

Emergency Response to Drunk Driving Accidents: Who Pays?

On Tuesday this week, the members of the Insurance and Financial Services Committee became the second legislative committee to grapple with LD 944, *An Act Regarding Recovery of Emergency Response Costs Related to an OUI Offense*. The bill, sponsored by President Mike Thibodeau of Waldo County, would amend the state's operating under the influence (OUI) laws to allow municipalities to receive a capped level of reimbursement to cover or help cover emergency response services costs generated by accidents caused by drunk and impaired drivers.

Although there is general support for legislation seeking to responsibly shift some burden of providing emergency services from the property taxpayers to drunk drivers when they create the need for the services, there are challenges to crafting the appropriate solution.

LD 944 was first vetted by the members of the Criminal Justice Committee in 2015 before being carried over into the second legislative session in 2016. Through the process of working the bill, it was determined that the criminal penalty statutes already address the issue of victim restitution and cost recovery. Under current law, courts are authorized to obligate a person convicted of a crime to compensate victims for associated economic losses, including reimbursing municipalities for the cost of provided emergency rescue services. However, the provision of restitution rests on the arguments made by prosecutors, decisions made by judges, and the defendant's financial capacity. The municipal experience with the existing restitution practice is that court ordered compensa-

tion for emergency response services is extremely hit-or-miss.

A different approach to this problem required a different legislative committee, and the Insurance and Financial Services Committee was asked to review an amended version of LD 944 seeking implementation of an insurance-based remedy. The amended version of the bill increases the cap on reimbursements to municipalities from \$2,500 to \$5,000 and excludes from reimbursable rescue services the costs borne by law enforcement officers, thereby focusing reimbursement on fire and rescue related services, only.

At this Tuesday's public hearing on LD 944, the proponents included Senator Thibodeau, fire chiefs from the communities of Dedham and Liberty, and a Town of Waldo selectperson who has served over 40 years in that capacity, Kathy Littlefield. As they had a year ago, the proponents again asked the Legislature for its assistance in relieving the property taxpayers of the costs of providing rescue services when those costs are generated by persons criminally operating their motor vehicles.

In his testimony, Dedham fire chief Craig Shane expressed frustration with

(continued on page 3)

MMA's Policy Committee Weighs In On Citizen Initiatives

After clearing the petitioning hurdle, citizen initiated legislation is first presented to the Legislature. In almost every case, the Legislature chooses not to enact the proposal, which automatically sends it to the voters in the statewide election. During the gestation of citizen initiated legislation, before the initiated measure gets on the ballot, it goes through a stage of being a bill, just like any other. When MMA's 70-member Legislative Policy Committee (LPC) convened last week to stake out the Association's position on this year's municipally-related legislation, three citizen-initiated bills were in the mix.

With a Feb. 1 signature submission deadline in order to make the statewide ballot in November, reports suggest that no less than four initiatives will be

presented to the Legislature in the weeks ahead, including proposals to:

- Establish "ranked choice voting."
- Raise the minimum wage over a four-year period to \$12 per hour.
- Require gun sales and transfers that do not involve licensed firearm dealers to include background checks on the buyer.
- Increase the income tax rates for filers with incomes greater than \$200,000 to fund increases in state financial support for public K-12 education.

The minimum wage issue doesn't trigger a special connection to municipal government, but the state's level of financial contribution to public education certainly does, as do election matters and issues associated with public safety and law enforcement. As a result, three

(continued on page 2)

of the initiated bills were reviewed and debated by the LPC, which voted to take the following positions.

LD 1557, *An Act To Establish Ranked-choice Voting*. This initiative creates new voting procedures, beginning in 2018, for the election of Maine's U.S. Senator, U.S. Representative to Congress, Governor, State Senator and State Representative. The fundamental purpose of ranked choice voting is to process an election involving three or more candidates competing for a single office in a way that results in the winning candidate achieving a level of voter support exceeding 50%.

Instead of being instructed to vote for the single favored candidate as is currently the case, voters in ranked choice elections with more than two candidates would be instructed to sequentially rank their voting preferences for all candidates on the ballot, with the designation of 1 for the most preferred candidate, 2 for the next most preferred candidate, and so on. The first round of ballot counting would be conducted as is done currently, but if no candidate prevails with more than 50% support, a second round of ballot counting would occur. In the second round, the candidate on the ballot with the least voter support is excluded and the votes on those ballots for the candidate of second preference are counted as first preference votes and the totals are re-tallied. If necessary, that process is repeated until a candidate with majority support is elected.

The LPC debate on LD 1557 was wide-ranging. Observations and discussion points came in from all angles.

Some members wondered what problem the ranked choice voting process was trying to solve while others felt that philo-

sophically achieving a majority support status should be a qualifying requirement for our elected officials. Some thought it was a reaction to the plurality elections of the current Governor, but others pointed out that the proposal was first advanced to the Legislature three administrations ago. Some thought that run-off elections to achieve a majority result are more straightforward than the ranked choice process. Others said that run-off elections typically garner substantially less voter participation and the ranked choice voting process achieves the same result as runoff elections, but more efficiently.

Concern was expressed over the issue of voter confusion and mismarked ballots, but LPC representatives from Portland, which has implemented ranked choice voting for its mayoral elections, indicated that in their experience over two mayoral elections, the voters adapted to the ranked choice voting procedures with ease. It was further pointed out that the ranking process would not be mandated by this law because any voter who wished could simply vote for their most favored candidate and leave the sequential preference ranking to others.

Because Maine's Constitution appears to provide a right for state level candidates to be elected by plurality, the constitutionality of the initiative was discussed. From another angle, it was generally agreed that the additional administrative costs of managing the ranked choice voting procedures would fall largely on the state rather than the towns and cities, because in most cases the sequential-round ballot counting would be conducted by the Secretary of State's Office (similar to the recount process) and not the individual municipalities. The municipalities' front-line exposure would be educating the voters about the new election procedures.

Finally, several LPC members expressed the belief that the ranked choice voting process would improve the tenor of partisan debate and require candidates to engage constructively with voter blocs not directly aligned with their political persuasion.

The motion before the Policy Committee was to support LD 1557. A major-

ity of the members voted to support the legislation. Although the majority vote wasn't overwhelming, a second round of ballot counting was not required.

An Act To Establish the Fund To Advance Public Kindergarten to Grade 12 Education. Although this initiative and the one that follows have yet to be processed as Legislative Documents, the requisite number of signatures have apparently been gathered. This measure imposes an income tax rate surcharge of 3% on the value of taxable income of \$200,000 or more and uses that tax revenue (estimated at \$150 million each year) to meet the state's obligation to pay for 55% of the cost of K-12 public education. A leading proponent of this initiative is the Maine Education Association. The initiative further stipulates that the dedicated revenues be used solely for the support of student learning and not for administrative costs.

The LPC debate on this initiative suggested that it presented a dilemma to the municipal community. There is certainly strong support for the goal of state government finally meeting its obligation to provide 55% of the cost of K-12 public education. That goal was established by the Legislature over 30 years ago and was reestablished by the state's voters as a directive in 2004, but it has never been achieved.

The other horn of the dilemma, however, is the method of achieving that goal in the initiative, which simply plants a 3% surcharge on the top marginal income tax rate for filers with incomes over \$200,000. The municipal leaders who give direction to the Maine Municipal Association have been advocating for comprehensive tax reform since the late 1980s. To their way of thinking, comprehensive reform requires modernizing, redesigning and rebalancing the entire tax code so that it better reflects the economy of today (rather than 1950) and there is a more equitable distribution of tax burden among the state's three major taxes (property, sales and income).

There is also some skepticism among municipal officials that the Legislature would implement the school financing

(continued on page 3)

Legislative Bulletin

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MMA's LPC (cont'd)

elements of the initiative in a manner fully faithful with its terms.

While expressing appreciation for the initiative's goal, the LPC came down with a strong vote in opposition to the proposal primarily because the taxation component of this initiative cannot be characterized as comprehensive, balanced or three dimensional reform

An Act To Require Background Checks for Gun Safety. This initiative requires a background check with regard to the person purchasing or receiving a firearm, when neither the seller ("transferor") nor the buyer ("transferee") is a licensed firearm dealer. To comply with the law in those circumstances, the transferor and transferee must meet with a licensed firearm dealer for the purpose of conducting the background check before the sale or transfer can be completed. The licensed firearm dealer is allowed to charge a fee for that service. Exceptions to the mandatory background check are provided in the bill for transfers between family members, while the parties are hunting, trapping or sport shooting, when necessary for emergency self-defense, and in the presence of the transferor.

In the debate, some LPC members came out of the gate in opposition for a number of reasons, including a belief that the issues presented were not clearly municipal matters, the requirements would be difficult to enforce, and the impact on criminal gun purchase would be minimal. An early motion to oppose was seconded, but the motion failed. As the debate continued, the argument that the proposal represented a step toward increased public safety began to take hold, and that public safety falls squarely into the orbit of municipal interests. The idea that there are currently two systems in place governing the sale of firearms, one of which involves a background check and the other of which does not, did not make sense to a majority of the LPC, which voted to support the initiative.

Next steps. There are other citizen initiatives in the wings, including an initiative to legalize the possession, sale and use of marijuana and an initiative sponsored by the Republican Party to (1) amend the laws governing certain public

assistance programs and (2) phase out the state's income tax. With the deadline set for next Monday, it is not known if the proponents of those initiatives have gathered a sufficient number of signatures to get on the ballot this year.

As for MMA, the next steps are to follow these initiatives through the legislative process, which will undoubtedly conclude with them being placed on the ballot for the Nov. 8, 2016 election. At

Drunk Driving (cont'd)

the insurance industry's aggressive reluctance to take some level of ownership in the process. The insurance companies' explanations for denial of payments can be troubling. One insurance company's denial was based on an understanding that local taxes are intended to cover the expenses associated with providing rescue services to impaired drivers. Another insurance company denied payment because the insured defendant was deceased when finally extricated from the vehicle.

One insurance company's denial that rings true with Chief Shane is the claim that absent a clear state law establishing the legitimacy of the charge for rescue service costs, payment of that charge is not required. For that reason, he supports LD 944 as a mechanism for establishing that expectation in Maine.

In her written testimony, Kathy Littlefield observed that LD 944 does not place financial burdens on the state. The bill only asks that *"the law clearly states that the person who is convicted of driving while under the influence of drugs or alcohol can be held liable for reimbursement of up to \$5,000."*

MMA also presented testimony in support of LD 944. In addition to promoting the bill's property tax relief outcome, MMA asked that at a minimum municipalities be provided a clear authority under law to obtain a judgment against an offender to recover rescue costs at a future date if the court refuses to include a restitution order in sentencing.

As might be expected, representa-

tives from the insurance industry testified in opposition to LD 944. However, the testimony provided by representatives of national and state insurance companies was in large part sympathetic to the municipal plight. Just as the property taxpayers believe that they should not be held liable for the poor decisions made by impaired motor vehicle drivers, the insurance companies do not think they should, either. Opponents of the bill are concerned that if the insurance companies are mandated to provide coverage, premium rates for all drivers will increase and insurance companies will be less interested in providing coverage in Maine.

that stage, the legislative body authorized to enact or reject the proposed law effectively changes from the Legislature to Maine's electorate. According to the bylaws that govern MMA's decision-making procedures, the Association's 12-member Executive Committee, rather than its Legislative Policy Committee, will be developing and articulating MMA's position on all municipally-related ballot measures.

The insurance lobby believes a more acceptable remedy would hold offenders directly responsible for their actions. Some of the possible solutions offered by the opponents to LD 944 included the assessment of surcharges on OUI related fines to help pay rescue costs or to require restitution to municipalities as a condition of reinstatement of driving privileges.

Although the members of the Insurance and Financial Services Committee expressed interest in finding a solution, they questioned whether an insurance-based remedy was the answer. One member of the Committee observed that a possible solution would be to require all insurance companies to provide coverage for these types of emergency fire and rescue services, but that crafting such a requirement needs to be done thoughtfully and carefully.

The Committee will determine the fate of LD 944 on Tuesday, Feb. 2 at 1:00 p.m.

New Jersey Drills Down into Charitable Exemption Policy - Will Maine Follow?

It was brought to MMA's attention last November that the Tax Court in New Jersey was taking a hard look at that state's property tax exemption standards. On July 15, 2015 the New Jersey Tax Court held in *AHS Hospital Corp. v. Town of Morristown*, 28 N.J. Tax 456 (2015), that the Town was, in part, justified in challenging and denying Morristown Memorial Hospital's tax exempt status as a charitable organization.

Underscored in the New Jersey tax court decision was the fact that statutes exempting certain property from taxation have to be regularly reviewed and amended to ensure intended outcomes. Since Elizabethan times, the charitable aspects of providing health care services have morphed tremendously. As is the case with Maine's law (which was Massachusetts' law at the time), when New Jersey's exempt status laws were first adopted, persons with means received their health care services at home, while those living in poverty sought those services from the hospitals. The public policy supporting those hospitals' charitable status was clearly appropriate in the 19th Century. Although 21st Century hospitals still provide needed health care services to those without financial resources, they are also providing elective and non-elective services to patients with full capacity to pay.

Without regularly re-assessing the nature and design of the property tax exemption provided to institutions defining themselves as "charitable" organizations, a disconnect easily develops between the public policy supporting the exemption and the actual service delivery system provided within the tax exempt facility. To that end, in *AHS Hospital* Judge Vito Bianco, took the New Jersey Legislature to task when concluding:

"If it is true that all non-profit hospitals operate like the Hospital in this case, as was the testimony here, then for the purposes of the property tax exemption, modern non-profit hospitals are essentially legal fictions; and it is long established that "fictions arise from the law, and not law from fictions." Accord-

ingly, if the property tax exemption for modern non-profit hospitals is to exist at all in New Jersey going forward, then it is a function of the Legislature and not the courts to promulgate what the terms and condition will be. Clearly, the operations and functions of modern non-profit hospitals do not meet the current criteria for property tax exemption under N.J.H.S.A 54:4-3.6 and the applicable case law."

The New Jersey law at the center of this case requires nonprofit entities seeking an exemption to meet three criteria: (1) the owner of the property must be organized exclusively for exempt purposes; (2) the property must be actually and exclusively used for the tax exempt purposes; and (3) the operation and use of the property must not be conducted for profit. Those are Maine's standards as well. If the entity seeking the exemption fails one of the tests, the exemption must be denied.

In *AHS Hospital*, Judge Bianco found that Morristown Memorial Hospital had violated the "exclusive use" and "purely nonprofit" provisions of the exemption statutes in the following three ways:

1. *Gift Shop.* The existence of the gift shop on hospital property was found to be in violation of New Jersey's exempt status use test. The gift shop was viewed as an unnecessary and superfluous to the hospital's core mission. Judge Bianco found that the presence of the gift shop *"is merely a convenience for hospital visitors who could otherwise purchase similar gift items at a variety of stores outside the Subject Property. The use of the Gift Shop is therefore, not reasonably necessary to any hospital purpose, but rather it serves as a form of competition to commercially owned facilities."*

2. *Healthcare Support Contract.* The hospital entered into a contract with a private company to provide necessary non-medical services. Those services included food and nutrition services, catering, environmental services, laundry and linen distribution, patient transportation, and plant operation maintenance services. That contract was found to violate the state's nonprofit provision in

two ways. First, seeking out a contract, rather than providing the services itself, the hospital reduced its expenditures, thereby generating a profit. Second, the contract between the service provider included an "under budget" saving incentive, where 10% of the savings associated with the contracted services were returned to the service provider and 90% accrued to the hospital. Judge Bianco found that *"there is no meaningful distinction whether profit comes in the form of increased revenue or decreased expenses. Given that the contract here also contemplates increased expenses, the cost of which was also to be split between the Hospital and Aramark (the contracted service provider), such an arrangement is typical of "commercial activity or business venture."*

3. *For-profit Physician Access.* Finally, the hospital allowed for-profit physicians to use its facilities to provide care to patients. Judge Bianco found an inability *"to discern between the nonprofit activities carried out by the Hospital on the Subject Property and the for-profit activities carried out by private physicians. Accordingly, the Hospital's application for exemption must be denied."*

Judge Bianco's decision has had impacts for both the nonprofit hospitals in New Jersey and the municipalities that host them. As a result of that finding, Morristown Medical Center has agreed to pay the community \$15.5 million in property taxes over the next 10 years.

In addition, the New Jersey Legislature is considering passage of a bill, supported by the New Jersey Hospital Association, requiring non-profit hospitals to make "community service contributions." According to the information printed in a Jan. 8, 2016 article published by *NorthJersey.com*, the legislation would assess a \$2.50/bed fee on all non-profit hospitals. The generated revenue, an estimated \$21 to \$25 million, would be used to fund public safety services or to reduce the property tax burden.

That legislation is slowly moving

(continued on page 6)

MMA Opposes Unfunded Bulletproof Vest Mandate

On Monday of this week the Criminal Justice and Public Safety Committee held a public hearing on LD 1536, *An Act To Provide Ballistic Vests to State Law Enforcement Officers*, sponsored by Senator David Burns of Washington County. The title of the bill suggests that the entire focus is on state level law enforcement officers. Certain elements of the printed bill support that interpretation by mandating the provision of bulletproof vests to all state police officers, forest rangers, juvenile community protection officers, Capitol security officers, marine patrol officers, and other state-level personnel charged with enforcing the law.

The second section of the bill, however, opens the mandate up to municipal and county governments as well, reading “*A political subdivision of State Government employing a law enforcement officer shall provide the law enforcement officer with a well-fitting, contemporary ballistic vest.*” Municipalities, counties, districts and other quasi-municipal entities are commonly defined as “political subdivisions” of the state. For several reasons, MMA’s Legislative Policy Committee voted to oppose the legislation if, indeed, it intends to impose a new unfunded municipal mandate.

The first reason is that no examples of insufficiency with respect to bulletproof vests for municipal law enforcement officials have been raised, at least to the knowledge of the members of MMA’s 70-member Legislative Policy Committee. Municipal law enforcement officers currently have or are provided access to bulletproof vests as the wide-ranging general rule. This contrasts with the testimony from four state-level forest rangers who testified in support of the bill as well as the Maine State Law Enforcement Officers Association, which is concerned about a lack of access to vests for officers across multiple state agencies.

If the proponents are advancing this bill as a municipal mandate, perhaps they lack faith in the capacity, quality or appropriateness of locally-based decision making, despite the fact that municipalities appear not to have fallen down on this issue. There is no question that the Legislature has every right to require state agencies to purchase certain protective

clothing for their employees. To go the next step and require the municipalities and counties to adhere to LD 1536’s edict that the vests, which are to be provided to the universe of local law enforcement officers as a state mandate – while also meeting both the “contemporary” and “well-fitting” standards – is a step too far.

As the only organization speaking in opposition to the legislation, MMA was met with more than a hint of incredulity from several members of the Criminal

Justice and Public Safety Committee. Any sense of capacity and good judgment with respect to local decision making appeared to be lost on these members. One representative called the LPC vote “selfish.” Another wondered whether the safety of municipal employees is a matter of concern to policy-level and purchasing-level municipal officials.

The work session on LD 1536 has been scheduled for this Monday, Feb. 1, 2016 at 1:00 p.m..

Carryover Updates

Waste-To-Energy Credits, Cemetery Access Receive Majority ONTP Votes

Two pieces of carryover legislation received votes this week that do not bode well for their chances of enactment.

Waste-to-Energy. In the Energy, Utilities and Technology Committee, LD 273, *An Act To Encourage and Enhance the Future of Waste-to-Energy Facilities by Establishing a Portfolio Requirement for Electricity from Waste Energy Resources*, previously received a 6-5 vote against passage. After a second work session held this week, it appears the supportive votes will likely further erode when the bill reaches the floor of the House and Senate. LD 273 provides financial support to Maine’s three existing Waste-to-Energy (WTE) facilities by including the electricity they produce in the “renewables portfolio” that Maine’s electric companies are required to provide to consumers, mixed in with the more traditional electricity supplies.

To address concerns about the impact on consumer ratepayers, the minority amendment advanced on Tuesday lowered the amount of WTE-generated power that electric companies would need to purchase under their renewable portfolio requirements. The trade-off for the lowered amount would be to add WTE resources to the definition of “renewable energy credit” in order to further expand the market for the electricity these facilities produce.

With the details of the minority report in hand, the Committee considered entertaining a new vote on the measure

but for parliamentary reasons that was not possible. Based on information gathered at the work session, it now appears that at least three of the five Committee members who formerly supported the ought-to-pass-as-amended motion in Committee will not support that position when LD 273 reaches the full Legislature.

Cemetery Access. For the better part of last year, an informal ad hoc advisory group (the cemetery group) made up of representatives of the Maine Old Cemetery Association, Maine Cemetery Association, Maine Genealogical Society, and the Department of Veterans Affairs, with input from the Maine Municipal Association, has worked to clarify how small family cemeteries and “ancient burial grounds” may be accessed, and by whom. These small burying grounds are often located on private property and at issue is the degree to which those gravesites can be accessed for maintenance and other related purposes. The legislation put forth, LD 1328, *An Act To Clarify the Ownership of and Access to Ancient and Family Burying Grounds*, was carried over in order to allow a subcommittee of the members of the State and Local Government Committee to better digest the bill in between sessions.

The subcommittee met once in October and hashed out the issues, save one relating to wheelchair access across these private properties. Just as a solution to that sole remaining quandary was

(continued on page 8)

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. For the Legislative Events Calendar, see the Legislature's web site at <http://www.mainelegislature.org/legis/calendar/>. If you wish to look up schedules by Committee, go to <http://www.mainelegislature.org/legis/bills/phwkSched.html>.

Monday, February 1

Criminal Justice & Public Safety
Rm. 436, State House, 10:00 a.m.
Tel: 287-1122

LD 1540 – An Act To Protect All Students in Elementary of Secondary Schools from Sexual Assault by School Officials.

Tuesday, February 2

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1316

LD 1512 – An Act To Authorize a General Fund Bond Issue To Fund Equipment for Career and Technical Education Centers.

Wednesday, February 3

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

Carryover Work Session:

LD 195 – An Act Regarding County jails. (Department of Corrections report on the county jails, as required by Title 34-A, section 1402, subsection 13.)

State & Local Government

Room 214, Cross State Office Building, 1:45 p.m.
Tel: 287-1330

LD 1525 – An Act To Encourage the Purchase of Products Made in Maine and in the United States and To Give Preference to Maine Businesses When Awarding Contracts.

Taxation

Room 127, State House, 10:00 a.m.
Tel: 287-1552

LD 1551 – An Act To Make Additional Technical Changes to Recently Enacted Tax Legislation.

Thursday, February 4

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1316

LD 1515 – An Act To Update the Laws Governing the Maine Public Employees Retirement System as They Relate to Wartime Veterans.

Environment & Natural Resources
Room 216, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1568 – Resolve, Regarding Legislative Review of Portions of Chapter 373: Financial and Technical Capacity Standards of the Site Location of Development Act, a Major Substantive Rule of the Department of Environmental Protection.

LD 1569 – Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act, a Major Substantive Rule of the Department of Environmental Protection.

LD 1570 – Resolve, Regarding Legislative Review of Chapter 380: Construction Projects Under the Site Location of Development Act, a Major Substantive Rule of the Department of Environmental Protection.

Health & Human Services
Room 209, Cross State Office Building, 1:00 p.m.
Tel: 287-1317

LD 1547 – An Act To Provide Access to Affordable Naloxone Hydrochloride for First Responders.

Charitable Exemption Policy (cont'd)

through New Jersey's legislative process.

Positive Impacts for Maine? The importance the New Jersey Tax Court placed on periodically reviewing tax exemption policy for accountability purposes parallels a tax policy maintenance task that Maine's municipal officials have attempted to convince the Legislature to take up for several decades. Over the last 20 years, MMA's 70-member Legislative Policy Committee has advanced five initiatives seeking, in one way or another,

to amend the laws governing Maine's tax exempt statutes to ensure that the benefit is provided to truly charitable entities providing fundamentally necessary services, "with no expectation of return." Those legislative efforts have ranged from proposing to establish qualifying expectations and standards for tax exempt nonprofit entities, to assessing a service fee on the tax exempt institutions for vital municipal services received (e.g., police, fire, emergency medical services

and road maintenance, etc.). Four of the five initiatives failed. The one successful initiative was radically overhauled into a study. The recommendations generated from that study were filed on the shelf of oblivion.

With the election of the members of the 128th Maine Legislature in November 2016, municipal officials might have reason to hope that the experience in New Jersey will positively impact property tax exemption reform efforts going forward.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's 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 & Public Safety

LD 1488 – An Act To Establish the Law Enforcement Assisted Diversion Program in Maine. (Sponsored by Rep. Dion of Portland.)

This bill appropriates \$2 million in FY 2017 to establish the Law Enforcement Assisted Diversion Program. The Program is established to address drug crimes by diverting low-level offenders into community-based treatment and support services. The bill directs the Attorney General to implement the Program by establishing eight pilot projects in communities around the state. Each project would provide case management services to the participants to secure treatment and support services such as housing, health care, job training and mental health services.

Environment & Natural Resources

LD 1578 – An Act To Update Maine's Solid Waste Management Laws. (Sponsored by Sen. Saviello of Franklin Cty.)

This bill makes a number of substantial changes to the state's solid waste management policies. The core element of the bill generates new revenue for the state by imposing fees on the disposal or processing of municipal solid waste. The Department of Environmental Protection (DEP) would use that revenue to implement three new solid waste management programs. In its several elements, the bill:

- Establishes a new schedule for the state to recycle or compost 50% of the municipal solid waste tonnage. When the 50% goal was first established in law in 1989, the schedule was to meet that recycling rate by January 1, 1994. Current law schedules the date of compliance with January 1, 2014. This bill advances the compliance deadline to January 1, 2021.
- Establishes the Maine Composting and Recycling Grant and Low-interest Loan Program. To be administered by the DEP, this program provides grant and loan funds to municipalities and other public and private entities submitting a proposal or plan that will be likely to increase composting or recycling rates within a community, municipality or region including, but not limited to, establishing or providing the infrastructure for municipal or regional composting or recycling programs, establishing or supporting residential composting programs, supporting business models designed to collect, transport or processing compostable or recyclable materials, supporting pilot programs designed to evaluate the feasibility of targeted composting/recycling programs and advancing composting/recycling educational programs. The DEP could expend up to 25% of the available revenue for program administration purposes.
- Capitalizes the Maine Composting and Recycling Grant and Low-interest Loan Program by repealing and replacing the fee system that applies to the landfilling of Municipal Solid Waste (MSW), which is currently \$2/ton but has a very limited application. From the time the solid waste fee system was first established in 1989, no surcharges of any amount have been applied to the landfilling of solid waste in municipally-owned landfills. For the last 17 years, the surcharge for landfilling MSW at commercial landfills has only applied to out-of-state and "spot market" disposal.

This bill repeals the current fee and imposes instead a \$1/ton fee to the disposal of all MSW at any landfill in the state regardless of ownership and regardless of contract. The proposal also imposes a new \$1/ton fee on the delivery of all MSW to any waste-to-energy incinerators or other disposal, processing or composting facility.

To avoid fee pyramiding, the bill repeals the current \$1/ton fee applied to the landfilling of MSW ash generated by waste-to-energy facilities as well as the \$1/ton fee applied to the disposal of "front end process residue," which is non-burnable solid waste (glass, metal, etc.) shaken out of raw solid waste prior to incineration at the PERC facility in Orrington.

The net new state revenue generated by the changes in fee schedule approximate \$500,000 per year.

- Phases in a food waste disposal ban for "Large Quantity Generators." Similar in nature to the food waste disposal bans established in some other New England states (e.g., Connecticut, Massachusetts and Vermont), "large quantity" commercial food waste generators (including food wholesalers, food processors, grocery stores, restaurants, hospitals, educational institutions, supermarkets, etc.) that generate 1 ton or more per week of food wastes would be required by Jan. 1, 2020 to deliver their food wastes to a composting facility for processing. The requirement would not be enforced unless there is a composting facility with capacity within 20 miles of the facility. Large-quantity generators who find it financially difficult to comply with the requirement could seek a loan or grant through the *Maine Composting and Recycling Grant and Low-interest Loan Program*, and potentially obtain a waiver from the requirement if a suitable loan or grant is not available.

- Directs the DEP to implement a composting pilot program. Under this program, the DEP is directed to invite municipalities, educational institutions, correctional institutions, hospitals and commercial restaurants to participate in a pilot program, with financial incentives provided from the *Maine Composting and Recycling Grant and Low-interest Loan Program*. Qualified participants would be selected to develop and implement a food waste composting program, with a primary purpose of collecting data on the amount of food waste diverted from the MSW stream.

- Implements a product stewardship program for small batteries, similar in design to the paint stewardship program, which would provide an opportunity for a battery stewardship organization to submit a plan to the DEP for a manufacturer-supported battery collection, transportation and recycling program. On and after July 1, 2017, and upon the plan's acceptance by the DEP, the bill would prohibit a manufacturer, distributor, wholesaler or retailer of small batteries from selling, offering for sale or distributing small batteries and products containing small batteries unless the producer of the product has joined in or is directly providing a DEP-approved battery stewardship program.

Veterans & Legal Affairs

LD 1574 – An Act To Protect Maine Voters from Intimidating Videotaping at the Polls. (Sponsored by Sen. Diamond of Cumberland Cty.)

This bill provides that the act of videotaping any voter in the voting place must occur outside the guardrail enclosure a minimum of 15 feet away from the voter being videotaped, including a voter at a location where a person is collecting voters' signatures.

Carryover Updates (cont.)

found, a more significant property-rights question was raised. Does the proposed legislation limit the rights of the owners of the property upon which the ancient and family burying grounds are located by opening that private property up to additional cemetery-related traffic? In some recent instances, abutting property owners have denied the right of access to cemetery visitors, giving rise to the advancement of this legislation.

The cemetery group's position was that the legislation merely clarified how and when interested parties may access and maintain these often hidden and forgotten cemeteries in order to keep abutters from inhibiting access. To that group, the various cemetery access laws developed

since the early 1800s have all had the same intent, albeit with variable (and variably coherent) statutory language. Moreover, a law passed last year, LD 862, *An Act To Clarify Who May Authorize Repairs in a Burying Ground*, clarified that indirect descendants may repair burying grounds, but the authority to repair is of little use without the authority to access.

At the second-to-last subcommittee meeting, an analyst with the Legislature's Office of Policy and Legal Analysis, citing advice from the Attorney General's Office, poured cold water on the cemetery group's reading of existing law that claimed a consistent intent over time with respect to access to both ancient and family burial grounds (which the cemetery group holds

are historically synonymous). The analyst informed the subcommittee that much of the bill created new rights for individuals to trespass on private property, and that passing the law could have "takings" implications.

Despite one final Hail Mary attempt from the cemetery group on Wednesday this week, the subcommittee voted against passage, citing both their reluctance to pass a bill with purported constitutional issues, as well as their regrets for not being able to salvage at least some of the work that had been done. The full State and Local Government Committee will likely follow the subcommittee's position with its own "Ought Not To Pass" vote in the near future.