

## We Take Care of Our Own

### Municipal Officials Respond to Tax Lien Foreclosure Bill

Tax collectors, treasurers, clerks, assessors and selectmen from across the state convened in Augusta on Thursday to participate in a public hearing on LD 1629, *An Act To Protect the Elderly from Tax Lien Foreclosures*. The bill, sponsored by Rep. Ellie Espling of New Gloucester, on behalf of Gov. Paul LePage, proposes to amend the pre-foreclosure and post-foreclosure tax lien processes. From the perspective of the proponents, LD 1629 makes changes in state statutes that are necessary to protect the interests of senior homeowners. From the opponents' perspective, the bill makes the existing foreclosure process far more complicated and burdensome to administer.

In a nutshell, LD 1629 seeks to add several new steps to the existing tax lien foreclosure process. With respect to the proposed changes in pre-foreclosure responsibilities, municipal officials would be required to identify delinquent property taxpayers 65 years of age and older, offer to assist those homeowners in applying for a property tax abatement, and negotiate a "reasonable" repayment plan for the portion of the tax that is ineligible for an abatement, with the help of a paid mediator when necessary. If an installment repayment plan is established and a senior homeowner becomes more than 30 days delinquent on that plan, the municipality may foreclose on the property. However, if a senior homeowner is living in the tax acquired home and it is the owner's sole residence, the municipality is prohibited from selling the property until the value of the municipal lien exceeds 50 percent of the assessed value of the property.

A provision of LD 1629 would also require municipal officials to contact the Maine Department of Health and Human

Services if at any point during the pre-foreclosure process a municipal official or employee believes the senior has a physical or mental condition that interferes with the owner's ability to conduct business with the community.

The bill also proposes changes to the post-foreclosure process that impact all homeowners, regardless of age. As pro-

posed, municipalities would be required to retain the services of an independent licensed broker and to sell the tax acquired property for its assessed value, unless an appraisal conducted by a licensed appraiser demonstrates that the fair market value of the property has decreased. Although under existing law municipalities

*(continued on page 2)*

---

## Feb. 1 Statewide Marijuana Moratorium Set To Expire

Last week, the Marijuana Legalization Implementation (MLI) Committee held a public hearing on LD 1775, *An Act To Further Delay the Implementation of Certain Provisions of the Marijuana Legalization Act*. As drafted, the legislation proposed to extend the statewide moratorium on commercial non-medical marijuana establishments until May 1 of 2018, three months past the current statutory deadline for state licensing of Feb. 1.

At this point it is clear the state will not have its licensing operations in effect within a week. For that reason, the bill's sponsor, Sen. Roger Katz of Kennebec County, explained that the purpose of LD 1775 is to allow the Committee to complete its work and hopefully get a bill passed – "no more and no less."

In its support of the bill, MMA explained the importance of extending the moratorium to provide a safeguard against the host of legal uncertainties surrounding the proper municipal management of applications for local licenses in the absence of state licensing.

Those who opposed LD 1775, which

included some caregivers and the Marijuana Policy Project, did so on the grounds that further delay continues to neglect the will of the voters who via referendum in November of 2016 legalized both personal growth and consumption as well as the commercial sale of non-medical marijuana.

Following the hearing, the MLI Committee moved to a work session where it passed LD 1775 unanimously, with one amendment to extend the moratorium from Feb. 1 to April 18, (rather than May 1 as proposed in the printed bill) of this year. The reason is that April 18 is the statutory deadline for the Legislature to adjourn.

It is important to point out that the odds of LD 1775 being finally enacted prior to Feb. 1 are slim. The House and Senate would need to pass the bill to be enacted on Tuesday, Jan. 30 (the only day the Legislature is scheduled to meet prior to Feb. 1), and Gov. LePage would have to sign it that day.

The result of the Feb. 1 moratorium  
*(continued on page 3)*

may voluntarily adopt ordinances that require excess proceeds from the sale of a tax acquired property to be returned to the previous owner, LD 1629 would mandate that outcome.

Representatives from the communities of Bangor, Gardiner, East Machias, Lubec, Machiasport, Morrill, and Waldoboro, provided testimony in opposition to LD 1629.

Bangor Tax Collector David Little walked the committee through the current foreclosure process, which starts with the commitment date and ends roughly 30 months later, when the community can avail itself of the statutory authority to acquire property for the nonpayment of taxes. He explained that through the process, property owners are made aware of their property tax obligations, the consequences associated with failing to pay the taxes owed and the opportunity to work out a repayment schedule with the community. With respect to cases when the city acquires owner occupied property, Mr. Little shared that city officials work with the former owner to find more appropriate, safe and affordable housing. No one is left out on the curb.

Kathy Cutler, Gardiner Tax Collector, raised concerns with the element of LD 1629 requiring municipalities to track the ages of delinquent property taxpayers, describing the task as age profiling. Ms. Culter described the many ways the city assists taxpayers of all ages, including access to a property tax payment club that allows qualifying residents to pay their property taxes over nine months without accruing interest. She also noted that many

seniors, motivated by pride, would rather go without heat or food than make use of the community's assistance programs.

Marcia Hayward, who serves as the Machiasport Town Clerk, Treasurer and Deputy Tax collector, raised objections with the proposed pre-foreclosure mandate that would require municipalities to notify DHHS. Ms. Hayward believes that family members are better suited for this role and that residents who are struggling with cognitive issues are better served by faces they know and trust.

The element of LD 1629 that drew the harshest criticism from Suzette Francis, Lubec Deputy Clerk, is one that forces the municipality to wait until the value of the municipal tax lien exceeds 50 percent of the property's assessed value, in homes owned and occupied by seniors, before a municipality can sell the home. Ms. Francis testified that while she did not particularly like any of the bill's proposed provisions, if in the spirit of compromise she was provided the opportunity to choose one part of the bill to delete, it would be the impediment to dispose of tax-acquired property in a reasonable timeframe. Other opponents echoed this concern and testified that if residents are allowed to stay in their home tax-free for several years after the municipality has acquired the property, there would be no incentive for seniors to pay property taxes in the first place.

Kenneth "Bucket" Davis, East Machias Chair of the Board of Selectmen and Tanya Brazil, the community's Clerk, provided joint testimony. Mr. Davis testified that municipalities would never be able to dispose of tax acquired property, particularly homes that are in disrepair due to the lack of maintenance, if mandated to sell the property at its assessed value. Underscoring the testimony provided by other opponents of the bill, Ms. Brazil reminded the committee that the foreclosure process does not occur overnight. Homeowners have 30 months to meet their property tax obligations.

Darryl McKenney, Tax Assessor and General Assistance Administrator for the Town of Waldoboro and Morrill Tax Collector, Roger Rowlands, testified that their communities had trust fund programs in place to help qualifying residents meet

their property tax obligations. Mr. McKenney also suggested that amendments to the state's poverty abatement laws could help reduce the property tax burden. He believes the current law lacks the teeth necessary to be helpful to those truly in need of assistance.

MMA also provided testimony in opposition to LD 1629, recommending that the Legislature focus its energy and resources on initiatives that reduce the burdens placed on all property taxpayers rather than making it more difficult for communities to collect the property taxes necessary to fund mandated and desired services.

The proponents of LD 1629 included representatives from Gov. LePage's office, Legal Services for the Elderly and Pine Tree Legal Services. These proponents believe that the changes proposed in the bill are necessary to ensure that seniors are able to stay in their homes. Or, at the very least when tax acquired property is sold, to recover their lifelong investments by requiring municipalities to return excess proceeds (e.g., less back taxes and costs of selling the tax acquired property, etc.) to the previous owners. The proponents believe that the provisions found in LD 1629 would provide a safety net for older adults and encourage municipalities to implement policies to meet the needs of a rapidly aging population.

Rep. Will Tuell of East Machias, who also serves on the Community's Board of Selectmen and Sen. Scott Cyrway of Kennebec County, both provided testimony "neither for nor against" LD 1629. Rep. Tuell reminded the committee that the bill seeks to advance several mandates and as such should be amended to include the statutorily required mandate preamble. The preamble requires the Legislature to either fund 90% of the additional costs LD 1629 proposes to place on municipalities or to override the state's reimbursement requirement by adopting the initiative by a 2/3 majority vote of the members of the House and Senate. Sen. Cyrway expressed conceptual support for LD 1629, but encouraged the interested parties to work together to ensure that elderly property owners can remain in their homes.

A work session on LD 1629 has not yet been scheduled.

### **Legislative Bulletin**

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: [www.memun.org](http://www.memun.org)

**Editorial Staff:** Kate Dufour, Garrett Corbin, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

# Discontinued Roads Amendment Moves Forward

On Wednesday, the State and Local Government Committee held a work session on LD 1588, *An Act To Maintain Mail Routes and Access to Residential Structures*, sponsored by Rep. Gary Hilliard of Belgrade on behalf of Gov. LePage and introduced toward the end of the last legislative session. The bill is the latest in a perennial effort to, in one way or another, mandate municipal maintenance of public easements on roads that have been abandoned or discontinued to public maintenance.

Given the strong objections to LD 1588, last year the committee formed a subcommittee for the purpose of finding a more palatable proposal that meets the concerns expressed by residents abutting these roads as well as the municipalities charged with “holding” the public easements on them. The subcommittee settled on an amendment that would replace the bill and instead, prospectively not retroactively:

(1) Limit civil liability for abutters who make good faith efforts to maintain the road;

(2) Exempt abutters from criminal liability for inadvertently damaging a public easement to access their property;

(3) Extend the residential property disclosure notice requirement in Title 33 section 173 regarding abandoned roads, discontinued roads, or public easements on or abutting the property to non-residential properties as well;

(4) Add to the required municipal notice of a proposed discontinuance of roads with properties not otherwise accessible by another public road information regarding the potential retention of a public easement following discontinuance, maintenance obligations and access implications, and the abutters’ right to negotiate private access easements amongst themselves;

(5) Prohibit municipalities for one year from proceeding with the discontinuance in order to allow the abutters to negotiate private easements, with the

aim of allowing the municipality to discontinue the public easement along with the road without landlocking properties;

(6) Require municipalities to retain the public easement when the underlying road is discontinued to public maintenance if the abutters have not been able to agree to private access easements in the year prior to discontinuance; and

(7) Require the final order of discontinuance in municipalities where the legislative body is the town meeting to be adopted at the annual town meeting rather than at any special town meeting.

The Maine Woodlot Owners Association as well as the Maine Forest Products Council expressed concerns at the work session with the first two elements of this proposal. Those elements were scratched as a result of the objections.

MMA, at the direction of its Legislative Policy Committee, voiced strong reservations with the last three elements of the amendment. In the association’s view, the amendment establishes a requirement that would be legally impossible to achieve. As proposed in the subcommittee’s amendment on roads owned by the municipality, private easement agreements negotiated between abutters prior to discontinuance would not be valid because the abutters would have no basis to form contracts involving property they do not own. Even on roads where the abutters already own the land to the center line of the road, accomplishing the legal legwork necessary to create all of the private easements needed to avoid landlocking parcels will be a tough row to hoe within one year.

For these reasons, the practical result of the proposal will likely be that municipalities have no choice but to retain public easements when they discontinue a road. This outcome seems contrary to a key aim of the bill’s proponents, which was to force termination of public easements when that is the abutters’ wish.

Despite the concerns raised, the com-

mittee unanimously voted in support of elements 3-7 described in this article, adding even more layers to Maine’s already complicated discontinued road law. Municipal officials concerned about seeing this proposal enacted are encouraged to contact their legislators.

**Feb. 1 Statewide Marijuana Moratorium Set To Expire (cont’d)**

deadline expiring will likely be minimal on the state, as applications for state licenses will simply not be made available or accepted by the relevant agencies. However, the towns, cities, and plantations of Maine which have not already adopted a prohibition or moratorium on commercial marijuana establishments may receive requests to apply for local licenses or permits as soon as the moratorium expires.

Even though current law requires state licenses before operating, there is no prohibition on applying at the local level prior to state licensing. It is not clear how officials in the municipalities without moratorium or prohibition ordinances should handle any “foot in the door” type requests. There is a concern that the lack of clarity in existing law will make municipalities the target of lawsuits no matter how they rule on license or permit requests; applicants whose requests are denied may question the grounds for denial, and concerned citizens who object to the industry may question the grounds for approval.

Unless a deal is reached in the coming days, municipal officials throughout the state could be forced to learn the answer to the question of how to appropriately act on premature applications the hard way-in court.

In the meantime, MMA will be advocating to make any bill which extends the moratorium retroactive to Feb. 1.

# Sidewalk Service Bill Gets the Committee Green Light

On Wednesday, the Veterans and Legal Affairs Committee had thoughts of summer as it held a work session on LD 1738, *An Act To Permit the Sale and Consumption of Alcohol in an Area That Is Not Contiguous to Licensed Premises*. As described in last week's *Legislative Bulletin*, the bill would allow hotels, performing arts centers, restaurants, taverns, and civic auditoriums licensed to sell alcohol to offer liquor service in outdoor areas that are not directly part of the business's physical location, such as a sidewalk that is owned by a municipality.

With several technical fixes in place, the Committee unanimously voted to support an amended version of LD 1738.

The Committee amendment makes three changes to the printed bill. First, it clarifies that unlike the servers, customers are not permitted in the public way with alcohol and must remain in the non-contiguous area with their beverage or leave it behind. Second, it requires that the public space between the base premise and the new outdoor space conform with adequate width requirements to maintain public access. Third, the term "municipally owned" is replaced with "property owned by a municipality".

## LEGISLATIVE HEARINGS

*Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.*

### **Monday, January 29**

**Criminal Justice & Public Safety**  
**Rm. 436, State House, 9:00 a.m.**  
**Tel: 287-1122**

LD 1735 – An Act To Authorize Regional Medical Control Committees To Have Access to Maine Emergency Medical Services Data for Purposes of Quality Improvement.

### **Tuesday, January 30**

**Inland Fisheries & Wildlife**  
**Room 206, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-1338**

LD 1790 – An Act To Increase Safety on a Youth Hunting Day for Hunting Bear by Allowing an Accompanying Adult To Possess a Firearm.

**Taxation**  
**Room 127, State House, 1:00 p.m.**  
**Tel: 287-1552**

LD 1765 – An Act To Provide a Source of Revenue To Preserve the Integrity of Maine's Transportation Infrastructure.