



Maine Municipal
Association

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Testimony of the Maine Municipal Association

In Support of

LD 1513- *An Act To Establish the Maine Abandoned and Discontinued Roads Commission*

February 7, 2022

Senator Baldacci, Representative Matlack and distinguished members of the Joint Standing Committee on State and Local Government, my name is Rebecca Graham, and I am providing testimony in support of LD 1513 on behalf of MMA at the direction of our 70-member Legislative Policy Committee.

Over the past four legislative sessions, this committee has heard from some proponents of forced maintenance on discontinued roads that the problem of public easements is a state-wide issue of concern. While MMA disagrees whole-heartedly, officials believe there are opportunities to review the complex land law that inevitably interest with adjacent landowners and public easements over abandoned and discontinued roads.

If the committee believes this is a state-wide problem that is not weighed appropriately through existing processes, then a state level committee to dig in and find acceptable solutions is necessary to balance the interests of public and private parties at play.

Legal concepts like “right of ways” over property are routinely litigated amongst neighbors without the involvement of legislative change. Such rights are often established by gift or payment for the right at the time of real estate transfer, require robust title search and land surveys to determine the extent of that right, and a fact-finding judgement by judicial processes.

Public easements, their existence, and their use, have the same protections as an owner of a private right of way with the exception that the owner of the right belongs to the people of Maine and not the municipal officials in the community in which they exist, and payment is either “gifted” to them by 30 years of inaction to pursue private rights, or paid for directly by the community at the time of discontinuance. Unlike private rights of ways that do not enjoy on going payment benefit unless declared in the easement, public easements on discontinued roads are supplemented annually by the State designed and mandated formula requiring lower land value tax assessment. This provides all owners present, and future to receive a lower than highest

and best value assessment than other community residents with similar residential assets along maintained roads in proportion to their community value.

To date, this committee has heard proposals to strip the rights of the people of Maine to use these public ways without a process that respects their choice to retain or release that right or force additional payment for rights already paid by the community against the budgetary process that allows such maintenance to be funded by the community in balance with other obligations. While private landowners can request maintenance and make their case in the same way other municipal departments must justify to the legislative body such expenditures, officials understand not all individuals have the capacity to pursue remedy through the additional legislation that protects the easement from damages at the hands of others.

Officials believe that a measured approach that accounts for all the ways in which easements are used in the state and involves a greater group of stakeholders is necessary to better communicate the importance of public trust rights that are often exercised on these ways in balance with the private interest issues at play. Such a comprehensive review will better inform future members of this committee of reasonable improvements to existing law or additional public processes that may be necessary to protect public interest. While officials believe the existing process proportionally balances public expenditure when used for private benefit, they do believe it would be beneficial to seek alternate ways to support maintaining or addressing easement issues for residents with limited funds and a need to access a primary residence.

To that end, municipal officials ask that you pass the amended version of LD 1513 and provide support for a state level entity to staff as well as participate in the process. Doing so will create a better informed path forward that is inclusive of all interests and better address the vested interests involved.