

# LEGISLATIVE BULLETIN



Vol. XLIII No. 20 MAY 28, 2021

## Magic Eight Ball...Are Remote Meetings Here to Stay? “Outlook Good”

If the Judiciary Committee has its way, local governments will be entrusted to adopt ordinances and policies enabling members of public bodies to meet remotely. By a unanimous vote, the nine members of the committee present at Thursday’s work session supported an amended version of LD 32, *An Act Regarding Remote Participation in Public Proceedings*, sponsored by Sen. Trey Stewart of Aroostook County. The bill was submitted at the request of MMA’s Legislative Policy Committee.

As amended, LD 32 will allow public

bodies to meet remotely provided that after notice and hearing the municipality adopts an ordinance or policy that contains the following provisions:

- Limits remote participation to circumstances where being physically present for a public proceeding is not practicable, which may include an emergency, illness or a geographic characteristic that impedes or slows travel;
- Provides members of the public an opportunity to attend by remote means when members of the body participate

remotely;

- Provides reasonable accommodations enabling an individual with a disability a meaningful opportunity to attend and participate remotely in a public proceeding;
- Provides, when allowed, for public input via an effective means of communication between the body and the public;
- Provides notice of the meeting that includes information on how the public may participate remotely, as well as the location where the public can participate

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### Last Legislative Bulletin

With the Legislature set to complete all committee work in advance of the long weekend, this will be the last Legislative Bulletin for the 2021 legislative session. Beginning next week, the Legislature will pivot to convening the House and Senate daily to complete its work prior to the statutorily established June 16 adjournment date.

However, in the coming weeks MMA State and Federal Relations staff will need assistance from local officials to ensure that lawmakers understand how the bills to be debated by the full Legislature will impact municipalities. As such, it is likely you will receive several “action alerts” over the next three weeks describing the bills of municipal interest to be addressed that day. Please take the time to review those alerts and reach out to your members of the Legislature to ensure your voices are heard and perspectives considered.

Thank you for your ongoing support of the Association’s advocacy efforts.

### Binding Arbitration Bill Supported

By a margin of 6 to 5 the Labor and Housing Committee voted to support LD 677, *An Act To Improve Public Sector Labor Relations by Amending the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws*, despite all of the testimony from public sector employers raising concerns with increasing costs.

As described in detail in the May 21 Legislative Bulletin, the bill amends the labor relations laws impacting public employers by making arbitrator decisions regarding salaries, pensions and insurance binding for all parties. Currently, the final decisions on these matters rests with appointed and elected representatives of the impacted public entities. Furthermore, under the terms of the bill the failure of an employer to implement the arbitrators’ final decisions results in the extension of a right to strike to impacted non-public safety employees.

Representatives from the Maine Depart-

ment of Administrative and Financial Services, Maine Community College System, Maine County Commissioners Association, Maine Judicial Branch, Maine School Management Association, Maine Water Utilities Association, the University of Maine System and MMA joined the cities of Bangor and Portland in opposing the bill.

From the municipal perspective, not only does the change inappropriately shift decision making authority away from elected officials, it puts the property taxpayers, who fund schools, county and municipal government operations, at risk for bearing greater financial burdens without an avenue for recourse.

With the House and Senate scheduled to convene daily starting on June 2, this bill will be debated by the Legislature soon. Please contact your legislators and ask them to oppose passage of LD 677.

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## The Environment and Natural Resources Digest

The Environment and Natural Resources Committee deserves kudos for how smoothly legislation referred to it was handled and voted out. Bills were wide ranging and always set against the backdrop of climate change. As the session progressed a few themes were revealed.

From the municipal perspective, the committee addressed four primary issues: (1) the group of forever chemicals collectively referred to as PFAS; (2) waste management; (3) site law review and Department of Environmental Protection (DEP) staffing capacity; and (4) Governor Janet Mills' four-year climate action plan, "Maine Won't Wait." The following committee wrap-up is not inclusive of every bill this session, but it is a good primer for the larger discussions ahead.

### Per- and Polyfluoroalkyl (PFAS) Substances

The scope of known PFAS contaminated locations in Maine is growing and as such, the committee faced a three-pronged challenge: identifying new sites, remediating known sites, and preventing further contamination.

Since PFAS substances are found in almost every industry sector, the committee is starting with a piecemeal approach to prevention. LD 1503, *An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution*, sponsored by Rep. Lori Gramlich of Old Orchard Beach, proposes a progressive phase-out of products that contain intentionally added PFAS by 2030, starting with carpets, rugs and fabric treatments in 2023. Wisely, the bill makes exemptions for products with PFAS when the use is currently unavoidable as determined by DEP. After minor revisions by the department, the committee voted "ought to pass as amended." If LD 1503 becomes law, it could be the vehicle DEP uses to prevent further PFAS contamination in Maine.

PFAS containing firefighting foams were another target of prohibitive legislation. As proposed in LD 1505, *An Act to Restrict the Use of Perfluoroalkyl and Polyfluoroalkyl Substances in Firefighting Foam*, also sponsored by Rep. Gramlich, use of such foams for training would be prohibited unless it is entirely collected and properly disposed.

The bill also paves the way for a complete prohibition when safer alternative foams become available and sets a precedent for requiring manufacturers of such products to institute buy-back programs. With a few definition and technical edits, the committee voted "ought to pass as amended."

MMA supported both LD 1503 and LD 1505 on the grounds that they balance the immediate need to obtain certain product categories like firefighting foams, with a long-term and equitable phase out of PFAS use in products known to have harmful environmental impacts. LD 1505 also accurately places responsibility on manufacturers, the principal producers of this PFAS predicament. Not all PFAS related bills were this precise.

LD 1600, *An Act to Investigate Perfluoroalkyl and Polyfluoroalkyl Substance Contamination of Land and Groundwater*, again sponsored by Rep. Gramlich, offers a needed solution with misguided culpability. The bill would create a fund, capitalized by a \$10 per ton fee assessed on septage and sludge, to be used by DEP to test and monitor soil and groundwater for PFAS contamination. MMA agreed such a fund needs to be established, but testified neither for nor against the proposal, because placing the fee on municipal sludge is misdirected for two reasons. The first being that municipal water treatment plants are the recipients, not generators, of PFAS related contamination, yet this legislation targets their resultant municipal sludge as a source of revenue. Second, the fee will unfairly be paid by Mainers who rely on the services of municipal water treatment plants. LD 1600 was amended to prioritize testing of sites already suspected of contamination and earned an "ought to pass as amended" before heading out of committee.

### Waste Management

Maine has a waste problem. The state produces a lot of it, doesn't know what to do with it, and can't figure out who should pay for it. As the committee deliberated a sustainable course forward it was mired with opposing technicalities.

The best example of the pull between competing definitions and roles in waste

management practices were two attempts at stewardship programs for packaging waste. Extended producer responsibility for packaging material has been discussed at length in the Legislative Bulletin and will get more print space this summer in MMA's Maine Town and City magazine, but for now the issue serves to underscore the extent to which the committee worked through discord. The two bills, one mostly supported by industry stakeholders and the other put forward with larger environmental interests in mind, contained innate divergences.

The result of that discord is an amended version of LD 1541, *An Act to Support and Improve Municipal Recycling Programs and Save Taxpayer Money*, sponsored by Rep. Nicole Grohoski of Ellsworth. The amended legislation is chock-full of revisions, like the removal of litter abatement as an incentive to producers and the increase of power to DEP during the rulemaking process. Fortunately, a last-minute suggestion by Sen. Richard Bennett of Oxford County kept the bill close enough to its original form that even as amended, the bill is a still victory for advocates of sharing responsibility. MMA testified in support of LD 1541, hoping the bill would share the financial burden of waste management with the generators of waste. The committee voted "ought to pass as amended."

Through the weeds the committee also found majority consensus on a new fee schedule that stimulates other means of waste disposal preferable over landfilling. As amended, LD 57, *An Act To Reduce the Landfilling of Municipal Solid Waste*, sponsored by Rep. Ralph Tucker of Brunswick, eliminates an exemption that excluded a large portion of municipal solid waste from the \$2 per ton tipping fee and allows DEP to set a fee that will encourage municipalities to reduce, reuse, recycle or incinerate before turning to landfilling. The Association testified neither for nor against the bill citing the elimination of a friendly exemption as the least preferable means of incentivizing other waste management practices over landfilling. The bill left committee with a majority "ought to pass as amended vote."

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After making serious headway on important waste related legislation, the committee was due for a few head-scratchers. Rep. Billy Bob Faulkingham of Winter Harbor put forth two bills before the committee that simply did not align with each other. LD 359, *An Act To Promote Energy Production from Recycling Plastics*, softens the definition of recycling to include incineration and the state’s admirable recycling goals. The bill’s purpose is to promote waste-to-energy production. Meanwhile, LD 911, *An Act to Prohibit the Reception of Foreign Waste Plastic in Maine Ports*, would starve the waste-to-energy industry of plastic waste originating from out of state. Just like everybody else, Rep. Faulkingham is trying to figure out what to do with waste. MMA offered neither for nor against testimony that weighed environmental concerns with the productivity of waste-to-energy generation. Both bills earned divided reports from the committee.

### Site Law Review and DEP Staffing Capacity

The committee ran circles debating how to quicken the review of development permit applications. There are really only two options, either reduce what DEP needs to review to clear the docket for more pressing permit applications or hire more staff to process the many important and detailed applications. The committee made concessions to both sides.

LD 69, *An Act to Reduce Duplicative Permitting Review for Projects under the Site Location of Development Laws*, sponsored by Rep. Ralph Tucker of Brunswick, was the first triumph for those urging DEP to do less. This bill, which was signed by the governor earlier this month, raises the upper limit from three to seven acres for proposed structures that initiate DEP site law review. MMA testified neither for nor against.

LD 1028, *An Act to Ease Business Expansion by Increasing the Number and Applicability of Permit Exemptions under the Site Location of Development Laws*, sponsored by Sen. Lisa Keim of Oxford County, lost most of its bite during a work session that removed the most sweeping exemptions. As amended, the bill extends the “DEP do nothing rule” to expansions of certain manufacturing facilities and education campuses. MMA was opposed to the

bill before its amendment. At present the bill is relatively benign by municipal standards and was voted “ought to pass as amended” by the committee.

These two site law exemption bills might seem like the tide is turning against environmental precaution, but in reality forces on the other side are holding firm in their desire to increase DEP staffing capacity. Of trivial note, at least six other site law related bills were voted “ought not to pass” by the committee this session. Of significant note, the committee voted “ought to pass as amended” on LD 1415, *An Act Regarding Minor Revisions to Existing Site Location Permits, Exemptions for Rerouting Storm Water and Exemptions for New Construction or Modification of an Existing Licensed Development under the Site Location of Development Laws*, sponsored by Sen. Catherine Breen of Cumberland County, which creates a resolve to uncover the adequacy of DEP’s current staffing capacity to efficiently review permit applications. The amended bill is a far cry from the version MMA submitted opposition testimony for. As proposed now, LD 1415 creates a needed resolve.

Perhaps the biggest sign that advocates for increasing DEP staffing will win the day came in the form of the governor’s supplemental FY 22 – FY 23 General Fund budget (LD 221). During a discussion on the package, the committee voted to support the request for six new positions dedicated to site law review. This is a signal MMA was definitely looking for.

### “Maine Won’t Wait”

This session nearly every committee of the legislature considered bills that would advance the governor’s climate action plan, but none did so as many times as the Environmental and Natural Resources Committee. Repeatedly the committee was given a chance to consider legislation purely in the name of mitigating climate change. For instance, LD 1571, *Resolve, To Analyze the Impact Sea Level Rise*, sponsored by Rep. Lydia Blume of York, was a straightforward directive for multiple state agencies and departments to consider incorporating the impacts of sea-level rise into their rules, regulations and responsibilities. The bill was proposed as a needed response to climate change, and was voted “ought to pass as amended” to combat

the impacts of climate change. It is a small step but a big indicator that the committee is ready to seriously consider the recommendations put forth in “Maine Won’t Wait.”

One momentous bill deserves so much consideration that the committee felt it prudent to carry it over to the next session. LD 1429, *An Act to Implement the Most Time-sensitive Recommendations of the Maine Climate Council*, sponsored by Rep. Michelle Dunphy of Old Town, is a massive 15-page bill that implements numerous parts of the governor’s climate action plan. The Association’s policy committee opted for neither for nor against approach, simply because the bill is too varied for MMA to establish a definitive position. During testimony, MMA noted rural broadband expansion grants, increased public transportation funding, and weatherization and home heat-pump incentives and rebate programs, as valuable supports to local climate change initiatives.

Considering how much of this session was exhausted on picking the right packaging stewardship legislation, sifting through handfuls of site law bills, and addressing PFAS contamination, the committee was unable to give LD 1429 the time it deserved. Hopefully the committee will be able to pick-up where it left off when it resumes next session.

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## LEGISLATIVE SESSION SCHEDULE

**The House and Senate will both be meeting at 10:00 a.m. on the following dates, with the potential addition of double sessions on some of these dates as they wrap up their work before the end of session:**

- Wednesday, June 2
  - Thursday, June 3
  - Monday, June 7
  - Tuesday, June 8
  - Wednesday, June 9
  - Thursday, June 10
  - Friday, June 11
  - Monday, June 14
  - Tuesday, June 15
  - Wednesday, June 16
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## Technology's Impact on Policy

### Criminal Justice Wraps Up and Carries Over

Legislating via remote means has had a significant effect on advocacy, leaving policy stakeholders to wonder if their messages are being heard or adequately understood. Condensing complex public policy concerns into three minutes of Zoom testimony is frustrating for everyone. Although at times tempers flared, communications were crossed, and opportunities for finding consensus on issues were lost, the Legislature has processed many bills under extreme conditions. While municipal officials do not agree with some of the decisions made, they nonetheless recognize the tremendous difficulty of legislating via technology.

The amount of work necessary to reach positive outcomes was evident as the Criminal Justice and Public Safety Committee held work sessions on three bills of municipal significance.

As printed, LD 1478, *An Act to Decriminalize Homelessness*, sponsored by Rep. Victoria Morales of South Portland, in part proposes an alternative to arrest for a person who lacks a home and commits certain low-level violations of law including loitering, disorderly conduct and drinking in public places. While removing arrest powers of law enforcement if the suspect identified as homeless, the bill directed the Office of the Attorney General (AG) to develop a "homelessness protocol" that must be adopted by all law enforcement agencies

statewide proscribing alternatives to arrest.

At the bill's hearing, the Department of Public Safety (DPS) cautioned that the definition of public space in Title 17-A is so broad that law enforcement officials would be prohibited from addressing violations taking place on private property where public access is expected, including store fronts, basements of apartment buildings, hotels, schools and beaches. From the perspective of the department, a better way forward is to create a response that directs enforcement through a policy, while allowing police to continue to access to the tools protecting the rights and safety of all parties.

On behalf of the City of Portland, Rep. Morales advanced an amendment directing the AG to develop a model homelessness protocol policy to be voluntarily adopted by a municipality. The amendment replaces the bill's mandated one-size-fits all approach that could hinder law enforcement efforts, and includes a change to the bill title at the request of Rep. Richard Pickett of Dixfield, to emphasize that homelessness is not, nor ever has been, criminal. The end result was a near unanimous committee vote in support of the amendment that elevates the needs of homeless individuals without eliminating the response of last resort.

Similarly, Rep. Grayson Lookner of Portland introduced, LD 1585, *An Act To Increase Privacy and Security by Prohibiting the Use of Facial Surveillance by Certain*

*Government Employees and Officials*, originally drafted to prohibit any government entity from collecting, retaining or mining facial recognition data and established a fine for such activities.

Following the public hearing, the sponsor worked with the American Civil Liberties Union, DPS, Maine Sheriffs' Association, and Maine Chiefs of Police on an amendment to the printed bill addressing the concerns raised by the impacted parties.

As a result of the collaborative efforts of all stakeholders, the committee unanimously voted to support the amended bill. As amended, the bill creates the provisions necessary to protect the use of facial recognition software, defines an auditing process for the use of material through DPS rule making, and balances privacy and public safety concerns.

The compromise approach was in stark contrast to the committee's reconsideration of LD 417, *An Act To Protect Maine's Drivers from Pretextual Traffic Stops*, which is also sponsored by Rep. Morales. As proposed, the bill prohibits a law enforcement officer from using a motor vehicle violation to stop an occupant suspected of engaging in criminal activity that is not related to a motor vehicle violation. The bill also provides that evidence obtained in a traffic stop in violation of this provision may not be used in any criminal proceeding.

Under current law and settled case law, an officer only needs articulable suspicion that a violation is or has occurred to initiate a traffic stop or question a driver. Settled case law establishes an obligation that limits the time and nature for the interrogation of a driver about activity not germane to the stop without further suspicion.

During its first work session, the bill was amended to increase the threshold to inquire about other suspected violations from articulable suspicion to probable cause. Articulable suspicion is the belief by a reasonable person that the suspect violated a law or regulation, while probable cause refers to the right that a police officer has

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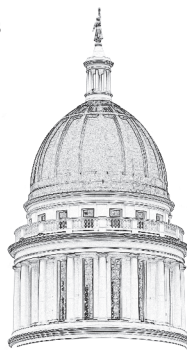
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to make an arrest, search a person or his property, or obtain a warrant.

The bill was tabled until the following day to allow committee members to have their concerns addressed offline, after considerable angst, with a promise to allow DPS to weigh-in the following day.

As drafted, the newly amended language defines a pretext stop as one legally conducted under several sections of Title 29-A, governing motor vehicle and traffic laws, with the intent of using that stop to “solely seek other criminal activity” and makes any evidence discovered under that stop inadmissible in court. Examples of violations this new provision would apply to include traffic stops for expired or unregistered vehicles, vehicle defects, speed, illegal U-turns, failing to secure a child in a safety seat or passing a stopped school bus.

The target of the legislation may have been perceived racial profiling during drug trafficking investigations, but the bill has sweeping implications for other investigative activity and may cost taxpayers access

to federal funds to remove impaired drivers from the roads. Operating under the influence enforcement details, often referred to as directed patrols, are conducted under the “pretext” of finding impaired drivers using legal traffic stops for defects and other motor vehicle violations. Such enforcement activity removes hundreds of impaired drivers from Maine roads annually, contributes to Maine’s low insurance rates regionally, and often uncovers a series of other violations like uninsured motorists, unlicensed operators, stolen property, and fugitive from justice warrants.

Unlike the two other criminal justice bills, this one received a divided report and is likely to be debated by the entire Legislature in the coming weeks. Fifteen other bills with significant municipal impacts were carried over until next session.

Municipal officials concerned with the change proposed in LD 417 should contact members of the Legislature and ask them to vote in opposition to the erosion of the tools law enforcement officers need to protect the public’s safety.

in-person; and

- Requires that all votes are taken by roll call and in a fashion that can be seen and heard by other members of the body and the public.

The amendment also clarifies that a member of the body participating remotely is considered present for the purposes of establishing a quorum and casting votes. A separate provision in the amendment, which requires all documents and materials considered by the body to be made available to the public, will be further revised to ensure that additional mandates and costs are not shifted onto municipalities.

Once the committee completes a final language review, the bill will be sent to the full Legislature for debate.

Municipal officials have long advocated for the authority provided in LD 32 and appreciate Sen. Stewart’s and the committee’s work on this important issue. Local leaders interested in retaining remote meeting authority in perpetuity are encouraged to contact their members of the House and Senate to urge support for the bill.

## IN THE HOPPER

### Judiciary

LD 982 - An Act To Protect against Discrimination by Public Entities. (Sponsored by Rep. Talbot Ross of Portland)

This bill amends the state’s Human Rights Act to prohibit public entities from denying participation in or access to services, programs or activities on the basis of an individual’s race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin.

LD 1345 – An Act To Implement the Recommendations of the Right To Know Advisory Committee. (Reported by Rep. Harnett of Gardiner for the Joint Standing Committee on Judiciary)

This bill implements recommendations of the Right To Know Advisory Committee that were contained in the 2020 annual report. The bill caps the fee to cover the cost of copying a public record at no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy and clarifies that a per-page copy fee may not be charged for records provided electronically and adds to the committee a member who has legal or professional experience in the field of data and personal privacy, to be appointed by the governor. The bill also makes the following changes to the requirements for training under the Freedom of Access Act to: (1) clarify that an official must complete training within 120 days of assuming the duties of the position; (2) expand the list of municipal officials required to complete training to include code enforcement officers, town managers and administrators and planning board members; and (3) clarify that school superintendents, assistant superintendents and school board members are required to complete training.

(The bill summaries are written by MMA staff and are not necessarily the bill’s official summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA’s website, [www.memun.org](http://www.memun.org).)

LD 1529 – Resolution, Proposing an Amendment to the Constitution of Maine To Create a Right to Privacy. (Sponsored by Rep. O’Neil of Saco)

This resolution proposes to amend the Constitution of Maine by creating a natural and inherent right to privacy in which a person’s personal life and affairs are free from governmental and private intrusion and not diminished by a person’s interaction with an internet, communication or other electronic data service and that requires a warrant prior to government access of a person’s electronic data and electronic communications.



## Maine Municipal Association

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### IN THE HOPPER (*cont'd*)

#### Labor & Housing

**LD 1530 – An Act To Allow People To Live in Tiny Homes as a Primary or Accessory Dwelling.** (Sponsored by Rep. McCrea of Fort Fairfield)

This bill establishes standards for municipalities to follow regarding tiny homes, which are structures no larger than 400 square feet constructed on a frame or chassis and designed for use as permanent living quarters. The bill allows municipalities to set rules for tiny homes that are less restrictive than state law, allows tiny homes on undeveloped and developed housing lots, allows municipal inspection of certain features of tiny homes and provides for tiny homes to be assessed for property tax purposes after 180 days in certain circumstances.

As amended, the bill is replaced and would now require municipalities to permit tiny homes to be placed or erected on individual lots where single-family dwellings are allowed or as an accessory structure, subject to all applicable land use requirements as single-family dwellings or as an accessory structure.

**LD 1590 – An Act To Define Commercial and Noncommercial Purveyors of Accommodations for Short-term Rental.** (Sponsored by Rep. Sylvester of Portland)

This bill defines terms to be used by municipalities when enacting ordinances regarding or regulating short-term rentals of living quarters offered through a transient rental platform, including definitions for “commercial short-term rental purveyor,” “noncommercial short-term rental purveyor,” “owner of a short-term rental unit” and “short-term rental unit.” This bill requires these definitions to be made publicly available on the state’s website and on the Maine State Housing Authority’s website and to be sent electronically to all municipalities.

#### State & Local Government

**LD 1228 – An Act To Promote Transparency and Public Safety When Public Servants Request Towing Services.** (Sponsored by Rep. Bryant of Windham)

This bill requires the Central Fleet Management Division within the Department of Administrative and Financial Services, Bureau of General Services to develop standards governing requests for roadside assistance or towing services.

**LD 1522 – An Act To Update and Eliminate References in Statute to Aldermen, Selectmen and Overseers of the Poor.** (Sponsored by Rep. Doudera of Camden)

This bill amends the Maine Revised Statutes to replace terms: (1) “board of selectmen” with “select board”; (2) “selectman” with “municipal officer”; (3) “overseer of the poor” with “overseer”; and (4) “alderman” with “municipal officer.”

**LD 1536 – An Act Regarding Municipal Public Hearings on Citizen-initiated Municipal Referenda.** (Sponsored by Rep. Bradstreet of Vassalboro)

This concept draft bill proposes to amend the laws governing municipal public hearings on citizen initiated municipal referenda.