

## Legislative Flight #2016 Begins Descent

This is the last printed Legislative Bulletin, at least for now

The directive from leadership to the various legislative committees was to finalize by today the committees' recommendations on all bills in their possession. As a result, this edition of the Legislative Bulletin presents something of a *pot-pourri*...quick updates on over a dozen municipally-related bills that were given some coverage when first presented at public hearing and have been incubating in committee ever since.

This deadline to report-out all bills marks the beginning of the final stage of the legislative session. The focus turns from the committee process to the debates held in the House and Senate and the final actions taken by the full Legislature.

As a result, this will likely be the last printed copy of the Legislative Bulletin for the duration of this legislative session. Our primary method of communicating State House activities to our members will shift from the weekly Bulletin to action alerts that will be sent out to all subscribers to the electronic Legislative Bulletin whenever it seems warranted to apprise municipal officials of legislative actions occurring on the

third floor.

Any municipal official who does not receive the Legislative Bulletin electronically but would like those action alerts to be either faxed or sent to them by regular U.S. mail should make that request to Laura Ellis at [lellis@memun.org](mailto:lellis@memun.org) or by calling 1-800-452-8786.

Many thanks to all municipal subscribers to the Legislative Bulletin, and please

be responsive to any action alerts that are sent out by communicating to your legislators and explaining your position on the legislative proposal in play.

It has long been our observation that municipal officials are much more effective than they give themselves credit for when it comes to influencing the decisions their legislators make on matters important to local government.

## Shooting Range Bill Creates Unprecedented Special Exception

The Feb. 26 Legislative Bulletin described the numerous and serious pitfalls posed by LD 1500, *An Act To Protect and Promote Access to Sport Shooting Ranges*. This bill proposed to protect shooting ranges by invalidating municipal ordinances that would cause the shooting range's closure or would substantially limit sport shooting at the range, and by providing existing ranges certain immunities from the impacts of land use regulation that virtually no other commercial, industrial or recreational land uses are provided. MMA's Legislative Policy Committee voted to oppose these preemptions of local land use management authority and mistreatment of legal land use doctrines for this or any other specific land use.

After being given an 8-2 "ought to pass as amended" vote by the Judiciary Committee on Wednesday this week, the bill would prohibit any municipal ordinance from requiring a shooting range to limit or eliminate shooting activities that have occurred at the shooting range prior to the enactment date of the ordinance, so long as the shooting range conforms

to state-established or National Rifle Association-established gun safety and shooting range standards.

The amended version of the bill would also immunize an existing shooting range that has become a nonconforming use in a defined land use zone from any ordinance provision that would require the range to rebuild itself after being destroyed by fire, flood or other similar event within a certain period of time in order to retain its legal-but-non-conforming status. This type of immunity currently exists for no other commercial, industrial or recreational land use activity in Maine law and would set an extraordinary precedent. Municipal officials interested in maintaining a balanced and equitable land use management system should be very concerned about opening the door to this type of special immunity. If shooting ranges get to enjoy this one-of-a-kind regulatory exemption, what other types of land use activities will line up in the queue for similar special treatment?

Although the votes have been taken, the final language on LD 1500 has yet to be reviewed by the Judiciary Committee.

### Legislative Bulletin

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Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: [www.memun.org](http://www.memun.org)

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# Bill on Absentee Ballot Processing Amended But Still Alive

An article in the Feb. 19 Legislative Bulletin described some behind-the-scene activity that was taking place with an “omnibus” elections bill (LD 1484) reported out of the Veterans and Legal Affairs (VLA) Committee with unanimous support in late January. LD 1484 has been cooling its heels on the Senate’s “unfinished business” table for nearly a month. At issue is just one section of the comprehensive bill that would allow municipal election clerks to begin processing absentee ballots on the Friday or Saturday before an election day, as well as on the Monday before an election day as has long been allowed by law.

The section in question is the single most important element of the entire bill from the municipal perspective, because it would ease the pressure on the municipality’s election management system during the crunch of election time. Despite the municipal support, an effort was afoot to strip that section out of LD 1484 before enactment. The motive for attempting to kill this expanded municipal authority was not entirely clear. Apparently, some Senators thought that the tabulated results of the absentee voting could become known to the election clerks processing the ballots and the clerks could, in turn, dispense that

information in an effort to influence the voting on election day.

On Wednesday this week, the VLA Committee charted a new course of action that retains most of what the municipal officials were seeking in LD 1484, but in a different legislative vehicle. The plan to delete the section allowing Friday or Saturday absentee ballot processing from LD 1484 prior to enactment is still scheduled to go forward. The new bill addressing the ballot processing issue is LD 1539, *An Act To Expand the Early Processing of Absentee Ballots*, sponsored by Representative Beth O’Connor of Berwick. As amended by Committee and given a unanimous “ought to pass” recommendation as an emergency bill, LD 1539 will

allow election clerks to begin processing absentee ballots on the Saturday (but not the Friday) before election day as well as on the Monday before election day as is currently allowed.

It turns out that there is a fair amount of misunderstanding about the pre-election day absentee ballot processing procedures that election personnel must follow. People not familiar with the requirements are often unaware of the various protections in place to ensure that the absentee voters’ choices remain unknown until the ballot is formally tallied on election day with all the other ballots. Municipal thanks are due to Lewiston’s City Clerk Kathy Montejo, Deputy Secretary of State Julie Flynn and Melissa Packard, Director of Elections in the Secretary’s Office, for helping Committee members and other interested lawmakers during the work session better understand the details of that process.

## Broadband Planning Grant Application Window Now Open

Applications are now being accepted by the ConnectME Authority for its tenth round of broadband infrastructure grants and first round of municipal broadband planning grants, with a due date of April 15, 2016. The goal is for the Authority to make grant

funding decisions at its meeting April 22, 2016.

Cover letter guidelines and applications can be found at [www.maine.gov/connectme/grants](http://www.maine.gov/connectme/grants). For more information, you can contact Lisa Leahy at 207-624-9970 or [Lisa.Leahy@maine.gov](mailto:Lisa.Leahy@maine.gov).

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# Bill on Participating “Remotely” in Public Meetings Flounders

Last week’s Legislative Bulletin described the bill before the Judiciary Committee that would entirely prohibit the use of telephone and videoconferencing in public deliberations by elected officials but allow this “remote participation” by appointed board members. The bill is LD 1586, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings*. MMA opposed the prohibition in LD 1586, arguing the same rules which apply to the appointed members of various statewide, regional and local boards ought to apply to locally

elected boards as well.

Due largely to the inability to find consensus on whether or not elected officials ought to be able to participate from a remote location, a majority of the committee voted to kill the bill. A minority voted in favor of simplifying the bill by amending it to only require the public board, whether elected or appointed, to adopt a policy governing the use of remote participation within certain parameters designated by law.

Following this vote, the same Committee took up LD 1241, *An Act To Increase Government Efficiency*. This

bill authorizes the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank to use remote participation, and even allows a quorum to be reached with remote participants (LD 1586 only allows for physically present members to constitute a quorum). A majority of the committee voted to pass LD 1241 to ensure these appointed boards can get their work done with some members participating in meetings over the phone or through teleconferencing.

## FY 2017 Revenue Sharing Estimates Available

The Maine State Treasurer released the FY 2017 revenue sharing projections on Monday this week. That spreadsheet, posted here: [http://www.maine.gov/treasurer/revenue\\_sharing/projections.html](http://www.maine.gov/treasurer/revenue_sharing/projections.html), shows how \$64.5 million – 2% of state sales and income tax revenue - will be distributed to 492 communities across the state between July 1, 2016 and June 30, 2017.

The FY 2017 revenue sharing projections provided in the spreadsheet are slightly conservative. The posted figures are based on a May 2015 state revenue projection. Since then, the Revenue Forecasting Committee has twice updated

those figures to reflect growth in state revenues. According to the information published in the March 2016 forecasting report, it is projected that \$64.8 million will be distributed to municipalities under the revenue sharing program in FY 2017, an increase of \$351,000.

That being said, the \$65 million distribution for fiscal year 2017 pales in comparison to the \$156 million that otherwise would have been “shared” with Maine communities under the revenue sharing law that had been in place for decades before suffering a hard cut-back by the Legislature last year.

After raiding in ever-increasing in-

crements more than \$415 million from the revenue sharing program over a period of 10 years, in 2015 the Legislature decided to instead “temporarily” but structurally reduce the amount of state revenues dedicated to the program. As enacted in the FY 2016-17 General Fund budget, for fiscal years 2016, 2017, 2018 and 2019 the portion of state sales and income revenue dedicated to the municipal revenue sharing program is reduced from 5% to 2%.

The property taxpayer burden over the next four years is expected to increase by an estimated \$384 million as a result of that decision.

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## Narcan Bill Shifts Direction

A summary of the public hearing on LD 1547, *An Act To Provide Access to Affordable Naloxone Hydrochloride for First Responses* was published in the Feb. 26 Legislative Bulletin. As originally drafted, the bill authorized the Attorney General’s Office to purchase naloxone hydrochloride in bulk and provide Maine first responders access to the emergency medication at a discounted price. Naloxone hydrochloride, or Narcan, is an emergency medication administered to reverse the effects of an opioid overdose. MMA’s Legislative

Policy Committee voted to support the bill because both the costs and need for Narcan are on the rise. According to municipal officials in Bangor, between 2014 and 2015 the per unit cost of the medication grew by 117% (from \$13 to \$28). Biddeford city officials reported experiencing a 107% cost increase (\$19 to \$38 per dose).

At this Tuesday’s work session on LD 1547, the members of the Health and Human Services Committee voted to support an amended version of LD 1547 by a margin of 8 to 2. As requested by

Rep. Sara Gideon of Freeport, the bill’s sponsor, the amended version of the bill proposes to make Narcan more readily available to the family members, loved ones and friends of those struggling with opioid addiction. If enacted by the entire Legislature, LD 1547 would direct the state board responsible for licensing pharmacists to develop the rules necessary to allow Narcan to be prescribed by pharmacists, thus increasing accessibility. Discounted Narcan pricing for first responders is no longer part of LD 1547.

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## Jury Still Out On Boosting Highway Funding

In recognition of the condition of Maine’s transportation infrastructure, in 2015 MMA’s Legislative Policy Committee adopted as part of its platform LD 901, *An Act To Ensure Sustainable Infrastructure Funding*, sponsored by Rep. Andrew McLean of Gorham. At the end of the last legislative session, the revenue proposal from that bill got rolled into a larger committee discussion on whether and how to seek new or expanded sources of revenue for Maine’s Highway Fund, facilitated under the umbrella of a concept draft bill also sponsored by Rep. McLean, LD 1110,

*An Act To Modernize Road User Fees*. This session the Transportation Committee, in four work sessions, clearly and affirmatively answered the question of “whether” more money is needed for Maine’s roads and bridges.

At the end of the latest work session on Thursday this week, the Committee was still not ready to put any specific “how” proposals to paper. The proposals discussed include:

- Enacting a \$100 million bond (relied upon by the MDOT’s current triennial work plan).
- Eliminating certain state fees that

cost more to administer than they collect.

- Expanding other fees, including adding a new charge for “rushed” drivers licenses as is the case with passports.
- Imposing a tax on hybrid vehicles, as some other states have done.
- Increasing the fuel tax.
- Increasing the surcharge on overweight vehicles.
- Increasing toll fees and stations.
- Requiring five percent of all state General Fund revenues to be diverted directly into the Highway Fund.

The Committee tabled further discussion until next week.

# Transportation Committee Addresses Supreme Court Sign Regulation Decision

A decision was handed down by the U.S. Supreme court last June (*Reed v. Town of Gilbert*) holding that any sign regulation which requires a reading of the content of the sign to understand whether or not the regulation applies will be considered “content-based” and, therefore, become very suspect from a constitutional free speech point of view. This decision has called into question Maine’s “Traveler Information Services” statutes on signs placed in the public right-of-way, found in Title 23, Chapter 15. The Maine Department of Transportation and Attorney General’s Office recommended to the Legislature’s Transportation Committee that they amend these statutes sooner-than-later to ensure conformance with the new Supreme Court ruling.

The newly printed legislation, LD 1592, *An Act To Amend the Maine Traveler Information Services Laws*, received its public hearing on Thursday last week, and a work session was held on the bill Tuesday this week. The Department of Transportation (MDOT) is the agency responsible for implementing sign regulations in the right of way, and the Department offered the only testimony on the bill, calling it a “starting point.” As printed, LD 1592 amends the placement of signs both within and outside of the public right of way in order make the state’s regulations “content neutral,” first by deleting five references in existing law. Those deleted references regard: (1) signs showing the place and time of service or meetings of religious and civic organizations; (2) memorial signs or tablets; (3) signs bearing political messages relating to an election, primary or referendum; (4) signs erected by a producer that directs travelers to the location where farm and food products are grown; and (5) signs erected for a farmers’ market that are directional in nature.

Next, instead of referring to allowable signs by content, LD 1592 provides that any temporary sign bearing a non-commercial message and not exceeding 4 feet by eight feet in size may be placed in the right-of-way for a maximum of six weeks per calendar year during the time period from May 1 to Nov. 15, with each tem-

porary sign placed at least 200 feet away from any other temporary sign bearing the same or substantially same message. With respect to the law governing the placement of signs outside of the right of way, the bill similarly repeals existing statute and replaces it with a content-neutral standard allowing the installation and maintenance of signs no greater than 50 square feet in size (mirroring the size already in existing law), without time limitation.

The committee’s reaction to this starting point showed some concern for enforcement difficulties, particularly at the local level. Under current law, municipal ordinances are allowed to be more strict than the state’s sign regulations, but not less. Members of the committee showed interest in finding a way of balancing the new *Reed* opinion with the traditions followed by the many local entities that typically place signs in public right of ways, from farmers to religious groups to political candidates, and everyone in between. With that said, the focus of the committee’s discussion during work session was on LD 1592’s potential impact on the placement of political signs.

During the work session this week, a motion was made to pass the bill as-is with only two changes. Those changes

would be to remove the May 1 to Nov. 15 restriction in recognition of the election season for municipalities operating on a calendar year basis, and to lower the minimal distance between similar signs from 200 feet down to 30 feet.

During the ensuing discussion, MDOT State Traffic Engineer Steve Landry reminded the committee of the Department’s recently promulgated rule completely prohibiting any signage in the islands in the middle of rotaries and roundabouts. Mr. Landry also mentioned that MDOT has been working with local code enforcement officials on sign enforcement matters, and that his Department will likely be outreaching to municipalities on this topic to assist in any education efforts that could spring from the enactment of LD 1592.

MMA’s attorneys have also been working on this issue, with their counterparts throughout the state and country, and they aim to distribute some formal sign regulation guidance to Maine’s municipalities this springtime. Until this guidance is issued, a review of the municipality’s sign regulations is recommended, checking for regulations based on a sign’s content. As always, municipal officials are welcome to contact MMA’s Legal Services Department with any questions.

## County Jail Funding Bill Splits Three Ways

The Feb. 5 Legislative Bulletin described the efforts by the Maine County Commissioners Association to secure additional state General Fund revenues for the county jails, and by the Maine Sheriffs Association to both secure these revenues and lift the jail-related property tax cap altogether. The vehicle for these requests is LD 1614, *Resolve, To Provide Funding for the County Jail Operations Fund*. MMA’s Legislative Policy Committee did not have a chance to take a position on this fast-moving, late session legislation.

At Wednesday’s work session, the Criminal Justice and Public Safety Committee issued a three-way vote. Six members voted in favor of providing \$4.9 million in state funds to the counties to help the most needy jails stay afloat until

the next state budget cycle. Rep. Rick Long of Sherman, Rep. Tim Theriault of China, and Rep. Mike Timmons of Cumberland all voted in favor of not only providing the additional state funding, but also removing the property tax cap which has been protecting property taxpayers from increases in jail operation costs since 2008. Senators David Burns (Washington Cty.) and Stan Gerzofsky (Cumberland Cty.) voted ought not to pass on LD 1614, presumably in an effort to force the jails to manage themselves in the manner they committed to last year while lobbying to repeal the Board of Correction jail management system enacted by the Legislature in 2008.

A three-way Committee split does not bode well for LD 1614.

## Solid Waste Fees: Take #3

The Environment and Natural Resources (ENR) Committee is advancing a comprehensive bill amending and expanding Maine's solid waste management policies. A description of LD 1578 as printed was initially provided in the Feb. 19 edition of the Legislative Bulletin.

A number of work sessions have been held since LD 1578's public hearing on Feb. 17. In that process, some elements of the printed bill have been jettisoned, including the composting mandate applied to large food waste generators and a directive to the Department of Environmental Protection to loosen-up the standards governing the amount of treated wood in construction debris that can be processed into boiler fuel. The central elements of the bill that will likely be reported out of Committee with an "ought to pass" recommendation include:

- Establishing a small battery stewardship program similar to the existing paint stewardship program.
- Extending the state goal to recycle or compost 50% of the annually-produced municipal solid waste by 2014 (current law) to 2021.
- Establishing a food recovery hierarchy similar in nature to the state's solid waste management hierarchy, which supports in order of preference: (1) reducing surplus volume of food generated at the source, (2) donating food to hungry people, (3) diverting food scraps for animal feed, (3) composting or recovery energy through food waste digestion systems, and lastly (4) land disposal or incineration.
- Authorizing the Department of Environmental Protection (DEP) to utilize any available revenue within the existing Maine Solid Waste Management Fund to provide grants to municipalities, regional associations and other public and private entities to establish or enhance composting or other solid waste diversion activities.
- Establishing the details of the largely uncapitalized Maine Solid Waste Diversion Grant Program.
- Directing the DEP to invite municipalities, educational institutions and other institutions from various regions of the state to voluntarily participate in pilot composting programs.

- Directing the Department of Administrative and Financial Services to participate in a composting program for the food scraps generated within the State House complex.

- And, restructuring the fees imposed on the disposal of municipal solid waste.

The proposal to restructure the fees imposed on the disposal of solid waste turned out to be one of the most controversial elements of the bill and has yet to be finalized.

In its printed form, the proposal was to impose a new \$1/ton fee on all municipal solid waste (MSW) whether it was delivered to a landfill or a waste-to-energy incinerator. That proposal generated over \$500,000 in new state revenue for the purpose of funding the DEP-administered enhanced composting grant program.

There must have been some quick feedback from municipal officials and others regarding that proposal, particularly with respect to increasing fees on municipal government and the state's property taxpayers in order to generate additional revenue to fund a new state program. In response, a new "revenue neutral" proposal was advanced to amend the existing fee structure without increasing the

amount of revenue currently generated, at least not by much. In this version, the existing fee structure on the disposal of MSW and MSW ash would be repealed and replaced with a flat 70-cents per ton of all MSW and MSW ash deposited in any landfill. Although nearly revenue neutral in the aggregate, that proposal generates a financial negative for approximately 120 municipalities that rely on landfills and a financial positive for three waste-to-energy facilities and, at least in some cases, the hundreds of municipalities that rely on those facilities.

A third proposal is now floating around that is a structural hybrid between the first two. Under this proposal, a fee of 35 cents would be applied to each ton of MSW that is either landfilled or delivered to a waste-to-energy facility. Relative to the 70-cent proposal on landfilled MSW and MSW ash, this proposal would cut the impact in half for the municipalities that rely on landfills, and essentially be a wash for the waste-to-energy facilities and their participating municipalities.

The ENR Committee is scheduled to pick up LD 1578 again on Tuesday, March 8 in the late morning, after the House and Senate adjourn.

## Oil Spill Reporting Bill Becomes Letter to DEP

The Jan. 22 edition of the Legislative Bulletin reported on the public hearing for LD 1494, *An Act To Revise Oil Spill Reporting Standards*. LD 1494 would have amended the law governing how oil spills can be promptly reported to the Department of Environmental Protection (DEP) so as to immunize the person spilling the oil from any fine or penalty. Specifically, the bill would have relieved those spilling up to 10 gallons of oil from the obligation to report the spill to the DEP provided they cleaned it up promptly. MMA's Legislative Policy Committee voted to oppose LD 1494 out of a concern for how those unreported spills could impact water bodies, storm drains, drinking water resources and the "impaired streams" that the towns

and cities are mandated to closely monitor and protect under the ever-escalating storm water mandates that are part of the federal Clean Water Act.

After the consideration of many amended versions of LD 1494 over the course of several work sessions, the Environment and Natural Resources Committee ultimately voted "ought not to pass" by a strong majority. Instead of advancing legislation, it appears the Committee intends to send a letter asking DEP to identify any regulatory or statutory changes to the oil spill reporting system that the agency believes would result in more efficient use of its staff and resources while still protecting its capacity for oil spill oversight and response.

## 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, March 7***

**Appropriations & Financial Affairs**  
**Room 228, State House, 10:00 a.m.**  
**Tel: 287-1316**

LD 1606—An Act To Provide Funding to the Maine Budget Stabilization Fund.

### ***Tuesday, March 8***

**Taxation**  
**Room 127, State House, 1:30 p.m.**  
**Tel: 287-1552**

LD 1623 – An Act to Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2016-17.

### ***Wednesday, March 9***

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

LD 1601 – An Act To Implement the Recommendations of the Task Force To Ensure Integrity in the Use of Service Animals.

**State & Local Government**  
**Room 214, Cross State Office Building, 1:30 p.m.**  
**Tel: 287-1330**

LD 1635—An Act Authorizing the Deorganization of Oxbow Plantation.

**2:00 p.m.**

LD 1633 – An Act Authorizing the Deorganization of Cary Plantation.