



*Attorneys at Law*

**MUNICIPAL CLIENT SEMINAR**  
**SEPTEMBER 28, 2017**

**PROGRAM**

- I. INTRODUCTORY REMARKS (6:30 - 6:35 p.m.)
- II. CURRENT MUNICIPAL ISSUES (6:35 - 8:15 p.m.)
  - A. Retail Marijuana Update - *Alyssa Tibbetts*  
TIF Carryover Legislation - *Alyssa Tibbetts*  
Transportation Legislation - *Alyssa Tibbetts*
  - B. County Government Legislation - *Pat Dunn*  
Labor & Employment Legislation and Cases - *Pat Dunn*
  - C. Dangerous Buildings Update - *Mark Bower*  
Municipal Broadband Legislation - *Mark Bower*  
Environment & Energy Legislation - *Mark Bower*
  - D. Land Use Legislation and Cases - *Natalie Burns*  
Public Safety & Law Enforcement Legislation - *Natalie Burns*
  - E. "Right-to-Know" Law Legislation and Cases - *Sally Daggett*  
Election Law Legislation - *Sally Daggett*  
First Amendment Update - *Sally Daggett*
  - F. Food Sovereignty Law - *Bill Dale*  
Property Tax Legislation - *Bill Dale*  
Real Estate Legislation & Practice Pointer - *Bill Dale*
- III. QUESTIONS AND ANSWERS (8:15 - 8:30 p.m.)

---

10 Free Street  
P.O. Box 4510  
Portland, ME 04112  
Phone: 775-7271  
Fax: 775-7935

11 Main Street, Suite 4  
Kennebunk, ME 04043  
Phone: 985-4676  
Fax: 985-4932

Toll Free: 1-800-756-1166  
*www.jbgh.com*



## TABLE OF CONTENTS

### **NEW LEGISLATION**

<b>SUMMARY OF NEW LAWS ENACTED BY THE FIRST SESSION OF THE 128th LEGISLATURE.....</b>	<b>1</b>
<b>A. ENVIRONMENT, ENERGY &amp; TELECOMMUNICATIONS .....</b>	<b>2</b>
<i>Natural Resources Legislation.....</i>	<i>2</i>
<i>Permitting Legislation .....</i>	<i>2</i>
<i>Public Utilities Legislation .....</i>	<i>3</i>
<i>Solid Waste &amp; Recycling Legislation.....</i>	<i>3</i>
<i>Telecommunications Legislation .....</i>	<i>3</i>
<i>Water/Wastewater/Stormwater Legislation.....</i>	<i>4</i>
<b>B. GOVERNMENT &amp; PUBLIC AFFAIRS .....</b>	<b>5</b>
<i>City/Town Clerk Legislation.....</i>	<i>5</i>
<i>Cemeteries Legislation .....</i>	<i>5</i>
<i>County Government Legislation .....</i>	<i>5</i>
<i>Freedom of Access/Privacy Legislation .....</i>	<i>7</i>
<i>Hunting/Fishing/Recreation Legislation .....</i>	<i>8</i>
<i>Licensing/Permitting Legislation.....</i>	<i>8</i>
<i>Liquor Licensing Legislation .....</i>	<i>9</i>
<i>Marijuana Legislation .....</i>	<i>10</i>
<i>Motor Vehicle Legislation .....</i>	<i>13</i>
<i>Public Works/Transportation Legislation .....</i>	<i>14</i>
<i>Voting &amp; Elections Legislation.....</i>	<i>16</i>
<i>Public Welfare Legislation .....</i>	<i>17</i>

<b>C.</b>	<b>LABOR &amp; EMPLOYMENT .....</b>	<b>18</b>
	<i>Public Officials .....</i>	18
	<i>Retirement System Legislation .....</i>	19
<b>D.</b>	<b>LAND USE, ZONING &amp; PLANNING .....</b>	<b>19</b>
	<i>CEO/Board of Appeals Legislation .....</i>	19
	<i>Dangerous Buildings Legislation .....</i>	20
	<i>Subdivision Legislation.....</i>	20
	<i>Zoning Legislation .....</i>	21
<b>E.</b>	<b>LAW ENFORCEMENT &amp; PUBLIC SAFETY .....</b>	<b>21</b>
	<i>Firearms Legislation.....</i>	21
	<i>Police/Fire/Rescue Legislation.....</i>	22
	<i>Public Health &amp; Safety Legislation .....</i>	24
	<i>Sex Offender Legislation.....</i>	24
<b>F.</b>	<b>MUNICIPAL FINANCE.....</b>	<b>25</b>
	<i>Budget Legislation .....</i>	25
	<i>Economic Development Legislation .....</i>	28
<b>G.</b>	<b>REAL ESTATE LEGISLATION.....</b>	<b>28</b>
	<i>Housing .....</i>	28
	<i>Miscellaneous Real Estate Legislation .....</i>	29
<b>H.</b>	<b>SCHOOL LAW.....</b>	<b>30</b>
	<i>General School Legislation .....</i>	30
	<i>School Transportation Legislation .....</i>	30
<b>I.</b>	<b>TAXATION.....</b>	<b>31</b>
	<i>Property Tax Legislation .....</i>	31
	<i>State Tax Legislation .....</i>	32

**SUMMARY OF LEGISLATION CARRIED OVER TO THE SECOND SESSION OF THE 128th LEGISLATURE.....33**

**SUMMARY OF LEGISLATION ENACTED IN 2016 BY REFERENDUM .....40**

**USEFUL LINKS REGARDING NEW LEGISLATION.....41**

**RECENT COURT CASES**

**SUMMARY OF RECENT COURT CASES**

*Administrative Procedure* .....42

*Civil Procedure*.....42

*Counties* .....43

*Elections/Voting*.....43

*First Amendment*.....44

*Freedom of Access/Right-to-Know Law* .....45

*Insurance*.....45

*Labor/Employment*.....45

*Land Use/Zoning*.....47

*Law Enforcement & Public Safety*.....49

*Maine Tort Claims Act*.....49

*Marijuana* .....50

*Property Taxation* .....50

*Real Estate* .....50

*Roads*.....51

*Takings* .....51

*Vital Records*.....52

*Cases to Watch*.....52

**SUPPLEMENTAL MATERIALS**

*Marijuana Legalization Act* .....54

*Minimum Wage* .....59

*Dangerous Buildings* .....61

*MUBEC Proposed Rulemaking* .....83

*Frequently Asked Right-to-Know Law Questions*.....94

*First Amendment Issues for Municipalities* .....98

*Tax Lien Foreclosure Curative Notice* .....106

*Ordinance Review Checklist*.....111

*November 7, 2017 Referendum Election Ballot Questions*.....112

**ABOUT JENSEN BAIRD GARDNER & HENRY**

*History of Government Services Practice Group* .....113

*Government Services Practice Group Overview* .....115

*Attorney Profiles* .....116

**SUMMARY OF  
NEW LAWS ENACTED BY THE  
FIRST SESSION OF THE  
128th LEGISLATURE<sup>1</sup>**

The following is a capsule summary of some of the new laws enacted by the first session of the 128th Legislature of significance for municipalities. Except for emergency laws and resolves, new laws become effective ninety days after adjournment. The effective date of non-emergency legislation enacted is **Wednesday, November 1, 2017**. Emergency legislation became effective on the date it was signed by the Governor, which is noted after each Public Law citation.

Legislation enacted with a “mandate preamble” contains the following language: “This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two-thirds of all of the members elected to each House have determined it necessary to enact this measure.”

Electronic copies of the new laws in this summary are available on the State’s website: <http://www.mainelegislature.org/LawMakerWeb/search.asp>. Simply type the number of the legislative document (“LD”) into the search box and click “Search.”

---

<sup>1</sup> Adapted from “New Laws” in the August-September 2017 edition of the *Maine Townsman* with the permission of Maine Municipal Association. Once again, we thank MMA for its work on behalf of municipalities before the Maine Legislature.

## A. ENVIRONMENT, ENERGY & TELECOMMUNICATIONS

### Natural Resources Legislation

#### 1. **LD 98 – An Act To Provide Greater Authority to the Department of Inland Fisheries and Wildlife over the Management of Wild Turkeys. P.L. 2017, ch. 85.**

This Act amends the law governing the hunting of wild turkeys to provide greater flexibility to the Commissioner of the Department of Inland Fisheries and Wildlife to manage the hunting seasons and bag limits by rule. The Act eliminates specific reference to spring and fall open seasons on wild turkeys, providing instead that the authorized agents of the Commissioner issue a wild turkey hunting permit rather than a spring and fall combined permit.

#### 2. **LD 1438 – An Act To Improve the Aquaculture Leasing and Licensing Laws. P.L. 2017, ch. 159.**

This Act makes several amendments to the laws governing aquaculture leasing and licensing laws. Among the various amendments, the Act provides a process by which the holder of a standard lease can seek an expansion of the lease area by up to 25% once during the duration of the lease, with any expansion limited so as not to exceed four acres. The process includes submitting an application to the Commissioner of the Department of Marine Resources (DMR). When DMR determines the application is complete, the State agency must provide notice to the municipal officers of the municipality or municipalities adjacent to the lease expansion, publish a summary of the lease expansion application in a newspaper of general circulation, and provide for a comment period for at least 30 days following the date of publication. According to the Act, after DMR has considered all the comments submitted, and determined that the application meets certain statutory requirements, the Commissioner may approve the expansion.

### Permitting Legislation

#### 3. **LD 725 – An Act To Recognize Local Control Regarding Food Systems. P.L. 2017, ch. 215.**

This Act defines the term “local food system” to mean a community food system within a municipality that integrates food production, processing, consumption, direct producer-to-consumer exchanges and other traditional foodways to enhance the environmental, economic, social and nutritional health and well-being of the municipality and its residents. The Act also cites municipal home rule authority to expressly authorize a municipal government to regulate local food systems by ordinance. The Act provides that such an ordinance adopted by a municipality must apply only to food or food products that are grown, produced or processed by individuals within that municipality who sell directly to consumers, and that any food or food products grown, produced or processed in the municipality intended for wholesale or retail distribution outside of the municipality must be grown, produced or processed in compliance with all applicable State and federal laws, rules and regulations.



*Public Utilities Legislation*

4. **LD 104 – An Act To Change the Time and Location of the Annual Meeting of the Board of Trustees of the Kittery Water District. P & S.L. 2017, ch. 1.**

This Act amends the charter of the Kittery Water District.

5. **LD 258 – An Act To Amend the Charter of the Southwest Harbor Water and Sewer District. P & S.L. 2017, ch. 4.**

This Act amends the charter of the Southwest Harbor Water and Sewer District.

6. **LD 757 – An Act To Amend the Charter of the Richmond Utilities District. P & S.L. 2017, ch. 7.**

This Act amends the charter of the Richmond Utilities District regarding the authority to borrow money and issue bonds.

7. **LD 759 – An Act To Clarify the Financial Authority of Sewer and Sanitary Districts. P.L. 2017, ch. 151.**

This Act authorizes sewer districts and sanitary districts to invest their funds in the same way and subject to the same restrictions as municipalities are authorized to invest municipal funds.

*Solid Waste & Recycling Legislation*

8. **LD 432 – An Act To Designate a Maine Community Litter Cleanup Day. P.L. 2017, ch. 41.**

This Act establishes the first Saturday in May as Maine Community Litter Cleanup Day.

*Telecommunications Legislation*

9. **LD 256 – An Act To Ensure Continued Availability of High-speed Broadband Internet at Maine’s Schools and Libraries. P.L. 2017, ch. 244.**

This Act expands the base of financial support for the telecommunications education access fund, which is used to ensure high speed internet capacity in all of the State’s public schools and libraries. Current law applies a certain surcharge on residential and business traditional telephone exchange lines to capitalize the education access fund. This Act lowers the surcharge rate to \$0.21 per month per line or telephone number, but expands the base to include interconnected voice over internet protocol service as well as mobile telecommunication services. The Act also requires the Department of Education and the Maine State Library to submit a report to the Legislature by January 15, 2018 on an assortment of information about the education access fund, including a list of the schools and libraries benefiting from the fund and,

for each institution, the broadband capacity, the average daily broadband use, and funding provided by both the federal E-rate program and the access fund to provide that broadband access.

**10. LD 406 – An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure. P.L. 2017, ch. 199.**

This Act expands the Public Utilities Commission’s authority to order the joint use of space on utility poles and other communications conduits. It adds providers of unlit fiber-optic cable, telecommunications service providers and information service providers to the list of entities potentially subject to an order. For clarification purposes, the Act also includes unlit fiber providers, telecommunications service providers and information service providers to the list of entities that are expressly required to obtain a written location permit from the applicable licensing authority (e.g., the municipal officers for the local roads) prior to constructing their facilities upon and along highways and public roads.

**11. LD 461 – Resolve, Regarding Legislative Review of Chapter 220: Removal of Provider of Last Resort Service Obligation, a Major Substantive Rule of the Public Utilities Commission. Resolves 2017, ch. 4 (Emergency Enacted Effective 4/11/17).**

This Resolve provides for final adoption of a rule promulgated by the Public Utilities Commission, Chapter 220: Removal of Provider of Last Resort Service Obligation, which regulates the procedure for a telephone utility to be relieved of the requirement to provide basic telephone service in a particular area.

**12. LD 825 – An Act To Ensure Direct Dialing of 911 from Multiline Telephone Systems. P.L. 2017, ch. 48.**

This Act requires that any public or private entity that installs or operates a multiline telephone system ensures that the system is connected to the public switched telephone network in such a way that an individual dialing 911 is connected to the public safety answering point without being required to first dial any other number or set of numbers.

**Water/Wastewater/Stormwater Legislation**

**13. LD 454 – An Act To Ensure Safe Drinking Water for Families in Maine. P.L. 2017, ch. 230.**

This Act directs the Department of Health and Human Services (DHHS) to develop a uniform recommendation for laboratories to test samples from private drinking water wells for such substances or properties as arsenic, bacteria, nitrates, nitrites, chloride, hardness, copper, iron, pH, sodium, lead, uranium, manganese, fluoride and radon. The Act directs the State’s Health and Environmental Testing Laboratory to establish a fee not to exceed \$10 per sample to perform those testing services, and creates a Private Well Safe Drinking Water Fund to accept that fee revenue and other donations, grants or appropriations from all sources for the purposes of improving the rate of testing the water in private drinking water wells. The Act requires the

Maine Water Well Commission to adopt rules to require the distribution of educational materials to a landowner when a residential private drinking water well is drilled or deepened that inform the landowner about the importance of testing for arsenic and other contaminants or properties.

**B. GOVERNMENT & PUBLIC AFFAIRS**

**City/Town Clerk Legislation**

**14. LD 83 – An Act Regarding Changing the Designation of a Parent on the Birth Certificate of an Adult. P.L. 2017, ch. 5.**

This Act repeals and replaces the process by which the State Registrar of Vital Statistics may amend the birth certificate of a person when genetic testing identifies a parent who was not known or listed at the time of the adult’s birth.

**15. LD 183 – An Act Regarding the Use of the Electronic Death Registration System. P.L. 2017, ch. 37.**

Beginning on July 1, 2018, this Act requires certificates of death to be filed using the electronic death registration system maintained by the State Registrar of Vital Statistics. The requirement does not apply to death certificates filed by family members and domestic partners of the deceased.

**Cemeteries Legislation**

**16. LD 661 – An Act Regarding the Chain of Custody in Crematories. P.L. 2017, ch. 101.**

This Act provides that if cremated remains are buried in a public burying ground, the person in charge of the cemetery or, in that person’s absence, another appropriate municipal official must endorse and provide the date the cremated remains were buried on each burial permit and within 7 days of the burial return the permit to the State Registrar of Vital Statistics or to the clerk of the municipality in which the cemetery is located. The Act further provides that the funeral director or other authorized person must also present a copy of the permit, after endorsement, to the State Registrar of Vital Statistics or the clerk of the municipality where the person died and to the municipal clerk who issued the permit.

**County Government Legislation**

**17. LD 463 – An Act To Improve the Funding of County Jails. P.L. 2017, ch. 281.**

This Act makes clarifying changes to the law that governs the degree to which an assessment of property taxes to fund county jail operations can increase from year to year. The Act preserves the current law allowing that assessment to increase from one year to the next by either 4% (as enacted by the budget, see LD 390 under Appropriations & Financial Affairs) or

the county's appropriate "LD 1" growth limitation factor, whichever percentage increase is less. For the purposes of clarification, the Act provides that to the extent the assessment is increased from one year to the next within the limits of this growth allowance, the increased assessment level becomes the base for the succeeding year, to which the growth allowance can be applied.

**18. LD 516 – An Act To Improve the Management of Inmates in County and Regional Jails. P.L. 2017, ch. 214**

This Act establishes a number of county jail reporting requirements for the general purpose of assembling more data at the legislative level regarding county jail cost-drivers. Specifically, the Act requires the county jails and regional jails to report the various established inter-jail boarding rates to the Department of Corrections (DOC), which is directed to provide that data to the Legislature. The Act also requires the jails to report their financial audits performed for the jails and further requires the DOC to provide the data derived from those audits to the Legislature. The Act also requires the jails to report twice per month to the Unified Criminal Docket in each jail's region on the pretrial detention population in the jail. The Act also amends the law governing the scheduling of probation revocation hearings when a probationer is committed to jail without bail pending such a hearing. Current law says the revocation hearing must be held within 45 days of the initial appearance unless otherwise ordered by the court. The Act removes the authority of the court to extend that 45-day schedule.

**19. LD 973 – An Act To Allow the Waldo County Budget Committee To Appoint Replacement Members. P.L. 2017, ch. 78 (Emergency Enacted Effective 5/21/17).**

This Act amends the statute governing the Waldo County Budget Committee to deal with the circumstances of a Committee vacancy.

**20. LD 1142 – An Act To Repeal the Laws Establishing the Cumberland County Recreation Center and to Transfer Authority to Cumberland County. P.L. 2017, ch. 195.**

This Act establishes in statute the 9-member Board of Trustees of the Cross Insurance Arena in Portland and clarifies that current members of the Board of Trustees of the Cumberland County Recreation Center serve as initial members of the Board of Trustees of the Cross Insurance Arena for the balance of their terms. The Act charges the Board of Trustees to develop, review and make recommendations to the Cumberland County Commissioners on financial, contractual and policy issues regarding the Cross Insurance Arena.

**21. LD 1498 – An Act To Clarify the Applicability of the Records Preservation Surcharge within County Registries of Deeds. P.L. 2017, ch. 116.**

This Act amends the law governing a \$3 surcharge that a register of deeds may collect for the records that are recorded in the registry. Under current law, that surcharge cannot be imposed on agencies of the State government and municipalities. This Act expands the definition of agencies of State government to include quasi-independent State entities, defined in statute as an organization established by the Legislature as an independent board, commission or

agency to fulfill governmental purposes and that receives revenues that are derived, in whole or part, from federal or State taxes or fees.

**22. LD 1622 – An Act To Allow the Androscoggin County Commissioners To Establish Reasonable Office Hours for County Offices. P.L. 2017, ch. 212.**

Current law specifies that except for holidays and weekends the Androscoggin County office hours are from 9 a.m. to 5 p.m. This Act repeals that provision and instead allows the Androscoggin County commissioners to establish reasonable office hours in the same manner as all other county commissioners.

**Freedom of Access/Privacy Legislation**

**23. LD 196 – An Act To Protect Personal Information of Participants in a Community Well-being Check Program. P.L. 2017, ch. 118.**

This Act creates a public records exemption under the Freedom of Access Act to protect the confidentiality of personal information of participants in “community well-being check” programs, defined as a voluntary program that involves daily or regular contact with a participant and, when contact cannot be established, sends first responders to the participant’s residence to check on that person’s wellbeing. The Act provides that all of a person’s application materials provided to a municipality or other public entity to participate in such a program, as well as other personal information, are confidential and do not constitute a public record, except that the otherwise confidential information may be made available to first responders as necessary to implement the program.

**24. LD 329 – An Act Concerning the Law Governing the Posting of Newspaper Legal Notices and the Statewide Repository of Legal Notices. P.L. 2017, ch. 19.**

Current law requires newspapers to provide a publicly accessible website containing the legal notices that are submitted to the newspaper for publication that may be accessed for free by the general public. That law also requires a statewide association of newspapers to provide a statewide repository of those notices as well as an email notification service when there are additions made to the repository. All of these requirements, however, are scheduled to be repealed on January 1, 2018. This Act removes that “sunset clause,” thereby retaining the newspapers’ obligations to maintain these legal notices websites.

**25. LD 1432 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Advance Payment of Costs for Public Records Requests. P.L. 2017, ch. 158.**

This Act establishes the authority of a governmental agency or official to require all authorized costs associated with providing requested public records to be paid before the prepared public records are released to the requestor. This law applies to the release of compiled records. Payments in advance, i.e., prior to compiling records, are still authorized in statute but

only for requests estimated to cost in excess of \$100, or provided to previously delinquent requesters.

### **Hunting/Fishing/Recreation Legislation**

**26. LD 191 – An Act To Allow Open Snowmobile and All-terrain Vehicle Weekends and Events. P.L. 2017, ch. 97.**

This Act authorizes the Commissioner of the Department of Inland Fisheries and Wildlife to establish one 3-day period annually during which a non-resident may operate in Maine a snowmobile or all-terrain vehicle registered in another state or Canadian province. In creating this authority, the Act repeals the provision of current law that allows a snowmobile registered in another state or contiguous Canadian province to operate in Maine for at least 3 consecutive days without being registered in this State if that other state or province extends that same “reciprocal” opportunity.

**27. LD 275 – An Act To Expand Disabled Veteran Eligibility for Complimentary Hunting, Fishing and Trapping Licenses. P.L. 2017, ch. 100.**

Current law provides complimentary hunting, trapping and fishing licenses for disabled veterans with a disability evaluated at 50% or more if they are residents of Maine, New Hampshire or Vermont and, in the case of a nonresident, the other state has a reciprocal agreement with Maine. This Act provides the complimentary hunting, trapping and fishing licenses to qualified disabled veterans from any other state that has a reciprocal agreement with Maine.

### **Licensing/Permitting Legislation**

**28. LD 3 – An Act To Grant Plantations the Power To Control Consumer Fireworks. P.L. 2017, ch. 3 (Emergency Enacted Effective 3/24/17).**

This Act authorizes plantations to adopt ordinances that control the sale and use of fireworks in the same manner municipalities may control consumer fireworks.

**29. LD 22 – An Act To Repeal the Requirement That Municipalities License Roller-skating Rinks. P.L. 2017, ch. 12.**

In 2014, a number of archaic municipal licensing mandates were repealed in favor of a general statute recognizing the inherent municipal authority to license the various activities as a matter of home rule authority. The mandate to license roller skating rinks was inadvertently left off of the list of to be repealed mandates. This Act repeals the mandate that municipalities license roller skating rinks.

**30. LD 1072 – An Act To Amend the Laws Regarding Dealers in Secondhand Precious Metals. P.L. 2017, ch. 126.**

This Act amends the law governing dealers in secondhand precious metals, including gold (other than coins or bullion), silver and, with this Act, palladium and platinum. Under current law, dealers in secondhand precious metals must obtain a permit from the municipal officers of the town or city where their place of business is located, and the statute provides a standard upon which such permits may be denied. This Act changes that requirement to provide that the secondhand precious metal dealer only has to register with the municipal officers, rather than obtain a permit from them, unless the municipality requires a permitting system.

**31. LD 1579 – An Act To Amend and Add Consistency to the Maine Weights and Measures Law. P.L. 2017, ch. 172.**

This Act authorizes the municipal officers of each municipality to appoint or arrange for the election of the municipal “sealer of weights and measures.” The appointed or elected municipal sealer must successfully complete certification through the National Conference on Weights and Measures professional certification program, and the State’s “sealer” retains final approval authority over the appointment. If the municipal officers choose to make such an appointment, they are directed to inform the State sealer within 30 days. If the municipal officers choose not to appoint a local sealer or fail to make the appointment or fail to inform the State’s sealer of the municipal appointment within 30 days after the appointment, the State sealer retains the sole authority to enforce Maine’s weights and measures law within that municipality, and may appoint a qualified person to carry out the State sealer’s responsibilities in that municipality.

**32. LD 1640 – Resolve, To Allow the Issuance of Open Burn Permits through Private Online Services. Resolves 2017, ch. 22 (Emergency Enacted Effective 7/04/17).**

This Resolve directs the Department of Agriculture, Conservation and Forestry to allow municipalities to purchase and use burn permit software sold by a private party to issue burn permits online as burn permits may be issued pursuant to State law if all statutory requirements for issuing burn permits are met by the software.

***Liquor Licensing Legislation***

**33. LD 30 – An Act To Amend the Law Governing Special Amusement Permits for Liquor Licensees. P.L. 2017, ch. 13.**

Current law requires any place licensed for the on-premises consumption of alcohol that also provides entertainment (beyond playing music from a radio or other mechanical devise) to first obtain a special amusement permit from the municipal officers. This Act amends the “special amusement permit” law that mandates municipalities to adopt ordinances and otherwise implement and operate a “special amusement permit” process for establishments that serve alcohol for on premise consumption and also provide live music or dancing entertainment. Under the terms of the Act, the mandate becomes an option to be implemented pursuant to

municipal home rule authority. The Act further specifies that the failure of an owner of such a business to obtain or comply with a permit required by such an ordinance can be considered by the municipal officers as a reason for the denial of a liquor license within the annual relicensing process.

**34. LD 852 – An Act To Make Changes to the Maine Liquor Liability Act. P.L. 2017, ch. 77.**

Under the Maine Liquor Liability Act, a plaintiff seeking damages must give written notice to all defendants within 180 days of the date of the server’s conduct creating the alleged liability under the Act, unless good cause can be shown why notice could not have reasonably been filed. This Act establishes “good cause” as including the inability of the plaintiff to obtain investigative records from a law enforcement officer or law enforcement agency.

**35. LD 1536 – An Act To Allow Maine Manufacturers To Sell Spirits at Farmers’ Markets and To Allow Taste Testings at Farmers’ Markets. P.L. 2017, ch. 168.**

This Act allows the sale of wine, spirits and malt liquor manufactured in Maine for off-premises consumption at taste-testing events and the sale of spirits manufactured in Maine at farmers’ markets. Under current law, the sale of wine and malt liquor at farmers’ markets is allowed. The Act also allows taste testings to be conducted at farmers’ markets. Taste testing at farmers markets would not be allowed in any municipality where on-premises and off-premises sales of alcoholic beverages are not allowed.

**36. LD 1543 –An Act To Simplify the Licensing Process for Off-site Catering. P.L. 2017, ch. 260.**

This Act amends the statute governing the municipal approval process governing requests for an “off-premises” catering license for any Class A restaurant, Class A lounge, Class A restaurant/lounge, club licensed to sell liquor, hotel, or bed and breakfast that wishes to cater an event which includes the serving of alcohol in a place other than the facility’s official location or in a municipality other than where they are licensed. Specifically, the Act provides that the Bureau of Alcoholic Beverages and Lottery Operations must accept documentation of the approval of the request by the municipal officers in electronic form submitted either by the applicant or directly by the municipal officers.

**Marijuana Legislation**

**37. LD 88 – An Act To Delay the Implementation of Certain Portions of the Marijuana Legalization Act. P.L. 2017, ch. 1 (Emergency Enacted Effective 1/27/17).**

This Act delays the full implementation of the retail elements of the citizen initiative that legalized recreational marijuana in Maine to February 1, 2018. The Act also makes several targeted amendments to the elements of the initiative providing for the lawful but non-retail personal use and possession and the right to limited levels of personal cultivation. Specifically, the Act: (1) amends the initiative’s definition of marijuana and creates a separate definition of



“marijuana concentrate”; (2) provides, as does the initiative, that a person 21 years of age or older may possess or transfer to another such person for no remuneration up to 2 and 1/2 ounces of marijuana or a combination of marijuana and marijuana concentrate which can include no more than 5 grams of concentrate; (3) limits the areas where marijuana can be consumed to a private residence, including curtilage or on other private property, not generally accessible by the public, and the person is explicitly permitted to consume marijuana on that property; (4) prohibits the consumption of marijuana or marijuana concentrate (a) in a motor vehicle in the public way, (b) in a private residence or on private property used as a day care or baby-sitting service during the hours of operation, and (c) in a designated smoking area under the Workplace Smoking Act of 1985; (5) prohibits the possession of edible retail marijuana products until February 1, 2018 unless the edible marijuana is a product purchased for medical use; and (6) reinstates provisions of law repealed in the initiative that establish certain civil violations for any person under the age of 21 possessing marijuana.

**38. LD 243 – An Act To Amend the Marijuana Legalization Act to Provide Licensing, Rulemaking and Regulatory and Enforcement Authority within the Department of Administrative and Financial Services; Assign Rulemaking, Regulatory and Enforcement Authority Related to Agricultural Purposes to the Department of Agriculture, Conservation and Forestry; and Allocate Funds for Implementation. P.L. 2017, ch. 278 (Emergency Enacted Effective 6/29/17).**

This Act reorganizes the State licensing, rulemaking and enforcement authorities under the Marijuana Legalization Act, as adopted by the voters last November. Specifically, the Act: (1) assigns to the Department of Administrative and Financial Services (DAFS) the authority for licensure and rule-making, regulatory and enforcement authority regarding the tracking from seed or clone to sale, distribution and sale of retail marijuana and retail marijuana products and the licensing of retail marijuana social clubs; (2) assigns to the Department of Agriculture, Conservation and Forestry (DACF) rule-making, regulatory and enforcement authority regarding marijuana cultivation, including, but not limited to, all aspects of marijuana seeds, clones, seedlings and plants, use of pesticides, harvesting and storage, and the preparation, manufacturing, production, packaging, labeling and testing of retail marijuana; (3) authorizes DACF to delegate rule-making authority to DAFS, the Department of Labor or the Department of Public Safety if DACF determines the expertise and resources of those other departments would be beneficial to the development and enforcement of rules; (4) appropriates \$1.6 million from the State’s General Fund in FY 2018 to capitalize the Retail Marijuana Regulatory Coordination Fund for use by DAFS and other State agencies authorized to conduct rulemaking, to contract with consultants, hire staff and otherwise implement their rulemaking obligations; and (5) directs DAFS to report to the Marijuana Legalization Implementation Committee 60 days after the effective date of the Act and every 60 days thereafter until final adjournment of the Second Regular Session of the 128th Legislature. The report must provide information on the progress of the Department of Administrative and Financial Services and all other State departments involved with implementing the Marijuana Legalization Act.

**39. LD 1641 – An Act To Amend the Marijuana Legalization Act Regarding Retail Marijuana Testing Facilities. P.L. 2017, ch. 309 (Emergency Enacted Effective 8/2/17).**

This Act amends the Marijuana Legalization Act as adopted by the voters last November with respect to the State regulation of marijuana testing facilities. Specifically, the Act mandates that any licensed retail marijuana facility, prior to selling or furnishing retail marijuana to a consumer or to another licensee, must have representative samples of the marijuana tested by a licensed testing facility to ensure the product does not contain one or more contaminants, over acceptable levels, that are injurious to health. The testing facility must also ensure that the labeling information on the product is accurate.

Details about the specific contaminants and contaminant threshold levels are given over by the Act to rulemaking by the Department of Agriculture, Conservation and Forestry (DACF). At a minimum, however, the Act requires testing for residual solvents, poisons and toxins, harmful chemicals, dangerous molds and mildew, harmful microbes such as e-coli and salmonella, pesticides, fungicides and insecticides. The testing must also compare the potency of the product in terms of THC levels to the potency level claimed on the label. The marijuana product's overall homogeneity and its "cannabinoid profile" must also be verified. For these mandatory testing requirements, the testing facility rather than the retail establishment licensee must control the sampling of the facility's product to be tested. The Act prohibits a testing facility license to be issued to persons with financial interests in any other form of retail marijuana establishment (i.e., cultivation facilities, manufacturing or processing facilities, retail stores or social clubs).

For marijuana products that are created for the purpose of research and development and that will not be made available for sale to consumers, the Act authorizes the testing facilities to provide "non-mandatory" testing services. The primary difference between the mandatory and non-mandatory testing services is that if problems are identified with the product undergoing mandatory testing, the testing facility must quarantine the product and notify the DACF. Testing facilities are also authorized under the Act to conduct non-mandatory testing of marijuana products on behalf of producers or consumers of marijuana grown for personal use or medical marijuana.

The Act gives a range of rulemaking direction to DACF governing all aspects of providing a State license for these facilities to operate. The Act expressly provides that a testing facility may not commence or continue operation unless the facility is approved or licensed by the municipality in which the facility is located and notice of that approval has been provided by the municipality to the State licensing authority.

In addition, the Act significantly amends the section of the initiated law governing the inspection of books and records. As re-written by the Committee, all retail marijuana licensees are required to maintain and retain their business transaction records, which must be open to inspection by the State licensing authority upon demand and without notice during normal business hours. The State licensing authority may require any licensee to submit to an audit.

The Act also requires each licensee to submit to an inspection of its licensed premises, including any places of storage, upon demand and without notice during all business hours (and other times of apparent activity) by the State licensing authority, law enforcement agency or authorized officials from the municipality in which the licensed premises are located. Locked areas within the licensed premises must be unlocked to facilitate such inspections.

### **Motor Vehicle Legislation**

**40. LD 118 – An Act To Require All Moped Riders under 18 Years of Age and Newly Licensed Moped Operators To Wear a Helmet. P.L. 2017, ch. 51.**

This Act requires a person under 18 years of age who is either operating a moped or a passenger on a moped to wear protective headgear. The Act also requires that an operator of a moped operating under a learner's permit or within one year of successfully completing a driving test must wear protective headgear and may not allow a passenger on the moped under 18 years of age unless the passenger is wearing protective headgear.

**41. LD 827 – An Act To Repeal the Laws Governing Truck Camper Registration. P.L. 2017, ch. 67.**

Under current law, motor vehicles, mobile homes, camp trailers and truck campers, which are the slide-in campers designed to be mounted on a truck body to provide temporary living quarters for recreational, camping and travel uses, need to be registered and, prior to being registered, proof needs to be shown that the sales taxes on those vehicles, trailers and slide-on campers have been paid. This Act repeals that requirement for truck campers.

**42. LD 1249 – An Act To Create the Emergency Medical Services Registration Plate. P.L. 2017, ch. 302.**

This Act provides for the issuance of emergency medical services motor vehicle registration plates for emergency medical services persons who are licensed by the Emergency Medical Services' Board and certified by the Director of Maine Emergency Medical Services within the Department of Public Safety. The EMS license plates may be used on only one motor vehicle with a registered gross weight not exceeding 10,000 lbs. A one-time fee of \$5 is charged for the EMS plates, in addition to the normal license registration fee. When the person receiving the EMS license plate is no longer licensed as qualifying EMS personnel, the Maine Emergency Medical Services must report that fact to the Secretary of State (SOS) who must, in turn recall the motor vehicle license plates. The Act requires the SOS to issue the EMS registration plates on or after January 1, 2018.

**43. LD 1577 – An Act To Amend the Motor Vehicle Laws. P.L. 2017, ch. 229.**

This Act makes a number of changes to the State's motor vehicle laws of a technical, clarifying, and minor substantive nature. Of municipal interest, the Act: (1) amends and clarifies the law governing the authority of the Secretary of State (SOS) to appoint municipal clerks and other agents to accept applications for drivers' licenses and license renewals to provide that the

SOS may authorize municipal clerks and other agents to receive and process applications, through the municipality, for non-commercial driver's license renewals and duplicates as well as non-driver identification card renewals and duplicates; and (2) allows a person to have and present to law enforcement a driver's license in electronic form if one is made available, with the express condition that such a presentation does not constitute consent for the law enforcement officer to access other contents of the person's portable electronic device.

**Public Works/Transportation Legislation**

**44. LD 207 – Resolve, To Designate a Bridge in East Machias as the Norman E. Bagley Memorial Bridge. Resolves 2017, ch. 1.**

This Resolve designates a bridge on Route 191 in East Machias the Norman E. Bagley Memorial Bridge.

**45. LD 208 – An Act To Allow Vehicles Hauling Animal Bedding to Travel over County or Town Ways without a Permit. P.L. 2017, ch. 25.**

This Act allows any truck delivering organic animal bedding material, and operating according to a permit issued by the Department of Transportation pursuant to the State law governing operating overweight vehicles on posted roads, to travel over any county or municipal posted road without a specific municipal or county permit. The law allows a municipality to impose additional restrictions for such trucks as long as those restrictions do not involve a permitting process.

**46. LD 236 – An Act To Update Accessibility Requirements on Highways. P.L. 2017, ch. 9.**

This Act amends the section of law governing the location and construction of highway curb cuts in order to repeal outdated language and conform with the federal Americans with Disabilities Act of 1990.

**47. LD 294 – Resolve, To Name the Bridge over the Penobscot River in the Towns of Enfield and Howland King's Bridge. Resolves 2017, ch. 3 (Emergency Enacted Effective 4/10/17).**

This Resolve names the bridge that spans the Penobscot River in the towns of Enfield and Howland the King's Bridge.

**48. LD 712 – Resolve, To Designate a Portion of Route 43 in Corinth, Exeter and Corinna the Donald Strout, Sr. Memorial Highway. Resolves 2017, ch. 5.**

This Resolve directs the Department of Transportation to designate Route 43 from its intersection with Route 15 in the Town of Corinth to its intersection with Route 7 in the Town of Corinna the Donald Strout, Sr. Memorial Highway.

**49. LD 905 – An Act To Authorize the Construction of a Maine Turnpike Connector to Gorham. P.L. 2017, ch. 68.**

This Act authorizes the construction of a connector in Cumberland County from Route 114 in South Gorham to an interchange on the Maine Turnpike provided an evaluation of reasonable alternatives, as required by the Sensible Transportation Policy Act, determines there is no reasonable alternative. The Act also authorizes the Maine Turnpike Authority to issue special obligation bonds or other evidences of indebtedness up to \$150 million to pay for the planning, design and construction of the connector.

**50. LD 1059 – An Act Concerning Bridges on Discontinued Town Ways. P.L. 2017, ch. 154.**

This Act provides that when a municipality or a county is proposing to discontinue a town way or a public easement and the segment of roadway being proposed for discontinuation includes a bridge that is owned and maintained by the Department of Transportation (DOT), the municipality or county must consult with, negotiate and enter into an agreement with DOT so that the bridge will either be removed or its ownership will be transferred to the municipality, county, or another State agency. The Act also requires that a discontinuation order in such a circumstance, developed for the town meeting or legislative body to vote on, must include the location of any State-owned bridge on the town way or public easement and the status of the negotiations with the DOT.

**51. LD 1395 – Resolve, To Name the Bridge over the Androscoggin River between the Towns of Peru and Mexico the PFC Buddy Wendall McLain Memorial Bridge. Resolves 2017, ch. 9.**

This Resolve designates a bridge that spans the Androscoggin River between the towns of Peru and Mexico as the PFC Buddy Wendall McLain Bridge.

**52. LD 1440 – An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019. P.L. 2017, ch. 283 (Emergency Enacted Effective 7/1/17).**

This Act is the biennial Highway Fund budget for FY 2018-2019. Funding for the Local Road Assistance Program (LRAP) is included within this budget. As a matter of statute, the LRAP allocation is 9% of the Highway Fund allocation to the Department of Transportation. According to the Act, the LRAP allocation for FY 2018 will be \$21.26 million.

**53. LD 1552 – An Act To Authorize a General Fund Bond Issue To Improve Highways, Bridges and Multimodal Facilities and Upgrade Municipal Culverts. P.L. 2017, ch. 299.**

This Act sends out to the voters in November 2017 a proposed \$105 million bond issue for transportation purposes. \$80 million of the bond revenue is dedicated to the construction, reconstruction and rehabilitation of Priority #1, #2 and #3 State highways, the municipal partnership initiative, and to replace and rehabilitate bridges. \$20 million is dedicated to capital improvements to ports, harbors, marine transportation, aviation, freight and passenger railroads, and bicycle and pedestrian trails. \$5 million capitalizes a competitive grant program that matches local funding for the upgrade of municipal culverts at stream crossing in order to improve fish and wildlife habitats and increase community safety. The bond proceeds are estimated to leverage \$137 million in federal and other funds.

**Voting & Elections Legislation**

**54. LD 299 – An Act To Increase Voter Knowledge on Bond Issues. P.L. 2017, ch. 45.**

With respect to proposed bond issues put before the voters on a statewide ballot, current law provides that the printed informational summaries of the State Treasurer regarding the total amount of bonded indebtedness and the amount of authorized but not yet issued bonds, etc., must either be printed directly on the ballot or printed separately from the ballot and posted at the polling place outside the guardrail. This Act requires that the State Treasurer's statement must also be posted in each voting booth at a statewide election to approve a proposed bond issue.

**55. LD 795 – An Act To Improve Voter Access to Information Regarding Referendum Questions on the Ballot. P.L. 2017, ch. 246.**

This Act requires the municipal election clerk to post outside the guardrail during every State-level election, where other required notices are posted, a printed notification indicating that the citizens' guide to the election, as prepared by the Secretary of State's Office, is available at the polling place for voters to read and that the guide provides helpful information regarding referendum questions on the ballot.

**56. LD 1269 – An Act To Adjust the Procedure for Recounts in Certain Municipal Elections. P.L. 2017, ch. 191.**

This Act makes two changes to the laws governing how recounts of municipal elections and referenda may be triggered. First, for a recount of the results of an election for municipal office, the law is amended to require that a written request for a recount must be filed with the municipal clerk within 7 (instead of 5) business days after the election. Second, for a recount of the results of a referendum, a petition signed by 10% or 100 of the registered voters in the municipality, whichever is less, must be presented. Current law requires a recount petition to be signed by 10% or 100, whichever is less, of the persons whose names were checked on the voting list during the referendum.

**57. LD 1384 – An Act to Amend the Election Laws. P.L. 2017, ch. 248.**

This Act makes several amendments to the laws governing the conduct of elections. Of most direct municipal interest, the Act: (1) moves the filing deadline for municipal nomination petitions from the 45th day to the 60th day prior to the election, which will, in turn, require that the nomination papers be made available to aspiring candidates for circulation 100 days before the election; (2) establishes that when a voter files an application with the registrar of voters to either change party enrollment or withdraw enrollment with a political party on the day of a primary election, that application shall be deemed to be received on the following business day; (3) authorizes a municipality to charge a rental fee or janitorial fee when providing meeting space in a municipal building for the purpose of holding the biennial partisan caucus; and (4) clarifies the nature of the licensed residential care facilities (as Level IV) and assisted housing facilities (as licensed with more than 6 beds) in which municipal clerks are obliged to conduct absentee voting opportunities during the 30-day period prior to an election.

**58. LD 1571 –An Act to Amend the Election Laws Relating to Party Qualifications. P.L. 2017, ch. 254.**

In response to legal issues raised by the Libertarian Party of Maine in a lawsuit filed in 2016, *Libertarian Party of Maine v. Dunlap*, and addressed by the U.S. District Court, this Act makes certain amendments to the way a new political party can be established. The Act extends the date by which a party may qualify as a party by submitting an application to the Secretary of State (SOS) with the required number of voters enrolled in the proposed party. Current law provides for one general election cycle to enroll the required 10,000 voters. The Act provides that the aspiring political party has two general election cycles to enroll the required number of voters to maintain party status. The Act also establishes an appeal process if the SOS denies an application for party qualification. The challenge under that appeal process may include a request for copies of voter registration and enrollment or change of enrollment applications that were rejected by municipal registrars from up to 15 named municipalities. Within five days of receiving a properly filed challenge, the SOS must notify the listed municipalities and direct the municipal officials of those municipalities to submit copies of the rejected voter registrations and enrollment or change of enrollment applications to the SOS within five business days, and the appeal process continues from there. The amendments to the process of political party qualifications in this Act apply retroactively to November 1, 2016.

**Public Welfare Legislation**

**59. LD 221 – An Act To Amend the Laws Regarding the Municipality of Responsibility for General Assistance Applicants Released from a State Correctional Facility or County Jail Facility. P.L. 2017, ch. 130.**

This Act repeals a recently enacted provision of General Assistance law that provided when an applicant applies for benefits within 45 days of being released from a correctional facility, the municipality of financial responsibility for a period of 12 months is the municipality of the applicant's residence immediately prior to incarceration.

**60. LD 239 – An Act To Require National Banks To Cooperate in the Administration of the General Assistance Program. P.L. 2017, ch. 28.**

Current General Assistance law includes a general requirement for banks or similar financial institutions to provide account balance information to the State or to a municipal General Assistance (GA) administrator for persons who have applied or are receiving GA. An exemption is provided, however, for national banks, which do not have to provide that information upon request. This Act amends the law governing the municipal authority to obtain information from banks and other financial institutions in order to determine the financial assets of GA applicants. Specifically, this Act: (1) removes the provision in current law that exempts national banks from providing information of a GA applicant's financial assets to a municipal administrator; (2) clarifies that any request for that information from a GA administrator must be accompanied by a written release signed by the depositor; and (3) specifies that in the case where the municipality is inquiring to determine the assets of a deceased individual in order to determine eligibility for burial or cremation services, the financial institution will provide the information upon receipt of a written request for the information from the municipality or its agents along with a notarized affidavit signed by the GA administrator that the named depositor is deceased.

**61. LD 518 – An Act To Amend the Laws Governing the Burial or Cremation of Certain Persons. P.L. 2017, ch. 62.**

This Act amends General Assistance (GA) law with respect to the responsibility of certain relatives to financially contribute toward the costs of burial or cremation of a deceased person determined potentially eligible for GA. To the current list of responsible relatives, the Act adds the decedent's spouse or registered domestic partner. The Act also strikes the provision of current law that restricts potentially responsible relatives to just those relatives who live or own property in Maine, thereby expanding the potential capacity of relatives to contribute toward the burial or cremation to liable relatives who reside out of state.

**C. LABOR & EMPLOYMENT**

**Public Officials**

**62. LD 622 – An Act To Ensure Appropriate Training for Harbor Masters. P.L. 2017, ch. 54.**

This Act establishes that the training courses that municipal harbor masters and deputy harbor masters are required to complete for certification purposes must be offered by a statewide harbor masters association that represents Maine harbor masters.

**63. LD 1377 – An Act To Prohibit Posing as a Governmental Entity in Commerce. P.L. 2017, ch. 228.**

This Act makes it a violation of the Maine Unfair Trade Practices Act for a person to represent him or herself as a representative of a government or governmental agency or



otherwise distribute documentation that is represented as official governmental documentation if those representations are false. The Act also prohibits a person who is not an official, agent or representative of a governmental entity from offering a document that is available free of charge or at a lesser price from a governmental entity without conspicuously disclosing that availability in a manner that is clearly visible to a consumer.

### **Retirement System Legislation**

**64. LD 409 – An Act To Amend the Laws Pertaining to the Maine Public Employees Retirement System. P.L. 2017, ch. 88.**

This Act makes a number of administrative and clarifying amendments to the laws governing the Maine Public Employees Retirement System (MEPERS). Among those amendments, the Act establishes express tax exempt status to all property owned by MEPERS. The Act also allows the board member representing the Participating Local Districts (PLD) to be a person who is either a member or a retired member of the PLD program.

**65. LD 723 – Resolution, Proposing an Amendment to the Constitution of Maine to Reduce Volatility in State Pension Funding Requirements Caused by the Financial Markets. Constitutional Resolution 2017, ch. 1.**

This Resolution sends out to the voters a proposed amendment to the State’s Constitution that would extend the pay-back amortization period for an unfunded actuarial liability created by experience losses from 10 years to 20 years.

**66. LD 917 – Resolve, To Require a Review of the State Employee and Teacher Retirement Plan. Resolves 2017, ch. 14 (Emergency Enacted Effective 6/7/17)**

This Resolve directs the Maine Public Employees Retirement System and the Department of Administrative and Financial Services to convene a 10-member working group to evaluate and design retirement plan options for all State employees and teachers. The working group’s report and recommendations must be submitted to the Legislature by January 1, 2018.

**D. LAND USE, ZONING & PLANNING**

### **CEO/Board of Appeals Legislation**

**67. LD 1381 – An Act To Clarify Appeals of Municipal Land Use Decisions. P.L. 2017, ch. 241.**

This Act amends several statutes governing the municipal land use regulatory decision making process for the purpose of determining when a municipal land use decision regarding a development proposal is ripe for Superior Court review at appeal. Among the statutory changes, the Act clarifies that: (1) unless otherwise established by municipal charter or ordinance, an appeal before the municipal Board of Appeals (BOA) is a “de novo” appeal whereby the parties may present new evidence to the BOA to support their position and are not limited by the

existing record; (2) if the municipal charter or ordinance provides an appellate review process for the BOA, the BOA must limit its review on appeal to the established record; (3) the decision of the BOA is a final decision when the project for which approval of the BOA is requested has received all required municipal administrative approvals by the BOA, planning board or municipal review authority, a site plan or design review board, a historic preservation review board and any other review board created by municipal charter or ordinance; (4) any denial of the request for approval by the BOA is considered a final decision even if other municipal administrative approvals are pending; and (5) such a denial must be appealed within 45 days of the BOA's vote to deny or within 15 days of any final action by the board on a reconsideration that results in a denial of the request. Because a somewhat separate appeal process to Superior Court has been established in municipal land use statutes for "significant municipal land use decisions," which essentially are development projects large enough to fall under the State's Site Location of Development Act, the Act replicates the same "final municipal decision" standards in that section of law, as well.

### **Dangerous Buildings Legislation**

#### **68. LD 1459 – An Act To Protect the Public from Dangerous Buildings. P.L. 2017, ch. 136.**

This Act modernizes the dangerous building statute without significant substantive change except that the Act allows the order issued by the municipal officers prescribing the required disposal of the dangerous building to allow for delay of disposal if the owner or party in interest has demonstrated the ability and willingness to satisfactorily rehabilitate the building. This Act modernizes the dangerous building statute and amends the law to provide an option under which the municipal officers or county commissioners may delay the disposal of a dangerous building if the owner or party in interest has demonstrated ability and willingness to satisfactorily rehabilitate the building. In addition, the Act clarifies the language in current law regarding recovery of expenses related to an order prescribing disposal of a dangerous building; specifically, the Act adds reasonable attorney's fees as a recoverable expense under the statute.

### **Subdivision Legislation**

#### **69. LD 805 – An Act To Streamline the Municipal Review Process When Dividing a Structure into 3 or More Dwelling Units and To Amend the Process for Recording Subdivision Variances. P.L. 2017, ch. 104.**

Under current law, a municipality is essentially preempted by State law from adopting a definition of "subdivision" that differs from the statutory definition, except a municipality is expressly allowed to expand the definition to include in its definition, and in the subdivision review process, the division of a structure into three or more units for commercial or industrial uses. This Act repeals that municipal authority. The Act also adds a new exemption to the definition, which is the division of a new or existing structure into 3 or more dwelling units however the division is accomplished (by sale, lease, development or otherwise) if the project is also subject to municipal site plan review pursuant to the law that delegates to qualifying municipalities the authority to perform State-level Site Location Act review for major

development projects. The effective date of the new exemption is July 1, 2018. Also under current law, when a variance is granted with respect to a subdivision application, the variance must be recorded in the registry of deeds within 90 days of the final subdivision approval or the variance is void. This Act retains the requirement that the variance must be re-corded to be valid, but expands the 90-day recording window to a two-year recording window before the variance is voided.

### **Zoning Legislation**

**70. LD 549 – An Act To Recognize Preexisting Land Uses. P.L. 2017, ch. 89.**

This Act amends the law governing the Maine Land Use Planning Commission, which serves a planning board function for the unorganized territories. The Act provides that if a person can demonstrate that a land use or structure that does not conform to the applicable land use standards that apply in that district has existed for at least 30 years, there is a rebuttable presumption that the use is a legal, nonconforming use or the structure is a legal, nonconforming structure.

**71. LD 1636 – An Act To Allow Municipalities To Establish Ordinances Banning or Restricting Marijuana Caregivers within 500 Feet of a School. P.L. 2017, ch. 271 (Emergency Enacted Effective 6/23/17).**

This Act authorizes a municipality to adopt and enforce an ordinance that establishes a moratorium on the location - within 500 feet of the property line of a preexisting public or private school - of new facilities or expansion of existing facilities where registered primary caregivers cultivate marijuana plants. The authority created by this Act is repealed July 1, 2018 and the ordinances adopted pursuant to this Act are made void after that date.

**E. LAW ENFORCEMENT & PUBLIC SAFETY**

### **Firearms Legislation**

**72. LD 9 – An Act To Prohibit the Creation of a Firearms Owner Registry. P.L. 2017, ch. 175.**

This Act prohibits the State or any municipality or other political subdivision of the State from keeping a comprehensive registry of privately owned firearms or the owners of those firearms within its jurisdiction.

**73. LD 343 – An Act To Prohibit the Discharge of a Firearm within 300 Feet of a State-owned Boat Launching Ramp. P.L. 2017, ch. 69.**

This Act establishes as a Class E crime the offense of discharging a firearm within 300 feet of a State-owned boat launching ramp, with an exception for law enforcement officers in the performance of their duties.

**Police/Fire/Rescue Legislation**

**74. LD 150 – An Act Regarding the Funding of Volunteer Fire Departments. P.L. 2017, ch. 33.**

This Act amends the law authorizing municipal appropriations to support an incorporated volunteer fire department to require that all such appropriations are itemized.

**75. LD 172 – An Act To Improve Officer Safety at Roadside Incidents. P.L. 2017, ch. 21.**

Current law allows a police vehicle to utilize blue emergency lights or a combination of blue and white emergency lights. This Act authorizes the additional use of red emergency lights on police vehicles.

**76. LD 179 – An Act To Make Creating a Police Standoff a Class E Crime. P.L. 2017, ch. 86.**

This Act changes the offense of creating a police standoff from a civil violation to a Class E crime and details the four elements of the crime, which exist when a person: (1) is in fact barricaded as a result of the person's own actions; (2) is or claims to be armed with a dangerous weapon; (3) is instructed by a law enforcement officer or law enforcement agency, either personally, electronically or in writing, to leave the barricaded location; and (4) fails to leave the barricaded location within 30 minutes of receiving the instruction to do so.

**77. LD 182 – An Act to Protect Firefighters by Establishing a Prohibition on the Sale and Distribution of New Upholstered Furniture Containing Certain Flame-retardant Chemicals. P.L. 2017, ch. 311.**

This Act was advanced in the interest of protecting firefighters from exposure to certain carcinogenic chemicals when in the act of extinguishing structure fires. The Act provides that with certain exceptions and beginning on January 1, 2019, a person is prohibited from selling or offering for sale new upholstered furniture containing more than 0.1% of a flame retardant chemical or 0.1% of a mixture that includes flame retardant chemicals. The exceptions are: (1) used upholstered furniture; (2) upholstered furniture purchased for public use in public facilities that meets a certain California flammability standard; and (3) new upholstered furniture that was imported into the State or otherwise purchased or acquired by the retailer or wholesaler for sale or distribution prior to January 1, 2019. The Act also directs the Department of Environmental Protection to adopt the "routine technical" rules necessary to implement this Act.

**78. LD 332 – An Act Regarding Service of Criminal Process on Electronic Communication Service Providers and Remote Computing Service Providers. P.L. 2017, ch. 144 (Emergency Enacted Effective 6/08/17).**

This Act expressly establishes that a Maine search warrant or grand jury subpoena may compel production of records of a provider of electronic communication service or remote

computing service even if the provider is outside of the State. The Act establishes the procedures for service of that type of legal process with respect to both foreign and domestic electronic communication service providers.

**79. LD 511 – An Act To Amend the Laws Governing Domestic Violence and Setting Preconviction Bail. P.L. 2017, ch. 66.**

Under current law governing improper contact with a family or household member prior to the setting of preconviction bail, a person who is notified by county jail staff not to contact the family or household member but who nonetheless makes the contact is in violation. This Act provides the same consequences of violation when the person is so-notified by a law enforcement officer.

**80. LD 588 – An Act To Allow Law Enforcement Agencies and Associations To Engage Directly in Fundraising under Certain Circumstances. P.L. 2017, ch. 90.**

This Act amends the law governing the authority of law enforcement agencies to engage in limited solicitation of funds from the general public for the tangible benefit of a law enforcement officer, or an immediate family member of a law enforcement officer, suffering from a catastrophic illness. Under current law, that type of solicitation must involve the services of designated public benefit corporation. This Act allows a law enforcement agency to retain a public benefit corporation for this purpose but also allows the law enforcement agency to conduct the limited solicitation without retaining a public benefit corporation. All other existing limitations on the solicitation effort, including the prohibition on door-to-door solicitation, remain in effect.

**81. LD 848 – An Act To Support Law Enforcement Officers and First Responders Diagnosed with Post-traumatic Stress Disorder. P.L. 2017, ch. 294 (Mandate).**

This Act, recognized as a State mandate, establishes a rebuttable presumption under the laws governing workers' compensation that when a law enforcement officer, firefighter or emergency medical services worker is diagnosed by a licensed psychologist or a licensed allopathic or osteopathic physician as having post-traumatic stress disorder, the posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, and is therefore compensable, provided the psychologist or physician can make three findings: (1) the stress was work-related; (2) the stress was extraordinary and unusual compared with the stress experienced by an average employee, and (3) the work stress and not some other source of stress was the predominant cause of the disorder. The employer can rebut the presumption by providing clear and convincing evidence to the contrary. The Act requires the Workers' Compensation Board to submit a report to the Legislature by January 1, 2022 that includes an analysis of the number of claims submitted pursuant to this rebuttable presumption that resulted in a settlement or award of benefits, as well as the financial impacts on the State, counties and municipalities. The reporting provision is repealed on October 1, 2022.

**82. LD 1512 – An Act To Protect the Health and Safety of First Responders. P.L. 2017, ch. 292.**

This Act authorizes a first responder (law enforcement officer, firefighter or emergency medical services provider) who has been exposed to a person’s bodily fluids in the course of the first responder’s official duties to ask the person who exposed the first responder to the bodily fluids for a blood sample for the purpose of testing for an aggressive blood-borne pathogen. If the request for the blood sample is denied, the Act provides for an expedited process for the first responder to petition the courts to schedule a probable cause hearing in order to obtain the necessary warrant to obtain the blood sample.

**Public Health & Safety Legislation**

**83. LD 569 – Resolve, Regarding Legislative Review of Chapter 5: Maine Disaster Recovery Fund, a Major Substantive Rule of the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency. Resolves 2017, ch. 7 (Emergency Enacted Effective 4/21/17).**

This Resolve provides for final adoption of a “major substantive” rule of the Department of Defense, Veterans and Emergency Management, Chapter 5, Maine Disaster Recovery Fund. The rule governs the process for the expenditure of revenues from the Disaster Recovery Fund, and establishes priorities for expenditure of the Fund among the uses authorized by statute including aid to individuals, families and municipalities and low-interest loans to businesses.

**84. LD 1427 – An Act To Make Community Paramedicine Services Permanent. P.L. 2017, ch. 276.**

Current law authorizes the Emergency Medical Services Board to establish community paramedicine projects as pilot projects. “Community paramedicine” is defined as the practice by an emergency medical services provider, primarily in an out-of-hospital setting, that provides episodic patient evaluation, advice and treatment directed at preventing or improving a particular medical condition, within the scope of practice of the emergency medical services provider as specifically requested or directed by a physician. The Board is authorized by current law to promulgate rules governing the pilot projects that apply to emergency medical services providers, including ambulance services or non-transporting emergency medical services providers. This Act essentially retains all of that current law except that the concept of pilot projects is removed, making the provision of the paramedicine services systems permanent.

**Sex Offender Legislation**

**85. LD 138 – An Act To Amend the Laws Governing the Sex Offender Registry. P.L. 2017, ch. 65.**

This Act amends the law governing the sex offender registry to include any person who is a teacher, employee or other official having instructional, supervisory or disciplinary authority in an educational institution who is convicted of the offense of gross sexual assault or unlawful

sexual contact when the victim, regardless of age, is a student over whom the employee has control and the crime is committed on or after October 1, 2017.

## F. MUNICIPAL FINANCE

### Budget Legislation

**86. LD 390 – An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019. P.L. 2017, ch. 284 (Emergency Enacted Effective 7/4/17).**

This Act establishes the State budget for the FY 2018-2019 biennium. Elements of the budget of municipal interest include:

**Homestead Exemption Reimbursement (April 1, 2017).** Prior to the adoption of this budget, both the value of the Homestead Exemption provided to all qualifying Maine resident homeowners and the amount of State reimbursement for lost property tax revenue increased on April 1, 2017. The value of the exemption increased from \$15,000 to \$20,000 and State reimbursement from 50% to 62.5%. As enacted in the budget, the amount of State reimbursement provided to municipalities is retroactively decreased from 62.5% to 50% for the \$20,000 exemption provided to Maine homeowners on April 1, 2017. The Homestead Exemption reimbursement rate for April 1, 2018 and subsequent property tax assessment years is still set at 62.5%.

**3% Surcharge.** As enacted by the voters of Maine at the November 8, 2016 referendum election, as of January 1, 2017 a 3% surcharge has been assessed on the portion of taxable Maine income that exceeds \$200,000, with the generated revenue dedicated to support K-12 classroom expenses. The budget repeals this citizen-initiated school funding law.

**\$162 million Increase in GPA.** The budget appropriates an additional \$162 million (\$48 million in FY 2018 and \$114 million in FY 2019) for K-12 education over the biennium, increasing the State's share of Essential Program Services (EPS) expenditures to \$1.040 billion in FY 2017-2018. As a result, the local mill rate expectation is reduced from 8.30 mills in FY 2017 to 8.19 mills in FY 2018. With one exception, the budget also stipulates that for fiscal years 2018 and 2019, 50% of all unanticipated K-12 funding must be returned to the contributing school district's member municipalities for the express purpose of reducing the property tax assessment for public education. The exception to the 50% property tax relief requirement applies only in FY 18 and to school budgets that were both approved by the voters prior to the July 4 enactment of the State's General Fund budget and that earmarked unanticipated State funding for increased expenditures for school purposes. In that case, the use of unanticipated State funding is permitted as approved by the school district's voters.

**55% of K-12 Education.** The budget amends the calculation of the State’s share of the total cost of funding K-12 public education to include roughly \$130 million in unfunded actuarial liabilities of the Maine Public Employees Retirement System attributable to teachers.

**State Funding for School Administration.** The budget amends the formula that previously included funding for 50% of the costs of system administration in the calculation of the State’s share of K-12 education. As enacted, between FY 18 and FY 20 the State share of administrative costs will be calculated on a per pupil basis, with an incrementally increasing portion of those State revenues targeted for regionalized administrative services. In FY 2021 and subsequent fiscal years, only school administrative units that have established regionalized administrative services or that have been identified as high-performing, efficient school administrative units will be eligible for the system administration allocation.

**“Minimum Subsidy” Adjustment.** “Minimum receiver” school systems that would otherwise receive no State subsidy through the regular operation of the school funding system have always been granted a “minimum subsidy” adjustment. In FY 2017, that adjustment is 30% of the school’s special education costs, as calculated by the EPS model. For the current school year (FY 2018), that adjustment increases to 33%. However, the previously adopted budget (FY 2017) included a scheduled increase in the minimum subsidy adjustment to 35% for the FY 2018 school year.

**Economically Disadvantaged Students.** Under the current EPS model, a school’s operating cost allocation is provided a 15% increase to the standard per-pupil cost for each economically disadvantaged student. The adopted budget provides an extra 5% adjustment to school districts that use the additional funds for qualifying learning programs specifically designed to benefit economically disadvantaged students.

**Title 1 Subtractions & Student-to-Teacher Ratio.** The budget repeals the current policy that subtracts from a school system’s calculated subsidy the amount of Title 1 money the school receives from the federal government for additional teaching staff. As a collateral policy change, and because those federally funded teaching positions were not included in the original establishment of the EPS model’s student-to-teacher ratios, those ratios are also changed in the budget. The new ratios are 17:1, 17:1 and 16:1 for the elementary level, middle school level and high school level, respectively. Beginning on July 1, 2018, the student-to-teacher ratio for the kindergarten level is 15:1.

**Special Education Per-pupil Weights.** Under the current EPS model, a school’s special education allocation utilizes a system that provides a 20% increase (1.2) to the standard per-pupil cost for each special education student. The budget increases that weighting to 50% (1.5). In addition, the budget creates a special education budgeting hardship adjustment that can be provided when unexpected special education enrollments cause significant school budget disruptions.

**Instructional Expenditures Targets.** Beginning with the next school year (FY 2018-2019) an incrementally increasing percentage of total “General Fund” K-12 education expenditures must be used for “direct instruction.” As defined in the budget, direct instruction



includes expenditures for “regular and special education, career and technical education and summer school and extracurricular instruction.” The schedule adopted in the budget requires that 61% of expenditures be used for direct instruction in the FY 2019 school year, 63% in FY 2020, 65% in FY 2021, 67% in FY 2022 and levels off at 70% of those costs in FY 2023 and thereafter.

**Property Fiscal Capacity.** In fiscal year 2019 and subsequent fiscal years, the “property fiscal capacity” component of the EPS model will be based on a 2-year rolling average State-certified valuation calculation, rather than the current 3-year average.

**Study of Conserved Lands.** The budget tasks the Legislature’s Agriculture, Conservation and Forestry Committee with studying how land owned by nonprofit conservation organizations impacts municipalities, the State economy and the tourism industry. The Committee is further directed to conduct at least three meetings, and to report out its findings no later than February 15, 2018.

**County Assessment for Jails.** Existing law allows the property tax assessment for county jail operations to increase from one year to the next by either 3% or the county’s appropriate “LD 1” growth limitation factor, whichever percentage increase is less. The budget amends the property tax assessment increase limit to the “LD 1” limit or 4%, whichever is less.

**County Jail Operations.** The adopted budget provides the Department of Corrections with the authority to inspect, review and take custody of county records related to the funding and operations of county jails. The Department is further directed to submit to the Appropriations Committee and the Criminal Justice and Public Safety (CJPS) Committee plans to restructure the funding and operations of county jails and correctional facilities and prisoner population and capacity. The CJPS Committee is authorized to report out legislation in 2018 implementing the Department’s recommendations.

**Local Government Efficiency Fund.** For FY 18 only, the budget includes a \$3 million appropriation for the Fund for the Efficient Delivery of Local and Regional Services.

**Fund for the Efficient Delivery of Educational Services.** The adopted budget appropriates \$10 million over the biennium for the Fund for the Efficient Delivery of Educational Services.

**State’s “LD 1” Reporting Obligation.** The budget repeals the Office of Policy and Management (OPM) directive to annually track municipal, county and school administrative unit progress with the so-called “LD 1” tax burden reduction goals.

**Coastal Zone Management Program.** Oversight and management of the State coastal zone management program is transferred from the Department of Agriculture, Conservation and Forestry to the Department of Marine Resources.

### *Economic Development Legislation*

**87. LD 1478 – An Act To Provide Support for Sustainable Economic Development in Rural Maine. P.L. 2017, ch. 174 (Emergency Enacted Effective 6/12/17).**

This Act establishes the Rural Manufacturing and Industrial Site Redevelopment Program within the Maine Rural Development Authority (MRDA). The purpose of the program is to provide technical assistance, planning grants and implementation grants for the rehabilitation, revitalization and marketing of manufacturing and industrial sites in rural communities, with a particular emphasis on communities that have experienced severe economic decline and employment loss due to the nonproductive nature of the site and insufficient technical or planning resources. The grants may be awarded to a municipality or to the owner of the nonproductive industrial or manufacturing site. The Act does not appropriate any State General Fund resources to implement the program. Instead, the MRDA is authorized to use funds from the Commercial Facilities Development Program to implement the Rural Manufacturing and Industrial Site Redevelopment Program.

**G. REAL ESTATE LEGISLATION**

#### *Housing*

**88. LD 1340 – An Act To Amend the Laws Governing the Maine State Housing Authority. P.L. 2017, ch. 234.**

This Act amends the statutes governing the Maine State Housing Authority (MSHA) in numerous ways. The amendments most related to municipal government and municipal housing authorities include: (1) rewriting and clarifying the jurisdictional authority of housing authorities to provide that a municipal housing authority has exclusive jurisdiction within its municipal boundaries to administer regular tenant-based housing choice (“Section 8”) vouchers but that jurisdiction does not limit MSHA’s authority to administer project-based vouchers or specialty vouchers that are associated with services such as case management, clinical services, child welfare services or other housing stability services; (2) removing archaic language that requires MSHA to meet and discuss with the local legislative body (i.e., the town meeting or town or city council) regarding such matters as permissible and preferred developers, potential project sites, etc. and establishing a replacement requirement that unless the municipality and authority agree otherwise, a municipal housing authority must meet at least annually with the legislative body of the municipality for which it is created; (3) repealing the requirement that MSHA meet with local planning boards and regional planning commissions to discuss MSHA’s affirmative housing action plans; (4) clarifying that MSHA’s obligation to provide a municipality with an opportunity to review and discuss proposed development projects should be extended to the municipal officers rather than the municipal legislative body; (5) repealing the requirement that each municipality report to the State’s Bureau of General Services on any municipally-owned land or building that may be suitable for affordable housing; and (6) eliminating the prohibition against MSHA entering into contracts with the federal government until the municipality in which the project is to be located adopts a resolution approving the contract.

*Miscellaneous Real Estate Legislation*

**89. LD 7 – An Act To Allow Conveyance of Land Previously Conveyed by the State to the Town of Bridgton. P.L. 2017, ch. 18.**

This Act amends the terms of a 1971 transfer of real estate in Bridgton from the State to the town to allow the town to convey non-waterfront portions of the parcel if the Town determines those lots to have no public use and provided the revenue from those sales is held in trust for parks and recreational purposes of the Town.

**90. LD 871 – An Act To Require Disclosures Relating to the Sale of Residential Property Accessible by a Public Way and Any Means Other than a Public Way. P.L. 2017, ch. 181.**

This Act amends the law establishing certain disclosures by the seller of real estate to the buyer or the recipient of the transaction to create an additional required disclosure. The additional disclosure is information describing the means of accessing the property whether by a public way or a means other than a public way. To the extent access is obtained by a means other than a public way, the seller must disclose information about who is responsible for maintenance of that means of access, including any responsible road association, if known by the seller.

**91. LD 992 – An Act To Authorize Moving the Town Line between Baileyville and Baring Plantation. P & S.L. 2017, ch. 6.**

This Act relocates all portions of Park Road and the Baileyville Commercial Park, currently in Baring Plantation, into the Town of Baileyville.

**92. LD 1139 – An Act To Clarify Certain Right-of-way Limitations. P.L. 2017, ch. 194.**

This Act provides that an owner of an easement or right-of-way leading to or touching upon a water body does not have the right by implication to construct a dock on the easement or right-of-way or use the easement or right-of-way to facilitate the construction of a dock. This clarification of the absence of any right by implication to install a dock on an easement adjoining a water body applies to any easement or right-of-way originally established in a written instrument on or after January 1, 2018 that does not expressly authorize the right to construct a dock or facilitate the construction of a dock on the easement or right-of-way.

**93. LD 1635 – Resolve, Authorizing Certain Land Transactions by the Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands. Resolves 2017, ch. 19.**

This Resolve authorizes the Director of the Bureau of Parks and Lands to grant an access easement to the Town of Fort Kent across the Fort Kent Historic Site to allow for improvements to the capacity of the earthen flood barrier along the St. John River and protect the Fort Kent Blockhouse, a National Historic Landmark, from flooding.

## H. SCHOOL LAW

### General School Legislation

94. **LD 1104 – An Act To Exempt School Resource Officers from Department of Education Background Check and Fingerprinting Requirements. P.L. 2017, ch. 155.**

This Act exempts from the school personnel background check and fingerprinting requirements any active duty law enforcement officer from a local law enforcement agency who is undertaking the assignment of the “school resource officer.”

95. **LD 1334 – An Act To Authorize the Town of Atkinson To Withdraw from School Administrative District No. 41. P & S.L. 2017, ch. 9.**

This Act authorizes the Town of Atkinson to withdraw from School Administrative District 41 if it meets the requirements established for the withdrawal of a single municipality from a school district.

### School Transportation Legislation

96. **LD 28 – An Act To Allow Alternate Flashing Headlights on a School Bus. P.L. 2017, ch. 26.**

This Act allows a school bus to be equipped with a device that provides for alternate flashing of the school bus’s headlights.

97. **LD 785 – An Act To Improve Safety and Traffic Efficiency near School Grounds. P.L. 2017, ch. 132.**

This Act establishes the necessary qualifications for a school crossing guard to be empowered to control traffic with hand signals or a handheld traffic control device so that the violation of that crossing guard’s direction is a traffic offense. To meet that level of qualification, the school crossing guard must: (1) be 18 years of age or older; (2) be under the control of a local law enforcement agency; (3) have completed applicable training approved by the Bureau of Labor Standards; (4) be wearing an appropriate uniform as specified by the supervising law enforcement agency; (5) be directing traffic in an intersection with a marked crosswalk on a public way; and (6) not contradict or override a lighted traffic control device or pedestrian control device. The Act does not prohibit a school crossing guard who does not meet those specifications from assisting a pedestrian to cross a public way as long as the school crossing guard does not attempt to do so by directing traffic.

## I. TAXATION

### Property Tax Legislation

**98. LD 117 – An Act To Strengthen the Farm and Open Space Tax Law. P.L. 2017, ch. 183.**

This Act amends the law governing the “current use” Farmland and Open Space tax program to provide that a parcel of land that is located on an island may not be considered contiguous to another parcel of land that is not located on the same island if the parcels of land are separated by water at the normal high water mark or high tide. With respect to a parcel of land that was included within a Farmland enrollment before April 1, 2017 that is excluded as a result of the Act’s clarification of the definition of “contiguous,” the excluded parcel must be treated as an Open Space parcel unless the owner chooses to withdraw the parcel from current use taxation.

**99. LD 393 – An Act To Clarify That the Department of Transportation Is Exempt from Property Assessment Liabilities When Acquiring Property by Condemnation. P.L. 2017, ch. 40.**

This Act amends the law to more clearly provide that the Department of Transportation is not required to pay any taxes on property it acquires for transportation purposes.

**100. LD 1078 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2017-18. P.L. 2017, ch. 121 (Emergency Enacted Effective 6/02/17).**

This Act establishes the “municipal cost components” for State and county services provided to the unorganized territory (UT). The municipal cost components form the basis of the property tax for the UT. After computing all the appropriations, identifying tax increment financing payments, and subtracting the general revenue and educational revenue deductions, the total UT tax assessment for FY 2018 is established at \$25,186,968 (not counting overlay), representing a 12.5% increase over the assessment for FY 2017.

**101. LD 1180 – An Act To Provide a Definition of “Primary Residence” for Purposes of Property Tax Abatements Based on Hardship or Poverty. P.L. 2017, ch. 273.**

This Act defines the term “primary residence” for the purpose of considering an application for a poverty abatement as the applicant’s home, appurtenant structures necessary to support the home and acreage sufficient to satisfy the minimum lot size as required by the municipality’s land use or building permit ordinances or regulations or, in the absence of any municipal minimum lot requirement, the generic statewide minimum lot requirement of 20,000 square feet.

**102. LD 1289 – An Act To Allow Voluntary Payments in Lieu of Taxes in the Unorganized Territory. P.L. 2017, ch. 193.**

This Act authorizes tax exempt entities with property located in the unorganized territories to make voluntary “payments in lieu of taxes” (PILOTs) to the State Tax Assessor. Any such payments must be deposited by the State Tax Assessor into the appropriate county’s unorganized territory fund.

**State Tax Legislation**

**103. LD 1405 – An Act To Require Remote Sellers To Collect and Remit Sales and Use Tax on Sales into Maine. P.L. 2017, ch. 245.**

This Act requires “remote sellers” that sell for delivery into Maine either personal property, a product delivered electronically or a taxable service, when the annual sales from those transactions are greater than \$100,000 a year or when the seller has processed at least 200 separate transactions in Maine in the previous year, to collect and remit to the State the appropriate sales tax associated with such a purchase.

**104. LD 1551 – An Act To Amend the Maine Tax Laws. P.L. 2017, ch. 211.**

This is an omnibus tax Act submitted by Maine Revenue Services (MRS) that makes dozens of amendments running throughout the State’s tax code. Of municipal interest, the Act: (1) establishes a lien on behalf of the State government on the property of persons who have tax liabilities with respect to State taxes, although the lien is expressly junior to municipal tax lien; and (2) establishes an avenue for a municipality to appeal a decision by MRS to withhold an amount of reimbursement under the Business Equipment Tax Exemption program if an MRS audit finds the exemption improperly granted.

**105. LD 1570 – An Act To Make Technical Changes to Maine’s Tax Laws. P.L. 2017, ch. 170.**

This Act makes a number of technical changes to the State’s tax laws, generally of a non-substantive nature. The amendments to the property tax elements of the State’s tax code in this Act include: (1) removing the requirement that Maine Revenue Services (MRS) publish a list of certified assessors and requires MRS, instead, to provide the list to municipalities upon request; (2) pushing out the due date for the annual distribution to municipalities for revenue lost under the Maine Tree Growth Tax Law, from August 1st to October 15th; and (3) clarifying that property of institutions and organizations exempt from property taxes under Section 652 of the tax code (e.g., as “charitable and benevolent” corporations, etc.) is not eligible under the Business Equipment Tax Exemption program (BETE).

**SUMMARY OF  
LEGISLATION CARRIED OVER TO THE  
SECOND SESSION OF THE  
128th LEGISLATURE<sup>1</sup>**

The following is a summary of a selection of bills of significance for municipalities that have been carried over to the second session of the 128th Legislature. Where applicable, the summaries state if the bill is a “concept draft,” meaning that no legislative language has been drafted yet.

**Environment, Energy & Telecommunications**

- **LD 11, Resolution, Proposing an Amendment to the Constitution of Maine To Establish the Right To Hunt and Fish.**

This bill would send to the voters a proposed amendment to the State’s Constitution to establish an unfringeable right to hunt, fish and harvest game and fish, with such activities subject only to laws enacted by the Legislature and rules adopted by the state agency designated for fish and wildlife management.

- **LD 140, An Act To Authorize a General Fund Bond Issue To Support Entrepreneurial Activity, Attract Business and Enhance Demographic Immigration by Investing in High-speed Broadband Infrastructure and To Amend the Law Governing the Municipal Gigabit Broadband Network Access Fund.**

This bond bill, put forward as part of MMA’s Legislative Policy Committee’s 2018-19 advocacy platform, asks voters to borrow \$10 million to support the expansion of high-speed internet infrastructure for economic development purposes. These funds would be used to capitalize the existing yet unfunded State Municipal Gigabit Broadband Network Access Fund. The bill also contains some amendments to the Fund that would allow grant applications from collectives of multiple municipalities, while also aiming to direct more state funds to implementation grants by encouraging local self-funding of preliminary planning efforts.

- **LD 257, An Act To Enable Municipalities Working with Utilities To Establish Microgrids.**

This bill (concept draft) proposes to establish measures to allow municipalities, working cooperatively with electrical utilities, to create microgrids, which are electricity distribution systems consisting of distributed energy sources, including demand management, storage and generation and loads capable of operating in parallel with, or independently from, the main power grid. This bill would address the following requirements:

1. The generation of electricity from renewable sources into the microgrid;

---

<sup>1</sup> Adapted from “2017 study and carryover bills” in the August-September 2017 edition of the *Maine Townsman* with the permission of Maine Municipal Association.

2. Methods for adding capacity for storage and managing or enabling a utility to manage the charging of the microgrid and the use of the stored power;
3. An appropriate rate for power generation and stored power usage;
4. A credit applicable toward municipal electricity utilization or assignable to organizations or households according to municipal public service decisions; and
5. Contracts with utilities to receive compensation for scheduling or shedding of electrical load in order to lower peak demand and consequently ratepayer prices.

- **LD 1372, An Act To Increase Broadband Access for Rural Communities.**

This bill (concept draft) proposes to enact measures designed to increase broadband access for rural communities. Specifically, this bill proposes to:

1. Direct the ConnectME Authority to create an accurate map of broadband coverage in the State. The mapping project should delineate, at a minimum:
  - A. Those areas of the State that do not have access to broadband coverage;
  - B. For those areas of the State without access to broadband coverage, the infrastructure in place that might be used to expand access, including, but not limited to, poles, nodes, and fiber optic cable; and
  - C. For those areas of the State with access to broadband coverage, the type or types of available broadband coverage and the associated connection speeds; and
2. Direct the ConnectME Authority to provide funding for the provision of digital literacy programs, particularly in rural areas of the State. A digital literacy program funded pursuant to this requirement must have a history of success in increasing fluency in the use and security of interactive digital tools and searchable networks, including the ability to use digital tools safely and effectively for learning, collaborating and producing.

- **LD 1373, An Act To Protect and Expand Access to Solar Power in Maine.**

This bill amends the laws governing net energy billing. It prohibits a charge to a customer that elects to use net energy billing. It provides specific provisions related to net energy billing including:

1. It provides that customers using net energy billing receive bill credits netted against delivery and supply charges on a one-to-one basis;
2. It provides that unused bill credits accumulate on a 12-month rolling basis;



3. It limits the installed capacity of an eligible facility to 2 megawatts in the territory of an investor-owned transmission and distribution utility and to 100 kilowatts in the territory of a consumer-owned transmission and distribution utility, except that the consumer-owned transmission and distribution utility may elect to allow an eligible facility with installed capacity up to 2 megawatts;

4. It allows an eligible facility with shared ownership or 3rd-party ownership to be eligible for net energy billing and prohibits the Public Utilities Commission from limiting the number of participants in a shared ownership project, but allows the commission to set a minimum share size; and

5. It requires a comprehensive review of ratepayer benefits and costs from net energy billing when any investor-owned transmission and distribution utility in the State enters into net energy billing agreements for a total generating capacity equal to 5% of the annual peak demand and again for every additional 3% of the utility's annual peak demand thereafter.

This bill also establishes a solar energy rebate program to be administered by the Efficiency Maine Trust. The program is to be funded through an assessment collected by the Public Utilities Commission from transmission and distribution utilities. Available funds are to be distributed in the following manner: 40% to eligible commercial customers, 20% to low-income or moderate-income residents and 40% to other eligible residents. This bill requires the trust to adopt routine technical rules to administer the program and requires the trust to submit an annual report to the Legislature that describes the actions of the trust related to the rebate program.

- **LD 1444, An Act Regarding Large-scale Community Solar Procurement.**

This bill directs the Public Utilities Commission (PUC) to enter into long-term contracts with a duration of 20 years for the procurement of 120 megawatts of large-scale community solar distributed generation resources by 2022.

The bill designates a standard buyer, which the bill specifies is the investor-owned transmission and distribution utility in its service territory. The bill allows the PUC to designate another entity as the standard buyer if the PUC determines it is in the best interest of ratepayers to do so. The purpose of the standard buyer is to purchase the output of large-scale community solar distributed generation resources, aggregate the portfolio of distributed generation resources procured and sell or use the output of these resources in a manner that maximizes the value of this portfolio of resources to all ratepayers.

The bill directs the PUC to conduct an initial competitive solicitation for 30 megawatts of output of large-scale community solar distributed generation by March 1, 2018. The bill directs the PUC and standard buyer to develop a contract prior to a solicitation that will ensure that projects proceed to commercial operation on a reasonable timeline and commits all parties to commercially reasonable behavior.

The bill gives the commission authority to establish requirements for bidder eligibility and standards to ensure competition in the bidding process. The bill also specifies that if the solicitation is determined competitive the PUC must select one or more winning bids and direct the standard buyer to negotiate and enter into a contract with the winning bidder or bidders. If the PUC concludes the solicitation is not competitive, no bidders may be selected and the capacity available in that solicitation must be deferred to a subsequent solicitation. The bill requires the PUC to select bids that maximize the benefits or minimize the costs to all ratepayers.

The bill requires after the first solicitation that the highest bid rate awarded a contract is the standard solar rate. For each subsequent procurement for 30 megawatts of large-scale community solar distributed generation resources, the PUC must establish a declining block rate by reducing the rate awarded in the previous procurement by up to 3%. Bidders in subsequent procurement must submit both a standard bid rate and a discounted bid rate. The bill specifies that if the total bids received in the aggregate is for less than 30 megawatts in subsequent solicitations, contracts will be awarded to all bidders at the applicable declining block rate; however, if the total bids received in the aggregate is for more than 30 megawatts, preference will be given to those bidders with the lowest discounted bid rate and contracts must be awarded to all selected bidders at the lowest qualified discounted bid rate. The bill requires that if there are multiple bids at the same discounted bid rate, preference will be given to the project that was submitted first, as determined by the time stamp showing when the bid was received by the PUC.

The bill specifies that the bill credit allocated to a subscriber to a particular large-scale community solar distributed generation resource must be based on each subscriber's percentage interest of the total production of the large-scale community solar distributed generation resource for the previous month. The bill requires the project sponsor to provide to the transmission and distribution utility, on a monthly basis, the information required to calculate the bill credit to be provided to each subscriber. The bill includes provisions on how payments to a subscriber must be credited against the subscriber's monthly electricity bill.

- **LD 1472, An Act To Lower the Costs of Broadband Service by Coordinating the Installation of Broadband Infrastructure.**

This bill would require the installation of broadband conduit during all roadway-related construction projects that are financed in whole or in part with federal, State or local funding when constructing new or replacing existing water or sewer lines in a public right-of-way, or constructing a new highway or road, or constructing or relocating an additional lane or shoulder for an existing highway or public road. The public entity responsible for the construction is authorized by the bill to lease the broadband conduit at a cost-based rate to providers to install fiber-optic or other cables that support broadband and wireless facilities for broadband service. The idea is to spread broadband conduit in a "two birds with one stone" fashion, but the mechanism contains mandate implications.

## **Government & Public Affairs**

- **LD 584, Act To Create the Fund for Municipalities To Improve Pedestrian Safety.**

This bill would establish a fund to be administered by the Department of Transportation as a program within the Highway Fund, and used for pedestrian safety improvements, including, but not limited to, lights, paint, signs, speed bumps and reconstruction of intersections. A municipality or group of municipalities could apply for funding for up to two-thirds of the cost of a qualifying project.

- **LD 1149, An Act To Provide Revenue To Fix and Rebuild Maine's Infrastructure.**

This bill proposes to increase a variety of existing fees and tax resources to cover ever-mounting infrastructure upgrade costs.

- **LD 1490, An Act To Stabilize Funding for the County Jails.**

This bill transfers funds out of the County Jail Operations Fund program to the Community Based Corrections program within the Department of Corrections to create a separate program for funds distributed pursuant to 34-A M.R.S.A. § 1210-D(2).

- **LD 1646, An Act To Bring Maine's Ranked-choice Voting Law into Constitutional Compliance.**

This bill amends the ranked-choice voting law to bring it into compliance with the Constitution of Maine by applying the provisions of the law only to primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative and general and special elections for the offices of United States Senator and United States Representative to Congress. The bill does not allow ranked-choice voting to be used for general and special elections for the offices of Governor, State Senator and State Representative unless an amendment to the Maine Constitution is ratified.

## **Land Use, Zoning & Planning**

- **LD 328, An Act To Encourage Regional Planning and Reorganization.**

As amended by the State and Local Government Committee, this bill would appropriate from the General Fund \$5 million for each year of the biennium to capitalize the Fund for Efficient Delivery of Local and Regional Services, referred to as the Local Government Efficiency Fund. A chapter of law was enacted in 2005 that governs the management of the fund, establishes a review panel to oversee the distribution of municipal grants, and identifies the type of regionally focused municipal service delivery proposals that are eligible for grant awards, among other provisions. Except for the initial year, the Local Government Efficiency Fund has never been capitalized by the Legislature, so the operational statute has been dormant for approximately 13 years.

This bill would also transfer from the Department of Administrative and Finance Services to the Department of Economic and Community Development (DECD) the obligation to administer the Local Government Efficiency Fund program. The bill would add a new category to the list of eligible costs that can be covered by the Fund, which are capital grants, including grants for: (1) facility, infrastructure or utility system acquisition, (2) the repair, rehabilitation or renovation of existing facilities; (3) new construction or expansion of existing facilities, and (4) purchase of major equipment or systems.

- **LD 1343, An Act To Promote Downtown Revitalization by Creating the Locating Businesses Downtown Loan Program.**

This bill would establish the loan program within the Communities for Maine's Future Program to provide forgivable loans for businesses seeking to locate or relocate in a downtown area, village area or along a main street within the state. Applications for loans under the program are evaluated by DECD in conjunction with a three-member loan review panel. Successful applicants must execute a loan agreement prepared by the department specifying the terms and conditions of the loan, including the length of time that a business must remain in the downtown area, village area or along a main street for the loan to be forgiven.

### **Municipal Finance**

- **LD 1565 – An Act to Ensure the Effectiveness of Tax Increment Financing.**

This bill amends the criteria for adopting a development program as part of a development district by requiring that 80% of the area within the district is designated for development by an entity engaged in a qualified business activity that is directly related to financial services, manufacturing or targeted technologies. This provision would apply to development programs approved by the Commissioner of Economic and Community Development on or after April 1, 2018.

### **Taxation**

- **LD 1196, An Act To Assist Seniors and Certain Persons with Disabilities in Paying Property Taxes.**

As amended by the Taxation Committee, this bill would re-establish the property tax deferral program managed by state government that was originally established in the 1980s, closed off to all new applicants in the early 1990s, and finally closed out as a State expenditure account in 2017. Under this bill, qualifying Maine resident homeowners, effective on or after April 1, 2018, can apply to the State to receive a deferral of the municipal property tax obligation related to their residential property. For as long as those residents qualify, the state will pay to the appropriate municipality the property taxes not otherwise paid by the homeowners. The state, in turn, will hold a non-foreclosing lien on the subject property until such a time as it is sold or otherwise transferred. The projected costs associated with reinstating this state-level property tax deferral program is \$1.7 million in the first full year of implementation (FY 2019), increasing to \$3.7 million in FY 2021.

- **LD 1479, An Act To Modernize and Improve Maine’s Property Tax System.**

This bill amends Maine’s property tax laws by:

1. Requiring centralized assessment by the Department of Administrative and Financial Services, Maine Revenue Services of complex manufacturing facilities valued at more than \$10,000,000;

2. Allowing appeals of decisions of an assessor or municipal officers involving nonresidential property with a value of more than \$1,000,000 directly to the Superior Court and decisions of the State Board of Property Tax Review directly to the Law Court;

3. Limiting to 30 the number of interrogatories or document requests that an assessor may require a taxpayer with property liable to taxation or seeking an exemption under the business equipment tax exemption program to answer in writing; and

4. Changing the membership specifications of the State Board of Property Tax Review to remove the requirement that a member be an engineer and instead requires members who are representatives of business and industry who are experienced in taxation, finance or valuation matters.

- **LD 1629 – An Act To Protect the Elderly from Tax Lien Foreclosures.**

This bill would amend the law governing the property tax lien mortgage system as it applies to property owners 65 years of age or older. For property owners, a pre-foreclosure process is established to commence at least 90 days before foreclosure, requiring the municipality to contact the owner of the property and assist the owner in applying for a poverty tax abatement. With respect to any property tax obligation not forgiven through the abatement process, the municipality would be mandated to offer the owner a reasonable repayment schedule and, if the owner does not agree to the repayment schedule, the municipality would have to engage a qualified mediator to negotiate a reasonable payment schedule, with 50 percent of the mediator’s fee being added to the value captured by the tax lien. These requirements would, among a host of other mandates, include the provision of special foreclosure and sale provisions for any property owner 65 years of age or older after a foreclosure occurs, which would bar the municipality from selling the foreclosed property until the value of the municipal lien exceeds 50 percent of its assessed value. All proceeds from the sale of the property in excess of the tax owed, interest and allowable fees would be required to be refunded to the former tax-delinquent owner.

**November 8, 2016**  
**Maine Referendum Election – Status Report**

<b>Question:</b>		<b>Outcome:</b>	<b>Statutes Affected:</b>	<b>Legislative Action:</b>
<b>1:</b>	To legalize marijuana for personal (recreational) use	Passed	7 M.R.S.A. §§ 2441 - 2454	Amended by LD 88, LD 243, LD 1641
<b>2:</b>	To add a 3% tax on income above \$200,000 to fund public education	Passed	36 M.R.S.A. § 5111(6); 20-A M.R.S.A. § 15697	Repealed by LD 390
<b>3:</b>	To require background checks prior to the sale or transfer of firearms	Failed		
<b>4:</b>	To increase the minimum wage to \$12 per hour	Passed	26 M.R.S.A. § 664	Amended by LD 673; P.L. 2017, ch. 272
<b>5:</b>	To allow voters to rank choices of candidates in state and federal elections	Passed	21-A M.R.S.A. §§ 1(27-C), 1(35-A), 601(2), 722, 723-A	Carryover LD 1646; <i>Opinion of the Justices</i> , 2017 ME 100, 162 A.3d 188.

## Useful Links Regarding New Legislation

Electronic copies of any of the new laws in this summary are available on the State's website: <http://www.mainelegislature.org/LawMakerWeb/search.asp>. Simply type the number of the legislative document ("LD") into the search box and click "Search."

Below are a few other useful links to websites with legislative information:

- Maine Legislature Website:

<http://legislature.maine.gov>

- Maine Statutes:

<http://www.mainelegislature.org/legis/statutes/>

NOTE: Make sure that text reflects changes made through 128th Legislature, 1<sup>st</sup> Regular Session.

- Legislative Digest of Bill Summaries and Enacted Laws (listed by Committee):

<http://legislature.maine.gov/opla/enacted-laws/9287>

NOTE: Prepared by the Legislature's Office of Policy and Legal Analysis.

- Current Legislative Studies (ongoing and interim):

<http://legislature.maine.gov/opla/current-study-information/9288>

NOTE: Prepared by the Legislature's Office of Policy and Legal Analysis.

- Maine Municipal Association's Legislative Bulletin:

<http://www.memun.org/TrainingResources/MMAPublications/LegislativeBulletin.aspx>

## **SUMMARY OF RECENT COURT CASES OF IMPORTANCE TO MUNICIPALITIES**

*The following case summaries are listed below by subject matter in the following order: administrative decisions (with citations such as Me. W.C.B.), Maine Supreme Judicial Court cases (with citations: \_\_\_ ME \_\_\_), First Circuit Court of Appeals cases (with citations: \_\_\_ F.3d \_\_\_) and U.S. Supreme Court cases (with citations: \_\_\_ S.Ct. \_\_\_ or \_\_\_ U.S. \_\_\_).*

Maine cases can be found at: [http://www.courts.state.me.us/opinions\\_orders/supreme/index.shtml](http://www.courts.state.me.us/opinions_orders/supreme/index.shtml))

First Circuit Court of Appeals cases can be found at: <http://www.ca1.uscourts.gov/opinions>

U.S. Supreme Court cases can be found at: <https://www.supremecourt.gov/opinions/slipopinion/16>

### **Administrative Procedure**

*Beal v. Town of Stockton Springs, 2017 ME 6*

- In this dangerous building case, the property owner argued that her due process rights were violated, in part, because her attorney was not permitted to question any witnesses on direct or cross-examination at the initial hearing before the municipal officers. The Law Court followed the precedent that local administrative boards are not required to provide the opportunity for cross-examination at every local administrative hearing, and therefore affirmed the decision.

*Bryant v. Town of Camden, 2016 ME 27*

- When a property owner required both a special exception permit from the zoning board of appeals and site plan approval from the planning board, an appeal from the first decision was not justiciable because the ZBA decision was not a final action subject to review in court. This was the result even though the local ordinance provided for an appeal from any decision of the ZBA.

*Desfosses v. City of Saco, 2015 ME 151*

- Following an approved site plan for a car dealership, the city planner approved the construction of a retaining wall and fence as a “minor change” to the site plan not requiring planning board approval. The plaintiff tried to appeal that determination to the planning board, which decided that it lacked jurisdiction under the ordinance. Although the ordinance only allowed applicants the right to appeal city planner decisions to the planning board, the Law Court interpreted that to include the right of non-applicants to appeal as well. The case was remanded to the planning board to hear the appeal.

### **Civil Procedure**

*Estate of Merrill P. Robbins v. Chebeague & Cumberland Land Trust, 2017 ME 17*

- A private owner of land encumbered by a conservation easement does not have standing to bring a lawsuit seeking the enforcement of the easement on other land that is not owned by that landowner and in which the landowner has no other legal interest.



*Cayer v. Town of Madawaska*, 2016 ME 143

- The plaintiffs had filed a petition to secede from the town, and while the petition was pending, the Legislature changed the secession statute by requiring petitions to be approved by the Legislature before going to a referendum vote. The town's board of selectmen voted not to put the petition to a vote because the plaintiffs had not yet obtained legislative approval. The plaintiffs failed to challenge that decision within 30 days, and therefore were time-barred under Rule 80B.

*Marshall v. Town of Dexter*, 2015 ME 135

- A developer who was issued a stop work order by the CEO could not pursue an action for violation of constitutional rights against the town when the complaint failed to link the CEO's action to any official town policies or customs, and when he failed to exhaust his administrative remedies because he did not appeal the CEO's order to the ZBA.

## **Counties**

*Somerset County v. Dep't of Corrections*, 2016 ME 33

- The county challenged the amount of State funding awarded by the Department of Corrections, which had lowered the county's funding due to the county's increase in federal prisoner boarding revenue that was applied to the cost of the jail construction. The Law Court held that these funds were "correctional services funds" subject to the State's control pursuant to statute, and that the county lacked the authority to divert them from the corrections budget.

## **Elections/Voting**

*Opinion of the Justices*, 2017 ME 100

- The Supreme Judicial Court responded to questions propounded by the Maine Senate, deemed a "solemn occasion," and held that the citizen's initiative legislation that would have required ranked-choice voting conflicts with the Maine Constitution, which provides for election by a plurality of votes.

*Rideout v. Gardner*, 838 F.3d 65 (1st Cir. 2016)

- The State of New Hampshire enacted a statute that prohibited citizens from photographing marked ballots and publicizing those photos publicly. The ACLU represented three citizens who were under investigation for having violated the new law. The District Court held that the statute violated the First Amendment because it was a content-based restriction of speech. The First Circuit Court of Appeals agreed, but on the grounds that the statute's purpose did not justify the restrictions it imposed on speech.

*Evenwel v. Abbott*, 136 S.Ct. 1120, 578 U.S. \_\_\_\_ (2016)

- The State of Texas uses total population from the latest census to draw legislative districts. A group of voters challenged the State's method of apportioning votes based on total population as a violation of the one-person, one-vote principle established by the equal protection clause of the U.S. Constitution. The Supreme Court held that a State or

local government may draw its legislative districts based on total population and that such a practice is consistent with the one-person, one-vote principle.

## **First Amendment**

*March v. Mills*, \_\_\_ F.3d \_\_\_ (1st Cir. 2017)

- A protester of the Planned Parenthood facility in Portland, Maine challenged the constitutionality of a provision of the Maine Civil Rights Act that bars a person from making noise that “can be heard within a building” when it is made intentionally after receiving an order from a law enforcement officer to cease, and with the additional intent to jeopardize the health of a person receiving health services within the building or to interfere with the safe and effective delivery of those services. The First Circuit Court of Appeals found that the provision was not a content-based restriction of speech on its face, but that it was a content-neutral restriction related to time, place or manner of speech, and was justified without reference to content. Additionally, the First Circuit Court of Appeals found that the provision was narrowly tailored to serve a significant governmental interest and left open ample alternative channels for communication; therefore, it did not violate the protestor’s First Amendment rights.

*Heffernan v. City of Paterson (N.J.)*, 136 S.Ct. 1412, \_\_\_ U.S. \_\_\_ (2016)

- A New Jersey police officer (Heffernan) picked up a campaign sign from a mayoral candidate and delivered it to his bedridden mother to be placed in her yard. He was demoted after being seen at the campaign site for alleged “overt involvement” in the mayoral campaign. The Supreme Court held that Heffernan had a First Amendment claim even though he did not actually engage in political activity, which is protected under the First Amendment. The City violated Heffernan’s First Amendment right to engage in political activity when it acted on the mistaken belief that he had done so and took adverse employment action against him on that basis.

*Packingham v. North Carolina*, 582 U.S. \_\_\_\_ (2017)

- North Carolina law makes it a felony for a registered sex offender to access social networking sites on which the offender knows that minors can create profiles. The Supreme Court held that the North Carolina law restricts lawful speech in violation of the First Amendment because the State did not meet its burden under the strict scrutiny analysis to show that the law was necessary or legitimate to serve its intended purpose.

*Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_\_ (2017)

- The Missouri Department of Natural Resources denied the Trinity Lutheran Church Child Learning Center’s application for a grant to install a new playground surface on the basis that it could not provide financial assistance to a church. The Supreme Court held that the Department’s denial of a generally available benefit to the church solely on the basis of its religious identity violated the church’s free exercise of religion under the First Amendment.

## **Freedom of Access Act/Right-to-Know Law**

*Greif v. Town of Bar Harbor*, 2017 ME 163

- A citizen filed a written complaint about the conduct of two town councilors, but the town council declined to order an investigation after considering the matter in executive session with its attorney. The court found that there was no violation of the town's charter or the Freedom of Access Act.

*Hughes Bros., Inc. v. Town of Eddington*, 2016 ME 13

- A landowner with a quarry application challenged the validity of an executive session held jointly by the board of selectmen and planning board for the purpose of consulting with legal counsel. Prior to the executive session a moratorium on quarries was discussed at a board of selectmen's meeting. Around the time of the executive session, a draft moratorium ordinance was prepared. The town subsequently scheduled a town meeting vote on the proposed ordinance, and the plaintiff requested documents under FOAA. The Law Court held that the town met its burden to show that the joint executive session was used for a proper purpose: to consult with counsel regarding the board's legal obligations and the potential consequences of its actions with regard to an ordinance to be proposed for action at a later town meeting.

## **Insurance**

*City of South Portland v. Me. Mun. Assoc. Property & Casualty Pool*, 2017 ME 57

- The insurer declined to defend the city in an underlying lawsuit challenging the legality of a local ordinance and asserting a claim under 42 U.S.C. § 1983. The city filed an action against the insurer, but the Law Court held that there was no duty to defend when any potential damages, including lost profits, were excluded from coverage under the policy.

## **Labor/Employment**

*Noll v. LePage Bakeries, Inc.*, Me. W.C.B. No. 16-25 (App. Div. 2016)

- LePage Bakery refused to reimburse an employee for medical marijuana costs pursuant to the Maine Workers' Compensation Act. The employee appealed the employer's decision to the Appellate Division of the Maine Workers' Compensation Board, which held that LePage Bakery was required to reimburse the employee for such costs. The Appellate Division found that because LePage Bakery was a self-insured employer, it did not fall within the exemption in the Maine Medical Use of Marijuana Act allowing private health insurers to deny reimbursement of medical marijuana costs. The Appellate Division also could not find a particular provision in the Controlled Substances Act that would be violated under these circumstances. The case was appealed to the Maine Law Court, which declined to consider it.

*Michael F. Bailey v. City of Lewiston*, 2017 ME 160

- After an employee was injured in 2001, began receiving worker's compensation benefits in 2004, and was deemed permanently impaired in 2007, the City filed a petition in 2013

to determine the extent of permanent impairment. The court held that the doctrine of res judicata barred relitigation of the permanent impairment level established for an employee's work-related injury.

*Brady v. Cumberland County*, 2015 ME 143

- In a whistleblower action, a sheriff's department employee was demoted for using work time to do polygraph testing as a side business, and then terminated him for being on medical leave for more than a year. The employee claimed that he was fired in retaliation for raising concerns about a jail guard using a chokehold on an inmate. Summary judgment in favor of the county was vacated when the Law Court adopted a new legal standard for whistleblower cases and remanded the case for reconsideration under the new standard.

*Pan Am Railways, Inc. v. U.S. Department of Labor*, 855 F.3d 29 (1st Cir. 2017)

- An employee of Pan Am Railways, Inc. filed a complaint with the Occupational Health and Safety Administration and Pan Am Railways subsequently threatened to dismiss the employee alleging that he lied in the complaint. An Administrative Law Judge determined that Pan Am's actions constituted unlawful retaliation against the employee and awarded punitive damages of \$250,000. The First Circuit Court of Appeals upheld the Administrative Law Judge's decision and award of punitive damages in order to punish and deter the perceived culture of intimidation, and declined to review the case further.

*O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017)

- Maine law provides several exemptions from the requirement that employers pay overtime to certain employees. Delivery drivers of Oakhurst Dairy challenged the company's reading of the law that exempted the drivers from overtime pay on the basis of certain job duties. The drivers argued that their duties did not fall within the list of exceptions under the law and that they were entitled to overtime pay. The First Circuit Court of Appeals agreed with the delivery drivers and held that, due to the lack of a serial comma in the list of exempt activities, the drivers were protected under Maine's overtime law.

*Friedrichs v. California Teachers Association*, 136 S.Ct. 566, \_\_\_\_ U.S. \_\_\_\_ (2015)

- California law requires every teacher to contribute financially to the local teachers' union for purposes of collective bargaining activities. The Supreme Court held in *Abood v. Detroit Board of Education* (1977) that the First Amendment does not prevent such "agency shop" arrangements where public employees who do not join a union are still required to pay their "fair share" of union dues for collective bargaining, contract administration, and grievance-adjustment. In a 4-4 opinion after the death of Justice Scalia, the Supreme Court affirmed the lower court's decision and the holding in *Abood*.

## **Land Use/Zoning**

*Appletree Cottage, LLC v. Town of Cape Elizabeth*, 2017 ME 177

- Because the CEO's issuance of a building permit, not the ZBA's appellate decision, was the operative decision for purposes of appeal, the case was remanded to the CEO to make detailed findings and conclusions that would be sufficient for appellate review.

*Wolfram v. Town of North Haven*, 2017 ME 114

- An abutter challenged land use permits obtained by a legally nonconforming inn/restaurant for renovations and change of use. Although the zoning ordinance only allowed for restoration or reconstruction of nonconforming structures damaged or destroyed by causes other than the willful act of the owner, the Law Court did not interpret that provision to prohibit an owner from demolishing a structure for purposes of a renovation or alteration.

*Balano v. Town of Kittery*, 2017 ME 110

- On a challenge to a site plan approval, the Law Court did not disturb findings by the planning board that a pitched roof was not practicable due to the snow accumulation, and therefore approved a flat roof. The board's interpretation of height requirements were affirmed because parapets are not included in the calculation of building height under the local ordinance.

*Town of Kittery v. Dineen*, 2017 ME 53

- The defendant was found in contempt of court for failing to remove a burned-out bus from his property, which had been deemed an "automobile graveyard" under Maine law. The finding was affirmed on appeal and the town was awarded attorney's fees. In addition, the Law Court upheld the town council's finding that a building on the defendant's property was a "dangerous building" and gave deference to the town council's determination that that demolition of the building was required.

*Estate of Merrill P. Robbins v. Town of Cumberland*, 2017 ME 16

- The town's board of appeals affirmed the CEO's determination that the town's proposal to use town-owned land as a public beach was a "municipal use" as defined in the ordinance as "any use or building maintained by [the town]." The Law Court did not disturb that finding on appeal, finding that the language in the zoning ordinance was clear and unambiguous.

*21 Seabran, LLC v. Town of Naples*, 2017 ME 3

- The issue in this case was whether the renovation of a garage to include three bedrooms, two bathrooms and 1,200 s.f. of living space constituted a second "residential dwelling unit" such that the property needed shore frontage for two dwelling units under the shoreland zoning ordinance. The Law Court held that, because the proposed structure lacked cooking facilities, it did not meet the shoreland zoning ordinance definition of "residential dwelling unit" and, therefore, the property met the frontage requirement (for a single dwelling unit) under the shoreland zoning ordinance. The Law Court also held, via a contortion of the Minimum Lot Size Rules, that although the structure was a

dwelling unit under the Minimum Lot Size Law and Rules, the frontage requirements of local zoning were not imported into the Minimum Lot Size Rules when the local zoning frontage requirement was not based on gallons per day of wastewater generated.

*Friends of the Motherhouse v. City of Portland*, 2016 ME 178

- The plaintiffs challenged the city council's action to rezone property in order to allow for an elderly housing development. Summary judgment was entered in favor of the city and developer. On appeal, the Law Court affirmed, concluding that the plaintiffs had not met its burden to show that the zone change was not in "basic harmony" with the city's comprehensive plan.

*Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174

- This case involved a challenge of Fryeburg Academy's proposed use of a building to house administrative offices. The Law Court gave deference to the local planning board's finding that the school's administrative offices constituted a "secondary school" use, even though the ordinance defined that use as a place where courses of study are taught.

*Osprey Family Trust v. Town of Owls Head*, 2016 ME 89

- Although this case involved an application to replace a non-conforming structure located within the shoreland zone, the planning board analyzed the case under the ordinance provision involving relocation of a structure. The Law Court vacated the decision of the planning board, and remanded the case to the planning board to analyze the application under the correct ordinance section.

*Day v. Bd. of Env'tl. Prot.*, 2016 ME 7

- The Law Court gave substantial deference to the agency's interpretation of its own rules, which prohibit certain projects in sand dune areas if they are likely to be severely damaged when allowing for sea level rise. The Board had determined that this provision did not apply to the proposed project because the term "severe damage" is defined in the Rules as damage exceeding "50% of a building's value," and no building was proposed. Rather, it was a proposed driveway and parking area for a recreational vehicle.

*Global Tower Assets, LLC v. Town of Rome*, 810 F.3d 77 (1<sup>st</sup> Cir. 2016)

- Global Tower Assets sought to build a wireless communications tower in the Town of Rome, Maine, but the Town's Planning Board denied its application. Global Tower Assets appealed the decision of the Town's Planning Board under the Telecommunications Act of 1996 (the "TCA"). The TCA permits appeal of a local land use decision when it constitutes final action. The Town of Rome's Planning Board decision was subject to further review by the Town's Board of Appeals and the Court found that the Planning Board's decision was not final action for purposes of an appeal under the TCA. The Court dismissed Global Tower Asset's claims under the TCA, as well as its constitutional due process challenges.

## **Law Enforcement & Public Safety**

*Birchfield v. North Dakota*, 136 S.Ct. 2160, \_\_\_ U.S. \_\_\_ (2016)

- The Supreme Court held that the Fourth Amendment permits breath tests for drunk driving without a warrant if incident to an arrest for drunk driving. However, the Court held that blood tests are not exempt from the warrant requirements, even if incident to an arrest.

*County of Los Angeles, California v. Mendez*, 581 U.S. \_\_\_\_ (2017)

- Two Los Angeles County Sheriff's Deputies entered a building without a warrant and without announcing their presence. Inside, they found two men napping. One of the men awoke, grabbed a BB gun and the deputies opened fire. The two men sued the deputies claiming a violation of the Fourth Amendment for warrantless entry, failure to knock and announce and excessive force. The Ninth Circuit held that the deputies' use of force was reasonable, but that they were liable because they provoked the confrontation. Known as the "provocation rule," this created an independent claim under the Fourth Amendment. The Supreme Court rejected the provocation rule, stating that it was incompatible with its excessive force jurisprudence, and remanded the case.

*Mullenix v. Luna*, 136 S.Ct. 305, 577 U.S. \_\_\_ (2015)

- A Texas police officer (Mullenix) shot and killed a suspect during a high speed chase. The suspect's estate sued Officer Mullenix claiming that he used excessive force in violation of the Fourth Amendment. The Supreme Court held that Officer Mullenix was entitled to qualified immunity because Officer Mullenix perceived a threat that was sufficient to justify deadly force.

## **Maine Tort Claims Act**

*Day's Auto Body, Inc. v. Town of Medway*, 2016 ME 121

- This case involved a claim of negligence against the town and its contractor for their response to a fire at the plaintiff's premises. The town was held to be immune under the MTCA. The case stands for the proposition that, although vehicles are involved, fire-fighting does not fall under the statutory exception to immunity for ownership, maintenance or use of vehicles, machinery and equipment when the basis of the claim is that the town made imprudent tactical decisions when fighting the fire.

*Deschenes v. City of Sanford*, 2016 ME 56

- In this case, the Law Court clarified that, in order to be in "substantial compliance" with the notice requirement under the MTCA, a claimant must provide written, not oral, notice of the claim within 180 days after the claim accrues. The plaintiff had fallen down the stairs at city hall and merely presented the finance director with a hospital emergency room note from the day of his fall as well as a summary sheet of payments that had been made by the VA for his medical treatment.

## **Marijuana**

*United States v. Ford*, No. 14-1669 (1st Cir. Aug. 19, 2015)

- Paul Ford was sentenced to 46 months in prison for two felony convictions related to the manufacturing of marijuana plants under federal law. Ford appealed the sentence claiming that it was unreasonable. The First Circuit Court of Appeals held that the sentence was reasonable both on procedural and substantive grounds. With respect to its review of the substantive reasonableness of the sentence, the Court noted that regardless of whether marijuana is now legal in Maine, it is still a crime under federal law and can be prosecuted as such.

## **Property Taxation**

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*, 2017 ME 152

- The owner of a 1,200-acre island homestead with five houses requested a tax abatement to challenge the fact that the town assessed buildings on the island at a higher value due to the additional cost of building on an island. Because the plaintiff was not treated differently from other island properties and the higher assessment for island structures was supported by evidence in the record, the Law Court affirmed the denial of the abatement.

*Bolton v. Town of Scarborough*, 2016 ME 152; *Petrin v. Town of Scarborough*, 2016 ME 136

- Taxpayers whose properties do not qualify for the large lot or abutting property programs do have standing to challenge those programs because they do not benefit from the favorable tax treatment that the town gives to owners of qualifying lots.

*Chadwick-BaRoss, Inc. v. City of Westbrook*, 2016 ME 62

- The issue in this case was whether certain personal property (construction equipment) owned by a taxpayer, but leased to others, falls within the personal property tax exemption for stock-in-trade. The Law Court held that such property subject to rental agreements is not inventory, even though the taxpayer had the right to repossess the property and sell it at any time.

*Penkul v. Town of Lebanon*, 2016 ME 16

- In this appeal of a poverty tax abatement, the plaintiff did not satisfy her obligation to obtain and file with the court a complete and accurate record of what testimony and documents the county commissioners considered on appeal. Therefore, on the limited record before it, the Law Court denied the plaintiff's appeal.

## **Real Estate**

*Town of Carthage v. Friends of Maine's Mountains*, 2016 ME 38

- The town filed a quiet title action to confirm title to two parcels of land that it purchased in the early 1900s in a tax sale. Because the defendant, who claimed an interest in the land by quit-claim deed from a descendant of the last known owner before the tax sale, failed to submit any evidence to meet its burden to rebut the presumption that the sale



was valid, and because the challenge to the tax sale was time-barred, the Law Court affirmed the judgment finding that the town held fee simple title.

*Phyllis Bradbury v. City of Eastport*, 2016 ME 20

- The city's charter allows the city manager to sell city property if authorized and advertised by the city council. The city negotiated a deal to sell 17 acres of land to a private entity, which then donated a separate parcel to provide public access to the ocean. The transaction was publicly discussed and the proposed sale was advertised in the newspaper. The Law Court held that this was sufficient to meet the advertisement requirement set forth in the charter.

## **Roads**

*Paul v. Town of Liberty*, 2016 ME 173

- This decision addresses the issue of road abandonment. First, the Law Court clarified that a challenge to a finding of abandonment is properly brought through a declaratory judgment action, and therefore is not subject to the time limits in Rule 80B. Second, the Law Court clarified that statutory damages are not available to a property owner due to the abandonment of a road, and 23 M.R.S.A. § 3029 does not create an independent cause of action for such damages.

*Edwards v. Blackman*, 2015 ME 165

- After a five-day trial, the trial court found that a seaside road was a town way by layout and acceptance, and not a private driveway. The Law Court affirmed, holding that the validity of a 30-year-old procedure to layout and accept the road (including whether the road description was adequate) must be challenged within 30 days of the municipal action, and upheld the trial court's ruling that the dedicated road was coincident with the existing traveled way.

## **Takings**

*Murr v. Wisconsin*, 137 S.Ct. 266, 582 U.S. \_\_\_\_ (2017)

- State law and local ordinances in Wisconsin prevented the use or sale of adjacent lots under common ownership as separate building sites unless they had at least one acre of land suitable for development. Land owners challenged the regulations claiming that they amounted to a regulatory taking. The U.S. Supreme Court concluded that the merger regulations did not effect a taking because petitioners had not been deprived of all economic value of their property as it was combined.

*Town of Chester v. Laroe Estates*, 137 S.Ct. 810, 581 U.S. \_\_\_\_ (2017)

- A New York developer sued the Town of Chester alleging that the Town obstructed his plans for development by forcing him to spend nearly \$5.5 million dollars to comply with its demands, which amounted to a regulatory taking. A development company, Laroe Estates, intervened in the case alleging that it paid the developer more than \$2.5 million related to the development and that it had an interest in the outcome of the litigation. The Supreme Court held that an intervenor must possess standing to intervene in a lawsuit as

a matter of right if the intervenor wishes to pursue relief not requested by the plaintiff and remanded the case for the lower court to determine if Laroe (intervenor) and the developer (plaintiff) were seeking the same relief.

### **Vital Records**

*Pavan v. Smith*, 582 U.S. \_\_\_\_ (2017)

- An Arkansas state law required a married woman to provide the name of her male spouse on her child's birth certificate, even if the male spouse was not the child's biological father. The Arkansas Supreme Court held that the State was not required to issue birth certificates including the name of a female spouse of a married woman who gives birth. Citing its decision in the 2015 case *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015), that the U.S. Constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite-sex couples, the U.S. Supreme Court held that Arkansas cannot deny married same-sex couples the same opportunities as married opposite-sex couples with respect to birth certificates.

### **CASES TO WATCH**

*Bourgoin v. Twin Rivers Paper Co., LLC*, Me. W.C.B. 16-26 (App. Div. 2016), pending before the Maine Supreme Judicial Court

- An administrative law judge of the Maine Workers' Compensation Board ordered Twin Rivers Paper Company to reimburse Bourgoin for his purchases of marijuana for pain-relief purposes after Bourgoin was injured while working for Twin Rivers. The Appellate Division of the Board affirmed the order. The Maine Supreme Court has accepted Twin Rivers' appeal and the parties are awaiting a decision. Twin Rivers argues that (1) the Workers' Compensation Board is preempted by federal law from ordering an employer to provide medical marijuana to an injured employee, (2) there was insufficient evidence to overcome the presumption created by the independent medical examiner's findings that marijuana is not effective to relieve pain; (3) there is insufficient evidence establishing that marijuana is safe and effective; and (4) because Maine's medical marijuana act does not require a "private health insurer" to cover the cost of medical marijuana, and because "private health insurer" should be construed to include an employer who pays for an employee's medical treatment, an employer should not be required to pay the cost of medical marijuana. The current law in Maine with regard to this issue was established by *Noll v. LePage Bakeries* (summarized above). This case has the potential to uphold or overturn that decision.

*Trump v. International Refugee Assistance Project*, pending before the U.S. Supreme Court

- The U.S. Supreme Court granted a petition for writ of certiorari to hear this case and oral argument is scheduled for October 10, 2017. At issue in this case is whether the so-called travel ban executive order that prevents people from six predominately Muslim countries from entering the United States for 90 days, freezes decisions on refugee applications for 120 days, and caps total refugee admissions at 50,000 for fiscal year 2017 is a violation of the establishment clause of the U.S. Constitution. The Supreme Court concluded that,

until it rules on the merits of this case, the executive order cannot be enforced against persons, including refugees, who have a “bona fide relationship with a person or entity in the United States.”

*Carpenter v. United States*, pending before the U.S. Supreme Court

- The U.S. Supreme Court granted a petition for writ of certiorari to hear this case, but oral argument has not yet been scheduled. The Sixth Circuit held that obtaining cell-site data showing the location and movements of cellphone users from wireless cellphone carriers does not constitute a search under the Fourth Amendment because, while “content” is protected by the Fourth Amendment, “routing information” is not. The Supreme Court will decide whether police must obtain warrants per the Fourth Amendment to require wireless carriers to provide such cell-site data.

*District of Columbia v. Wesby*, pending before the U.S. Supreme Court

- The U.S. Supreme Court granted a petition for writ of certiorari to hear this case and oral argument is scheduled for October 4, 2017. The Supreme Court will decide whether a police officer had probable cause to arrest individuals for trespassing inside a vacant house when the owner of the vacant house informed police that he had not authorized the suspects’ entry, but the suspects claimed to have permission to be present from someone who ultimately did not have authority to give such permission.

*Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, pending before the U.S. Supreme Court

- The U.S. Supreme Court granted a petition for writ of certiorari to hear this case. Colorado has a public accommodations law that prohibits discrimination on the basis of sexual orientation. The owner of Masterpiece Cakeshop declined to make a wedding cake for a same-sex couple on the basis of his religious belief and the couple sued under the State’s public accommodations law. The Colorado Court of Appeals held that Colorado’s law was “rationally related to Colorado’s interest in eliminating discrimination in places of public accommodation.” The Supreme Court will decide if Colorado’s law violates the free speech or free exercise clause of the First Amendment.

**MARIJUANA LEGALIZATION ACT**  
**(7 M.R.S.A. §§ 2441 – 2454)**

---

**Joint Select Committee on  
Marijuana Legalization Implementation (MLI)**

Senator Roger Katz, Chair  
Senator Susan Deschambault  
Senator Mark Dion  
Senator Joyce Maker  
Senator Kimberly Rosen  
Senator Teresa Pierce, Chair  
Danielle Fox, OPLA Staff  
Jane Orbeton, OPLA Staff  
Daniel Tartakoff, OPLA Staff

Representative Kent Ackley  
Representative Bruce Bickford  
Representative Lydia Blume  
Representative Patrick Corey  
Representative Aaron Frey  
Representative Lance Harvell  
Representative Craig Hickman  
Representative Erik Jorgensen  
Representative Donald Marean  
Representative Kimberly Monaghan  
Representative Michael Perkins

---

As a result of a statewide referendum election in November 2016, the Marijuana Legalization Act became law in Maine. The law enacted by the referendum is currently codified in Title 7 of the Maine Revised Statutes, Sections 2441 – 2454. Following enactment of this citizen initiated law, the Legislature enacted LD 88, “An Act to Delay the Implementation of Certain Provisions of the Marijuana Legalization Act,” as emergency legislation effective January 27, 2017. This bill delayed the effective date for most provisions of the Marijuana Legalization Act until February 1, 2018.

Following enactment of the Marijuana Legalization Act, the Legislature also adopted HP 96, a Joint Order Establishing the Joint Select Committee on Marijuana Legalization Implementation (MLI). Pursuant to this Order, the MLI Committee was tasked with resolving any issues necessary in order to implement the new law.

During the Legislative session, the committee held several work sessions, including public comment. The Committee recommended LD 243, “An Act To Amend the Marijuana Legalization Act to Provide Licensing, Rulemaking and Regulatory and Enforcement Authority within the Department of Administrative and Financial Services; Assign Rulemaking, Regulatory and Enforcement Authority Related to Agricultural Purposes to the Department of Agriculture, Conservation and Forestry; and Allocate Funds for Implementation,” which was enacted as emergency legislation on June 29, 2017. The Committee also reviewed 32 additional proposed LDs related to the Marijuana Legalization Act, 31 of which were approved to be carried over to the next legislative session.

Governor LePage has called a special session of the Legislature to convene on November 1, 2017. As of the date of printing of these materials (September 20, 2017), the Committee is scheduled to hold a public hearing on September 26<sup>th</sup> to discuss LR 2395 “An Act to Amend the Marijuana Legalization Act,” and work sessions on September 27<sup>th</sup> and 28<sup>th</sup> to discuss the same. The Committee intends to incorporate public comment into this draft bill and submit a final draft of LR 2395 to the full Legislature during its special session.

The proposed bill (LR 2395) as made publicly available *prior to the September 26<sup>th</sup> public hearing* was drafted to provide the regulatory framework necessary to implement the citizen initiated law legalizing the recreational use of marijuana for persons 21 years of age or older, referred to as the “adult use” of marijuana in the proposed bill. The full text of LR 2395 can be found at <http://legislature.maine.gov/legis/opla/comitinfoMLI.htm>. The new regulations would be codified in a new Title of the Maine Revised Statutes, Title 28-B, and include the following categories of regulation:

1. Adult use of marijuana
  - a. General provisions;
  - b. General licensing requirements related to cultivation facilities, testing facilities products manufacturing facilities, marijuana stores, and marijuana social clubs;
  - c. Licensing requirements for marijuana cultivation facilities;
  - d. Municipal regulation of marijuana establishments;
  - e. Operating requirements for marijuana establishments;
  - f. Testing of marijuana and marijuana products;
  - g. Labeling and packaging; health and safety; signage advertising and marketing;
  - h. License violations;
  - i. Marijuana advisory commission; and
  - j. Adult use of marijuana public health and safety fund and regulatory coordination fund.
2. Personal use of marijuana and marijuana products; home cultivation of marijuana.

The proposed bill (LR 2395) also amends several sections of existing law found in Titles 5 (Administrative Procedures and Services), 13-B (Maine Nonprofit Corporation Act), 17-A (Maine Criminal Code), 22 (Health and Welfare), 25 (Internal Security and Public Safety), 30-A (Municipalities and Counties), and 36 (Taxation) of the Maine Revised Statutes.

The following summary of the provisions of the proposed bill (LR 2395) published by Maine Municipal Association is provided for general reference. ***However, please note that as of the date of printing of these materials (September 20, 2017), there is still a substantial amount of work to be done on this legislation and it is all subject to change before adoption. While many of these provisions may ultimately be enacted, they should not be relied upon in making local policy decisions related to the regulation of retail marijuana establishments until they have been finally adopted by the Legislature.***

**Local Control.** Of greatest significance to municipal officials, the bill expressly authorizes municipalities to prohibit the operation of some or all types of marijuana establishments (*e.g.*, cultivation, manufacture, testing, retail stores and social clubs) within the

municipality and also to limit the number of any type of establishment that may be approved or licensed to operate in the community. The bill authorizes communities to adopt reasonable land use ordinances regulating the location of all marijuana establishments within the community and impose reasonable licensing requirements addressing matters not regulated by the State. The bill specifies that municipalities can adopt ordinances that: (1) place reasonable restrictions on size, content and location of signs and advertisements used by marijuana establishments, except that provisions must prohibit the placement of signs and advertisements within 1,000 feet of the property line of a preexisting public or private school; (2) establish reasonable municipal licensing fee schedules; and (3) enforce odor control measures for both commercial and personal cultivation of marijuana. Furthermore, municipalities are authorized to deny an application for the location of a marijuana establishment within the community without first adopting an ordinance regulating marijuana establishments.

The standards adopted by the municipality, however, cannot be more restrictive than or otherwise conflict with explicit State regulations. Municipalities are expressly prohibited from approving or licensing marijuana establishments that seek to locate within 1,000 feet of the property line of an existing public or private school, although municipalities may expand that minimum distance. Municipalities are also prohibited from granting a license to an applicant that has not demonstrated that the applicant owns or leases the property from which the proposed establishment will operate. The bill requires applicants to submit a site plan designating the location, size and layout of the proposed establishment. If the applicant is approved or granted a license to operate in the community, the municipality must provide the Department of Administrative and Financial Services (DAFS) with a copy of the submitted site plan.

As provided in the bill, a municipality's failure to act on a request for approval or a license to operate a marijuana establishment cannot be construed to satisfy the approval or licensing process. If at any time a municipality withdraws approval for a marijuana establishment or revokes a municipal license, the establishment must immediately cease operations and may apply to DAFS for a relocation permit.

Finally, municipalities are required to notify DAFS within 14 days of a decision to: (1) approve or deny the location of a marijuana establishment; (2) issue or renew a license; (3) withdraw the approval or suspend or revoke a license; (4) approve the relocation of a licensed premises; or (5) approve a transfer of ownership interest in a licensed establishment.

**Taxation.** The bill assesses a 20 percent State sales tax on products sold at marijuana retail stores and social clubs. Five percent of all monthly tax revenue generated within each municipality by all marijuana stores and social clubs within the municipality must be distributed to that municipality. One percent of the total monthly tax revenue generated statewide must be distributed in equal amounts to each municipality that had a cultivation facility, product manufacturing facility, marijuana store or social club in operation in the municipality during the prior month. Twelve percent of the total monthly tax revenue must be transferred to the Adult Use Marijuana Public Health and Safety Fund to be used to facilitate public health and safety awareness education programs and for enhanced training for local, county and State law enforcement officers.

**State Agency Authority.** Regulatory implementation and oversight of the law is assigned primarily to DAFS and the Department of Agriculture, Conservation and Forestry (DACF). As proposed in the bill, DAFS is authorized to:

- Adopt the major substantive rules establishing: (1) initial license and renewal application processes; (2) qualifications for licensure; (3) licensing fees; (4) appeals process for a denial of an application and the conduct of appeals and hearings; and (5) security requirements for marijuana stores and social clubs. DAFS must provisionally adopt these rules on or before March 15, 2018.
- Implement and administer a system to track adult use marijuana from immature plant to the point of retail sale, disposal or destruction.
- Develop programs or initiatives to facilitate the collection and analysis of data regarding the impacts and effects of the use of marijuana in the State, including youth and adult marijuana use; school suspension and discipline; E-911 calls, emergency department visits and hospitalizations; operating under the influence arrests; motor vehicle accidents; and violent crimes associated with the use of marijuana.
- Develop and implement programs, initiatives and campaigns focused on educating the public on the health and safety matters related to the use of marijuana.
- Develop and implement programs or initiatives providing enhanced training for criminal justice agencies in the requirement and enforcement of the law, including training law enforcement officers in the inspections, investigations, searches, seizures, forfeitures and personal use and home cultivation allowances.
- In collaboration with DACF, annually submit a report to the joint standing committee of the Legislature with jurisdiction over adult use marijuana. The report must include information on the number and types of applications, total amount of application and license fees received and the amount of sales tax revenue collected; volume and value of adult use marijuana sold by stores, social clubs and cultivation facilities; number of inspections conducted; number of license violations committed; public health and safety data; and recommendations for legislation to address issues associated with adult use marijuana. The first report must be submitted on February 15, 2019.

DACF is directed by the bill to implement, administer, enforce and adopt rules to regulate the cultivation, manufacture and testing of adult use marijuana including: (1) marijuana seeds, clones and plants; (2) security requirements (*e.g.*, lighting, physical security, alarms and other internal control and security, etc.); (3) use of pesticides, fungicides and herbicides, harvesting and storage of marijuana products; (4) limits on the concentration of THC and other cannabinoid per product serving; (5) odor control, sanitary, refrigeration, storage and warehousing standards; and (6) packaging and labeling of marijuana products. DACF must provisionally adopt these rules on or before March 15, 2018.

**State Licensing Authority.** Establishes several initial, renewal, transfer of ownership, relocation of premises licensing criteria, include delaying the licensing of social clubs until June 1, 2019. If an application is approved, the State is required to issue a conditional license. An active license to operate a marijuana establishment is issued only if and when the applicant obtains municipal approval or a municipal license to operate within the municipality's boundaries. A conditional license expires in one year.

**Regulation in the Workplace.** Allows employers to: (1) prohibit the use, consumption, possession, trade, display, transport, sale or cultivation of marijuana in the workplace; (2) adopt policies restricting the use of marijuana by employees; and (3) discipline employees who are under the influence of marijuana in the workplace according to the employer's policies.

**Operating, Testing, Labeling and Packaging Requirements.** Sets into place the many operating, testing, labeling and packaging requirements for the cultivation, manufacturing and testing facilities, as well as for retail stores and social clubs.

**License Violation.** Implements the process for fining a licensee or suspending or revoking licenses for violations of State law.

**Personal Use of Marijuana Products.** Establishes qualitative limits for the personal use, consumption, cultivation and possession of marijuana by persons 21 years of age or older.

**Marijuana Advisory Commission.** Creates the 15-member Marijuana Advisory Commission, which includes a representative of a statewide association representing municipalities appointed by the Speaker of the House. The commission is tasked with reviewing the laws and rules pertaining to the adult use and medical marijuana industries and recommending changes to the laws and rules that are necessary to preserve public health and safety. Beginning January 15, 2019, and annually thereafter, the commission is required to submit a report containing findings and recommendations to the joint standing committee or committees of the Legislature having jurisdiction over medical marijuana and adult use marijuana matters.

**Adult Use Marijuana Public Health and Safety Fund.** Creates a dedicated, non-lapsing fund within DAFS capitalized by 12% of the sales tax revenue generated by the 20% tax imposed on the products sold in retail stores and social clubs and all funding from other public or private sources. The revenues dedicated to the fund must be evenly divided between to public health and safety awareness and education programs and enhanced State, county and municipal law enforcement training programs related to the sale and use of adult use marijuana.

Finally, MMA would like to stress the relatively high degree of Home Rule deference afforded to municipalities in this legislation, and in the existing Act. Municipal officials have significant latitude to adjust their ordinances to meet their communities' needs.



**Maine Revised Statutes**  
**Title 26: LABOR AND INDUSTRY**  
**Chapter 7: EMPLOYMENT PRACTICES**

**§664. MINIMUM WAGE; OVERTIME RATE**

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [1995, c. 305, §1 (RPR) .]

**1. Minimum wage.** The minimum hourly wage is \$7.50 per hour. Starting January 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the minimum hourly wage is \$10.00 per hour; starting January 1, 2019, the minimum hourly wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter.

**§663. DEFINITIONS**

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

**1. Director.** "Director," the Director of the Bureau of Labor Standards;

[ 1981, c. 168, §26 (AMD) .]

**2. Employ.** "Employ," to suffer or permit to work;

**3. Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher; and [2009, c. 529, §2 (AMD) .]

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 33 (MINIMUM WAGE)**

**Article III.**

**Section 33.7. Minimum Wage.**

- (a) *Minimum wage payment required:* Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage established by this ordinance for each hour worked within the City Limits.
  
- (b) *Minimum Wage rate:*
  - (i) Beginning on January 1, 2016, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.10 per hour;
  
  - (ii) Beginning on January 1, 2017, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.68 per hour; and
  
  - (iii) Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be increased according to the Consumer Price Index - All Urban Consumers (CPI-U) percentage increase from the prior year. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.

## OUTLINE FOR DANGEROUS BUILDING PROCEEDINGS

Applicable Statutes: 17 M.R.S.A. §§ 2851-2859

1. The first step is to have the municipal officers (Board of Selectmen or Town/City Council) vote to set a public hearing and to issue the notice as required by statute. The hearing must be set within a period of time that will allow for the service required below; a minimum of four (4) weeks is recommended.

2. Once the municipal officers have voted to set the hearing, they must sign the notice and have the municipal clerk attest it.

a. One attested copy must be recorded in the Registry of Deeds.

b. One attested copy must be served on each owner of the property and any “parties-in-interest,” as defined in 14 M.R.S.A. § 6321 (“mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises”). Service must be accomplished by the Sheriff in the county in which the party is located.

**NOTE:** A title search will be required to determine which persons or entities are entitled to receive service of a notice.

3. The returns of service must be provided to the municipality so that municipal officers have them at the hearing.

4. The municipal officers hold the public hearing required under the statute at the time and date designated on the notice.

a. The Code Enforcement Officer should present evidence concerning the status of the building.

b. If an engineer has been hired to review and inspect the building, the engineer should attend the meeting to testify and present any written report that may be prepared. An oral report is sufficient.

c. Any other municipal officials with relevant information about the building, such as the Fire Chief or Police Chief, should present any testimony or written reports that have been prepared.

5. Following the public hearing, the municipal officers must consider whether the building is a “dangerous building” under the meaning set forth in 17 M.R.S.A. § 2851— that is, whether it is “structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property.”

6. If the municipal officers vote that the building is a dangerous building under the statute, they must sign an order to that effect. The order must:

a. Contain detailed findings of fact supporting the conclusion that the structure on the property is a dangerous building;

b. State that the property owner or any party-in-interest has 30 days to demolish the structure or repair the structure to the municipality’s satisfaction, and further state that if the repair/demolition does not occur, the manager/administrator will have the authority to cause the structure to be demolished;

c. State that if the municipality has to demolish the building, it will assess a special tax on the property for the costs of demolition (including the costs of title searches, location reports, service of process, costs of removal of the structure, any costs incurred in securing the structure pending its removal, and all other costs incurred by the municipality that are reasonably related to the removal of the structure, including legal advice); and

d. State that any party aggrieved by the decision of the municipal officers may appeal to Superior Court pursuant to Rule 80B.

7. The order must be recorded in the Registry of Deeds and served upon the owner and the parties-in-interest in the same fashion as the notice of hearing referenced in step 2(b) above.

8. If the municipality has to hire a contractor(s) to repair or demolish the structure, it will need to put together an itemization of its costs of demolition, removal and disposal. Once the final bill is put together, the municipality must issue a written demand to the property owner(s).

9. If the property owner fails to pay the bill within 30 days, the Town may assess a “special tax” on the real estate. According to the statute, the special tax “shall be included in the next annual warrant to the tax collector of said town for collection, and shall be collected in the same manner as other state, county and municipal taxes are collected.” 17 M.R.S.A. § 2853. Attached is a sample Certification of Assessment form created by MMA that can be used in the event of a special assessment such as a

dangerous building. Because the special tax is not an *ad valorem* tax (i.e., not based on the “just value” of the property), and special assessments are not used to determine the municipality’s mil rate from the “total assessment,” it should be issued as a separate tax bill from the regular annual tax bill on the real estate for the parcel in question.

10. In the event that the special tax goes unpaid by the owner, it is subject to the same automatic tax lien foreclosure procedure as applicable for regular property taxes. *See* 36 M.R.S.A. §§ 942, 943.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SEVENTEEN

S.P. 505 - L.D. 1459

An Act To Protect the Public from Dangerous Buildings

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 17 MRSA §2851**, as amended by PL 1997, c. 6, §1, is further amended to read:

**§2851. Dangerous buildings**

~~Whenever the~~ The municipal officers in the case of a municipality; or the county commissioners in the case of the unorganized or deorganized areas in their county, ~~find that a building or structure or any portion thereof or any wharf, pier, pilings or any portion thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, is structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property, they may after notice pursuant to section 2857 and hearing on this matter adjudge the same a building to be a nuisance or dangerous, in accordance with subsection 2-A, and may make and record an order, in accordance with subsection 3, prescribing what disposal must be made of that building or structure. The order may allow for delay of disposal if the owner or party in interest has demonstrated the ability and willingness to satisfactorily rehabilitate the building. If an appeal pursuant to section 2852 is not filed or, if an appeal pursuant to section 2852 is filed and the Superior Court does not order, stay or overturn the order to dispose of the building, the municipal officers or the county commissioners shall cause the nuisance to be abated or removed in compliance with the order.~~

For the purposes of this subchapter, "building" means a building or structure or any portion of a building or structure or any wharf, pier, pilings or any portion of a wharf, pier or pilings thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, and "parties in interest" has the same meaning as in Title 14, section 6321.

~~1. **Notice.** The notice must be served on the owner and all parties in interest, as defined in Title 14, section 6321, in the same way service of process is made in accordance with the Maine Rules of Civil Procedure.~~

~~2. **Notice; how published.** When the name or address of any owner or co-owner is unknown or is not ascertainable with reasonable diligence, then the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper.~~

2-A. **Standard.** To adjudge a building to be a nuisance or dangerous, the municipal officers or county commissioners must find that the building is structurally unsafe, unstable or unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property.

~~3. **Recording of the order.** The An order made by the municipal officers or county commissioners under this section must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in ~~subsection 2~~ section 2857.~~

**4. Proceedings in Superior Court.** In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the ~~structure~~ building is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and ~~parties in interest~~ parties in interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the ~~structure~~ building, it shall award costs as authorized by this subchapter to the municipality or the county. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure.

**Sec. 2. 17 MRSA §2852**, as amended by PL 1997, c. 6, §2, is further amended to read:

**§2852. Appeal; hearing**

An appeal from a decision of the municipal officers or county commissioners under section 2851 or section 2856 must be to the Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure, Rule 80B.

**Sec. 3. 17 MRSA §2853**, as amended by PL 1979, c. 27, §5, is further amended to read:

### **§2853. Recovery of expenses**

~~If no appeal is filed, the municipal officers of such municipality shall cause said nuisance to be abated or removed in compliance with their order, and all~~ All expenses thereof shall incurred by a municipality or county related to an order issued under section 2851, including, but not limited to, expenses relating to the abatement or removal of a building, must be repaid to the municipality or county by the owner or co-owner within 30 days after demand, or a special tax may be assessed by the assessors against the land on which ~~said~~ the building was located for the amount of ~~such~~ the expenses and ~~such~~ that amount ~~shall~~ must be included in the next annual warrant to the tax collector of ~~said town~~ the municipality or county for collection, and ~~shall~~ must be collected in the same manner as other state, county and municipal taxes are collected.

In the case of any claim for expenses incurred in the abatement or removal of any wharf, pier, pilings or any portion thereof ~~which~~ that extends beyond the low water mark, the special tax authorized by this section ~~shall~~ must apply to the land from which ~~such~~ the wharf, pier or pilings extended or to which they were adjacent, ~~provided if~~ provided if the owner of the land is also the owner of the ~~said~~ wharf, pier, pilings or portion thereof.

Expenses ~~shall~~ include, but ~~not by way of limitation~~ are not limited to, the costs of title searches, location reports, service or process, reasonable attorney's fees, costs of removal of the ~~structure~~ building, any costs incurred in securing the ~~structure~~, building pending its removal, and all other costs incurred by the municipality ~~which~~ or county that are reasonably related to the removal of the ~~structure~~ building. In addition to levying a special tax, the municipality or county may recover its expenses, including its reasonable attorney's fees, by means of a civil action brought against the owner.

**Sec. 4. 17 MRSA §2856**, as enacted by PL 1979, c. 27, §6, is amended to read:

### **§2856. Securing dangerous buildings**

In addition to other proceedings authorized by this subchapter, a municipality ~~shall~~ has the right to secure ~~structures which~~ buildings that pose a serious threat to the public health and safety and to recover its expenses in so doing as provided in ~~this subchapter~~ section 2853. If a building is secured under this section, notice, in accordance with section 2851, ~~subsection 1, shall~~ 2857 must be given. This notice need not be given before securing the ~~structure~~ building if the threat to the public health and safety requires prompt action.

**Sec. 5. 17 MRSA §2857**, as enacted by PL 1979, c. 27, §6, is amended to read:

### **§2857. Notice; recording**

Notice required under section 2851 or section 2856 must be served on the owner and parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. When the name or address of an owner or party in interest is unknown or is not ascertainable with reasonable diligence, the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper.



The municipal ~~or county~~ clerk shall cause an attested copy of the notice to be recorded in the Registry of Deeds located within the county where the ~~structure~~ building is situated. Recording of this notice ~~shall be deemed to put~~ puts any person claiming under the owner of a ~~structure~~ building subject to proceedings under this subchapter on notice of the pendency of the proceedings.

**Sec. 6. 17 MRSA §2858**, as enacted by PL 1979, c. 27, §6, is amended to read:

**§2858. Consent to removal**

The owner ~~and parties in interest~~ or a party in interest of a dangerous ~~structure~~ building may consent to its removal and to the recovery of the expenses incurred by a municipality ~~or county~~ by means of a special tax as set forth in this subchapter. Notices of the consent ~~shall~~ must be recorded in the Registry of Deeds located in the county where the ~~structure~~ building is situated.

**Sec. 7. 17 MRSA §2859, sub-§1**, as corrected by RR 2007, c. 2, §5, is amended to read:

**1. Commencement of action.** A municipality, acting through its building official, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building ~~or structure~~ is "dangerous," as ~~that term is defined~~ described in section 2851<sup>2</sup>, and shall state in the complaint that the public health, safety or welfare requires the immediate removal of that building ~~or structure~~.

**Sec. 8. 17 MRSA §2859, sub-§2, ¶A**, as enacted by PL 1981, c. 43, is amended to read:

A. Requiring the owner and all ~~parties in interest, as that term is defined in the statutes governing foreclosure by civil action,~~ parties in interest to appear and show cause why the building ~~or structure~~ should not be ordered demolished;

**Sec. 9. 17 MRSA §2859, sub-§§4 and 5**, as enacted by PL 1981, c. 43, are amended to read:

**4. Hearing.** After hearing, the court shall enter judgment. If the judgment requires removal of the building ~~or structure~~, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7.

**5. Appeal.** ~~No~~ A judgment requiring demolition issued pursuant to this section may not be appealed. The owner of a building ~~or structure which~~ that is the subject of an order issued under this section; or a ~~party in interest,~~ party in interest may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7.

**Sec. 10. 17 MRSA §2859, sub-§7**, as amended by PL 1995, c. 450, §6, is further amended to read:

**7. Damages.** Any complaint that either seeks damages for the wrongful removal of a building ~~or structure~~ or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order that is the subject of the appeal. The damages that may be awarded for wrongful demolition are limited to the actual value of the ~~structure~~ building at the time of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality ~~should prevail~~ prevails, the court may award it its costs in defending any appeal, which may include, but are not limited to, reasonable attorney's fees.

**NOTICE OF PUBLIC HEARING**  
**Pursuant to Title 17 M.R.S §§ 2851 - 2859**  
**(Dangerous Buildings)**

<b>Property Location:</b>	1171 Maine Street	<b>Parcel ID:</b>	0039-0019
<b>Owners:</b>	Jane E. Barnaby 1171 Maine Street Poland, Maine 04274	<b>Dated:</b>	February 2, 2016

---

To: Jane Barnaby, and all other persons having an interest in the premises situated at 1171 Maine Street in Poland, Maine, a parcel of land with a building or structure located thereon, described as Lot 19 on Tax Map 39, a copy of which is on file at the Poland Town Office, 1231 Maine Street, Poland, Maine, and more particularly described in the deed from Stanley R. & Janet L. Pulsifer to Marvin H. & Jane E. Barnaby, dated June 24, 1986, and recorded in the Androscoggin County Registry of Deeds at Book 1971, Page 141 (hereinafter, the "Property").

You are hereby notified that the Board of Selectmen of the Town of Poland, Maine will hold a Public Hearing on Tuesday, March 15, 2016, at 7:00 p.m. in the conference room at the Town Office located at 1231 Maine Street, Poland, Maine 04274. The purpose of this public hearing is to hear all persons interested in the condition of the Property, as herein described, which is alleged to be a nuisance and dangerous building within the meaning of 17 M.R.S.A. § 2851.

At such hearing, the Board of Selectmen will consider whether they will adjudge said Property, including the buildings thereon, or any part thereof, to be a nuisance or dangerous; and if so adjudged, will record an Order prescribing what disposal shall be made thereof, including, but not limited to, the demolition and removal of the building/structure found to be in violation.

If any such Order of the Board of Selectmen is issued and is not timely complied with and no appeal is taken, the Board of Selectmen may undertake to abate or remove any such dangerous condition or nuisance as above referenced that is found to exist, at municipal expense, and recover all such expenses, including reasonable attorney's fees, by means of a special tax or civil action against the owner thereof as provided by statute.

It is hereby ordered that copies of this Notice be served upon the persons above-named as required by law and, pursuant to 17 M.R.S.A. § 2857, that an attested copy be recorded in the Androscoggin County Registry of Deeds.

**BOARD OF SELECTMEN of the Town of Poland.**

\_\_\_\_\_  
Stephen Robinson

\_\_\_\_\_  
James G. Walker Jr.

\_\_\_\_\_  
Stanley L. Tetenman

\_\_\_\_\_  
Janice A. Kimball

\_\_\_\_\_  
Walter J. Gallagher

Personally appeared before me the above-named \_\_\_\_\_, in his/her capacity as a member of the Board of Selectmen of Poland, Maine and acknowledged the foregoing instrument to be his/her free act and deed.

---

Alexander Sirois, Notary Public  
My Commission Expires: April 10, 2021

Decision and Order of the Kittery Town Council  
Acting as the Municipal Officers

Re: Dangerous Building (40 Old Post Road  
in Kittery; Tax Map 8, Lot 25)

A. Findings of Fact

Based on the parties' presentations--both the sworn testimony of the four witnesses and Mr. Dineen as the property owner, and the documentary evidence presented by the Fire Chief and Mr. Dineen, the Town Council makes the following findings:

1. The Kittery Town Council, acting as the "municipal officers" for the Town of Kittery, convened at a properly called and noticed meeting on March 9, 2015 at 7 pm in the Town Council Chambers at the Kittery Municipal Offices. The procedure was a hearing pursuant to state statute to determine whether the small building located on a small lot or parcel of land on the generally southeasterly side of the Old Post Road (Lot 25 on Town Tax Map 8), with a street address of 40 Old Post Road (the "Property"), constitutes a so-called "dangerous building" within the meaning of the applicable Maine statute, 17. M.R.S. Sec. 2851, and, if so, what the disposition of the same should be.
2. All seven members of the Town Council were present; one of the Councilors, Frank Dennett, was recused from partici-

pating in the hearing based on prior business dealings with the property's apparent owner, James Dineen. Mr. Dineen appeared on his own behalf and stated that he was the owner of the Property by virtue of an unrecorded 2004 deed from the Personal Representative of his late mother's estate. He further indicated that he had seen a legal notice of the hearing in the Portsmouth Herald, a local newspaper of general circulation in Kittery, which legal notice had run for three successive weeks, as Town officials had been unable to ascertain in advance of the hearing who owned the Property beyond the record owner, the Estate of Ruth Dineen, who had died in 1995. Mr. Dineen stated that he had also received a written notice of the time and place of the hearing in a plain, unmarked envelope hand-addressed to him and stated that he may, or may not, have been at home when a York County Deputy Sheriff made repeated, unsuccessful attempts to serve him in hand with that notice.

3. Attorney Duncan McEachern represented the Town Council during the hearing; Attorney William Dale represented the Town staff presenting the case to the Town Council; and Mr. Dineen said he is a lawyer and was representing himself. All fact witnesses were sworn and testified under oath: the Fire Chief David O'Brien; the Police Chief, Theodore Short; the Code Enforcement Officer Robert Marchi; and one member of the public, David Lincoln. Mr. Dineen was also sworn in.

4. The Fire Chief testified that he has served as the Kittery Fire Chief for the past 17 years and stated his extensive experience and training as a fire fighter. He also testified that he had grown up in Kittery and was very familiar over the years with the Property at issue in the hearing. He testified that he had been to the Property recently and confirmed that the building is in a dilapidated state of gross disrepair, and that a series of recent photographs he introduced in evidence accurately depicted the same. In particular, he testified that the one story building had a basement underneath it and that a very large section of the first floor had fallen into the basement and that it appeared that more of the floor might well fall in if weight were put on it. He also testified that the walls had buckled such that the structural integrity of the building as a whole was severely compromised and that the front end of the building was beginning to collapse. He further stated that given the very dilapidated state of the building, especially with the first floor so substantially compromised, he would not want his firefighters to enter the building in the event of an on-site emergency because their safety would be so at risk. The building is also near to other potentially flammable objects such as a literally burned out bus and other buses and an assortment of old tires on the same lot and the building is located close to a

nearby occupied residential building. He felt that in his opinion the building would not be economic to repair. He felt that children or others could get into the building and would be in a dangerous situation and any rescue efforts would put his firefighters in a dangerous situation.

5. The Police Chief stated that he agreed with the Fire Chief's testimony regarding the status and dangerous condition of the building. He also confirmed the Fire Chief's testimony that the photographs accurately depicted the very unstable and unsafe state of the building. The Police Chief also testified it would be a hazard to the health and safety of police officers if they had to go inside the building. The Code Enforcement Officer, who is also the Kittery Health Officer, also agreed with the Fire Chief's testimony and, in addition, raised the specter that the sanitary sewer line from the building may not have been properly "capped off." The failure to cap off the sewer connection, if it were the case, could create a sort of Petri dish effect that could create a problem with bacteria and posed a health hazard. Mr. Dineen admitted that he did not know whether the sewer line had been capped off.
6. Mr. Dineen conceded that he owned the building and that the photos accurately depicted its current state. He admitted that he had not given the building any maintenance in many years. He said there has been no power to the structure



since maybe 10 years ago nor any heat in the building during the same period. He said he has no present plans for the building and that he was last in the building about six months ago and had to walk around very carefully because of the collapsed floor inside. He said he had to walk around so as to avoid getting too close to the edge of the remaining floor in order to prevent himself from falling into the basement. He debated with the Fire Chief, however, as to whether the building was easily accessible to trespassers. On balance the Town Council finds the building would be relatively easy for third parties to enter, an especially troublesome possibility given its immediate proximity to a local skating pond used by youngsters in the neighborhood. Mr. Dineen admitted that he had sufficient money to have the building razed, but did not want to do so.

#### B. Conclusions

Based on the above, the Town Council makes the following conclusions:

1. Mr. Dineen is the property's owner, even though that could not be confirmed until he so testified during the hearing. Although Mr. Dineen purported to "preserve" any objections about the adequacy of the Town's notice to him, there was no question that the proper notice had been published in the Portsmouth Herald for three weeks in advance of the hearing when the ownership was still

uncertain (Ruth Dineen had died in 1995). Mr. Dineen, by his own admission said that he had seen the newspaper legal notice, that he finally admitted that he owned the property by virtue of his unrecorded 2004 deed arising out of his mother's death in 1995, and that he had also received in the mail a copy of the written notice prepared by the Town and sent to his home in a plain, unmarked envelope. He said that he discussed this Notice with the Town Clerk while he was in the Town Hall about a week or two before the hearing date of March 9, 2015. Similarly, he identified no prejudice in terms of the timing of the notices and his ability to prepare for the hearing. Mr. Dineen retained a recorder and had her attend and transcribe the hearing.

2. The photographs submitted by the Fire Chief, as validated by his sworn testimony, and as admitted to by Mr. Dineen, leave no doubt that the Property is a "dangerous building" within the meaning of the statute as it is without question structurally unsafe, unstable, unsanitary and constitutes a health and safety hazard to the public. Mr. Dineen's protestations to the contrary that the building is locked and has not been broken into in the last ten years do nothing to allay the Town Council's very serious concerns for the public safety of the neighboring properties, the neighboring residents and children and the risk to the Town's fire, police, and other safety personnel if a fire

should break out, especially surrounded by the half-burned out bus and rubber tires that can intensify a fire.

Similarly, if trespassers (especially children) should enter the building, get hurt due to the unstable condition of the building and then need to be rescued by the Town's public safety personnel, the public safety risk presented would be totally unacceptable.

### Decision

Based on the above findings of fact and conclusions, the Town Council finds that the building on the Property is a "dangerous building" within the meaning of the state statute. Further, the building's state of disrepair is such that no one would reasonably conclude that it can be repaired. The Council finds that the building must be razed and the debris disposed of in a lawful and environmentally appropriate manner. There is no reason the taxpayers of Kittery should shoulder that burden as Mr. Dineen admitted that he could pay for the same, but simply did not want to do so.

The Town Council by a vote of 6 to 0 (with one member recusing himself) finds the building located on the Property located at 40 Old Post Road, Map 8, Lot 25, meets the conditions of the Maine state statute in that it is so unstable, so unsafe and so much a hazard to public safety because of inadequate maintenance and dilapidation that it constitutes a "dangerous building" within the meaning of the statute and that it must be

razed within thirty (30) days of the date this Decision and Order becomes final. All such demolition and removal expenses and all other expenses as set forth in M.R.S. § 2853 shall be at the owner's sole expense and shall be repaid by the owner to the Town of Kittery within 30 days after demand upon the owner or a special tax may be assessed against the land at 40 Old Post Road and the Town may proceed with all other remedies for collection available to it pursuant to 17 M.R.S. § 2853.

The Town Clerk shall cause an attested copy of this Decision and Order to be recorded as required by law and cause an attested copy of the same to be served on James Dineen as required by law. Any appeal from this decision must be made to the Maine Superior Court (York County) within 30 days after the date of this Decision and Order.

Dated: April 13, 2015

By: Jeffrey Thomson  
Jeffrey Thomson, Chairperson

Charles Denault

Councilor Charles Denault

Jeffrey Pelletier  
Councilor Jeffrey Pelletier

Russell White  
Councilor Russell White

Judy Spiller  
Councilor Judy Spiller

Kenneth Lemont  
Councilor Kenneth Lemont

As Town Clerk for the Town of Kittery, I hereby certify that the above Decision and Order of the Kittery Town Council is a true attested copy of said Decision and Order issued by the Kittery Town Council on April 13, 2015.

Dated: April 16, 2015

Maryann Place  
Maryann Place, Town Clerk

**ASSESSORS' CERTIFICATION OF ASSESSMENT**  
**(For use in connection with special assessments)**

WE HEREBY CERTIFY, that the pages herein, numbered from \_\_\_\_\_ to \_\_\_\_\_ inclusive, contain a list and valuation of Estates, Real and Personal, liable to be taxed in the Municipality of \_\_\_\_\_ for State, County, District, and Municipal Taxes for the fiscal year \_\_\_\_\_ to \_\_\_\_\_ as they existed on the first mm/dd/yy mm/dd/yy day of April \_\_\_\_\_. We further certify that the pages herein numbered (Special Assessment-1 to Special Assessment-\_\_\_\_\_), inclusive, contain a list of those properties which have been specially assessed pursuant to \_\_\_\_\_ (cite the specific State statute) and are included in this commitment for collection in the same manner as State, county and municipal taxes for the year \_\_\_\_\_.

IN WITNESS THEREOF, we have hereunto set our hands at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 \_\_\_\_\_

Municipal Assessors

\_\_\_\_\_ **MUNICIPAL TAX ASSESSMENT WARRANT**  
 year

State of Maine Municipality \_\_\_\_\_ County \_\_\_\_\_  
 To \_\_\_\_\_, Tax Collector \_\_\_\_\_

In the name of the State of Maine you are hereby required to collect of each person named in the list herewith committed to you the amount set down on said list as payable by that person.

**Assessments**

- |   |              |
|---|--------------|
| 1. County Tax                                   | _____        |
| 2. Municipal Appropriation                      | _____        |
| 3. TIF financing plan amount                    | _____        |
| 4. School/Educational Appropriation             | _____        |
| 5. Overlay (Not to exceed 5% of Net Assessment) | _____        |
| 6. Total Assessments                            | _____ \$0.00 |

**Deductions**

- 7. State Municipal Revenue Sharing \_\_\_\_\_
- 8. Homestead Reimbursement \_\_\_\_\_
- 9. Other Revenue \_\_\_\_\_
- 10. Total Deductions \_\_\_\_\_
- 11. Net Assessment for Commitment (Line 6 minus Line 10) \_\_\_\_\_  
**(Should agree with Item 13, Municipal Valuation Return)**
- 12. Total Special Assessments \_\_\_\_\_  
(indicate type and amount: dangerous buildings; malfunctioning subsurface disposal systems, etc.)
- 13. Total Commitment (sum of lines 11 and 12) \_\_\_\_\_

You are to pay to \_\_\_\_\_, the Municipal Treasurer, or to any successor in office, the taxes herewith committed, paying on the last day of each month all money collected by you, and you are to complete and make an account of your collections of the whole sum on or before \_\_\_\_\_  
mo/day/yr

In case of the neglect of any person to pay the sum required by said list until after \_\_\_\_\_;  
mo/day/yr

you will add interest to so much thereof as remains unpaid at the rate of \_\_\_\_ percent per annum, commencing \_\_\_\_\_ to the time of payment, and collect the same with the tax remaining unpaid.  
mo/day/yr

Given under our hands, as provided by a legal vote of the Municipality and Warrants received pursuant to the Laws of the State of Maine, this \_\_\_\_\_.  
mo/day/yr

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Assessor(s) of: \_\_\_\_\_

**CERTIFICATE OF COMMITMENT**

To \_\_\_\_\_, The Collector of the Municipality of  
\_\_\_\_\_, aforesaid.

Herewith are committed to you true lists of the special assessments of the Estates of the persons wherein named; you are to levy and collect the same, of each one their respective amount, therein set down, of the sum total of \$\_\_\_\_\_ (being the amount of the lists contained herein), according to the tenor of the foregoing warrant.

Given under our hands this \_\_\_\_\_.  
mo/day/yr

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Assessor(s) of: \_\_\_\_\_

Complete in Duplicate  
File Original with Tax Collector/File Copy in Valuation Book

**CERTIFICATE OF ASSESSMENT TO BE RETURNED TO MUNICIPAL TREASURER**

STATE OF MAINE

County of \_\_\_\_\_, ss.

We hereby certify, that we have assessed a tax on the estate, real and personal liable to be taxed in the Municipality of \_\_\_\_\_ for the fiscal year \_\_\_\_\_, at \_\_\_\_\_ mils  
m/d/yy

on the dollar, on a total taxable valuation of \$\_\_\_\_\_. We further certify that we have specially assessed taxes on certain properties in the Municipality of \_\_\_\_\_ pursuant to State law.

**Assessments**

- 1. County Tax \_\_\_\_\_
- 2. Municipal Appropriation \_\_\_\_\_
- 3. TIF financing plan amount \_\_\_\_\_
- 4. School/Educational Appropriation \_\_\_\_\_
- 5. Overlay (Not to exceed 5% of Net Assessment) \_\_\_\_\_
- 6. Total Assessments \_\_\_\_\_

**Deductions**

- 7. State Municipal Revenue Sharing \_\_\_\_\_
- 8. Homestead Reimbursement \_\_\_\_\_
- 9. Other Revenue \_\_\_\_\_
- 10. Total Deductions \_\_\_\_\_
- 11. **Net Assessment for Commitment** (Line 6 minus Line 10). \_\_\_\_\_  
**(Should agree with Item 13, Municipal Valuation Return)**
- 12. Total Special Assessments \$ \_\_\_\_\_
- 13. Total Commitment (sum of lines 11 and 12) \$ \_\_\_\_\_

Lists of all the same we have committed to \_\_\_\_\_, Tax Collector of said Municipality, with warrants in due form of law for collecting and paying the same to \_\_\_\_\_, Municipal Treasurer of said Municipality, or the successor in office, on or before such date, or dates, as provided by legal vote of the Municipality and warrants received pursuant to the laws of the State of Maine. (Title 36 M.R.S.A., section 712)

Given under our hands this \_\_\_\_\_.  
m/d/yy

\_\_\_\_\_ Municipal Assessor(s)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# Notice of Agency Rule-making Proposal

AGENCY: **Office of State Fire Marshal, Bureau of Building Codes and Standards**

CHAPTER NUMBER AND TITLE: **Chapter 5, Maine Uniform Building and Energy Code and Maine Uniform Building Code-Residential Building Code for One and Two Family Dwellings in Maine**

PROPOSED RULE NUMBER *(leave blank; to be assigned by Secretary of State)*:

BRIEF SUMMARY: This rule adopts the 2015 International Residential Code. This rule was amended to conform to a change in the statute that allows towns below 4,000 residents to adopt the building code, the energy code, or both building and energy codes. It also raises the threshold for municipal enforcement to 4,000 residents. The rule also reduces the allowable void spaces within a home to no more than 500 square feet. This rule also defines the use of a rooming and lodging facility to bring this code into compliance with the Life Safety Code. This rule also expands compliance options for townhomes. This rule also includes Appendix V which defines the requirements for Tiny Homes.

Date, time and location of PUBLIC HEARING *(if any)*: September 18, 2017, Champlain conference room, Department of Public Safety, 45 Commerce Drive, Augusta, Maine 04333 @ 9 a.m.

COMMENT DEADLINE: September 28, 2017

CONTACT PERSON FOR THIS FILING *(include name, mailing address, telephone, fax, TTY, e-mail)*: **Michelle Mason Webber, Sr. Planning and Research Analyst, 52 State House Station, Augusta, ME 04333-0052, phone: 207-626-3873, email: michelle.mason@maine.gov**

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: **Richard McCarthy, Assistant State Fire Marshal, 52 State House Station, Augusta, ME 04333-0052, phone: 207-626-3886, richard.mccarthy@maine.gov**

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: Towns below 4,000 residents would no longer be required to enforce the building and energy code.

STATUTORY AUTHORITY FOR THIS RULE: 10 M.R.S. §9722

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

AGENCY WEBSITE: <http://maine.gov/dps/fmo/laws/proposedrulemaking.html>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: **michelle.mason@maine.gov**

\* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

**Please approve bottom portion of this form and assign appropriate AdvantageME number.**

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
*(authorized signature)*

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
014	016A	1300				

16 DEPARTMENT OF PUBLIC SAFETY

635 BUREAU OF BUILDING CODES AND STANDARDS

Chapter 5: MAINE UNIFORM BUILDING AND ENERGY CODE AND MAINE UNIFORM BUILDING CODE - RESIDENTIAL BUILDING CODE FOR ONE AND TWO-FAMILY DWELLINGS IN MAINE

---

**SUMMARY:** This chapter establishes the Residential Building code component of the Maine Uniform Building and Energy Code (“MUBEC”) and the Maine Uniform Building Code (“MUBC”). The provisions of this chapter are based on a nationally recognized model building code published by the International Code Council, Inc., and is made part of the MUBEC and MUBC through incorporation by reference. This chapter also contains requirements for the enforcement of the Residential Building code by local building officials in municipalities with a population of more than ~~2,000~~ 4,000 residents.

---

**SECTION 1. PURPOSE AND SCOPE**

All building construction ~~in Maine, with some exceptions~~ is within a municipality of over 4,000 inhabitants shall be governed by the MUBEC. which is All other municipalities shall be governed by the MUBEC or the MUBC as adopted by the municipality. These codes are adopted by the Technical Building Codes and Standards Board pursuant to 10 M.R.S. Chapter 1103. The primary objective of the Board is to establish a uniform building code throughout the State of Maine.

This chapter sets forth the standards for residential construction for one and two-family dwellings that are part of the MUBEC and MUBC. It applies to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

**SECTION 2. AUTHORITY**

The authority for this Chapter is 10 M.R.S. §9722, which provides that the Maine Technical Building Codes and Standards Board shall promulgate rules which adopt, amend, and maintain the Maine Uniform Building and Energy Code and the Maine Uniform Building Code. A municipality will have up to 90 days after the effective date of this rule to begin enforcement under the 2015 code.

**SECTION 3. DEFINITIONS**

1. **IRC.** “IRC” means the ~~2009~~ 2015 International Residential Code, ~~in effect on June 1, 2010,~~ published by the International Code Council, Inc.
2. **NFPA.** “NFPA” means The National Fire Protection Association.

3. **MUBEC.** “MUBEC” means the Maine Uniform Building and Energy Code adopted pursuant to 10 M.R.S. §9271, *et seq.*
4. **MUBC.** “**MUBC**” means Maine Uniform Building Code. "Maine Uniform Building Code" means that portion of the Maine Uniform Building and Energy Code that does not contain energy code requirements as determined by the board pursuant to section 9722, subsection 6, paragraph L.
- ~~5.4.~~ **Technical Building Codes and Standards Board.** “Technical Building Codes and Standards Board” means the board established pursuant to 5 M.R.S. §12004-G, subsection 5-A and 10 M.R.S. §9722.

#### SECTION 4: INCORPORATION BY REFERENCE

1. The following Chapters of the ~~2009~~ 2015 International Residential Code, published by the International Code Council, Inc., ~~in effect on June 1, 2010~~, are hereby adopted and incorporated by reference:
  - A. Chapters 1 - 10
  - B. Chapters 12 - 19
  - C. Chapter 23
  - D. Chapter 41
  - E. Chapter 42
  - F. Chapter 44
  - G. Appendix G
  - H. Appendix V-As Attached
2. The following Chapters, and all appendices, of the IRC are specifically excluded from adoption:
  - A. Chapter 11 Energy Efficiency
  - B. Chapter 20 Boilers and Water Heaters
  - C. Chapter 21 Hydronic Piping
  - D. Chapter 22 Special Piping and Storage Systems
  - E. Chapter 24 Fuel Gas
  - F. Chapter 25 Plumbing Administration
  - G. Chapter 26 General Plumbing Requirements
  - H. Chapter 27 Plumbing Fixtures
  - I. Chapter 28 Water Heaters
  - J. Chapter 29 Water Supply and Distribution
  - K. Chapter 30 Sanitary Drainage
  - L. Chapter 31 Vents
  - M. Chapter 32 Traps
  - N. Chapter 33 Storm Drainage
  - O. Chapter 34 General Requirements
  - P. Chapter 35 Electrical Definitions
  - Q. Chapter 36 Services
  - R. Chapter 37 Branch Circuit and Feeder Requirements
  - S. Chapter 38 Wiring Methods
  - T. Chapter 39 Power and Lighting Distribution

- U. Chapter 40 Devices and Luminaries
- V. Chapter 43 Class 2 Remote-Control, Signaling and Power Limited Circuits
- W. Appendix A – F and H - Q

## SECTION 5. REVISIONS TO THE IRC

The following additions, insertions, deletions, and other changes are hereby made to the ~~2009~~ 2015 International Residential Code:

1. Generally all sections

*Delete* “International Mechanical Code”

*Insert* “applicable state codes and statues”

2. Section R101.1

*Delete* [NAME OF JURISDICTION]; *and*

*Insert* “State of Maine” in its place.

3. Section R101.2

*Delete* under Exception: “complying with the requirements of Section 419 of the International Building Code”

*Delete* under Exception: “fire suppression required by Section 419.5 of the International Building Code when constructed under the International Residential Code for one and two-family dwellings shall conform to Section 903.3.1.3 of the International Building Code.”

*Delete* exception 1 in its entirety

*Insert* “Live work units as defined in the International Building Code shall be permitted and constructed in accordance with The International Residential Code for One and Two Family Dwellings.”

*Delete* Exception 2 in its entirety

*Insert* “One and two family dwellings that house more than 3 outsiders in rented rooms shall be considered an R-1 use group. One and two family dwellings housing 3 or less outsiders in rented rooms shall be permitted and constructed in accordance with The International Residential Code for One and Two Family Dwellings.”

- ~~4.3-~~ Section R102.2.1

*Insert* “No provisions of the MUBEC or MUBC shall be construed to prohibit the adoption or enforcement of an ordinance of any political subdivision that sets forth provisions for local enforcement of building codes. Such ordinances may include items such as, permits, permit fees, boards of appeals and violations.”

- ~~5.4-~~ Section R102.7

*Delete* “International Property Maintenance Code or the International Fire Code”; *and Insert* “NFPA #1; Fire and Safety Codes and standards adopted pursuant to Title 25, M.R.S. §§2452 and 2465” in its place.

~~6.5.~~ Section R103

*Delete* Section R103 ‘Department of Building Safety’ in its entirety, without substitution.

~~6.~~ Sections R104, R105, R106 R107, R109, R110, R111, and R114 and any amendments thereto shall only be applicable:

A. ~~In a municipality with a population of 2,000 or more residents, beginning:~~

(1) ~~No later than December 1, 2010, if the municipality had previously adopted any building code on or before August 1, 2008; or~~

(2) ~~No later than July 1, 2012, if the municipality had not adopted any building code on or before August 1, 2008.~~

B. ~~In a municipality with a population of less than 2,000 residents, if the municipality voluntarily elects to enforce the MUBEC.~~

7. Section R104.8

*Delete* all language in Section R104.8; *and Insert* “See 14 M.R.S.A §8101” in its place.

8. Section R105.1

*Insert* “where required by municipal ordinance.” at the end of the paragraph.

~~9.~~ Section R105.2

*Insert* “Structures exempt from permits shall be located in compliance with zoning and floodplain regulations.” at the end of the paragraph.

~~9.10.~~ Section R105.3

*Delete* “department of building safety” in the first paragraph; *and Insert* “municipality” in its place.

~~10.44.~~ Section R105.3.1

*Delete* “within a reasonable time after filing”  
*Insert* “in accordance with 30A M.R.S.A §4103”

~~11.42.~~ Section R105.3.1.1

*Delete* “finding shall be provided to the board of appeals for a determination of substantial damage. Applications determined by the bar of appeals to constitute substantial improvement or substantial damage”; *and*

*Insert* “Building Official” in its place.

~~12.13.~~ Section R108

*Delete* Section R108 “Fees” in its entirety, without substitution.

~~13.14.~~ Sections R112 and R113

*Delete* Section R112 “Board of Appeals” and Section R113 “Violations” in their entirety, without substitution.

~~14.15.~~ Section R202

*Delete* “Conditioned space: For energy purposes, space within a building that is provided with heating and/or cooling equipment of systems capable of maintaining, through design or heat loss/gain 50° F (10° C) during the heating season and 85° F (29° C) during the cooling season, or communicates directly with a conditioned space. For mechanical purposed, an area, room or space being heated or cooled by any equipment or appliance”

*Insert* “An area or room within a building being heated or cooled, containing un-insulated ducts, or with a fixed opening directly into an adjacent conditioned space.” in its place.

15. Section 302.2

*Delete* Section 302.2 in its entirety

*Insert* Section 302.2 as follows:

Townhouses. Common walls separating townhouses shall be assigned a fire resistance rating in accordance with section R302.2, item 1,2 or 3. The common wall shared by two townhouses shall be constructed without plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing.

- A. Where a fire sprinkler in accordance with NFPA 13D is provided the common wall shall be not less than a 2- hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263.
- B. Where a fire sprinkler is not provided the common wall shall not be less than a 2-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 and meeting the requirements of NFPA 221 as a fire wall.
- C. Where a fire sprinkler in accordance with section NFPA 13R is provided the common wall shall be not less than a 1- hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263.

16. Section 302.12

*Delete* Section R 302.12 in its entirety

Insert Section R302.12 as follows:

Draftstopping shall be provided in one and two residential family combustible lightweight assembly construction where there are concealed voids or interstitial spaces above or below a floor/ceiling assembly components; such as but not limited to attics, mansards, overhangs or other concealed spaces. Draftstops shall be installed so that the area of any concealed or void space does exceed 500 sq.ft. Draftstops shall be installed so that the area of any concealed space into approximately equal areas. Draftstopping shall be installed above, and in line with, sleeping unit and dwelling unit separation walls that do not extend to the underside of the roof sheathing above. Where the assembly is enclosed by a floor membrane above and a ceiling membrane below, draftstopping shall be provided in floor/ceiling assemblies under the following circumstances:

- A. Ceiling is suspended under the floor framing
- B. Floor framing is constructed of truss-type open-web or perforated members

Exceptions:

- A. Where corridor walls provide a sleeping unit or dwelling unit separation, draftstopping shall only be required above one of the corridor walls.
- B. Draftstopping is not required in buildings equipped throughout with an automatic sprinkler system in accordance with IBC Section 903.3.1.1.
- C. Draftstopping is not required in buildings equipped throughout with an automatic sprinkler system in accordance with IBC Section 903.3.1.2 provided that automatic sprinklers are also installed in the combustible concealed space, where the draftstopping is being omitted.

~~17.16.~~ Section R310.1, ~~First~~ Exception

*Insert* “if the dwelling unit is protected throughout by an approved automatic sprinkler system in accordance with R313.” at the end of the ~~first~~ exception.

~~18.17.~~ Section R310.1.1 2.1

*Delete* “Exception: Grade floor openings shall have a minimum net clear opening of 5 square feet (0.465 m<sup>2</sup>).”

19. Section 310.2.3

*Insert* “window wells shall be maintained free and clear at all times”

~~20.18.~~ Section R313.2

*Delete* Section R313.2 in its entirety.

*Insert* (IRC) R501.3 Fire protection of floors, Floor assemblies, not required elsewhere in this code to be fire resistance rated, shall be provided with a ½ inch gypsum wallboard

~~membrane, 5/8 inch wood structural panel membrane, or equivalent on the underside of the floor framing member.~~

Exceptions:

- ~~1. Floor assemblies located directly over a space protected by an automatic sprinkler system in accordance with Section NFPA 13D, or other approved equivalent sprinkler system.~~
- ~~2. Floor assemblies located directly over a crawl space not intended for storage or fuel-fired appliances.~~
- ~~3. Portions of floor assemblies can be unprotected when complying with the following:
 
  - ~~3.1 The aggregate area of the unprotected portions shall not exceed 80 square feet per story.~~
  - ~~3.2 Fire blocking in accordance with Section R302.11.1 shall be installed along the perimeter of the unprotected portion to separate the unprotected portion from the remainder of the floor assembly.~~~~
- ~~4. Wood floor assemblies using dimension lumber or structural composite lumber equal to or greater than 2 inch by 10 inch nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance.~~

~~21.49.~~ Section: Table M1507.3

*Delete* Table M1507.3.3(1) and M1507.3.3(2); and

*Insert* See ASHRAE 62.2 – 2007 edition; Table 5.1 and 5.2

---

STATUTORY AUTHORITY: 10 M.R.S. §9722

EFFECTIVE DATE:

October 11, 2010 – filing 2010



2015 International Residential CodeAPPENDIX V TINY HOUSESCHAPTER PART AV101— GENERAL

AV101.1 Scope. This appendix shall be applicable to tiny houses used as single dwelling units. Tiny houses shall comply with this code except as otherwise stated in this appendix.

CHAPTER PART AV102— DEFINITIONS

AV102.1 General. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein.

Refer to Chapter 2 of this code for general definitions.

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the emergency escape and

rescue opening requirements in Section R310.2.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a loft.

LOFT. A floor level located more than 30 inches (762 mm) above the main floor and open to it on at least one side with a

ceiling height of less than 6 feet 8 inches (2032 mm), used as a living or sleeping space.

TINY HOUSE. A dwelling that is 400 square feet (37 m ) or less in floor area excluding lofts.

CHAPTER PART AV103— CEILING HEIGHT

AV103.1 Minimum ceiling height. Habitable space and hallways in tiny houses shall have a ceiling height of not less than

6 feet 8 inches (2032 mm). Bathrooms, toilet rooms, and kitchens shall have a ceiling height of not less than 6 feet 4 inches

(1930 mm). Obstructions shall not extend below these minimum ceiling heights including beams, girders, ducts, lighting

and other obstructions.

Exception: Ceiling heights in lofts are permitted to be less than 6 feet 8 inches (2032 mm).

CHAPTER PART AV104— LOFTS

AV104.1 Minimum loft area and dimensions. Lofts used as a sleeping or living space shall meet the minimum area and

dimension requirements of Sections AV104.1.1 through AV104.1.3.

AV104.1.1 Minimum area. Lofts shall have a floor area of not less than 35 square feet (3.25 m ).

AV104.1.2 Minimum dimensions. Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

AV104.1.3 Height effect on loft area. Portions of a loft with a sloping ceiling measuring less than 3 feet (914 mm) from the

finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

2

2

Exception: Under gable roofs with a minimum slope of 6:12, portions of a loft with a sloping ceiling measuring less than 16

inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required

area for the loft.

AV104.2 Loft access. The access to and primary egress from lofts shall be any type described in Sections

AV104.2.1

through AV104.2.4.

AV104.2.1 Stairways. Stairways accessing lofts shall comply with this code or with Sections

AV104.2.1.1 through

AV104.2.1.5.

AV104.2.1.1 Width. Stairways accessing a loft shall not be less than 17 inches (432 mm) in clear width at or above the

handrail. The minimum width below the handrail shall be not less than 20 inches (508 mm).

AV104.2.1.2 Headroom. The headroom in stairways accessing a loft shall be not less than 6 feet 2 inches (1880 mm), as

measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width.

AV104.2.1.3 Treads and risers. Risers for stairs accessing a loft shall be not less than 7 inches (178 mm) and not more

than 12 inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following

formulas:

1. The tread depth shall be 20 inches (508 mm) minus 4/3 of the riser height, or

2. The riser height shall be 15 inches (381 mm) minus 3/4 of the tread depth.

AV104.2.1.4 Landing platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing

platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the loft. The landing

platform shall be 18 inches to 22 inches (457 to 559 mm) in depth measured from the nosing of the landing platform to the

edge of the loft, and 16 to 18 inches (406 to 457 mm) in height measured from the landing platform to the loft floor.

AV104.2.1.5 Handrails. Handrails shall comply with Section R311.7.8.

AV104.2.1.6 Stairway guards. Guards at open sides of stairways shall comply with Section R312.1.

AV104.2.2 Ladders. Ladders accessing lofts shall comply with Sections AV104.2.1 and AV104.2.2.

AV104.2.2.1 Size and capacity. Ladders accessing lofts shall have a rung width of not less than 12 inches (305

mm) and 10 inches (254 mm) to 14 inches (356 mm) spacing between rungs. Ladders shall be capable of supporting a 200

pound (75 kg) load on any rung. Rung spacing shall be uniform within 3/8-inch (9.5 mm).

AV104.2.2.2 Incline. Ladders shall be installed at 70 to 80 degrees from horizontal.

AV104.2.3 Alternating tread devices. Alternating tread devices accessing lofts shall comply with Sections R311.7.11.1

and R311.7.11.2. The clear width at and below the handrails shall be not less than 20 inches (508 mm).

AV104.2.4 Ships ladders. Ships ladders accessing lofts shall comply with Sections R311.7.12.1 and R311.7.12.2. The

clear width at and below handrails shall be not less than 20 inches (508 mm).

AV104.2.5 Loft Guards. Loft guards shall be located along the open side of lofts. Loft guards shall not be less than

36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less.

#### CHAPTER PART AV105— EMERGENCY ESCAPE AND RESCUE OPENINGS

AV105.1 General. Tiny houses shall meet the requirements of Section R310 for emergency escape and rescue openings.

Exception: Egress roof access windows in lofts used as sleeping rooms shall be deemed to meet three requirements of

Section R310 where installed such that the bottom of the opening is not more than 44 inches (1118 mm) above the

loft floor, provided the egress roof access window complies with the minimum opening area requirements of Section

R310.2.1.

# Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: **Office of State Fire Marshal, Bureau of Building Codes and Standards**

NAME, ADDRESS, PHONE NUMBER, E-MAIL OF AGENCY CONTACT PERSON: **Michelle Mason Webber, Sr. Planning and Research Analyst, 52 State House Station, Augusta, ME 04333-0052, 207-626-3873, email: michelle.mason@maine.gov**

CHAPTER NUMBER AND RULE TITLE: **Chapter 5, Maine Uniform Building and Energy Code and Maine Uniform Building Code-Residential Building Code for One and Two Family Dwellings in Maine**

STATUTORY AUTHORITY: 10 M.R.S. §9722

DATE, TIME AND PLACE OF PUBLIC HEARING: September 18, 2017, Champlain conference room, Department of Public Safety, 45 Commerce Drive, Augusta, Maine 04333 @ 9 a.m.

COMMENT DEADLINE: September 28, 2017

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)] To conform to the current statute that was passed in the last legislative session, and adoption of the 2015 version of the International Residential Code.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE?  YES  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)] This rule adopts the 2015 International Residential Code. Towns below 4,000 residents would no longer be required to enforce the building and energy code.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B] Professional judgement of agency.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] None: as new codes are adopted, exceptions are granted and new requirements are added. A careful review of the code changes shows no apparent increase to construction costs.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:  
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED  
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*

**FREQUENTLY ASKED FREEDOM OF ACCESS ACT  
 (“RIGHT-TO-KNOW” LAW) QUESTIONS**  
 (updated through First Regular Session of 128th Legislature)

QUESTION	ANSWER
<b>PUBLIC RECORDS</b>	
Does a municipality have to comply with a federal Freedom of Information Act request?	<ul style="list-style-type: none"> <li>●No. The Freedom of Information Act only applies to federal government agencies and officials. The applicable Maine statute is the Freedom of Access Act, also known as the “Right-to-Know” law.</li> </ul>
Does a municipal department or official have to respond to a request for public records that such department or official does not maintain?	<ul style="list-style-type: none"> <li>●Yes. A 2015 statutory amendment requires that the department or official forward the request to the department or official that maintains the record, “without willful delay,” and notify the requester that the request has been forwarded and that the office to which the request was forwarded will acknowledge receipt within <u>5 working days</u> of the other office’s receipt of the request. 1 M.R.S.A. § 408-A(3).</li> </ul>
Does a municipality have to acknowledge receipt of a Right-to-Know law request?	<ul style="list-style-type: none"> <li>●Yes. The law requires that the acknowledgement be within <u>5 working days</u> of the municipality’s receipt of the request. 1 M.R.S.A. §§ 408-A(3), 413(1).</li> </ul>
Does a municipality have to produce the requested documents within 5 working days?	<ul style="list-style-type: none"> <li>●No, but if the municipality is going to refuse permission to inspect or copy records, the municipality must provide written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review, within <u>5 working days</u> of receipt of the request. 1 M.R.S.A. § 408-A(4).</li> <li>●Compiling records by staff and the making of them available for inspection and copying to the requester may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public records requested. 1 M.R.S.A. § 408-A(5).</li> </ul>

<b>PUBLIC RECORDS (cont.)</b>	
Does a municipality have to provide the requester with an estimate of the research/compilation and copy charges before proceeding?	<ul style="list-style-type: none"> <li>●If the (non-binding) estimate of the total cost (research/compilation time plus copy charges) will exceed \$30, the municipality must inform the requester <u>before</u> proceeding. If the estimate of the total cost is more than \$100, the municipality may require prepayment. 1 M.R.S.A. § 408-A(9).</li> </ul>
Does a municipality have to create records that do not exist?	<ul style="list-style-type: none"> <li>●No; repeat, no. 1 M.R.S.A. § 408-A(6).</li> </ul>
Does a municipality have to answer written questions requesting information?	<ul style="list-style-type: none"> <li>●No, but if public records exist that answer the questions, the municipality should follow the procedures for making the responsive records available for inspection and copying. See 1 M.R.S.A. § 408-A, first sentence.</li> </ul>
Does a municipality have to honor a “standing request” for public records, such as a request that certain reports be sent to a requester automatically each month?	<ul style="list-style-type: none"> <li>●No. A municipality is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.</li> </ul>
Does a municipality have to provide the personal contact information of municipal employees or appointed officials?	<ul style="list-style-type: none"> <li>●No; indeed, the personal contact information (<i>i.e.</i>, home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number) of municipal employees and appointed officials it is not a “public record” and <u>must</u> be treated as confidential except when that information is public pursuant to other law. The personal contact information of elected officials <i>is</i> a public record. 1 M.R.S.A. § 402(3)(O).</li> </ul>
Does a municipality have to respond to a request that it deems to be burdensome and oppressive?	<ul style="list-style-type: none"> <li>●No, but pursuant to a 2015 statutory amendment, only if the procedures set forth in 1 M.R.S.A. § 408-A(4-A) are followed, which involves filing a lawsuit requesting an order of protection in Superior Court for the county where the request for records was made within 30 days of receipt of the request. 1 M.R.S.A. § 408-A(4-A).</li> </ul> <p><u>Practice pointer:</u> Best not to try to complete the specific, legally required procedural steps without first consulting with legal counsel.</p>

<b>PUBLIC RECORDS (cont.)</b>	
<p>How much can a municipality charge for copies and can a municipality charge for staff time spent retrieving records?</p>	<ul style="list-style-type: none"> <li>● Copy fees must be “reasonable.” 1 M.R.S.A. § 408-A(8)(A).</li> <li>● A municipality may charge a fee that covers the costs of staff research/compilation time (\$15 per hour after the first hour of staff time per request; first hour is free). 1 M.R.S.A. § 408-A(8)(B).</li> <li>● See below regarding pre-payment/estimates.</li> </ul>
<p>Can a municipality require prepayment?</p>	<ul style="list-style-type: none"> <li>● Yes, if the estimated total cost exceeds \$100 <u>or</u> the requester has previously failed to pay a properly assessed fee under the Right-to-Know law in a timely manner <u>or before the public record is provided to the requester</u> [2017 amendment]. 1 M.R.S.A. § 408-A(8)(F) &amp; (10).</li> </ul>
<p>Does an administrative board, committee or subcommittee have to keep minutes?</p>	<ul style="list-style-type: none"> <li>● No, but some sort of <u>record</u> of every public meeting <u>must</u> be made within a reasonable period of time after the meeting and must include: (1) the date, time and place of the public meeting; (2) the members of the body holding the public meeting recorded as either present or absent; and (3) all motions and votes taken, by individual member, if there is a roll call. 1 M.R.S.A. § 403(2).</li> <li>● An audio, video or other electronic recording of a public meeting satisfies the requirements of the law. 1 M.R.S.A. § 403(3). Any recording is subject to record retention requirements.</li> <li>● An advisory body that makes recommendations but that has no decision-making authority is exempt from this record of public meeting requirement, but is not otherwise exempt. 1 M.R.S.A. § 403(6).</li> </ul>
<p>How long does an aggrieved requester have to go to court?</p>	<ul style="list-style-type: none"> <li>● A requester now has 30 calendar days to file suit in Superior Court. The municipality only has 14 calendar days of service of the appeal to respond to the court filing with a statement of position explaining the basis for its denial. Pursuant to a 2015 statutory amendment, the court will review the matter and take testimony and other evidence as determined necessary (there is no longer a trial <i>de novo</i>). 1 M.R.S.A. § 409.</li> </ul>

## PUBLIC MEETINGS

<p>Can e-mail or other electronic communications turn into a meeting?</p>	<ul style="list-style-type: none"> <li>●Yes, administrative board business must be conducted at a public meeting with public notice of the meeting; communications by telephone, e-mail, blog or otherwise that turn into a dialogue with other board members about substantive board matters violates the law.</li> </ul>
<p>Are e-mail, text messages and other electronic communications covered under the Right-to-Know law?</p>	<ul style="list-style-type: none"> <li>●If it relates to City/Town business, it is a “public record” with only limited exceptions.</li> <li>●Even if created, received, transmitted or maintained by a public official on privately owned equipment and communication devices, it still qualifies as a “public record.”</li> <li>●Before you push the “send” button, ask yourself whether you want the e-mail to be printed on the front page of the local newspaper.</li> <li>●Consider a disclaimer advising the public not to expect privacy.</li> </ul>
<p>Can a citizen tape record or videotape a public meeting?</p>	<ul style="list-style-type: none"> <li>●Yes, so long as the recording does not unreasonably interfere with the orderly conduct of the meeting. 1 M.R.S.A. § 404.</li> </ul>
<p>Can a board member participate in a meeting remotely by telephone or Skype?</p>	<ul style="list-style-type: none"> <li>●No; there is no clear legal authority for elected or appointed board members to participate in public meetings remotely by any means. The Legislature has considered this issue for public bodies and failed to act to allow it.</li> </ul>
<p>Is a joint executive session of the municipal officers and an appointed board in order to consult with legal counsel permissible?</p>	<ul style="list-style-type: none"> <li>●Yes; a recent Maine Supreme Court decision upheld a joint Selectmen/Planning Board executive session to discuss the potential ramifications of a moratorium ordinance with legal counsel. <i>Hughes Bros., Inc. v. Town of Eddington</i>, 2016 ME 13, 130 A.3d 978. Legal counsel must be present in person or over the telephone.</li> </ul>

# **A SAMPLING OF FIRST AMENDMENT ISSUES FOR MUNICIPALITIES**

September 2017

Note: This is not a comprehensive discussion of First Amendment issues because the subject is vast. Each topic referenced below is worthy of a separate, full presentation. No amount of careful drafting of ordinances and policies or sound legal advice will totally avoid First Amendment challenges and potential litigation. The intent of this outline is to raise awareness of the fact that the First Amendment is a **trap for the unwary** for all levels of government: federal, State, county and local.

## **I. Simplified Overview of Public Forum Analysis**

### **A. The First Amendment is “first” for a reason**

- Bedrock of liberty and a free society: no law shall “abridg[e] the freedom of speech.” U.S. Const. amend. I.
- “It is the function of speech to free men from the bondage of irrational fears.” Justice Brandeis, *Whitney v. California*, 274 U.S. 357 (1927).
- “A bedrock principle underlying the First Amendment is that Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397 (1989) (flag burning case).
- Speech includes spoken and written words, signs, symbolic speech and other expressive conduct.
- Reminder: The First Amendment does not regulate the activities of private individuals, businesses or organizations. It regulates the activities of government.
- Check out Michael Douglas as President Andrew Shepard lecturing the press corps on the First Amendment in *The American President* (1995) movie:  
[https://www.youtube.com/watch?v=zemrWB1c\\_hE](https://www.youtube.com/watch?v=zemrWB1c_hE)

### **B. Three basic types of public forums**

- (1) A traditional public forum is any area historically dedicated to public assembly and protest, such as public streets, public parks and public sidewalks.
- (2) A limited public forum is public property that, while not typically dedicated to public assembly, has been open to expressive activity by particular categories of people or on particular subjects. Examples of limited public forums may include public auditoriums, school classrooms, the steps of city hall and plazas in front of public buildings.
- (3) A non-public forum is public property that is not a traditional venue for public expression. Examples of non-public forums include prisons, military bases, airport terminals, and the entrance to a post office. The government can severely restrict public expression in a non-public forum.



**C. Constitutional standards for government regulation of speech in traditional public forums – three levels of scrutiny<sup>1</sup>**

- (1) Content-based laws = law refers to content of messages
  - (a) Example: Ban on signs criticizing foreign governments within 500 feet of a foreign embassy (*Boos v. Barry*, 485 U.S. 312 (1988))
  - (b) Level of scrutiny: **strict scrutiny**
    - Law must be *narrowly tailored* to further a *compelling* governmental interest (compelling means something necessary or crucial, as opposed to something merely preferred or better)
    - Law must be the *least restrictive means* for achieving that interest (if there is a less restrictive way to protect the interest, the law fails)
  - (c) Presumption: presumptively *unconstitutional*
  
- (2) Content-neutral laws = law makes no reference to the content of speech
  - (a) Example: Law prohibiting any signs within 25 feet of a foreign embassy
  - (b) Level of scrutiny: **intermediate scrutiny**
    - Law must be *narrowly tailored* to protect a *significant* government interest
    - Restrictions on time, place and manner are allowed, so long as there are *ample alternative means* of communication available
  - (c) Presumption: presumptively constitutional
  
- (3) Laws restricting unprotected speech<sup>2</sup> = law restricting speech that is not constitutionally protected
  - (a) Example: Law prohibiting obscenity, pornography or “fighting words”
  - (b) Level of scrutiny: **rational basis test**
    - Whether the law is *rationally related* to furthering a legitimate government interest
    - Reasonable and not arbitrary basis
  - (c) Presumption: strong presumption in favor of the legislative determination

---

<sup>1</sup> Regardless of which level of scrutiny applies, a law restricting speech cannot be “overbroad” or “unconstitutionally vague.” Overbroad means that a law regulates substantially more speech than is needed to further the government interest (e.g., a law prohibiting “photographs of naked persons,” even though it regulates pornography, is overbroad). A law is too vague when it is not possible for a reasonable person to determine what speech or conduct is, or is not, permissible.

<sup>2</sup> Commercial speech has less protection than non-commercial speech and is constitutionally protected, but under *Central Hudson Gas & Electric Co. v. Public Service Comm’n*, 447 U.S. 557 (1980) and progeny, it is subject only to intermediate scrutiny. It is unclear whether this analysis survives *Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218 (2015) (the new sign regulation case).

## II. Trending First Amendment Issues for Maine Municipalities

### A. Municipal Regulation of Signs

- (1) *Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218, 576 U.S. \_\_ (June 18, 2015), is most definitive and far-reaching statement ever of U.S. Supreme Court regarding day-to-day regulation of signs.
- (2) Maine Legislature made changes to the Maine Traveler Information Services Act (Billboard Law), 23 M.R.S. §§ 1901-1925, in response to *Reed*.
- (3) Has your local ordinance been reviewed post-*Reed*?
  - See handout courtesy of the New Hampshire Municipal Association.
  - MMA has an information packet on “Municipal Sign Regulation.”

### B. Municipal Regulation of Special Events (Parades, Protests, Demonstrations and Mass Gatherings)

- (1) Permitting of special events
  - (a) Municipalities can’t prohibit special events on public sidewalks or streets or rallies in most public parks and plazas, but they can require a permit to regulate competing uses of the area and to ensure reasonable *time, place and manner restrictions* are adhered to.
  - (b) Special event permit ordinances must have *precise* and *specific* standards for denying a permit.
    - Have your licensing, parade, mass, gathering and park use ordinances and policies been updated lately?
  - (c) Permit restrictions often found to be unlawful:
    - Permit required well in advance of expression (*i.e.*, advance notice should be days, not weeks, and there should be an exception to allow for demonstrations in response to breaking news)
    - Exemption for certain individuals or organizations (*e.g.*, exemption of IRS Section 501(c)(3) organizations)
    - Fees or liability insurance requirements with no indigency waiver, or fees not reasonable or fees arbitrary
    - Too much discretion to decision-maker to grant/deny permit
    - Failure to contain deadline to make a decision
    - Prior arrest or conviction as grounds for denial
    - No mechanism for review or appeal of denial
- (2) Countervailing special events – a private organization can exclude other groups with a contrary message from official participation in an event occurring in a traditional public forum per *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995). In *Kessler v. City of Charlottesville*, U.S. District Court (W.D. Va.) Docket No. 3:2017-cv-0056 (filed August 10, 2017), a preliminary injunction was granted

upholding the right of white nationalist Jason Kessler to hold a demonstration in a park. The city had issued a permit to Kessler on June 13, 2017 for an August 12 event. Other organizations that opposed Kessler's message were issued permits to counter protest a few blocks away from the park on the same day. Three days before the August 12 scheduled event, the city, citing "safety concerns" associated with the number of people expected to attend, revoked Kessler's permit and modified the permit to require the event to take place at another park a mile way. The court found on the scant record that the relocation was not narrowly tailored to achieve a compelling interest.

- (3) Counter protesters – Exclusion of individuals whose First Amendment activities interfere with a permit holder's ability to effectively convey the message of its event or the audience's ability to receive that message and experience the event is lawful so long as the exclusion is based on narrowly tailored, content-neutral time, place, or manner restrictions and ample alternative channels for communications are open. *Startzell v. City of Philadelphia*, 533 F.3d 183 (3rd Cir. 2008).
- (4) Renewed discussion of enacting/enforcing mass gathering ordinances
  - (a) Maine statute – State law, 22 M.R.S. §§ 1601-1607, requires a permit from Maine Dep't of Health & Human Services for any gathering "held outdoors with the intent to attract the continued attendance of 2,000 or more persons for 12 or more hours" (e.g., Hempstock)
  - (b) Supreme Court guidance – *Thomas v. Chicago Park District*, 534 U.S. 316 (2002), upheld an ordinance enacted by the Chicago Park District that required a person to obtain a permit in order to conduct a public assembly, parade, picnic or event involving more than 50 people. The Supreme Court determined that the permit process was a content-neutral time, place and manner regulation of a traditional public forum. Eleven of the 13 reasons for denying a permit contained in the ordinance were referenced in the Court's opinion.
  - (c) First Circuit guidance – *Sullivan v. City of Augusta*, 511 F.3d 16 (1st Cir. 2007), found the advance notice and in-person meeting with Police Chief requirements of the City of Augusta's parade ordinance unconstitutional but the First Circuit did not reach the mass gathering ordinance challenges because the plaintiffs were found to not have standing to raise them. City paid plaintiffs' attorney's fees in the amount of \$83,264.78.

### **C. Municipal Regulation of Social Media Posts**

- (1) Social media is protected speech – In *Packingham v. North Carolina*, 137 S.Ct. 368 (2017), the U.S. Supreme Court ruled unanimously that a North Carolina law making it a felony for a registered sex offender to access social networking sites where minors can create profiles violates the First Amendment free speech clause. The court confirmed that social media is

“speech” under the First Amendment, and the case confirms that municipalities should observe First Amendment principles when engaging in social media activities. The Supreme Court assumed the statute in this case was content-neutral, but still found it to be too broad to withstand even less vigorous intermediate scrutiny because it prohibited protected First Amendment activities on social media that had nothing to do with keeping sex offenders away from vulnerable victims.

- (2) Moderating municipal social media posts – The moderator of a municipality’s social media page cannot simply delete, hide or block posts or people based solely on the content of the message that was posted. Municipalities can adopt rules on public comments so long as the rules don’t implicate protected speech (*e.g.*, municipality can prohibit obscenity and pornography). Municipalities should put their comment policies in writing and post them on their social media sites (or provide links on their website) to put the public on notice of the type of comments that will be subject to removal.
- (3) Have your social media policies been updated lately? – With laws and social media platforms changing all the time, it is important for municipalities to work with their attorneys and staff to implement and regularly update a social media policy, including a comment policy and an employee use policy, that fits with how its officials and employees use social media and that is consistent with the First Amendment, the Freedom of Access Act, record retention laws and copyright laws.
- (4) Cases to watch:
  - Leuthy et al. v. LePage*, U.S. District Court (D. Me.) Docket No. 1:2017-cv-00296 (filed August 8, 2017) (ACLU of Maine seeks declaratory and injunctive relief relating to Governor LePage’s Facebook page that has allegedly been routinely deleting negative posts and blocking critics).
  - Knights First Amendment Institute, et als. v Donald J. Trump, et als.*, U.S. District Court (S.D.N.Y.) Docket No. 1:2017-cv-05205 (filed July 11, 2017) (similar to LePage lawsuit but focused on the Twitter habits of President Trump; plaintiffs allege that the President’s social media posts on Twitter are public records and, therefore, blocking someone limits a person’s access to them).



# The First Amendment and Your Town's Sign Regulations *Addressing Reed v. Town of Gilbert Step-by-Step*

## 1. KNOW THE ISSUE AND WHY YOU SHOULD CARE

In *Reed v. Town of Gilbert\**, the US Supreme Court established a bright-line test to determine when a sign regulation violates the First Amendment. *Please take note: this is a big deal!* Based on *Reed*, it is nearly certain that at least some aspect of your sign ordinance is unconstitutional and illegal.\*\*

## 2. REVIEW YOUR SIGN REGULATIONS: are they “content-based”?

**A. Review now!** If you DO NOT HAVE STAFF, you should review your sign regulations as soon as possible to identify potential First Amendment violations. If you DO HAVE staff, you should direct them to do so. Alternatively, you could of course bring *Reed* to the attention of your legal counsel and request that he or she conduct the review.

**B. Use the test.** For purposes of conducting an initial review of your sign regulations, you can use a short-hand version of the *Reed* test. To do so, read each and every regulation related to signs in your Zoning Ordinance or Code and ask yourself this question:

- ✓ **Do I need to READ the sign in order to know whether or how this regulation applies?**
- ✓ **If the answer is YES, the regulation is most likely unconstitutional and illegal.** (Why? Because it is most likely a “content-based” restriction on free speech and, therefore, subject to “strict scrutiny” review which means a court will very likely consider it an unconstitutional restriction on free speech).

If you need to read the sign in order to determine whether your regulation applies, the regulation is most likely unconstitutional and illegal.

**C. Consult your legal counsel.** Your town’s attorney will apply a more nuanced application of the test and may be able to identify regulations that may pass constitutional muster.

## 3. AMEND YOUR SIGN REGULATIONS: make them “content-neutral”. Before starting:

**First:** Review “Sign Ordinance Drafting Tips” on page 3.

**Second:** Determine your level of comfort.

- A conservative approach would eliminate any and all *content-based* restrictions.
- A riskier approach could maintain some commercial/non-commercial content-based restrictions, including for example on-site/off-site regulations.

**Third:** Clarify your goal.

- Do you want to address only the specific concerns you identified in Step 2?  
*IF SO, PROCEED TO OPTION #1*  
--OR--
- Do you want to take this an opportunity to revise your sign regulations entirely?  
*IF SO, PROCEED TO OPTION #2*

## OPTION #1: MAKE TARGETED REVISIONS to help your ordinance survive a First Amendment challenge.

### A. Simple changes you can make:

- Include a purpose statement that identifies:
  - traffic safety and aesthetics as purposes of your sign regulations;
  - goals of your master plan that will be furthered by the sign regulations; and, if possible,
  - studies that draw the connection between sign clutter and vehicle accidents.
- Include a “message substitution clause” that allows the copy on any sign to be substituted with noncommercial copy.
- Include a severability clause to increase the likelihood that your ordinance will be upheld in litigation, even if certain provisions are not upheld.

### B. Additional strategies/changes. Provide that:

The key is to tie the additional sign allowance to the use of the property, rather than the content of the sign.

- Every property has a designated amount of square feet of signage that they can use for any temporary signs on their property, year round. For example:
  - [x] square feet per parcel, in a residentially-zoned area, with a limit on the size of signs and perhaps with spacing of signs from one another.
- All properties get additional noncommercial signs at certain times (for example, before an election) or in connection with activities taking place on the property (for example, a home for sale or a special event).
- Additional sign area is allowed for particular uses, such as a property with a drive-through service window.

## OPTION #2: MAKE COMPREHENSIVE REVISIONS.

If you decide to use the review necessitated by *Reed* as an opportunity to revise and update all of your sign regulations (and why not? it’s the perfect time to do so), there are at least two model ordinances that you can use as a starting point:

- ❖ APA Model Ordinance. The “Street Graphics Model Ordinance” can be found in Street Graphics and the Law, Fourth Edition (2015), PAS Report 580, published by the American Planning Association, available for purchase on-line here: <https://planning.org/publications>. *Recommended!*
- ❖ IMLA Model Ordinance. The International Municipal Lawyers Association is preparing its own model ordinance. Consult your legal counsel for more information.
- ❖ The Town of Warner, NH, adopted revised sign regulations in March, 2016. The revisions were crafted as a response to *Reed* and could be used as a *New Hampshire-specific* model for use as a starting point. See Article XII of the Town’s Zoning Ordinance, available on-line here: <http://www.warner.nh.us/index.php?page=pubs>

\*The full citation is *Clyde Reed, et al, v. Town of Gilbert, Arizona*, 135 S.Ct. 2218, \_\_\_ U.S. \_\_\_ (2015).

\*\*For a detailed discussion of *Reed v. Gilbert* and *pre-Reed* case law regarding First Amendment challenges to municipal signs ordinances, see Free Speech Law for On Premise Signs, 2016 Revised Edition, Daniel R. Mandelker, published by the United States Sign Council, available on-line at [www.ussc.org](http://www.ussc.org). See also Chapter 11 (“Street Graphics and Free Speech Issues”) of Street Graphics and the Law, referenced in Step 5 above.

# SIGN ORDINANCE DRAFTING TIPS

The goal: make your sign regulations as content neutral as possible!

1. Include purpose statement, or revise if existing.
  - Specifically tie purpose of sign regulations to Town's interests in aesthetics and traffic safety. Reference Master Plan goals.
2. Regulate signs by *zoning* and *land use*, not content.
3. Remember that non-commercial speech has the most constitutional protection. So:
  - Treat all forms of non-commercial speech equally (do not bother creating categories for different types of non-commercial speech!)
  - NEVER treat commercial speech more favorably than non-commercial speech.
    - Include a clause in your ordinance to allow any commercial sign to be substituted with a non-commercial message.
4. Keep in mind the unknowns:
  - It's not clear whether the *Reed* test applies to **commercial signs**, which have historically been subject to the lower intermediate scrutiny standard.
    - A “*Reed*-proof” ordinance would eliminate **all** regulations that control the **content** of **any** sign.
  - The Supreme Court specifically ruled in *Metromedia v. San Diego* (US, 1981) that ordinances banning **signs advertising off-site uses** are subject to intermediate scrutiny. It is not clear whether off-site advertising bans are now subject to strict scrutiny.
    - A “*Reed*-proof” ordinance would eliminate any distinction between on-site and off-site advertising.
5. Most importantly - ***don't be the Town of Gilbert!***
  - Make sure all of your regulations are fully supportable.
  - At a minimum, be prepared to demonstrate or explain how the regulation actually furthers the Town's alleged interest in enacting the regulation.

**Maine Revised Statutes**  
**Title 36: TAXATION**  
**Chapter 105: CITIES AND TOWNS**

**§943. TAX LIEN MORTGAGE; REDEMPTION; DISCHARGE; FORECLOSURE**

The filing of the tax lien certificate in the registry of deeds shall create a tax lien mortgage on said real estate to the municipality in which the real estate is situated having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to said municipality all the rights usually incident to a mortgagee, except that the municipality shall not have any right of possession of said real estate until the right of redemption shall have expired.

The filing of the tax lien certificate in the registry of deeds shall be sufficient notice of the existence of the tax lien mortgage.

In the event that the tax, interest and costs underlying the tax lien are paid within the period of redemption, the municipal treasurer or assignee of record shall prepare and record a discharge of the tax lien mortgage in the same manner as is now provided for the discharge of real estate mortgages, except that a facsimile signature of the treasurer or treasurer's assignee may be used. [2011, c. 104, §1 (AMD).]

If the tax lien mortgage, together with interest and costs, shall not be paid within 18 months after the date of the filing of the tax lien certificate in the registry of deeds, the said tax lien mortgage shall be deemed to have been foreclosed and the right of redemption to have expired.

The municipal treasurer shall notify the party named on the tax lien mortgage and each record holder of a mortgage on the real estate not more than 45 days nor less than 30 days before the foreclosing date of the tax lien mortgage, in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address of the impending automatic foreclosure and indicating the exact date of foreclosure. For sending this notice, the municipality is entitled to receive \$3 plus all certified mail, return receipt requested, fees. These costs must be added to and become a part of the tax. If notice is not given in the time period specified in this section to the party named on the tax lien mortgage or to any record holder of a mortgage, the person not receiving timely notice may redeem the tax lien mortgage until 30 days after the treasurer does provide notice in the manner specified in this section. [1993, c. 422, §7 (AMD).]

Beginning with taxes that are assessed after April 1, 1985, the notice of impending automatic foreclosure shall be substantially in the following form:

STATE OF MAINE  
NOTICE OF IMPENDING AUTOMATIC FORECLOSURE  
Title 36, M.R.S.A. Section 943

IMPORTANT: DO NOT DISREGARD  
THIS NOTICE. YOU WILL LOSE  
YOUR PROPERTY UNLESS YOU PAY  
YOUR 19 PROPERTY TAXES,  
INTEREST AND COSTS.

TO:

You are the party named on a tax lien certificate filed on , 19 , and recorded in Book , Page in the County Registry of Deeds. This filing has created a tax lien mortgage on the real estate described therein.

On , 19 , the tax lien mortgage will be foreclosed and your right to recover your property by paying the taxes, interest and costs that are owed will expire.


IF THE TAX LIEN FORECLOSES,



THE MUNICIPALITY WILL OWN  
YOUR PROPERTY.

If you cannot pay the property taxes you owe please contact me to discuss this notice.

Municipal Treasurer



After the expiration of the 18-month period for redemption, the mortgagee of record of said real estate or his assignee and the owner of record if the said real estate has not been assessed to him or the person claiming under him shall, in the event the notice provided for said mortgagee and said owner has not been given as provided in section 942, have the right to redeem the said real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage shall then be discharged by the owner thereof in the manner provided.

The tax lien mortgage shall be prima facie evidence in all courts in all proceedings by and against the municipality, its successors and assigns, of the truth of the statements therein and after the period of redemption has expired, of the title of the municipality to the real estate therein described, and of the regularity and validity of all proceedings with reference to the acquisition of title by such tax lien mortgage and the foreclosure thereof.

Whenever the person against whom the tax is assessed shall have died after the tax has been committed and prior to the expiration of the 18-months period of foreclosure and such person shall have left a will offered for probate, the probate judge of the county wherein said will is offered upon petition of any devisee of the real estate on which said tax is unpaid may grant a period of redemption not to exceed 60 days following the final allowance or disallowance of said will. Notice of said petition shall be given to the tax collector of the town wherein said property is located and a certified copy of the court order shall be filed in the registry of deeds of the county wherein the property is located.

A discharge of a municipal tax lien mortgage given after the right of redemption has expired, which discharge has been recorded in the Registry of Deeds for more than one year, terminates all title of the municipality derived from such tax lien mortgage or any other recorded tax lien mortgage for which the right of redemption expired 10 years or more prior to the foreclosure date of this discharged lien, unless the municipality has conveyed any interest based upon the title acquired from any of the affected liens. This paragraph applies to discharges of municipal tax lien mortgages given after October 1, 1935. [1991, c. 245, §1 (AMD); 1991, c. 245, §2 (AFF).]

When a municipality conveys the premises back to the former record titleholder or to a successor of that holder who obtained title before the foreclosure for a consideration of the taxes and costs due, the rights of the other parties claiming an interest of record in the premises at the time of foreclosure, including mortgagees, lien creditors or other secured parties, are revived as if the tax lien mortgage had not been foreclosed. [1993, c. 373, §4 (NEW).]

SECTION HISTORY

1973, c. 368, (AMD). 1975, c. 474, §1 (AMD). 1975, c. 770, §205 (AMD).  
1977, c. 630, §9 (AMD). 1981, c. 29, (AMD). 1983, c. 407, §4 (AMD).  
1985, c. 364, §1 (NEW). 1985, c. 364, §1 (AMD). 1989, c. 766, (AMD).  
1991, c. 245, §1 (AMD). 1991, c. 245, §2 (AFF). 1993, c. 373, §4 (AMD).  
1993, c. 422, §7 (AMD). 2011, c. 104, §1 (AMD).

---

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to*



**Boothbay Town Offices  
1011 Wiscasset Road  
P.O. Box 106  
Boothbay, ME 04537-0106**

VIA FIRST CLASS & CERTIFIED MAIL, RETURN RECEIPT REQUESTED

September 20, 2017

Patricia G. Marsh  
61 Meadowbrook Rd  
Carlisle, MA 01741-1115

Re: Notice of Filing of Tax Lien Certificates Related to Property on Wiscasset Road,  
Boothbay, Maine (Tax Map U19, Lot 2-A)

Dear Mrs. Marsh:

I am writing to you as the Tax Collector/Treasurer for the Town of Boothbay regarding the real property located on Wiscasset Road, Boothbay, Maine (Tax Map U19, Lot 2-A) (the "Property"). The Town believes that you have an interest in the Property by virtue of a deed recorded in the Lincoln County Registry of Deeds Book 1518, Page 155.

The real property taxes relating to the 2013-14 fiscal year (April 1, 2013 assessment date) on the Property are unpaid. The Town caused a tax lien certificate relating to the Property to be recorded in the Lincoln County Registry of Deeds in Book 4789, Page 158 on June 16, 2014 (copy enclosed).

The taxes remain unpaid today. This letter is being sent to you pursuant to 36 M.R.S.A. § 943, which provides, in relevant part, as follows:

After the expiration of the 18-month period for redemption, the mortgagee of record of said real estate or his assignee and the owner of record if the said real estate has not been assessed to him or the person claiming under him shall, in the event the notice provided for said mortgagee and said owner has not been given as provided in section 942, have the right to redeem the said real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage shall then be discharged by the owner thereof in the manner provided.

**If the taxes are not paid within the three month redemption period referenced above, the Town will own the Property.** If you wish to redeem the Property, please contact my office for the current payoff amount of taxes, interest and costs. Thank you.

Sincerely,

Daniel G. Bryer, Jr.  
Tax Collector/Treasurer  
Town of Boothbay

DGB

Enclosure:

LCRD Book 4789, Page 158

13/14

State of Maine  
Tax Lien Certificate  
2014

001887

MARSH PATRICIA G and C/O MACNABB ENGINEERING CO INC  
C/O MACNABB ENGINEERING CO INC  
131 LEXINGTON STREET  
WALTHAM, MA 02154 4636

I, JAMES D CHAOUSIS, II, Collector of Taxes for the Town of Boothbay, a municipal corporation located in the County of LINCOLN, State of MAINE, hereby give you notice that a tax in the amount of \$451.08 has been assessed, and was committed to me for collection on July 10, 2013, against real estate in said Town of Boothbay, and against MARSH PATRICIA G and C/O MACNABB ENGINEERING CO INC as owner(s) thereof, said real estate being described as follows:

Real Estate located at: WISCASSET RD


Map Lot Description: U19-002-A

Registry of Deeds reference: B1518P155 01/01/1900

Map and Lot numbers refer to such numbers as found on tax maps of the Town of Boothbay, prepared by: John E O'Donnell & Associates and dated 04/01/2013, on file at the Town of Boothbay municipal office.

I give you further notice that said tax, together with interest in the amount of \$19.17, which has been added to and has become part of said tax, remains unpaid; That a lien is claimed on said real estate, above described, to secure the payment of said tax; that proper demand for payment of said tax has been made in accordance with Title 36, Section 942, revised statutes of 1964, as amended.

Costs to be paid by taxpayer:	
Statutory Fees and	
Mailing Costs	: \$57.49
Principal	: \$451.08
Interest	: \$19.17
	: -----
Total	: \$527.74



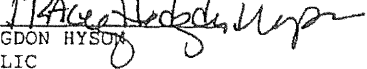
JAMES D CHAOUSIS, II  
Tax Collector  
Town of Boothbay

NOTICE: The municipality has policy under Title 36, M.R.S.A. Section 906 to apply all payments to the oldest outstanding tax obligation. If you are uncertain of the status on this property, contact the Tax Collector.

NOTICE: Partial payments do not waive a lien.

LINCOLN, SS. State of MAINE Boothbay, MAINE June 16, 2014

Then personally appeared the above named JAMES D CHAOUSIS, II, Collector of Taxes, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before Me,   
TRACEY HODGDON HYSOM  
NOTARY PUBLIC  
October 30, 2020

**ORDINANCE REVIEW CHECKLIST**  
**Following 128<sup>th</sup> Legislature, 1<sup>st</sup> Session**

**I. Local Option Ordinances:**

1. Regulation of Local Food Systems (see # 3, LD 725 on page 2)
2. Regulation of Consumer Fireworks by Plantations (see # 28, LD 3 on page 8)
3. Regulation of Marijuana Caregivers within 500 Feet of a School (see # 71, LD 1636 on page 21)

**II. Ordinance Review Issues:**

1. Special Amusement Permits for On-Premises Consumption (see # 33, LD 30 on page 9)
2. Board of Appeals Review Process (see # 67, LD 1381 on page 19)
3. Prohibition, Regulation or Licensing of Retail Marijuana Establishments and/or Social Clubs (see 2016 Maine Referendum Election – Status Report)

## **November 7, 2017 - Referendum Election**

Referendum Elections provide Maine's citizens an opportunity to vote on People's Veto Referenda, Direct Initiatives of Legislation (*i.e.*, Citizen Initiatives), Bond Issues, other referenda proposed by the Legislature, and Constitutional Amendments. Referendum elections are an important part of the heritage of public participation in Maine.

**In their correct order**, the questions that will appear on the November 7, 2017 Referendum Election ballot are as follows:

### **Question 1: Citizen Initiative**

*An Act To Allow Slot Machines or a Casino in York County.*

Do you want to allow a certain company to operate table games and/or slot machines in York County, subject to state and local approval, with part of the profits going to the specific programs described in the initiative?

### **Question 2: Citizen Initiative**

*An Act To Enhance Access to Affordable Health Care.*

Do you want Maine to expand Medicaid to provide healthcare coverage for qualified adults under age 65 with incomes at or below 138% of the federal poverty level, which in 2017 means \$16,643 for a single person and \$22,412 for a family of two?

### **Question 3: Bond Issue**

*An Act To Authorize a General Fund Bond Issue to Improve Highways, Bridges and Multimodal Facilities and Upgrade Municipal Culverts.*

Do you favor a \$105,000,000 bond issue for construction, reconstruction and rehabilitation of highways and bridges and for facilities or equipment related to ports, harbors, marine transportation, freight and passenger railroads, aviation, transit and bicycle and pedestrian trails, to be used to match an estimated \$137,000,000 in federal and other funds, and for the upgrade of municipal culverts at stream crossings?

### **Question 4: Constitutional Amendment**

*Resolution, Proposing an Amendment to the Constitution of Maine To Reduce Volatility in State Pension Funding Requirements Caused by the Financial Markets.*

Do you favor amending the Constitution of Maine to reduce volatility in state pension funding requirements caused by the financial markets by increasing the length of time over which experience losses are amortized from 10 years to 20 years, in line with pension industry standards?

*Source: Department of the Secretary of State, <http://www.maine.gov/sos/cec/elec/upcoming/index.html>*



*Attorneys at Law*

Ten Free Street, P.O. Box 4510, Portland, Maine 04112  
Eleven Main Street, Suite 4, Kennebunk, Maine 04043

(207) 775-7271  
(207) 985-4676

**HISTORY OF JENSEN BAIRD GARDNER & HENRY**  
**GOVERNMENT SERVICES PRACTICE GROUP**

Jensen Baird Gardner & Henry's history of providing legal services to local governments goes back into the 1940s, at which time Francis W. Sullivan represented the towns of Cumberland, Gorham and Gray, among others. Saul H. Sheriff was associated with Mr. Sullivan when the latter was appointed to the Superior Court in 1951 by then Governor Frederick G. Payne. Justice Sullivan's appointment made him the first Catholic to be appointed to the Maine Judiciary and created quite a stir at the time.

After Justice Sullivan's elevation to the bench, Saul Sheriff inherited his clients, and he and Ken Baird formed the law firm of Sheriff & Baird. Sheriff & Baird continued to represent the towns of Cumberland, Gorham and Gray. Mr. Sheriff also served as a member of the State Liquor Commission and on the Maine Port Authority, while Mr. Baird served as a municipal judge in South Portland and later as an Assistant County Attorney for Cumberland County, and was actively involved in redevelopment of the old shipyard in South Portland with the creation of the Greater Portland Public Development Commission.

Robert W. Donovan became an associate of Sheriff & Baird and assisted Saul Sheriff in the municipal area. Following Mr. Sheriff's untimely death at age 46 in 1960, Mr. Baird and his associates, Bob Donovan and Merton G. Henry, joined forces with Raymond E. Jensen to form the initial Jensen Baird Donovan & Henry law firm. Mr. Donovan carried on Mr. Sheriff's representation of the towns of Cumberland, Gorham and Gray and worked simultaneously as part time Assistant Corporation Counsel for the City of Portland from 1952 to 1970 under Attorney Barney Shur and as Corporation Counsel from 1970 to 1973 after Mr. Shur's retirement. Mr. Donovan stepped down when the City of Portland decided to make the position full-time in 1973. He was also counsel for MSAD No. 6 from its organization in the early 1960s until he became a District Court Judge in 1978.

In 1978, Mr. Donovan was appointed to the Maine District Court, and Kenneth M. Cole III, who had joined the law firm in 1972, took over the law firm's municipal practice and added the towns of Windham, Standish, Casco and Pownal, as well as Cumberland County, to the law firm's local government practice. Additionally, Nicholas Nadzo was hired in 1976, and while assisting Mr. Henry in the school law area, he also served as lead counsel in helping to form Regional Waste Services (RWS) (now *ecomaine*) in Portland and Mid-Maine Waste Action Corporation (MMWAC) in Auburn.

In 1986, William H. Dale joined Mr. Cole at the law firm, after serving for almost ten years as South Portland's Corporation Counsel, and together they enlarged the municipal law practice by adding numerous towns outside of Cumberland County, such as Boothbay, Hiram, Kennebunk, Lyman, New Sharon, Ogunquit, Owls Head, Pittsfield, Sanford, Thorndike, Waterboro and Westport Island.

The law firm has continued to grow since then, adding Patricia M. Dunn, former Maine Commissioner of Labor, in 1987 to provide labor and employment law advice and expertise. Ronald A. Epstein had joined the law firm in 1985 and specializes in the area of public finance and economic development. Sally J. Daggett joined as an additional municipal attorney in 1992, and Natalie L. Burns joined the law firm in 1998 after having served for many years as an Assistant Corporation Counsel for the City of Portland. During their tenure, the law firm has become general counsel to the cities of South Portland and Westbrook, continued to perform substantial outside attorney work for the Cities of Portland and Saco, and added numerous other municipalities throughout the State ranging from Denmark to Poland to Lincolnville to Cutler to its full time municipal clientele. Mark Bower and Alyssa Tibbetts have since joined the law firm to assist in servicing our municipal clients.

At the Memorial Service for Bob Donovan on April 18, 2009, Mr. Henry made the following remarks:

Now let me just mention what a wonderful team Barney [Shur] and Bob made. They were the premier municipal lawyers in Maine and established standards to which many aspire today. Our firm's formidable municipal practice these days owes its origins to Bob's nurturing of the municipal clients he inherited from Francis Sullivan and Saul Sheriff.

Thanks to the groundwork laid by our predecessors at the law firm, we continue to aspire to provide the best full-service representation of local governments in the State of Maine.





*Attorneys at Law*

Ten Free Street, P.O. Box 4510, Portland, Maine 04112  
Eleven Main Street, Suite 4, Kennebunk, Maine 04043

(207) 775-7271  
(207) 985-4676

**GOVERNMENT SERVICES PRACTICE GROUP**

Jensen Baird Gardner & Henry is a law firm of over 25 attorneys with offices in Portland and Kennebunk. Within the State, the law firm provides full service representation to a broad client base including many municipalities, businesses and individuals. The law firm's other practice areas include litigation, real estate, labor relations, school law, commercial lending, bankruptcy, environmental regulation, corporations, tax, criminal defense, and trusts and estates.

The firm represents a large number of local governments, including many municipalities, school districts and the largest county in the state. The firm also represents many quasi-municipal corporations, such as special purpose sewer districts and the State's two publicly owned waste-to-energy facilities. We advise our government clients (such as town councils, selectmen, school boards, county commissioners, planning boards and boards of appeal) on a wide variety of legal issues. In addition, we negotiate and draft contracts, handle labor negotiations and prosecute and defend litigation in both federal and state courts as well as before various state and local administrative boards.

Our municipal law experience is also of great assistance to our private clients who have transactions, often real estate related, with local governmental entities we do not represent. Lawyers in our firm also have extensive experience dealing with state agencies (such as FAME and DEP) and federal agencies (such as EPA and Army Corps of Engineers) in securing regulatory approvals for a variety of both large and small-scale development projects.

Mark A. Bower  
Natalie L. Burns  
Kenneth M. Cole, III (Of Counsel)  
Sally J. Daggett

William H. Dale  
Patricia M. Dunn  
Ronald A. Epstein  
Alyssa C. Tibbetts



**MARK A. BOWER**  
Director/Partner

207.775.7271  
mbower@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

---

Practice Area

Government Services

Mark represents municipalities in various aspects of land use, zoning, environmental and energy matters—including trial and appellate work. He regularly handles Rule 80B appeals on behalf of municipalities in Superior Court, prosecutes land use enforcement actions in District Court, and advocates for municipalities in appeals before the Maine Supreme Judicial Court. In addition, Mark currently serves as in-house counsel to the law firm and advises Jensen Baird attorneys on a variety of issues relating to professional ethics and risk management.

As a complement to his general municipal work, Mark has considerable experience in the field of municipal solid waste management, serving as outside general counsel to each of the publicly owned and operated waste-to-energy facilities in the State of Maine. In that capacity, he has appeared before the Maine Department of Environmental Protection and the Board of Environmental Protection in licensing matters.

Prior to joining the law firm in 2010, Mark was an associate at another Portland law firm, where he practiced in the fields of energy, utilities and corporate law. Mark also served as law clerk to U.S. District Court Chief Judge John A. Woodcock in Bangor prior to entering private practice.

### *Education*

- Tufts University, B.A. *magna cum laude*
- University of Maine School of Law, J.D. *cum laude*

### *Bar & Court Admissions*

- State of Maine
- Commonwealth of Massachusetts
- U.S. District Court, District of Maine

### *Community/Public Service*

- The Children's Center, Board of Directors
- Portland Little League, Coach
- City of Portland Zoning Board of Appeals, former member

### *Memberships*

- Maine State Bar Association
- American Bar Association



**NATALIE L. BURNS**  
Director/Partner

207.775.7271  
nburns@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

---

Practice Area

Government Services

Natalie joined the law firm in 1998, after working for ten years as Associate Corporation Counsel for the City of Portland. She practices municipal, environmental, and land use law and represents both public and private clients. She serves as lead counsel for several municipalities and land use counsel for many more. She has defended municipalities in cases involving the status of roads, Freedom of Access Act claims, and appeals from administrative board decisions, as well as prosecuted ordinance violations on behalf of municipalities. She has advised both municipal and private clients in zoning and land use matters, including defending challenges to municipal zoning actions. In addition, she has drafted many ordinances for her clients, with a particular focus on zoning amendments, including contract and conditional zoning. She also has advised municipalities on a variety of issues, including election procedures, real estate, and contract drafting and review.

She regularly provides training for municipal clients in Freedom of Access Act requirements, boardsmanship issues and substantive areas of the law such as variance requirements, subdivision regulations, the drafting of notices of decision and other best practices.

### *Education*

- Bowdoin College, A.B., *cum laude*
- University of Maine School of Law, J.D.

### *Bar & Court Admissions*

- State of Maine
- U.S. District Court, District of Maine
- U.S. Court of Appeals, First Circuit

### *Community/Public Service*

- Girl Scouts of Maine, Finance Committee and Past Board President
- Domestic Violence Pro Bono Panel

### *Memberships*

- Maine State Bar Association
- Cumberland Bar Association

### *Honors*

- *The Best Lawyers in America*®
  - Land Use & Zoning Law
  - Litigation-Land Use & Zoning Law
  - Municipal Law
- *Best Lawyers*® "Lawyer of the Year" in Portland, Maine
  - 2018 Municipal Law
  - 2016 Municipal Law
  - 2014 Land Use & Zoning Law
- *New England Super Lawyers* 2016 Land Use/Zoning



**SALLY J. DAGGETT**  
Director/Partner

207.775.7271  
sdaggett@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

---

Practice Areas

Government Services

Employment Law

Sally concentrates her practice in all areas of municipal law. Since joining the law firm in 1992, she has provided representation on zoning, land use, tax assessments and exemptions, the Freedom of Access Act, town meetings and elections, contracts, road disputes and dispositions, personnel and litigation matters to a wide range of municipalities. She regularly appears before administrative boards, either as counsel to the board or as counsel for one of the parties. She has handled all types and phases of litigation, from pretrial discovery to trial through appellate review. She serves as the municipal attorney for over 10 municipalities and serves many others in a special counsel capacity. She serves as Chair of the law firm's Government Services Practice Group.

She frequently provides training for elected and appointed officials and municipal employees on electronic communications and the Freedom of Access Act, administrative boardsmanship, zoning and planning law, poverty abatement appeals and tax lien foreclosures. In addition, she is a frequent presenter at MMA/MAAO seminars for local assessors and boards of assessment review on tax abatement appeals and charitable and benevolent institutions.

### *Education*

- Bowdoin College, A.B. *magna cum laude*
- George Washington University Law School, J.D.

### *Bar & Court Admissions*

- State of Maine
- Commonwealth of Massachusetts
- U.S. District Court, District of Maine
- U.S. Court of Appeals, First Circuit
- U.S. Supreme Court

### *Community/Public Service*

- Hospice of Southern Maine, member Board of Directors (9 years)
- Friends of Baxter State Park, member Board of Directors (7 years)
- Maine Special Olympics, Volunteer and Coach

### *Memberships*

- Maine State Bar Association
- Cumberland Bar Association

### *Honors*

- *The Best Lawyers in America*®
  - Municipal Law
  - Land Use & Zoning Law
  - Administrative/Regulatory Law



**WILLIAM H. DALE**  
Director/Partner

207.775.7271  
wdale@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

---

Practice Areas

Government Services

Employment Law

Bill practices in all aspects of municipal and administrative law, concentrating in property tax and land use litigation matters. For more than forty years, he has provided high quality representation to Maine municipalities as large as Portland to as small as Thorndike. His long and diverse experience affords him--and his clients--the benefits of taking the broader view of challenging legal issues facing local governments in Maine today. For his first ten years of practice, he was employed as in-house counsel, first with the City of Bangor and then with the City of South Portland. Those experiences give him an insider's perspective on how local governments really work. Similarly, his tenure on the South Portland City Council also gives him an insider's perspective on how local Maine governments react to the various legal matters facing them, especially from a budgetary perspective. No amount of legal training can substitute for the hand's-on experience he gained serving as a local elected official.

Bill has been a frequent speaker at seminars involving the increasingly complex issues facing Maine municipalities today. He has argued countless administrative board matters across Maine and successfully argued many cases before the Maine Supreme Court. He served as lead Maine counsel on an important real property tax exemption case before the U.S. Supreme Court, helping his client to overturn a lower court's adverse ruling on constitutional grounds.



### *Education*

- Johns Hopkins University, B.A.
- University of Maine School of Law, J.D.

### *Bar & Court Admissions*

- State of Maine
- Passamaquoddy Tribal Court
- U.S. District Court, District of Maine
- U.S. Court of Appeals, First Circuit
- U.S. Supreme Court

### *Community/Public Service*

- Chair, South Portland Board of Voter Registration Appeals
- Former City Councilor & Mayor, City of South Portland

### *Memberships*

- Maine State Bar Association (former Chair of Municipal Law Section)
- Cumberland Bar Association

### *Honors*

- *The Best Lawyers in America*® for Municipal Law, Land Use & Zoning Law and Administrative/Regulatory Law, as well as Municipal Litigation and Land Use & Zoning Litigation
- *Best Lawyers*® 2014 Litigation - Land Use & Zoning "Lawyer of the Year" in Portland, Maine
- *Best Lawyers*® 2013 Administrative/Regulatory, and Land Use & Zoning Law "Lawyer of the Year" in Portland, Maine
- *Best Lawyers*® 2012 Litigation - Land Use & Zoning "Lawyer of the Year" in Portland, Maine
- *New England Super Lawyers* for State, Local & Municipal Law



**PATRICIA M. DUNN**  
Director/Partner

207.775.7271  
pdunn@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

---

Practice Areas

Government Services

Employment Law

Business Services

Pat concentrates her practice in the areas of employment and labor law, municipal law and administrative law. She advises both private and public employers on a wide variety of employment issues, including family medical leave, workers compensation, wage and hour matters, state and federal laws regarding workplace discrimination and public employee bargaining laws.

She regularly appears before the Maine Labor Relations Board, the Maine Human Rights Commission and arbitrators from the Maine Board of Arbitration and Conciliation and the American Arbitration Association.

Prior to joining the firm in 1987, she served as Commissioner of Labor for the State of Maine and as an Assistant Attorney General. She has been a presenter at numerous seminars on employment, municipal and administrative law issues.

*Education*

- University of Maine, B.A. with highest distinction; Phi Beta Kappa
- University of Maine School of Law, J.D.

### *Bar & Court Admissions*

- State of Maine
- U.S. District Court, District of Maine

### *Community/Public Service*

- Maine Irish Heritage Center, Board of Directors
- University of Maine Foundation, Board of Directors and former Chair
- Maine Labor Relations Board, former Employer Representative

### *Memberships*

- Maine State Bar Association
- Cumberland Bar Association
- American Bar Association
- Labor and Employment Relations Association

### *Honors*

- AV Preeminent Martindale-Hubbell



**RONALD A. EPSTEIN**

Director/Partner

207.775.7271  
repstein@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

Practice Areas

Government Services

Real Estate

Business Services

Ron practices in the area of municipal finance. He has served as bond counsel on a wide variety of municipal financings, including general obligation bonds, revenue bonds, tax anticipation notes, equipment lease purchase transactions, and special purpose district financings. Ron has also represented municipalities and developers in a number of tax increment financing districts. He is a member of the National Association of Bond Attorneys and is listed in the Bond Buyer's list of recognized bond counsel. He is also on the approved bond counsel list of the Maine Municipal Bond Bank.

Ron also represents clients on a wide variety of commercial real estate matters, including debt and equity financings, purchase, exchange and sale transactions, condominiums, cooperatives, leases, zoning, subdivision and environmental regulatory matters and financing and operation of retirement communities and healthcare facilities.

*Education*

- Boston College, B.A.
- University of Wisconsin, M.A. in Political Science
- University of Maine School of Law, J.D.

### *Bar & Court Admissions*

- State of Maine

### *Memberships*

- Maine State Bar Association

### *Honors*

- *The Best Lawyers in America*® for 10 consecutive years for Public Finance Law and Real Estate Law
- *Best Lawyers*® 2013 Public Finance Law “Lawyer of the Year” in Portland, Maine



**ALYSSA C. TIBBETTS**  
Associate

207.775.7271  
atibbetts@jbgh.com

Ten Free Street  
P.O. Box 4510  
Portland, ME 04112-4510  
800.756.1166 (Toll Free)  
207.775.7935 (Fax)

Practice Areas

Government Services

Employment Law

Land Use &  
Permitting

Alyssa is a member of the firm's Government Services and Employment Law practice groups. In her employment practice, Alyssa represents both public and private clients in all aspects of employer-employee relationships, including employment contracts, separation agreements, personnel policies, benefits administration, investigations, collective bargaining, arbitrations and matters before the Maine Human Rights Commission and Maine Labor Relations Board. In her government services practice, Alyssa represents both public and private clients in land use, zoning and development matters, which include ordinance drafting, permitting, site plan and subdivision approvals, code enforcement and tax increment financing. Alyssa's government services practice also includes representation of public entities in public finance transactions such as general obligation bonds and anticipation notes.

Prior to joining the firm in 2014, Alyssa served as the Assistant Town Manager for the Town of Cumberland where she was responsible for the Town's human resources services and economic development initiatives. Alyssa is a graduate of the University of Maine School of Law where she served as Chair of the Moot Court Team and a representative to the Student Bar Association. Alyssa is a Portland native and currently lives in Scarborough with her family.

### *Education*

- University of Southern Maine, B.A. *magna cum laude*
- University of Maine School of Law, J.D.
- Certificate in Mediation, University of Southern Maine

### *Bar & Court Admissions*

- State of Maine
- Commonwealth of Massachusetts

### *Community/Public Service*

- Greater Portland Regional Chamber of Commerce,  
Board of Directors

### *Memberships*

- Maine State Bar Association
- Cumberland Bar Association
- Labor and Employment Relations Association
- National Association of Bond Lawyers