

Finding a Solution that Fits the Problem

Tax Committee Holds 2nd Work Session on Senior Tax Foreclosure Bill

As described in past editions of the *Legislative Bulletin*, Gov. LePage's bill, LD 1629, *An Act To Protect the Elderly from Tax Lien Foreclosures*, provides property owners 65 years of age and older with access to special pre-foreclosure and post-foreclosure procedures. In a nutshell, LD 1629 would establish in state statute procedures that allow senior homeowners, regardless of their financial ability to pay the taxes owed, to walk away from their property tax obligations and remain in their homes for 10 to 30 years before the municipality is finally authorized to hire a real estate broker to sell the home, for top dollar, and return all revenue in excess of the back property taxes and other fees accrued by the municipality to the delinquent property owner.

On Tuesday, the Taxation Committee held a second work session on LD 1629.

At that meeting the committee was informed by a representative of the governor that he was working with other proponents of the bill, including Pine Tree Legal Services, Maine Legal Services for the Elderly and Maine Equal Justice Partners, on an amendment to LD 1629, focused on protecting the interests and investments of Maine's most vulnerable homeowners, without shifting overly burdensome administrative procedures onto municipalities.

According to a verbal description of the amendment shared with MMA and the Mayors' Coalition an hour before Tuesday's work session, special post-foreclosure processes would be made available only in situations when tax acquired property was previously owned by a disabled or senior resident. In those cases, municipalities would be required to list the property with a real estate broker at

its fair market price and return the proceeds in excess of back taxes, interest and fees to the previous home owner.

In response to concerns raised by municipal representatives, it is possible the proponents' amendment will be further refined to include additional restrictions to limit the time the property is listed with a broker and include administrative costs as allowable municipal expenses to be deducted from the amount of revenue returned to the previous owner. Changes to the pre-foreclosure process that will

be included in the amendment are still unknown.

The only supporter of the bill to attend Tuesday's work session was the governor's representative who responded to the committee's questions and requested additional time to finish drafting the amended version of LD 1629.

Based on the committee's discussion, it would appear that several members of the Taxation Committee are uncomfortable with some of the provisions offered

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Remote Participation In Public Meetings

Committee Eyes Outright Prohibition

On Thursday, the Judiciary Committee revisited a question that has vexed government transparency advocates, municipal attorneys and legislators for the better part of the last decade. The quandary relates to the intersection of Maine's Freedom of Access Act with the practical needs of public bodies and realities of modern technology. The main question is whether or not to allow members of public bodies to use audiovisual technology in order to participate in a public meeting from a separate location. The remaining question is, if so, under what terms. These questions exist because the Act, which requires that public meetings be accessible to the public, does not directly address the issue.

In 2013 and 2015, the Legislature answered the initial question affirmatively, but legislation failed to be enacted when the specific terms of "remote participation" could not be agreed upon. This time around, several members of the Judiciary

Committee appear interested in doing away with any discussion of the terms, instead moving to prohibit such activity altogether.

The committee advanced two bills for consideration this year, combining the two into the same public hearing. One of them, LD 1831, *An Act Concerning Remote Participation in Public Proceedings*, was printed at the recommendation of the Judiciary Committee and would completely prohibit the use of remote technology to participate in any meeting of a public body at the local level. Certain state agencies would be allowed to continue to utilize remote technology for their meetings for another two years.

The other bill, LD 1832, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation*, reflects a consensus reached by a stakeholder advisory committee that devoted multiple

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in the bill.

In addition to reiterating her offense at the governor's description of local public servants as "scammers," Rep. Gay Grant of Gardiner again asked for information regarding the governor's claim that in the last year alone, 12 other senior homeowners were evicted from their homes when unnamed municipalities had acquired property for the nonpayment of taxes. Although Rep. Grant stated that one case is too many, she believes a review of the other examples is warranted in order to pinpoint where the system failed and to design a solution that actually resolves the identified problem.

Rep. Matthew Pouliot of Augusta advocated for making changes to existing law to provide elderly property taxpayers access to the equivalent of a state level ombudsman tasked with linking senior homeowners to the resources and programs available to assist with property tax payments. Rep. Bruce Bickford of Auburn proposed amending existing law to allow boards of selectmen and councils to simply waive the automatic foreclosure process.

Bucket Davis, Chair of the East Machias Board of Selectmen, also attended Tuesday's work session. When asked to address the committee, he detailed the many avenues municipalities explore to ensure that those unable to pay the property taxes owed can remain in their homes. Mr. Davis reported that on some occasions, he and the remaining members of the board voluntarily dig into their own pockets and wallets to pay the property taxes owed.

After some discussion, the committee voted to table LD 1629 to allow the Governor's Office the opportunity to deliver

the requested information and provide the proponents additional time to finish their work on an amended version of the bill.

The last word on the subject came from Sen. Justin Chenette of York County who warned that if LD 1629 is enacted, Maine Revenue Services, as it pertains

to property in the unorganized territory, should be prepared to undertake the same administrative procedures required of municipalities. As the saying goes, what is good for the goose, is good for the gander.

A work session on LD 1629 is scheduled for Tuesday, Feb. 27 at 1:00 p.m.

Remote Participation In Public Meetings (cont'd)

meetings in the fall of 2017 to finding the best public policy answer to this question. LD 1832 would require any public body wishing to use remote technology to adopt a policy explicitly allowing the use, subject to the following eight minimum restrictions that would be spelled out in state law: (1) participation in executive session must be authorized in writing that includes procedures to ensure the privacy of the executive session; (2) 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; (3) a quorum of the body must be physically present, with certain exceptions; (4) members of the body must be able to hear and speak to each other during the proceeding; (5) a member who is participating remotely must identify the persons present at the offsite location from which the member is participating; (6) all votes taken during the public proceeding must be taken by roll call vote; (7) 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; and (8) remote participation is not allowed with respect to adjudicatory (i.e., judicial or quasi-judicial) proceedings.

At Thursday's hearing, no one spoke in favor of LD 1831. The 13 opponents of the bill included the Chair of the Isle Au Haut School Board Kendra Chubbuck, Rep. Walter Kumiega of Deer Isle, Island Institute, Brunswick Sewer District, Maine Water Environment Association, Maine Rural Water Association, Maine School Management Association, Atlantic Partners Emergency Medical Services, Maine State Housing Authority, Maine Community College System, University of Maine System, the Finance Authority

of Maine, and MMA. While a couple of these entities opposed LD 1832, most of them expressed an ability to live with most of that bill's provisions.

Rep. Kumiega encouraged the committee to sail with the wind rather than against it, taking the "opportunity to codify something that we know works." Based on the experience of some of the island communities he represents, including Frenchboro which has only three ferry trips per week this time of year, he sees no reason to place an undue burden on these communities. In his view, the question of whether or not to allow remote participation should be left to local residents to decide. While strictly in-person meetings may work in Portland, they can be unworkable in areas that rely on weather-dependent transportation systems.

A member of the committee raised a concern that state approval of remote participation will lead it to become the expectation or norm, whereby the public has difficulty holding their leaders accountable. Rep. Kumiega answered that it would be difficult to imagine the electorate supporting re-election of officials who regularly shirk their duties and avoid meetings, emphasizing that the written policy provided by LD 1832 could address this issue and be amended as the community sees fit. Rep. Kumiega and the Island Institute also questioned whether reaching a quorum or requiring a roll call vote on all matters needs to be addressed in statute, preferring to have these matters considered by local policies.

Isle Au Haut School Board Chair Chubbuck noted that the board cannot legally meet without the superintendent joining the conversation, and requiring the superintendent to be physically present

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Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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would make it nearly impossible to hold most of their meetings. This is especially the case during the regular meetings leading up to budget adoption at the annual town meeting, given that most of the town's budget in terms of dollars spent is the school budget. Not only is the superintendent's presence possible due to remote technology, but so is participation in these budget deliberations by many interested residents who may be off-island.

Because Isle Au Haut has only 35 year-round residents, to Chair Chubbuck it seems entirely illogical to prohibit residents with day jobs on the mainland from being allowed to volunteer for the town's many local boards, keeping them from participating in meetings on days they are not able to catch the 3:30 p.m. boat back to the island. As she put it, "we need them, it just works." She asked the committee to imagine how people would react if they could not get permits from their planning board when the permits are needed.

Emphasizing this point, the Island Institute called LD 1831 an existential threat to Maine's island communities, akin to shutting down schools. Removing a tool that works from these small and remote municipalities, all on the notion that the tool might potentially be abused when in regular practice it has not, makes little sense. A prohibition would make staffing local boards much more difficult in places where human capacity is already a struggle.

The Maine Water Environment Association (MEWEA) and the Maine School Management Association each emphasized the fact that local officials do their best to be responsive to the public, holding themselves to high standards of accessibility, and agreed with the reasonable parameters created by LD 1832. MEWEA also believes the quorum requirement should be left to local decision makers, and pushed back on the requirement that members calling from remote locations identify others present at their location. Their support for LD 1832 was made contingent on these two aspects of the bill being changed. The Brunswick Sewer District reminded the committee that its board members are volunteers, urging the Legislature to "let technology help." The

Maine Rural Water Association testified that it has worked with several districts that have long serving trustees who remain on the board as a result of the difficulty in finding new individuals to voluntarily serve in the public sector. MRWA sees "time and time again that the same individuals performing public service are often serving in multiple capacities within their community." For these reasons, they note that any elimination of the governing body's ability to conduct district business remotely could foreseeably result in a hardship for its smaller, rural water districts.

MMA's testimony focused on the fact that 35 states allow remote participation in their Freedom of Access statutes, and prohibiting it here overlooks the needs of Maine's rural communities while sending a negative message to municipalities. The message is negative because a prohibition appears to be based entirely on an assumption that municipal officials will

take a mile when given an inch, even though that has not been the case. Over several years of public hearings before the Judiciary Committee and Right to Know Advisory Committee, not a single example of municipal misuse of remote technology has been provided. For this reason, to many members of MMA's Legislative Policy Committee the bill seems to be a solution in search of a problem. There are clearly occasional situations where a three member selectboard, with one member in the hospital and the other out of town, will need to include offsite members in order to do its job.

The committee has scheduled its work session on these two bills for the afternoon of Tuesday, Feb. 27. The Association hopes this will be the year state policymakers will be able to strike a balance that allows for public access without impeding the ability of local governments to function.

Municipal Small Cell Preemption Limping Out of Committee

On Thursday, the Energy, Utilities, and Technology Committee reported out LD 1690, *An Act To Facilitate Wireless Broadband Deployment in Maine and Modify the Process for Issuing Utility Facility Location Permits*. The Jan. 19 and Feb. 2 editions of the *Legislative Bulletin* described the public hearing and work session on this bill, respectively.

At the work session, the committee voted 11-2 against passage of the bill, encouraging proponents to work out a more acceptable proposal. After the work session, MMA and a group of municipal officials agreed to discuss the bill with numerous representatives of the wireless phone industry. Following the discussion, the industry came back with an amended proposal that, from the municipal point of view, represented only a small step in the right direction. Common ground proved difficult to find as proponents continue to push for preemptions of home rule authority that at this time make little sense; the preemptions cover technology that is still in development and hasn't even found its

way to Maine yet.

Given the impasse, the committee did not reconsider its vote. The bill is now headed to the full Legislature for its review and, hopefully, disposal.

The association understands the industry is still encouraging legislators to pass LD 1690 on the false premise that it will cause the industry to expand broadband into rural Maine. Because small cell antennas are only capable of transmitting signals a few hundred feet, they are expected to be deployed primarily in densely packed areas, like downtowns or sports arenas. For this reason, it does not appear that small cells will offer any sort of panacea solution to Maine's broadband woes, even if local review is waived and deployment is fast-tracked.

Municipal officials are encouraged to correct the record in conversations with their representatives and senators. Maine needs an internet infrastructure roll-out based on partnerships, not preemptions. To the extent small cells are helpful, they will be welcomed at the local level.

Let Them Eat Brownies!

Marijuana Committee Keeps All Proceeds For State

While the merits of legalizing marijuana for non-medical purposes continue to be debated in Maine, there is no denying that the industry has been a sizeable boon to the budgets of states that have legalized the sale, possession and use of marijuana. Each of those states affords municipalities local revenues on the order of at least three cents per dollar sold, with some states allowing five or more times that amount.

As previous editions of the *Legislative Bulletin* have detailed, the Marijuana Legalization Implementation Committee's bill, LD 1719, afforded municipalities table scraps in comparison, offering only half-a-cent on each dollar sold at wholesale or retail. Apparently, even that sliver of a share is too much for the state to stomach.

On Wednesday, after a brief discussion with less than a hint of debate, the committee lowered its already low bar, even below the terms of the existing voter-initiated Marijuana Legalization Act. The Feb. 2 edition of the *Legislative Bulletin* described the latest proposal advanced by the committee, which was to allow for a municipal impact fee to offset actual costs in lieu of the bill's half-cent of revenue.

By a vote of 10 in favor and 2 opposed, the committee this week decided that its amendment to LD 1719 will not include any direct provision of tax revenues to municipalities, nor will it allow for local impact fees, nor will it afford a half-share of state licensing application fees as provided in the existing Act.

That public policy seems to undercut the very premise of the committee's efforts to date, which has been to reform the law in a way that ensures a highly

regulated yet robust legal market for non-medical marijuana that eventually eliminates the existing, and now flourishing, illicit market. All along, a key component of this initiative has been a two-tier regulatory approach, with the state and municipalities working in tandem. How the state expects municipalities to act as partners in regulating an industry filled with uncertainties without the proceeds to offset local costs is anyone's guess.

The committee's consistent efforts to date to allow ample home rule authority deserve serious credit. Subchapter 4 of LD 1719 provides thoughtful, clear, and helpful guidelines for local control. Additionally, some members of the committee offered their opinions that local property taxes and existing licensing and permitting fee authorities will help towns, cities, and plantations recoup their costs. There is also hope that some amount of the new state revenues will find its way to municipalities in the form of grants or marginally increased revenue sharing disbursements.

However, as the association and municipal officials have testified repeatedly, property tax resources already have a hard enough time covering other state mandates, and existing law limits local licensing or permitting fees to actual administrative costs. Moreover, any incremental bump to the Revenue Sharing Program will be needed by communities that choose not to opt in, to offset spillover costs resulting from neighboring municipalities that do opt in.

The result of this change to the bill is that municipalities which would like to opt in and allow commercial non-medical marijuana operations within

their boundaries will face a difficult choice: whether to sit on the sidelines of a new economic development opportunity, or whether to opt in and risk exposing their property taxpayers to a variety of new fiscal impacts.

Drawing from experience in other states, and from Maine's experience with medical marijuana operations, these costs are likely to include, but are far from limited to: increased risk of fires and power outages as a result of faulty electrical wiring or extraction operations; mold resulting from the moisture created when plants are grown indoors, causing habitability and resale issues; fertilizer runoff that can negatively impact wastewater and stormwater treatment efforts; increased water intake/usage and related demand on infrastructure and water sources; nuisance-level odor and lighting; parking and transportation safety at high traffic operations; and general criminal issues such as OUI, theft or burglary.

Because the proposal to remove local proceeds from the committee amendment appeared to be accepted as a *fait accompli* without any serious public debate, the municipal community will never know for certain the exact rationale for this change of heart. The only comments made publicly on Wednesday implied the shift had more to do with politics than policy, with one member acknowledging both the difficulty of this decision as well as his understanding that "political elements are hard to overcome."

The irony is that the state's revenues are directly contingent on participation at the local level. For now, it appears the state is still looking to feast, without helping hands to feed it.

Maine DEP Solidifies Relationship With Satellite Sewer Systems

In March 2017, the Committee on Environment and Natural Resources voted to kill LD 881, *An Act to Increase Wastewater Management Responsibility by Licensing Certain Municipal Sewerage Collection Systems*, which would have required municipal satellite wastewater treatment sites to be licensed by the state. On Valentine's Day 2018, the committee reignited the love of municipal regulation by the Maine Department of Environmental Protection (DEP) and voted "ought to pass as amended" on LD 399, *An Act To Revise Maine's Environmental Laws*.

Following the death of LD 881 last year, the committee chairs encouraged interested municipal wastewater systems to form a stakeholder group to review the legislation and to develop recommendations for the committee to consider in January 2018. LD 399 was presented as a concept bill that would implement the recommendations developed by the stakeholder group.

As proposed by the stakeholder group, the amended version of LD 399 grants DEP new authority to require the reporting of illegal or unauthorized discharges by satellite sewer systems and mandates the registration of these systems with the department. Along with system operator contact information, every five years each system must also provide the department with a basic map of their operations, numbers of residential and industrial connections, miles of system types and numbers of pumping stations.

Brian Kavanah, representing DEP's Division of Water Quality testified in support of the bill. The department believes LD 399, as amended, fills gaps in existing law by mandating that overflows and spills from satellite systems are reported. Mr. Kavanah clarified that although the department already has authority to enforce violations of overflows and spills under the existing federal Clean Water Act, and has taken action against satellite systems for system failures,

currently system operators have no duty to report such events. Mr. Kavanah testified the department has received voluntary reports of 45 illegal discharges from 11 municipal satellite system since 2007. However, he believes the number could be much higher and for this reason strongly supports the proposed mandatory reporting requirement.

Other stakeholders found LD 399 to be an improvement over LD 881, but were left with the feeling the effort was an unnecessary step for an unproven problem. Four members of the stakeholder group expressed some concerns with the proposed language and the possible regulatory "creep" the bill might initiate.

Robert Gasper, chair of the Manchester Sanitary District, testified in opposition to the bill, offering ample evidence that satellite systems are in compliance with the licensed treatment plants who treat their waste and provide maintenance service to the satellite systems. Pointing to his tenure since 1983, Mr. Gasper said he was aware of only a single overflow event in his district, and struggled to understand why DEP feels that system failures should be more frequent. He expressed the fear that the two page report requirement included in the amended version of LD 399 would grow exponentially in future years.

Dan Wells, Superintendent of Winthrop Utilities District, testified neither for nor against the bill, stating he did not have a problem with the information being requested, but like Mr. Gasper, remained concerned that over time state regulation and mandates would increase. He informed the committee that each system must already document their compliance with the Clean Water Act and Sewer Maintenance Regulations standards, and must report overflows currently under these regulatory conditions. Pointing to a current administrative order against an adjacent community, Mr. Wells asked what necessitated additional state regulatory authority.

Boyd Snowden, Superintendent of

the Oakland Sewer Department, testified that he agreed with the language proposed by stakeholders, but took issue with the DEP assertion that these publicly funded systems do not benefit from appropriate regulatory oversight. Mr. Snowden advised the committee that not only do satellite systems have community and municipal oversight, revenues provided by Rural Development Funds entail specific project monitoring standards as part of their loan requirements. He added the high cost of facility insurance has proven to be a far better driver for maintenance and repair, than regulation. Mr. Snowden also asked the committee to be mindful of the fact that many satellite systems do not have a large customer base from which to draw revenue or to hire engineering firms and consultants necessary to meet increased regulatory standards.

Alex Wong, Project Manager for the Maine Rural Water Association (MRWA), also testified neither for nor against LD 399. MRWA expressed appreciation for the process that allowed the Association to bring membership concerns to the stakeholder group, but also offered language to improve what was presented in the report. MRWA asked that the bill be further amended to clarify that the change advanced would not subject satellite systems to pre-treatment requirements. Mr. Wong also asked that the definition of mapping be broadened to include schematic or basic maps in an effort to reduce the cost of meeting this new registration mandate.

After a brief caucus, the committee voted "ought to pass as amended" on LD 399. The committee's amendment clarifies that the reporting requirements do not create new pre-treatment standards and includes language making a "no cost" mapping alternative an acceptable part of the registration process.

If the committee report is upheld by the entire Legislature and signed by Gov. LePage, the new registration requirement for satellite sewer systems will become law in July 2018.

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/>.

Monday, February 26

Criminal Justice & Public Safety
Rm. 436, State House, 1:00 p.m.
Tel: 287-1122

LD 1813 – An Act To Establish as a Class D Crime the Intentional Photographing of a Minor without Consent of the Minor’s Parent or Guardian by an Individual Required To Register as a Sex Offender.

Wednesday, February 28

Criminal Justice & Public Safety
Rm. 436, State House, 11:00 a.m.
Tel: 287-1122

LD 1838 – An Act To Amend the Laws Governing Indecent Conduct To Include Distribution of Photographic Images.

State & Local Government
Room 214, Cross State Office Building, 9:00 a.m.
Tel: 287-1330

LD 1840 – An Act To Revise the Municipal Consolidation Referendum Process.