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Testimony of the Maine Municipal Association

In Qualified Support For

LD 2204, An Act to Combat Racketeering in Scheduled Drugs by Certain Organizations

February 21, 2024

Sen. Beebe-Center, Rep. Salisbury and distinguished members of the Criminal Justice and Public Safety Committee, my name is Rebecca Graham, and I providing testimony, in qualified support for LD 2204, on behalf of the Maine Municipal Association, which represents the interests of municipal government before the Legislature. The positions of the Association are established by our 70-member Legislative Policy Committee (LPC), who are elected by the councils and selectboards of municipalities in each of Maine's 35 Senate districts.

It is important to note than many of these operations have targeted rural communities without an organized police department and an intentional desire to not opt in to legalized recreational cannabis operations that municipalities directly have the ability to regulate. For these reasons, municipal officials expressed support for the theme of enhanced local enforcement expressed in LD 2204 for illegal cannabis operations. Due to the dual programs, the processes for investigating and determining if an operation is legally authorized through the medicinal program has proven to be challenging at the very best for municipal officials.

Once a suspected illegal operation is identified, often by a neighborhood complaint to a code enforcement officer or planning board, there is little information that a municipal officer can obtain from the Office of Cannabis Policy (OCP) when trying to determine if the residence is a licensed medicinal operation. Even when potentially confirmed to be an unlicensed operation, the office (OCP) has no authority to investigate an operation without a license directing officials to local law enforcement. Law enforcement also has little support from local prosecution districts to pursue illegal operations and in some cases have been advised that cases submitted, despite criminality, will be declined.

Due to the lack of local enforcement options, for communities who have not opted into the recreational cannabis program, municipalities must rely on federal level investigations into the organized, interstate, and federal tax evasion aspects of these criminal operations which consume an enormous amount of local and federal investigative time. For this reason, municipal officials welcome any attempt to increase local prosecution of such cases as drafted in §1140. However, also for this reason, municipal officials are concerned that criminal asset forfeiture proceeds would be redirected to Maine Housing instead of the current process that allows the participating investigative agencies to receive proceeds from the sale of forfeited property to offset the exorbitant cost such major investigations consume.

Officials would prefer to have the real property returned to the local municipality to restore the property to habitability or meet a local housing need if it will no longer be available to restore a portion of the taxpayer expense for the investigation. Additionally, other proceeds from criminal assets should be directed to the investigating agencies as currently allowed.

Under Sec. 2. 30-A MRS §4173, sub-§6 places a burden on municipal code enforcement officers (CEOs) that may not be possible to meet. For some CEOs with electrical permitting capabilities

this express requirement has been suggested as a method to curd illicit activity for municipalities struggling with permitting issues related with cannabis operations. However, few of these operations solicit legal permits for their electrical connections. Additionally, the section does not identify the standards for reviewing or approving the permit – how will CEOs/other municipal enforcement authority know the criteria to review?

In general, a utility will be in a much better position to report on usage amounts by residential facilities. CEOs or local municipal officials will not have any means to access information on how much power is being used by individuals to enforce permitting requirements and anyone conducting criminal activity will likely not apply for any additional permit. For this reason, officials support the language in Sec. 4, 35-A MRSA §3217, sub-§6 as the appropriate burden for notification of electrical connection and consumption abnormalities.

It's important to note that many municipalities, particularly the ones targeted by these operations, do not have mechanisms to enforce this permitting process, so its effectiveness in identifying criminal activity may be sporadic at best.

Another area of municipal concern is the language that may sweep in normal municipal processes as criminal behavior particularly for state legalized and directed activity. The bill under 17-A §1131-§1141 provides that a person is guilty of racketeering if they are “employed” or “associated with” a governmental entity and “conducts or participates in the affairs of the” governmental entity by participating in a pattern of criminal activity (meaning multiple drug offenses). Although unlikely to be considered “criminal activity”, it is worth noting that a municipal code enforcement officer may be inadvertently involved in cannabis criminal activity by virtue of their role in enforcing local cannabis regulations. The CEO enforcement authority also involves discretion to enforce or not enforce local ordinances – it might be helpful to include some sort of reference or exemption for a CEO's discretionary enforcement authority under local land use ordinances.

Additionally, if a municipal official or employee was found to be using town offices or facilities to conduct criminal activity, would §1134(1) allow for a court to take municipal property (buildings, cars) or CEO fees. The bill should express a clear exception for municipally owned buildings and property used by the defendant in such cases. As municipal operations are funded by the local taxpayer, they should be expressly exempt from paying any civil penalty under §1134(3) if an official or employee is found to be guilty of racketeering. The individual charged, not the taxpayers, should shoulder the burden for their criminal actions.

Should the committee decide to move forward with any aspect of the legislation proposed, officials suggest that the requirement for a public utility to report to a public safety entity any abnormal significant spike in power usage at a residential address would not only alleviate some of the local investigative burden, but also provide law enforcement officials potential activity focused reporting thereby diffusing ethnically motivated false reports. It's important to note that officials are deeply concerned about the need for communities to de-escalate tensions in the aftermath of perceived ethnically motivated incidents. Lifelong Maine residents of Asian ancestry and their children have increasingly been targets of racial slurs, and rude or bullying behavior, though few follow through with reporting incidents to the police or rise to the level of a hate crime.

For all of these reasons, officials ask that you carefully unpack the language presented in the current draft of the bill and focus on tools to address all potential illegal behavior not origin of the actors and potentially miss local actors, and even municipal officials, who have been charged with similar activity in the past.