Legislative BULLETIN
MAINE MUNICIPAL ASSOCIATION
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Right To Know Legislation Resolved – More to Come

The Judiciary Committee took action this week to require a further study of three elements of Maine's Right to Know law. The basis for this action was LD 1551, *Act To Further Regulate the Communications of Members of Public Bodies* sponsored by Representative Stacy Dostie (Sabattus) and Senator John Nutting (Androscoggin Cty.).

The printed bill had two primary elements. First, it would have prohibited the distribution of "group emails" among a quorum of members of a public body. Second, it would have prohibited a public board member from communicating to third parties that a majority of a public board was in agreement on a topic. MMA appreciates that the sponsors reached-out to MMA staffers to better understand the municipal perspective prior to filing this legislation.

With respect to the first issue - group emails - two concerns appeared to emerge. First, it would effectively prohibit a partisan majority of a legislative committee (such as all the Democrats on the Judiciary Committee) to send among themselves group emails concerning committee issues, but the minority members could conduct that type of activity. This kind of disparate impact appeared to make the Committee a bit uneasy.

The second reason the Committee hesitated to enact a statute focused on emails is that email is but one form of electronic communication. In the age of emails, texting, Facebook, Twitter and other modes of electronic and telecommunications, a statute focused on only one form of electronic communication (email) is probably not going to be a sufficient public policy solution.

At the work session, the sponsors introduced an amendment to their bill converting it into a resolve calling for the study of two issues.

First, the resolve requests that the Right to Know Advisory Committee (RTK Advisory Committee), a statutorily created committee of media and government representatives charged with assisting the Legislature as it deals with issues associated with the Freedom of Access Act (FOAA), to review all forms of electronic communications to see how utilizing these forms of communications might constitute violations of the open meeting elements of the FOAA.

The second portion of the resolve asks the RTK Advisory Committee to review the existing penalty provisions associated with violations of the FOAA. Mal Leary, a journalist with the Capitol News Service and member of the RTK Advisory Committee, has suggested to the Judiciary

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$20 million Excise Tax Cut Still on the Table

The January 15th edition of the *Legislative Bulletin* described a carryover bill that would slash municipal excise tax revenue. LD 195, *An Act to Base the Excise Tax on Vehicles on a Percentage of the Manufacturer's Suggested Retail Price,* would cut municipal excise tax revenue by 10% each year, or by over $20 million annually. The bill accomplishes that result by applying an across-the-board 10% reduction to the value of the Manufacturer's Suggested Retail Price, against which the various excise tax rates are applied.

LD 195 is sponsored by Rep. Gary Knight, of Livermore Falls, who is a member of the Taxation Committee.

At the Committee level, LD 195 was given a divided "Ought Not to Pass" report. The Democrats on the Committee voted to kill the bill. The Republicans on the Committee voted to support the $20 million cut to municipal excise tax revenue.

The "ought not to pass" report was accepted by the House. By a vote of 87-49, largely along party lines, the House agreed with the Tax Committee and voted to kill the bill.

LD 195 is now before the Senate. We are told that there is a possibility the Senate could vote to support LD 195, which would keep the bill alive for further consideration.

Municipal officials should contact their State Senators and ask them how they intend to vote on LD 195. Something along the lines of $250 million are being cut to local governments in the state budgets either already enacted or being considered this year. It is hard to believe that legislators are proposing an additional $20 million cut to municipal government in this environment, just four months after Maine's voters absolutely crushed a similar proposal offered as a citizens' initiative. But only your State Senators can tell you for sure how they are planning to vote on LD 195. Please give them a call.

RIGHT TO KNOW (cont'd)

Committee that a violation of the FOAA by governmental officials should be made a criminal offense. It is currently a civil offense carrying a $500 fine.

The Judiciary Committee then expanded the scope of the resolve by adding a third topic for review. This third topic involves the practice among some committees of the Legislature breaking into "partisan caucuses" that are closed to the public for purposes of deliberating positions on legislation being considered by the committees. There is a widespread belief that the Attorney General's Office has sanctioned this activity as not being in violation of Maine's open meeting law on the theory that when a majority of a legislative committee goes into a caucus, it is suddenly not a majority of a committee anymore, but is transformed into a political partisan caucus divorced from the committee function, and can therefore deliberate behind closed doors. When it opens the door, it becomes a majority of the committee again.

This issue is relevant to the second item in the originally printed bill. That item prohibited any public body member from communicating that a majority of that public body was in agreement on a topic. Again, this provision would burden a majority party much more than it would a minority party in that, practically speaking, a member of a majority party would be prohibited from communicating with any interested party that the majority had reached an "agreement" on a substantive matter, such as a bill. The Judiciary Committee's discussion of this issue morphed into a discussion of whether the closed process to arrive at those partisan-based agreements, through caucusing, is proper at all.

The Attorney General's Office provided information to the Committee that the AG had not formally issued a legal opinion on the matter. A letter from the AG's Office did indicate that it is possible that partisan caucuses may be permissible under the open meeting law in certain circumstances and that the AG could defend such caucuses – depending on the facts of the case.

The committee members present unanimously supported the resolve.

Keeping Minutes. Next week the Judiciary Committee will take up another piece of legislation related to the Freedom of Access Act. That bill, LD 1791, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings* is a late-filed bill presented pursuant to the authority of the Right to Know Advisory Committee to submit legislation, outside of the normal deadlines. The legislation represents a recommendation of a majority of the RTK Advisory Committee.

The bill would require meeting notes be kept for any meeting that constitutes a "public proceeding" pursuant to the FOAA. Public proceeding is defined to include "the transactions of any functions affecting any or all citizens of the State during meetings by any of the following:

• The Legislature of Maine and its committees and subcommittees;

• Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees;

• Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

• The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

• The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

• Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor, unless the law, resolve or Executive Order specifically exempts the organization from the application of this subchapter; and

• The committee meetings, subcommittee meetings and full membership meetings of any association that:

1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities;

The record that must be created under the terms of LD 1791 includes:

1) The date, time and place of the public proceeding;

2) The members of the body holding the public proceeding recorded as either present or absent;

3) The general substance of all matters proposed, discussed or decided; and

4) All motions made and votes taken, by individual members if there is a roll call.

Of this list, the least clear requirement is #3, the obligation to record the "general substance of all matters proposed, discussed or decided". This standard will invite further litigation regarding the sufficiency of the notes kept. For example, does the Judiciary Committee have to do more than simply list the bill numbers and titles discussed at a work session to satisfy item #3? Or, do the notes have to reflect the comments of the Committee members? What level of specificity satisfies this element of the mandatory record?

This bill is similar to legislation reviewed and rejected by the State and Local Government Committee during the first legislative session last year. That bill was

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Legislative Bulletin

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Editorial Staff: Geoffrey Herman, Kate Dufour, Jeff Austin, and Laura Veilleux of the State & Federal Relations staff.

"Local Option" Tax Deferral for the Elderly

The Maine State Legislature seems ever-ready to enact "local option" tax initiatives that serve to reduce, limit or somehow restrict tax revenues the "opt-in" municipality would otherwise receive. There is a "local option" to create a property tax rebate program for low-income elderly residents. There is a "local option" to create a $750 property tax abatement program for elderly volunteers.

The new addition to that arsenal of "local options" to restrict a municipality's cash flow is LD 1121, *An Act To Protect Elderly Residents from Losing Their Homes Due to Taxes or Foreclosure*.

LD 1121 was originally printed as a bill to restore the state-administered elderly tax deferral system that was in place in the late 1980s. Under that system, the state would step in and pay the property taxes of a qualifying elderly household and take a lien on the household's property to cover the state's contribution.

LD 1121 was carried over into this legislative session, and picked-up by Rep. Kathy Chase of Wells who converted the bill into a "local option" elderly tax deferral system.

As converted by Rep. Chase and given a unanimous "ought to pass" report from the Taxation Committee, LD 1121 would now authorize the legislative body of a municipality to adopt an ordinance creating a program that would allow all homeowners 70 years of age or older to have the property taxes for their residences (and the land upon which the residence is located) deferred for an indefinite period provided the applicant has lived in the homestead property for at least 10 years and has a household income at the time of application that is 300% of the federal poverty level or less.

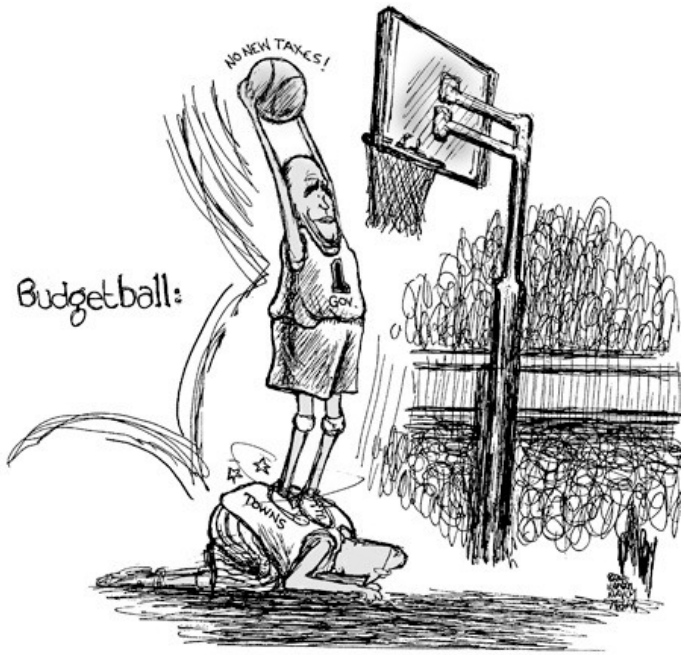
The right to this property tax deferral would expire when the applicant dies, no longer owns the property, or no longer resides in the property, unless the absence is related to health issues.

When the municipality establishes that the applicant no longer qualifies for the deferral, and no one else in the household is eligible to extend its terms, the deferred taxes plus interest would have to be paid within the next 45 days to avoid the delinquency going to lien. The applicable interest rate is the established interest rate for delinquent taxes plus one-half of one percent (.5%). If the deferred taxes are still unpaid at the conclusion of the 45-day period after notification, the normal tax lien paperwork would have to be filed in the registry and the deferred tax obligation could be fully enforced 18 months later.

A public policy issue associated with this "local option" elderly tax deferral program is the qualifying household income standard (no more than 300% of the federal poverty level) only has to be met once, at the time of application. If circumstances change after enrollment into the deferral program and the household's financial capacity significantly improves, eligibility for ongoing tax deferral does not change.

There are also administrative issues associated with managing this local option program that will have to be carefully considered by a municipality before implementation, including: (1) administering the application part of the program confidentially while otherwise dealing with the generally open-to-the-public aspects of property tax administration; (2) filing mandatory annual reports in the registry of deeds listing the properties subject to the deferred tax collection program in order to preserve the lien; and (3) accidentally discharging the tax lien by inadvertently not including a property in the mandatory annual listing filed in the registry which had previously been listed in the annual filing, etc.

LD 1121 is moving quickly through the enactment process given its unanimous "ought to pass" report by the Taxation Committee.



This depiction of "Budgetball" by George Danby appeared on the Editorial Page of the February 20th Weekend Edition of the Bangor Daily News. It is re-printed here with the permission of the cartoonist.

"Waivers" and the Local Contribution for School Funding

Town and city officials are in the process of developing the municipal budgets that will be presented to the voters or the town and city councils later this spring, and school officials are in the process of putting their budgets together as well. Because of the sharp reductions in school subsidy and municipal revenue sharing that the Legislature has enacted or is currently considering, the budgets are not coming together easily and to a certain extent are colliding. That is, the increases to local property taxes that would be necessary to just provide some school systems with a 0% budget increase are too large to even consider presenting to the voters. In some cases, however, school officials are telling the town officials that if the communities fail to raise their fully required "mill rate effort", there will be a reduction in the amount of state subsidy they will receive. They will be leaving available state funding "on the table".

It looks like that will not be the case for the upcoming fiscal year because of a "waiver" provision that the Department of Education is recommending to be included in the supplemental state budget that is being developed by the Appropriations Committee.

To explain, the general rule is that each school system must raise a certain amount of revenue through property taxation to support its operations in order to receive its full allocation of General Purpose Aid for Local Schools (GPA). Under that general law, to the extent a school system raises less than its designated local share, that school system's GPA allocation is reduced proportionately.

An initial waiver of the general rule was written into a supplemental state budget that was enacted in January of 2009 and applied to the FY 2009 school year. Because that supplemental state budget reduced the state's GPA appropriation by $27 million half-way through the school year, and increased the required local contribution by the same amount, a "waiver" of some kind was necessary because the schools had long since adopted their budgets, and should not be punished financially for failing to meet a funding requirement that did not exist at the time their budgets were adopted.

That same process is now occurring with respect to the current, FY 2010 school year. This time around, the state's GPA appropriation is expected to be reduced by $38 million in mid-year, and the required local share increased by the same amount. Just as was done a year ago, the supplemental budget is being developed with a waiver that ensures a school system will receive its full GPA allocation even though it didn't necessarily raise its required local mill rate effort, because the required level of local effort is being jacked-up in mid-year (at least on paper) long after the school budgets were already adopted.

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Two Studies on PSAPs Released

In the past couple of years, municipal officials and the Legislature have focused considerable attention on the issue of Public Safety Answering Points (PSAPs). Two reports have been issued in the past few weeks analyzing the existing PSAP structure and recommending possible changes for the state to consider.

PSAPs are an integral link in the process of answering and responding to emergency 9-1-1 telephone calls. When a 9-1-1 call is placed, it is answered by a call-taker at a PSAP. There are currently 26 PSAPs in the state: 4 are operated by the state government, 13 are operated by counties/sheriffs' departments and 9 are operated by municipalities.

The emergency call must not only be answered, but an emergency response must be provided. A dispatcher literally dispatches the appropriate responder to the emergency. There are approximately 60 dispatch centers in Maine. In some cases, such as the City of Portland, dispatching is integrated into the functions of the PSAPs; the PSAP that answers the call also dispatches the appropriate response. In other cases, the PSAP forwards the call to the appropriate dispatching center. Outside of the PSAPs, most dispatch agencies are municipal police departments.

In 2003, the Legislature passed a law requiring the Emergency Services Communications Bureau to reduce the number of PSAPs then in existence from 48 to a number between 16 and 24. That project was undertaken in 2005 and by 2008 the number of PSAPs had been reduced to 26.

This consolidation has resulted in a number of complaints and challenges. Included in the list of challenges are: the costs to municipalities and the state in paying for PSAP service; the appropriate level of the surcharge imposed on phone bills to fund the E-9-1-1 network; the costs and benefits of stand-alone dispatch facilities; and, most importantly, the quality of the responses to 9-1-1 calls by the new consolidated agencies.

In 2009, problems and complaints associated with these issues caused the Legislature to request two PSAP reports.

The first report is a broad overview of the entire PSAP system. The Public Utilities Commission retained Kimball Associates of Virginia to conduct that study, entitled "Optimum PSAP Reconfiguration Assessment." The second report is a more micro-level review of the various PSAP issues in Kennebec County. That report, entitled "Emergency Communications in Kennebec County", was completed by the Office of Program Evaluation and Government Accountability (OPEGA).

The two reports focus on a few common issues:

1) Consolidation of dispatching;

2) Further consolidation of PSAPs;

3) The different rate structures charged by local PSAPs vs. state PSAPs;

4) The role of the Public Utilities Commission in rate-setting;

5) Training and oversight of call-takers; and,

6) Unique challenges posed by cell-phone based emergency calls.

Both reports can be found on the Maine Municipal Association's website (www.memun.org).

While no legislation is pending on these issues, if past is prologue, we can be sure that legislation will be shortly forthcoming.

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.)

Judiciary

LD 1791 – An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings. (Reported by Rep. Priest of Brunswick for the Joint Standing Committee on Judiciary.)

This bill requires that a record of all "public proceedings", as defined by Maine's Right to Know law, must be made within a reasonable period of time after the public proceeding. At a minimum, the record must include the date, time and place of the public proceeding, the members of the body recorded as either present or absent, the general substance of all matters proposed , discussed or decided, and all motions and votes taken by individual member if there is a roll call.

LD 1792 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions. (Reported by Rep. Priest of Brunswick for the Joint Standing Committee on Judiciary.)

This bill implements a number of recommendations of the "Right to Know Advisory Committee" which are generally focused on statutory language in various places in Maine law regarding confidentiality provisions. In addition, this bill includes a recommendation of the Right to Know Advisory Committee to give itself the charge of reviewing and making recommendations concerning the issues involved with requests for public records in bulk, including: (1) public access to data bases; (2) protection of personal information not expressly designated as confidential but contained in data bases that include public records; (3) reasonable costs for copies when public records are requested in bulk; (4) whether access to public records or the costs of their reproduction should be based on the intended or subsequent use of the information requested in bulk; and (5) the acceptable formats for responses to requests for bulk records.

Legal & Veterans Affairs

LD 1790 – An Act To Implement the Recommendations of the Working Group To Study Landlord and Tenant Issues. (Reported by Rep. Trinward of Waterville for the Joint Standing Committee on Legal and Veterans Affairs.)

This bill implements a number of recommendations of a working group studying landlord and tenant issues. Among the various recommendations, this bill expands the law enacted in 2009 that allows a municipality to provide heating fuel in certain circumstances to an apartment building when necessary to ensure the habitability of the property, and further establishes a process for the municipality to place a lien on the property to recover those costs. This bill expands that authority so a municipality could provide "basic necessities" other than heating oil, according to the same procedures. The term "basic necessities" is defined as services, including but not limited to maintenance, repairs, and provision of heat and utilities, that a landlord or tenant in otherwise responsible to provide.

LEGISLATIVE HEARINGS

NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm. *If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at* http://www.state.me.us/legis/.

Monday, March 1

Education & Cultural Affairs
Room 202, Cross State Office Building, 10:00 a.m.
Tel: 287-3125

LD 1782 – An Act To Exempt the Town of Hermon from the School Administrative Unit Consolidation Law.

Tuesday, March 2

Natural Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1787 – An Act To Provide for Legislative Review of Recently Proposed Revisions to Certain Rules Adopted Pursuant to the Site Location of Development Laws.

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 1785 – An Act To Bolster Maine's Social Safety Net through Voluntary Sales Tax Contributions.

(No LD number yet) LR 2612 – An Act to Update the Telecommunications Taxation Laws.

Utilities & Energy
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1783 – An Act To Amend the Charter of the Kennebec Water District.

Wednesday, March 3

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

LD 1781 – An Act To Allow Electronic Filing of Vital Records and Closing of Records To Guard against Fraud and Make Other Changes to the Vital Records Laws.

Legal & Veterans Affairs
Room 437, State House, 9:00 a.m.
Tel: 287-1310

LD 1790 – An Act To Implement the Recommendations of the Working Group To Study Landlord and Tenant Issues.

Thursday, March 4

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

LD 1791 – An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings.

LD 1792 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions.

RIGHT TO KNOW (cont'd)

LD 786, *An Act to Require That Minutes Be Kept of Municipal Meetings*. LD 786 only applied to municipal boards, whereas LD 1791 applies to the public proceedings of all levels of government, including the Legislature. LD 786 was vague in that it required "meeting minutes". LD 1791 adds some clarity to a certain degree, but the vagueness of item #3 discussed above still remains.

The primary municipal objection to LD 1791 would be the same as it was to LD 786, which is the cost associated with preparing, managing and archiving these kinds of records for every meeting of every municipal board, commission or committee. Maine law already mandates records and notes for certain municipal activities. In fact, formal records of actions of the legislative body (town meeting or council) of planning and land use bodies and of all quasi-judicial municipal bodies (assessment review boards) must be kept now. The public is not in the dark regarding actions taken by municipal bodies.

Maine has a strong "open meetings" law that allows any member of the public to attend any meeting of any public body. And these public bodies must provide varying levels of public notice that a meeting is going to occur. This allows any member of the public, including the press, to take the meeting minutes they desire.

At one point during this legislative session, in the context of huge reductions in state financial support for local government, there was a theme to repeal or reduce many of the mandates that are placed on Maine's towns and cities by Augusta. This late-filed bill from some of the membership of the Right to Know Advisory Committee goes in the opposite direction.

WAIVERS (cont'd)

What is also included in the supplement budget as a recommendation from the Department is an open waiver for the upcoming fiscal year, FY 2011. Because of the difficulty a number of school systems may have in raising the required local share in order to meet the full "EPS-based" allocation, the Department is prospectively recommending a waiver for FY 2011. That is, even if a community is unable to raise the full amount of its required allocation for next year's school budget, its full GPA allocation will still be provided to it.

LD 1735. A bill has been introduced this legislative session that would both rationalize and codify this "waiver" process so that school systems and the property taxpayers can understand the rules up-front, rather than relying on *ad hoc* waivers buried in budget bills.

Sponsored by Representative Peggy Rotundo of Lewiston, LD 1735 (*An Act to Waive Certain Penalties Imposed against School Administrative Units if the State Has Not Fulfilled Its Goal of Paying 55% of Costs*) would permanently adjust the general law to make the local cost-share obligation proportionate to the state's cost share contribution (plus federal "stabilization" funding support) as measured against what the state funding level should be at the full 55% level.

For example, if LD 1735 was current law going into the upcoming fiscal year, and the state contribution to the total EPS allocation amounted to 85% of what full funding would be at the full-funding, "55%" level, than the school systems would continue to receive their full school subsidy allocation as long as they raised at least 85% of their required local share. In short, LD 1735 recognizes that the shared partnership of state and local school funding is a two-way street, and imposes a predictable minimum funding standard based on proportional equity.

The Education Committee is expected to hold a substantive work session on LD 1735 on Friday this week (February 26th).