

Municipal Update:
Legal Developments Resulting
from the Pandemic

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Maine Omnibus Bill – Budget Matters

- May defer budget vote and spend according to prior year's budget, until budget can be adopted
- May commit taxes based on last year's budget
- Secret ballot election already called can be postponed – absentee ballots already issued may be counted whenever election finally held
- Schools may defer budget meeting and operate according to last year's budget
- No suspension of budget validation referendum process – what if town refuses to / cannot hold?
- Some strategies to address

Maine Omnibus Bill – Meeting Matters

- Meetings may be held electronically – but must they??
- Notice: Must provide link or other information necessary for public to access
- Ability to watch meetings after-the-fact is more important now – consider posting online if you don't already
- How to handle public hearings

Families First Coronavirus Response Act

- Applies to
 - All municipal governments < 500 employees
- Employers may by policy exempt “emergency responders”
 - Law enforcement, EMT, paramedic, 911 operators, public works personnel “as well as individuals who work for such facilities employing these individuals.”

FFCRA – Paid Leave

- Amount of paid leave required
 - Full-time: 80 hours (10 work days)
 - Part-time: Number of hours would have worked on average over two-week period.
- Reasons
 - Full pay rate up to \$511/day; \$5,110 in aggregate
 - Employee subject to quarantine or isolation order related to COVID-19
 - Employee advised by health care provider to self-quarantine
 - Employee has symptoms and is seeking diagnosis
 - 2/3 pay up to \$200/day; \$2,000 in aggregate
 - Employee is caring for an individual who is under quarantine
 - Employee is caring for their child if the child's school or child care child has been closed
 - Employee is experiencing any substantially similar condition specified by the Secretary of Health and Human Services

FFCRA – Paid Leave Misc.

- No need to have been employed for any length of time
- Leave is in addition to any other accrued leave to which employee is entitled
- If employee is laid off while on leave, must be paid out in full. Otherwise not entitled to this pay upon termination, as with accrued leave.
- Must provide notice of benefits to all employees

FFCRA – Extended FMLA benefits

- Eligibility
 - Unable to work or telework due to need to care for child whose school or place of care has been closed, or childcare provider unavailable.
 - Must have worked > 30 days.
 - Health care providers may be excluded by policy.
- 10 weeks of leave paid at 2/3 regular rate.
- Capped at \$200 per day and \$10,000 in aggregate
- First 10 days unpaid – employee can elect to use other benefits, including paid leave provision of FFCRA

FFCRA – Extended FMLA benefits

- Job restoration requirements
 - If over 25 employees – exact job
 - If under 25 employees
 - Not if job eliminated or
 - Employee is restored to job with similar terms/conditions of employment

FFCRA – How to document

- Adapt existing FMLA forms
- Get physician note where possible
- Remember testing / diagnosis not required
- Confirm ages of children and that schools or caregivers are closed
- Ok to ask what other caregivers are available in the home – Intermittent leave may be a strategy

FFCRA –
Bad news

No Reimbursement.

Coronavirus Aid, Relief, and Economic Security (CARES) Act

\$2 trillion economic relief package

Key features relevant to municipalities

- Unemployment enhancements
- Employment Tax Payment Deferral
- Funding to grant programs
- Funding to loan programs

Popular programs not available to municipalities:

- Payroll Protection Program loans
- Employee Retention Credits

Coronavirus Aid, Relief, and Economic Security (CARES) Act

Unemployment Insurance Expansion –

Key features

- Provides an additional 13 weeks of UI benefits over standard 26 weeks
- Provides an additional \$600 per week benefit to employees receiving UI benefits
- Provides for temporary federal financing of short-time compensation programs (Workshare plans)
- Waives the one-week waiting period for benefits
- Workers are not eligible if they can telework with pay or are receiving paid leave

CARES Act Unemployment- Self-pay entities

Sec. 2103 Emergency Unemployment Relief for Governmental Entities and Non-profit Organizations

- Funds transferred from Federal Unemployment Account to state trust fund.
- Self-insured local governmental entities reimbursed for 50% of unemployment costs
- The 50% amount does not include Section 2104 Benefits (\$600 per week), Section 2107 Benefits (additional 13 weeks) or PUA amounts, which are all 100% funded by the Federal government.
- Weeks of unemployment from March 13 through December 31, 2020, are covered.
- Reimbursements apply even if the unemployed individual is not unemployed due to COVID-19.
- States urged to interpret their unemployment compensation laws to provide maximum flexibility to reimbursing employers re: timely payment; penalties and interest

Governor Mills'
COVID-19
Emergency
Legislation
(LD2167)

Revises UI eligibility standards for claims associated with COVID-19

Waives the work search requirement for claimants still connected to their employers

Waives the one-week waiting period for UI benefits

UI benefits do not impact the employer's experience rating

UI Programs and COVID-19

Available resources for more information ...

www.maine.gov/labor/docs/2020/covid19/covidfaqandui.pdf

www.maine.gov/unemployment/docs/2020/Unemployment%20Programs%20COVID19%202020-03-30.pdf

https://davidscott.house.gov/uploaded_files/uc_faq_cares_act.pdf

CARES Act – Payroll Tax Deferral

- Is available to municipalities
- Applicability
 - Defer 6.2% FICA for payroll between 3/27/20 – 12/31/20.
 - 50% due on 12/31/21; 50% due on 12/31/22
- Check with IRS for instructions on how to report – starts with second quarter 2020 reporting.

CARES Act – Grant Funding

- Community Development Block Grants (\$2b) and Childcare and Development Block Grants
 - Increased funding to existing program
- Education Stabilization Fund
 - New fund; Maine DOE has applied and will administer
- Public Health and Social Services Emergency Fund
 - New fund; Maine HHS will likely administer
- Additional \$850 to Justice Assistance Grant Program for state/local law enforcement agencies in response to coronavirus

CARES Act – Coronavirus Relief Fund

- \$139b total to state and local governments; \$1.25b to State of Maine
- Maine has no qualifying local governments – Money goes straight to the state
- Still no guidance to states about how funds are to be distributed to municipalities (or whether they must be at all!)

CARES Act – Exchange Stabilization Fund

- \$454b for loans, loan guarantees and investments to support Fed lending to businesses, states and municipalities.
 - Purchase obligations directly from issuers
 - Purchase obligations in secondary market
 - Direct loans, not to exceed 5 years
- Guidelines and procedures forthcoming from Dept. of Treasury

Coronavirus
Aid, Relief, and
Economic
Security
(CARES) Act

Available resources for more information

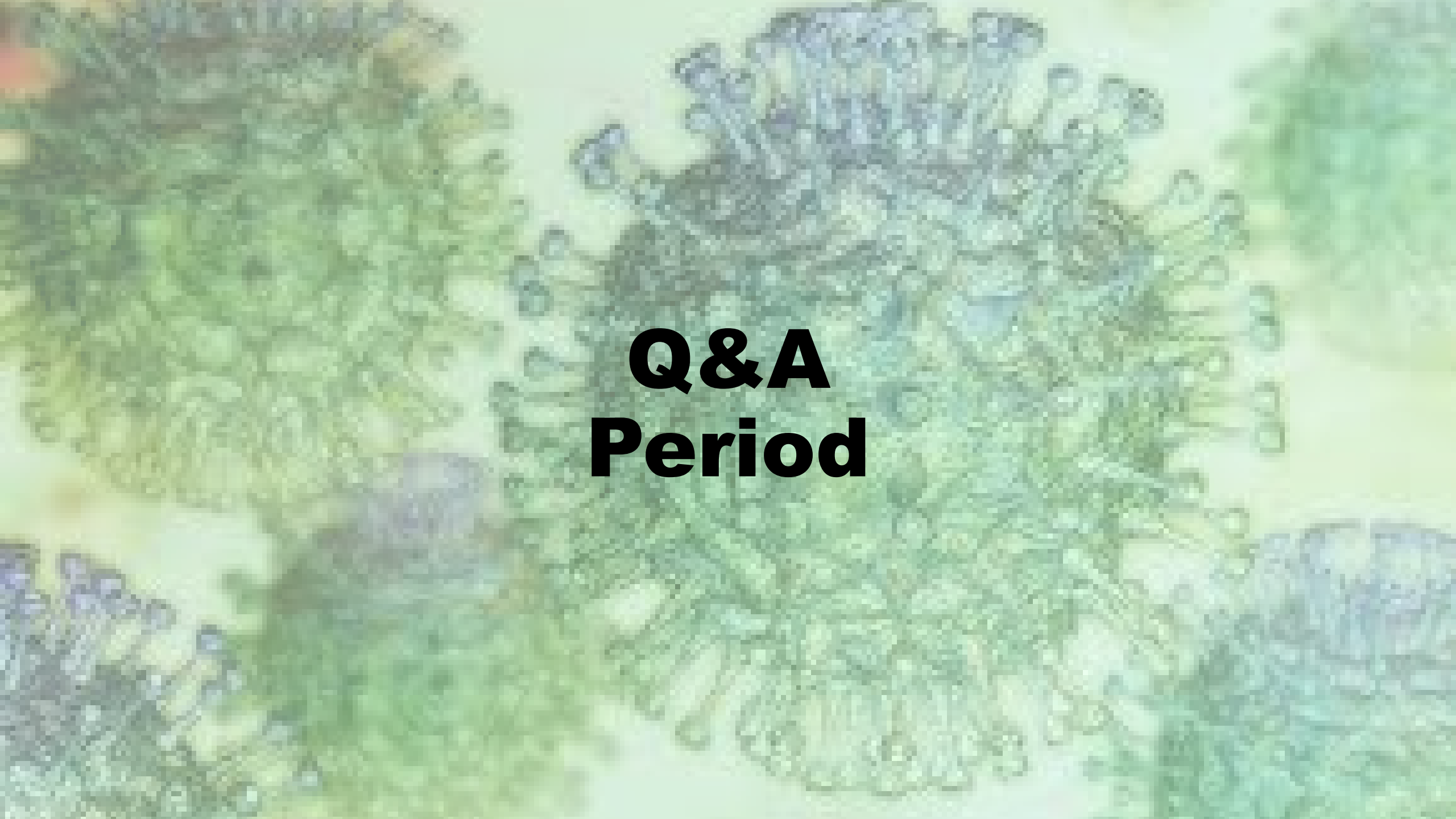
<https://www.sbc.senate.gov/public/index.cfm/guide-to-the-cares-act>

www.preti.com/publications/covid-19-financial-relief-evaluation-and-selection-tool

This Just In

New Public Health and Social Services Emergency Fund

- \$11b total to states and local governments
- Earmarked for increased testing capabilities
- Unclear how will be distributed



**Q&A
Period**