

## New Road Maintenance Mandate Supported by Half of Local Government Committee

The late session bill introduced by the Governor, LD 1637, *An Act To Assist Maine Citizens Residing along Public Easements*, received a party-line vote by the Legislature's State and Local Government Committee after a short work session convened immediately after a quickly announced public hearing held on Wednesday. The seven Democrats on the Committee recommended "ought not to pass" on this new "discontinued roads" bill in large part because of the comprehensive bill dealing with these types of "public easement" issues already hammered out by the Committee earlier this session. That bill, LD 1325, is working its way through the legislative process with unanimous Committee support.

As amended by the six Republicans on the Committee, however, the significant unfunded mandate created by LD 1637 would require municipalities to maintain all roads legally discontinued to municipal maintenance (discontinued or abandoned roads, roads discontinued annually to winter maintenance, any other public right-of-way not maintained by the municipality) wherever the U.S. postal service operates a mail route over those "public easements."

Here is the language that would be enacted by LD 1637: *"If a municipality holds a public easement over which there is a mail route, it is the responsibility of that municipality to keep the mail route to the standard required by United States Postal Service regulations."*

Since first learning about LD 1637, MMA has had trouble determining exactly what the referenced United States Postal Service (USPS) mail route standards entail. Any detailed or specific

USPS road standards are hard to find and even the nearest regional office of the USPS has had trouble answering this question. Local Post Offices have informed MMA that the specific route to deliver mail is to some extent a matter of carrier discretion. If a "mail route" is the same as a "carrier route" as defined by the USPS, then these routes include any road with an address to which a carrier delivers mail. Under these terms, LD 1637 would require municipalities to

maintain according to certain unknown standards all roadways, even the roads the towns are not now required to maintain, that U.S. postal carriers may currently utilize.

Municipalities throughout the state are already having significant difficulties covering the costs of fully maintaining the roads for which they are currently responsible, in addition to all the other unfunded state mandates placed upon

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## Shooting Range Bill Improves, Advances To Full Legislature

LD 1500, *An Act To Protect and Promote Access To Sport Shooting Ranges*, has been summarized in previous editions of the Legislative Bulletin. At issue from the municipal perspective is the degree to which this bill would give special exemptions to existing sport shooting ranges from the normal exposure of municipal land use regulation, particularly when shooting ranges become "legal but non-conforming" uses in the land use zone or district within which they are located. LD 1500 was opened up for consideration one more time on Wednesday this week by the Judiciary Committee. After receiving additional input from MMA and the bill's proponents, the Committee found a way to further massage its amendment to the printed bill in a way that softens the municipal concerns with the legislation described previously.

Although the amendment expands the special protection for shooting ranges from nuisance actions provided the shooting

range is operating according to previously accepted practice, it will also ensure that any significant range improvements and expansions will need to conform to modern building codes and zoning ordinances. In the event a range that has been determined to be a legal-but-non-conforming use is destroyed by a disaster of some sort, owners will have two years to rebuild in order to continue to exist in that status. The finally-amended version of LD 1500 also ensures that pre-existing shooting ranges falling in the legal but nonconforming use status will remain subject to the municipality's building code and zoning ordinance standards with respect to any general "habitability" improvements to the facility they may wish to undertake.

With these amendments, one more Committee member decided to support the "ought to pass as amended" report, leaving the final vote at ten in favor of LD 1500 as amended, with three members supporting the "ought not to pass" report.

## Road Maintenance Mandate (cont'd)

them. Newspapers are full of articles covering the town meetings currently in play, where road costs are one of the primary issues residents and officials are grappling with. It is not clear how the legislators supporting LD 1637 expect their towns to afford bringing roadways that are currently not subject to municipal maintenance up to year-round vehicle passability standards when they cannot even afford to keep their current public roads fully passable at certain times of the year.

Sometimes, particularly due to mud or spring snow conditions, the USPS carriers will decide to not even traverse those roads that are currently subject to municipal maintenance. If enacted, LD 1637 could require municipalities to begin paving dirt roads that get muddy this time of year, and significantly increase plowing, sanding, and salting of all roads in winter. The option of closing roads to winter maintenance could also be compromised with the enactment of LD 1637 and municipalities will need to start budgeting annually for plowing miles of roads discontinued to winter municipal maintenance to make them accessible to postal carriers.

On behalf of the Governor, Rep-

resentative Gary Hilliard of Belgrade is the prime sponsor of LD 1637 and Senator Tom Saviello (Franklin Cty.) the cosponsor. According to Representative Hilliard, the issue of abutters having to maintain their private roads “lingers to the severe detriment of many people all around Maine.” At the public hearing, a single couple from Fayette testified in support of the legislation. For this couple, the intent of the bill is to ensure residents who bought or built homes on discontinued roads with public easements “will not suddenly find themselves burdened with the expense and liability for providing maintenance of a road which remains open to unrestricted public motor vehicular travel, but for which the public no longer bears any responsibility due to the road being officially discontinued.”

It was not mentioned in that testimony that when a road is discontinued to maintenance, municipalities must by law award damages to the abutters as part of the discontinuation order, and if the road is discontinued at the time of purchase it will say so in the deed, with damages already having been paid to the previous owner.

According to the testimony provided by the Governor’s Office, residents who live on private roads with public easements ought to receive the same basic services, such as plowing snow in the winter, as residents who reside along public roads. The testimony from the Governor’s Office recognized that many municipalities may not be able to afford the additional maintenance required by LD 1637. The response to that concern was to structure all road discontinuations in a manner to permanently extinguish all public easements.

In addition to MMA, the Maine Water Utilities Association and Maine Water Environment Association testified against the bill. The utilities were concerned that the legislation could

encourage municipalities to extinguish public easements that are necessary to access and maintain public utility facilities. For over fifty years, the Legislature has chosen to incentivize, not discourage, the retention of easements that the public relies upon for access to important public resources like water bodies and hunting grounds, as well as landlocked properties.

A related rub with this mandate is that municipalities only hold public easements at the direction of the state according to Title 23, section 3021. Public easements need to be “held” by some entity. The majority of these public easements on what were formerly termed “private ways” were created in the early-to-mid 20<sup>th</sup> Century, often by actions of the county government, and no municipality ever asked for the obligation to “hold” all these easements. The obligation to “hold” the easement was thrust on the towns and cities by state law and is now being used as justification to mandate road maintenance obligations that were never intended.

MMA is surveying all towns and cities in an attempt to ascertain the financial impacts of this proposed mandate. It turns out that although most formal postal routes are located on town-maintained roads, it is not uncommon for postal carriers to “go the extra mile” in certain circumstances and deliver packages or certified mail to the front door of homes located on non-maintained roads. The U.S. Postal Service is certainly not responsible for this legislation, but if the proponents of LD 1637 are attempting to bootstrap that type of customer service into a municipal mandate to expand road obligations onto non-maintained roads, the fiscal impacts will be very significant statewide.

Municipal officials concerned about unfunded state mandates are encouraged to contact their legislators and urge them to oppose LD 1637.

### Legislative Bulletin

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# Solar Legislation Strongly Supported but Appears Headed For Split Committee Vote

On Wednesday this week the Energy, Utilities and Technology held a public hearing attended by nearly one hundred people, almost all of whom testified in support of LD 1649, *An Act To Modernize Maine's Solar Power Policy and Encourage Economic Development*. The product of a stakeholder process, LD 1649 establishes a comprehensive framework to support solar power generation in Maine. If enacted, municipalities should be able to develop solar arrays on capped landfills, brownfields and other undevelopable properties if they so choose. According to a group of municipal proponents, those municipalities could use half of the electrical power generated to offset municipal energy costs and offer shares in the other half to local homes and businesses.

The framework proposed in LD 1649 is complex. In a nutshell, the Public Utilities Commission would be required to solicit bidders who will enter into long term contracts to produce, collectively, twelve times the megawatts of solar-sourced power than is currently produced, going from 20 total megawatts to 248 megawatts per year, through the year 2022. The output of these facilities would be aggregated and sold to New England energy markets.

The municipal support for LD 1649 was strong. Given the constant pressure on municipal budgets and the way LD 1649 opens a door for municipalities to lower their energy costs, MMA's Legislative Policy Committee voted heavily in favor of the bill. Rockland City Councilor Larry Pritchett testified that there are over 1,800 acres of capped landfills in Maine, the vast majority of which are municipally owned. According to his calculations, if only 40% of that acreage was developed for solar, these capped

landfills could host the infrastructure to generate the electricity equivalent of approximately \$25 million in electricity costs paid by municipalities for street lights, traffic lights, water treatment, and other municipal functions. Portland Sustainability Coordinator Troy Moon supported the bill as helping his city achieve its goal of converting all of its power supply to renewable electricity by 2035, and Mayor Ethan Strimling's goal of solar adoption by at least 25% of businesses and residents by 2026. Tex Haeuser, South Portland's Director of Planning and Development, juxtaposed the enhanced safety and reliability posed by LD 1649's focus on "distributed" energy sources, where power generation eggs are put in multiple baskets, against the current practice of putting all of them in one centralized facility, which tends to elevate distribution costs and security hazards. Kimberly Darling, Falmouth's Energy and Sustainability Coordinator, explained how her town's landfill could generate almost a quarter of Falmouth's municipal electric load in the first year alone.

Additional supportive testimony, including from the state's major utilities, was so abundant and wide-ranging it cannot be easily summarized.

As far as MMA can tell, the only opposition testimony was provided by the Governor's Energy Office. Its director, Patrick Woodcock, recommended four changes if the Committee moves forward with the legislation, including establishing price caps on the contracts, reducing the contracts' duration to a maximum of ten years, reducing the megawatt capacity required of residential solar installations, and opening up the contract solicitations to all renewable energy technologies rather than strictly solar.

The Public Utilities Commission (PUC) testified neither for nor against LD 1649, but cast a significant shadow over the Public Advocate's estimates that this initiative will generate savings for ratepayers in the long-term, predicted to be over \$122 million in twenty years. According to the PUC, determining whether LD 1649 will yield savings depends on uncertain long-term forecasts and projections, and the PUC questioned whether the bill will wind up having a net impact of increasing rates. Under PUC estimates, the bill could add \$22 million more in electric costs over five years. The PUC's claim that it could not perform the tasks required with current staff also raises a question of whether full time staffing costs will be included in the fiscal note, creating an additional hurdle for enactment.

Perhaps the biggest hurdle was posed the morning of the public hearing, when the House Republican on the Committee involved in the stakeholder process, along with his caucus leadership, called on the PUC to "stay the course on net metering." Net metering, also known as net energy billing, allows residential-level solar panel owners to receive credit from utilities for the electricity they produce. Some question whether it is fair to subsidize one type of renewable energy over others, and prefer to see this practice sunsetted. LD 1649 would continue to allow net metering for an additional twelve years for those already in the program, while providing an alternative contracting possibility for future residential and small business solar installations.

A work session on LD 1649 scheduled for Thursday this week was postponed and it has not yet been rescheduled.