

Senator Baldacci, Representative Matlack, members of the Committee on State and Local Government; my name is Roberta Manter, and I am testifying in favor of LD 1513 on behalf of Maine ROADWays, Residents & Owners on Abandoned & Discontinued Ways.

Sorry this is so late - I thought I had already sent it, but it appears I did not. I find it necessary to provide you with a line by line rebuttal to MMA's testimony on this bill. My comments are in italics. Ms Graham's statements are in quotation marks. She stated:

"From a policy perspective, municipal officials question why it is necessary to put this maintenance burden on the taxpayers." *The simple answer is that public easements are public, that's why! We question why it's necessary to put this entire maintenance burden on a few private landowners. You might just as well ask why it's necessary for taxpayers to have to bear the burden of public road maintenance at all. Let's just make all town ways into public easements and cut our taxes, and each person can be responsible for the section of public road that leads to their house. That's what residents on public easements face every day.*

"Going forward into the future, persons purchasing land and building homes on discontinued roads are aware that the road is discontinued." *But they probably are not aware that "discontinued" only refers to maintenance. The road is still open to unrestricted public use.*

"Existing recent law requires that sellers tell a buyer whether the access road to the property is maintained or not." *You mean, whether the road is maintained **by the public** or not. The catch is, they are not also required to tell the buyer whether the road is still subject to public use in spite of the fact that the public no longer provides maintenance.*

"Maintaining legally discontinued roads for residents who made a personal choice to move to an unimproved road is not the obligation of the rest of the taxpayers in that community." *Assuming it was an informed personal choice to move to an unimproved road is faulty reasoning. First, only those who bought their property after 2017 were required to be told the status of the road. Those who bought their property earlier may not have learned the status of the road until after they bought it. Second, the road may have looked in good shape because it had recently been made passable by a logger who needed the road to harvest his wood, but who will do no further maintenance for another twenty years. Or it may have been kept passable by a single resident who kept it maintained for his own careful use, but who has neither the ability nor the inclination to keep it maintained for daily use by newcomers. Those who have not lived on an unimproved road before may have no idea of how fast these roads can deteriorate, or how often they require attention. Third, they may have known they would have to provide their own maintenance, but would not necessarily have known the public would still have the right to wear the road out. Fourth, there are cases where a road was a town way when a person moved in, but the Town later voted to discontinue maintenance because only a few people live on it. Fifth, there are those like my husband who wanted seclusion and bought a place on a road it was obvious no one else used, but as soon as they made it passable the Town claimed abandonment, making it a public easement. And sixth, as to taxpayers' obligation, the rest of the taxpayers might not have the obligation to maintain a road for **private** use, but it certainly should not be the obligation of the **private** individual to maintain the public easement for the **public** as a whole.*

"The town's legislative body is in a better position to determine whether a road should be maintained or not." *You refer to a "road." Are you saying a town's legislative body can decide not to maintain a town way? Section 3651 already mandates that they maintain town ways, and*

section 3652 already allows the County Commissioners to decide if they are shirking that responsibility. What is so different about giving the County oversight over public easements as well? Furthermore, in recent years some towns have seen abandonment as a means of getting rid of their obligation to keep roads "safe and convenient" without having to go through the process of formal discontinuance (which includes compensating the landowners for the decreased value of their land.) So where abandonment was intended to apply when a road was rediscovered after having been forgotten for thirty years, some towns are now simply ceasing maintenance in the hope of reaching the thirty year mark so they don't have to award compensation. This is where the current section 3652 can be used to allow the County Commissioners to hold the town accountable.

"A town already may (but is not required to) maintain a public easement with the consent of the municipal legislative body. Town voters are in a better position to decide if the road should be maintained and if they are willing to pay for it." If you have half a dozen residents on a public easement and 1,000 voters in town, what are the chances that they will vote in favor of spending their money on a road they can already use for free? Or even that they will vote to dedicate a portion of taxes from properties on that road towards maintaining that road, when currently they get to use every penny of revenue from those properties elsewhere in town? In some towns, people may be sufficiently generous and neighborly to do that, but that has not been our experience with most towns.

"These types of decisions have always rightly been within the sound discretion of local policymakers based on the unique circumstances and evolving needs of each case. The one-size-fits-all approach proposed by this bill totally ignores that tradition and unquestionably imposes a State mandate." This is NOT a one size fits all approach. The Town has the options of providing minimal maintenance, or of negotiating with landowners to establish private easements and discontinue the public easement, or of taxing only for the land and not for the buildings. It's not a mandate because the town has options so as not to have to provide maintenance. The local policymakers can make that decision based on the circumstances of each case.

*"In practice in many municipalities, when a road is used as a throughway or a number of people live on the road, it is often maintained. As towns grow and develop, this is the natural process, and roads are added to the town budget." This may be true in towns with large or well-to-do populations, but in our experience, towns will only accept a road if the landowners first bring it up to full town road standard at a price they can't possibly afford. And after they have spent the money, the townspeople may still vote not to accept the road. Many towns have a policy of not accepting ANY new roads. Also, I'm intrigued by this statement because it sounds like towns will just ease into maintaining a road if a lot of people use it. Years ago, I would have said this was true; many towns felt it was their obligation to keep access open for their taxpayers, even if they lived on a private road. But then the Maine Supreme Court decided that the Constitutional prohibition against using public funds for a **private** use means that towns cannot plow or maintain private roads. MMA informed towns to cease the practice, and many towns immediately dropped all their private roads like a batch of hot potatoes, leaving residents scrambling to make other arrangements to get their access plowed. Many towns resolved this problem by accepting private roads as - guess what - **public easements!** So they now plow these roads that never were public, while refusing to plow or maintain public easements that were once town ways.*

“If the town’s legislative body has previously determined that the road in question should be discontinued, which involved a town meeting or council vote, again, the town’s legislative body is in the best position to weigh the value of the road/access and the town’s other commitments and fiscal resources.” *But does the town’s legislative body have the right to decide how the resident will spend his fiscal resources? Is it right for the town to decide the resident on the public easement should devote his funds to keeping the road passable for the general public? If the public were not using the road, the resident could decide how much to spend on the road. But when he rebuilds the road only to have public use make it impassable once again, he is being mandated to devote his funds to rebuilding the road once again. As I said above, the Maine Supreme Court determined that it’s unconstitutional to use public funds to maintain a private road. That same Court has determined that it’s unconstitutional to take private property for public use without just compensation. So why is one decision enforced, but the other is not?*

“This bill would provide automatic road maintenance benefits for a road that supports only one family.” *Maine Constitution Article 1 section 6-a prohibits discrimination. Why should one family be treated differently from other families in town? If the road only supports one family, why on earth does the public need the road? If the public needs to keep the public easement, presumably it’s because the public wants to be able to use the road, in which case the road is not supporting only one family, it’s supporting all that public use as well.*

“The voters should decide when it is in the municipality’s best interest to maintain a public easement and not have the state impose those costs on them.” *So it’s not okay for the state to impose the cost on the municipality, but it’s perfectly okay for the municipality to impose the costs of maintenance of the public road on landowners? If the landowner finds it costs \$2,000 a year to keep the road passable for the public’s use, and the town has 1,000 taxpayers, does it make more sense to have the individual pay the bill for the whole town’s use of the road, or to have each taxpayer in town chip in \$2 to cover the cost of public use?*

“Equally problematic is the insertion of County government into the decision-making process for local issues. County government is not the oversight body for municipal government.” *Oh, really? Then how do you explain 23 MRSA 3652? County Government is already overseeing municipal government when it comes to road maintenance, in a process that’s been in use for decades. Maine Municipal is fond of saying that Abandonment should not be changed because it’s been “working well” since 1976. Well, the last time section 3651 was amended was in 1977, and the amendment removed the words “horses, teams and carriages.” Those words still appear in section 3652. (Abandonment has had to be amended seven times since 1976.) Section 3652 is still working, and is in fact about to be used in the town of Stow. Everyone needs to be accountable to someone. Would you rather these disputes be taken to court at great expense to the town?*

“Municipal government is directly responsible to the voters of the community who determine what they are willing to pay for beyond their required mandates.” *Shouldn’t the resident be able to determine what he is willing to pay for? Yet when the public destroys his only access, he has little choice but to pour his money into rebuilding it. Here MMA is admitting that there are already “required mandates.” These include the obligation to keep town ways safe for the traveling public. Why shouldn’t there be an obligation to keep public easements at least passable? According to 23 MRSA 3021, public easements are held “for purposes of public access to land or water not otherwise connected to a public way.” How can a road fulfill that purpose if it’s impassable?*

“For all these reason, municipal officials are opposed to LD 1513 and suggest that individuals who feel their municipality should assume this obligation for their road and liability have those conversations with their neighbors and municipal government and make the case directly to the individuals who will pay for this obligation.” *MMA says it represents towns, but as is admitted here, it really represents municipal officials, not the townspeople. We’ve been having those conversations with our neighbors and our municipal government for 50 years, and the answer is always the same - the municipal officials recommend “ought not to pass,” so the people vote “No.” Yet at the same time, WE bear the liability for members of the public who use the road. Our municipal government has been quite willing to allow others to build and move in on the road where we live, has been willing to increase the taxes on those properties, and has made it very clear that now that we have made the road passable at our own expense, we cannot restrict public use of the road.*