

Municipal Matters

Mandates

Maine Constitution Article IX Section 21. State mandates. For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the vote of 2/3 of all members elected to each House. This section must be liberally construed.

This is the second article in a limited series discussing important municipal issues for the purpose of exploring the background and context for the positions taken by the Association's Legislative Policy Committee.

Background

In 1992, the Legislature enacted an amended version of LD 66, *RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities*, which was sponsored by Sen. Nancy Clark of Cumberland County. The initiative, supported in the Senate by a margin of 30 to 1 and in the House by a vote of 109 to 20, sent out to Maine voters a question proposing an amendment to the state's Constitution that would significantly limit the ability of state lawmakers to shift unfunded mandates to local governments. On Nov. 3 of that same year, Maine voters ratified the mandate amendment.

Generally, mandates are considered to be state or federal directives to local governments (not the general public or private sectors) to perform a certain activity. The historic reliance on municipal government to provide services for the general good of the state is deeply embedded in Maine's history, with a number of programs mandated to be provided by municipalities established as early as the 19th Century.

Under Maine law, state directives are only technically deemed to be a mandate when they entail a new cost. As defined by the provision of Maine's Constitution quoted above, a mandate is an action of the state (statutory or regulatory) that requires a local unit of government to expand or modify its activities in a way which necessitates the expenditure of additional local revenue.

How the Mandate Law Works

At the state level, Maine's Constitution only allows the state to impose new mandates on municipalities by funding at least 90 percent of the local costs of the

mandate, or by overriding this funding requirement and enacting an "unfunded mandate" by at least a 2/3 vote in both the House and Senate. Otherwise, local units of government – i.e., towns, cities, plantations, school systems, counties, quasi-municipal districts, etc. – have no legal obligation to comply with the mandate.

The statute enacted to implement the constitutional amendment is Title 30-A, section 5685. Important qualifying elements of that implementing statute provide that:

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Right to Know Advisory Committee Seeks Amendments to the Freedom of Access Act

The reach of Maine's Freedom of Access Act ("FOAA") looks set to continue to grow, spurred on by the Right To Know Advisory Committee, which is established in state law to "serve as a resource for ensuring compliance... and upholding the integrity of the purposes" of the Act. Last week, the Committee's thirteenth Annual Report was released for the 129th Legislature's consideration. Three of the Committee's four recommendations would impact local

governments.

Mandated Training. The first recommendation asks for a do-over for a bill that died in the crossfire of the 128th Legislature. That bill mandated that the freedom of access training currently required of all elected officials also be required of all officials who are appointed, rather than elected, throughout the state. The Advisory Committee still stands by that principle and hopes for

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(1) The state cannot meet its obligation to properly fund a mandate by authorizing the municipalities to levy new taxes or fees or by using funding previously appropriated to the local governments for other purposes;

(2) The Legislature must expressly and knowingly override its general obligation to properly fund new state mandates – a two-thirds vote by itself, without the “mandate preamble” being part of the bill, is insufficient to override the State’s financial obligation; and

(3) If a mandate is enacted without the necessary two-thirds vote, there is no obligation on the local level to perform the mandated function.

The Legislature’s Office of Fiscal and Program Review (OFPR) is charged with identifying potential mandate implications contained in the bills making their way through the legislative process. For the mandates they identify, OFPR provides an estimate of the costs to local governments. OFPR has interpreted guidance provided by the Maine Office of the Attorney General and summarized which types of state government actions they generally interpret as imposing a mandate, and which types they do not believe constitute mandates.

According to OFPR’s summary, mandates may include the following:

- Bills introduced on behalf of local units of government are mandates, despite being initiated and favored by the local units, if those local units are required to do something that requires additional expenditures, such as hold a

special election.

- Bills generating revenue at the local level or net savings in aggregate are mandates if they include any requirements that may result in any local unit of government incurring additional costs to implement.

- Bills establishing a new state requirement that all or some municipalities may already have implemented or bills prohibiting cuts in programs are mandates even though many local units may be in compliance.

Alternatively, OFPR does not consider the following to be mandates:

- Bills of general applicability, such as bills that affect employers generally or environmental regulations that are not directed at operations specific to local units of governments, because they do not “primarily affect” a local unit’s governmental activities;

- Legislation setting new standards for discretionary programs, such as bills that require local units of governments to perform certain activities if those units choose to implement a particular program, because they do not actually require those local units of government to do something;

- Bills adding new crimes or enhancing the class of certain crimes, because enforcement at the local level is discretionary and the laws are not directed specifically at local units of government;

- Bills reducing state subsidies, because reducing state subsidies alone does not actually require local units to expand or modify their activities; and

- Constitutional Amendments, because they are not “enacted” by the legislature but are instead submitted to the voters for final adoption.

Municipal Impacts

The first mandate requirements were put into place almost as soon as Maine gained statehood. For example, municipalities have always been and continue to remain the primary administrator of all elections in Maine. Another example, harking back to the English “pauper laws” of the 17th Century, is the concept of municipal responsibility for assisting impoverished citizens who lack access to basic life necessities. In the mid-1970s the pauper laws were modernized into the General Assistance program and the state came in as a financial partner for the first time with the creation of a reimbursement system. Under current law, municipalities are responsible for the total cost of administering the program and the state is financially responsible for reimbursing municipalities for 70% of the benefits issued to residents in need.

Over the last several decades, a wide range of mandates have been enacted by the Legislature. State-imposed requirements on local governments include, but are far from limited to, the following:

- Holding an annual meeting and publishing an annual report;

- Keeping government records and complying with Maine’s Freedom of Access Act;

- Employing certain officials, including animal control officers, assessors, clerks, code enforcement officers, fire chiefs, fire inspectors, forest fire wardens, harbor masters, health officers, road commissioners, selectpersons, tax collectors, and treasurers;

- Providing education, not only in compliance with various instructional and testing requirements but also logistical matters like bomb threat preparedness and pesticide application management;

- Administering local, state, and federal elections;

- Managing solid waste;

- Managing stormwater;

- Shoreland and other types of zoning

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better luck this time around.

Remote Meetings. The second recommendation pertains to what is known as “remote participation,” addressing the legal question of whether or not FOAA prohibits officials from using audiovisual technology to participate in a public meeting from a location other than the place of the meeting. Maine’s Freedom of Access Act does not directly address the question, creating an ambiguity in law that vexes members of the committee each year.

As far as the Association is aware, the only actual instance of abuse of remote participation is one 1979 vote conducted over the phone by county commissioners to expend public funds on a certain project. Forty years later, this type of entirely telephonic meeting where no public access to a central location is permitted is widely understood to be impermissible under Maine’s Freedom of Access Act. Meanwhile, advances in technology have ushered in a sea change in the ability of people to functionally interact with one another from separate locations, with a corresponding rising tide in the public’s use of remote meeting technology.

Based on the experience of MMA’s Legal Department, which has for decades fielded questions from municipal officials regarding Maine’s Freedom of Access Act, remote participation is typically only needed under unforeseen circumstances whereby one or two members of an elected three-person board are physically unable to attend. For hundreds of municipalities in this state, the three-member selectboard oversees all governmental operations, requiring the presence of two members to act. Issues like ice storms, hospitalizations, or ferries running off schedule all give rise to the need to utilize an offsite participation capacity to function, particularly with respect to time-sensitive matters.

Although the Right to Know Advisory Committee has put forward remote meeting bills nearly annually, the Legislature’s Judiciary Committee has struggled with how to appropriately balance the public interest in accessibility with the need of local bodies to conduct

their business in difficult or geographically disparate circumstances.

The Advisory Committee this year concluded this question should be examined by more legislators. The report recommends that the Legislature create a legislative study commission on remote participation. Whether before the Advisory Committee, Judiciary Committee, or Study Commission, MMA will continue to remind policymakers that no examples of municipal officials abusing remote technology have ever been reported.

Penalties. Finally, the Committee also recommends increasing the penalty

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and construction enforcement;

- Subdivision review,
- Road maintenance;
- Drinking and waste water treatment; and
- Veteran grave maintenance.

Fortunately, in recent years the Legislature has been reluctant to enact new unfunded mandates on municipalities, especially if the cost of the mandate is significant. But there have been exceptions. Two of the most substantial recently enacted unfunded mandates have impacted the way public employers and employees are treated under Maine’s Workers’ Compensation laws. While bills that propose to shift new Workers’ Compensation burdens onto the state or private sector employers are hardly ever enacted, new “rebuttable presumption” laws have been imposed overwhelmingly – if not exclusively – on local government employers over the past decade.

It warrants mentioning that in terms of fiscal impact, two of the most significant mandates falling upon local governments come from the federal government. The first is in the area of environmental regulation and education. Specifically, the federal requirements under the Clean Water Act regarding the management of drinking water, wastewater and stormwater. The second is the Individual’s with Disabilities in Education Act (IDEA), also referred to

for intentionally violating the FOAA. This recommendation appears to hail from evidence of violations at the state level, not the local level, but would nonetheless equally impact municipalities. The Committee’s bill will increase the current maximum \$500 penalty to \$1,000 for a second willful violation within four years, and \$2,000 per violation for the third and subsequent violations. Moreover, the proposal will count offenses by individual officials collectively against the employing agency or municipality.

MMA will continue to monitor these recommendations as they move through the legislative process.

as to “special education.” Compliance with these two mandates alone places a burden on Maine’s property taxpayers and utility rate payers valued at hundreds of millions of dollars annually.

Moving Forward

The passage of unfunded state mandates shifts additional pressures onto Maine property taxpayers, effectively placing the state’s funding priorities ahead of a community’s desired programs and services. Although the general shift toward avoiding enacting new unfunded mandates has been appreciated, the recent emphasis on imposing new mandates on municipal employers and not all employers seems disproportionate to the reality of workplace incidents. This trend is as unfortunate as it is unwelcome.

Especially in the recent context of substantial shifts of state responsibilities onto municipal governments, municipal leaders are asking state policymakers to recognize Maine’s over-reliance on local property taxpayers, and avoid passing new unfunded mandates. The state mandate law affords lawmakers the opportunity to put their money where their policy positions are and fund at least 90% of the mandates it passes along to municipalities. The Association will continue to advocate for backing significant state mandates with state funds rather than limited local resources.

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, January 21 – HOLIDAY

Tuesday, January 22

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635

LD 47 – An Act To Authorize a General Fund Bond Issue To Invest in Fire Stations.

LD 48 – An Act To Authorize a General Fund Bond Issue To Invest in Housing for Persons Who Are Homeless.

Thursday, January 24

Marine Resources
Room 206, Cross Building, 1:00 p.m.
Tel: 287-1337

LD 4 – An Act To Encourage Applied Shellfish Research.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's official 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.)

Criminal Justice and Public Safety

LD 141 – An Act To Promote Highway Safety by Restricting the Use of Marijuana and Possession of an Open Marijuana Container in a Vehicle. (Sponsored by Rep. Corey of Windham)

This bill is similar to the provisions of law making consuming alcohol or having an open container of alcohol in the passenger area of a vehicle a traffic infraction. Specifically, the bill makes it a traffic infraction to consume marijuana or a marijuana product, to possess an open container of marijuana or a marijuana product in the passenger area of a vehicle or to place marijuana or a marijuana product in a container labeled by the manufacturer of the container as containing a non-marijuana substance.

LD 159 – An Act To Require Cameras in Ambulances When a Patient is Being Transported. (Sponsored by Sen. Miramant of Knox Cty.)

This bill requires that, whenever an ambulance transports a patient from the scene of an emergency or from a hospital or other health care facility to another place, the ambulance must be equipped with video recording equipment that is in operation for the duration of the transport and that is producing a clear video record of the care provided to the patient. In accordance with applicable federal and state law, the video records are to be maintained as confidential by the ambulance service operator and, if applicable, by the Emergency Medical Services' Board and the Department of Public Safety.

LD 182 – An Act To Amend the Maine Bail Code Regarding the Financial Capacity of a Defendant To Post Bond. (Sponsored by Rep. Pierce of Falmouth)

This bill amends the Maine Bail Code to provide that a defendant who is not dangerous, is not a flight risk in the absence of bond and is otherwise eligible for bail may not be detained solely due to financial inability to post a money or property bond and may file a motion with the court requesting relief from the requirement to post a money or property bond. This bill requires the court to determine the financial capacity of the defendant and rule on the motion in an expedited manner.

Education and Cultural Affairs

LD 63 – An Act To Improve Responsiveness of Elected School Boards to the Public. (Sponsored by Rep. Arata of New Gloucester)

This bill clarifies that a school board is accountable to the residents of the school board's district, who are the school board's constituents.

LD 136 – An Act To Establish a Special Education Circuit Breaker Reimbursement Program. (Rep. Rudnicki of Fairfield)

This bill establishes the special education circuit breaker reimbursement program, in which the Department of Education reimburses school administrative units, for a student whose eligible special education costs exceed 4 times the statewide EPS per-pupil rate, 75% of the amount of the special education costs that are above 4 times the statewide EPS per-pupil rate. The bill requires the department to distribute reimbursements to eligible school administrative units on a quarterly basis, and the reimbursements must be deposited in a separate revolving account that may be spent only on approved special education services.

LD 178 – An Act To Increase the State Share of the Cost of Health Insurance for Retired Teachers. (Emergency) (Sponsored by Rep. Collings of Portland)

Current law requires the state to pay 45% of a retired teacher's share of the premium for group accident and sickness or health insurance. This bill incrementally raises that percentage to 90% by June 30, 2027.

Energy, Utilities and Technology

LD 173 – An Act To Promote Economic Development and Critical Communications for Family Farms, Businesses and Residences by Strategic Public Investment in High-speed Internet. (Sponsored by Rep. McCrea of Fort Fairfield)

This bill proposes to increase funding to the ConnectME Authority from \$1 million to \$5 million to expand universal broadband and high-speed internet into rural areas identified as the 6% of the state unserved

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by high-speed internet. This bill proposes to make expanding high-speed internet into unserved rural areas a key emphasis in the economic development of and to multiply the return to the state by directing the ConnectME Authority to use the increased funding to increase the rate of strategic broadband investment and leverage additional federal funding to provide middle-mile and last-mile infrastructure in the unserved areas and to correct broadband deficiencies identified in the ConnectME Authority's baseline update of 2013.

Environment and Natural Resources

LD 112 – An Act To Implement Changes to Maine's Solid Waste Laws Pursuant to a Review of the State Waste Management and Recycling Plan. (Sponsored by Rep. Tucker of Brunswick)

This concept draft bill proposes to implement changes to the laws governing the management, reduction and recycling of solid waste determined necessary based on a review of revisions to the state waste management and recycling plan prepared by the Department of Environmental Protection.

Inland Fisheries and Wildlife

LD 79 – An Act To Protect Shooting Ranges. (Sponsored by Rep. Corey of Windham)

This bill allows the discharge of a firearm on a sport shooting range that is within 100 yards of a building if the sport shooting range was established and in regular operation prior to the erection of the building.

Innovation, Development, Economic Advancement and Commerce

LD 105 – An Act To Establish the Office of Outdoor Recreation. (Sponsored by Sen. Breen of Cumberland Cty.)

This bill creates the Office of Outdoor Recreation within the Department of Economic and Community Development. The office is charged, in part, to strengthen and grow the outdoor recreation economy by developing strategies to create outdoor recreation employment, to enhance business growth and to coordinate with state economic development leaders to integrate development of the outdoor recreation industry with the state's economic development efforts, as well as to monitor, analyze, develop and coordinate outdoor recreation policies at the federal, state and local levels. The bill also proposes to fund the new office through an annual allocation of \$250,000 from the Tourism Marketing Promotion Fund, which is funded by a portion of the meals and lodging sales tax.

LD 149 – An Act To Authorize a General Fund Bond Issue To Provide Student Debt Forgiveness To Support Workforce Attraction and Retention. (Sponsored by Sen. Libby of Androscoggin Cty.)

This bill sends out to the voters a proposed \$250 million bond issue to provide funds for payment of student loan debt for individuals who agree to live and work in Maine for 5 years and to reimburse employers that make student loan debt payments on behalf of their employees who agree to live and work in Maine for 5 years. The bill also establishes the Maine Student Loan Debt Relief Program and the Maine Student Loan Debt Relief Fund and requires the Finance Authority of Maine to adopt major substantive rules to implement the program and submit the rules to the Second Regular Session of the 129th Legislature.

Labor and Housing

LD 69 – An Act To Provide Economic Security to Maine Families through the Creation of a Paid Family Medical Leave System. (Sponsored by Sen. Herbig of Waldo Cty.)

This bill creates a paid family medical leave program, patterned after the unpaid family medical leave program existing in current law but requiring a contribution from an eligible employee, or a self-employed person on a voluntary basis, of no more than 0.5% of the employee's

or self-employed person's wages or earnings. The program requires employers to deduct the contributions from employee paychecks and requires the employers and self-employed persons to submit contributions to the Department of Labor, Bureau of Unemployment Compensation, which is charged with administering the program. The program pays benefits of up to 66% of an employee's wages or self-employed person's earnings, capped at the same maximum amount as unemployment benefits for leave taken by the employee or self-employed person for various family-related medical issues. The bill makes participation optional for employers that employ fewer than 15 employees. The bill also directs the Department of Labor to develop an implementation plan dealing with staffing, technology, start-up expenses, rulemaking and scheduling to begin the program on its effective date of October 1, 2020.

LD 75 – An Act To Protect Earned Pay. (Sponsored by Sen. Herbig of Waldo Cty.)

Under current law, a person who receives or is scheduled to receive remuneration in the form of vacation pay in excess of 4 weeks' wages or holiday pay is disqualified from receiving unemployment benefits for the week that remuneration is due. This bill removes those disqualifications.

Taxation

LD 77 – An Act To Increase the Homestead Property Tax Exemption to \$50,000 for Persons 75 Years of Age and Older. (Sponsored by Rep. O'Connor of Berwick)

This bill increases the property tax exemption for individuals who are 75 years of age or older from \$20,000 to \$50,000 for property tax years beginning on or after April 1, 2020. A homeowner seeking an enhanced exemption must file a notification verifying the individual's age with the assessor prior to April 1st of the year on which the taxes are based.

LD 118 – An Act To Direct Vehicle Excise Tax Revenue for Local Transportation Infrastructure. (Sponsored by Rep. Cebra of Naples)

This bill provides that revenue received by a municipality from the vehicle excise tax must be used for maintenance or improvement of transportation infrastructure within that municipality.

LD 119 – An Act To Base the Motor Vehicle Excise Tax on the Sale Price. (Sponsored by Rep. Cebra of Naples)

This bill changes the method of computing the excise tax that is levied on motor vehicles and camper trailers registered in the state. With the exception of certain commercial motor vehicles and buses and special mobile equipment, current law requires that the excise tax be based upon the maker's list price for the motor vehicle; the excise tax on certain commercial motor vehicles and buses and special mobile equipment is based on the purchase price. This bill requires that the excise tax for all motor vehicles and camper trailers be based upon the purchase price of the vehicle. Either the original bill of sale or the state sales tax document may be used to verify the purchase price. Current law requires the State to reimburse a municipality for the difference in the amount of excise tax that would have been collected by the municipality on each commercial motor vehicle or bus using the manufacturer's suggested retail price instead of the actual purchase price. This bill applies that requirement to all vehicles registered and taxed by the municipality using the actual purchase price.

LD 133 – An Act To Fully Restore State-Municipal Revenue Sharing for Fiscal Year 2018-19. (Emergency) (Sponsored by Rep. Evangelos of Friendship)

This bill restores state-municipal revenue sharing to 5% from 2% for the current fiscal year (July 1, 2018 to June 30, 2019), rather the restoring full funding in the next fiscal year (July 1, 2019 to June 30, 2020), as statutorily required.

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HOPPER (cont.)

LD 146 – An Act To Make the Assessment and Collection of Personal Property Taxes Optional for Municipalities. (Sponsored by Rep. Cebra of Naples)

This bill allows a municipality, by referendum, to exempt all personal property located in that municipality from taxation.

LD 156 – An Act To Allow Regional Service Center Municipalities To Assess an Additional One Percent Sales Tax for Infrastructure Costs. (Sponsored by Sen. Miramant of Knox Cty.)

This bill allows a municipality that is a service center community to impose a local option sales tax of no more than 1% by local referendum for the purpose of funding infrastructure costs specifically authorized by the local legislative body.

LD 163 – An Act Regarding Property Tax Relief for Veterans. (Sponsored by Sen. Farrin of Somerset Cty.)

This bill provides enhanced property tax exemptions for certain veterans. A veteran regardless of age becomes eligible for a \$25,000 exemption if the veteran has served at least 90 days of active service and has served in a combat zone. A veteran with a service-connected disability becomes eligible for a \$50,000 exemption if the disability is rated 50% to 90% and a \$100,000 exemption if the disability is rated 100%. A surviving unremarried spouse, minor child or parent who is receiving a pension based on the service of a deceased veteran qualifies for the same exemption. The bill also requires the state to reimburse

municipalities for 50% of the lost property tax revenue.

LD 164 – An Act To Reduce Property Taxes for Maine Residents. (Sponsored by Sen. Pouliot of Kennebec Cty.)

This bill increases the total exemption under the Maine resident homestead property tax exemption program to \$50,000 for property tax years beginning on or after April 1, 2020. This bill also increases state reimbursement to municipalities for homestead property tax exemptions from 62.5% to 100% for property tax years beginning on or after April 1, 2020.

LD 193 – An Act To Fully Fund and Restore State-Municipal Revenue Sharing. (Emergency) (Sponsored by Rep. Harnett of Gardiner)

This bill restores state-municipal revenue sharing to 5% from 2% as of Jan. 1, 2019, which is six months earlier than currently provided in law.

Veterans and Legal Affairs

LD 186 – RESOLUTION, Proposing an Amendment to the Constitution of Maine To Specify the Qualifications of Electors. (Sponsored by Rep. Faulkingham of Winter Harbor)

This resolution proposes to amend the Constitution of Maine to specify that only a person who is a citizen of the United States may vote in a state, county or municipal or other local election.