



LEGISLATIVE BULLETIN

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Municipal Franchise Agreement Bill Needs Your Support

The Legislature is coming in hot for the second regular session and is feverishly working through the large amount of carry over bills on its plate, rumored to have been ordered out of committee by the end of January. One such bill is LD 1967, *An Act to Support Municipal Franchise Agreements*, sponsored by Rep. Melanie Sachs of Freeport.

In short, as amended by a majority of the members of the Energy, Utilities, and Technology Committee, the comprehensive proposal makes several changes to the franchise agreement statute including: (1) defining a video service provider (VSP) as “any person in Maine that directly or through one or more affiliates sells access to video, audio or computer-generated or computer augmented entertainment and owns or operates facilities located in whole or in part in a municipality’s public rights-of-way that are used to provide those services, irrespective of the technology or application used to deliver such services;” (2) making a VSP responsible for all costs associated with public, educational and government (PEG) facility equipment, as deemed necessary by the municipality; (3) prohibiting a VSP from offsetting costs through franchise fees but enabling providers to recover fees assessed to subscribers to the extent applicable by law and as negotiated by the municipality; (4) repealing language in current statute allowing municipalities to enter into exclusive franchise agreements; (5) prohibiting a VSP from providing services in a municipality unless they have entered into a franchise agreement; (6) allowing municipalities to use franchise fees for the purposes the municipality deems pertinent; (7) establishing a quarterly payment schedule with allowable interest for late payments; (8) requiring a VSP to maintain certain financial records related to the calculation of payment; (9) allowing a municipality to challenge or audit the amount of the payment; (10) clarifying that a violation is one that violates the unfair trade practices act and requires action within seven years; (11) developing a dispute resolution process; and, (12) establishing a 30-day notice for the movement of channels to a different tier or lineup.

At the public hearing in October, proponents of the bill confirmed that clarifying the definitions would help tremendously when managing the franchise agreement process. Among those in favor were Tony Vigue representing the Maine Community Media Association, the Attorney General, the Maine Municipal

Association, and several local community media stations, among other interested parties.

The Motion Picture Association (MPA), Comcast, Maine State Chamber of Commerce and Charter Communications testified in opposition to the bill, and offered suggestions that would be more amenable to their interests. In particular, the MPA asserted that if this bill were to pass, it would conflict with federal law. However, the Maine chief deputy attorney general who Rep. Sachs consulted regarding this measure, has flagged it to her as defensible, as amended.

Sounds like a serious case of “he said, she said.”

Also worth noting is that a similar bill was passed by mem-

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Hubris Housing Policy

This week, the Joint Select Committee on Housing held work sessions on bills carried over from the last session which must be voted out by the end of the month. One of the bills can only be categorized as pro-runaway development. Others not only fail to understand current local planning processes and more importantly the reason for their development, but express clear disdain for any community seen to make decisions on planning applications that kill large scale housing development regardless of the reasons.

The co-chair of the committee, Rep. Traci Gere of Kennebunkport, sponsored one such bill, LD 1672, *An Act to Establish an Affordable Housing Permitting Process*. As drafted, the bill is a seismic shift in the ability for residents to engage in planning for their own communities. Instead, the bill transfers the authority to approve any development project categorized as “affordable housing” to an unelected state board of subject matter experts, largely representing the development industry, including financial institutions, developers, architects, and designers with a single token municipal representative.

Under LD 1672 there are no requirements for board participation by members of the public who reside, or hope to reside, in such developments either historically funded through

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Municipal Franchise Agreement Bills cont'd

bers of the 130th Legislature but was subsequently vetoed by the governor. The major difference between that bill and LD 1967 is that the former bill placed the compliance piece on the back of the Public Utilities Commission (PUC), LD 1967 does not.

Since not all communities have PEG channels, there was some concern raised that this bill could negatively affect communities that do not offer PEG programming. For that reason, the bill was ultimately tabled to give the sponsor and the parties in opposition to the initiative the time necessary to work on a solution agreeable to both sides.

After a short time, Rep Sachs reported that a compromise had been reached, noting that the goal for this legislation is to take a thoughtful approach without creating more loopholes. She further assured the committee that this bill would not impact any community that does not have PEG channels. Rep. Sachs acknowledged there are opposing viewpoints on the defensibility of the bill, however, after another consultation with the Attorney General's Office, it was determined that the State could still defend the measure with the proposed changes. Ultimately, the bill was voted out of committee with a divided report along party lines.

Amid the mad dash to get carryover work accomplished, LD 1967 hit the House floor on Tuesday, January 9. Rep. Steven Foster of Dexter rose in opposition to the motion and pled with the body to vote against the measure to prevent additional fees from being passed on to subscribers and further suggested municipalities raise their taxes to account for any additional revenue received from potential franchise fees.

Luckily, Rep. Sachs rose to correct the misinterpretation, as the updates contained in LD 1967 create clarity and provide a conflict resolution process that is not currently in place for franchise agreements. As the bill sponsor, Rep. Sachs has worked diligently with stakeholders, including the PUC, which currently has a dispute resolution process in place and could absorb the extra work without the need for added resources. Rep. Anne-Marie Mastraccio of Sanford, who has negotiated the terms of franchise agreements in her service as mayor, also confirmed

the bill would not create new taxes or fees and though it would not solve all the problems related to franchise agreements, it would move this issue forward in the right direction.

The bill was put before the Senate on Thursday, January 11, but was tabled. Although the bill passed the House with bipartisan support (88-50 vote), the false narrative regarding the fiscal impacts on subscribers took hold and is circulating around the State House.

Now more than ever it is important for municipal officials to reach out to their senators to help set the record straight. The passage of LD 1967 will not create any new fees or taxes and any assertion otherwise is blatantly false. Furthermore, service providers that do not own facilities in the public way, such as Netflix, would not be subject to franchise fees.

Please help protect municipal rights and the benefits and protections from future industry abuse by urging your senators to pass LD 1967. The issue may be decided by the members of the Senate as soon as January 16. Please stay tuned.

The Benefits of Communication

Just over a year ago, Rep. Stephen Wood of Greene, presented LD 491, *Resolve, to Require the Department of Inland Fisheries and Wildlife to Develop a Plan for Communication Regarding Certain Municipal Regulation*. This resolve directed the department to develop "a plan to inform municipalities about the limits on local regulation of hunting, fishing and trapping and the operation of watercraft, snowmobiles and all-terrain vehicles and a distribution scheme for the information."

LD 491 was initiated after several concerns were brought to the Department of Inland Fisheries and Wildlife (IFW) about municipal ordinances that seemed to encroach on rules already established in state statute. After passage of the bill, IFW began the task of determining the most effective ways to collaborate with municipalities and clarify the areas of local and state jurisdiction regarding regulated outdoor activities in Maine. Conversations with MMA and the Maine Harbormaster's Association have led to clarification on some items, as outlined in the recently published FAQ, a valuable guidance document for both municipal officials and citizens, available on the IFW website.

Department staff also attended the Annual MMA Convention in October where staff and wardens spoke with countless municipal officials about their programs including the Beginning with Habitat maps and their application to municipal comprehensive plans and the Landowner Relations program. To date, the department is pleased with the response to their municipal outreach efforts and plans to continue working with municipalities as issues may arise.

Outside of this resolve, IFW staff and stakeholders are continuing discussions regarding regulation of moorings and houseboats on inland waters.

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HEARING SCHEDULE

For the week of January 15, 2024

Note: What follows is a schedule of public hearings which were known to us at the time of this publication. To sign up for direct committee notifications of meetings, hearings and work sessions, you can choose which committees you would like to hear from at this link: <https://lists.legislature.maine.gov/sympa>. Also, 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 also be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/>.

MONDAY, JANUARY 15 – HOLIDAY

TUESDAY, JANUARY 16

Innovation, Development, Economic Advancement & Business

Room 202, Cross Building, 1:00 p.m.
Tel: 287-4880

LD 262 – An Act to Strengthen Maine's Workforce

Transportation

Room 126, State House, 1:00 p.m.
Tel: 287-4148

LD 235 – An Act to Promote Economic Development in the Fishing Industry by Funding a Dredging Project in Portland Harbor

WEDNESDAY, JANUARY 17

Criminal Justice & Public Safety

Room 436, State House, 10:00 a.m.
Tel: 287-1122

LD 2051 – An Act Regarding the Duties of Bail Commissioners

1:00 p.m.

LD 2041 – Resolve, to Review Traffic Fatalities Occurring While an Operator Was Under the Influence and Subsequent Prosecution with Respect to Those Occurrences

LD 2054 – An Act to Exclude Certain Operating Under the Influence Crimes from the Immunity Provisions That Are Triggered When Law Enforcement Is Called for a Suspected Overdose

Health & Human Services

Room 209, Cross Building, 10:00 a.m.
Tel: 287-1317

LD 1975 – An Act to Implement a Statewide Public Health Response to Substance Use and Amend the Laws Governing Scheduled Drugs

Veterans & Legal Affairs

Room 437, State House, 9:20 a.m.
Tel: 287-1310

LD 1991 – An Act Regarding Gubernatorial Primary Elections

IN THE HOPPER

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.

This bill adds operating under the influence, or OUI, and operating or attempting to operate a watercraft, snowmobile or all-terrain vehicle, or ATV, under the influence to the list of crimes that do not qualify for immunity from arrest, prosecution and certain revocation and termination proceedings when assistance has been requested for a suspected drug-related overdose.

Criminal Justice & Public Safety

LD 2041 – *Resolve, to Review Traffic Fatalities Occurring While an Operator Was Under the Influence and Subsequent Prosecution with Respect to Those Occurrences* (Sponsored by Rep. O'Connell of Brewer)

This resolve directs the Attorney General to convene a commission with membership made up of law enforcement officers and district attorneys to review traffic fatalities in the State in which an operator was charged with operating under the influence, or OUI, and the subsequent prosecution of those occurrences. The commission is directed to create a set of best practices to be used as a guide in the enforcement of and prosecution involving the laws governing OUI offenses in the State.

LD 2054 – *An Act to Exclude Certain Operating Under the Influence Crimes from the Immunity Provisions That Are Triggered When Law Enforcement Is Called for a Suspected Overdose* (Sponsored by Rep. Hasenfus of Readfield)

Health & Human Services

LD 1975 – *An Act to Implement a Statewide Public Health Response to Substance Use and Amend the Laws Governing Scheduled Drugs* (Rep. Crafts of Newcastle)

In part, this bill establishes the Substance Use, Health and Safety Fund in the Department of Health and Human Services to oversee, approve and provide grants and funding to agencies, organizations and service providers, to increase voluntary access to community care for persons who need services related to substance use. By June 30, 2024, and annually thereafter, the Legislature must appropriate to the fund an amount sufficient to fully fund the services as set forth in the bill.

Health Coverage, Insurance & Financial Services

LD 1832 – *An Act to Require Reimbursement of Fees for Treatment Rendered by Public and Private Ambulance Services* (Emergency) (Sponsored by Rep. Cyrway of Albion)

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MaineHousing or a local community development grant. There are also no requirements that board members have any experience with planning processes or application review or to declare a conflict of interest as with the higher standard that municipal and county official appeals board members must bear. **M.S.R.A Title 30-A, Section 2605: “Every municipal and county official shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention.”** (Emphasis added).

Additionally, the proposed board threatens to override the local community process for economic incentives that truly affordable housing projects need to secure bank funding or meet the developer’s profit margin.

By shifting the public process to “legislative time” public hearings that the board must hold will be held during daytime hours instead of evening hours where such reviews occur now at the municipal level. These changes impact working class residents who rent and immigrant communities most harshly by allowing a state level board at the discretion of the developer to decide if a development occurs, including the authority to override the very ordinances those individuals approve, unless they can take a day off to participate. As there are no requirements for the board to meet in the impacted community, it may mean those individuals also need to travel to Augusta, or have access to the internet, to exercise their voice.

That is, if the community even knows the application exists.

As drafted, the bill only requires the new board to notify the affected planning board in the community, not the residents, public or adjacent landowners and accepts comments only from the “affected board” and “consultants” undefined. Perhaps even more egregiously, the legislation defines a finite type of criteria by which the development is measured based on what exists currently—not where the community wants to be—by requiring the development to look like all other buildings in the community. Ironically, the bill misunderstands the purpose of a comprehensive plan by allowing a developer to point to an ordinance for such a requirement and deem it incompatible with the plan thus providing standing to use the state board.

Aside from overriding judicial authority and local democratic processes, such a framework stifles innovation and quality tools used to limit future environmental degradation through smart design such as green roofs or absorbing pavement that slows down runoff or requires stormwater to be held locally before entering municipal infrastructure. It even rewrites local roads standards to a level below what is traditionally needed and used to accommodate vehicles, accessible sidewalks, utility poles, and other public infrastructure, and prevents the municipality from providing services by design. The new road will be required to be maintained by the developer, thus making it constitutionally impossible to provide services like plowing or waste pick up.

As drafted, the bill would defer to the state environmental standards which form the basis of what is required for environmental review at the local level and what communities build on

with stricter standards to meet their federal permit requirements, and localized habitat protections. The state level is now the maximum under the drafted bill. Most concerning, it makes the other taxpayers in the community pay for the development impact on shared infrastructure by preempting local fees that link development to the pressures it creates on local systems.

The list of issues with the language are extensive beyond what has been touched upon here, but the attitude of the sponsor was hauteur towards the failure of municipalities to effectively approve affordable housing development pointing to press articles for developments killed by NIMBYism. The facts on the ground in many of those projects are a little more nuanced and at least one well publicized project had no requirement for affordability at all in the application while proposing to fill in one of the few remaining watershed wetlands.

Stopping the Clock on Local Regulation

Another bill considered by the committee was LD 772, *An Act to Establish a Process to Vest Rights for Land Use Permit Applicants*, sponsored by Sen. Matthew Pouliot of Kennebec County, which tips the scales directly in favor of developers and away from the community, regardless of the type of project. The initial bill allowed a developer to submit an application to a planning process and force the committee to review its merits based on the rules in place at the time of the submission.

While most processes in place already recognize the need to find balance between a community’s right to protect its interests through ordinance amendments and the private sector’s rights to protect its investments in pursuing development, the bill would remove the community’s right altogether through the act of submitting an application. A developer could submit an incomplete application while a community was holding a public process to amend ordinances that may place restrictions on particular developments such as a solar installation or “big box” retail store in a small business zone and be exempted from any subsequent rule changes.

Moratoriums on development are short-lived and extending one requires the advancement of regulation that solves the identified problem leading to the action. They remain an important tool for communities to use when addressing new concerns like requiring a solar decommissioning plan that was not in place at the state level until nearly two years after such developments were incentivized. Other uses have addressed where cannabis retail or processing can occur in a community and address the impact of “dark stores” on the local property tax via restrictive covenants placed on commercial development designed to keep the competition from moving in.

While the proponents of the bill are all from the development community, even balanced support from the planning community pointed to the ways in which the bill is a bridge too far. Each planning process in a community has several requirements before an application can be considered complete and planners

remained concerned that the mere act of filing an application is not an appropriate trigger to shift those rights to a developer who may not have provided a full view of the intended project. They asked that at a minimum the acceptance of a complete application be the threshold for triggering a freeze on local and state regulations for a project.

During the public hearing, much of the concern was to focus the bill to provide vested rights only on housing projects. Unfortunately, the amended language presented at the work session by the sponsor only shifted the threshold to start the clock when an application is deemed complete for any type of development. Increasingly, communities are returning to the planning drawing board to use ordinances to keep naturally occurring affordable housing from being shifted to market rate housing through redevelopment. Low-income neighborhoods are being targeted for redevelopment in cities across the U.S., disproportionately displacing communities of color and low-income residents.

If either of these bills are advanced as drafted, it will take more than one “Goonies” adventure and pirate treasure to save an entire neighborhood from being replaced by a golf course. While balance and affordable housing subsidies are desperately needed to grow housing, it’s important to remember that community tools can also be used to build more desirable long term, affordable housing and protect neighborhoods from gentrification pressures. On the bright side, the long-awaited sequel Goonies 2 might actually be filmed on the Maine coast.



POTHoles & POLITICS

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MMA: <https://www.memun.org/Media-Publications/MMA-Podcast>

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Apple Podcasts: <https://podcasts.apple.com/us/podcast/potholes-politics-local-maine-issues-from-a-to-z/id1634403397>

Taxation - All in a Day's Work Session

The Taxation Committee held work sessions on several bills of municipal relevance on Thursday afternoon, moving several bills out of committee and tabling two for further examination.

LD 1153, *An Act to Allow Municipalities to Tax Personal Solar Energy Equipment Under 5 Megawatts*, sponsored by Rep. David Woodsome of Waterboro, was reviewed by the committee, sponsor, and stakeholders, and garnered much discussion. The committee generally agreed that the “carve-out,” which provides a property tax exemption on commercial solar equipment, should be eliminated. However, confusion over taxation of real versus personal property and whether the removal of the personal property exemption for solar should, in fact, trigger the removal of both exemptions, led to a robust discussion with representatives from Maine Revenue Services (MRS).

While MMA’s Legislative Policy Committee suggested the bill be amended to maintain the exemption for residential solar installations, the committee was divided on this idea, as well as on the consideration of maintaining the program for currently exempted property and only removing the exemption on properties going forward. In the end, the committee voted to table the bill for a future work session to gain clarity on how assessors currently value solar, tools available for municipalities to maintain standardization in those assessments and how a potential sunset of the current program could work for properties already receiving the exemption.

Also tabled was LD 1737, *An Act to Provide up to \$5,000 in Property Tax Relief to Veterans*, sponsored by Rep. Benjamin Hymes of Waldo. After discussion, surrounding a thoughtful, amended solution by the sponsor to expand the current exemption while addressing concerns brought forth by MRS, more questions than answers arose. Committee members agreed that the veteran’s exemption program could benefit from a thorough review and after suggestions from MRS, proposed that perhaps a study of how to best implement an updated version of the program might be ideal.

Finally, with a nod to home rule authority, and to the meaningful work by sponsor Rep. Stephen Moriarty of Cumberland, the committee voted out LD 1345, *An Act to Permit Municipalities to Establish by Ordinance a Program for Partial Deferral of Property Taxes for Seniors*, as ought to pass as amended. If enacted by the entire Legislature, in the same posture, municipalities will be provided yet another tool for alleviating the burdens placed on qualifying homeowners.

Even though a short deadline for completion of work on carried over bills is looming, the committee is taking the time necessary to move out thoughtful and effective legislation, all the while staying mindful as to how it affects municipalities and taxpayers. They’d probably say it’s all in a day’s work.



HOPPER (cont'd)

This emergency bill requires an ambulance service to be reimbursed for the cost of treating a person, regardless of whether the ambulance service transports the person to a hospital.

Joint Select Committee on Housing

LD 1787 – *Resolve, Directing the Department of Agriculture, Conservation and Forestry to Convene a Stakeholder Group Tasked with a Comprehensive Overhaul and Modernization of the State Subdivision Statutes* (Sponsored by Rep. Ducharme of Madison)

This resolve requires the Department of Agriculture, Conservation and Forestry, in coordination with the Department of Environmental Protection, to convene a stakeholder group, including municipal officials, to review and recommend a comprehensive overhaul and modernization of the subdivision laws. The departments must submit a report to the Joint Standing Committee on Agriculture, Conservation and Forestry and on Environment and Natural Resources, which are authorized to report out legislation in 2024.

LD 1864 – *An Act to Increase Maine's Housing Supply by*

Prohibiting Certain Zoning Requirements in Areas Where Public Sewer and Water Infrastructure Are Available and in Designated Growth Areas (Sponsored by Rep. Boyle of Gorham)

This bill restricts municipal ordinance requirements related to minimum lot size in areas where water and sewer infrastructure are available and in areas where water and sewer infrastructure are not available but that are within designated growth areas. For a housing development served by public water and sewer systems located in an area in which dwelling units are allowed, a municipality must allow a dwelling unit on a lot with a minimum size of 5,000 square feet. For a housing development located in a designated growth area that is not served by public water or sewer system, that complies with minimum lot size requirements in accordance existing subdivision law and that is in an area in which dwelling units are allowed, a municipality must allow a dwelling unit on a lot with a minimum size of 20,000 square feet. The bill also provides limits to ordinance provisions relating to lot coverage, road frontage and setback requirements.