

LEGISLATIVE BULLETIN



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Sunseting the PTSD Presumption

In 2017, the Legislature enacted an initiative making the diagnosis of post-traumatic stress disorder (PTSD) in public safety officials, including police, fire, EMS and dispatch, a rebuttable presumption of workplace injury under the Workers' Compensation laws. The implementation of the presumption shifts the burden of proof of injury from the employee to the employer. In other words, current law requires a public employer to prove that a PTSD injury sustained by a public safety official is not work related.

However, recognizing the impacts on municipalities the enacted law sunsets on Oct. 1, 2022, therefore no longer effective, and directs the Workers' Compensation Board to study the impacts of the PTSD

presumption, including an assessment of the costs incurred by public employers.

With the presumption set to expire in the coming months, LD 1879, *An Act To Support Law Enforcement Officers, Corrections Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Service Persons Diagnosed with Post-traumatic Stress Disorder* received a public hearing this week. The bill, sponsored by Rep. Michael Sylvester of Portland, repeals the

sunset provision thereby making the presumption of workplace injury permanent.

During the hearing proponents of the bill stressed the importance of retaining the presumption in recognition of the pressures that the provision of public safety services places on employees, the trauma associated with responding to situations when people are at their most vulnerable, and the stigma associated with asking for help.

(continued on page 2)

On-premises Sales & Delivery

Expanding access to adult use marijuana products.

At a work session scheduled for Feb. 9, the members of the Veterans and Legal Affairs Committee will determine the fate of legislation seeking to allow the delivery of adult use marijuana products to locations across the state, regardless of whether the residents have opted to allow sales to occur within community boundaries. At last week's public hearing on LD 1827, *An Act to Permit Limited Delivery of Adult Use Marijuana*, MMA raised objections with the bill as the first step in eroding the authority afforded to municipalities to regulate this industry.

Also on Wednesday, the committee will vote on LD 1927, *An Act To Authorize Certain Off-premises Sales of Adult Use Marijuana*, sponsored by Rep. Kathleen Dillingham of Oxford. As proposed, the bill allows the Office of Marijuana Policy to issue permits to marijuana store licensees to sell marijuana or related products at events, such as festivals, fairs, and farmers'

markets, similar to the authority in existing law allowing for sales of spirits, beer and wine manufactured in Maine at farmers' markets. The bill also requires the licensees to receive approval from the municipality where the event is held and prohibits the consumption of adult use marijuana or related products at the event, or sales that extend for a period of more than three days.

Although appreciative of the provision requiring local approval, in its written testimony MMA raised concern with whom the authority to approve or deny an application rests. Considering the legislative body – town meeting or council – has the discretion to opt-in to allowing the adult use industry to operate within municipal boundaries, that same body should retain the authority to make decisions regarding off-premises sales as well.

By the next week's end, we should know if the committee elects to expand access to adult use marijuana.

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Expanding Remote Meeting Authority

Earlier this week the Judiciary Committee held a public hearing on LD 1772, *An Act To Amend the Remote Meeting Law in Maine's Freedom of Access Act*, sponsored by Rep. Thom Harnett of Gardiner and co-sponsored by Rep. Steve Moriarty of Cumberland, both of whom serve on the committee.

As detailed in the Jan. 28 Legislative Bulletin, the bill affords local leaders greater flexibility in determining when it is in the best interest of municipal boards and councils to meet remotely. To that end, the bill repeals from existing statute the list of reasons authorizing the use of remote meetings, and instead leaves the determination of the reasons to municipalities.

During the hearing one member of the committee questioned whether the amendment to the law was in the best interest of a community's residents. More pointedly, will the tradition and expectation of providing direct in-person access to local decisionmakers erode over time?

In response proponents of the legislation focused on three points.

First, the provision in the underlying law requiring public

notice and a hearing prior to the adoption of the remote meeting policy is retained. Residents can offer feedback prior to the adoption of the policy.

Second, residents retain the final say via the ballot box. If a member of a board or council is acting in way that is contrary to the needs and desires of the residents, that member can be replaced at a subsequent election.

Third, the ability to meet remotely is an authority provided by the state and therefore can be amended or more concerningly, repealed.

In acknowledging that the provision does expand underlying municipal authority, Rep. Harnett asked the committee to have faith that local leaders will use the tool appropriately.

The Association agrees with the sponsor's sentiment as residents trust that roads will be plowed and sanded, dogs and vehicles registered, building permits issued, and calls for assistance answered. The evidence shows that municipal officials will use this authority judiciously.

A work session on LD 1772 has yet to be scheduled.

Sunsetting the PTSD Presumption (cont'd)

Opponents agree.

Where disagreement exists it is with respect to the conclusion in the board's report stating that *...while the number of PTSD claims being filed has increased, the total benefit costs have stayed relatively constant in comparison to the costs in the pre-presumption period.*

The information in the board's report might lead readers to believe that claims open and close in single year, allowing for a straightforward comparison between pre- and post-presumption costs. However, rarely are more complex claims resolved in a single year, thereby accruing expenses over time.

For example, the information in the board's report shows that as of 2021 the average cost of a 2015 claim (pre-presumption) was \$84,479, as compared to the average of \$6,244 for a 2020 claim (post-presumption). The difference between the two is that the 2015 figure has accrued expenses over seven years as compared to two years. An "apples to

apples" assessment would compare the 2015 data to projected 2027 average costs, which municipal officials believe will be much higher.

In addition, the presumption adopted in 2017 did not change the nature of public safety work, address shortcomings in the mental health system, create early intervention programs, raise awareness, or impact cultural changes. Simply making it a more costly program will not resolve the challenges facing those suffering from PTSD.

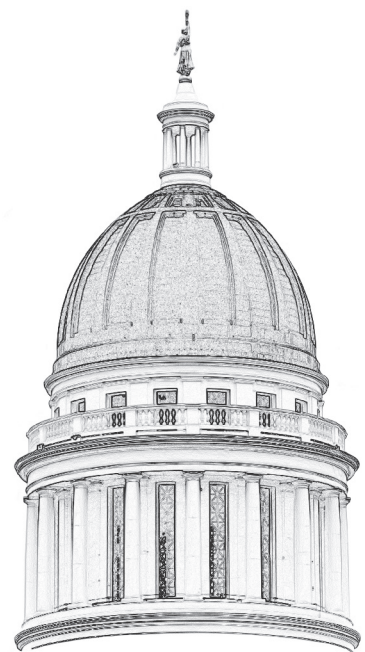
During the public hearing members of the Labor and Housing Committee questioned whether to extend the sunset provision to provide the time necessary to gather additional data for more appropriate comparison.

MMA supports the opportunity for further study.

However, whether the committee votes to repeal or extend the sunset provision, municipal officials are calling on the legislature to put the programs in place to ensure that public safety officials have access to

needed treatment and to share in the costs currently shouldered solely by the property taxpayers by funding the mandate.

A work session on LD 1879 will take place at 10 a.m. on Monday, Feb. 7.



HEARING SCHEDULE

For the week of February 7, 2022

MONDAY, FEBRUARY 7

Criminal Justice & Public Safety
Room 436, State House, 10:00 a.m.
Tel: 287-1122

LD 1886 – An Act To Repeal the Law Regarding the County Jail Reimbursement Fee.

Environment & Natural Resources
Room 216, Cross Building, 9:00 a.m.
Tel: 287-4149

LD 1940 – An Act To Ensure That Building Codes Allow the Installation and Use of Products and Equipment That Use Certain Federally Regulated Refrigerants.

State & Local Government
Room 214, Cross Building, 9:00 a.m.
Tel: 287-1330

LD 1795 – An Act To Update Statutory References to Building Code Standards for Public Improvements.

LD 1936 – An Act To Codify the Senate and House Legislative Districts, the Congressional Districts and the County Commissioner Districts as Enacted by the Legislature.

LD 1513 (*amended version as proposed, see Hopper on pg. 6 for amended description*) – An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences.

Veterans & Legal Affairs
Room 437, State House, 10:00 a.m.
Tel: 287-1310

LD 1784 – An Act To Ensure Legislative Review of Rules for Maine’s Medical Use of Marijuana Act.

LD 1928 – An Act To Update and Clarify the Maine Medical Use of Marijuana Act and Provide for Greater Transparency.

LD 1948 – An Act To Enhance Access to, Education Regarding and Patient and Community Safety in Maine’s Marijuana Programs.

TUESDAY, FEBRUARY 8

Education & Cultural Affairs
Room 208, Cross Building, 9:30 a.m.
Tel: 287-3125

LD 176 – An Act To Facilitate a Grade 9 to 16 School Project.

Taxation
Room 127, State House, 10:00 a.m.
Tel: 287-1552

LD 484 – An Act To Change Maine’s Tax Laws.

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

LD 1833 – Resolve, To Exempt Specialty or Recognition Registration Plates Already in the Process of Being Created from the Moratorium on the Approval of New Motor Vehicle Registration Plates.

WEDNESDAY, FEBRUARY 9

Criminal Justice & Public Safety
Room 436, State House, 10:00 a.m.
Tel: 287-1122

LD 1862 – An Act To Strengthen Maine’s Good Samaritan Laws Concerning Drug-related Medical Assistance.

Education & Cultural Affairs
Room 208, Cross Building, 9:30 a.m.
Tel: 287-3125

LD 1777 – An Act To Amend the Laws Regarding Education Service Centers.

LD 1789 – An Act To Modernize Funding of Publicly Funded Tuition Students Attending Career and Technical Education Programs.

Health & Human Services
Room 209, Cross Building, 10:00 a.m.
Tel: 287-1317

LD 1693 – An Act To Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust.

Inland Fisheries & Wildlife
Room 206, Cross Building, 9:00 a.m.
Tel: 287-1338

LD 1813 – An Act to Amend the Definition of “Oversized ATV” To Increase the Minimum Weight Requirement.

FRIDAY, FEBRUARY 11

Criminal Justice & Public Safety
Room 436, State House, 11:00 a.m.
Tel: 287-1122

LD 1604 – An Act to Reclassify Certain Offenses under the Inland Fisheries and Wildlife Laws and Motor Vehicle Laws and Increase the Efficiency of the Criminal Justice System.

Note: 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/>.

Due to COVID-19 related restrictions (and until further notice), all public hearings and work sessions will be conducted remotely. Municipal officials interested in providing live remote testimony will need to email ljo@legislature.maine.gov or call (207) 287-1692 no later than 5 p.m. the day before the hearing for information on how to participate. Comments on bills can be submitted in advance of a public hearing using the Legislature’s testimony submission form (Online Testimony Submission (mainelegislature.org)) and interested parties can view committee proceedings, both live and recorded, on the Legislature’s YouTube channel (News | Maine State Legislature.)

Forever Chemicals Hopefully Not A Forever Problem

The full extent of PFAS contamination, or per- and poly-fluoroalkyl substances, is still emerging, however it is obvious that the situation is dire. These so-called forever chemicals have been discovered throughout the state's water table, in dairy, eggs, and organic foods produced in the state, and even local venison harvests. As solutions to remediate the chemicals are developed, policymakers at every level of government are working to prevent future contamination.

To their credit, legislators sense the magnitude of the problem and are doing their part to seek resolutions. At least twelve different bills pertaining to PFAS have been presented before the 130th Maine Legislature. Complicating their work is the fact that little can be done to eliminate PFAS from our state, the chemicals are here and need to be managed. Thus, when one PFAS-related activity or product is addressed by legislative action, the ripple effects must be addressed often with more legislation.

MMA and its members are also aware of the increasingly frequent discoveries of PFAS contamination and what that means for local government. Broadly speaking, municipal officials support phasing-out products and activities that exacerbate the PFAS predicament, increasing wastewater, groundwater, and drinking water testing, and remediating sites once identified as contaminated. The problem however is that municipalities cannot do this alone and communities cannot shoulder the solutions through property tax assessment.

Commissioner Melanie Loyzim of Maine's Department of Environmental Protection recently said the state must commit \$20 million annually to tackle the problem of forever chemicals. This only addresses the issues of testing, remediation, and landowner compensation. More resources will be needed to reinvent how municipal facilities handle, process, and dispose of PFAS containing products and byproducts.

The two most recent PFAS-related bills highlight just how complicated the issue is

and how much industry disruption is created every time the legislature attempts to address the issue.

LD 1911, *An Act To Prohibit the Contamination of Clean Soils with So-called Forever Chemicals*, sponsored by Rep. Bill Pluecker of Warren initially aimed to restrict the land application of sludge or sludge-derived compost unless it is tested for PFAS. During its work session before the Environment and Natural Resources Committee, an amendment was proposed that would turn the conditional prohibition into an outright ban of all land application of sludge or sludge-derived compost.

The rationale for the amendment is that since there is no capacity to monitor and test this compost, and no affordable technology exists to reduce the harmfulness of PFAS, the only viable alternative is to prohibit land application and send this material to landfill.

MMA testified in support of the original bill but is reexamining the legislation in light of the amendment. Many concerns arise if an outright prohibition is enacted. This ban changes the operations of at least eight municipalities that are generating revenue from composting sludge.

Furthermore, banning the practice does not eliminate the problem of what to do with PFAS containing sludge, forcing municipalities to reinvent how they handle this product. Most will likely send sludge to landfills, raising the cost of waste disposal significantly. Landfilling toxic sludge then creates new ripples like shortened landfill lifespans, a need for improved linings, and more leachate to manage. The ensuing butterfly effect creates the need for further PFAS-related legislation.

LD 1875, *An Act To Address Perfluoroalkyl and Polyfluoroalkyl Substances Pollution from State-owned Solid Waste Disposal Facilities*, sponsored by Rep. Paige Zeigler of Montville specifies that a state-owned landfill may not transfer leachate to a wastewater treatment plant prior to the leachate being treated to reduce the concentration of

PFAS, unless the receiving facility employs technology to reduce the concentration of PFAS in leachate. Early during its work session committee members suggested including all landfills, state-owned or otherwise, into this legislation.

The requirements within LD 1875 are wishful common sense, but the inferred logistics needed to execute these new requirements are impractical. First is the matter of technology and cost to reduce PFAS concentration levels. Assuming the technology was readily available it would still be cost prohibitive for most landfill and wastewater treatment plant operators to install. Second is the increased tipping fees that will invariably be passed down to taxpayers if this additional treatment step is added to the handling of leachate. Finally, is the implication from LD 1911 that landfills are about to start receiving much larger volumes of PFAS containing sludge that will in turn create more leachate.

In line with the general sentiment of municipal officials, MMA supported the original language of LD 1875. Given that the discussed amendment implicates the operations of all municipalities, MMA will closely track the evolution of this legislation.

The interconnectedness of LD 1911, LD 1875, and the PFAS problem at-large is evident. For committee members the issues were so muddled that both bills were tabled for further research and discussion. A follow-up work session has been scheduled for Monday, Feb. 7 at 10:00 a.m.

Committee Hears Psilocybin Bill

This week, the topic of debate before the members of the Health and Human Services Committee was whether to legalize the use of psilocybin services in Maine. According to the U.S. Department of Drug Enforcement Administration a psilocybin is “a hallucinogenic chemical obtained from certain types of fresh and dried mushrooms.”

Since the use of psilocybin treatment is not authorized by the federal government, LD 1582, *An Act To Enact the Maine Psilocybin Services Act*, sponsored by Sen. Donna Bailey of York County establishes the framework necessary to allow psilocybin treatment in Maine.

For the municipal leaders still grappling with the implementation of the medical and adult use marijuana laws, the establishment of another experimental industry is just too much.

As proposed, the bill directs the Office of Marijuana Policy to create a regulatory system to oversee and license four psilocybin-related activities to include service centers where treatment is provided, service facilitators who provide the treatment, and product

manufacturing and testing. As described in the bill, the treatment is provided in three stages: (1) a preparation session where the facilitator and client meet to discuss treatment; (2) an administration session at which a client purchases, consumes and experiences the effects of the psilocybin product under the supervision of a facilitator; and (3) an integration session where a client and facilitator meet after completion of the administration session.

According to the proponents, psilocybin is an effective treatment option for severe depression, substance use disorders, and post-traumatic stress disorder that carries limited side effects. However, the lack of local regulatory authority over the new industry is of grave concern for municipal officials.

Section 9 of the bill unapologetically describes the initiative’s intent to preempt the will of Maine residents by authorizing municipalities to adopt and enforce “reasonable regulations.” The limited authority includes establishing conditions on the way products are manufactured and services

provided, operating hours, directing where licensed premises may be located and limiting public access to those facilities. While the bill envisions the need for local law enforcement services, the initiative does not contemplate remuneration for those services and furthermore expressly prohibits municipalities from adopting local business or operating licenses to help defer local enforcement costs.

While LD 1582 provides a process to outright ban the industry from operating within municipal boundaries, that privilege must be earned. Not only does the path to opt-out require approval by the legislative body – the town meeting or town or city council – the community’s residents must validate that decision at a subsequent November general election, allowing the industry to establish roots before the community can respond.

At a work session scheduled on Tuesday, Feb. 8 at 1 p.m., the committee will decide whether to prioritize the interests of the industry over the desires of Maine residents.

IN THE HOPPER

Labor & Housing

LD 1961 – An Act To Help Alleviate Maine’s Housing Shortage and Change the Membership of the Maine State Housing Authority. (Emergency) (Sponsored by Sen. Hickman of Kennebec Cty.)

This bill amends the State’s planning and land use goals to include addressing significant disparities in housing needs and access to educational, occupational and other opportunities; furthering the purposes of the federal Fair Housing Act; and promoting housing choice and economic diversity in housing, including housing for both low-income and moderate-income households. It also changes the membership of the Maine State Housing Authority and specifies that appointments to the authority and the appointment of the director are subject to review by the joint standing committee of the Legislature having jurisdiction over housing matters.

(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.)



Maine Municipal Association

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IN THE HOPPER (*cont'd*)

State & Local Government

LD 1513 (*amended version as proposed*) – An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences. (Sponsored by Rep. Newman of Belgrade)

As amended, the bill creates a permanent 12-member Maine Abandoned and Discontinued Roads Commission, which includes representatives from the Departments of Inland Fisheries and Wildlife, Agriculture Conservation and Forestry and Transportation, the Attorney General's Office, an association of woodlot owners, a land trust organization, and members from organizations representing county and municipal governments. Additionally, the group includes a resident who owns property on a discontinued or abandoned road, an attorney with experience in boundary disputes, a member of a statewide organization representing all-terrain vehicle or snowmobile users, and one unaffected member

of the public. The commission is tasked with examining and advising future Legislatures around the overlapping considerations regarding roads and easements while involving a broader group of stakeholders and state agencies to make recommendations for amendments to existing law. The duties entail examining: (1) property owner liability; (2) public easement retention over an abandoned and discontinued road, including scope of permitted and actual public use; (3) statutory terminology; and (4) current statutory processes for abandonment and discontinuation of a road, including, barriers to determining the legal status of a road. Members of the commission serve three-year terms and must meet at least three, but no more than six times each year. The commission is further directed to submit a report of its activities and any recommendations to the State and Local Government, Agriculture, Conservation and Forestry and Inland Fisheries and Wildlife Committees on Feb. 1, 2023 and by Dec. 1 of every even-number years thereafter.