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Initiated bills and competing measures

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Initiated Bills and Competing Measures

The competing measure requirement. Proposed legislation on a subject addressed in an initiated bill that is before the Legislature must be sent out to the voters as a competing measure under the following provision of Article IV, Part 3, Sec. 18(2) of the Maine Constitution: "The measure thus proposed, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both."

Determining whether proposed legislation is a competing measure. A detailed review of both the initiated bill and the legislation in question is necessary to determine when the competing measure requirement is triggered. The Law Court has held that a bill that deals broadly with the same general subject matter, particularly if it deals with it in a manner inconsistent with the initiated measure so that the two cannot stand together, is a competing measure within the meaning of the Constitution. *Farris ex rel Dorsky v. Goss*, 143 Me. 227 (1948). The Justices have offered the opinion that a statute designed to "fade away" and not take effect in the event an initiated bill is approved by the voters would not avoid the competing measure requirement and must be submitted to the voters before it can become effective. *Opinion of the Justices*, 680 A.2d 444 (Me. 1996).

Emergency legislation. The competing measure requirement does not deprive the Legislature of its authority under Art. IV, Part 3, Sec. 16 to enact emergency legislation immediately necessary for the preservation of the public peace, health or safety. *McCaffrey v. Gartley*, 377 A.2d 1367 (Me. 1977). The Law Court has held that tax legislation can properly be the subject of emergency legislation even though the funds raised thereby will not be required or become available before the expiration of the ninety day period required for non-emergency legislation to become effective. *Morris v. Goss*, 147 Me. 89 (1951). However, the Justices have warned that the fact that an initiated bill is pending does not by itself constitute an emergency within the meaning of the Constitution. *Opinion of the Justices*, 680 A.2d 444 (Me. 1996).

Initiated bills requiring expenditures beyond appropriations. Initiated measures approved by the voters normally take effect 30 days after the referendum results are announced by the Governor (unless the terms of the initiative provide another date). However, Art. IV, Part 3, Sec. 19 provides that "any such measure which entails expenditure in an amount in excess of available and unappropriated state funds shall remain inoperative until 45 days after the next convening of the Legislature in regular session, unless the measure provides for raising new revenues adequate for its operation."

Requesting an Opinion of the Justices. If questions arise during the Legislature's consideration of budget proposals that impact its ability to enact a non-emergency budget, it may be possible to request an advisory opinion from the Justices of the Supreme Judicial Court under Art. VI, Sec. 3 of the Maine Constitution, which provides: "The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." There is a significant body of law on the question of when a "solemn occasion" exists that provides a sufficient basis for the Justices to take the unusual step of offering an advisory opinion.