



# LEGISLATIVE BULLETIN

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## The Study Grinches Stealing Christmas

The holiday season may be upon us, but from the perspective of the advocacy office, that has been hard to realize as work sessions, rulemaking engagements, and study committees are filling every day of December to either meet January reporting deadlines or prepare for a vote out of committee for work left over from last session. Needless to say, there are only work elves on our shelves, and no one has finished, much less begun buying gifts. While we know if legislators dictated what ended up in our stockings, we'd have plenty of fossil fuel until January 2025, we hope municipal officials will think of us as the Tiny Tim for municipal good cheer as we break down some of the major legislative issues discussed this week.

### Weaponizing FOIA

On Monday, the Right to Know Advisory Committee (RTKAC) met to discuss annually proposed recommendations to expand or improve access to public records generated by government activity. The first discussion area was around how to address harassing freedom of information act (FOIA) requests to government agencies in response to the growing use of such requests often viewed as intentionally vexatious. Guidance on narrowing the request to the requester, coupled with an estimate of the amount of staff time required for broader requests and estimated cost, was hoped to limit broader time-consuming asks. In some cases, agencies posted the requested data on their website to avoid receiving repeated requests, which works well if a municipality or agency has the technical capacity for such an approach.

Additionally, the use of FOIA requests to access data that is then monetized through the private sector via another platform, has been a concern nationally. Ultimately, the committee decided that this process needed to be understood in a more detailed example-based way through a robust survey of municipalities, schools, and state agencies. The goal is to generate the feedback necessary to develop

recommendations that avoid limiting access, or defining what could be considered harassing or vexatious in any way that couldn't already be addressed under the current harassment statutes with better guidance.

### Public Access to Law Enforcement Discipline Records

Another area of concern expressed by some members of the committee centered on the impact of collective bargaining agreements and arbitration on disciplinary records, specifically for law enforcement. Seeking to understand why law enforcement collective bargaining agreements contain different provisions for the disciplin-

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## Elections Security Working Group

The working group to study the use of public schools as polling places, established by LD 419, *Resolve, to Establish a Working Group to Study Polling Places at Schools in Order to Protect Security and Accessibility*, sponsored by Rep. Morgan Reilly of Westbrook, met for their introductory meeting in late November, and then again on December 4, for their first "meat and potatoes" meeting.

The working group, which consists of a variety of stakeholders including school and local government representatives, is directed to identify the number of school buildings that have been designated as polling places in Maine and compare how student, voter, election and school staff protection and security standards compare with those used in other states. The working group is further required to report its findings and recommendations to the Joint Standing Committee on Veteran & Legal Affairs by January 1, 2024.

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ary record retention in a personnel file, and the possible impact of legislation attempting to establish retention standards in statute notwithstanding such time limits, the committee sought feedback from MMA and Maine Service Employees Association (MSEA). The assignment was to present on the ways in which discipline can be characterized to establish a retention schedule that would provide greater information regarding an individual officer's discipline history for a longer period of time either based on the severity of the offense or the discipline trigger.

Key to both MMA and MSEA presentations was the fact that bargaining agreements establish the amount of time discipline records are retained in a personnel file and is related to how that record can be used against the employee, either as a trigger for more progressive discipline steps or as a disqualifier for promotional processes. Collective bargaining agreement retention timelines are completely unrelated to the retention of the record in another municipal location for the purposes of public disclosure.

Disciplinary actions are steps intended to inform an employee of the expected standard and encourage them to improve, which may also require the employer or supervisor to improve how those standards are shared, communicated, or established. Similar to a dreaded speeding ticket, the goal is to provide notice of a standard not met or rule transgressed with a protentional monetary sanction painful enough to stop the behavior or lose your ability to operate. Thankfully such transgressions do not place you permanently on Santa's naughty list or form an indelible score card of your total worth as a driver, human, or employee. Yet.

Municipal law enforcement has long operated under a statute requiring disclosure of the final record of discipline, a standard not on par in statute with their county or state counterparts, until this session. From the municipal perspective, there is a two-tier system reaffirmed by the decision in *Thurlow v. City of South Portland* where if an officer makes a written request for removal of a reprimand from their personnel file, such removal is limited to the personnel file kept within the police department and its purpose is reviewed only when making personnel related decisions such as promotions, progressive discipline, or terminations. The same standard applies to bargaining agreement removal timelines. Removal of disciplinary records from a personnel file at an agreed upon time frame does not require their elimination from all of the city's

records because the retention's purpose is to address promotional opportunities or progressive disciplinary steps or even merit pay increases.

At the center of the *Thurlow v. City of South Portland* case was the exception in rule of the Maine State Archives under the "Local Government Record Retention Schedule" which requires retention of disciplinary records for "60 years after separation unless collective bargaining contract requires that disciplinary documents be destroyed earlier than the contract shall be followed." Perceiving "removal" as "destroyed" the former employee believed the record should not have been disclosed to the FOIA requester.

Municipal practice has understood that the removal of a record from a personnel file is an action for their intended contractual purpose and does not require their destruction. Generally, such records are placed elsewhere after the bargaining agreement time limit, such as in an internal investigation file or employment archive. The final record of discipline, not the allegation or supportive material, is publicly available under the archives schedule for records retention.

While a law enforcement officer is held to a conduct standard well above other municipal employees punishable by monetary sanctions, demotion, loss of certification and termination for perfectly legal behavior allowed by a member of the press or a municipal clerk—for good reason—some committee members were skeptical of the perception of protection implied by bargaining unit agreed removal schedules. As a result, the committee decided to recommend establishing a study group with vested stakeholders to explore potential changes that would make that clearer.

One way to measure the weight and impact of such a review on a single government position may be to require anyone wishing to serve on the committee to submit all final records of discipline from every employer public or private for the past 60 years for full public review. The impact of such a requirement on recruitment for a thankless role may be telling.

## **Chapter 500 Stormwater Management Update**

Remember the movie scene where the Grinch tries to grab the sled of toys as it plummets down the hill? Believing the effort is futile at first, he exclaimed; "Oh well, it's just toys...right?" Then Cindy Lou Who pokes her head

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up embedded in the toys perched on the precarious cliff and proclaims that she just wanted to be with him because no one should be alone on Christmas. As the sled careens down the hills with warnings shouted, everyone at the bottom helped slow the sled down. Catastrophe avoided.

The management of stormwater and the effect of development on its management is a similar “all in” task. While municipal stormwater rangers often feel alone in the federally regulated tasks, their work should at least be supported by the very activity that makes it harder. We all live down hill or at least down water. It is for this reason the state must review the current regulatory approach to stormwater management on both the site and regional levels. More specifically, how to better support the regulated municipal separate stormwater sewer system (MS4) communities and protect the waters in Maine not subject to the federal permit requirements from becoming impaired.

Disturbed soils and impervious surfaces speed water run off from previously slow flow vegetation areas and create conditions that interrupt the ground water cycle which can have catastrophic effects on waterbodies, roads, and the small organisms that keep our shared resources economically and environmentally vibrant. Municipal and private property boundaries are ignored by flowing water. Paying for the damage is inevitable but far cheaper at the front end of development when managed appropriately. Oh well, it’s just soil...right?

The Department of Environmental Protection has begun the task of reviewing the current rules for stormwater management, designed to be a one size fits all approach for their appropriateness to protect the water bodies that draw us to communities, serve as important economic generators from aquatic harvest and attract visitors. In a decade and anticipated future marked by increasing storms, ever expanding impervious surface in densely populated communities, and ever hotter summers, this review has never been more important.

This week, the steering committee members held their first meeting receiving an overview of the statewide picture on the growth of surfaces that interrupt the cycle of surface water soaking into the ground or speed water heated by roadways and gravel to the receiving waterbodies downhill. Slowing down, holding and cooling stormwater is expensive from the infrastructure view, while wetlands, trees and undisturbed soils are nature’s slow-release cleaning sponge...where they exist.

Over the next few months, the steering committee

will assign review work to the technical committee of subject matter experts that require scientific and technical expertise to address. The steering committee consists of a representative cross-section of stakeholders from municipal experts, and policy wonks to construction and permit management professionals. Their role is to discuss the state regulations governing stormwater management as the rules impact development, local review, municipal budgets, and design standards. The final stakeholder meeting will be held in June of 2024.

The hybrid meetings will be held in person with limited attendance due to space constraints and available via teams remotely. If officials would like to be on the mailing list for this work, please email DEP, Chapter 500 at [Chapter500.DEP@maine.gov](mailto:Chapter500.DEP@maine.gov) and request to be added to the closed email list.

Think of it as mailing the North Pole your low impact development wishes.

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*Elections Security Working Group...cont'd*

On Monday, the working group was presented with a wealth of information on how voting places are determined and reviewed the laws that have affected elections, particularly voting places, throughout the years. Interesting to note is that the American Voting Experience report from 2014 showed that schools are the preferred building for voting due to the ease of accessibility, location, and size, and suggests that school administrators should consider scheduling professional development or in-service days on election day so that students are not present.

The Department of Education (DOE) also provided a presentation on how schools make their calendar decisions. Since Maine is a home rule state, the calendars are set by each school unit, but there are several parameters that need to be met. For example, each calendar needs to include 175 instruction days and must consider the calendar of any Career & Technical Education school that students attend. Once the calendar is set and sent to the DOE, waivers may be granted for certain situations, like weather related closings.

The next meeting for the working group will be held on December 13, from 10 a.m. until noon via Zoom. If you would like to view the next meeting, you can request the link by emailing the office of the Secretary of State at [sos.office@maine.gov](mailto:sos.office@maine.gov).

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# LEGISLATIVE COMMITTEE MEETING SCHEDULE FOR THE WEEK OF DECEMBER 11, 2023

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The following is a schedule of Joint Standing Committee and Subcommittee meetings for the next week, as well as meetings of Commissions, Studies, and Working Groups, that were known at the time of this publication. Weekly schedules for meetings and work sessions can be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/>.

## MONDAY, DECEMBER 11

**Blue Ribbon Commission to Study Emergency Medical Services in the State**  
**Appropriations & Financial Affairs meeting room**  
**Room 228, State House, 1:00 p.m.**  
**Tel: 287-1635**

## TUESDAY, DECEMBER 12

**Judiciary Interim Meeting**  
**Room 438, State House, 10:00 a.m.**  
**Tel: 287-1327**

Re: Recent developments in tribal legislation

## WEDNESDAY, DECEMBER 13

**Appropriations & Financial Affairs Interim Meeting**  
**Room 228, State House, 9:25 a.m.**  
**Tel: 287-1635**

Re: Financial order 30-day waiver request

**Commission to Study Expansion of Public Preschool and Early Care and Education**  
**Education & Cultural Affairs**  
**Room 208, Cross Building, 12:00 p.m.**  
**Tel: 287-3125**

**Elections and School Security Working Group**  
**Zoom Meeting**  
**Veterans & Legal Affairs**  
**Room 437, State House, 10:00 a.m.**  
**Tel: 287-1310**

Request Zoom link by emailing the office of the Secretary of State at [sos.office@maine.gov](mailto:sos.office@maine.gov).

## THURSDAY, DECEMBER 14

**Criminal Justice & Public Safety WORK SESSION**  
**Room 436, State House, 10:00 a.m.**  
**Tel: 287-1122**

LD 911 – *An Act to Amend the Laws Regarding Certain Law Enforcement Interactions and Tools for Determining Residency During Conflict Resolution*

**Health & Human Services Interim Meeting**  
**Room 209, Cross Building, 10:00 a.m.**  
**Tel: 287-1317**

Re: Child Welfare Quarterly Update & General Assistance

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