

Senate Election Law and Municipal Affairs Committee

Jessica Bourque 271-2104

HB 1135, prohibiting the acquisition of prescriptive rights in private roads through adverse use.

Hearing Date: March 18, 2026

Time Opened: 1:21 p.m.

Time Closed: 1:57 p.m.

Members of the Committee Present: Senators Gray, Lang, Rochefort, Perkins Kwoka and Long

Members of the Committee Absent: None

Bill Analysis: This bill prohibits acquiring of rights in private roads, ways, driveways, or trails through adverse use.

Sponsors:

Rep. Aylward

Rep. Fracht

Who supports the bill: Rep. Deborah Aylward, Robert Johnson, Bob Benson, Curtis Howland, Timothy Finney

Who opposes the bill: Dennis McKenney, Stephan Nix, Thomas Lacey, Jasen Stock, Mark Condodemetraky, Tom Chrisenton, Ginny Chrisenton

Summary of testimony presented:

Rep. Deborah Aylward, Merrimack-District 5

- The bill supports private property.
- RSA 477:34 prohibits public property from being taken by adverse or prescriptive means. This bill would extend those protections to private property.
- Since public land is protected through adverse or prescriptive use, private roads owned by private citizens should receive the same protections.
- HB 1135 will ensure land stability between owners.
- Situations surrounding adverse claims can cause uncertainty and violence.
- Rep. Aylward noted that in her handout, she mentions that the Timberland Owners Association supported the bill, but they have since withdrawn their support for unspecified reasons.

- Line 16 reads if “fully adjudicated” and believes that if this is changed to “fully ripened,” she thinks this would lessen opposition.

Dennis McKenney, Bennington

- Has been a land surveyor for 39 years.
- Opposes this bill because it removes longstanding common law principles.
- He regularly testifies in court cases as an expert in boundary disputes, and he relies on common law principles to guide his decisions.
- Property disputes are site-specific and nuanced, and he feels that trying to craft a one-size-fits-all fix is dangerous.

Senator Perkins Kwoka asked whether the language would affect both easements and adverse possession, raising an issue in both permissive and non-permissive situations.

Mr. McKenny said that longstanding uses would be terminated under the language of the bill, as he reads it.

Senator Perkins Kwoka said she thinks the bill has specific carveouts that do not seem to address easements that have arisen by law.

Mr. McKenny said the proposed law aims to terminate rights that people may have established through long-term use. A one-size-fits-all solution rarely works and will not be effective here.

Senator Gray asked whether there is a situation that needs legislative action.

Mr. McKenny replied that he had no example to provide.

Stephan Nix, Attorney and Land Surveyor

- Mr. Nix said that the bill, when combined with common law, would eliminate private property rights and that the language fails to fulfill its intended purpose.
- An easement is established by either conveyance, prescription, or implication. Mr. Nix said the bill would eliminate prescriptive and implied easements, removing common ways of establishing access.
- The way the bill is drafted, there seems to be some confusion between easements by prescriptive use and by adverse possession.
- Explained that adverse claims need landowner awareness and usually take 20 years.
- Warned that this would complicate traditional land use and cause legal issues.

Senator Perkins Kwoka asked whether an individual who participates in hikes would need 20 years of history to cross land.

Mr. Nix stated that, yes, the hiker would need twenty years of history. There could be a solution under the Fish and Game statute. For example, if a landowner allows people

to hunt, then they are not liable for any recreational activity. One possibility is that, if a bill were crafted, it could state that people who are merely walking through private land for recreational purposes cannot claim adverse use.

Senator Lang asked whether an individual could place barriers at a corner of their land if their land happens to cross a road that connects to 10 houses down the road, and now those 10 houses do not have access to their land.

Mr. Nix replied that that scenario would be lawful under the legislation.

Senator Rochefort said that when he was researching this bill, he spoke with an attorney who explained that many lakes and ponds in his district have roads running along them that are owned by everyone. Senator Rochefort inquired as to whether this change, if passed, would affect how the lakes operate in the state.

Mr. Nix replied absolutely. Many of the lots would become landlocked, and there would be litigation.

Thomas Lacey, Resident from Keene

- Owns 65 acres of land and is opposed to this bill.
- HB 1135 is unnecessary and would do damage to many property owners
- Those in support of this bill are driven by concern over how technology and social media impact private land, but he does not believe that is a good reason to throw away hundreds of years of common law.
- Private owners will learn to adapt to the issue that is arising from technology.
- Mr. Lacey described to the committee that his private road was heavily used by citizens, including many Keene State students, who were guided by GPS and social media to his road because it indicated it was a trailhead. He said he took preventive measures by erecting a gate, securing signs, and reporting the issue to GPS providers; the problem was resolved.
- He expressed that it was his responsibility to solve the issue and that anyone can do this.

Mr. Jasen Stock, NH Timberland Owners Association (NHTA)

- NHTA opposes this bill.
- Originally, NHTA supported this bill because they were looking at it from a landowner's perspective.
- NHTA was contacted by many of its members who asked them to withdraw their support.
- Many roads across NH, especially in Coos, are private, and many people use them to access their camps or their own parcels of land.
- This bill will cause more harm than good.

Mark Condodemetraky, Laconia

- Opposes the bill.
- Owns over 200 acres in Laconia.
- He owns a property in the city of Laconia that was built in 1925, and shares access with a neighboring rental property built in 1890. The alley is fully the property of the neighbor who blocked access to the alley for Mr. Condodemetraky's company and another user. After extensive effort, a court granted Mr. Condodemetraky prescriptive rights to the alley.
- The battle for prescriptive rights was challenging, and the bar is extremely high.
- If this bill passes, it would allow landowners to block access to thousands of alleyways and driveways that people have been using for decades to access their property.