



LEGISLATIVE BULLETIN

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Foreclosure...The Final Tax Act

This week, as the legislative session continued to wind down, the Taxation Committee worked on its final bill with municipal implications.

In February, the committee received a report from the Working Group to Study Equity in the Property Tax Foreclosure Process. As previously reported, the working group was convened through the passage of last session's LD 101, *An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property*, which was enacted as emergency legislation in response to the U.S. Supreme Court decision in *Tyler vs. Hennepin County*. In the Tyler case, the court unanimously held that a government likely violates the takings clause of the U.S. Constitution's Fifth Amendment when it sells tax-acquired property and keeps more sales proceeds than are owed in delinquent taxes, interest, and costs.

After review, the committee voted to send the suggested language from the working group's report to the Revisor's Office, which resulted in the development of LD 2262, *An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes*. Since the working group consisted of a wide range of stakeholders, including representation from MMA's Legal Services Department, and the report provided consensus bill language, advocates - and likely the committee - felt this bill was a done deal.

Not a chance!

A public hearing was held for LD 2262 on March 14 and while all submitted testimony was supportive of the bill, several community-based organizations, financial industry representatives, attorneys and policy groups offered amendments intending to clarify areas seemingly not addressed by the working group's recommendations. These unresolved issues included requiring a public auction as part of the sales process; increasing the timeframe for the sale of the property; addressing concerns that lienholders are left out of the process for disbursement of

excess funds; and of most importance to local officials, requiring that excess funds that remain after all municipal costs are deducted be transferred to the state's Unclaimed Property program.

The committee scheduled the work session for this bill immediately following the public hearing, another indicator that the members did not anticipate any push-

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The Eclipse of Hope

Awe is an emotion aroused by the sense that one is in the presence of something vaster than oneself, and celestial events are well known to inspire awe in those who witness them. Among the inspirational songs, art, proof of theories of general relativity and touchstones of human mythology, solar eclipses also produce space weather. "During a solar eclipse, we can observe changes in the weather on Earth in the eclipse's path. Temperatures can drop, cloud cover can decrease, relative humidity can increase, and winds can decrease," the National Weather Service (NWS) Weather Prediction Center posted on the platform formerly known as Twitter.

But what, if any, effect can a solar eclipse have on the political climate? Some scholars using historic NASA data and records of civil unrest also imply there is a solar eclipse correlation to rebellious moods, particularly within Confucianism societies where the solar eclipse is viewed as a negative sign for political legitimacy. One recent study showed that the rebellious effect of a solar eclipse extended globally beyond traditionally Asian societies, producing a nearly 20% increase in social protests in countries in the path of a near total eclipse.

While the total eclipse of the sun is predictable and view path discernable, the same cannot be said for the predicted adjournment date and legislative paths under

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back to language in a legislatively directed bill that was composed of recommendations from an equally directed working group.

At the conclusion of the hearing, an advocate caucus, including MMA, Maine Equal Justice and Legal Services for Maine Elders, as well as a representative from Maine Revenue Services (MRS), convened in the State House hallway to discuss the proposed amendments. Consensus was not reached on those proposals and as a result, an additional work session was scheduled.

Here in MMA's advocacy department, we live by the creed, "words matter," and as a result it will come as no surprise that some of the proposed amendments in LD 2262 seemed to mysteriously imply that municipal officials are the bad guys. For example, adding words like "reasonable," because towns must be charging unreasonable sewer, water and utility fees; limiting administrative foreclosure costs in a "not to exceed" fashion, because what treasurer isn't going to inflate the hours it took to execute the process; requiring that any improvements to a foreclosed property must be "in compliance with local building codes," because towns would definitely contract shoddy work on a property they want to sell; and best of all, including language that clarifies a former owner can still "commence an action for damages" although they've waived their right to a property's title.

The subsequent work session, held on Tuesday, had so many active contributors the committee room resembled a classroom of kindergarteners all grouped around their teacher. Advocates and department staff all vied for empty seats around the horseshoe, next to the analyst and anywhere else a microphone was available. Over nearly three hours, the committee reviewed the bill language, compared it to the proposed amendments, listened to advocates, and discussed the merits of each option.

Bolstering the position of municipalities was MRS as the department and MMA opposed many of the same amendments. Regarding foreclosed property in the Unorganized Territory, it is the department that "has the obligations of a municipality."

Measures that would have capped expenses, required adherence with building codes, and included public auctions were dealbreakers for MRS. Likewise, for a municipality dealing with a property that may present environmental issues or other complications, a cap on administrative costs could hinder the remediation efforts on a property or simply not compensate local officials for doing their due diligence to responsibly sell a property. Since the Maine

Uniform Building and Energy Code (MUBEC) is not enforced in all communities, requiring all improvements to comply with MUBEC is unrealistic. A community without a building inspector could never comply. Public auctions are expensive and while they could possibly bring a better result, the fees would likely reduce the sales proceeds even more so than via use of a real estate broker.

One piece of the pie that municipalities will no longer enjoy is the ability to retain any excess sale proceeds should the former owner not be located. During the public hearing, the committee briefly voiced their desire to instead move those proceeds to the state's Unclaimed Property program. Going into the work session, MMA's argument for municipalities' ability to retain those funds remained, but advocates knew that argument wouldn't be won.

By dinnertime, what resulted was a compromise and an amended bill that everyone could digest. Most of the additional proposals that were unrealistic for municipalities did not make it into the final amended version of the bill, a result that certainly seemed "reasonable."

The committee's analyst now has the daunting task of taking the many scribbles and notes of the work session and crafting an amended version of the bill to match the requests of the committee. Only the final language review of the bill will show if that mission is accomplished. Until then, MMA members should rest reassured that the committee approved amended bill was negotiated with their best interests in mind.

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the 131st Legislature. We can safely say the correlation to unrest is not causation, however the view of an April 17 adjournment date seems like magical thinking when reviewing the backlog of bills to evaluate and still move through the body. This week at least one committee decided the path of a recently printed bill that proposed to amend major sections of law pertaining to municipal activity with less awe and more shock.

Windy Roads, Lovely Views

The Committee on State and Local Government took up the recommendations of the Abandoned and Discontinued Roads Commission in the form of a bill printed on March 12 as LD 2264, *An Act to Further Clarify the Meaning of "Private Road" and "Public Easement" in Certain Provisions of Maine Law*, presented by Sen. Timothy Nangle of Cumberland County. As drafted, the bill proposes to change several sections of law that used the term "private way" to "public easement," which was created when the legislature again waded into the matter by gifting county roads and their public easements to municipalities in 1976. Private ways became public easements when the Legislature removed the phrase "subject to gates and bars" from public easement statute via Public Law 1975, c. 711. Since this point, the courts and statute have interpreted the term "private way" to mean public easement.

The purpose of "gates and bars" language originally was to allow abutting owners to "lessen the hazard of unwarranted or casual intrusion on their property due to it being opened to easy access from the main highway." In spite of the erection of gates and bars the public still would have the right to use the way "in the same manner as the parties who are primarily interested in it." (*Browne v. Connor, 138 Me. 63, 67-68, 21 A.2d 709 (1941)*) However, there remains confusion and animosity among residents on a previously discontinued or abandoned road that often faults the municipality or their neighbors for road stewardship. Municipalities cannot use public funds for private interests and the public right to access an easement cannot be extinguished without a public process, no more than private property can be taken without compensation to the owner at the time of the act. Each are constitutionally protected and all hinge upon situationally specific facts that do not lend themselves well to simple solutions.

During the public hearing on LD 2264, Maine Woodland Owners (MWO), who have a seat on the commission, expressed concern around the change of term and interpreted the change as compelling landowners with

a public easement to enter into a road association when three or more owners on the easement chose to do so. This is current law however, as the term is interchangeable in court interpretation.

Instead of simply disposing of the bill, MWO asked the committee to send the measure back to the commission and suggested that the focus of the work be for examining whether municipalities should incur the cost of doing a road inventory and produce a list to determine the status of every road in the municipal boundary, make the municipality a paying member of any subsequent road association, limit unfettered access to a public easement and limit landowner liability for damage to an easement caused by others. Maine landowners are also protected by some of the strongest liability statutes in the nation, but MWO contend they must repair environmental damage caused by the use of public easement.

Municipalities know very well which roads they commit funds to maintain and that list, as well as the list of all roads with a residence on them, are publicly available via the Local Roads Assistance website and reported to the Emergency Communications Bureau through E-911 addressing laws.

There is no simple formula for determining the legal status of a particular road. One road, over portions of its total length, may be a combination of a town way, a public easement, and a privately owned road. The status of a road depends on its creation, its history of use and maintenance, and its discontinuance, if any. It may even require court action to finally resolve the legal status of a road or portion of a road. (Read fiscal note and happy municipal lawyers).

Ultimately, the committee decided to clarify the ability in statute for a municipality to provide funds at the direction and level granted to them by the legislative body to assist in repairing or maintaining access to a public easement without needing to meet the safe and passable standard of public ways and skip the language debate all together. The committee further directed the commission to examine liability and related issues to easement retention and allotted more meetings to accomplish the tasks.

Public access to unobstructed views of the solar eclipse in the rural landscape is protected for the moment, as is access to historic cemeteries, natural treasures, and traditional hunting areas that new ownership may seek to limit. You can follow along to the activity of the Abandoned and Discontinued Roads Commission here: <https://www.maine.gov/adrc/>.

Cannabis Rules and a Hard No on Psilocybin

After the House and Senate adjourned for the day on Wednesday, members and interested parties gathered in the Veterans and Legal Affairs (VLA) Committee room for work sessions on LD 1517, *An Act to Create Equity in the State's Cannabis Industry*, sponsored by Speaker Rachel Talbot Ross of Portland, LD 1914, *An Act to Enact the Maine Psilocybin Health Access Act*, sponsored by Sen. Donna Bailey of York County, and LD 40, *An Act to Amend the Cannabis Laws*, sponsored by Sen. Craig Hickman of Kennebec County.

Choosing to start with LD 1914, right off the farm it seemed some committee members had an appetite to immediately move “ought not to pass” citing that the measure legalizing the use of psilocybin-based care, was not “ready for prime time.” However, Rep. Marc Malon of Biddeford and Rep. Laura Supica of Bangor, were both inclined to hear the analyst’s assessment of any continued issues contained in the amendment, including any sprouting issues identified during the drafting process. Part way through the analysis, the committee tabled LD 1914 noting it would be added to the schedule for Friday.

The committee’s attention then turned to LD 1517,

because the bill sponsor had other matters to attend to and would need to leave the VLA committee room. An amendment was presented that proposed to change the title of the bill to *An Act to Establish the Social Equity Program*, which would be housed within the Department of Economic and Community Development and focused on providing support to individuals or businesses owned by members of impacted communities.

The intent of the bill is to help marginalized populations who for the past 50 years have experienced incarceration at disproportionate rates when compared to the rate of criminality for the whole population. Additionally, an advisory committee and four new positions, two of which would be temporary, would be created through passage of the amendment.

The proposed advisory committee would be comprised of five members from impacted communities, two appointed by the President of the Senate and three appointed by the Speaker of the House. One of the newly proposed positions would be in the Department of Labor specifically to increase access to workforce development opportunities for impacted communities, and the second position located

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There is no hopper of bills this week, but bills are still being printed and the most current MMA LD list is available here: https://www.memun.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core_Download&EntryId=1445&language=en-US&PortalId=0&TabId=38

Next week both the House and Senate are planning to debate bills that have completed the committee process or been directly referred to the chamber daily beginning at 10:00 am. You can view the calendar here: <https://legislature.maine.gov/Calendar/#Weekly/2024-03-24>

within the Department of Administrative and Financial Services to assist participants with navigating the Cannabis Legalization and Medical Use of Cannabis Acts.

Funding to support the new positions and its work would come from the Adult Use Cannabis Public Health and Safety and Municipal Opt-in Fund.

Ultimately, LD 1517 was voted out of committee “ought to pass as amended,” with the amendment being to establish the Social Equity Program with the authority to employ consultants, but not to exceed \$300,000 every two years.

Next the committee moved on to the highly contested LD 40, which has had two work sessions since the last article was published in the Legislative Bulletin on March 8. As you may recall, the 66-page amendment was released less than a week before the public hearing. Despite working with other interested parties to tailor LD 40 in a way that would work for all involved, public health officials continue to strongly oppose the changes contained in the bill and urged the committee to hold off on passing the measure until a thorough review of the bill with all stakeholders could be completed.

During the work session this past Monday on LD 40, the committee chair commented that the parts of the amendment that changed local licensing authority and related to transfers of ownership were not going to be put forward in the final amendment.

This change is welcomed, as the information MMA provided prior to the work session pointed to the amount of revenue opt-in municipalities stand to lose if annual licensing authority is stripped, underscored the fact that municipalities can only charge for expenses incurred—hinting this could be viewed as an unfunded mandate, and shared that local leaders are growing weary of the constant chipping away of local authority. While municipalities patiently wait for a larger slice of the cannabis pie, what little local authorization currently afforded to municipalities, remains, for now.

Keeping on par with the lightning speed in which policies are finding their way through committee, the cannabis rules that were scheduled to be taken up on Friday, were moved to Thursday—the same day. Just after the committee was called to order on Thursday, it was noted that LD 1914, *An Act to Enact the Maine Psilocybin Health Access Act*, would also be added to the schedule, time permitting.

With the goal being to streamline the committee’s work, three of the four rulemaking bills that would amend the adult use and medical cannabis statutes, were tagged by the chair to be voted on by the committee as “ought to pass as amended,” with the amendment being to not authorize the

final adoption of the rules for the impacted chapters. By doing this, the committee elected to take all the changes proposed and combine them into one bill.

Therefore, LD 2185, *Resolve, Regarding Legislative Review of Chapter 2: Medical Use of Cannabis Program Rule, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy*; LD 2178, *Resolve, Regarding Legislative Review of Chapter 20: Rules for the Licensure of Adult Use Cannabis Establishments, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy*; and LD 2186, *Resolve, Regarding Legislative Review of Chapter 30: Compliance Rules for Adult Use Cannabis Establishments, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy*, were all voted on in that fashion.

This left LD 2187, *Resolve, Regarding Legislative Review of Chapter 10: Rules for the Administration of the Adult Use Cannabis Program, a Major Substantive Rule of the Department of Administrative and Financial Services, Office of Cannabis Policy*, to be the vehicle used for rule changes and included changes to definitions, the rules related to off premises sales at specified events, and various other changes.

The committee breezed through their work and turned their attention back to LD 1914, to which an amendment was presented that would strike and replace the entire bill by creating a committee to study the issue of psilocybin programs in other states and make recommendations on how to create pathways for such a program in Maine. The resolution would include a 13-member advisory committee comprised of administration members, legislators, and other stakeholders to determine how other states have handled the roll out of similar programs.

Although the threat of a rushed psilocybin program is off the table, some members in opposition to the measure in general were still opposed to the amendment to study the issue. In consideration of all the work done this session for this bill, a friendly amendment to the motion was proposed to include a directive to specifically look at past legislation relating to psilocybin and be reflective of those initiatives in the committee’s recommendations. With that, LD 1914 was voted out of committee with seven in favor and two opposed.

All these bills are now at the mercy of the House and Senate. Keep an eye on the calendars to see when they are scheduled.



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