



LEGISLATIVE BULLETIN



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Keeping Clerks Safe

Under the statutes governing the administration of elections, preventing a person from voting, attempting to vote when ineligible, and casting multiple ballots at the same election are crimes punishable by up to five years in prison and a \$5,000 fine.

If Rep. Bruce White of Waterville has a say, the intentional interference by force, violence or intimidation with a public official performing a function relating to a federal, state, or municipal election will be added to the list.

At a hearing before the Veterans and Legal Affairs Committee, the Maine Town and City Clerks Association, represented by Lisa Goodwin, Bangor city clerk, was joined by city clerks Patti Dubois (Waterville) and Angela Holmes (Westbrook) in supporting LD 1821, *An Act To Make Interfering with an Election Official a Class C Crime*.

The testimony offered by Maine's most seasoned election officials focused on the fact that anger and threats are on the rise and profanity laced rants are now a commonplace occurrence in the process of conducting an election. The use of social media to anonymously spread misinformation regarding an election is creating an environment so hostile that officials are leaving the profession. Threats have become so routine that at least one community requires officials to participate in de-escalation training prior to an election.

Municipal clerks and election officials from 19 communities also lent support for the initiative in written comments.

In the submitted testimony, municipal officials shared stories of being referred to as voter suppressors and murderers. Some communities have resorted to hiring law enforcement services to provide necessary protection on the day of an election. One clerk offered that meritless claims of improprieties are both "hurtful and mentally draining." Another clerk shared that a voter threatened to incite a mob because she

refused to direct the initiators of a citizen petition to remove a sign.

The state's chief election official, Shenna Bellows, also supported the bill and equated threats on election officials to threats on democracy, as these officials ensure safe and secure access to ballot boxes at all elections.

According to Secretary Bellows elevating the crime of interfering with an election official over that of interfering with a public official – a Class D crime punishable by less than one year in prison and a \$2,000 fine – is necessary to shift prosecutorial authority from the District Attorney's Office to the Attorney General's Office, which expedites the judicial process.

After the 2020 election the secretary received two reports of documented threats to Maine election clerks, prompting her support for the initiative and noting that with increasing frequency voters frustrated with election results are misdirecting that anger toward election officials.

Rep. Lois Galgay Reckitt of South Portland

and Rep. Heidi Brooks of Lewiston also supported the bill, agreeing that at the very least the individuals administering safe and secure elections should be afforded the same protections.

At the hearing, the ACLU of Maine testified in opposition to LD 1821, stating that creating a new felony, without evidence of its efficacy, would not increase safety or integrity, leaving a committee member to question whether the bill provides a false sense of security.

Instead, the ACLU encourages the exploration of creative ways to address this issue, in recognition of the crucial and important work of election officials.

While the Maine Association of Criminal Defense Lawyers raised similar concerns in written testimony, the League of Women Voters of Maine, Maine Conservation Voters, Maine Prosecutors and MMA provided testimony in support of the bill.

The work session on LD 1821 is not yet scheduled.

Strike Hearing Scheduled

On **Wednesday, Jan. 19 at 10 a.m.**, the Labor and Housing Committee will hold a public hearing on LD 555, *An Act to Expand the Rights of Public Sector Employees*, sponsored by Rep. Michael Sylvester of Portland. The bill extends the right to strike to public employees, including certain municipal officials.

As proposed, the bill provides that a strike is authorized when a public employee organization: (1) polls its members; and (2) if a majority of members support the strike, provides notice to the employer of the intent to strike and the days the work stoppage will start and end. The proposal also allows either the employee organization or employer to initiate emergency

bargaining up to the third day before the strike is to begin.

Although the bill does not extend this right to employees whose duties include protecting "public safety," the list of exempted employees is short. Municipal employees excluded from the provision include law enforcement officers, firefighters, emergency dispatchers, emergency medical services providers and other first responders.

Municipal officials are urged to connect with members of the committee and the Legislature to share how this right could impact the delivery of vital municipal services.

Enhanced Law Enforcement

Will incentives or mandates prevail?

Public safety reform remains a hot button issue this session, with bills in the mix proposing changes to education and training policies from two different directions. One path uses incentives to retain women and men who dedicate their lives to serving our communities, while the other erects credentialing barriers to retention and recruitment efforts not linked to given outcomes.

Legislation supporting the incentive approach had a public hearing on Tuesday in the Innovation, Development, Economic Advancement and Business Committee. LD 1785, *An Act To Address Staffing Shortages in Critical Public Safety Jobs through Economic Incentives*, sponsored by Sen. Joseph Baldacci of Penobscot County received no opposition. As drafted, the bill would create a “Public Service Student Loan Forgiveness Fund” and provide no-interest home mortgages to local and county law enforcement officers, firefighters, emergency medical services personnel, dispatchers and public health workers. The total appropriation for both programs is \$10 million.

The Maine Ambulance Association, Maine Sheriffs’ Association, and National Association of Social Workers, all of whom are struggling to fill vacant positions, testified in support of LD 1785 and requested that private EMS providers working for communities but not directly employed by them, social workers, and correctional employees be added to the list of eligible participants.

The Legislative Policy Committee has not yet established a position on the bill, however MMA testified “neither for nor against” the measure pointing to and emphasizing the successes of federal home loan programs in assisting police to take residence in the communities they serve. A program of this nature could support local efforts to keep or increase staffing in rural communities where salaries cannot compete with urbanized areas and where communities are heavily reliant on part-time volunteers to meet fire and emergency medical needs.

Municipalities have long offered educational incentives to public safety workers ranging from reimbursement for tuition and course material costs to salary increases based on attainment of advanced degrees. However, many public safety officials struggle to carve out personal time to pursue higher education under the forced overtime and rotating schedule requirements of

the profession. The pandemic-related shift to online courses may make this easier in the future.

Questions from committee members ranged from how the appropriation would work after the initial proposed \$5 million, how many degrees could be paid for with the level of funding suggested versus the scope of those who would qualify, and if the debt to obtain a degree in any field should be forgiven.

The value of a specific degree to some public safety professionals is an idea worth examining. Unless seeking a highly specific technical career, the basic premise of higher education is to introduce the language and history of a given subject and ideally create individuals ready and able to think critically, solve problems, and communicate with their career peers and community. For instance, a bachelor’s degree in marine biology might not seem like something of worth to law enforcement. However, coastal communities may prefer the police responsible for enforcing shellfish regulations and boating laws to have a background in a subject matter that drives their economies, particularly in a profession that relies on officer discretion for enforcement. Law enforcement specific training is delivered through department field training programs and academy certification regardless of degree credentials.

Volunteer fire departments are heavily reliant on individuals with diverse backgrounds to help manage and run equipment outside the parameters of an emergency, while others tackle structural fires from the inside. Their specialized training is also obtained on the job and through fire attack schools in controlled environments. While the degrees obtained may have no bearing on the situation, loan forgiveness can help departments recruit younger members while keeping them closer to home if affording student loans is not a factor in career decisions that drive them to urbanized areas.

A measure taking an opposite approach will have a work session before the Criminal Justice and Public Safety Committee next week. As covered in the May 21, 2021 edition of the Legislative Bulletin, LD 1447, *An Act To Require Training in Racial Issues, Racial Justice and Social Issues at the Maine Criminal Justice Academy and To Establish Additional Requirements for Law Enforcement Officers and Candidates*, sponsored by Rep. Lori Gramlich of Old Orchard Beach, as drafted,

would mandate that all law enforcement officers and future candidates have a minimum of an associate’s degree in a finite set of subjects in order to be certified by the Maine Criminal Justice Academy (MCJA).

These conversations are worth having if for no other reason than they have the potential to dispel assumptions about law enforcement and illuminate areas that have been heavily regulated but far too reliant on the good will of volunteers.

A survey conducted by MMA asking Maine Chiefs of Police, including municipal and county officials, for data on the average education attainment levels for patrol officers and officers holding leadership positions in their departments found that 88% of their officers have an associate’s or higher degree. While many reported degrees were preferred, they also overwhelmingly believe that implementing such a requirement would rule out good candidates.

LD 1447 also directs the MCJA to add specific curriculum to their offerings, most of which is already in place in some form, often as a four-hour online block of instruction. Since its inception, the academy has been heavily reliant on municipal police, and thus municipalities, to provide volunteer instructors to fill roles often held by full-time employees in other states. The current MCJA is staffed with five fewer state employees than it had in 2000. While multiple training mandates have been enacted by the Legislature since then, little has been done to take the increasing pressure off the model of instruction or provide adequate staffing for curriculum review and expansion. This model will increasingly feel the trickle-down effects of an exodus from policing and local vacancies when agencies might not be able to spare an officer to serve as an instructor when needed.

It remains to be seen which path legislators will take on public safety. Will they retain our partnerships and invest in the public safety officials Maine needs and relies on, or will they build another barrier for municipal officials to keep and attract them?

LD 1447 will get another review on Wednesday, Jan. 19 at 11:00 a.m. A work session on LD 1785 will take place on Thursday, Jan. 20 at 9:30 a.m.

HEARING SCHEDULE

For the week of January 17, 2022

MONDAY, JANUARY 17 – HOLIDAY

TUESDAY, JANUARY 18

Agriculture, Conservation & Forestry
Room 214, Cross Building, 11:00 a.m.
Tel: 287-1312

LD 174 – An Act To Implement the Recommendations of the Ending Hunger by 2030 Advisory Group.

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

LD 1749 – An Act To Change the Requirements for the Sales of Used Catalytic Converters.

WEDNESDAY, JANUARY 19

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

LD 1797 – An Act To Amend the Laws Governing the Maine Length of Service Award Program.

LD 1803 – An Act To Attract and Retain Firefighters and Emergency Medical Services Personnel through the Maine Length of Service Award Program.

Labor & Housing
Room 202, Cross Building, 9:00 a.m.
Tel: 287-1331

LD 555 – An Act To Expand the Rights of Public Sector Employees.

LD 1753 – An Act Regarding the Retirement of Law Enforcement Officers under the Participating Local District Retirement Program.

State & Local Government
Room 214, Cross Building, 10:00 a.m.
Tel: 287-1330

LD 383 – An Act Concerning Small Wireless Facilities in Maine.

Veterans & Legal Affairs
Room 437, State House, 9:00 a.m.
Tel: 287-1310

LD 1827 – An Act To Permit Limited Delivery of Adult Use Marijuana.

FRIDAY, JANUARY 21

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

LD 1552 – An Act To Provide Reentry Services to Persons Reentering the Community after Incarceration.

LD 1799 – An Act To Require Law Enforcement Agencies To Retain Serial Numbers of Stolen Firearms.

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearings and work sessions can be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/>.

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

Affordable Housing Webinar on January 19

MMA is pleased to announce an upcoming webinar detailing new opportunities to create affordable housing.

A range of existing and future state housing programs will be explored in this 90-minute free webinar. The panelists will describe new housing programs being unveiled in 2022 to help finance the creation of affordable homes to be rented and owned.

The presentation will also focus on opportunities for regional and county collaboration, as well as the assistance available to local leaders charged with ensuring compliance and justification when using federal funds like ARPA to invest in housing. The panel will include representatives from the Governor's Office of Policy Innovation and the Future, Maine State Housing Authority, and Maine Municipal Association.

The webinar is scheduled for Wednesday, Jan. 19, 2022, at 1:00 p.m. You can register for the event at www.memun.org

MMA
Maine Municipal Association

SAVE THE DATE: JANUARY 19, 2022 @ 1 PM

NEW OPPORTUNITIES TO CREATE AFFORDABLE HOUSING

Join us for an afternoon of presentations, opportunities, and Q&A.

PANELISTS INCLUDE REPRESENTATIVES FROM:
GOVERNOR'S OFFICE OF POLICY INNOVATION & FUTURE
MAINE STATE HOUSING AUTHORITY
MAINE MUNICIPAL ASSOCIATION

Wednesday January 19, 2022 | 1:00 - 2:30 PM
Free Virtual Webinar
Register Online @ www.memun.org
Let's get building!

Opposing Views on Sharing Surplus Revenues

On Wednesday, the question before members of the Appropriations and Financial Affairs Committee was not whether to share a portion of the \$882 million in general fund surplus with Maine residents, but with whom.

As printed, LD 327, *An Act To Return Surplus Money to Maine Taxpayers*, sponsored by Rep. Jeffery Hanley of Pittston, provides that once the state has paid its bills that 75% of the remaining surplus revenue be returned to taxpayers.

However, pointing to a consumer price index increase of nearly 7% – a four-year decade high – and increasing fuel, energy and grocery costs, Rep. Hanley proposed that 90% of surplus revenue be returned to the taxpayers, with the remaining 10% deposited into Maine’s Budget Stabilization Fund.

Implementing guidance for the investment of surplus revenue is not a novel concept. As directed by existing statute, after making transfers to different funds, including a contingent account and reserve for operating capital, 80% of remaining surplus revenues are transferred to the stabilization fund, more commonly referred to as the “rainy day” fund and 20% used to support the state’s highway and bridge capital fund.

The bill inserts a requirement that 90% of the remaining revenues are redistributed to taxpayers, just ahead of the distribution to the

stabilization fund.

Proponents of the bill argue that because the taxpayers are largely responsible for the state’s surplus those revenues should be returned in direct proportion to the amount contributed, thereby returning more revenues to those who generate greater levels of funding for the state. Advocates believe this investment approach will increase public confidence in the budget process, as taxpayers will know that the state is only raising the revenues necessary to fund approved programs.

Although supportive of the concept of sharing surpluses, opponents maintain that state lawmakers should retain the authority to determine how best to use those revenues, arguing further for investment in programs that support the state’s most vulnerable populations, such as the property tax fairness program. Opponents point to the disparate financial impacts of the public health pandemic as evidence. While some residents benefited from the ability to work from home or sold assets to keep afloat, others were laid off or had to give up employment to care for children due to closures of daycare facilities. To that end, proponents find it is only fair that surplus revenue is shared with those who struggled the most.

Because LD 327 is a concept draft bill lack-

ing the details necessary to advance a change to the way surplus revenue is invested, both the proponents and opponents have been asked to submit an implementation plan for the committee’s consideration.

Continued discussion on this subject will take place at the bill’s work session, which is not yet scheduled.

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IN THE HOPPER

Criminal Justice & Public Safety

LD 1799 – An Act To Require Law Enforcement Agencies To Retain Serial Numbers of Stolen Firearms. (Sponsored by Rep. Mason of Lisbon)

This bill requires a law enforcement agency to maintain a record of the serial number of a stolen firearm if the owner provides the number and until the firearm is recovered or destroyed.

Environment & Natural Resources

LD 1801 – An Act To Modify Exemptions for Certain Storm Water Discharges to Class AA and SA Waters. (Emergency) (Sponsored by Rep. Zeigler of Montville)

This bill amends the law governing exemptions for storm water discharges to Class AA and Class SA waters and provides that certain segments of waters classified along the tributaries of the Narraguagus River; the main stem of the St. George River; main stem and tributaries of the Aroostook River; and tidal waters of Some Sounds are not designated as outstanding national resources.

LD 1809 – An Act To Allow Exceptions to the Height Limitations under the Shoreland Zoning Laws. (Sponsored by Sen. Brenner of Cumberland Cty.)

This bill provides an exception to the height restrictions imposed on legally

(The bill summaries are written by MMA staff and are not necessarily the bill’s summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA’s website, www.memun.org.)

existing nonconforming structures located in the “special flood hazard area” of the shoreland zone to be raised to the minimum elevation necessary to be consistent with the local floodplain management elevation requirements, provided the relocated, reconstructed, or elevated structure meets water body or wetland setback requirements to the greatest extent practically possible. A special flood hazard is defined as land in a floodplain having a 1% or greater chance of flooding in any given year as established in flood insurance rate maps. The bill also defines how minimum elevation is measured when property is located within the special flood hazard area.

LD 1835 – An Act To Amend the Laws Governing Storm Water Management To Provide an Exemption for Mountain Bike Trails. (Emergency) (Sponsored by Sen. Daughtry of Cumberland Cty.)

This bill exempts certain mountain bike trails from stormwater management requirements.

ENR Committee Commences the Session with Needed and Innocuous Legislation

This week the Environment and Natural Resources (ENR) Committee began the Second Regular Session of the 130th Legislature on a truly upbeat note. On Monday the committee convened for three public hearings of municipal relevance, all with unanimous support.

Storm water was central to two of the bills up for discussion. LD 1801, *An Act To Modify Exemptions for Certain Storm Water Discharges to Class AA and SA Waters*, sponsored by Rep. Paige Zeigler of Montville was largely a clerical modification of laws governing exemptions for storm water discharges. The legislation was submitted by the Maine Department of Environmental Protection to remedy the U.S. EPA's discontent with the state's water quality classifications.

At first glance LD 1801 could be interpreted as a reduction in protection over some state managed waters, but in practice the bill authorizes no new or increased storm water discharge. For all municipalities, passage of this bill creates no impact to operations, however failure to pass the bill would leave public and private discharges in a state of regulatory limbo. Hanging over all stakeholders would be the constant worry

that the EPA challenges the department's water quality classification system, raising the question of non-conformity and legality for every discharge into Class AA and SA waters.

The second storm water-related bill attempts to reduce tedious permitting requirements for mountain bike trails, which most people agree rarely precipitate storm water concerns. LD 1835, *An Act To Amend the Laws Governing Storm Water Management To Provide an Exemption for Mountain Bike Trails*, sponsored by Sen. Mattie Daughtry of Cumberland County, exempts such trails from Chapter 500 storm water management requirements.

A wide range of stakeholders attested to the needlessness to hold mountain biking trails to the same storm water standards as other forms of developments since these trails are generally narrow, surrounded by pervious natural buffers, and impermanent, making them easily redirected as necessary. The result will be faster construction of trails which are a growing part of Maine's important outdoor recreation industry.

The third municipally relevant bill before the ENR committee this week is LD 1809, *An Act*

To Allow Exceptions to the Height Limitations under the Shoreland Zoning Laws, sponsored by Sen. Stacy Brenner of Cumberland County. Proposed in the bill is the right for property owners to elevate or stilt buildings to the minimum level of the 100-year floodplain as modeled by FEMA. While this is a preemption of local control in zoning practices, municipal officials recognized this as a needed change to state and local procedures to protect property against increasingly frequent and intense floods and to acquire affordable federal flood insurance protection through FEMA. This is an instance where preemption of local zoning ordinances serves municipal interests because it preserves property tax rolls by facilitating needed adaptations to development in shoreland zones that are at risk of damage.

Seldom is legislation as uncontentious as LDs 1801, 1809 and 1835. MMA provided provisional testimony to support the three bills for reasons mirroring the general sentiment expressed by all stakeholders. This is a hopeful prelude to the remaining session.

Work sessions for all three bills are scheduled for Wednesday Jan. 19, at 1:00 p.m.

IN THE HOPPER (cont'd)

LD 1875 – *An Act To Address Perfluoroalkyl and Polyfluoroalkyl Substances Pollution from State-owned Solid Waste Disposal Facilities.* (Sponsored by Rep. Zeigler of Montville)

This bill provides that a state-owned solid waste disposal facility may not be licensed or authorized to transfer leachate from the facility to a wastewater treatment plant unless the leachate is treated to reduce the concentration of perfluoroalkyl and polyfluoroalkyl substances (PFAS) or the facility receiving the leachate employs technology to reduce the concentration of PFAS. It requires the Department of Environmental Protection to adopt rules to implement the prohibition.

LD 1911 – *An Act To Prohibit the Contamination of Clean Soils with So-called Forever Chemicals.* (Sponsored by Rep. Pluecker of Warren)

This bill prohibits the land application or distribution of sludge or sludge-derived compost unless it is: (1) tested for all perfluoroalkyl and polyfluoroalkyl substances that may reasonably be quantified by a laboratory; and (2) does not exceed screening level for beneficial use that is established by the Department of Environmental Protection. The bill also requires the department to adopt rules to implement the requirements of the law including a requirement that sludge and sludge-derived compost intended for land application or distribution is tested annually.

Innovation, Development, Economic Advancement & Business

LD 1785 – *An Act To Address Staffing Shortages in Critical Public Safety Jobs through Economic Incentives.* (Sponsored by Sen. Baldacci of Penobscot)

This bill provides a one-time allocation of \$10 million divided equally between a student loan forgiveness program and a no-interest home mortgage program for local and county law enforcement officers, firefighters, EMS providers, dispatch and public health workers.

Judiciary

LD 1581 – *An Act To Require Telecommunications Companies To Divulge Location Information to Law Enforcement When Necessary To Respond to a 9-1-1 Call or Locate a Person in Danger.* (Sponsored by Sen. Cyrway of Kennebec Cty.)

This bill requires a provider of communications service, including any voice, satellite, data, fixed wireless data or video retail service, to provide upon the request of a law enforcement officer the location data from a wireless device used to place a 9-1-1 call requesting emergency assistance or reasonably believed to be in the possession of an individual in an emergency situation involving risk of death or serious physical harm to the individual. This bill also provides immunity from civil or administrative action by a governmental entity for providing location data required by this bill.



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486

IN THE HOPPER (cont'd)

Labor & Housing

LD 1879 – An Act To Support Law Enforcement Officers, Corrected Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Services Persons Diagnosed with Post-traumatic Stress Disorder. (Sponsored by Rep. Sylvester of Portland)

This bill repeals the provision of law repealing, on Oct. 1, 2022, the rebuttable presumption of workplace injury for law enforcement officers, corrections officers, dispatchers, firefighters and emergency medical services persons diagnosed as having post-traumatic stress disorder.

LD 1884 – An Act To Create Affordable Agricultural Homesteads. (Emergency) (Sponsored by Rep. Bickford of Auburn)

This bill prohibits a municipality from requiring as a condition of residential construction: (1) an income requirement; (2) in an agricultural zone a more restrictive condition on farmland than provided under Maine's farmland current use tax law; and (3) a minimum lot size for zones primarily used for agriculture that is more than twice the minimum lot size of the most restrictive residential zone in that municipality.

Veterans & Legal Affairs

LD 1821 – An Act To Make Interfering with an Election Official a Class C Crime. (Sponsored by Rep. White of Waterville)

This bill makes intentional interference by force, violence or intimidation with

a public official performing a function relating to a federal, state, or municipal election a Class C crime.

LD 1827 – An Act To Permit Limited Delivery of Adult Use Marijuana. (Sponsored by Rep. Perry of Bangor)

This bill allows certain retail marijuana stores to deliver adult use marijuana, regardless of the delivery location or local approval of retail marijuana stores.

Taxation

LD 1071 – An Act To Reduce Property Taxes for Maine Residents. (Sponsored by Sen. Pouliot of Kennebec Cty.)

For property tax years beginning on or after April 1, 2021, this bill increases the homestead property tax exemption from \$25,000 to \$50,000 and increases reimbursement to municipalities from 70% to 100%.

LD 1757 – An Act To Make Technical Changes to Maine Tax Laws (Sponsored by Rep. Terry of Gorham)

In part, this bill amends the property tax statutes by authorizing Maine Revenue Services to hold assessor certification exams two rather than four times each year, as currently required. The bill also clarifies the amount of property tax that must be paid when a property owner has appealed a denial of abatement as the greater of: (1) the amount of taxes paid in the previous tax year, provided the amount does not exceed the taxes due in the current year or (2) the amount of taxes in the current tax year that is not in dispute.