

Meet Your Legislative Policy Committee

With the commencement of a new legislative session, we find it fitting to introduce the members of the Association’s 70-member Legislative Policy Committee (LPC), who are listed on Page 3. The municipal officials who serve on the Policy Committee are elected by the boards of selectpersons and town and city councils in each of the state’s 35 senate districts to represent the interests of the municipal leaders from those geographic areas. Similar to the election of the Maine Legislature, members of the Policy Committee are elected in even numbered years to serve a two-year term. However, unlike the terms of state policymakers, there are no limits on the number of terms a member can serve on the LPC.

The members of the LPC have two important roles.

The first is convening monthly in January through March, and occasionally in April, if needed, to establish the Association’s position on bills of municipal interest. Although MMA’s advocacy staff is responsible for sorting through all the printed bills and identifying initiatives having varying levels of impact on municipal government, it is the members of the Policy Committee that determine the Association’s positions on the flagged bills. Those positions are established during the LPC’s meeting when, similar to the legislative process, subcommittees of the LPC meet in the morning to review all of their assigned bills, and then reconvene in the afternoon with the entire LPC to consider subcommittee recommendations. The positions voted on and the information gleaned from both the subcommittee and full LPC discussions are used as the basis of the testimony provided by MMA staff.

Essentially, MMA’s advocacy staff acts as a conduit of information between

the Association’s members and the Maine State Legislature. The positions established by the LPC are shared with state lawmakers through participation in public hearings and work sessions, and the legislative responses to the municipal stance on important matters are shared with municipal officials across the state through the weekly publication of the *Legislative Bulletin*.

The LPC’s other role is to establish

and adopt the Association’s two year legislative platform, which takes place shortly after the Policy Committee’s August election. Through a deliberative and reiterative process, the LPC determines and prioritizes the bills it will cause to be submitted to the Legislature for its consideration.

As a result of the LPC’s work during the late summer and fall months of 2018,

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Municipal Matters

Exploring Home Rule Authority

Home Rule

Reflecting a continuing balancing act between the duties and responsibilities of federal, state, and local governments, home rule is the legal concept which allows Maine’s towns and cities to perform functions their residents believe are necessary, so long as the municipal activity is not precluded by state or federal law.

In 1986, Stetson Selectperson and then-MMA President Julian Orr described local government as “the keystone of democracy.” That year, the Legislature’s Joint Standing Committee on Local and County Government issued a report capping its two-year, two-subcommittee study on revising Title 30, now Title 30-A, of the Maine Revised Statutes, which contains most of the laws governing municipal government operations. According to the report, the revision was made to “reflect the Legislature’s commitment to municipal home rule ... [due in part to] the legislature’s and Judiciary’s failure to follow through on the concept of municipal home rule in Maine” since its adoption fifteen years prior. In the decades since, Maine’s long-standing home rule inclination has crystalized into the framework for the state-local relationship.

Background

States with little or no home rule authority are referred to as “Dillon’s Rule” states, named after 19th Century U.S. Supreme Court Justice John F. Dillon, who described municipalities as a “creature of the state,” able to exercise only those powers provided by the state legislature to local governments. In contrast, essentially the opposite is true for towns and cities in states that recognize home rule authority – municipalities are authorized to act unless the Legislature has restricted that authorization for a specific government function.

In November 1969, Maine voters established the general doctrine of home rule in the Maine Constitution (Article 8, Part 2, section 1). The following year, the Legislature enacted the Home Rule

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Meet Your Legislative Policy Committee (cont'd)

the Association's 2019-2020 legislative agenda includes initiatives seeking to:

- Restore and protect funding for the Municipal Revenue Sharing Program by amending the state's Constitution to require that each month not less than 5% of the previous month's state sales and income tax revenue is distributed to municipalities;
- Increase the value of the benefit provided under the Homestead Exemption Program from \$20,000 to \$25,000 and increase state reimbursement for lost property tax revenue from 62.5% to 100%;
- Grant municipalities the authority to adopt a local sales tax of not more than 1% on retail, meals and lodging sales currently subject to the state sales tax;
- Target property tax relief to older homeowners through the reinstatement of the State Property Tax Deferral Program for Maine's Senior Homeowners, which provides homeowners who meet certain age, household income and asset thresholds the ability to defer all or a portion of their property tax liability;
- Require the school district budget adoption warrant to include an article describing how "unanticipated" additional state subsidy for K-12 education will be used;
- Reduce the property tax burden associated with funding county jail inmates' healthcare costs by requiring the Department of Health and Human Services to establish a mechanism for ensuring that county jail inmates who are eligible for Medicaid coverage are able to apply for coverage while detained or incarcerated;
- Allocate one-quarter of the gross sales and excise tax revenue generated by adult use marijuana establishments in the state to the municipalities where the

revenue is generated;

- Restore municipalities' right to attach municipal facilities to utility poles located in the municipal right of way, without having to pay utilities to move their facilities out of the space on the poles that has traditionally been reserved for municipal uses;
- Add "community broadband systems" to the list of essential types of infrastructure that municipalities may construct for reasons of public necessity; and
- Strengthen provisions of statute to make sure above-ground utilities respond to public needs in a timely fashion and do not disregard their use of public property.

Legislative Committees. Also printed in the pages of this *Legislative Bulletin* is a list of the 17 joint standing legislative committees with the names of the House and Senate members assigned to serve on those committees, as well as the committee clerk's name and contact

information. This information may come in handy to municipal officials wishing to check in on the scheduling of a public hearing or work session or when seeking to submit written testimony via mail or email, rather than in person.

Municipal Matters. Finally, this edition of the bulletin includes the first installment of a limited series called "Municipal Matters." Over the course of several weeks, MMA staff will provide a debriefing on an important municipal issue. The purpose of this series is to explore the background and context for the positions taken by the Association's Legislative Policy Committee on municipally-relevant bills. The first article details the history, background and importance of municipal home rule authority.

MMA's advocacy staff looks forward to providing all the information and updates you need as the 129th Maine State Legislature gets underway. Thank you for your readership and Happy New Year.

Municipal Matters (cont'd)

Enabling Act, which states: "Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter."

The Amendment and Act have provided legal authorization for local governments to operate independently, allowing each community to tailor responses to various local needs in the ways that are

most consistent with the community's unique priorities and values.

How Home Rule Works

For matters not reserved by state or federal law to those levels of government, municipal operations are governed by the charters and ordinances adopted by the municipality's legislative body, which is either the town meeting or town or city council. Some governmental services that are chiefly local in nature include animal control, public safety (i.e. police, fire, and emergency medical services), general

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Legislative Bulletin

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Municipal Matters (cont'd)

assistance, drinking water provision and waste water treatment, solid waste disposal, winter and summer maintenance on some 13,800 miles of local roads, property tax assessment and collection, planning and growth management, and library and cemetery operation.

Other areas of policy are more exclusively in the purview of federal or state government. For these matters, municipalities are said to have been “preempted” from acting without a direct grant of permission. One example might be taxation policy, where municipalities have little in the way of self-determination. State law authorizes municipalities only to assess and retain property and vehicle excise taxes. Income tax rates are dictated by state and federal governments, and sales tax authority is reserved to state government.

Municipal Impacts

For an assessment of the municipal impacts of home rule authority, which is more of an overarching concept than policy topic, the effect is contingent on what the given topic is.

Take, for instance, the most fundamental matter – the municipality’s basic governing structure. The question of which type of structure to utilize is not at all up to the state. Whether the community adopts a town meeting/select board or town meeting/select board/ manager, or council/manager approach, for example, is a decision entirely up to the municipality. Here, affording municipalities home rule authority has the impact of fully empowering citizens to determine how their communities will be governed.

Alternatively, preempting home rule has the impact of mandating one statewide set of rules, prohibiting single communities from acting in a way that is inconsistent with the rest of the state. In addition to the state preemption regarding taxation described above, another example is building and electrical codes. When it comes to ensuring structural integrity and mitigating fire hazards resulting from electrical installations, the state has mandated one set of rules that all communities with more than 4,000 residents are required to adopt and enforce.

Other policy areas have more mixed home rule implications. The state’s non-medical Marijuana Legalization Act on the one hand recognizes strong home rule in the hope that municipalities will help the state administer and enforce its new law. Yet on the other hand, the Act offers municipalities no method of receiving a return on investment for their efforts. Municipalities have wide-reaching home rule authority to regulate, but nearly no authority to compensate.

Moving Forward

The Association aims to ensure continued respect for Maine’s strong home rule tradition in order to guarantee local governments are able to effectively express the will of their inhabitants on issues that directly affect them. As the 1986 legislative committee report put it, “municipal government is the level of government closest to the people and most immediately responsive to their needs. It is manifest that the people need and deserve the authority to act to meet demands occasioned in the community.”

IN THE HOPPER

(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.)

Education and Cultural Affairs

LD 55 – An Act To Return the Normal Cost of Teacher Retirement to the State. (Sponsored by Rep. Stearns of Guilford)

This bill repeals the provisions of school funding law that require school administrative units and private schools to pay for teacher retirement.

Energy, Utilities and Technology

LD 13 – An Act To Allow Microgrids That Are in the Public Interest. (Sponsored by Rep. Devin of Newcastle)

This bill directs the Public Utilities Commission to approve a petition to construct and operate a new microgrid if the commission finds the proposal to be in the public interest. It provides the commission with the ability to impose such terms, conditions or requirements as, in its judgment, it considers necessary in approving a new microgrid and also gives the commission oversight to ensure reliability and security of the electrical system and consumer protections for new microgrid consumers. It specifies that a new microgrid does not become a public utility as a result of its furnishing electrical service to participating consumers. Of municipal significance, it provides that a new microgrid that has been approved by the commission may construct, maintain or operate its lines in, upon, along, over, across or under the roads

and streets. The bill directs the Public Utilities Commission to submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utility matters by January 15, 2021.

Innovation, Development, Economic Advancement and Business

LD 15 – An Act To Provide for Municipalities To Allow Grocery Stores up to 10,000 Square Feet To Open on Thanksgiving, Easter and Christmas. (Sponsored by Rep. Kinney of Knox)

This emergency bill authorizes municipalities to adopt ordinances allowing grocery stores with no more than 10,000 square feet of interior customer selling space to be open on Easter, Thanksgiving and Christmas.

Marine Resources

LD 4 – An Act To Encourage Applied Shellfish Research. (Sponsored by Rep. Alley of Beals)

This bill amends municipal shellfish conservation ordinance authority by allowing the adoption of ordinances allowing eligible entities to conduct the research necessary to support a locally adopted shellfish conservation program. Only research entities working in conjunction with the Department of Marine Resources or a department

approved entity may conduct the research. In addition, the adopted ordinance must require the research entity to issue a report on its findings to the Commissioner of Marine Resource by January 1 of each year.

State and Local Government

LD 53 – An Act To Clarify Local Referendum Ballots. (Sponsored by Sen. Sanborn of Cumberland Cty.)

This bill requires that municipal initiative and referendum questions be listed on election ballots using sequential capital letters of the alphabet rather than sequential numbers.

LD 59 – An Act To Establish a Recall Process for Elected Officials in Plantations. (Emergency) (Sponsored by Rep. Devin of Newcastle)

This bill establishes a procedure to recall an elected official of a plantation based on the elected official's neglect of duty or misconduct.

Taxation

LD 35 – An Act To Exempt All Disabled Veterans in Maine from All Income Tax and To Increase Their Homestead Exemption to \$50,000. (Sponsored by Rep. O'Connor of Berwick)

This bill increases the homestead exemption to \$50,000 for veterans of the United States Army, Navy, Air Force, Marines or Coast Guard who are receiving disability compensation from the federal government due to a service-connected disability and provides an income tax deduction for all income of those individuals.

LD 43 – Resolution, Proposing an Amendment to the Constitution

of Maine To Dedicate All Sales Taxes from All Vehicle Sales and Vehicle-related Sales to the Highway Fund for Roads and Bridge Capital Improvements. (Sponsored by Rep. Cebra of Naples)

This resolution proposes to amend the Constitution of Maine to dedicate all motor vehicle and related sales tax revenue to the Highway Fund for roads and bridge capital improvements.

LD 62 – An Act To Enhance the Senior Volunteer Benefit Program. (Sponsored by Rep. Bailey of Saco)

This bill increases the maximum benefit that a municipality may provide under a senior volunteer benefit program from \$750 to the greater of \$1,000 and 100 times the state minimum hourly wage.

LD 65 – An Act To Allow Municipalities To Impose a Seasonal or Year-round Local Option Sales Tax. (Sponsored by Rep. Beebe-Center of Rockland)

This bill allows a municipality to impose a local option sales tax, which may be seasonal, if approved by referendum of the voters in that municipality. The referendum question must identify the rate of the local option sales tax, specify the months during which it will be imposed if not year-round and identify the purposes for which the revenue will be used. The local option sales tax would be collected and administered by the State in the same manner as the sales and use tax. Revenue from the local option sales tax is distributed to the municipality imposing the local option sales tax. Revenue received by a municipality may not be used to reduce or eliminate funding otherwise due the municipality under other provisions of law.