

## Municipal Point of View Needed on the Elderly Foreclosure Bill

Gov. LePage addressed the Taxation Committee in person on Tuesday as it held its first work session on LD 1629, *An Act To Protect the Elderly from Tax Lien Foreclosures*. The bill, sponsored by Rep. Ellie Espling of New Gloucester on behalf of the governor, proposes several changes to the tax lien foreclosure process. Articles printed in the Jan. 12 and Jan. 26 editions of the *Legislative Bulletin* describe LD 1629 and provide a summary of the bill's public hearing.

In his remarks, the governor called on the committee to work with him and his staff to adopt an amended version of the bill that would accomplish two important goals: First, to require municipal officials, particularly elected officers, to work with delinquent senior property taxpayers in the 18 months between the filing of the lien and the foreclosure to ensure that every potential resource and program available to assist a senior homeowner is explored. Second, to amend state statutes to require that a home acquired by municipalities through the foreclosure process is sold at its fair market value with all proceeds in excess of back taxes, interest and other costs accrued by the municipality returned to the previous homeowner.

Gov. LePage believes these changes are necessary to end a practice that allows communities to evict delinquent property taxpayers from their homes. In the last year alone, he claims to have been made aware of 12 cases where senior homeowners found themselves out on the streets. Although he promised to provide the committee with information on the 12 cases, at Tuesday's work session he once again zeroed in on a foreclosure

that occurred in the Town of Albion two years ago, resulting in a senior couple being evicted from their home after the tax acquired property was sold.

Unfortunately, the community's efforts to work with these homeowners were not mentioned at the work session. According to the Albion officials directly involved in this case, the town took great strides to keep the couple in their home. In 2011 and 2012, the town paid the property taxes owed using revenues from

two community funded special purpose accounts. The community sent a letter to the homeowners asking them to come to the town office to work out a payment plan. Additionally, one member of the select board met with the couple at their home to discuss the consequences associated with failing to make agreed upon installment payments.

Yet, the governor took the opportunity to describe municipal officials who

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## Home Rule for Online Burn Permits?

On Thursday, the Agriculture, Conservation and Forestry Committee met to hold a public hearing on LD 1809, *An Act to Amend the Laws Governing the Issuance of Burn Permits*. As drafted, the bill would give municipalities the ability to use state approved third-party software for the purpose of issuing burn permits electronically. Under the terms of the bill, the authority is accompanied by the condition that the municipality does not assess a fee for the issued permit.

The bill's sponsor, Sen. Tom Saviello of Franklin County, joined a throng of proponent voices in championing local decision making authority over the issuance of permits and the ease of an online system to meet the needs of small rural fire departments. Eleven other interested parties offered testimony in support of LD 1809, including legislators, fire chiefs, and software designers.

In addition to convenience, the proponents testified that the use of third party online burn permit programs increases

public safety and access to information. An online application for a permit triggers an immediate notification to the town fire warden, dispatch service and anyone else the town adds to their designation list, supplying the location of the permit, the type of burn permit requested and the permit holder's contact information. This seamless communication is being credited for reducing the number of suspicious smoke related service calls when the town fire warden and fire department members have immediate notice that the permit has been issued. Hand written permits may be issued by several delegated town officials to facilitate the same 24/7 in person availability, making communicating that issuance an additional and easily fallible process. Proponents of the bill stated that online access permitting software has increased compliance with the state law requiring burn permits.

While the use of online programs has reduced the amount of time spent

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## ***Municipal Point of View Needed on the Elderly Foreclosure Bill (cont'd)***

foreclose and sell tax acquired property as “scammers,” drawing a comparison between the act to foreclose on a home for the nonpayment of property taxes to those of swindlers who intentionally prey on and exploit the state’s elderly residents.

Raising concerns with the governor’s disparaging remarks about municipal officials dedicated to public service, Rep. Gay Grant of Gardiner asked for information on the 12 other cases that resulted in the acquisition and sale of senior homeowners’ property. Although he promised to provide the information, the governor added that one example should be enough to end the “unconscionable” practice. Rep. Matthew Pouliot of Augusta asked whether a state agency, rather than the municipal officers, might be better suited to help seniors access available programs. Gov. LePage responded that he has no preference with respect to who is targeted to provide the assistance only that during the 18 months prior to the foreclosure someone gets involved. He believes that there are “a million different no cost ways” to get the job done.

The decision to foreclose and sell an owner occupied home is never easy. While these decisions are difficult and politically unpopular, municipal officials have a fiduciary responsibility to consider the burdens placed on all other property taxpayers when residents are unwilling to work with the community to get outstanding property tax obligations resolved. Taking and selling occupied property is the option of last resort.

Although MMA finds it unfortunate that municipal officials were described as scammers, the association remains committed to working with the committee, the governor’s staff and others in drafting an amended version of the bill that meets the needs of all the interested parties.

Municipal officials agree that the burdens placed on the property taxpayers must be addressed. However, municipal officials do not believe that simply shifting burdens from one category of property owners, in the case of LD 1629 senior homeowners, to all other property owners in the community, including young families and businesses, is a workable solution. A more comprehensive approach

is necessary. Municipal leaders ask that through this process legislators also work on efforts to restore funding for municipal revenue sharing, fund a greater share of the \$20,000 Homestead Exemption and restore the state administered and funded elderly property tax deferral program.

During his comments on Tuesday, the governor also informed the committee that this issue, generally, and the Albion case, specifically, will be featured in both his radio address on Saturday and in the

State of the State address on Feb. 13.

For this reason MMA is strongly encouraging municipal officials to contact members of the Legislature to discuss the impacts of LD 1629 and the practices and services established in your communities to keep residents in their homes. Your stories are vital to our efforts to ensure that all sides are represented when the Taxation Committee resumes its work on this bill at another work session yet to be scheduled.

## ***Home Rule for Online Burn Permits? (cont'd)***

issuing permits, the proponents assured the committee that fire wardens are not relieved of their duties. One software provider makes fire warden approval a mandated part of the process by issuing the electronic permit only after the designated local administrator approves the application.

Two software service creators also provided testimony in support of LD 1809, stating the systems they designed not only improve public safety and communication between burn permit holders and municipal fire officials, but also allow communities to tailor the program to meet local ordinance requirements, in addition to state standards. Each service offers notifications through text messaging and email, allowing notifications to reach town wardens at any time. The “real time” notification process provides an added safety feature allowing fire wardens to prevent the issuance of a permit on high risk burning days, as local conditions often differ from statewide forecasts.

Even though the town fire warden will receive all the information pertaining to the burn electronically, as required by law the end user must still be in possession of the printed permit. Two proponents testified that the paper copy requirement is a barrier in an increasingly paperless world, advocating for a change in current law to allow the burn permit to be available on the permitted party’s mobile device.

Opponents of the bill included Sen. Scott Cyrway of Kennebec County, Maine Forest Services Director, William Hamilton, and the Maine Forest Products

Council.

Forest Service Director Hamilton testified in opposition to LD 1809 for a variety of safety and software related reasons. He believes that online systems should be uniform and centralized and cautioned that the face-to-face conversations between permit holders and fire officials should not be sacrificed for convenience. The loss of the opportunity to provide safety information to a permit applicant was a universally shared concern among the opponents.

Director Hamilton also expressed concern with an element of the bill providing Maine Forest Service only 10 days to review and approve the software to be used by a community, with the failure to act within the time allotted resulting in the automatic approval of the permitting program. He believes it would be too difficult to meet this deadline if they received a flood of new applications. He was also concerned that the bill did not include a penalty provision to address circumstances where the software is deemed approved, but failed to meet appropriate standards.

MMA testified neither for nor against LD 1809, questioning why municipalities pursuing such services could not be empowered to make fee decisions at the local level. Should such software services charge a fee in the future, or should a municipality pursue a higher priced option, the flexibility to pass that cost onto the user should also remain at the local level.

A work session is scheduled for Feb. 20.

# Marijuana Moratorium – 2nd Time No Charm

The past two editions of the *Legislative Bulletin* detailed the rise and fall of the Legislature’s efforts to pass LD 1775, which would temporarily extend the statewide moratorium on commercial non-medical marijuana sales until the Legislature’s scheduled adjournment date of Apr. 18. Last week, the Senate passed this legislation “under the hammer” (without a vote), but the House voted against passage by a margin of 81-65.

On Thursday, the House reconsidered the bill in light of concerns that have reportedly been raised since the

moratorium expired. A provision that is now in law in Title 7 section 2454 is reported to be the chief culprit. That provision states, “A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person’s consuming marijuana outside of the school’s, employer’s or landlord’s property.” Members of the business community are concerned that this provision in the existing Act could prevent employers from disciplining employees who use marijuana offsite, but

arrive to work while under the influence. They claim the Marijuana Legalization Act now in law creates a separate legally protected class that can sue employers for discrimination, even though no other substance, including alcohol, has this legal protection.

There was little discussion prior to the vote, other than one proponent of the existing law expressing the view that the above-referenced protection should remain in place. After this discussion, LD 1775 failed again in the house, this time by a margin of 74-69.

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## Broadband Conduit Bill Moves Forward, Mandate Minimized

On Thursday, the Energy, Utilities and Technology Committee held a work session on LD 1472, *An Act To Lower the Costs of Broadband Service by Coordinating the Installation of Broadband Infrastructure*. The bill had its public hearing on Apr. 26, 2017, and was carried over to this session to afford the proponents the time necessary to work on an amendment. As printed, the bill required governmental entities constructing roadways or installing or replacing water and sewer lines to, in the process, install underground conduits for internet cables. The hearing and work session were described in the May 5, 2017, edition of the *Legislative Bulletin*.

At Thursday’s work session, the committee voted unanimously in favor of an amended version of LD 1472 that requires applicants for road opening projects to notify the ConnectME Authority of the proposed opening. The aim is for the Authority to publicize the road or bridge work to internet service providers, who would then be able to ne-

gotiate with the excavator and permitting authority (i.e., the municipality or the Maine Department of Transportation) to arrange for space to lay the conduit. The conduit itself would be paid for by the internet service provider.

Although the language has not yet been finalized, it appears the only mandate entailed by this approach is for the municipality to notify the ConnectME Authority when the municipality is the entity performing the underground work.

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## Vehicle Excise Tax Bill Gets Split Vote

On Tuesday, the Taxation Committee voted “ought not to pass” on LD 1687, *An Act To Amend the Laws Governing the Calculation of Excise Tax on Automobiles*, by a margin of 6 to 3.

As sponsored by Sen. James Dill of Penobscot County, the bill would require the excise tax assessed on new model year vehicles to be based on the purchase price in the first year and on the maker’s list price for all succeeding years. Under existing law, the excise tax assessed is based on the maker’s list price.

Some members of the committee believe the existing system is appropri-

ate because it ensures that all taxpayers are treated equally. These legislators do not believe that the ability to negotiate a good deal on a motor vehicle should impact the amount of excise taxes paid.

The proponents of the bill, however, believe that change is necessary. For that reason, the committee’s minority “ought to pass as amended” report on LD 1687 requires the excise tax to be assessed against the sales price in the first and subsequent years.

In the coming weeks the entire Legislature will have the opportunity to decide the fate of LD 1687.

### Legislative Bulletin

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**Editorial Staff:** Kate Dufour, Garrett Corbin, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

## LEGISLATIVE HEARINGS

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

### Tuesday, February 13

**Energy, Utilities & Technology**  
**Room 211, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-4143**

LD 1798 – Resolve, Regarding Legislative Review of Portions of Chapter 101: ConnectME Authority, a Major Substantive Rule of the ConnectME Authority.

LD 1814 – An Act To Amend the Charter of the Lisbon Water Department.

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

LD 1806 – An Act To Ensure Equity in the Funding of Maine’s Transportation Infrastructure by Imposing an Annual Fee on Hybrid and Electric Vehicles.

LD 1818 – Resolve, To Designate a Bridge in Gorham the Corporal Joshua P. Barron Memorial Bridge.

### Wednesday, February 14

**Environment & Natural Resources**  
**Room 216, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-4149**

LD 399 – (new title) An Act Regarding Municipal Satellite Sewage Collection Systems.

### Thursday, February 15

**Appropriations & Financial Affairs**  
**Room 228, State House, 2:00 p.m.**  
**Tel: 287-1316**

LD 1815 – An Act To Authorize a General Fund Bond Issue To Improve Multimodal Facilities, Highways and Bridges.

## IN THE HOPPER

(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](http://www.memun.org).)

### Environment & Natural Resources

LD 399 – (new title) An Act Regarding Municipal Satellite Sewage Collection Systems. (Sponsored by Rep. Tucker of Brunswick)

As amended, this bill would establish a new state level regulation system over “satellite” sewage collection systems that directly or indirectly convey wastewater to another publicly owned sewerage treatment works. The amendment enables the Department of Environmental Protection to establish pretreatment standards and adopt rules as necessary to issue and enforce permits that require any license for a discharge from a publicly owned wastewater sewerage system into another publicly owned treatment works owned by a separate legal entity to include conditions that assure compliance with the pretreatment standards. Violations of the license which lead to the discharge of prohibited pollutants into the publicly owned treatment works would be enforceable by the State and/or the owner of the treatment works separately or through joint action. Owners of municipal satellite sewage collection systems must register the systems with the Department, providing contact, location, mapping, and discharge information. Owners are also required to report unauthorized discharges within 24 hours of becoming aware of the discharge, and follow up with a written report within five days.

### Judiciary

LD 1821 – An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials. (Sponsored by Rep. Moonen of Portland for the Joint Standing Committee on Judiciary)

Current law requires certain elected officials to complete the training requirements of the Freedom of Access Act, but does not require officials appointed to those offices to complete the training. This bill would extend the training requirements to both elected and appointed officials holding similar offices and in turn impact appointed municipal clerks, treasurers, assessors and budget committee members.

LD 1831 – An Act Concerning Remote Participation in Public Proceedings. (Reported by Rep. Moonen of Portland for the Joint Standing Committee on Judiciary)

This bill amends Maine’s Freedom of Access Act to prohibit all members of public bodies subject to Maine’s Freedom of Access Act from participating in meetings of those bodies remotely from offsite locations by phone, video, or other electronic conferencing. The exception to the prohibition are seven state-level boards, which are authorized to continue to allow members to participate remotely until July 1, 2020. The boards include the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services’ Board, and the Workers’ Compensation Board. These boards’ votes would be limited to a majority of members present unless in an emergency.

The bill also establishes procedures for the Legislature to review future legislation seeking to authorize remote participation of any public body. These procedures require that, first, a majority of the members of the legislative committee of jurisdiction support the proposal and, second, an unspecified review committee evaluate and report back to the legislative committee regarding the proposal considering the following four factors: (1) geographic distribution of members; (2) demonstrated need based on emergency nature of action; (3) demonstrated need based on exigent circumstances, such as a natural disaster or an emergency declaration by the Governor directly related to the activities of the body; and (4) any other criteria that assist the review committee in determining the value of the proposed remote participation and authorization as compared to the public’s interest in all members participating.

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## HOPPER (cont.)

LD 1832 – An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation. (Reported by Rep. Moonen of Portland for the Joint Standing Committee on Judiciary)

This bill is a recommendation of the Right to Know Advisory Committee and amends Maine's Freedom of Access Act to authorize members of public bodies subject to the Act to participate remotely in meetings from offsite locations by phone, video, or other types of electronic conferencing. Specifically, the bill would prohibit public bodies from conducting a public proceeding during which a member of the body participates in the discussion or transaction of public business through telephonic, video, electronic or other similar means of communication unless such meetings are conducted according to the following terms and conditions: (1) the board must adopt in writing a policy that authorizes such participation and establishes the circumstances under which a member may participate when not physically present; (2) participation in executive session must be authorized in writing that includes procedures to ensure the privacy of the executive session; (3) notice of any such public meeting must be provided as required by law and members of the public must be allowed to attend at the location identified in the notice; (4) a quorum of the body must be physically present, with certain exceptions; (5) members of the body must be able to hear and speak to each other during the proceeding; (6) a member who is participating remotely must identify the persons present at the offsite location from which the member is participating; (7) all votes taken during the public proceeding must be taken by roll call vote; (8) each member who is not physically present must have received, prior to the proceeding, any documents or other materials that

will be discussed at the public proceeding; (9) remote participation is not allowed with respect to adjudicatory (i.e., judicial or quasi-judicial) proceedings; (10) members of the Legislature are prohibited from participating remotely in public proceedings of the Legislature; and (11) members of seven state-level boards are authorized to continue to allow members to participate remotely subject to their existing statutory parameters. These boards include the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services' Board, and the Workers' Compensation Board.

LD 1833 – An Act To Facilitate Compliance with Federal Immigration Law by State and Local Government Entities. (Governor's Bill) (Sponsored by Rep. Lockman of Amherst)

This bill prohibits government entities, including municipalities and law enforcement agencies, from adopting policies or practices that restrict the sharing and use of immigration and citizenship information or the enforcement of federal immigration law and establishes a complaint process and a duty to report suspected violations. The bill also requires that if upon investigation the AG determines that a government entity is violating these prohibitions, to issue an opinion stating that finding. The government entity has 30 days to appeal the finding to the Superior Court. If the Superior Court agrees with the AG, the court must immediately enjoin the policy or practice. A government entity that continues the policy or practice is subject to a \$500 fine for each day the policy or practice remains in effect. If the Superior Court disagrees with the finding, the AG must immediately certify that the government entity is in compliance with the law.