

Governor's Tree Growth Bill Printed

On Wednesday this week Gov. LePage's anticipated Tree Growth bill was printed as LD 1691, *An Act To Improve the Maine Tree Growth Tax Law Program*.

LD 1691 makes several substantive changes to the existing Tree Growth tax program with a focus on more effectively ensuring that Tree Growth landowners are actually engaged in commercial timber harvesting. Specifically, LD 1691 proposes to make the following program eligibility, compliance and enforcement changes.

Program Eligibility. The eligibility changes proposed in LD 1691 focus on the size, location and use of the parcels eligible for Tree Growth tax benefits. Beginning on April 1, 2017, the minimum number of acres eligible for enrollment in the Tree Growth program would increase from 10 to 25 acres. Furthermore, no portion of any enrolled parcel could be located within 10 miles of the Atlantic Ocean.

Landowners with parcels between 10 and 25 acres enrolled in the program before April 1, 2017 and entirely located more than 10 miles from the ocean could: (1) keep their property in the Tree Growth program in a grandfathered status; (2) move their property from the Tree Growth program to the Open Space tax program, as is allowed in current law; or (3) withdraw their property from "current use" taxation, paying the minimum "5 year back taxes" penalty provided in Maine's Constitution rather than the stiffer statutory Tree Growth penalty.

In comparison, landowners with parcels of any size enrolled in the program before April 1, 2017 and located in whole or in part within 10 miles of the ocean would not be grandfathered. Instead, landowners with parcels in the 10-mile

ocean setback zone would have to choose by April 1, 2017 between transferring the parcels (or at least the portion within the 10 mile zone) into the Open Space program or completely withdrawing the parcels from current use taxation, with penalty. Again, the penalty assessed for taking the option to immediately withdraw from the program would be equal to the full value of the taxes that would have been assessed on the property over the past five years less the taxes actually paid, rather than the statutory Tree Growth withdrawal penalty.

In addition, program eligibility standards would be amended under LD

1691 to exclude parcels not used for commercial timber harvesting, including parcels exclusively used for cultivating and harvesting Christmas trees, tapping maple syrup, and gathering nursery products used for ornamental purposes, such as wreaths, bough material, cones or other seed products.

Program Compliance. The bill would establish for a four-year period the Bureau of Forestry's compliance review program in state statute. The program, currently provided on a pilot or "as requested" basis, would authorize the Bureau to review landowners' forest management

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Committee Splits 3 Ways on Solar Bill

The March 18 Legislative Bulletin described a newly introduced bill to revise Maine's solar power framework, LD 1649, *An Act to Modernize Maine's Solar Power Policy and Encourage Economic Development*. MMA's Legislative Policy Committee voted to support LD 1649 because of the opportunities it would provide municipalities to constructively utilize difficult-to-develop municipal properties such as capped landfills or abandoned industrial brownfield sites. On Tuesday this week, the Energy, Utilities and Technology Committee voted out three different recommendations for LD 1649. If any version of LD 1649 finds majority support in both the House and Senate, it could likely be vetoed by Governor LePage who is reportedly concerned about what he believes the impact would be on the retail cost of electricity. At this point, it does not appear likely that any of these amendments will facilitate a veto-proof majority vote in either chamber.

LD 1649 was developed by a "stakeholders" group, utilizing the input of in-state solar power and utility companies (which often oppose one another on legislative matters), as well as environmental groups, municipalities, and the Public Advocate. The majority "Committee Amendment A," supported by all of the Committee's Democrats, essentially preserves the stakeholders' proposal in the printed bill, with a few technical changes.

"Committee Amendment B," offered by Rep. Nathan Wadsworth of Hiram and supported by two other Committee members, would replace the bill with a change to the current "net metering" statute found in Title 35-A section 3209-A. The amendment explicitly directs the Public Utilities Commission (PUC) to allow increased municipal and community project development, but some municipal stakeholders believe this amendment misses a key piece of the electricity cost

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Update on “Discontinued Roads” Bills

As described in previous editions of the Legislative Bulletin, three bills were introduced in the 127th Legislature proposing to fundamentally alter existing municipal road maintenance, discontinuance, and/or abandonment laws. The first, LD 494, *An Act Regarding the Maintenance of Easements*, and the last, LD 1637, *An Act To Assist Maine Citizens Residing along Public Easements*, were essentially two sides of the same mandate coin. Each required municipal maintenance of public easements, even when that easement applies to a former town way legally discontinued to maintenance. Thanks in large part to calls made to legislators by municipal officials throughout the state, LD 1637 was defeated in both the House and Senate on Wednesday this week after receiving a surprising level of Committee support last week.

LD 494 was killed last year by the State and Local Government Committee to make way for substantive work being done

on the third road discontinuation bill, LD 1325, *An Act To Ensure a Public Process When Discontinuing or Abandoning a Public Road*. LD 1325 was first introduced to the Legislature in 2015, a compromise was struck on that legislation earlier this year and LD 1325 has now been enacted.

In addition to creating a right of action in statute for abutters of public easements to seek recovery from anyone (aside from law enforcement officers and other emergency responders) who significantly damages the public easement, LD 1325 clarifies the steps required of municipal officials throughout the road discontinuation process. A minor mandate in the bill requires municipalities to file a copy of finalized road discontinuation orders or abandonment determinations with the county registry of deeds and the Department of Transportation in an effort to improve public knowledge of the status of roads discontinued to municipal maintenance.

Solar Bill (cont'd)

puzzle and will be of little local value unless it is further amended to also allow for utility “demand charges” to be offset by solar production.

At the final work session on Tuesday afternoon, the Committee’s Senate Chair, David Woodsome (York Cty.), and Rep. Norm Higgins of Dover-Foxcroft advanced “Committee Amendment C.” This amendment seeks middle ground between the terms of the printed bill and certain amendments recommended by the Governor’s Energy Office. Specifically, this amendment caps the credit available to residential solar producers, expands LD 1649’s scope beyond solar to all renewable technologies, reduces the required utility-producer contract length from twenty to ten years and reduces the total megawatts of solar power that utilities would be

required to purchase from each of the bill’s solar generation “sectors” from a total of 248 to 160 megawatts.

The final language of the three amendments has not yet been reviewed by the Committee, so it is possible some additional changes will be introduced. As of this writing, with multiple but conflicting Committee recommendations behind it, LD 1649 is facing a steep uphill climb to enactment. Municipal officials interested in opening the door to community-level solar power development should urge their legislators to help nurture this legislation’s advancement to enactment. A number of municipal officials are watching LD 1649 closely. If you would like to connect with their efforts, contact Garrett Corbin at 1-800-452-8786 or gcorbin@memun.org.

Tree Growth (cont'd)

plans to ensure that “reasonable” efforts are being made to manage property enrolled in the Tree Growth program according to required forest management and harvesting plans as prepared by licensed professional foresters. In the process of reviewing practices for plan compliance, the Bureau would be authorized to: (1) enter and examine the forest land after giving notice to the landowner; (2) request and review a current forest management and harvesting plan; and (3) request and review an expired forest management and harvesting plan. Landowners found to be in noncompliance with adopted plans would be provided 120 days in which to comply. If the landowner fails to bring the management of the parcel into substantial compliance within that four-month window, the Bureau would inform the municipal assessor that the property should be withdrawn from the Tree Growth program at full statutory penalty.

Program Enforcement. Upon receiving notice from the Bureau that a landowner has failed to comply with established forest management and harvesting plans, the municipal assessor would be required to withdraw the land from the program. Any municipality failing to withdraw the non-compliant parcels from the program would be ineligible to receive any state Tree Growth program reimbursement in the subsequent year.

As printed, LD 1691 would also make several less substantial changes. For example, to ensure landowner compliance with management and harvesting plans, landowners would be required to provide a copy of the current management plan, as well as any plan that had expired within 2 years, at the request of the municipal assessor, State Tax Assessor of the Bureau of Forestry.

LD 1691 Hearing & Work Session. With the April 20, 2016 Legislative adjournment date looming, it is no surprise that the public hearing and work session for LD 1691 have been fast tracked. The Taxation Committee has scheduled the hearing on LD 1691 for Monday, April 4 at 1 p.m., with the work session scheduled for 2 p.m. on that same day.

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