



LEGISLATIVE BULLETIN

A publication of the Maine Municipal Association • Vol. XLV No. 3 FEBRUARY 3, 2023

Bad Cops Need Not Apply

While the list of proposed bill titles is long, the printed bills are just starting to trickle out. Juggling stakeholder and interested party introductions this week, the Joint Standing Committee on Criminal Justice and Public Safety began the task of plowing through printed bills starting with LD 96, *An Act to Ensure Release of Relevant Background Investigation Material to Current Employers of Law Enforcement and Corrections Officers*, sponsored by Rep. Scott Cyrway of Albion.

As drafted, the bill seeks to add “background investigation” materials to the provision of law that governs the release of polygraph examination results that may indicate criminal behavior of a currently employed police officer and is discovered through an application to another agency. There is a clear public interest in allowing a prospective law enforcement agency to share potentially disqualifying behavior uncovered during a hiring process to an agency who currently employs the officer.” No community wants a bad cop, let alone some other community’s problems, and once hired there is little need to conduct annual background checks and polygraphs as disqualifying behavior usually becomes self-evident.

However, not all states share or collect information seamlessly or report to federal authorities with expediency. As a result, records of conduct in other areas along with spontaneous confessions have been uncovered during hiring processes with other agencies. Sharing that information with the current employer requires the employee’s permission unless it is an adjudicated record.

In Maine, municipal employees can only be terminated with just cause, which is frequently challenged and litigated. In current practice, a waiver from the candidate is required to provide the current employer details that led to an agency decision not to hire a candidate. Without it, the non-hiring agency may find itself party to litigation against neighboring com-

munities, particularly if the employing agency takes adverse employment action against the individual. Even when the employing agencies do everything correctly and transparently, they often trigger the expenditure of public funds to successfully prevail in defense of their actions in court.

The Maine Sheriffs’ Association, MMA and the Maine Criminal Justice Academy believe that change is necessary to close a gap in the information feedback loop to eliminate employees who fall below the standards of those we trust to protect our communities. Officials hope the committee will consider additional language that makes it clear that no chief, or their municipality, is forced be a party to a wrongful termination lawsuit for an officer they never hired. A work session on the bill will be held February 8 at 10:00 a.m.

All Static for TVs

The Environment and Natural Resource Committee gets to share its room with the Joint Select Committee on Housing this year and already members are finding items left behind by others who share their seats. In that same light, Sen. Harold “Trey” Stewart of Aroostook County would like municipalities to share the burden of disposing television sets dumped onto charitable organizations when no one is watching, as proposed in his bill, LD 127, *An Act to Eliminate Television Recycling Fees for Charitable Entities*.

Anyone who has experienced a bad roommate, raised teenagers, or used the office microwave will understand the natural tragedy of the commons that happens when no one is accountable for managing shared spaces. This often results in a single person through their own initiative to begrudgingly manage the mess to which they contribute proportionately little. LD 127 seeks to nominate municipalities for the task of television clean up at their own expense. As originally drafted, the bill prohibits the assessment of recycling fees on a charitable organization.

(continued on page 2)

Data Harvesting Hits Home

While the Orwellian construction of “Big Brother” envisioned a government program that collects data and uses it to make decisions around the worthiness of its citizens, in 2023, corporations wield the real data stores to scrutinize human actions often with our full permission in return for free email or social connection. Last Thursday, the Judiciary Committee held a public hearing on LD 23, *An Act to Limit Public Access To Electronic Citation Data*, sponsored by Sen. Anne Carney of Cumberland County.

The use of personally identifying data has great commercial value and is used to market products, services, and even politicians in targeted ways, particularly when an entity can merge pockets of information not found in a single database. For this reason, municipalities and government agencies across the country are receiving Freedom of Access Act (FOAA) requests for publicly available data collected in the delivery of essential government services.

Public safety is not immune from mining attempts either, and recently discovered a hole in important confidentiality protections created by the centralized electronic citation system (eCitations) used by the Department of Public Safety and 35 other agencies statewide to record traffic stops.

E-citation software collects personally identifying information that results from traffic stops for the purposes of printing and immediately transmitting violations directly to the Violations Bureau, which recently was expanded to collect data on all traffic stops, regardless of outcome, to record race data for annual evaluation by the Attorney General’s Office.

Under Maine rules of civil procedure, pre-adjudicated violation information is only available through the courts to parties of case and not publicly accessible until case completion, when records of convictions become part of a driver’s history. In the case of a warning, no adjudication is necessary, and previously had no need to be recorded with driver

details. As the information collected is housed in a database that communicates with the court system, not inside the court database, the Department of Public Safety and Attorney General’s Office became bogged down by a large FOAA request from a credit services entity armed with only a technical defense related to the federally protected portion of data that originates from the Bureau of Motor Vehicles.

To avoid other potentially backdoor requests through participating agencies and make privacy protections explicit, LD 23 was introduced. On Thursday, the Committee held a work session on the bill, which was supported by the Department of Public Safety, Maine Equal Justice, Maine Chiefs of Police and Maine Voices for the Homeless. The proponents of the bill highlighted

All Static for TV’s (cont’d)

Though no one testified in favor of the bill, most non-profit resellers have ceased to accept electronic items to avoid the costly fees that rack up when undesirable items must be disposed. In response, several entities have limited times when they will accept items to play an active role in policing the acceptance of unwelcomed items. However, in a county as big as Aroostook and frequently thought to have more moose than people, unsupervised collection points are still a norm.

Officials are sympathetic to the plights of charitable organizations who provide important supportive services for the most vulnerable in our communities. Municipalities and waste management professionals are acutely aware of the challenges with managing waste they did not generate, and with rules established by others often unaware of the differences between facilities, volumes, and capacities. Like charities, towns and cities are left on the hook to pick up after those who scoff their duty to dispose of waste properly.

the impacts on the use of such data in other states to exclude individuals from housing opportunities, increase vehicle insurance rates, or potentially expose the addresses of victims of stalking.

Out of concern that the language proposed in the bill may unintentionally make all the data confidential even after conviction, amended language was introduced to make it explicit that the confidentiality provisions only pertained to the data housed in the e-citation system. Data transmitted to the court as part of a violation action would be subject to the court’s records release processes. Taken up as the last matter of the day, the committee voted “ought to pass as amended” 11 to 3, largely along party lines, not long after the state house doors were scheduled to be locked. It is now up to the rest of the legislative body to decide the bill’s fate.

However, as charitable organizations are also tax-exempt entities, and property taxes and fees fund the provision of waste management services. They must also recognize the burden added waste places on these services, and discourage such donations when reselling items is the business model for revenue generation. Recognizing the enormous burden this would place on municipalities and processors, during the hearing Sen. Stewart offered an amendment that he hoped would shift costs away from municipalities and consolidators and have the costs absorbed by the state instead.

The Department of Environmental Protection and MMA were opposed to the bill as drafted, and while not acknowledged during the hearing, the department is unlikely to support accepting the costs should the initiative pass. You can use your closest electronic device like a TV, and watch the committee decide on a path forward next week, February 8, through the live stream of the work session at 10:00 a.m.

HEARING SCHEDULE

For the week of February 6, 2023

MONDAY, FEBRUARY 6

Veterans & Legal Affairs

Room 437, State House, 10:00 a.m.

Tel: 287-1310

LD 26 – An Act to Provide Postage Prepaid Return Envelopes to Voters Who Send Absentee Ballots by Mail

LD 34 – An Act to Require a Person to Show Photographic Identification for the Purpose of Voting

LD 230 – Resolve, to Require the Maine National Guard to Sell Certain Property in Hallowell

LD 237 – An Act to Require a Registered Voter to Update the Registration

TUESDAY, FEBRUARY 7

Energy, Utilities & Technology

Room 211, Cross Building, 1:00 p.m.

Tel: 287-4143

LD 211 – An Act to Amend the Laws Governing Water Supply Protection Funds

Labor & Housing

Room 202, Cross Building, 1:00 p.m.

Tel: 287-1331

LD 12 – An Act to Amend the Laws Governing Severance Pay to Cover More Types of Employers and Include More Workers

Taxation

Room 127, State House, 1:00 p.m.

Tel: 287-1552

LD 101 – An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property

LD 144 – An Act Regarding the Monitoring of Municipal Abandoned Property

LD 149 – An Act to Amend the Definition of “Homestead” Under the Homestead Property Tax Exemption Laws

LD 167 – An Act Regarding Eligibility for the Maine Resident Homestead Property Tax Exemption

LD 210 – An Act to Expand the List of Persons Exempt from the Real Estate Transfer Tax

WEDNESDAY, FEBRUARY 8

Appropriations & Financial Affairs

Room 228, State House, 10:00 a.m.

Tel: 287-1635

LD 258 – Governor’s biennial budget.

1:00 p.m. In conjunction with the Joint Standing Committee on Taxation.

Agriculture, Conservation & Forestry

Room 214, Cross Building, 9:00 a.m.

Tel: 287-1312

LD 159 – An Act to Facilitate the Construction of a Firehouse by Sinclair Township

Environment & Natural Resources

Room 216, Cross Building, 9:00 a.m.

Tel: 287-4149

LD 71 – Resolve, Regarding Legislative Review of Chapter 171: Control of Petroleum Storage Facilities, a Major Substantive Rule of the Department of Environmental Protection

LD 216 – An Act to Amend the Laws Governing Storm Water Management to Provide an Exemption for Trails for Hiking and Other Similar Activities An Act to Amend the Laws Governing Storm Water Management to Provide an Exemption for Trails for Hiking and Other Similar Activities

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearings and work sessions can be found on the Legislature’s website at: <http://legislature.maine.gov/calendar/#Weekly/>. There is also the option testify via Zoom if you register 30 minutes in advance. Persons wishing to testify over Zoom can submit their testimony by uploading it through the registration portal (<https://www.mainelegislature.org/testimony/>).

THURSDAY, FEBRUARY 9

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1635

LD 258 – Governor’s biennial budget in conjunction with the Joint Select Committee on Housing.

Education & Cultural Affairs

Room 208, Cross Building, 1:00 p.m.

Tel: 287-3125

LD 33 – An Act to Expand Access to Career and Technical Education Opportunities for Middle School Students

LD 79 – An Act to Ensure a High-quality Education for Students with Disabilities by Clarifying the Definition of “State Agency Client” and Who Provides Special Education Programs and Services

LD 232 – An Act to Amend the Laws Governing Bonding Restrictions for School Administrative Units

FRIDAY, FEBRUARY 10

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1635

LD 258 – Governor’s biennial budget in conjunction with the Joint Standing Committee on Labor & Housing.

LEGISLATIVE BULLETIN

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to:

Legislative Bulletin, Maine Municipal Association,
60 Community Drive, Augusta, ME 04330.
207-623-8428. Website: www.memun.org

Editorial Staff: Kate Dufour, Rebecca Graham, Rebecca Lambert and Laura Ellis of Advocacy & Communications.

Layout: Sue Bourdon, Advocacy & Communications



Hearings of The Week: Updated Voter Registrations & Severance Pay

Voter Registration. The Veterans and Legal Affairs Committee will conduct a public hearing on LD 237, *An Act to Require a Registered Voter to Update the Registration*. The hearing will take place at **10:00 a.m. on Monday, February 6** in room 437 of the State House.

The bill, sponsored by Rep. Griffin of Levant, amends the voter registration procedure in Maine's election laws by adding a provision requiring registered voters to submit an updated registration form, developed by the Secretary of State, at least once every four years.

Severance Pay. The Labor and Housing Committee will conduct a public hearing on LD 12, *An Act to Amend the Laws Governing Sever-*

ance Pay to Cover More Types of Employers and Include More Workers. The hearing will take place at **1:00 p.m. on Tuesday, February 8** in room 202 in the Cross Office Building.

This bill, sponsored by Rep. Roeder of Bangor, amends the laws regulating the payment of severance when an industrial or commercial entity closes or relocates by extending the provision to all employers that at any time in the preceding 12-month period employed 100 or more employees, which includes municipalities. The bill also repeals a provision in existing law that exempts employees that have been employed for less than three years from receiving severance payments, thereby making all employees eligible for compensation.

Cannabis Sales Road Show

On Monday, the Veterans and Legal Affairs committee held a public hearing on LD 202, *An Act To Clarify the Requirements for Off-premises Sales by Cannabis Store Licensees*, sponsored by Sen. Teresa Pierce of Cumberland County. The bill, put forth by Governor Mills' Office of Cannabis Policy (OCP), intends to clarify existing law by providing a more organized framework for the regulated sale of cannabis products at specified off-premises events.

LD 202 bloomed from passage of legislation in 2022 (LD 1927/PL 2021, c. 735), which emulated the law authorizing the sale of Maine-made wine, beer and spirits at farmers' markets and extended similar provisions to the sales of adult use cannabis at outdoor events.

Under the current law, off-premises cannabis sales can only occur if the retailer receives approval from the municipal legislative body (e.g., council or town meeting) where the sale will take place and provided certain safety provisions are in place. MMA opposed the original bill (now law) out of concern that the sales might have been allowed over the objections of residents in communities that had not authorized adult use cannabis operations within their municipal borders.

During the hearing, the bill's sponsor testified that the provisions in LD 202 were necessary to provide OCP with

additional guidance enabling the final adoption of the rules regulating these off-premises sales. To that end, the bill is further identified as an emergency measure to make the change effective upon receipt of the governor's signature.

Other proponents included OCP and Alex McMahan, representing MEDCo.

McMahan testified that he was mostly in support of the bill but took issue with two aspects: (1) that the bill allowed OCP approval authority over what kind of and where the specified events took place; and (2) the prohibition on the sale of adult use cannabis products that can be smoked.

No one offered testimony in opposition to the initiative.

Given the 2022 passage of LD 1927, which left decision making authority with the municipality, and considering that LD 202 preserves that authority, MMA provided "neither for nor against" testimony on the bill. The professionals that Maine towns and cities employ appreciate clear, concise guidance and therefore appreciate the provisions in the bill seeking to eliminate confusion and maintain clarity, whenever applicable.

Since members of the committee elected not to pose questions during the hearing, whether silence is a virtue will be determined during the work session on LD 202, which has not yet been scheduled.

Rural Volunteer Programs

There are two programs seeking state funding for volunteer programs through the passage of LD 142, *An Act to Fund Climate-related Service Work*, and LD 143, *An Act to Support Rural Service Programming and Promote Volunteerism*. Both are sponsored by Rep. Morgan Rielly of Westbrook and received public hearings before the Education and Cultural Affairs Committee on January 31.

LD 142 seeks to fully fund the Maine Climate Corps, which is tasked with facilitating connections among its members, host communities, and organizations needing assistance in implementing energy efficiency programs, such as weatherization programs, education on energy efficiency, and related “do it yourself” home repair projects for community members.

At the hearing, Rep. Rielly explained the goals of the bill, noting that the program would focus on helping public schools and towns save money through energy efficiency projects, working with rural communities who need help developing emergency plans to access federal funds to mitigate the risk from extreme storms and other events, assisting communities with invasive species intervention and mitigation, and maximizing the impacts of weatherization efforts by making the necessary repairs to homes owned by the neediest Mainers.

In a similar vein, LD 143 seeks to hire fellows, typically recent college graduates, and connect them with rural communities and nonprofits to aid with community projects. Rural communities often do not have the capacity to participate in traditional AmeriCorps programs, and the Maine Service Fellows seeks to bridge that gap for those communities. Service programs in Maine typically generate \$3 of investment for every \$1 spent, with the investments staying within the community to build up local infrastructure that is self-sustaining after the fellows have completed their work.

Though Maine’s larger communities do not stand to benefit from the fruits of these bills, municipal officials across the state are nonetheless supportive of these programs. Local leaders recognize the dire need to protect the environment, the challenges associated with workforce development, and ongoing progress with COVID-19 recovery, as well as the shoestring budgets available to smaller communities and nonprofit organizations.

With so many priorities vying for funding in the state budget, it may be an uphill battle for these initiatives. Whether the bills clear the first hurdle will be known on Tuesday, February 7 at 1:00 p.m. when the committee conducts work sessions on LD 142 and LD 143.

IN THE HOPPER

Criminal Justice & Public Safety

LD 244 – Resolve, Directing Maine Emergency Medical Services to Convene a Stakeholder Group to Explore Emergency Medical Services Career Pathways and Educational Opportunities in the State (Sponsored by Sen. Curry of Waldo Cty.)

This resolve directs the Department of Public Safety, Maine Emergency Medical Services to convene a stakeholder group, including providers of EMS services and representatives from the Maine University and Community College systems, to explore career pathways and educational opportunities for emergency medical services providers in Maine and to submit a report to the legislature.

Environment & Natural Resources

LD 188 – An Act to Require the Department of Environmental Protection to Pay for Certain Water Tests for Perfluoroalkyl and Polyfluoroalkyl Substances (Sponsored by Sen. Libby of Cumberland Cty.)

This bill amends the waste discharge licensing laws to provide that, if the Department of Environmental Protection requires a person licensed to discharge wastewater to sample the effluent discharged for perfluoroalkyl and polyfluoroalkyl substances, all costs associated with the sampling and testing must be paid by the department.

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

LD 276 – An Act to Assist Municipalities in Preventing Damage from Storm Water (Sponsored by Rep. Ankeles of Brunswick)

For the purpose of protecting or restoring a great pond, current state law authorizes municipalities, subject to certain conditions, to appropriate funds to repair a private road, way, or bridge to prevent storm water runoff pollution from reaching the great pond. This bill expands that authority to include repairs necessary to protect a threatened natural resource, including coastal bluffs, sand dune systems and wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, and great ponds, rivers, streams and brooks.

**MAINE MUNICIPAL
ASSOCIATION SINCE 1936**

60 Community Drive
Augusta, ME 04330

IN THE HOPPER (cont'd)

Health Coverage, Insurance & Financial Services

LD 274 – An Act Regarding Municipal Costs for Water Used for Firefighting (Sponsored by Rep. Ankeles of Brunswick)

This bill requires a property insurance policy to include a provision for the indemnification of a municipality for the actual costs for water service, not to exceed \$3,000, incurred by the municipality for the water used in connection with extinguishing a fire. The bill also prohibits a municipality from seeking reimbursement from a resident for costs for water service incurred by the municipality for the water used in connection with extinguishing a fire at a property owned or rented by the resident.

Labor & Housing

LD 53 – An Act to Ensure Accountability for Workplace Harassment and Assault by Removing Intentional Acts and Omissions from Workers' Compensation Exemptions. (Sponsored by Rep. Lee of Auburn)

This bill removes intentional acts and omissions from the exemptions from civil action related to damages sustained by an employee when an employer has secured payment of workers' compensation.

State & Local Government

LD 354 – An Act to Amend the Laws Regarding the Use of Engineers on Public Works Projects over \$100,000 (Sponsored by Sen. Farrin of Somerset Cty.)

This concept draft bill would amend the laws governing the use of engineers on public works projects when the contemplated expenditure

for the completed project exceeds \$100,000.

Taxation

LD 149 – An Act to Amend the Definition of "Homestead" Under the Homestead Property Tax Exemption Laws (Sponsored by Sen. Bailey of York Cty.)

Under current law, one of the qualifications for the homestead property tax exemption is that real property held in trust must be in a revocable living trust. This bill removes the requirement that the living trust be revocable.

LD 167 – An Act Regarding Eligibility for the Maine Resident Homestead Property Tax Exemption (Sponsored by Rep. Bell of Yarmouth)

This bill extends the homestead exemption to a person holding a life lease on a permanent resident, which by contact allows an individual to live in a home owned by another until death, provided the resident: (1) pays property taxes and utility costs; (2) carries comprehensive homeowner's insurance on the property; and (3) pays for home maintenance and repair costs.

Veterans & Legal Affairs

LD 26 – An Act to Provide Postage Prepaid Return Envelopes to Voters Who Send Absentee Ballots by Mail. (Sponsored by Sen. Carney of Cumberland Cty.)

This bill requires the Secretary of State to furnish each municipality with prepaid return envelopes for voters sending absentee ballots by mail.