Legislative BULLETIN
MAINE MUNICIPAL ASSOCIATION
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Rapid PACE

Maine's "Property Assessed Clean Energy" Program

The Utilities and Energy Committee is working very quickly on a novel bill that would potentially unlock $75 million of dollars in weatherization grant funding from the federal government. The bill is LD 1717, *An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses*, sponsored by Representative Patsy Crockett (Augusta). One key to the bill's success is municipal government.

Last year, the federal Department of Energy (DOE) announced that it would be making grant funding available pursuant to the Weatherization Assistance Program within the Energy Efficiency Community Block Grant Program. The DOE is strongly encouraging states applying for these funds to utilize a new revolving-loan type mechanism known as a PACE (Property Assessed Clean Energy) program.

The federal government has long provided revolving loan funds to states for water and sewer upgrades. The PACE program takes this concept down to the individual residential property level. Under these PACE programs, which have only recently been enacted in a dozen municipalities nationwide, the municipality loans funds to the owner of a residential home who uses the funds to make a weatherization improvement. The loan is repaid to the municipality via the property tax assessment process.

Proponents of PACE believe that one of the biggest barriers to investing in weatherization improvements is that many homeowners may not own the home long-enough to recoup the investment, which can take anywhere from 10 to 20 years. Why invest in a technology with a 20-year repayment if you will be moving in 5 years?

The idea behind the PACE program is that the weatherization loan, which is secured by a municipal lien, will stay with the property upon transfer. That is, the lien will not come due if the property is sold. Instead, the remaining loan balance will be transferred with the property to the new owner. Therefore, the original borrower only has to repay the loan for the period he or she is in the home; the investment won't be lost.

The property tax process is being

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New Rules for Firefighters - Update

On Monday this week, the Labor Committee voted to support an amended version of LD 1558, *An Act Regarding Accidental Death Benefits for Beneficiaries of Deceased Firefighters,* sponsored by Senator Troy Jackson (Aroostook Cty.).

As described in last week's *Legislative Bulletin*, this bill deals with accidental death benefits provided by the Maine Public Employees Retirement System (MainePERS) for municipal firefighters who belong to the system via the Participating Local District program.

The current law governing eligibility for this accidental death benefit, which can be more than double the "ordinary" death benefit, provides a single 64-word, sentence that applies to all municipal workers.

As used in this article, unless the context otherwise indicates, "qualifying member" means a member ***who dies as a result of an injury arising out of and in the course of employment*** *as an employee or a former member receiving a disability retirement benefit who dies as a result of an injury arising out of and in the course of employment as an employee.*

LD 1558 leaves this law in place for all other municipal workers and creates a special rule for firefighters who die of a heart attack.

As the current law is administered by MainePERS, an employee is only eligible for the accidental death benefit if they die on the scene. Thus, a firefighter who suffers a heart attack while at home, 48-hours after fighting a fire, is ineligible for the higher accidental death benefit. The Committee broadly felt that this bright-line test was unfair.

The workers compensation system has recognized for 20-years that a work-related heart attack can occur up to 6 months after a firefighting event. (*Current Labor Committee members asked for medical justification for this 6-month rule rather than a shorter time period, such as 3-months. The firefighters' union representatives promised to provide this information*.)

The main point, however, is that this 20-year old workers compensation law provides a rebuttable presumption that a heart attack occurring up to 6 months later is work-related. It is not a "no questions asked" benefit. A rebuttable presumption

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PACE (cont'd)

promoted because of its very high level of security. Property tax liens are superior liens and if a municipality pursues a tax foreclosure, all junior liens – including mortgages – can be extinguished; that is, either the back taxes are paid by a junior lien holder or the title transfers to the municipality.

A major reason for connecting with Maine's towns and cities in the development of the PACE program is because 60% of the funding must be distributed to municipalities pursuant to federal guidelines. Municipalities must be involved in the process.

A PACE program thrusts a municipality into the unusual role of financier. As banks are failing and bankers are competing in popularity contests with the likes of lobbyists and used car salesmen, it might be considered an odd time for a municipal government to contemplate issuing residential loans.

The original bill was about a page and a half long. A working group interested in the bill has been working on a redraft. The working group includes state officials from Efficiency Maine, the State Planning Office, the Bureau of Credit, the Maine State Housing Authority, non-governmental organizations like the Natural Resources Council of Maine, bank and credit union representatives and several private-sector interests that sell weatherization products and services. A redrafted bill dated February 10th is approximately 10 pages.

There are many big issues that must be confronted in establishing a PACE program.

Voluntary municipal participation. The bill is a local option; no municipality will be mandated to participate, at least as of yet. However, homeowners will not be able to participate unless their municipality agrees to establish a PACE program, including an Efficiency Maine-administered program. In some areas there may be local pressure to participate.

This program could advance two very big public policy goals – putting people to work and reducing energy consumption. Municipalities will likely be eager to participate in a well-designed and thoughtful program.

However, the pressure being applied to get this done quickly could compromise administrative integrity. This could lead to either municipalities choosing not to participate, or costly mistakes.

Municipal Borrowing to fund PACE programs. The time-pressure the Legislature faces stems from the fact that the grant application has already been submitted and the U.S. Department of Energy is allegedly awaiting this legislation to see if Maine qualifies for the grant.

The bill also includes issues not central to the grant programs, including the ability of municipalities to borrow money that can then be used to make weatherization loans.

MMA staff believes it would be more prudent to delete that section of the bill and create a resolve that would call for the drafting of legislation over the summer to allow both municipal borrowing and private sector lending to take place. There does not seem to be any real need to rush these kinds of programs through in this session.

A municipal program somewhat out of PACE. The current draft does not utilize a property-tax type lien (e.g. superior lien) as envisioned in the DOE guidelines and as is done in many PACE programs that are being developed around the country. Instead, the lien status in the current draft is a junior lien and "*shall not be entitled to any special or senior priority*." The most significant consequence of reducing this lien to junior status is to make it more difficult for a municipality from being able to foreclose on the property for failing to make the energy loan payements. If a municipality were to foreclose from such junior position, it would take title subject to any superior liens – including mortgages. In other words, it would be voluntarily assuming a $200,000 mortgage in order to recover a $10,000 weatherization loan.

Consequently, many of the benefits of utilizing the well-established, well-known, and highly effective municipal tax lien process are reduced in the current draft.

That is not to say that municipalities are unable or would be unwilling to participate in the program and provide the state the assistance it needs in recovering their federally-funded weatherization loans. What will probably be required, though, is a foreclosure process with notices, timelines and remedies commensurate with the junior status contemplated by the current draft.

Furthermore, because of the junior lien level of security provided in the current draft, the success rate of municipal tax collectors in recovering the loans will be lower than their success rate in collecting property taxes. Accordingly, the current bill provides that municipal collectors don't actually have to succeed in recovering the state's loan. Municipalities only need to exercise reasonable efforts to recover the loan. MMA believes this protection should be spelled-out in even greater detail, because it's not clear how much effort should be expended trying to recover when the debtor really doesn't have to make the payments.

Other issues of a broader concern include the following.

Creditworthiness. One of the significant contributors to the housing crisis that led to the current economic downturn was the reckless lending by banks and the corresponding foolhardy borrowing by homeowners. The standards of creditworthiness had become too relaxed.

The combination of millions in federal grant money, dozens of local businesses which could profit by accessing that funding, and state government leaders who want to meet various commitments to reduce greenhouse gas emissions is a cocktail that could potentially result in the reckless distribution of money to individuals who should not take on more debt.

Accordingly, any loan program must institute responsible lending standards. The DOE has issued general guidance outlining at least eight risk-reducing policies. The working group draft includes

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Legislative Bulletin

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PACE (cont'd)

a section on consumer underwriting and disclosure standards.

For example, a weatherization loan may not be made if the debt service to income ratio of the borrower is more than 50% of gross income. The general rule-of-thumb lenders use is that housing costs (mortgage, property taxes and homeowners insurance) should not cost more than between 25-33% of a family's gross income.

It is not clear if the DOE has a guideline for this issue. The federal agency does suggest that the improvement should not exceed 10% of the appraised value of the house.

Another underwriting protection is a prohibition on issuing loans to any property that is delinquent on its property taxes or other outstanding debts.

The program is expressly exempted from the state's truth-in-lending laws. However, Efficiency Maine is obligated to work with the Bureau of Consumer Lending to develop "appropriate" disclosure requirements that are consistent with the principles of Maine's truth-in-lending standards.

Unclear right now is the scope and applicability of any federal laws to this activity. That is, municipalities are generally not involved in the kind of activity contemplated by the PACE legislation and consumer-related federal laws (e.g., the "Red Flag rules" of the Federal Trade Commission) may become applicable to municipalities for the first time. A review of these federal laws is warranted.

Survivability of PACE liens. Most PACE legislation in other states, and the federal DOE guidelines issued in connection with the grant program, envision that these liens will survive transactions in ways that other liens don't. That is, generally if a property is sold, all liens need to be satisfied to transfer title. PACE programs are intended to allow the outstanding amounts due on the weatherization loan to not come due; in other words, the loan obligation is supposed to automatically transfer to the new owner. As mentioned above, the policy goal is to convince the current homeowner that he or she will only be responsible for the costs of the improvement while he or she lives there.

The status of "survivability" is still in dispute in LD 1717. The banking interests would prefer that the weatherization loan be presumed to be due in full upon a transfer. The loan may continue on to the new owner, but only with the express approval of the new owner and with the agreement of Efficiency Maine to subordinate its lien to the new buyer's mortgage. Therefore, the weatherization loan can be passed-on to the new owner, but not with the ease and seamlessness with which PACE programs are designed to operate.

Administration. Understanding that this program may prove administratively burdensome for many municipalities, the bill is being drafted in such a fashion that municipalities who volunteer to participate in the program can ask that Efficiency Maine administer the underwriting and loan issuance aspects of the program for them. Because of the federal requirement that 60% of the funds be allocated to municipalities, it is apparently the case that Efficiency Maine cannot simply take-over the program and be the lender. Municipalities must "touch" the money before it is loaned. A municipality that chooses to have Efficiency Maine administer the program will have to enter into a contract with Efficiency Maine. The municipality will technically remain the lender and Efficiency Maine will be the municipality's agent. However, the draft bill provides broad indemnity for municipalities who choose to participate in the program and assign administrative duties to Efficiency Maine.

Ordinance Adoption. The current draft appropriately places the authority to participate in such a program with the legislative body of each municipality. While the statute purports to allow a municipality to participate by the adoption of a resolution, the nature of this program would appear to require an actual municipal ordinance.

Weatherization vs. Renewable Energy. The DOE grant program is focused on weatherization, including efforts such as insulation, window or door replacement, and caulking. Some would like the Maine program to be expanded to include renewable energy sources like residential windmills or wood pellet stoves.

They would also like to see the program designed so that municipalities could bond for revenue to capitalize the PACE fund and not just rely on state or federal grants. However, the junior lien status in the draft bill applies to all loans, not just those funded with federal grant money. This will reduce the chances that municipalities would go out to the bond market and borrow money for loans that would be so secured.

While both alternative financing and the inclusion of renewable energy sources are legitimate issues, they are unconnected to the current grant application which is the source of the pressure to act quickly. Accordingly, it might be appropriate for the Committee to consider deleting these extraneous issues from the bill and revisit them next session.

Payback. The federal guidelines for PACE programs have established a savings-to-investment ratio of "greater than one."

For example, a $10,000 loan paid back over twenty years (240 months) with no interest or fees would equal $42 in monthly finance charges. The federal "greater than one" guidelines would require monthly utility savings of at least that amount from a weatherization investment. The federal guidelines allow for a present-value analysis, which would presumably permit a regulator to "assume" an amount of monthly utility savings related to a particular investment. It is unclear what will happen if an angry homeowner refuses to pay a loan back if assumed utility savings don't materialize.

The most recent draft of LD 1717 requires the weatherization improvement to be "cost effective." It appears that the term "cost effective" embodies the "greater than one" principle within it.

Maine's Application. Maine submitted an application for $75 million in grant funds. Of that, $57 million would be used for the PACE program, another $6 million for a multi-municipal project in the Biddeford-Saco area, and the balance for administration and monitoring. Maine's application, submitted last December, indicated that Maine will adopt PACE legislation this session consistent with the general DOE guidelines. The grant application is pending.

The challenge for the Utilities and Energy Committee is to get this done both quickly and responsibly. It is possible, but more work needs to be done.

Bill Would Relax Tree Growth Deadlines

On Tuesday this week the Taxation Committee held a public hearing on LD 1635, *An Act to Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program*. MMA opposes the legislation. Here's its history.

Original forest plan requirements. In 1989 the Tree Growth tax program was amended to require landowners to obtain a forest management plan, prepared by a licensed professional forester, to govern the management of their Tree Growth property. That law further required the landowners provide to the municipality a certification from a forester every 10 years thereafter that the plan is being complied with and has been reviewed and updated. Failure to provide that updating certification every 10 years causes the property to be withdrawn from the Tree Growth program and the withdrawal penalties applied.

Fast forward to 2007. 18 years later, the Small Woodlot Owners Association of Maine (SWOAM) caused a bill to be submitted requiring municipalities to provide 60-day written notice prior to withdrawing the property from the Tree Growth program for failing to provide the 10-year update.

Even though that legislation was a defined state mandate and increased the administrative responsibilities of towns and cities across the state, MMA's Legislative Policy Committee supported that legislation and it was enacted. From the municipal point of view, the legislation formalized a "wake-up call" notification that was widely used informally and successfully addressed the problem of the forgetful landowner.

MMA's support for the notification mandate enacted in 2007 gives credence to the observation that no good deed goes unpunished.

LD 1635. Apparently, the notice requirements enacted in 2007 haven't satisfied the interests of a phalanx of lobbyists who regularly advocate for the interests of the Tree Growth landowners. Lobbyists for SWOAM (small lot owners) and the Forest Products Council (large lot and industrial Tree Growth landowners), a lobbyist for "Grow Smart Maine", a legislator who is also a forester, the Tree Growth point person at the Department of Conservation, an aggrieved landowner and two lawyers for landowners all came out on Tuesday to testify in favor of LD 1635.

LD 1635 would repeal the 60-day notice requirement and replace it with an alternative 365-day "wake-up call" system. In essence, LD 1635 would stretch the 10-year deadline for plan recertification to an 11-year deadline. During that eleventh year, the assessed value of the property would jump from its "current use" Tree Growth value to its "just value". If the property owner manages to get the updated certification to the municipal assessors before the end of the 11-year deadline, the property's assessed value would flip back to its Tree Growth value in the subsequent year. If the property owner still fails to recertify the forest management plan, even after being given a one-year extension, the property would then be withdrawn from the program and the Tree Growth penalties would be applied.

Apparently the driving force behind LD 1635 is the way Maine Revenue Services has been interpreting the admittedly awkward wording of the 60-day notice provision that was enacted in 2007. Two landowners, both owning Tree Growth properties in the Unorganized Territories, received notices of the impending 10-year deadline from Maine Revenue Services but for a variety of reasons missed the ultimate deadline to certify their updated plans by a relatively short period of time. Because it handles the administration of thousands of Tree Growth enrollments, Maine Revenue Services interprets the deadline very strictly and withdrew these two parcels, triggering a penalty of $64,000 in one case and $54,000 in another. The landowners engaged lawyers, are in the process of appealing to the Board of Property Tax Review, and are advocating for LD 1635 to not only be enacted, but to be enacted retroactively so as to reverse their financial penalties.

One of those properties is located in Trescott Township, between Cutler and Lubec in Washington County. The other is located on Long Pond within the Chain of Ponds area of the unorganized territory in Franklin County. This second parcel was described as a camp lot that came with 25 acres on Long Pond that is accessible only by water. The forest management plan for the parcel was described as requiring the owner to do nothing more than clean up deadwood and slash. The property in Trescott Township was described as several hundred acres in size, with 1,200 feet of ocean frontage, and apparently more actively managed as forest land than the camp lot in Franklin County.

MMA testified in opposition to LD 1635. It cannot be denied that the 60-day notice requirement enacted in 2007 was not written as clearly as it should have been. The essential problem with the wording of that legislation was that it appears to require the 60-day notice to be issued after the 10-year deadline has already passed, and it does not reconcile the conflict between the apparent 60-day "grace period" and the actual 10-year deadline. That being said, the solution to that poor wording is not to grant an additional one year to file the management plan, and then require municipalities to flip property from current-use taxation to just-value taxation and then back to current-use taxation, all for the purpose of making a louder and much-longer "wake-up call". Although municipal officials can support a more cleanly worded notice requirement, they believe the landowners and their foresters should assume more personal responsibility for meeting the 10-year updating requirements that have been part of the law for more than two decades. At the very least, they should respond promptly to the "wake-up" notices they are currently receiving.

At a work session on Thursday this week, MMA offered to the Committee a revised version of the bill that: (1) clarifies that the 10-year deadline falls on the appropriate April 1 date of assessment, rather than the random date when the plan was prepared; (2) retains the 60-day notice requirement (which may be expanded to 90-days); and (3) clarifies that if the landowner complies with the 60-day (or 90-day) notice requirement, the property is not withdrawn from the program even if compliance falls slightly past the April 1

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TREE GROWTH (cont'd)

date of assessment.

The Taxation Committee is forming a subcommittee to fully resolve LD 1635.

Additional Tree Growth issues. MMA has no idea what is happening to the effort to tighten-up the Tree Growth program from being used as a tax dodge by camp owners and residential waterfront owners who park their residual acreage in the Tree Growth program so their land can get assessed at a couple of hundred dollars per acre instead of its true value.

Municipal officials may remember that an approach to fix that problem was presented to the Taxation Committee several weeks ago, but it has received no attention.

Then, the bill just discussed, LD 1635, was going to be the "vehicle bill" to address the Tree Growth tax-dodge problem, but that idea appears to have been scrapped as well.

The state's misleadingly-named "90%" reimbursement to the municipalities affected by the Tree Growth tax break is in the process of being reduced by 25% in funding for the FY 2011 fiscal year. At the same time, there are significant public policy problems with small-lot waterfront Tree Growth enrollments pushing a property tax burden onto people who truly don't deserve it. These connected issues seem completely disconnected in the Legislature, and that should not be the case.

FF BENEFIT (cont'd)

shifts the legal burden of proof to the employer to prove that the heart attack was not work related. It is not a slam-dunk for employees, but it is a significant legal head start.

(*The Legislature dealt with the issue of firefighters and rebuttable presumptions in-depth last session in connection with LD 621 which was enacted and provides a rebuttable presumption for firefighters who have cancer.*)

LD 1558 as amended by the Committee is an improvement over the original bill.

As amended, the bill will provide as a presumption that a firefighter in the MainePERS system who suffers a heart attack within 6 months of participation in actually fighting a fire (or a training event involving fighting a fire) will be eligible for the higher accidental death benefit.

For the first 30-days, the presumption is not rebuttable. From day 31 until 6 months after the fire, the presumption is rebuttable.

To guarantee an "accidental" death benefit for a full 30 days after the work event is questionable. There are many possible contributing factors for a heart attack. One of them is the stress and physical demands of fighting a fire. Others include obesity, smoking and poor physical condition. If a firefighter dies on-site, a no-questions-asked policy is appropriate.

But if the heart attack occurs three weeks later, and the firefighter is in poor shape and/or smokes and/or was shoveling snow at the time, the Legislature owes the taxpayers the ability to allow the medical experts to express their opinion whether the death was work-related or not. It should not be automatic.

There is only one known death occurring since 2004 for which the benefits provided by this bill would matter. According to the firefighters' union representative, the death in that case occurred within 48-hours of leaving the scene of the fire.

Stretching the no-questions-asked policy to a reasonable period, such as 48-hours after an event, would not be unreasonable. Beyond that immediate period though, there are too many other possible contributing factors to just have the Legislature declare that all such heart attacks are work-related. Especially since this bill was heard and worked without the introduction of a single piece of medical evidence to the Labor Committee regarding the relative risks and causes of heart attacks among firefighters that occur after the 48-hour period.

Heart disease is an ailment with potentially several causes. One possible cause is work as a firefighter. However, that risk level lowers considerably as time passes after participating in an actual firefighting event. Reviewing the facts of a case to determine if work was the cause of a firefighter's after-the-fact heart attack, rather than other risk factors, can be difficult but necessary work.

Again, the majority report of the Labor Committee is an improvement over the original bill. However, in order for the bill to be good policy that is fair to both the firefighters and the taxpayers who pay their salary and benefits, a more reasonable no-questions-asked period should be created.

LEGISLATIVE HEARINGS

Monday, February 15 – Holiday

Tuesday, February 16 – State shut-down day

Wednesday, February 17

Utilities & Energy
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1756 – An Act To Amend the charter of the Gardiner Water District.

Thursday, February 18

Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125

LD 1747 – An Act To Allow the Town of Wells and the Town of Ogunquit To Amend the Terms of Their Cost-sharing Agreement for Their Community School District and To Provide Each Town the Ability To Withdraw from the Wells-Ogunquit Community School District.

Transportation
Room 126, State House, 1:00 p.m.
Tel: 287-4148

LD 1748 – An Act To Authorize a General Fund Bond Issue To Purchase and Upgrade Trackage of the Montreal, Maine and Atlantic Railway.

Utilities & Energy
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1696 – An Act To Strengthen the Community-based Renewable Energy Pilot Program.

(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.)

Education & Cultural Affairs

LD 1686 – An Act To Allow Minor Capital School Improvement Projects To Be Permitted Costs under Essential Programs and Services. (Emergency) (Sponsored by Rep. Rotundo of Lewiston; additional cosponsors.)

This emergency bill allows the cost of minor capital school improvement projects, such as the replacement of windows, a boiler or a roof, to be permitted costs under the Essential Programs and Services funding formula.

LD 1733 – An Act To Exempt from Penalties School Administrative Units That Would Lose Subsidy as a Result of Reorganization. (Emergency) (Sponsored by Rep. O'Brien of Lincolnville; additional cosponsors.)

This emergency bill would lift the financial penalty to be imposed in FY 2011 from any school system that is noncompliant with the 2007 school consolidation law because compliance with the law would have resulted in the school system losing subsidy, or the vote to consolidate into a compliant "Regional School Unit" failed because one of the units in the proposed RSU would have lost school subsidy because of the consolidation.

LD 1734 – An Act To Require the Department of Education To Calculate Subsidy on the Basis of Membership in a Regional School Unit or an Alternative Organizational Structure and as if the School Administrative Unit Had Not Reorganized as of 2009. (Emergency) (Sponsored by Rep. O'Brien of Lincolnville; additional cosponsors.)

For any school system that has become part of a Regional School Unit (RSU) or Alternative Organizational Structure (AOS), this bill requires the Department of Education to calculate the school system's subsidy in two ways, and provide the larger subsidy level. The two calculations would be: (1) as part of the RSU or AOS; and (2) as though the school system had not reorganized into the RSU or AOS.

LD 1750 – An Act To Require the State To Pay the Costs of School Administration Consolidation. (Sponsored by Rep. Connor of Kennebunk; additional cosponsors.)

This bill requires the state to pay the costs of consolidation by July 1, 2012 for any town or community that has complied with the laws governing the reorganization of school systems by June 2, 2009.

LD 1757 – An Act To Create Fair Education Funding for Regional School Units. (Sponsored by Rep. Webster of Freeport; additional cosponsors.)

This bill requires the state to provide to the school systems that voted to consolidate in 2009 the resources that would have been provided to them had the school systems that voted not to consolidate been subjected to financial penalties and the penalty revenue been distributed to the consolidating school systems.

Taxation

LD 1636 – An Act To Encourage Extended Stays in Maine Waters. (Sponsored by Rep. Cushing of Hampden; additional cosponsors.)

Under current law, watercraft that are not within the State for more than 75 days during the year are exempt from excise tax. This bill would extend that time period from 75 to 90 days.

Utilities & Energy

LD 1778 – An Act To Enable the Installation of Broadband Infrastructure. (Emergency) (Sponsored by Rep. Dill of Cape Elizabeth; additional cosponsors.)

This emergency bill establishes a new entity known as a "dark fiber provider", which is a business that installs fiber optic cable infrastructure without including any of the electronic equipment required in order to make the fiber capable of transmitting communications. The dark fiber provider would then offer its dark fiber on an open-access basis to all carriers and end users according to a posted schedule of rates, terms and conditions, and the dark fiber would "light up" when agreements between the carriers and the dark fiber providers are implemented. Among the bill's provisions, the bill would expressly authorize dark fiber providers to construct, maintain and operate its lines within the municipal right of ways.