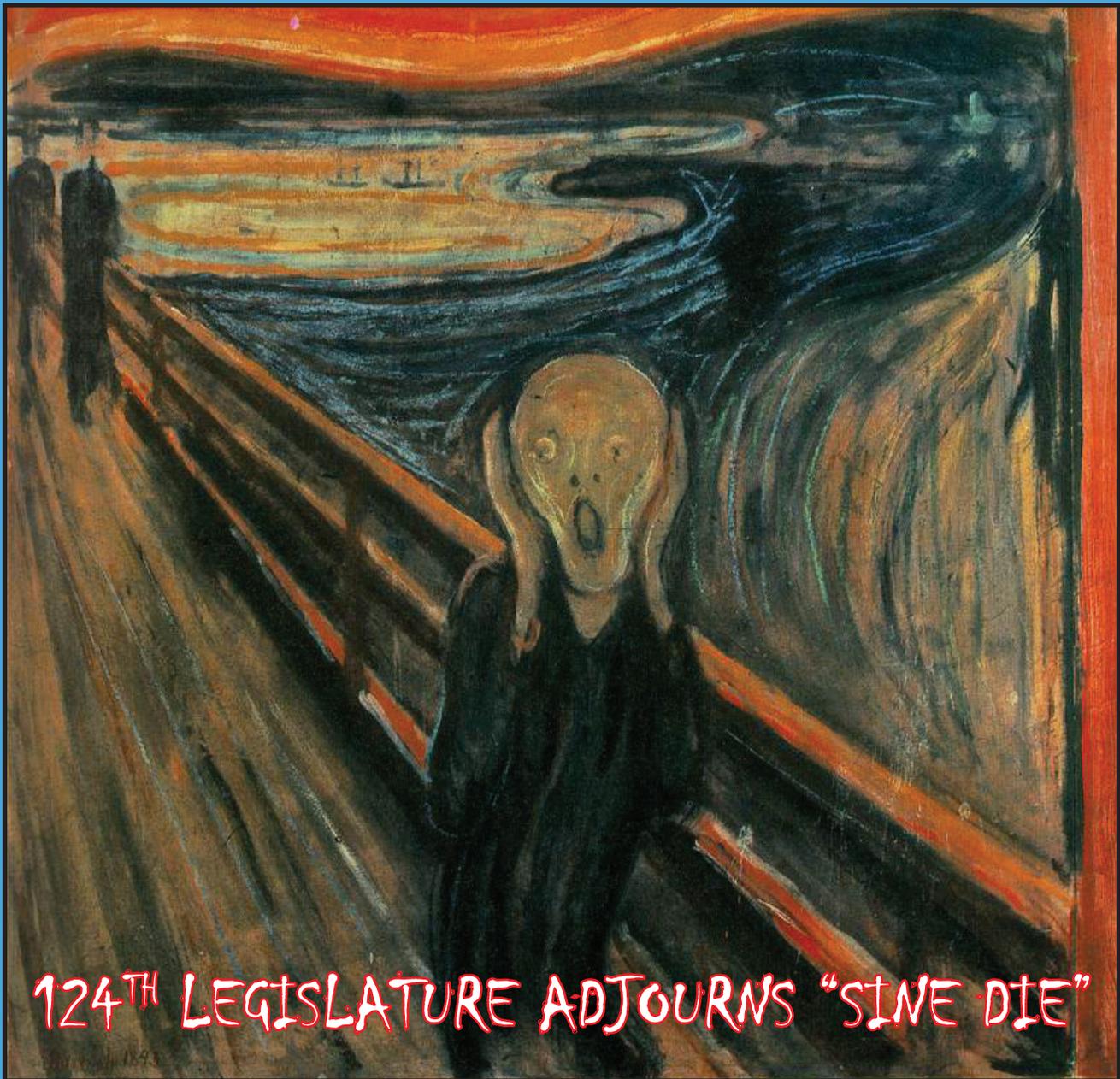


April 2010

maine townsman

The Magazine of the Maine Municipal Association



IN THIS ISSUE:

From the Editor • Recapping the Session
Contributing this Summer • Town Meeting Trends
Risk Manager

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April, 2010
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recycled paper

maine townsman

The Magazine of the Maine Municipal Association

From the Editor

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New to the Maine Townsman and Maine Municipal Association, Editor Eric Conrad says communication is a two-way street – and he wants your feedback. Also, collaboration and innovation are alive and well within municipal government. Conrad promotes a series of articles, starting in May, that will highlight that trend.

The Tough Session That Was

7

OK, so the state Legislature was in a tough spot. It faced a \$400 million deficit, with little hopes that revenues would quickly rebound. But it wound up translating \$147 million of that into local-government cuts without truly examining how that would affect municipal programs. Geoff Herman, the MMA's Director of State & Federal Relations, recaps the 2010 session – and beyond.

Show Us (Not) the Money

11

The short take on the session was that it was all about deficits, spending reductions and vows to oppose tax increases. And there was plenty of that. So, too, were there other issues, ranging from regulating medical-marijuana dispensaries to repairing culverts in a way that did not breach municipal coffers.

You Can't Find This Anywhere Else

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The MMA's regular and exhaustive post-session recap of new laws begins here. It touches on topics ranging from downtown redevelopment to sex-offender notification to school consolidation. You may not find this kind of comprehensive coverage from the media any longer but you can get it from the MMA.

Managing Risk

25

Our quarterly look at reducing risk and liability for municipalities takes on such diverse topics as making parades safe to lawn mower safety.

What You Can Do This Summer

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When in doubt on certain issues, the Legislature can opt for the formation of working groups and studies. The 2010 session was no exception. While "extra" work, these limited-time offers represent meaningful ways to contribute to deliberations, in areas including stormwater permits, ocean energy and weatherization.

Of Money and Wind

39

Town meetings this spring had two recurring themes: Providing local services on a financial shoestring and regulating a burgeoning wind-power industry. Here is our April wrap-up.

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ON THE COVER: The cover is a famous painting called "The Scream," done by Edvard Munch in 1893. The State & Federal Relations staff at MMA provided much of the content and made the cover selection for the April edition of the Maine Townsman, which is largely devoted to the 2010 legislative session.



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From The Editor

by Eric Conrad, Director, Communication & Educational Services



Eric Conrad

When you start a new job, friends and family tend to ask the usual questions. “How’s the new job?” “What exactly do you do?” “Do you think you’ll like it?” Those kinds of things.

As we were driving to school a short time ago, my 9-year-old daughter, Nora, had a different inquiry: “Dad, what is a *Maine Municipal*?”

I smiled and corrected her slightly. “I work for the Maine Municipal Association,” I said. “That’s a group made up of towns and cities in Maine and the people who were elected to lead and hired to run them. The association I work for is there to help them.”

Nora nodded and looked out the car window, her thoughts already shifting to dragonflies, Leprechauns or who she might play with at recess that day.

I have given the topic more thought, however, since Nora and I had that exchange and since I’ve had more than a month on the job. Here are some of the things I would say now:

The MMA strives to help municipalities of all sizes and makeup provide their citizens with many of the most important governmental services that exist: public policing, fire-fighting, clearing and maintaining roads, recycling, setting spending priorities and levying taxes.

The MMA provides integral tools and programs to municipal leaders and employees: advocacy and lobbying services; legal advice; training; self-funded health and other types of insurance; and, human-resource expertise, to name a few.

Another crucial thing the MMA does is provide information and communication vehicles to our members. It is an ironic fact that during an age in which we are swimming in print publications, hundreds of TV and radio channels and millions of blogs and Web sites, it is harder than ever to discern what information is useful versus what is a colossal waste of time.

This is where the *Maine Townsman* and our Web site (www.memun.org) come in. This is why I am both humbled and honored that the MMA has hired me to play an important role.

For starters, I believe that communication is a two-way street. So, I’d like to hear from you. What do you like about the *Townsman*? What do you think should be changed? What

subjects should we cover more often or in more depth? Do you visit our Web site? If so, how often and what are your thoughts about it? The MMA also provides electronic updates, weekly legislative bulletins during sessions and many other means of communication. Is it enough, too much – or just the right approach?

I will tell you that in just my short period of time in the job, I have been impressed by what I’ve seen both the MMA and its member municipalities do. I’ve lived and worked in Maine for 15 years and did not fully realize all that was going on.

For example, the MMA recently held its 2010 Tech Conference, an event that I went to but the Communication & Educational Services staff and others at MMA had organized before my first day.

Two hundred people attended, coming from big cities like Bangor and Lewiston and small towns like Andover and Mechanic Falls. The evaluation forms – we read every one of them – were overwhelmingly positive despite a brief fire emergency triggered in another part of the Augusta Civic Center.

Even at this conference, the importance of information was underscored. James Page, chief executive officer at the James W. Sewall Co. in Old Town, set a somber tone during his keynote address. The short-term outlook for government and business, he said, is that financial resources will remain tight, while expectations for services will continue to rise.

“How we turn data into information is the key to how we meet expectations with fewer resources,” Page said, adding that technology and smart communication decisions together can make this possible.

From what I’ve seen, innovation and collaboration are alive and well at the municipal level. I was an editor and journalist in Portland, Augusta and Waterville for close to 15 years before a job change last year. I’m a bit embarrassed to say that I did not know the degree to which municipal leaders and their staffs collaborate across municipal boundaries when it makes sense to do so, and how many times municipalities contract with local businesses to provide quality services at affordable rates.

Mainers instinctively know that local government is the most accessible, nimble and efficient layer of government, which may explain why recent ballot initiatives to end the (locally spent) vehicle excise tax or impose mandated tax caps failed by wide margins.

We at MMA want to help get the word out. Starting in the *Townsman*’s May edition, we will highlight collaborative projects and programs so members can learn from what’s happening around the state and so the public and media realize to what extent this is being done. If you have examples that you want to share, please send them my way.

In the meantime, please know that I feel privileged to be here, serving those of you who serve all of us. 

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Tough Economy, Tough Legislative Session

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

A \$200 million-plus cut in state support for towns, cities, schools and property taxpayers

Municipal officials generally believe that state government should honor its financial commitment to public education; back-up its relief programs to the state's property taxpayers, especially in tough economic times; and share, proportionately and impartially with its local government partners in both good and bad times by letting the municipal revenue sharing program operate as it was designed; that is, by refraining from raiding it.

If that is the yardstick by which a legislature might be judged, the 124th Legislature gets something less than resounding applause from its municipal audience.

Between the cuts to school subsidy, municipal revenue sharing, Tree Growth tax program reimbursement, and the Circuit Breaker and Homestead Exemption property tax relief programs, a cut of about \$212 million was delivered over the biennium by this Legislature to the municipalities, the schools, and the residential property taxpayers who support both. \$65 million in cuts were delivered in this supplemental state budget. \$147 million in local government cuts were enacted in the initial state budget last spring.

Clearly, lawmakers were in a tough spot. The session began with a newfound gap of over \$400 million between anticipated revenue and the gross appropriations of the state budget adopted just months before. The choices seemed limited. Either: (1) cut out \$400 million worth of programs;

(2) increase taxes, raid health insurance reserves or otherwise raise state revenue; or (3) some combination of both.

Equating revenue reduction to an efficiency tool, Governor Baldacci ruled out state tax increases; a decision that seemed to conform comfortably, more or less, with the sensibilities of this second-session Legislature. Few state politicians want to raise state taxes in an election year, especially with their constituents struggling in a tough economy. In addition, a second-session tax increase would certainly muddy the waters with respect to the comprehensive tax reform legislation facing a "peoples' veto" attempt on June 8th.

Therefore, the only answer seemed to be securing other-source revenue

(principally from the federal government and state employee health insurance reserves), cutting state financial support for various programs, including local programs such as K-12 public education and municipal revenue sharing, and counting on the property tax to pick up some of the slack.

But were those the only choices?

Maine's municipal leaders recognized early-on that the towns and cities were going to have to take their fair share of the hits. Whether at the end of the day they got more than their fair share is an open question (see "Proportionality" sidebar on page 8), but town and city leaders fully expected to participate in helping balance the state budget, especially on the school side of the ledger.

At the same time, however, the

FY 2010-11 State General Fund Budget (Initial Budget and Supplemental Budget) Cuts to Municipal and Property Tax Relief Programs

| Program | FY 2010 (Current Year) | FY 2011 (Next Year) | Total Cuts (FY 2010 + FY 2011) |
|---------------------|---------------------------|------------------------|-----------------------------------|
| School Subsidy* | \$47,208,223 | \$78,106,470 | \$125,314,693 |
| Revenue Sharing | \$25,383,491 | \$35,270,254 | \$60,653,745 |
| Tree Growth | \$877,500 | \$1,468,500 | \$2,346,000 |
| Circuit Breaker | \$8,255,226 | \$8,209,224 | \$16,464,450 |
| Homestead Exemption | | \$6,900,607 | \$6,900,607 |
| Total | \$81,724,440 | \$129,955,055 | \$211,679,495 |

Source: Office of Fiscal and Program Review

*School subsidy reductions are calculated on the basis of FY 2009 base state subsidy level.

municipalities asked the Legislature to provide some substantive help in mitigating the upcoming financial impacts by taking a hard look at a range of unfunded state mandates as well as the design of certain programs towns and cities are required to administer that need to be fixed. A list of those ideas was published and provided specifically to the Taxation Committee and generally to the Legislature in the January 22, 2010 edition of MMA's *Legislative Bulletin*.

Very little of that critical review and "program drill-down" with respect to municipal programs actually happened.

To start on a positive note, the municipalities asked the Legislature to refrain from enacting any new unfunded state mandates as a first step. A very expensive example was working through the system in the form of LD 1725, known as the "culvert" bill, which would have required municipalities to build significantly more expansive infrastructure wherever roads cross perennial or intermittent streams in order to enhance the passage of fish and other aquatic organisms. LD 1725 was pushed by the Department of Environmental Protection and initially endorsed by a majority of the Natural Resources Committee despite the concerns about financial impacts expressed by municipal officials. Ultimately, after the financial impacts to the state's Department of Transportation finally became apparent, LD 1725 was modified to significantly reduce the short-term impact on municipalities and allow time to develop a revised set of rules that might be workable. Building municipal input into the development of environmental regulations before they get promulgated is the key to reducing the concern of Maine's town and city leaders about state-level environmental mandates.

The municipalities also asked the Legislature to extend the allowed period of time between the provisional adoption of a school budget by an open-meeting vote and the mandated "school budget validation referendum" from 14 days to 30 days. The limited 14-day requirement was generating scheduling problems and interfering with uniform absentee voting procedures, creating the need for off-schedule elections which cost money. That change was enacted as part of the

supplemental budget (see sidebar on page 9).

Having focused on the positive, here is a list of the ideas that were offered but never saw the light of day.

Passing on Some Relief from Federal Mandates. The Legislature had an opportunity this session to include in the bond package it enacted on the last day of the session a \$5.2 million component for the revolving loan programs that help capitalize necessary improvements to the drinking water and wastewater facilities throughout the state. (See the description of LD 1826 under the "Appropriations" section of the New Laws article.) Because

of the extremely attractive 5:1 federal matching ratio, the \$5.2 million state share would have leveraged \$26 million in federal funds for the same purpose. On a regular basis, Maine's municipal leaders ask the Congressional Delegation to provide solid funding opportunities for drinking water and wastewater infrastructure, the construction and renovation of which is so powerfully driven by the mandated standards of the federal Clean Water Act. Finally, when the federal government comes through and puts \$26 million on the table, the State Legislature decided to take a pass. An opportunity lost.

Proportionality

As illustrated in the chart below, the decisions made by the 124th Legislature have had disproportionate impacts on the programs funded with state General Fund revenues.

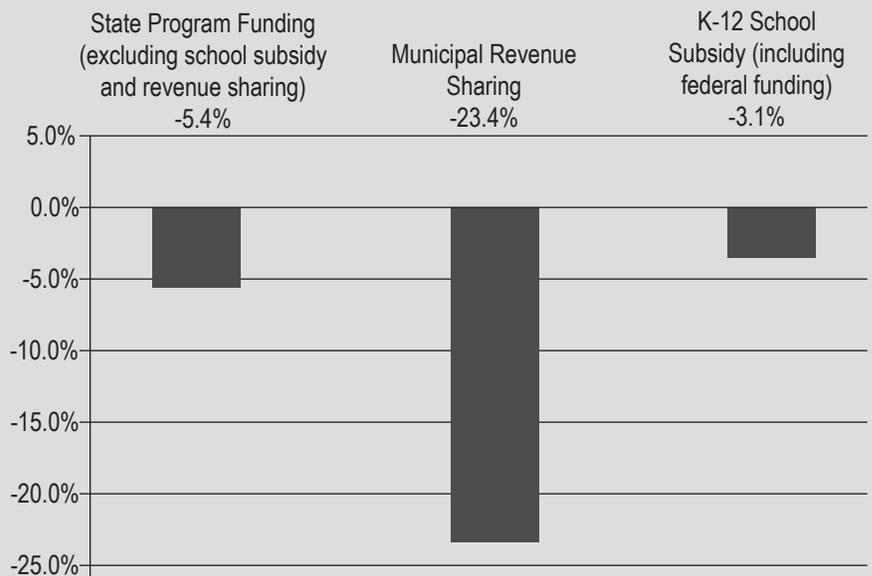
The chart reflects an analysis of the total appropriations in three categories enacted in the two-year FY 2008-09 state budget as compared to the same categorical appropriations in the FY 2010-11 state budget.

Between those two biennial periods, funding for state programs other than K-12 education and municipal revenue sharing have decreased by 5.4%.

The state's financial support for K-12 education between those two biennial periods has decreased by only 3.1%, helped in large part by the investment of nearly \$129 million in federal "stabilization" funding.

The towns and cities, however, experienced a 23.4% cut to the municipal revenue sharing program between the FY 2008-09 and FY 2010-11 biennia. That is an impact that will be borne by the property taxpayers throughout the state.

**% Change FY 2008-09 & FY 2010-11 Funding
State Government Programs, Municipal Revenue Sharing & K-12 Education**



Source: Office of Fiscal and Program Review

Tree Growth Tax Program Abuses. The municipal request was that if the Legislature was going to cut the reimbursement due to the towns for the tax losses suffered by virtue of the Tree Growth tax program, the Legislature could at least fix the elements of the Tree Growth program that allow residential waterfront property owners to dodge their rightful property tax obligations through a bogus claim that they are managing their small-acreage residential properties for “commercial harvesting” purposes. MMA submitted to the Taxation Committee several versions of corrective language that would tighten up the program to deal with abuses. Nothing was done.

Service Charges on Large Tax Exempt Institutions. In 2009, MMA’s Legislative Policy Committee caused a bill to be submitted (LD 1290) that would authorize a municipality to adopt an ordinance permitting an assessment of carefully limited service fees against tax exempt institutions with a property value or annual income exceeding \$1 million. The service fees would be calculated on the basis of the value of road services and public safety services (fire and police) the institutions directly receive from the town or city. LD 1290 was killed by the Taxation Committee in 2009, but the concept was resurrected in the budget debate this year as a possible way to help those communities where tax exempt institutions congregate cope with the negative financial impacts delivered by the supplement budget. The talk was simply talk, and nothing was done.

General Assistance Accountability Standards. As originally proposed by the Governor, the supplemental budget would have cut General Assistance (GA) reimbursement by about \$2 million, particularly affecting those municipalities with unusually high GA demands, such as the service centers like Portland, Bangor and Caribou. The Governor’s GA proposal was eventually pulled-out of the proposed budget because the Department of Health and Human Services addressed the \$2 million shortfall in a different way. Facing a \$200 million cut to local government over the biennium, however, the municipalities were still interested in beefing-up the accountability standards in GA law. A few years ago, the Maine Welfare Directors Association developed a proposal that addressed

the obligations of applicants who come into Maine from other states and have recently broken the rules of the social service programs they were receiving in the states they had left. Under current GA law, a person who has already received GA cannot forfeit a public benefit, such as a housing voucher or heating assistance, and then expect to get GA to replace that forfeited benefit. That law doesn’t apply, however, to first-time applicants. MMA advanced the legislation to buck-up that element of GA law, but nothing was done.

Relax Mandate on Publication of Legal Notes. For a long time the municipalities having been seeking a relaxation of the law that requires legal notes to be published in the most expensive and often least widely circulated daily papers. It is particularly

frustrating when the publication of those notices in the “shopping notes” newspapers achieves 100% circulation at substantially lower costs. The legislation to fix that problem has been advanced unsuccessfully to the Legislature many times over the last decade, and the idea was put forward again this session, but nothing was done.

Over-determined Department of Labor “OSHA” Inspections. Municipal officials are becoming increasingly concerned about the attitude and aggressiveness of the Maine Department of Labor officials who conduct workplace inspections at the town offices, transfer stations, fire departments, etc. There isn’t a municipal official responsible for a workplace that isn’t completely motivated to provide a safe environment, but the way Maine law is designed, the Department of Labor

Immediate Changes to the School Budget Validation Referendum Process

Municipal officials should be aware of one change and one clarification with respect to the school budget validation referendum process that were included in the supplemental state budget. Because the supplemental budget was enacted as emergency legislation, these two amendments to the school budget adoption process have become immediately effective.

- **More flexibility in scheduling school budget validation votes.** Until now, the law required the school budget validation referendum vote to be scheduled within 14 days after the open meeting vote or council vote where the school budget is provisionally adopted. That time period has now been extended, and the referendum “validation” election may be scheduled within 30 days after the open meeting vote.

- **School budget validation referendum continuation question.** The original school consolidation law, which included the school budget validation referendum process, required all school budget validation ballots to include a question to the voters every three years which asks the voters if they wish to continue with the validation referendum process. It was not clear how the three-year requirement should be applied to a newly formed school system that was just recently created. The supplemental budget clarifies that ambiguity by establishing this year, 2010, as the year for all school systems to place an article on the school budget referendum ballot which asks the voters if they wish to continue with the school budget validation referendum process. The supplemental budget also creates the opportunity for either the school board or the voters by petition to restore the school budget validation referendum process if referendum voting is discontinued by the voters and at least three years have passed.

With respect to this year’s ballot question, the Department of Education has posted the following suggested language on its website.

Suggested Article regarding the vote on continuation of the budget validation referendum process:

ARTICLE _____ Do you wish to continue the budget validation referendum process in (name of school administrative unit) for an additional three years?

Informational Note (to be included with the article):

A “YES” vote will require (name of school administrative unit) to continue to conduct a referendum to validate its annual school budget for the next three years.

A “NO” vote will discontinue the budget validation referendum for at least three years and provide instead that the annual school budget shall be finally adopted at a meeting of the (voters, municipal council or other legislative body, as applicable).

inspectors are supplied an encyclopedic arsenal of more-or-less applicable OSHA standards which are themselves so complicated, removed, overbroad or inexact that a nearly subjective regulatory authority is at play. In almost every case, if the inspector wishes, violations can be cited, fines can be threatened or applied, and a dizzying array of paperwork can be initiated. The applicable law is so heavily cross-referenced with codes from other jurisdictions that are "adopted by reference", it is hard to know where to begin in the effort to give the municipality subject to these inspections a clearer sense of the standards with which it is expected to comply. Perhaps the municipal request that the Legislature address this bureaucratic over-determination was too broad. In any event, the municipal request to make this regulatory system more objective, rational and coherent went nowhere.

Animal Welfare. In 1994, shortly after the state's Constitution was amended to limit the enactment of unfunded state mandates, the Legislature enacted a law placing the immediate obligation on towns and cities to control undomesticated animals posing a threat to public health or safety. Since 1987, municipalities have been mandated to provide all necessary medical attention to stray domestic animals whose owners are not known. MMA suggested that both of these mandates deserve review. In the first case, the state's Inland Fisheries and Wildlife Department should have primary and lead responsibility for all undomesticated animal control. In the second case, municipalities should be authorized to order the euthanasia of stray animals picked up by local animal control officers and found to be in need of expensive medical treatment. No progress was made on these issues.

End Mandatory State-level Boiler Non-Inspections. Although not technically a "mandate" issue, the state should end the practice of charging municipalities for boiler inspections that the state never actually conducts. It's a \$50 per boiler fee for essentially filing a piece of paper the municipalities must provide to the state certifying an inspection has occurred. The inspection is actually conducted and paid for by the municipalities, typically through their insurance companies.

All of this stems from an underlying law that exempts most normal boilers from the state inspection process except the boilers of "schoolhouses and municipalities". It has never been explained why school and municipal buildings do not get the exemption state law provides to every other place of public accommodation. The required fee for municipal boiler non-inspection was not eliminated this session.

Conclusion. This short list of state mandates municipalities would like to see reviewed and improved may seem like small potatoes in the scheme of things, but it all adds up. Those who prognosticate on such issues are giving warning that based on three observations the state will be facing very difficult financial circumstances over the next several years.

First, even if an economic recovery from the 2008 recession is beginning to emerge, history suggests that state income and sales tax revenues do not instantaneously rebound with a rebuilding economy.

Second, although the state budget over this biennium has been propped up with federal stimulus funding, stabilization resources and changes to the Medicaid matching rates that are advantageous to the states, that type of extraordinary financial support to

the states from the federal government will not likely be sustained past the next fiscal year.

Third, the state is facing very significant internal financial obligations to buy-down the size of the unfunded liabilities it is carrying with respect to the pension and health insurance promises it has made to state employees and school teachers.

If that grim prognosis is accurate, the failure of the Legislature to work on this short and initial list of municipal "mandate issues" is truly unfortunate. The entire list described in this article is just the beginning. Many more ideas of the same type could easily be generated and should be dealt with squarely by the next Legislature, not merely as a matter of partisan rhetoric but by actually changing the laws that effectively prevent municipalities from adapting to a much leaner financial environment. Without legislative action, the towns and cities will have to submit to the priorities they are forced to accept as a result of these archaic and unexamined laws, codes and regulations handed down by legislatures long since adjourned. If state government deficits are going to dominate the future, the municipalities ask not to be handcuffed to the expensive and unexamined state mandates of the past. [\[ml\]](#)

Our Biennial Thanks to Rep. Briggs and Sen. McCormick



Senator Earle McCormick (Kennebec County) and Representative Sheryl Briggs (Mexico) have been kind enough over the last two years to provide permission each week for MMA's weekly *Legislative Bulletin* to be distributed in both the House and the Senate so that all legislators have easy access to our communications with town and city officials. We appreciate their generosity very much.

It's Not All About the Budget....

By Kate Dufour, Legislative Advocate, MMA

If you asked any five people who hang around the State House to describe the centerpiece of the 2010 session, the most likely response would be “money”, or better yet, the lack thereof. Clearly, most of the chatter in the halls of the Capitol Building centered on the efforts of the Appropriations Committee to bridge the \$310 million revenue shortfall in its development of the FY 2010-11 supplemental General Fund budget. While the Appropriations Committee undertook that task, other legislative committees quietly sorted through the details of several non-budget related bills of significance.

What follows is a brief description of the most relevant municipal issues addressed by the Legislature in the last three months. More detailed descriptions of these bills can be found in the *New Laws* article in this edition of the *Maine Townsman*.

Culverts (LD 1725). Despite the fact that Maine’s towns and cities were getting hammered through the budget process, the Natural Resources Committee seriously debated enacting the Department of Environmental Protection’s (DEP) proposed permit-by-rule standard for achieving “natural stream flow” in what came to be known as the “culvert bill”. As originally developed, the rules would have increased the cost of local road repair and maintenance projects by mandating communities to install much larger culverts at stream crossings, or even bridges where culverts used to suffice. Due to the efforts of many legislators and municipal officials, the bill was amended to alleviate the fiscal impacts on municipalities (and other impacted parties) by making the new culvert standard immediately ap-

plicable to “new crossings” only, and further directing the DEP to start the rulemaking process over again to elicit additional comments on the impact of the proposed rules. A description of LD 1725 is found in the “Natural Resources” section of the *New Laws* article.

Local Option (LD 1121 and LD 1717). This session, the Legislature provided municipalities with the authority to locally administer two politically popular programs: (1) the elderly tax deferral program; and (2) the “clean energy improvement financing” program.

Elderly Tax Deferral Program (LD 1121). As enacted, LD 1121 authorizes the legislative body of a municipality to adopt an ordinance creating a program allowing all homeowners 70 years of age or older to have the property taxes for their residences (and the land upon which the residence is located) deferred for an indefinite period provided the applicant has lived in the homestead property for at least 10 years and has an income at the time of application that is less than 300% of the federal poverty level. A detailed description of LD 1121 is provided in the “Taxation” section of the *New Laws* article.

PACE Legislation (LD 1717). This emergency legislation is often referred to as the Property Assessed Clean Energy Act, or PACE Act. The Act authorizes municipalities, working in conjunction with the Efficiency Maine Trust (Trust), to adopt ordinances establishing property assessed clean energy programs. Through these PACE programs, property owners in a participating municipality can apply to the town or city for funding from the Trust to finance an energy savings

improvement to their property, and the financing of that debt would be administered by the municipality or, by arrangement, the Trust. A detailed description of LD 1717 is found in the “Utilities and Energy” section of the *New Laws* article.

Medical Marijuana (LD 1811). The overarching purpose of LD 1811 was to enact the recommendations of a task force that was formed to help implement the medical marijuana law adopted by the voters at the November 2009 referendum election. As enacted, registered patients can obtain the authorized medical marijuana by either growing their own, designating a caregiver to grow the marijuana on their behalf or designating a dispensary to provide the marijuana. The issue of most importance to municipalities is the authority to regulate the number and location of medical marijuana dispensaries. As enacted by the Legislature, the law clearly addresses one municipal concern with the dispensary legislation, and provides some help with another.

Confidentiality. As finally enacted, the medical marijuana law is clarified to enable municipalities to appropriately regulate the location and siting of medical marijuana dispensaries without having to dance around confidentiality issues. As adopted, the law clarifies that with the exception of patient, caregiver and physician identification data, all other dispensary information (i.e., location, the dispensary’s board membership, etc.) is not considered confidential. This clarification in the law enables municipalities to appropriately engage the public in the creation of ordinances guiding the siting of these dispensaries.

Local Control Over Dispensaries. Mu-

municipal officials also raised a concern with the amount of local control provided to municipalities in the regulation of medical marijuana dispensaries. According to the law adopted by the voters, municipalities are expressly authorized through general zoning authority to regulate the number and location of dispensaries. For some municipal officials, the zoning authority was not strong enough, and there was a municipal interest in having more regulatory discretion over medical marijuana dispensaries. In an effort to address this concern, several municipal officials advocated for an amendment to the law that would require pharmacies to dispense the medication. Although LD 1811 as finally enacted does not go in the pharmacy direction, it does limit the number of dispensaries in the first year of implementation to one in each of the state's eight public health regions. The municipal regulatory authority provided in the underlying law is somewhat expanded. In addition to zoning, municipalities are authorized to apply other types of reasonable municipal regulation to the dispensaries, such as a municipal site plan review ordinance.

A detailed description of LD 1811 is found in the "Health and Human Services" section of the *New Laws* article.

Tree Growth Notification (LD 1635). A law was enacted several years ago requiring municipal assessors to formally notify landowners with property in the Tree Growth program who failed to meet their 10-year updating certification requirements, providing them with a 60-day opportunity to do so. The law was so poorly written that if administered strictly by its terms, the landowners could not actually cure their noncompliance, even with the 60-day extension. As originally crafted, LD 1635 would have effectively provided those landowners with a one-year extension rather than just 60-days. As a group, municipal officials do not believe Tree Growth landowners need to be so extensively coddled, and a pre-deadline notice procedure was enacted instead. A detailed description of the notification procedures of LD 1635 is found in the "Taxation" section of the *New Laws* article.

School Consolidation Fix-up (LD 570). On November 3, 2009, the vot-

ers of Maine decided not to repeal the school consolidation law that was enacted by the Legislature in 2007 and amended in 2008. Few legislators, however, interpreted that vote to mean that the consolidation law was anywhere near perfect. The difficulty facing school systems in very rural parts of the state to conform to the consolidation standards, combined with the imposition of financial penal-

ties for noncompliance which would obviously impact the quality of those students' education, were among the issues that unquestionably needed to be fixed. On top of that, there was very little transparency in the school consolidation law because many of its most significant flexibility provisions were never enacted into Maine statutes but were instead enacted as "unallocated law", which means that

Upcoming Elections of MMA's Legislative Policy Committee

MMA's efforts to advance the positions taken by Maine's town and city leaders on issues of statewide importance to local government is entirely dependent on the work of the Association's 70-member Legislative Policy Committee (LPC). The willingness of municipal officials from every corner of this state to dedicate their precious time and invaluable local government experience during each two-year term to the task of guiding MMA's State and Federal Relations Department is critical to the integrity of the process and ultimately determines whatever successes might be achieved.

With the close of this legislative session and the final adjournment of the 124th Legislature, it is now time to begin the process of electing the next LPC. The first task of the newly-elected Policy Committee will be to develop the legislative platform the municipalities would like to see advanced to the newly-elected 125th Legislature next January.

The 70-member LPC is made up of two municipal officials from each of the state's 35 Senate Districts. Any elected or appointed municipal official is qualified to serve on the LPC. All that official has to do is get nominated onto the election ballot through the Chair of a board of selectmen or town or city council within his or her Senate District and then get enough votes from all the boards of selectmen and town or city councils within the Senate District to win the election.

The Legislative Policy Committee is responsible for:

- Developing and coordinating MMA's legislative policy process;
- Identifying MMA's advocacy priorities and developing a legislative platform;
- Providing direction on legislative strategy to achieve these objectives; and
- Taking positions on all legislative proposals affecting municipalities.

Those positions are usually determined at town-meeting style LPC gatherings held each month during the legislative session. Sometimes those positions are determined through surveys that are mailed or e-mailed to all LPC members.

LPC activities require a minimum time commitment of approximately 10 hours per month during legislative sessions, as well as a small time commitment in the summer and fall of the even-numbered years to develop the next biennium's legislative agenda. In addition to the responsibilities outlined above, it is also expected that the LPC members act as liaisons with their municipal colleagues throughout the Senate District and keep up a regular communication with the District's several legislators.

On April 22nd a memo seeking nominations for candidates will go out to the key municipal official in each of the Association's member municipalities requesting the nomination of any elected or appointed municipal official within that municipality's Senate District. The "key" municipal official is the town or city manager if the municipality has one, or the first selectman if it doesn't. The nomination form and a brief "bio" of the nominee will be due back to MMA by June 3rd. A ballot will be mailed to the key municipal official in each member municipality on June 4th. The ballot will be due back to MMA by July 16th, and the process of developing a prioritized package of public policy ideas to advance to the next Legislature in January will begin soon after that.

those provisions were not published in the red law books or posted on the “Maine Statues” website. LD 570 was enacted as the school consolidation law’s second major “fix-up” bill, the first fix-up bill was enacted in 2008. A complete description of LD 570 as finally enacted is found in the “Education” section of the *New Laws* article in this edition of the *Townsmen*. 

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Looking Ahead

On November 2, 2010 Maine’s voters will put a new Governor at the helm of State. With that in mind, over the last several months MMA has been actively involved in the process of looking ahead toward 2011 and the incoming Administration by setting up informal staff-level conversations with all the gubernatorial aspirants who are willing.

In January, MMA’s advocacy staff published a “*Municipal Priorities Paper*” as an open letter to the 2010 gubernatorial candidates. For anyone wishing to read the *Priorities Paper*, it is available at www.memun.org/public/news/PrioritiesPaper.pdf. The *Priorities Paper* contains a considerable amount of data and related background information about the public-policy positions the municipalities have collectively endorsed over the years with regard to such matters as home rule, unfunded mandates, “regionalism”, tax reform, intergovernmental financing, state-level financial support for public education, school consolidation, transportation policy, labor-management issues, etc.

The *Priorities Paper* was mailed to all 26 candidates who were running for office at the time, and the purpose of the distribution was two-fold.

First, the *Priorities Paper* served as the invitation and “discussion starter” for any of the Blaine House aspirants who wanted to have an informal chat over a cup of coffee with MMA staff about:

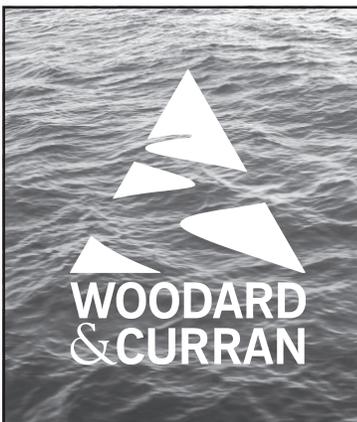
- the issues of greatest concern to Maine’s town and city leaders;
- what the state’s 25-year strategic plan might look like; and
- the appropriate nature of the relationship between state and local government over the next four to eight years.

The second purpose of distributing the *Priorities Paper* to all the candidates was to help inform their individual platforms and candidacies on local government issues even for those candidates who might choose not to come into the office and engage with us directly. After all, MMA is a non-partisan organization that neither endorses any candidate nor moves a single penny of donation in any candidate’s direction, so some candidates might not see any immediate political pay-off in stopping by for a chat. Even in that circumstance, the thinking was that if all the candidates would at least read the *Priorities Paper*, maybe the pre-primary debates on local government issues would become more information-based and less platitudinous.

Thankfully, a number of candidates accepted our offer and we have learned a great deal in the process. Hopefully, the benefits of the exchange have been mutual.

After June 8th when the primary season ends, the informal nature of the exchange with gubernatorial candidates will shift gears. During the month of July, MMA’s Executive Committee will be scheduling formal interviews with all post-primary candidates still standing, and the content of those interviews will be on the record, summarized in a late summer edition of the *Maine Townsman* and perhaps even recorded in video format and posted on MMA’s website.

And three weeks before the General Election, at MMA’s annual Convention on October 13th, a Candidates’ Forum will be held at the Augusta Civic Center. It is at that event where the several hundred municipal officials in attendance will have an opportunity to take a full inventory of the next occupant of the Blaine House.



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Funding the State's Vital Records Operation

The state and local system of financing the administration of vital records is another issue addressed in the supplemental state budget as well as in a separate piece of legislation. Here's the background.

The Maine Center for Disease Control and Prevention's (CDC) self-funded vital records program apparently hit an insurmountable revenue hurdle this year. Without any additional support, the program was projected to face a \$340,000 funding shortfall in FY 2010.

In 2009, in a piecemeal attempt to address immediate and future funding shortfalls, the CDC underwent a rulemaking process and increased the fees assessed for the state (rather than municipal) issuance of vital records, such as marriage, birth and death certificates, from \$15 per record to \$60 per record.

In 2010, the CDC also submitted LD 1592, *An Act to Update the Laws Affecting the Maine Center for Disease Control and Prevention*. One element of the bill sought to address state funding shortfalls by increasing the fees assessed by municipal clerks for providing vital records (birth, marriage and death certificates, marriage licenses, and burial permits) and essentially requiring the communities to remit the increased fee revenue to the state. That is not the way LD 1592 was ultimately enacted, however.

As described in the "Health and Human Services" section of the *New Laws* article in this edition of the *Townsmen*, the fees for providing vital records issued by the town and city clerks have been increased and the municipalities will not be required to remit some percentage of their vital records fees to the state, at least immediately. Instead, the CDC is authorized by LD 1592 to develop a fee schedule through a "major substantive" rulemaking process to assess fees on municipalities for the vital records related services the state provides municipalities. As "major substantive" rules, the fee schedule will need to be endorsed by the Legislature next year before it can be implemented.

The CDC's vital records department's funding shortfalls were also addressed in the supplemental budget. First, in order to address the immediate FY 2010 shortfall, a one-time General Fund appropriation of \$340,000 is allocated to the state's vital records operations. Second, as of April 1, 2010 the state's vital records fee is restored at the \$15-per-record level (down from \$60 per record) and a General Fund appropriation of \$34,330 in FY 2010 and \$102,990 in FY 2011 is provided to offset the decreased fee assessment revenue loss. Finally, in FY 2011 funding for three positions in the CDC's vital records operations is transferred from the fee-based "other revenue" account and funded with \$244,861 of federal revenue. These changes are important because they acknowledge that this "vital" state program needs some level of General Fund support. Hopefully this acknowledgement will be carried forward into the rule making process as the state's fees for its services to municipalities are developed.



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NEW LAWS

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 July 12, 2010.

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.

Agriculture, Conservation and Forestry

LD 1238 – An Act Concerning the National Animal Identification System. (Sponsored by Rep. Hamper of Oxford.) **PL 2009, c. 544**

Carried over from the First Regular Session, this Act authorizes the Commissioner of the Department of Agriculture to adopt rules to implement a national animal identification system, but only if federal law makes the system mandatory. Among other provisions of the Act, municipalities are preempted from adopting any ordinance requiring participation in an animal identification system except to conform to a program established by the Department.

LD 1587 – An Act To Amend the Animal Welfare Laws. (Sponsored by Rep. Pieh of Bremen.) **Emergency Enacted; PL 2009, c. 548 (3/25/10)**

This Act makes several changes to the state’s animal welfare law. Of municipal interest, this Act: (1) increases the late fee for dog licenses from \$15 to \$25, correcting an inadvertent result from changes to the late dog-licensing procedures enacted in 2009 that effectively reduced the late licensing fee from \$25 to \$15; and (2) expands the potential area where an unattended animal could be cited for trespass from “the property of another” to include any local, county or state road or highway.

Appropriations & Financial Affairs

LD 1668 – An Act To Implement the Recommendations of the Initiative To Streamline State Government and To Make Other Necessary Changes to Law. (Reported by Rep. Cain of Orono.) **Emergency Enacted; PL 2009, c. 462 (1/21/10)**

As part of the state budget that was enacted in the spring of 2009, the Appropriations Committee was directed to identify \$30 million in additional budget cuts as an initiative to “streamline” state government. This Act is the result of that effort. Many of the changes involve moving state government personnel from state General Fund accounts to “Other Special

Revenue” accounts so that their salaries and benefits, in whole or in part, are covered by revenue sources other than the General Fund. Among its various provisions, this Act makes an additional cut to municipal revenue sharing of \$625,000 in the current fiscal year (FY 2010) and \$9,300 in FY 2011. This Act also authorizes the Department of Education to begin adjusting subsidy payments to local school systems in the current fiscal year (FY 2010) to accommodate the \$38.1 million “curtailment” to this year’s appropriation of General Purpose Aid for Local Schools ordered by the Governor on November 20, 2009.

LD 1671 – 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, 2010 and June 30, 2011. (Governor’s Bill) **Emergency Enacted; PL 2009, c. 571 (3/31/10)**

This Act is the supplemental state budget designed to bridge what turned out to be a \$310 million gap between projected state revenues and the appropriations enacted in the biennial state budget last spring. The Act includes: (1) cuts to programs funded by state government; (2) a significant utilization of retired state employee health insurance reserves; and (3) some shifting of expenditures from the current budget biennium into the next (e.g., see “Homestead Exemption reimbursement push”, below).

In order of gross impacts, the proposed direct cuts to municipal government are:

School Subsidy: \$48.2 million cut this round (\$125.3 million over the biennium). The Act cuts General Purpose Aid for Local Schools by \$38.1 million in the current fiscal year and \$10.1 million in FY 2011. These reductions are applied on top of approximately \$78 million in school subsidy reductions over the biennium enacted by the Legislature last spring. With these reductions, the state share of K-12 spending (not counting temporary federal “stabilization” funding) as measured by the Essential Programs and Services school funding model (EPS) will be 47% this year and 45% in FY 2011. Based on projections of recent actual spending levels, the state share of total K-12 spending will be approximately 43% over each year of the biennium.

Revenue Sharing: \$16 million cut this round (\$60 million over the biennium). Last spring, the Legislature took \$44 million out of municipal revenue sharing to balance the state’s budget. This Act takes an additional \$16 million by taking \$6 million out of the current year’s revenue sharing distribution and another \$10 million out of next year’s revenue sharing. The combined revenue sharing cuts enacted by the Legislature will result in a 19.4% reduction in revenue sharing distribution this year and a 28.3% reduction next year. All of these cuts are imposed on top of the reductions that are already taking place in revenue sharing as a result of the slumping economy.

| Year | Revenue Sharing w/out Legislative Cuts | Total Legislative Cuts to Revenue Sharing | Total Revenue Sharing Distribution | Percentage Value of Legislative Cuts |
|---------|--|---|------------------------------------|--------------------------------------|
| FY 2010 | \$130,851,457 | \$25,383,491 | \$105,467,966 | 19.4% |
| FY 2011 | \$124,479,621 | \$35,270,254 | \$89,209,367 | 28.3% |

Tree Growth Reimbursement : \$531,000 cut this round (\$2.35 million over the biennium). If the state was going to provide the amount of Tree Growth reimbursement called for by law, the appropriation would be \$6.25 million. Last spring, the Legislature cut the appropriation by \$877,500 for the current year and by \$937,500 for FY 2011. This Act reduces the FY 2011 distribution by an additional \$531,000.

The Homestead Exemption reimbursement “push”: \$5.4 million. Before this year’s change, 80% of the homestead exemption reimbursement to which each municipality is entitled was provided by August 15th of the year in which the exemption is provided, and the remaining 20% of reimbursement was issued by December 15th of that same year. This Act amends that distribution to provide 75% of the entitled reimbursement by the August 15th deadline, but delays the payment of the remaining 25% (formerly 20%) of the reimbursement from the December 15th distribution to July 15th of the following year. By delaying this payment seven months, the state pushes a \$5.4 million expenditure into the next biennium. It’s an accounting gimmick. Although the push creates a cash-flow issue for all municipalities, the towns operating on a calendar fiscal year will be most affected by this delay in distribution.

Other Notables in the Supplemental Budget. There are several other items of municipal interest in this supplemental state budget, including:

- **General Assistance.** The Act appropriates \$880,000 for the current fiscal year and \$1.46 million for FY 2011 in order to make sure there are enough funds to adequately provide municipal General Assistance reimbursements.

- **Board of Corrections.** \$3.5 million is appropriated in this Act for the Board of Corrections Investment Fund to provide for the operational needs of the county jails under the new unified correctional system.

- **Disaster Assistance.** The Act appropriates \$1.75 million over each year of the biennium to pay the state’s 15% share of disaster assistance provided for a half-dozen declared disasters, including flooding in 2005, the St. Patrick’s Day Flood of 2007, the Patriots’ Day Flood of 2007, the May flooding in 2008, the July/August floods in 2008, the December ice/snow events of 2008 and the June/July floods in 2009.

- **Vital Records Fees.** The Act reverses the significant fee increase imposed last year by the Legislature for vital records sought from and provided by the state. The background and final result of all the changes regarding vital records fees are discussed in a side-bar article on the subject on page 14 of this edition of the *Townsmen*.

- **Property Tax Review Board.** The State Board of Property Tax Review has been absorbing budget reductions for several years, and now there are not enough funds to allow the Board to dispose of appeal requests in a timely manner. In an effort to provide additional funding to the Board, the Act creates a filing fee system similar to the filing fee system that is used for appeals to Superior Court. The fees are established as follows:

- For applicants seeking an appeal from “current use” tax decisions made at the local level (e.g., Tree Growth, Farmland, Open Space), the filing fee will be \$75.

- For applicants seeking an appeal from a valuation decision of a non-residential property with a taxable value over \$1 million, the filing fee will be \$150.

There will be no filing fee for a municipality seeking an appeal from a state valuation determination made by Maine Revenue Services.

Other K-12 Education Issues.

- **Removing the non-consolidation penalty for some.** The Act includes an appropriation of \$1.12 million to remove the financial penalty that would otherwise be applied to school systems that voted ‘yes’ on a school consolidation plan that was ultimately rejected because their proposed partners voted ‘no’.

- **More flexibility in timing school budget validation votes.** Current law requires the school budget validation referendum vote to be scheduled within 14 days of the open meeting vote where the school budget is provisionally adopted. The Act extends that time period to within 30 days after the open meeting vote.

- **School budget validation referendum continuation question.** The Act establishes 2010 as the year for all school systems to place an article on the school budget referendum ballot which asks the voters if they wish to continue with the school budget validation referendum process. The Act also restores the opportunity that used to be in law for the voters in subsequent years to petition a referendum article to restore the school budget validation referendum process if referendum voting is discontinued by the voters and in later years the petitioners wish to see it restored (see sidebar article on page 9).

- **Partial waiver of minimum local funding effort.** The Act provides that for the next two years, if the state is able to fund only a percentage of its 55% share of the Essential Programs and Services school funding model, there will be no proportional reduction in any school’s state subsidy if the local school system raises at least the same percentage of their required local contribution. The Act repeals this statutory recognition of proportional-responsibility as of June 30, 2012.

LD 1826 – An Act To Authorize Bond Issues for Ratification by the Voters for the June 2010 Election and November 2010 Election. (Governor’s bill) Emergency Enacted; PL 2009, c. 645 (4/12/10)

This Act sends out to the voters a proposed \$47.8 million transportation bond to be considered by the voters at the June 8, 2010 primary election. The bill also schedules a separate \$5 million bond proposal to go out to the voters in November 2010 to create a community based dental school teaching clinic and upgrade dental clinics statewide. In addition, the bill amends two of the three bond questions that have already been scheduled to be placed on the June 8th ballot by increasing one component of those borrowing proposals by \$5 million and decreasing three other components within those bond proposals by \$13.5 million. It should be noted that until the point on enactment this bond included approximately \$5 million for drinking water and wastewater infrastructure improvements, leveraging \$26 million in matching federal funds to help deal with Clean Water Act mandates. The Legislature ultimately rejected these components of the bond. The specifics of the elements of this bill related to the June 8th bond election are:

- Transportation Bond - \$47.8 million
 - \$24.8 million for state highway reconstruction and paving;
 - \$7 million to help finance the purchase and preservation of 240 miles of railroad track in Aroostook County;
 - \$5 million to purchase a portion of rail line and make other rail improvements to create a connector to the Lewiston-Auburn area;
 - \$4 million for repairs and improvements to the state-owned Mountain Division Railroad located in southern Maine;
 - \$6.5 million to help finance the Ocean Gateway deep water pier in Portland; and
 - \$0.5 million to provide challenge grants through the Small Harbor Improvement Program.
- The June 8th Energy Investments Bond, *as amended*:
 - A \$26.5 million capital improvement package (*down from \$33.5 million*), with:
 - ◆ Zero funding for a program to weatherize low and middle income households and small businesses (*down from \$12 million*);
 - ◆ \$15.5 million for capital upgrades at the Univer-

sity and Community College campuses; and

- ◆ \$11 million for research and development investments targeted to ocean wind energy demonstration sites (*up from \$6 million*).
- The June 8th Economic Development Bond, *as amended*.
 - A \$23.75 million economic development package (*down from \$25 million*), with:
 - ◆ \$8 million to redevelop the Brunswick Naval Air Station site;
 - ◆ \$3.5 million for the “Communities for Maine’s Future” program;
 - ◆ \$3 million for research and development investments;
 - ◆ \$4 million for the Small Enterprise Growth Fund (*down from \$5 million*);
 - ◆ \$3 million for an economic recovery loan program;
 - ◆ \$1 million to provide grants for food processing and lumbering industries; and
 - ◆ \$1.25 million for acquiring historic properties (*down from \$1.5 million*).

LD 1830 – An Act To Make Administrative Changes to Tax Laws To Maintain a Balanced Budget. (Sponsored by Rep. Cain of Orono.) **P & SL 2009, c. 41**

This Act amends the comprehensive tax reform legislation enacted in 2009 which has by petition been made subject to a “people’s veto” referendum on June 8, 2010. The purpose of the Act is to advance the effective date of the tax reform package if the voters elect not to repeal it on June 8th so as to avoid a significant reduction in income tax revenue collected during FY 2011 that would occur out of synch with the concomitant sales tax revenue increases associated with the reform package and create a revenue shortfall in the state budget for FY 2011 of nearly \$50 million. Under the terms of the Act, if the voters elect on June 8th not to repeal the tax reform legislation, the effective dates of the various provisions of the enacted legislation would be extended by one year.

Business, Research & Economic Development

LD 91 – An Act To Fund the Maine Downtown Center. (Sponsored by Rep. Watson of Bath.) **P & SL 2009, c. 42**

Carried over from the First Regular Session, this Act appropriates \$10,000 from the General Fund for FY 2011 to recapitalize the Maine Downtown Center.

LD 1389 – An Act to Create Regional Quality of Place Investment Strategies for High-value Jobs, Products and Services in Maine. (Sponsored by Sen. Damon of Hancock County.) **PL 2009, c. 483**

This Act creates a process for establishing a “quality of place jobs creation and investment strategy”. The term “quality of place assets” is defined as those exceptional, marketable, place-based competitive strengths, resources and advantages that drive the local and regional economy and its sustainability, including: sustainable economic activities based on natural resources, downtowns and community centers, historic buildings and structures, arts and “creative economy” activities, landscapes, access to outdoor recreational activities, workforce skills and knowledge, and intellectual assets such as colleges and research institutes. The Act establishes the 12-member Maine Quality of Place Council, which includes 6 state agency representatives and 6 private citizens appointed by the Governor. The Act directs the Council, in consultation with the regional economic development districts, to establish guidelines and standards governing the development of regional quality of place investment strategies. These strategies may be voluntarily

created by regional Economic Development Districts. The Act also directs the Council to work with state agencies to identify how the state agencies can promote initiatives that support those regional strategies.

LD 1530 – An Act To Facilitate Recovery Zone Facility Bonds, Recovery Zone Economic Development Bonds and Qualified Energy Conservation Bonds. (Sponsored by Sen. Mitchell of Kennebec County.) **Emergency Enacted; PL 2009, c. 517 (3/17/10)**

This Act provides certain authorities to the Governor and to the county commissioners in order to facilitate the issuance and reallocation of facility bonds, economic development bonds and qualified energy conservation bonds pursuant to the federal American Recovery and Reinvestment Act of 2009. Specifically, the Act authorizes a reallocation process whereby each county’s allocation for those bonds would be waived, enabling the Finance Authority of Maine and the Maine Municipal Bond Bank to reallocate the unused bonding volume cap in a timely manner. For more information visit www.mainebondbank.com/arra.aspx.

Criminal Justice & Public Safety

LD 1497 – An Act To Amend the Law Pertaining to Smoke Detectors and Carbon Monoxide Detectors. (Sponsored by Sen. Diamond of Cumberland County.) **Emergency Enacted; PL 2009, c. 551 (3/25/10)**

This Act amends the law that requires installation of smoke detectors and carbon monoxide detectors in multi-family and certain single family homes. Among the various amendments and clarifications, this Act: (1) clarifies that smoke detectors must be installed in rental units at the time of new occupancy if they are not already present; (2) establishes that carbon monoxide detectors are required in all dwelling units occupied under the terms of a rental agreement or under a month-to-month tenancy and further establishes that the buyer of any single-family dwelling or multifamily apartment building must install carbon monoxide detectors and certify that the buyer has done so; (3) establishes that carbon monoxide detectors in rental units, new construction and buildings converted into dwelling units must be powered by both electrical service and by battery; and (4) appropriates \$115,000 from revenues in the State Fire Marshall’s Office for the purpose of distributing carbon monoxide detectors to the Maine State Housing Authority, community action agencies, local fire departments, realtors’ associations and other organizations willing to promote the placement of those detectors in houses.

LD 1610 – An Act To Establish the Silver Alert Program. (Sponsored by Rep. Rotundo of Lewiston.) **PL 2009, c. 583**

This Act directs the Department of Public Safety (DPS) to develop and implement the “Silver Alert Program”, which establishes certain law enforcement and media alert protocols when elderly people with physical or mental impairments are discovered missing. DPS is directed to develop this program with the cooperation of the Maine Turnpike Authority, the Department of Transportation, media broadcast companies, and law enforcement agencies. The program must include standards and procedures for local law enforcement agencies to determine that a missing person is a missing senior citizen and activate a “Silver Alert” to local or statewide law enforcement agencies and the media. The program must also include a plan for providing relevant information to the public through a system of dynamic message signs located across the state. The program must also include training for all law enforcement officers. According to the Act, the Silver Alert Program must be developed and implemented using existing resources.

LD 1822 – An Act To Further Amend the Sex Offender Registration and Notification Act of 1999. (Reported by Rep. Haskell of Portland.) **Emergency Enacted; PL 2009, c. 570 (3/30/10)**

This Act implements several changes to the sex offender registration laws in response to a 2009 decision of the Maine Supreme Court that found elements of that law unconstitutional. Many of those changes are focused on the process of verification performed by sex offender registrants and law enforcement agencies with respect to offenders sentenced on or after January 1, 1982 and prior to September 18, 1999.

Education and Cultural Affairs

LD 551 – Resolve, To Direct the Commissioner of Education To Review the Essential Programs and Services Funding Formula. (Sponsored by Rep. Finch of Fairfield) **Resolves 2009, c. 197**

Carried over from the first regular session, this Resolve directs the Commissioner of the Department of Education, in conjunction with the Maine Education Policy Research Institute (MEPRI), to conduct a review of certain finance and policy issues associated with the Essential Programs and Services school funding model (EPS). Among the various charges in this Resolve, the Commissioner's review must include analyses of: (1) the original policy goal or educational objective established for each of the EPS cost components and a detailed description of the original and current methodology used to calculate the adequate level of resources to support each component; (2) the subsidy distribution methodology originally established for the EPS funding formula and the current subsidy distribution methodology; (3) the practices found in schools identified by MEPRI as "higher-performing, more efficient" schools and "lower-performing, less efficient" schools; (4) the current statutory framework related to the Commissioner's annual funding level computations and recommendation; and (5) the process of reviewing and updating certain EPS cost components based on information provided by MEPRI. The Commissioner's report must be provided to the Legislature by January 3, 2011.

LD 570 – An Act to Improve the Laws Governing the Consolidation of School Administrative Units. (Sponsored by Rep. Finch of Fairfield) **Emergency Enacted; PL 2009, c. 580 (4/01/10)**

Carried over from the first regular session, this Act amends the body of law governing the mandatory school consolidation process, as originally enacted in 2007 and amended in 2008, to either achieve or allow the following:

- An "Alternative Organizational Structure", or AOS, which was created in law in 2008 in what is known as "unallocated language", is now created in statute as a "school administrative unit" that can meet the requirements of school consolidation law. An "Alternative Organizational Structure" is a modified school union-type system where independent school systems share a superintendent; a consolidated administration of special education, transportation, and back-office business functions; a common core curriculum and student assessment systems; common school policies and calendar; and "consistent" collective bargaining agreements.

- Allows the number of students attending a school from the unorganized territories to be counted as students "served by the school system" for the purpose of meeting consolidation threshold standards.

- Expressly allows a regional school unit (RSU) or AOS to be formed that serves just 1,000 students (as opposed to the original 2,500-student threshold) if the proposed RSU or AOS:

- comprises three or more school units that were in existence prior to July 1, 2008, or

- the member municipalities of the proposed RSU/AOS are surrounded by already approved RSU or AOS systems and there are no other school systems available to join the proposed RSU/AOS, or

- the member municipalities of the proposed RSU/AOS include two or more "isolated small schools" as that term is defined in law.

- Allows an RSU/AOS designation to be granted to one or more school systems even if the 1,000 student threshold is not achieved if the applying school systems can demonstrate and otherwise convince the commissioner of the Department of Education that all reasonable and practical means of satisfying the various RSU standards have been exhausted and approval is warranted based on the unique or particular circumstances of those school units.

- Allows for the purpose of school subsidy distribution the individual school systems within an AOS to have their subsidy calculated as individual school systems, unless the participating schools systems decide in their reorganization plan for the AOS to be treated as a single school system for school subsidy distribution purposes. The governing bodies of existing AOS systems, which were not provided this option, would be given the opportunity to effectively change their reorganization plan in this respect if they wish to.

- Establishes the procedures for a municipality to withdraw from a RSU by essentially reinstating the procedures that used to be available for a municipality to withdraw from a School Administrative District (SAD). Under the terms of the withdrawal process, neither the withdrawing municipality nor the remaining RSU would be subject to the financial penalties for being noncompliant with the standards of consolidation for a 2-year period after withdrawal. If either the remaining RSU or withdrawing municipality are noncompliant with the standards of consolidation at the end of the 2-year period, the penalties would kick-in.

- Provides an authority for the RSU school boards to place an article before the voters that would permit the school board to establish a single common date for the beginning term of office for elected board members, who may be elected at different times at their municipal elections.

LD 1686 – Resolve, To Clarify the Reporting of Debt Service Costs and the Allowance of Minor Capital School Improvement Projects Costs under Essential Programs and Services. (Sponsored by Rep. Rotundo of Lewiston.) **Emergency Passed; Resolves 2009, c. 182 (3/30/10)**

This Resolve directs the Department of Education to convene a stakeholder group, made up of representatives of the Maine School Management Association, to review the current school funding formula as it relates to recognizing, funding and approving non-state-funded debt service costs incurred for minor capital school improvement projects. The stakeholder group must report its recommendations to the Legislature by January 15, 2011.

LD 1705 – An Act To Align the Duties of School Boards Concerning Student Safety with the Requirements of the Federal Gun-Free Schools Act and To Prohibit the Discharge of Firearms within 500 Feet of Public and Private School Properties. (Sponsored by Rep. Martin of Eagle Lake.) **PL 2009, c. 614**

To achieve conformity with federal minimum standards, this Act clarifies that the current prohibitions against possessing a firearm on school property or discharging a firearm within 500 feet of school property applies to both public and private schools. The Act also articulates the standards that apply with respect to the exceptions to the general rule, such as for school board-authorized firearm education and training

programs, authorized “hunters’ breakfasts” that are conducted outside of normal school hours, etc.

Health & Human Services

LD 1592 – An Act To Update the Laws Affecting the Maine Center for Disease Control and Prevention. (Sponsored by Rep. Martin of Eagle Lake.) **(Mandate) PL 2009, c. 589**

This Act makes several changes to the fees assessed by the divisions of the Department of Health and Human Services’ (DHHS) Maine Center for Disease Control and Prevention (CDC). Of municipal relevance are the vital records and plumbing permit fee increases.

With respect to the CDC’s Data, Research and Vital Records division, this Act, which is identified as a state mandate, authorizes DHHS to adopt “major substantive” rules governing the fees the state can assess on towns and cities for the vital records services provided to the municipalities by the CDC, including but not limited to fees for service, paper and supplies. The Act requires DHHS to review the fees it charges by rule every three years, beginning in 2013. To help communities cover the cost associated with the state service fee, the vital records fees assessed and retained at the municipal level are increased as follows: (1) original or corrected birth, marriage or death certificates from \$10 to \$15 (for the first copy) and from \$5 to \$6 (for subsequent copies); (2) burial permit, which is renamed “permit for the disposition of human remains”, from \$5 to \$20; and (3) marriage license from \$30 to \$40. The fee assessed for a burial permit that is paid through the General Assistance program is waived.

With respect to the CDC’s Subsurface Wastewater division, this Act increases the maximum fees that can be assessed for: (1) plumbing permit from \$6 to \$10; (2) combined internal plumbing permit from \$24 to \$40; and (3) non-engineered subsurface wastewater disposal system fee from \$100 to \$250.

LD 1781 – An Act To Allow Electronic Filing of Vital Records and Closing of Records To Guard against Fraud and Make Other Changes to the Vital Records Laws. (Governor’s Bill) **PL 2009, c. 601**

This Act makes a number of changes to the laws governing the management of vital records. Among the several amendments and additions to those laws, this Act: (1) allows the state Registers of Vital Statistics, in addition to municipal clerks, to issue all forms of burial permits, cremation permits, or cremation-burial at sea permits; (2) shortens the time period in which a vital record can be corrected without a formal amendment from one-year to 90 days; and (3) clarifies the rules regarding the release of vital records to interested parties and establishes that the release of these records to the general public can only occur with respect to records that are 100 years old, although certain exceptions must be provided through state-agency rule-making for genealogical research.

LD 1811 – An Act To Amend the Maine Medical Marijuana Act. (Governor’s Bill) **Emergency Enacted; PL 2009, c. 631 (4/09/10)**

This Act makes several amendments to the citizens’ initiative governing medical marijuana dispensaries that was adopted by the voters in November 2009. Many of the amendments clarify certain “authorized conduct” on the part of physicians, dispensaries, patients, and people assisting patients or in their presence so as to differentiate that conduct from otherwise illegal activity. Of interest to municipalities, this Act makes the following clarifying amendments to the citizens’ initiative adopted by the voters in 2009: (1) July 1, 2010 is established as the deadline for the Department of Health and Human

Services (DHHS) to promulgate rules governing the manner in which DHHS considers applications for registration cards for registered patients, registered caregivers, principal officers, board members and employees of dispensaries; (2) the confidentiality provisions governing the process whereby eligible applicants obtain their registration cards are amended to make it clear that nothing related to the process of approving the site location or land use approval of a dispensary at the local level is a confidential proceeding; (3) DHHS is authorized to issue registration cards for no more than one dispensary in each of the state’s eight public health districts in the first year of implementation; and (4) the originally-adopted provision of the citizen’s initiative that expressly authorized municipalities to limit the number of dispensaries and subject the dispensaries to reasonable zoning regulations is expanded to allow for reasonable local regulation that may not be zoning regulation *per se*, such as site plan review regulations.

Insurance & Financial Services

LD 1649 – Resolve, To Increase the Financial Stability of Low-income Families in Maine. (Sponsored by Sen. Simpson of Androscoggin County.) **Resolves 2009, c. 156**

This Resolve directs the Superintendent of Financial Institutions within the Department of Professional and Financial Regulations to establish the “Bank on ME” working group, composed of municipal officials and representatives of state and federal financial institutions, community organizations and state agencies. The working group is responsible for developing and implementing collaborative voluntary initiatives that increase the financial stability of low-income families by increasing awareness of, and access to, basic financial services.

Judiciary

LD 445 – An Act To Improve Tribal-State Relations. (Sponsored by Rep. Priest of Brunswick.) **PL 2009, c. 636**

Carried over from the first regular session, this Act makes a number of changes to the laws governing state and tribal relations. Among those changes, the Act adds the position of Representative of the Houlton Band of Maliseet Indians to the Maine House of Representatives, just as there are currently Representatives of the Penobscot Indian Nation and the Passamaquoddy Tribe. The Act also adds a 714 acre parcel of land in the territory of Argyle in Penobscot County to the Penobscot Indian Reservation. The Act also amends the Interlocal Agreement Act, which allows municipal, county, school and other and quasi-municipal entities, along with state or federal agencies, to formally partner on the delivery of specified services. This Act expressly allows the Passamaquoddy Tribe and the Penobscot Nation, and their political subdivisions, to enter into agreements with other parties under the terms of the Interlocal Agreement Act.

LD 1551 – Resolve, Directing the Right To Know Advisory Committee To Examine Issues Related to Communications of Members of Public Bodies. (Sponsored by Rep. Dostie of Sabattus.) **Resolves 2009, c. 171**

This Resolve directs the Right to Know Advisory Committee to examine three issues related to Maine’s “Freedom of Access” or “Right to Know” laws and provide recommendations on those matters to the Legislature by January 15, 2011. The three issues are: (1) how the state’s Right to Know laws can address the use of electronic communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public; (2) whether the penalties for violations of the right to know laws should be revised, including making them criminal violations; and (3) whether partisan party cau-

cuses, which legislative committees often break into so as to deliberate on legislation behind closed doors, should be specifically excluded from the definition of “public proceedings”.

LD 1722 – An Act To Strengthen Protection from Abuse and Protection from Harassment Laws. (Sponsored by Rep. Haskell of Portland.) **PL 2009, c. 555**

This Act allows for the service of temporary and final protection from harassment and protection from abuse orders when the original court orders have been electronically transmitted directly from the court issuing the order to the authorized law enforcement agency making the service. The Act also allows the return of proof of service to be made by electronic transmission directly to the court from the law enforcement officer making service.

LD 1791 – Resolve, Directing the Right To Know Advisory Committee To Further Examine Requirements That Public Bodies Keep Records of Public Proceedings. (Reported by Rep. Priest of Brunswick for the Joint Standing Committee on Judiciary.) **Resolves 2009, c. 186**

This Resolve directs the Right to Know Advisory Committee to examine issues related to requiring public bodies to keep records of public proceedings (e.g., the mandated production of meeting minutes). The Committee’s examination must include the form and maintenance of the records to be kept, the time period within which the records must be made available, how long the records must be retained, the appropriate content of the records, and whether failure to comply with the records requirements results in the invalidation of any action taken by the public body. The Committee must submit its report to the Legislature by February 15, 2011.

LD 1792 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions. (Reported by Rep. Priest of Brunswick for the Joint Standing Committee on Judiciary.) **PL 2009, c. 567**

This Act implements a number of recommendations of the Right to Know Advisory Committee which are generally focused on statutory language in various places in Maine law regarding confidentiality provisions. In addition, this Act includes a recommendation of the Right to Know Advisory Committee to give itself the charge of reviewing and making recommendations concerning the issues involved with requests for public records in bulk, including: (1) public access to data bases; (2) protection of personal information not expressly designated as confidential but contained in data bases that include public records; (3) reasonable costs for copies when public records are requested in bulk; (4) whether access to public records or the costs of their reproduction should be based on the intended or subsequent use of the information requested in bulk; and (5) the acceptable formats for responses to requests for bulk records.

LD 1802 – Resolve, Directing the Right To Know Advisory Com-

mittee To Examine Issues Related to Private Information Contained in the Communications of Public Officials. (Sponsored by Rep. Hill of York.) **Resolves 2009, c. 184**

This Resolve directs the Right to Know Advisory Committee to examine issues relating to the protection of private information contained in communications, electronic or otherwise, that are sent and received by public officials, particularly communications between elected public officials and their constituents. The advisory committee is asked to consider confidentiality requirements related to legislators’ oversight responsibilities, as well as appropriate warning for public officials to provide with regard to communications that are or may be public records. The advisory committee must submit its recommendations to the Legislature no later than November 30, 2010.

Labor

LD 1524 – Resolve, Directing the Department of Labor To Research and Analyze the Methods Other States Utilize To Assess Benefit Charges When a Worker Becomes Unemployed and Receives Benefits. (Sponsored by Rep. Beaulieu of Auburn.) **Resolves 2009, c. 147**

This Resolve directs the Department of Labor to examine the methods employed by other states to assess benefit charges when a worker who has multiple employers becomes unemployed and receives unemployment benefits, and prepare a report on the information gathered. One focus of that report is how to best protect employers from inequitable assessments. The Department’s report must be submitted to the Legislature no later than January 15, 2011.

LD 1558 – An Act Regarding Accidental Death Benefits for Beneficiaries of Deceased Firefighters. (Sponsored by Sen. Jackson of Aroostook County.) **PL 2009, c. 513**

This Act provides an accidental death retirement benefit to the beneficiary of a professional firefighter who dies from cardiovascular injury or disease or pulmonary disease, provided the firefighter was a member of the Participating Local District Retirement Program administered by the Maine Public Employees Retirement System and the injury or disease that caused the firefighter’s death is the result of a condition that developed within 30 days of the active member’s participating in firefighting or training or a drill that involves firefighting. If the professional firefighter dies after 30 days but within 6 months of participating in firefighting or training or a drill that involves firefighting, the Act establishes a rebuttable presumption that the death is the result of an injury arising out of and in the course of employment as a professional firefighter. The Act makes the death benefit retroactive to November 1, 2004.

LD 1582 – An Act To Bring the Laws of the Maine Public Employees Retirement System into Compliance with the Federal Internal Revenue Code. (Sponsored by Rep. Tuttle of Sanford.) **PL 2009, c. 474**

This Act makes changes to the laws governing the qualified defined benefit retirement programs administered by the Maine Public Employees Retirement System to conform them to provisions in the United States Internal Revenue Code in order to ensure the continued qualified status and favorable tax treatment of the programs.

LD 1595 – An Act To Provide Continued Protection of Benefits for Retirees of the Maine Public Employees Retirement System. (Sponsored by Sen. Mitchell of Kennebec County.) **PL 2009, c. 473**

This Act amends the laws governing the Maine Public Employees Retirement System by requiring that if the Consumer



Representative Charlie Priest (Brunswick), as House Chair of the Judiciary Committee, was keenly sensitive to the impact three different bills related to the Freedom of Access Act would have had on municipalities. His leadership helped ensure that the Right to Know Advisory Committee would further develop and refine these pieces of legislation.



Representative Jim Hamper (Oxford) was a diligent and persistent advocate for municipalities this session both as a member of the Natural Resources Committee and in his work with the Labor Committee. On both fronts, his efforts improved several pieces of municipally-related legislation.

Legal & Veterans Affairs

LD 1596 – An Act Regarding Mobile Service Bars at Municipal Golf Courses. (Sponsored by Sen. Perry of Penobscot County.) **Emergency Enacted; PL 2009, c. 472 (2/23/10)**

Current law allows golf courses with appropriate liquor licenses to dispense malt liquor from a licensed mobile service bar. This Act authorizes municipalities that own golf courses to contract with restaurants or lounges licensed to sell alcoholic beverages so that the employees of the contracted restaurant or lounge may sell or dispense malt liquor from a mobile service bar on the municipal golf course.

LD 1579 – An Act To Facilitate Voting by Uniformed Service and Overseas Voters. (Sponsored by Rep. Willette of Prisque Isle.) **Emergency Enacted; PL 2009, c. 563 (3/29/10)**

This Act allows voters from all municipalities in the state to request absentee ballots using the Secretary of State's online absentee ballot request service. The Act also allows the Secretary to facilitate voting by uniformed service and overseas voters by allowing for the central issuance, receipt and counting of their absentee ballots by the Secretary of State's Office. The Act requires the Secretary to adopt rules regarding the central issuance and processing of absentee ballots for uniformed and overseas voters to ensure the ballots are examined, counted and stored in the same manner as regular absentee ballots, and further requires the Secretary to issue a report on the central issuance and processing of absentee ballots to the Legislature by March 1, 2011. The Act stipulates that its provisions do not apply to the primary election scheduled to occur in June 2010.

LD 1627 – An Act To Improve Access to Data in the Central Voter Registration System. (Sponsored by Rep. Trinward of Waterville.) **PL 2009, c. 564**

This Act makes a number of changes to the laws governing the centralized voter registration system, with a primary focus on the management of that system by the Secretary of State's Office. Among those changes, the Act amends the fee schedule that pertains to the provision of voter information by electronic form by increasing the fee in all number-of-voter categories by

Price Index (CPI) decreases for one or more years, retirement benefit cost of living increases, which are pegged to CPI, must not go negative. This protection against cuts to retirement benefits must be provided in a cost-neutral fashion such that subsequent increases in the CPI must be off-set by the negative CPI amounts avoided.

LD 1626 – An Act To Amend the Unemployment Compensation Laws Regarding Vacation Pay. (Sponsored by Rep. Pingree of North Haven.) **PL 2009, c. 638**

Under current law, a person who is laid off from employment must effectively use up his or her accrued vacation time before becoming eligible for unemployment benefits. This Act would allow employees who are laid-off to receive unemployment insurance payments for any period that the worker also receives vacation pay.

10%. The Act also entitles the person paying the fee and receiving the electronic records to receive, upon request, up to 11 updates free of charge during the subsequent 12-month period, with no more than one free update during any 30-day period.

LD 1656 – Resolve, To Transfer the Ownership of the Bath Armory to the City of Bath. (Sponsored by Sen. Goodall of Sagadahoc County.) **Resolves 2009, c. 143**

This Resolve directs the transfer of ownership of the Bath Armory from the State to the City of Bath for a sum of not less than \$175,000 as long as the City agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs, that may arise in connection with the land and buildings being transferred.

LD 1667 – An Act To Amend the Election Laws and Other Related Laws. (Sponsored by Sen. Sullivan of York County.) **PL 2009, c. 538**

This Act makes a number of technical and minor substantive changes to the state's election laws. Among those changes, the Act: (1) clarifies that certain restrictions on the offices a registrar of voters may hold apply only with respect to the electoral division in which the registrar is appointed; (2) allows that when there is a vacancy in the office of warden, ward clerk or deputy warden, those vacant positions can be filled on a per-election basis until the vacancy is filled with qualified persons who are registered voters of the county rather than registered voters of the municipality which they serve; (3) removes the requirements that the fiscal impact statement for direct initiatives of legislation must be placed in each booth on election day and replaces it with a requirement that the fiscal information be posted with the sample ballots outside the guardrail so as to be visible to the voters; and (4) clarifies that any member of the public, and not just candidates or candidates' representatives, may inspect absentee ballot envelopes and applications before they are processed according to the procedures and times as established in law.

LD 1730 – An Act To Strengthen the Ballot Initiative Process. (Sponsored by Sen. Nutting of Androscoggin County.) **PL 2009, c. 611**

This Act creates a registration requirement for companies that receive compensation to circulate petitions to advance statewide citizen initiatives or "peoples' veto" initiatives. In addition to those companies having to register with the Secretary of State's Office prior to circulating any petitions, each page of the circulated petitions must include a space for the circulator to place his or her name, along with a unique identifying number. The Act further provides that all circulated petitions must be signed by the circulator and notarized prior to being submitted to the municipal election officials for signature verification, and if they are not properly signed and notarized, the municipal registrar may not certify the petitions and must return them to the circulator. In addition, the Act mandates that any municipal registrar or clerk who suspects that a petition is submitted in violation of any of the circulation requirements must immediately notify the Secretary of State and provide a copy of the petition to the Secretary.

LD 1790 – An Act To Implement the Recommendations of the Working Group To Study Landlord and Tenant Issues. (Reported by Rep. Trinward of Waterville for the Joint Standing Committee on Legal and Veterans Affairs.) **PL 2009, c. 566**

This Act implements a number of recommendations of a working group studying landlord and tenant issues. Among the various recommendations, this Act expands the law enacted in 2009 that allows a municipality to provide heating fuel in

certain circumstances to an apartment building when necessary to ensure the habitability of the property, and further establishes a process for the municipality to place a lien on the property to recover those costs. This Act expands that authority so a municipality could provide “basic necessities” other than heating oil according to the same procedures. The term “basic necessities” is defined as services, including but not limited to maintenance, repairs, and provision of heat and utilities, that a landlord is responsible to provide under the terms of a lease, a tenancy at will agreement or applicable law.

Natural Resources

LD 891 – Resolve, To Develop Practices for Developments of State and Regional Significance in Order to Reduce Dependency on Imported Fossil Fuels and Meet the State’s Greenhouse Gas Emissions Reduction Goals. (Sponsored by Sen. Seth Goodall of Sagadahoc County.) **Resolves 2009, c. 206**

This Resolve directs the Department of Environmental Protection (DEP), in consultation with the Efficiency Maine Trust Board, the Technical Building Codes and Standards Board, and experts in energy efficiency, to provide recommendations for the design and operation of non-industrial and non-manufacturing developments subject to the state’s Site Location of Development Act that when applied will ensure that the development will further the state’s climate action plan by minimizing overall energy use and dependence on fossil fuels, avoiding or minimizing emissions of greenhouse gases while considering mitigation and maximum energy efficiency. The DEP must submit a report on the recommended practices to the Legislature by January 1, 2011. The Resolve also directs the DEP, consulting with the same entities and according to the same report-back schedule, to evaluate the energy performance of the Maine Uniform Building and Energy Code in relation to other commonly used energy-efficiency benchmarking systems (e.g., the United States Green Building Council’s “LEED” system, etc.) and make recommendations as to whether the developments subject to the Site Location of Development Act that are designed and operated to those benchmarking systems will further the state’s climate action plan by minimizing overall energy use and dependence on fossil fuels, avoiding or minimizing emissions of greenhouse gases while considering mitigation and maximum energy efficiency.

This Resolve also directs the DEP, in consultation with the State Planning Office, the Department of Transportation, and technical experts in architecture, transportation and site development, to develop a series of best management practices for the design and site layout of developments subject to the Site Location of Development Act that will contribute to minimizing or avoiding the emission of greenhouse gases, maximizing energy efficiency and reducing dependence on fossil fuels. The DEP must submit the report on those best management practices to the Legislature by January 1, 2011.

LD 1526 – Resolve, Regarding Legislative Review of Portions of Chapter 700: Wellhead Protection: Siting of Facilities That Pose a Significant Threat to Drinking Water, a Major Substantive Rule of the Department of Environmental Protection. (Reported by Rep. Duchesne of Hudson.) **Emergency Passed; Resolves 2009, c. 149 (2/18/10)**

This Resolve provides final legislative authorization of a rule promulgated by the Department of Environmental Protection entitled Chapter 700: Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water. The rule regulates the siting of facilities such as automobile graveyards, automobile body shops or other commercial automobile maintenance and repair facilities, dry cleaners, metal finishing

and plating facilities and commercial hazardous waste facilities within wellhead protection zones and over certain ground water aquifers.

LD 1527 – Resolve, Regarding Legislative Review of Portions of Chapter 692: Siting of Oil Storage Facilities, a Major Substantive Rule of the Department of Environmental Protection. (Reported by Rep. Duchesne of Hudson.) **Emergency Passed; Resolves 2009, c. 148 (2/18/10)**

This Resolve provides final legislative authorization of a rule promulgated by the Department of Environmental Protection entitled Chapter 692: Siting of Oil Storage Facilities. Chapter 692 combines the existing siting standards and restrictions for underground storage facilities found in Chapter 691 with new, identical provisions for aboveground storage facilities.

LD 1553 – An Act To Facilitate Establishment of Watershed Districts. (Sponsored by Rep. Eberle of South Portland.) **Emergency Enacted; PL 2009, c. 506 (3/15/10)**

This Act clarifies that the laws enabling the creation of watershed management districts are open rather than exclusionary enabling laws, and a watershed management district can also be created by one or more municipalities pursuant to municipal home rule authority or municipal interlocal cooperation authority. The Act further establishes this clarification to apply retroactively to July 1, 2009. The Act also amends the laws governing site location of development to authorize the Department of Environmental Protection to make a finding that the storm water management standards are met if a redevelopment project is located in a watershed with an approved watershed management plan and the developer has obtained the necessary approvals or entered into the necessary agreements to participate in that management plan.

LD 1573 – An Act To Improve Water Quality through the Phaseout of Overboard Discharges and the Improvement of the Boat Pump-out Laws. (Sponsored by Rep. Pingree of North Haven.) **PL 2009, c. 654**

This Act amends the laws governing the replacement and licensing of overboard discharge systems in several ways. Among the various changes, this Act rewrites and builds-up the so-called “transfer” provisions that apply when a property operating an overboard discharge system is transferred or is significantly reconstructed (“significant action”) or there is a division of the lot upon which the system is located. A “significant action” is defined as a single construction project performed on a primary residence with an overboard discharge system when the total material and labor cost of the construction project exceeds \$50,000. Certain exemptions are provided if the construction is to make the residence accessible to the disabled or in response to fire or severe weather-related damage. At the center of the transfer or “significant action” provisions is a requirement that an analysis must be conducted regarding the possibility of installing a technologically proven alternative to the overboard discharge and, if so, that the alternative system be installed within 90 days of the transfer or significant action provided certain grant and loan funds are available to financially assist with the installation.

LD 1603 – An Act To Amend Laws Administered by the Department of Environmental Protection. (Sponsored by Sen. Goodall of Sagadahoc County.) **PL 2009, c. 501**

This Act, submitted by the Department of Environmental Protection, is a housekeeping Act making a number of technical amendments to the state’s environmental laws. Among those amendments, this Act restores to its original language a section of law governing the authority of a town meeting or village corporation to authorize the municipal officers to use

municipal highway equipment on private ways whenever it is considered advisable for fire and police protection. With the enactment of legislation in 2009 related to another subject (providing a limited authority to use public resources on private roads for water quality protection purposes), this section of law was inadvertently expanded to implicitly allow for the regular or ongoing winter maintenance of private roads (rather than private ways) for the stated purpose of fire and police protection.

LD 1631 – An Act To Provide Leadership Regarding the Responsible Recycling of Consumer Products. (Sponsored by Rep. Walsh Innes of Yarmouth.) **PL 2009, c. 516**

This Act authorizes the Department of Environmental Protection to submit on an annual basis to the Legislature's Natural Resources Committee a report regarding products and product categories that when generated as waste may be appropriately managed under a "product stewardship program", which is a program financed without a visible fee at purchase that is either managed or provided by the producer of the product and includes the collection, transportation, reuse and recycling or disposal of the unwanted product. The Natural Resources Committee, in turn, is authorized by this Act to annually submit legislation that would establish a new product stewardship program or revise an existing program.



Representatives Melissa Walsh Innes (Yarmouth) and Stacy Dostie (Sabattus) both reached out to MMA prior to submitting their separate legislative proposals this session. This kind of outreach and communication is relatively unusual. MMA staff greatly appreciates this higher level of interest in the municipal perspective.

LD 1716 – An Act To Expedite Rulemaking Concerning Agronomic Utilization of Sludge. (Sponsored by Rep. Duchesne of Hudson.) **PL 2009, c. 507**

This Act changes the status of rules adopted by the Department of Environmental Protection relating to the agronomic utilization of sludge. Those rules are currently "major substantive" rules, ultimately requiring legislative approval before final adoption. This Act gives those rules a "routine technical" status, so that legislative approval is not a necessary step in the approval process.

LD 1725 – Resolve, Regarding Legislative Review of Portions of Section 10: Stream Crossings within Chapter 305 Permit by Rule Standards, a Major Substantive Rule of the Department of Environmental Protection. (Reported by Rep. Duchesne of Hudson for the Department of Environmental Protection.) **Resolves 2009, c. 208**

LD 1699 – An Act To Update and Modernize Maine's Floodplain Mapping. (Sponsored by Rep. Legg of Kennebunk.) **Emergency Enacted; PL 2009, c. 522 (3/18/10)**

This Act establishes a Floodplain Mapping Fund within the State Planning Office and initially capitalizes the Fund with \$500 for each year of the FY 2010-11 biennium. The Fund may be further capitalized with contributions from private sources, federal funds, bond funds issued or other funds received for the purpose of floodplain mapping.

This Resolve provides final legislative authorization of part of a rule promulgated by the Department of Environmental Protection (DEP) entitled Chapter 305 Permit by Rule Standards. The Resolve is the result of legislation enacted last spring which required the Department of Environmental Protection to amend its permit-by-rule standards under the Natural Resources Protection Act (Chapter 305) in such a way as to require municipalities to achieve "natural stream flow" when installing road culverts for the purpose of protecting water passageways for fish and other aquatic organisms. As originally promulgated by DEP, the proposed rule required two significant changes. First, culverts must be embedded in a riverbed and not just laid upon it. Second, the size of the culvert must equal the size of the river channel at its "bank-full" level. As finally passed, the Resolve limits the application of these standards to the construction of new stream crossings only. The Resolve further directs the DEP, along with the Departments of Transportation, Inland Fisheries and Wildlife, and Marine Resources, to conduct a series of meetings with municipal public works officials to provide training, information and opportunities to evaluate stream crossings subject to the requirements of the rule as approved by the Resolve as well as stream crossings already in existence that might become subject to these types of rules. The meetings must be held in locations around the state to provide for widespread participation by municipal officials and must provide opportunities for field work. After conducting those meetings, the DEP is authorized by the Resolve to adopt major substantive rules regarding stream crossings already in existence, and submit those provisionally-adopted rules to the Legislature by January 1, 2011 for legislative review.



Senator David Trahan (Lincoln Cty.) was instrumental this session in bringing together the parties that had an interest in LD 1725, the "culvert bill", and securing an outcome that requires the Department of Environmental Protection to work with the municipalities on amending the culvert rules.

LD 1787 – An Act To Provide for Legislative Review of Recently Proposed Revisions to Certain Rules Adopted Pursuant to the Site Location of Development Laws and the Storm Water Management Laws. (Sponsored by Sen. Goodall of Sagadahoc County.) **Emergency Enacted; PL 2009, c. 602 (4/02/10)**

This Act establishes that most rules adopted by the Department of Environmental Protection in the category of Site Location of Development regulation between January 1, 2010 and January 1, 2012, including storm water management rules, are "major substantive rules" and therefore need to be ultimately approved by the Legislature. The Act further establishes that DEP Site Location rules promulgated after January 1, 2012 are routine technical rules and therefore would not require subsequent legislative ratification.

LD 1818 – Resolve, To Continue Evaluating Climate Change Adaptation Options for the State. (Reported by Sen. Goodall of Sagadahoc County.) **Resolves 2009, c. 195**

In 2009, the Legislature enacted a Resolve that directed the Department of Environmental Protection (DEP) to convene a stakeholder group made up of representatives of the business community, non-governmental organizations and state government to study the impacts of climate change on, among other systems, built infrastructure including coastal and inland flood-

ing effects on roads and facilities, the heat effects in urban centers, beach scouring, water supplies and drinking water, emergency response systems, etc. According to that Resolve, the DEP submitted a report to the Legislature identifying the findings and recommendations of that effort. This Resolve directs the DEP and the stakeholder group to continue those efforts to evaluate the options and actions available to Maine people and businesses to prepare for and adapt to the most likely impacts of climate change. The DEP must submit a report on the progress of developing a plan for state climate change adaptation to the Legislature by January 31, 2011, and its final plan by January 31, 2012.

State & Local Government

LD 1512 – An Act To Amend the Laws Governing the Somerset County Budget Procedure. (Sponsored by Rep. Curtis of Madison.) **Emergency Enacted; PL 2009, c. 576 (3/31/10)**

This Act amends the law governing the Somerset County budget procedure to allow the county to operate on a provisional budget that does not exceed the previous year's budget if the county budget is not approved before the start of the fiscal year. The previous law restricted the provisional budget to be no more than 80% of the previous year's budget.

LD 1513 – An Act to Authorize Municipal Officers to Resolve Road-naming Disputes. (Sponsored by Rep. Magnan of Stockton Springs.) **PL 2009, c. 477**

This Act authorizes the municipal officers to make the final decision when there is a dispute in the naming of a town way, private way or private road for E-911 purposes, unless an alternative decision-making authority is otherwise provided by local ordinance or charter.

LD 1554 – An Act Regarding Document Fees at County Registries of Deeds. (Sponsored by Rep. Crockett of Augusta.) **PL 2009, c. 575**

This Act establishes the basis for a fee a county may charge for providing a person copies or abstracts from its registry records. The Act allows the commissioners to determine potentially different fees for different categories of abstracts and copies, and further authorizes the commissioners to consider the following factors when determining those fees: the cost of depleted supplies, record storage media costs, actual mailing and alternative delivery costs, amortized infrastructure costs, direct equipment operating and maintenance costs, costs associated with media processing time, personnel costs including actual costs paid to private contractors for copying services, contract and contractor costs for database maintenance and for online provision and bulk transfer of copies, and a reasonable rate related to the dedication of a computer server.

LD 1569 – An Act To Clarify the Informed Growth Act. (Sponsored by Rep. Beaudette of Biddeford.) **Emergency Enacted; PL 2009, c. 549 (3/25/10)**

This Act adds the following "clarification" to the Informed Growth Act (IGA). The IGA mandates a certain analytical review before a "big box" retail store can be approved for construction. This Act clarifies that the IGA does not apply when the retail business is proposing to occupy an existing building in which the most recent occupant was a large-scale retail development and the building will not be expanded by more than 20,000 square feet.

LD 1718 – An Act To Amend the Laws Relating to Government Records. (Sponsored by Rep. Adams of Portland.) **PL 2009, c. 509**

This Act establishes that a record created by or belonging to the state or any local or county government in the state remains the property of the state until ownership and possession are formally relinquished in accordance with applicable rules and statute, and that the state's ownership pertains regardless of when the record was created. To facilitate an understanding of this law, the Act directs the State Archivist to prepare a detailed explanation, written in plain language that includes practical examples of what constitutes a "record" and "records belonging to the State or to a local government or any agency of the State".

LD 1832 – An Act To Amend the Laws Governing the Election of Androscoggin County Commissioner District Budget Committee Members. (Sponsored by Sen. Craven of Androscoggin County.) **Emergency Enacted; PL 2009, c. 650 (4/13/10)**

This Act amends the law governing the method of calculating the votes for the Androscoggin County budget committee members to reflect the current commissioner districts which were reapportioned in 2003.

Taxation

LD 71 – Resolve, To Create a Working Group To Review the Property Tax Exemption for Veterans. (Sponsored by Rep. Nass of Acton.) **Resolves 2009, c. 181**

Carried over from the First Regular Session, this Resolve directs Maine Revenue Services to convene a working group to review the current property tax exemption for veterans and make recommendations for changes that will increase that exemption. The working group is instructed to review alternatives for increasing the exemption, such as by increasing it on a one-time basis or increasing it over time either by indexing it to inflation or increasing it at a 5% annual rate. The working group must include representatives of the Bureau of Maine Veterans' Services, the Maine Municipal Association and other interested parties. The report of the working group must be submitted to the Legislature by January 15, 2011.

LD 839 – An Act To Authorize an Alternative Calculation of the Property Growth Factor for Municipalities with Exempt Personal Property. (Sponsored by Rep. Gilbert of Jay.) **PL 2009, c. 545**

Carried over from the first regular session, this Act authorizes a municipality that has a significant amount of personal property in its tax base to include the value of newly installed personal property in the numerator and the denominator of the calculation of that municipality's growth factor under the LD 1 property tax levy limit system even though the newly installed personal property is exempt from taxation.

LD 1121 – An Act To Protect Elderly Residents from Losing Their Homes Due to Taxes or Foreclosure. (Sponsored by Rep. Chase of Wells.) **PL 2009, c. 489**

This Act authorizes the legislative body of a municipality to adopt an ordinance creating a program that would allow all homeowners 70 years of age or older to have the property taxes for their residences (and the land upon which the residence is located) deferred for an indefinite period provided the applicant has lived in the homestead property for at least 10 years and has an income at the time of application that is less than 300% of the federal poverty level. The right to this property tax deferral expires when the applicant dies, no longer owns the property, or no longer resides in the property (unless the absence is related to health issues). When the municipality establishes the applicant no longer qualifies for the deferral, the deferred taxes plus interest are owed within the next 45 days.

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The applicable interest rate is the established interest rate for delinquent taxes plus one-half of one percent (.5%). If the deferred taxes are still unpaid at the conclusion of the 45-day period after notification, the normal tax lien paperwork must be filed in the registry and the deferred tax obligation could be fully enforced 18 months later. A public policy issue associated with this "local option" elderly tax deferral program is that only one member of a household needs to qualify with respect to the age and length-of-residency standards for the entire household to be eligible for the deferral, and it would appear that the household income standard only has to be met at the time of application and not thereafter. There are also administrative issues associated with managing this local option program that should be carefully considered by a municipality before implementation, including: (1) administering the application part of the program confidentially; (2) filing annual reports in the registry of deeds listing the properties falling within the deferred tax collection program and the value of the deferred taxes; (3) completely discharging tax liens by default by inadvertently or mistakenly failing to file an annual listing in the registry of deeds or forgetting to include a deferred property in the annual listing which had previously been listed in the annual filing.

LD 1514 – Resolve, To Promote Efficiency and To Streamline Access to the Circuitbreaker Program Application Process. (Sponsored by Rep. Crockett of Augusta.) **Resolves 2009, c. 189**

This Resolve directs Maine Revenue Services to explore with the Department of Health and Human Services (DHHS) the possibility of coordinating the determination of eligibility for the "Circuit Breaker" property tax and rent rebate program with income information available through DHHS' Automated Client Eligibility System (ACES). A report on that study must be submitted to the Legislature by January 15, 2011.

LD 1539 – An Act Concerning Technical Changes to the Tax Laws. (Sponsored by Rep. Watson of Bath.) **PL 2009, c. 496**

This Act provides a number of "technical" changes to the state's tax laws. "Technical changes" legislation typically rewrite sections of existing statutes in a way to remove unintended ambiguities. Among the several clarifications within this Act, the law governing state reimbursements to businesses under the Business Equipment Tax Reimbursement program (BETR) is clarified to provide that with respect to BETR property assessed for the first time after 4/1/08 and any BETR property that has been enrolled in the program over 12 years, the so-called "double dip" is extinguished; that is, reimbursement may not exceed the actual property taxes paid on the qualifying property less any tax increment financing refund received.

LD 1540 – An Act To Amend the Tax Laws. (Sponsored by Rep. Watson of Bath.) **PL 2009, c. 625**

Initially prepared by Maine Revenue Services, this Act provides a number of amendments to Maine's tax laws that are somewhat more substantive than purely technical house-keeping legislation. Among the many provisions of this Act, it amends the law governing when the counties must issue their warrant to both the municipalities and the state tax assessor by fixing July 15th as the latest date for the issuance of that warrant and requiring a county to pay for any costs associated with a making a supplemental assessment if the county fails to meet that deadline.

LD 1635 – An Act To Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program. (Sponsored by Rep. Watson of Bath.) **(Mandate) PL 2009, c. 577**

Current law requires assessors to provide a 60-day notice

to landowners in the Tree Growth program who fail to provide the assessor with the necessary 10-year update certifications. This Act rewrites the assessors' notification procedures in the following way:

1. The existing 60-day notification procedure (which as written does not allow the notification to be issued until the landowner had already failed to meet his or her 10-year deadline) is repealed and replaced with a more flexible, pre-deadline notification procedure.
2. For any Tree Growth landowner whose 10-year deadline is approaching and who has not filed the necessary certifications, the assessor must issue a written notice, sent by regular U.S. mail, that includes the following information:
 - The specific date of the deadline;
 - The statutory citation that describes the landowner's responsibilities, which is 36 MRSA §574-B; and
 - A statement that the consequences of failing to meet the deadline could result in substantial financial penalties being assessed against the owner.
3. This particular notice must be mailed within 185 days, or 6 months, of the deadline.
4. If the notice is mailed between 185 days and 120 days of the deadline, then the specific date of the deadline is the final deadline, and if the landowner fails to provide the necessary certifications by that day, the property is removed from the Tree Growth program and the penalties are applied.
5. If the notice is mailed within 120 days (4 months) of the deadline, the notice must inform the owner that he or she has a full 120 days from the date of the notice to provide the assessor with the documentation to achieve compliance, and provide the actual date of that 120-day deadline. In this case, the 120-period expressly trumps the specific date of the initial deadline.

LD 1694 – Resolve, To Increase Transparency and Accountability and Assess the Impact of Tax Expenditure Programs. (Sponsored by Rep. Cain of Orono.) **Resolves 2009, c. 199**

This Resolve directs the Department of Administrative and Financial Services to convene a working group of state agencies to develop recommendations about quantifying the effectiveness of the state's "tax expenditure programs". "Tax expenditure programs" include tax exemptions or tax rebate programs designed to support or enhance business activities, and include the Business Equipment Tax Reimbursement program (BETR), municipal tax increment financing programs (TIFs), Employment Tax Increment Financing programs (E-TIFs), Pine Tree Zone program, etc. The working group is charged with defining the purpose of each tax expenditure programs, designing a method of collecting data that measure the economic impact of each tax expenditure program, and recommending a regular reporting schedule for that data to be presented to and reviewed by the Taxation Committee. The Working Group's report must be presented to the Legislature by November 3, 2010.

LD 1807 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2010- 11 and To Make Certain Changes in the Laws Governing Tax Increment Financing Payments in the Unorganized Territories. (Reported by Rep. Watson of Bath for the Department of Audit.) **Emergency Enacted; PL 2009, c. 619 (4/08/10)**

This Act establishes the "municipal cost components" for state and county services provided to the unorganized territories (UT), which establish the property taxes for the UT.

LD 1812 – Resolve, Regarding Legislative Review of Chapter 37: Voluntary Municipal Farm Support Program, a Major Substantive Rule of the Department of Agriculture, Food and Rural Resources. (Reported by Rep. Pieh of Bremen for the Department of Agriculture, Food and Rural Resources.) **Emergency Passed; Resolves 2009, c. 187 (3/31/10)**

This Resolve finally implements the major substantive rules promulgated by the Department of Agriculture regarding the voluntary municipal farm support program, which allows a legislative body of a municipality to exchange property tax payments from a farm property for the development rights of that property for periods of no less than 20 years.

LD 1823 – Resolve, To Review and Update the Telecommunications Taxation Laws. (Reported by Rep. Watson of Bath.) **Resolves 2009, c. 202**

This Resolve directs Maine Revenue Services to convene a working group to review the current telecommunications tax structure and make recommendations for modernizing the applicable tax codes. In addition to Maine Revenue Services, the working group includes MMA, incumbent local exchange carriers, newer competitive phone services such as the wireless carriers, and the cable industry. The charge to the working group is to review options for updating the telecommunications tax law in a way that is revenue neutral for the state and provides equitable tax treatment of the telecommunications providers. Maine Revenue Services must report any recommendations back to the Legislature by January 17, 2011.

Transportation

LD 1503 – An Act To Establish Emergency Zones on Public Ways To Minimize Accidents. (Sponsored by Sen. Trahan of Lincoln County.) **PL 2009, c. 554**

This Act creates a traffic infraction for failing to operate a motor vehicle in a careful and prudent speed when approaching or passing through an emergency zone, or failing to have due regard for the safety of any individual present in the emergency zone. The Act defines an emergency zone as any portion of a travelled way where at least one stationary ambulance or emergency medical service, fire department, hazardous material response or police vehicle is located with emergency lights in use. An emergency zone may be identified by any method reasonably visible to an approaching operator, including vehicle emergency lights, signs, traffic cones, flaggers or mobile lighting.

LD 1561 – An Act To Regulate the Use of Automated License Plate Recognition Systems. (Sponsored by Sen. Damon of Hancock County.) **PL 2009, c. 605**

This Act regulates the use of automated license plate recognition systems as may be used by transportation or law enforcement agencies. The recognition systems are defined as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. The Act creates a general prohibition against the use of automated license plate recognition systems, with three exceptions.

The Maine Department of Transportation may use them to protect public safety and transportation infrastructure; the Maine State Police may use them for the purposes of motor vehicle screening and inspection; and any state, county or municipal law enforcement agency may use them when providing public safety, conducting criminal investigations and ensuring compliance with local, state and federal laws. Specifically, a law enforcement officer may use the collected license plate data only when based on specific and articulable facts of a concern

for safety, wrongdoing or a criminal investigation or pursuant to a civil order or records from the National Crime Information Center database or official published law enforcement bulletin. The data that are collected and retained through the use of the automated license plate recognition system are confidential and not public records, although summary reports using aggregate data regarding the overall use or effectiveness of the systems may be published and released. The data collected by the automated license plate recognition systems that do not fall within the definition of intelligence and investigative information may not be stored for more than 21 days.

In addition, this Act directs the Secretary of State to establish a working group to study and assess potential issues relating to the use of automated license plate recognition systems. The working group must include representatives of the Maine State Police, local and county law enforcement agencies, the Department of Transportation, the Maine Turnpike Authority, and representatives of organizations representing privacy and constitutional interests. The working group's report must include model policy language or draft legislation related to its findings regarding the use of this technology. The report must be submitted to the Legislature by January 15, 2011.

LD 1639 – An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs. (Sponsored by Rep. MacDonald of Boothbay.) **PL 2009, c. 648**

This Act establishes the standards governing major transportation-related construction partnerships between private sector construction companies and the Maine Department of Transportation (MDOT). In summary, the Act provides a framework for private sector companies to propose projects to MDOT where the initial capital cost of the project is \$25 million or more and the state's capital funding obligation is less than 50% of the initial capital cost, including transportation projects that involve the installation of tolls. The Act further requires MDOT to prioritize all proposals and authorizes the Department to further negotiate with the company or companies submitting the highest priority proposal. When the proposal is finally developed, the Act requires the proposal to be submitted to the Legislature for approval. With respect to local government, the Act requires that all proposals must provide that all reasonable costs of substantially affected local governments and utilities related to the construction proposal are borne by the private entity or are otherwise provided for to the satisfaction of MDOT. The Act also requires that notices of unsolicited but otherwise qualified proposals received by the Department must be mailed to each local government in the area affected by the proposal.

LD 1675 – An Act To Reduce Noise Caused by Motorcycles and Improve Public Health. (Sponsored by Sen. Sullivan of York County.) **PL 2009, c. 624**

Effective January 1, 2012, this Act requires motorcycle inspection stickers to be affixed to the rear of the motorcycle, either on a mounting plate secured to the motorcycle's frame or on a rear fender or similarly integral part of the motorcycle's frame. The Act also directs the Maine State Police to convene a working group made up of motorcycle enthusiasts, citizen groups, municipal officials, the motorcycle industry and local law enforcement agencies. The working group is charged with studying the most feasible ways to implement motorcycle noise emission standards and how to incorporate those standards into Maine law. The Maine State Police must issue its report to the Legislature by January 15, 2011.

LD 1736 – An Act To Improve Safety on Maine's Primary and Secondary Roads, Reduce Road Maintenance Costs

and Improve the Environment and the Economy by Allowing Certain Heavy Commercial Vehicles on the Interstate Highway System in Maine. (Sponsored by Sen. Damon of Hancock County.) **Emergency Enacted; PL 2009, c. 469 (2/12/10)**

Federal law was enacted with an effective date of December 16, 2009 providing Maine an exemption from the federal 80,000 lb. truck weight limit on federal interstate highways for a one-year trial period, thereby allowing trucks with a gross vehicle weight of 100,000 lbs. or less to operate on those highways. This Act parallels the federal law by allowing tractor trailer vehicles with a gross vehicle weight up to 100,000 lbs. to operate on the Maine Interstate Highway System for as long as federal law exempts the state from the 80,000 lb. federal limit.

LD 1728 – An Act To Make Supplemental Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2010 and June 30, 2011 (Governor’s Bill) **Emergency Enacted; PL 2009, c. 600 (4/02/10)**

This Act is the supplemental Highway Fund budget for the FY 2010-11 biennium, designed to bridge a \$13.5 million gap between appropriations and recently re-projected Highway Fund revenues. Much of the deficit is covered by a transfer of \$11.1 million of reserves from the state employee retirement health insurance fund into the Highway Fund. Of municipal interest, the Act allocates nearly \$2 million for the purpose of replacing cross culverts, pothole patching, shoulder grading, bridge repair and street sweeper rental for winter sand cleanup on town-plowed state aid roads in village areas. The Act also adjusts the distribution of the local road assistance fund (URIP) as a result of recent revenue re-projections by increasing the FY 2010 allocation by \$1.1 million and increasing the FY 2011 allocation by \$366,000.

Utilities & Energy

LD 1504 – An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments. (Sponsored by Sen. Mills of Somerset County.) **PL 2009, c. 642**

This Act provides some guidance to municipalities and communities where wind power developments are proposed. It requires wind power developers to provide a “community benefit package”, in addition to property tax payments, valued at least \$4,000 per year per turbine. The Act also requires the developer to include in the permit application to the Department of Environmental Protection information regarding the number of jobs created, the estimated amount of annual energy generated, projected property taxes and other tangible benefits to be provided. The Act also provides ‘fast-tracking’ for any appeal of a permitting decision regarding an expedited wind project.

LD 1515 – An Act To Amend the Charter of the Caribou Utilities District. (Sponsored by Rep. Edgecomb of Caribou.) **Emergency Enacted; P & SL 2009, c. 29 (3/01/10)**

This Act amends the charter of the Caribou Utilities District.

LD 1516 – An Act To Amend the Charter of the Dexter Utility District. (Sponsored by Rep. Thomas of Ripley.) **P & SL 2009, c. 35**

This Act amends the charter of the Dexter Utility District.

LD 1525 – An Act To Create the Buckfield Water District.

(Sponsored by Rep. Hayes of Buckfield.) **P & SL 2009, c. 36**
This Act creates the Buckfield Water District.

LD 1557 – An Act To Raise the Indebtedness Limit of the Eagle Lake Water and Sewer District. (Sponsored by Rep. Martin of Eagle Lake.) **P & SL 2009, c. 28**

This Act amends the charter of the Eagle Lake Water and Sewer District.

LD 1589 – An Act To Authorize Sanitary Districts, Water Utilities and Sewer Districts To Waive an Automatic Lien Foreclosure. (Sponsored by Rep. Chase of Wells.) **PL 2009, c. 490**

This Act authorizes the trustees of sanitary districts, water utility districts and sewer districts to waive the automatic foreclosure of a district’s lien mortgage by causing the appropriate wavier to be recorded in the registry of deeds.

LD 1601 – An Act To Create the Lincolnville Sewer District. (Sponsored by Sen. Weston of Waldo County.) **P & SL 2009, c. 32**

This Act creates the charter of the Lincolnville Water and Sewer District.

LD 1645 – An Act To Streamline Collections for Consumer-owned Consolidated Water and Wastewater Utilities. (Sponsored by Rep. Fitts of Pittsfield.) **Emergency Enacted; PL 2009, c. 541 (3/24/10)**

This Act allows a consumer-owned water utility that also provides sewer services to disconnect water service to a user when the user fails to pay the utility’s sewer service charges. In exchange for that authority, the water utility must provide annual reports with the Public Utilities Commission (PUC) on the number of disconnection notices issued as well as the number of disconnections and reconnections completed. The water utility must also provide its customers who receive disconnection notices information about assistance programs that may be available to help pay for their water, sewer and other utility obligations. The PUC is directed to submit a report on January, 15, 2012 regarding the impact of this legislation.

LD 1696 – An Act Regarding Community-based Renewable Energy. (Sponsored by Rep. Adams of Portland.) **Emergency Enacted; PL 2009, c. 565 (3/29/10)**

This Act builds on legislation enacted in 2009 that established a “community-based renewable energy” pilot program that provides certain incentives for “qualifying local owners”, including municipalities and other political subdivisions, to install renewable-resource electricity generating systems, which include wind power installations, solar arrays and installations, generators fueled by landfill gas, or biomass generators that use fuel including anaerobic digestion of agricultural products, byproducts or waste. This Act augments that 2009 legislation by directing the establishment and administration of a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development and to fund community demonstration projects using renewable energy technologies. The voluntary contributions must be collected by the electricity transmission and distribution utilities and provided to the Efficiency Maine Trust for distribution. The voluntarily provided research and development funding would be distributed to the public universities and colleges. The voluntarily provided community demonstration projects would be distributed to the array of community-based organizations, including municipalities, that develop community development projects using renewable energy technologies. The law also clarifies the process used by a municipality to endorse a community-based renewable energy project. Municipal endorsement is required for a project to participate in

the program.

LD 1717 – An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses. (Sponsored by Rep. Crockett of Augusta.) **Emergency Enacted; PL 2009, c. 591 (4/01/10)**

This Act is the Property Assessed Clean Energy Act, or PACE Act. The Act authorizes municipalities, working in conjunction with the Efficiency Maine Trust (Trust), to adopt ordinances establishing property assessed clean energy programs. Through these PACE programs, property owners in a participating municipality can apply for funding to finance an energy savings improvement to their property. An energy savings improvement means an improvement to the property that is new and permanently affixed, will result in increased energy efficiency and substantially reduced energy use, either meets nationally-recognized energy efficiency standards (if an appliance) or involves weatherization, or involves a renewable energy installation or an electric thermal storage system. The Trust is directed by this Act to adopt a quality assurance system with respect to the renewable energy installations.

Property owners who elect to participate in the municipal PACE program must enter into an agreement to establish a mortgage on their property to finance the improvement and repay that mortgage through an assessment on the property. The money that is loaned through this program is intended to be provided, at least initially, through the federal Energy Efficiency and Conservation Block Grant program.

With respect to actually authorizing the loans, the Trust is directed by the Act to adopt underwriting requirements that would govern the approval of any PACE loans. Among the minimum requirements listed in the Act, the underwriting standards must: (1) limit the size of a PACE mortgage to no more than \$15,000; (2) require participants to have a debt-to-income ratio of no more than 50%; (3) limit the term of a PACE agreement to no longer than the useful life of the installed improvements; and (4) require that the qualified property is current on property taxes and sewer charges, lien-free, and unencumbered by a reverse mortgage.

A participating municipality must adopt an ordinance to implement the program, and may directly administer the program. The Trust is authorized by this Act to pay reasonable administrative expenses of a municipality that may be incurred when carrying out the purposes of the Act. The Trust is also directed to develop model documents and educational materials for the benefit of the municipalities that would like to participate. In the alternative, a participating municipality that has adopted an ordinance may enter into a contract with the Trust that allows the Trust to administer some or all of the functions of the PACE program.

As part of program administration, the Act requires that a notice of a PACE agreement must be filed in the registry of deeds. This notice creates the PACE mortgage. A PACE mortgage is provided no special or senior priority. As far as day-to-day administration is concerned, the Act specifies that the PACE assessment is not a tax but may be assessed and collected by a municipality, the Trust or a designated agent by any reasonable means. Municipal officials, such as selectmen, councilors, tax assessors and tax collectors are expressly held to be not personally liable to the Trust or any other person for claims related to the administration of a PACE program.

Finally, the Act directs the Trust to convene a stakeholder group to review and make recommendations regarding the implementation of PACE programs. The Trust must submit an interim report to the Legislature by March 1, 2011, and a final report not later than January 30, 2012.

LD 1720 – Resolve, Regarding Waste-to-energy Power.

(Sponsored by Rep. Soctomah of the Passamaquoddy Tribe.) **Resolves 2009, c. 163**

This Resolve directs the Governor's Office of Energy Independence and Security (Office) to examine the issue of qualifying certain waste-to-energy power for renewable energy credits and renewable resource portfolio requirements. The examination must include: (1) relevant legislative proposals and actions by Congress and in other states, with particular attention to the New England states; and (2) the potential implications of allowing certain waste-to-energy facilities to qualify for renewable energy credits or renewable resource portfolio requirements with respect to the market for renewable energy credits and the environment. The Office shall conduct this examination in consultation with the Passamaquoddy Tribe, the Department of Environmental Protection, the Public Utilities Commission, and the Efficiency Maine Trust. The Office's report must be submitted to the Legislature by February 15, 2011.

LD 1756 – An Act To Amend the charter of the Gardiner Water District. (Sponsored by Rep. Hanley of Gardiner.) **P & SL 2009, c. 37**

This Act amends the charter of the Gardiner Water District.

LD 1778 – An Act To Enable the Installation of Broadband Infrastructure. (Sponsored by Rep. Dill of Cape Elizabeth.) **Emergency Enacted; PL 2009, c. 612 (4/06/10)**

This Act establishes a new entity known as a "dark fiber provider", or "provider of federally-supported dark fiber", which is a business that installs fiber optic cable infrastructure without including any of the electronic equipment required in order to make the fiber capable of transmitting communications. The legislation is closely linked to the provision of federal grant funding provided through the American Recovery and Reinvestment Act of 2009 for the purposes of expanding broadband communication infrastructure in rural areas of the country. As envisioned, after installing the dark fiber infrastructure, the provider would then offer its dark fiber on an open-access basis to all carriers and end users according to a posted schedule of rates, terms and conditions, and the dark fiber would "light up" when agreements between the carriers and the dark fiber providers are implemented. Among the Act's provisions, the Act expressly provides dark fiber providers with the same authority as is provided to other communication utilities to construct, maintain and operate their lines within the municipal right of ways.

LD 1783 – An Act To Amend the Charter of the Kennebec Water District. (Sponsored by Sen. Marraché of Kennebec County.) **P & SL 2009, c. 38**

This Act amends the charter of the Kennebec Water District.

LD 1810 – An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force. (Governor's Bill) **Emergency Enacted; PL 2009, c. 615 (4/07/10)**

This Act is designed to encourage ocean-based electricity-generating systems using off-shore wind power, tidal power or wave power and should be of special interest to Maine's coastal and island communities. The Act has eight separate components dealing with the state's wind energy generation policies, submerged lands policies, tax code, state-level land use regulatory jurisdictions in both the unorganized (LURC) and organized (DEP) areas of the state, and municipal land use regulatory authority. Of particular pertinence to municipal government, the Act: (1) directs Maine Revenue Services to review whether and under what circumstances renewable ocean energy-generating machinery, equipment and related components that are in transit to be located in, on or above state submerged lands but happen to be located in a municipality on the

April 1 universal date of assessment are exempt from property taxation under current law and provide a report on that review to the Legislature by November 1, 2010; (2) establishes the capacity to create a "community-based offshore wind energy project", which is an off-shore energy-based project located within one nautical mile of an offshore island that will offset part or all of the island community's electrical requirements and have an aggregate generating capacity of less than 3 megawatts; (3) requires the Department of Environmental Protection (DEP) to provide notice of any off-shore wind power project to the municipality where the proposed development will occur, as well as to any municipality within three miles of the proposed development, and requires the DEP to consider any comments provided by the affected municipalities; (4) prohibits a municipality from enacting a zoning ordinance that prohibits or has the effect of prohibiting the siting of renewable ocean energy projects and their associated facilities within the municipality; (5) prohibits a municipality from enacting or enforcing any land use standards regarding a renewable ocean energy project unless the project or part of the project is located within the municipal boundaries as established in its legislative charter prior to the effective date of this Act; and (6) establishes as a rebuttable presumption that the boundaries of a municipality in coastal areas do not extend below the mean low-water line on waters subject to tidal influence. While not part of the Act, it is anticipated that representatives of the State Planning Office and those of coastal municipalities will meet informally to see what regulatory authority municipalities would like to exert over these projects in submerged lands and whether a consistent set of regulations can be established by agreement.

LD 1813 – An Act Relating to the Recommendations of the Office of Program Evaluation and Government Accountability Regarding Emergency Communications Services. (Reported by Rep. Hinck of Portland for the Government Oversight Committee.) **Emergency Enacted; PL 2009, c. 617 (4/07/10)**

This Act makes a number of changes to the laws governing Public Safety Answering Points (PSAPs). Specifically, this Act: (1) establishes the 15-member Maine Communications System Policy Board within the Department of Public Safety, rather than the Public Utilities Commission (PUC), as the entity that determines the fees that must be paid by municipalities for services provided by the state's PSAPs; (2) provides that the three municipal members of the Maine Communications System Policy Board be nominated by a statewide municipal association rather than the current system which allowed appointees to only be municipal officers from municipalities of specific population ranges; (3) provides guidance to the Policy Board that in establishing the fees charged to municipalities they should be based on the incremental costs of providing PSAP and dispatch services; (4) directs the Emergency Services Bureau within the PUC to implement a quality assurance program to audit and monitor compliance with emergency dispatching standards, practices and procedures; (5) authorizes the funding of two additional positions to provide supervisory services within the state-run PSAP systems; and (6) amends the scheduled increase to the E-9-1-1 surcharge so that it will increase from the current monthly amount of 37 cents (per line, per month) to 45 cents on July 1, 2010 instead of 52 cents.

LD 1828 – Resolve, Regarding Emergency Communications Services. (Reported by Rep. Hinck of Portland.) **Emergency Passed; Resolves 2009, c. 196 (4/01/10)**

This Resolve directs the Emergency Services Communication Bureau within the Public Utilities Commission to follow through with the recommendations advanced by a technology consulting group (Kimball) that was hired by the state to review

the current configuration of Public Safety Answering Points (PSAPs) in the state. To advance those recommendations, this Resolve directs the Bureau to establish a plan to reduce the number of PSAPs in the state from 26 to 15-17. In developing the plan, the Bureau is directed to examine the various issues raised in the Kimball report. The Bureau must submit its plan to the Legislature by November 1, 2010.

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Summer Projects and Working Groups

Many Opportunities for Municipal Officials to Participate

By Jeffrey Austin, Legislative Advocate, MMA

During the hiatus between now and January 2011 when the 125th Legislature assembles, there will be several working groups or stakeholder groups discussing various policy issues and developing recommendations for the next Legislature to consider. What follows is a list of those working group efforts for which municipal participation is important.

MMA will be corresponding to municipal officials in the near future seeking volunteers for each of these groups. Anyone interested in participating, however, does not need to wait for that correspondence to let us know of your interest. Unless alternative contact information is provided below, if you would like to be included in any of the following “summer-of-2010” working group efforts, or even if you would simply like to be placed on an “interested parties” list so as to be kept informed of the activities of working group(s), please contact Laura Veilleux at 1-800-452-8786 or lveilleux@memun.org.

Culverts: The Legislature directed the Department of Environmental Protection (DEP) to review the issue of culverts and fish-passage/natural stream flow again. The DEP is obligated to go through the rulemaking process and specifically take into account the fiscal impact on municipalities.

Municipal officials and public works personnel are strongly encouraged to participate in these rulemaking activities.

Industrial Stormwater Permits: The DEP issues 5-year stormwater permits to industries whose operations pose a threat to surface water quality. The current 5-year permit expires in October, 2010 and the DEP is intending on issuing a new permit by that

date.

The DEP further intends on expanding the industries required to get these stormwater permits to include many municipal garages that perform vehicle maintenance activities (fueling, painting, washing, etc.). Not all municipal garages will be required to get a permit, but all are potentially required.

Municipal officials and public works personnel are strongly encouraged to participate in the DEP process to reissue the permit.

Waste & Recycling: Three significant changes in the landscape of waste management have occurred in the past year. First, the Hampden commercial landfill closed. Second, Casella Waste Systems, which operates the state-owned Old Town landfill, applied for a permit to expand. Third, a solid waste disposal company called Waste Management pursued a legislative change that would allow it to expand the Norridgewock landfill it owns and operates.

These activities, along with other waste-related concerns, prompted the Natural Resources Committee to seek permission (which was granted) to meet four times during this interim period to discuss waste and recycling issues.

Municipal officials and public works officials are invited to attend these Committee meetings.

Ocean Energy: As enacted, LD 1810 seeks to encourage and to some degree expedite the development of ocean-based windmills. One issue associated with this legislation is the degree of municipal regulatory jurisdiction, particularly with respect to the “submerged lands” below the tidal low water line.

The Legislature has given municipal officials an opportunity to meet with staff from the State Planning Office to discuss the scope and extent of any municipal regulation of these projects.

Municipal officials, planning board members and planners from coastal communities are invited to participate.

P.A.C.E.: LD 1717 as enacted creates a modified ‘Property Assessed Clean Energy’ program. This program is intended to allow the state to implement a revolving loan fund program that will be used to assist homeowners to make energy efficiency improvements. The funding is to be provided by federal grants.

The Legislature would like to see if it is possible for municipalities to similarly offer a municipally-funded weatherization program. The terms of such a program, in particular the priority funding status of such weatherization loans and the repayment mechanisms, need to be discussed with representatives of the banking community.

Municipal officials, treasurers, tax collectors, and economic development directors are encouraged to participate.

Tree Growth: By means of a letter from the Tax Committee chairs, Maine Revenue Services (MRS) has been directed to put together a working group to address certain issues identified as problems in the Tree Growth program. Specifically, the MRS working group has been asked to review three issues: (1) possible changes to the penalties that are imposed when a landowner fails to comply in a timely manner with his or her 10-year plan-update and plan-compliance recertifi-

ation obligations; (2) possible changes to the law regarding how much land should be excluded from classification with respect to developed properties in the shoreland areas; and (3) possible changes to the law that would better balance the need for providing municipal officials with sufficient information to ensure parcels are properly enrolled in the program.

Municipal officials wishing to participate or provide information regarding this working group effort should contact Geoff Herman at 1-800-452-8786 or gberman@memun.org.

Telecommunications Taxation. A description of LD 1823, *Resolve, To Review and Update the Telecommunications Taxation Laws*, can be found in the "Taxation" section of the *New Laws* article in this edition of the *Townsmen*. In summary, the Resolve directs Maine Revenue Services to convene a working group to review the state's system of taxing the providers of telecommunications services (i.e., both landline and wireless telephone, television, and Internet companies). The Legislature has been working on this project without success for a decade. Any restructuring will likely affect municipalities

because certain types of telecommunications personal property is subject to the local property tax. It does not appear that this process envisions a large working group made up of many representatives, but if there are some municipal assessors or other officials who believe they have some information or ideas about how to penetrate this conundrum, their participation or input is warmly encouraged.

PSAP Consolidation: LD 1828 endorses the so-called Kimball Report commissioned by the Public Utilities Commission to review the E-9-1-1 system in Maine. LD 1828 directs the PUC to develop a plan to reduce the number of Public Safety Answering Points (PSAPs) in Maine from the current number of 26 to between 15 and 17. The PUC is directed to examine the issues raised in the Kimball report, including issues relating to system fragmentation and the separation of E-9-1-1 call processing and dispatch functions; the transfer of E-9-1-1 calls and the absence of key E-9-1-1 features at dispatch-only facilities; the routing of E-9-1-1 wireless telephone calls; rate shopping and cost shifting; and the alleged lack of collaboration among

state, county and local agencies. The plan must address how consolidation studies should be conducted and funded, how appropriate consolidation incentives may be designed and implemented and how consolidation may be coordinated with the development of a so-called "Next Generation 911" as identified in the Kimball report. The PUC is obligated to work with interested parties as it develops this plan. Municipalities operate 9 of the existing 26 PSAPs and all municipalities rely on PSAPs in one fashion or another.

Municipal officials are encouraged to participate in this plan development.

Seats on PSAP Policy Board: In a related bill, LD 1813 implements some of the changes proposed for the PSAP system by the Office of Program Evaluation and Government Accountability (OPEGA). One of the changes is to relocate the review process for the rates charged by the Department of Public Safety to municipalities who receive their PSAP services from one of the four state-run PSAPs. The rate-review is being relocated from the Public Utilities Commission to the Maine Communications System Policy



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Board within the Department of Public Safety.

Municipalities have three seats on this Policy Board, but those seats have been vacant for some time. The Legislature has now changed the statute's restrictive appointing process in such a way that there is now greater flexibility. These seats are in addition to one seat that is reserved for a police chief and one seat that is reserved for a fire chief. The three municipal representatives should represent the interests of the board of municipal officers.

Municipalities, particularly those who still receive their PSAP services from state-run facilities, are strongly encouraged to nominate officials to fill these seats. Please direct those nominations to Jeff Austin at 1-800-452-8786 or jaustin@memun.org.

Dig Safe: The Public Utilities Commission is reviewing the Dig Safe program and is accepting comments on whether public entities, such as water and sewer districts, should be obligated to participate in the Dig Safe system. The next meeting of interested parties is at the PUC headquarters in Hallowell on April 28.

Municipal officials are encouraged to participate in this review.

Documenting Impacts of Truck Weight-Limit Changes: With the help of Maine's Congressional Delegation, Congress enacted a law last December that allows for a truck weight limit increase on the section of Interstate 95 north of Augusta from 80,000 pounds to 100,000 pounds. The increase was enacted on a trial basis, and a study must be done to demonstrate the impacts of increasing the truck weight limit over the course of this year. To conform to the newly-created allowance at the federal level, LD 1736 was enacted by the Legislature. LD 1736 parallels the federal law by allowing vehicles with a gross vehicle weight of up to 100,000 pounds to operate on the entire Interstate system for as long as the federal exemption applies.

Maine's entire Congressional Delegation is very interested in obtaining information about the impacts of this change, in terms of reduced wear and tear on Maine's smaller roads, improved fuel efficiencies, and improvements to public safety.

Over the next several months,

MMA will be contacting municipal officials from impacted communities in order to provide whatever assistance we can to collect this important information. Without adequate documentation both at state and local level, our Congressional Delegation is concerned that the weight limit could revert to the 80,000 pound limit at the conclusion of the one-year trial period, which is December 16, 2010. If you have any questions or have information and data to share, please contact Kate Dufour at 1-800-452-8786 or kdufour@memun.org.

Statewide Building Code: The State's Technical Building and Standards Board is obligated by statute to adopt the Maine Uniform Building and Energy Code by June 1, 2010. The manner for adopting the code is the state's rulemaking process. The Board has been working for several months making adjustments to the model codes upon which the Maine code will be based.

Municipal officials and code enforcement officers are encouraged to participate in this rulemaking process. 

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Money, Wind Worry Town Meeting Voters

By Liz Chapman Mockler

Holding down the property tax rate while revenues decline and unemployment remains stubbornly high drove many of the decisions made during scores of Maine annual town meetings in March.

An estimated 60 percent of municipalities with a town meeting form of government still gather in the slush and rain of March to pass local budgets and debate thorny issues. Nearly all of the rest hold meetings in May and June to coincide with the state and school districts' fiscal years, allowing them to pass budgets based on firmer revenue sharing, highway and school funding estimates.

This year, many elected officials gave up increases in their "pay" despite increased workloads and meetings. Municipal staff members in many towns were given modest wage increases. However, voters in other communities, lamenting unemployment and tight household budgets, declined even cost-of-living raises for employees.

Voters in many towns were tough on social-service agencies, which typically ask for an annual contribution based on the number of people they serve in a particular town.

In **Brownville**, for example, residents voted to budget \$3,035 for cemeteries for the coming year, and \$1,000 for general assistance – a safety net for residents who may need heat or food.

That decision led one resident to observe, "We're taking care of our dead better than we are our living," according to a published report.

Liz Chapman Mockler is a freelance writer and media advisor from Augusta, lizmockler@hotmail.com

BLOWING IN THE WIND

Aside from the typical financial concerns, discussions and decisions, some the most debated questions this March centered on wind power construction.

Most of the proposed moratoriums focused on commercial, not residential, projects. And the majority of towns that took up the issue were being proactive, since there were no proposed projects pending in their towns.

Of the 10 proposed wind-development moratorium votes reviewed by the Townsman, seven were passed and three failed.

Voters who favored six-month bans on turbine construction wanted to give town officials time to craft ordinances to regulate the "green" power-generating projects. They were con-

cerned about noise, proximity of turbines to homes and scarring some of Maine's most rural and rugged places.

Those who opposed the moratoriums were concerned about: possibly passing up future projects and jobs; negatively impacting projects already on the table for review; and losing a potentially lucrative, new revenue source for cash-strapped small towns.

Under state law, local voters may enact 180-day moratoriums on wind-power projects, while local ordinances are being considered. Municipal officers can extend the moratoriums for 180 additional days.

Municipal ordinances can focus on setback and height restrictions and limits on how much noise a project can create.

Voters in the town of **Eddington**,

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Penobscot County, passed a moratorium, although a committee had spent eight months working on an ordinance.

Meanwhile, in **Woodstock** in western Maine, voters rejected a ban by a vote of 100 to four, and agreed that a plan to build a wind farm on Spruce Mountain would move forward as expected this summer.

Voters in the town of **Unity**, a community of 1,900 in Waldo County, rejected a moratorium out of fear that it would prevent residential construction of wind turbines for domestic use. The vote was nearly unanimous, according to reports.

In **Montville**, voters passed a moratorium last year, followed this spring by enactment of a strict wind-power ordinance that calls for a one-mile setback from homes but exempts turbines from regulation if they are less than 150 feet high or produce fewer than 100 kilowatts of power a year.

The new Montville ordinance passed by a vote of 90-39.

As the so-called "Green Energy" economy continues to blossom across the state and nation, more Maine towns are expected to debate the merits of wind power facilities in their own backyards.

In other voting on special ordinances, voters in the town of **Alfred** in far southern Maine rejected restrictions on where people could campaign or gather petition signatures, deciding the language was too strong.

Meanwhile, in rural **Starks**, known for its annual hemp festival, voters defeated proposed moratoriums on marijuana dispensaries and adult entertainment.

NIP, TUCK AND CUT

Voters in many of the towns that held March town meetings were presented with budgets that were lower than current-year levels. In **Cushing**, spending for municipal services was down 8 percent, while **St. George** officials proposed a budget 15.7 percent lower than existing spending levels.

St. Albans voters passed a budget 18 percent lower than the current fiscal year spending plan.

Although municipal budgets have been being seriously trimmed over many years, the continued poor economy and corresponding loss of revenue has forced more draconian mea-

sures than in the past.

After years of eliminating jobs through attrition, Maine municipalities have started laying people off to balance their books. In the state's smallest towns, there are few employees to let go.

In some places, officials predicted the worst is not yet over.

In the town of **Waldo**, voters agreed to cut all but \$350 for social-service contributions from the \$5,133 approved last year and the total requested this year of \$7,727.

Advocates for the elderly made special pleas, reminding Waldo voters that another cold winter is never far

away and predicting that the state's economy would still be weak next year.

In the town of **Etna**, the Newport Food Bank told voters it would no longer be able to provide food for Etna families because the town had eliminated its grant of \$700.

The news for Etna didn't get any better after voters decided to eliminate the town manager's job without fully realizing how the decision would impact selectmen and staff. Rounding off a tough day was the resignation of all three members of the town planning board.

In other financial action, **Belgrade**



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voters didn't like either of two proposals for a new town office – one version for \$3.5 million and the other for \$1 million.

Some communities endorsed major projects, however, mostly through long-term borrowing. Other towns dipped deeply into surpluses to balance their budgets and keep property taxes stable.

For example, **Palmyra** voters agreed to take \$350,000 from surplus for the new year, or \$50,000 more than recommended by selectmen. Benton voters also upped their withdrawal from surplus by \$50,000 for a total of \$200,000.

In better times, most municipalities tried to spend surplus funds only on one-time capital projects or purchases to avoid building in a natural budget gap when the surplus account was low or empty.

Some communities spent more freely, however. The small town of **Andover** near Rumford will borrow \$500,000 to repair 11 miles of road; Castine, home to Maine Maritime Academy, will spend \$2.5 million as the first step in a \$14 million infrastruc-

ture upgrade in the village; Bristol voters approved borrowing \$548,000 over 30 years for a new fire station; and, Abbott will spend \$95,000 for an addition to its municipal building.

TURNOUT

Here are some samples of voter turnout from around the state.

In **Farmingdale**, 60 people out

of about 2,850 attended their town meeting; 63 voters in the town of **Montville** showed up, with a population of 1,000; **Liberty**, with a population of 990, attracted 60; and 103 **Farmington** residents from a population of 7,500 attended.

About 55 **Morrill** residents from a total of 890 attended the morning part of the meeting; half remained after a potluck lunch. **mt**

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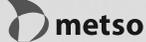


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Maine Municipal Association

Seeking Nominations for MMA Executive Committee

Nominations

Nominations are being accepted for three seats on the MMA Executive Committee. The Vice President position is also open to municipal officials who have served at least 12 consecutive months on the MMA Executive Committee during the past five years. The Nominating Committee will interview Vice President candidates during their May meeting.

What Is Involved?

The Executive Committee is the Maine Municipal Association's corporate board, consisting of twelve elected and appointed municipal officials representing the interest of member municipalities throughout the state. The Committee has overall governance and fiduciary responsibility for the Association, its annual operating budget, and the development of policy and priority initiatives.

The Executive Committee meets 10-12 times per year and has a required attendance policy in place. The Association reimburses the municipal official or municipality for any travel related expenses incurred for attending meetings or authorized activities to represent the Association's interests.

Who Should Apply?

- Town and/or city managers or chief appointed administrative officials in an active member municipality; or
- "Municipal officers" (*mayor and aldermen or councilors of a city, the selectmen or councilors of a town, and the assessors of a plantation*)

What are the Qualifications?

- The ability to serve a three year-term;
- Basic knowledge and/or interest in the corporate operations of the Maine Municipal Association;
- Although not necessary, it would be helpful to have prior experience on other governing boards and/or involvement in the Maine Municipal Association.

Timetable

| | |
|------------------------------|---|
| March 2010 | Appointment of MMA Nominating Committee (2 MMA Past Presidents; 2 Elected Municipal Officials & 1 President of Affiliate Group or Town/City Manager or Chief Appointed Administrative Official) |
| March 30, 2010 | 1st Meeting of Nominating Committee |
| April 2010 | Notice in MMA Townsman and MMA Today |
| April 2, 2010 | 1st Mailing to Key Municipal Officials – Seeking Interested Candidates |
| May 3, 2010 | Deadline for Receipt of Statement of Interest Forms |
| May 6, 2010 at 1:00 p.m. | 2nd Meeting of Nominating Committee – Interviews for Vice President Position and putting forth Proposed Slate of Nominees |
| May 14, 2010 | 2nd Mailing to Key Municipal Officials - Proposed Slate of Nominees |
| July 2, 2010 – 4:30 p.m. | Deadline for Receipt of Nominees by Petition |
| July 14, 2010 | 3rd Mailing to Key Municipal Officials - Voting Ballots |
| August 13, 2010 – 12:00 noon | Deadline for Receipt of Official Voting Ballots |
| August 13, 2010 | MMA Election Day – Counting of Voting Ballots by Municipal Clerk |

For Further Information:

Please visit the MMA Website at www.memun.org for additional information on the MMA Nominating Committee process, timetable, and access to the Statement of Interest Forms for the MMA Executive Committee and Vice President positions. Please contact Theresa Chavarie at 1-800-452-8786 ext. 2211 or by e-mail at tchavarie@memun.org if you have any questions.
(Please see Statement of Interest Form for the MMA Executive Committee on back side of this Notice)

Maine Municipal Association
STATEMENT OF INTEREST FORM
SERVICE ON THE MMA EXECUTIVE COMMITTEE
Deadline for Receipt – 4:30 p.m. on Monday, May 3, 2010

Please answer each question completely. Attach additional sheets if necessary.

Name of Candidate: _____
Municipal Position: _____ Years in Position: _____
Municipality: _____ County: _____
Preferred Mailing Address: _____
Work or Office Phone _____ Home Phone: _____
Mobile/Cell Phone _____ E-Mail: _____

Professional And Municipal Experience – Please include work experience, appointments to municipal/agency/organizational boards, and volunteerism (provide position title and year(s) of service):

Previous Involvement With the Maine Municipal Association – Please provide info on your past involvement on MMA Legislative Policy Committee, Governance Boards, Ad Hoc Committees, Municipal Leadership Program, Convention Planning, etc., (provide dates of service, if available):

Other Information – Occupation, education, other activities of interest, awards, etc.

What Attributes Do You Believe You (or Your Candidate) Will Bring To The Maine Municipal Association?

Please provide a Municipal Reference that we may contact:

Name Municipal Position Telephone #

For an understanding of the attendance policy please see the MMA Executive Committee job description which is located on the MMA website. Based on this, do you believe that the time commitment meets your availability?

Yes No

If you are making this recommendation on behalf of someone other than yourself, please complete the following information so that we may contact you if more information is needed.

Name: _____ Daytime Tel #: _____ Email: _____

Municipal Position: _____ Municipality: _____

Address: _____

MMA Nominating Committee c/o Executive Office
Maine Municipal Association, 60 Community Drive, Augusta, Maine 04330

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Brochure and registration forms will be sent out in mid-April. Registration Deadline is May 21, 2010. For more information call the Affiliate Services Office—Maine Chapter APWA, 1-800-452-8786.

Durham Selectman **Wesley Bennett Jr.** died March 10 at the age of 73. He served 20 straight years on the board, many of them as chairman.

Mitchell "Mitch" Berkowitz was struck by a falling tree while clearing downed trees after a storm in early March, sustaining serious injuries to his lower body. Berkowitz underwent surgery and is recovering at home. He was expected to be out of work for three months, although he has told selectmen he is available by telephone and e-mail. Administrative Assistant **Georgiann Fleck** will serve as staff for the selectmen board until Berkowitz returns.

Thomaston Selectman **Thomas Bertocci** died April 4. He was elected for the first time last November and beat his opponent by a margin of 2-to-1. Bertocci once ran the Rockland field office of former U.S. Sen. George Mitchell. Bertocci was finishing the term of Mona Stearns, who resigned. Bertocci's successor will be elected in June.

Joseph Clark, Sangerville town manager since 2008, has resigned for personal reasons effective April 9. The announcement at town meeting in March surprised residents.

Strong Selectman **Rebecca Croteau** resigned last month, two years before the end of her term. Croteau was elected in the past and also resigned. Her replacement will be elected in June.

Sidney Town Clerk **Shawna Foye** was honored for 25 years of service to the town during the annual town meeting last month.

Leslie "Les" Grover, who served 41 years for the Orrington Volunteer Fire Department, died March 20 at the age of 74. Grover, a businessman, served as fire chief for the town for 21 years.

Sharon Jackson was hired as administrative assistant to the Fryeburg Board of Selectmen after the board dismissed Town Manager **Martin Krauter**. Jackson is presently appealing her firing as manager of the town of Paris. Krauter also is appealing selectmen's decision not to renew his contract, which expired last June.

Brunswick Fire Chief **Clark Labbe** has retired after almost 40 years with the department, the last five as chief. He joined the department in 1973 as a call firefighter, one year before the elder Labbe retired. He became a full-time firefighter three years later and served as assistant chief for 20 years before being named to the top post permanently in 2005. Labbe will be replaced by **Kenneth Brilliant**.

China selectmen honored **James Lane** during the March town meeting. The retiring police officer and animal control officer worked for the town for 30 years.

Albion 911 dispatcher **Sally Lindsay** received a United Way "Spirit of America" award for her 20 years of helping people in emergencies.

Biddeford City Councilor **Bob Mills** announced in March he will seek the Democratic primary nomination to replace state Rep. Stephen Beaudette, who is termed out of office this year after four straight terms.

St. Agatha selectmen have named

interim Town Manager **Christy Sirois** the permanent manager following the March resignation of **Ryan Pelletier**. Sirois previously served as town clerk.

Etna Town Manager **Evelyn Serval's** job was eliminated by town meeting voters in March, who gave the manager one year before having to leave the post she has held for five years. The vote was 65-35 and reflected voters' frustrations over a revaluation of property last year, which resulted in a tax increase, according to officials.

Litchfield firefighter **Michael Sherman**, 24, has been deployed to Afghanistan. He left in mid-March for training in Texas with his Bangor-based National Guard unit. Sherman will become a captain in the 35-member volunteer department upon his return, officials said.

Jonesport Selectman **Ralph Smith Sr.** resigned last month for health reasons after serving the town for nearly 25 years. Residents were not expecting Smith's resignation, which was announced during the annual town meeting in early March. Smith was first elected in 1988 and has served as chairman for the past decade.

Harold West, nicknamed "Mr. Milbridge" for his decades of public service to the town, county and state, died March 12 in Ellsworth at the age of 85. West served 18 years as a Milbridge selectman, through the late 1980s. [mc](#)

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Addison: The town will receive \$76,000 in federal stimulus money to buy energy-efficient equipment, such as a wind turbine and solar panels. The town must match the grant by 10 percent. The grant was written in one week, according to town staff.

Auburn: The cities of Auburn and Lewiston plan to expand their efforts to synchronize traffic lights on major arteries on both sides of the Androscoggin River so traffic will flow better between two of Maine's largest cities. The Twin Cities linked their traffic signals on the busiest route between the two cities in 2006, but will now branch out to the other heavily used roads.

Beals: Selectmen in March voted to use \$181,000 from its surplus to cover a budget hole created by an omission when the tax rate was set last year. The board preferred not to send out a second tax bill to property owners. The money is for Beals' share of the regional high school budget.

Cumberland: A sluggish economy and increased competition have helped the town save as much as \$400,000 on its projected \$4.5 million road project on Route 88. The town council voted last December to borrow up to \$4.5 million for the work. The lower bid also will save the town \$25,000 to \$35,000 on next year's bond payment.

Freeport: The town councils of Freeport and Brunswick voted to merge their emergency-dispatch services, effective as early as July 1. Two days later, a citizen petition was initiated to repeal the vote. The Brunswick 911 communications center already takes 911 calls from Freeport residents under a state 911 consolidation mandate. But under the merger, the Brunswick communication staff would dispatch the calls directly rather than routing them to Freeport, which then in turn dispatches help. Freeport officials expect the change will save the town \$80,000 in the 2011 budget, now being drafted, and \$100,000 annually beginning in fiscal year 2013.

Machias: Good things do come to those who wait, Washington County

residents learned in March when the state Department of Transportation announced it would repair two bridges and 122 miles of roads this summer, including shoulders and guardrails along Route 1. Bids are being solicited and DOT officials hope to start the work a month earlier than expected.

Newport: Selectmen reversed themselves in early April and decided against creating town-run recreation programs for the summer due to confusion among residents regarding who was offering baseball and softball programs for kids. Selectmen in March voted to deny the Newport-based Sebasticook Valley Community Center \$100,000 in funding and have the town develop the programs because of questions about financial problems at the nonprofit community group. They changed their minds after parents said they were not sure where or how to get their children signed up. Also, the district attorney is now involved in the community-center issue.

Portland: The proposed 2011 budget for Maine's largest city would cut 40 municipal jobs, but add some positions with grant money for a net staff reduction of about 12 full-time jobs. Of the 40 jobs being cut, 25 are now filled. The proposal also calls for numerous increased fees and other efforts to balance the \$196 million budget, which is up \$7 million over the current-year budget.

Presque Isle: The city has become the latest in Maine to consider a moratorium on establishing marijuana dispensaries, which are now allowed under a new state law. The Legislature this month passed a bill that creates eight "public health districts" across the state and allows one nonprofit dispensary in each of the districts in the first year. It also establishes a tracking system for people who use the drug for medicinal reasons and gives the state authority to create rules and assess licensing fees. The Presque Isle six-month moratorium would give officials time to draft an ordinance to regulate dispensaries. Two hearings are set before the council votes on the

matter later this spring.

South Berwick: The town's village, which comprises most of its downtown, has earned a place on the prestigious National Register of Historic Places. The designation, announced in March, indicates the national group thinks the 117 buildings and sites downtown are historically significant and worthy of notice. The honorary listing does not restrict property owners from changing their buildings, but it does offer tax incentives to both owners and the town to develop or rehabilitate the buildings. The town started its effort to gain historic designation in 2007.

Statewide: Residents in Maine's poorest county spent the most on lottery tickets in 2009, according to an annual report. On a per-capita basis, Washington County customers spent \$238, while Kennebec County residents spent the second most at \$192. Waldo County residents spent the least at \$121 each. Washington's poverty rate is 20 percent and the new figures support a university study which concluded that as income declines, gambling increases. [\[m\]](#)

NEW ON THE WEB

Here some highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

- **Help with health-care reform.** The National League of Cities recently issued a helpful memo about how federal health-care changes may affect municipalities as employers.
- **Running for the MMA.** The election process has begun for the MMA Executive Committee. This memo and these forms explain the nomination process.
- **Federal Issues Paper 2010.** All six New England states came together to present their respective members of Congress with a list of critical issues facing municipalities from Connecticut to Maine.
- **Scenes from the Technology Conference.** This slide show gives you a taste of the well-attended and well-received Technology Conference, held last month at the Augusta Civic Center.



Municipal Bulletin Board

CODE CONFERENCE

The 2010 Spring Maine Code Conference will be held May 3-4 at the Ramada Conference Center in Lewiston. It is a full two days, with registration beginning at 8 a.m. on May 3 and adjournment coming at 4 p.m. on May 5.

The conference will cover a wide array of topics, ranging from updates to the 2009 International Residential Code to sprinkler systems to radon. There are several workshops dealing with energy evaluation and efficiencies.

The full-conference cost is \$150 per person for members of the Maine Building Officials Association and \$199 for non-members. For more information, visit the Maine Municipal Association Web site at www.memun.org. The deadline for pre-registration has passed but you still have time to register and attend.

VITAL STATISTICS

Patty Brochu, City Clerk in Old Town, will present a workshop on vital statistics May 5 at the Maine Municipal

Association building in Augusta. The event is sponsored by the Maine Town & City Clerks' Association.

Registration begins at 8 a.m. The conference runs from 9 a.m. to 4 p.m. Cost is \$50 for members of the MTC-CA and \$60 for non-members. As the course outline says, "Vital records are the one thing in our society that everyone has in common."

Participants need to bring their Vital Records Manuals with them. If you do not have a manual, please contact Office Services at 287-2558.

MMTCTA ANNUAL CONFERENCE

The annual conference of the Maine Municipal Tax Collectors ' and Treasurers' Association will be held on May 14 at The Captain's Galley Restaurant & Banquet Center in Old Orchard Beach.

This one-day conference features speakers such as: Geoff Herman, Director of State & Federal Relations, MMA; Bill Swan of the Maine Inland Fisheries & Wildlife Department; and Wendy Paradis, of the law firm Bernstein & Shur.

The event starts at 8 a.m. and ends with a door prize drawing at 4 p.m. The cost is \$60 for members and \$75 for non-members. Tax collectors and treasurers seeking certification must stay for the entire conference. Please register through the MMA Web site at www.memun.org.

ELECTED OFFICIALS WORKSHOP IN MACHIAS

Key members of the MMA Legal Services and other staff will hold a workshop for elected officials on May 11 at the Science Building on the University of Maine-Machias campus. The workshop begins at 4:30 p.m. and ends at 8:30 p.m.

The workshop is recommended for newly elected officials, but also for veteran officials who want to brush up on Right to Know requirements, legal requirements for officials and dealing with the media. Please register through the MMA Web site or by calling the Educational & Affiliate Services office at 1-800-452-8786. [mm](http://www.memun.org)

SCENES FROM MMA TECHNOLOGY CONFERENCE



Attendees in the e-Lounge talking to one of the many Conference Partners.



Opening session of the Conference.

MMA GOES TO WASHINGTON



MMA meets with Maine's Congressional Delegation. These meetings are held in conjunction with the NLC Congressional City Conference. Pictured from left to right: Mark Green, Town Manager, Sanford (MMA Vice President); Joan Sylvester; Pat Finnigan, Assistant City Manager, Portland; John Sylvester, Selectman, Alfred (MMA President); Nick Mavodones, Mayor, Portland; The Honorable Olympia Snowe, Maine Senator; Jerry Goss, City Councilor, Brewer; Jean Goss; Tanya Pereira, Deputy Director Economic Development, Brewer; D'arcy Main-Boyington, Director Economic Development, Brewer; Chris Lockwood, Executive Director, Maine Municipal Association; Gail Kelly, State Director for Olympia Snowe's Congressional Offices

BIAS NOT ALLOWED IN QUASI-JUDICIAL ROLE

Public officials are free to promote a political agenda in their policy-making role, such as when adopting ordinances or budgets. But they are barred from basing decisions on their politics when acting in a quasi-judicial role, such as when issuing licenses or permits. Here, like a judge, they are required by due process to be fair and impartial and to base their decisions solely on the evidence and applicable legal criteria. A recent Maine case illustrates the point.

In *Moore, Inc. v. City of Westbrook*, AP-09-11 (Me. Super. Ct., Cum. Cty., Mar. 23, 2010) (Crowley, J.), a City Councilor voted not to renew the license of a bar because she felt it simply didn't "belong" in her neighborhood and her vote was "what the people want me to do." The presiding justice said these statements indicated bias on her part and she should not have voted – "[She] prejudged issues of fact before considering [the] application and... ignored her duty as a quasi-judicial decision-maker [to be open-minded and impartial]."

The Councilor nevertheless vowed to vote the same way next time when the bar's license comes up for renewal because she lives in the area and represents its residents. The bar owner's attorney said if her vote is determinative, he'll appeal again. Stay tuned.

For more on bias and related issues, see our "Information Packet" on ethics and conflicts of interest, available free to members at www.memun.org. (By R.P.F.)

MARIJUANA DISPENSARIES

The Legislature has amended the ballot measure passed by Maine voters last November to liberalize the State's medical marijuana laws.

The revised law, effective immediately, requires patients to register with the Department of Health and Human Services (DHHS) and be issued an ID card. It also restricts the number of marijuana dispensaries to eight – or one in each of the State's eight public health districts – during the first year. Dispensaries, which are limited to nonprofit entities, must pay an annual \$15,000

license fee to DHHS and are subject to unannounced inspections at any time.

In anticipation of the new law, several municipalities have asked recently whether they can regulate or even possibly prohibit marijuana dispensaries. The law explicitly acknowledges municipal authority to enact reasonable regulations on dispensaries and to limit their number. But like methadone clinics, adult businesses and other often controversial enterprises, medical marijuana dispensaries are now a legal activ-

ity (subject to the requirements of the new law) and cannot be totally banned from a community, either explicitly or by regulations having that effect. A temporary moratorium on dispensaries – to give a municipality time to develop appropriate permanent regulations – is certainly a possibility, however (see our "Information Packet" on moratorium ordinances at www.memun.org).

Municipalities considering regulating medical marijuana dispensaries should work with local counsel to en-



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CORRECTION:

The Municipal Calendar in the March edition of the Maine Townsman should have said municipal officers are no longer required to issue warrant for collection of fees for unlicensed dogs. All dogs, except those owned for law-enforcement purposes, still must be licensed annually, however. Failure to do so is punishable by a civil forfeiture of \$100. Animal control officers are required to enforce the licensing requirement.



MAY — Municipal officers shall meet as the "licensing board" to license innkeepers and tavernkeepers during the month of May (30-A MRSA §3812)

MAY 1 — Licenses for bowling alleys, pool rooms, shooting galleries, etc., issued during the previous 12 months expire (8 MRSA §2).

ON OR BEFORE MAY 15 — Monthly/Quarterly expenditure statement and

claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333 (22 MRSA §4311).

MAY 31 — (Last Monday in May) Memorial Day observed. A legal holiday (4 MRSA §1051); a school holiday (20-A MRSA §4802). Municipal officers shall direct the decoration of veterans' graves. (30-A MRSA §2901).

sure that ordinances address legitimate concerns without overstepping these legal bounds. (By R.P.F.)

NEW TAX DEFERRAL PROGRAM FOR SENIORS: A LOCAL OPTION

The Legislature has enacted a new law authorizing municipalities to allow taxpayers who are at least 70 years of age to defer taxes on their principal dwelling if they have lived there for at least 10 years and their household income does not exceed 300% of the federal poverty level (see PL 2009, c. 489, enacting 36 M.R.S.A. § 6271).

The new law does not take effect until mid-July 2010, however, and applies only to taxes assessed after that date.

In addition, in order to participate, a municipality must have an ordinance enacted by its legislative body (town meeting or town or city council). This is a local option, similar to the tax relief program for senior volunteers authorized two years ago (see "New Tax Relief Program for Senior 'Volunteers'," *Maine Townsman*, "Legal Notes," June 2008). Municipalities must opt in if they wish to participate. No action is required if they do not.

Under the program, eligible seniors who apply for deferral will have their taxes deferred, with interest at 0.5% above the otherwise applicable rate, until (1) they die, or (2) the property is transferred to someone other than the taxpayer, or (3) the property is no longer occupied by the taxpayer as a principal residence (except for health reasons), or (4) if a mobile home, it is moved out of state. Once any of these events occurs, the municipality must send a notice to the taxpayer or their heirs or devisees listing the total amount of taxes deferred, together with interest accrued, and specifying the due and payable date (in most cases, within 45 days of the date of the notice).

In lieu of an annual tax bill, the municipality must provide participants with a notice of tax deferral and its effect, together with an accounting of taxes deferred and interest accrued.

In order to preserve the right to enforce its lien, the municipality must annually record a list of tax-deferred properties in the registry of deed. If deferred taxes and accrued interest are not paid when ultimately due (see above), the municipality may begin the statutory lien process.

Although this new program may

seem appealing at first, municipalities should be wary and wide awake before adopting it. For one thing, deferred taxes mean decreased cash flow, so to maintain the status quo, participating municipalities will have to find other revenues (there is no State reimbursement). This is a significant budgeting concern since all qualified seniors are eligible, and both the number of participants and their length of participation are unknowable.

For another, the program imposes some new and unfamiliar administrative obligations, including special notices and extra recordkeeping. Failure to comply with these requirements could jeopardize the municipality's ability to actually collect deferred taxes. For example, the failure to annually record a list of tax-deferred properties in the registry would waive the liens.

For these and other reasons, MMA has not prepared a sample ordinance to implement this program. Municipalities considering opting in should work closely with local legal counsel to develop an ordinance that strictly conforms to the requirements of the new law. (By R.P.F.)

WILLS & ZONING VIOLATIONS

If a will distributes ("devises") property in a manner that violates zoning or other land use requirements, is it invalid? Not according to a recent Maine

Supreme Court decision.

In *Estate of Eldon C. Hunt*, 2010 ME 23, one of five sons – the only one left out – sought to have their father's will set aside on the grounds that it divided a parcel of land among the other four in violation of minimum lot size and frontage requirements. (Had the argument succeeded, the land would have reverted to a trust and been divided equally among all five sons, which was evidently his motive.) But the Law Court, apparently in a case of first impression in Maine, saw no reason to adopt this view.

The Court did acknowledge that conveyance of property by will "may generate zoning issues" for the beneficiaries. But it noted that zoning controls the use of land, not its ownership, and there may be various ways to resolve such issues, including having the Probate Court divide the land to conform to the ordinance (which is in fact what happened here). Thus, the Court said it saw no justification for allowing zoning to impair the transfer of property ownership by devise.

The *Hunt* case illustrates that zoning compliance is often irrelevant to the legality of other matters, such as the validity of a will (or a property tax assessment). It also confirms an old legal truism – that feuding over a will can be a very costly and divisive contest (there were at least six lawyers engaged in this one). (By R.P.F.) 

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