



LEGISLATIVE BULLETIN



Vol. XLIV No. 7 FEBRUARY 25, 2022

Session to Heat Up

Perhaps due to school vacation or the mix of issues being addressed by committees, it was a relatively quiet week for MMA’s advocacy efforts. The reprieve, however, will be short-lived as the issues being addressed could have serious impacts on home rule, local control, and the cost of delivering municipal services. It is the proverbial “calm before the storm.”

Remaining on the Legislature’s to do list are reviews of bills seeking to increase statewide development of affordable housing, restrict law enforcement tools, and empower a commission to review complaints regarding the public use of discontinued and abandoned roads.

The list of unresolved issues include:

- LD 626, *An Act To Clarify Temporary Mooring Privileges for Moorings on Inland Waters*, seeking clarity on the regulation of houseboats.

- LD 859, *An Act to Allow Municipalities to Use Ranked Choice Voting in Municipal Elections*, extending this voting option to all municipalities.
- LD 1407, *An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance*, amending municipal authority to regulate forestry operations.
- LD 1446, *An Act To Aid Municipalities in the Issuance of Concealed Handgun Permits*, calling on the Department of Public Safety to perform the background checks necessary to determine whether permits should be issued.
- LD 1479, *An Act To Make Certain Traffic Infractions Secondary Offenses*, making certain traffic infractions, such as the failure to register a motor vehicle, a secondary offense and enforceable only when violated in conjunction with

a primary offense, such as operating under the influence.

- LD 1654, *An Act To Stabilize State Funding for County Corrections*, providing opportunities for more uniform data collection, predictable state funding to address future pressures on the county system, and collaboration with state and municipal partners to solve shared statewide jail funding and operational burdens.

For information on public hearings and work sessions on these and other bills, please keep an eye out for future editions of the bulletin. As issues move out of committees and into the House and Senate chambers for full legislative debate, MMA will increase its reliance on action alerts urging municipal officials to connect with their legislators.

Thank you for your ongoing support of our advocacy efforts.

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.

Finding the Road of Least Resistance

Concept bills that veer from their proposed title and summary are rarely well received because they often advance an agenda without providing stakeholders a preview of the contents in the bill. In other words, concept bills can be used to shield the details of controversial legislation until the final hour and are unlikely to receive a second public hearing.

This is seemingly the case of LD 1616, *An Act To Ensure That Municipalities and Multimunicipal Regions 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. Nothing in that mouthful of a title or the bill’s summary would lead one to believe that the legislation is targeting maintenance of private roads.

The bill’s amendment scraps the favorable aspects teased in the concept draft that

municipal officials could support. Foremost is the insinuation that the Governor’s Office of Policy Innovation and the Future will offer guidance documents to assist municipalities in the development of climate vulnerability and resilience plans. Furthermore, the concept draft led municipal officials to believe their regional partners would be supported so that they may better assist municipalities too.

In place of the concept language is an amendment that would extend municipalities the authority to repair or maintain private roads if stormwater runoff threatens a natural resource, like a streambed.

At stake are three core municipal concerns or objections. First is the question of whether municipalities will have to maintain private roads in perpetuity after making the initial improvement. Second is the standard to which municipalities are expected to maintain the private road. Third is the

(continued on page 4)

Step 1: Planning. Step 2: Action.

ENR committee gearing up to make climate action plan a reality

The state's four-year plan for climate action, "Maine Won't Wait," is not one of those reports that preaches action and urgency while collecting dust on a shelf in some committee room. Instead, the plan is being actively implemented. At first legislators were cherry-picking the low hanging fruit from the plan, translating the recommendations that either had broad consensus or urgent priority into legislation and statute.

Now that the easy work is concluded, legislators are diving into the more far-reaching recommendations from the climate action plan. Two of those recommendations are set for public hearings on Monday, Feb. 28 at 11 a.m., before the Environment and Natural Resources Committee.

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 is a hodgepodge of administrative updates and a hand-off of climate action planning from the state to the local level.

The administrative changes to statute proposed in the bill arose from state agency recommendations to prepare for four feet of sea-level rise expected by 2100. While there is still some disagreement as to if the sea-level will ever rise by four feet, there is agreement that Maine should be prepared in the event it does.

According to the bill, the Department of Agriculture, Conservation and Forestry is requesting that added protections for natural resources be included in the exemptions from permitting for culvert repair, replacement, or maintenance. The added protections include erosion control measures, free passage for fish, and maintaining flowing water. From the municipal perspective, these are worthwhile protections but in practice permitting leniency, rather than restrictions, will do more to protect natural resources.

Municipal officials are seeking leniency when resizing culverts so that they do not have to trudge through lengthy permitting processes. This leniency will expedite the

needed improvement of outmoded culverts that are creating environmental harm as they wait for permitting approval. Rather than add minutia to the steps, municipal officials recommend addressing the overarching process.

The bill also incorporates recommendations from the Department of Environmental Protection (DEP) to modify the language of the site development laws. Through LD 1970, DEP is proposing to include ambiguous language that allows them to consider the *harmoniousness* of fitting development into the existing natural environment. Akin to the impediments to culvert replacements described above, this legislation makes permitting new and existing development a more arduous process. Municipal officials are not opposed to this proposed language; they are also certain that this legislation will lead to lost development opportunities.

Perhaps the most significant portion of LD 1970 is its expectation that municipalities undertake much more climate action planning and vulnerability assessments or otherwise risk being overlooked for grant preference to mitigate climate change impacts.

This push for local climate action planning is the state's attempt to mirror the success of its climate action plan on the local level. While municipalities would benefit from the structure and context that local climate action plans and vulnerability assessments provide, the availability of resources and expertise necessary for this planning to occur are neither similar between local and state government nor between various municipalities. Put plainly, the state's experience with climate action planning is not easily replicated in every municipality.

Municipalities of all sizes are being asked to conduct climate action planning with fewer resources than their state counterpart. Local governments cannot commit to the process the same level of funding, capacity, and coordination that the state can. More specifically:

Cost: It is easiest to begin here because the difference is obvious. Local governments do not operate on budgets that can readily support extensive climate action assessments, planning, or response. Municipal budgets are already strained by their current expenses and cannot sustain the addition of the all-encompassing expectation of climate resiliency.

The local disparity to afford climate action planning should be resolved not exacerbated. LD 1970 would seemingly further divide communities with and without the financial means to afford climate action planning. By creating preferential grant status for municipalities with climate action plans, communities that cannot afford such plans will fall further behind in climate change mitigation and response. Historically, those communities will be poorer, more rural, and the home to more vulnerable populations.

Capacity: For the most part municipalities do not have the internal capacity to create and pursue ambitious climate action plans. The state's climate action plan was informed by hundreds of experts spanning dozens of industries, many of which donated their time and knowledge. Local governments will not be as fortunate. Assuming municipal budgets could afford consultancy fees, a diverse and expansive field of businesses and firms is needed to perform planning and action across a varied set of towns and cities.

There is much hope that regional planning organizations and councils of governments will fill the void of climate action planning in Maine. Municipalities share this hope and are eager for regional action on climate change. However, just as the capacity for climate action planning varies from town to town, so too does it vary among their regional partners. Regional planning organizations will need to expand their internal capacity if they are going to be relied on for climate action planning on the local level.

Coordination: Coordination is needed to ensure that climate action planning in Maine does not lead to 487 independent, conflicting, or impractical local plans. In some fashion, the state should take the lead at defining what must be prioritized in a climate action plan and executing on that plan. State coordination will avoid redundancy and inefficiencies in planning and action.

It must be noted that municipal officials are interested in pursuing more ambitious climate action planning and support the sentiment of LD 1970, however placing this expectation on municipalities will create hardship for many communities and their residents. For this reason, MMA intends to submit testimony neither for nor against the bill.

The second piece of proposed legislation originating from Maine Won't Wait is LD 1974, *An Act To Establish and Fund the*

CORRECTION. In the Budget Bill Drops article published in the Feb. 18 edition of the Legislative Bulletin it was incorrectly noted that revenue sharing distributions would increase to 5% of state sales and income taxes as of July 1, 2023. [The increase is effective as of July 1, 2022.](#)

HEARING SCHEDULE

For the week of February 28, 2022

MONDAY, FEBRUARY 28

Environment & Natural Resources
Room 216, Cross Building, 11:00 a.m.
Tel: 287-4149

LD 1616 - An Act To Ensure That Municipalities and Multimunicipal Regions of Every Size and Capacity Have Guidance on Climate Adaptation and Resilience Strategies for Policy, Implementation and Investment Decision Support.

LD 1970 - An Act To Implement Agency Recommendations Relating to Sea Level Rise and Climate Resilience Provided Pursuant to Resolve 2021, Chapter 67

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.

TUESDAY, MARCH 1

Appropriations & Financial Affairs
Room 228, State House, 9:30 a.m.
Tel: 287-1635

LD 1995 - An Act Making Unified Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023. Part C: K-12 Education Funding and Part Y: Education Stabilization Fund.

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

LD 1968 - An Act To Expand Access to Mental Health and Crisis Care for Individuals in Jails and Individuals Experiencing Homelessness.

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

LD 1986 - An Act To Exempt Permanently Disabled Veterans from Payment of Property Tax.

WEDNESDAY, MARCH 2

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635

LD 1995 - An Act Making Unified Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023. Part F: Property Tax Fairness Credit.

THURSDAY, MARCH 3

Appropriations & Financial Affairs
Room 228, State House, 11:00 a.m.
Tel: 287-1635

LD 1995 - An Act Making Unified Supplemental Appropriations and Allocations for the Expenditures of State Government, General

Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023. Part PP: Highway Fund.

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635

LD 1995 - An Act Making Unified Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023. Part U: Housing Opportunity Program.

FRIDAY, MARCH 4

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

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.

LD 1999 - An Act To Require Civil Rights Officers at Law Enforcement Agencies.

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.)

Step 1: Planning. Step 2: Action. cont'd

Maine Climate Corps Program Pursuant to Recommendations in the Report Required by Resolve 2021, Chapter 25, sponsored by Sen. Stacy Brenner of Cumberland County.

This bill seeks to create a largely volunteer-driven agency, based on the AmeriCorps and Peace Corps model, that would undertake the state's climate change priorities at the local level through community service and volunteerism. Optimistically the Climate Corps will engage young professionals and community members in meaningful climate change mitigation projects and provide preference for rural communities in the process.

MMA will be supporting the bill at its public hearing on the basis that engaging young people in climate resiliency projects

will hopefully spur more interest among the future generation of activists, policymakers, and community leaders. There is also the universal understanding that "any little bit helps." Regardless of the magnitude of success, any step forward is progress towards mitigating climate change impacts, and unlike other legislative proposals this bill provides assistance instead of barriers.

While MMA is not in full support of every aspect of these two bills, the Association recognizes that they originated from a statewide process that engaged stakeholders at every level of government. Maine Won't Wait is a valuable planning resource and MMA intends to give whole-hearted consideration to the many important bills that are arising from those recommendations.



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486

IN THE HOPPER

Criminal Justice & Public Safety

LD 1999 – An Act To Require Civil Rights Officers at Law Enforcement Agencies. (Sponsored by Rep. Talbot Ross of Portland)

This bill amends the provision in law requiring law enforcement agencies to adopt written policies regarding procedures to deal with hate or bias crimes by adding a requirement that such a policy must require the law enforcement agency to select, assign and secure training for a civil rights officer and provide that individual's name and contact information to the Attorney General. The bill also provides funding for computer programming costs and related maintenance.

(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.)

Finding the Road of Least Resistance cont'd

constitutionality of using public funds (i.e., taxpayer dollars) to repair a private road that does not offer access to the public.

Extending to municipalities the authority to maintain private roads, or from another angle, the expectation, has long been debated. MMA has written about the ongoing discussion surrounding maintenance of discontinued roads multiple times, most recently in the Feb. 11 Legislative Bulletin.

To quickly summarize, an amendment to LD 1513, *An Act To Establish the Maine Abandoned and Discontinued Roads Commission* sponsored by Rep. Will Tuell of East Machias has been unanimously supported by the State and Local Government Committee. The amendment establishes a 12-member commission of stakeholders to dive into subject matters very closely related to Rep. Blume's private roads bill.

At present, the amended version of LD 1616 looks to subvert the ongoing and broad stakeholder discussion on this difficult topic. MMA encourages the Legislature to reconsider the committee of jurisdiction for the bill given the large overlap with LD 1513, which has already generated a substantial amount of comment, progress, and consensus.

If this is untenable, then the bill should be converted into a similar study to determine some basic metrics. MMA predicts that maintaining a mile of private road costs about \$1 million. Just how many miles of private roads are out there with stormwater runoff that threatens a natural resource, what barriers exist for these private property owners to address access issues, and how will local property taxpayers feel about paying to repair what are often long driveways to private homes and vacation properties?

The Environment and Natural Resources Committee is slated to conduct a public hearing on LD 1616 on Monday, Feb. 28 at 11 a.m.