



# LEGISLATIVE BULLETIN



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## Pine Tree Power Company: Take 2

The members of the most recently elected Legislature are breathing new life into the Pine Tree Power Company, the newest iteration of the state’s attempt at a consumer-owned utility to replace Central Maine Power and Versant. Compared to previous legislation, LD 1708, *An Act to Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence*, sponsored by Rep. Seth Berry of Bowdoinham, is a pragmatic approach to the municipalization of electricity transmission and distribution that very likely will create long-term savings for ratepayers. In the words of the bill’s sponsor “LD 1708 will let us control our own money and our own energy destiny.”

So without further ado, here’s the elevator pitch:

**The problem:** By all accounts, Maine has bad electricity service reliability. Outages are frequent and long in duration. The market is

dominated by two providers who serve the interests of foreign shareholders instead of local ratepayers. Maine’s electricity grid is overdue for modernization. Surely, the state could do a better job.

**The solution:** Let a third-party arbitrator set a fair-market price for all of CMP and Versant’s assets and establish a quasi-governmental nonprofit to use bonds, to be repaid by future ratepayers, to acquire

everything. Use a competitive bidding process to generate market competition in order to secure affordable and competent private operators. Remove for-profit incentives by forcing the company to set the lowest possible rates to ensure no profit is generated. Give the company a non-profit status.

To the proponents things appear pretty straightforward, the assumptions are reasonable and the economics pan out. But if you

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## GA Bait & Switch – Increasing Burdens without Reimbursement

Via an 8–3, party-line vote, on Tuesday the members of the Health and Human Services Committee supported an amended version of LD 1695, *An Act To Improve Housing Security by Improving Access to General Assistance*, sponsored by Rep. Victoria Morales of South Portland.

As amended by the committee at the sponsor’s request, the bill sets the stage for shifting significant General Assistance (GA) program costs onto state and municipal taxpayers.

The original version of the bill, in part, proposed to increase the cost of providing GA by requiring communities to exceed the maximum levels of assistance that must be provided under the program when the cost of housing alone is exceeded by the set rate. Although it was not entirely clear how it would work, the original version of the bill acknowledged this shift in burden to property taxpayers by providing communities with state reimbursement for 90% to 100% of the housing assistance provided.

Using the current formula established in

state law, the calculated maximum amount of assistance provided to a two-person household residing in Bangor is roughly \$880 per month. Under the current law, the state reimburses communities for 70% of those costs, leaving the property taxpayers to fund \$264.

Under the terms of the printed bill, Bangor’s property taxpayers would have fared better. If 90% of housing costs and 70% of all other expenditures were reimbursed by the state, property taxpayers would fund \$245 of the total aid provided to a two-member household. Under the 100% funding plan, Bangor’s property taxpayers would fund \$156 of the total aid provided.

However, the concern for property taxpayers was short-lived.

In an effort to “simplify” the bill, the amendment removes all enhanced reimbursement to municipalities, but retains the provision increasing the amount of assistance GA administrators will be required to provide.

As a result, the amount of aid provided

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## Binding Arbitration – Who Should Control?

An equal number of public employee groups and employers participated in a hearing on LD 677, *An Act To Improve Public Sector Labor Relations by Amending the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws* held on Monday. During the hearing, public employees supported the provisions of the bill as a means to level the playing field between parties involved in contract negotiations, while employers opposed LD 677 as unnecessarily upsetting the balance between interested parties that currently exists in the laws regulating contract negotiations.

As sponsored by Sen. Troy Jackson of Aroostook County, the bill seeks to amend the labor relations laws impacting municipalities, schools and counties, by making arbitrator decisions regarding salaries, pensions and insurance binding for all parties. Currently, the final decision on these matters rests with the duly appointed and elected representatives of the impacted public entities.

One of the more surprising elements of the bill provides that if a public employer fails to implement the binding determinations,

employees represented by the bargaining unit, except those responsible for protecting public safety, are authorized to strike.

The proposal also includes provisions delaying the implementation of the binding cost items to the next fiscal year's budget and a list of factors an arbitrator must consider when controversies between the employer and bargaining agent are not resolved. Those factors include: (1) the interests and welfare of the public and ability to finance the cost items; (2) a comparison of the wages, hours and working conditions of the impacted employees with other employees performing similar services in public and private sectors; (3) the overall compensation presently received by the employees including direct wage compensation, vacation, holidays, excused time, insurance benefits and pensions; (4) other factors that are traditionally considered through the voluntary collective bargaining process; and (5) the need of the public employer to retain qualified employees, maintain appropriate relationships between different occupations in employment, and establish fair and reasonable

conditions in relation to job qualifications and responsibilities.

Finally, existing labor relations laws governing local, university, state and judicial employees require that each party select one arbitrator, with the two chosen arbitrators tasked with selecting a neutral third arbitrator. LD 677 requires that the neutral third arbitrator be selected from a panel of Maine arbitrators appointed by the governor.

Municipal officials strongly oppose LD 677 as an erosion of home rule authority that gives control over a significant portion of municipal budgets to unelected individuals who are not accountable to the property taxpayers. Taking into consideration the burdens school and county assessments, unfunded state mandates and tax exemptions place on the property taxpayers, the ability to decide what portion of municipal revenues will be dedicated to salaries and benefits should be left to the municipal officers at the very least.

The Labor and Housing Committee will decide the fate of LD 677 at 9 a.m. today, May 21.

## IN THE HOPPER

### Energy, Utilities & Technology

**LD 971 – An Act To Require the Public Utilities Commission To Open an Inquiry Regarding Notification of the Sale of an Investor-owned Transmission and Distribution Utility.** (Sponsored by Rep. Berry of Bowdoinham)

This bill requires the Public Utilities Commission (PUC) to consider the potential benefits of providing more local control over electricity service and whether local control is feasible before issuing an order of authorization for the sale or merger of an investor-owned transmission and distribution utility. It allows the commission to adopt routine technical rules to implement this proposed change. The bill allow directs the PUC to open an inquiry to examine and make recommendations regarding a process to provide timely notification to entities authorized to own a transmission and distribution plant of any proposed sale of an investor owned transmission and distribution utility and to provide the opportunity for the notified entities to bid on the sale. The PUC is further directed to submit the results of this inquiry to Committee on Energy, Utilities and Technology by Feb. 1, 2022.

**LD 1432 – An Act To Update the Municipal Gigabit Broadband Network Access Fund.** (Sponsored by Rep. Berry of Bowdoinham)

This bill amends the Municipal Gigabit Broadband Network Access Fund, which is a fund administered by the ConnectMaine Authority to address the need in Maine to access ultra-high-speed broadband infrastructure to: (1) limit the grants to a municipality or group of municipalities; (2) remove the cap on the amount of the grant, but limit the amount of ConnectMaine funds that may be used to 50% of the total cost of a project; (3) maintain the requirement that a municipality provide at least a 25% cash match but provide that the cash match may not consist of funds from a source other than the municipality; and (4)

(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).)

remove specific reporting requirements for applicants, instead requiring them to meet application requirements established by the authority.

**LD 1484 – An Act To Enhance the Connect Maine Authority's Capacity To Provide World-class Internet.** (Sponsored by Sen. Bennett of Oxford Cty.)

In part, this bill amends the laws governing the ConnectMaine Authority by: (1) reorganizing the authority as a nonprofit organization with oversight provided by a board of directors; (2) authorizing the authority to acquire and hold securities, issue bonds, acquire and hold equity investments and enter into agreements or contracts with public and private entities; (3) requiring the authority to submit to the committee of the Legislature having jurisdiction over utilities matters no later than Jan. 15, 2030 a proposal, along with any necessary implementing legislation, designed to facilitate the termination and repeal of the authority by Jan. 15, 2032; and (4) altering the Municipal Gigabit Broadband Network Access Fund to authorize the authority to offer loans to and make direct equity investments in any public or private entity using a proposal solicitation process.

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## Committee Postpones Decision on Future of Off-Shore Wind

The work session for two off-shore wind bills was a rare instance of opposing sides making the same plea. Everybody wants to continue talking about a long-term framework to best position Maine in the emerging off-shore wind industry. However, it's unclear if further conversations will elicit consensus between stakeholders who routinely talk past each other.

The two bills are LD 101, *An Act To Prohibit Offshore Wind Energy Development*, sponsored by Rep. Billy Bob Faulkingham of Winter Harbor, and LD 1619, *An Act To Establish a Moratorium on Offshore Wind Power Projects in Maine's Territorial Waters*, sponsored by Sen. Mark Lawrence of York County on behalf of Governor Janet Mills.

The bills share a common theme of figuring out what to do next.

Proponents of the prohibition, LD 101, are asking for an immediate halt to all operations including siting, planning, port development, and project financing. According to Rep. Faulkingham, Maine is putting the cart before the horse. The representative asserts that the state is picking sites and preparing to lay underwater transmission cables with little understanding of the impact. The prohibition also extends to any off-shore wind projects in federal waters, but obviously cannot stop other states from advancing development in the Gulf of Maine.

The prohibition also terminates the nation's first floating off-shore wind research array. The representative of Winter Harbor is concerned that as the pilot project proves its efficacy the site will develop into a central hub for all off-shore wind development in the Gulf of Maine.

Those opposed to the prohibition are eager for the data and investment the innovative pilot array will attract from research institutions and private financiers.

Proponents of the moratorium, LD 1619, propose a 10-year pause on off-shore wind developed in state managed waters that does not abandon progress on the research array, risk falling behind out-of-state actors in the Gulf of Maine, or impede momentum in creating a long-term framework for the

industry. The Governor's Energy Office views a moratorium as a precaution.

Off-shore wind is going to happen in federal waters and Maine wants to be ready when it does. Preparing for that moment means building the off-shore wind supply chain, modernizing the electricity grid, attracting and training a skilled labor force, adapting port and harbor infrastructure, and conducting research and collecting data.

After a brief caucus, members of the Energy, Utilities and Technology Committee

felt there is enough overlap between these two bills that some consensus should be achievable. Both bills have been set aside to allow the interested parties more time to find middle ground. The upside is everyone agrees a plan must be made, the downside is these conversations consume valuable time.

If the two sides cannot find consensus, the committee will be impelled to recommend either prohibition or moratorium. Or, elect to chart the current course by opposing both approaches.

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### *Pine Tree Power Company (cont'd)*

dig deeper, the solution has one massive oversight from the municipal perspective.

The Pine Tree Power Company's non-profit status provides it many benefits, first among them, is the freedom to not pay property taxes. LD 1708 attempted to correct that oversight by suggesting that the company shall make payments in lieu of taxes (PILOT) in the same amount as the property taxes paid had investor-owned utilities not been acquired. For anybody unfamiliar with PILOTs, they are like promissory notes, but in this case the state might one day break their promise. Today, in the 130<sup>th</sup> Legislature that would not happen, but in the 131<sup>st</sup> or the 200<sup>th</sup>, it could.

The City of Lewiston illustrates how catastrophic this could be for municipal budgets. Central Maine Power pays over \$4.5 million in property taxes on \$163 million in valuation. It is the single largest taxpayer in the city (and the state), representing nearly 10% of the city's entire property tax commitment. The city will never recoup that money from the remaining property taxpayers if the state, for any reason, does not honor its commitment. Imagine the services the city would have to cut with a 10% reduction in property tax revenue.

Statewide, CMP and Versant account for over 3% of all property tax revenue and this portion is only expected to increase. Maine is on the threshold of an energy revolution

and investment in energy assets is going to grow exponentially as the state modernizes its grid and transitions to clean energy.

Municipalities are willing to consider losing the largest taxpayer in town only if the state can match those tax commitments in perpetuity. Legislation absent of this forever guarantee is too risky for municipal officials to gamble on. Swapping PILOTs for property taxes strips municipalities of their tax authority over these utility properties and lowers them to beggars.

MMA presented neither for nor against testimony based on the information presented above. In summary, the Pine Tree Power Company could be outrageously successful and the Association's members will not stand in the way of that progress. However, municipal officials believe they must stand up for the concerns of all property taxpayers and consumers. The benefits of the Pine Tree Power Company are undeniable and its failure would be insurmountable.

This Pine Tree Power Company will remain in the public eye for a while. As of 6:00 p.m. on Thursday the committee was reconvening for a few more hours of testimony. Hopefully no one turns the power off on them.

As this legislation progresses MMA will provide ongoing updates.

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## Addressing Symptoms; Ignoring problems

### Criminal Justice and Public Safety Round up

It is routine for the same legislation to be reintroduced year after year with core issues raised during previous attempts either unaddressed or ignored. Under pandemic conditions, the same rules apply to the sitting Legislature. However, a variety of new approaches have been introduced to the Criminal Justice and Public Safety Committee this year aimed at addressing core social inequities that have long languished unaddressed by targeting symptoms and not the root problem.

Some bills seemed to lack any stakeholder engagement beforehand or used inaccurate information during their development. These bills could be used as vehicles to enact sustainable change if they were honed to address root causes rather than target the agents of last resort or mandate expenditures at the expense of positive outcomes.

Rep. Lori Gramlich of Old Orchard Beach introduced LD 1447, *An Act To Require Training in Racial Issues, Racial Justice and Social Issues at the Maine Criminal Justice Academy and To Establish Additional Requirements for Law Enforcement Officers and Candidates*, which was heard by the committee during a public hearing on May 7. As drafted, the bill mandates additional training on racial issues and racial justice, responding to incidents involving persons with substance use disorder to reduce their involvement in the criminal justice system, and law enforcement responses to challenging social situations, homelessness, and additional training to address emerging social issues.

In addition to essentially codifying what is already in practice, the bill would require every law enforcement officer in Maine to have an associate degree in a finite set of disciplines, many of which do not exist, such as “implicit bias,” before they could be hired and sent to the Maine Criminal Justice Academy (MCJA) for the 80 hour pre-service training program, or the 18-26 weeks of training in addition to department on the job supervision. The requirements would even apply to full-time retired police officers returning to

service with another agency or relocating to Maine or those seeking to recertify.

MCJA testified in opposition to the bill because of the additional education requirements for pre-application. The MCJA board already mandates instruction on topics addressed in the bill, including training related to bias, community policing, mental health, addiction recognition, and homelessness and carries out a robust program that weeds many applications out of the process. Seven other individuals submitted written testimony in opposition to the bill.

Maine Sheriffs’ Association, Maine County Commissioners Association and MMA all testified neither for nor against the bill emphasizing that the restrictions fail to recognize police need to mirror the constituents of their communities, and all education has value in subjects that improve communication and expand critical inquiry. Ruling out a new Mainer simply because they chose to pursue an English undergraduate degree before deciding to move into public safety is short sighted at best.

Most municipal police departments already prefer degreed applicants, provide additional salary supplements to those who do, and offer tuition reimbursement to allow individuals to pursue a degree once hired. Municipal police come from a variety of backgrounds and skills sets all of which are an asset to their community. The volunteer model of the police academy has served Maine well and needs further investment which no one opposes.

The sponsor agreed to work with a specific list of stakeholders during the first work session held May 11, and the bill was tabled and will likely be carried over during the next work session, which is scheduled today, May 21.

Another bill that reinvents the existing wheel is LD 1504, *An Act To Enhance Use of Critical Incident Stress Management Teams for Firefighters*, also sponsored by Rep. Lori Gramlich. The bill would require the Commissioner of Public Safety to support the establishment of critical incident

stress management team services for every firefighter in every department, and include training and awareness for team supports. Additionally, the bill mandates every fire department employ one firefighter with critical incident stress management training and provide access to ongoing behavioral care related to any post-traumatic stress for incidents that occur in the course of their duty.

All public safety staff, including fire department staff, are directed under existing law to have access to such services (PL 2019, c.89) which established critical incident stress management peer support teams that have a relationship with a licensed health clinician who must meet with the team annually and directs the Commissioner of Public Safety to develop rules and procedures to assist with supporting these teams. Existing law allows individuals to establish their own provider relationship for additional care and share their experiences with peers who understand the impacts of such incidents, with whom they are far more likely to open up and this experience better results from treatment.

A representative of the Fire Marshal’s Office testified in opposition to the requirement that his department establish teams and provide education for at least one firefighter in every department highlighting the existing process.

MMA testified neither for nor against, as LD 1504 would further complicate existing law and force struggling departments to find additional members with the specialty training necessary to provide ongoing behavioral health services. The peer support teams are already in law with knowledgeable providers and a department level mandated provider relationship would remove the ability for the individual to establish a relationship with their own provider, which remains crucial to positive outcomes.

The sponsor has asked that the bill to be carried over and advised she would work with relevant stakeholders to better understand the needs.

LD 1478, *An Act To Decriminalize*  
(continued on next page)

*Homelessness*, sponsored by Rep. Victoria Morales of South Portland, is another bill that makes sweeping assumptions about police response and on the ground reality. As drafted, the bill excludes individuals who advise they are homeless from being charged or prosecuted for criminal trespass, disorderly conduct including making loud or unreasonable noises, activating devices, or exposing a substance that releases a noxious or offensive odor, engaging in fighting, possession of a scheduled drug, public drinking, or public urination.

Additionally, the bill directs the Attorney General to adopt a homeless crisis protocol that must be adopted by all law enforcement agencies and provide mental health, substance use disorder professionals to respond to encounters with police and provide referrals to resources including case management, transitional housing, and crisis services.

Multiple social agencies and homeless individuals testified in support of the bill offering stories of police harassment and removal from public and more often, private spaces, which exacerbated their situations.

Residents living near shelters and those providing support services for individuals, the Department of Public Safety and MMA testified against the provision that would remove enforcement tools used to address public safety concerns often applied to assist in getting individuals into an under resourced system and balancing the safety for staff and residents.

Noting the bill's title is misleading since homelessness is not criminal, MMA offered LD 1300, *An Act to Require County Governments to Coordinate with Municipalities to Create Plans to Address Homelessness*, sponsored by Rep. Laura Supica of Bangor, as a better way forward. As proposed, the bill seeks to address issues related to homelessness by creating the law enforcement crisis response support teams necessary to support police on a regional basis, rather than removing enforcement tools. Without such tools, expanding resources such as new homeless shelters and associated services will be impossible.

Any planning board session regarding the siting of new shelters or shelter-like accommodations and supports is met with

resident outcry in fear of the very behavior the bill seeks to absolve. Right, wrong, or indifferent, municipal officials and police are faced with balancing the rights of all residents regardless of their housing status.

A work session on this bill will be held while this edition of the bulletin goes to print.

LD 1179, *An Act to Restrict Maine Law Enforcement Participation in Federal Fire-arm Confiscation or Buy-Back Programs without Legislative Approval*, sponsored by Rep. Patrick Corey of Windham, received a divided report from the committee on May 11. The majority report supports inserting legislative and executive branch approval before any law enforcement agency could participate in any federal program that provided funding to agencies for turning in weapons to the program.

Unsurprisingly, the normal gun lobby players such as the National Rifle Association and the Sportsman's Alliance of Maine showed up in force, supporting the bill, fearing that a federal program would incentivize law enforcement to seize weapons from law abiding individuals.

It is important to note that no such program currently exists and was merely a platform idea floated during the 2020 Presidential campaign.

MMA testified in opposition to legislative preemption of municipal authority to

participate in any federal programs that may provide tangible benefits to property taxpayers and already involves community deliberation prior to engagement.

Many weapons are turned in to local police because of personal tragedies and owner desire to ensure the weapons are never used again. The department shoulders the expenses for managing the destruction of these items because they have been entrusted with that final protection activity. It's up to that community who pays for those services, not the legislature, to decide what programs they want their police to participate in to recoup expenditures whenever possible.

Hearings on other bills that have a public safety and fiscal impact on communities have yet to be scheduled or were moved out of one committee to another without a new hearing date. LD 1604, *An Act to Reclassify Certain Offices under the Inland Fisheries and Wildlife Laws and Motor Vehicle Laws and Increase the Efficiency of the Criminal Justice System*, and LD 1654, *An Act To Stabilize State Funding for County Corrections* sponsored by Rep. Charlotte Warren of Hallowell as well as, LD 1479, *An Act To Make Certain Traffic Infractions Secondary Offenses*, sponsored by Rep. Victoria Morales will be ones municipal officials will want to watch closely.

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### **GA Bait & Switch (cont'd)**

by Bangor to a two-person household with a monthly rent of \$880 would increase to \$1,400 to cover the costs associated with rent, food, utilities, and personal care items. The \$420 to be funded locally, would result in a nearly 60% increase in the burden placed on property taxpayers.

Of equal concern to municipal leaders is the presumption of eligibility proposed in LD 1695, which provides that an individual facing or experiencing homelessness in a community is eligible for assistance – no question asked – if that the community neither has a homeless shelter nor the capacity to provide shelter to the individual. This provision is also retained in the amended version of the bill.

Not only does this change have the potential for increasing costs, it creates a system authorizing the inequitable treatment of applicants by holding some residents accountable to a set of rules, while others are not. Because state and municipal tax revenues are used to fund the GA program, it is of utmost importance that these resources are appropriately invested.

The merits of the amended bill will soon be debated by the Legislature. In the meantime, municipal officials are encouraged to contact their members of the House and Senate to ask them to oppose this shift in property taxpayer burden.



## Maine Municipal Association

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### HOPPER (cont'd)

#### Environment & Natural Resources

LD 676 – An Act To Reclassify Part of the Androscoggin River to Class B. (Sponsored by Sen. Claxton of Androscoggin Cty.)

This bill reclassifies from Class C to Class B the lower section of the Androscoggin River from Gulf Island Dam to a line formed by the extension of the Bath-Brunswick boundary across Merymeeting Bay in a northwesterly direction.

LD 1616 – An Act To Ensure That Municipalities and Multimunicipal Regions of Every Size and Capacity Have Guidance on Climate Adaptation and Resilience Strategies for Policy, Implementation and Investment Decision Support. (Sponsored by Rep. Blume of York)

This concept draft bill proposes to implement the recommendations of the Community Resilience Planning, Public Health, and Emergency Management Working Group of the Maine Climate Council, which provides municipalities and multi-municipal regions with guidance on climate adaptation and resilience strategies for policy, implementation and investment decision support. The bill seeks to: (1) require municipalities to incorporate climate vulnerability and resilience plans into their comprehensive plans or make separate climate vulnerability and resilience plans, to be updated at least every five years; (2) require the Governor's Office of Policy Innovation and the Future to develop a guidance document to assist municipalities in their review to ensure that each element of a comprehensive plan or climate vulnerability and resilience plan considers climate adaptation and resilience planning when appropriate; (3) amend the laws governing planning and land use regulation to include the goal of planning for climate change adaptation and resilience; and (4) strengthen the ability of regional planning organizations to provide tools to municipalities and multi-municipal regions to develop climate adaptation and resilience strategies.

#### Judiciary

LD 1459 – An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions. (Sponsored by Rep. Talbot Ross of Portland)

This bill proposes to restrict public access to criminal conviction records for individuals who have served sentences and have not committed a new criminal violations for a specific set of Class C and D offenses excluding convictions for: (1) a current or former Class D crime under Title 17-A, chapter 11 or 24 or Title 17-A, section 852, 853 or 855; (2) stalking under Title 17-A, section 210-A or 210-C; (3) a crime of domestic violence or any crime involving domestic violence, as defined in section 28 1003, subsection 3-A; (4) violations of conditional release less than 20 years old if the offense involved assault against a family member or convictions under Title 19-A, section 4002, 31 subsection 4 that are less than 20 years old regardless if the assault was an element of the crime. Access to these records would be remain available to criminal justice agencies for the purpose of employment.

#### Transportation

LD 1479 – An Act to Make Certain Traffic Infractions Secondary Offenses. (Sponsored by Rep. Morales of South Portland)

This concept draft bill proposes to make certain traffic infractions secondary offenses, including littering from a vehicle, failing to register a vehicle or properly display a vehicle registration, failing to display a valid and current vehicle inspection sticker, failing to wear a seat belt, making unnecessary noise, operating of a defective vehicle, operating a motorcycle without a headlight, operating a vehicle with an obstructed view, operating a vehicle in a 2-way or left lane, or operating a vehicle with a suspended license as a result of failure to pay a fine, license reinstatement fee or a dishonored check.