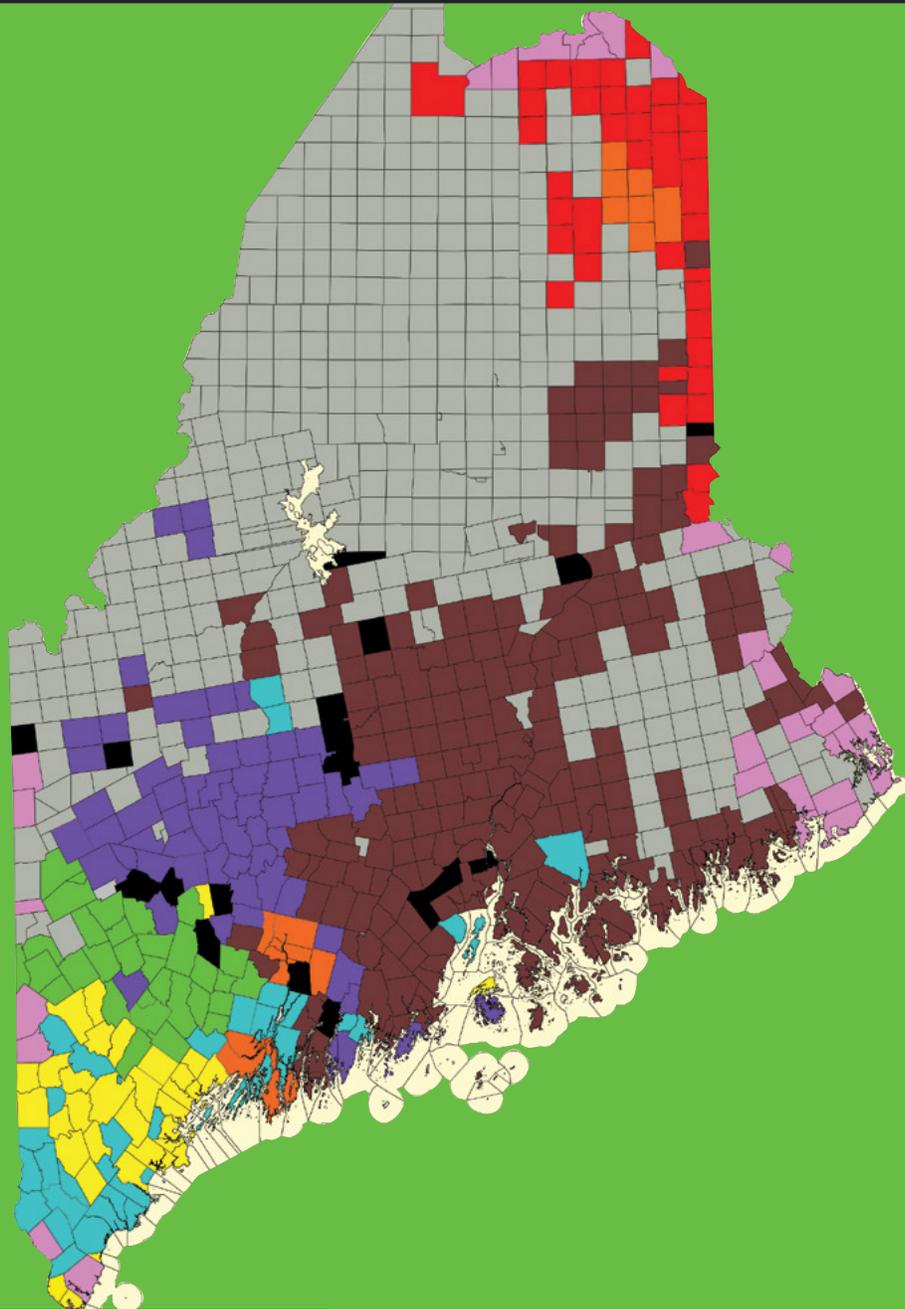


# Maine Townsgman

The Magazine  
of the Maine Municipal Association

DECEMBER 2015



## SESSION PREVIEW

**Solid waste among the municipal  
2016 legislative issues**



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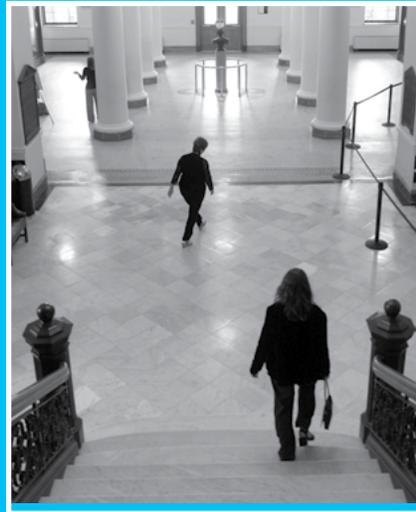
# Maine Townsman

December 2015 | Volume 77 | Issue 11

The Magazine of the Maine Municipal Association

## FEATURED STORY | 7

### Session of Conflict



*The 2015 Legislative Session was marked by non-concurrence votes, vetoes and overrides. Since then? The State House divide may have grown wider. MMA forecasts a short, less than productive session.*

**MMA President Stephan Bunker** sums up the year that was in 2015 and looks at 2016, in terms of legislative activity, member outreach and the MMA Annual Convention going to Bangor. Your municipal organization plans new services next year as well. [Page 5](#)

**On the cover:** Laura Ellis of MMA's State & Federal Relations staff researched and created this map of Maine's solid waste regions, working with Blue Marble Geographics in Hallowell.

## A Giant Among Us

*There are leaders and then there are real leaders. Don "Donnie" Strout, a former selectman, town manager and state representative from Corinth, embodied municipal service and community stewardship. [Page 20](#)*

## Legal Analysis: What About Drones?

*Unmanned aerial vehicles, commonly known as drones, are here to stay. Bernstein Shur Attorney Kelsey Wilcox Libby analyzes what municipalities can do – and mostly cannot do – with regulating this latest fad. [Page 23](#)*

## Town Meeting Trends

*Maine voters showed a refreshing willingness to authorize some large capital projects last November, from sewer and water plants to road and bridge work. York's plastic bag ban also made history. [Page 26](#)*

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## A MESSAGE FROM MMA

BY STEPHAN BUNKER / MMA PRESIDENT

# A year-end update, from your MMA President

**A**s your 2015 Maine Municipal Association president, I bid you welcome from Farmington, the Shire town of Franklin County. As I pen my message to our membership, my fellow citizens continue to enjoy a day-long celebration of Farmington's most famous citizen, Chester Greenwood, the inventor of the earmuff.

What a surprise to march in our parade down Main Street on the 5<sup>th</sup> of December in 50-degree weather. Given the unusually warm temperatures we have been blessed with this fall, along with continued low petroleum prices, our municipal budgets have experienced welcome savings in fuel for our fleets, heating oil for municipal and school facilities. Additionally, reduced dollars per mile for asphalt allowed local road improvements to gain extra coverage.

As I reflect back on the year ending and contemplate the coming year, I see an ever-growing role for Maine Municipal Association in its role as advocates for its membership communities, a service provider and source of training and education.

The year 2015 saw much legislative action in Augusta, with Municipal Revenue Sharing and local school funding among the critical issues coming under scrutiny. The several thousand bills under consideration kept MMA's State & Federal Relations staff very busy, along with MMA's dedicated, 70-member Legislative Policy Committee (LPC), which invested in many hours scrutinizing bills and shaping the priorities and positions we voiced on behalf of our cities and towns.

It is to a credit to our members that so many municipal officials, elected and appointed, department heads and concerned citizens from around the state by the hundreds, lining up to offer compelling testimony, particularly in front of the Legislative Appropriations Committee.

Although it was a tough political environment to advance new policy changes recommended by our LPC, the 2015 legislative session established a great deal of stability and predictability in the intergovernmental funding systems (Municipal Revenue Sharing, the Homestead property-tax exemption, General Assistance reimbursement, etc.), at least for the next four years.

Now we are facing the so-called "short session" or emergency session of the Legislature, with a restrained number of bills allowed to be heard. Rest assured that

staff and LPC members will be poised to review any bills of interest to municipalities.

Looking forward, our "new" Executive Director, Steve Gove, has hit the ground running, quickly working with senior management staff to draft and implement a proposed 2016 MMA budget. Steve is also placing an emphasis upon outreach to member communities, both by him personally and by MMA staff. This will come in the form of personal visits and through opportunities such as video conferencing.

One of the many policy issues being addressed by Steve is that of succession planning for MMA staff positions, particularly senior management positions currently held by those nearing retirement age. With the growing number of Baby Boomer generation employees reaching retirement age in our communities, it serves cities and towns well to have a well thought-out succession plan that cultivates mid-level employees to be prepared for greater responsibilities, should the opportunity call. This is a win-win for experienced employees to gain advancement and for the organization to retain valuable expertise.

Other projects on the MMA agenda include new information technology support services for members and a rejuvenated Municipal Salary Survey, which will be more electronic in nature and searchable in form than our previous offering.

Looking further into 2016, I am most excited with the anticipation of our Annual Convention moving to Bangor, taking advantage of the new Cross Insurance Center and all that Bangor has to offer visitors. Feedback from our sold-out vendor area this year showed great enthusiasm for a new venue. Certainly, our membership from communities up north and Downeast will welcome the change. Work is already under way to identify varied and interesting speakers and educational sessions worthy of attending.

I encourage you to make the best of all that MMA has to offer, not only in its programs such as property & casualty, workers' comp, unemployment and, health insurance, but also in legal services and among its educational offerings.

Yours in service,  
Stephan M. Bunker

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# Forecasting little relief from last session's negativity

*The 2016 Presidential election also looms over the next session. Meanwhile, a chart developed by MMA shows Maine solid-waste collaboration at its undeniable best.*

**By Geoff Herman, Director of State & Federal Relations, MMA**

A wide assortment of negative terms was used by the press, pundits and other State House observers to characterize the 2015 legislative session, which ended last July. The depth of enmity within the walls of the Capitol was unusual. More policy initiatives than ever in the past died in “non-concurrence” or through the sustainment of a veto. The number of veto overrides was also unprecedented and the veto process itself was mishandled. A great deal of high-level decision making was conducted outside of the public eye. The checks-and-balances benefits of a divided government were erased, it seems, by the raw contentiousness of a government divided too sharply.

If at the conclusion of the first legislative session the clouds hovering over state governance were dark and heavy with thunderheads, there is little evidence to suggest that any atmospheric changes are in the immediate forecast for the upcoming legislative session beginning in January.

To the contrary. Since the final adjournment of the Legislature in July, the Governor in his public events has become more openly critical of the Legislature. The Republican Party has initiated citizen initiatives in an attempt to achieve policy outcomes that the Legislature has rejected. A joint standing committee of the Legislature is assembling a formal record of the actions of the Governor and his staff which allegedly resulted in the Speaker of the House losing a job that had been offered him. At the same time, the Speaker has filed a lawsuit in federal court against the Governor in response to those gubernatorial actions, which the Speaker believes

constituted blackmail.

If there is a silver lining, the divisive rhetoric has drawn out lawmakers from both political parties, including many legislative leaders, who are able to isolate and disengage from the negative politics and work together quietly on solving problems. Those efforts notwithstanding, the 2016 legislative session will likely be sour and unproductive in equal parts, shaken over ice and served with an especially short twist.

By the terms of Maine's Constitution, the second legislative session is supposed to be limited. Unlike the first session, to which even a ham sandwich can be submitted for consideration, the second session is restricted.

## CONSTITUTIONAL LIMITS ON 2ND LEGISLATIVE SESSION

- Citizen-initiated legislation
- “Carryover” bills from the first session
- “Emergency” bills that simply can't wait until 2017 to resolve
- Bills submitted by the Governor

This session will likely be shaved even shorter by the fact that 2016 is a presidential election year with an open seat for the Oval Office, and the politicians straight down the ticket in Maine will be anxious to begin politicking just as soon as they can dispose of the legislative agenda.

That leaves us with three categories of information to provide municipal officials wondering about the potential public policy changes in store for

2016.

The following article on page 11 describes the bills sponsored by legislators of greatest municipal interest that will be considered by lawmakers over the next four months, including both the “carryover” bills of interest as well as the few bills of municipal significance that successfully navigated the “emergency” gauntlet of the Legislative Council and were allowed into the session.

That article concludes with a review of the various citizen initiatives that are in circulation which, if the requisite number of signatures are obtained, could be presented to the Legislature toward the end of the session and passed along to the voters for approval or rejection in the November 2016 election. Of the eight citizen initiatives actively in circulation, five carry some direct impact to local government.

Policies being advanced as a result of study commissions, advisory committees and working group efforts are the subject of the next article. Included in that summary is a review of MMA's Municipal Fiscal Survey which tracks trends in municipal revenue collection and expenditure data. This year's report, reflecting Fiscal Year 2014, has just been published and the article reviews the “top line” results.

The article also covers the reports of other study groups that MMA has either been directly involved with or closely tracking that will likely inform 2016 legislation, particularly in the environmental areas of shoreland zoning and solid waste management.

Related to the solid waste management issue, the map on the cover of this edition of the Maine Townsman is

our attempt to delineate the functioning solid waste disposal regions of the state. MMA's advocacy staff engaged in this exercise at the request of the Environment and Natural Resources Committee, which devoted its meeting time between the first and second legislative session to the task of framing out a bill that amends and, in the committee's view, advances the state's solid waste management policies. The details of the committee's proposal begin on Page 15.

Beyond the committee's interest in this information, the solid waste management regions depicted in the map vividly demonstrate the effective way municipal governments solve problems through collaboration. Most of the regions shown in the map, at the initiative of the local governments involved, have been created over the last 30 years as formally constituted multi-municipal organizations or co-operatives. The remaining regions are anchored by private sector service providers that allow the towns and cities in their regions to meet the demands of the large, unfunded state solid waste management mandate within some measure of cost effectiveness.

The point is that just 30 years ago, the map would have consisted of 500 dots across the face of the state, each marking the site of an open and probably unlined gravel pit landfill.

In the State House, there is unending political rhetoric about the lack of municipal collaboration and efficiency. The map, found on Page 18, tells a different story. ■

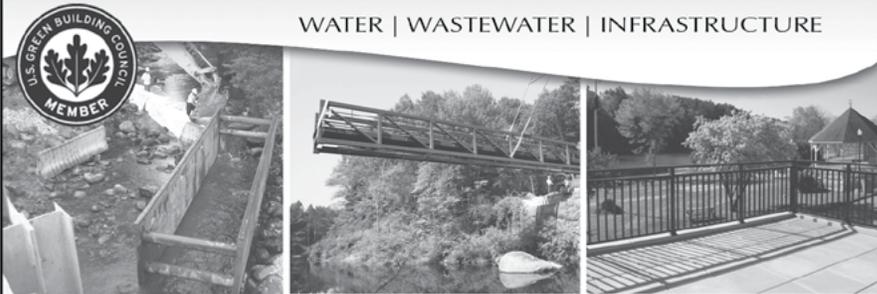
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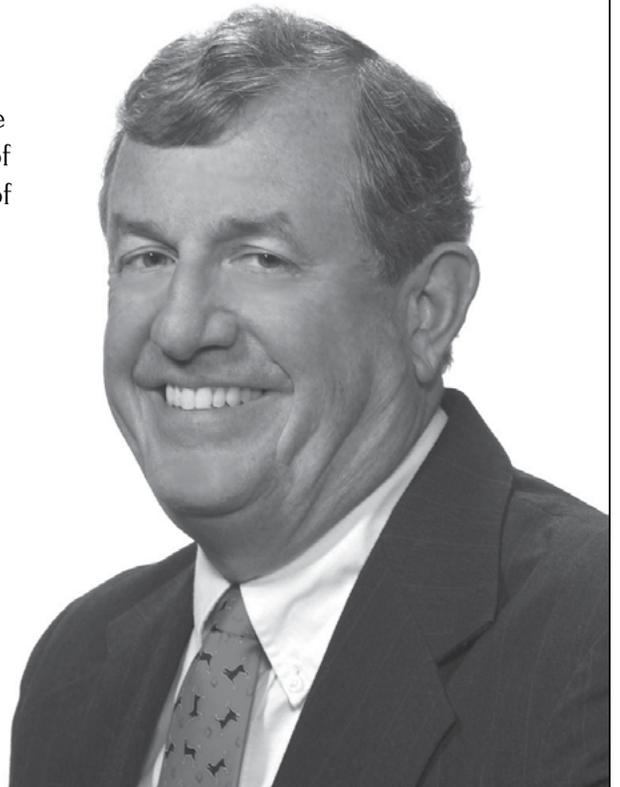
## Meet our Consultants Don Gerrish

With over 35 years in municipal management in the State of Maine, Don brings extensive experience in all facets of municipal government. He was formerly with the Town of Brunswick where he served 19 years as Town Manager. Don previously managed the Town of Gorham and worked for the Cities of Auburn and Rockland. Don is a member and served as the President of the International City/County Managers Association. He provides interim management, strategic planning, budgeting, personnel management and training services.

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# Municipal bills in the hopper for 2016

By Kate Dufour, Senior  
Legislative Advocate, MMA

When the 127<sup>th</sup> Maine Legislature reconvenes on Jan. 6, 2016 its primary task will be to finally dispose of three baskets of legislation: all newly submitted bills, carryover bills from last session and the citizen initiated legislation submitted by the Feb. 1 deadline with enough signatures to qualify for consideration in 2016. Based on the information available at this writing, it appears that less than 40 pieces of legislation to be debated over the next four months will directly impact the provision of local government services.

**Newly Submitted Bills.** The 10-member Legislative Council authorized 100 entirely new bills to be introduced during the 2016 session. Of that total, approximately a dozen will have varying impacts on municipal government operations. Although these new bills have not been printed, three bills of the most direct municipal impact can be summarized.

**Home Rule Pre-emption.** Sponsored by Rep. Jeff Timberlake of Turner, this bill directs the Department of Environmental Protection to adopt statewide standards regulating the use of pesticides, preempting more restrictive local ordinances. The bill summary provides that existing pesticide management ordinances would remain valid only if the community establishes a local Board of Pesticide Control responsible for ensuring compliance with that ordinance.

**“Grandfathering” Shooting Ranges.** Rep. Patrick Corey of Windham received approval to advance legislation limiting actions against firearm shooting ranges. As proposed, owners and operators of shooting ranges could not be subjected to either private or public civil actions for violations of state statutes or regulation or any standards in local ordinances that did not exist at the time the shooting range was constructed or began operating.

**Processing Absentee Ballots.** On a more municipally positive note, Rep. Beth O’Connor of Berwick was given permission to advance legislation al-



lowing municipal election clerks to process absentee ballots as early as the fourth day before the election. Under existing law, municipal clerks may process absentee ballots no earlier than the day before the election. The bill would also authorize clerks to bring absentee ballots to a central location for the purpose of using high-speed tabulators to process those ballots.

**Other New Bills.** Other second session bills of municipal interest include a proposal to increase MaineCare ambulance service reimbursements to conform to federal Medicare rates, a bill authorizing the transfer of state owned snowmobile trail maintenance equipment to incorporated nonprofit snowmobile clubs and several bills focused on the needs of individual municipalities, an example being legislation to amend a water district charter.

**Carryover Bills.** Nine of the 12 carryover bills being monitored by MMA on behalf of municipal officials are briefly described below. Three other carryovers, involving solid waste management, shoreland zoning and Right to Know policies, were taken up by legislative or stakeholder working groups over the last several months and described in the following article, *Policies Advanced by Study Commissions*.

Two municipally significant carryover bills are LD 68, *An Act To Authorize a General Fund Bond Issue To Attract Business by Investing in High-speed Broadband Infrastructure* and LD 1325, *An Act to Ensure a Public Process When Discontinuing or Abandoning a Public Road*.

**Broadband Bond.** LD 68, sponsored by Rep. Jim Campbell of Newfield at

the request of MMA’s 70-member Legislative Policy Committee, provides for a bond issue in the amount of \$10 million to be used to expand high-speed municipal broadband infrastructure. The bill also establishes the High-speed Municipal Broadband Infrastructure Fund to assist municipalities in developing and improving their broadband infrastructure.

**Road Abandonment & Discontinuation.** A less municipally positive carryover bill is LD 1325, sponsored by Rep. Catherine Nadeau of Winslow. Although elements of LD 1325 offer noncontroversial amendments to the road discontinuation process, the problematic element of this carryover is the complete repeal of the road abandonment statute. Under the terms of LD 1325, even those long forgotten sunken roads in the middle of the woods would have to go through the formal discontinuation process, with damages paid to abutters, before the town is legally absolved of providing full road maintenance.

The proposed repeal of the abandonment law is of significant municipal concern. The current presumption of abandonment was enacted to provide some certainty regarding the status of roads that have not been used or maintained for a minimum of three decades, as well as predictability with respect to the liability and responsibilities of municipalities. Municipal officials strongly believe that repealing the existing presumption of abandonment will leave the status of many old unused ways in doubt and open municipalities to increased public works expenditures on archaic road systems, as well as increased litigation and insurance costs.

**Other Carryovers.** Other carryover bills of municipal interest include legislation to:

- Expedite the adjustment of a town’s “state valuation” and education funding for certain industrial towns experiencing a sharp drop in valuation (LD 281).
- Prevent the placement of political campaign signs in the right of ways run-

ning along state or municipal roadways (LD 287).

- Allow for the sheltering of municipal valuation as a means for incentivizing the regional delivery of local government services (LD 646).

- Study the feasibility of providing centrally located firefighter training facilities statewide (LD 655).

- Direct the appeals regarding the municipal permitting of major land use development projects directly to the Maine Supreme Judicial Court, bypassing Superior Court (LD 755).

- Allow for the recovery of costs incurred by municipalities when responding to accidents found to be caused by drivers operating under the influence (LD 944).

- Establish a comprehensive framework for the public-private financing of major public works (LD 1298).

- Establish more stringent teacher certification education standards and implement a \$40,000 minimum annual teacher salary (LD 1370).

**Citizen Initiatives.** According to information posted on the Secretary of State's website, eight interest groups are engaged in the citizen initiative process. To date, only one proponent

group has collected the 61,125 signatures necessary to advance the proposal to the Legislature for its consideration in 2016. The proponents of the remaining initiatives have until Feb. 1, 2016 to submit their petitions to the Secretary in time for their issues to make the Nov. 8, 2016 General Election ballot. Of the eight petitions in various stages of the process, five carry some level of municipal impact. The subject matters addressed in those five initiatives include: (1) the election of candidates for federal and state office by a majority rather than a plurality, (2) increased funding for in-classroom K-12 education expenditures, (3) welfare reform and the incremental reduction and elimination of the state income tax, (4) legalization of marijuana, and (5) allowing public funds to be used to provide religious school tuition.

**Ranked-choice Voting.** At this writing only the authors of *An Act To Establish Ranked-choice Voting* have gathered the signatures necessary to advance the issue to the Legislature in 2016. As proposed, this bill establishes "ranked choice" voting procedures for the election of Maine's U.S. Senator, U.S.

Representative to Congress, Governor, State Senator and State Representative. The new voting procedures would begin with those elections in 2018 and thereafter, including any primary elections for those offices. The fundamental purpose of ranked choice voting is to process elections where three or more candidates are running for a single office in a way that results with the winning candidate achieving a level of voter support exceeding 50 percent.

Instead of being instructed to just vote for the single favored candidate as is currently the case, voters in ranked choice voting elections would be instructed to sequentially rank their voting preferences for all candidates on the ballot (including not more than one potential write-in candidate) with the designation of 1 for the most preferred candidate, 2 for the next most preferred candidate, and so on. Under the ranked choice voting procedures, the ballots would be processed in sequential rounds until one candidate has reached the point of majority voter support. The first round of tabulations would be conducted just as ballots are counted currently. If there are more than two candidates for a single posi-

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tion, and if no candidate emerges with greater than 50 percent support, a second round of ballot counting would be conducted, presumably at the Secretary of State's Office. In the second round, the candidate on the ballot with the least voter support is excluded, the votes on those ballots for the candidate of second preference are counted as first preference votes and the totals are re-tallied. If the second round tally still fails to produce a candidate with majority support, the process is repeated until a candidate with majority support is elected.

**Enhanced K-12 Education Funding.** Entitled *An Act To Establish The Fund to Advance Public Kindergarten to Grade 12 Education*, this initiative imposes an income tax rate surcharge of 3 percent on the value of taxable income in excess of \$199,999 and uses that revenue (approximately \$150 million each year) to meet the state's obligation to pay for 55 percent of the cost of K-12 public education. A leading proponent of this initiative is the Maine Education Association. The initiative further stipulates that the dedicated revenues be used solely for the support of student learning and not for administrative costs.

**Welfare Reform & Income Tax Reduction and Elimination.** The initiative advanced by the Maine Republican Party is entitled *An Act to Amend the Law Governing Welfare, to Lower the Individual Income Tax Rate to 4 Percent and to Dedicate Funds to Further Reduce the Income Tax until It Is Eliminated*. As the title suggests, the proposal advances changes in two distinctly different areas of public policy: the taxation of income (eliminate it) and the state's public assistance programs (restrict eligibility and limit the allowed uses of cash benefits). The Maine GOP started its signature collection effort on Nov. 3, General Election day.

**Welfare Changes.** The public welfare elements of the GOP initiative impact the state/municipal General Assistance (GA) program, the state/federal Temporary Assistance for Needy Families (TANF) program and the Supplemental Nutrient Assistance (SNAP) programs in the following ways:

**Immigrants and GA.** There is a federal statute that in a round-about way defines a class of non-citizens residing in the U.S. while they are seeking refugee or asylee immigration relief and

further requires each state, if the state so-chooses, to expressly allow those people to be eligible for public assistance benefits. According to the federal law, if the state does not expressly establish eligibility, those noncitizens are ineligible for most public assistance benefits. In 2015, the Legislature enacted a bill making persons in that defined class eligible for state/municipal General Assistance benefits for a limited 24 month period. The GOP initiative reverses that policy by making those lawfully present "aliens" ineligible for General Assistance benefits.

**Proposed TANF Changes.** Changes in the initiative targeted at the TANF program include: (1) requiring "job-ready" applicants to complete a department approved employment search program; (2) prohibiting TANF benefits from being spent at smoke shops or on tobacco, liquor, gambling, lotteries, tattoos, bail, travel services and foreign money transfer services; (3) prohibiting the use of TANF benefits out of state; (4) eliminating all existing "good cause" exemptions from federal work requirements, except for the circumstance of domestic violence; (5) prohibiting DHHS from providing benefits to a person who is not a U.S. citizen unless that person is an asylum seeker who is elderly, disabled or receiving and eligible to receive TANF assistance as of July 1, 2015; (6) making applicants that have reached the 60 month TANF lifetime limit also ineligible for "alternative aid", a program designed to provide short-term assistance in order to obtain or retain employment; (7) making convicted drug felons ineligible to receive benefits; and (8) requiring adult applicants to be screened and possibly physically tested for the unlawful use of drugs.

**Proposed SNAP Changes.** The changes in the initiative targeted at SNAP make convicted drug felons ineligible to receive benefits and also prohibit DHHS from providing benefits to a person who is not a U. S. citizen unless that person is an asylum seeker who is elderly, disabled or receiving and eligible to receive SNAP benefits as of July 1, 2015. DHHS is further directed to annually submit a waiver request to the USDA to limit SNAP benefit purchases to foods with high nutritional value.

**Reducing & Eliminating the Income Tax.** The GOP initiative also seeks to

eliminate the income tax in two steps.

The first step of the plan incrementally reduces the three marginal tax rates (currently 5.8%, 6.75% and 7.15%) so that by 2021 the income tax rate assessed on all wage earners is a flat 4%. The second step of the proposal requires in the subsequent years that the income tax rate be reduced by at least 0.1% annually – eventually to 0% – provided the available revenue in a dedicated tax relief fund is sufficient to cover the first year of each incremental rate reduction. That tax relief fund would be primarily capitalized with approximately 50% of the annual revenue generated by the state's "liquor contract", which is the negotiated sale of the state's right to exclusively wholesale liquor. These contracts are let on a 10-year basis to the qualifying private-sector liquor distributor.

**Legalizing Marijuana.** Earlier this year it was expected that two different organizations would be advancing somewhat similar proposals seeking to legalize the purchase, possession, use and sale of marijuana. However, in late October it was announced that the two groups would unite behind a single proposal. Of interest to municipal officials, the proposal now backed by both groups would authorize municipalities to regulate the location and operations of marijuana based industries through the adoption of land use and zoning ordinances. Municipalities would also be authorized to impose restrictions on the time, place, manner and number of related business. Although municipalities are provided regulatory power, it is unclear whether municipalities can outright prohibit the establishment of related marijuana business within community borders. In addition to any locally assessed licensing fees, 50 percent of state license fees must be dedicated to the host municipality.

**Other Initiatives.** Collection efforts are also underway for four other citizen initiatives. Those initiatives seek to: amend elements of the wind energy development permitting process; increase the statewide minimum wage; require background checks for the sale or transfers of certain firearms; and allow public funds to be used to fund private religious school tuition. Details on these four proposals can be found on the Secretary of State's website <http://www.maine.gov/sos/cec/elec/citizens/index.html>. ■

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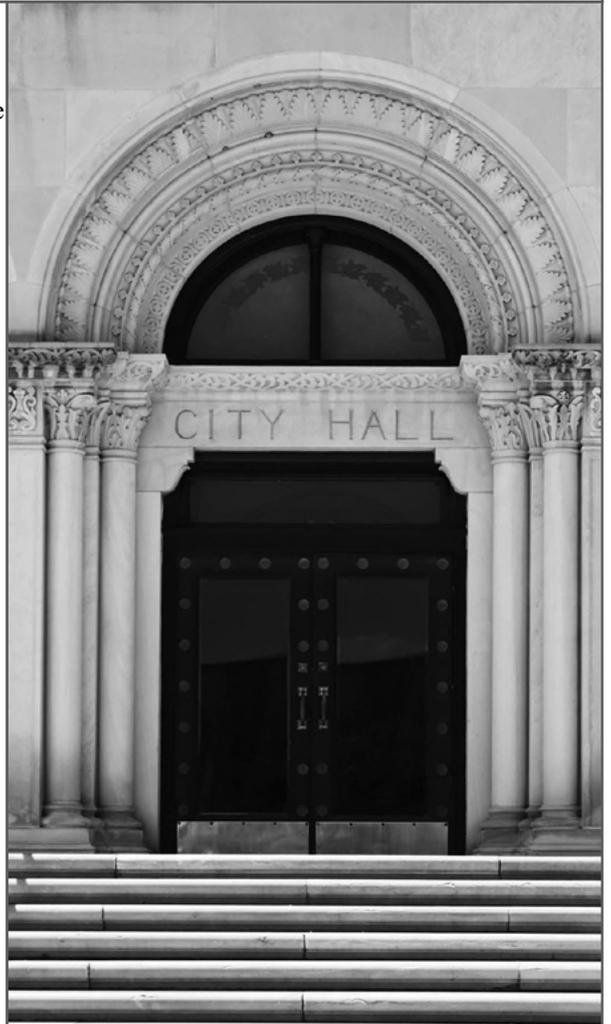
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# Policies advanced by study commissions

By Garrett Corbin  
Legislative Advocate, MMA

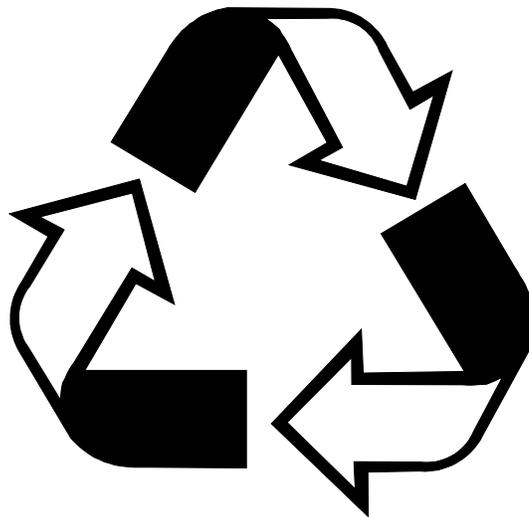
The summer and autumn seasons in each odd-numbered year are book-ended by the Legislature's first and second sessions. In the past these inter-session months have included a flurry of working group activity. A relatively small number of interim studies were authorized this year, however. With respect to municipal interests, the Legislature's Environment and Natural Resources Committee is advancing a package of changes to the state's solid waste management policies. Two "stakeholder" working groups have generated proposals to amend shoreland zoning enforcement policy, in one instance, and expand benefits for municipal firefighters and emergency services personnel in another. Finally, a permanently-established committee to advise the Legislature on Maine's "Right to Know" law is advancing proposed amendments to state law governing how, if at all, board members can remotely participate in public meetings they are unable to attend in person.

## Municipal Fiscal Survey

A backdrop for those recommendations is the November release of the annual Municipal Fiscal Survey. MMA has been conducting this survey over the past two decades, and since 2008 in conjunction with the U.S. Census Bureau. This survey produces a comprehensive analysis of municipal revenues and expenditures for hundreds of Maine municipalities big and small, allowing for comparisons of revenue and expenditure data across communities. The Fiscal Survey also provides a fiscal year snapshot on a statewide basis of municipal operating revenues (by source) and expenditure allocation (by program or service category). The full report explaining what local governments do for Maine citizens, and how those services are paid for, is available on MMA's website at: <http://memun.org/TrainingResources/MMAPublications/FiscalSurvey.aspx>.

In total, municipalities generate and receive \$4.1 billion in revenue to provide a wide array of public services including but not limited to K-12 education, road maintenance and other infrastructure investments, wastewater and drinking water facilities, solid waste disposal, law enforcement, fire protection, emergency medical services, animal control, tax administration, general assistance, vehicle registrations, election management, land use management and community planning.

To provide these core services, municipalities rely primarily on locally



generated revenues, which make up nearly 75% of all revenue available to local government. The lion's share of that locally generated revenue, 83%, comes from property-based taxation. The remaining sources of locally-generated revenue include service fees (8%), licensing and permit fees (1.5%) and other miscellaneous sources.

The bottom line is that municipal governments in Maine are highly reliant on locally-generated revenue, the vast majority of which comes from taxing the value of people's property.

Almost all of the \$1.1 billion in non-municipal source revenue, 86%, was distributed as the state's share of K-12 education funding. The Fiscal

Survey reveals that K-12 education accounts for 60% of all local level spending on a statewide basis, absorbing nearly 70% of the revenues received from property taxes. After covering education costs, the largest remaining municipal expenditures go to public safety and public works, at 8% and 6% of all expenditures, respectively.

State-based school subsidy dwarfs municipal revenue sharing, the next highest category of intergovernmental financial support. With one exception in an anomaly year (1992), the \$66 million in municipal revenue sharing distributed in 2014 was the lowest annual distribution since 1988.

In sum, the 2014 Fiscal Survey substantiates that state financial support for local government activities is almost entirely directed toward K-12 education, with all other state-mandated municipal services supported primarily by property taxes. The state's revenue sharing participation in 2014 was at a 26-year low. That wasn't the lowest point, however. In the following year (FY 2015) the distribution of financial assistance to the towns and cities through the revenue sharing program was over \$100 million less than the distribution required by law.

## Legislative studies

Against that backdrop, the work of the various legislatively authorized working groups might be reviewed.

**Solid Waste Management.** The Legislature's Environment and Natural Resources Committee dedicated the three between-sessions meetings it was allotted to the task of developing a bill that in the committee's view would advance the state's policy on solid waste management. The carryover bill that formed the foundation of this effort is LD 313, *An Act To Create a Sustainable Solution to the Handling, Management and Disposal of Solid Waste in the State*. The committee's central goal is to increase the rate at which various categories of solid waste, primarily so-called "Municipal

Solid Waste” (MSW), is recycled. To that end, the committee’s focus is on encouraging and ultimately requiring the expansion of systems and facilities that actively compost or anaerobically digest biodegradable waste material, such as food waste. According to some studies, approximately 40 percent of the “municipal solid waste” stream is made up of biodegradable material.

Here comes the rub. For state government to encourage the advancement of composting and digestion facilities, the ENR Committee needs to generate financial resources to fund grant and loan programs so that the municipalities and other stakeholder entities can be incentivized to make those capital and programmatic investments. The idea of financing such a program directly out of the state’s General Fund was never seriously considered.

Instead, the committee is recommending that the composting grant and loan program should be financed by imposing a \$1 fee on every ton of municipal solid waste that is delivered to a landfill, waste-to-energy facility or solid waste processing facility of any kind. These new “state” financial resources would then be made available as grants or loans to municipalities, other nonprofit and even for-profit entities with skin in the game. According to the Editorial Board of the Bangor Daily News, tagging a \$1/ton fee on all municipal solid waste is the “right funding source” for this program because it “*finally ends the state’s policy of allowing towns and cities to send their waste straight to a landfill for free.*”

To suggest that the lack of a state-imposed surcharge on the disposal of solid waste is the equivalent of disposing solid waste “for free” significantly misrepresents the reality of solid waste management and disposal. For the local government entities mandated by state law to manage the disposal of “municipal” solid waste – which they accomplish to the tune of \$75 million a year in property tax dollar resources – that editorial opinion delivers a particularly sharp slap to the face.

**ENR Committee’s Draft Solid Waste Proposal.** The bill will be entitled *An Act To Update Maine’s Solid Waste Management Laws*. The core elements of the committee’s recommended policy changes would generate new revenue for the state which the DEP

would use to implement three new solid waste management programs. If provided the requisite permission from the Legislative Council, the committee’s bill will be posted as an entirely new legislative document and given its public hearing in January.

**Revenue Generation.** The proposal would repeal and replace the fee system that applies to the landfilling of MSW, which is currently \$2 per ton but has a very limited application. From the time the solid waste fee system was first established in 1989, no surcharges of any amount have been applied to the landfilling of solid waste in municipally owned landfills. For the last 17 years, the surcharge for landfilling MSW at commercial landfills has only applied to out-of-state and “spot market” disposal, which refers to MSW delivered to a landfill outside of the terms of a long-term contract.

The committee’s replacement proposal imposes a \$1/ton fee to the disposal of all MSW at any landfill in the state regardless of ownership and regardless of contract. The proposal also imposes a new \$1/ton fee on the delivery of all MSW to any waste-to-energy incinerators or other disposal, processing or composting facility.

To avoid double taxation, the Committee’s proposal repeals the current \$1/ton fee applied to the landfilling of MSW ash generated by waste-to-energy facilities as well as the \$1/ton fee applied to the disposal of “front end process residue”, which is non-burnable solid waste (glass, metal, etc.) shaken out of raw solid waste prior to incineration at the PERC facility in Orrington.

The approximate fiscal impacts of the proposal are as follows:

- Lost annual revenue to state from repealing the current \$2/ton fee on out of state and spot-market MSW: (\$88,000)
- Lost annual revenue to state by repealing the current \$1/ton fee on the landfilling of incinerator ash: (\$110,000)
- Lost annual revenue to the state by repealing the current \$1/ton fee on the landfilling of front end process residue: (\$55,000)
- New annual revenue to the state generated by instituting a \$1/ton fee on all MSW landfilled in Maine. \$200,000
- New annual revenue to the state by instituting a \$1/ton fee on MSW

delivered to waste-to-energy facilities: \$560,000

Bottom line. Net new annual revenue to the state (and net new annual costs to municipal solid waste programs, property taxpayers and/or residential/business solid waste generators): \$507,000

#### New DEP-administered Programs:

**Composting and Recycling Grant Program.** The net new revenue generated by the imposition of the fees would be dedicated to the *Maine Composting and Recycling Grant and Low-interest Loan Program* administered by the DEP that would provide grant and loan funds to municipalities and other public and private entities, including waste-to-energy and biomass recycling facilities, proposing to establish composting programs, compost or recycling enhancement systems, composting facilities, anaerobic digester systems, etc. The DEP could expend up to 25 percent of the available revenue for program administration purposes.

In addition to the recycling/composting grant and loan program, the committee’s recommendation appears to envision two additional programmatic uses of these new financial resources: (1) helping DEP administer a separate composting pilot program, and (2) providing financial assistance to large scale food waste generators that need assistance in order to comply with the proposed food waste disposal ban, which is also being proposed.

**Composting Pilot Program.** The committee’s recommendation includes a directive to DEP to implement a composting pilot program. Under this program, the DEP is directed to invite municipalities, educational institutions, correctional institutions, hospitals and commercial restaurants to participate in a pilot program, with incentives provided from the *Maine Composting and Recycling Grant and Low-interest Loan Program*. Qualified participants would be selected to develop and implement a food waste composting program, with a primary purpose of collecting data on the amount of food waste diverted from the MSW stream.

**Phased-in Food Waste Disposal Ban for “Large Quantity Generators.”** Similar in nature to the food waste disposal bans established in some other New England states (e.g., Connecticut, Massachusetts and Vermont), “large quantity” commercial food waste gen-

erators (including food wholesalers, food processors, grocery stores, restaurants, hospitals, educational institutions, supermarkets, etc.) that generate one ton or more per week of food wastes would be required by Jan. 1, 2020 to deliver their food wastes to a composting facility for processing. The requirement would not be enforced unless there is a composting facility with capacity within 20 miles of the facility. Large-quantity generators who find it financially difficult to comply with the requirement would be directed to the *Maine Composting and Recycling Grant and Low-interest Loan Program* for assistance.

**Shoreland Zoning Enforcement.** The Shoreland Zoning Working Group was created at the request of the Environment and Natural Resources Committee in response to legislation submitted during the First Regular Session of the 127<sup>th</sup> Legislature, LD 713, *Resolve, To Further Protect Lake Water Quality*.

Although LD 713 directed the Department of Environmental Protection (DEP) to convene and conduct the stakeholder group process, the Committee chose to ask the Maine Municipal Association to convene the Working Group instead. Unfortunately, the DEP chose not to participate in the Working Group process in any way, even declining to respond to information requests submitted by the Working Group in writing.

The Working Group met four times, in July, September, October and November. At the ENR Committee's recommendation, two surveys were conducted by the Working Group, one seeking information from Maine's code enforcement officers, the other seeking information from shoreland area property owners. The information collected by these surveys helped inform the Working Group's several recommendations.

A majority of the recommendations received unanimous support. These focused on improving administrative effectiveness, landowner education, and Code Enforcement Officer training. Those recommendations that did not receive unanimous support would increase the obligations of municipal code enforcement officers without covering the increased costs associated with the action. One non-unanimous recommendation would

require all code enforcement officers to be trained to conduct pre-construction, during-construction and post-construction on-site inspections for all permitted construction projects within the shoreland zone. The other non-unanimous recommendation would establish a pre-activity notification obligation for any property owner intending to cut down a tree or remove vegetation within the first 100 feet of the shoreline.

The final report of the Shoreland Zoning Working Group will likely be taken up by the ENR Committee in January. That report is available at: <http://goo.gl/rhpui1>.

**Municipal Firefighter Recruitment.** Three inter-session meetings, co-chaired by Senator Linda Baker (Sagadahoc Cty.) and Representative Michel Lajoie (Lewiston), were spurred by the passage of LD 500, *Resolve, To Create a Working Group To Develop Solutions To Meet the Needs for Municipal Volunteer Personnel*. Despite the broad width of its title, the entire focus of the group was on municipal firefighters, and to some extent emergency medical services personnel, and how to enhance their recruitment and retention.

Testimony by the firefighters at the first two meetings made it clear that the financial and demographic circumstances of deeply rural Maine are leaving gaps in small town fire departments. Training requirements were identified almost universally as the greatest hurdle in improving volunteer firefighter recruitment, with a lack of financial incentives being commonly identified as well.

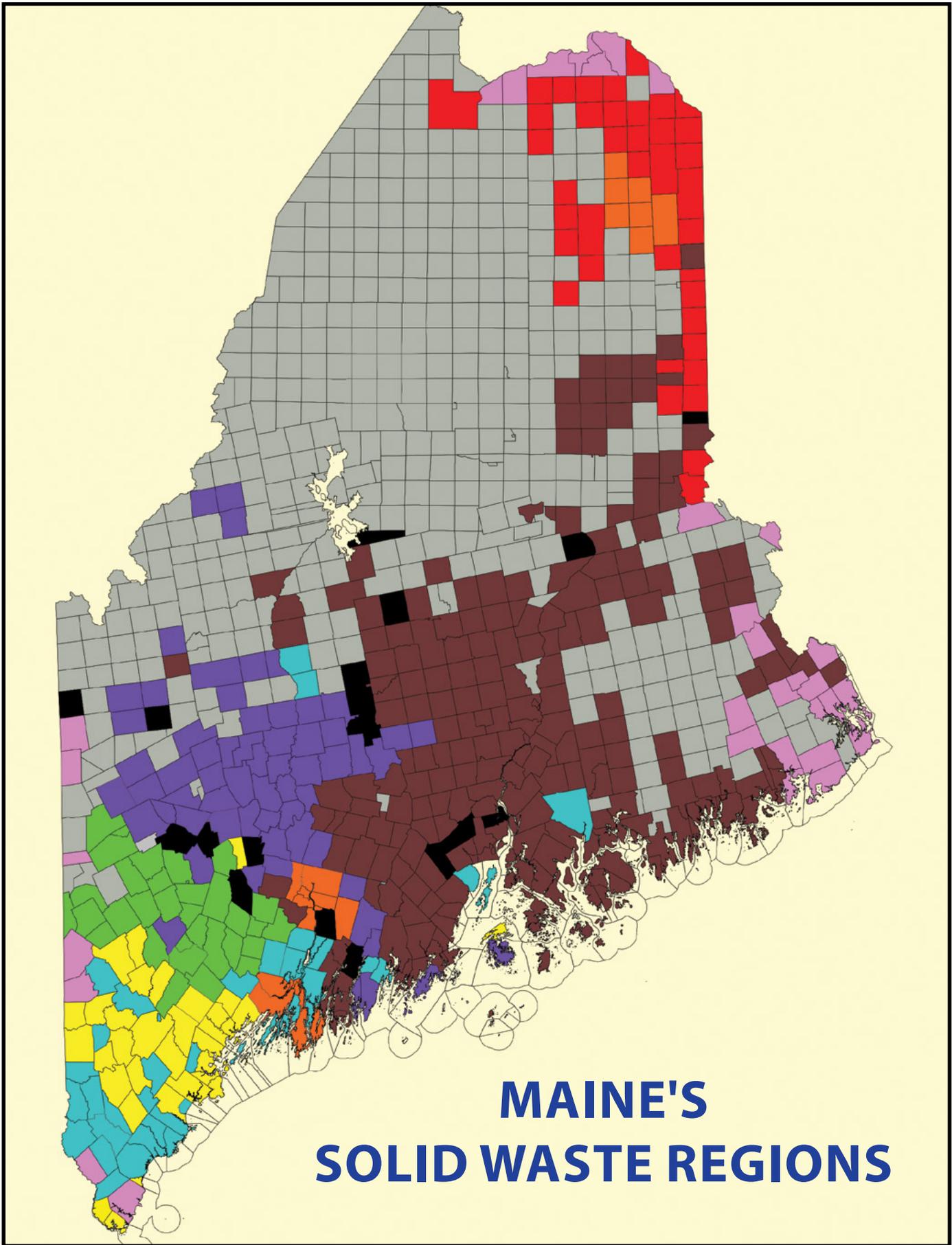
The seven recommendations that appear slated to be advanced in the coming legislative session are as follows, in order of support expressed by votes of the working group members present at the final meeting: funding the Length of Service Assistance Program (LOSAP), a pension system for municipal firefighters that was enacted into state law in 2015 but without any funding to actually operate it; providing unspecified tax benefits for both municipal firefighters and emergency medical service providers; enacting "tone-to-tone" Workers' Compensation coverage; creating a Central Fire Academy with regional facilities to train firefighters; allowing firefighters and emergency medical service pro-

viders to be eligible for state employee health insurance; increasing firefighter and rescue personnel course offerings as well as financial aid at technical schools and community colleges; and enacting new liability protections for fire and rescue volunteers, incident commanders and fire chiefs.

**"Remote Participation" in Public Meetings.** The Right to Know Advisory Committee (RTKAC) is a permanently-established group of stakeholders that meets annually to review the outcomes of Maine's Freedom of Access Act and recommend improvements in the way of government transparency and accountability. For years, a question has been bouncing around between RTKAC and the Legislature as to whether officials serving on public boards may participate in public meetings by telephone or video conferencing if they are unable to be physically present.

The RTKAC has chosen to recommend remote participation legislation this coming session as part of its annual report to the Legislature's Judiciary Committee, which has authority to report out a new bill based on the RTKAC recommendations. By a 9-2 margin, the RTKAC voted to expressly prohibit remote participation in all meetings of bodies of *elected* officials (e.g., selectboards, councils, school boards, elected planning boards, library boards, etc.) while allowing remote participation for all appointed boards. The public policy driving this elected board vs. appointed board discrimination is unclear. If enacted as recommended, Maine would join just two other states that entirely prohibit remote participation by elected board members. Currently, thirty states expressly allow remote participation.

The appointed boards that wish to use remote participation technology (either audio and/or visual, the RTKAC chose not to distinguish) would have to adopt a policy explicitly authorizing remote access and providing for public notice of the meetings. Remote access would not be permissible for executive sessions or quasi-judicial proceedings, each member of the body participating would have to be able to communicate clearly with the other members, and members participating remotely would have to be provided with any documents or other materials to be discussed prior to the proceeding. ■



**MAINE'S  
SOLID WASTE REGIONS**

# MAP LEGEND OF SOLID WASTE REGIONS

	Ecomaine
	Mid-Maine Waste Action Corporation (MMWAC)/Lewiston Landfill
	Individual municipal landfill regions (from south to north: Brunswick, Bath, Augusta, Presque Isle)
	Tri-Community Landfill
	Casella and former MERC now Juniper Ridge (Casella)/PERC Solid Waste Region
	Crossroads Landfill
	Municipal Review Committee (MRC)/PERC
	Out of state or out of country
	No long-term contract with solid waste facilities (hauler chooses)
	Unorganized Territory

# Don Strout epitomized service, led a career that touched many

*The late Corinth legislator, selectman, manager, firefighter – and more – staunchly defended municipal interests during a lifetime spent serving others.*

**By Eric Conrad, Director of Communication and Educational Services, MMA**

**T**ireless. Knowledgeable. Gruff, yet friendly. And above all, dedicated – to the issue before him, to the community of Corinth and to the State of Maine.

The people who knew Don “Donnie” Strout best hit those themes over and over again while praising the man as a gentle yet firm mentor who fought passionately for local control during more than three decades as a Corinth selectman, town manager and state representative.

He pushed hard for property tax reform, against unfunded mandates and for state investment in local roads, knowing that a good infrastructure is rural Maine’s lifeline. He practiced real-life “compassionate conservatism” before any U.S. presidential candidate’s speech writer ever dreamt up the catch phrase.

“In the late 1980s, when I was just cutting my teeth at Maine Municipal Association, I thought Don Strout was a giant,” said Geoff Herman, MMA’s Director of State & Federal Relations.

“He seemed to be everywhere at once: Serving constituents in the State House until very late at night. At the Corinth Town Office first thing in the morning, administering a local road project or managing a General Assistance case. At a meeting of MMA’s Legislative Policy Committee that afternoon, where his common sense and judgment were valued by his 70 LPC colleague as no others’ were, then or since.”

In fact, it’s hard to name a community-oriented position that Strout did not hold at one point or another. In addition to the more official ones, Strout was a church deacon, Little League coach, fire and ambulance volunteer, snowmobile club member,



**This photo, taken in 2011, shows Don Strout in the town that he loved. (Photo by Eric Conrad)**

credit union director and Mason. We’re probably missing a few.

Strout died on Oct. 17 at the age of 78. He is survived by his wife of 48 years, Lorayne, six children, 18 grandchildren and two great-grandchildren.

## **Uncommonly effective**

Some say the pinnacle of his achievements came during his 24 years in the Maine House of Representatives, where he served from 1973-1996. He was an uncommonly effective legislator because his knowledge about the issues was beyond question, his honest, no-nonsense approach to politics was refreshing – even back then.

“He was a member of the opposite party from me but we worked very well together because he was so straightfor-

ward,” said Rep. John Martin of Eagle Lake, a powerful force in Augusta politics since his first election as a representative in 1964. Martin served as Maine’s Speaker of the House from 1974-1994.

“When he got up on the floor to talk about issues, he knew what he was talking about,” Martin said. Everyone listened when Strout spoke because if they did, they probably would learn something.

“Even though he was in the minority party for most of his time, he often won the day,” Martin recalled.

During his tenure in Augusta, Strout sponsored or co-sponsored 295 bills, according to official records provided by the Maine State Law and Legislative Reference Library. Many

related to common municipal issues such as bonding, tax liens and road construction, a particular area of passion for Strout. But there were others too, like designating special license plates for people who serve in the National Guard and a bill to require parental notification for minors seeking to have abortions.

Strout co-chaired the Legislative Transportation Committee. During an interview for a 2011 profile that also appeared in the *Maine Townsman*, Strout cited his success with two Corinth-area road projects as highlights of his multi-faceted career.

When he began as town manager in 1979, Corinth had 36 miles of gravel roads. When he retired as town manager, some 32 years later, that number was down to five.

Strout also saw the drain that maintaining Routes 11-43 between Corinth and Corinna represented to his municipality's budget. During the administration of former Gov. John "Jock" McKernan, when Strout served in the House of Representatives, he was able to get the state to take responsibility for that stretch of road.

"It was approximately 15 miles and

that was a savings not just to Corinth, but to two of my other towns," Strout said, during his 2011 interview.

### 'Really invested'

Travis Gould, who serves as manager in Corinth (population 2,800) today, said his town still reaps the benefit of the state maintaining that road. "I don't know how he was able to do that," Gould said, "but he was."

"You don't serve as a town manager for 32 years (1979-2010) if you don't have the respect of the townspeople," said Gould. "He was a firefighter, a coach – he was really invested in this town."

Patricia Finnigan, manager for the Town of Camden, worked at MMA as

a General Assistance paralegal and as assistant director of State & Federal Relations during the height of Strout's career. She got to know Strout well in both roles.

"For people who didn't know Don, they could be a little intimidated the first time they had to testify at *his* Transportation Committee," Finnigan said. "But his outward gruff exterior was due to his intense attention to what needed to be accomplished. He just as easily would break into his big smile to show his appreciation when people took the time to travel to the State House to express their views."

Strout spoke openly about what he considered to be his pragmatic approach to local General Assistance. He

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knew that sometimes people need a helping hand financially, and that GA funds provide that. But he also knew that healthy, able people could work instead, even in exchange for local, public assistance.

"He could read people very well," Gould said. "He knew the local economy. He knew the employers. He could say, 'They're picking vegetables up there right now at this company, so why don't you see if they need any help?' Or, 'They're cutting meat right now at this place, so go talk to them.'"

Finnigan echoed that assessment.

"Don was frugal, but he also understood that people fall on hard times and sometimes all they needed was a hand up," she said. "He went out of his way to help people who were doing as much as they could to help themselves."

### A good listener

Doris "Dori" Harnett, assistant Attorney General for the State of Maine, served as Corinth's local counsel for the Bangor law firm of Cuddy & Lanham when she was a partner there, and Strout was the Corinth town manager.

Harnett recalled that she and Strout hit it off immediately, because she had worked for the Attorney General's office previous to her Cuddy & Lanham days, and Strout served in the Legislature.

What Harnett remembers most was Strout's leadership style, which can be characterized as one that emphasized active listening.

"Prior to making a decision as town manager, Don listened, he researched the issue and he considered all points of view," Harnett said. "Don led by example. He taught me the importance and power of a collaborative management style. I am forever indebted to Don for his lessons on leadership."

Herman, MMA's State & Federal Relations director, said Strout's involvement in the battle against the second Taxpayer Bill of Rights tax-cap initiative in 2009 was memorable. MMA was near the end of its second campaign of statewide messages and advertisements to keep local property tax matters within the realm of local control.

"When we got Don to do one of the last campaign ads, his voice – it was authentic and distinct, just like Maine – fit perfectly," Herman recalled. "You

couldn't argue with it when he said it."

Citizens rejected both the TABOR (2006) and "TABOR II" (2009) initiatives by significant margins.

"At MMA, we often reflect on the nature of the relationship between state government and the towns and cities," Herman said. "Is it a relationship based only on those cold requirements and legal obligations listed out in a statute or is it a relationship of mutual endeavor and true partnership?"

"Don was the absolute manifestation of a true and authentic partnership between the state and municipalities," Herman continued. "He forged the relationship as it should be but as it hardly can be sustained, without more exemplary leaders like Don."

### Corinth campaign manager

Strout also helped to develop other leaders, such as Terri Jane Casavant, a selectman in Corinth who ran with Strout's backing. The two had a deep connection, as Casavant's father, Terry Grant, has had the town's snowplowing contract for close to 50 years. Much of that time was during Strout's tenure as town manager.

"There were many times in Donnie's younger years when he would ride with my dad at night during snow storms and be his wing man," Casavant said.

"When I decided to run for select-

man, Donnie was extremely supportive of my decision," she said. "Donnie would often joke that he was my campaign manager. Once elected, for the first couple of years, whenever we were together he would tell anyone who would listen how I was the first female to be elected in the Town of Corinth as a selectman. I think he was as excited as I was."

Finally, the man who served many also possessed a sense of humor, even during stressful times.

Scott Bragdon, fire chief in the Town of Corinth since 1997, and a firefighter since 1989, noted first of all that at one time, all three of Strout's sons served in the Corinth Fire Department. Two of them remain active with the fire service.

"One of my fondest memories of Donnie was when his son, Brad, Donnie and I responded to a chest pain call," Bragdon said. "Upon arriving we found a very distraught lady who, while experiencing chest pain, was very upset to have had to call 911."

"Brad and I tried to put her at ease about that while treating her, but she was still very upset. At that point, Donnie said to her: 'Look, you've got nothing to worry about. You have the Town Manager driving and the Fire Chief working in the back with you. What could go wrong?' That was the kind of classic one-liner that Donnie was famous for!" ■



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# Close to home: Local regulation of drones faces uncertain future

*This legal analysis finds that federal pre-emption restricts a municipality's ability to regulate unmanned aerial vehicles, though several cities have tried.*

By Kelsey Wilcox Libby  
Attorney, Bernstein & Shur

It seems that drones are making headlines on an increasingly regular basis, and their sudden ubiquity appears to be much more than a passing trend. Many people thought they were reading science fiction a few years ago when Amazon announced that it was launching a drone delivery program, but with testing under way under the auspices of the Federal Aviation Administration it is clear that the plan is very much in motion.

Drones are forecast to be a top holiday gift for the 2015 giving season, with roughly 700,000 expected to ship within the U.S. In short, drones aren't going away. The appearance of drones on the scene poses myriad issues from a legal perspective – primarily in the areas of privacy and safety – and local officials may wonder whether they can and should take action to regulate their use. While there is an argument to be made for regulating drones at the local level, there are countervailing issues of federal pre-emption and operators' constitutional rights that should also be taken into consideration.

## Local efforts to regulate use

A spattering of local governments across the country have taken it upon themselves to fill what they deem to be a regulatory void when it comes to drone use. To name a few examples at the local level: St. Bonifacius, Minn. effectively banned the operation of drones within the town's air space, with certain limited exceptions. Northampton, Mass. enacted a similar



ordinance establishing that landowners have “exclusive control of the immediate reaches of the air space and that no drone aircraft shall have the ‘public right of transit’ through this private property.” The City of Pittsburgh banned the use of drones above or in the vicinity of public parks. Just recently, the City of Chicago passed a comprehensive ordinance that, among other things, prohibits drones from flying higher than 400 feet and within five miles of airports, essentially mirroring proposed regulations issued by the FAA. Los Angeles passed a similar ordinance paralleling the FAA model.

Because the practical effects of drones are most keenly felt at the local level, it makes sense that local governments are taking action. Certainly, traditional police powers typically allow local governments to pass reasonable regulations to protect the safety and privacy of its residents. However, there has been considerable discussion on the legal authority of local governments to regulate in this area due to questions about federal pre-emption

and the constitutional rights of operators.

## The federal landscape

In the most general terms, pre-emption is the constitutional principle that federal law will take precedence over a state or local law in situations where they would be incompatible taken together. Federal pre-emption will occur in three basic circumstances: First, in cases where Congress specifically states its intent to pre-empt state/local law within the applicable statute; second, as ruled in *Fidelity Federal Savings & Loan Association v. De La Cuesta*, 458 U.S. 141 (1982), when the scheme of federal regulation is so dominant and pervasive that “the federal system will be assumed to preclude enforcement of state laws on the same subject;” and, lastly, when a state/local law actually conflicts with the federal regulatory scheme.

To understand the pre-emption question as applied to drones and other aircraft, one first must be familiar with the federal aviation landscape.

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Since 1958, the FAA has regulated the operation of aircraft in the national air space. The FAA has clarified in recent years that it considers unmanned aerial vehicles (“UAVs,” commonly referred to as “drones”) to be “aircraft” subject to its jurisdiction and existing regulations. Recognizing, however, that many regulations applicable to manned aircraft were simply not suitable for UAVs, Congress passed the FAA Modernization and Reform Act (“FMRA”) in 2012.

In the FMRA, Congress instructed the FAA to create a comprehensive set of regulations to facilitate the safe integration of drones into the national air space. Pursuant to that directive, in February 2015 the FAA issued a set of proposed regulations applicable to the commercial use of drones, which have yet to be finalized and are not expected until 2016 or possibly 2017. In the meantime, prospective users must obtain a “Section 333 exemption” to operate a drone for commercial purposes. A grant of exemption comes with certain conditions and limitations (e.g., drone must be operated within visual line of sight and at no more than

400 feet above ground level), and the operator must have an FAA registered aircraft and a pilot’s license. The proposed regulations will streamline the process, but are expected to include a comprehensive set of conditions and limitations on the operation of drones for commercial purposes.

As to recreational drone users, the FMRA established that recreational or hobby use is to be exempt from future FAA regulation as long as it complies with certain enumerated safety standards.

This author is not aware of any cases to date where a local ordinance governing drones was struck down on

pre-emption grounds. Given the FAA’s established dominance in the area of manned aircraft, however, it is not surprising that many efforts to regulate full-sized aircraft operations at the local level have been deemed pre-empted by federal law. For example, the Supreme Court held in *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624 (1973) that a local ordinance that banned aircraft from taking off from the local airport during nighttime hours was invalid. The court explained that the FAA already thoroughly regulated aircraft noise, thus pre-empting state and local control in that area. In another example, the highest court of



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Colorado held in *Banner Advertising, Inc. v. People of City of Boulder*, 868 P.2d 1077 (Colo. 1994) that a local ordinance that banned banner towing by planes was pre-empted in a case where a company had obtained a certificate of waiver from the FAA specifically allowing it to tow banners subject to certain restrictions.

At the same time, however, some courts have recognized that local government does have the ability to regulate the air and land below “navigable air space,” which historically refers to minimum cruising altitudes and the airspace necessary for landing and takeoff applicable to manned aircraft. For instance, in *Condor Corp. v. City of St. Paul*, 912 F.2d 215 (8th Cir. 1990) the 8th Circuit Court of Appeals upheld a zoning regulation that would have required a heliport operator to obtain a conditional use permit with various conditions attached to it. As the court put it: “We see no conflict between a city’s regulatory power over land use, and the federal regulation of air space...”

The FMRA itself does not contain an express pre-emption clause regarding the operation of drones, but the FAA’s final regulations on the topic presumably will regulate the use of drones below what is currently considered to be navigable air space, and will affirmatively allow commercial operation if certain requirements are met. As to recreational users, the pre-emption issue is murky because the FMRA states that the FAA will *not* regulate recreational users if they com-

ply with certain minimum standards. For these and other complex reasons, there is simply no way to conclusively determine whether local regulation of drone use will withstand a legal challenge on pre-emption grounds.

### First Amendment considerations

Briefly, the other potential roadblock a local government attempting to regulate drone use may encounter is the First Amendment. Several courts, including our First Circuit Court of Appeals in *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011), have held that the First Amendment’s guarantee of freedom of speech and expression includes the right to gather information, or the “right to record.”

The right to record has been found to apply in situations where private citizens record police activity or other matters of public concern, and commentators have suggested that the right is likely applicable to private citizens’ use of drones equipped with video recording devices. However, the right to record, like other First

Amendment activity, is subject to reasonable “time, place, and manner” restrictions. Ultimately, any local effort to regulate drone use that implicates the right to record will come down to a balancing of the government’s legitimate interests and the constitutional right in question.

### Conclusion

While the legal implications of drone regulation can be truly confounding, one thing that’s clear is that the sudden proliferation of drone use by businesses and individuals shows no signs of slowing down. Certainly, local regulation of drones is something to be considered depending on the needs and experiences of the municipality in question. Narrow drafting and careful attention to current and proposed regulations can minimize – though likely not eliminate – the risk of legal challenge down the road. Due to the complexity of the legal issues in play, it remains to be seen how far municipal governments can go in terms of regulating drone use at the local level. ■

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# York makes history with plastic bag ban during November voting

*Many major infrastructure and bonding proposals passed, as voters saw the need for communities to keep up with physical demands.*

By Liz Mockler

The Town of York became the first municipality in Maine to enact a total ban on single-use plastic bags during the Nov. 3 election voting, exempting only nonprofits and religious organizations. The vote was 1,649 to 1,151.

The ban takes effect next March, giving residents and businesses time to prepare for it. Most business owners and the entire board of selectmen endorsed the proposal. Town leaders worked with a citizens' group, Bring Your Own Bag York, to craft the ordinance, with hope of setting an environmental example for the state.

"We're a coastal town. I think (selectmen) are concerned about the environmental impact of plastic bags," York Selectmen Chairman Robert Palmer said. "I wasn't surprised it would pass. By and large, the business community supported it."

Palmer said he backed an outright ban over charging a per-bag fee because "over time, people would just adjust to that" as part of the cost of shopping.

The citizens' group organizer, Victoria Simon, could not be reached for comment, but she told local reporters after the votes were counted that "if we can do it, towns and communities across Maine can feel that they can do it, too."

Although several communities have amended local ordinances to charge a fee for each bag used, York is the only community to ban any single-use plastic bag with plastic handles, like so many of the bags used by retailers of all sizes and types.

Paper bags, and those used for dry

cleaning, newspapers, produce, meat, lobster, fish, and bulk and wet foods, are not considered single-use plastic bags under the amended business regulation ordinance.

In a long local ballot, 25 percent of registered York voters turned out to approve every item, ranging from the village master plan to expansion of the sewer system. Most of the municipal questions amended existing ordinances. There were no close votes.

Meanwhile, many other communities are studying or have already adopted a pay-as-you-throw (PAYT) solid-waste program, which has shown dramatic reductions in municipal waste when residents must pay a fee for each garbage bag of non-recyclable waste they throw away.

In voting in Woolwich, however, residents repealed the town's PAYT program after two months, with supporters arguing the program should be decided by voters in a general election. In the first month in the program, Woolwich reduced its solid waste by 46 percent. But the vote to repeal PAYT was a convincing 616-453.

In a trash-related twist, Jay voters opted to contract for curbside solid-waste collection rather than simply dumping the service. The vote was 457-322 to privatize, which will save the town \$130,000.

The three statewide referendum questions all easily passed. Elderly housing and transportation bonds were endorsed, as well as expanding the state's Clean Election Act.

## Financial support

Many cities and towns won voter approval for major infrastructure projects and other significant monetary proposals.

Augusta voters endorsed a \$1.7

million bond to finance major improvements to streets and sidewalks. The payments will be made with taxes on pipelines installed over several years by Summit Natural Gas of Maine. Construction is expected to start in 2016 and take two years.

Oakland voters endorsed a \$1 million police station proposal to replace the farmhouse now used by the department, which is more than a century old. The new station will allow better police operations because it will be built and equipped as a police station, officials said. The new station will be built on the same property as the farmhouse.

In Bath, voters approved a \$9.8 million bond for wastewater system improvements on a vote of 1,061 to 332. In addition to upgrading the wastewater plant, some of the money will fund pump station repairs, as well as improve the infrastructure under some city roads.

The bond will stretch over 22 years, with a total cost of \$12.6 million with interest. The wastewater plant was built in the 1970s and has not been upgraded since 1997, city officials said. The upgrades are likely to begin next summer and take 10 years to complete.

Across the river in Brunswick, residents voted 1,799 to 635 to allow the town's sewer district debt limit to increase \$5 million to \$25 million. The money will be used to finance a \$22 million upgrade to the wastewater treatment facility.

Dover-Foxcroft voters approved re-financing the town debt to get a lower interest rate and save \$273,000. The vote was 487-126.

Kittery voters authorized the town council to issue bonds not to exceed \$275,000 by a vote of 1,458 to 447.

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## Not so popular

Voters rejected a few significant projects and proposals across the state.

In Windham, residents rejected a \$7.6 million bond for a new public works and school bus maintenance facility by a vote of 1,110-997.

Ellsworth voters decided not to borrow \$5 million to renovate a part of the city library built in 1817. The vote was 894-604. Library trustees said they respected the voters' decision, but that the renovations must be funded somehow. They are still hopeful that supporters, including surrounding towns without public libraries, will ultimately support a

Most other local questions were not financial, but many were interesting.

- In Eastport, voters agreed the deer population is a concern by a vote of 379-107. They endorsed a plan to work with state wildlife officials to develop strategies to reduce the population, including by additional hunting. The vote was 356-111.

- Rockland residents, by a 3-1 margin, rejected the idea of starting the process for the town to withdraw from the regional school district. The vote was 909-310. The vote will allow school officials to begin plans to consolidate, reorganize and close some schools in the coastal district.

- Boothbay voters approved the first changes to the tourist town's comprehensive plan by vote of 436-211. The plan has not been updated in 25 years.

- In Brewer, voters endorsed two ordinance changes, one eliminating the requirement that the school superintendent reside in the city. Voters imposed the rule three years ago, but found it limited the number of people applying for the job. The requirement was repealed on a vote of 1,092-623. The second change allows for a recall process for school committee members. It passed by a vote of 1,398-249. There already is a recall process for city councilors.

## Local questions

Maine's largest city faced many contested races last month, including electing a mayor (see election results article), and also decided two controversial local referendum questions.

First, Portland voters rejected a plan to phase in an increase in the minimum wage to \$15 an hour. The city's minimum wage is set to increase to \$10.10 an hour in January, as well as voting next year on a proposal to increase the state's minimum wage to \$12 an hour by 2020. The vote was 10,922-7,922.

Portland voters also rejected a referendum to inventory the city's "scenic viewpoints" and then place those areas under stricter zoning rules.

Meanwhile, many municipalities approved numerous changes to their local charters or local ordinances.

- Camden voters approved changing its zoning, harbor, waterways and subdivision ordinances by wide margins.

- Dover-Foxcroft residents over-

whelmingly supported a hydroelectric power plant and solar energy operation on Main Street. The vote was 473-141.

- Fairfield voters agreed to create a charter commission to revise or write a new charter. The tally was close, at 357 to 324.

- Kittery voters voted 1,556-275 to approve amendments to the town charter.

- Lisbon voters rejected setting term limits for the chairmen of the town council, planning board and board of appeals.

- In Old Town, residents approved a measure prohibiting people from serving on the city council if they are married to the city manager or any department director. The vote was 706-166.

- And in Princeton, voters easily rejected a question to authorize the sale of liquor in licensed establishments. A second vote prohibited Sunday liquor sales. The votes were 126-76 and 139-63, respectively. ■

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# Here it is again: the Townsman's annual general election roundup

By Liz Mockler

**A**uburn: Mayor **Jonathan LaBonte** defeated a challenger to win re-election by a vote of 2,605 to 1,896.

**Bangor:** Incumbent **David Nealley** earned another term on the city council, while newcomer **Sarah Nichols** and former state Rep. **Joseph Perry** were elected in a seven-way race for three council seats. Nichols received the most votes at 2,230, followed by Perry with 2,071 and Nealley with 1,770. Nichols and Perry replace **Pauline Civello**, who did not seek re-election, and **Patricia Blanchette**, who moved out of state.

**Bath:** **Terry Nordmann** needed just 30 votes to win the city council seat vacated by **Kyle Rogers**, who resigned in June.

**Belfast:** City Councilor **Eric Sanders** defeated a challenger by a vote of 952 to 631 to win his fourth straight term. Supporters of both candidates used social media to share sometimes-fierce opinions. Both candidates were surprised by the interest and did not sanction the intense online give-and-take. About a third of registered voters turned out to cast ballots, according to officials.

**Biddeford:** **Alan Casavant** garnered 63 percent of the vote to win a third term as mayor. Casavant interpreted the victory as a signal from voters that they want a different future after months of allegations and embattled city council meetings, but they did not want new leadership. Casavant saw the city through its difficulties.

**Brewer:** Incumbents **Jerry Goss** and Mayor **Matthew Vachon** held off a third candidate to win re-election to the city council. Goss received 1,138 votes, followed by Vachon with 1,036 votes. The third candidate won 614 votes.

**Calais:** Incumbent **Arthur Mingo** defeated two challengers to win re-election with 302 votes.

**Cape Elizabeth:** Incumbent Town Councilor **Jessica Sullivan** pulled in the most votes to win re-election,

while newcomers **James Garvin** and **Sara Lennon** won their first terms. Sullivan garnered 1,372 votes, followed by Lennon with 1,273 and Garvin with 1,262 votes.

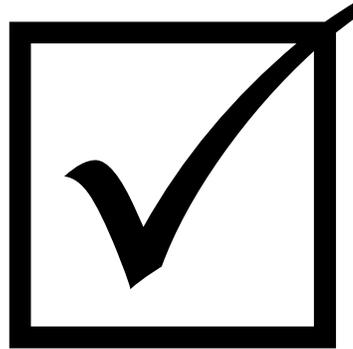
**Caribou:** Incumbents **Philip McDonough II** and **Tiffany Stewart** won re-election against one challenger with votes of 552 and 546, respectively.

**Castine:** Incumbent **Gus Basile** won re-election to a third term with a four-vote advantage, outpacing his challenger by a vote of 172-168. The challenger, Ted Lameyer, was making his second straight bid for selectman, losing by eight votes in 2014.

**China:** Incumbent Selectman **Irene Belanger** and Planning Board member **Ron Breton** held off a challenger to win two-year terms as selectmen. Belanger, a 10-year veteran selectman, collected 428 votes, while Breton received 441.

**Eastport:** Incumbents **Gilbert Murphy** and **Colleen Dana-Cummings** held off a challenger to win re-election with 319 and 312 votes, respectively.

**Fairfield:** Former town Councilor **Harold Murray** ran an uncontested race to win a third seat on the coun-



cil, while incumbents **John Picchiotti** and **Michael Taylor** retained their seats.

**Fort Fairfield:** Incumbents **Jason Barnes** and **Scott Smith** defeated a challenger to win reelection with 278 and 233 votes, respectively.

**Gorham:** Newcomer **Marla Stelk** won 1,269 votes and

incumbent **Sherrie Benner** collected 1,210 to win a four-way race for two open seats on the town council. Incumbent **Shonn Moulton** was unseated in the election, receiving 1,135 votes. The fourth candidate, an 18-year-old Gorham High School graduate, received 779 votes.

**Hallowell:** **Diano Circo** defeated a challenger by a vote of 90 to 24 to replace **J. Mark Sullivan**, who did not seek re-election.

**Millinocket:** Former State Sen. **Charles Pray** was elected to serve one year to finish the term of **Richard Theriault**, who resigned in August. **Louis Pelletier** ran uncontested to replace **Anita Mueller**, who also resigned in August. **Jesse Dumais** and **Paul Sannicandro** won two, three-year terms. Dumais received 528 votes and Sannicandro

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collected 520 votes to win.

*Portland:* **Ethan Strimling** defeated incumbent Mayor **Michael Brennan** to become only the second publicly elected mayor of Maine's largest city since 1923. Strimling earned 9,162 votes, while Brennan received 6,882. Green Party candidate Tom MacMillan garnered 1,880. Strimling placed second to Brennan in 2011, one of 14 candidates defeated by Brennan. Meanwhile, City Councilor **Nick Mavodones Jr.** easily defeated two challengers to win a seventh straight term on the council – an achievement never before reached by a Portland councilor. Mavodones collected 9,754 votes, with challengers receiving 3,153 and 2,476. In two other races, newcomers **Belinda Ray** defeated three challengers to win the seat vacated by **Kevin Donoghue**, who did not seek re-election. **Spencer Thibodeau** bested two challengers for the seat vacated by **David Marshall**, who also did not seek re-election. Ray received 1,206 votes and Thibodeau garnered 1,352 votes, far outpacing their closest challengers.

*Rockland:* Mayor **Frank Isganitis** was defeated by newcomer **William Jillson** by a vote of 528 to 476. Isganitis was ending his first three-year term on the city council, the past year serving as mayor.

*Scarborough:* **Christopher Caiazzo** and **Robert Rowan** easily held off three other challengers to win open council seats by votes of 2,398 and 2,149,

respectively. They replace **Jessica Holbrook** and **Edward Blaise**, who did not seek re-election.

*South Portland:* Mayor **Linda Cohen** was returned to office by downing a challenger by a vote of 2,785 to 1,127. **Eben Rose** was elected to fill the seat of **Melissa Linscott**, who did not seek re-election. Rose received 2,476 and his challenger 1,500.

*Standish:* Town Councilor **Lester Ordway** defeated four other candidates to win a Maine House seat vacated by **Michael Shaw**, who resigned in August when he moved out of District 23. Ordway received 628 votes to win the state position. Ordway plans to serve on both the council and in the Legislature.

*Topsham:* **Roland Tufts** received 1,243 votes to replace Selectman **Don Russell**. Tufts is a former school board and finance committee member.

*Waterville:* Two incumbents were unseated, with council **Chairman Fred Stubbart** losing to newcomer Stephen Soule by a vote of 170-72. In a second ward race, incumbent **Karen Rancourt-Thomas** was bested by **Jacqueline Dupont** by 18 votes.

*Westbrook:* **Anna Turcotte** defeated incumbent **Paul Emery** and a third candidate by large margins. Turcotte received 308 votes, while Emery received 88 and the third challenger received 83 votes. **John O'Hara**, the city's longest serving councilor, defeated a challenger by a vote of 1,242 to 1,180

to win reelection.

*Winthrop:* Longtime town Councilor **Kevin Cookson** lost his bid for re-election after 15 years to challenger **David Bubier**. Former Councilor **Priscilla Jenkins** collected the most votes overall at 748 to replace **Larry Fitzgerald**, who did not seek re-election. Veteran council member **Linda Caprara** also sought and won re-election.

*Winslow:* Incumbent town Councilor **Ray Caron** defeated a challenger by a vote of 154-63 to win a three-year term.

*Wiscasset:* Former Selectman **Judith Colby** defeated two challengers to win the fifth seat on the board of selectmen, ending a four-person board of selectmen that often tied in voting or could not act on certain town business without a full board. Colby, who received 289 votes, takes the seat vacated by **Bill Barnes**. Her challengers garnered 142 and 109 votes.

*Woolwich:* **David King Sr.** held off a challenger by a vote of 551 to 491 to win another three-year term as selectman. King has served as selectman for 20 years, the past 10 as board chairman. ■



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# PEOPLE

South Thomaston selectmen have hired **Terri Baines** as their town administrator, replacing interim administrator **John Spear**. Spear stepped in to help the town six months ago when Ann Matlack left after a six-month probation. Baines, who grew up in South Thomaston, presently works as the town's deputy administrator, town clerk, treasurer and several other duties in the town of 1,500 residents. She will resume her new duties after someone is hired to take her present jobs. Spear will stay on in his interim role until Baines can assume the administrator's job.



**Kevin Guimond**

**Kevin Guimond** retired at the end of November as South Portland fire chief, ending a career that spanned three decades. Guimond, 49, has taken the position of fire protection analyst for the parent company of

Central Maine Power Co. in Augusta. Guimond's career started in his native Cape Elizabeth at age 20 after a farmer urged him to volunteer for the town fire department. He took a position as South Portland firefighter in 1987 and, three years later, had earned his paramedic license. He was named chief in 2003. Guimond said he will miss the interaction with city residents, but looked forward to trying a new profession while young enough to do it. Deputy Fire Chief **Miles Haskell** has been named acting chief pending a search for a permanent replacement.



**Roland Miller**

Auburn economic development director **Roland Miller**, who worked for the city for 35 years, resigned at the end of November. He was hired in 1980 as director of community development and was named economic development director in 2000. A Wisconsin native, Miller is credited with helping preserve historic Main Street buildings, among many more city projects. A nationwide search will be conducted to find Miller's replacement.



**Amy Ouellette**

**Amy Ouellette** has been hired as Madawaska town clerk. A former town clerk in neighboring St. Agatha, Miller is a certified Maine clerk. She also worked previously for a Frenchville school as secretary, and as administrative assistant for a local manufacturing company. Miller earned her clerk certification while working in St. Agatha, finishing the courses far sooner than expected. Ouellette was expected to start her new job on Dec. 14.

Jackman selectmen hired **Matthew Pineo** in November as their new town manager. Pineo has worked as Brownville town manager, and also has extensive private-sector experience for retailer Lowe's in both California and Maine.



**Matthew Pineo**

Selectmen were unanimous in choosing Pineo, who was scheduled to start his new job on Dec. 7. Pineo has broad experience serving in myriad regional and state organizations, including the Maine Town, City and County Management Association. Pineo replaces **Kathleen MacKenzie**, who died in May.



**Dennis Reed**

Rockland assessor **Dennis Reed** will retire in January, after serving the popular tourism destination for 10 years. Previously, Reed worked for 12 years as assessor for Topsham. Officials hope to hire Reed's successor before he leaves next month.

**Amy Warner** was looking for a town clerk's job in May 2008 when she registered her car at the Alna town office – not knowing the town was looking for a deputy clerk. After chatting with the town clerk, she applied for the job and was hired. She would be promoted to town clerk in the spring of 2009. Now, Warner is retiring from municipal work to join her fiance in running the Old Narrow Gauge Farm in Alna. Warner said she will stay on with the town through next spring's town meeting and elections, giving her replacement time to get settled in before leaving.

**Diane Wyman** retired in October as Newcastle deputy town clerk, a job she has held since December 2008, but was quickly hired as Topsham town clerk, where she lives. Wyman also worked for nearly 20 years for the regional school district as business manager, as well as a stint in the Damariscotta town office, before taking the Newcastle job. Wyman's peers said she would be remembered for her organization and knowledge of the job, as well as her "funky socks." Her municipal friends gave Wyman enough socks for a month in honor of her new job. Newcastle Deputy Town Clerk **Susan Anneley** will replace Wyman. ■

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## CAMDEN

Officials in coastal Camden and neighboring Rockport are considering creating a two-town recreation committee to increase facility and fields use by both communities with better scheduling and more streamlining. They also agreed to further share the services of Assessor Kerry Leichtman, but for him to split his work between the towns. Leichtman currently works for Rockport but contracts with Camden for one day a week. The cost-sharing deal would be 50-50. Selectmen continue to look for ways where collaborating makes both community and fiscal sense.

## CANTON

Elected and appointed officials recently finished an in-depth project to find, categorize, and preserve town documents dating to 1821. The effort was inspired after town staff could not find the book containing proof of the town's incorporation. The book was found in a box of miscellaneous papers, behind a bookcase that was moved only by chance. The town won a state grant to conduct the work and hired a computer firm to help staff separate useless papers from historical and legal documents that are now archived for future generations.

## LIMINGTON

The town received a \$10,000 grant from M.L. "Jack" Gibson, a South Portland philanthropist who worked in road construction with his company, Commercial Paving & Recycling, for 59 years. Limington officials will use the money to replace a steel roof on the two-story "Old Town Hall," a 19<sup>th</sup> Century building used for weddings, by Boy Scouts and for various other community classes and events, according to Charles Huntress, a Limington selectman.

## LINCOLN

The Lincoln County Paper and Tissue auction lasted six hours in November, with a group of liquidators buying the one-time thriving complex for \$5.9 million. The bidding started at \$5.3 million. The deal was expected to close quickly. A dozen employees were expected to be manning the mill by late November, down from the crew of 126 who still had jobs after the November 2012 explosion of a boiler. The company filed for bank-

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**Technology, HR Conference Ideas.** The 2016 Municipal Technology Conference will be held on May 5 at the Augusta Civic Center. The Municipal HR Conference – our second ever – will be held on June 7 at Thomas College in Waterville. Now is the time to suggest municipally relevant topics that our experts can explore.

**Efficiency Fund Applications.** The state's Local Government Efficiency Fund now has \$1.5 million available through the Department of Administrative and Financial Services. The deadline to apply is Jan. 15, 2016.

**Fiscal Survey.** Maine Municipal Association's latest Fiscal Survey is out, and it shows how municipalities fund services from road and bridge repair to maintaining public parks. The report also outlines how 67 percent of property taxes collected state-wide pay for K-12 education and county government administration.

ruptcy in September. The auction sale price equaled 11 percent of the assessed value of the personal property.

## MILLINOCKET

The town council in late November approved an ordinance banning fireworks use within town limits, effective Dec. 23. The vote was 6-1. People will be fined up to \$500 per violation. Professional licensed displays are exempted from the ban.

## OXBOW PLANTATION

Half of the plantation's registered voters have decided to disband their local government and join Maine's unorganized territories, which are governed by county government and served by county and state governments. In a special town meeting on Thanksgiving eve, 21 of the town's 53 voters unanimously agreed to seek state approval to de-organize. If approved, a second vote would be needed in November 2016. Declining and aging populations, and an increasing mill rate of 23.5, were cited as reasons for the decision. Oxbow, in rural Aroostook County, was organized as a plantation in 1870.

## SCARBOROUGH

The town council approved a municipal property tax credit for elderly residents to make up for the loss of credits from state-funded programs following a law change last year. The council de-

cidated a fund a separate municipal program for residents over age 62 who will lose the state-funded help because their gross income will determine eligibility, rather than adjusted gross income. Because of the change, town residents who qualified this year totaled 105, down from 206 last year.

## SOUTH PORTLAND

City councilors in November rejected a moratorium to block a liquid propane distribution facility off Route 1. The NGL Supply Co., left homeless by a state waterfront redevelopment project in Portland, will build a \$3 million facility at the rail yard that will serve more than 50,000 homes. A super majority of eight councilors were needed to approve the ban. Only three councilors supported it.

## YORK

Thanks to a zoning change endorsed by voters on Nov. 3, a business owner can now proceed to build a "tiny house" village in York Village that will feature both retail shops and apartments. The plan is to build up to six houses, each about 20 feet by 30 feet in size. The first floor would feature retail spaces, and the second floor studio or one-bedroom apartments. The zoning change allows the developer to build up to 50 percent density of the one-acre lot, rather than 25 percent. All or most of the houses are expected to be constructed by next summer. ■

# MARK YOUR CALENDARS!

## Maine Municipal Association 2016 Events

### Municipal Technology Conference

May 5, 2016

Augusta Civic Center, Augusta, Maine



### Municipal HR Conference

June 7, 2016

Thomas College, Waterville, Maine



### MMA 80th Annual Convention

October 5 & 6, 2016

Cross Insurance Center, Bangor, Maine

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# LEGAL NOTES

## Plowing Private Roads

**Question:** We've heard that if a municipality has been plowing a private road for a certain number of years, it must continue doing so. Can this be true?

**Answer:** We sometimes hear this too, but it is not and never has been true. Plowing or otherwise maintaining private roads at public expense is a violation of the Maine Constitution's "public purpose" clause, which requires that public funds be expended only for public purposes (see *Opinion of the Justices*, 560 A.2d 552 (Me. 1989)). There is no statute, case law or legal theory to support the claim that plowing a private road for any period of time somehow obligates a municipality to continue doing so despite the law. Nor does a history of plowing a private road in some way "grandfather" or permit a municipality to continue the practice.

The source of this misunderstanding is likely the doctrine of prescriptive use, by which a municipality may acquire a public easement over a private road by continuously using it for at least 20 consecutive years. But two crucial points: First, a prescriptive easement does not exist unless and until suit has been filed and a court declares it so. Second, a prescriptive easement cannot arise where the municipality's use has been with the owner's consent, which is virtually always the case with public plowing of private roads. Also, even if a court were to declare that a prescriptive easement exists, this would not require public plowing, it would merely permit it.

Another myth about plowing private roads is that if emergency vehicles such as fire and rescue cannot gain access to persons or property due to snowbound roads, the municipality can be held liable. This of course is nonsense. Municipalities have no legal duty to ensure access to private roads. Those who live on private roads but neglect to maintain them do so at their own risk.

For more on why plowing private roads is both illegal and inadvisable from a liability standpoint, see "Plowing Private Roads & Driveways Revisited," *Maine Townsman*, Legal Notes, November 2003. (By R.P.F.)

## New Sewer Lien Law

The last session of the Legislature made three important changes to the

law governing municipal sewer liens (see PL 2015, c. 174, amending 38 M.R.S.A. § 1208, eff. Oct. 15, 2015).

First, the requirement that sewer charges be "committed" to the treasurer before the lien process can begin has been eliminated. (It was never clear exactly what "committed" meant, and many municipalities simply didn't bother.) Now, it should be sufficient just to give the treasurer a list of names, addresses and overdue accounts.

Second, if the initial 30-day "demand" notice is not sent to all record owners of the real estate at that time, the treasurer must send a true copy of the recorded lien certificate to any owner who was not sent the demand notice. A true copy of the lien certificate must also be sent to any new record owner at the time of recording.

Third, after the expiration of the 18-month redemption period, in the event a copy of the lien certificate was not provided to a mortgage holder of record or an owner of record who was entitled to one (see above), the mortgage holder or owner who did not receive it has the right to redeem the real estate within three months after receiving actual knowledge of the recording of the lien certificate by paying the amount of the lien together with interest and costs.

These changes will be incorporated in Chapter 4 of MMA's *Guide to Municipal Liens*, which contains a detailed step-by-step description of the sewer lien process. The guide is available free to members at [www.memun.org](http://www.memun.org). (By R.P.F.)

## Traffic Ordinances Revisited

As we noted here last month, only the municipal officers (selectmen or councilors) can enact ordinances regulating traffic and parking on public ways and public property (see "Traffic & Parking Ordinances," *Maine Townsman*, Legal Notes, November 2015).

Several readers have since asked whether the voters can petition to amend or repeal such ordinances. Our answer: The voters are free to circulate and submit a petition to do so, but since the municipal officers have *exclusive* authority over traffic and parking ordinances (see 30-A M.R.S.A. § 3009(1)), a petition would be merely an expression of political sentiment and would have

## MUNICIPAL CALENDAR

**JANUARY 1** — New Year's Day 2015 – A legal holiday. (4 M.R.S.A. §1051)

**ON OR BEFORE JANUARY 15** — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

**JANUARY 18** — Martin Luther King, Jr. Day - a legal holiday (4 MRSA §1051).

**BY JANUARY 20** — Treasurer of State to post notice of maximum interest rate which can be charged on delinquent taxes (36 M.R.S.A. §505).

**JANUARY 31** — Deadline to submit quarterly withholding taxes to State Tax Assessor(36 MRSA § 5253).

**DURING JANUARY** — In towns with a March annual meeting, selectmen should begin preparing the town meeting warrant and town report. Obtain reports from all departments: schools, roads, etc. Arrange to have annual audit made before town meeting. ■

absolutely no legally binding effect. Specifically, it would neither require a town meeting (which would be powerless to act in this case) nor require the municipal officers themselves to act on the request. They would be free, in their discretion, to either consider or ignore it, as they see fit.

The same is true for any other ordinances (general assistance, cable television, etc.) that the municipal officers have the exclusive authority to enact (see "Municipal Officers' Legislative Authority," *Maine Townsman*, Legal Notes, May 1999).

Ditto for public ways that the municipal officers have the exclusive authority to designate as ATV-access routes (see "Public Ways & Public Ways," *Maine Townsman*, Legal Notes, July 2007). (By R.P.F.)

# LEGAL NOTES

## 'Familial' Bias

In quasi-judicial proceedings, such as license or permit applications, zoning appeals and personnel grievances, local officials are required by constitutional principles of due process to be fair and impartial or unbiased. (If they cannot be, they cannot legally participate.) Whether an official is biased is usually determined on a case-by-case basis. But one Maine law presumes a disqualifying bias if there is a close family relationship.

Title 1 M.R.S.A. § 71(6) states that, as between an official and any interested party, such as an applicant or an opponent, "a relationship by consanguinity [blood] or affinity [marriage] within the 6<sup>th</sup> degree... will disqualify." This includes any familial relationship up to and including first cousins once removed and second cousins. All kidding aside, this could pose a serious problem in some especially close-knit Maine communities!

Where familial bias is deemed by § 71(6) to exist, the disqualified official must either step aside for the duration of the proceeding or obtain the written consent of all parties (which is an option under the statute).

It's important to note that bias is a legal issue *only* in quasi-judicial proceedings, where officials are required by law to be fair and impartial. When performing other functions, such as legislative, administrative or budgetary, officials are perfectly free to act on their personal views and policy preferences (indeed, these may be why they were chosen in the first place).

On a related note, it is generally not illegal for spouses or other family members to serve simultaneously on the same board (see "Spouses on the Same Board," *Maine Townsman*, Legal Notes, February 2013). (By R.P.F.)

## FOAA Fees

Maine's Freedom of Access Act (FOAA) or "Right to Know" law authorizes custodians of public records to charge certain fees for responding to records requests (see 1 M.R.S.A. § 408-A). Here's a summary of them:

**Copying.** The custodian may charge a reasonable fee to cover the cost of copying.

**Mailing.** The custodian may charge for

the actual cost of mailing.

**Converting.** The custodian may charge for the actual cost of converting a record into a comprehensible or usable form.

**Staff time.** The custodian may charge up to \$15 per hour after the first hour to cover the actual cost of staff time for searching for, retrieving and compiling records, including reviewing and redacting confidential information.

The custodian may not charge a person for merely inspecting a record unless the record cannot be inspected without being compiled or converted (see above).

If the estimated total cost of responding to a records request exceeds \$30, the custodian must inform the requester before proceeding. If the estimated total cost exceeds \$100, or if the requester has previously failed to pay costs, the requester must pay in advance. The custodian may, but is not required to, waive part or all of these costs if the requester is indigent or release of the requested record is in the public interest.

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We recommend that the municipal officers (selectmen or councilors) adopt a policy establishing these fees so that both the general public and municipal staff are aware of them before making and responding to a FOAA request.

For more on responding to records requests, see "Public Records Requests," *Maine Townsman*, Legal Notes, August-September 2015. (By R.P.F.) ■

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