

Remote Meetings To Be Prohibited, Until Allowed

On Wednesday, the Judiciary Committee voted unanimously to advance to the full Legislature a proposal that would put to rest the question of whether a variety of public bodies, including municipalities, can use audio-visual technology to participate in meetings from a remote location. The bill is LD 1183, *Resolve, To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation by Members of Public Bodies*, sponsored by Rep. Donna Bailey of Saco, and as amended it would prohibit remote participation unless the “constituents of the public body” vote to authorize the public body to adopt a policy allowing remote meeting participation, subject to parameters described below.

Before describing the amendment, some background may be helpful. Maine’s Freedom of Access Act (FOAA) is currently silent on the question of remote participation, but a 1979 opinion issued by the Maine Attorney General’s Office called into question its legality. The opinion decided that a vote taken by a board of county commissioners was likely invalid under Maine’s Freedom of Access Act because, for the vote in question, there was no public meeting location and the commissioners voted entirely over the phone from separate locations.

As a result of this decades-old opinion, and in light of significant technological improvements in the intervening period of time, Maine’s Right to Know Advisory Committee has for years discussed how to establish parameters for lawful remote participation in public meetings. The policies that the advisory committee has recommended would typically apply equally to all of the hundreds of various types of local boards and councils, while

often carving out different policies for state-level entities.

When similar recommendations have been brought to the Legislature in the past, committee members have split on the question of whether or not remote participation should be allowed at all, let alone allowed subject to limitations. Even though municipal officials understand the basic requirement of holding public meetings in a central, accessible location, and even though no one has in recent memory complained to the state of any municipal impropriety resulting from the use of remote technology, representatives and senators have often taken the view that anyone who agrees to hold

office must attend the meetings, period.

During the work session, the sponsor of the bill acknowledged the hypocrisy of that view given the ability of legislators to cast votes at the committee level from remote locations or, under certain circumstances, by proxy even after missing hearings and work sessions. After a thoughtful conversation, and with an eye toward ending this ongoing debate, the committee voted to support an amendment that was rejected last year even after diligent work by the advisory committee and further refinement by Rep. Chris Babbidge of Kennebunk, who has been a member of both committees.

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Homestead Exemption Expansion

Through votes on two bills, LD 164, *An Act To Reduce Property Taxes for Maine Residents*, sponsored by Sen. Matthew Pouliot of Kennebec County and LD 1234, *An Act To Expand the Value of the Homestead Exemption to \$25,000 and State Reimbursement to 100 Percent of Lost Property Tax Revenue*, sponsored by Rep. Betty Austin of Skowhegan on behalf of MMA, the Taxation Committee endorsed – to varying degrees – three avenues for increasing the property tax relief provided under the state’s homestead exemption program.

The committee unanimously voted to support an amended version of LD 164. As amended, the bill increases the homestead exemption from the current \$20,000 to \$30,000 and provides municipalities 100% reimbursement for the lost property tax revenue. A provision in the amendment also requires municipalities

to include a note on the property tax bill encouraging qualifying property taxpayers who are not receiving the exemption to enroll in the program.

By a vote of 6 to 3, the committee supported an amended version of LD 1234. The majority report increases the value of the homestead exemption to \$25,000 and provides full reimbursement for only the \$5,000 increase by adjusting the state’s reimbursement rate from 62.5% to 70%.

The minority report on LD 1234 requires the state to fully reimburse municipalities for the lost revenue under the current \$20,000 exemption.

The changes proposed in all three options would impact tax years beginning on April 1, 2020.

It is now up to the Legislature to decide which option, if any, to advance to the Appropriations Committee for funding.

Remote Meetings To Be Prohibited, Until Allowed (cont'd)

If the amended version of LD 1183 is enacted, five basic statewide parameters will apply to the technological participation in public meetings by members of local public bodies.

First, as noted above, the constituents of the body will be required to authorize (at the local level likely either through a town meeting or referendum vote) the body to adopt its remote participation policy.

Second, no policies may allow remote participation in executive session, and votes may not be cast remotely on issues just discussed in executive session.

Third, a quorum is required for public bodies with more than three members, and for bodies with three or fewer members, at least one member of the body must be physically present at the location identified in the meeting notice.

Fourth, all members must be physically present during at least one public proceeding per year.

Fifth and finally, municipalities and counties are authorized to impose stricter limits or total prohibitions on remote participation.

To the Association, these parameters seem to respect the realities of Maine's smaller communities while putting Maine in line with 35 other states that allow remote participation in one way or another.

In additional FOAA-related news, the Judiciary Committee voted in favor of passing the first of the three following bills and tabled the fourth:

LD 1414, *An Act To Implement the Recommendations of the Right To*

Know Advisory Committee Concerning Penalties for Violations of the Freedom of Access Act, will establish a tiered schedule for the fines that are imposed on state and local entities for willful FOAA violations. The tiers are up to \$500 for the first violation, up to \$1,000 for the second, and up to \$2,000 for the third and subsequent violations committed within four years of a willful violation. MMA opposed this legislation.

LD 1416, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Freedom of Access Training for Public Officials*, will expand the FOAA training currently required of elected employees to appointed employees as well. MMA supported this legislation.

LD 1511, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions*, will create protection for Social Security numbers in communications with constituents, automatically protect information concerning minors obtained by municipalities in various recreational or educational program-

ming instead of requiring an ordinance to establish protection, and accomplish a few other housekeeping-type measures. MMA supported this legislation.

LD 1575, *An Act To Improve the Freedom of Access Laws of Maine*, proposes to make four changes to Maine's FOAA law. One is to define "governmental business," and another is to direct the advisory committee to study and make recommendations on how this law ought to interact with newer types of technological communication such as text messaging. The two most significant provisions would: (1) require that requests for public records must contain sufficient evidence to identify the record sought, such as specific subject matter and relevant dates, and, last but not least, and (2) establish a two-month limit on FOAA responses. As proposed in the bill, public officials would need to provide a progress update within 30 days of receiving the request, and fulfill the request after another 30 days, or provide an explanation for being unable to comply and then continue to fulfill the requests when able. MMA supported this legislation.

CEO Training Slated for Improvement

An amended version of LD 855, *An Act to Strengthen the Maine Uniform Building and Energy Code* sponsored by Rep. Chris Caiazzo of Scarborough received unanimous support from the members of the Criminal Justice and Public Safety Committee this week. The bill seeks to improve the quality and frequency of the state training program offered to code enforcement officers (CEO) who are required to enforce the Maine Uniform Building and Energy Code.

As amended by the committee, the bill: (1) moves oversight of the training program from the Department of Economic and Community Development (DECD) to the Fire Marshal's Office; (2) adds a \$5 surcharge to the fees municipalities assess for new building, addition, and renovation permits; and (3) requires communities to remit the increased per-

mit revenue to the state to help fund the training and technical support provided to municipal officials required to enforce building, fire and plumbing codes.

Currently, DECD has one employee tasked with managing all aspects of the statewide training program. Under the supervision of the Fire Marshal's Office, three employees, including a technical codes coordinator, training officer and an administrator, will manage the program. Assistant State Fire Marshal, Richard McCarthy, also envisions developing a mentoring program enabling experienced CEOs to assist new employees in navigating all aspects of the code enforcement process. The end goal is to provide a support system that helps municipalities attract and retain much needed code enforcement officers.

The fate of LD 855 will be determined by the full legislative body soon.

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Clouds Parting On Solar Policy

One of the most contentious issues in the 2015 and 2017 Legislatures centered on the question of whether and how the state would encourage the solar power industry. A variety of proposals on this topic have been the subject of debate and deliberation. Common to them was direction to the Public Utilities Commission to procure more megawatts of power from panels of photovoltaic cells that capture solar energy, and to adopt metering proposals that allow those with solar cells to reduce their transmission and distribution bills or generate profit. Little was achieved on the first goal, and on the second the state has tried and revisited a few different metering policies. The bill that could put an end to this quagmire received a public hearing on Thursday.

LD 1711, *An Act To Promote Solar Energy Projects and Distributed Generation Resources*, sponsored by Sen. Dana Dow of Lincoln County, would substantially amend Maine law regarding solar energy billing and in particular the Maine Solar Energy Act.

At the hearing, over 20 people or organizations testified in support of LD 1719. The Industrial Energy Consumer Group was the only opponent, and the Public Advocate and Public Utilities Commission (PUC) testified neither for nor against the bill.

Supporters included residents from all over the state, Rep. Sara Gideon of Freeport, the Natural Resources Council of Maine, Portland Climate Action Team, A Climate to Thrive, Dynamic Energy Solutions, Borrego Solar, Sierra Club Maine, Conservation Law Foundation, Walden Renewables, Pine Gate Renewables, the Center for an Ecology Based Economy, Emera Maine, Central Maine Power, and several municipalities including Augusta, Falmouth, Portland, South Portland, Waldoboro, and York.

Sen. Dow explained he was building upon the framework established by Sen. David Woodsome of York County last session, and views the bill as a solution on the solar energy front, but not necessarily to all of Maine's energy challenges. Sen. Dow believes his legislation will increase market competition

and drive prices down by focusing not only on people's homes but also on larger community sized farms that can reduce the cost for people indirectly if they don't have a property suitable for their own panels. He referenced businesses, schools, towns, cities, and commercial customers.

Rep. Gideon called the proposal a major and long overdue step toward making Maine a leader in clean energy once again. The Governor's Energy Office reminded the committee of Governor Mills' intention to convert Maine to running on 8% clean energy by 2030, highlighting how Maine has about 600 solar energy jobs compared with over 10,000 in Massachusetts. According to testimony, the Governor sees an opportunity in solar for our state to play a part in a growing market.

Augusta's Director of Development Services Matt Nazar explained how his city has over the past six years invested \$6 million upgrading equipment and installing new technologies that will save taxpayers tens of millions of dollars over the equipment's lifetime. Four of the initiatives the city has completed include: (1) upgrading municipal buildings' lighting to LED, (2) converting inefficient oil boilers to natural gas boilers, (3) installing electric generating equipment at its landfill that produces electricity for city buildings with methane, and (4) installing a cogeneration turbine at city hall, which they believe was a first for a municipal building in Maine. The city said LD 1711 will give it negotiating and purchasing flexibility to work with solar power generators in a way they currently cannot.

Town of Falmouth Energy and Sustainability Coordinator Kimberly Darling explained the town's attempt to site a megawatt-size solar project on its capped landfill over the past three years. The town believes, based on its feasibility study, that the installation could reduce its electric load by 25% in its first year of operation, and potentially closer to 30% given LED streetlight and interior lighting upgrades. But the current project cap of 660 kilowatts and the ability to offset only 10 accounts has

kept their project from moving forward. The town therefore supports the bill's increase to the project size cap from 660 kilowatts to 5 megawatts and lift of 10 metered accounts to 200, which will enable their array to take advantage of economies of scale and move forward in a viable way.

City of Portland Sustainability Coordinator Troy Moon testified in support of the bill, while also pointing out that the auction process for larger scale projects may be cumbersome and difficult for municipal budgeting purposes. He suggested creating a tariff for these distributed generation (i.e. closer to the site of consumption) projects up to two megawatts.

City of South Portland Sustainability Director Julie Rosenbach supported the bill overall as a great step forward that creates a solid framework, while also dialing in on the same municipal budgeting concern. The bill, in her view, is most helpful to residential level net metering and large scale projects that use a competitive procurement process. But municipal projects can fall in a gap between these two levels, because the municipal load is comprised of "medium general service" accounts. Net metering does not work well for these accounts due to demand charge math, while the bidding complexity of the competitive procurement process could be tough for municipal officials to navigate at best and downright unworkable in the capped landfill settings due to the cost premium for brownfields over ordinary land. For these reasons, Rosenbach also suggested directing the PUC to establish an ongoing, predictable tariff rate through a process municipalities can navigate.

Waldoboro Select Board Chair Robert Butler, on behalf of the town, described how his municipality has created a 110 kilowatt array on its capped landfill and encouraged the Legislature to lift unwarranted restrictions on solar developments. He described how the closed and blighted Osram Sylvania plant is being looked at in a different way now that it has renewable energy

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Law Enforcement Profiling

On Monday, the Judiciary Committee heard testimony on LD 1475, *An Act To Eliminate Profiling in Maine*, sponsored by Rep. Craig Hickman of Winthrop. The bill aims to prohibit investigation of people based on appearances rather than circumstances. To achieve that end, the proposal would define profiling as the discriminatory practice of a law enforcement officer or law enforcement agency relying, to any degree, on actual or perceived race, gender, ethnicity, religion, socioeconomic status, ancestry or national origin in targeting an individual for routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and time frame, that links a person with a particular characteristic to an identified criminal incident or scheme.

Specifically, LD 1475 directs the Board of Trustees of the Maine Criminal Justice Academy to establish policies and procedures to eliminate profiling and require mandatory training and anti-profiling education by all law enforcement agencies in the state. All law enforcement agencies would be required to adopt written policies on profiling and to implement procedures for receiving, investigating and responding to complaints of profiling. The bill also directs the attorney general to adopt rules and guidelines for collecting and reporting data regarding profiling. The rules would have to define what data must be collected, how it must be collected and how the data may be reported and used to eliminate profiling and inform law enforcement, the public and the Legislature's committees of jurisdiction.

The sponsor of the bill was joined by the American Civil Liberties Union of Maine (ACLU), Immigrant Legal Advocacy Project (ILAP), Maine Business Immigration Coalition (MeBIC), Maine Association of Criminal Defense Lawyers (MACDL), Maine People's Alliance (MPA), and Representatives Lois Reckitt of South Portland and

Rachel Talbot Ross of Portland in support of his proposal. Most supporters emphasized the need for more data to inform legislative answers to questions of public policy.

The sponsor testified that his bill builds on work done by stakeholders a decade ago, establishing measures that will lead to tangible progress, yet stopping short of criminalizing profiling as 17 other states have done. His testimony was also rich with anecdotes and evidence of the humiliation and danger that can go along with being questioned by law enforcement when there is little or no actual reason for suspicion.

ILAP believes even only a few instances of bias-based profiling can have a detrimental effect on the relationship of Maine immigrants and people of color with all law enforcement. MeBIC spoke to Maine's critical labor shortage and the need for more people "from away" to move here to live and work. MACDL testified that "we are charging forward in the dark" in terms of evidence, and that compiling and aggregating data "gives a real starting place" for examining racial disparities and disproportionate impacts in Maine's criminal justice system using actual numbers rather than anecdotal evidence. Using the numbers available in criminal justice system data on those apprehended and prosecuted (not including those who are only stopped and questioned), the ACLU testified that black people in Maine are 3.64 times more likely to be arrested than white people, 3.83 times when it comes to arresting youth, and 6.53 times more likely to be incarcerated.

The Maine Law Enforcement Coalition and Maine Sheriffs' Association testified against LD 1475, while the Maine Department of Public Safety and MMA testified neither for nor against the bill.

The Coalition, which includes the Maine Association of Police, Maine State Troopers Association, Maine State Law Enforcement Association, Maine Chiefs of Police Association, and Maine Federation of Police, was represented by the Chief of Police for the Town of York, who testified that the

opposition was not based on a belief that profiling is acceptable or that it does not exist, but rather on the means of ascertaining the degree to which it exists. Law enforcement officers believe the approach presented in LD 1475 "is unnecessarily costly, inefficient, and, frankly, offensive to both the law enforcement community and potentially to members of the public whom they serve. And, depending upon how it is executed, it could possibly turn otherwise legal traffic stops into illegal ones" by contradicting a 1968 U.S. Supreme Court decision that limited the legality of searches and seizures to only those based on "reasonable articulable suspicion of a violation of law." The Sheriffs' Association appeared to mainly object to the additional training-related costs, testifying that their budgets are already facing a \$3 million shortfall this year caused in part by existing training mandates.

The department's testimony brought to the Judiciary Committee's attention that the provisions of this bill would apply to 164 law enforcement agencies in Maine and 3,680 officers. The department preferred to abide by the model policy adopted by the Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies in 2009, and the training program put into place as a result of the committee's work in 2013. The department also spoke to the Bias-Based Profiling Committee's inability to craft a fair and affordable data collection system, based in part on the need to either ask for information and risk offending persons, or for officers to make educated guesses, "which is extremely inaccurate and fraught with the individual officer's own biases." MMA focused its commentary on this last point, expressing concern that the counter-intuitive approach called for in the bill's language of basing data reports on the law enforcement officers' perception could in practice pour salt on the very wound the legislation's proponents are attempting to heal.

A work session on LD 1475 has been scheduled for May 20 at 1pm.

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/>.

The Legislature is no longer obliged to provide two weeks' notice for public hearings, and beginning Monday, April 29 until the end of the 2019 legislative session, the Legislature will no longer be advertising public hearings in the newspaper.

In some cases, bills are being printed and scheduled for a public hearing within two days. If you would like to receive notice of a public hearing on any particular bill, please contact Laura Ellis at lellis@memun.org or 1-800-452-8786.

Monday, May 20

Judiciary
Room 438, State House, 9:00 a.m.
Tel: 287-1327

LD 1701 – An Act To Clarify Various Provisions of the Maine Human Rights Act.

LD 1703 – An Act To Improve Consistency within the Maine Human Rights Act.

Tuesday, May 21

Agriculture, Conservation & Forestry
Room 214, Cross Building, 1:00 p.m.
Tel: 287-1312

LD 1719 – An Act To Improve Geographic Information System Data Acquisition and Maintenance.

LD 1726 – An Act To Penalize Violators of Wood Shipment and Quarantine Laws.

Education & Cultural Affairs
Room 208, Cross Building, 1:00 p.m.
Tel: 287-3125

LD 1715 – An Act To Reorganize the Provision of Services for Children with Disabilities from Birth to 5 Years of Age.

Wednesday, May 22

Judiciary
Room 438, State House, 9:00 a.m.
Tel: 287-1327

LD 1449 – An Act To Facilitate Compliance with Federal Immigration Law by State and Local Government Entities.

LD 1589 – An Act To Protect the Liberty of Immigrants and Asylum Seekers in Maine.

Thursday, May 23

Environment & Natural Resources
Room 216, Cross Building, 1:30 p.m.
Tel: 287-4149

LD 1743 – An Act To Reclassify Certain Waters of the State.

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.)

Education and Cultural Affairs

LD 1715 – An Act To Reorganize the Provision of Services for Children with Disabilities from Birth to 5 Years of Age. (Emergency) (Sponsored by Rep. McCreight of Harpswell)

Beginning in fiscal year 2019-20 for early adopters and over a five-year implementation phase-in beginning in fiscal year 2020-21 for other school administrative units, this bill moves responsibility for providing special education and related services for children who are at least three years of age and under six years of age from the Department of Education, Child Development Services System, the state intermediate educational unit, to the school administrative units of residence of the children. The bill also eliminates the Child Development Services System and moves the entire responsibility for providing services to children from birth to under three years of age to the Department of Education's office of special services. The funding plan continues the present arrangement of full responsibility for costs being shared among state funds, federal funds, the MaineCare program and private insurers.

Environment and Natural Resources

LD 1743 – An Act To Reclassify Certain Waters of the State. (Sponsored by Rep. Zeigler of Montville)
This bill updates classifications for certain waters based on water quality data.

Judiciary

LD 1589 – An Act To Protect the Liberty of Immigrants and Asylum Seekers in Maine. (Sponsored by Rep. Hickman of Winthrop)

This bill establishes the Maine Liberty Act, which governs the relationship of state and local law enforcement agencies, including correctional facilities, with federal immigration authorities, including: (1) Prohibiting a law enforcement agency from stopping, investigating, interrogating, arresting or detaining a person solely for immigration enforcement purposes, including in response to a hold request, immigration detainer or administrative warrant issued by the United States Department of Homeland Security, or allowing the federal agency to access to inmates, inmate information or law enforcement agency facilities or providing law enforcement agency resources or personnel to assist immigration enforcement activities; (2) Clarifying that a law enforcement agency upon a request from the federal agency may arrest and detain a person and perform other law enforcement duties due to suspected criminal activity or other reasons not solely based on the person's immigration status; (3) Establishing the permissible scope of collaboration of a law enforcement agency with a joint law enforcement task force and requiring reporting to the Attorney General on all arrests made by the task force, including all arrests made for immigration enforcement purposes; (4) Requiring a law enforcement agency to release as soon as possible and detain no longer than 48 hours

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Solar Policy (cont'd)

potential.

Gerry Runte testified on behalf of the Energy Steering Committee of the Town of York, which was developed by the select board for recommending efficiency and clean energy projects to reduce the town's carbon footprint and reach a 100% clean energy goal by 2050. The committee attempted last month to design a large solar program that could meet the demands of the municipal government, school district, sewer district, water district, library, and community services association, as well as low- and medium-income residents. Runte testified that under the current rules, York could not make this project work, but LD 1711 will allow the community to move forward.

MMA believes that for all of these reasons, and in particular the expansion of the allowable project size and number of associated metered accounts, the legislation is worth supporting, especially if it can be modified to accommodate the concerns expressed by Portland and South Portland.

A work session will be scheduled in the near future.

HOPPER (cont.)

a person determined to be held solely for immigration enforcement purposes; (5) establishing duties and prohibitions for law enforcement agencies regarding immigration issues of inmates, including requiring the agency to inform an inmate of the inmate's rights prior to interview by an immigration authority and whether the agency intends to comply with a hold request and prohibiting an agency from restricting access to educational programming and good conduct credits or determining an inmate's custodial status based upon the inmate's immigration status; (6) Requiring the Attorney General to publish a model policy regarding limiting assistance to immigration authorities in public facilities and publish guidance, audit criteria and training recommendations to ensure that a database operated by a state or local law enforcement agency limits the availability of database information to immigration authorities; and (7) Requiring a law enforcement agency to record certain information regarding hold requests and certain other information from immigration authorities received by the agency and to report quarterly to the Attorney General on this information.