



# LEGISLATIVE BULLETIN

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## Trimming the Sails on Public Comment

The Marine Resources committee rarely hears bills with municipal relevance, but this session brings forth considerations for amending Maine's aquaculture leasing laws, a topic that can leave municipal officials feeling awash in confusion.

In the last ten years, the aquaculture industry has exploded in the state as commercial fishermen across many fisheries have found the option of adding an aquaculture lease to their repertoire as a lucrative investment in diversification. But aquaculture leases are approved in state waters, by a state agency, with often underrepresented opinions from municipal officials or community members. LD 2065, *An Act to Amend Maine's Aquaculture Leasing Laws*, sponsored by Rep. Allison Hepler of Woolwich, would update language, processes, and notice requirements for certain aquaculture leases approved by the Department of Marine Resources (DMR).

While the amendments to the laws were proposed by department staff to streamline renewals of current leases and the conversion of experimental leases, opponents were quick to criticize the increase in number of requests needed to require a public hearing before a lease is approved. Law currently requires the department to hold a hearing after five requests have been made. The bill proposes to increase the number of requests to 25.

The department's rationale for this change was the time-consuming nature of holding these hearings, and the abundance of requests for hearings that are made that do not translate into attendance. Municipal officials can certainly appreciate not wanting to hold a hearing that no one attends, but the proposal gives the appearance of stifling community and municipal engagement, in an environment where local officials are already confused by the process and the part, if any, that they play. A quick review of the pending aquaculture lease applications on the DMR website reveals that hearings are scheduled at times when most municipal officials, or community members, cannot attend. Many municipal officials are not even consulted by DMR for the time or location of these hearings.

While this may seem about as positive as a sinking ship, the good news is that the committee members heard the concerns raised.

A small group of legislators, municipal officials, MMA staff

and DMR met after the hearing to discuss municipal and public involvement in the state's leasing process. Department staff listened to the concerns and were open to a continued discussion of how communities can receive appropriate and adequate notice of hearings and how municipal officials can be more actively involved in the process.

At Thursday's work session on LD 2065, the committee agreed to reduce the number of required hearing requestors to 10 and asked the department to create an opt-in email subscription, by county, for those community members interested in receiving electronic notice of hearings in their area. With these compromises in place, the committee voted "ought to pass as amended" on the bill.

While this may not have satisfied everyone, the willingness of the legislators and DMR staff to hear municipal concerns, and take them seriously, is definitely enough to make impacted municipal leaders feel as happy as a clam (at high tide...).

## Ins and Outs of Housing Bills

While last Friday's Legislative Bulletin was dropping, the Joint Select Committee on Housing was meeting again on bills seeking to impact housing policy statewide. What follows is a breakdown of what happened this week.

**Still In Play.** Several measures have received preliminary analysis and work sessions and continue to be considered for language correction or improvement before the committee takes a definitive position. Among those are LD 2158, *An Act to Improve the Housing Voucher System*, and LD 1710, *An Act to Establish the Maine Rental Assistance and Guarantee Program and Amend the Laws Regarding Tenants and the Municipal General Assistance Program*, both sponsored by Rep. Cheryl Golek of Harpswell, and LD 1976, *An Act to Update the Growth Management Program Laws*, sponsored by Rep. Melanie Sachs of Freeport. More updates on these bills will likely occur in the coming weeks.

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## Ins and Outs of Housing Bills cont'd

**In.** Several measures were voted out of committee, despite continued concerns over problematic language. Among them are LD 602, *An Act to Provide Regional Support to Deliver State and Federal Programs to Cities and Towns in the State*, sponsored by Rep. Traci Gere of Kennebunkport and LD 772, *An Act to Establish a Process to Vest Rights for Land Use Permit Applications*, sponsored by Sen. Matthew Pouliot of Kennebec County.

Issues around LD 602 are covered in last week's bulletin and center on the use of statute to mandate the delivery of certain services by regional planning organizations and councils of government that can already be provided without statute and at the will of their members but have seen a reduction of support since the demise of the State Planning Office. Questions remain as to how these regional entities will meet those service delivery obligations if the state fails to fund the new mandate.

Constitutional challenges are possible for an amended version of LD 772.

The sponsor's amendment carves out the Maine Land Use Planning Commission from the proposal to grant "vested rights" for a development (of any kind) when an applicant's proposal is publicly noticed thereby only applying those rights to municipal decisions. All planning board applications must be accompanied by a public notice of the meeting to determine if an application is complete, which provides the opportunity for abutters to challenge the authority to develop a parcel or for a developer to show they have authority to file an application on behalf of the owner. No requirement to determine an application complete,

**Reminder.** The Appropriations and Financial Affairs Committee will **convene at 2 p.m. on Tuesday, February 13** to conduct a public hearing on an amended version of LD 646, an emergency bill, now titled *An Act to Fully Reimburse Municipalities for Lost Revenue Under the Property Tax Stabilization for Senior Citizens Program*. The bill, sponsored by Rep. Melanie Sachs of Freeport proposes to use \$15 million in unappropriated General Fund revenue to reimburse municipalities for 100% of the lost property tax revenue associated with the now repealed stabilization program. *Municipal officials are strongly urged to participate in the public hearing by either testifying in person or submitting testimony via the legislature's testimony submission portal found here: <https://www.mainelegislature.org/testimony/>. The amended version of LD 646 can be viewed here: <https://legislature.maine.gov/doc/10647>.*

including proof of legal authority to develop a piece of land, will be required if LD 772 is passed when simple public notice is the trigger for vesting rights, as requested by the sponsor at the last work session.

Under language already existing in Maine statute (1 M.R.S. 302.) "...actions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby." This provision is consistent with the usual rule contained in Maine's constitution and applicable to the Legislature for the enactment of state statutes (ME. CONST. art. IV, pt. 3, § 16). However, as Maine's Law Court has explained, just as the legislature can enact emergency legislation that becomes effective immediately or retroactively (rather than 90 days after final adjournment), municipalities can enact emergency or retroactive ordinances that can be made to apply to applications that were pending before a newly adopted ordinance becomes effective.

The purpose of Section 302 and the existing "pending proceeding" rule that an application must be complete and have undergone substantive review to be governed by existing laws is to avoid a situation where a mass of people are submitting wholly incomplete applications just to get the benefit of existing ordinances - thereby creating work for municipalities before the application is actually "fully baked." Depending on the language in the finally amended version of LD 772, there may be an issue with how long those rights are maintained before an application is considered abandoned as well.

A key decision supporting a possible challenge can be found in *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 20, 856 A.2d 1183, 1191:

"Generally, neither the submission of a development application, nor the issuance of a development permit, establishes vested rights. *Thomas v. Zoning Bd. of Appeals*, 381 A.2d 643, 647 (Me.1978). This is because "'all property is held in subordination to the police power.'" *Id.* (quoting *R.A. Vachon & Son, Inc. v. City of Concord*, 112 N.H. 107, 289 A.2d 646, 648 (1972)). Although a party may acquire vested rights as a result of equitable considerations, mere reliance on the language of an existing ordinance, or the incurrence of preliminary expenses to satisfy application requirements, is not sufficient to establish vested rights. *Sahl v. Town of York*, 2000 ME 180, ¶ 13, 760 A.2d 266, 270. We have recognized, however, that "bad faith or discriminatory enactment of a zoning ordinance for the purpose of preventing a legal use by the applicant may confer vested rights on the applicant." *Thomas*, 381 A.2d at 647."

Rights are conferred by both *bad faith* (read unjustifiable) enactment of zoning ordinances and *significant expense* (read not just an applicational expense) on the part of the developer, such as the complete approval of an application with a shovel in the ground.

We shall see how the final amended language reads but as the work session highlighted, there remains significant misunder-

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## Ins and Outs of Housing Bills cont'd

standings around municipal planning processes for legislators seeking to solve perceived issues without familiarity of the on the ground reality.

**Out.** One of the even more constitutionally challenged pieces of legislation that was unanimously voted “ought not to pass” on Tuesday is LD 1672, *An Act to Establish an Affordable Housing Permitting Process*, also sponsored by Rep. Gere. As highlighted in the January 12 edition of the bulletin, the bill would create a 7-member board of vested professionals to override local planning approval processes on affordable housing projects. The effort was unanimously discarded after the bill’s sponsor advised it wasn’t ready for prime time yet, and likely couldn’t be corrected this session.

The final piece of legislation removed from the slate of bills is an easily digestible example of the disconnect between voting for an idea or voting for achievable policy and why we all need to get better at making “achievable” emotionally relevant.

LD 853, *Resolution, Proposing an Amendment to the Constitution to Establish a Right to Housing*, sponsored by Rep. Benjamin Collings of Portland, and covered extensively in last week’s bulletin, would have created a host of unachievable and unintended consequences likely to detract from available funds to produce actual housing. Understanding not only the problems with the language of the question, but also the hurdle for passage by a two-thirds majority of the legislature, the committee moved “ought not to pass” with two dissenters.

Each member of the committee present expressed whole-hearted belief in the principle of a fundamental right to shelter before their vote, while qualifying the reasons they could not pass the bill knowing it would not achieve the desired outcome. Two members felt so strongly about the optics of voting against a bill that merely implies a human right to housing, they opted to jump on a divided report that would assemble a variety of stakeholders, to look systematically at housing challenges, including those who regularly deal with homelessness, mental health, and shelters along with housing authorities, state departments dealing with housing, health, and planning, municipal officials, and public safety.

The minority report contained more substance than the original bill’s language and it is the path to the hard work that is necessary to identify root causes around housing and homelessness and view the piecemeal social services net as a whole system to finally address the existing issues. More importantly, a systemic review will aid the next legislature in designing appropriate government market disruption on real estate impacting all Maine residents. Policy made simply and in haste is tempting in the midst of a crisis, but bold policy with lasting outcomes focuses on the real problems even when addressing the symptoms is easier.

Stay tuned for more shovel ready bills when the committee returns next week.

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# HEARING SCHEDULE

For the week of February 12, 2024

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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/>.

## TUESDAY, FEBRUARY 13

**Appropriations & Financial Affairs**  
**Room 228, State House, 2:00 p.m.**  
**Tel: 287-1635**

LD 646 (as amended) – An Act to Fully Reimburse Municipalities for Lost Revenue Under the Property Tax Stabilization for Senior Citizens Program

**Education & Cultural Affairs**  
**Room 208, Cross Building, 1:00 p.m.**  
**Tel: 287-3125**

LD 2170 – An Act to Prioritize School Construction Projects for Schools Affected by Disasters

LD 2179 – Resolve, Regarding Legislative Review of Portions of Chapter 64: Maine School Facilities Program and School Revolving Renovation Fund, a Major Substantive Rule of the Department of Education and the Maine Municipal Bond Bank

LD 2181 – Resolve, Regarding Legislative Review of Portions of Chapter 61: State Board of Education Rules for Major Capital School Construction Projects, a Major Substantive Rule of the Department of Education, State Board of Education

**Taxation**  
**Room 127, State House, 1:00 p.m.**  
**Tel: 287-1552**

LD 1298 – An Act to Allow a Local Option Sales Tax on Short-term Lodging to Fund Affordable Housing

LD 2048 – An Act to Amend the Content of Notices Provided with Respect to Tax Liens on Certain Property

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## LEGISLATIVE BULLETIN

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## No Fee Revenue For You & Other Tax Updates

Since the last update, the Committee on Taxation has been busy voting out carryover bills and holding hearings on new proposed legislation.

To that end, it came as no surprise to municipal officials when the committee voted “ought not to pass” on LD 1893, *An Act to Allow a Municipality to Impose a Fee on Short-term Rentals for the Benefit of That Municipality*, sponsored by Rep. Tiffany Strout of Harrington. The bill would have authorized municipalities to add a locally determined fee to short term rentals. The ability to assess taxes, fees, duties, or levies is governed by Article 1, Section 22 of Maine’s constitution, and provides that such fees, “shall not be imposed without the consent of the people or their representatives in the Legislature.” The required consent regarding local option has consistently been denied by past legislatures and is not supported by the Mills Administration.

Two additional local option sales tax carryover bills will likely face a similar demise when heard and debated in the coming weeks.

LD 2027, *An Act to Clarify the Property Tax Exemption for Air Pollution Control Facilities*, sponsored by Sen. Cameron Reny of Lincoln County, would clarify that nuclear waste storage facilities do not qualify as air pollution control entities eligible to claim a

property tax exemption. Although the proposed change to this bill is directed at one facility and would only benefit one Maine town, MMA’s Legislative Policy Committee (LPC) elected to support the legislation to address the disproportionate tax burden placed on the community’s taxpayers due to the exemption. Like all properties receiving an exemption, the facility in question still benefits from town services like road maintenance and emergency response services. Complicating this bill’s future is the pending appeal to Superior Court from the town, challenging the Board of Environmental Protection’s decision of eligibility for the exemption, twice.

What is the likelihood the legislature will take a position on a bill that is actively moving its way through the judicial system? More will be known after the work session next week, but it doesn’t take a nuclear scientist to know that this is a tricky situation.

Adding to the slurry of bills potentially impacting Maine’s military service members, is LD 2076, *An Act to Exempt from Excise Tax Vehicles of Active Duty Service Members Stationed Out-of-state*, sponsored by Rep. Michael Lemelin of Chelsea.

In short, this bill would make the exemption of local motor vehicle excise tax for qualified active duty service members

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## Resource Coordination for New Americans

After the House and Senate adjourned on Tuesday, members of the State and Local Government Committee still had a full afternoon of work to tackle. Last up on their schedule, which included four public hearings and two work sessions, was the work session for LD 2167, *An Act to Develop Maine’s Economy and Strengthen Its Workforce by Establishing an Office of New Americans*, sponsored by Rep. Deqa Dhalac of South Portland.

This bill, put forward by the Governor’s Office, would create the Office of New Americans located within the Governor’s Office of Policy, Innovation, and the Future (GOPIF) and would be directed to provide the tools, resources, and guidance needed by new Americans to support community and economic integration and further solidify Maine’s commitment to diversity.

After a mildly tense public hearing that generated a mix of testimony, members requested information for the work session on the definitions, including asylum and refugee, among other terms, referring to individuals who have come to United States from another country. A representative from the Immigrant Legal Advocacy Project provided the committee with those definitions and shared that it can sometimes take five to 10 years between the time asylum paperwork is submitted and the actual court date. The proposed office would help new Americans going through this process access available resources to assist in their civic integration.

GOPIF Director Hannah Pingree presented an amendment to the printed version of LD 2167 and confirmed that the bill is broadly

about immigrants who are here legally and authorized to work. The amendment also includes legislators on the office’s advisory council, as suggested at the public hearing, and strengthens the business representation on the council to include employers who have robust training and apprenticeship programs.

Resistance to the bill was felt as some committee members questioned general assistance benefits for immigrants, the lack of federal law enforcement by local departments for immigrants who have been denied asylum status, fast tracking educational credentials for immigrants over veterans, and concern that the new office would make rules or regulations with no second body oversight.

Pingree responded that this bill is meant to bridge an identified gap using a broad range of input to coordinate policy. Rep. Holly Stover of Boothbay Harbor punctuated the bill’s intent by saying that a fast track for credentialing has been a hang up for more than 20 years. It is her feeling that this new office will look at the systemic issues and review the problems creating such a gap.

The committee spun out on the issue of rulemaking, and suggestions were made on how to avoid rules being made with no outside oversight. Given that rules are unlikely to be promulgated by the office, that the intent is to provide a place to coordinate current resources for new Americans, and that it was well into the evening hours, Rep. Dhalac moved “ought to pass as amended,” which was supported by a margin of 8 to 4, along party lines of those present.



mandatory. Current law already exempts service members who are stationed within Maine and communities may adopt a local ordinance to extend that exemption to service members who are stationed outside of Maine. This bill would combine the two allowances into law for all active duty service members in all communities. While usually hesitant to support any type of action resulting in the loss of local revenues, out of fairness to all members of the Armed Services, the LPC supported the effort.

Bills proposing changes to the Working Waterfront and Open Space current use tax programs, respectively, were also the subject of discussion this week.

LD 2162, *An Act Regarding the Homestead Property Tax Exemption and the Property Value Reassessment Process*, sponsored by Rep. Daniel Ankeles of Brunswick, provides for an expanded homestead exemption as well as amendments to the working waterfront program.

As drafted, real estate parcels with homes valued at \$100,000 or less would be eligible for an additional \$15,000 homestead exemption and municipalities would be fully reimbursed for the property tax revenue losses associated with the increased exemption. The bill would also expand eligibility for working waterfront classification and increase the percentage reductions in valuation. While several fishing community proponents were on hand at the public hearing to testify in support of the measure, Maine Revenue Services and MMA cited several technical issues.

The work session will likely provide clarity into the intentions of the sponsor regarding the potential inclusion of structures into the valuation calculations, which do not exist in other current land use tax programs, as well as the proposed section adding eligibility for a valuation deduction for parcels with deeded right-of-way access. Municipal officials certainly support their community's working waterfront families but will want clarification on the potential impact that an expanded exemption may have on keeping the remaining taxpayers in the community afloat.

A second work session was held on Thursday for LD 1648, *An Act to Make Changes to the Farm and Open Space Tax Law*, sponsored by Rep. James Boyle of Gorham. A stakeholder group made up of conservation groups, representatives of state departments, and members of the forest products industry supplied an amendment to the original bill outlining a complete overhaul of the program.

If passed the changes would align the valuation method for open space parcels with the Tree Growth tax law, although the calculations would differ; two of the four tiers of the exiting open space program would be renamed from "forever wild" and "managed forest land" to "wildlife enhancement practice" and "climate-friendly practice" and institute new requirements to determine enrollment in those tiers; and the percentages used to reduce assessed value would be adjusted.

Under current law an applicant can "stack" all four tiers to garner a reduction in valuation of up to 95%. The proposed changes in this bill would cap the reduction at 50% and only allow stacking of two tiers, but simultaneously and significantly reduce the per acre value of the property enrolled in the program. The bill

would also remove the 15,000-acre aggregate maximum allowed to be enrolled in the program, provided the property is owned by a non-profit entity. In addition, the bill proposes a municipal reimbursement like that of the existing Tree Growth program.

Supporters on the committee agreed that the municipal reimbursement is appropriate given the constitutional requirement for municipalities to participate in the program with little to no ability to stop landowners from enrolling and by default reducing the tax base. Committee members opposed to the bill spoke with vigor regarding the burden placed on all Maine taxpayers due to the perceived overabundance of non-profit organizations benefitting from current use programs, the lack of property taxes provided to municipalities by those groups, and the general removal of saleable property from the market when parcels are given to or purchased by non-profit organizations. The bill was voted out of committee with a divided report, equally along party lines, as "ought to pass as amended" and "ought not to pass." With three members absent, the final tally is still up in the open air.

Next week, the committee will hold two public hearings and four work sessions on bills of municipal interest. Stay tuned for updates from another taxing work week.

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## Oh, Magic Eight Ball...

After finally passing the House and Senate, Governor Mills now has LD 1967, *An Act to Support Municipal Franchise Agreements*, sponsored by Rep. Melanie Sachs of Freeport, on her desk awaiting a signature. A shake of the plastic Tyco Toys ball hints that the outlook is good for the amendments to the law regulating cable franchise agreements to be memorialized in state statutes. A heartfelt thank you goes out to the bill sponsor, and to our valued members who contacted their legislators to get this measure through the chambers. Keep those fingers crossed.



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## 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](http://www.memun.org).

### Judiciary

*LD 748 – An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody* (Sponsored by Sen. Hickman of Kennebec Cty.)

This bill amends the Maine Civil Rights Act to provide that a person who is placed under arrest, in custody, under interrogation or temporarily detained by a law enforcement officer and who is not warned by the law enforcement officer of the person's privilege against self-incrimination and the person's right to the assistance of legal counsel may institute and prosecute in the person's name and on the person's behalf a civil action for legal or equitable relief against the law enforcement officer for failure to provide such warnings.

### Labor & Housing

*LD 513 – An Act Regarding Overtime Protections for Certain Maine Workers* (Sponsored by Sen. Tipping of Penobscot Cty.)

This bill annually raises the minimum salary used to determine whether an employee who works in an executive, administrative or professional is ineligible for overtime pay, which is currently 3,000 times the minimum

hourly wages. As proposed, the minimum incrementally increases from 3,500 times the minimum wage in 2024 to 4,500 times the minimum wage in 2026. The bill also exempts nonprofit corporations that meet compensatory time agreements from the proposed provisions and directs the Department of Labor to adopt routine technical rules, including rules regarding compensatory time for employees of nonprofit corporations.

### Taxation

*LD 1298 – An Act to Allow a Local Option Sales Tax on Short-term Lodging to Fund Affordable Housing* (Sponsored by Rep. Skold of Portland)

This bill allows a municipality to impose a local option sales tax of 1% on short-term lodging that is subject to the state sales and use tax if approved by referendum of the voters in that municipality. The revenue from the sales tax must be distributed to the municipality imposing the tax and used for municipal programs that support affordable housing development in that municipality, including rental assistance for lower income households or moderate-income households.

*LD 2048 – An Act to Amend the Content of Notices Provided with Respect to Tax Liens on Certain Property* (Sponsored by Rep. Perry of Bangor)

This bill removes a provision in the laws governing tax liens that requires a municipality, or the State Tax Assessor in the case of an unorganized territory, to place language in a notice of lien on a property on which a homestead exemption is claimed that the taxpayer may contact the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection regarding options for finding an advisor to assist the taxpayer in working with the taxing entity to avoid tax lien foreclosure.