

Party Divide on Workers Comp

The March 8 and April 5 editions of the *Legislative Bulletin* provided readers with a description of the many pieces of legislation proposing to amend Maine’s workers’ compensation law. The Labor and Housing Committee has been firing on all cylinders since our last report, holding hearings on no less than seven additional “comp” bills in the interim. In the past week, all legislative proposals were distilled into party-line committee reports on a single bill, LD 756, *An Act To Improve the Maine Workers’ Compensation Act of 1992*.

The proposals included in the majority and minority reports are summarized

in the table on page two, and the amended bill language is posted on MMA’s website at <https://bit.ly/2QANyGR>.

Although there is hope among some stakeholders that a compromise between these two reports will be struck in the few weeks left before the Legislature’s scheduled adjournment date of June 19, others seem to believe the window of opportunity to strike a deal has passed. If that is the case and the two major parties move forward hedging their political bets, the outcome will likely be the enactment of the majority report version of the bill.

If the LD 756 majority report is

enacted by the House and Senate, all eyes in the employer community will be on Governor Janet Mills to see if the anticipated costs are significant enough to justify a veto. The National Council on Compensation Insurance (NCCI), which typically performs the actuarial analyses that factor into state fiscal estimates on comp-related insurance matters, has now been asked to provide feedback regarding the costs associated with the new benefit policies created in each report. Yet, with a dwindling number of days left in session, it is unclear whether the council will be able to perform the analyses in time.

(Chart on page 2)

Budget Update: No Revenue Sharing News Yet

Here’s hoping that the “no news, is good news” adage proves true as members of the Appropriations Committee continue to work out a compromise on Governor Mills’ proposed FY 2020 - FY 2021 General Fund budget. Although committee members have met in partisan caucuses throughout the week, a final decision on the revenue sharing proposal found in Part H of the budget has not yet been established.

As proposed by the governor, funding for the revenue sharing program would increase from the current 2% of state sales and income tax revenues to 2.5% and 3% in the first and second year of the upcoming biennium, respectively, but falls shy of the statutorily required 5% funding level.

Encouragingly, in the last few weeks both Democrats and Republicans serving on the committee have expressed interest in increasing the amount of state sales

and income tax revenues to be shared with municipalities above the levels proposed in the budget.

It is likely that decisions on all budget issues will be finalized as soon as this morning.

Until the details are sorted out, mu-

nicipal officials are urged to continue to discuss the importance of the revenue sharing program with members of the Legislature. Your efforts back home have certainly kept this issue on the front burner.

Please stay tuned for updates.

Legislative Bulletin

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Summary of the Majority & Minority Report on LD 756, An Act To Improve the Maine Workers' Compensation Act of 1992

Policy	Majority	Minority
Fringe benefits	For an injury occurring on or after Jan. 1, 2020, increases the value of fringe or other benefits that are discontinued during the disability from 2/3 of the State average weekly wage to 125% of the state average weekly wage at the time of the injury. According to the Dept. of Labor, in FY 2018 the average weekly wage was \$829.30.	For an injury occurring on or after Jan. 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of 120% of the state average weekly wage at the time of the injury.
First Claim Payment Extension	Creates a new exception that provides flexibility when an employer cannot make the first claim payment within the 14 days required by law due to a factual mistake or an act of God. In such cases, claims would have to be made "as soon as practicable."	Extends the time that the first payment must be made by an employer from 14 days after notice of the injury or death to 60 days after notice.
Maximum Benefit Level Increase	Increases the maximum benefit level from 100% of the state average weekly wage to 125% of the state average weekly wage for an injury occurring on or after Jan. 1, 2020.	Increases the maximum benefit level from 100% of the state average weekly wage to 120% of the state average weekly wage for an injury occurring on or after Jan. 1, 2020.
Partial Incapacity COLA and Lowering the Partial Incapacity Threshold	For an injury occurring on or after Jan. 1, 2020 Requires a cost-of-living adjustment to be applied in cases of partial incapacity after 520 weeks of benefits and lowers the partial incapacity threshold from 18% to 12%.	<i>Makes no changes to current law.</i>
Total Incapacity COLA	For an injury occurring on or after Jan. 1, 2020, requires a cost-of-living adjustment to be applied in cases of total incapacity after 260 weeks of benefits.	<i>Policy revision is identical to the change propoused in the majority report.</i>
Partial Incapacity Benefit Cap Duration Extension	Extends the cap of benefits for partial incapacity from 520 weeks to 624 weeks.	<i>Policy revision is identical to the change proposed in the majority report.</i>
Deceased Employee Estate Benefits	Current law requires payment of benefits to dependents of deceased employees. The majority report requires employers to pay benefits to the estate of deceased employees with no dependents for a period of 500 weeks, applying retroactively to an injury or death occurring on or after Jan.1, 2019.	<i>Makes no changes to current law.</i>
Notice of Injury Extension	For an injury occurring on or after Jan. 1, 2020, extends the amount of time an employee has to file their claim from 30 days in current law up to 90 days.	For an injury occurring on or after Jan. 1, 2020, extends the amount of time an employee has to file their claim from 30 days in current law up to 60 days.
Mediation Petitions	<i>Makes no changes to current law.</i>	When a full agreement is not reached after mediation, parties would be required to file any petition related to the controversy with the Workers' Compensation Board within 30 days after the conclusion of mediation.
Attorney's Fees	For injuries occurring on or after Jan. 1, 2020, allows for the deduction of certain attorney expenses before computing the 10% fees allowed for lump sum settlements.	For an injury occurring on or after Jan. 1, 2020, the maximum attorney's fees prescribed by the board in a case tried to completion may not reflect any increases in benefits payable for partial incapacity or as a result of any annual adjustment in benefits for total incapacity.
Study Group	Requires the Workers' Compensation Board to convene a working group of stakeholders to evaluate issues related to work search and vocational rehabilitation requirements and benefits protections for injured workers, reporting back with recommendations to the committee by Jan. 30, 2020.	Requires the Workers' Compensation Board to convene a working group of stakeholders to evaluate seven specific issues related to potential changes to the system, focusing mostly on benefits eligibility, reporting back with recommendations to the committee by Jan. 30, 2020.

New Study and Regulations Likely For Law Enforcement Officials

The May 17 edition of this publication described a hearing on LD 1475, *An Act To Eliminate Profiling in Maine*, that would prohibit investigation by law enforcement officials in Maine of persons based on the profiling of their actual or perceived race, gender, ethnicity, religion, socioeconomic status, ancestry or national origin. The Judiciary Committee has now held the work session on that bill, as well as hearings and work sessions on two immigration-related bills that conflict with one another. The committee's reports on all three bills impacting law enforcement practices are described below.

LD 1449, *An Act To Facilitate Compliance with Federal Immigration Law by State and Local Government Entities*, sponsored by Rep. Lawrence Lockman of Bradley, establishes prohibitions concerning restricting the sharing and use of immigration and citizenship information. It prohibits restricting the enforcement of federal immigration law, establishes a complaint process and a duty to report, requires the attorney general to investigate and issue an opinion on violations, and government entities that continue a policy or practice claimed to be a violation would be subject to a \$500 fine for each day the policy or practice remains in effect.

MMA objected specifically to the language in the bill requiring all government entities to "fully comply with and to the full extent permitted by law support the enforcement of federal immigration law," given the vagueness of that mandate and the fact that federal law does not require local law enforcement agencies to engage in the enforcement of federal immigration law.

At Wednesday's work session, a majority of the committee voted against passage of LD 1449, while a minority of members voted in favor of passage with no amendments.

On the other end of the immigration policy spectrum is LD 1589, *An Act To Protect the Liberty of Immigrants and Asylum Seekers in Maine*, sponsored by Rep. Craig Hickman of Winthrop. As drafted, this six-page bill establishes the Maine Liberty Act, which governs the relation-

ship of state and local law enforcement agencies, including correctional facilities, with federal immigration authorities.

At the hearing, MMA expressed its concern that enumerating in one section of statute all permitted and prohibited law enforcement activities could be oversimplified, giving rise to conflicts with other provisions of law. The Association's Policy Committee prefers to afford local law enforcement agencies flexibility to balance their responsibilities under the laws of their municipality with the laws of the state and federal governments.

Committee chair Rep. Donna Bailey of Scarborough proposed an amendment to replace the bill with a study to look at the interaction of local police and immigration to see if there are any problems, and make recommendations to address any problems that are identified. Four members of the committee voted in favor of this study approach, the details of which have not yet been ironed out. Three other committee members voted in favor of passing LD 1589 as drafted, and the remaining five members voted against passage.

LD 1475, *An Act To Eliminate Profiling in Maine*, also sponsored by Rep. Craig Hickman of Winthrop, aims to prohibit investigation of people based on appearances rather than circumstances, as noted above. Since the public hearing, a group

of stakeholders met and agreed upon a compromise.

As the Association understands that compromise, it would accomplish three things. The first is that it would put into statute the standards for the Maine Chiefs Model Policy adopted by the Maine Criminal Justice Academy Board of Trustees over the past decade, establishing various statutory (rather than policy) prohibitions on certain bias-based activities by law enforcement officials. The second is that it would direct the Attorney General to consult with interested parties to develop, and then adopt, routine technical rules for the operation of administrative complaint procedures and independent audit programs by March 15, 2020 related to allegations of profiling by law enforcement officers and agencies. The third provision entails incorporating existing Maine Criminal Justice Academy training standards into law.

While it is unclear at this time whether this last item of agreement could entail some level of new training, it is clear that the printed bill's significant and worrisome perception-based data collection mandate is no longer part of the amendment that now appears to be headed for enactment. All members of the committee but one voted in favor of this compromise amendment, with the sole holdout voting against passage.

Surplus for Property Tax Relief

By a margin of 8 to 2 the Taxation Committee voted on Thursday of this week to support an amended version of LD 1713, *An Act To Return Funds to Maine Property Tax Payers*.

The bill, sponsored by Rep. Sara Gideon of Freeport, would use the surplus revenue funneled into the Tax Relief Fund for Maine Residents to help offset the property taxes paid by Maine homeowners. Current law requires the revenues in the fund, which is capitalized by an end of fiscal year transfer of 20% of unappropriated General Fund surplus, to be used to provide income tax relief.

As proposed in LD 1713, the amount

of property tax relief provided is calculated by dividing the amount of revenue in the fund by the number of homestead exemptions granted statewide. If that amount is enough to support a rebate of at least \$100, the state treasurer is required to send a check to each qualifying homesteader no later than December 1. Under the terms of the bill, municipal assessors are required by Oct. 1, 2019 and annually thereafter to provide the state treasurer with the names and addresses of each homesteader.

The fund, which has an estimated \$29 million in surplus revenue, would need

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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, June 3

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

LD 1785 – An Act To Amend Certain Education Laws.

Judiciary
Room 438, State House, 1:00 p.m.
Tel: 287-1327

LD 1790 – An Act To Amend the Law To Protect the Confidentiality of State and Local Government Employees' Private Information.

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.)

Agriculture, Conservation and Forestry

LD 1788 – An Act To Eliminate Online Burn Permit Fees for All Areas of the State. (Sponsored by Sen. Dill of Penobscot Cty.)

This bill eliminates online burn permit fees for all areas of the state.

Education and Cultural Affairs

LD 1785 – An Act To Amend Certain Education Laws. (Sponsored by Rep. Kornfield of Bangor)

This bill makes several changes to the education laws. Of municipal significance, the bill: (1) Removes the so-called LD 1 limitation on the total cost of the components of essential programs and services; (2) Changes the amount of the adjustment for economically disadvantaged students to be the actual amount computed multiplied by the relevant special education costs percentage; (3) Removes a requirement that school construction project plans and specifications must be approved by the state Bureau of General Services (BGS), Departments of Education and Health and Human Services, and the State Fire Marshal; (4) Removes BGS from the requirement to perform certain activities relating to school construction projects; (5) Includes psychometrically valid English language proficiency screening for potential English learners in the screening that local units may develop; (6) Amends the powers and duties of a cooperative board for a career and technical education region; (7) Amends the laws governing elementary and secondary tuition students and ; (8) Adds a definition of "rural school administrative unit" for purposes of allocating federal funds under the federal Every Student Succeeds Act.

Environment and Natural Resources

LD 1789 – An Act To Restore the Authority of the Board of Environmental Protection. (Governor's Bill) (Sponsored by Sen. Foley of York Cty.)

This bill amends the responsibilities and duties of the Board of Environmental Protection to: (1) move all rulemaking authority

of the Department of Environmental Protection to the board; (2) add to the board's enforcement responsibilities the duty to approve administrative consent agreements and to advise the commissioner on enforcement priorities and activities and on the adequacy of penalties and enforcement activities; and (3) include language to provide for the orderly transition of the rulemaking authority and for procedures pending before the department on the effective date of this legislation.

LD 1802 – An Act To Make Minor Changes and Corrections to Statutes Administered by or Concerning the Department of Environmental Protection. (Sponsored by Rep. Campbell of Orrington)

This bill makes adjustments to laws administered by or that affect the Department of Environmental Protection. The bill authorizes laboratories operated by a waste discharge facility to analyze waste discharges for *Enterococcus* without being certified under a state laboratory certification or accreditation program. It changes the timelines regarding appeals under the laws governing uncontrolled hazardous substance sites. It also changes the rule-making authority from the Board of Environmental Protection to the Commissioner of Environmental Protection for certain rules regarding waste management.

Innovation, Development, Economic Advancement and Commerce

LD 1791 – An Act To Amend Licensure for Professional Engineers. (Sponsored by Rep. Stetkis of Canaan)

This bill amends the laws governing licensure for professional engineers and certification for engineer-interns, to in part: (1) clarify language regarding the use of professional engineers in public works projects; (2) repeal the temporary licensing provisions for nonresidents; (3) clarify and update references to the building standards and eliminate references to standards that have been

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superseded; (4) increase the maximum penalty for violations to \$10,000; and (5) allow the board to maintain its roster of active licensed professional engineers on its publicly accessible website.

Judiciary

LD 1790—An Act To Amend the Law To Protect the Confidentiality of State and Local Government Employees' Private Information. (Sponsored by Rep. McCreight of Harpswell)

This bill amends the law governing the confidentiality of personal information of municipal employees to parallel the same protections provided for state employees and establishes as confidential any genetic information and information about the sexual orientation of employees contained in the records of the municipality. This bill also amends the state employee personnel records provisions to include confidentiality of genetic information and sexual orientation and amends the laws governing county and municipal employee personnel records to match.

LD 1811 – An Act To Enhance Personal and Public Safety by Requiring Evaluations of and Judicial Hearings for Persons in Protective Custody Regarding Risk of Harm and Restricting Access to Dangerous Weapons. (Sponsored by Sen. Kiem of Oxford Cty.)

Current law authorizes law enforcement officers to take a person into protective custody for evaluation by a medical practitioner as protection from imminent threats of substantial self-inflicted harm or substantial harm to others. Part A of this bill requires that a medical practitioner evaluate the history, recent actions and behaviors of a person taken into protective custody and determine whether there is a reasonable likelihood that the person's mental health will deteriorate; whether the person will in the foreseeable future pose a likelihood of serious harm; and whether any such likelihood of harm is exacerbated by the person's immediate access to a firearm or other dangerous weapon. A medical practitioner must certify this evaluation and, if the evaluation is certified in the affirmative, the person is required to surrender any dangerous weapons possessed or controlled by that person to a law enforcement officer pending a judicial review hearing to be held within 14 days. A court then determines whether to dissolve or continue those restrictions for one year. When the person is determined by a court to no longer present a substantial threat, the restrictions end and the weapons are returned. Part B of this bill requires that a court make similar determinations for a person enrolled in the progressive treatment program. When a person in that program is no longer determined by a court to present a substantial threat, the restrictions end and the weapons are returned. Part C makes related changes to the laws governing the Extradition and Prosecution Expenses Account to in part pay for the cost of the required evaluation by a medical practitioner; possession of firearms by prohibited persons; law enforcement agency written policy requirements; and law enforcement agency training requirements.

Taxation

LD 1798 – An Act To Amend the Maine Tax Laws. (Sponsored by Rep. Tipping of Orono)

This bill makes the following changes to the tax laws. Of municipal interest, the bill: (1) simplifies the notice and appeals processes for municipal valuations by repealing the provision that the notice to municipality be sent by certified mail; (2) creates a process allowing the state to adjust prior years' state valuations for purposes of calculating current and ongoing state education payments to a municipality when the state assessor determines that the value was improperly excluded from the calculation of the three most recently certified state valuations and further allows municipalities to appeal adverse decisions to the State Board of Property Tax Review; (3) requires that the municipal assessor be notified prior to the commitment of taxes for an owner of a partial interest in property to be assessed on the partial interest only; (4) removes the requirement for benevolent and charitable institutions to be incorporated in Maine in order to qualify for property tax exemption; (5) clarifies when the alternative municipal tax lien foreclosure sales process is required, by excluding the sale of acquired property back to the immediate former owner or owners; (6) removes the provision allowing the \$4,000 exemption for the legally blind to be apportioned among multiple jurisdictions. Instead, the exemption may be claimed only in the taxpayer's place of residence; (7) eliminates photocopiers and postage machines from property eligible for tax exemption under the business equipment tax exemption; (8) removes the provision limiting the aggregate total acres that may be classified in the farm and open space tax program to 15,000 for a single person; (9) clarifies the definitions of "mobile home" and "camper trailer" to align the definitions with those used in property tax and sales tax law; (10) clarifies that the credit for excise tax previously paid and the model year adjustment for certain vehicles is limited to instances when the previously paid excise tax is the Maine excise tax; and (11) defines nominal value as less than 20% of the assessed value for determining when the market value for a property should be used for the purposes of calculating the real estate transfer tax. The bill also allows the disclosure of confidential tax information to an authorized representative of the Public Utilities Commission for use in the administration and oversight of the E-9-1-1 funding, the state universal service fund and the telecommunications education access fund.

Surplus for Property Tax Relief (cont'd)

at least \$30.5 million to trigger the minimum \$100 rebate .

As amended by a majority of the committee, municipalities would be required to generate the list of eligible homesteaders by March 1 in the year in which the treasurer determines revenues in the fund are sufficient to provide the minimum \$100 rebate, rather than annually as proposed in the printed

bill. The amendment also requires that fund revenue be used to cover the costs of program administration borne by the treasurer and municipal assessors.

The committee's work on LD 1713 will soon be vetted by the entire Legislature.