Legislative BULLETIN
MAINE MUNICIPAL ASSOCIATION
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Senate Supports Costly Road Mandate

On Thursday of this week, the Senate supported an amended version of LD 1177, *An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group*, by a margin of 21 to 14. The Senate roll call vote is included with this article.

As advanced by a majority of the Senate, this bill significantly expands the road management obligation of municipal governments, particularly throughout rural Maine, by repealing the abandoned road statute. If enacted by the entire Legislature, municipalities with town ways that have not exhausted the 30 year non-maintenance period will be mandated to either maintain the town way at public expense or to formally "discontinue" the functionally-obsolete town way and pay damages to abutters. Another example of the Legislature changing the rules in the middle of the game, shifting big-time costs onto the affected municipalities.

The Senate's proposal also mandates municipalities to prepare comprehensive road inventories identifying the legal status of "known" maintained, discontinued and abandoned town ways, or segments of town ways, for each year going back to 1965.

The bill is now in the House. Please call members of the House today (Friday, April 4) and ask them to oppose LD 1177, which is clearly an unfunded state mandate. House members can be reached at 1-800-423-2900.

Members of the Senate who voted to support this front-running candidate for the biggest unfunded state mandate of 2014 should also be contacted and asked to reconsider their vote to further burden Maine's property taxpayers. Members of the Senate can be reached at 1-800-423-6900.

Senate Roll-call #534: LD 1177

Date: April 3, 2014
Number of Yeas Required: 18 (simple majority)
Outcome: PREVAILS
Yeas (Y): 21 Nays (N): 14 Absent (X): 0 Excused (E): 0

MEMBER	VOTE	MEMBER	VOTE
ALFOND of Cumberland	Y	LACHOWICZ of Kennebec	Y
BOYLE of Cumberland	Y	LANGLEY of Hancock	N
BURNS of Washington	N	MASON of Androscoggin	N
CAIN of Penobscot	Y	MAZUREK of Knox	Y
CLEVELAND of Androscoggin	Y	MILLETT of Cumberland	Y
COLLINS of York	N	PATRICK of Oxford	Y
CRAVEN of Androscoggin	Y	PLUMMER of Cumberland	N
CUSHING of Penobscot	N	SAVIELLO of Franklin	Y
DUTREMBLE of York	Y	SHERMAN of Aroostook	N
FLOOD of Kennebec	N	THIBODEAU of Waldo	N
GERZOFSKY of Cumberland	Y	THOMAS of Somerset	N
GRATWICK of Penobscot	Y	TUTTLE of York	Y
HAMPER of Oxford	N	VALENTINO of York	Y
HASKELL of Cumberland	Y	VITELLI of Sagadahoc	Y
HILL of York	Y	WHITTEMORE of Somerset	N
JACKSON of Aroostook	Y	WOODBURY of Cumberland	Y
JOHNSON of Lincoln	Y	YOUNGBLOOD of Penobscot	N
KATZ of Kennebec	N		

Prohibiting All Forms of Remote Access to Public Meetings

The Legislature is poised to enact late-session legislation, LD 1809, *An Act Concerning Meetings of Public Bodies Using Communications Technology*, that eliminates the right of municipal officials to video conference in to a public meeting from a remote location. If you wish to protect the right of your governing body to include off-site members in public meetings, especially as may be necessary in an emergency, contact your legislator immediately to ask them to oppose LD 1809 as a rushed and unnecessarily discriminatory solution in search of a problem.

As recommended to the full Legislature by the Judiciary Committee, LD 1809, in a heavily prescriptive way, allows a small subset of governing bodies in Maine to conduct a public meeting with one or more members participat-

(continued on page 2)

ing from a remote location via two-way video connection. The only public entities allowed to conduct a meeting in this manner are the governing bodies of water and waste water districts. For reasons that are less than clear, this authority would not be provided to boards of selectmen, town or city councils, school boards or elected or appointed public bodies at the county or state level. In fact, remote access of any kind, even in an emergency, would be effectively prohibited if LD 1809 is enacted.

The premise of the bill, held by some members of the Judiciary Committee and Attorney General's Office, is that current law impliedly prohibits public officials from using any form of remote access to public meetings. MMA, along with other lawyers in firms with deep experience in municipal law, disagrees with that premise. MMA does not believe that the most recent Attorney General's opinion presented to the Judiciary Committee, issued in 1979 to address a hurried, secret telephone vote held by a board of county commissioners, ought to be viewed as instructive for properly publicized local meetings held 35 years later in an entirely different technological era.

Three separate versions of this bill have been reviewed by the Judiciary Committee over the last year.

The first version was LD 258, *An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Meetings of Public Bodies*. MMA's 70-member Legislative Policy Committee voted to support LD 258, which authorized the use of remote-access technology to conduct public proceedings as long as a number of careful protections of the public's access to the meeting were adhered to and the public body adopted a policy authorizing such remote participation. These individualized policies would flesh-out the specific circumstances under which a member could participate when not physically present, and it seemed fair to let public entities set terms that made sense, subject to statutory parameters appropriate and necessary for the conduct of public meetings.

LD 258 was killed by the Judiciary Committee for the purpose of providing further review, setting the stage for the second iteration of this issue in the form of LD 1809. As printed, LD 1809 was another rendition of LD 258, yet this time all public entities in the state were granted the authority to conduct public meetings with some level of remote access except elected boards of selectmen, town and city councils and school boards. Appointed public bodies were given the right to include remote participants, but under more limited circumstances than recommended by the Right to Know Advisory Committee. MMA opposed the printed version of LD 1809 because of its discriminatory approach.

The third iteration of this legislative initiative is the Judiciary Committee's amended version of LD 1809, which flips the discrimination in another direction. Instead of allowing all public bodies in the state to utilize some level of public access except the elected municipal and school officers, the Committee's new approach is to let no public body use any form of remote access under any circumstance, except the boards of water and wastewater districts. This approach was acknowledged to be experimental in nature.

Unfortunately, the Committee's 2013 intention to allow for more time to carefully review this proposal turned into an end-of-session "ready…fire…aim" approach. The reasoning behind these various approaches to the issue reflect different impressions of whether and why members of public governing bodies may need to call, "Skype" or "FaceTime" in to a meeting. In the cynical view of many members of the Judiciary Committee, elected officials throughout Maine run for office knowing full well that they will not be physically present in Maine for a significant part of the year, that they often have clandestine intentions, and that they utilize opaque technology to further these intentions.

MMA acknowledges that if remote participation is used to circumvent ordinary public meeting requirements then that use would be contradictory to the intent of Maine's Freedom Access Act. This does not mean that all forms of remote participation need to be prohibited; many remote communication technologies are entirely supportive of the public process. In fact, perfectly public legal proceedings in this state, such as arraignments, are commonly conducted using remote technologies. Yet it is somehow against the law for this to happen at all select board meetings?

The municipal reality is that remote participation may become necessary in the occasional event that a three-member board of select persons or assessors (governing the majority of the 469 towns and plantations in Maine) needs to meet when it happens that one of their members is out of state and another member is confronted with a sudden illness or other unforeseeable circumstance. The need to conduct a public meeting utilizing some remote access is not a common occurrence, but to the extent it does arise at the municipal level it is most commonly due to one or more members of an elected three-person board being physically unable to attend.

MMA's Legal Department has advised municipalities dealing with this circumstance to only allow for remote participation after following regular meeting notification and publication protocols, to not use remote participation for quasi-judicial proceedings, to not count the remote member toward a quorum if

(continued on page 3)

Legislative Bulletin

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The Property Tax Fairness Credit Redux

For the towns and cities, the theme of the 2014 legislative session is to repair, in certain small ways if not entirely, the damage inflicted by the Legislature in 2013. The bill enacted in February blocking an additional $40 million in revenue sharing raids established the theme. At least a half-dozen additional bills working through the system are supplementing the effort.

One of those bills is LD 1751, *An Act To Provide Property Tax Relief to Maine Residents*. Sponsored by the Speaker of the House, Rep. Mark Eves of North Berwick, the original goal of LD 1751 was to increase the value of the property tax fairness credit, which is now part of the state's income tax code.

As municipal officials are well aware, the Legislature torpedoed the popular Circuitbreaker property tax relief and rent rebate program as part of the state budget enacted last June and replaced it, after skipping a year altogether, with the property tax fairness credit. As created, the new credit has a maximum benefit of $400 for elderly households and $300 for nonelderly households. The benefit is delivered as an offset to any state income tax obligation owed by the eligible taxpayer. If there is no income tax obligation, the credit is provided to the homeowner just like a tax refund.

This is where LD 1751 comes in. The Taxation Committee, Speaker Eves, and Senator Richard Woodbury (Cumberland Cty.), who was invited into the project because of his expertise in designing the former Circuitbreaker program, reworked the bill to entirely restructure the property tax fairness credit without changing the amount of General Fund resources dedicated to supporting the credit, approximately $35 million a year. In other words, the final version of LD 1751 is "revenue neutral" and imposes no additional demands on the state budget.

What follows are descriptions of the property tax fairness credit, first as it was enacted last year (and applied with respect to 2014 returns), and then as redesigned by LD 1751, which has been unanimously supported by the Taxation Committee.

Credit Design Under Current Law. For tax returns filed with respect the 2013 calendar year, the data input to calculate a person's eligibility for the credit includes the property taxes the person paid on his or her homestead property during the previous calendar year as a percentage of the taxpayer's adjusted gross income (AGI). The "property tax" value assumed for renters is 25% of the rent actually paid. Eligibility is not provided to any tax filer with an AGI over $40,000. The property tax fairness credit is calculated as 40% of the property taxes exceeding 10% of AGI, up to maximum benefit of $300 for a non-elderly household and $400 for a homestead owned by a person 70 years of age or older.

Credit Design Under LD 1751. Beginning with tax returns filed in 2015 (covering the 2014 calendar year), the data input to calculate a person's eligibility for the credit includes the property taxes the person paid on his or her homestead property during the previous calendar year as a percentage of a special definition of income that includes AGI plus several types of income that are otherwise exempt from taxation, such as Social Security benefits, various categories of exempt investment income, and various categories of business or investment expenses that can be deducted from income for regular income tax purposes.

In effect, the income figure used to measure eligibility for the property tax credit is "total income" rather than "adjusted gross income." This change will have the effect of more accurately measuring true capacity to contribute to the property tax obligation. By recognizing the availability of certain nontaxable assets, the new definition of "income" will shift the distribution of benefits from households that have low income on paper but are otherwise supported by business or investment assets to other low income households that do not have access to those additional assets. It is by using this broader definition of income that the other components of the redesigned credit can be expanded, including the maximum benefit caps and the allowable income thresholds.

The maximum value of property taxes paid for the calculation of benefits (the "benefit base") is $2,000 for single filers, $2,600 for joint filers with 2 or fewer personal exemptions, and $3,200 for joint filers with three or more personal exemptions. The property tax value for renters is 15% of the rent actually paid. By applying the benefit base, a phase-out system is developed to gradually reduce the value of benefits rather than creating a benefit "cliff." The phase-out system ultimately ends all benefits for single tax filers with a household income over $33,500, two-person households with an income over $43,500 and multi-family households with dependents with an income over $53,500. The property tax fairness credit is calculated as 50% of the taxes exceeding 6% of income, up to a $600 maximum for a non-elderly households and $900 for a homestead owned by a person 65 years of age or older.

With its unanimous "ought to pass" report, LD 1751 is headed toward enactment on consent agendas in the House and the Senate.

Remote Access *(cont'd)*

possible, and to ensure communication with the remote member is clear and open. The vast majority of meetings which include remote participation are undertaken within such reasonable parameters that still allow for the public to attend and witness deliberations and votes, with technology that allows all members present to clearly speak with and often see the member who is away. LD 1809 would do away with the option, the special tool in emergency situations, without a single real life example having been presented for objective review.

Majority Report Honors Jail Funding Promise

Since 2008, the nine-member Board of Corrections (BOC) has been responsible for overseeing the state/county unified corrections systems. The unified system was put into place to address increasing county jail costs, limited jail and prison bed space and a need to provide a more streamlined and financially sustainable corrections system. The funding for the unified system comes, in part, from property taxes, which are capped at the county's 2008 jail operations budget level, which raises $62 million each year. An additional $20 million in state source revenues and federal inmate boarding income round-out the unified system's $82 million annual budget.

As might be expected, over the last five years the unified system has experienced its share of ups and downs. To assist with implementation issues, the Legislature charged a special commission to develop recommendations for improving the administration, operation and funding of the existing state/county unified corrections system.

The Criminal Justice Committee has now approved a plan to implement the Commission's recommendations by voting in support of LD 1824, *An Act To Provide Additional Authority to the State Board of Corrections* by margin of 11 to 1 to 1. Rep. Corey Wilson of Augusta advanced a minority "ought to pass as amended" report, while Rep. Ricky Long of Sherman voted "ought not to pass".

As amended by a majority of the Committee, LD 1824:

• Provides the BOC with the tools and authorities necessary to accomplish its charge.

• Specifies that the $62 million in capped property tax contributions are to be used for operational purposes only.

• Allows for LD 1-based increases in the jail budgets annually prepared by county officials and authorized by the BOC and clarifies that the state, not the property taxpayers, is responsible for funding annual increases to jail operation budgets.

• And, reduces the membership of the BOC from nine to five.

The minority "ought to pass as amended" report differs from the majority report only in that it seeks to shift the costs of annual increases onto the property taxpayers. As proposed by Rep. Wilson, starting in FY 2015 the 2008 county jail operations capped value would be on schedule for annual CPI-based increases. Rep. Wilson is strongly advocating for passage of his proposal in spite of the fact that it breaks yet another promise made by the Legislature to the property taxpayers of Maine.

Municipal officials believe the cap is a fundamental element of the 2008 agreement. The program was sold to the municipal community as way to limit the property taxpayers' exposure to a system that is more appropriately funded with state-level resources. The foundation of the 2008 agreement was that the increased role of state control over jail operations came with an increased state responsibility to pay the piper.

That is the deal which the majority report honors.