



LEGISLATIVE BULLETIN



Vol. XLIV No. 8 MARCH 4, 2022

Marathon Week Leads to Quick Decisions

The Environment and Natural Resources Committee had a marathon week, conducting five public hearings and seven work sessions over two days. Operating at breakneck speeds is efficient, but not conducive to broad public participation. Many of the bills up for discussion were previewed in last week's Legislative Bulletin and already deserve revisiting given the committee's fast style of legislating.

The process for LD 1616 *An Act To Ensure That Municipalities and Multimunicipal Re-*

gions of Every Size and Capacity Have Guidance on Climate Adaptation and Resilience Strategies for Policy, Implementation and Investment Decision Support, sponsored by Rep. Lydia Blume of York best demonstrates the speed at which bills can, unfortunately be pushed through committees.

Last Wednesday evening, amendment language was revealed to expand an exemption on a prohibition to use public funds for private infrastructure when a public benefit exists. More specifically, LD 1616 extends additional authority to municipalities to maintain private roads if there is a threat to a protected natural resource. On Monday, the committee heard public testimony from just four parties and only one in support. Two days later the bill was voted out of committee. In less than one week, the bill went from concept draft to a committee vote of ought to pass by a margin of 8 to 3.

In under seven days the committee di-

gested a brand-new bill, put aside the concerns of the Department of Environmental Protection and The Nature Conservancy, and ultimately ignored the wishes of municipalities as presented by MMA. One committee member stated, "It was not a rushed hearing at all, MMA came out against the bill and articulated a variety of problems and concerns in a rather thorough way." The member continued, "[Repairing private roads] is an optional thing for the towns. If they are worried about liability that's their risk. It's on that basis that I was willing to ignore some of the concerns of the Maine Municipal Association." This process produced LD 1616, as amended.

Since time is clearly of the essence, here is a brief explanation of MMA's opposition to LD 1616: Adding another tool to the toolbox of climate resiliency, as the committee members claimed this bill does, only benefits municipalities if they are given the

(continued on page 2)

Housing Bill Scheduled for Hearing

Speaker Ryan Fecteau's Housing Commission bill, LD 2003, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, will receive a public hearing before the Labor and Housing Committee **on Monday, March 7 at 10:00 a.m.** A description of the bill can be found on page 3 of this bulletin.

Municipal officials concerned with this proposal are urged to participate in the public hearing by submitting written testimony, signing up to provide oral testimony or both. It is important that legislators hear from as many municipal officials as possible.

Municipal officials needing assistance submitting written testimony or registering to participate in the hearing are welcome to contact Kate Dufour at 1-800-452-8786 or kdufour@memun.org.

Remote Meeting Bills Tabled

The COVID-19 pandemic has forced municipalities to examine the way community business is conducted to ensure public participation and access are continued. The use of remote meetings is but one of the tools that has enabled communities to continue to provide essential services to their residents. Though many municipalities have adopted remote participation policies, under current law communities that have not yet adopted a remote participation policy that meets the requirements of Maine Revised Statutes, Title 1, section 403-B, are not authorized to participate in a public proceeding unless physically present.

Proposed by Rep. Thomas Harnett of Gardiner, LD 1971, *An Act To Implement the*

Recommendations of the Right To Know Advisory Committee Concerning Remote Participation, would amend the law governing remote participation in public proceedings to allow the flexibility for a public body to adopt a remote participation policy utilizing the following two-step process.

Step 1. The chair of the public body can determine that an emergency or urgent issue exists that prevents the body from meeting in person and as such, call a meeting of the public body in which participants may use remote methods. A public notice must be issued that includes information on how the public can participate in the meeting. Once the meeting has been convened, the

(continued on page 4)

Marathon Week Leads to Quick Decisions cont'd

resources to utilize that tool. The authority to repair private infrastructure will go unused unless funding is available to help with climate resiliency measures and statute is clarified to limit municipal liability on private roads. Otherwise, this shiny new tool will quickly rust.

If the committee is interested in finding workable solutions to protecting threatened natural resources impacted by privately owned infrastructure with public funds, it might need another week to deliberate.

The committee worked three other bills of municipal interest this week:

LD 1970 *An Act To Implement Agency Recommendations Relating to Sea Level Rise and Climate Resilience Provided Pursuant to Resolve 2021, Chapter 67*, sponsored by Rep. Ralph Tucker of Brunswick.

Previewed last week, this bill makes administrative updates to the maintenance and repair of culverts and to site location laws. The bill also introduces the expectation that municipalities fund more local climate action planning to gain the state's favor for grant funds. MMA testified neither for nor against the bill, noting that the administrative updates are needed but not fully reflective of municipal priorities. This bill, and the larger effort of climate resiliency, underscore the reality of municipal climate action planning.

Municipalities are eager to perform more climate mitigation and response actions, however the funding is simply not available. Just as LD 1616 expands the roles municipalities are allowed to perform without providing any additional resources, LD 1970 expands expectations with little concern for affordability.

Given that there was no opposition to the bill, and only MMA testified neither for nor against, the measure was afforded minimal attention during its work session. The very optimistic opinion of one committee member characterized the majority sentiment, "It's not that much of a problem to get some help, and to get a local climate plan set up, it's just not a big deal." The bill was voted ought to pass as amended by a margin of 9 to 2.

LD 1974 *An Act To Establish and Fund the Maine Climate Corps Program Pursuant to Recommendations in the Report Required by Resolve 2021, Chapter 25*, sponsored by Sen. Stacey Brenner of Cumberland County.

Previewed last week, this legislation also went from public hearing to commit-

tee vote in just a few short days. At least in this instance, there was universal support. The committee voted unanimously ought to pass on the proposed legislation to create a climate corps to pursue state climate resiliency priorities through a largely volunteer workforce.

LD 1911 *An Act To Prohibit the Contamination of Clean Soils with So-called Forever Chemicals*, as amended by Sen. Brenner.

The irony of this legislation is that of all those described here, this bill addresses the most urgent issue of PFAS contamination yet was given the most time for consideration. Contrary to other bills vetted this week, the legislation has benefited from an appropriate amount of debate and stakeholder input and is much improved since being initially introduced.

The amended bill prohibits the land appli-

cation of any septage, sludge, or wastewater residual, or any compost derived from those products on Maine soils. Instead, the only allowable disposal method for these products will be landfilling. MMA supported the bill throughout all its iterations and is pleased to see the suggestions of multiple stakeholders incorporated in the amendment.

Through the course of its public hearing and work sessions, exemptions were provided to farmers and brewers, the emergency preamble was removed to give wastewater treatment plant operators more time to make the operational pivot, and the \$10 proposed per ton tipping fee on this product was stricken. The bill was voted ought to pass as amended with nine committee members in support. Competing amendments or opposition attracted four committee votes.

A Cleaner Pathway to Zero-Emissions

Carried over from last session by the Energy, Utilities and Technology Committee, LD 1579, *An Act To Transition State and Local Motor Vehicle Fleets to 100% Zero-emission Vehicles* has benefited from additional fine-tuning between sessions. The bill, sponsored and recently amended by Sen. Eloise Vitelli of Sagadahoc County, charts a much cleaner pathway for municipalities to transition motor vehicle fleets to zero-emissions by 2030.

Originally, the bill set goals for municipalities to achieve zero-emission vehicle fleets measured by the reduction of greenhouse gas emissions, reaching 100% reduction by 2040. This pathway required the unenviable task of determining a quantifying measurement. Instead, the sponsor's amendment suggests setting a goal based on annual acquisitions, ultimately reaching 100% annual acquisitions of zero-emission vehicles by 2030.

More pointedly, by 2030 municipalities should only be purchasing or leasing electric vehicles.

The amendment makes two other notable changes of municipal interest. First is the stronger language to denote this legislation as a goal and not a mandate. The second change was the inclusion of plug-in hybrid electric vehicles as qualifying towards the goal.

The second change is especially notable because it acknowledges the fledgling status of Maine's charging infrastructure. Charging stations are so limited that 100% electric vehicles are still impractical in many areas of Maine.

Last session MMA offered neither for nor against testimony, stating the bill is largely aspirational due the high cost of electric vehicles and absence of a used electric vehicle market, and highlighting the unfulfilled prerequisite for charging infrastructure. Sen. Vitelli's amendment does little to change these realities, but at least it lays out a clear goal.

During its work session on Tuesday the committee recommended the bill ought to pass as amended by a vote of 7 to 1. Rep. Steve Foster of Dexter was the lone dissenter arguing practicality and cost will impede progress towards this goal.

State, county, and school district transitions were mapped out as well. State and county vehicle fleets have a similar expected pathway as municipalities, with school districts encouraged to achieve at least 75% annual acquisitions of zero-emission school buses by 2035.

The bill will next be debated before the entire Legislature at a time to be determined.

HEARING SCHEDULE

For the week of March 7, 2022

MONDAY, MARCH 7

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

LD 259 – An Act to Improve Solid Waste Management.

LD 866 – An Act Concerning Advance Refrigeration Technology.

Labor & Housing
Room 202, Cross Building, 10:00 a.m.
Tel: 287-1331

LD 460 – An Act To Amend Certain Employment Laws To Help Front-line and Other Workers.

LD 463 – An Act To Better House Maine Residents.

LD 1961 – An Act To Help Alleviate Maine’s Housing Shortage and Change the Membership of the Maine State Housing Authority.

LD 2003 – An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions.

State & Local Government
Room 214, Cross Building, 1:00 p.m.
Tel: 287-1330

LD 408 – An Act To Amend the Laws Regulating the Operation of the Legislature.

LD 2005 – An Act Regarding the Reapportionment of the Knox County Budget Committee Districts.

TUESDAY, MARCH 8

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

LD 1967 – An Act To Amend the Charter of the Gray Water District.

Labor & Housing
Room 202, Cross Building, 10:00 a.m.
Tel: 287-1331

LD 177 – An Act To Improve Labor Laws for Workers in Maine.

LD 2006 – An Act To Improve the Low-income Home Energy Assistance Program.

Note: As of now, the legislative presiding officers have waived the requirement that bills be advertised for public hearing two weeks in advance; therefore, you should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearings and work sessions can be found on the Legislature’s website at: <http://legislature.maine.gov/calendar/#Weekly/>.

IN THE HOPPER

Labor & Housing

LD 2003 – An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions. (Sponsored by Speaker Fecteau or Biddeford)

This bill:

Housing as a Human Right (Secs. 1-3). Amends Maine’s housing discrimination laws to prevent a municipality or government entity from restricting the construction or development of housing units in areas based on criteria that refers to the character of a location, overcrowding of land or the over concentration of the population. This section of the bill also defines those terms to mean the unique characteristics of a municipality; the density of the population within a specific area of the municipality; and the density of residential dwellings or other developments within a specific area of the community, respectively.

Prohibits Housing Caps (Secs. 4-6). Prohibits municipalities from adopting ordinances that cap the number of building or development permits issued each year for any residential dwellings, including but not limited to permits for affordable housing.

Technical Assistance and Grant Program (Sec. 7). Directs the Department of Economic and Community Development (DECD)

(The bill summaries are written by MMA staff and are not necessarily the bill’s 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.)

to provide technical assistance to municipalities for the purpose of developing and implementing zoning and land use ordinances that conform with state and federal laws and review municipal building and development permits. This section further directs the department to provide grants from the Municipal Planning Assistance Grant and Incentive Program Fund to contract for services and hire staff to help administer municipal housing related responsibilities.

Municipal Incentive Program (Sec. 8). Directs DECD to provide a grant of up to \$25,000 for each year a municipality participates in the incentive program. In order to be eligible for the grant a municipality must: (1) in the first year, establish a working group to review municipal zoning and land use ordinance impacts on housing availability; (2) in the second year, adopt or amend zoning and land use ordinances to promote the availability of housing, based on the recommendations of the working group; and (3) in the third year, provide information

Remote Meeting Bills Tabled cont'd

members of the public body must vote on whether to support the chair's determination that an emergency or urgent issue demanding remote participation exists.

Step 2. If members of the public body vote to support the determination that an emergency or urgent issue exists, the members can then vote on adopting a policy authorizing remote participation.

Local government leaders have proven throughout the pandemic their commitment to delivering essential services, which provides for public access and participation by remote methods. This bill would provide those leaders with flexibility to continue such practices in the event of an emergency or other urgent issue.

At a short public hearing held on Feb. 28, members of the Judiciary Committee received testimony on LD 1971, none of which was offered in opposition to the bill.

Testimony in strong support for the bill came from the Maine School Boards Association who testified that during the pandemic school boards experienced benefits to holding remote meetings that included increased public participation. While it is agreed that appropriate guidelines need to be in place, remote participation has allowed important business to continue to be conducted, at all levels of government, and should be included when planning for the future.

At a work session, held on Wednesday, March 2, committee members discussed possible bill amendments to clarify the language and add the requirement that the vote be affirmed by a two-thirds majority. Given the difficulty the standard could pose for small boards, it was discussed to require passage by two-thirds of the majority present.

A motion to table the bill was made to allow time to work on the proposed amendments. Rep. Steve Moriarty of Cumberland agreed to work with the analyst to prepare alternative clarifying language based on the discussion. Committee Chair, Sen. Anne Carney of Cumberland County, closed the work session noting that it would be rescheduled as soon as possible.

Additionally, a work session was held later in the morning to discuss LD 1771, *An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act*, sponsored by Rep. Harnett and co-sponsored by Rep. Moriarty.

As described in previous editions of the Legislative Bulletin, the bill affords local

leaders greater flexibility in determining when it is in the best interest of municipal boards and councils to meet remotely. As a result, the proposed bill removes the list of reasons to determine when the use of remote meetings is authorized, therefore leaving the creation of the list to local officials. Some committee members questioned why LD 1771 was not combined with the previously worked bill (LD 1971).

Rep. Harnett was not in attendance at the work session and therefore unable to answer any questions. However, Rep. Moriarty mentioned to the committee members present that the Maine Municipal Association's (MMA) Legislative Policy Committee guides the advocacy efforts of MMA and that if the Association submitted this bill that it was clear that Maine towns and cities would like to see this initiative passed.

A motion was made, at the suggestion of the senate chair, to table LD 1971 until Rep. Harnett was available. The motion passed with nine in favor and one opposed.

Bill Proposes Five-Fold Increase in Waste Disposal Fees

Amended language for LD 259, *An Act to Improve Solid Waste Management*, sponsored by Rep. Ralph Tucker of Brunswick, was recently printed and the bill is scheduled for a public hearing before the Environment and Natural Resources Committee on Monday March 7, at 9:00 a.m.

The amendment proposes a five-fold increase to fees imposed on the disposal of waste at landfills. First, is an increase from \$1 to \$5 per ton of municipal solid waste (MSW) and municipal solid waste ash. Second, is an increase from \$2 to \$10 per ton of construction and demolition debris (CDD) and residue from the processing of construction and demolition debris.

According to a January 2021 report by the Maine Department of Environmental Protection (DEP), the average tipping fee for MSW is \$77, making the proposed fee increase a 5% hike. For CDD, the proposed fee increase represents a 14% hike based on DEP's reported average of \$59 per ton.

Revenue from these fees go towards the

state's waste management fund. From this fund, grants are issued to public and private entities to "increase the diversion of solid waste from disposal," (i.e., create recycling or composting programs). In the years 2018 and 2019 combined, grants totaling roughly \$300,000 were awarded to 19 proposals by public and private entities.

If enacted, the bill would generate approximately \$12.4 million in revenue from MSW and CDD fees over the next two years. Assuming the five-fold fee increase leads to a proportional acceleration in grants, about \$1.5 million of collected fees will be distributed back to private and public entities in the form of restrictive grants.

Until the Legislative Policy Committee (LPC) has a chance to establish a formal position on the bill, MMA is opposing the bill based on previous testimony, past LPC positions, and early outreach from members.

Municipal officials that would like to provide input, are encouraged to reach out to Neal Goldberg at n Goldberg@memun.org.

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
207-623-8428
www.memun.org

Editorial Staff: Kate Dufour, Rebecca Graham, Neal Goldberg, Laura Ellis and Rebecca Lambert of the Advocacy & Communications staff.

Layout: Sue Bourdon, Advocacy & Communications.



Assisting Veterans Via Tax Exemption

Pointing to fixed incomes, increasing property tax burdens, and spikes in assessed property values, several veterans rallied around LD 1986, *An Act To Exempt Permanently Disabled Veterans from Payment of Property Tax*, sponsored by Rep. Timothy Roche of Wells.

The bill, which received a public hearing before the Taxation Committee this week, exempts from the property tax homesteads owned by veterans of the U.S. Armed Forces who are permanently disabled and receive any form of pension or compensation from the U.S. Government for a total, service-connected disability.

According to the proponents, the change would benefit roughly 2,700 eligible veterans, who on average pay \$2,500 in taxes each year. Of the total \$6.75 million price

tag, the state is constitutionally obligated to reimburse municipalities for 50% of the lost property tax revenue, or in this case \$3.375 million annually.

Throughout the course of the hearing, it became clear that neither the proponents of LD 1986 nor several committee members supported shifting additional burdens onto communities, particularly in rural areas of the state where many of the would-be beneficiaries reside.

Instead, the sponsor and proponents voiced support for reimbursing municipalities for 100% of the lost property tax revenue. One member of the public suggested that a portion of the state's then \$882 million surplus – which has since grown to \$1.2 billion – should be used to capitalize a non-lapsing fund to ensure ongoing payments to

municipalities.

MMA's "neither for nor against" testimony was parallel to that provided by the proponents. While municipal leaders support the concept of assisting the men and women who protected our country, absent 100% state reimbursement to municipalities, the exemption simply shifts burdens onto all other property owners, including some of our most vulnerable residents.

With all public hearing participants on the same page, MMA remains cautiously optimistic that the bill will be amended to provide additional reimbursement to municipalities.

The committee will decide whether to provide full or partial payment at a work session on Thursday, March 10 at 9:00 a.m.

IN THE HOPPER

to DECD about current or prospective housing developments or permits issued for the construction of housing resulting from the implementation of related land use and zoning changes.

Affordable Housing Density (Sec. 9). On or after April 20, 2022, municipalities are required to use an affordable housing density standard for qualifying affordable housing developments that is equal to 2.5 times the density that is otherwise allowed in the zone where the development is located and are prohibited from requiring more than two off-street parking spaces for every three units. Before approving an affordable housing development, the developer must agree to ensure that for at least 30 years occupancy will remain limited to households at or below 80% of the local area median income for rental units and for owned housing to remain limited to households at or below 120% of local area median income. In addition, the developer is prohibited from renting units for a period of less than 30 days.

Prohibits Establishment of Single Family Only Zones (Sec. 10). Provides that notwithstanding a law to the contrary, on or after April 20, 2023, all zones where housing is permitted must allow for the development of structures with up to four dwelling units. Municipal residential housing ordinances may not establish dimensional size requirements or setbacks distances that are greater than those required for single-family structures. This section also requires the owner of a housing unit to provide written verification to the municipality that the unit is connected to adequate water and wastewater services before the municipality can issue an occupancy permit. In the process of adopting an ordinance, a municipality is authorized to: (1) establish an application and permitting process; (2) impose fines for violations of building, zoning and utility requirements; and (3) establish

alternative criteria that are less restrictive utility requirements, but only if a variance is allowed. This section requires ordinances to comply with the minimum shoreland zoning requirements set by the Department of Environmental Protection (DEP).

Accessory Dwelling Units (ADUs) (Sec. 11). Provides that an ADU is allowed on the same lot as a single-family dwelling in any zone in which housing is permitted. An ADU is defined in existing law as a self-contained dwelling unit located within, attached to, or detached from an existing dwelling unit. This section allows an ADU to be constructed if: (1) within an existing structure on the lot; (2) attached to or sharing a wall with a single-family unit; or (3) is a new structure on the lot for the primary purpose of creating an ADU. A related municipal ordinance must: (1) allow for at least one ADU on any lot where a single-family unit is the primary structure; (2) require lots where a single-family dwelling unit is the primary unit and an ADU has been constructed to be zoned as single-family; (3) exempt an ADU from any density requirements; (4) require the setbacks and dimensional requirements to be the same as the requirement for a single-family dwelling unit, if the ADU is located within the single-family unit; (5) exempt an ADU from meeting additional parking requirements, beyond that applied to the single-family unit; (6) require an ADU to comply with DEP shoreland zoning requirements and Maine Uniform Building Code requirements; and (7) prohibit a rental term of less than 30 days for units constructed or permitted on or after April 20, 2022. The owner of an ADU must provide written verification to the municipality that the unit is connected to adequate water and wastewater services before the municipality can issue an occupancy permit. In the process of adopting an ordinance, a municipality is authorized to: (1) establish an application and permitting process; (2) impose fines for violations of building, zoning,



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486

IN THE HOPPER

and utility requirements; and (3) establish alternative criteria that are less restrictive utility requirements, but only if a variance is allowed.

Municipal Housing Development Permit Review Board (Sec. 12).

Establishes a seven-member board, appointed by the governor to hear complaints against the final decisions of a local board denying a housing project. Upon receipt of a complaint, the board must provide written notice of the hearing at least 20 days in advance to the person seeking review and the municipality that denied the application and allow both the opportunity to provide testimony before the board. If the board determines that the project should have been approved, the municipality that denied the project must approve the development.

Priority Development Zones (Sec. 13).

Requires municipalities to designate an area within the municipality as a priority development zone (PDZ) located in an area that has significant potential for housing development and located near community resources, as determined by DECD. A PDZ is defined as a zone in which owned or rented multifamily housing composed of both market and affordable housing units is permitted at a specified density that is greater than the density allowed in other zones. Community resources are defined as available services, including transportation, schools,

and recreational, employment and business opportunities. Prior to adopting the development zone, DECD must review the proposal to ensure compliance with adopted state agency rules. Adoption of the PDZ is delayed for two years following the adoption of agency rules.

Staggered Review Board Terms (Sec. 14).

Provides that the terms of the review board established in Section 12 are staggered with two members serving for one year; two members serving for three years; and three members serving the full five-year term.

Fiscal Note (Sec. 15).

Provides: (1) \$79,762 in ongoing funds for one position to provide technical assistance to the Municipal Housing Development Permit Review Board; (2) \$89,760 in ongoing funds for one position to implement a municipal land use and zoning ordinance review incentive program and provide technical assistance to municipalities; (3) \$3 million in ongoing funds for grants to municipalities to review land use and zoning ordinances; (4) \$115,500 in ongoing revenue for one position to serve as a municipal planning coordinator to provide expertise in zoning and land use to municipalities; and (5) \$1.3 million in ongoing funds to assist municipalities in the development and implementation of zoning and land use ordinances.