



LEGISLATIVE BULLETIN



Vol. XLIII No. 15 April 23, 2021

Catching Up with the Tax Committee

The Taxation Committee is making noticeable headway on a fairly hefty docket. In the last two weeks alone, the committee worked several bills of municipal importance. What follows is a summary of the decisions made to date.

Veterans' Exemptions. The full Legislature will be asked to debate the merits of two proposals seeking to expand the property tax exemption provided to Maine homeowners who are at least 62 years of age and have served in the U.S. Armed Services. Under current law, a veteran who served during World War I is entitled to a \$7,000 exemption, while a \$6,000 exemption is available for veterans who served during any other federally recognized war period. As provided in statute, a federally recognized war time period includes all conflicts and wars fought since 1918, excluding the period of time between Feb. 1, 1955 and Feb. 1, 1961.

LD 576, *An Act To Increase Property Tax Relief for Veterans*, sponsored by Senate President Troy Jackson of Aroostook County, amends existing laws by: (1) increasing the exemption provided to qualifying veterans to \$10,000; (2) expanding the definition of a federally recognized war period to include conflicts taking place between 1955 and 1961; and (3) increasing state reimbursement to municipalities for lost property tax revenue from the constitutionally required 50% to 100%. LD 647, *An Act To Expand Eligibility for the Veterans' Property Tax Exemption*, sponsored by Sen. Lisa Keim of Oxford County, expands the definition of a federally recognized war period to include conflicts taking place between 1955 and 1961.

At its work session, the committee unanimously voted to support both measures. Due to the expansion of the exemption and the cost to the state for reimbursing communities the bills will carry a fiscal note. If the state's

appropriators decide they are not able to fund LD 576 which includes an increase in benefit and reimbursement for municipalities, LD 647 will afford a less expensive option.

Exemptions, Generally. By a margin of 9 to 4, the committee supported LD 198, *An Act To Improve Maine's Tax Laws by Providing a Property Tax Exemption for Central Labor Councils*, which is sponsored by Sen. Ben Chipman of Cumberland County. The bill, as its title indicates, exempts from taxation the property owned and occupied or used solely by central labor councils. The beneficiaries of the exemption are defined in the bill as a "group of labor unions designed to promote and protect the interests of their members." The fiscal note accompanying LD 198 provides \$1,350 in state revenue to reimburse communities for

50% of the lost revenue associated with the expanded exemption.

Over concerns that the initiative would violate the constitutional provision requiring all property owners to be treated equally, LD 659, *An Act To Ease the Property Tax Burden by Authorizing Municipalities To Require Payment in Lieu of Taxes from Certain Exempt Organizations*, received a unanimous "ought not to pass" report from the committee. The bill, sponsored by Rep. Will Tuell of East Machias, would have allowed municipalities to assess an impact fee of no less than 50% of the property taxes that would have been assessed if not exempted. Before assessing the fee the municipality would have to negotiate a payment in lieu of taxes, which under existing law enables an owner of exempt property to

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Clear-Cutting Home Rule for Forestry

On Thursday, the Committee on Agriculture, Conservation, and Forestry held a public hearing on LD 1407, *An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance*, sponsored by Sen. Russell Black of Franklin County. As drafted, the bill preempts any municipal ordinance that limits or prohibits an accepted forestry practice established by rules adopted by the Department of Agriculture, Conservation and Forestry.

The bill describes the practices that are exempted from being considered a nuisance, including a change in size or ownership of an operation, enrollment in a government forestry or conservation program, adoption of a new forest technology or operation, normal noise from forestry equipment, application of a pesticide in any manner accepted by the Board of Pesticides Control or application of fertilizers

in any manner consistent with laws and rules. The bill also provides that the defendant in a nuisance complaint addressed by a court must be awarded costs and attorney's fees if an alleged nuisance is unfounded.

Maine Organic Farmers and Gardeners Association, Maine Appalachian Mountain Club, and Natural Resource Council of Maine all testified in opposition to the proposal highlighting local control as vital and pointing to the bill's intent to circumvent the democratic process for a single industry without proof of a problem. Pesticide and herbicide ordinance preemption was of particular concern to organic farmers, who lose their certification when overspray from applications nearby is found in a farm's soil.

Proponents of LD 1407 included the Professional Logging Contractors of Maine, Maine Forest Products Council and Maine Woodland

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HEARING SCHEDULE

For the week of April 26, 2021

MONDAY, APRIL 26

Appropriations & Financial Affairs Room 228, State House, 10:00 a.m. Tel: 287-1635

LD 49 – An Act To Authorize a General Fund Bond Issue To Invest in Infrastructure To Address Sea Level Rise.

LD 150 – An Act To Authorize a General Fund Bond Issue To Fund Hazardous Substance Site Cleanups.

LD 687 – An Act To Authorize a General Fund Bond Issue To Promote the Conservation of Land, Working Waterfronts, Water Access and Outdoor Recreation.

LD 983 – An Act To Authorize a General Fund Bond Issue To Promote Land Conservation, Working Waterfronts, Water Access and Outdoor Recreation.

Criminal Justice & Public Safety Room 436, State House, 10:00 a.m. Tel: 287-1122

LD 1043 – An Act Concerning the Unannounced Execution of Search Warrants.

LD 1127 – An Act To Prohibit the Use of “No-knock” Warrants.

LD 1171 – An Act To Curtail No-knock Warrants.

Environment & Natural Resources Room 216, Cross Building, 9:00 a.m. Tel: 287-4149

LD 911 – An Act To Prohibit the Reception of Foreign Waste Plastic in Maine Ports.

LD 1208 – An Act To Amend the State’s Electronic Waste Recycling Law.

LD 1367 – An Act To Create a Grant Program To Promote Innovation in Municipal Carbon Reduction Initiatives.

LD 1415 – An Act Regarding Minor Revisions to Existing Site Location Permits, Exemptions for Rerouting Storm Water and Exemptions for New Construction or Modification of an Existing Licensed Development under the Site Location of Development Laws.

LD 1467 – An Act To Promote a Circular Economy through Increased Post-consumer Recycled Plastic Content in Plastic Beverage Containers.

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

LD 1201 – Resolve, Directing the Maine State Housing Authority To Engage Stakeholders in an Examination of Fair Chance Housing Policy Options.

LD 1312 – An Act To Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are Allowed.

LD 1322 – Resolve, Directing the Maine State Housing Authority To Allow Rental Housing Owners To Apply for Emergency Rental Relief Assistance.

LD 1397 – An Act Directing the Maine State Housing Authority To Create a Commission To Develop a Comprehensive Rental Registry for Multifamily Housing.

LD 1464 – An Act To Improve Accessibility of Affordable Housing Data.

LD 1546 – An Act To Prevent Homelessness by Establishing the Rental Relief Fund within the Maine State Housing Authority.

State & Local Government Room 214, Cross Building, 10:00 a.m. Tel: 287-1330

LD 1215 – Resolve, To Require the State Auditor To Report on Corrective Actions Regarding the Administration of Federal Grants.

Veterans & Legal Affairs Room 437, State House, 9:00 a.m. Tel: 287-1310

LD 1375 – An Act To Permit Online Absentee Voting.

LD 1485 – An Act to Modify the Requirements for Political Action Committees and Ballot Question Committees.

TUESDAY, APRIL 27

Appropriations & Financial Affairs Room 228, State House, 10:00 a.m. Tel: 287-1635

LD 133 – An Act to Authorize a General Fund Bond Issue To Invest in Fire Stations.

LD 969 – An act To Authorize a General Fund Bond Issue for the Construction of a Convention Center in Portland, Improvements to the Augusta Civic Center

and a Competitive Grant Program for Capital Improvements to Public Venues across the State.

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

LD 1426 – An Act To Provide for the Equitable Funding of Education Chosen by Maine Families.

LD 1449 – An Act To Provide for Education Funding Reform for More Equitable State Support to Communities.

Energy, Utilities & Technology Room 211, Cross Building, 9:00 a.m. Tel: 287-4143

LD 848 – An Act To Increase High-speed Internet In Rural Maine.

LD 1432 – An Act To Update the Municipal Gigabit Broadband Network Access Fund.

LD 1484 – An Act To Enhance the Connect Maine Authority’s Capacity To Provide World-class Internet.

LD 1555 – An Act To Fund Broadband Internet Infrastructure for Marginalized Groups in the State.

11:00 a.m.

LD 1542 – An Act To Repeal and Replace the Kittery Water District Charter.

Health & Human Services Room 209, Cross Building, 9:00 a.m. Tel: 287-1317

LD 1547 – An Act To Promote Intergovernmental Coordination Regarding Age-friendly State Initiatives.

Health Coverage, Insurance & Financial Services Room 220, Cross Building, 10:00 a.m. Tel: 287-1314

LD 1544 – An Act Regarding Credit and Debit Card Merchant Fees.

Innovation, Development, Economic Advancement & Business Room 202, Cross Building, 9:30 a.m. Tel: 287-4880

LD 1309 – An Act To Address Systematic Racism and Improve Economic Prosperity.

LD 1517 – An Act To Establish the Maine Workforce, Research, Development and Student Achievement Institute.

Catching Up with the Tax Committee (cont'd)

financially contribute to the services provided by the municipality. The flaw in the existing law, however, is that the decision to make the payment and the value of contribution is left up to the exempt entity to decide. Nothing in state statute compels an exempt institution to contribute to the services they receive from the community. LD 659 would have addressed this issue.

Adult Use Marijuana Revenue. Borrowing from the tale of Goldilocks, the committee was afforded three options for sharing adult use marijuana excise and sales tax revenue with the communities where the revenues are generated.

LD 740, *An Act To Provide Municipalities a Percentage of Revenue Generated from the Taxes Imposed on the Sale of Recreational Marijuana in Those Municipalities*, sponsored by Rep. Kevin O'Connell of Brewer, would share 25% of related revenues with municipalities. Using the traditional revenue sharing approach as a model, LD 1195, *An Act To Increase Funding to Qualifying Municipalities by Sharing Adult Use Marijuana Sales and Excise Tax Revenue*, sponsored by Rep. Tiffany Roberts of South Berwick, would share 5% of the generated marijuana tax revenue with communities. In the middle of the revenue sharing pack is LD 1185, *An Act To Distribute Tax Revenue To Offset Costs Incurred by Adult Use Marijuana Host Municipalities*, sponsored by Rep. Joseph Perry of Bangor, which seeks to share 12% of generated revenues with participating communities.

Unlike others, this fairy tale has a mediocre ending. The committee voted by a margin of 6 to 6 to support the 5% share proposed in LD 1195 and "ought not to pass" on LD 740 and LD 1185.

Motor Vehicle Excise Taxes. Each year, the committee contemplates whether excise taxes should be assessed on a vehicle's value or on the price paid. MMA has opposed these measures on the principle that all taxes on property should be assessed equitably, rather than on the ability to negotiate a good deal. While sympathetic to the concerns raised by proponents of these bills, the committee unanimously voted to oppose two related bills, LD 724, *An Act To Base the Vehicle and Mobile Home Excise Tax on Actual Value*, sponsored by Rep. Lester Ordway of Standish and LD 970, *An Act To Base the Motor Vehicle Excise Tax on Actual Sale Price*, sponsored by Rep. Jonathan Connor of Lewiston.

Use of Tax Increment Financing Revenue. This year the committee was asked to debate the merits of two proposals seeking to expand of the use of TIF revenue. One bill would include as an allowable expense the renovation or construction of municipal buildings not to exceed \$1 million. The other bill would authorize TIF revenue to be used to cover costs associated with the development of affordable housing in and outside a development district and to support housing services for homeless individuals.

The committee voted "ought not to pass" by a margin of 9 to 4 on LD 412, *An Act To Authorize the Use of Tax Increment Financial Funds for Constructing or Renovating Municipal Offices and Other Buildings*, sponsored by Rep. Nathan Carlow of Buxton. The minority "ought to pass as amended" report replaces the \$1 million investment cap for municipal buildings with a provision limiting expenses to 15% of the development district's captured assessed value.

LD 953, *An Act To Improve Affordable Housing Options and Services To Address Homelessness*, sponsored by Sen. Susan Deschambault of York County fared better. With a technical change in place, the bill received a unanimous "ought to pass as amended" report from the committee.

Mixed Bag. The committee has established positions on several bills that are not easily associated with a particular category. This year's grab bag of legislation includes proposals: (1) facilitating the quick disposal of abandoned foreclosed property; (2) authorizing the issuance of separate property tax bills to collect the revenues for school, county and municipal programs and services; and (3) regulating the timing of revaluations.

As amended by the bill's sponsor, Rep. Victoria Morales of South Portland, LD 1132, *An Act To Encourage the Renovation of Available Housing*, would reduce from five years to one year the period of redemption on tax acquired property that the code enforcement officer has certified as abandoned. The determination applies only when the occupant has no intent to return to the property and there is evidence of abandonment, which includes broken doors and windows, accumulated rubbish, trash or debris and deterioration of the property to the point of creating a threat to public safety. The committee unanimously supported the amended version of LD 1132.

LD 1174, *An Act To Allow Municipalities*

To Send Separate Tax Bills for Municipal, County and School Taxes, sponsored by Rep. Lester Ordway of Standish, was unanimously voted out of the committee with an "ought not to pass" recommendation. While the committee appreciated that the bill authorized, but did not mandate, municipalities to send out separate bills and sought to increase transparency with respect to the use of property tax revenue, concerns with the bill outweighed the benefits. Key among the concerns was the confusion a multiple billing system could cause among property taxpayers who are accustomed to paying taxes at one time, as well as the inconvenience associated with writing out multiple checks or incurring multiple credit card service charges.

The committee was also unanimous in their opposition to LD 1247, *An Act To Place a Moratorium on Property Revaluations for Tax Purposes during a State of Emergency*, sponsored by Sen. James Dill of Penobscot County. The bill would require municipalities to halt revaluations during a state of emergency and resume the process upon the termination of the emergency. Members of the committee raised concerns that this legislation would contradict constitutional provisions directing communities to conduct revaluations at least every 10 years and requiring the equal assessment of all property owners.

What's Next? Although the committee has processed many of the bills of interest to municipalities, there are two categories of bills yet to be debated.

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Local Option Sales Tax. On the horizon are discussions over two local option sales tax bills. LD 1342, *An Act To Authorize a Local Option Sales Tax on Lodging and Other Goods and Provide Funding for Tax Abatement and Rental Relief*, sponsored by Rep. Michael Sylvester of Portland, allows a municipality to impose a one percent local sales tax on currently taxable lodging sales, subject to approval of the municipality's voters at a referendum election. Of the total revenue generated, 90% is distributed to the generating community and the remaining 10% distributed to Maine State Housing Authority to establish a property tax relief and rent relief program.

LD 1418 *An Act To Allow a Local Option Sales Tax on Meals and Lodging*, sponsored by Sen. Louis Luchini of Hancock County,

allows a municipality to impose a one percent local sales tax on currently taxable meals and lodging sales, which may be applied seasonally, subject to approval of the municipality's voters at a referendum election. Of the total revenue generated, 85% is distributed to the generating community and the remaining 15% distributed to all other municipalities.

The public hearing on local option sales tax bills is scheduled for Wednesday, May 5 at 9 a.m.

Homestead Exemption. However, there is still no word on when the three homestead related bills will be heard. In the queue for debate are: (1) LD 708, *An Act to Increase the Homestead Exemption to \$50,000*, sponsored by Rep. Billy Bob Faulkingham of Winter Harbor, which increases the exemption to \$50,000

and retains the current 70% reimbursement rate for lost property tax revenues; (2) LD 1071, *An Act to Reduce Property Taxes for Maine Residents*, sponsored by Sen. Matthew Pouliot of Kennebec County, which increases the exemption to \$50,000 and increases reimbursement to 100%; and (3) LD 1448, *An Act To Increase State Reimbursement to Municipalities for Revenue Lost Due to the Homestead Property Tax Exemption*, sponsored by Rep. Rachel Talbot Ross of Portland, which keeps the exemption at the \$25,000 level, but boosts reimbursement to 100%.

With pressure from legislative leaders to complete committee work, it is likely that hearings on the homestead exemption bills will be heard in the coming weeks.

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.)

Education & Cultural Affairs

LD 1426 – *An Act To Provide for the Equitable Funding of Education Chosen by Maine Families.* (Sponsored by Rep. Greenwood of Wales)

This bill requires each school administrative unit (SAU) to calculate the per-pupil tuition costs for elementary and secondary students who reside in that SAU and provide no more than that amount to a student who resides in but does not attend public school in that SAU and who incurs education costs, such as for attendance at a private school or educational cooperative, for a tutor or for costs associated with homeschooling. This bill also repeals the restriction in current law on providing public school funds to sectarian schools.

LD 1449 – *An Act To Provide for Education Funding Reform for More Equitable State Support to Communities.* (Sponsored by Rep. Geiger of Rockland)

This concept draft bill proposes to make changes to the school funding formula to create a more fair and equitable system of state funding for education by: (1) adding a per capita income adjustment to the school funding formula; (2) establishing a state per-pupil contribution rate equal to 46% of the cost of educating each student in each school administrative unit (SAU) with additional funding provided to units with low property valuations and low per capita income; (3) providing additional funding outside of the school funding formula for service center communities to adjust for disparities created among communities by the school funding formula; or (4) adopting a version of one of the following models: (A) the foundation grant model, in which the state determines a minimum amount that should be spent for each student, calculates the ability of an SAU to pay for each student and provides funding for the difference; (B) the guaranteed tax base model, in which the state guarantees that each municipality will raise a guaranteed amount of funding per student at a given rate of property taxation, with the state providing funding to a municipality for the difference between the guaranteed amount of funding and the amount actually raised; (C) the centralized model, in which a standard property tax rate to fund the cost of education is set by the state and the state provides a standard per-pupil amount of funding to each school administrative unit; or (D) the Vermont model, in which the state sets property tax rates and bills property owners to fund the cost of education

with a lower rate for homesteads and the state provides funding for education on a per-pupil basis with certain adjustments, including a poverty adjustment. Local school districts may raise additional funds through property taxation to supplement the funding provided by the state, subject to certain requirements and limits. The bill also proposes, until such time as a more equitable change in the school funding formula takes place, that any money to fund education provided in addition to the money annually directed by the school funding formula, including COVID-19 relief funds, must be apportioned to each school administrative unit on a per-pupil basis.

Environment & Natural Resources

LD 911 – *An Act To Prohibit the Reception of Foreign Waste Plastic in Maine Ports.* (Sponsored by Rep. Faulkingham of Winter Harbor)

This bill prohibits a port on navigable waters in the state from receiving from a vessel of plastic waste originating from another jurisdiction or country.

LD 1367 – *An Act To Create a Grant Program To Promote Innovation in Municipal Carbon Reduction Initiatives.* (Sponsored by Rep. Bailey of Gorham)

This bill establishes the Maine Municipal Carbon Reduction Initiatives Program for the purpose of providing competitive grants for towns and cities to help fund technology and innovation projects that will reduce carbon emissions in line with Maine's climate action plan.

LD 1415 – *An Act Regarding Minor Revisions to Existing Site Location Permits, Exemptions for Rerouting Storm Water and Exemptions for New Construction or Modification of an Existing Licensed Development under the Site Location of Development Laws.* (Sponsored by Sen. Breen of Cumberland Cty.)

This bill amends the site location of development laws administered by the Department of Environmental Protection. It specifies the time in which the department must process minor revisions to permits. It clarifies the exemption for new construction or modification of an existing licensed development. It adds an exemption for the rerouting of storm water if certain criteria are met.

Health Coverage, Insurance & Financial Services

LD 1544 – *An Act Regarding Credit and Debit Card Merchant Fees.* (Sponsored by Rep. Sachs of Freeport)

This bill excludes state and local taxes and fees from the amount on which an interchange fee is charged for an electronic payment transaction.

Clear-Cutting Home Rule for Forestry (cont'd)

Owners, who testified to the several unnamed communities that have adopted forestry ordinances without department knowledge, leaving the industry to find the information on their own. The bill's supporters hoped a "right to farm" approach for forestry operations would protect the industry from surprise restrictions.

In its testimony in support of the bill, the Maine Forest Service provided the most insight as to why the industry does not have access to a list of communities that have adopted related ordinances. According to the bureau's director, Don Mansius, the department lacks the staff necessary to sort through the files to advise which communities have which ordinances.

The State forestry website does not contain a list of local ordinances sent to the bureau, as do other state agencies, including the Bureau of Pesticide Control. In general, contractors look to the state to be the one stop shop for information and resources, which is why municipalities send this information to the state agency.

Instead, the Forest Service website advises that:

"It is your responsibility, as landowner, Licensed Forester, or logger, to know and understand what rules, including municipal ordinances, apply to your timber harvesting and related activities. Maine Forest Service strongly recommends that you: (1) check with the town or municipality about any local ordinances that may apply to your activity; (2) are familiar with all rules that apply to your activity before you begin your activities and; (3) plan your harvest well in advance."

MMA testified neither for nor against LD 1407, describing the proposal as an unnecessary erosion of home rule authority. The process for adopting a forestry practice ordinance, already established in law, is appropriately designed to balance the interests of both the industry and a community's residents. Accordingly, municipalities that wish to enact a forestry practice ordinance must: (1) consult a licensed forester in the process of drafting the ordinance; (2) inform the department of the community's needs; (3) keep definitions consistent with those in state statutes; (4) notify effected property owners of the proposed rules; (5) hold a public hearing on the

proposed rules; (6) delay implementation for a set period of time to afford an opportunity for impacted parties to appeal the proposed ordinance; and (7) file a copy of the ordinance with the Maine Forest Service.

From the perspective of municipal leaders, the bill inappropriately seeks to address department level staffing shortfalls by suppressing local level priorities.

Despite the claims of insufficient staff, the department supports legislation that directs the agency to assume many more duties. In addition to rule making and oversight authority, the state agency would become responsible for the enforcement of established rules that factor in permitted timber harvesting activities and all standards necessary to comply with related EPA obligations and take into consideration the provisions that must be in place to protect organic farms, scenic byways and local historic preservation districts.

If the department cannot see the trees of ordinances through the forest of archived boxes now, the additional duties assigned via LD 1407 will find them swamped.

IN THE HOPPER *cont'd*

Innovation, Development, Economic Advancement & Business

LD 1517 – An Act To Establish the Maine Workforce, Research, Development and Student Achievement Institute. (Sponsored by Sen. Curry of Waldo Cty.)

This bill establishes the Maine Workforce, Research, Development and Student Achievement Institute and creates an 18-member steering committee, which includes a member employed in the public sector and one from the Maine Municipal Association, to advise the Legislature on matters related to workforce training, research and development, student debt and economic advancement in Maine. Committee members serve a term of two years and are required to meet at least four times annually.

Judiciary

LD 1403 – An Act To Protect Maine Businesses, Nonprofits, Educational Institutions and Municipalities during the COVID-19 Pandemic. (Sponsored by Rep. Dillingham of Oxford)

This bill provides a limitation against liability for a municipality, educational institution or for-profit or nonprofit business organization from suit alleging personal liability due to exposure to coronavirus if the municipality, educational institution or business organization is following applicable government standards and guidance related to coronavirus exposure.

LD 1416 – An Act To Limit Qualified Immunity of Law Enforcement Officers in Maine Civil Rights Act Claims. (Sponsored by Sen. Carney of Cumberland Cty.)

This bill removes the qualified immunity for a government official for a violation under the Civil Rights Act if: (1) at the time of the alleged violation, the government official was a law enforcement officer who allegedly used or threatened to use force or physical violence against the aggrieved person; (2) the law enforcement

officer was required to receive either preservice law enforcement training, basic law enforcement training or in-service law enforcement training; and (3) the law enforcement agency employing the law enforcement officer was subject to the requirement to have policies concerning the use of physical force. The bill also limits liability in these cases to \$10,000 per violation.

Labor & Housing

LD 959 – An Act To Protect Small Businesses by Ensuring That a Prevailing Wage Is Paid on Public Works Construction Projects. (Sponsored by Sen. Miramant of Knox Cty.)

This bill expands the definition of "construction" under the laws governing preference to Maine works and contractors, which include provisions requiring the payment of prevailing wages, to include contracts for any construction, reconstruction, demolition, improvement, enlargement, painting, decorating or repair of any public works under which work is performed at an off-site location within 350 miles of the public works or where at least 10% of the contracted work is performed.

LD 965 – An Act Concerning Nondisclosure Agreements in Employment. (Sponsored by Rep. Harnett of Gardiner)

This bill prohibits an employer from requiring an employee, intern or applicant for employment to enter into a: (1) contract or agreement that waives or limits any right to report or discuss discrimination, retaliation or harassment occurring in the workplace or at work-related events; or (2) settlement, separation or severance agreement that limits an individual's right to (a) report, testify or provide evidence to a federal or state agency that enforces employment or discrimination laws; (b) prevents an individual from testifying or providing evidence in federal and state court proceedings in response to legal process; or (c) prohibits an individual from reporting conduct to a law enforcement agency. This bill allows a settlement, separation or severance agreement, under certain circumstances, to include a provision that prevents the subsequent disclosure of factual information relating to a claim of discrimination, retaliation or harassment. It also provides

Site Law Bills Reverse Course of Environmental Protection

This month is full of hokey events from April Fools' Day to the marijuana inspired 4/20. In 1970, Earth Day would have been lumped into the hokey category but 51 years later the day is hardly contrived. Earth Day is an annual demonstration of support for environmental protection observed in nearly 200 countries by over one billion people.

In Maine, the celebration lasted all week. Maine Audubon hosted an outdoor film festival, Sierra Club of Maine facilitated a panel of speakers on the waste crisis, environmental advocacy, and the intersectionality of climate change and social issues, Acadia National Park offered digital experiences at the park, the Department of Inland Fisheries and Wildlife presented a virtual event and clean ups were held in Westbrook, Falmouth, Limington, Farmington, Kennebunkport, Saco, Fort Kent, Thomaston and beyond.

Governor Janet Mills joined the festivities during a virtual event hosted by the United States Climate Alliance, a coalition of governors committed to achieving the goals of the Paris Climate Agreement. During the event Governor Mills received praised for Maine's approach to job creation through climate change initiatives. The governor views environmental protection and climate change mitigation as opportunities to create above market jobs with salaries that will attract new

workers. Maine's plans for off-shore wind generation, solar grids, weatherization and heat-pump installations, and new industries like wood-fiber insulation and cross-laminated timber depend on staffing at every level. Engineers, technicians, mechanics, operators, policy makers, and planners are all needed.

The Environment and Natural Resources Committee, however, held a work session that ended in stark contrast to the governor's sentiments. While the administration urged for more human capital and workforce productivity, the committee contemplated six site law bills that called for the Department of Environmental Protection (DEP) to do less or at least do it faster.

At hand was the matter of DEP permit efficiency and whether the department should hire more staff to manage permit applications or create exemptions and timetables in the name of expediency. Of the six site laws bills, the committee killed four and will report out on two.

The first, an amended version of LD 1028, *An Act to Ease Business Expansion by Increasing the Number and Applicability of Permit Exemptions under the Site Location of Development Laws*, sponsored by Sen. Lisa Keim of Oxford County, gives large exemptions from site law review for manufacturing facilities and educational campuses that are already

licensed by DEP. The committee's vote of "ought to pass as amended" was unanimous.

The committee was not as united on Sen. Keim's next site law bill, LD 1038, *An Act to Facilitate a Timely Revision Process in the Site Location of Development Laws*. As amended, the bill directs the DEP commissioner to make two timetables for permit applications, one for new permits and one for amended permits. The DEP stayed neutral on the matter, observing that permit amendments should be processed faster but the directive will cut both ways since time spent on permit amendments will come from some other time commitment, like processing new permits. Committee members noted this bill is commentary on the work of DEP staff and their timeliness, especially with regards to permit amendments, and worried what effect this bill would have on department morale. The committee's "ought to pass as amended" vote was split 5 to 5.

This is not the end of the committee's deliberation on site law in Maine either. LD 1415, *An Act Regarding Minor Revisions to Existing Site Location Permits, Exemptions for Rerouting Storm Water and Exemptions for New Construction or Modification of an Existing Licensed Development under the Site Location of Development Laws*, sponsored by Sen. Cathy Breen of Cumberland County has a public hearing on Monday, April 26 at 9 a.m.

IN THE HOPPER *cont'd*

the Department of Labor with the duty to enforce these provisions and allows an individual to receive liquidated damages or to be employed or reinstated with back wages when an employer discharges or refuses to hire an individual who declines to enter into a contract or agreement that waives or limits any right to report or discuss discrimination, retaliation or harassment occurring in the workplace or at work-related events.

LD 1312 – An Act To Remove Barriers to Accessory Dwelling Units and Allow Accessory Dwelling Units where Single-family Houses Are Allowed. (Sponsored by Rep. Geiger of Rockland)

This bill requires municipalities to allow one accessory dwelling unit to be included within or located on the same lot as a single-family dwelling unit. It prevents municipalities from imposing any of the following restrictions on accessory dwelling units: setback requirements on accessory dwelling units incorporated within an existing single-family dwelling unit; setback requirements of more than 5 feet for accessory dwelling units not included within a single-family dwelling unit; off-street parking requirements; separate sewer or water systems; or owner occupancy of one of the units unless one of the units is being used for short-term or vacation rentals. A municipality may not restrict use of one of the units on a lot as a short-term or vacation rental. A municipality may not require correction of a non-conforming use when an accessory dwelling unit is incorporated into an existing single-family dwelling unit or of an existing structure converted into an accessory dwelling unit, but a municipality may require compliance with applicable building and fire safety codes for all accessory dwelling units. A municipality's design standards for accessory dwelling units must be clear and objective. Accessory dwelling units within historical preservation

districts must comply with historical preservation standards.

LD 1339 – An Act To Clarify That Municipal Firefighters, Volunteer First Responders and Substitute Teachers Are Excluded from Maine Earned Paid Leave. (Sponsored by Rep. Greenwood of Wales)

This bill excludes from the law requiring employers of more than 10 employees to provide earned paid leave to municipal firefighters, volunteer first responders and substitute teachers.

LD 1397 – An Act Directing the Maine State Housing Authority To Create a Commission To Develop a Comprehensive Rental Registry for Multifamily Housing. (Sponsored by Rep. Gere of Kennebunkport)

This bill directs the Maine State Housing Authority to create a commission to develop, implement and disseminate to municipalities and post on a publicly accessible website a comprehensive rental registry of multifamily housing in Maine. The commission consists of representatives of large and small municipalities, owners and renters of multifamily housing and other interested parties invited by the authority. The authority is directed to report annually to the Legislature on the progress of the registry.

LD 1430 – An Act Regarding the Waiting Period for Compensation for Incapacity To Work under the Maine Workers' Compensation Act of 1992. (Sponsored by Rep. Bryant of Windham)

In part, this bill amends the Maine Workers' Compensation Act of 1992 by requiring a state or county correctional facility employee or firefighter to receive compensation from the date of incapacity.



Maine Municipal Association

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AUGUSTA, MAINE 04330-9486

IN THE HOPPER *cont'd*

LD 1436—An Act To Protect Certain Essential Workers from Infectious Disease. (Sponsored by Rep. O’Connell of Brewer)

This bill requires public and private employers that employ persons who provide direct, in-person services in medical settings or in correctional institutions or that employ firefighters or emergency medical services persons, collectively referred to in this bill as “covered employees,” to take certain actions with respect to providing personal protective equipment for those covered employees. The bill requires employers to supply personal protective equipment to covered employees and to ensure these employees use the personal protective equipment in accordance with occupational and safety rules of the Department of Labor. It also requires employers to maintain a stockpile of the following specific personal protective equipment equal to three months of normal use by covered employees: N95 filtering face piece respirators, powered air-purifying respirators with high-efficiency particulate air filters, elastomeric air-purifying respirators and appropriate particulate filters or cartridges, surgical masks, isolation gowns, eye protection and shoe coverings. The bill provides that, on or before Jan. 15, 2022, an employer is required to determine its highest 7-day consecutive daily average consumption of personal protective equipment and to provide this information to the Department of Labor upon request.

LD 1453 – An Act To Protect Small Employers by Prohibiting Municipalities from adopting Ordinances Regarding employee Work Benefits Other Than Ordinances Regarding Minimum Wage Rates. (Sponsored by Rep. Bradstreet of Vassalboro)

This bill prohibits municipalities from enacting or enforcing an ordinance, regulation or order regulating wages or benefits of an employee provided by an employer except for an ordinance concerning a life safety matter or establishing a minimum wage rate for a particular class of workers during a particular period of time.

LD 1519—An Act To Increase Workplace Transparency with Regard to Arbitration Agreements, the Rights of Employees and Legal Remedies. (Sponsored by Sen. Miramant of Knox Cty.)

This bill enacts the Maine Workplace Transparency Act that ensures certain

rights for employees subject to arbitration agreements as part of their employment. The bill provides a list of unconscionable terms in an arbitration agreement that may not be used against employees and a list of rights for employees in their conduct in and out of the workplace. The bill provides the right to bring an action to dispute an unconscionable term or to enforce a right, including the issuance of a temporary restraining order or a preliminary or permanent injunction. The limitation period is six years, the burden of proof is by a preponderance of evidence and an employee may request a jury trial. A violation of the provisions is subject to a civil penalty of not less than \$10,000 enforceable by the Department of Labor, and a violation of a court order for a temporary restraining order or a preliminary or permanent injunction is a Class D crime. The prevailing party in an action, except for the state, is entitled to receive attorney’s fees and costs, and the state is liable for attorney’s fees and costs in the same manner as a private party.

State & Local Government

LD 1513 – An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences. (Sponsored by Rep. Newman of Belgrade)

This bill requires that when a road or a discontinued town way on which a public easement is retained and is the only road that can be used to access one or more residences and the town issues permits for residential use or collects property taxes on those properties, the town is not required to keep the road or way safe and convenient for travelers with motor vehicles, but must provide sufficient maintenance to keep the road or way passable to access the residences on the road or way, as determined by the county commissioners.

Veterans & Legal Affairs

LD 1375 – An Act To Permit Online Absentee Voting. (Sponsored by Rep. Terry of Gorham)

This bill allows registered voters to cast absentee ballots by electronic means approved by the Secretary of State.