

Personal Privacy Protections for Municipal Employees

Interested readers may recall a bill in the last Legislature, submitted at MMA's request, which would have extended the same privacy protections that state and federal employees have received for years, to employees of municipal and county governments as well. That sensible legislation was unfortunately vetoed by the previous governor, but Rep. Jay McCreight of Harpswell has dusted the language off and re-introduced it just in time for potential enactment this year.

LD 1790, *An Act To Amend the Law To Protect the Confidentiality of State and Local Government Employees' Private Information*, provides that local government records regarding an employee's age, ancestry, ethnicity, genetic information, national origin, race or skin color, marital status, mental or physical disabilities, personal contact information, personal payroll management decisions, religion, sex or sexual orientation and social security information is confidential personal information, not a record subject to release to the general public under Maine's Freedom of Access Act.

The majority of this information has been protected from disclosure under the state public records law for state employees since 2007, and for federal employees under federal law since at least as far back as 1982.

At Monday's hearing before the Judiciary Committee, LD 1790 received the support of Rep. McCreight, Rep. Matt Moonen of Portland (who chaired the committee last time it considered this proposal), the Maine Chiefs of Police Association, the Maine Department of Public Safety, and the Cumberland

County Sheriff. No one testified against, or "neither for nor against," the bill at the hearing.

In its testimony, the department proposed two substantive amendments. The first adds employees' gender to the list of personal information that would not be considered open to public inspection. The second would clarify that all of this information could still be disclosed publicly in an aggregate form, unless there is a reasonable possibility that the

information would be able to be used to identify a specific employee.

Following the hearing, the committee moved immediately into work session and voted unanimously in favor of passing LD 1790 as amended, incorporating the department's recommended changes into their committee report on the bill.

The Association is optimistic that this legislation will not be vetoed this time around.

Revenue Sharing Increases in Budget

Last week, members of the Appropriations Committee responded to the property tax burden concerns raised by municipal officials by unanimously voting in support of an amended version of the revenue sharing proposal found in Part H of Governor Mills' proposed FY 2020 – FY 2021 General Fund budget.

The committee's proposal increases funding for the revenue sharing program from the current 2% of state sales and income tax revenues to 3% and 3.75% in FY 2020 and FY 2021, respectively. Based on the figures published in the May 2019 Revenue Forecasting Committee Report, total revenues distributed under the state/municipal program will increase from the current \$74 million (FY 2019) to roughly \$105 million in FY 2020 and \$143 million in FY 2021.

Using the data published by the Maine State Treasurer, MMA staff has calculated the town-by-town revenue sharing distributions at both the 2.5%

and 3% levels for FY 2020. A copy of the impact spreadsheet, currently posted under "Recent Announcements" on MMA's website, can also be obtained by contacting Laura Ellis at 1-800-452-8786 or lellis@memun.org.

In addition, the committee voted to expand the value of the homestead exemption benefit from \$20,000 to \$25,000 and provide full reimbursement for the \$5,000 increase by adjusting the state's reimbursement rate from 62.5% to 70%.

The Association is greatly appreciative of the committee's property tax relief efforts. Once the committee has completed its work, the amended budget will be printed and debated by the entire membership of the Legislature.

For this reason, municipal officials are encouraged to continue to promote the importance of revenue sharing with their representatives in the Maine Legislature.

Marine Flare Disposal Debate Burns On

On Tuesday of this week, the Criminal Justice and Public Safety Committee voted to reconsider its decision on LD 430, *An Act to Establish and Promote a System of Safe Disposal of Expired Marine Flares*. As described in the March 1 edition of the *Legislative Bulletin*, the committee unanimously supported the bill which would establish a \$1 fee on registrations of boats in excess of 16 feet and require that the revenue be used to purchase an incinerator for the Maine Fire Marshal's Office and establish a public education campaign on safe disposal of the hazardous materials.

Following the committee vote, the bill's sponsor, Rep. Jay McCreight of Harpswell, was contacted by the U.S. Coast Guard, which advised that the fee would be in violation of federal law. This strikes the Association as ironic because it is federal level standards that have created the requirement that boats over 16 feet long carry at least three non-expired flares on board.

Hoping to find a solution similar to the Department of Inland Fisheries and Wildlife's milfoil protection program, Rep. McCreight asked the department if it would be possible to establish a similar boat sticker program for marine flares that would be voluntary for commercial vessels that fall under the federal restriction. The department, however, would need an appropriation of \$150,000 to implement the program.

As a result of these realities, the newly

amended version of LD 430, supported by a margin of 8 to 3, simply requests an appropriation of \$43,500 to purchase an incinerator large enough to handle existing and anticipated waste. Concerned that this request will not get approval from the state's appropriators, the bill's sponsor and Fire Marshal's Office will look for alternate funding methods, including reaching out to Maine's federal delegation for support.

The minority report on LD 430 would require that a \$1 fee be placed on the sale

of flares, in lieu of the boat registration approach.

While the Association understands the significance of the fiscal note that will now be placed on the majority report to LD 430, municipal officials believe the state is in the best position to seek alternate funding solutions, including federal funds, to provide the office with the tools necessary to protect Maine residents and natural resources from this waste and to encourage all boaters to dispose of these items with care.

Board of Environmental Protection Rulemaking Authority

On Friday, May 31, the Environment and Natural Resources Committee held a public hearing on LD 1789, *An Act To Restore the Authority of the Board of Environmental Protection*, which was printed two days before the hearing. The bill proposes to return "routine and technical" rulemaking authority to the Board of Environmental Protection with a hope of increasing transparency and public comment on Maine Department of Environmental (DEP) rule changes, which at times results in shifting additional costs and responsibilities onto the regulated community.

DEP Commissioner Gerald Reid testified that the process of requiring the commissioner and DEP staff to "explain to the [citizen] Board in a public meeting why a certain rulemaking initiative is necessary and appropriate, as well as why settling an enforcement action on certain terms makes sense will inherently lead to better decisions" and increase transparency on the DEP's work. The board previously held the same oversight responsibility before 2011.

In the past eight years, the department has shifted significant enforcement burdens onto local code enforcement officers, storm and wastewater engineers, and other local officials who oversee many permitted activities as a condition of their municipal licensing requirements.

While regular public hearings and

increased transparency may benefit the routine rulemaking process, it may also help the department's outreach efforts. Although existing law requires the department to notify "interested parties" of proposed rule changes, the list of parties notified in practice appears to be only those who subscribe to the department's rule notification blanket email system.

Many state agencies benefit from consistent municipal outreach, such as the Land Use Planning Commission and Maine Department of Transportation, which each provide regulatory staff an opportunity to explain complex issues and hear directly how changes impact communities. The Association believes the local outreach approach is vital to developing informed public policy decisions, fosters the necessary partnership between municipalities and state agencies tasked with delivering public protection services, and remains hopeful that the return to a citizen board review of rulemaking, as proposed in LD 1789, will help intergovernmental communication efforts.

On Wednesday of this week, the committee voted unanimously to support LD 1789.

Municipal officials are encouraged to sign up for rule making updates through the MEDEP subscription service available here: <https://public.govdelivery.com/accounts/MEDEP/subscriber/new>

Legislative Bulletin

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Solar Power Bill Heading Out of Committee

The May 17 edition of this publication described the public hearing on LD 1711, *An Act To Promote Solar Energy Projects and Distributed Generation Resources*, sponsored by Sen. Dana Dow of Lincoln County. After three thoughtful work sessions, on Wednesday of this week the Energy, Utilities and Technology Committee voted 10-2 in favor of recommending the passage of this bill as amended.

The amended LD 1711, like energy policy itself, is fairly complex. The following is the Association's understanding of the most municipally relevant highlights of the amendment language as it currently stands (legislative staff are still working on compiling the various amendment pieces into a finalized publicly available draft).

The focus of this legislation is on promoting not just solar energy initiatives, but distributed generation projects in general. "Distributed Generation" refers to power production, which is not consolidated into a small handful of major industrial power plants or dams and the like, but is instead spread around throughout the state. The idea is that generating power closer to consumers reduces the cost of transporting the electricity from the point of production to the family or business at the end of the line.

These "DG" projects are defined under the amended proposal as those located in the service territory of one of the state's "transmission and distribution" utilities that use a renewable fuel or technology. As amended by the committee, the "renewable capacity resources" that would qualify for consideration as a DG resource include: fuel cells, tidal power, solar arrays and installations, wind power installations, geothermal installations, hydroelectric generators that meet all applicable state and federal fish passage requirements, biomass generators that are fueled by wood or landfill gas, and anaerobic digestions of by-products of waste from various organic materials.

Under the terms of the amendment, it appears these same entities will be the only ones eligible in the future for the net energy billing (a.k.a. "net metering")

program that allows DG power producers to offset their electricity bills. This means that generators fueled by municipal solid waste in conjunction with recycling, and micro-combined heat and power systems, will no longer be eligible for net energy billing, although existing contracts would be grandfathered.

For the qualifying entities, the amount of electricity generation capacity that will now be eligible for the net energy billing program will be significantly expanded, rising up from today's cap of 660 kilowatts to projects producing up to five megawatts of power. The existing cap on the number of eligible meters, currently set at 10 per account, will also be lifted (except in the territory of the independent system administrator for northern Maine, unless modified by the Public Utilities Commission or future legislative action).

Additionally, the amendment directs the commission to adopt rules by Jan. 1, 2020, for competitive solicitations that will procure distributed generation resources, and to establish a 20-year tariff rate for customers participating in the program by Dec. 1 of this year. The terms of the tariff seem to allow municipalities to choose to use the normal net energy billing arrangement, or to choose

a monetary credit for its full supply and 75% of demand charges.

The status of metering and billing system capabilities would be reviewed by the next Legislature in the context of a report required to be completed by the commission for the committee by Dec. 1, 2021. Within three years of the effective date of the Act, a report to the Legislature regarding the effectiveness of net energy billing in achieving state policy goals and providing benefits to ratepayers would also be required.

Three provisions of this legislation in particular – removing the 10-meter net energy billing cap in most of the state, expanding eligibility up to five megawatts of power produced, and the setting of a tariff for participating customers – are expected to play a large part in making budgeting for the municipal development of solar arrays and other types of projects on brownfields and landfills much more viable. The Association is appreciative of the committee's serious consideration of municipal requests and the revisions that a strong majority of committee members made accordingly to the printed bill.

LD 1711 now heads to the full Legislature in a posture that appears to be poised for enactment.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

The Legislature is no longer obliged to provide two weeks' notice for public hearings, and beginning Monday, April 29 until the end of the 2019 legislative session, the Legislature will no longer be advertising public hearings in the newspaper.

In some cases, bills are being printed and scheduled for a public hearing within two days. If you would like to receive notice of a public hearing on any particular bill, please contact Laura Ellis at lellis@memun.org or 1-800-452-8786.

Monday, June 10

Veterans & Legal Affairs
Room 437, State House, 1:30
Tel: 287-1310

LD 1837 – Resolve, Regarding Legislative Review of Chapter 1: Adult Use Marijuana, a Late-filed Major Substantive Rule of the Department of Administrative and Financial Services, Office of Marijuana Policy.

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.)

Appropriations and Financial Affairs

LD 1836 – An Act To Authorize A General Fund Bond Issue for Infrastructure, Economic Development, Workforce Development and Energy and Environment Investment. (Governor's Bill) (Sponsored by Sen. Breen of Cumberland Cty.)

This bill sends out to the voters a comprehensive bond package. Specifically, the bill includes: (1) \$100 million bond for reconstruction and rehabilitation of highways and bridges and for facilities or equipment related to ports, harbors, marine transportation, railroads, aviation, transit and pedestrian trails, matching an estimated \$137 million in federal and other funds, \$4 million for a competitive grant program that matches local funding for the upgrade of municipal culverts at stream crossings in order to improve fish and wildlife habitats and to allow communities to better prepare for extreme storms and floods, and \$1 million to renovate a wharf and bulkhead at the Gulf of Maine Research Institute in Portland to bring the wharf back into operation for a fishing vessel berthing resource to support marine research at sea, for commercial fishing access and for continued long-term marine job development; (2) \$50 million to invest in community broadband infrastructure, economic development and job creation; (3) \$19 million to invest in Maine Community College training, in child care services, in Maine Army National Guard readiness centers and support facilities and in career and technical education centers; and (4) \$65 million to protect Maine's environment by investing in land conservation, water access, wildlife habitat, outdoor recreation opportunities, including hunting and fishing, farmland and working waterfronts

and by supporting environmental clean-up efforts and promotion of renewable energy projects. Funds provided for the Efficiency Maine Trust, in the amount of \$15 million will be used to purchase solar arrays, high-efficiency ductless heat pumps and high-efficiency modern wood heating systems for buildings and property owned by municipalities and school administrative units and, if enacted by the voters, will fund the proposed Municipal Energy Efficiency and Renewable Energy Program, designed to support municipalities and municipally authorized citizen committees and school administrative units across the state in reducing energy costs, reducing carbon emissions, facilitating the development of renewable energy resources and creating local jobs related to the building of renewable energy facilities and the installation of energy-efficient equipment.

State and Local Government

LD 1830 – An Act Establishing the Office of Policy Innovation and the Future. (Governor's bill) (Sponsored by Rep. Martin of Sinclair)

This bill eliminates the Governor's Office of Policy and Management and establishes the Office of Policy Innovation and the Future to support the creation of a coherent system of policy planning and coordinated implementation as one function and responsibility of the executive branch of state government, serve as a research, advisory, consultative, coordinating and administrative agency and advance policies that support a sustainable future for Maine's people, communities, natural resources, physical infrastructure, industries, businesses and institutions.