

Utilities Committee Considers Limiting Local Review of Small Cells

On Thursday the Energy, Utilities and Technology Committee heard testimony on LD 1690, *An Act To Facilitate Wireless Broadband Deployment in Maine and Modify the Process for Issuing Utility Facility Location Permits*. The bill is Maine’s version of legislation being proposed by the cell phone industry in states across the country. The goal of this type of legislation is to streamline and expedite the deployment of the “small cell” facilities needed to transmit the next generation of cellular internet signals.

This bill proposes to specify in state law the process by which municipalities regulate the installation of small cell antennas, defined as facilities that can fit within an enclosure no larger than six cubic feet, plus associated equipment other than antennas with a cumulative volume of no more than 28 cubic feet. Small cells are being rolled out in many of the country’s largest cities, attaching to utility poles, existing cell towers, and tall buildings. According to the industry, investment in Maine will likely be delayed if the local approval process for small cell facilities cannot be streamlined.

To that end, LD 1690 proposes to disallow land use ordinances which prohibit or restrict the siting of a small cell facility, or provide for the local review or approval of small cell siting. Municipalities would be allowed some authority to regulate the location of small cell facilities within public rights of way, and to require some concealment measures within historic districts. But municipal officials would only be allowed to deny small cell permit applications if the proposed facility (1) fails to comply with applicable building and electrical codes, (2) obstructs the

use of the right-of-way for public travel, (3) materially interferes with the safe operation of traffic control equipment, or (4) materially interferes with American Disabilities Act.

In addition to the bill’s sponsor, Rep. Nathan Wadsworth of Hiram, eight hearing participants testified in favor of the legislation, four against, and three “nei-

ther for nor against.” Proponents, which included a wireless phone industry trade association, AT&T, Verizon, U.S. Cellular, T-Mobile, the Maine Association of Realtors, the Maine State Chamber of Commerce, and the Maine Farm Bureau, generally claimed that small cell facilities will help address Maine’s need for more

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Taking Full Advantage of Maine’s Warm Season

Expanding Outdoor Alcohol Service

On Tuesday, the Veterans and Legal Affairs Committee held a public hearing on LD 1738, *An Act To Permit the Sale and Consumption of Alcohol in an Area That Is Not Contiguous to Licensed Premises*. Under current state law, restaurants can only serve alcohol on their licensed premises. The issue this bill seeks to address is serving patrons seated outside when a sidewalk separates the restaurant from its outdoor tables. In such cases, the tables may not in fact be on the “licensed premises”, which means the restaurant-goers may eat outside, but not be served alcoholic beverages.

No one testified against LD 1738.

The bill’s sponsor, Sen. Susan Deschambault of York County, noted that her proposal seeks to allow wait staff to carry alcohol from the restaurant to tables outside, across a public passageway. The change to existing law is necessary to allow restaurants to take advantage of the draw of outdoor seating during Maine’s

relatively limited warm weather months.

Emphasizing this growing interest in outdoor dining, Biddeford City Manager James Bennett spoke to the way this change in statute will help the city make progress in its downtown development efforts. Mr. Bennett explained the local process built into the legislation, which envisions municipal approval and setting parameters such as hours of operation, will ensure the “mothers and fathers of the community are able to make the decision” regarding this use of public property.

Also testifying in support of LD 1738 was Westbrook Economic Development Director Daniel Stevenson, who sees the bill as simply allowing some flexibility for restaurants and their host municipalities. In written testimony, he made clear that this legislation supports local investments to revitalize downtowns, in turn supporting the tourist industry and

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broadband internet service.

Rep. Wadsworth introduced the bill by claiming it is needed to ensure the private sector invests in deploying 5G technology in Maine. When a member of the committee asked about the provisions of the bill limiting local control, the sponsor stated that he philosophically supports proposals that help expedite business interests by keeping them from having to get permission from each and every town to operate.

CTIA, the trade association representing the wireless phone industry, noted that interest in the type of cellular data the small cell facilities will support is exploding nationwide, and that 13 states have already enacted similar legislation. One committee member asked how the technology, which currently is only capable of transmitting signals up to about 1,000 feet, will address broadband needs in rural areas. The CTIA representative answered that the predictability and resulting cost savings achieved by passing this legislation will free up capital to invest in other types of infrastructure in rural areas.

Verizon explained its view that existing municipal wireless facility ordinances were crafted to address freestanding cell phone towers before technology was available to facilitate the distribution of cellular signals simply by attaching antennas to existing utility poles and tall buildings. The purpose of the bill, as they see it, is to ensure small cells are treated just like other facilities that attach to poles in the public right of way, such as the “smart meters” that electric transmission and distribution companies attached to their poles in recent years without local land

use review requirements.

The company also bristled at a fee charged in one unnamed Maine municipality, which reportedly asked for \$2,400 for small cells to be attached to municipal property. When asked about the need for municipalities to retain some flexibility to address these proposals, Verizon responded that this fee is a good example of how home rule authority can wind up costing the state as a whole by limiting private investment. The company also noted that a statewide standard will help make sure cell phone customers receive consistent service as they travel between municipalities. Another member of the committee then added that he views Maine’s home rule nature to be a bit antiquated when it comes to responding to the regional nature of telecommunications services.

AT&T, which testified to its interest in meeting today’s consumer demand while preparing its capacity for tomorrow, was asked by a committee member why the bill limited municipal fees to \$20 per attachment. The company responded that is the rate it charges other entities to attach to poles owned by AT&T, and that is the attachment rate recommended by the Federal Communications Commission.

The Maine Association of Realtors supported the bill out of concern that the lack of reliable broadband throughout Maine has become an issue in efforts to attract new home buyers to the state. The Maine State Chamber of Commerce supported having a consistent, streamlined process statewide.

MMA’s testimony in opposition to LD 1690 laid out its concern with enacting a preemption of home rule authority before the industry has even begun in earnest to deploy small cells. Seeing no hold-ups to date at the local level, the Association’s Legislative Policy Committee had a hard time understanding the approach of prohibiting any local review processes before municipalities had even been given a chance. Reviewing land use proposals is a core local government function that all residents and businesses abide by. It does not seem wise to carve particular uses out, particularly while that use is still in its research and development phase.

Charter (formerly known as Time

Warner Cable), Comcast, and the City of Portland joined MMA in opposition to the bill. Charter questioned whether the state Legislature is better suited to assess the local impacts of small cell facilities than municipalities. Although the small cell antennas themselves may be small, the company pointed out that the cells still need power lines and broadband fiber optic cables, or similar infrastructure, to operate. Would municipalities lose control over siting these related facilities, too?

Comcast expressed the view that enacting this legislation, which creates unique rules for the cellular telecommunications industry alone, would not be fair or equitable. If that industry is exempted from having to obtain local permits to relocate facilities, or is indemnified from liability as the bill proposes, the company insinuated it would expect the same types of carve-outs for the cable industry as well. The Telecommunications Association of Maine, testifying neither for nor against LD 1690, expressed a similar interest in a standardized set of rules across all communications industries locating in rights of way.

An attorney representing the City of Portland opposed the removal of municipal officials’ existing authority to consider impacts of these installations on abutters, or to hold public hearings related to the installations, or to set appropriate permitting fees. While recognizing that broadband access has become a significant asset to Portland’s economy, municipal leaders do not believe that economic development should come at a cost to Maine’s long-standing home rule tradition. In its view, a more balanced approach is warranted.

Two state entities testified neither for nor against the legislation. While supporting the goal of reducing regulatory barriers to broadband infrastructure deployment, the Maine Small Business Advocate encouraged the committee to seriously consider whether the local control limitations proposed in the bill are necessary. Maine’s Public Advocate singled out MMA in his testimony, claiming the Association is wrong in its position and “will have to move some.”

The work session on LD 1690 has not yet been scheduled.

Legislative Bulletin

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Taking Full Advantage of Maine's Warm Season (cont'd)

attracting people to the center of town.

Rep. Heather Sanborn of Portland, a co-owner of one of Maine's breweries, along with the Maine Brewers Guild, supported LD 1738 as presenting "a modest fix that would allow a server (and only a server) to take a few steps across a sidewalk to serve a customer." Rep. Sanborn claimed the current restriction does not serve our state well because it restricts the ability of villages and small businesses to take advantage of the short but critical outdoor dining season. The bill does propose an 11 p.m. deadline for outdoor alcohol service, and the Guild

suggested excluding the time limit from the printed bill to allow for full local flexibility.

The Mayors' Coalition also presented testimony in support of LD 1738 and described the effort as affording local discretion to allow for creative uses like this, which may not have been foreseen when the existing "on premises consumption" statute was drafted.

The Maine Bureau of Alcoholic Beverages and Lottery Operations testified "neither for nor against" the proposal, requesting that if the committee decides to move forward with the bill, the "non-

contiguous area" where the patrons are seated be clearly defined and include only one access point for entry and exit.

The committee did not question that suggestion at the hearing, but two committee members questioned whether a limit ought to be added on the allowable distance from the restaurant. Mr. Bennett responded that under the bill's language the municipality would be able to impose such a limit, but that Biddeford would be amenable to putting some sort of reasonable cap in statute.

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LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

Tuesday, January 23

Inland Fisheries & Wildlife

Room 206, Cross State Office Building, 1:00 p.m.

Tel: 287-1338

LD 1667 – An Act To Prohibit the Entry of Anadromous Fish Species into Sheepscot Pond for 3 Years and To Study the Consequences of the Presence of Anadromous Fish in Sheepscot Pond.

Wednesday, January 24

Education & Cultural Affairs

Room 202, Cross State Office Building, 1:00 p.m.

Tel: 287-3125

LD 1689 – An Act To Repeal Certain Provisions Regarding the System Administration Allocation Affecting Maine School Districts in the 2018-2019 Biennial Budget.

LD 1761 – An Act Regarding the Prohibition on the Possession of a Firearm on School Property.

Energy, Utilities & Technology

Room 211, Cross State Office Building, 9:00 a.m.

Tel: 287-4143

LD 1729 – An Act Regarding Compensation by Large Transmission and Distribution Utilities.

State & Local Government

Room 214, Cross State Office Building, 9:00 a.m.

Tel: 287-1330

LD 1668 – An Act To Change Certain Gender-specific Terminology in the Laws Regarding Municipalities and Counties.

LD 1673 – An Act To Authorize the Deorganization of Codyville Plantation.

LD 1679 – An Act To Authorize the Oxford County Commissioners To Close the Western District Registry of Deeds.

Thursday, January 25

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1316

LD 1760 – An Act To Authorize a General Fund Bond Issue To Acquire Significant Historic Properties for Resale and Rehabilitation.

Taxation

Room 127, State House, 1:00 p.m.

Tel: 287-1552

LD 1629 – An Act To Protect the Elderly from Tax Lien Foreclosures.

LD 1687 – An Act To Amend the Laws Governing the Calculation of Excise Tax on Automobiles.

(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.)

Criminal Justice & Public Safety

LD 1735 – An Act To Authorize Regional Medical Control Committees To Have Access to Maine Emergency Medical Services Data for Purposes of Quality Improvement. (Emergency) (Sponsored by Sen. Thibodeau of Waldo County)

This emergency bill authorizes a regional medical control committee who are appointed by the service contracted Regional Medical Control access to data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment for the purpose of quality improvement. Such quality improvement activity should be approved by the Medical Direction and Practices board and the Department of Public Safety, Emergency Medical Services' Board to carry out a plan of quality improvement.

Marijuana Legalization Implementation

LD 1719 – An Act To Implement a Regulatory Structure for Adult Use Marijuana. (Emergency) (Sponsored by Rep. Pierce of Falmouth)

This bill provides the regulatory framework necessary to implement the citizen initiated law legalizing the recreational use of marijuana for persons 21 years of age or older, which as proposed in the bill is referred to as the "adult use" of marijuana. With exception to delaying the licensing system for manufacturing, cultivation, testing, and retail facilities to December 1, 2019 and the licensing of social clubs to June 1, 2020, as well as clarifying the municipal "opt-in" process, this bill is identical to LD 1650, which was vetoed by the Governor in 2017. (In current law, the statewide moratorium on non-medical marijuana establishments is scheduled to end on February 1, 2018).

Local Control. Of greatest significance to municipal officials, the bill expressly authorizes municipalities to prohibit the operation of some or all types of marijuana establishments (e.g. cultivation, manufacturing, testing, retail stores and social clubs) within the municipality and also to limit the number of any type of establishment that may be approved or licensed to operate in the community. The bill authorizes communities to adopt reasonable land use ordinances regulating the location of all marijuana establishments within the community and impose reasonable licensing requirements addressing matters not regulated by the state. The bill specifies that municipalities can adopt ordinances that: (1) place reasonable restrictions on size, content and location of signs and advertisements used by marijuana establishments, except that provisions must prohibit the placement of signs and advertisements within 1,000 feet of the property line of a preexisting public or private school; (2) establish reasonable municipal licensing fee schedules; and (3) enforce odor control measures for both commercial and personal cultivation of marijuana. Furthermore, municipalities are authorized to deny an application for the location of a marijuana establishment within the community without first adopting an ordinance regulating marijuana establishments.

The bill proposes that marijuana establishment applications would not be authorized at the local level until the municipality passed a new ordinance, amended an existing ordinance, or approved a warrant article designating certain or all types of marijuana establishments to be a permissible use in that municipality's jurisdiction.

The standards adopted by the municipality, however, cannot be more restrictive than or otherwise conflict with explicit state regulations. Municipalities are expressly prohibited from approving or licensing

marijuana establishments that seek to locate within 1,000 feet of the property line of an existing public or private school, although municipalities may expand that minimum distance. Municipalities are also prohibited from granting a license to an applicant that has not demonstrated that the applicant owns or leases the property from which the proposed establishment will operate. The bill requires applicants to submit a site plan designating the location, size and layout of the proposed establishment. If the applicant is approved or granted a license to operate in the community, the municipality must provide the Department of Administrative and Financial Services (DAFS) with a copy of the submitted site plan.

As provided in the bill, a municipality's failure to act on a request for approval or a license to operate a marijuana establishment cannot be construed to satisfy the approval or licensing process. If at any time a municipality withdraws approval for a marijuana establishment or revokes a municipal license, the establishment must immediately cease operations and may apply to DAFS for a relocation permit.

Finally, municipalities are required to notify DAFS within 14 days of a decision to: (1) approve or deny the location of a marijuana establishment; (2) issue or renew a license; (3) withdraw the approval or suspend or revoke a license; (4) approve the relocation of a licensed premises; or (5) approve a transfer of ownership interest in a licensed establishment.

Taxation. The bill assesses a 20 percent state sale tax on products sold at marijuana retail stores and social clubs. Five percent of all monthly tax revenue generated within each municipality by all marijuana stores and social clubs within the municipality must be distributed to that municipality. One percent of the total monthly tax revenue generated statewide must be distributed in equal amounts to each municipality that had a cultivation facility, product manufacturing facility, marijuana store or social club in operation in the municipality during the prior month. Twelve percent of the total monthly tax revenue must be transferred to the Adult Use Marijuana Public Health and Safety Fund to be used to facilitate public health and safety awareness education programs and for enhanced training for local, county and state law enforcement officers.

State Agency Authority. Regulatory implementation and oversight of the law is assigned primarily to DAFS and the Department of Agriculture, Conservation and Forestry (DACF). As proposed in the bill, DAFS is authorized to:

Adopt the major substantive rules establishing: (1) initial license and renewal application processes; (2) qualifications for licensure; (3) licensing fees; (4) appeals process for a denial of an application and the conduct of appeals and hearings; and (5) security requirements for marijuana stores and social clubs.

Implement and administer a system to track adult use marijuana from immature plant to the point of retail sale, disposal or destruction. DAFS must provisionally adopt the rules on or before **December 1, 2018**.

Develop programs or initiatives to facilitate the collection and analysis of data regarding the impacts and effects of the use of marijuana in the State, including youth and adult marijuana use; school suspension and discipline; E-911 calls, emergency department visits and hospitalizations; operating under the influence arrests; motor vehicle accidents; and violent crimes associated with the use of marijuana.

Develop and implement programs, initiatives and campaigns focused on educating the public on the health and safety matters related to the use of marijuana.

Develop and implement programs or initiatives providing enhanced training for criminal justice agencies in the requirement and enforcement of the law, including training law enforcement officers in the inspections, investigations, searches, seizures, forfeitures and personal use and home cultivation allowances.

In collaboration with DACF annually submit a report to the joint standing committee of the Legislature with jurisdiction over adult use marijuana. The report must include information on the number and types of applications, total amount of application and license fees received and the amount of sales tax revenue collected; volume and value of adult use marijuana sold by stores, social clubs and cultivation facilities; number of inspections conducted; number of license violations committed; public health and safety data; and recommendations for legislation to address issues associated with adult use marijuana. The first report must be submitted on February 15, 2019.

DACF is directed by the bill to implement, administer, enforce and adopt rules to regulate the cultivating, manufacture and testing of adult use marijuana including: (1) marijuana seeds, clones and plants; (2) security requirements (e.g., lighting, physical security, alarms and other internal control and security, etc.); (3) use of pesticides, fungicides and herbicides, harvesting and storage of marijuana products; (4) limits on the concentration of THC and other cannabinoid per product serving; (5) odor control, sanitary, refrigeration, storage and warehousing standards; and (6) packaging and labeling of marijuana products. DACF must provisionally adopt the rules on or before **December 1, 2018**.

The bill also:

State Licensing Authority. Establishes several initial, renewal, transfer of ownership, relocation of premises licensing criteria, include delaying the licensing of social clubs until June 1, 2019. If an application is approved, the state is required to issue a conditional license. An active license to operate a marijuana establishment is issued only if and when the applicant obtains municipal approval or a municipal license to operate within the municipality's boundaries. A conditional license expires in one year.

Regulation in the Workplace. Allows employers to: (1) prohibit the use, consumption, possession, trade, display, transport, sale or cultivation of marijuana in the workplace; (2) adopt policies restricting the use of marijuana by employees; and (3) discipline employees who are under the influence of marijuana in the workplace according to the employer's policies.

Operating, Testing, Labeling and Packaging Requirements. Sets into place the many operating, testing, labeling and packaging requirements for the cultivation, manufacturing and testing facilities, as well as for retail stores and social clubs.

License Violation. Implements the process for fining a licensee or suspending or revoking licenses for violations of state law.

Personal Use of Marijuana Products. Establishes quantitative limits for the personal use, consumption, cultivation and possession of marijuana by persons 21 years of age or older. This includes limiting home cultivation to a maximum of 12 plants per "any one parcel or tract of land", regardless of whether the plants are being grown for personal adult use or personal medical use.

Marijuana Advisory Commission. Creates the 15 member Marijuana Advisory Commission, which includes a representative of a statewide association representing municipalities appointed by the Speaker of the House. The commission is tasked with reviewing

the laws and rules pertaining to the adult use and medical marijuana industries and recommending changes to the laws and rules that are necessary to preserve public health and safety. Beginning January 15, 2019, and annually thereafter, the commission is required to submit a report containing findings and recommendations to the joint standing committee or committees of the Legislature having jurisdiction over medical marijuana and adult use marijuana matters.

Adult Use Marijuana Public Health and Safety Fund. Creates a dedicated, non-lapsing fund within DAFS capitalized by 12% of the sales tax revenue generated by the 20% tax imposed on the products sold in retail stores and social clubs and all funding from other public or private sources. The revenues dedicated to the fund must be evenly divided between to public health and safety awareness and education programs and enhanced state, county and municipal law enforcement training programs related to the sale and use of adult use marijuana.

Taxation

LD 1629 – An Act To Protect the Elderly from Tax Lien Foreclosures. (Governor's Bill) (Sponsored by Rep. Espling of New Gloucester)

This bill amends the law governing the property tax lien mortgage system as it applies to property owners 65 years of age or older. For those property owners, a pre-foreclosure process is established to commence at least 90 days before foreclosure. Under that process, the municipality must contact the owner of the property and assist the owner in applying for a poverty tax abatement. With respect to any property tax obligations not forgiven through the abatement process, the municipality must offer the owner a reasonable repayment schedule. If the owner does not agree to the repayment schedule, the municipality must engage a qualified mediator to negotiate a reasonable payment schedule, with 50% of the mediator's fee being added to the value captured by the tax lien. If an installment repayment plan is established, and the property owner becomes more than 30 days delinquent on that plan, the municipality may issue a demand for the balance of the tax obligation to be paid within 14 days. If during the pre-foreclosure process a municipal official or employee has a reasonable suspicion that the property owner has a physical or mental condition that interferes with the owner's ability to have business dealings with the municipality, the municipality must notify the Department of Health and Human Services.

The bill also provides special foreclosure and sale provisions for any property owner 65 years of age or older after a foreclosure occurs. If such an owner is living in the property and the property is the owner's sole residence, the municipality is prohibited from selling the foreclosed property until the value of the municipal lien exceeds 50% of the assessed value of the property. The owner must be provided a right to purchase back the property prior to any sale. The sale of the property must be accomplished by an independent licensed broker, conducted in a commercially reasonable manner, and the property may not be sold for less than its municipal assessed value unless the municipality can demonstrate through an independent appraisal that the value of the property has deteriorated since the most recent tax assessment. Neither the municipality nor any purchaser of the property from the municipality may take any action to remove the former owner from the foreclosed property until after a sale of the property. All proceeds from the sale of the property in excess of the tax owed, interest and allowable fees must be refunded to the former owner.