

At the Sound of the Bell

Legislative Bulletin on Hold until State Budget Comes Into Focus

As the Legislature wraps up its work in the days leading to final adjournment, the phrase “at the sound of the bell” is being uttered with regularity by the Legislature’s presiding officers. The term is used to inform members of the House and Senate, as well as the general public, that the chambers are at ease and will be reconvening again that day, but the timing of that gathering is unknown. While the delays can be frustrating, the breaks in action allow committees to meet, paperwork to make its way between the two bodies, leaders to amend the list of issues to be debated, and the political parties to caucus the issues of the day, activities that contribute to the more efficient use of time once the bodies are reconvened.

Following suit, MMA is providing notice that the schedule for the next and likely final edition of the Legislative Bulletin will be held in abeyance until the Legislature’s final actions come into sharper focus. There are three reasons for the temporary break in publication.

Few Bills Left. First, except for the state budget, there are very few issues of municipal interest that have not been finally addressed, either through a unanimous vote of a committee of jurisdiction, action of the entire Legislature, or a decision to carryover the bill into the next session for more deliberation.

With the exception of the bills on the “Appropriations Table,” which are described in a sidebar to this article (found on P. 3), there are only three bills of statewide municipal interest that remain to be decided. Those bills include:

LD 133 – This bill restores the percentage of state sales and income tax revenue dedicated to the municipal

revenue sharing program to its historical level of 5% over a three year period. The current but temporarily established level of 2% is increased by the bill to 3% for FY 2018, 4% for FY 2019 and 5% for FY 2020 and thereafter. The members of the Taxation Committee decided to hold all initiatives that might otherwise be funded through adoption of the FY 2018 – 2019 biennial General Fund budget. As a result, LD 133 has not been reported out of the Taxation Committee.

LD 146 – This bill expands the categories of information in personnel records that may be in the possession of

state government, county government or municipal government regarding those governments’ employees that is confidential and therefore not subject to release to interested parties as a “public record” or part of public record. The bill amends several different chapters of state law so as to apply the same confidentiality provisions at all three levels of government. The categories of personal information made private are age, ancestry, ethnicity, genetic information, national origin, race or skin color, marital status, mental or physical disabilities, personal contact

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No Clear Path for Ranked Choice Voting

At its work session on June 8, the Veterans and Legal Affairs Committee gave full debate to the two competing proposals that deal with the ranked choice voting (RCV) conundrum, each in its own starkly different way.

The details of how we got to where we are on this issue need not be reiterated here. Municipal officials are very familiar with the ranked choice voting initiative and how it would change the method of voting for all candidates for state and federal office when more than two candidates are on the general election ballot for a single office. They also understand why the state’s Supreme Judicial Court issued an advisory opinion finding central elements of the initiative to be in conflict with Maine’s Constitution, and they are not surprised to see the two competing proposals advanced in response to the Supreme Court opinion.

The state’s towns and cities are

directly responsible for managing elections, and municipal officials respond to both the policy implications and the administrative implications of ranked choice voting in a variety of ways. It would be fair to say they are all over the place on the topic.

Bill to support RCV. The bill most supportive of ranked choice voting, LD 1624, is a resolution that would send out to the voters a proposed amendment to the state’s Constitution. Targeting the four subsections of the Constitution that deal with the elections for the offices of Governor, State Senator and State Representative, the amendment would repeal the “by plurality vote” standard that identifies the winners of those elections and replaces it with a “by majority vote” standard. If supported by at least a two-thirds vote in both the Senate and the House and then subsequently sup-

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information, personal payroll management decisions, religion, sex or sexual orientation and social security information. LD 146 has been supported by the full Legislature but vetoed by Governor LePage. The House has overridden the Governor's veto. The bill is tabled in the Senate awaiting that chamber's decision on the veto.

LD 351 – This bill authorizes municipalities to adopt ordinances that prohibit the carrying of a dangerous weapon at municipal public proceedings and voting places within the municipality, with an exception allowing the carrying of handguns by law enforcement officers. LD 351 is currently tabled in the Senate.

No Action on Bond Bills. Second, the Appropriations Committee has not yet held public hearings or work sessions on the roughly forty bond proposals submitted for consideration this session. It is possible that the Committee will turn its attention to those bills once the FY 2018-2019 biennial General Fund budget has been adopted. It is also possible that a majority of these bills will be carried over to the next legislative session, although a significant transportation bond issue will likely be sent to the votes this November.

Budget Adoption Impasse. The third reason for the break in publication is the impasse on the adoption of the FY 2018 – 2019 General Fund budget.

On Monday, the House and Senate voted to support two different versions of the budget bill. Although there are many differences between the two budget proposals, the single issue of greatest

significance is funding for K-12 public education.

The version of the budget supported by the Democrats in both the House and Senate appropriates an additional \$320 million for public school funding over the FY 2018 -2019 biennium. This investment in education is capitalized with the revenue raised from the 3% surcharge assessed against the portion of Maine taxable income over \$200,000 as adopted by the voters at the November 2018 election.

The other version of the budget, which is supported by the Republicans in the Senate, appropriates an additional \$100 million over the next two years for K-12 education, but repeals the 3% income tax surcharge approved by the voters. The funding for the infusion of additional school funding in the Senate Republican's proposal comes from existing resources.

A majority of the Republicans in the House back neither of these budget proposals, and instead support an amended version of Governor LePage's originally submitted budget. That version of the budget was not offered to the Legislature for an up or down vote.

As a result of this deadlock, a "committee of conference," made up of six members of the Legislature, was appointed on Tuesday and tasked with developing a version of the budget that resolves the existing differences. Members of the Committee of Conference include House Speaker Sara Gideon of Freeport, Representative Aaron Frey of Bangor, Representative Tom Winsor of Norway, Senate President Mike Thibodeau (Waldo Cty.), Senator Roger Katz (Kennebec Cty.) and Senator Cathy Breen (Cumberland Cty.). These six members, split evenly between the two political parties, have 10 legislative days to develop a final budget to be either accepted or rejected by the members of the Legislature.

When first convened on Tuesday, the committee had established Thursday noon as its deadline for developing the compromised budget. Unfortunately, members of the committee have not been able to resolve the differences over the appropriate amount and source of funding

for K-12 education.

However, some concessions have been made.

All three Democrats on the Committee of Conference proposed to reduce their "ask" for K-12 funding to \$200 million over the biennium, provided that a new and sustainable source of revenue is dedicated to that cause. The two Senate Republicans have moved from \$100 million to \$110 million in school aid and offered an additional \$65 million for other "property tax relief" efforts. However, that total investment of \$175 million would continue to be funded with existing state resources and without any changes to the state's tax code except for repealing the 3% income tax surcharge.

All in all, three of the four negotiating parties (e.g., House Democrats and the Senate Republicans and Democrats) appear to be within \$25 million of striking a deal on overall school funding for the biennium, but are still divided on how to capitalize the increased financial contribution. The House Republicans, do not even support the increased funding, so a supermajority vote on the budget is impossible.

Although the Committee of Conference's desired deadline for completing the mission has come and gone, the committee has seven legislative days to strike a budget deal. Time, however, is rapidly evaporating. Once the budget is delivered to the Governor, he will have 10 days to either sign the budget, let the budget become law without his signature, or to veto the budget and return it to the Legislature for an override vote. A supermajority vote is needed to override the veto.

If a budget is not finally enacted by midnight on June 30, Maine will face a state government shutdown on July 1 due to the lack of funding. In order to have the time to override a potential veto, if issued on the 10th day, the Legislature would need to send the budget to the Governor on Monday, June 19.

As soon as a budget document is made available for public review, MMA will provide municipal officials with an overview of that funding proposal through the distribution of an action alert or the next Legislative Bulletin. Please stay tuned.

Legislative Bulletin

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The Appropriations Table

All adopted legislation that requires state funding, but is not otherwise included in the General Fund budget, must be placed on the Appropriations Table before being finally enacted. Bills on the Appropriations Table compete with other initiatives for the unappropriated revenue that remains once the budget is adopted. Legislation of municipal interest currently on the funding table include:

LD 82 - This bill creates a 100% property tax exemption for the homestead of a veteran who can provide certification from the U.S. Armed Forces of 100% disability and who receives benefits based on a rating of 100% for a service-connected disability. The bill further provides that the state must reimburse municipalities for 100% of the property tax revenue they lose because of the new exemption. The estimated costs to the state for the reimbursement obligations are estimated to be \$4.8 million a year.

LD 289 - This bill extends the (generally) \$6,000 veteran's homestead exemption, which is currently provided to veterans over the age of 62 who served during federally recognized periods of war, to all honorably discharged veterans of the U.S. Armed Forces over the age of 62. The effective date of the exemption for the newly eligible veterans is April 1, 2018. The projected annual cost to the state of providing the affected municipalities with 50% of the lost tax revenue associated with the expanded veterans exemption is \$430,000 beginning in FY 2020. The bill includes a \$15,000 appropriation from the General Fund for FY 2019 to cover 90% of the municipal administrative costs (mandate costs) associated with processing the applications submitted to the municipal assessors by the veterans made eligible for the exemption by this bill.

LD 328 - This bill appropriates 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. The Local Government Efficiency Fund was established as a result of a citizen initiative adopted by the voters in 2004 that is more widely known for directing the Legislature to cover at least 55% of the cost of K-12 public education with state General Fund resources. The bill also adds 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 601 - This bill repeals provisions in existing K-12 school funding law that requires school administrative units and private schools to pay for teacher retirement, shifting 100% of the costs of those premiums back to the state. Under current law, the cost of those premiums are effectively shared, on a statewide basis, between the state and the school systems on a 50:50 basis. The savings to the property taxpayers associated with this change, assuming the operation of the current Essential Program and Services school funding model, is roughly \$22 million each year.

LD 848 - This bill, 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 the 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 bill 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. State reimbursement to municipalities for 90% of the cost of this new mandate is estimated by MMA to fall in the range of \$1.9 to \$2.5 million annually.

LD 1196 - This bill reestablishes 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 age, income and asset qualifications for the deferral program include: (1) at least one of the resident homeowners needs to be either 65 years of age or older or retired from gainful employment by reason of physical disability; (2) the household income does not exceed \$40,000; and (3) the value of the household's liquid assets (e.g., bank accounts, stocks and bonds, life insurance policies, lump sum payments and inheritances, etc.) does not exceed \$50,000 for a single homeowner or \$75,000 for a multi-person household. A household would also not qualify if the property tax payments are being deferred pursuant to a municipally-established deferral program. The projected fiscal costs associated with reinstating this state-level property tax deferral program, including the establishment of a position in Maine Revenue Services, computer programming costs and the payments of the property taxes to the affected municipalities, is \$1.7 million in the first full year of implementation (FY 2019) increasing to \$3.7 million in FY 2021.

LD 1212 - This bill transfers the tax status of personal property that is exempt from taxation by virtue of being personal property leased by hospitals to the tax exempt status provided by enrollment in the Business Equipment Tax Exemption program. The effective date of the transfer of exempt status from the hospital exemption statute to the BETE program is April 1, 2018. The projected cost to the state's General Fund associated with paying the affected municipalities 50% of the lost tax revenue associated with BETE enrollment is \$245,000 annually.

ported by a majority of Maine's voters next November, LD1624 would remove the cloud of legal uncertainty over the initiated law and allow it to be fully implemented.

The committee vote on LD 1624 was split down the middle along party lines, with six committee members voting "ought not to pass" and six committee members voting "ought to pass" with some housekeeping amendments to the bill as printed. One committee member voted to take the bill in a completely different direction, described in more detail below.

A split vote like that on a conventional bill would be tough for the bill's prospects but not necessarily fatal. An evenly split vote is a death knell, however, for a bill that needs supermajority support in both chambers in order to emerge from the State House and be placed before the voters. Therefore, it's a safe bet that a constitutional resolution on the ranked choice voting issue in 2017 is not a happening thing.

Bill to repeal RCV. The other bill taken up by the committee, LD 1625, would simply repeal the initiated rank choice voting law, lock, stock and barrel. The supporters of LD 1625 point out that the state's Supreme Court, in a unanimous advisory opinion, have held that the portions of the initiated law governing the general election for the offices of Governor, State Senator and State Representative are in direct conflict with the state's Constitution and that it would be an expensive and confusing administrative nightmare to implement the ranked choice voting procedures just for some state-level elections (e.g., the primary elections and the general elec-

tions for U.S. Senator and U.S. Representatives) and not others.

The committee cast a similarly split vote on LD 1625.

Six of the committee members voted that the repeal legislation "ought to pass".

Six committee members voted for a report that would repeal only the elements of the initiated law that were found unconstitutional by the Supreme Court and retain ranked choice voting for the primary elections and the general elections for U.S. Senator and U.S. Representative. This version of LD 1625 pushes out the effective date of the initiated law that is not being repealed to the year 2020 and directs the Secretary of State to evaluate and report back to the Legislature the projected impacts of implementation, including costs to the state and municipalities, along with any rulemaking the partially implemented initiated law will require.

One committee member, Representative Craig Hickman of Winthrop, signed on to a third report, which is identical to his solo report on the previous bill, LD 1624. Rep. Hickman's recommendation would retain the entire initiated law in statute, but place a controlling provision over the elements governing the general elections for the office of Governor, State Senate or State Representative—the parts found unconstitutional by the Supreme Court—to prevent the implementation of ranked choice voting for those elections until such a time as the Constitution is amended to allow those statutory provisions to be implemented. The elements of the initiated law that were not found to be unconstitutional (providing for ranked choice voting in primary elections and for the general election offices of U.S. State

Senator and U.S. Representative) would be implemented under Rep. Hickman's report, but not until 2020.

A committee member in favor of repealing the initiated law in its entirety made the observation that the process of advancing ranked choice voting was a classic case of "putting the horse before the cart," meaning that the constitutional authority should have been secured before advancing the initiative.

Rep. Hickman flipped the argument by observing that the initiated law was properly the horse. A proposal to amend the Constitution can only be advanced by the Legislature in Maine, and the implementing language cannot be enacted until after the voters approve the proposed amendment. Maine's Constitution prevents the citizens from advancing a proposed constitutional amendment by petition. It would be politically impossible, Rep. Hickman suggested, to convince the Legislature to advance a proposal to amend the Constitution to require majority voting for multiple-candidate contests without the voters first advancing their vision for how that should be done. For the citizens to effectuate a change that requires a constitutional amendment, their only option is to advance the implementation of that amendment as the horse, and, at least for the moment, leave the Constitution in the cart.

In summary, the committee is putting forward five separate recommendations to deal with the ranked choice voting law as currently on the books. All five recommendations will likely be debated on the floor of the House and Senate next week.