

Statewide Building Code Gets Review

Municipalities with populations greater than 4,000 must adopt and enforce the Maine Uniform Building and Energy Code or “MUBEC” for short, which includes statewide minimum requirements for all new construction and additions to existing buildings. In 2010, MUBEC replaced the state’s model energy code and the current regulatory policy is based on the 2009 International Residential Code (IRC) and International Energy Conservation Code (IECC)

Uniform building code bills have historically been heard before the Labor and Housing Committee, however this session the Criminal Justice and Public Safety Committee was tasked with deciding if the near decade old law needs to be updated.

Before members of the committee accepted public testimony on the five related bills, they received briefings on the history of MUBEC. The state agency updates, in part, focused on the provisions adopted in law making certain that smaller municipalities were not burdened with the same enforcement obligations as large communities, which traditionally face greater development pressure. Three of the bills heard by the community explore the necessity of those so-called “hold harmless” provisions.

Encouraging the voluntary adoption of enhanced energy efficiency standards is at the crux of the remaining two bills.

Committee members have already decided the fate of three of the MUBEC bills.

LD 921, *An Act To Allow Municipalities To Adopt Stricter Building and Energy Code Standards Than the Maine Uniform Building and Energy Code*, sponsored by Rep. Christopher Kessler of South Portland, would allow any municipality to adopt a “stretch code” (e.g., a code that exceeds current standards) and require new buildings and additions to meet higher

energy standards than the state adopted code. LD921 received a unanimous “ought not to pass” vote from the committee.

LD 1509, *An Act To Amend the Laws Governing the Maine Uniform Building and Energy Code to Ensure It Is Consistent with Current Standards and Applies to Small Municipalities*, sponsored by Rep. Deane Rykerson of Kittery, would make

MUBEC apply statewide. As amended by the committee, the bill allows, but does not mandate, municipalities under 4,000 residents to opt-in to enforcing the code, thereby protecting those communities that are not currently required to do so. However, the bill clarifies that new construction in those communities must meet

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State and Local Update

On Wednesday of this week, the State and Local Government Committee took action on four bills of municipal relevance.

The two bills presented for the Legislature’s consideration on the perennial issue of abandoned and discontinued roads were described in the April 12 edition of this publication. LD 1415, *An Act To Improve the Laws Regarding Discontinued and Abandoned Roads*, sponsored by Rep. Catherine Nadeau of Winslow, would end the ability of municipalities to consider roads which have been publicly maintained after 1990 to be abandoned at any time in the future. LD 1536, *An Act To Require Municipalities To Maintain Access on Public Rights-of-way*, sponsored by Rep. Dennis Keschl of Belgrade, would have in various ways achieved the objective stated in the bill’s title, even for public easements that exist on roads which have been abandoned or discontinued to public maintenance. At Wednesday’s work session, the committee voted unanimously among those present “ought not to pass” on LD 1536, while carrying over LD 1415 to next year’s legislative session.

LD 1176, *An Act Regarding Caretakers of Ancient Burying Grounds and Access to Ancient Burying Grounds*,

sponsored by Senator David Miramant of Knox County, would have allowed descendants of those buried (including veterans) in ancient or public burying grounds to appoint a caretaker to maintain the burying ground when the municipality is unable to care for the burying ground. The committee voted unanimously against passing this legislation for reasons that are not entirely clear, although it should be noted that a majority of the committee voted previously against passing another bill addressing this same general area of public policy, LD 1054, *An Act To Clarify the Use of Burying Grounds and Family Burying Grounds*, sponsored by Rep. Donna Bailey of Saco.

Finally, the Committee voted unanimously in support of LD 1476, *An Act To Clarify Recounts in Municipal Elections*, which was sponsored by Rep. Jim Handy of Lewiston on behalf of the Maine Town and City Clerks Association (MTCCA). The MTCCA and MMA worked together on a compromise amendment that will only require local recounts to follow the state recount rules if the municipality’s legislative body chooses to adopt the state rules, while establishing basic parameters for local recounts in all other municipalities.

MUBEC standards. The amended version of LD 1509 was unanimously supported by the committee.

LD 1543, *An Act To Amend the Maine Uniform Building Energy Code*, sponsored by Sen. Benjamin Chipman of Cumberland County, would create an appendix of increased energy standards at the state level that could be adopted by willing communities. To ensure contractors have the information necessary, the bill would also require the state to maintain a centralized list of the communities that opted to adopt the enhanced energy code. LD 1543 received a party line 6 to 4 “ought to pass as amended” vote.

LD 855, *An Act To Strengthen the Maine Uniform Building and Energy Code*, sponsored by Rep. Christopher Caiazzo of Scarborough, would assess a \$3 fee on all issued building permits to support expanded and enhanced training for code enforcement officers and to move the coordination of the training program out of the Department of Economic and Community Development and into the Maine Fire Marshal’s Office where the program was previously housed. One work session has been held on LD 855 with a second one planned for Monday, May 13 at 1 p.m. The tasks that remain on the committee’s “to do” list include: (1) establishing the fee amount necessary to improve the training program; (2) determining the permits to which the fee will apply; and (3) deciding which state agency will host the program.

Finally, LD 1675, *An Act Regarding Building Codes*, sponsored by Sen. Shenna Bellows of Kennebec County would require the adoption and enforcement of

MUBEC by all municipalities in Maine with over 2,000 residents, create an exemption for application of the code for all properties built before 2007, and mandate that third party inspectors are hired and paid for by the municipality through a competitive bidding process. Currently, communities that use third party inspectors require the building permit holder to pay for the inspection as a condition of the permit, allowing building owners to choose the inspector. Inspections that are conducted by communities who use code enforcement officers, still require a fee to be paid for this service.

Arguing that some residents require work to their property but do not have enough funds to pay for a third party inspector to comply with MUBEC, Sen.

Bellows testified these fees should be absorbed by the municipality. Unfortunately, this mandate, unless fully funded by the state, would increase the property tax for all residents including those on low and fixed incomes forcing them to foot the bill for third party inspections on all homes, including multi-million dollar properties.

Municipal officials believe LD 1675 undermines the committee’s work to create a predictable statewide code that protects the interests of smaller municipalities and property taxpayers, as accomplished under the amended language in LD 1509, and to ensure that regional training is available to support local level code enforcement efforts as proposed in LD 855.

A work session on LD 1675 is scheduled for Monday, May 13 at 1 p.m.

Transportation Round About

The members of the Transportation Committee have been hard at work vetting several issues of municipal significance, including rail corridors, roadside memorials, signs in public right of ways, public transportation and increased road weight limits. What follows are brief summaries of the public hearings on five bills of municipal interest.

Rail Corridors. LD 1367, *An Act To Preserve and Protect the State’s Rail Corridors*, sponsored by Rep. Benjamin Collings of Portland, would prohibit the creation of rail trails on all rail corridors, including privately owned property, and further direct the Department of Transportation (MEDOT) to maintain existing infrastructure to the standard necessary to permit future use.

Proponents of LD 1367 believe the prohibition is necessary to protect and expand Maine’s existing rail infrastructure and testified that the integrity of the system is eroded each time a rail bed is converted to a pedestrian and bicycle path. Twenty-three opponents, including Maine Municipal Association (MMA), testified that existing law governing the creation of rail trails already requires department evaluation of rail beds for future need and includes a provision for converting a rail corridor to its historic use.

Signs in the Public Way. LD 1195, *An Act To Encourage the Removal of Campaign Signs from the Public Right of Way*, sponsored by Sen. David Woodson of York County, would require the removal of a sign advertising a temporary event within four weeks after the event. The bill further authorizes municipalities to remove outdated signs and assess a \$10 fee to the owner of the sign to cover the removal and disposal costs.

No one, except the sponsor, testified in support of LD 1195.

MMA testified in opposition based on the proposal’s conflict with existing law that allows signs to be placed in the public right of way for six weeks per year. MEDOT testified “neither for nor against” and reminded the committee of the U.S. Supreme Court Decision in *Reed vs. Town of Gilbert*, which does not allow for the regulation of signs based on content exclusively and the Maine Attorney General opinion that “event” is construed to be content restrictive.

Roadside Memorials. LD 1329, *An Act To Allow Temporary Roadside Memorials for Deceased Victims of Traffic Accidents*, sponsored by Sen. Robert Foley of York County, would authorize the placement, with limitations on content and

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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

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Layout: Jaime Clark, of Communication & Educational Services.

Transportation Round About (cont'd)

materials used, of memorials marking the site of death of a person in the right of way for no more than 180 days. The bill also requires the person placing the memorial to notify the state or municipality of the location of the memorial.

The mother of a teenager killed in a motor vehicle accident, who requested submission of the bill, testified in support of LD 1329 sharing the pain associated with the vandalism to her son's roadside memorial, and the lack of ability in law to hold those who admitted to the action, accountable for their deed. While municipal officials support amending current law to make vandalism of memorials a crime, MMA testified against the provisions in the bill that require municipalities to keep track of the location of roadside memorials and ostensibly held responsible for reminding the owner of the memorial to remove it after the 180 period expires. MEDOT and Maine Turnpike Authority testified "neither for nor against" LD 1329 highlighting the sensitivity of such items, public safety concerns about the locations where memorials are often located, and discouraged a permissive approach to the placement of fixed objects near travel

lanes that could become a safety hazard.

Public Transportation. LD 1166, *An Act to Require Public Transportation to Be Accessible to Blind or Visually Impaired Riders*, sponsored by Sen. Benjamin Chipman of Cumberland County, would require all public transportation vehicles that operate on a fixed-route system to be equipped with automated systems that announce stops to assist visually impaired individuals.

Several impacted individuals testified that automated announcement systems would improve their ability to utilize public transportation. One bus driver testified in support saying the automated system would reduce his distractions during operation and provide the needed services for visually impaired riders. The Association testified "neither for nor against" LD 1166 and in order to lessen the impact on municipal budgets, asked the committee to consider making the mandate prospective in application, by requiring updates only when new vehicles are purchased.

No one testified in opposition to the bill.

Weight Limits. LD 1498, *An Act To Provide Equity for Commercial Vehicles*

on Roads and Bridges in Maine, sponsored by Sen. Troy Jackson of Aroostook County, was originally drafted to increase the weight limits and number of axles for large trucks on all roads in Maine to the 137,000 pounds. While presenting the bill, Sen. Jackson emphasized the inequity between the weight limits allowed on certain sections of Maine's highways which essentially provide exemptions for higher weight Canadian trucks to access mills in northern Maine.

The bill's sponsor and the Professional Logging Contractors of Maine testified in support LD 1498, but offered an amendment to repeal the weight exemption for Canadian trucks traveling along a specified route, instead of increasing the weight limits on all roads as proposed in the printed bill.

The Maine Department of Transportation, Secretary of State's Office and MMA testified in opposition to the bill, highlighting the declining status of Maine's roads and bridges and the inability to meet existing repair needs adequately under current weights.

Work sessions on all of these bills will likely be scheduled for next week.

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/>.

The Legislature is no longer obliged to provide two weeks' notice for public hearings, and beginning Monday, April 29 until the end of the 2019 legislative session, the Legislature will no longer be advertising public hearings in the newspaper.

In some cases, bills are being printed and scheduled for a public hearing within two days. If you would like to receive notice of a public hearing on any particular bill, please contact Laura Ellis at lellis@memun.org or 1-800-452-8786.

Monday, May 13

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

LD 1492 – An Act To Reform Drug Sentencing Laws.

LD 1636 – An Act To Increase the Efficiency of the Criminal Justice System.

Education & Cultural Affairs
Room 208, Cross Building, 10:00 a.m.
Tel: 287-3125

LD 1641 – An Act To Strengthen the School Transportation Workforce.

1:00 p.m.

LD 1638 – An Act to Provide for Gubernatorial Appointments to the Maine Charter School Commission.

Judiciary
Room 438, State House, 9:00 a.m.
Tel: 287-1327

LD 1475 – An Act To Eliminate Profiling in Maine.

1:00 p.m.

LD 1688 – An Act To Protect Original Birth Certificates.

LD 1695 – An Act Regarding the Law Governing the Disclosure of Vital Records.

Tuesday, May 14

Energy, Utilities & Technology
Room 211, Cross Building, 1:00 p.m.
Tel: 287-4143

LD 1646 – An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems.

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LEGISLATIVE HEARINGS (cont.)

Wednesday, May 15

Environment & Natural Resources
Room 216, Cross Building, 10:00 a.m.
Tel: 287-4149

LD 1687 – An Act Regarding the Water Quality Certification of Graham Lake on the Union River.

LD 1706 – An Act To Ensure Public Notification of Air Quality Violations.

LD 1707 – An Act To Ensure Accuracy and Reliability of Environmental Testing by Requiring Compliance Testing by 3rd-parties.

Labor & Housing
Room 202, Cross Building, 9:00 a.m.
Tel: 287-1331

LD 1693 – An Act To Enhance Enforcement of Employment Laws.

Taxation
Room 127, State House, 10:00 a.m.
Tel: 287-1552

LD 1713 – An Act To Return Funds to Maine Property Tax Payers.

Friday, May 17

Environment & Natural Resources
Room 216, Cross Building, 10:00 a.m.
Tel: 287-4149

LD 1679 – An Act To Establish the Maine Climate Change Council To Assist Maine To Mitigate, Prepare for and Adapt to Climate Change.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's official summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Criminal Justice and Public Safety

LD 1346 – An Act To Revise the Good Time Laws To Improve Public Safety. (Sponsored by Rep. Talbot Ross of Portland)

Beginning January 1, 2020, this bill provides for up to 12 days of deduction per month from a sentence of imprisonment for any person sentenced for a crime on or after October 1, 1983 and for any person who commits a crime on or after January 1, 2020 and is subsequently sentenced for that crime as follows: (1) up to six days per month may be deducted if the person's conduct and fulfillment of assigned responsibilities is determined to warrant those deductions; (2) up to four additional days per month may be deducted if the person's participation in educational programming, participation in assigned work, compliance with the person's case plan or fulfillment of other responsibilities is determined to warrant those deductions; and (3) up to two additional days per month may be deducted if the person's participation in minimum security or community programs in the person's transition plan for community work, education or rehabilitation programs is determined to warrant those deductions. Awarding of these deductions is determined by the chief administrative officer of the state correctional facility or the sheriff of the county jail in which the person has been detained. The bill caps at 12 days the total days of deduction per month a person may receive under the state's good time laws.

LD 1492 – An Act To Reform Drug Sentencing Laws. (Sponsored by Rep. Beebe-Center of Rockland)

This bill amends the Maine Criminal Code provisions regarding scheduled drugs by relaxing or eliminating provisions regarding trafficking and furnishing, unlawful possession of scheduled drugs, trafficking, furnishing or possession of hypodermic apparatuses, use of drug paraphernalia and trafficking or furnishing of imitation drugs.

Energy, Utilities & Technology

LD 1646 – An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems. (Sponsored by Rep. Berry of Bowdoinham)

This bill creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the state currently operated by the investor-owned transmission and distribution utilities known as Central Maine Power Company and Emera Maine. The rates charged by the authority must

include a sufficient amount to allow the authority to make payments in lieu of taxes and to the extent revenues exceed expenditures, the authority is required to make payments in lieu of taxes in the same amount as would have been assessed if the private entity continued to own the property.

LD 1651 – An Act To Promote Equitable and Responsible Broadband Investment. (Sponsored by Rep. Stewart of Presque Isle)

This bill creates requirements that a municipality must meet in order to provide broadband service to its residents. It requires the completion of a feasibility study and requires the municipality to hold a referendum to decide whether the municipality may offer broadband service. It includes general operation limitations, including those related to the establishment of rates, the use of subsidization and the use of eminent domain. It requires the adoption of ordinances relating to service quality and enforcement by a municipality that elects to provide broadband service. It also removes antitrust liability protections from a municipality as those protections relate to the municipality's offering broadband service. The bill also requires that in order to receive any grants from the ConnectME Authority, the municipality must show evidence of compliance with the requirements proposed in the bill.

Environment and Natural Resources

LD 1679 – An Act To Establish the Maine Climate Change Council To Assist Maine To Mitigate, Prepare for and Adapt to Climate Change. (Governor's Bill) (Sponsored by Sen. Woodsome of York Cty.)

This bill establishes the 38-member Maine Climate Change Council, which includes a municipal government representative, tasked with assisting Maine to mitigate, prepare for and adapt to climate change. The bill requires that 80% of electricity consumed in Maine come from renewable resources by Jan. 1, 2030 and increases the consumption rate to 100% by Jan. 1, 2050. The bill also requires the state climate action plan to be updated by Dec. 1, 2020 and every four years thereafter.

LD 1706 – An Act To Ensure Public Notification of Air Quality Violations. (Sponsored by Sen. Millett of Cumberland Cty.)

This bill requires the Department of Environmental Protection to notify an affected municipality when the department issues a notice of violation or initiates an enforcement action relating to an air quality violation.

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HOPPER (cont.)

LD 1707 – An Act To Ensure Accuracy and Reliability of Environmental Testing by Requiring Compliance Testing by 3rd-parties. (Sponsored by Sen. Millett of Cumberland Cty.)

This bill requires the Department of Environmental Protection to include in each license issued by the department a requirement that an independent entity perform testing to determine compliance with the license.

LD 1711 – An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine. (Sponsored by Sen. Dow of Lincoln Cty.)

This bill regards amendments and enactments of provisions regarding energy billing and the Maine Solar Energy Act, including: (1) Establishing parameters on the financial interest and limits of accounts for net energy billing; (2) Directing the Public Utilities Commission to establish a pilot program implementing a tariff rate for nonresidential customers of new distributed generation resources if the commission determines a tariff rate is the most cost-effective manner possible to promote the development of distributed generation resources; (3) Amending the Maine Solar Energy Act by: (A) Adding specific measures to support solar energy; (B) Establishing a standard buyer designation and detailing the standard buyer's obligations and cost allocation; (C) Directing the Public Utilities Commission to procure 125 megawatts for the output of distributed generation resources associated with commercial or institutional customer accounts through a bid solicitation process; (D) Directing the Public Utilities Commission to procure 250 megawatts for the output of large-scale shared distributed generation resources through a bid solicitation process; and (E) Detailing the process by which credits are applied to a customer's bill and how entities that own or operate a large-scale shared distributed generation resource on behalf of customers that own a proportional interest in the large-scale shared distributed generation resource may recover costs incurred on behalf of an investor-owned transmission and distribution utility; (4) Directing the Public Utilities Commission to report to the Legislature the results of the implemented tariff rates for distributed generation resources and the status of metering and billing system capabilities for investor-owned transmission and distribution utilities; (5) Directing the Public Utilities Commission to evaluate net energy billing when the total amount of generation capacity involved in net energy billing in the State reaches 8% of the total maximum load of transmission and distribution utilities in the state; (6) Directing the Public Utilities Commission to solicit bids for long-term contracts to supply up to 400 megawatts of electricity from solar energy projects; and (7) Directing the Executive Department, Governor's Energy Office to make recommendations to the Legislature regarding long-term contracts for installed capacity and associated renewable energy and renewable energy credits produced by solar energy projects.

Judiciary

LD 1449 – An Act To Facilitate Compliance with Federal Immigration Law by State and Local Government Entities. (Sponsored by Rep. Lockman of Bradley)

This bill establishes prohibitions concerning restricting the sharing and use of immigration and citizenship information. It prohibits restricting the enforcement of federal immigration law. It establishes a complaint process and a duty to report. This bill also provides that if the Attorney General, upon investigation, determines that a government entity is violating these prohibitions, the Attorney General must issue an opinion stating that finding. The government entity has 30 days to appeal the finding to the Superior Court. If the Superior Court agrees with the Attorney General, the court must immediately enjoin the policy or practice. The government entity that continues the policy or practice is subject to a \$500 fine for each day the policy or practice remains in effect. If the Superior Court disagrees with the Attorney General, the Attorney General must immediately certify that the government entity is in compliance with the law.

LD 1475 – An Act To Eliminate Profiling in Maine. (Sponsored by Rep. Hickman of Winthrop)

This bill creates the Act To Eliminate Profiling in Maine, which establishes policies and procedures for law enforcement officers and law enforcement agencies to prohibit and eliminate profiling. The bill defines profiling as the discriminatory practice of a law enforcement officer or law enforcement agency relying, to any degree, on actual or perceived race, gender, ethnicity, religion, socioeconomic status, ancestry or national origin in targeting an individual for routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and time frame, that links a person with a particular characteristic to an identified criminal incident or scheme. Specifically, the bill directs the Board of Trustees of the Maine Criminal Justice Academy to establish policies and procedures to eliminate profiling and require mandatory training and anti-profiling education by all law enforcement agencies in the State. All law enforcement agencies must adopt written policies on profiling. The bill requires law enforcement agencies to implement procedures for receiving, investigating and responding to complaints of profiling. The bill also directs the Attorney General to adopt rules and guidelines for collecting and reporting data regarding profiling. Rules must define what data must be collected, how it must be collected and how the data may be reported and used to eliminate profiling and inform law enforcement, the public and the joint standing committees of the Legislature having jurisdiction over judiciary matters and criminal justice and public safety matters.

Taxation

LD 1713 – An Act To Return Funds to Maine Property Tax Payers (Sponsored by Rep. Gideon of Freeport)

The Tax Relief Fund for Maine Residents, which is funded by the transfer of 20% of the unappropriated surplus of the General Fund after all required deductions of appropriations, budgeted financial commitments and adjustments considered necessary by the state controller have been made, was established to provide income tax relief by reducing income tax rates once a certain level of funds in the fund is reached; to date, the required level of funding to provide income tax relief has not been reached. This bill renames the fund the Property Tax Relief Fund for Maine Residents and requires it to be used to provide property tax relief payments directly to residents that qualify for an exemption under the Maine homestead property tax exemption. The amount of the tax relief payment is determined annually by dividing the total amount of funds available in the fund by the total number of homesteads that qualify for the Maine homestead property tax exemption. If that amount is at least \$100, the Treasurer of State is required, by December 1st, to mail checks for the tax relief payment to each owner of a qualifying homestead. The bill also requires that by Oct. 1, 2019 and annually thereafter each municipal assessor provide the state treasurer with a list of the number of homesteads in the community as well as the name and address for each qualifying property taxpayer.

Transportation

LD 1435 – Resolve, Directing the Joint Standing Committee on Transportation To Study Transportation Funding Reform. (Emergency) (Sponsored by Rep. McLean of Gorham)

This resolve directs the Transportation Committee to study how to reform and adequately supplement funding for the state's transportation infrastructure to promote equity, sustainability and predictability in a manner that allows the state to responsibly provide a safe and reliable transportation system. The committee is authorized to meet for this purpose up to four times when the Legislature is not in session, and the committee's report must be submitted by December 4, 2019. The committee may submit legislation to the Second Regular Session of the 129th Legislature relating to the subject matter of the report.