

Packaging Producers Held Accountable

On Thursday, the Environmental and Natural Resource Committee voted out an amended version of LD 2104, *An Act To Support and Increase the Recycling of Packaging*, by a party line vote of 6 to 4 of the members present. As reported in the Jan. 10, Feb. 21 and Feb. 28 editions of the Legislative Bulletin, the bill creates a third party system for collecting fees from producers for the packaging they place into Maine’s municipal solid waste stream, and dedicates a portion of the fees to reimburse eligible municipalities for recycling and waste management costs.

While the minority report creates another stakeholder process, the amendments in the majority report were adopted, in large part, to address

several of the concerns raised by the bill’s opponents, including producers of packaging.

As amended by a majority of the committee, producers are granted an “off ramp” from the fees and possibly the program once a 75% materials recycling rate is achieved. Additionally, the amendment exempts a number of products from program participation, including drugs and products regulated as drugs under the U.S. Food and Drug Administration, paint containers covered under the current paint recycling program, child resistant packaging, bottles as covered under the existing bottle bill, and medical devices.

The amendment adds to the reimbursable municipal cost the waste-

to-energy alternative for disposing of non-recyclable packaging rather than exclusively through incinerating. The amendment also places an emphasis on the use of readily recyclable materials over those that are not.

Small producers who make less than \$2 million in revenue or have less than 50 employees are also excluded from participating in the program.

Large scale producers have been going full court press against the initiative - even though most of the producers already pay into a similar system in Canada and Europe - seeing Maine as the bellwether for similar legislation proposed in other states.

Among the producers’ unrealized demands was the inclusion of a

(continued on page 2)

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. Tel: 623-8428
Website: www.memun.org

Editorial Staff: Kate Dufour, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

Layout: Sue Bourdon, of Communication & Educational Services.

Strike Bill in House

LD 900, *An Act To Expand the Rights of Public Employees under the Maine Labor Laws*, is tabled in the House. The amended version of the bill allows non-public safety public employees to strike provided the affected union members vote to do so and union leadership notifies the employer of the intent to strike and the dates the strike will take place. The bill also allows public employers to call employees who are on strike back

to work to address an emergency and allows an employee to file a grievance for being called back to work.

MMA opposed the bill on the basis that a strike would disrupt the ability of municipalities to provide mandated, needed and locally desired services. Municipal officials concerned with the provisions of the bill are urged to contact their legislators.

It is possible that LD 900 will be debated next week.

Packaging Producers Held Accountable (cont)

provision forcing municipalities to earmark the reimbursement received under the program for improvements in recycling infrastructure statewide, rather than making the property taxpayer whole for the incurred expenses of recycling.

Claiming municipalities will be incentivized to utilize the less costly landfill option for disposing of non-recyclable packaging material, producers also asked that municipalities be prohibited from receiving reimbursement for the cost of landfilling materials.

For Aroostook County, which does

not produce enough waste to support incineration and is 175 miles distance from the nearest facility, this view doesn't pass the straight face test. Additionally, it ignores that some municipal landfills are also energy generators using captured methane from the landfill to reduce greenhouse emissions and electricity fees.

The path to implementation is far from over, as the bill needs to be enacted by the entire Legislature and signed into law by Governor Mills.

It is an understatement to suggest that a fleet of industry lobbyists are

actively advocating against passage of LD 2104. To that end, municipal officials are urged to contact their legislators, as well as the Governor's Office to share how managing producer packaging materials impacts municipal budgets and urge support for passage of the legislation.

Municipal officials are also encouraged to share recycling costs with MMA staff and reach out with any questions on the bill by emailing Rebecca Graham at rgraham@memun.org.

Abandoned Utility Poles

Earlier this week, the Energy, Utilities and Technology Committee held a public hearing and work session on a bill that has not yet been assigned an LD number. The bill, LR 3272, *An Act Regarding Utility Poles and Associated Facilities*, spearheaded by Rep. Nicole Grohoski of Ellsworth, provides an avenue for addressing abandoned or duplicative utility poles located on municipal roads.

As proposed, LR 3272 simply amends state statute to make related Department of Transportation (DOT) utility pole management rules applicable in municipalities that have not otherwise adopted standards. Under DOT rule, Chapter 210, Section 7, sub§4, provides that "all facilities taken out of service... shall be removed within 60 days of their last use," and subsection 5 of the rule provides that "all wire transfers and removal of replaced poles shall occur within one year from the installation date of the new pole(s)."

The impetus for the bill came as a result of a Public Utilities Commission (PUC) Jan. 31, 2020 report on

abandoned utility poles and associated facilities. Through passage of LD 1206 (PL 2019, c. 128) last session, the PUC was directed to report on the actions taken by the commission in 2019 related to abandoned utility poles and associated facilities located in the public right-of-way and report back to the committee findings and recommendations. Although the report concluded that the preference among many of the impacted parties was for the PUC to take a more comprehensive approach on the issues associated with abandoned poles in municipal rights-of-way, included within the report was a summary of the feedback provided by both CMP and Emera Maine regarding the DOT process. According to Emera Maine, "the DOT process works well."

In its testimony in support of the bill, MMA described the measure as a proven, straightforward, common sense approach for addressing the utility pole management related concerns raised by several municipal officials across the state.

The Telecommunications Association of Maine, speaking on behalf

Charter Communications, Consolidated Communications and Comcast opposed the measure, in part, urging the committee to "rely on its experts at the Commission to address this issue and not intervene with rushed legislation." In its "neither for nor against" testimony, the Office of the Public Advocate urged the committee to direct the interested parties to work together on a compromise solution.

During the bill's work session, Rep. Chris Caiazzo of Scarborough, offered an amendment to help incentivize the pole removal process by allowing the PUC to assess fines should owners fail to remove poles and facilities in a timely manner. The fine for failing to remove an out-of-service pole within 60 days is \$1,000 and the failure to transfer wires to new poles and remove all old poles is \$100 per pole, per day. Under the terms of the amendment, the collected fine revenue is dedicated to ConnectME.

After a brief debate, the committee voted to support the amended version of the bill by a margin of seven to two.

Hearing Schedule

Tuesday, March 17

Taxation

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

Tel: 287-1552

LD 2123 – An Act To Create Fairness in the Revitalization of Maine’s Paper Industry.

Veterans & Legal Affairs

Room 437, State House, 1:00 p.m.

Tel: 287-1310

LD 2145 – An Act To Help Veterans Access Jobs, Education, Health Care and Housing and Provide General Support to Veterans.

Wednesday, March 18

Criminal Justice & Public Safety

Room 436, State House, 1:00 p.m.

Tel: 287-1122

LD 2144 – An Act To Protect Maine Residents from Stalking and Unauthorized Surveillance by Use of an Unmanned Aerial Vehicle.

Environment & Natural Resources

Room 216, Cross Building, 10:00 a.m.

Tel: 287-4149

LD 2147 – An Act To Require Reporting of Perfluoroalkyl and Polyfluoroalkyl Substances, PFAS, in Products and Discharges of Firefighting Foam Containing PFAS.

Note: As of now, the legislative presiding officers have waived the requirement that bills be advertised for public hearing two weeks in advance; therefore, 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/>.

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.)

Environment and Natural Resources

LD 2147 – An Act To Require Reporting of Perfluoroalkyl and Polyfluoroalkyl Substances, PFAS, in Products and Discharges of Firefighting Foam Containing PFAS. (Governor’s Bill) (Sponsored by Rep. Ingwersen of Arundel)

This bill requires any person, including a government entity, who causes a discharge of aqueous film-forming fire suppressant foam into waters of the state to report that discharge to the department within 24 hours. This bill also requires manufacturers of products with intentionally added perfluoroalkyl and polyfluoroalkyl substances to report the presence of those substances in those products to the Department of Environmental Protection beginning in 2023.

Judiciary

LD 2118 – An Act To Establish an Enhanced Process for Tribal-State Collaboration and Consultation and To Develop a Process for Alternative Dispute Resolution. (Reported by Rep. Bailey of Saco for the Joint Standing Committee on Judiciary)

This bill establishes a requirement that state agencies consult with the tribes prior to engaging in any proposed action that may directly affect the tribes. It requires state agencies to request tribal consultation in

writing and to provide the tribes with at least 30 days to respond and to agree to or decline consultation. If a state agency is required by outside legal factors to act earlier, the state must provide as much time for consultation as possible. If a tribe agrees to consultation, the state must provide preliminary drafts or proposals to the tribe and engage in meaningful and timely in-person consultation. The state must explain in writing to the tribe how it has or has not addressed tribal concerns. The bill requires tribal consent prior to proposed actions that could cause substantial or irreparable harm to tribal communities or tribal rights, including but not limited to reserved treaty rights and other tribal rights in land, water and other natural resources. The bill authorizes the state to enter into cooperative agreements with federally recognized Indian tribes within the state to facilitate cross-jurisdictional cooperation and the delivery of government services and to avoid disputes. The bill establishes the annual assembly of the governor and chiefs of each tribe and the biennial legislative assembly to discuss issues relating to the relationship between the state and the tribes. The also bill directs the Maine Indian Tribal-State Commission to report, by Nov. 15, 2020, on its study of alternative dispute resolution options and best practices for facilitating resolution of tribal-state disputes and authorizes the committee of the Legislature having jurisdiction over judiciary matters to report out legislation based on the recommendations of the commission.

Finally, the bill directs the governor to work with the chiefs of each tribe to establish the Bicentennial Accord in order to institutionalize general principles governing tribal state relations. It directs the Maine Indian Tribal-State Commission to provide logistical support and technical assistance in developing the Bicentennial Accord.

Veterans and Legal Affairs

LD 2145 – An Act To Help Veterans Access Jobs, Education, Health Care and Housing and Provide General Support to Veterans. (Sponsored by Sen. Carpenter of Aroostook Cty.)

This concept draft bill, presented in the form of 32 directives, establishes a bill of rights to help veterans’ access jobs, education, health care and housing. Of municipal interest, the bill proposes to: (1) extend to all veterans the \$6,000 property tax exemption provided to veterans of the U.S. Armed Forces who are at least 62 years of age and served during a federally recognized war period; (2) survey public lands, unused public buildings and available private buildings, including closed mills, for opportunities to provide housing or temporary shelter for veterans; and (3) provide preference to veterans in the Bridging Rental Assistance Program, which assists persons with mental illness to secure temporary housing.