

## Discontinued and Abandoned Road Bill Officially Designated as a Mandate

### Action Alert: Urge Your Legislators to Oppose LD 1177

As required by Maine's Constitution, all proposed legislation must be assessed to determine if the proposal "expands or modifies a local unit of government's activities so as to necessitate additional expenditures from local revenues." Legislation fitting the description is identified as a mandate and the Legislature is required to either appropriate the funds necessary to cover at least 90% of the new costs or to adopt the legislation by a two-thirds vote of all the elected members of the House and Senate, thereby eliminating any obligation to help cover the costs of the mandate imposed on the towns and cities.

On Monday of this week, the State and Local Government Committee received official notice that several elements of LD 1177, *An Act to Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group*, qualified as a mandate. The fiscal note that now accompanies the bill identifies the cost of complying with the mandate as "moderate statewide."

The specific elements of the bill that contributed to the mandate determination include the requirements that a municipality: (1) hold a public hearing before taking the final vote on a road discontinuance order; (2) file orders of discontinuance with the registry of deeds and Department of Transportation; and (3) prepare a comprehensive road inventory identifying the legal status of maintained, discontinued and abandoned town ways, or segments of town ways, for each year going back to 1965.

A major financial impact of LD 1177 is not mentioned in this list, which if properly recognized would push the im-

pact of these mandates from "moderate" to "significant."

As described in detail in the Feb. 14 edition of the Legislative Bulletin, LD 1177 also proposes changes to the state's longstanding road abandonment and discontinuance law that are detrimental to municipalities, property taxpayers and the general public. By requiring municipalities to formally discontinue all roads that become abandoned, municipalities with town ways that have not been maintained for up to 30 years will be required to either remain obliged to maintain the town way at the abutters' demand or discontinue the town way and pay damages to abutters. These very real financial impacts should have been included in the fiscal analysis.

The bill's proposal allowing a single abutter to force a community to reconsider a decision to discontinue a road 20 years

after the original vote is as disruptive as it is unnecessary. Why roads should be discontinued or un-discontinued or re-discontinued on 20-year intervals is a complete mystery, especially when local democratic process allows those decisions to be made when necessary, without this unprecedented statutory alarm clock.

With the fiscal note officially recorded, it is expected that the fate of LD 1177 will soon be decided by the Legislature. Considering the State and Local Government Committee's near unanimous vote in support of the bill, it is possible that LD 1177 will be enacted with little or no debate. For that reason, it is important for municipal officials to contact their legislators as soon as possible and urge them to oppose LD 1177 for the several unnecessary, unwelcome and burdensome state mandates that are contained within it.

## Update on the "Dig Safe" Bill

### What's On The Table Should Trigger Municipal Concern

The Energy, Utilities and Technology (EUT) Committee was expected to vote this past week on an amendment to LD 965, *An Act To Improve Maine's Underground Facility Damage Prevention Program*. The Committee tabled the bill on Wednesday to allow proponents more time to consider MMA's concerns.

MMA's Legislative Policy Committee voted to oppose the original bill as well as an amendment presented in January, both of which would have entailed mandatory municipal membership in the Dig Safe system. Such membership would not only

have exposed 260-plus municipalities with underground water and wastewater infrastructure—even very small scale community water or waste water systems—to fees and fines, it also threatened to upend municipal management of road openings.

The current amendment proposal would not require towns and cities to become Dig Safe members. Instead, municipalities and quasi-municipal water and sewer districts would become Dig Safe "Participants."

The following table depicts the general

*(continued on page 2)*

**“Dig Safe” Update (cont’d)**

changes between the first version of the bill that was put on the table in January, a compromise proposal that was verbally proffered in February, and the current version on the table, which retracts from the February compromise in several important ways. MMA’s advocacy position on the current version of LD 965 is provided at the end of the article.

Beyond disputing the proponents’ claim that mandatory Dig Safe “participation” will improve road-opening safety, MMA’s three major concerns with the version of LD 965 that is currently being considered by the Energy, Utilities and Technology Committee are:

1. The requirement that the 260-plus municipalities required to become Dig Safe “Participants” by this legislation will need to each individually sign the Dig Safe

membership forms, or some facsimile, that establishes contact information (including 24/7 phone and email access) and infrastructure mapping requirements that the municipality may not be able to provide, and that failure to provide this information could expose the municipality to liabilities. MMA has asked that the new municipal obligations, in their entirety, be listed clearly in statute rather than folded in to the

*(continued on page 3)*

Element of the Dig Safe “Participation”	Current Law	LD 965 in January	LD 965 Compromise Proposal (Verbal)	LD 965 as Currently on the Table
Membership Forms and Contact Information  (The way to contact the person in the municipality responsible for the management of underground utility infrastructure)	N/A, membership voluntary	Municipalities provide contact information by filling out and signing Dig Safe’s membership forms, the signing of which allows Dig Safe to impose additional terms and costs, and could establish certain municipal liabilities	MMA will provide the most up-to-date contact information possible, updated on a quarterly basis	Municipalities provide contact information by filling out and signing Dig Safe’s membership forms, the signing of which allows Dig Safe to impose additional terms and costs, and could establish certain municipal liabilities
Costs and Charges	None required, voluntary members pay certain membership fees	Per-excavation charges assessed to municipalities, plus costs to map infrastructure, plus infrastructure map loading cost at \$125/hour when infrastructure changes, plus financial penalties for mis-marking (see below)	Municipal charges paid by the Public Utilities Commission	Base municipal charges paid by the Public Utilities Commission, with costs exceeding \$50k/year passed onto PUC-regulated entities (i.e. utilities) in fees
Mapping	None required, voluntary members pay certain mapping fees	Required as part of Dig Safe membership	Voluntary	Ambiguous. Appears to be required or eventually required as part of signing the Dig Safe Participation form
Marking	Regularly conducted in practice but not required	Required, PUC penalties assessed against municipalities for mis-marking (Up to \$5,000, depending on violation)	Voluntary	Required, PUC penalties assessed against municipalities for mis-marking (\$500 to \$5,000, depending on violation)
Municipal Street Opening Ordinances	Ordinances valid, no preemption	Ambiguous. Street opening ordinance standards that do not align exactly with Dig Safe statute potentially invalid by implication	Ordinances valid, no preemption	Ambiguous. Street opening ordinance standards that do not align exactly with Dig Safe statute potentially invalid by implication
Advisory Committee	None	Establishes permanent advisory committee, largely controlled by Dig Safe interests	Public Utilities Commission would convene advisory group on ad hoc basis	Establishes permanent advisory committee, largely controlled by Dig Safe interests

# End of an Era - Sand/Salt Shed Program on Track for Retirement

## “Priority 3” Municipalities Take Notice!

As the result of the Transportation Committee’s unanimous vote in support of an amended version of LD 1817, *An Act to Amend the Law Concerning the State Cost-share Program for Salt and Sand Storage Facilities*, the 27 year old sand/salt storage facility funding program will be retired on July 1, 2017.

Enacted in 1987, the program was established to provide municipalities with access to state funds to offset the costs of building the storage facilities the Department of Environment Protection deemed necessary to protect drinking water sources from the contamination caused by the location of sand/salt stockpiles. According to the Department of Transportation (DOT), over the course of the program’s history the state has invested \$11 million in the construction of 204 municipal sand/salt facilities.

LD 1817 proposes to close out the funding program by establishing the final and definitive deadlines eligible municipalities are required to meet to receive state aid. The deadlines apply to the filing of the “notice of intent,” the filing of the construction plans and the completion of construction. As proposed, upon receipt of the final notice from the Department of Transportation, a municipality has: (1) two months to notify the Department of its interest in moving forward with the construction of a facility; (2) 12 months to submit its final construction plans to the Department for review; and (3) 24 months to construct and occupy the facility.

The cost to the Department to finally retire the program is estimated at \$4.6 million, \$3 million of which is included as part of the FY 2014-2016 three-year transportation improvement work plan.

The \$3 million incorporated in the Department’s budget includes the \$813,500 owed to 15 communities that have already built facilities, but have not yet received state reimbursement. The \$3 million allocation also assumes that approximately one-half of the 29 communities that are eligible to receive state aid but have not yet built a facility will participate in the

state reimbursement program. However, if all 29 communities respond to the Department’s “last call for reimbursement” notice, then the additional state resources will be secured. In other words, the 29 eligible communities will receive the assistance if municipal officers meet the deadlines established in LD 1817.

With a directive to close out the program by July 1, 2017, it is expected the

Department will begin to contact the 29 remaining eligible communities in late June of this year. Those communities are listed in the sidebar to this article. Municipal officials interested in moving forward with the construction of a storage facility are urged to respond to the Department’s notice in a timely fashion in order to secure funding from this soon-to-be-retired program. It is now, or never.

### Municipalities Eligible for Sand/Salt Facility Construction State Aid

Addison, Amity, Brighton Plt., Canaan, Canton, Charleston, Cutler, Freedom, Grand Isle, Harmony, Hebron, Hodgdon, Industry, Kingsbury Plt., Limerick, Limestone, Livermore, Lovell, Mars Hill, Merrill, New Canada, New Limerick, Newry, Saint Albans, Stow, Vanceboro, Webster Plt., and the unorganized territories of Mayfield Township and Long A Township.

### “Dig Safe” Update (cont’d)

amorphous Dig Safe “participant” status, and that municipalities not be required to sign open-ended Dig Safe membership forms that authorize the Dig Safe Board to subsequently change the rules of the game. MMA’s requests along these lines have thus far been denied.

2. MMA has asked for clean language clarifying that municipal street opening ordinances are valid and may require more from excavators than whatever the Dig Safe standards might require in the way of municipal notification, etc. Thus far, clean language with that clarification has not been forthcoming.

3. Dozens upon dozens of municipalities that would be subject to this law have extremely small amounts of underground utility infrastructure, such as a small community water or wastewater system installed by a private developer in a mobile home park served by a town road. To require those municipalities to be Dig Safe participants, provide 24/7 emergency contact information, along with mapping and marking mandates and mis-marking

penalties, is an extremely heavy-handed legislative initiative.

Municipal officials with input regarding LD 965 as it is currently before the Committee should contact Garrett Corbin at [gcorbin@memun.org](mailto:gcorbin@memun.org) or 1-800-452-8786.

### Legislative Bulletin

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# A Name by Any Other Rose

## Tax Reform it isn't

MMA's Legislative Policy Committee has been trying to convince the Legislature to engage in comprehensive tax reform for over 20 years. In 1997, 2002, 2004, 2007 and 2013 the Association either advanced comprehensive tax reform legislation directly or contributed to tax reform efforts being advanced by others. Success has not been forthcoming. Modernizing and rebalancing the tax code is a task Maine's municipal leaders believe is a fundamental responsibility of any government that is responsible for the administration of a taxation system.

To be sure, it is far easier to glibly advocate for tax reform from a distance than actually accomplish it on the ground. Municipal officials get a sharp taste of the difficulty when they undertake property tax revaluations, and because of that experience they can understand why upgrading a multi-faceted and exponentially more complex tax system presents political obstacles. Tax reform is often called the "third rail" of politics for a reason.

Against this backdrop, the Taxation Committee held a public hearing on Wednesday this week for LD 1813, *An Act To Hold an Advisory Referendum on Tax Reform*. Submitted for consideration by Gov. LePage, LD 1813 would send out the following ballot question to be presented to the voters 11 weeks from now on Tuesday, June 10, Primary Election day.

*"Do you favor lowering income tax rates, implementing alternative taxes and reducing overall tax revenues and government spending by at least \$100,000,000 in order to make Maine more economically competitive and improve the job creation environment?"*

That sentence represents all the information LD 1813 provides. It is unclear how a 'yes' vote might be subsequently translated into changes to the state's tax code. The single sentence suggests that this particular "tax reform" proposal is focused on further lowering income tax rates so that "at least" \$100 million a year will be cut from that source. The "alternative taxes" that might be

implemented with an affirmative vote are entirely unknown. The cause-and-effect between draining \$100 million out of the state treasury each year and job creation is apparently so self-evident that, as the lawyers say, *res ipse loquitur*... the thing speaks for itself.

Senator Doug Thomas (Penobscot Cty.), who is sponsoring LD 1813 on behalf of the Governor, touted the bill's elegant simplicity when presenting it to the Taxation Committee. According to Sen. Thomas, the problem with the various spending limitation proposals that have been advanced to the voters by citizen initiative (the "Palesky" proposal in 2005, TABOR I in 2006, TABOR II in 2009) was their complexity. In this case, the voters are asked only to say yes or no to cutting state taxes and spending by \$100 million. If the voters were to approve this simple question, the Senator believes, a mandate would be imposed on the Legislature in 2015 to implement the tax and spending cuts.

Several of his colleagues on the tax panel asked whether cutting \$100 million in state revenue could translate into: (1) reduced financial support for local government and K-12 education, (2) the imposition of more state mandates on the towns and cities to perform functions the state could no longer afford, and (3) generally increased property taxes. Sen. Thomas said that local government would not be impacted because the Legislature would cut state programs only.

Jonathan Nass, Governor LePage's Senior Policy Advisor, was the only other proponent of LD 1813. Mr. Nass described LD 1813 as advancing true tax reform in the traditional sense. If the voters were to say "yes" to this question, the modernization of the state's archaic tax code would allegedly be implemented, providing a more stable and dependable revenue source for the state. Mr. Nass went on to provide some more detail about the Governor's vision. In addition to lowering the income tax rates, the idea would apparently include eliminating the estate tax and implementing "modest" statutory limits on the rate of state gov-

ernment growth. These elements of the proposal are not articulated in the bill.

Rep. Joe Brooks of Winterport asked a question about vote interpretation. If the Governor believes that a 'yes' vote would be a mandate to implement \$100 million in tax and spending cuts, would a "no" vote be interpreted as a mandate not to reduce state taxes and spending? Mr. Nass did not agree on that interpretation of a negative vote.

MMA testified in opposition to LD 1813 using the cart-before-the-oxen argument. Among the various ways MMA's Legislative Policy Committee has tried to convince the Legislature to engage in comprehensive tax reform over the past 20 years, it has been suggested that there may be a right time and a good reason to place a well-developed reform proposal before the voters for their consideration. Before that right time, however, a serious, balanced and comprehensive tax reform proposal would need to be developed, a thorough analysis of the proposal would need to be vetted by tax policy and economic development experts to identify all the direct and indirect impacts, and all of that information would need to be provided to the general public well in advance of the vote so the voters' final decision is based on quality information. That represents a process that shows respect for the electorate.

Because none of those necessary components are provided in LD 1813, MMA opposed the initiative.

The Mayors' Coalition also testified in opposition, pointing out that it is hardly the time to propose cutting \$100 million in state revenues when the state is covering 45% of the total cost of K-12 education instead of the 55% standard provided in law, and when the municipal revenue sharing program is being underfunded to the tune of \$86 million a year.

The Taxation Committee's work session on LD 1813 is scheduled for today (Friday, March 21).

# Committee Relaxes Expensive Cemetery Maintenance Mandates

As its last official act of the 126<sup>th</sup> Legislative session, the State and Local Government Committee voted unanimously in support of an amended version of LD 1662, *An Act to Clarify the Laws Governing the Maintenance of Veterans' Grave Sites*, sponsored by Sen. Chris Johnson of Lincoln County.

As finalized by the Committee, the bill scales back the onerous cemetery maintenance mandates enacted by the Legislature in 2013. That legislation, which is now current law, holds municipalities responsible for maintaining “in good condition and repair” the graves, headstones, monuments and markers of all veterans buried in public cemeteries and “ancient burying grounds”, whether municipal or private, according to state prescribed standards that include full-scale stone management. Municipal responsibilities also include keeping the grass, weeds, and brush suitably cut and trimmed on all graves located in ancient burying grounds, whether municipal cemeteries or not, and whether the graves are veterans’ graves or not. Prior to the enactment of this law, the maintenance mandate applied only to the graves of wartime veterans buried in private ancient burying grounds and public cemeteries.

The amended version of LD 1662, which is supported by representatives of veterans’ organizations, cemetery associations and municipal government, significantly amends the existing municipal veteran grave site and ancient burying ground mandate by:

- **Veterans’ Graves in Ancient Burying Grounds.** Requiring municipalities, working in collaboration with veterans’ organizations, cemetery associations, civic and fraternal organizations and other interested persons, to keep in “good condition and repair” the graves, headstones, monuments and markers designating the burial places of veterans in ancient burying grounds, and to the best of their ability to keep

the grass, weeds, and brush suitably cut and trimmed on those graves from May 1 to Sept. 30 of each year.

- **Non-veterans’ Graves in Ancient Burying Grounds.** Allowing, but not requiring, municipalities to maintain non-veteran graves in ancient burying grounds. The municipalities are also authorized to designate a caretaker to provide the maintenance functions on non-veterans graves in ancient burying grounds.

- **Veterans Graves in Public Burying Grounds.** Requiring the owner of a public cemetery (e.g., municipality, cemetery corporation, or cemetery association), working in collaboration with veterans’ organizations, cemetery associations, civic and fraternal organizations and other interested persons, to keep in “good condition and repair” the graves, headstones, monuments and markers designating the burial places of veterans buried in public burying grounds and establishing minimum maintenance standards to keep the grass suitably trimmed, flat grave markers free

of grass and debris, and burial places free of fallen trees, branches, vines and weeds.

- **Public Burying Ground.** Defining a “public burying ground” as a cemetery owned and operated by a municipality, cemetery corporation or cemetery association, thereby clarifying the entity responsible for the proper maintenance of veterans’ graves in public burying grounds.

- **Adoption of Veterans’ Graves Maintenance Standards.** Allowing, but not requiring, municipalities, working in collaboration with veterans’ organizations, cemetery associations, civic and fraternal organizations and other interested persons to adopt local maintenance standards which at a minimum detail how to maintain the graves or headstones of veterans and the grass within the vicinity of those graves.

As a result of the State and Local Government Committee’s support of this collaborative effort, the bill is now headed to the Legislature for what is expected to be prompt enactment.

## LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature’s web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://janus.state.me.us/legis/lho/>.

### Tuesday, March 25

**Health & Human Services  
Room 209, Cross State Office Building, 1:00 p.m.  
Tel: 287-1317**

LD 1822 – An Act To Increase Integrity in the Temporary Assistance for Needy Families Program through Restriction of Expenditures.