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Testimony of the Maine Municipal Association

In Support of
LD 1223, *An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment*

May 10, 2023

Senator Lawrence, Representative Zeigler and members of the Energy, Utilities and Technology Committee. My name is Rebecca Lambert, and I am submitting testimony in support of LD 1223 on behalf of the 70 municipal leaders elected by their peers to serve on the Association’s Legislative Policy Committee and directed to establish positions on bills of municipal interest.

I want to extend the Association’s gratitude to Sen. Grohoski for agreeing to sponsor LD 1223 on behalf of MMA’s Legislative Policy Committee, as well as to all the interested parties that provided feedback in advance of the public hearing to improve the legislation.

As we have stated before in testimony on similar bills, there is an inequity that exists not only with respect to the quality of broadband service, but to access as well, which needs to be addressed. Broadband access is becoming more vitally important to our individual health and economic prosperity and as the state becomes more dependent on electronic connectivity, improved access will become increasingly important to avoid adding to the existing inequities.

A decade ago, in 2013, the EUT Committee and Maine Legislature approved legislation ([Resolve 2013, Ch. 28](#)) that created a “Working Group To Study Issues Relating to Broadband Infrastructure Deployment.” Despite all the progress that has been made over the past decade, this Committee knows it has not been enough, and there is still much work left to do to provide reliable, affordable internet to large swaths of the state, as evidenced by the creation of the Maine Connectivity Authority in recent years.

Unlike in other states, utilities in Maine have long had access to public property – i.e., state and municipal rights of way – at no cost, save for the nominal charge of initial pole placement permits. In 2019, in response to a bill advanced by the MMA Legislative Policy Committee and sponsored by Sen. Vitelli, this Committee and the Legislature recognized it was unjust for utilities to be exacting installation (make ready) and rental (attachment) charges on municipalities to attach broadband facilities to utility poles, when those poles are located on municipal property practically free of charge.

Public Law 2019, Ch. 127 established a compromise: municipalities would pay the ongoing and not insubstantial attachment charges, but they would not be subject to make ready charges. A basis for this compromise was that the make ready charges were highly inconsistent, and so varied that they could be described as arbitrary at best and discriminatory at worst.

Despite this compromise, more work is necessary as municipal officials now face a new barrier, which is millions of dollars' worth of insurance coverage, demanded by utilities to be carried by municipalities beyond what Maine's statutory liability protection for public entities (the Maine Tort Claims Act) covers.

The compromise amendment in LD 1223 addresses this latest hurdle. Its language is succinct, and the purpose is clear. The proposed amendment establishes that the Maine Tort Claims Act covers any potential liability resulting from municipal attachments to utility poles, just as it does for practically every other type of governmental liability that comes into play with construction and facilities management.

Adding the proposed subsection 3 to Title 35-A, section 2524, will remove this unnecessary hurdle standing in the way of Maine's broadband expansion efforts. Moreover, it is fair; property taxpayers should not be on the hook for utilities' own insurance obligations.

Thank you for considering the municipal perspective on this issue. If you have any questions about the Association's position on this bill, please do not hesitate to contact me at kdufour@memun.org or 1-800-452-8786.