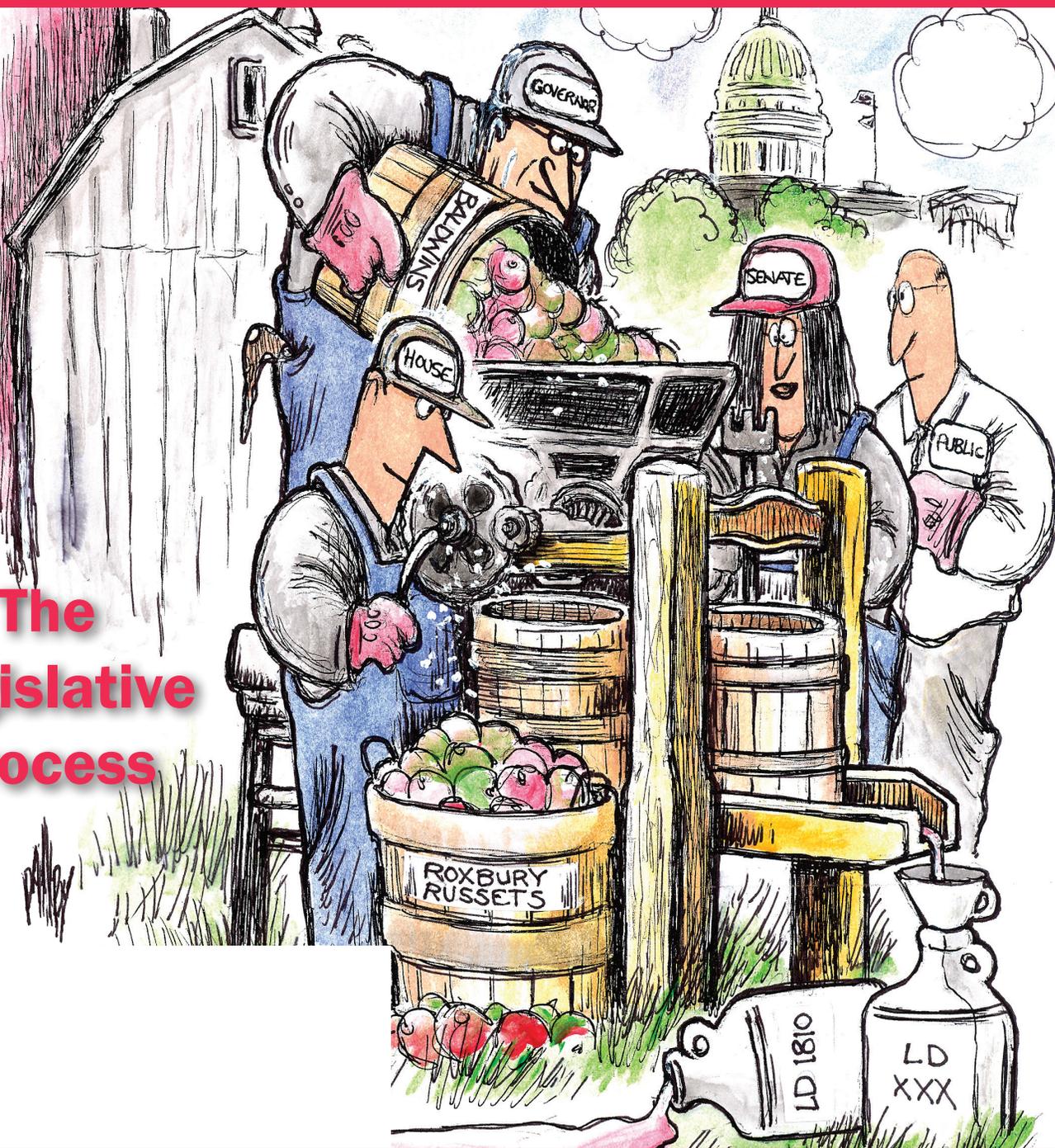


June 2012

# maine townsman

The Magazine of the Maine Municipal Association

## The Legislative Process



### IN THIS ISSUE:

Analyzing the Session | New Laws | Working Groups & Commissions | Municipal Utilities

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- |  |                                      |  |  |                                       |
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#### Magazine Staff:

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Valarie Pomerleau, Circulation Manager  
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MMA website: [www.memun.org](http://www.memun.org)

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# maine townsman

The Magazine of the Maine Municipal Association

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Maine Municipal Association Executive Director Christopher Lockwood writes about the cover and content of this month's Maine Townsman and encourages municipal officials to play active, public roles in the legislative process.

### 'Dependable Table Wine'

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No one analyzes a Maine legislative session quite the way MMA's State & Federal Relations staff can. SFR Director Geoff Herman compares the just-concluded session to making apple cider – a reasonable and palatable apple cider, at that.

### Listing the Laws

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Laws enacted during the session touched on farmland registration, General Assistance, the employee retirement system – and many things in between. Turn here for a complete look at the new laws and changes that most directly affect municipal government.

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In some ways, the process never stops. While the period after lawmakers adjourn generally is considered down time, working group and special commission projects continue. They also represent opportunities for municipal officials to get more involved.

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When most people think of electricity, the words "Central Maine Power" or "Bangor Hydro" may come to mind. But four municipalities in Maine have electric companies of their own and, in many cases, their customers cherish that fact.

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**COVER:** Artist George Danby worked closely with MMA's State & Federal Relations staff to come up with this unique rendering of Maine's legislative process.



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# A Message From MMA



by Christopher Lockwood, Executive Director

## A Different Take On the Session That Was

Did the cover of this month's Maine Townsman catch your attention? As our wrap-up issue on the recently concluded legislative session, we decided to depart from a traditional photo of the Statehouse and engage the services of George Danby, the cartoonist for the Bangor Daily News. The cartoon was "inspired" by Geoff Herman's lead-in article, "Public Policy and Pressing Cider" (page 7).

The various articles in this month's Townsman provide an overview of the legislative session and a detailed report on enacted legislation. We also included information regarding study and work groups which will meet during the ensuing months to prepare recommendations for the next Legislature which will convene in December after the Nov. 6 election.

For me, there are two key "takeaways." First, given the broad array of municipal government responsibilities and the interrelationship with State tax and fiscal policies, municipal governments have a vital stake in what happens in the Legislature. Close to one third of the bills considered by the Legislature would potentially affect municipal governments. Municipal budgets and property tax burdens are directly affected by State policy decisions, such as moving over \$40 million of municipal revenue sharing money into the State's FY 2013 General Fund budget or underfunding the State's statutory obligation to cover 55 percent of the costs of K-12 education from the State's General Fund.

The second "takeaway" is the vital importance of ongoing involvement by municipal officials in the legislative process. I had an opportunity to witness the value of this involvement firsthand when I attended a news conference conducted at the Statehouse in March by the newly formed "Mayors Coalition on Jobs and Economic Development." Participants in the news conference included: Mayor Michael Brennan of Portland; Mayor Robert Macdonald of Lewiston; Mayor Karen Heck of Waterville; Mayor William Stokes of Augusta; Mayor Colleen Hilton of Westbrook; and, Mayor Alan Casavant of Biddeford, who also is a State Representative.

The Mayors stressed the importance of their communities as engines of economic growth in Maine and cited their concerns with State policies that shift costs to property taxpayers – such as General Assistance costs – that in turn

inhibit business expansion. Responding to questions from reporters, the Mayors spoke with passion regarding the significant steps their communities have taken to reduce costs and to hold the line on property taxes, employing very difficult measures, such as layoffs, closing schools and cutbacks in service. The message was clearly heard. Combined with phone calls, emails and other communications from municipal officials across the state, the input from municipal officials had a clear impact on the General Assistance measure ultimately adopted by the Legislature.

There are many ways for municipal officials to become involved.

Consider serving on the MMA Legislative Policy Committee (LPC). The LPC consists of two municipal officials from each of the 35 State Senate Districts. The nomination and election process for the new LPC is currently under way (check out the MMA website – [www.memun.org](http://www.memun.org) – Legislative-Advocacy section).

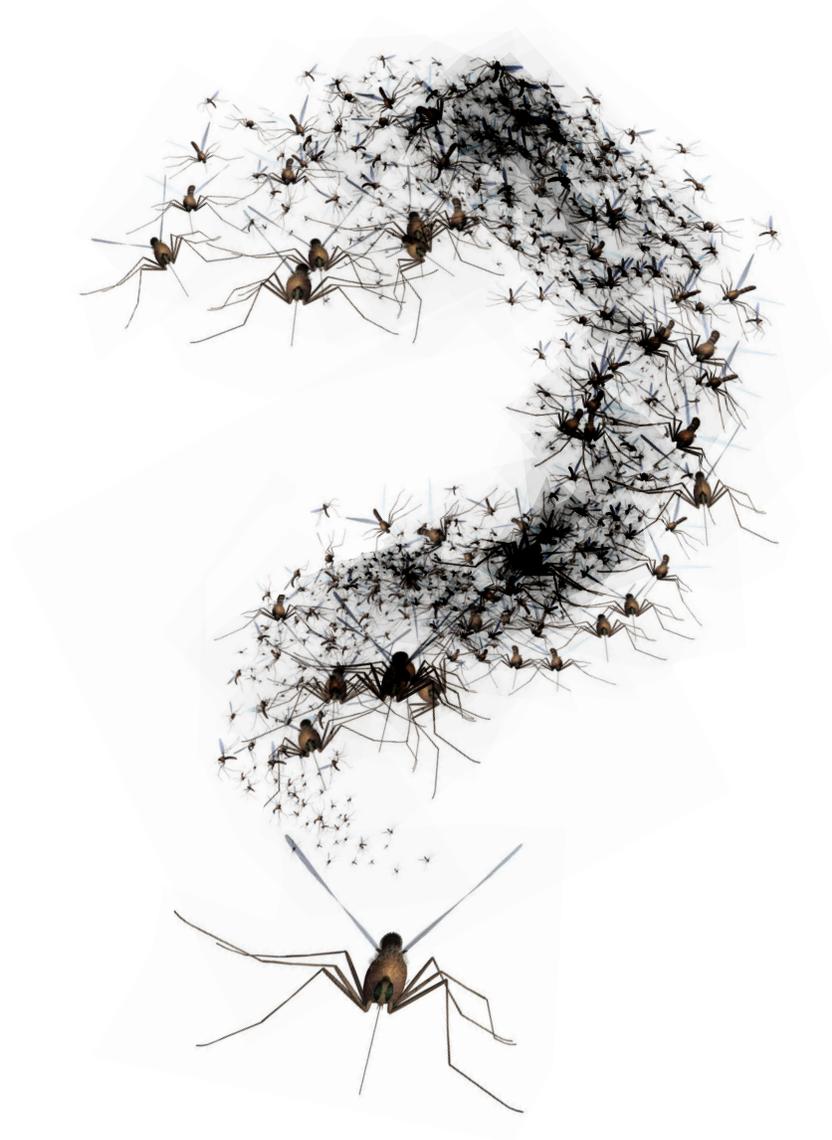
Keep in touch with your Legislative Policy Committee representatives. As one of its first tasks in the fall, the newly elected LPC will formulate MMA's legislative platform for the next legislative session. This is an opportune time to provide input to the LPC regarding issues of concern.

Maintain ongoing dialogue with your local legislators and legislative candidates. Particularly as candidates are campaigning, it's an excellent time to convey municipal concerns and issues and to establish ongoing relationships with your local legislators. The same holds true for members of Congress.

I cannot overemphasize the importance and effectiveness of municipal officials communicating directly with elected state and federal representatives. You can provide specific information on how various proposals will affect your communities. You represent the same citizens. You are doing your utmost to provide the services your citizens value, while keeping taxes and fees as low as possible. You can put a real face on the consequences of proposed State and federal legislation and tax policy.

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# Public Policy and Pressing Cider

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

Otto Von Bismark is quoted as saying, "Laws are like sausage, it is better not to see them being made."

Presumably, the first German Chancellor was referring to the back room deal making and rough horse trading that characterize some elements of the legislative process; activities where public policy positions are bartered with startling indifference, and previous decisions, agreements, alliances and loyalties are roughly ground into a peppery amalgam called compromise.

Since there is no doubt that the process of lawmaking should be comfortably witnessed by all, we are proposing to convert the simile from extruding sausage to pressing cider.

Like the process of legislating, cider making is a busy activity that is engaging to watch, typically involving many participants from the community repeatedly performing multiple activities that are carried out either simultaneously or in overlapping patterns. From original fruit to final product, a transformative process is on display that involves breaking down the raw material poured into the hopper and eliciting from the pommace a valuable derivative. To make a product worth bottling, the good apples must be separated from the bad and all participants must be dedicated to proper cider house procedures. Good cider cannot be pressed out of low quality apples, and trying to cut corners or shortchange the standards of cleanliness and production established for the activity will result in an insipid liquor at best or a vinegary bile at worst.

For the towns and cities, this year's cider may not go down in history as a cherished vintage, but it makes the grade of a dependable table wine. With respect to the enactments most

pertinent to local government, neither the achievements nor disappointments were earthshaking. Some of the initial product poured into the hopper was a little sketchy; a particular talent of this Legislature was to transform proposals of questionable quality into a palatable product.

**Achievements.** The straight-out achievements from the municipal perspective were utilitarian in nature and generally modest. The advancement of a responsible bond package to support transportation projects, water/wastewater infrastructure upgrades and economic development was most welcome.

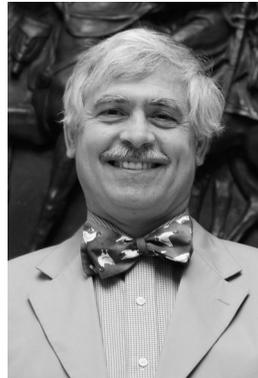
**MUBEC.** Confusion created during the 2011 legislative session over the implementation of the Maine Uniform Building and Energy Code in communities with populations between 2,001 and 4,000 has been erased with a "fix-up" bill, LD 1619.

**Tree Growth.** Two bills developed by the Taxation Committee and enacted this session, LD 1138 and LD 1470, moved the Tree Growth tax law in the right direction by a couple of steps. More might have been done, but at the last minute some important language to the municipalities was softened by the Taxation Committee at the request of one of the "stakeholders". That language, previously agreed to by the stakeholder who then changed its mind, was

designed to establish greater accountability among those Tree Growth enrollees who are using the program as a tax dodge.

Of greater importance, perhaps, than the legislation itself was the significant press attention paid to abuses of the Tree Growth program in high value residential settings. The Lewiston Sun Journal, for example, published an in-depth article this spring on the subject of problematic Tree Growth enrollments all along the Maine coast, with good representation of the municipal assessors' concerns.

**Revenue Sharing.** A bill modestly redesigning the "Disproportionate Tax Burden Fund", commonly referred to as the "Revenue Sharing II" (Rev II) component of the municipal revenue sharing program, made it through this Legislature. The enactment provided a testament to an ability of both state and local leaders to focus on policy rather than spreadsheet politics. The Rev II component of the municipal revenue sharing system distributes approximately 20 percent of all revenue sharing funds to municipalities with especially high property tax burdens. Ever since the Rev II program was created twelve years ago, that "disproportionately high" threshold was a full value mill rate of 10 mills, which is nearly



*Senator Tom Saviello (Franklin Cty.) scored something resembling a hat trick for the municipalities this legislative session. On behalf of MMA, he sponsored the bill which corrected conflicting enactments from last session and will aid in the coherent implementation of the MUBEC building code system (LD 1619). He also advanced some legislation on behalf of constituent municipalities concerned about the impacts of state policy changes on their local General Assistance programs. Sen. Saviello also stood firm in his support of the more measured and reasonable solution to the "regulatory takings" issue (LD 1810).*

two mills below the statewide average property tax rate. The enacted bill, LD 1835, gradually moves the qualifying mill rate threshold up to the statewide average, but only if the Legislature is fully honoring the law that capitalizes the revenue sharing distribution and not raiding municipal revenue sharing to balance the state budget. Design changes as proposed in LD 1835 are politically difficult because the impacts vary from town to town and region to region. After significant analysis, a majority of the municipal officials on MMA's 70-member Legislative Policy Committee and a majority of Maine's lawmakers agreed on this matter of tax policy: If a program is designed to address disproportionate property tax burden, the statewide average property tax rate is a more appropriate qualification than an arbitrary mill rate that is actually below average.

*The bond package.* That a bond package ultimately made it out of the State House at the very end of the legislative session should probably be viewed as an achievement in itself. The \$96 million borrowing package carefully crafted by the Appropriations Commit-

tee was well balanced and very fiscally responsible. Along with the general business community, road contractors, the tourist industry and others, municipal officials strongly supported solid proposals to capitalize highway and bridge construction and water/wastewater infrastructure projects. MMA's Legislative Policy Committee also supported borrowing in the "research and development" category

to stimulate growth in technological capacity and encourage economic development, particularly for Maine's resource-based and emerging industries. Unfortunately, the \$20 million research-and-development component of the Appropriations Committee's three dimensional package was successfully vetoed by Governor Page on the last day of the legislative session. Setting aside that disappointment,

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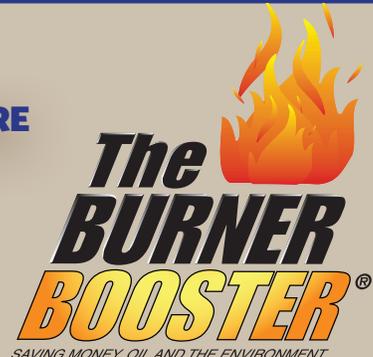
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the transportation and water/wastewater infrastructure bond proposals remain important municipal components of the bond offerings that will be presented to the voters for their consideration on November 6, 2012.

**Quality Committee Work.** Several proposals of some controversy were submitted to the Legislature in a form that stirred considerable municipal opposition. As a general rule, the legislative committees to which these bills were referred gathered up the printed bills with soft hands, and converted an objectionable proposal into a workable solution. Here are a few examples.

*General Assistance.* Since January 2011, Governor LePage has proposed a number of changes to the state's General Assistance (GA) program, including: (1) allowing a person to receive GA benefits only once a year; (2) reducing the rate of reimbursement provided to municipalities when the demand for GA benefits exceeds a certain valuation-based threshold from 90% to 75%; (3) in another iteration, reducing the rate of reimbursement provided to those same municipalities from 90% to 50%; (4) extending the period of disqualification for GA fraud or failing to adhere to work requirements from 120 days to 180 days; (5) restricting GA benefits for housing purposes to no more than 90 days in any year; (6) making all households that receive Temporary Assistance for Needy Families (TANF) benefits categorically ineligible for GA; and (7) completely converting the General Assistance program to a "block grant" program.

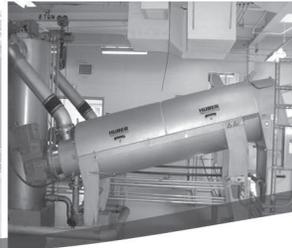
In late April, as a legislative response and in the context of one of the several supplemental state budget bills enacted this session (LD 1903), the Appropriations Committee unanimously developed a responsible General Assistance strategy that was subsequently enacted by the Legislature. That strategy, as fully described under LD 1903 in the New Laws article, implements some relatively modest programmatic changes for FY 2013, and then gives over to a balanced stakeholders group the task of recommending the long-term changes to the



*Every time you turned around this legislative session, Representative Brad Moulton of York was there trying to help out local government. He worked as hard as any legislator in the State House to retain and protect the municipally important programs provided by the State Planning Office during that Office's deconstruction, such as the land use planning assistance programs (see LD 1903). He was the lead Republican on the Judiciary Committee to craft the more reasonable bipartisan version of the "regulatory takings" bill (LD 1810). He bucked his party and probably took some heat for opposing LD 849, which is a bill that dedicates all extra state revenue to income tax rate reduction, even when that extra state revenue includes big chunks of municipal revenue sharing funds raided by the Legislature. He sponsored a bill to increase the document filing fees in the county registries to relieve the pressure on property tax assessments (LD 1550). This legislation gained the support of the Legislature but was successfully vetoed by the Governor. The list goes on.*

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*Freedom of Access Act.* As printed, a bill introduced in 2011 could have turned Maine's "Right to Know" law into a system very friendly to people with a goal of paralyzing a particular local government or targeted government agency. LD 1465 was modified by the Judiciary Committee, with assistance from the Right to Know Advisory Committee, into a measure that essentially modernizes the state's Freedom of Access Act.

*Regulatory Takings Compensation.* As printed and submitted in 2011, LD 1477 would allow landowners to sue state or local governments in order to obtain financial compensation whenever a jury determines that the impact of land use regulation created an inordinate burden on the owner's use of the property, so as to reach the level of a "regulatory taking." A special working group was created to work on the bill over the summer and fall of 2011, and a modified version of the original bill reappeared in 2012 as LD 1810. Throughout its life, the bill took many forms, but a majority of the Judiciary

Committee opted for a much more direct and less litigious approach to the issue of overreaching land use regulation. In summary, the majority report established a special legislative committee for the purpose of periodically convening for the express purpose of taking testimony on actual cases where a landowner feels a "regulatory taking" has occurred as a result of state regulation, and developing responsive legislation as may be appropriate.

Ultimately, LD 1810 was killed altogether because the supporters of the extremely complicated, litigation-based "regulatory takings compensa-

tion" system were unwilling to support the more moderate approach, and another group of legislators were not convinced any legislation on the subject was necessary. As politics in Washington D.C. is often described, there was not enough support in the middle.

*School Choice.* A "school choice" bill (LD 1854) that caused municipal officials significant concern was dealt with adroitly by the Education Committee, with the final product authorizing and encouraging school systems to create open enrollment agreements between themselves to the extent it makes sense, rather than as a man-

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# Welcome

## Roger Raymond

Former Bucksport Town Manager, Roger Raymond joins Eaton Peabody Consulting Group's economic development and municipal practice. Prior to his 30 years of leading economic growth for the town of Bucksport, he served Aroostook County as Town Manager, Tax Collector and Treasurer for the Town of Eagle Lake for almost a decade. Roger is looking forward to sharing his extensive knowledge with other Maine communities. Read more about Roger's story >>



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dated policy from Augusta.

*Land Use Planning Commission.* Another bill, as submitted, would have abolished Maine's Land Use Regulation Commission (LURC) and given over to county governments the home rule authority to establish land use ordinances and enforcement programs for the unorganized territory (UT) within each county's jurisdiction. After an extended process bridging two entire legislative sessions, the Agriculture, Conservation and Forestry Committee massaged LD 1798 into a bill that infuses local oversight of the UT's regulatory system by authorizing the county commissioners to appoint the actual commissioners, rather than creating another layer of regulatory authority at the county level.

#### DISAPPOINTMENTS.

*Tax Reform (by quite another name).* A taxation related measure that crept into this legislative session as a carryover bill from 2011 was transformed into another bill entirely. As enacted, LD 849, *An Act To Provide Tax Relief for Maine's Citizens by Reducing Income Taxes*, dedicates two state General Fund

revenue streams to a "Tax Relief Fund for Maine Residents" for the specific purpose of cutting the state's income tax rate in half, to 4%.

One of those revenue streams is 40% of General Fund revenue available to the state that exceeds the state's "LD 1" appropriation limitation. The other revenue stream is 20% of the state's unappropriated surplus of the General Fund, as identified at the end of the each state fiscal year. Under cur-

rent law this revenue is dedicated to the state's Budget Stabilization Fund, two capital reserve accounts, the state's obligations to the employees' retirement fund, and the reduction of the state's unfunded actuarial liabilities associated with the retiree health insurance benefit system. Several of these dedications will now be significantly reduced to make room for the new priority of lowering the state's income tax rates until the top rate in all income

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tax brackets is 4%. The highest state income tax rate in 2013 is 7.95%.

The municipal concern is that the state's General Fund has for the last four years included big chunks of municipal revenue sharing funds that have been taken by the Legislature. Well over \$40 million of revenue sharing money has been moved into the state's FY 2013 General Fund budget. It should also be noted that the Legislature is significantly underfunding its statutory obligation to cover 55% of the costs of K-12 education from the state's General Fund. That short funding of the public schools is almost \$200 million a year with respect to the 55% funding obligation adopted by the voters in 2004.

From the municipal perspective, the state relies too heavily on the property tax to pay for core governmental services, especially in the field of K-12 education. The three major taxes in Maine generate approximately \$4 billion annually. From that mix, the state's most progressive tax, the income tax, generates 34% of the total. The consumption-based sales tax generates 21% of the total, and the most regressive property tax – the tax most disconnected with ability to pay – generates 44% of the total.

Any way you calculate it, the public policy of LD 849 is clearly moving away from achieving a more balanced tax burden among the three major sources of governmental revenue in this state, and puts income tax reduction as the Legislature's unquestionable top priority even as property tax relief resources are being withheld.

**Conclusion.** What follows are descriptions of all the laws enacted in 2012 that have some bearing on municipal government. There are two final observations.

First, the Appropriations section of the following article struggles to contain all the details of no less than four "supplemental" state budget bills enacted, respectively, in February, March, April and May. The sheer quantity of that material reflects the extraordinary focus this Legislature has had on budgetary matters this year, particularly in the area of the Department of Health and Human Services.

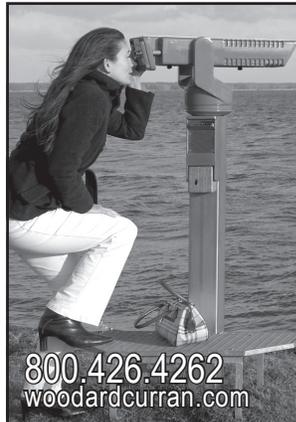
Second, on the purely municipal side of the equation, there are very few bills that were enacted as un-

funded state mandates. With that said, four of the 13 bills described in the Education section of the New Laws article were enacted as unfunded state mandates, and a fifth bill (LD 1422)

carries all the trappings of a significant educational mandate without bearing the formal identification. The state and federal mandates in the area of K-12 education just never seem to end. **[ml]**



*Municipal government interests are in the capable hands of Representative Alan Casavant, who also serves as the City of Biddeford's mayor. Rep. Casavant's firsthand experience with municipal government, as well as his professional experience as a teacher, has made him a valued member of the State and Local Government Committee. This session, Rep. Casavant advocated for and advanced "after deadline" legislation on behalf of the Maine Welfare Directors Association. That bill would have relieved the General Assistance (GA) program of the burden to replace benefits lost as a result of the Legislature's enactment of the five-year lifetime limit on TANF (Temporary Assistance for Needy Families) program benefits.*



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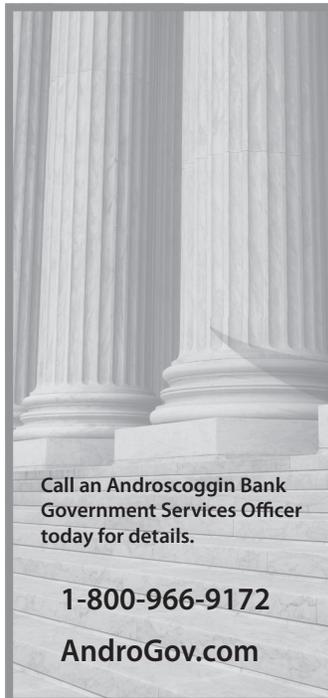
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## 2012 FALL BOND ISSUE SCHEDULE

Capital financing through the Bond Bank's General Bond Resolution Program allows borrowers to take advantage of the Bond Bank's high investment grade rating, low interest rates and reduced issuance and post issuance costs. Traditionally twice a year, in the spring and fall, the Bond Bank will consolidate eligible applicants and engage in a bond sale. From application to receipt of funds the bond issuance process usually lasts three to four months. Below is the schedule for the Bond Bank's Fall Issue.

AUGUST						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

**Wednesday, August 1st**  
Application Deadline.

**Wednesday, August 22nd**  
Application approval (Board Meeting).

**Thursday, September 6th**  
Preliminary opinions and loan agreements due from bond counsel of each borrower.

SEPTEMBER						
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

**Friday, September 7th**  
Last date for signing school contracts and rates in place for water districts.

**Monday, October 1st & Tuesday, October 2nd**  
Maine Municipal Bond Bank Pricing.

**Wednesday, October 3rd**  
Maine Municipal Bond Bank Sale Meeting (Board Meeting).

**Wednesday, October 17th**  
Final documents due from bond counsel.

**Wednesday, October 24th**  
Pre-Closing.

**Thursday, October 25th**  
Closing - Bond Proceeds Available (1:00 PM).

OCTOBER						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

If you would like to participate in or have any questions regarding the 2012 Fall Bond Issue, please contact Toni Reed at 1-800-821-1113, (207)622-9386 or tir@mmbb.com.



# Maine Resource Recovery Association



## Offering these services:

Maine's Recycling & Annual Solid Waste Conference  
Recycling & Solid Waste Technical Assistance,  
Consulting & Guidance  
The Materials Marketing Cooperative  
The Scrap Paper Newsletter  
Workshops & Tours

MRRRA is a membership-based, 501(c)3, non-profit, organization committed to working with Maine towns and cities to improve recycling and solid waste management.

## MRRRA works with towns and cities statewide.

The MRRRA mission is:

1. promoting sound solid waste management practices;
2. communication and information exchange between members and markets, equipment vendors, state and federal governments, other state and national associations and among members themselves;
3. Compiling and developing information relevant to the education and technical assistance needs of Maine's solid waste and recovery programs;
4. promoting market development and cooperative marketing opportunities.

MRRRA also offers home composting bins and rain barrels (at greatly reduced prices) and kitchen pails with over 6000 distributed to date. Watch for our campaign starting in 2011 for spring delivery.



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# NEW LAWS

## 125th Legislature – Second Session

**Effective dates.** Emergency legislation became effective on the date it was signed by the Governor unless otherwise noted. If the new law was an emergency measure, it is so-noted before the Public Law citation. Non-emergency legislation becomes effective 90 days after adjournment of the legislative session in which it was enacted. The effective date of non-emergency legislation enacted this session will be August 30, 2012.

**Mandate preamble.** Legislation enacted with a “mandate preamble” contains the following language: “This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two-thirds of all of the members elected to each House have determined it necessary to enact this measure.” If the new law was enacted with a mandate preamble, it is so-noted along with the Public Law citation.

**Rules.** Some of the enactments described below involve the Legislature’s review and final approval of regulations provisionally adopted by state department or state agencies. As provided in the Administrative Procedures Act, all identified “major substantive” rules must be officially approved by the Legislature before final adoption. Generally, the descriptions provided below are crafted to inform readers that these rules have been finally adopted. For detailed information about the rules, please see the Secretary of State’s website at: <http://www.maine.gov/sos/cec/rules/index.html>.

### Agriculture, Conservation & Forestry

LD 1649 – An Act To Authorize the Registration of Farmland. (Sponsored by Sen. Saviello of Franklin Cty.) **(Mandate) Emergency Enacted; PL 2011, c. 608 (4/09/12)**

This Act reconstitutes, with significant amendment, a farmland registration program enacted in 1989 that allowed qualifying farmers to register their farmland with the municipality for a two-year period in 1990 and 1991 and by so doing prevent certain types of development from occurring within 100 feet on the abutter’s side of the farmland boundary. The amended version of the farmland registration program will operate as follows:

- The new farmland registration program will not involve registration with the municipality nor require municipalities to keep and maintain a municipal registry. Instead, the landowner will register the farmland property by filing the registration application in the registry of deeds after confirming eligibility. Eligibility is confirmed by first submitting the application for registration with the applicable soil and water conservation district and then notifying all abutters that the registration will be filed.
- Unlike the previous registration system, the window of opportunity to register farmland will not be available for just a limited (two-year) period of time. Instead, it will be permanently available, but each registration will expire after a five-year period unless renewed by the farmer in the same manner as an initial registration.

- Unlike the previous registration system, the buffer area immediately adjacent to the farmland boundary upon which no incompatible development is allowed will be 50 feet wide rather than 100 feet wide.
- Unlike the previous registration system, the incompatible development within the 50 foot buffer is limited to the drilling, digging or creation of a well, drinking water spring or water supply intake point. Under the previous registration system, the prohibited development within the buffer area included residential buildings, commercial establishments dispensing or selling food, public or commercial campgrounds and picnic areas, buildings, playgrounds, athletic fields or other school facilities designed for use by children, as well as public or private wells, drinking water springs and water supply intake points.
- All existing farmland registrations that were created in the early 1990s will remain in place until April 1, 2013. Landowners who still maintain registrations under the previous program will have until that date to renew their farmland registration under the new system.
- The revised registration system maintains the requirement that the municipality refuse to permit the development of an incompatible use within the 50 foot buffer zone unless a waiver is granted by the local Board of Appeals to allow the use. The law establishes the variance criterion, which is that adherence to the incompatible use requirement renders a parcel of land subdivided prior to the registration of the farmland unusable for residential purposes.

LD 1741 – An Act To Streamline the Paperwork Requirements of the State’s Forest Practices Laws. (Sponsored by Sen. Sherman of Aroostook Cty.) **PL 2011, c. 532**

This Act is designed to reduce certain paperwork requirements that are associated with forest practices management, particularly with respect to the Forest Operations Notification (FON) forms that must be filed with the Maine Forest Service (MFS) prior to the commencement of a commercial timber harvesting operation. Among the changes, the Act repeals the requirement that the Director of the Maine Forest Service notify the assessor in a municipality when a FON form filed with MFS indicates that there will be a change of use of land enrolled in the Tree Growth tax program. The justification for the repeal is that a copy of the FON form is already provided directly to the municipality, so the MFS notification regarding information on that form is redundant. The Act also deletes a section of the FON that: (1) asks if the timber harvesting operation is compliant with the landowner’s forest management plan for all harvests occurring on land in the Tree Growth program; and (2) instructs the landowner that non-compliance with the forest management plan will result in withdrawal of the property from the tax program.

LD 1798 – An Act To Reform Land Use Planning in the Unorganized Territory. (Sponsored by Rep. Edgcomb of Caribou for the Joint Standing Committee on Agriculture, Conservation & Forestry.) **PL 2011, c. 682**

This Act comprehensively redesigns the Maine Land Use Regulation Commission (LURC) into the Maine Land Use Planning Commission, which is designed differently and provided with a more limited land use regulatory authority than

LURC, but retains much of LURC's core functions of land use planning and regulation in the unorganized and deorganized areas of the state (UT). The elements of this Act most relevant to local and primarily county government would retain a unified "Maine Land Use Planning Commission" made up of nine members, one of which is appointed by the Governor and eight of which are appointed by the county commissioners of the eight counties containing the most unorganized territory (Aroostook, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset and Washington). The Act provides to this Commission essentially the same functions and authority as LURC, with the following exceptions: (1) it authorizes the Commission to delegate to any qualifying county certain smaller-scale land use review and approval functions in the UT if the county wishes to take on that function; (2) it gives over to the Department of Environmental Protection the function of reviewing and approving "grid-scale" wind power projects within the UT as well as other development projects of a statewide or regional significance; and (3) it provides a clear path for plantations and municipalities currently within the Commission's jurisdiction to obtain their own land use planning authority provided a comprehensive plan and appropriate implementing ordinances are adopted and a land use planning and regulatory enforcement capacity is established.

## Appropriations & Financial Affairs

**LD 359 – An Act To Authorize a General Fund Bond Issue for Wastewater and Drinking Water Revolving Loan Funds.** (Sponsored by Rep. Flood of Winthrop.) **PL 2011, c. 695**

This Act sends out to the voters a proposed bond issue of \$7.925 million for the purpose of capitalizing the state's drinking water and wastewater revolving loan fund programs. The bond proceeds will be provided over a two year period. \$3.59 million will be provided for drinking water systems. \$4.335 million will be provided for wastewater systems. The package would generate \$40 million in matching federal funds.

**LD 852 – An Act To Authorize a General Fund Bond Issue To Support Maine's Natural Resource-based Economy.** (Sponsored by Sen. Trahan of Lincoln Cty.) **PL 2011, c. 696**

This Act sends out to the voters a proposed \$5 million bond proposal to be used for the acquisition of land and interest in land under the Land for Maine's Future program.

**LD 874 – An Act To Authorize a General Fund Bond Issue for Higher Education.** (Sponsored by Sen. Alford of Cumberland Cty.) **PL 2011, c. 700**

This Act sends out to the voters a proposed \$11.3 million bond for the purpose of providing capital improvements to the University of Maine system (\$7.8 million), the Maine Community College system (\$3 million), and the Maine Maritime Academy (\$500,000).

**LD 894 – An Act To Authorize a General Fund Bond Issue To Invest in Transportation Infrastructure To Meet the Needs of the Business Sector and To Create Jobs.** (Sponsored by Sen. Diamond of Cumberland Cty.) **PL 2011, c. 697**

This Act sends out to the voters a proposed \$51.5 million bond issue for highway, bridge and other transportation infrastructure purposes. The \$51.5 million package, which is projected to generate over \$100 million in federal and other matching funds, is comprised of the following elements:

- Highways/Bridges
  - \$41 million for the Department of Transportation's (DOT) Highway and bridge reconstruction, repair and maintenance program

- Ports
  - \$3 million for dredging the established commercial channel at Searsport
  - \$2 million for material handling equipment for the port at Mack Point
  - \$1.5 million for warehousing facilities at the port in Eastport
- Rails/buses
  - \$1 million for transit buses
  - \$1.5 million for the Industrial Rail Access Program
- Aviation
  - \$1.2 million for aviation facilities
  - \$300,000 for the LifeFlight Foundation for weather observation stations and for helipads in rural communities with a history of high use or in remote locations, to be matched by at least \$300,000 in funding from local government sources.

**LD 1746 – An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013.** (Presented by Sen. Rosen of Hancock Cty.) **PL 2011, c. 657**

This Act is the fourth supplemental state budget bill to be enacted in 2012, with a primary focus on balancing a financial shortfall in the state's Medicaid budget as administered by the Department of Health and Human Services (DHHS). This Act includes the following provisions that are most pertinent to municipal government.

**General Assistance (GA) Funding.** This Act appropriates \$4.75 million to the General Assistance reimbursement account in order to ensure necessary resources to properly reimburse the towns and cities for the state share of GA benefits distributed at the local level during FY 2013. The Act also appropriates \$1.45 million for the purpose of hiring seven Family Independence Specialists within DHHS. The specialists will be hired for a limited two-year period to assist qualifying GA clients and veterans in their applications for federal Supplemental Security Income (SSI) benefits.

**Elimination and Adjustments to MaineCare Coverage.** This Act removes two categories of current Medicaid recipients from the state's MaineCare program: 19 and 20 year old members of an otherwise eligible Medicaid household, and the parents within a Medicaid household that has an income between 100% and 133% of the federal poverty level. These two changes are projected to remove over 20,000 people from the Medicaid rolls.

Among other changes to the state's Medicaid program, the Act limits reimbursements for methadone treatment for a lifetime maximum of 24 months, with certain allowances for extensions. The Act also reduces the income eligibility threshold for the Low-cost Drugs to Maine's Elderly program from 185% to 175% of the federal poverty level.

**Income and Sales Tax Exemptions.** This Act includes three proposals to expand income and sales tax exemptions. However, the effective date of these proposals is pushed into the next fiscal year (FY 2014), which will begin on July 1, 2013. Once fully implemented, it is projected that these changes will reduce state sales and income tax revenues by \$22.6 million each year. The proposed tax breaks are as follows:

- *Retiree Pensions.* The non-taxable portion of retiree pensions is increased from \$6,000 to \$10,000. It is estimated that once fully implemented, state income tax revenues will be reduced by nearly \$21 million annually.
- *Active Duty Military.* The income of active duty military personnel earned while stationed outside of the state is exempted from taxation. When fully implemented, this exemption will reduce state income tax revenues by a projected \$757,000 each year.
- *Wood Harvesting, Greenhouse & Nursery Products.* Sales of commercial wood harvesting, greenhouse and nursery products are exempted from sales taxes. It is estimated that this exemption will reduce sales tax revenue by \$850,000 year.

**Next Step: New Retirement System for State Employees and School Teachers.** This Act directs the Maine Public Employees Retirement System (MEPERS) to develop proposed legislation to be presented to the newly elected Legislature in January 2013 that would implement a new retirement system for all state employees and public school teachers hired for the first time on or after a fixed date in the future. This represents the second phase in the development of this proposed new retirement system, the framework of which would rely on the Social Security system as the foundation, augmented by both a supplementary defined benefit and optional defined contribution system. The proposed new system is described in a March 2012 MEPERS report, which was commissioned by the Legislature in the biennial state budget enacted in 2011. The implication of this proposal for local governments is that the school systems would become responsible for some or all of the employer's share of the retirement premium, which is currently covered entirely by the state.

**E-9-1-1 Operations.** The Act appropriates \$3.8 million in FY 2013 to cover costs within the Emergency Services Communication Bureau associated with operating the emergency response systems during a period of transition from the existing operations to a more modernized system utilizing advanced technologies.

**Hospital Payments.** This Act allocates \$25 million in FY 2013 unappropriated surplus General Fund revenues to the hospital settlement fund, putting the hospital pay-back priority fourth in the "cascade" queue for end-of-the-year surplus state revenue. The Act also caps at \$10.6 million the 25% of net income from Oxford Casino slot machine operations that are dedicated under current law to "supplement and not supplant" the Essential Programs and Services school funding program (EPS). All "over cap" revenue is dedicated by this Act, for FY 2013 only, to the hospital settlement fund rather than EPS.

**Dolby Landfill.** The Act appropriates \$320,000 in FY 2013 for the operations of the state owned Dolby landfill located in East Millinocket.

**Combine Department of Conservation with Department of Agriculture.** This Act combines the current Department of Agriculture, Food and Rural Resources and the Department of Conservation into a single Department of Agriculture, Conservation and Forestry. It will be to this Department that the land use planning, floodplain management and coastal program management responsibilities formerly provided by the State Planning Office will now be assigned

(see LD 1903). One of the divisions within the combined Department is the Division of Land Use Planning, Permitting and Compliance, which has heretofore focused entirely on staffing the Land Use Regulation Commission within the Department of Conservation.

**Use Tax Compliance & Education Program.** This Act includes the implementation of the Maine Use Tax Compliance program to enable Maine residents to comply, without penalty, with state sales tax laws requiring payment of "use" taxes on goods and services purchased outside of Maine, or through catalogs or the Internet from non-Maine businesses. The proposal is modeled after a similar program implemented in 2006 and based on past experience is projected to generate \$5 million for the state's General Fund.

**LD 1816 – An Act To Implement the Recommendations of the Streamline and Prioritize Core Government Services Task Force for the Fiscal Years Ending June 30, 2012 and June 30, 2013 and To Make Certain Other Allocations and Appropriations and Changes to the Law Necessary to the Operation of State Government.** (Reported by Rep. Flood of Winthrop for the Joint Standing Committee on Appropriations & Financial Affairs.) **Emergency Enacted; PL 2011, c. 477 (2/23/12)**

This Act represents the first of a two-part process to address an originally estimated \$220 million shortfall in the state's Department of Health and Human Services budget related to Maine's Medicaid program (see LD 1746). This Part I legislation addresses more than half of the full shortfall and balances the state's Medicaid budget for the current fiscal year (FY 2012), thus avoiding running out of Medicaid funding between the date of the Act's enactment and June 30, 2012.

The Act employs three strategies to obtain state savings in the Medicaid program:

- reduces the availability of some Medicaid services through program cut-backs and program caps
- reduces the payments to providers of Medicaid-eligible services and/or reduces the state's financial share of the services provided
- secures other-source revenues.

**Program Cut-backs.** The two largest and most controversial program cuts in the Act affect childless adults and parents within Medicaid eligible households.

**Childless adults.** Instead of completely eliminating Medicaid coverage for all "childless adults", as proposed by the Governor, this Act caps the program for these "non categorical" Medicaid recipients at \$40 million for the year (state and federal funds), closes off admission to new applicants and reduces the current non-categorical population through attrition. If attrition alone is not enough to keep within the \$40 million cap, then the Department



*As the former Town Manager of Belgrade (and former member of MMA's Legislative Policy Committee), Representative Dennis Keschl conducts his work on the Appropriations panel with a thorough background in municipal issues. Rep. Keschl also brought forward a bill this session (LD 1693) on behalf of a constituent municipality that successfully connects the public policy between two property tax relief programs: the state's Circuitbreaker cash benefit program and the locally administered poverty abatement system.*

of Health and Human Services, beginning October 1, 2012, may redesign (i.e., cut, eliminate or cap) benefits under the program.

**Parents of eligible children.** Under the current system, both the parents and the children in a household with an income below 200% of the federal poverty level are eligible for Medicaid in Maine. The Governor's proposal would have eliminated the parents' eligibility unless the household income was below 100% of the federal poverty level. This Act sets the parental eligibility level at 133% of the federal poverty level, with the new eligibility threshold kicking-in on October 1, 2012. (Note: LD 1746, enacted after this legislation, moved the parental eligibility threshold down to 100% of the federal poverty level.) This is the primary element of the Act that removes current Medicaid recipients from the program. It is estimated that 14,000 parents are affected.

Of all the elements in this Act, these two limitations in Medicaid eligibility are the most likely to create an increased demand on municipal General Assistance programs.

**Program Caps.** Where the Governor proposed eliminating a number of optional Medicaid programs, this Act generally employs a capping approach as an alternative. Examples include limiting Medicaid coverage to not more than two brand name prescriptions when generic brands are available, capping coverage for chiropractic services to a certain number of visits a year, limiting Medicaid coverage to the oxycodone drugs for a limited period of time (with multiple for-cause exceptions), providing only 50% coverage for smoking cessation products, etc.

**Provider Cuts.** This Act imposes a one-year assessment on each hospital in the state during FY 2013 equal to .39% of net operating revenue. The legislation also institutes a number of reductions in reimbursement rates, in the 5% to 15% range, for optional Medicaid services such as podiatry, occupational and physical therapies, adult family care, community support services for adults with mental health crises, methadone treatment and developmental disability services. These reductions in reimbursement rates are typically offered as an alternative to outright program elimination, as originally proposed by the Governor.

**Other-source revenue.** There are a number of revenue appropriations in the Act that also help bridge the first \$140 million of the \$220 million DHHS budget gap. Those include:

**"Streamlining" savings.** This Act includes accepting a package of state government "streamlining" recommendations developed by a special working group created in last year's biennial state budget. The working group found \$25 million in "streamlining" savings, primarily in changes that would impact next year's state budget. Through a mechanism of borrowing with quick pay-back between fiscal years, this Act pulls those savings into the current fiscal year.

**Recovery of overpayments.** Certain providers of services in boarding care facilities have apparently been overcompensated, leading to a recovery value of approximately \$11 million.

**DHHS Salary and Administrative Savings.** The Act identifies \$20 million is DHHS administrative and staff salary/benefit savings.

**Sweeps of "all other" accounts.** Nearly \$6 million of the "other source" revenue is obtained by sweeping certain accounts throughout the state budget affecting all state agencies, including the Legislature's own spending account.

LD 1870 – An Act To Make Supplemental Appropriations

and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government To Address Revenue Shortfalls Projected for the Fiscal Year Ending June 30, 2012. (Reported by Rep. Flood of Winthrop for the Joint Standing Committee on Appropriations and Financial Affairs.) **Emergency Enacted; PL 2011, c. 575 (3/30/12)**

This Act is a stop-gap supplemental state budget designed to bring the current state budget year (FY 2012) into balance before it concludes on June 30, 2012. The Act consists of identified savings in projected debt service costs as well as the transfer of several lapsed balances or unexpended funds from various accounts. The only element of this supplemental budget related to municipal government is the transfer of \$100,000 from the Fund for the Efficient Delivery of Local and Regional Services to the state's General Fund. The so-called "Local Government Efficiency Fund" was created by the voters in 2004 with the passage of the citizen initiative Question 1A. Although the Local Government Efficiency Fund was initially established by the Legislature in response to that initiative, the Fund was systematically raided each year by the Legislature to balance the state budget. The mechanism for capitalizing the Local Government Efficiency Fund was formally repealed several years ago.

LD 1903 – An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013. (Presented by Rep. Flood of Winthrop.) **Emergency Enacted; PL 2011, c. 655 (4/24/12)**

This Act is the third supplemental budget enacted this year designed to balance the state's FY 2012-2013 General Fund budget. The elements of the supplemental state budget with greatest impact on municipal government are:

- **General Assistance.** The supplemental state budget implements the following changes to the administration of the General Assistance (GA) program for the FY 2013 fiscal year, beginning on July 1, 2012:
  - **Maximum Levels of Assistance.** The maximum levels of assistance established by municipal ordinance for FY 2013 must be 90% of the maximum levels of assistance established by municipal ordinance as of April 1, 2012. Although a straight reading of this reduction would appear otherwise, this "90%" requirement applies to only the overall maximum levels of assistance and not the various "basic need" maximum-level categories, such as for housing, heating aid, food, etc.
  - **Housing Assistance Limit.** During the July 1, 2012 – June 30, 2013 year, GA applicants are limited to nine-months of housing assistance unless otherwise exempted from the limit. Two exceptions to the limit are provided by this law: (1) the existing emergency provision, which enables GA administrators to provide applicants with housing assistance in a life threatening situation or a situation beyond the control of the individual, which if not alleviated immediately could reasonably pose a threat to the health or safety of a person; and (2) a "hardship extension" that extends housing assistance to GA applicants who have "severe and persistent mental or physical conditions" or applications pending with the Social Security Administration.
  - **Temporary Reduction in 90% GA Reimbursement.** Current law requires the state to reimburse municipalities whose GA expenditures exceed .0003 times the municipality's state valuation 90% of that over-

threshold spending. This Act reduces that reimbursement rate to 85% for FY 2013.

- **GA Workgroup.** This Act directs the Commissioner of the Department of Health and Human Services (DHHS) to convene a nine-member working group to review and make recommendations to reduce the state's share of the GA program for the second half of FY 2013 by \$500,000. That is, \$500,000 in state savings must be saved by programmatic changes implemented for just the six-month period in 2013 from January 1 through June 30.

Seven of nine representatives on the working group are voting members, and include two DHHS appointees, three municipal appointees, one advocate for low-income individuals, and the executive director of the Maine State Housing Authority. Non-voting members include a representative with knowledge of federal Veterans Administration programs and a person with knowledge of affordable housing programs.

In addition to identifying \$500,000 in General Fund savings, the working group is charged with:

- Proposing suggestions for electronic data exchange between municipalities and DHHS to increase efficiency in verifying GA eligibility
  - Examining the structure of the state/municipal GA program and making recommendations to improve accountability, cost effectiveness and uniformity
  - Reviewing the role of the GA program in funding homeless shelter services
  - Evaluating the appropriateness and necessity of limiting GA benefits to Temporary Assistance for Needy Families (TANF) recipients
  - Reviewing the pilot program to be administered by DHHS to maximize access to federal assistance programs for which GA applicants may be eligible.
- **SSI Pilot Project.** DHHS is tasked with administering a pilot program to maximize and expedite awards for federal Social Security Income benefits for recipients of GA and to identify and assist veterans who receive assistance through programs administered by DHHS who may be eligible for Veterans Administration assistance programs.

- **General Purpose Aid to Education; Creating a new "55%" standard.** In 2004, the voters of Maine directed the Legislature to appropriate from the General Fund 55% of the cost of K-12 education which was specifically defined to mean the total cost of providing K-12 education without including the costs of the teachers' retirement premium. That total cost for FY 2013 under this budget is \$1.996 billion and the state contribution toward that cost is \$910.6 million, or 45.6% of the total. In order to achieve the 55% standard, the Legislature would have to appropriate an additional \$187 million a year from its broad-based sales and income tax revenues rather than requiring that funding to be provided through property taxation.

In this Act, the Legislature goes the next step and formally redefines its "55%" obligation to include the total cost of K-12 education as calculated by the Essential Programs and Services school funding model (EPS) plus the annual cost of the teacher retirement premium, which has always been funded entirely by the state. The annual cost of the teacher retirement premium is \$175 million. When the state's \$910 million appropriation for its share of the EPS allocation is added to its \$175 million appropriation for the teachers' retirement premium, and that total is divided by the total EPS allocation plus the teachers' retirement premium, the state's share of that

total jumps to 50%.

In summary, the Legislature has now formally created a new standard of state financial obligation toward K-12 education that differs from the standard adopted by the voters in 2004, providing itself a quick additional five percentage points toward meeting the standard.

- **Eliminating the State Planning Office.** This Act implements the dismantling of the State Planning Office (SPO) as recommended by an 11-member working group made up of state agency commissioners. The working group was charged with developing a plan for transferring all existing SPO responsibilities and programs to other departments and agencies within the executive branch. Implementing the working group's recommendations, this Act does the following effective July 1, 2012:
  - The SPO's Director's position is eliminated
  - Code enforcement training and certification responsibilities are transferred to the Department of Economic and Community Development (DECD). (*Note: The Act tasks the commissioners of the Department of Conservation (DOC) and DECD to report back to the Appropriations and Judiciary Committees no later than November 15, 2012 with any recommended changes regarding the status of the training and certification program.*)
  - Land Use Planning responsibilities are transferred to the Department of Conservation. (*Note: the Act requires the commissioner of DOC to appoint a director of land use planning who will be responsible for coordinating technical assistance efforts, providing guidance to state agencies, and providing guidance in the development of local and regional comprehensive plans.*)
  - Waste Management and Recycling responsibilities are transferred to the Department of Environmental Protection
  - Ownership of the state's landfills are transferred to the Bureau of General Services
  - Land for Maine Future responsibilities are transferred to the Department of Conservation, Bureau of Geological Services and Natural Areas
  - Maine Coastal Program responsibilities are transferred to the Department of Conservation
  - Flood Plain Management responsibilities are transferred to the Department of Conservation
  - Maine Commission on Community Services are transferred to the Department of Education
  - The Office of Energy Independence and Security is overseen by the Governor's Office
  - The state economists responsible for economic and demographic analysis are transferred to a newly-created Office of Policy and Management, overseen by the Governor
  - That Office of Policy and Management is staffed by six employees, including a deputy director, two public service executives, a secretary and two economists. In addition to housing the economists, the purpose of this office is to conduct investigations of state agencies and to advise the Governor on the policy changes necessary to eliminate fraud and reform state government programs.
- **State Emergency Relief Reimbursement.** This Act also appropriates \$700,000 for the current fiscal year to provide the disaster relief funds owed to municipalities. These funds are owed for several weather related disasters, including the Aroostook May Day flood of 2008, February and March floods of 2010, December flood of 2010 and the 2011 tropical storm Irene.

## Criminal Justice & Public Safety

LD 1514 – An Act To Amend the Sex Offender Registration Laws. (Sponsored by Rep. Haskell of Portland.) **PL 2011, c. 663**

This Act creates the state's Sex Offender Registration and Notification Act of 2013, governing the sex offender registration and notification system for persons sentenced on or after January 1, 2013. This going-forward registration system classifies offenders according to three tiers, with each tier generally related to the classification of the sex crime for which the offender was convicted and the age of the victim or victims. Class E or Class D sex-based crimes generally establish a Tier I offense. Class C and some Class B sex-based crimes establish a Tier II offense. Most Class B and Class A sex-based crimes establish a Tier III offense. As a general rule, Tier I offenders are placed on the registry for a 10-year period, Tier II offenders are placed on the registry for a 25 year period and Tier III offenders are placed on the registry for their lifetime.

The Act also establishes all the information the Department of Public Safety (DPS) must obtain from sex offender registrants for the Department's data base, and further establishes all the notification protocols – DPS to local law enforcement agencies and then local law enforcement agencies to the general public – when registrants are released from confinement. The Act also establishes the seven-member Sex Offender Risk Assessment Advisory Commission and charges the Commission with developing a risk assessment methodology that may be used to predict the risk of recidivism by a sex offender.

LD 1635 – An Act Regarding Inmates on Public Works Projects. (Sponsored by Rep. Clarke of Bath.) **Emergency Enacted; PL 2011, c. 506 (3/16/12)**

This Act allows inmates of jail facilities to participate in public works-related projects in any county, not only the county where the inmates' jail facility is located, provided the sheriff of the county where the public works-related project is being conducted provides the necessary supervision.

LD 1711 – An Act To Adopt the Use of Standardized Risk Assessment in the Management of Domestic Violence Crimes. (Sponsored by Rep. Cain of Orono.) **(Mandate) PL 2011, c. 680**

This Act, identified as a state mandate, introduces into the assessments made by law enforcement officers a new assessment known as a "validated, evidenced-based domestic violence risk assessment" as recommended by the Maine Commission on Domestic and Sexual Abuse and approved by the Department of Public Safety. The Act provides that no later than January 1, 2015, all law enforcement officers must administer this assessment in good faith to suspects in any domestic abuse case and report the assessment results to the bail commissioner, if appropriate, and the district attorney. The Act also provides state, municipal and county law enforcement officials with immunity from civil liability for implementing or failing to implement the risk assessment.

LD 1731 – An Act To Combat Human Sex Trafficking. (Sponsored by Sen. Diamond of Cumberland Cty.) **PL 2011, c. 672**

This Act significantly expands the list of behaviors that could lead to the charge of aggravated promotion of prostitution.

LD 1744 – An Act To Require Carbon Monoxide Detectors in Additional Residential Occupancies. (Sponsored by Rep. Haskell of Portland.) **PL 2011, c. 553**

This Act requires that the owner of a hotel, motel, inn or

bed and breakfast receiving its initial license on or after August 1, 2012 to install carbon monoxide detectors. The same requirement applies to the new construction of, restoration to, or addition or conversion to a single-family dwelling, fraternity or sorority house or dormitory affiliated with a private school, public school or private or public postsecondary institution.

LD 1760 – An Act To Ensure Notification to Victims of Domestic Violence, Sexual Assault and Stalking When Defendants Are Released on Bail. (Sponsored by Rep. Casavant of Biddeford.) **PL 2011, c. 639**

This Act provides that in a case of domestic violence, sexual assault or stalking, the arresting law enforcement officer must obtain the victim's contact information and provide it to the jail where the defendant is delivered or directly notify the victim if the defendant is released on bail before being delivered to a jail. The Act further requires the jail to notify the victim when the defendant is released on bail. If the jail is unable to reach the victim, the jail must notify the arresting law enforcement agency which must make a reasonable effort to contact the victim. The Act includes certain protocols to follow when the victim is a minor. Finally, the Act provides an immunity from liability for the various law enforcement agencies and authorities in a civil action for compliance or noncompliance with these requirements.

LD 1859 – An Act To Protect Firearm Ownership during Times of Emergency. (Sponsored by Rep. Shaw of Standish.) **Emergency Enacted; PL 2011, c. 626 (4/12/12)**

This Act prohibits a person acting on behalf or under the authority of the state or a political subdivision of the state from prohibiting or restricting the otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency. The Act also removes the power of the Governor to suspend or limit the sale, dispensing and transportation of firearms during a declared state of emergency.

LD 1900 – An Act To Support Members of the Law Enforcement Community Who Have Suffered a Catastrophic Illness. (Sponsored by Rep. Cushing of Hampden.) **Emergency Enacted; PL 2011, c. 596 (4/05/12)**

This Act expands the limited law enforcement officers "solicitation" law. Current law authorizes a law enforcement agency or association to solicit property from the general public to benefit a law enforcement officer or family member suffering from a catastrophic illness provided the solicitation is accomplished through public advertising and all donations are sent to a designated public benefit corporation. In addition to the general public, this Act authorizes that type of solicitation to other law enforcement officers, law enforcement agencies or law enforcement associations.

## Education & Cultural Affairs

LD 958 – Resolve, To Authorize the Legislature To Contract for an Independent Review To Evaluate the Essential Programs and Services Funding Act. (Sponsored by Rep. Johnson of Greenville.) **Emergency Passed; Resolves 2011, c. 166 (5/29/12)**

This Resolve directs the Legislature's Education Committee to contract with a qualified research entity to conduct an independent review of the Essential Programs and Services school funding model (EPS). The Resolve establishes the guidelines for putting out the request for proposals and the process to select the research entity, which cannot be the Education Policy Research Institute associated with the University of Maine and University of Southern Maine because of the Institute's deep

involvement with the development and maintenance of the EPS model. By comparing the school funding impacts between and among the municipalities of Maine as well as comparing school funding systems in Maine with other comparable states, the elements of the research assignment must include: (1) whether school funding distribution is fair and equitable; (2) an analysis of similar school funding models in other states; (3) the percentage of state funding in other states and how the state funding is provided; (4) the advantages and disadvantages of using student enrollment and property valuation as the central components of subsidy distribution; (5) municipal ability-to-pay methodologies in other states; and (6) comparison of other states' subsidy systems with respect to providing adequate resources to support economically disadvantaged students. The contract is funded with the appropriation that would otherwise go to the University of Maine's Educational Policy Research Institute for the purpose of reviewing previously scheduled cost components of the EPS model.

**LD 1003 – Resolve, To Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services.** (Sponsored by Rep. Edgecomb of Caribou.) **Emergency Passed; Resolves 2011, c. 145 (4/04/12)**

This Resolve directs the Department of Education and the Department of Health and Human Services, along with a stakeholders group made up of specialists from public and private schools, to refine existing policies, develop new policies, and prepare nonregulatory guidance on billing procedures that will allow school systems to appropriately access Medicaid in the provision of medically necessary services to students in school-based settings. The two state agencies directed by this resolve must provide a status report to the Legislature's Education and Health and Human Services Committees on March 30, 2012 (sic) that includes specific timeframes for implementing the policy changes, communicating the implementation plan, training school officials on the new policies, etc.

**LD 1237 – An Act To Prohibit Bullying and Cyberbullying in Schools.** (Sponsored by Rep. Morrison of South Portland.) **(Mandate) PL 2011, c. 659**

This Act, identified as a state mandate, requires the Department of Education to develop a model policy on bullying and cyberbullying by January 1, 2013 and further requires all school systems, when they subsequently amend or revise their established student code of conduct policies as required under current law, to adopt policies regarding bullying and cyberbullying that are consistent with the Department's model. The Department's model policy must include an established list of components, including the assignment of responsibilities among school management and staff to implement the policies, procedures to follow to report incidents of bullying, procedures to promptly investigate claims of bullying, the details of disciplinary actions to be taken in response to bullying, procedures for appealing the actions taken by school personnel, and a statement that communication with law enforcement officials is permitted when the appropriate school personnel believe student conduct could lead to either civil action or criminal charges.

**LD 1422 – An Act To Prepare Maine People for the Future Economy.** (Sponsored by Sen. Langley of Hancock Cty.) **PL 2011, c. 669**

This Act requires all public secondary schools to transition to a "standards-based" educational system requiring students to meet certain proficiency standards before receiving a diploma. The Act establishes January 1, 2017 as the point in time after which high school diplomas must be awarded on a proficiency basis, and that to receive such a diploma the student must demonstrate: (1) engagement in educational experiences relating

to English language, mathematics, and science and technology in each year of the student's secondary schooling; (2) proficiency in meeting the state's Learning Results standards in all content areas; (3) proficiency in each of the Learning Results guiding principles; and (4) any other graduation standards required by the school system. The Act provides certain exceptions to the proficiency standards for students in qualifying circumstances. The Act also authorizes the Commissioner of the Department of Education to provide waivers for qualifying school systems to delay full implementation of the standards-based system beyond the January 2017 deadline, although waivers are no longer available beyond January 1, 2020. To avoid having this Act identified as a state mandate, the Department of Education is required to provide "transition grants" to each school system during each transition year, when funding is available, in the amount of 1/10 of 1% of the school system's total EPS allocation for the purpose of covering the mandated costs. For any year the transition funding is not made available, that school system's required year of full implementation is put off for one additional year. The Act also requires each school system to adopt within its comprehensive planning process a plan of how the school system will transition to the proficiency-based graduation standards. The Act also directs the Department of Education to convene a working group made up of representatives from school systems currently developing proficiency-based standards, assessments and assessment criteria. With the assistance of this working group, the Department is directed to maintain on its website the information, tools, models and other forms of technical assistance that will help the school systems accomplish this transition.

**LD 1503 – An Act To Promote School Attendance and Increase School Achievement.** (Sponsored by Sen. Alford of Cumberland Cty.) **PL 2011, c. 614**

This Act comprehensively amends the laws governing the procedures for expelling a student from a public school and a school system's rights and responsibilities with respect to the identification of truancy and authorized responses.

With respect to expulsion, the Act establishes the due process standards that must be followed in all school expulsion proceedings, including providing notice to the student and the student's parents, the expulsion hearing procedures and the student's right to an attorney, and the school system's authority to either expel a student for the remainder of that school year or for an indefinite time, subject to a reentry plan developed by both school officials and the expelled student and expelled student's parents. The Act also establishes the school's financial obligations, or lack thereof, to provide expelled students with post-expulsion professional services depending on the student's identification as a child with disability.

With respect to truancy, the Act amends the criteria that must be met for a student under the age of 18 to be permitted to not attend school. The Act also establishes the criteria that must be considered in the development of an intervention plan to be implemented upon the identification of a truant student. Only upon the identified inefficacy of an intervention plan may the school then refer the truancy to local law enforcement officials and the Department of Health and Human Services, as appropriate.

**LD 1696 – An Act To Modify the Alternative Organizational Structure Budget Approval Process.** (Sponsored by Rep. David Burns.) **PL 2011, c. 485**

The budget of a school system organized as an Alternative Organizational Structure (AOS) is essentially the budget of the superintendent's office and other central administrative services that are provided to the various participating municipal school systems within the AOS. Under current law, the AOS

budget is adopted by the combined voters within the entire AOS at an open meeting. (No budget validation referendum vote is required.) Under this Act, the AOS budget could be approved by the AOS school board (governing body) rather than the voters, if the voters expressly provide the governing body that authority at a referendum vote held during the statewide election.

**LD 1723 – Resolve, Regarding Legislative Review of Chapter 122: Grant Application and Award Procedure: Fund for the Efficient Delivery of Educational Services, a Major Substantive Rule of the Department of Education. (Sponsored by Rep. Richardson of Carmel.) **Emergency Passed; Resolves 2011, c. 122 (3/08/12)****

This Resolve provides final legislative approval for a “major substantive” rule provisionally adopted by the Department of Education, *Chapter 122: Grant Application and Award Procedure: Fund for the Efficient Delivery of Educational Services* (Fund). The rule establishes the process whereby school systems, municipalities and counties may apply for and be awarded grants from the Fund in order to implement changes in governance, administrative structures or policies that result in the creation of consolidated school administrative units, purchasing alliances, innovative “autonomous” public schools, innovative public school districts, innovative public school zones, regional delivery of educational services, or collaborations of municipal-school delivery or support systems. The actual Fund has been created by the Legislature but not significantly capitalized.

**LD 1742 – An Act To Amend Education Laws. (Sponsored by Rep. Richardson of Carmel.) (Mandate) PL 2011, c. 678**

This Act, identified as a state mandate, makes a number of changes to the laws governing K-12 education, some of which are minor, clarifying and technical in nature and some of which are substantive. Among the changes with some substance, the Act requires a follow-up “school budget validation referendum” to occur no later than 45 days after a failed validation referendum vote on the proposed school budget. The Act also reinstates the requirement that all schools systems operate a “gifted and talented” educational program, but provides an option for a school system to seek a one-year waiver of that requirement from the Commissioner of the Department of Education, with the possibility of an additional one-year extension of that waiver to be established by rule. The Act also creates a period of time between now and January 1, 2015 within which the current 2/3 vote standard for a local legislative body to approve a withdrawal agreement from a regional school unit is reduced to a simple majority standard provided a certain quorum of voters is achieved that is equal to or greater than 50% of the number of voters who cast ballots in the most recent gubernatorial election. After January 1, 2015, the voting requirement reverts back to the 2/3 “supermajority” standard. In order to be eligible for the simple majority withdrawal option, the regional school unit must have actually organized as result of the school consolidation law of 2007 and not merely been an existing school administrative district renamed as a “regional school unit”.

**LD 1762 – An Act To Amend and Clarify the Public Charter School Law. (Sponsored by Sen. Mason of Androscoggin Cty.) PL 2011 c. 570**

This Act makes a number of changes to the Public Charter School law enacted in 2011, primarily for the purpose of clarifying ambiguous provisions or establishing more precise procedural requirements. Among other provisions, the Act defines the term “catchment area” as the defined area from which the public charter school expects to draw the majority of its students. A “catchment area” cannot be smaller than

the combined enrollment areas of the two closest noncharter public schools serving students of the same grade levels or a geographic area within a circle having a radius of 20 miles extending from the proposed public charter school, whichever of these two geographic areas is smaller. The Act further requires any public charter school’s plan of organization to describe the proposed catchment area of the school, which may not be designed to exclude areas with high rates of poverty, English language learners, at-risk students or students with disabilities. In addition, the public charter school is required by the Act to provide transportation services to those students within the catchment area. The Act also clarifies that public charter schools are subject to the same federal and state laws, regulations and rules regarding special education as noncharter public schools, and additionally clarifies the funding obligations of the public charter school and the student’s public school of residence with respect to high-cost in-district and out-of-district special education services. The Act also establishes external auditing requirements for all public charter schools.

**LD 1783 – Resolve, Regarding Legislative Review of Chapter 140: Public Charter Schools, a Major Substantive Rule of the Department of Education. (Sponsored by Rep. Richardson of Carmel.) **Resolves 2011, c. 136****

This Resolve provides for legislative review of the “major substantive” rules provisionally adopted by the Department of Education governing Chapter 140: Public Charter Schools. Specifically, the Resolve directs the Department of Education to amend its provisionally-adopted rules governing charter schools to slightly adjust the wording of the student application form, require timeliness with respect to the transfer of student records between public charter and public non-charter schools, and adjust the procedure for converting a public school to a public charter school in the circumstance where the existing public school is the only option for students in that school system. In that circumstance, the rules must require that the vote to convert to a public charter school be accomplished by referendum.

**LD 1788 – Resolve, Regarding Legislative Review of Portions of Chapter 64: Maine School Facilities Program and School Revolving Renovation Fund, a Major Substantive Rule of the Department of Education and the Maine Municipal Bond Bank. (Sponsored by Rep. Richardson of Carmel.) **Emergency Passed; Resolves 2011, c. 137 (3/29/12)****

This Resolve provides for legislative review of “major substantive” amendments to rules provisionally adopted by the Department of Education regarding Chapter 64: Maine School Facilities Program and the School Revolving Renovation Fund. Specifically, the Resolve directs the Department of Education to amend its provisionally-adopted rules governing the School Revolving Renovation Fund to essentially affirm the existing priority system established in law regarding eligible school renovation projects, but allow for exceptions to the priority system if category-specific funds become available for renovation purposes. The current statutory priority system is: (1) health, safety and compliance upgrades; (2) structural improvements; (3) energy/water conservation projects; (4) learning space upgrades.

**LD 1854 – An Act to Expand Educational Opportunities for Maine Students. (Presented by Rep. Johnson of Greenville.) PL 2011, c. 651**

This Act authorizes the school boards of two or more school systems to adopt mutual policies allowing the transfer of students between or among the participating school systems. Those policies must address such issues as the duration of any transfers in enrollment, application procedures, and the assignment of transportation and special education responsibilities.

The Act also directs the Department of Education to convene a stakeholder group including representatives of the various public education associations (school boards, superintendents, principals, educators, special educators, etc.) as well as members from the general public for the purpose of developing a publicly funded school choice model that addresses such implementation obstacles as transportation, respective funding obligations, special education, etc. The Act also directs the Commissioner of the Department of Education to communicate with all school superintendents and school boards about the standards in law governing inter-district enrollment transfers allowed by the “superintendent agreement” system. The report of the stakeholder group, including the public school choice model, must be presented to the Legislature by January 14, 2013.

**LD 1865 – An Act To Enhance Career and Technical Education.** (Presented by Sen. Langley of Hancock Cty.) **(Mandate) PL 2011, c.686**

For the purpose of providing enhanced opportunities for students in career and technical education programs, this Act, which is identified as a state mandate, tightens the standards governing the required alignment of school calendars among the school systems participating in regional career and technical education programs so there are no more than five days on the respective school calendars that are out of alignment, with some allowances for exception. The standard in current law is no more than nine instructional days of non-alignment. The Act links compliance with the new five-day standard to eligibility for school subsidy from the state.

## Energy, Utilities & Technology

**LD 1620 – An Act To Amend the Charter of the Ogunquit Sewer District.** (Sponsored by Sen. Hill of York Cty.) **P & SL 2011, c. 24**

This Act amends the charter of the Ogunquit Sewer District.

**LD 1703 – An Act To Create the New Gloucester Water District.** (Sponsored by Rep. Espling of New Gloucester.) **Emergency Enacted; P & SL 2011, c. 19 (1/26/12)**

This Act establishes the charter of the New Gloucester Water District.

**LD 1803 – An Act To Implement the Recommendations of the Dig Safe Work Group.** (Reported by Rep. Fitts of Pittsfield for the Public Utilities Commission.) **Emergency Enacted; PL 2011, c. 588 (4/04/12)**

This Act amends the so-called dig safe law in four ways. First, the Act clarifies that the law and associated penalties apply to state agencies and departments. Second, the Act exempts from dig safe requirements notifications for grading activities undertaken on private roads where the grading activities are limited to the shaping, maintaining or scraping of a road surface or road shoulder to allow for proper drainage and the depth of the grading activities is no deeper than six inches. Third, the Act establishes special allowances after an excavator notifies private property owners who are not members of dig safe (e.g., a homeowner who technically owns the sewer lines running to the house from the main trunk) of the excavator’s intention to



*As Senate Chair of the Education Committee, Senator Brian Langley (Hancock Cty.) had a nuanced ear this session for the municipal input on K-12 education issues, which is often slightly (or even significantly) different from the school management or school teachers’ input. For example, although there was a general local government concern with the printed version of the “open enrollment” school choice bill, Senator Langley did not fail to notice that MMA’s Legislative Policy Committee agreed that a subset of that issue—the “superintendent’s agreement” process – needs more third-party oversight as suggested in the legislation. A step in that direction was included in the final product (LD 1854).*

excavate. For these types of excavations, the excavator can either wait the three day period for the private property owner to mark the location of the underground facilities, whereby the excavator’s liabilities for damage become limited, or proceed to excavate without waiting the three day period, thereby assuming liability for any damage.

Finally, the Act directs the Public Advocate to convene a 22-member dig safe working group to facilitate the creation of a centralized one-call system to notify operators of underground facilities of pending excavations. The “one-call” system would result in municipalities, which are currently not mandatory members of the Dig Safe system, becoming mandatory members and subject to all membership dues and penalty assessments. Generally, municipal and public utility membership is not mandatory throughout the New England Dig Safe system. With respect to the 2012 Dig Safe working group, the Act calls for the Public Advocate to “consider fair representation of members and nonmembers of the damage prevention system.” For municipal and quasi-municipal appointments, the working group consists of two municipal public works officials, two persons representing quasi-municipal water or sewer utilities, and two municipal officials or persons representing municipal officials.

**LD 1820 – An Act To Implement Recommendations To Provide Additional Flexibility for Funding Infrastructure Improvements for Water Utilities.** (Reported by Representative Fitts of Pittsfield for the Joint Standing Committee on Energy, Utilities and Technology.) **PL 2011, c. 602**

This Act establishes the authority of consumer-owned water utilities to fund future infrastructure improvements through recovery in rates and fund completed infrastructure replacement or repairs through the establishment of a surcharge. The Act requires a water utility establishing such a surcharge to file its intentions and the justification

for the surcharge with the Public Utilities Commission (PUC) no less than 30 days before the surcharge’s effective date. The PUC is authorized to investigate the surcharge to determine if it is just and reasonable, and either approve or disapprove the surcharge request within 75 days of the filing. The Act also directs the PUC to promulgate “major substantive” rules to implement the rate-recovery and surcharge-recovery systems, including a requirement that any water utility establishing and using a capital reserve account must file an infrastructure needs assessment plan with the PUC. The Act also requires water utilities establishing capital reserve accounts to provide the PUC with an annual accounting of their capital reserve accounts.

**LD 1834 – An Act To Amend the Boothbay Region Water District Charter.** (Sponsored by Rep. MacDonald of Boothbay.) **Emergency Enacted; P & SL 2011, c. 25 (4/06/12)**

This Act amends the charter of the Boothbay Region Water District to include the Town of Southport and to allow the municipal officers of the towns within the District to be elected to serve as trustees of the District provided the voters of the District ratify that amendment to the District’s charter at referendum.

**LD 1901 – An Act To Amend the Charter of the Lewiston-Auburn Water Pollution Control Authority.** (Sponsored by Rep. Beaulieu of Auburn.) **P & SL 2011, c. 27**

This Act amends the charter of the Lewiston-Auburn Water Pollution Control Authority.

**LD 1842 – An Act To Amend the Charter of the Bingham Water District and To Direct That Certain Issues Be Studied.** (Sponsored by Rep. Dunphy of Embden.) **Emergency Enacted; P & SL 2011, c. 26 (4/12/12)**

This Act amends the charter of the Bingham Water District. This Act also directs the Public Utilities Commission (PUC) to convene a stakeholder group to examine financial issues related to the loss of customers by water utilities as well as the effect that loss has on the remaining customers of the utilities and the utilities' ability to pay for infrastructure. One issue the stakeholder group is charged with examining is whether there are appropriate means by which contributions to system costs may be collected from customers who discontinue service or from property owners whose property has been served or may be served by the system. The PUC must report the findings and recommendations of the stakeholder group to the Legislature by February 15, 2013.

## **Environment & Natural Resources**

**LD 693 – An Act Concerning Solid Waste Facility Citizen Advisory Committees.** (Sponsored by Rep. Duchesne of Hudson.) **PL 2011, c. 543**

This Act requires the owner or operator of a state-owned solid waste disposal facility that is seeking to obtain an operating license or amended license from the Department of Environmental Protection (DEP) to send to each member of the landfill's citizen advisory committee a notice that a copy of the application will be provided to each affected municipality and any other entity authorized to appoint committee members. That notice must be provided at least 10 days prior to filing the application with the DEP. The Act further requires the owner or operator to provide each affected municipality and any other appointing authority a copy of the application at the time the application is actually filed with the DEP.

**LD 879 – An Act To Ensure Adequate Landfill Capacity in the State for Solid Waste.** (Sponsored by Rep. Curtis of Madison.) **PL 2011, c. 566**

This Act amends the law regarding expansion of commercial solid waste disposal facilities by authorizing a commercial disposal facility (e.g., landfill) to expand if the proposed expansion is contiguous with the existing landfill, is located on property owned by the person holding the existing facility's license, and the existing facility is not under an order or agreement to close. The Act also makes several amendments to the laws governing the determination of "substantial public benefit" by the Department of Environmental Protection, which is an existing finding that must be made prior to the approval of any expansion of a commercial solid waste disposal facility. The Act also provides that the expanded facility may not receive a property tax exemption on real or personal property.

**LD 1278 – An Act To Stabilize Solid Waste Management Funding.** (Sponsored by Rep. Duchesne of Hudson.) **PL 2011, c. 544**

This Act establishes a new fee to be applied to the disposal of construction and demolition debris and the residue from the processing of construction and demolition debris at commercial, municipal, state-owned and regional association landfills. The fee for the disposal of these solid wastes during calendar 2013 is \$1 per ton. Beginning on January 1, 2014, the fee will increase to \$2 per ton. All of the fee revenue generated by this new fee may be expended only for the state's cost share to municipalities under the closure and remediation cost-sharing

program for solid waste landfills. These new fees do not apply to municipal or regional association landfills that are less than six acres in size and accept only inert fill, construction and demolition debris and debris from land clearing and wood wastes.

**LD 1768 – An Act To Improve the Department of Environmental Protection's Annual Waste Discharge License Fee System.** (Sponsored by Rep. Knapp of Gorham.) **Emergency Enacted; PL 2011, c. 546 (3/29/12)**

This Act substantially revises the fee system implemented by the Department of Environmental Protection with respect to the waste discharge licenses issued to municipalities and publicly owned treatment works that discharge treated wastewater effluent into the waters of the state potentially or directly affecting shellfish harvesting areas. The Act eliminates the base fee, the fee for quantities of pollutants actually discharged or licensed to be discharged, the annualized license renewal service fee, the initial dilution fee and the multiple discharge point fee. In replacement, the Act establishes for existing licensees a fee based on the average of the licensees' "bill amounts", allocated among the wastewater dischargers on the basis of their three-year annual flows. A separate surcharge is similarly applied to wastewater dischargers that cause adjacent shellfish growing areas to be closed, with the application of a fee based on the acreage of closed harvesting areas impacted by each wastewater treatment system. The fee for new licensees, not having the benefit of three-year flow data, is established as the median fee for the selected discharge group.

**LD 1793 – Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a Major Substantive Rule of the Department of Environmental Protection.** (Sponsored by Rep. Hamper of Oxford.) **Emergency Passed; Resolves 2011, c. 131 (3/18/12)**

This Resolve finally promulgates the "major substantive" rules provisionally adopted by the Department of Environmental Protection regarding Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law. The rules establish the sound level standards for both grid-scale and small scale wind energy developments under Maine's Site Location of Development Act.

**LD 1794 – Resolve, Regarding Legislative Review of Portions of Chapter 378: Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products, a Major Substantive Rule of the Department of Environmental Protection.** (Sponsored by Rep. Hamper of Oxford.) **Emergency Passed; Resolves 2011, c. 139 (3/29/12)**

This Resolve finally promulgates the "major substantive" rules provisionally adopted by the Department of Environmental Protection (DEP) regarding Chapter 378: Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products. Specifically, the amended rules establish the threshold point when a spill prevention control and countermeasures plan must be submitted to DEP, which is when more than 1320 gallons of petroleum products are being stored on an excavation site. The rules also establish excavation site petroleum storage setback distances from private drinking water wells (300 feet) and public drinking water wells (1000 feet) and prohibit petroleum storage altogether on excavation sites located in mapped source water protection areas or high-yield sand and gravel aquifers. The rules permit fuel storage on excavation sites located on moderate yield sand and gravel aquifers provided not more than 1100 gallons of fuel are stored and all fuel tanks meet certain specifications.

LD 1846 – Resolve, Directing the Department of Environmental Protection To Adopt Rules Pertaining to Petroleum Storage and Gravel Pits. (Sponsored by Sen. Saviello of Franklin Cty.) **Emergency Passed; Resolves 2011, c. 149 (4/06/12)**

This Resolve directs the Department of Environmental Protection to adopt an emergency rule to allow aboveground oil storage tanks used to supply diesel fuel to be located in excavations for borrow, clay, topsoil or silt and quarries that are located in significant sand and gravel aquifers. Although the emergency rule may be promulgated as a “routine technical rule”, therefore not requiring subsequent legislative ratification, all subsequent amendments to the rule must be promulgated as “major substantive” rules, which must ultimately be ratified by the Legislature.

LD 1853 – An Act To Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine. (Sponsored by Rep. Martin of Eagle Lake.) **PL 2011, c. 653**

This Act creates a comprehensive statutory framework to replace current mining laws and rules and establishes the Department of Environmental Protection (DEP) as the agency responsible for permitting and regulating the development, operation and closure of metallic mineral mines in the state. This Act expressly retains municipal home rule authority with respect to the regulation of metallic mineral mining, and places additional requirements on any applicant for a mining license to formally include the municipal officers, county commissioners and general public in the application review process. Specifically, the Act requires any applicant for a mining permit from the DEP to provide published newspaper notice to both the municipal officers and the general public in the municipality where the proposed activities will be occurring in order to allow for public engagement in the permit review and approval process. For mining activities proposed to occur in the unorganized territory, the county commissioners are treated as the municipal officers. The Act requires applicants for mining permits to make available up to \$50,000 for the purpose of providing financial assistance to parties that wish to assume intervenor status in the permit approval proceedings, and further provides the municipal officers (or county commissioners) with intervenor status if that status is requested in a timely manner. The DEP is required by this Act to hold an adjudicatory public hearing within the municipality in which the proposed mining operation would be located. The Act also requires all metallic mineral mining applications to include a contingency plan covering potential environmental and public health and safety emergency situations, and the contingency plan must be provided to the applicable municipal officers and the county commissioners where the mining operations are located.

## Health & Human Services

LD 897 – An Act To Amend the Application Process for the Progressive Treatment Program. (Sponsored by Sen. Hill of York County.) **PL 2011, c. 492**

This Act adds medical practitioners, law enforcement officers and legal guardians of individuals to the list of persons who may apply to the District Court for admission to the progressive treatment program of an individual in need of psychiatric treatment.

LD 1627 – An Act Regarding the Filing of Birth, Death and Marriage Data. (Sponsored by Sen. McCormick of Kennebec Cty.) **PL 2011, c. 511**

This Act makes a number of changes to the laws governing the filing of birth records and notices of intentions of marriage

with local or state agencies. Specifically, the Act provides that: (1) the application recording the intentions to marry as filed with the town or city clerk are confidential and not available for public inspection for a 50-year period, except that the names of the marrying persons and the intended date of the marriage are public records, and except that a person engaged in genealogical research who holds a specially-issued researcher identification card is permitted to both inspect such records and be issued a noncertified copy of the application; (2) the required practice of a municipal clerk transmitting a copy of the certificate of live birth to the municipality of a parent if other than the municipality where the birth occurred is no longer required if the birth is registered or will be registered on the electronic birth registration system implemented by the state registrar; (3) the report of a birth occurring in an unincorporated place may be registered in the electronic birth registration system by the reporting municipality; (4) a person assuming custody of a child of unknown parentage must report to the State Office of Data, Research and Vital Statistics rather than the local town or city clerk; and (5) the certificates of live births must be filed with the Office of Data, Research and Vital Statistics in all cases where the filing occurs more than seven days after the date of the birth.

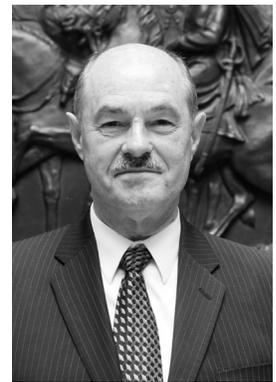
LD 1813 – An Act To Amend the Laws Governing Confidentiality of Health Care Information. (Reported by Rep. Strang Burgess of Cumberland for the Joint Standing Committee on Health & Human Services.) **Emergency Enacted; PL 2011, c. 572 (3/30/12)**

In conformity with federal HIPAA regulations (the Health Insurance Portability and Accountability Act), this Act amends the state law governing the confidentiality of health care information to allow health care practitioners or facilities to report information to federal, state or local governmental entities when the practitioner or facility officials believe in good faith that the information constitutes evidence of criminal conduct that occurred on their premises.

LD 1851 – An Act To Amend the Laws Concerning Municipal Inspections of Establishments. (Sponsored by Rep. Strang Burgess of Cumberland.) **PL 2011, c. 589**

This Act corrects an unintentional enactment in 2011 that broadly prohibited a municipality from conducting any form of inspection or the licensing of eating establishments. This Act corrects the 2011 version by more narrowly authorizing municipalities to perform the health and safety-related inspection and licensing functions provided the municipality has been delegated that authority by the Department of Health and Human Services according to certain criteria already established in law.

LD 1888 – An Act To Strengthen the State’s Ability To Investigate



*With unwavering patience, dedication to process, and resolve, Senator Earle McCormick (Kennebec Cty.) led the Health and Human Services Committee through another year where the funding and structure of the state’s social service programs were all up for serious debate. Municipal officials also appreciate Sen. McCormick’s willingness to stand his ground on several issues of municipal significance, including his stance on the “regulatory takings” bill (LD 1810). Added to that, Sen. McCormick allows MMA’s weekly Legislative Bulletin to be distributed to the members of the Senate under his name.*

and Prosecute Misuse of Public Benefits. (Presented by Sen. McCormick of Kennebec Cty.) **PL 2011, c. 687**

This Act makes a number of changes to Maine law focused on more strongly penalizing cases of misuse of benefits provided through state and local welfare programs and the state-federal Medicaid program. With respect to the municipal General Assistance (GA) program, this Act creates the Class D crime of “misuse of a public benefits instrument”, and defines such an “instrument” as any method of issuing benefits (coupons, vouchers, electronic benefits, etc.) through the following programs: General Assistance (GA), Temporary Assistance for Needy Families (TANF), federal food supplement, child care subsidies or the WIC (women, infants and children) supplemental food programs. The Act also expressly includes GA benefits in the list of benefits that the Department of Health and Human Services has a right to recollect from the recipient in the event of an overpayment, but the Act specifies that with respect to the municipal General Assistance program, an “overpayment” does not include an overpayment made because of an unintentional error made by the individual or household or an error made by the department or municipality.

### Inland Fisheries & Wildlife

LD 1747 – An Act To Prohibit Municipalities from Imposing Fees on Ice Fishing Shacks. (Sponsored by Rep. Shaw of Standish.) **Emergency Enacted; PL 2011, c. 519 (3/16/12)**

This Act prohibits a municipality from imposing a fee for the placement of an ice fishing shack on public water supplies or coastal waters of the state.

### Insurance & Financial Services

LD 1636 – An Act To Extend Certain Insurance Protection to Emergency Responders. (Sponsored by Rep. Luchini of Ellsworth.) **PL 2011, c. 493**

Current law prohibits an insurer from increasing the insurance policy premium of a law enforcement officer for a motor vehicle accident that occurs while the officer is acting in the course and scope of employment. This Act extends this protection to emergency responders provided the motor vehicle accident involves the use of a municipal vehicle or emergency medical services vehicle licensed in accordance with state law and does not include accidents involving a personal vehicle of an emergency responder.

### Judiciary

LD 1465 – An Act To Amend the Laws Governing Freedom of Access. (Sponsored by Sen. Rosen of Hancock Cty.) **(Mandate) PL 2011, c. 662**

This Act, identified as a state mandate, makes the following changes to Maine’s Freedom of Access Act (FOAA) with respect to the management of “public records”.

- Each state agency, county, municipality, school unit, school board and regional or other political subdivision shall designate an existing employee as a “public access officer” and provide that appointee with the same training in the FOAA as is currently required of elected officials.
- The governmental agency or official shall acknowledge



*As a longtime municipal employee in the town of Mexico, Representative Sheryl Briggs brings to the legislative process an understanding of how changes in policy at the state level affect the way local government services are provided. On many votes covering issues of municipal importance, she has displayed a strong commitment to balancing the interests of both state and local taxpayers. In addition, Rep. Briggs deserves thanks for generously allowing MMA’s Legislative Bulletin to be distributed to members of the House under her name.*

receipt of any FOAA public records request within a reasonable time, and shall provide a good faith, non-binding estimate of the time within which the agency or official will comply with the request.

- Inspection, translation and copying of public records may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.
- A person may copy a public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. “Reasonable office hours” includes all regular office hours of an agency or official. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public records must be posted at a conspicuous public place. A request need not be made in person or in writing. The agency or official shall mail the copy upon request.
- As is the case under current law, an agency or official is not required to create a record that does not exist.
- Access to an electronically stored record, or a copy of

such a record, must be provided at the requester’s option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any confidential information contained in that file.

- A public entity is not required to provide an electronically stored record in a different structure, format or organization or provide a requester access to a computer terminal.

- The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. (The current maximum rate is \$10 per hour.) The agency or official must notify the requestor of any request that is estimated to cost \$30 or more to process. The agency or official may request and obtain an up-front payment for any request that is estimated to exceed \$100 to process.

- When purchasing or contracting for computer software and other information technology resources, all governmental agencies must consider the extent to which the software or technology will maximize public access to public records and the exportability of public records while protecting confidential information.

- Finally, the Act appropriates the necessary resources to fund a full time Public Access Ombudsman position within the Attorney General’s Office to provide assistance to all parties in complying with the Freedom of Access Act.

LD 1530 – An Act To Amend the Housing Provisions of the Maine Human Rights Act. (Sponsored by Sen. Hastings of Oxford Cty.) **PL 2011, c. 613**

This Act amends the Maine Human Rights Act with respect to compliance with the building accessibility standards for public housing. Specifically, this Act establishes September 1, 2012 as the date after which all new or substantially reconstructed multifamily and public housing will have to comply with the updated American National Standards Institute (ANSI) standards for accessible and useable facilities. The Act also clarifies that certain costs of normal maintenance, decoration and upgrades are not costs counted toward the 75% threshold of the replace-

ment cost of a completed facility for purposes of the definition of “new construction” that triggers certain code compliance requirements. The Act also clarifies that punitive damages for unlawful housing discrimination are not available against a governmental entity or employee based on a claim that arises out of an act or omission occurring within the course or scope of the employee’s employment.

**LD 1831 – An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes.** (Sponsored by Rep. Fossel of Alna.) **PL 2011, c. 606**

This Act permits a court to order the forfeiture of benefits of a public employee who is a member of the Maine Public Employees Retirement System if: (1) the member is convicted of or pleads guilty or no contest to a crime for which the penalties are equal to or greater than a Class C crime; and (2) the crime is committed in connection with the member’s public office or public employment or if the member’s position places the member in a position to commit the crime. The Act also authorizes the court to award the forfeited benefits in these circumstances to the member’s spouse, former spouse or dependents provided those individuals had no involvement with the crime.



*Representative Charles Priest of Brunswick took the time to advance an eminently rational approach to deal with “regulatory takings” issues (LD 1810) by teaming up with Rep. Brad Moulton (York) from across the aisle. Rep. Priest’s approach established a 14-member Committee of Regulatory Fairness, rather than create a hyper-complicated system culminating in litigation and the possibility of either significant financial or environmental impacts to the state.*

## **Labor, Commerce, Research & Economic Development**

**LD 323 – An Act To Implement a Coordinated Strategy To Attract New Businesses, Expand Existing Businesses and Develop a Consistent and Recognizable Maine Brand.** (Sponsored by Rep. Volk of Scarborough.) **PL 2011, c. 563**

This Act makes a number of changes to the laws governing various aspects of the state’s economic development activities. Of direct municipal interest, the Act establishes certain “outcome measures” that must be used to evaluate eight separate economic development programs, including a demonstration of the number of jobs created and wages paid that are attributable to each program, as well as any state revenues that are attributable to the activities of the program. One of those eight programs is the municipal tax increment financing program.

**LD 771 – Resolve, To Support the Development of a Model Charter for the St. John Valley Regional Planning Commission.** (Sponsored by Rep. Ayotte of Caswell.) **Emergency Passed; Resolves 2011, c. 165 (5/29/12)**

This Resolve directs the Commissioner of the Department of Economic and Community Development (DECD) to invite representatives from the unorganized townships and 15 municipalities in northern Aroostook County to at least two meetings to facilitate the development of a model charter that would establish the St. John Valley Regional Planning Commission. By December 5, 2012, DECD must submit a report to the Legislature describing those meetings and providing any recommendations regarding establishing the regional planning commission’s charter in law.

**LD 1314 – An Act To Standardize the Definition of “Independent Contractor”.** (Sponsored by Rep. Tilton of Harrington.) **PL 2011, c. 643**

This Act establishes a detailed definition of “independent contractor” for the purposes of employment security law and workers’ compensation law. The definition includes five threshold criteria that must be met in order for an individual to be recognized as an independent contractor rather than an employee, including the findings that the contractor: (1) has the essential right to control means and progress of work; (2) is customarily engaged in an independently established business; (3) has the opportunity for either profit or loss with respect to the services being performed; (4) possesses full employer obligations for all assistants; and (5) makes services available even if performed by another.

The Act also establishes seven additional criteria at least three of which must be met to achieve the final determination of independent contractor status: (1) substantive investment in tangible or intellectual tools of the trade; (2) no requirement to work exclusively for the entity receiving services; (3) responsibility for satisfactory completion of the work/possible contractual responsibility for failure to complete the work; (4) contractual definition of roles and responsibilities; (5) payment based on factors related to work product and not solely on time spent; (6) work performed outside of business normally performed by the entity receiving the services; and (7) classification by the Internal Revenue Service as an independent contractor.

**LD 1437 – Resolve, Directing the Maine Economic Growth Council To Develop the Maine Prosperity Action Plan of 2012.** (Sponsored by Sen. Woodbury of Cumberland Cty.) **Resolves 2011, c. 148**

This Resolve directs the Maine Economic Growth Council to develop the “Maine Prosperity Action Plan”, which must be a comprehensive and specific action plan for a sustainable state economy. In developing the plan, the Council must review the proposals and recommendations in several high-profile reports released over the last several years, including the 2006 report “Charting Maine’s Future”, the 2008 report “Time for Change”, the 2010 report “Reinventing Maine Government” and the “Making Maine Work” series recently developed by the Maine State Chamber of Commerce and the Maine Development Foundation. After reviewing those reports and recommendations, the Council is charged with identifying the concrete proposals most likely to positively transform the economic conditions of the state and translate them into proposed legislation. That report must be provided to the Legislature by December 5, 2012.

**LD 1619 – An Act To Resolve Conflicts In the Implementation of the Maine Uniform Building and Energy Code.** (Sponsored by Sen. Saviello of Franklin Cty.) **PL 2011, c. 582**

This Act makes the following changes to the laws governing the implementation of the Maine Uniform Building and Energy Code (MUBEC): (1) allows municipalities to adopt the MUBEC-based codes “by reference” as that process is governed by Title 30-A MRSA, section 3003; (2) removes the requirement that a municipal code enforcement officer be MUBEC trained and certified if the municipality is 4,000 or less in population and has not adopted the MUBEC code; (3) targets the requirement to inspect all buildings under construction for compliance with MUBEC to those municipalities that are mandated or have voluntarily chosen to enforce MUBEC; (4) requires only those municipalities that are mandated or have voluntarily chosen to enforce MUBEC to issue occupancy permits for buildings that have been constructed according to MUBEC; (5) establishes the right to appeal decisions made by building

officials to the municipal officers or to a municipality's board of appeals if a local ordinance does not provide for an appeal process; and (6) clarifies that an appeal from a decision of a building official with respect to the issuance of an occupancy permit may be taken pursuant to an alternative appeal process established by municipal ordinance or by an appeal to the municipal officers or the municipality's board of appeals.

**LD 1675 – Resolve, To Establish a Response Team To Facilitate the Redevelopment of Unoccupied Mills and Other Unoccupied Buildings.** (Sponsored by Sen. Hobbins of York Cty.) **Resolves 2011, c. 167**

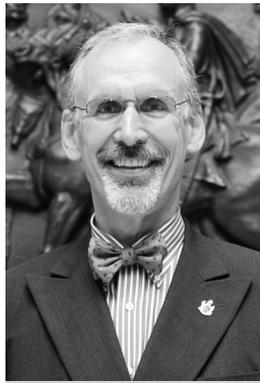
This Resolve directs the Department of Economic and Community Development (DECD) to establish and coordinate a response team, which will include the Department of Environmental Protection, the Finance Authority of Maine and the Maine State Housing Authority, to facilitate the redevelopment of unoccupied mills and other large unoccupied buildings, such as unoccupied schools. DECD is further directed to invite the participation of a commercial real estate developer, a representative from an economic development district, a local economic development representative and a private sector representative knowledgeable about mill redevelopment. The response team is to provide assistance upon request to a municipality by visiting the site, engaging in discussions with local officials regarding the availability of federal, state and local financial resources, and identifying and removing any regulatory obstacles to the redevelopment. DECD is further directed to provide a report to the Legislature no later than February 1, 2013 describing the team's response efforts. The report may include any recommendations for changes required in statute or local ordinances to remove obstacles to the redevelopment of the unoccupied buildings.

**LD 1695 – An Act To Provide Additional In-store Space for Maine's Businesses by Removing License and Permit Posting Requirements.** (Sponsored by Rep. Prescott of Topsham.) **PL 2011, c. 535**

This Act eliminates the requirement that certain retail vendors must publicly display at the retail location their various retail licenses, permits or sales tax registration certificates, requiring the retailers instead to make those licenses or certificates available on demand by the various governmental licensing authorities. Along those lines, the Act prohibits the municipal officers from requiring a licensee or permittee to publicly display any licenses or permits that may be issued at the local level, authorizing only an inspection-on-demand system instead.

**LD 1697 – An Act Relating to the Calculation of Population for Purposes of the Maine Uniform Building and Energy Code and Public Safety Answering Point Assessments.** (Sponsored by Rep. Richardson of Warren.) **Emergency Enacted; PL 2011, c. 505 (3/16/12)**

This Act provides two circumstances where persons held at a correctional facility will not be included in the calculation of that municipality's population. One circumstance is with respect to a municipality's obligation to enforce the Maine Uniform Building and Energy Code (MUBEC). The second circumstance is with respect to the fees calculated and assessed to a municipality for Public Safety Answering Point (PSAP) services.



*Senator Christopher Rector (Knox Cty.) continued to demonstrate his understanding that in order to construct a workable uniform building and energy code for the state, periodic fix-ups are necessary. LD 1619 looked to address inconsistencies that arose when legislation was enacted last session that confused the MUBEC building code enforcement requirements for municipalities with populations between 2,001 and 4,000 residents. To date, Senator Rector has continually worked toward building upon existing legislation to allow for a sensible, workable and consistent building and energy code for the state.*

**LD 1708 – An Act To Prevent the Theft and Illegal Sale of Copper and Other Metals.** (Sponsored by Rep. Longstaff of Waterville.) **Emergency Enacted; PL 2011, c. 545 (3/29/12)**

For the purposes of further restricting the theft and illegal sales of scrap metals, this Act makes a number of changes to the various obligations placed on scrap metal processors to keep records of their purchases and detailed records about the individuals from whom they purchase scrap metal. Those records, under current law, must be made available to law enforcement officers at all levels of government. Among the changes to the current law, this Act requires the scrap metal processor to compile and maintain these records for all purchases, not just transactions that exceed 100 lbs. or \$50. The Act also requires the scrap metal processor to keep photocopies of the photo identification of those persons selling scrap metal to the processor, and to record the make, model and license plate number of the seller's vehicle. Also, the Act requires the processor to hold available for inspection by law enforcement all metal purchased before resale for up to seven days at the written order of a law enforcement officer who has a reasonable suspicion that the metal is stolen, with the possibility of an additional seven-day extension. The Act also establishes a graduated financial penalty system for scrap metal processors who violate these requirements, beginning at a maximum \$1,000 fine for an initial offense and running up to a maximum \$4,500 fine for multiple offenses, plus a six-month suspension of permission to operate as a scrap metal processor.

**LD 1725 – An Act To Strengthen the Unemployment Insurance Laws and Reduce Unemployment Fraud.** (Sponsored by Sen. Rector of Knox Cty.) **PL 2011, c. 645**

This Act tightens up the standards to retain ongoing eligibility for unemployment insurance benefits (UI). Specifically, the Act: (1) provides that a UI recipient must seek work each week for which a claim is filed, unless participating in an approved training program or the work search requirement is waived, and report the work search efforts to the UI commission or face denial of benefits for the week(s) where no proof was provided; (2) requires a UI recipient to broaden his or her work search after 10 weeks of unemployment rather than 12 weeks; (3) provides that participation in reemployment eligibility assessment services is mandatory when referred to the service by the Department of Labor (DOL) and failure to comply without good cause results in loss of benefits; and (4) places UI fraud in the "theft by deception" crime category. The Act increases the earning requirements for re-qualifying for benefits after disqualification for refusing suitable work or misconduct, and provides the Commissioner of DOL with discretionary authority to establish the length of the disqualification period upon a third determination of UI fraud. The Act also adds accrued vacation pay exceeding four weeks' wages to the types of employee remuneration that offset UI benefits.

**LD 1729 – An Act To Clarify the Minimum Wage Law as It Relates to People with Disabilities.** (Sponsored by Rep. Volk of Scarborough.) **PL 2011, c. 483**

In accordance with parallel provisions in federal law, this Act permits the issuance of a certificate to an employer for the hiring of one or more persons with disabilities at a rate of pay

commensurate with the ability of those persons to perform the duties required in comparison to the ability of a person who does not have a disability even if that rate of pay is less than the established minimum wage.

**LD 1787 – An Act To Create Efficiencies in the Administration and Enforcement of the Maine Uniform Building and Energy Code.** (Sponsored by Rep. Prescott of Topsham.) **PL 2011, c. 633**

This Act moves the authority and responsibilities of the Bureau of Building Codes and Standards, located within the Department of Public Safety, into a division within the Office of the State Fire Marshal, which is itself a bureau within the Department of Public Safety.

**LD 1836 – An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters.** (Sponsored by Rep. Knight of Livermore Falls.) **Emergency Enacted; PL 2011, c. 622 (4/12/12)**

This Act provides for some special taxation and licensing recognition for an out-of-state business that enters the state to provide assistance in the circumstance of a formally declared emergency situation or disaster. One element of the Act provides that an out-of-state business that is conducting operations within the state for the purpose of performing work or providing services related to a declared state disaster or emergency is deemed to have not established a level of presence that would require that business or its out-of-state employees to be subject to certain state or local employment, licensing or registration requirements. Such requirements may include business licensing or registration requirements, unemployment insurance, taxes or fees or workers' compensation insurance taxes or fees, and occupational licensing. The Act also provides for exclusion from certain state-level use tax exposures on property brought into the state and for their employees' income tax exposures for those out-of-state businesses while they are performing emergency-related operations within the declared period of emergency or disaster.

**LD 1913 – An Act To Review and Restructure the Workers' Compensation System.** (Reported by the Majority from the Joint Standing Committee on Labor, Commerce, Research & Economic Development.) **PL 2011, c. 647**

This Act makes a number of changes to the state's Workers' Compensation (WC) system. The changes of greatest interest to municipal employers and employees include: (1) shortening the time in which a notice of injury must be given to the employer by the employee from 90 days to 30 days from the date of the injury, effective January 1, 2013; (2) clarifying the time period governing the statute of limitations for filing a petition for award of compensation by establishing it as two years from the date of injury or two years from when the employer files a required first report of injury if the filing of such a report is required by law, whichever is later; (3) eliminating the requirement that WC benefits continue to be issued to an employee during the appeal of a hearing officer's decree; (4) establishing 10 years (520 weeks) as the end date of benefit eligibility for employees determined to have a permanent, partial incapacity, unless the case involves extreme financial hardship; (5) the creation of an Appellate Division within the Workers' Compensation Board made up of panels of no less than three WC hearing officers charged with hearing appeals from decisions of individual hearing officers instead of requiring those appeals to be taken to the Maine Supreme Judicial Court, as is the case under current law; and (6) starting on January 1, 2013, a change in the calculation of WC benefits wherever found in current law as 80% of the employee's net average weekly wages to 2/3 of the employee's gross average weekly wages.

## Marine Resources

**LD 1721 – An Act To Improve the Method of Classifying Shellfish Harvesting Areas and Providing Notification of Changes.** (Sponsored by Sen. Langley of Hancock Cty.) **Emergency Enacted; PL 2011, c. 527 (3/18/12)**

Under current law, the Department of Marine Resources manages contaminated or polluted shellfish resource areas by closing them for shellfish harvesting purposes (with the exception of depuration harvesting) through the adoption of emergency rules. This Act changes the management method by authorizing the Commissioner of DMR to classify the affected shellfish resource areas as open or closed through text descriptions and maps provided on the DMR website. The classifications must also be provided to the municipal office of each municipality in the affected areas as well as to the Bureau of Marine Patrol.

## State & Local Government

**LD 1596 – Resolve, To Review Laws and Policies Related to Discontinued and Abandoned Roads.** (Sponsored by Sen. Saviello of Franklin Cty.) **Resolves 2011, c. 120**

This Resolve directs the Department of Conservation to convene a stakeholder group to review laws and policies related to discontinued and abandoned roads. The stakeholder group is charged with examining issues related to access over public easements, road damage caused by abutting property owners and the general public, methods to address problems of road damage, maintenance of a public easement where there is no municipal duty to maintain the road, and ways to maintain access to intermittent users who require road access. The stakeholder group must include representatives from the Department of Transportation, residents who own property on discontinued roads with public easements, municipal representatives, small woodlot owners, producers of forest products, and snowmobilers. The report and recommendations of the stakeholder group must be reported to the Legislature by January 15, 2013.

**LD 1616 – An Act Concerning Copying Fees for Users of County Registries of Deeds.** (Sponsored by Sen. Thomas of Somerset Cty.) **Emergency Enacted; PL 2011, c. 508 (3/16/12)**

Under law enacted in 2011, the various fees established in statute that may be charged by the counties for making abstracts and copies of records were to be repealed on July 31, 2012 and the commissioners were authorized after that date to establish their own fee schedule based on certain defined cost-drivers. This Act re-establishes the various statutorily prescribed fees by repealing the commissioners' authority to craft their own fee schedule.

**LD 1681 – An Act To Amend the Charter of the Lucerne-in-Maine Village Corporation.** (Sponsored by Sen. Rosen of Hancock Cty.) **Emergency Enacted; P & SL 2011, c. 22 (3/08/12)**

This Act amends the charter of the Lucerne-in-Maine Village Corporation.

**LD 1712 – An Act Regarding the School Fund in the Town of Burlington.** (Sponsored by Rep. Turner of Burlington.) **P & SL 2011, c. 20**

This Act authorizes the town of Burlington to allow the funds remaining in the town's school and ministerial fund to lapse into the town's general fund.

## Taxation

LD 849 – An Act To Provide Tax Relief for Maine’s Citizens by Reducing Income Taxes. (Sponsored by Sen. Trahan of Lincoln Cty.) **PL 2011, c. 692**

This Act dedicates two state budget General Fund revenue streams to a “Tax Relief Fund for Maine Residents” for the specific purpose of cutting the state’s income tax rate in half, to 4%. One of those revenue streams is 40% of General Fund revenue available to the state that exceeds the state’s “LD 1” appropriation limitation. The other revenue stream is 20% of the state’s unappropriated surplus of the General Fund, as identified at the end of the each state fiscal year. Under current law this revenue is dedicated to the state’s Budget Stabilization Fund, two capital reserve accounts, the state’s obligations to the employees’ retirement fund, and the reduction of the state’s unfunded actuarial liabilities associated with the retiree health insurance benefit system. Three of those five dedications are reduced by one-third to allow for the state to cover the cost of the first-year implementation of any income tax rate reduction. The General Fund revenue redirected to this special “Tax Relief Fund” must be used to cover the costs of incrementally lowering the state’s income tax rates until the top rate in all income tax brackets is 4%. The highest state income tax rate is currently 8.5%, which is now scheduled to drop to 7.95% for calendar 2013. The state’s General Fund currently includes approximately \$40 million each year of municipal revenue sharing funds that have been redirected to balance the state’s General Fund budget. This dedication of surplus General Fund revenue for income tax relief will also compete with the state’s statutory obligation to cover 55% of the costs of K-12 education from the state’s General Fund. That short funding of the public schools is almost \$200 million a year with respect to the 55% funding obligation adopted by the voters in 2004.

LD 1138 – An Act To Amend the Maine Tree Growth Tax Law and the Open Space Tax Law. (Sponsored by Rep. Knight of Livermore Falls.) **(Mandate) PL 2011, c. 618**

This Act, identified as a state mandate, makes a number of substantive changes to the Tree Growth tax law program. There are five basic elements to this Act, three of which are designed to improve the accountability of the program, one of which deals with the landowner’s 10-year update compliance deadline, and one of which creates a new “managed forest” Open Space category.

The three “accountability” elements of the Act are:

- Requiring all Tree Growth landowners, at the time of first enrollment and at the 10-year update, to formally attest that “the primary use of the forest land... is to grow trees to be harvested for commercial use.”
- For new Tree Growth enrollments where there are buildings located in the shoreland zone, or when a residential building is being constructed on Tree Growth land in the shoreland zone after August 1, 2012, the Act requires the removal from Tree Growth enrollment the full swath of land including the developed area where the building exists down to and including the minimum shoreline waterfront area.
- Closing a loophole that currently allows landowners to convert their Tree Growth enrollment to an Open Space enrollment

immediately before withdrawing the property entirely from current use taxation, all to avoid the Tree Growth withdrawal penalty. This Act provides that when a landowner transfers enrolled property from Tree Growth to Open Space after August 1, 2012, and then subsequently withdraws from current use taxation altogether, the withdrawal would be subject to the Tree Growth penalty rather than the softer Open Space penalty for the first 10 years after the transfer.

**Compliance deadlines.** As a result of this Act, the 10-year update compliance deadline system works as follows:

1. Year 10, Deadline year. The municipal assessor is still required to send out the so-called “120-day” notice informing the landowner of the exact date of the impending deadline and the landowner’s obligation to get the certification that the plan has been updated to the town. Current law allows that notice to be sent by regular mail. It will now have to be sent by certified mail.
2. If the landowner fails to get the proper certification to the town assessor by the deadline established in the 120-day notice, a \$500 administrative penalty is supplementally assessed against the landowner. That is, the financial penalty is assessed against the property just as a property tax is assessed, with all the associated power of enforcement. The property remains enrolled in the Tree Growth program and in addition to the penalty, the landowner is still obliged to pay his or her Tree Growth taxes.
3. The notice of the supplemental assessment must be sent to the landowner by certified mail, along with the instruction that the landowner must provide either the necessary certification that the forest management plan has been updated or submit an application to enroll in the Open Space program within six months from the date of that notice.
4. If the landowner still fails to provide one or the other of these required submissions by that newly established deadline, a subsequent administrative penalty of an additional \$500 is supplementally assessed against the property. The property remains in the Tree Growth program and the landowner is still obliged to pay his or her Tree Growth taxes.
5. The notice of this second supplemental assessment would again be sent to the landowner by certified mail, along with instructions that the landowner has an additional six months to either become compliant with the 10-year (now 11-year) management plan update requirement or apply for the Open Space program.
6. No additional noticing is required. If the landowner fails to follow those instructions in the six-month period, the land is removed from the Tree Growth program and the full withdrawal penalty applied.

**New Open Space category.** Finally, this Act creates a new “managed forest” category in the Open Space tax program.

With respect to enrollments in the Open Space tax law generally, a parcel is eligible only if the property’s long term nondevelopment provides an articulable public benefit to the community by conserving scenic resources, enhancing public recreation, promoting game management, or preserving wildlife or wildlife habitat. For the purposes of calculating the taxable value of an Open Space parcel, a non-mandatory “alternative valuation method” system is available in law that creates certain categories of Open Space property, including



*Both the House Chair of the Taxation Committee, Representative Gary Knight of Livermore Falls (right), and the lead Democrat on the tax panel, Representative Seth Berry of Bowdoinham (left), were instrumental in shepherding quality property tax legislation through the process this year. The Tree Growth bills (LD 1138 and LD 1470) clearly represent two steps in the right direction. Positive progress was also made by connecting the poverty abatement system with state Circuitbreaker benefits (LD 1693). Throughout the session, both legislators listened closely to matters of municipal concern.*

the development easement category, the forever wild category, and the public access category.

“Managed forest” Open Space is essentially an alternative to the existing “forever wild” Open Space category. To obtain “forever wild” status, the landowner must enter into a third party enforceable easement that completely restricts timber harvesting activities. Under the “managed forest” Open Space alternative, the property must contain at least 10 forested acres and the landowner must be managing the land according to a forest management plan prepared by a licensed professional forester. That forest management plan must be updated every 10 years with certification that the plan being retired has been complied with. The only real difference between the standards of the “managed forest” Open Space category and the standards of property use and management in the Tree Growth tax program is that the landowner’s “primary use” of the property does not have to be commercial timber harvesting. The primary use of the property could be conservation, aesthetics, or wildlife management or preservation.

The taxable value ascribed to property enrolled in the Open Space program is the value the assessors believe the property could command on the market if the property was required to remain forever in its particular open space “public benefit” category (conserving scenic resources, enhancing public recreation, promoting game management, or preserving wildlife or wildlife habitat). The assessor’s right to independently determine the value of the “managed forest” Open Space parcel still applies under this Act.

If the assessor is uncertain about what that value should be, the assessor is free to utilize the valuation guidelines provided under the “alternative valuation method” provided in law.

Under that alternative methodology, an Open Space property is given:

- A 20% reduction from its full market value just for being enrolled in the program;
- An additional 30% reduction if the landowner places a 3<sup>rd</sup> party enforceable easement on the property permanently preventing development;
- An additional 25% reduction if the landowner is willing to allow public access on the property;
- An additional 20% reduction if the landowner places a 3<sup>rd</sup> party enforceable “forever wild” easement on the property;
- Under this Act, as an alternative to the “forever wild” category, an additional 10% reduction is provided if the parcel meets the “managed forest” standard.

If the property owner fails to comply with the forest management plan, which is the key to eligibility for this Open Space program, this Act provides that the landowner is excluded from the 10% additional benefit for a 10-year period.

**LD 1470 – An Act To Evaluate the Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law.** (Sponsored by Sen. Raye of Washington Cty.) **PL 2011, c. 619**

This Act authorizes the Maine Forest Service (MFS) between the effective date of the legislation and December 31, 2014 to conduct evaluations of randomly selected Tree Growth parcels for the purpose of identifying any differences in compliance levels with the landowners’ forest management and harvest plans based on location or type of parcel and assessing overall compliance with the requirements of the Tree Growth tax law. MFS is authorized by this Act to enter and examine enrolled Tree Growth parcels with appropriate notification to the landowner, obtain the landowner’s current forest management plan, and obtain an expired plan if it is still in the possession of the landowner or the landowner’s agent. All of the information obtained by MFS in this data-gathering process is confidential

as a matter of law, and no information about specific compliance issues may be released to any party, including the municipal assessor (who is the only entity possessing the authority to enforce compliance issues). The MFS authority to randomly audit parcels for Tree Growth compliance expires on December 31, 2014, and MFS is directed by this Act to submit a report to the Legislature no later than March 1, 2014 that includes: (1) findings related to any difference in compliance issues based on the location of the parcels, such as coastal and waterfront properties compared to other parcels; (2) a summary of data concerning violations and enforcement activities; (3) an assessment of the effectiveness of the Tree Growth law in promoting the harvesting of trees for commercial purposes; and (4) recommendations to address any problems identified and ensure the enrolled Tree Growth parcels meet the requirements of the law. The MFS report cannot contain any information revealing the compliance or noncompliance activities of any individual landowner.

**LD 1653 – An Act To Make Fisheries and Wildlife and Marine Resources Projects Eligible for Tax Increment Financing.** (Sponsored by Sen. Raye of Washington Cty.) **PL 2011, c. 675**

This Act expands the allowable uses of Tax Increment Financing (TIF) revenue to support “fisheries and wildlife or marine resources projects”, which are defined as projects within the municipality approved by the Department of Inland Fisheries and Wildlife or the Department of Marine Resources undertaken for the purpose of improving public access to fresh water or saltwater fisheries and wildlife resources of the state for fishing, hunting, research or observation or for conservation or improvement of the fisheries and wildlife resources of the state.

**LD 1680 – An Act To Amend the Circuitbreaker Program To Include Claimants Occupying Property Pursuant to a Trust and To Require Proof of Payment of Rent.** (Sponsored by Sen. Plowman of Penobscot Cty.) **PL 2011, c. 513**

This Act clarifies the law governing threshold eligibility for Circuitbreaker benefits in the circumstance of a revocable living trust by allowing a person to apply for and receive benefits if the person possesses the property under a legally binding agreement that allows the owner to transfer the property but retain a possessory interest until some future event. The Act also directs Maine Revenue Services to adopt rules that will require a renter applying for a Circuitbreaker benefit to show proof of payment of rent if the amount of rent claimed during the calendar year is \$9,000 or more.

**LD 1693 – An Act To Amend the Law Governing Abatements of Property Taxes for Infirmity or Poverty and the Administration of the Circuitbreaker Program.** (Sponsored by Rep. Keschl of Belgrade.) **PL 2011, c. 552**

This Act: (1) authorizes a board of municipal officers to consider Circuitbreaker benefits issued by the state and actually received by a person seeking a poverty abatement as having been available to that person for the purpose of paying his or her property taxes when those benefits were received, and therefore “set off” the value of the Circuitbreaker benefit against the value of the poverty abatement; and (2) prohibits a person from applying for Circuitbreaker benefits with respect to a property tax obligation that has been abated at the local level.

**LD 1699 – An Act To Create Excise Tax Equity and Consistency for Buses.** (Sponsored by Rep. Knapp of Gorham.) **PL 2011, c. 646**

Under current law the motor vehicle excise tax rates are applied to the motor vehicle’s Manufacturer’s Suggested Retail

Price (MSRP) or “list price”. The exception is for commercial vehicles manufactured after 1995 and registered for more than 26,000 lbs. The excise tax on those vehicles is based on the actual sales price. Municipalities are reimbursed the difference between the actual excise tax received and what would have been received under an MSRP calculation through a reimbursement program funded by required contributions to the state from interstate trucking operations. This Act expands the “sales price” (instead of “list price”) excise tax system to include buses, which are defined as motor vehicles designed to carry more than 15 persons, including the operator. The municipal reimbursement system will also apply to the newly established bus excise tax system just as it applies to the truck excise tax system. The fiscal note on the Act indicates that \$30,000 worth of bus-related municipal reimbursement would be provided in FY 2013. Because excess funds in the municipal reimbursement account lapse to the Highway Fund each year, the fiscal note identifies that \$30,000 as an annual loss to the Highway Fund.

**LD 1752 – An Act Concerning Technical Changes to the Tax Laws.** (Sponsored by Rep. Knight of Livermore Falls.) **PL 2011, c. 548**

This Act makes a number of technical changes and clarifications to Maine’s tax code. Included among the many technical amendments, the Act provides that only the applicant for a tax abatement with respect to non-residential property exceeding \$1 million in value may appeal a tax abatement decision made by a local assessor to the State Board of Property Tax Review. Under current law, either party to such a decision is allowed to appeal; i.e., the municipality could technically appeal the local assessor’s decision on an abatement request.

**LD 1835 – An Act To Restore Equity in Revenue Sharing.** (Sponsored by Sen. Alford of Cumberland Cty.) **PL 2011, c. 656**

This Act incrementally adjusts the distribution formula for the “Rev II” municipal revenue sharing system only at such a time that the Legislature refrains from raiding the revenue sharing program to balance the state budget. Under current law, the percentage of total revenue sharing funds dedicated to the Rev II distribution are provided to municipalities with a full value property tax rate over 10 mills. This Act is designed to change that 10 mill threshold in the distribution formula to the statewide average property tax rate and further defines how that statewide average property tax rate is calculated. In 2012, the statewide average property tax rate is 11.76 mills according to that definition. No change to that threshold mill rate is authorized by this Act unless the Legislature is allowing for the full revenue sharing distribution as provided by law, which is 5% of all sales and income tax revenues. Also, in any fiscal year the threshold rate can be changed by no more than ½ of 1 mill until the statewide average mill rate is achieved.

**LD 1847 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2012-13.** (Reported by Rep. Knight of Livermore Falls for the Administrator of the Unorganized Territory.) **Emergency Enacted; PL 2011, c. 591 (4/04/12)**

This emergency Act establishes the “municipal cost components” for state and county services provided to the inhabitants of the unorganized territory (UT) and is the annual legislation that determines the property tax assessment on the UT. The total state-provided services are valued at \$13.7 million, the total county reimbursements are valued at \$7 million. The total other-source revenue is valued at \$2.8 million, and the total tax assessment is valued at \$17.9 million.

**LD 1878 – An Act To Allow Reimbursement and Abatement of Property Taxes Due to Hardship.** (Sponsored by

Rep. Graham of North Yarmouth.) **PL 2011, c. 624**

This Act amends the statute governing the issuance of poverty abatements to provide that the abatement may be provided when the applicant demonstrates an incapacity to contribute to the public charges by reason of “hardship or poverty” rather than “infirmary or poverty”.

**LD 1910 – An Act To Allow the Town of Fort Kent To Create a Downtown Tax Increment Financing District Using the Current Assessed Value of the Downtown.** (Sponsored by Rep. Martin of Eagle Lake.) **Emergency Enacted; P & SL 2011, c. 28 (4/17/12)**

This Act allows the Town of Fort Kent to set the original assessed value of a downtown Tax Increment Financing district that may be designated after April 1, 2012 at the downtown district’s April 1, 2012 assessed value, rather than its April 1, 2011 value, in recognition of the March 2012 fire that destroyed 20% of the downtown.

## Transportation

**LD 1367 – An Act To Restore Maine’s Secondary Roads.** (Sponsored by Sen. Thomas of Somerset Cty.) **PL 2011, c. 652**

This Act establishes the Secondary Roads Fund as a dedicated account within the Department of Transportation (DOT) for the purpose of providing state funds to match local funding for capital improvements to the state’s minor and major collector roads. The Secondary Roads Fund is capitalized with the uncommitted balance in the Highway Fund’s unallocated surplus account, as well as any revenue derived from the use of DOT land and assets for energy infrastructure development, including 90% of the revenue derived from that use of the designated statutory corridors along Interstate 295 and Interstate 95, excluding the Maine Turnpike Authority. The Secondary Roads Fund is capped at \$4 million. Under the terms of the Act, the state share of a collector road project is determined by DOT and would range from a low of 50% to a high of 80%. Projects qualifying for the higher state match rate would have to meet one of three criteria: (1) address an existing and potentially high crash location; (2) create a substantial number of new jobs for the region; or (3) have a greater regional or statewide benefit relative to other similarly classified roads. In determining the municipal share, DOT may take into consideration in-kind services and materials, an agreement from the municipality to assume year-round capital and maintenance responsibilities on the improved collector road, or reductions in future local road assistance program distributions. The Act also renames the Urban-Rural Initiative Program as the Local Road Assistance Program.

**LD 1753 – An Act To Improve Transportation in the State.** (Sponsored by Sen. Collins of York Cty.) **PL 2011, c. 610**

This Act makes a number of changes and establishes certain goals within the transportation statutes. Amendments of the transportation laws with a municipal impact include: (1) removing the Department of Transportation’s role as the collector and re-distributor of the excise taxes that apply to aircraft and instead require those taxes to be paid directly to the municipality where the airport is located or to the county in the case of county-owned airports; (2) providing the City of Augusta rather than the State with the authority to assess, collect and retain the excise taxes associated with aircraft based at the Augusta State Airport; (3) requiring the DOT to classify the state’s public highways according to six-tier prioritization system; and (4) establishing deadlines running from 2017 through 2022 for the variously-prioritized roadways to be improved to at least the

“Fair or better” serviceability customer services levels.

This Act also provides a comprehensive set of findings regarding the three bridges crossing the Piscataqua River between Kittery and Portsmouth, New Hampshire (the Piscataqua River Bridge, the Long Bridge and the Memorial Bridge), the bridges’ respective maintenance and reconstruction needs, the agreements on cost sharing and project responsibilities between the two states that have been struck in the recent past, and an apparent change on the part of New Hampshire authorities with respect to the design of the Long Bridge reconstruction standard that could expose Maine to a greater cost than originally documented in the March 1, 2011 memorandum of agreement on the three bridges.

**LD 1896 – An Act To Provide a Temporary Registration Permit to Certain Members of the Armed Forces.** (Presented by Sen. Saviello of Franklin Cty.) **PL 2011, c. 605**

This Act authorizes the Secretary of State to issue a temporary registration plate to a member of the United States Armed Forces to allow that member to operate a motor vehicle or trailer for a period of 30 days if that member has returned to Maine from a deployment outside of the United States. The Secretary may delegate this authority to agents of that Office and may adopt rules to establish the application criteria.

**LD 1907 – An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013.** (Presented by Rep. Cebra of Naples.) **Emergency Enacted; PL 2011, c. 649 (4/18/12)**

This Act is the supplemental Highway Fund budget designed to re-balance the Highway Fund budget enacted in 2011 covering FY 2012 (the current fiscal year) and FY 2013. The element of this supplemental budget of greatest interest to municipal government is an upward adjustment of nearly \$200,000 in FY 2012 and \$213,000 in FY 2013 to local road assistance payments provided to municipalities under the Urban-Rural Initiative program (URIP). With these adjustments, total local road assistance payments in FY 2012 will be \$24.2 million and \$23.6 million in FY 2013 (but see LD 1916, immediately following).

**LD 1916 – An Act Making Supplemental Appropriations and Allocations from the Highway Fund for the Expenditures of State Government To Address Revenue Shortfalls Projected for the Fiscal Years Ending June 30, 2012 and June 30, 2013.** (Presented by Rep. Cebra of Naples.) **Emergency Enacted; PL 2011, c. 658 (5/16/12)**

This bill is the second supplemental Highway Fund budget proposing changes necessary to address Highway Fund revenue shortfalls of \$2.8 million in FY 2012 and \$3.3 million in FY 2013 as projected in late April by the state’s Revenue Forecasting Committee. Of municipal interest are the decreases in local road assistance provided to municipalities under the Urban Rural Initiative Program (URIP). In FY 2012 URIP payments are projected to decrease by \$266,355, and by \$319,645 in FY 2013.

## Veterans & Legal Affairs

**LD 199 – Resolve, Directing the Secretary of State To Study Voter Participation and Registration and the Conduct of Elections in the State.** (Sponsored by Rep. Cebra of Naples.) **Resolves 2011, c. 133**

As submitted in 2011, this legislation required that a person provide proof of identity with photograph identification in order to vote. After being carried over into 2012 and amended by Committee, this Resolve directs the Secretary of State to conduct a study of voter participation, the current system for registering voters and the conduct of elections in the state. The Secretary’s report and recommendations for legislation, if any, must be provided to the Legislature by February 1, 2013.

**LD 1630 – Resolve, To Establish a Stakeholder Group for the Development of a Plan for the Inventory and Proper Care of Veterans’ Graves.** (Sponsored by Sen. Raye of Washington Cty.) **Resolves 2011, c. 126**

This Resolve directs the Bureau of Maine Veterans’ Services to establish a stakeholder group for the development of a plan for the inventory and proper care of veterans’ graves. The Bureau must invite the participation of representatives of municipal and county government, genealogy groups, veteran organizations, a designee of the Maine Old Cemetery Association, a designee of the Maine Cemetery Association and interested members of the public. The stakeholders must review the status of all veterans’ graves in public cemeteries and ancient burying grounds subject to municipal care and maintenance obligations and make recommendations to ensure the proper care of those graves. The Bureau’s report and recommendations must be submitted to the Legislature by January 15, 2013.

**LD 1643 – An Act To Enhance a Community’s Ability To Establish or Update Its Veterans Honor Roll.** (Sponsored by Rep. Johnson of Greenville.) **PL 2011, c. 481**

This Act allows the Bureau of Maine Veterans’ Services to release certain information about veterans honorably discharged from military service to municipalities for the purpose of establishing or updating a veterans’ honor roll provided the municipal request is made in a manner determined by the Bureau.

**LD 1664 – An Act To Amend the Election Laws.** (Sponsored by Sen. Farnham of Penobscot Cty.) **PL 2011, c. 534**

This Act makes several changes to laws governing the conduct of elections. Of significant interest, this Act: (1) increases from two to five the number of years the incoming voter list must be kept by the clerk and clarifies that the list may be kept in the clerk’s office or other secure location under the clerk’s control; (2) requires clerks to keep all paperwork related to the absentee voter process for two years; (3) requires that 10 to 15 business days before an election the office hours of the registrar of voters be published in a newspaper of general circulation instead of the “at least seven days” standard in current law; (4) establishes the procedures to follow when a voter from the unorganized territories registers to vote with less than 60 days before an election for which a ballot has been prepared with some candidates or questions that fall outside of the voter’s elective jurisdiction,



*In the Maine Townsman wrap-up of last year’s legislative session, we recognized Representative Michael Beaulieu of Auburn for his exemplary skills as House Chair of the Veterans and Legal Affairs Committee. This year, we would add our appreciation for his quietly firm support for the reasonable version of the “regulatory takings” bill (LD 1810) that was reported out by the other legislative committee Rep. Beaulieu serves on, Judiciary. When explaining to his fellow Committee members the principles underlying his position on that bill, Rep. Beaulieu observed that land use regulation, when properly applied, generally protects the value of real property rather than diminishes it.*

including a requirement that the municipal registrar immediately contact the Secretary of State's Office to obtain the appropriate ballot; (5) adds "year of birth" to the voter information the Secretary of State is allowed to issue to authorized governmental and quasi-governmental entities; (6) removes the "is not a registered voter" from the list of reasons a voter may challenge the ballot of another; and (7) authorizes clerks to issue a second absentee ballot when the ballot envelope has a defect in the affidavit that would cause the ballot to be rejected.

LD 1882 – Resolve, Directing the Committee on Veterans and Legal Affairs To Develop Legislation Establishing a Presidential Primary. (Sponsored by Sen. Raye of Washing-

ton Cty.) **Resolves 2011, c. 164**

This Resolve directs the Legislature's Joint Standing Committee on Veterans and Legal Affairs to meet sometime in the summer or early fall of 2012 for the purpose of considering options for legislation to establish a presidential primary rather than a presidential caucusing system. The Committee is authorized to work with the Secretary of State to develop a timeline for a presidential primary and to ensure compliance with state and federal law governing the conduct of elections. The Committee is directed to complete its report no later than December 1, 2012, and is authorized to report out legislation establishing a presidential primary for consideration by the newly elected Legislature when it convenes in 2013. [MFL](#)

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## PRESENTERS:

**Amanda Meader**

Staff Attorney, Legal Services  
Department, MMA

**Dana Lee**

Lee Facilitation Services  
(Town Manager in Buckfield and  
former Town Manager in Poland,  
Mechanic Falls)

**Eric Conrad**

Director of Communication &  
Educational Services, MMA



Maine Municipal Association

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# Working Group Projects & Special Commissions

By State & Federal Relations Staff, MMA

When the Legislature votes to adjourn in the odd-numbered year, the legislative biennium is only half over and many working groups and study commissions are typically established for the intersession period. Their purpose is to perform further analysis of carryover bills or specific public policy issues in order to tee those matters up for consideration in the second regular legislative session.

Not so much in the even-numbered year. Far fewer legislatively created working groups are charged with conducting business during the summer and fall after the adjournment of the second (and final) regular legislative session. It is a time of limbo between a retiring and a newly elected state legislature when many incumbent lawmakers and their challengers are focused on their campaigns to win the right to represent their constituents in Augusta next January. In a sense, the slate is made clean. After all, the 2013 legislative session will allow all the public policy issues anyone is concerned about to be submitted afresh for consideration.

With that said, a few working groups and special studies potentially impacting local government were established by the adjourning Legislature. MMA will be directly involved in many of these working groups and monitoring them all. Municipal officials interested in participating in these working groups, being given notice of a particular working group's meeting dates, having their name put on an "interested parties" list to be regularly updated on a study group's progress, etc., should contact Laura Veilleux at 1-800-452-8786 or [veilleux@memun.org](mailto:veilleux@memun.org).

Here is the short list of the 2012 municipally related working groups,

presented in the order of potential municipal impact:

**General Assistance.** A full description of this working group and its formal charge is found under *LD 1903* in the Appropriations section of the New Laws article. In summary, this nine-member working group (with seven voting members) is charged with recommending structural changes to the General Assistance program that will reduce the state's financial exposure to municipal General Assistance reimbursements by \$500,000 over the Jan. 1 – June 30, 2013 time period. There are essentially two ways to reduce the state's General Assistance appropriation. Programmatic changes can be enacted that either reduce the level of benefits provided to General Assistance applicants or reduce the degree to which the state is obligated to reimburse municipalities in this state-local "partnership" program. The working group must report its recommendations to the Appropriations Committee by Dec. 1, 2012.

**Dig Safe.** The details of this legislatively created "Dig Safe" working group are found in the description of *LD 1803* in the Energy, Utilities and Technology section of the New Laws article. The 22-member Dig Safe working group created by this bill is identical in size and similar in make up to the Dig Safe

working group MMA monitored in 2011. A strong majority of the members of the 2011 Dig Safe working group were either representatives from private utilities that are mandatory Dig Safe members or the private sector excavators who dig in the public streets. The specific charge to this newly created 2012 Dig Safe working

group is to facilitate the creation of a centralized "one-call" system to notify underground facility operators of pending excavations. The one-call system would result in municipal public utilities, which are currently not mandatory members of the Dig Safe system, becoming mandatory members and subject to all membership dues and penalty assessments. Because of the stark imbalance on the 2011 working group between the excavators and private-utility Dig Safe members on one side of this issue and the public utility non-members on the other, MMA asked the legislative committee writing this bill for greater balance, particularly where the central charge to the working group is focused on the issue of mandatory membership. Accordingly, the directive in *LD 1803* calls for the Public Advocate to "consider fair representation of members and nonmembers of the damage prevention system." Six of the 22 working group members will be representing municipi-



*Representative Margaret Rotundo of Lewiston deserves a great deal of thanks and credit for her efforts as one of the lead negotiators on the General Assistance (GA) program changes that were advanced by the members of the Appropriations Committee as part of one of several supplemental state budgets enacted this session (LD 1903). Those recommendations were subsequently adopted, nearly unanimously, by members of both the House and Senate. Her commitment to honoring the GA program as a state/municipal partnership, as well as ensuring that necessary programs are available to the state's neediest residents, is greatly appreciated.*

pal and quasi-municipal utilities: two municipal public works officials, two persons representing quasi-municipal water or sewer utilities, and two municipal officials or persons representing municipal officials.

**Aquatic Conservation and Restoration Strategy Plan (culverts).** Over the last several years there has been a push from the environmental community to require road culverts carrying streams to be larger, embedded in the ground, and never impede the passage of fish or the organisms that fish eat. The municipal community has reacted with concern because of the costs associated with a blanket culvert repair and management mandate. In 2011, a bill was enacted that modified the culvert installation standards in a way that was not overly expensive to municipal road budgets. That bill was LD 1387, enacted as PL 2011, chapter 205. In addition to making some changes to the culvert maintenance and replacement “permit by rule” standards, LD 1387 directed four state agencies and any interested parties (of which there are many) to develop a “statewide aquatic conservation and restoration strategy plan.”

The intended outcome of this plan

is to maintain and restore dynamic ecological processes responsible for creating and sustaining aquatic habitats over broad landscapes. At least one reason for the creation of this stakeholders’ group was to help make sure that any new environmental mandates would be proposed within some sort of prioritized context. A sampling of the study group’s charge includes: using scientific data, establishing active restoration priorities, refining and proposing best management practices, establishing performance measures, and proposing funding alternatives for passive and active restoration. This group has already met several times in 2011 and 2012, subcommittees have been formed and more meetings are scheduled throughout the remainder of the year.

The state agencies participating in this process include the Departments of Environmental Protection, Inland Fisheries and Wildlife, Marine Resources, and Transportation. Attendance varies, but approximately 40 people are participating as “interested parties,” with a majority of the attendees coming at these issues from an environmental protection perspective. No more than eight participants rep-

resent municipal or business interests. Although other issues will be discussed before the plan is finalized, one of the major issues to be considered by the working group and addressed in the recommendations is the proper sizing and standards for culvert repairs and replacements, including the appropriateness of the “1.2 times bank full width” sizing standard that was previously the subject of municipal cost concerns. The Department of Environmental Protection, with the other participating departments, will present the findings and recommendations of the working group in the form of a finalized plan to the Environment and Natural Resources Committee by Jan. 31, 2013.

**Veterans Graves.** As more fully described under *LD 1630* in the Veterans and Legal Affairs section of the New Laws article, the charge to this study group is relatively simple. The group is to make recommendations to ensure that veterans’ graves are properly maintained. Preliminary to making such recommendations, the study group is charged with reviewing the current maintenance status of veterans’ graves. The size of the working group isn’t fixed by this directive, but

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it must include municipal and county representatives, representatives from cemetery associations, veterans' representatives, and genealogy groups. The Bureau of Maine Veterans' Services convenes the group, and the group's report must be completed by Jan. 15, 2013.

**Discontinued Town Ways.** The formal description of this working group is found under *LD 1596* in the State and Local Government section of the New Laws article. This is not the first working group charged with studying and making recommendations about the use of discontinued or abandoned town ways where a public easement has been retained, and it will probably not be the last. The central question to the working group is who should be obliged, if anyone, to fix damaged roads when the town has no obligations to maintain the public easement, and how should those repair obligations be managed. The Department of Conservation is directed to convene this working group. The working group's report and all recommendations must be completed by Jan. 15, 2013. Small and large woodlot owners, snowmobilers, residential property owners located

on these public easements, municipal representatives and the Department of Transportation must be included in the working group.

**Presidential Primary.** Unlike the other 2012 study groups described in this article, this resolve directs a joint standing committee of the Legislature to study a particular proposal rather than a group of "stakeholders". As described under *LD 1882* in the Veterans and Legal Affairs (VLA) section of the New Laws article, the VLA Committee is directed to meet over the summer to consider the option of changing the presidential caucusing system to a presidential primary system, potentially triggering statewide primary elections to be held in the late winter on a 4-year cycle. The municipal connection is the cost of conducting another round of elections. The VLA Committee must complete its report by Dec. 1, 2012, and recommended legislation establishing a presidential primary system could follow.

**Maine Prosperity Action Plan.** This study group is also a horse of a different color. As more fully described under *LD 1437* in the Labor, Commerce, Research and Economic Development

section of the New Laws article, the "stakeholders" group that is directed to perform this study is the Maine Economic Growth Council (Council). As established by statute, the Council is a 19-member group of experts in the fields of business, economic development, labor, environment, and education appointed by the Governor and top legislative leadership. Municipal officials are probably most familiar with the Council's annual "Measures of Growth" report, prepared by the Maine Development Foundation, which tracks the state's progress toward established goals in 25 economic health measurement categories. With that as background, *LD 1437* directs the Council to winnow out from several high-profile reports released over the last 6 years the various concrete proposals requiring legislation that are most likely to positively change the economic conditions of the state. The reports the Council must review include "Charting Maine's Future" (2006), "Time for Change" (2008), and "Reinventing Maine Government" (2010). The deadline for the Council's recommendations to the Legislature is Dec. 5, 2012. [\[ME\]](#)



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# 'Municipals' Say They Offer Superior Service

By Douglas Rooks

When Maine consumers think about electric utilities, they're likely to identify Central Maine Power, the state's largest, or, in northern and eastern Maine, Bangor Hydro and Maine Public Service. Yet there are also four municipal electric companies and a half-dozen customer-owned electric cooperatives, which may come as a surprise to even the most dedicated consumers.

That lack of familiarity comes partly because none of the "municipals," as they're known in the trade, is in a major city. Yet Kennebunk Light and Power, Madison Electric Works, Houlton Water Co. and Van Buren Light and Power all offer lower rates and better service than the much larger companies that serve the same areas, even though none of them has more than 6,300 customers.

How can that be?

There are a number of reasons, according to managers and officials at the municipals. Sharon Staz in Kennebunk points out that publicly owned utilities answer only to their customers and don't have to provide dividends and attractive stock prices, as do Central Maine Power and the other privately owned utilities.

"We don't work for two bosses," she said. "We don't have to ask whether this decision will benefit the stockholder and improve dividends. We're focused only on the customer."

For John Clark, manager in Houlton, the compact service area and the district's requirement that line crews live within 15 minutes of the central station means quick restoration of service after outages, as well as lower

rates.

"We're fortunate in that regard. This company had a policy of not running lines too far from the central station, which keeps costs down." He added, "And, frankly, we pay our people less."

## NO SECRET

In Madison, Calvin Ames, who worked for years at CMP before taking the Madison job, says it's no mystery why a bigger utility struggles after major storms bring down lines.

"I used to be a line manager in the York district," he said. "They have half the people they had when I was there 20 years ago and demand has grown."

Staz points out that CMP was fined by the Maine Public Utilities Commission for inadequate tree trimming and is currently in the second year of a five-year plan to catch up on deferred maintenance. "We can keep to a higher standard and still offer lower rates," she said.

The numbers don't lie. The four municipals generally have much lower transmission and distribution costs and are now able to buy power at rates comparable to other utilities. In CMP's area, Kennebunk and Madison's residential rates are three to four cents lower per kilowatt hour. In Maine Public Service's territory, Houlton and Van Buren's are three to five cents lower, a major saving.

That the four municipals survived the consolidation that marked the 1920s and '30s – and the subsequent granting of exclusive franchise areas by the PUC – is something of a historical accident. Several of them came out of efforts, in the late 1800s, to bring street lighting to town not long after Thomas Edison devised the first practical systems to deliver electricity

commercially.

Kennebunk's major employer at the time was the Kesslen Shoe Co., which operated a turbine on the Mousam River that powered the factory. When Kesslen got into financial trouble in 1893, three local businessmen stepped forward to help. They, in turn, approached town fathers about a loan to buy the generating facilities. The three ended up becoming the first three town utility commissioners when Kennebunk took over the operation.

The original factory site still produces electricity for customers. Along with two other turbines, they are the only hydro plants still being operated by the municipals. Madison decommissioned its turbines after major floods. Since all of Kennebunk's three turbines are run-of-river operations, their output is limited.

"When flows are good, it might amount to 5 percent of our load factor," said Staz. "After a winter like this one, it might be 1 or 2 percent."

## HOULTON HISTORY

Houlton Water Co., as the name implies, does more than provide electricity. "There were once three separate companies – all private – that the town took over," said John Clark. The origins can be traced to a flour mill that, in 1902, decided to offer street light service.

Houlton Water offers electric service to a five-town area that also includes Hodgdon, New Limerick, Linneus and Ludlow. Water service is limited to Houlton and Hodgdon. The company has an elected board of directors but cooperates closely with the town.

"We contribute annually to the town budget," Clark said. In recent

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*Douglas Rooks is a freelance writer from West Gardiner and regular contributor to the Townsman, [drooms@tds.net](mailto:drooms@tds.net)*

years, annual payments have run from \$30,000 to \$60,000.

Houlton is second in terms of customers at 5,200, compared to Kennebunk's 6,300. But by far the largest electric load is carried by Madison, whose 3,000 customers include the Madison Paper Industries Plant and the Backyard Farms greenhouse operation. Madison has a load factor of 60 megawatts, compared with 20 megawatts for Houlton.

Calvin Ames points out that Madison's low rates were a big factor in convincing Backyard Farms to set up shop in 2007. It has since expanded its greenhouses to cover 42 acres and it employs 200 people.

"We were very competitive with the other sites they looked at, including some out of state," Ames said. Backyard Farms is cited prominently on the town's economic development website page.

But the municipals and town government don't always see eye-to-eye. That became clear during Madison's recent attempts to win support for a municipal bond that would have brought a natural gas pipeline to town along a 52-mile route to the Northeast & Maritimes compressor station in Richmond. The town took two votes on the bond, both unsuccessful. It has since signed an agreement with Kennebec Valley Gas Co., a private company, to have Madison Electric distribute the gas if the pipeline is built.

That's the way Calvin Ames said directors saw it from the beginning. "We weren't interested in the idea of building the pipeline itself," he said. "That's where the conversation (with the town) pretty much ended."

### THE KENNEBUNK 'ISLAND'

Though Kennebunk also distributes electricity to customers in parts of Lyman, Arundel and Wells, there are more than 1,000 customers in Kennebunk it doesn't serve, a kind of "island" with CMP service in the southeast corner of town. This has become a sore point with those customers, who say that CMP's service is inferior to what they could get from Kennebunk Light and Power.

They formed a citizens group called Citizens for Electrical Equity in Kennebunk (CEEK) and began lobbying the Legislature for a bill that would authorize utilities to shift fran-

chise areas for the first time. On the third try, the bill passed muster – but the elation CEEK felt was short-lived.

CEEK's concerns were not so much about costs as the lack of service; after one major storm, Kennebunk had its customers reconnected within 48 hours, while some CMP customers in town had to wait another three days.

"I think they're a little discouraged now," Staz said of CEEK. Unless the PUC responds to complaints by ordering a sale by CMP – something it's never done before – there may be no recourse.

Madison also would be interested in taking over the 1,000 or so CMP customers within its boundaries, Madison takes a different approach to pricing than CMP. For instance, it charges the same delivery rates to residential customers as it does to Madison Paper and Backyard Farms; CMP tends to offer lower rates for industrial customers.

The smallest municipal electric utility is in Van Buren, where Skip Dumais manages a system with 1,400 customers and has an amicable relationship with Maine Public Service Co. "We help them on occasion when they're restoring service after outages," he said. "Sometimes we're closer than they are."

Van Buren Light and Power dates to 1906, when the town bought a private company. Like the other municipals, Van Buren takes a look, from time to time, at generating its own electricity. An impoundment for the Van Buren Water District has been identified as a site for a hydro plant but so far, Dumais said, such a move wouldn't be cost-effective, although that could change.

Madison's search for electricity has been more extensive, since it has only a small diesel generator in operation since the hydro stations were decommissioned. One idea was purchasing a boiler from a defunct manufacturing plant, Calvin Ames said, but it turned out the boiler wouldn't take enough pressure. Natural gas is now a possibility, though it won't be known for awhile whether the Kennebec Valley Gas pipeline will be built, he said.

Such investments are not without risk. As John Clark pointed out, the Eastern Maine Cooperative – Maine's largest publicly owned electric utility, with 12,000 customers – went through

bankruptcy after it invested, along with other Maine utilities, in the Seabrook nuclear plant in New Hampshire.

### ISLAND WIND

One of the cooperatives has gone into the generation business in a big way – Fox Islands, which serves the offshore towns of Vinalhaven and North Haven. Aided by a retired University of Maine professor, the Island Institute, a federal grant and a major anonymous "bridge" investor, Fox Islands LLC built one of Maine's first commercial-scale wind farms: three turbines that generate 4.5 megawatts at a cost of \$9.5 million. The project went on-line in 2009 and has gained long-term financing with the Rural Utilities Service.

The purpose, according to manager Charles "Chip" Farrington, was to provide a consistent, reliable supply and ultimately lower electric bills. It has not been without controversy. Some neighbors have filed suit, claiming the turbines violate state noise restrictions. Fox Islands' move to have the case dismissed was recently denied by a Superior Court judge.

Maine Department of Environmental Protection did its own testing and found some violations. General Electric, which manufactured the turbines, spent several months on Vinalhaven last summer and fall, making modifications that created serrated edges on the turbine blades, which should reduce noise. It appears to be working; Farrington said tests showed a reduction by two decibels, which should resolve any violations.

While General Electric did the work at no cost to the cooperative, it did require a lot of downtime for the turbines. When operating normally, the wind farm generates about 60 percent of the electric load. Fox Islands also sells surplus electricity when the turbines are producing near capacity. On average, 40 percent of what's produced is sold back to the New England grid.

So far, energy costs are about eight cents a kilowatt hour, slightly higher than the state average. The real expense comes from distribution through an undersea cable – 17.3 cents per kwh. Still, that compares favorably to islands that are smaller and further offshore, where most of the state's cooperatives are and where

electricity really is expensive. According to the PUC, delivery costs are: Swans Island, 20.1 cents; Isle au Haut, 37 cents; Matinicus, 65 cents; and, Monhegan, 74 cents.

Asked if he thinks coop members would make the same decision to build the turbines today, Farrington said he thought they would.

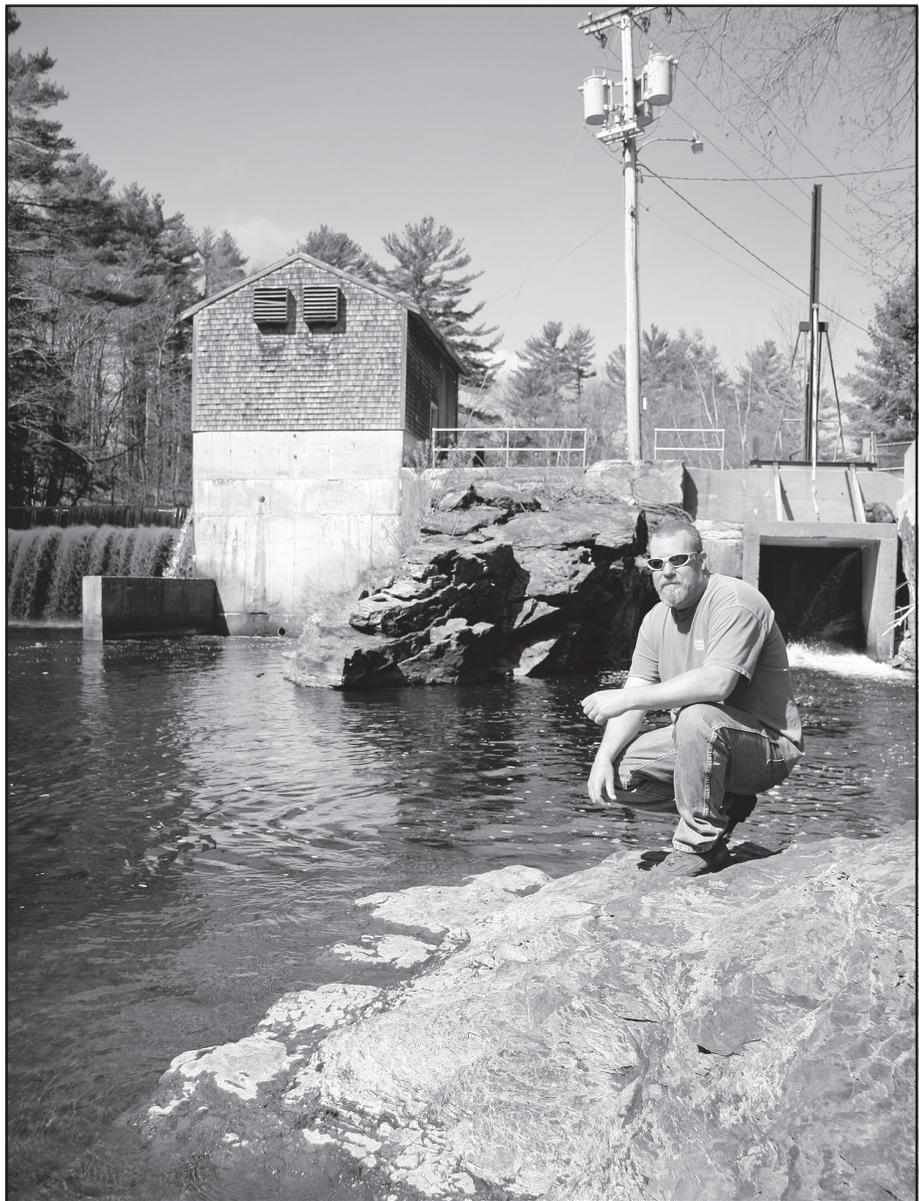
**‘BROAD SUPPORT’**

“This is a project that’s had very broad support all along, despite what you might see in the papers.” Before the vote, he said, members did a lot of research about alternatives, “and they decided this was best for them. This wasn’t about next month’s bills, but the long-term future.”

It doesn’t appear likely that the municipals will build wind turbines themselves. Madison looked at the possibility, Ames said, including putting wind monitors on some likely-looking ridges. The wind supply “wasn’t even close to being practical,” he said.

While municipally owned utilities are uncommon in Maine, they are less so in other states. Sharon Staz, who got her start in the business managing a small utility in Princeton, Mass., said there are 40 municipals in Massachusetts, some of which serve tens of thousands of customers. The nation’s largest municipal power company, in Austin, Texas, “serves three times as many people as CMP,” she said. John Clark also started his career in Massachusetts, returning to Houlton 28 years ago.

People in the public power business “tend to be passionate about it,” Staz said. “We really believe the way we operate is better for our customers.” 



*Wayne Condon, dam operator for Kennebunk Light and Power, keeps things running at Dane Perkins Dam in West Kennebunk. (Photo by Jill Brady)*

**MUNICIPAL ELECTRIC RESIDENTIAL RATES**  
(CENTS PER KILOWATT HOUR)

Town	Energy	T&D	Total
Kennebunk Light and Power	8.7	2.24	10.94
Madison Electric Works	6.78	3.2	9.98
(Central Maine Power)	7.44	6.47	13.87
Houlton Water Co.	7.94	3.2	10.16
Van Buren Light and Power	8.06	4.13	12.19
(Maine Public Service)	7.3	8.41	15.71

Source: Maine Public Utilities Commission. Rates as of March 1, 2012



**Erv Bickford**

Yarmouth Selectman **Erving “Erv” Bickford**, one of the longest-serving councilors in town history, died on May 12 at the age of 79. Bickford was elected to the town council eight times, all for three-year terms. His first victory came in 1978. He also served as chairman several times and he volunteered for town events and groups over many decades. His family said Bickford was known across the nation for his collection of 300 antique trucks. Bickford’s present term was set to expire this year. A replacement will be elected on June 12. Bickford was not seeking re-election.

Penobscot Nation Police Chief **Robert Bryant** has been named Tribal Chief of the Year by the national group WeTip, which runs a crime prevention and anonymous tip hotline. Bryant was honored for his leadership, effectiveness and community policing efforts, which have reduced crimes on Indian Island near Orono from 1,300 in 2006 to 160 in 2010.

**Clinton Deschene** was named the new Auburn city manager, replacing Glenn Aho, who resigned last fall. Deschene, who was expected to start his new job on June 18, moves south from Hermon, where he worked as town manager since 2002. Deschene earned a law degree before beginning his municipal government career in 1999 in the Town of Bradford. A native of Maine, Deschene and one other candidate, from Idaho, were interviewed by the Auburn council in April and invited to meet residents at an informal get-together.

Westbrook Public Services Director **Tom Eldridge** was honored in May for 40 years of service to the city. He received a plaque and a key to the city, along with much praise over his dedication and leadership skills. Eldridge began working for the city in 1972 in the sewer department at the age of 19. He served in numerous positions as he worked his way up to the director’s

job in 2004.

**Geraldine Kimball** has been named tax collector for the town of Somerville. Kimball replaces Natasha Brilyea, who resigned to take a job with higher pay and benefits. Kimball will serve until the next annual town meeting in March 2013, when residents elect a tax collector.

Veteran Maine municipal manager **Dana Lee** was hired as manager of Buckfield, replacing **Glen Holmes**, who resigned in late 2011 to become director of the Western Maine Economic Development Council. Lee began as interim town manager shortly after Holmes’ departure and was named permanent manager by selectmen on May 22. Lee is the former manager of the towns of Mechanic Falls and Poland, where he worked for 16 years and four years, respectively. He is a former president of Maine Municipal Association.

Two Whitefield fire officials will retire on June 30. Chief **Tim Pellerin** plans to remain with the department as a volunteer while keeping his job as Lincoln County EMA director. He worked as a firefighter for the Town of Brunswick and the cities of Portland and Westbrook before moving to Whitefield to take the EMA job in 2005. Meanwhile, Deputy Chief **Scott Higgins** also will retire after working for the department since 1993. He said he wants to spend more time with his grandchildren.

North Yarmouth has a new fire chief in **Ricky Plummer**, who was promoted in May from his job as public safety assistant. Plummer has worked for fire departments in three states, not including Maine. Plummer will be the part-time fire chief of the town’s volunteer firefighting force, replacing **Clark Baston**, who will continue as road foreman for the town. Baston is expected to assume his new duties on July 1.

Bangor Police Sgt. **John Roach** retired in late April after a 33-year law enforcement career with the city. Roach was hired as a patrolman in 1979 after working as a military po-

lice officer. Roach served in various positions over the years, including 20 years as supervisor in the Support Services Division of the department.



**Richard Ruhlin**

Brewer community leader **Richard “Dick” Ruhlin**, who served two terms as mayor and 50 years in various civic positions, died on May 9 at the age of 75. He represented the city in the Legislature for five terms as a House member and three terms as Senator. He served 10 years on the city council, including two stints as mayor. He was elected councilor in three different decades –the 1960s, the ‘70s and again in the ‘80s. In addition to his state and municipal government service, Ruhlin volunteered for countless groups and events over his lifetime. 

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

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For more information visit the MMA website:  
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**Statewide:** In an effort to nurture economic development and quality of life in Maine, municipal officials are asked to inventory crucial institutions in their communities that have or need broadband service, such as schools, hospitals and municipal buildings, among others. The information is being sought by the ConnectME Authority and the James W. Sewall Co. Once the information is gathered, Sewall will create a map showing “anchor institutions” across Maine and where broadband is or is not available. For more information, visit the Maine Municipal Association website or contact ConnectME at 207-624-9970. The project manager for Sewall is Randy Claar, who can be reached at [randy.claar@sewall.com](mailto:randy.claar@sewall.com) or at 207-817-5403.

**Bethel:** The Mahoosuc Touring Map, available in print for years, is now a mobile app that will help residents and visitors navigate the Greater Bethel area’s trails, historic landmarks, businesses and campgrounds. The Mahoosuc Initiative is a collaborative effort by groups and communities in the Androscoggin Valley. Last year, 10,000 print maps were requested. The new map, updated in 2011, also will be available online.

**Biddeford:** The city has been named the 2012 Main Street Maine Community of the Year. Since being designated as a Maine Street Maine community in 2006, Biddeford municipal and business leaders have invested more than \$18 million in downtown improvements. The result: Twenty-five new businesses and more than 150 housing units. The group Heart of Biddeford has overseen the downtown revitalization and the protection of historically important properties. The group was feted during the 12<sup>th</sup> annual Maine Downtown Conference in May. During the conference, the Town of **Brunswick** was named the newest Main Street Maine community.

**Hebron:** Selectmen approved a mass-gathering permit allowing a resident to hold a three-day “Redneck Rodeo” that last summer attracted 2,600 people to the western Maine town. Selectmen wanted the organizer to show his insurance policy for the event

and also reviewed his plans for parking, camping and portable bathrooms, among other necessities, before endorsing the event.

**Islesboro:** Residents are asking Searsport officials if they can have a voice in deciding the future of an ongoing, controversial plan to site a propane tank on Mack Point. Searsport Planning Board Chairman Bruce Roberts praised the islanders for putting their concerns in writing. However, board members have told the public that if the application for the \$40 million project meets municipal zoning rules, the fuel tank – expected to stand 137 feet high – would be permitted in the industrial zone.

**Millinocket:** Now that the town has opened its 16-mile, multi-use recreational trail, municipal leaders are asking businesses to help purchase a durable all-terrain vehicle so police can patrol the trail. Officers are using their personal ATVs but find they aren’t holding up as police patrol vehicles. A spur in the trail takes riders to the downtown, so town leaders hope business owners will chip in and help buy an ATV that can handle police work. The town already has secured grants to finance the additional cost of patrolling the trail, as well as for training. The trail is considered pivotal to increasing economic, recreational and tourism activity

throughout the Greater Katahdin area.

**Norridgewock:** The town has been awarded a \$2.2 million Federal Aviation Administration grant to repair runways, reconstruct the primary runway and improve lighting at the Central Maine Airport. The grant money also will finance other improvements, such as rebuilding the taxiway.

**Rockport:** Selectmen in May became the newest boosters for a project to build a 10-foot chess board near the ocean at Marine Park. The idea was proposed by a chess-loving resident who saw giant chess boards during a visit to Europe. The plan has the support of the town’s Public Works Department and Harbormaster. It is expected to cost \$500, half of which already has been raised.

**South Portland:** The city has joined other Maine communities in computer mapping where crimes or crime reporting is taking place. The free program (called “Raids Online”) will assist both police and residents by pinpointing areas of the city where crimes occur. The crime mapping, which also allows the public to provide tips to police, is being used in Auburn, Augusta, Brunswick, Lewiston, Lisbon and Saco. The free service is available through the Reston-Va.-based BAIR Analytics. [www.baيرانalytics.com](http://www.baيرانalytics.com)

### NEW ON THE WEB

Here are some highlights of what’s been added at [www.memun.org](http://www.memun.org) since the last edition of the *Maine Townsman*.

- **Broadband Mapping.** The ConnectME Authority and GIS mapper James Sewall Co. are working together to create a map of broadband services and areas of need. Municipal cooperation is considered a key to the success of this project.
- **Pesticide Use.** The Maine Board of Pesticides Control has established a list of best practices for the use of pesticides on school and athletic grounds, many of which are town- and city-owned.
- **Legal Seminar.** The International Municipal Lawyers Association will sponsor the New England Land Use Seminar on June 21-22 in Portsmouth, N.H. The seminar will examine issues such as Sustainable Development and Development Approvals and Conditions.
- **Social Media Guidelines.** Maine Municipal Association posted its recently approved “Communication and Social Media Policy and Guidelines.” The document may be a valuable resource for municipalities that have not adopted guidelines on this topic and may be using Facebook, Twitter and other social-media communication tools.



# Municipal Bulletin Board

## ROLES OF ELECTED OFFICIALS & MUNICIPAL MANAGERS

This popular program is designed to help elected officials and city and town managers focus on their differing roles, responsibilities and legal requirements. It will be presented by: David Barrett, Director of Personnel Services & Labor Relations at MMA; Don Gerrish, consultant with Eaton Peabody and a long-time municipal manager; and, Pam Plumb, a former councilwoman and mayor for the City of Portland and co-founder of Great Meetings! Inc.

The evening workshop will be held on June 21 at Kennebunk Town Hall, beginning with registration at 4 p.m. It is scheduled to end at 8:30 p.m. A light meal will be provided. The cost is \$60 for MMA members and patrons and \$120 for non-members.

## EOW: BAR HARBOR, SACO

MMA officials will hold Elected Officials Workshops on June 28 at the Atlantic Oceanside in Bar Harbor and on July 19 at the Ramada Inn in Saco. The workshops will run from 4:30 to 8:30 p.m. and include a light meal. Registration begins at 4 p.m.

The workshops are “musts” for both newly elected and veteran officials as they provide an update to legal requirements regarding: your rights as officials; open meeting requirements; conflicts of interest; liability issues; and, the Maine Freedom of Access law. Officials who attend the session meet the state’s Right to Know training requirements and will receive certificates. A section on media relations and communications was added in 2010.

The cost is \$40 for MMA members and \$80 for non-members. Registration is available through the MMA website at [www.memun.org](http://www.memun.org).

## NEW MANAGERS

A workshop for new municipal managers will be held on June 26 at the Maine Municipal Association Conference Center in Augusta. The workshop will feature numerous speakers from MMA staff and from the Maine Town, City and County Management

Association, including MMA Executive Director Christopher Lockwood and MTCMA President Barry Tibbetts, Town Manager in Kennebunk.

The workshop will provide information about the roles of municipal managers, the rights and protections offered to public employees in Maine, the International City/County Management Association Code of Ethics and the variety of services offered at MMA. Attendees also will benefit from discussions involving fellow managers. While aimed at new managers, veteran managers may benefit from hearing new information. Municipal administrative assistants are also encouraged to attend.

Managers “new” to Maine since May 2011 are invited on a complimentary basis. For other MMA member attendees the cost is \$30 and for non-members it is \$60. The event begins with registration at 8:30 a.m. and it concludes at 2:30 p.m. Lunch is provided.

## MFCA MEETING, LUNCHEON

The Maine Fire Chiefs’ Association will hold a membership meeting and networking luncheon on July 12, beginning at 9 a.m., at the Hope Fire Station. The event includes a lobster bake or steak dinner.

Cost for registration is \$35 for members who pre-register or \$45 for those who register after July 2. Guests can attend as well. Please provide a billing address if it will be different from the municipal address.

## PAYROLL AND 1099 RULES

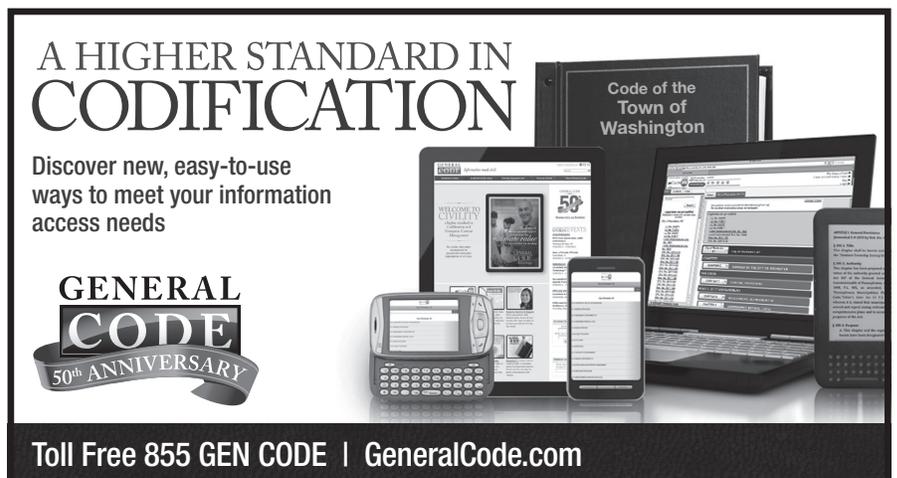
The Maine Municipal Tax Collectors’ and Treasurers’ Association is sponsoring a workshop on Payroll and 1099 Rules on July 17 at the Maine Municipal Association Conference Center in Augusta. Robert C. Westhoven, the Internal Revenue Services’ Northeast Area Manager for Federal, State & Local Governments, is the presenter.

The workshop, which begins with registration at 8:30 a.m. and ends at 3:30 p.m., costs \$50 for MMTCTA members and \$60 for non-members. The workshop will address: FICA and Medicare; continuing employment exemption; tax treatment of emergency firefighters; and, other topics.

## MUNICIPAL LAW FOR CLERKS

Kathy Montejo, City Clerk in Lewiston, and Michael Stultz, Staff Attorney with MMA’s Legal Services Department, will co-present a day-long session on municipal law at the Waterville Elks Banquet & Conference Center on July 19. The workshop will strengthen clerks’ knowledge of major legal subject areas such as municipal record requirements, Maine’s Freedom of Access Law and clerks’ records. It also will provide in-depth discussion of specific areas of concern. It is designed for new and veteran clerks alike.

The course starts with registration at 8:30 a.m. and concludes at 3:30 p.m. The cost to attend is \$50 for MTCCA members and \$60 for non-members. Members are asked to wear their MTC-CA badges. 



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## TAX-ACQUIRED PROPERTY: IS INSURANCE ADVISABLE?

*Question:* Should we be insuring tax-acquired property, and if so, for what?

*Answer:* It depends. If the property is unimproved land, under the Maine Tort Claims Act, a municipality cannot be held liable for slips and falls, so there is no reason to insure it for liability (see 14 M.R.S.A. § 8104-A(2)(A)(1)).

On the other hand, if the property includes a building, and if the building is or becomes vacant for a period of 60 days after foreclosure, a municipality *can* be held liable for negligent ownership, maintenance or use of the building (see 14 M.R.S.A. §8104-A(2)(B)). In this event, the municipality should immediately insure it against liability for at least \$400,000 – the current cap on damages under the Maine Tort Claims Act (see 14 M.R.S.A. § 8105). Security measures and signage should also be considered to reduce the risk of injury and vandalism.

As long as the building remains in the actual possession of the former owner or the former owner's lessee or licensee, however, the municipality cannot be held liable. For this reason, among others, we generally do not recommend that the occupants of tax-acquired property be evicted (see "Tax-Acquired Property: Eviction Not Necessary," *Maine Townsman*, "Legal Notes," March 2009).

Irrespective of potential liability, if a tax-acquired building has substantial value, it should also be insured against property and casualty loss (fire, for example) to protect the municipality's equity. This should be done immediately upon foreclosure because the risk of loss is immediate.

If taxable property has no substantial value (such as a dilapidated mobile home) or may pose a significant liability risk (such as an abandoned hazardous waste site), the municipality may not *want* to tax-acquire it. Automatic foreclosure can be avoided by recording a waiver of foreclosure in the registry of deeds *before* the foreclosure date. For details, see "Waiver of Lien Foreclosure," *Maine Townsman*,

"Legal Notes," July 2000.

For more on tax-acquired property generally, see MMA's "Information Packet" on the subject, available free to members at [www.memun.org](http://www.memun.org).  
(By R.P.F.)

## CONFIDENTIALITY & HIRING

*Question:* We've always understood that municipal employment applications are confidential and that employee interviews and hiring deliberations may be conducted in executive session. Does the same hold true for bids and proposals from independent contractors?

*Answer:* No, it doesn't. Employment applications, resumes, references, working papers, research materials, exams and any other records solicited or prepared by either applicants or the municipality for use in hiring municipal employees are confidential by statute (30-A M.R.S.A. § 2702(1)(A)). This is an express exception to the definition of "public records" under Maine's "Right to Know" law (1 M.R.S.A. § 402(3)). (The application, resume and references of the successful applicant become public records after that applicant is hired, though.)

Similarly, the Right to Know law authorizes an executive session for board interviews and deliberations in connection with the hiring of municipi-

pal employees provided that public discussion could damage the individual's reputation or violate the individual's right to privacy (1 M.R.S.A. § 405(6)(A)).

There are no analogous statutory protections for bids and proposals from independent contractors, however. Even though a municipality may be "hiring" someone to perform work, unless that person will be an employee, all records associated with the award of the contract, including bids or proposals, and all board interviews and deliberations, will be public. In the eyes of the law, at least for purposes of confidentiality, hiring an independent contractor is not the same at all as hiring an employee.

For a detailed description of the differences between an employee and an independent contractor for other purposes, including for IRS withholdings, see our "HR Tool Kit" entitled "Employee vs. Independent Contractor – Which Is It?"

For some valuable advice on dos and don'ts in employee hiring, see our HR Tool Kit on "The Hiring Process."

And for a full discussion of the competitive bidding process, with sample forms, see our "Information Packet" captioned "Municipal Contracts and Competitive Bidding."

All of MMA's "Information Pack-



**JULY 4** — Independence Day — A legal holiday (4 MRSA §1051).

**ON OR BEFORE JULY 15** — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, DHS #11, Augusta, ME 04333 (22 MRSA §4311).

**ON OR BEFORE JULY 31** — Every employer required to deduct and withhold tax for each calendar quarter shall file a withholding return and remit pay-

ment as prescribed by the State Tax Assessor (36 MRSA §5253).

**BETWEEN MAY 1 AND OCTOBER 1** — Municipal officers may initiate process to close certain ways during winter months (23 MRSA §2953). For further information, see the MMA Municipal Roads Manual.

**BY JULY 31** — Supply certification to the Maine Department of Transportation that Rural Road and Urban Compact Initiative Program funds will be used consistent with the requirements of the law (23 MRSA §1804).

ets/Guides” are listed alphabetically by subject on our website ([www.memun.org](http://www.memun.org)) and are available free to members. (By R.P.F.)

### IS A MUNICIPAL RAFFLE OK?

**Question:** Is it permissible for a municipality to conduct a fundraising raffle, to benefit the fire department or the recreation program, for example?

**Answer:** No, only certain organizations are authorized under Maine law to conduct raffles and other games of chance, and municipalities are not among them.

Title 17 M.R.S.A. § 1832(2) lists the following organizations as eligible to conduct a game of chance: agricultural societies; bona fide nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic and religious organizations; volunteer fire departments; and auxiliaries of any of the foregoing.

Municipalities are units of government, not nonprofit organizations. And “volunteer fire departments” include only separately incorporated entities, not municipal fire departments, even if the latter consist solely of volunteers. The Maine State Police, which licenses and oversees games of chance, confirms this reading of the statute.

For eligible organizations, raffles may be conducted without a license from the State Police if the prize is something of value worth \$10,000 or less (see 17 M.R.S.A. § 1837). Raffles with a prize worth more than \$10,000 and all other games of chance, however, require a license.

Any person who conducts a raffle in violation of 17 M.R.S.A. §§ 1831-1846 commits a Class D crime (see 17 M.R.S.A. § 1844).

The Maine State Police maintains an excellent webpage on nonprofit gaming licenses at [http://www.maine.gov/dps/msp/licenses/nonprofit\\_gaming.html](http://www.maine.gov/dps/msp/licenses/nonprofit_gaming.html). Included are applicable laws and FAQs on games of chance as well as beano or bingo games. The latter games are governed by separate but similar statutes (see 17 M.R.S.A. §§ 311-329). As with raffles and other

games of chance, municipalities are ineligible to conduct beano or bingo games. (By R.P.F.)

### HOW TO RECOVER OVERPAID WAGES

**Question:** We just discovered that an employee was overpaid, and the fault was ours. Can we recover the overpayment without the employee’s consent and without going to court?

**Answer:** Yes, you can. Title 26 M.R.S.A. § 635 authorizes an employer who has overpaid an employee in error to withhold up to 10% of the employee’s regular net pay, without the employee’s consent, until the overpayment is recovered in full. An employer may deduct more than 10% if (1) the employee agrees in writing, or (2) the employee voluntarily quits (in which case the full amount may be deducted from wages due), or (3) the employee “knowingly accepted” the overpayment (the burden of proving this is on the employer).

An employer who violates this law (for example, by withholding more

than 10%) may forfeit any claim to the overcompensation, depending on the number of employees and whether the employer knew about the 10% limit on withholding.

An employer who is not in violation of this law may also use general civil remedies (such as a lawsuit) to recover overpaid compensation.

Title 26 M.R.S.A. § 635 does not apply to the overpayment of compensation based on employee fraud or misrepresentation. Before withholding pay or taking any other disciplinary action in such a case, an employer should consult legal counsel. Also, overcompensation based on employee fraud or misrepresentation may constitute a theft crime for which, in addition to imposing criminal penalties, a court may order the employee to make full restitution.

For a review of federal and State minimum wage and hour requirements, see our “HR Toolkit” on the Fair Labor Standards Act (FLSA) & Municipal Employers, available free to members at [www.memun.org](http://www.memun.org). (By R.P.F.) [mt](#)

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