

LD 32 An Act to Repeal the Laws Regarding Net Energy Billing,
Senator Guerin of Penobscot

Senator Lawrence, Representative Sachs and distinguished members of the Energy and Utilities Committee, my name is Richard Malaby and I reside in Wiscasset and I am before you today to speak about LD 1711. LD 1711 was the legislation passed in the 129th Legislature that authorized the creation of Solar Farms and Net Energy Billing.

I am not here to argue for repeal of LD 1711. Rather I oppose LD 1711 because it is quite simply unconstitutional. It was unconstitutional when first passed and continues to be so today, 6 years later.

LD 1711 was placed improperly before the Body when it was enacted. This bill was intentionally structured to raise revenues from one class of electric consumers with no means of opting out, and redistributing those funds to another class of ratepayer (solar panel owners). These acts fit squarely within the common court case findings of a tax.

The courts have consistently held that governmental entities can tax through a variety of means, most recently in the case of *National Federation of Independent Businesses v. Sebelius*, 567 US 519 (2012). That was the landmark United States Supreme Court Decision in which the Court Upheld Congress' power to enact most provisions of the Patient Protection and Affordable Care Act. The majority opinion written by Chief Justice John Roberts authorized the individual mandate which compels individuals who choose not to participate in an insurance pool to pay a fee under the constitutional exercise of Congress' taxing power. And while Congress has the authority to compel non-users to pay a fee under their authority to tax, so too does this legislative body have the authority to compel non-users via LD 1711 to pay a fee under our authority to tax.

However, the fact that LD 1711 levies a tax on non-solar users creates a constitutional conflict. Article IV. Part Third. Legislative Powers. Section 9 of the Maine Constitution clearly states: all bills for raising revenue must originate in the House of Representatives.

Section 9. Either House may originate bills; revenue bills.

*Bills, orders or resolutions, may originate in either House, and may be altered, amended or rejected in the other; but all bills for raising a revenue **shall originate in the House of Representatives**, but the senate may propose amendments as in other cases; provided, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.*

As this bill originated in the Senate (SP 565), and it clearly is a bill which raises a tax, I respectfully submit that it was improperly before this body and is thereby unconstitutional.

Hon. Richard Malaby