

## “It’s Theirs, Not Ours”

### House Debates Revenue Sharing

The quote in the title of this article was excerpted from the testimony Rep. Thom Harnett of Gardiner offered on his bill, LD 193, *An Act To Fund and Restore State-Municipal Revenue Sharing*. The bill, which was debated in the House on Tuesday of this week, seeks to retroactively restore funding for the revenue sharing program to 5% of state sales and income tax revenue as of Jan. 1, 2019.

In addition to stressing the importance of returning this promised revenue to municipal government partners, Rep. Harnett shared that during his tenure as mayor of the City of Gardiner, he participated in executive sessions where humiliated property owners faced with deciding whether to purchase food, medication, or heating fuel, or to pay property taxes, appeared before the council requesting assistance. These homeowners, who had for years dependably paid taxes on the homes where they raised children and nurtured grandchildren and great grandchildren, were no longer able to afford their taxes.

Rep. Harnett placed blame for this avoidable situation not on the homeowners or the municipalities trying to provide required and desired services with a 60% reduction in revenue sharing, but on state policymakers for not honoring the long held commitment to share a mere 5% of state sales and income tax revenue with local government partners. Absent the full restoration of the state/municipal revenue sharing program, Rep. Harnett testified that it is unrealistic for the Legislature to expect that the state, as a whole, will continue to prosper.

Representatives from Bath, Brunswick, Lewiston, Portland, Penobscot, Woolwich and Waterville also spoke on the House floor to the importance of restoring

revenue sharing as of Jan. 1 of this year.

Representatives from Auburn, Presque Isle and Winslow expressed support for increasing funding for the program, but in a more moderate and incremental fashion, specifically pointing to the proposal found in Governor Mills’ biennial budget. As proposed in the budget, funding for the program would increase from the current 2% of sales and income tax revenue to 2.5% in FY 2020 and 3% in FY 2021.

LD 193 was supported in the House by a margin of 89 to 49 and two days later adopted in the Senate without debate. That being said, the journey is far from

over, for the bill carries a near \$50 million fiscal note for the current fiscal year (FY 2019). Before this bill is presented to the governor for her consideration, the state’s appropriators will have to agree to fund the fiscal note.

In the meantime, members of the Appropriations Committee continue to work Governor Mills’ FY 2020–FY 2021 General Fund budget. Over the course of the last few weeks, some members of that committee have expressed interest in increasing the amount of revenue to be shared with local government partners, above the levels proposed in the budget.

An encouraging development, indeed.

## MMA Broadband and Utility Bills Signed Into Law

The Association is pleased to report that three bills submitted at the request of its Legislative Policy Committee were signed into law last week. These new laws, which are summarized below, will take effect 90 days after the Legislature adjourns.

LD 1063, *An Act To Support the Role of Municipalities in Expanding Broadband Infrastructure*, sponsored by Rep. Jay McCreight of Harpswell, would acknowledge the fact that broadband is a public necessity in today’s society and clarify the authority for local governments to create “community broadband systems,” treating them like other important municipal infrastructure such as roads, airports, water, and sewer. On May 14, this legislation was signed by Governor Mills into Public Law 2019, chapter 108.

LD 1192, *An Act To Establish Municipal Access to Utility Poles Located in Municipal Rights-of-way*, sponsored by Sen. Eloise Vitelli of Sagadahoc County, as amended by the Energy, Utilities and Technology Committee, would exempt municipalities from make-ready fees for public safety purposes (such as E-911 lines, traffic signals, and street lights), as well as broadband purposes when the pole does not already have a line or cable attached to it capable of providing internet at a speed that meets the state definition of broadband service (25 megabits per second download speed and 3 Mbps upload speed). On May 16, this legislation was signed by the Governor into Public Law 2019, chapter 127.

LD 1206, *An Act To Improve Aboveground Utilities’ Responsiveness*

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# To Record or Not to Record

## Police Use of Body Cameras Study

On March 6, the Committee on Criminal Justice and Public Safety held a public hearing on LD 636, *An Act to Require Law Enforcement Officers to Wear Body Cameras*, sponsored by Sen. Susan Deschambault of York County. As described in an article published in the March 8 edition of the *Legislative Bulletin*, the bill would mandate the use of body cameras for all law enforcement officers. At a subsequent work session, the committee unanimously voted “ought not to pass” on LD 636.

However two days later, on March 15, the committee reconsidered its decision and voted to convert the bill into a resolve directing interested parties to study the matter in greater detail.

The particulars of that study were made publicly available earlier this week.

As amended, LD 636, now titled *Resolve To Establish the Work Group to Study the Use of Body Cameras by Law Enforcement Officers*, creates a nine-member working group represented by a member of the Senate, two members of the House, a member from the Office of the Attorney General, and five additional members – appointed by the Attorney General – including a state, local and county law enforcement officer, a representative from a “statewide organization that works to further the interests of municipalities,” and a representative

that “works to ensure the privacy rights of Maine citizens.”

The working group is charged with reviewing current practices and all research pertaining to the use of body cameras by law enforcement officers, both in Maine and other states. The assigned tasks include: (1) examining the costs and potential revenue sources available for procuring body cameras; (2) determining whether to mandate the use and operation of cameras or to adopt a statewide policy regulating the voluntary use and operation of the equipment; (3) reviewing collective bargaining, ownership, use, storage and chain of custody of material concerns raised by the interested parties; (4) determining

the level of training necessary for law enforcement officers and supervisors; (5) establishing protocols governing the recording of sensitive or private situations; (6) assessing whether the use of cameras promotes accountability; and (7) addressing privacy and transparency concerns, specifically balancing access to video by justice-involved individuals, the public and the courts with privacy interests of victims and their families.

If the Legislature supports passage of the amended version of LD 636, it is expected the group will meet during the summer and fall of this year and report out findings and recommendations to the committee by the established March 1, 2020 deadline.

## MMA Broadband and Utility Bills Signed Into Law (cont'd)

*to Public Interests*, sponsored by Rep. Pinny Beebe-Center of Rockland, aims to address the issue of utility companies not being responsive to municipal requests to remove abandoned poles, relocate poles and related facilities, or otherwise remediate related issues such as debris and holes left after pole removal. As amended by the committee, the bill directs the Public Utilities Commission to address these issues in a rulemaking this year and to report back

to the committee on its progress next year. In the meantime, the bill exempts municipal officials from liability under Maine’s “pothole law” for defects in rights of way created by utilities. On May 16, this legislation was signed by the Governor into Public Law 2019, chapter 128.

MMA greatly appreciates the contributions of the bills’ sponsors, which were central to the successful enactment of these municipally important initiatives.

## Legislative Bulletin

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# Movement on Marijuana Front

When compared to the flurry of legislative activity in the last two years aimed at expanding, curtailing, or refining the “adult use” Marijuana Legalization Act that was adopted by Maine voters in the fall of 2016, this year’s legislative session has been relatively quiet. With the state’s newly created Office of Marijuana Policy (OMP) working diligently on getting its rules drafted and approved in time for an anticipated launch of the state licensing program this autumn, many industry players seem to be waiting patiently, holding off on seeking changes to statute until the businesses are up and running.

In that context, legislators are starting to make decisions on several marijuana-related bills before them, most of which are being carried over to next year’s session. The state agency also held a hearing on its proposed rules on Thursday.

The following is an update on two of the most municipally relevant bills, as well as a recap of the agency’s rule-making hearing.

**Funding.** LD 335, *An Act To Require the State To Distribute 25 Percent of Adult Use Marijuana Retail Sales and Excise Tax Revenue to Generating Municipalities*, sponsored by Rep. Charlotte Warren of Hallowell on behalf of MMA as part of the Association’s legislative platform, has been amended by a majority of the committee to distribute 12% of revenues generated in a municipality which opts in to allow adult use businesses back to the municipality. The municipal share would be calculated after another 12% reduction comes out for a statewide public health and safety fund, and after state administrative costs are deducted, leaving the overall amount that is re-distributed to opt-in communities closer to an effective 10% at the end of the day.

The minority of the Taxation Committee voted against passage of the bill.

LD 335 now awaits a fiscal estimate of any potential costs to the state, followed by approval from the House, Senate, Appropriations Committee, and Governor. Municipal officials who believe that the towns and cities which

allow adult use marijuana businesses deserve a cut of the proceeds to help mitigate local planning and public safety costs, are encouraged to voice their support for LD 335 with their legislators.

**Medical Storefronts.** LD 1129, *An Act To Clarify Certain Provisions of the Maine Medical Use of Marijuana Act*, sponsored by Rep. Erik Jorgensen of Portland, will refine language put into law last year regarding grandfathering of medical storefronts. By providing a definition of “retail store” and “municipal approval,” this bill should help clarify for municipal officials and caregiver businesses whether or not a medical store has been authorized in compliance with the law. On Thursday of this week, the Health and Human Services Committee reported this bill out to the full Legislature with a unanimous recommendation in favor of passage as amended.

**Rulemaking Hearing.** About 100 people attended a public hearing held Thursday in Portland on the draft rules recently released by the Maine Office of Marijuana Policy (OMP), though fewer than 50 testified. The tone overall was positive, encouraging the efforts by OMP, in its three months of existence, to finally get the commercial adult use program into gear this year after almost three years of legal wrangling.

The Association’s review of the proposed rule found no major cause for municipal concern. Before the written comment window closes on June 2, MMA will submit comments that suggest a variety of minor technical clarifications. Interested municipal officials can find a link to the draft rule and the state comment form on MMA’s Marijuana Resources website at [www.memun.org/Training-Resources/Local-Government/Marijuana-Resources](http://www.memun.org/Training-Resources/Local-Government/Marijuana-Resources).

Based on the comments delivered at Thursday’s hearing, it appears the industry is pushing for mostly technical amendments as well. Themes emerging at the hearing included:

*Revenue for municipalities.* The single most common comment from a number of industry stakeholders was that OMP should afford a share of the tax revenues to municipalities that allow

adult use businesses. The Association notes that this authority is likely beyond the Office’s jurisdiction, however, and must be enacted by the Legislature, preferably via LD 335, described above.

*Grandfathering medical stores for adult use.* Many of the proponents of revenue for municipalities also encouraged OMP to draft rules that would automatically grandfather at the state level the ability for medical marijuana retail store operators to be licensed for adult use retail store operations, so long as the municipality they are located in opts in. The ability to make this policy change also seems, to MMA, to rest with the Legislature rather than the state agency.

*Public Consumption.* Because the adult use industry is expected to be attractive to tourists, members of the public also encouraged creating a new allowance for consumption in public places. A concern was expressed that tourists will wind up consuming marijuana in public areas like parks, parking lots, and hotels until the law is changed. Public “social clubs” were disallowed by the last Legislature, so this policy seems to be up to lawmakers rather than regulators as well.

*Testing Lab Co-Location.* The rules as drafted prohibit testing facilities from being co-located with or abutting other establishments. A concern was expressed that space for testing labs could be limited if a low number of municipalities opt in, as is being reported statewide, due in part to the lack of local revenue. Multiple parties encouraged OMP to allow testing facilities to be located next to other types of businesses provided certain safeguards or firewalls are in place, and to take other measures to avoid the product “bottlenecking” at testing facilities that has occurred in other legalizing states.

*Consumer Convenience.* Support for the rule included a view that the terms encourage consumer choice, which is necessary in order to draw consumers into the legal market from the cheaper illicit market.

*Exposure for “Other Interested Parties.”* It was pointed out that the defini-

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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/>.*

*The Legislature is no longer obliged to provide two weeks' notice for public hearings, and beginning Monday, April 29 until the end of the 2019 legislative session, the Legislature will no longer be advertising public hearings in the newspaper.*

*In some cases, bills are being printed and scheduled for a public hearing within two days. If you would like to receive notice of a public hearing on any particular bill, please contact Laura Ellis at [lellis@memun.org](mailto:lellis@memun.org) or 1-800-452-8786.*

### **Monday, May 27 – HOLIDAY**

### **Tuesday, May 28**

**Agriculture, Conservation & Forestry  
Room 214, Cross Building, 1:30 p.m.  
Tel: 287-1312**

LD 1762 – Resolve, Authorizing the Transfer of a Plot of Land from the State to the Town of Allagash.

## IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's official 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).)

### **Appropriations and Financial Affairs**

LD 299 – An Act To Authorize a General Fund Bond Issue To Assist Schools, Municipalities and Counties in Using Emerging Technologies and Energy Alternatives to Fossil Fuels in Heating, Electrical and Other Utility Systems. (Sponsored by Rep. Handy of Lewiston)

This bill sends out to the voters a proposed \$15 million bond issue to assist schools, municipalities and counties in using emerging technologies and energy alternatives to fossil fuels in heating, electrical and other utility systems. The Finance Authority of Maine is directed to establish an application process and requirements for distribution of the funds.

LD 859 – An Act To Authorize a General Fund Bond Issue To Fund Equipment for Career and Technical Education Centers and Regions. (Sponsored by Rep. Fecteau of Biddeford)

This bill sends out to the voters a proposed \$40 million bond issue to provide funds to make capital improvements to and purchase equipment for career and technical education centers and regions for high school students.

LD 1093 – An Act To Authorize a General Fund Bond Issue To Invest in Maine's Railroad Infrastructure. (Sponsored by Sen. Claxon of Androscoggin Cty.)

This bill sends out to the voters a proposed \$50 million bond issue to provide funds for investments in railroad infrastructure to expand passenger rail service, with a priority for railroad track corridors that could support passenger and freight intermodal operations and enhance the movement of agricultural products.

LD 1119 – An Act to Authorize a General Fund Bond Issue To Support Investments in Energy Efficiency and Renewable Energy in Municipalities and School Administrative Units. (Sponsored by Sen. Luchini of Hancock Cty.)

This bill sends out to the voters a proposed \$10 million bond issue to provide funds to purchase solar arrays, high-efficiency ductless heat pumps and high-efficiency modern wood heating systems for buildings and property owned by municipalities and school administrative units. The bill also directs the Efficiency Maine Trust to use funds from the bond issue to fund the Municipal Energy Efficiency and Renewable Energy Program (program). Finally, the bill establishes the program within the Efficiency

Maine Trust to support municipalities and municipally authorized citizen committees and school administrative units across the state in reducing energy costs, reducing carbon emissions, facilitating the development of renewable energy resources and creating local jobs related to the building of renewable energy facilities and the installation of energy-efficient equipment. It funds the program with the proceeds of bonds, including bonds issued pursuant to Part A, any other funds allocated by the trust and matching funds from participating municipalities. The program is created only if the voters approve the bond issue.

LD 1604 – An Act To Authorize General Fund Bond Issues To Improve Highways, Bridges and Multimodal Facilities. (Governor's Bill) (Sponsored by Sen. Diamond of Cumberland Cty.)

The funds provided by this bond issue, in the amount of \$100 million in both 2019 and 2020, will be used for reconstruction and rehabilitation of highways and bridges and for facilities or equipment related to ports, harbors, marine transportation, freight and passenger railroads, aviation, transit and bicycle and pedestrian trails, matching an estimated \$137,000,000 per year in federal and other funds.

LD 1705 – An Act To Authorize A General Fund Bond Issue To Strengthen the Marine Economy. (Sponsored by Sen. Jackson of Aroostook Cty.)

This bill sends out to the voters a proposed \$50 million bond to facilitate the growth of the commercial fishing and aquaculture sectors of the state's marine economy through research and development and workforce development with capital investments awarded after a competitive process administered by the Maine Technology Institute in consultation with the Department of Marine Resources and the Department of Economic and Community Development, to be matched by at least \$50 million in private and other funds.

### **Environment and Natural Resources**

LD 1779 – An Act To Establish Standards for Operation and Maintenance and Asset Management for Publicly Owned Treatment Works and Municipal Satellite Collection Systems. (Sponsored by Rep. Tucker of Brunswick)

This bill authorizes the Department of Environmental Protection

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## HOPPER (cont.)

to establish standards through routine technical rulemaking for operation and maintenance and asset management for publicly owned treatment works and municipal satellite collection systems.

LD 1781 – An Act To Allow the Board of Environmental Protection To Make Changes through Routine Technical Rulemaking to Federally Based Screening Levels for the Beneficial Use of Solid Waste. (Sponsored by Rep. Tucker of Brunswick)

This bill allows the Board of Environmental Protection to make changes to its rules regarding federally based screening levels for the beneficial use of solid waste as routine technical rulemaking pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

## Movement on Marijuana Front (cont'd)

tion in the rule for “other interested parties” is very broad in scope, potentially roping a number of parties who are only barely affiliated with operators, such as credit unions and private investors, into the operators’ disclosure and reporting requirements. Many changes were suggested, including a professional association encouraging added confidentiality protections for proprietary trade secrets.

*Packaging.* A number of stakeholders viewed the rule’s proposed product packaging requirements as excessive, and they encouraged various ways of relaxing the terms.

The Office of Marijuana Policy will be finalizing its draft rule the first week of June, with the aim of having the rules approved by the Legislature before its June 19 adjournment date.