



LEGISLATIVE BULLETIN



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Housing Appeals Board Is local control in danger?

The pace with which Maine is growing its affordable housing stock was the topic of discussion at a public hearing conducted by the Labor and Housing Committee this week.

Sponsored by Rep. Rachel Talbot Ross of Portland, LD 1673, *An Act To Create a Comprehensive Permit Process for the Construction of Affordable Housing*, emulates a process used in Massachusetts that expedites the approval of affordable housing projects.

LD 1673 achieves that outcome by short-changing local level review of developments, but only in certain communities. In a nutshell, unless deemed by the Maine State Housing Authority (MSHA) as a “municipality in good standing,” LD 1673 allows developers of affordable housing projects to skip the planning board process and advance immediately to review by the local board of appeals (BOA), if one exists, and MSHA.

The bill further establishes the standard for achieving gold star status as the percentage of a municipality’s total housing stock that is affordable. For communities with less than 500 households the affordable housing goal is 10% and in municipalities with more than 1,000 households the goal is 16%. For communities falling between the lower and higher household thresholds the goal is set at 13%. As defined in LD 1673, affordable means “a decent, safe, and sanitary dwelling, apartment or other living accommodation where the cost of housing and utilities is no more than 30% of gross household income for a household whose income does not exceed 120% of the median income for the area as defined by U.S. Department of Housing and Urban Development.”

Although proponents of the bill suggest the comprehensive permitting process provides residents and planning boards opportunities to engage in the discussions, the language of the bill suggests otherwise.

First, the BOA and MSHA are required to accept planning board input, only if deemed necessary or helpful. Second, the legislation

contains a failsafe clause. Failure to convene the “required” hearing within 30 days of the receipt of the application or render a decision within 40 days of the public hearing, if scheduled, yields an automatic approval of the housing project.

If circumventing review by residents who are most familiar with municipal ordinances, comprehensive plans, and goals is not concerning enough, some members of the committee expressed interest in the concept of preempting local decision-making authority in this arena.

In oppositional testimony, MMA instead advocated for the creation of state/municipal partnerships focused on the development of measurable affordable housing goals, assessment of which level of government is better suited to implement mutually beneficial strategies and investment in financial and technical resources necessary to develop affordable housing statewide.

Whether home rule or preemption wins the day will remain unknown until the committee schedules its work session on LD 1673.

Floating Homes Need Clarity and Review

Some of the best Maine childhood memories involve nights spent floating under the stars in a canoe or sailboat with friends realizing your miniscule place in the infinite universe and telling stories of imaginary creatures lurking beneath the dark surface, eager to bite the unsuspecting toes that dangle from the edge. While not all of us grew up to find permanent homes in those cherished locations, the draw of the water and desire for those joys never fades.

Increasingly, Maine communities are finding themselves wrestling with a new notion of floating homes, a desire to sleep on the water, and a multijurisdictional regulatory and enforcement authority to address the number of complex issues these buildings cause public officials to confront. LD 626, *An Act To Clarify Temporary Mooring Privileges for Moorings on Inland Waters*, sponsored by Rep. Paul Stearns of Guilford, attempted to find a clear path forward for the use of this shared space. While the original bill would have mandated inland harbor masters to regulate mooring privileges, the sponsor recognized the hardship a requirement would place on municipalities and instead asked stakeholders to review options and report back findings.

Over the summer, MMA staff worked with the Submerged Lands Program, and the Department of Inland Fisheries and Wildlife to review the complexity of state and local authority over inland waterways to see if there was an easy path forward. Unsurprisingly, the issue is as complex as the vast waterbodies these homes occupy. The key questions explored were: Are floating camps legal in Maine? Do floating camps meet the definition of a motorboat or watercraft? Are floating camps only a mooring placement problem? If regulated, should it happen at the state or municipal level? Does existing law address problems associated with floating camps/structures?

Because there is no definition of a floating home in statute, there is a great deal of ambiguity around what can be regulated and by whom. Some floating homes have been registered by the state as homemade boats, and thus municipalities have no authority to regulate their use beyond existing watercraft law. While enforcement actions on inland waters are the authority of the Warden’s Service, other certified law enforcement entities can also enforce violations.

For lakes with several communities making up the boundaries, municipal policing

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Supplemental Budget Drops

On Tuesday afternoon the Bureau of the Budget released Governor Janet Mills' proposed FY 2023 supplemental General Fund budget. According to the accompanying fiscal note, the initiative appropriates \$640 million in unappropriated surplus revenue for a variety of different purposes.

To the relief of municipal officials statewide, the budget proposal honors the commitments made to property taxpayers last year. Starting on July 1, 2023, 5% of state sales and income tax revenues will be distributed to municipalities under the revenue sharing program and state reimbursement will increase from 70% to 73% to cover a greater portion of the lost property tax revenue associated with the \$25,000 homestead exemption.

According to the data found in the Revenue Forecasting Committee's December 2021 report, the jump to 5% of state revenues will increase revenue sharing distributions to an estimated \$230 million in FY 2023. Reimbursement under the Homestead Exemption program will increase from \$97 million to \$100 million.

K-12 Education. The governor's proposal continues to honor the commitment to fund 55% of K-12 education expenses on two fronts. First, the budget calculates the total cost of K-12 education in FY 2023 as \$2.46 billion, appropriates \$1.35 billion as the state's share, and sets the minimum mill rate expectation at 7.10. Second, the budget establishes the Education Stabilization Fund to prevent future reductions in the state's share of K-12 education, which is capitalized using \$30 million in unappropriated general fund surplus.

Property Tax Fairness Credit. To provide additional support to qualifying home-

steads, the bill increases the maximum property tax fairness credit for income tax years beginning on or after Jan. 1, 2022, from \$750 to \$1,000 for residents under 65 years of age and from \$1,200 to \$1,500 for residents 65 years of age and older.

COVID Relief Payments. One of the budget's largest investments is in the creation of the COVID Pandemic Relief Payment Program designed to help Maine residents recover from the economic fallout of the pandemic and respond to increasing costs due to inflation and supply-chain impacts. The fund uses \$411 million in surplus general fund revenue to distribute \$510 payments to qualifying Maine residents. To be eligible, a full-year resident must have filed a Maine income tax return by Oct. 31, 2022, and have an adjusted gross income of less than: (1) \$150,000 for married individuals filing jointly; (2) \$112,500 for heads of households; and (3) \$75,000 for single individuals or married persons filing separate returns.

Technical Assistance for Housing Development. The proposed bill also includes funding for the creation of the Housing Opportunity Program, which is intended to encourage and support the development of additional affordable and workforce housing units in all areas of Maine. Of the \$3 million appropriation, \$1.55 million funds

a competitive grant program supporting municipal efforts to create and implement housing development plans, and \$1 million funds a competitive grant program providing financial assistance to experienced regional service providers able to support municipal efforts, including facilitating public and community engagement processes.

The remaining revenues fund two limited-period positions necessary to administer the program and provide municipalities information about available housing-related grant opportunities, best practices from jurisdictions inside and outside of Maine, and model language for local ordinances and policies.

Highway Fund. Finally, the bill provides a \$100 million one-time transfer from unappropriated general fund surplus revenue to the Highway Fund, of which \$85 million is used to make improvements to highways and bridges and \$15 million for investment in multimodal transportation projects.

In the coming weeks, the budget bill will receive a public hearing and then be reviewed, debated, and amended by the members of the Appropriations and Financial Affairs Committee, before being sent to the entire Legislature for enactment.

Considering there are only two months before the adjournment date of April 20, much work lies ahead.

Committee Supports Coordinated Browntail Moths Response

Last week, the Committee on Agriculture, Conservation and Forestry unanimously green lighted LD 1929, *An Act To Provide Assistance to Areas Severely Infested with Browntail Moths*, sponsored by Rep. Allison Hepler of Woolwich.

As the title suggests, the bill appropriates \$343,000 and directs the Department of Agriculture, Conservation and Forestry to administer a program enabling governments and nonprofit entities to apply for assistance in controlling invasive browntail moths and adds additional entomology staff to provide technical support and coordinate the response.

Currently, municipalities have little recourse but to expend local funds in the growing battle against the intense rash causing pests. The life cycle of these lepidoptera does not normally coincide with municipal budget approval processes, an issue which is further complicated by the inability for public

funds to be used to address many problems on private property.

With information campaigns featured heavily as the municipal response, there is also the ability for communities to apply to the Center for Disease Control and Prevention for a public health nuisance declaration as acknowledgment of the public health hazard these invasive species create. This declaration allows a community to expend more of its own funds, over any budgeted amount, to conduct aerial spray operations and target the moth infestations. However, it does not provide additional funds, or technical support to the municipality. It only permits extra expenditures.

LD 1929 takes the next step by financially investing in a needed collaborative approach to managing this public health threat. It will be up to the full Legislature to support the coordinating effort necessary to start the statewide plan to suppress the rash.

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HEARING SCHEDULE

For the week of February 21, 2022

MONDAY, FEBRUARY 21 HOLIDAY

TUESDAY, FEBRUARY 22

Education & Cultural Affairs
Room 208, Cross Building, 10:30 a.m.
Tel: 287-3125

LD 1963 – An Act To Create the General Purpose Aid Stabilization Fund.

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

LD 1955 – An Act to Facilitate Net Energy Billing.

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

LD 393 – An Act To Amend the Laws Regarding Health and Human Services.

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

LD 1977 – An Act to Require Registration by General Contractors for Home Improvement and Construction.

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

LD 1943 – An Act To Expand the Address Confidentiality Program to Victims of Certain Human Trafficking Crimes.

THURSDAY, FEBRUARY 24

Agriculture, Conservation & Forestry
Room 214, Cross Building, 11:00 a.m.
Tel: 287-1312

Briefing
LD 1407 – Authority of Municipalities to Regulate Timber Harvesting.

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

LD 1973 – An Act To Support Frontline Health Care Workers by Waiving Professional Licensing Fees.

FRIDAY, FEBRUARY 25

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

LD 1479 – An Act to Make Certain Traffic Infractions Secondary Offenses.

LD 1654 – An Act To Stabilize State Funding for County Corrections.

Judiciary
Room 438, State House, 10:00 a.m.
Tel: 287-1327

LD 1946 – An Act To Ensure Constitutionally Adequate Contact with Counsel.

LD 1971 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation.

LD 1972 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions Related to Research and Aquaculture Leases.

Veterans & Legal Affairs
Room 437, State House, 10:00 a.m.
Tel: 287-1310

LD 1957 – An act To Promote Equity and Increase Opportunities in the Cannabis Industry by Removing Restrictions Related to Convictions for Drug Offenses and To Replace the Term “Marijuana” with the Term “Cannabis” in the Maine Revised Statutes.

Note: 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/>.

Due to COVID-19 related restrictions (and until further notice), all public hearings and work sessions will be conducted remotely. Municipal officials interested in providing live remote testimony will need to email lio@legislature.maine.gov or call (207) 287-1692 no later than 5 p.m. the day before the hearing for information on how to participate. Comments on bills can be submitted in advance of a public hearing using the Legislature’s testimony submission form (Online Testimony Submission (mainelegislature.org)) and interested parties can view committee proceedings, both live and recorded, on the Legislature’s YouTube channel (News | Maine State Legislature.)

Floating Homes Need Clarity and Review (cont’d)

authority is limited to their jurisdiction on the water. Usually, law enforcement issues around boating are related to safety and operation not placement, moorings, or anchorage. Discord among boaters, those occupying floating homes and upland homeowners, who previously enjoyed unsoiled viewsheds, often result in nuisance and noise complaints. Neither are core policing imperatives. County sheriffs would have full jurisdiction for waters entirely in a county, but often do not have boats on standby to address quality of life issues, such as nuisance moorings.

Professionally crafted house boats can be registered, operated, and anchored in inland

waterways but they also have wastewater tanks that are not released into waterbodies. Should standards be created for floating homes and allowed all the same abilities as other watercraft with sleeping facilities? Should they be outlawed? These questions deserve an answer and the challenges associated with mixed enforcement authority in various parts of an inland waterbody need to be addressed.

For these reasons, the stakeholder group believes at a minimum the term floating home needs to be defined in statute. Further direction should also include a strategic understanding of how municipalities might be able to adopt an enforceable ordinance

for similar vessels on inland waters where appropriate. As the final report concludes, this would help create a consistent foundation for municipalities to work with their coastal and inland harbor master programs if they desired, but also to assist enforcement across a multijurisdictional waterbody. Once defined, additional regulations could be applied, if necessary, to keep in line with the public trust rights on our inland and coastal waters and the land beneath.

The issue is now in the hands of the Agriculture, Conservation and Forestry Committee which will revisit the issue at a work session on Thursday, Feb. 22 at 11 a.m.



Maine Municipal Association

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IN THE HOPPER

Criminal Justice & Public Safety

LD 1988 – An Act To Establish That the Provision of Emergency Medical Services by an Ambulance Service Is an Essential Service and To Establish the Blue Ribbon Commission To Study Emergency Medical Services in the State. (Emergency) (Sponsored by Rep. Talbot Ross of Portland)

This bill provides that to be eligible for federal funding, emergency medical services provided by an ambulance service are essential services and considered as essential as services provided by fire departments or law enforcement. It also establishes the 13-member Blue Ribbon Commission To Study Emergency Medical Services in the State, which includes: (1) an EMS provider representing a community with 10,000 or more residents; (2) an EMS provider representing a community with less than 10,000 residents; and (3) a volunteer EMS provider. The commission must examine and make recommendations on the support and delivery of emergency medical services and may look at all aspects of emergency medical services, including but not limited to workforce development, training, compensation, retention, costs, reimbursement rates, organization, and local and state support. No later than Dec. 7, 2022, the commission must submit a report that includes its findings and recommendations, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over public safety matters.

(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.)

Taxation

LD 1986 – An Act To Exempt Permanently Disabled Veterans from Payment of Property Tax. (Sponsored by Rep. Roche of Wells)

Current law provides an exemption from property taxes in an amount up to \$6,000 of the just value of the property to veterans of the Armed Forces of the United States who are disabled by injury or disease during active military service. This bill provides a property tax exemption up to 100% of the just value to a veteran who is totally and permanently disabled.