the direct costs incurred by that municipality or tribe on or after July 1, 2015 for the general assistance program granted by that municipality or tribe. For the purposes of this subsection, "Indian tribe" has the same meaning as in section 411, subsection 8-A.

1-A. Municipalities reimbursed.

A. When a municipality pays for expenses approved pursuant to section 4313 for hospital inpatient or outpatient care at any hospital on behalf of any person who is otherwise eligible and who would have been entitled to receive payments for hospital care if that care had been rendered prior to May 1, 1984, for services under the Catastrophic Illness Program, section 3185, the department shall reimburse the municipality for 100% of those payments.

B. When a municipality provides payment for emergency general assistance pursuant to this chapter, and those expenses are in excess of the maximum levels of assistance established by that municipality, the department shall reimburse the municipality as follows:

- (1) 70% of the amount of those payments up to the maximum levels of assistance; and
- (2) 100% of the amount of those payments that exceed the maximum levels of assistance.

§4323. DEPARTMENT OF HEALTH AND HUMAN SERVICES; RESPONSIBILITIES

The Department of Health and Human Services shall, in accordance with this section, share responsibility with municipalities for the proper administration of general assistance.

1. Review. The department shall review the administration of general assistance in each municipality for compliance with this chapter. This review shall be made on a regular basis and may be made in response to a complaint from any person as necessary.

The department shall inspect the municipality's records and discuss the administration of the program with the overseer. The overseer or his designee shall be available during the department's review and shall cooperate in providing all necessary information.

The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this chapter.

1-A. Education. The department shall ensure that all general assistance overseers have access to training describing the purpose of the program and the laws governing its administration. The department or the Maine Welfare Directors Association may provide this training and shall make the training available in-person, online or through video presentations so that overseers can participate remotely at times convenient to them. The department shall provide to each general assistance administrator/overseer a clear written list of expectations that all cities and towns are expected to meet in the administration of the general assistance program and the department must post it prominently on its website.

2. Violation; penalty. If the department finds any violation of this chapter after review, it shall notify the municipality that it has 30 days in which to correct that violation and specify what action shall be taken in order to achieve compliance. The municipality shall file a plan with the department setting forth how it will attain compliance. The department shall notify the municipality if the plan is acceptable and that it will review the municipality for compliance within 60 days of accepting the plan. Any municipality which fails to file an acceptable plan with the department, or which is in violation of this chapter at the expiration of the 60-day period shall be subject to a civil penalty of not less than \$500. The Department of Health and Human Services shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality is in violation of this chapter after review and notification shall constitute a separate offense. In addition to the civil penalty, the department shall withhold reimbursement to any municipality which is in violation of this chapter until it reaches compliance.

3. Departmental assistance. Whenever the department finds that a person in immediate need of general assistance has not received that assistance as a result of a municipality's failure to comply with the requirements of this chapter, the department shall, within 24 hours of receiving a request to intervene and after notifying the municipality, grant this assistance in accordance with regulations adopted by it. The expense of that assistance granted, including a reasonable proportion of the State's administrative cost that can be attributed to that assistance, shall be billed by the department to the municipality. Should that bill remain unpaid 30 days after presentation to the municipality, the department shall refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the department for assistance granted under this subsection if the department failed to intervene within 24 hours of receiving the request to intervene or if the department failed to make a good faith effort, prior to the intervention, to notify the municipality of the department's intention to intervene.

4. Appeal. Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A request for that appeal shall be in writing and shall be made within 30 days of receiving notification. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this section shall be pursuant to the Maine Rules of Civil Procedure, Rule 80 C.

5. Emergency contact information. The department shall collect from each municipality emergency contact information for use by municipal residents in applying for assistance under this section. The department shall forward the municipal emergency contact information

periodically to the statewide 2-1-1 telephone number designated pursuant to Title 35-A, section 7108.

6. Publication of data. The department shall report on a quarterly basis the amount of general assistance expended by a municipality for each type of assistance provided by the municipality, the amount of assistance expended by the State of Maine, the number of individuals or household served by each municipality, the type of assistance provided by each municipality, and the number of instances in which the Department provided assistance pursuant to §4323 of this Chapter.

FISCAL NOTE

129th MAINE LEGISLATURE

LD

LR

An Act To Improve the Administration of General Assistance in the State of Maine

Note for Bill as Engrossed with:

Committee: Health and Human Services

Fiscal Note

FY 2019-20FY	2020-21	FY 2021-22	FY 2022-23
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Appropriations/Allocations

Other Special Revenue Funds

Revenue

Other Special Revenue Funds

Fiscal Detail and Note

This bill requires the Department of Health and Human Services to hire additional staff and provide ongoing training to the newly hired and existing state employees charged with supervising the implementation of the general assistance program.

This bill also requires the Department of Health and Human Services to use staff to provide education and training to municipal personnel administering the general assistance program and to develop training materials to be used in those trainings.

This bill also requires the State of Maine to reimburse municipalities for 100% of emergency general assistance awarded by the municipality that exceed the maximum levels of assistance set forth in the municipality's general assistance ordinance.



129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2091

S.P. 741

In Senate, January 30, 2020

An Act To Amend the Marijuana Legalization Act and Make Other Implementing Changes

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 203.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

51. Seedling. "Seedling" means a marijuana plant that is:

A. Not flowering;

B. Less than ~~6~~ 12 inches in height; and

C. Less than ~~6~~ 12 inches in width.

PART B

Sec. B-1. 28-B MRSA §302, sub-§1, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

1. Operating plan. The applicant shall submit an operating plan demonstrating the proposed size and layout of the cultivation facility; plans for wastewater and waste disposal for the cultivation facility; plans for providing electricity, water and other utilities necessary for the normal operation of the cultivation facility; plans for securing the proposed facility, including plans for obscuring from public view by any person under 21 years of age any marijuana or marijuana plants, and otherwise meeting applicable security requirements under this chapter and the rules adopted pursuant to this chapter; and plans for compliance with applicable building code and federal and state environmental requirements.

PART C

Sec. C-1. 28-B MRSA §104, sub-§1, ¶A, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

A. Grant or deny applications for the licensure of marijuana establishments and marijuana establishment support entities under this chapter; and

Sec. C-2. 28-B MRSA §201, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

§201. License process; license types

The department, upon receipt of an application in the prescribed form that meets all applicable requirements for licensure under this chapter and the rules adopted pursuant to this chapter, shall issue to the applicant a conditional license to operate one or more of the following types of marijuana establishments or marijuana establishment support entities or shall deny the application in accordance with section 206:

1. Cultivation facility. Consistent with the requirements and restrictions of section 205, subsection 2, paragraph A and subchapter 3, a cultivation facility license;

2. Testing facility. Consistent with the requirements and restrictions of section 205, subsection 2, paragraph B and section 503, subsection 2, a testing facility license;

3. Products manufacturing facility. A products manufacturing facility license; or

4. Marijuana store. Consistent with the restrictions of section 205, subsection 2, paragraph C, a marijuana store license; or

1 **5. Sample collector.** Consistent with the requirements and restrictions of section
2 205, subsection 2, paragraph B and section 503-A, a sample collector license.

3 Except as provided in section 205, the department may not impose any limitation on
4 the number of each type of license that it issues to a qualified individual applicant or on
5 the total number of each type of license that it issues to qualified applicants pursuant to
6 this chapter.

7 **Sec. C-3. 28-B MRSA §205, sub-§2, ¶B,** as enacted by PL 2017, c. 409, Pt. A,
8 §6 and amended by c. 452, §37, is further amended to read:

9 B. If the applicant has applied for the issuance or renewal of a testing facility license
10 or sample collector license, the applicant or, in the case of a sample collector
11 licensee, any individual or entity contracting with or employing the applicant, may
12 not be a caregiver or registered caregiver or have an interest in a registered
13 dispensary, a cultivation facility license, a products manufacturing facility license or
14 a marijuana store license. If the applicant has applied for the issuance or renewal of
15 any license under this chapter that is not a testing facility license or a sample collector
16 license, the applicant may not have an interest in a testing facility license or a sample
17 collector license. An applicant that meets the requirements for the issuance of a
18 testing facility license under this chapter and the requirements of this paragraph may
19 apply for and be issued multiple testing facility licenses. For purposes of this
20 paragraph, "interest" means an equity ownership interest or a partial equity ownership
21 interest or any other type of financial interest, including, but not limited to, being an
22 investor or serving in a management position; and

23 **Sec. C-4. 28-B MRSA §205, sub-§3,** as enacted by PL 2017, c. 409, Pt. A, §6, is
24 amended to read:

25 **3. Issuance of conditional license.** Within 90 days of receipt of an application for a
26 license to operate a marijuana establishment or a marijuana establishment support entity
27 or for renewal of an existing license to operate a marijuana establishment or a marijuana
28 establishment support entity, the department either shall issue to the applicant a
29 conditional license to operate the marijuana establishment or marijuana establishment
30 support entity if the applicant meets all applicable requirements for licensure under this
31 chapter and the rules adopted pursuant to this chapter or shall deny the application in
32 accordance with section 206.

33 A. A licensee that has been issued a conditional license by the department may not
34 engage in the cultivation, manufacture, testing, sampling or sale of adult use
35 marijuana or adult use marijuana products until the department has issued an active
36 license to the licensee pursuant to subsection 4.

37 B. A conditional license issued by the department pursuant to this subsection is
38 effective for a period of one year from the date of issuance and may not be renewed.
39 If a licensee issued a conditional license by the department fails to obtain an active
40 license from the department pursuant to subsection 4 within one year from the date of
41 issuance of the conditional license, the conditional license expires.

1 **Sec. C-5. 28-B MRSA §205, sub-§4, ¶B**, as enacted by PL 2017, c. 409, Pt. A,
2 §6, is amended to read:

3 B. The department shall prepare and furnish to applicants, except applicants for a
4 sample collector license, municipalities and the Maine Land Use Planning
5 Commission a certification form by which the municipality may certify to the
6 department that the applicant has obtained local authorization as required by section
7 402, subsection 3, paragraph B or, in the case of a marijuana establishment to be
8 located in the unorganized and deorganized areas, the Maine Land Use Planning
9 Commission may certify to the department that the applicant has obtained local
10 authorization as required by section 403, subsection 3, paragraphs B and C.
11 Applicants for a sample collector license are not required to seek local authorization
12 prior to issuance of an active license by the department but must submit all other
13 information required by the department under this chapter.

14 **Sec. C-6. 28-B MRSA §207, sub-§3-A** is enacted to read:

15 **3-A. Fees for sample collectors.** For a sample collector license, the department
16 shall require payment of an application fee of \$100 and a license fee of not more than
17 \$250.

18 **Sec. C-7. 28-B MRSA §209, sub-§3**, as enacted by PL 2017, c. 409, Pt. A, §6, is
19 amended to read:

20 **3. Operation under expired license.** A licensee that files an application for renewal
21 of its existing license and pays all required fees under this section prior to the expiration
22 of the license may continue to operate the marijuana establishment or the marijuana
23 establishment support entity under that license notwithstanding its expiration until such
24 time as the department takes final action on the renewal application, except when the
25 department suspends or revokes the license in accordance with the provisions of
26 subchapter 8 prior to taking final action on the renewal application.

27 **Sec. C-8. 28-B MRSA §209, sub-§4**, as enacted by PL 2017, c. 409, Pt. A, §6, is
28 amended to read:

29 **4. Expired license; cessation of activity and forfeiture of marijuana and**
30 **marijuana products.** Except as provided in subsection 3, a person whose license has
31 expired shall immediately cease all activities relating to the operation of the marijuana
32 establishment or marijuana establishment support entity previously authorized under that
33 license and ensure that all adult use marijuana and adult use marijuana products
34 cultivated, manufactured, sampled or otherwise in the possession of the person pursuant
35 to that license are forfeited to the department for destruction in accordance with section
36 803.

37 **Sec. C-9. 28-B MRSA §209, sub-§5**, as enacted by PL 2017, c. 409, Pt. A, §6, is
38 amended to read:

39 **5. Renewal application process; fees; rules.** An applicant seeking renewal of a
40 license to operate a marijuana establishment or marijuana establishment support entity

1 must pay to the department a renewal application fee or, if applicable, a late renewal
2 application fee, and must demonstrate continued compliance with all applicable licensing
3 criteria under this chapter, including, but not limited to, obtaining local authorization as
4 required by section 402, subsection 3, paragraph B or, in the case of a marijuana
5 establishment located in the unorganized and deorganized areas, as required by section
6 403, subsection 3, paragraphs B and C, except that an applicant seeking renewal of a
7 license is not required to submit to a criminal history record check under section 204
8 unless specifically required to do so by the department.

9 A. The department may not issue an active license to a licensee seeking renewal of a
10 license until the licensee obtains local authorization as required by section 402,
11 subsection 3, paragraph B or, in the case of a marijuana establishment located in the
12 unorganized and deorganized areas, as required by section 403, subsection 3,
13 paragraphs B and C, pays the applicable license fee required under section 207 and
14 meets all other applicable requirements for the issuance of an active license under
15 section 205, subsection 4. A sample collector licensee is not required to seek local
16 authorization as a condition for renewal of that license by the department but must
17 submit all other information required by the department under this chapter.

18 B. The department shall by rule set forth requirements for the submission, processing
19 and approval of a renewal application, which must include, but are not limited to,
20 setting of a reasonable renewal application fee and a reasonable late renewal
21 application fee.

22 **Sec. C-10. 28-B MRSA §401, last ¶**, as enacted by PL 2017, c. 409, Pt. A, §6, is
23 amended to read:

24 Notwithstanding any other provision of law to the contrary, a municipal ordinance
25 regulating marijuana establishments within the municipality adopted pursuant to this
26 subchapter is not subject to the requirements or limitations of Title 7, chapter 6 or 8-F.
27 Nothing in this subchapter may be construed to require an applicant for a sample collector
28 license or a sample collector licensee to seek local authorization prior to the issuance or
29 renewal of an active license.

30 **Sec. C-11. 28-B MRSA c. 1, sub-c. 5, headnote** is amended to read:

31 **SUBCHAPTER 5**

32 **OPERATING REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS** 33 **AND MARIJUANA ESTABLISHMENT SUPPORT ENTITIES**

34 **Sec. C-12. 28-B MRSA §503, sub-§3**, as enacted by PL 2017, c. 409, Pt. A, §6,
35 is amended to read:

36 **3. Compliance with testing protocols, standards and criteria.** A testing facility
37 shall follow all testing protocols, standards and criteria adopted by rule by the department
38 for the testing of different forms of marijuana and marijuana products; determining batch
39 size; sampling; testing validity; and approval and disapproval of tested marijuana and
40 marijuana products. A testing facility may use an independent sample collector for the

1 collection of samples for mandatory testing, as long as the testing facility has indicated
2 the use of an independent sample collector in its operating plan and standard operating
3 procedures.

4 **Sec. C-13. 28-B MRSA §503, sub-§8**, as enacted by PL 2017, c. 409, Pt. A, §6
5 and amended by c. 452, §37, is further amended to read:

6 **8. Independence of testing facility interest.** A person with an interest in a testing
7 facility may not be a caregiver or a registered caregiver or have an interest in a registered
8 dispensary, a marijuana store license, a cultivation facility license or a products
9 manufacturing facility license, but may hold or have an interest in multiple testing facility
10 or sample collector licenses. A person who is a caregiver or a registered caregiver or who
11 has an interest in a registered dispensary, a marijuana store license, a cultivation facility
12 license or a products manufacturing facility license may not have an interest in a testing
13 facility or sample collector license. As used in this subsection, "interest" has the same
14 meaning as in section 205, subsection 2, paragraph B.

15 **Sec. C-14. 28-B MRSA §503-A** is enacted to read:

16 **§503-A. Operation of sample collectors**

17 A sample collector shall operate in accordance with the provisions of this section and
18 the rules adopted pursuant to this chapter.

19 **1. Sample collector may operate as independent contractor, as entity or as**
20 **employee of testing facility.** A sample collector is authorized to collect samples from a
21 marijuana establishment for mandatory and other testing by a marijuana testing facility.
22 A sample collector may operate as an independent contractor, as an employee of a
23 marijuana testing facility or as an employee of a business entity that is not a registered
24 caregiver, registered dispensary, registered manufacturing facility under the Maine
25 Medical Use of Marijuana Act, registered manufacturing facility using inherently
26 hazardous substances for marijuana extraction in accordance with Title 22, section
27 2423-F, cultivation facility, products manufacturing facility or marijuana store if that
28 entity employs more than one individual who is a sample collector.

29 **2. Compliance with sampling protocols, standards and criteria.** A sample
30 collector shall follow all sampling protocols, standards and criteria adopted by rule or
31 otherwise approved by the department for the sampling of different forms of marijuana
32 and marijuana products.

33 **3. Record keeping.** A sample collector shall maintain records of all business
34 transactions in accordance with the record-keeping requirements of section 511 and
35 section 602, subsections 2 and 3.

36 **4. Disposal of marijuana and marijuana products.** A sample collector shall
37 dispose of or destroy used, unused and waste marijuana and marijuana products in
38 accordance with rules adopted by the department.

1 **5. Independence of sample collector interest.** A person with an interest in a
2 sample collector license may not be a caregiver or a registered caregiver or have an
3 interest in a registered dispensary, a marijuana store license, a cultivation facility license
4 or a products manufacturing facility license but may hold or have an interest in a business
5 entity that employs multiple sample collectors, in a testing facility license or in multiple
6 testing facility licenses. A person who is a caregiver or a registered caregiver or who has
7 an interest in a registered dispensary, a marijuana store license, a cultivation facility
8 license or a products manufacturing facility license may not have an interest in a sample
9 collector license. As used in this subsection, "interest" has the same meaning as in section
10 205, subsection 2, paragraph B.

11 **6. Tracking.** In accordance with the requirements of section 105, a sample collector
12 shall track all adult use marijuana and adult use marijuana products it collects from a
13 licensee for testing purposes from the point at which the marijuana or marijuana products
14 are collected from a licensee to the point at which the marijuana or marijuana products
15 are delivered to a testing facility or the marijuana or marijuana products are disposed of
16 or destroyed.

17 **7. Rules.** The department shall adopt rules regarding the sampling of marijuana and
18 marijuana products by sample collectors pursuant to this chapter, including, but not
19 limited to, rules establishing acceptable sampling methods, sample collector record
20 keeping, documentation and business practices, and regarding the disposal of used,
21 unused and waste marijuana and marijuana products. Rules adopted pursuant to this
22 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **Sec. C-15. 28-B MRSA §601,** as enacted by PL 2017, c. 409, Pt. A, §6, is
24 amended to read:

25 **§601. Testing program established**

26 The department shall establish a testing program for adult use marijuana and adult
27 use marijuana products. Except as otherwise provided in this subchapter, the program
28 must require a licensee, prior to selling or distributing adult use marijuana or an adult use
29 marijuana product to a consumer or to another licensee, to submit the marijuana or
30 marijuana product to a testing facility for testing to ensure that the marijuana or marijuana
31 product does not exceed the maximum level of allowable contamination for any
32 contaminant that is injurious to health and for which testing is required and to ensure
33 correct labeling. The department shall adopt rules establishing a testing program pursuant
34 to this section, rules identifying the types of contaminants that are injurious to health for
35 which marijuana and marijuana products must be tested under this subchapter ~~and~~, rules
36 regarding the maximum level of allowable contamination for each contaminant and rules
37 regarding the qualifications of sample collectors authorized by the department to sample
38 marijuana and marijuana products for mandatory testing and the approval of sampling
39 protocols implemented by sample collectors. Rules adopted pursuant to this subchapter
40 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

41 **Sec. C-16. 28-B MRSA §604,** as enacted by PL 2017, c. 409, Pt. A, §6, is
42 amended to read:

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SUMMARY

This bill does the following.

In the Marijuana Legalization Act, it amends the definition of "inherently hazardous substance" to include ethanol and alcohol, amends the definition of "marijuana trim" to exclude from that definition stalks and roots of the marijuana plant, amends the definition of "seedling" to include larger plants and adds definitions of "marijuana establishment support entity" and "sample collector."

In the Marijuana Legalization Act, it changes the requirements of the operating plan for cultivation facilities to require such facilities to obscure from public view by anyone under 21 years of age any marijuana or marijuana plants.

In the Marijuana Legalization Act, it provides for sample collectors to collect samples of marijuana and marijuana products for mandatory testing by marijuana testing facilities and provides for the licensing of marijuana establishment support entities.

It allows the Department of Administrative and Financial Services, Maine Revenue Services to provide tax information directly to the Department of Administrative and Financial Services, office of marijuana policy for the purposes of determining applicant eligibility for licenses issued by the office.

It amends the Freedom of Access Act to exclude from the definition of "public record" application materials provided to the office of marijuana policy regarding security, trade secrets and standard operating procedures.



CITY OF PORTLAND
Office of the City Manager
Jon P. Jennings, City Manager

February 21, 2020

Re: LD 2091 ("An Act to Amend the Marijuana Legalization Act and Make Other Implementing Changes")

Senator Luchini, Representative Schneck, and members of the Committee:

I am writing regarding LD 2091 ("An Act to Amend the Marijuana Legalization Act and Make Other Implementing Changes"), and to request that the Committee consider making the same information confidential with respect to marijuana business license applications when that information is submitted to municipalities for local licensing. Doing so would facilitate the collection of accurate, comprehensive information from applicants by local towns and cities, and prevent the omission of important but proprietary information.

Among other provisions, LD 2091 proposes to add language making certain application materials for marijuana businesses confidential. This includes application materials that contain information regarding security; trade secrets related to cultivation, product recipes or extraction methods; or standard operating procedures. However, the proposed bill only makes that information confidential if it is obtained by the Department of Administrative and Financial Services (DAFS). When the same information is given to a municipality it is likely to be not confidential, and may need to be turned over in response to a request under the Freedom of Access Act (FOAA).

The current draft of the City of Portland's ordinance on marijuana licensing will require applicants to submit much of the same information to the City as they will submit to DAFS, including security plans and operating plans. It is critically important to the City that applications provide an honest, complete picture of the business they represent. Security plans, for example, will provide the City reassurance that there are adequate safeguards in place to prevent diversion and theft, as well as to protect employees working for those facilities. The requirement to make security plans public would undermine those goals. Plans describing extraction plans, cultivation plans, materials, and equipment are necessary to ensure that extraction is done in a safe manner and to inform the activities of inspectors and first responders; however, businesses may be deterred from providing a complete picture of proprietary information or operations.

The City supports a balance between transparency and protection of proprietary information. We urge the Committee to consider amending LD 2091 as follows:



“W. Application materials obtained by the Department of Administrative and Financial Services, office of marijuana policy, or to any municipal licensing authority, containing information regarding the security of marijuana establishments licensed or registered by that office; trade secrets related to marijuana cultivation, marijuana product recipes or marijuana extraction methods; or standard operating procedures for marijuana establishments.”

Thank you for your consideration. Please do not hesitate to contact me at 207-874-8685 with any questions or for additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon P. Jennings".

Jon P. Jennings
City Manager



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1415

H.P. 1028

House of Representatives, March 26, 2019

An Act To Improve the Laws Regarding Discontinued and Abandoned Roads

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, reading "Rt B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative NADEAU of Winslow.
Cosponsored by Senator DIAMOND of Cumberland and
Representatives: COREY of Windham, MARTIN of Eagle Lake, Senator: President
JACKSON of Aroostook.

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

2 **Sec. 1. 23 MRSA §3028, sub-§1**, as enacted by PL 1991, c. 195, is amended to
3 read:

4 **1. Presumption of abandonment.** ~~It~~ Except as provided by subsection 1-A, it is
5 prima facie evidence that a town or county way not kept passable for the use of motor
6 vehicles at the expense of the municipality or county for a period of 30 or more
7 consecutive years has been discontinued by abandonment. A presumption of
8 abandonment may be rebutted by evidence that manifests a clear intent by the
9 municipality or county and the public to consider or use the way as if it were a public
10 way. A proceeding to discontinue a town or county way may not prevent or estop a
11 municipality from asserting a presumption of abandonment. A municipality or its
12 officials are not liable for nonperformance of a legal duty with respect to such ways if
13 there has been a good faith reliance on a presumption of abandonment. Any person
14 affected by a presumption of abandonment, including the State or a municipality, may
15 seek declaratory relief to finally resolve the status of such ways. A way that has been
16 abandoned under this section is relegated to the same status as it would have had after a
17 discontinuance pursuant to section 3026, except that this status retains a public easement
18 and all remaining interests of the municipality pass to the abutting property owners in fee
19 simple to the center of the way. A way that has been abandoned under this section is at
20 all times subject to an affirmative vote of the legislative body of the municipality within
21 which the way lies making that way an easement for recreational use. A presumption of
22 abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless
23 other evidence exists that shows a clear intent by the municipality or county to consider
24 or use the way as if it were a public way.

25 **Sec. 2. 23 MRSA §3028, sub-§1-A** is enacted to read:

26 **1-A. Termination through discontinuance process only.** For a town way that does
27 not meet the requirements of subsection 1 as of January 1, 2020, a municipality may
28 terminate in whole or in part any interests held by it for highway purposes only through
29 the discontinuance process pursuant to section 3026-A. This subsection is not intended to
30 modify common law regarding abandonment of a road.

31 **Sec. 3. 23 MRSA §3028, sub-§5**, as enacted by PL 2015, c. 464, §7, is amended
32 to read:

33 **5. Filing of record of evidence and determination of abandonment.** ~~If after the~~
34 ~~effective date of this subsection~~ the municipal officers, either on their own or after being
35 presented with evidence of abandonment, determine that a town way has been
36 discontinued by abandonment pursuant to subsection 1, the municipal officers shall
37 provide in writing the evidence upon which the determination of discontinuation by
38 abandonment was made and the municipal clerk shall file a record of this determination,
39 the evidence upon which the determination was made and the effective date of the
40 determination with the registry of deeds. The absence of a filing of a determination of
41 discontinuation by abandonment may not be construed as evidence against the status of
42 abandonment. The registry of deeds shall record a document regarding an abandoned

1 town way under the name of the town way, the name of the municipality and the names
2 of the abutting property owners. The municipal clerk shall provide a copy of the
3 document regarding an abandoned town way to the Department of Transportation, Bureau
4 of Maintenance and Operations.

5 SUMMARY

6 Under current law, a presumption of abandonment exists if a municipality fails for a
7 period of 30 or more years to keep a way passable for the use of motor vehicles at the
8 expense of the municipality. This bill eliminates that presumption for ways that have not
9 met that statutory requirement by January 1, 2020 and instead specifies that the only
10 process that a municipality may use to terminate its interests in a public way is through
11 the discontinuance process established in the Maine Revised Statutes, Title 26, section
12 3026-A. This bill also amends the filing required by the clerk of a municipality following
13 the determination of discontinuance by abandonment of a town way to require that the
14 record filed with the registry of deeds include the evidence used by the municipality to
15 make the determination of abandonment and the effective date of that determination of
16 abandonment.

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

An Act to Improve the Laws Regarding Abandoned Roads

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 23 M.R.S.A. §3028 is repealed

Sec. 2. 23 M.R.S.A. §3028-A is enacted as follows:

§3028-A Abandonment of Public Ways. After October 1, 2020, a town way, or portion thereof, may not be declared discontinued by abandonment unless the municipality or county complies with the requirements of this section. A municipality or its officials, or a county or its officials are not liable for nonperformance of a legal duty with respect to a town way declared discontinued by abandonment in accordance with this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected property" means real property which does not abut the town way to be declared discontinued by abandonment, but for which the town way is the only access route.

B. "Best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, to abutting and affected property owners whose addresses appear in the assessment records of the municipality or county.

2. Declaration of abandonment. A town or county may vote to declare a town way discontinued by abandonment if:

A. For a period of 30 or more consecutive years the town way was not kept passable for the use of motor vehicles at the expense of the municipality or county. Isolated acts of maintenance by the municipality or county without other evidence that shows a clear intent by the municipality or county to consider or use the town way as if it were a public way does not negate evidence that the way was not kept passable for the use of motor vehicles; and

B. The municipal officers or county commissioners vote to declare the way discontinued by abandonment at a regularly scheduled meeting of the municipal officers or county commissioners. If the municipal officers or county commissioners vote to declare a town way discontinued by abandonment they must also vote on whether a public easement is retained.

If evidence is presented to the municipal officers at the meeting required in paragraph B, or at a public hearing required in subsection 4, that the municipality received Local Road Assistance Program

funds pursuant to Title 23, ch. 19, subchapter 6 for any portion of the town way to be declared discontinued by abandonment during the 30 or more consecutive year period, the municipality may not declare the town way discontinued by abandonment.

3. Notification of discontinuation by abandonment. The municipal officers or county commissioners shall give best practicable notice to all abutting and affected property owners of the town way to be declared discontinued by abandonment at least 30 days prior to the meeting required in subsection 2, paragraph B.

A. The notice must include information regarding the potential retention of a public easement, including the abutting and affected property owners' maintenance obligations for and right of access to the way, the right of access to the way by the public if a public easement is retained and information regarding the rights of abutting and affected property owners to enter into agreements regarding maintenance of and access to that way, including the right of abutting and affected property owners to create private easements.

B. If the town way to be declared discontinued by abandonment is the only means of access to property in an adjacent municipality or county, the municipal officers or county commissioners shall cause a written notice of the vote to declare a town way discontinued by abandonment be given to the municipal officers or county commissioners of the adjacent municipality or county at least 30 days prior to the meeting required in subsection 2, paragraph B.

4. Public hearing. The municipal officers or county commissions shall hold a public hearing prior to voting to declare a town way discontinued by abandonment upon receipt of written request signed by at least 10% of the abutting or affected property owners. The written request for a public hearing must be received by the municipal or county clerk no more than 10 days after the notification issued pursuant to subsection 3.

5. Status of public way discontinued by abandonment. If the municipal officers or county commissioners vote to declare a town way discontinued by abandonment, the interests of the municipality or county in the abandoned town way pass as follows:

A. If the municipal officials or county commissioners vote not to retain a public easement in the abandoned town way all interest of the municipality in the way, if any, pass to the abutting property owners to the center of the way.

B. If the municipal officials or county commissioners vote to retain a public easement in the abandoned town way all other interest of the municipality or county in the way, if any, pass to the abutting property owners to the center of the way. If the municipal officers or county commissioners vote to retain a public easement in the abandoned town way the public easement is limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42.

C. An easement for public utility facilities necessary to provide or maintain service remains in a town way declared to be discontinued by abandonment regardless of whether a public easement is retained.

6. Filing with registry of deeds. If the municipal officers or county commissioners vote to declare a town way discontinued by abandonment the municipal or county clerk shall record an attested certificate of the discontinuance by abandonment in the registry of deeds in the county where the abandoned way is situated.

A. The certificate may not be filed before the appeal period in section 6 has passed or if an appeal is filed before the appeal process has ended;

B. The certificate must describe the town way, whether a public easement was retained and the date of the vote by the municipal officers or county commissioners; and

C. The registry of deeds shall record the certificate under the name of the town way, the name of the municipality or county and the names of the abutting and affected property owners. The municipal or county clerk shall provide a photo copy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

7. Appeal. Notwithstanding section 3029, any person affected by a vote to declare a town way discontinued by abandonment may appeal the decision by filing a written appeal request within 10 days of the vote as follows:

A. With the municipal clerk for an appeal of a vote by the municipal officers in a municipality with a board of appeals authorized to hear the appeal

B. With the county clerk for an appeal of a vote by the municipal officers in a municipality that does not have a board of appeals authorized to hear the appeal; or

C. With the county clerk for an appeal of a vote by the county commissioners

Within 15 days of receiving an appeal request filed pursuant to this subsection, the municipal or county clerk shall schedule a hearing on the appeal before the municipal board of appeals or county commissioners and provide written notice of the hearing date to the municipal officers or county commissioners and the person filing the appeal request. The public hearing must occur no more than 30 days after the appeal request is received.

Any person aggrieved by the decision of the municipal board of appeals or county commissioners pursuant to this section may appeal the decision to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure.

The determination of the municipal officers regarding the status of a town way or public easement pursuant to this section is a quasi-judicial act under Title 14, section 8104-B, subsection 2.

7. **Previously abandoned town ways.** Nothing in this section alters the status of a town way abandoned by a municipality or county under the terms of former section 3028 or under common law.

8. **Removal of obstructions.** If the municipal officers or county commissioners have declared a town way discontinued by abandonment and have retained a public easement in the town way under this section, the municipality, county commissioners or an abutter on the way, acting with the written permission of the municipal officers or county commissioners, may remove any gates, bars or other obstructions in the way.

SUMMARY

This amendment strikes the entire bill and replaces the presumption of abandonment in the current law with a process for municipalities and counties to declare a town way discontinued by abandonment. The process includes notice to abutting property owners, property owners for whom the town way is the only means of access, and adjacent municipalities and counties. The amendment provides for a public hearing process and a local appeals process. The amendment clarifies that the public easement retained in a town way discontinued by abandonment is limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. These limits are the same as those obtained by a municipality if it laid out a new public easement pursuant to Title 23, section 3022.

**CITY LEGISLATIVE COMMITTEE 2018-2019
FLOW CHART**

CITY MANAGER COMPILES CITY STAFF LEGISLATIVE PRIORITIES AND DISCUSS WITH LEGISLATIVE COMMITTEE ; COMMITTEE ALSO REACHES OUT TO CITY COUNCIL, BOARD OF EDUCATION, AND SUPERINTENDENT FOR LEGISLATIVE PRIORITIES; COMMITTEE DECIDES WHAT TO PURSUE.



LEGISLATIVE COMMITTEE DEVELOPS LEGISLATIVE AGENDA AND MEETS WITH DELEGATION TO DISCUSS AGENDA AND TO ALSO HEAR DELEGATION'S PRIORITIES



LEGISLATIVE COMMITTEE PRESENTS PROPOSED AGENDA ON SPONSORED BILLS TO CITY COUNCIL AS A COUNCIL



SUBMIT ACTION PLAN FOR
LEGISLATIVE AGENDA

If emergency and other issues arise throughout the Legislative Session, Lobbyist will discuss with Mayor, City Staff and Legislative Committee (if possible) and Legislative Committee Chair to determine best course of action.

**TRACKING LIST OF
APPROVED BILL
TITLES**

City Staff/Lobbyist/
Legislative
Committee track
bills throughout
drafting; release;
committee process,
both chambers until
chaptered law via
tracking list.

Weekly meetings
soon after Friday
update of tracking
list; Priority position
assigned to bills by
Committee

City staff draft
testimony;
Legislative
Committee
determines lead
resources