

Archaic State Mandate Slated for Revival

In 2013, the Legislature directed the Department of Administrative and Financial Services to convene a working group charged with reviewing state imposed mandates and identifying mandates that could be mitigated or eliminated. One of the recommendations included in the working group's report was the repeal of the mandate that each municipality appoint a local sealer of weights and measures. That recommendation was subsequently adopted by the Legislature in 2014 as part of the state budget.

LD 1579, An Act To Amend and Add Consistency to the Maine Weights and Measures Law, sponsored by Representative MaryAnne Kinney of Knox, seeks to reinstate that mandate by requiring municipal officers for each of the state's 491 communities to either appoint a sealer of weights and measures or request that the state appoint one on the municipality's behalf. This legislation was printed May 4, had its public hearing May 9 and its work session on May 11, when it was unanimously reported out "ought to pass as amended."

The structure of this bill appears to require the actual sealers of weights and measures, whether appointed by the municipality or the state, to be appointed municipal officials who are charged with the task of overseeing the accuracy of the weights and measures of the various products sold at retail. The state's "sealer" retains final approval authority over the appointment, and the municipality is responsible for ensuring that the appointed or elected municipal sealer successfully completes certification through the National Conference on Weights and Measures professional certification program. As printed in the bill, the failure of the municipal officers to appoint a sealer of weights and measures

subjects the municipal officers to a fine of \$10 for each month that they fail to make the appointment. Also, if the municipal clerk fails to notify the state's "sealer" of the appointment or election within 10 days, the clerk is subject to a fine of \$10.

At the public hearing, the sponsor and the Department of Agriculture, Conservation and Forestry testified in support,

while Bangor's City Clerk and MMA testified in opposition. The Department testified that this unfunded mandate was never, really, an unfunded mandate. The department said that since local sealers are paid based on state established testing fees, there are no added costs to cities and towns.

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Changing the Filing Deadline for Municipal Nomination Papers

Every legislative session the Secretary of State's Office submits a bill to amend the election laws in a variety of ways, most typically in a non-substantive or "minor substantive" way to fix glitches in statutory construction, clarify elements of the law that generate confusion or conflicting interpretations, or address changes in procedures to adapt to emerging technologies. LD 1384, rather blandly entitled *An Act To Amend the Election Laws*, was this year's version of that bill.

The Veterans and Legal Affairs Committee has reviewed and finally reported out LD 1384 with a unanimous "ought to pass as amended" recommendation. Several elements of the bill touch on municipal election procedures, with the most significant change falling within the "adaptation to new technologies" category.

Current municipal election law requires all candidates' nomination papers to be returned to the municipal clerk no later than 45 days before an election, which in a less technological age provided enough time for the ballots to be prepared, printed and made available for absentee voters 30 days before an election, as is generally required. (Municipalities that have adopted state election procedures

or by their charters may require different deadlines.)

The age of machine balloting has ushered in a challenge for that relatively quick turnaround. The vendors who program the ballot counting machines apparently need more time to turn the ballot formatting and candidate information they receive from the towns and cities into the machine-readable ballots that the municipalities can utilize. The turnaround timeframe issue is particularly acute when the municipal election is held concurrently with the statewide general election.

To address that problem, the printed version of LD 1384 proposed moving up the deadline in statute to submit municipal nomination papers from 45 days before the election to 70 days before the election. MMA's Legislative Policy Committee expressed concern about the confusion that could be generated, and the missed deadlines that could occur, as a result of such a radical change to a deadline that has been locked in statute as long as anyone can remember. Because the nomination petitions must be made available to aspiring municipal candidates 40 days before the filing deadline, the change would result in

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The department also testified that its own inspectors do not have the wherewithal to inspect all the scales, fuel pumps and devices that need to be measured annually, and that local sealers relieve the state's need to create new state-level inspector positions.

If that doesn't sound like a state mandate on municipalities, MMA is not sure what does. The committee appears to have unanimously voted to support this bill at the work session on the premise that the language of the bill does not constitute a mandate because it begins with "a municipality *may*..." rather than "a municipality *shall*..."

Yet, in the context of the provided language of the bill, the word "may" only reflects a choice between the municipality making the appointment or having the appointment made on the town's behalf. Whether appointed by the state or the municipality, the sealer becomes a municipal employee. Each municipality, not the state, will undertake all "employer" responsibility associated with these "municipal" officials.

Bangor City Clerk Lisa Goodwin testified in opposition to the element of LD 1579 that would impose a penalty on municipalities that neglect their duty to appoint the sealer of weights and measures. Apparently persuaded by the argument that an optional, non-mandatory activity should not come with a penalty for non-compliance, the committee voted to amend the bill to remove the penalty at the work session.

The municipal appointment of a local sealer of weights and measures may

have made sense in the 1800s. In 2017, consumer protection services such as verifying that a gallon of gas or milk is, in fact, a gallon, is unquestionably a state-level function which should be funded entirely on a fee structure paid for by retailers and centrally managed by state employees. Legislators often claim they want to get rid of unnecessary mandates

on the towns and cities. Ironically, in this rare case when the Legislature actually did that in recent memory, law makers are now poised to reinstall the mandate three years later.

If the re-installment of this archaic mandate that was repealed three years ago is of concern to you, please contact your legislators.

Amending Labor Contracting Laws

Binding Arbitration & Right to Strike

On Monday, the Labor, Commerce, Research, and Economic Development Committee held public hearings on two separate pieces of legislation seeking amendments to the laws that guide labor contract negotiations conducted between public employers and employees.

One of those bills, LD 1358, *An Act To Improve Public Sector Labor Relations*, sponsored by Senator Troy Jackson (Aroostook Cty.), would expand the elements of a labor contract that are subjected to binding arbitration during the collective bargaining process between public sector employees and employers, including municipalities. Under current law, salary, pension and insurance-related issues settled through arbitration are not binding on either employee or employer. However, all other contracted employment issues (e.g., management rights and department rules, disciplinary and discharge provisions, sick leave, etc.) decided through arbitration are binding. LD 1358 would make all matters in labor contracts, including salaries and benefits, subject to binding arbitration.

The other bill, LD 1348, *An Act To Expand the Rights of Public Employees under the Maine Labor Laws*, sponsored by Representative Michael Sylvester of Portland, would provide to all public employees the right to strike.

The Maine Education Association (MEA), Southern Maine Labor Council, Teamsters Union, and American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) all testified

in support of these bills. The primary argument offered by proponents was that since public unions are prohibited from conducting a strike, their negotiating strength is weakened and that binding arbitration will help "level the playing field".

The AFL-CIO believes there is a massive power imbalance with unfair rules "baked into" Maine's collective bargaining process, which leads to an inequitable outcome for employees. Explaining their tactic of submitting one fairly traditional labor bill (LD 1358) as well as one highly unusual labor bill (LD 1348), the organization testified that there is a relationship between these two pieces of legislation and that one if not both bills should be enacted.

According to the history provided by the Maine State Employees Association, which supported LD 1358, when Maine's Employee Labor Relations Act was adopted, labor unions gave up the right to strike in exchange for the right for binding arbitration over collective bargaining, except with respect to salaries, pensions, and insurance. The state employees union supported LD 1358 because the bill provides what they described as an alternate resolution forum, allowing for an objective view of what salaries should be. The MEA argued that public employers feel emboldened by arbitration not being binding, removing any employer incentive to negotiate fairly.

MMA opposed both bills.

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Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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Local Option Sales Tax in the Wings?

Update from the Taxation Committee

In marathon work sessions held on Wednesday and Thursday, the Taxation Committee took positions on two bills that could help to relieve some of the burdens placed on property taxpayers located in the state's service center communities. One of the bills would provide municipalities with the option to adopt a local meals and lodging tax, while the other bill would repeal the property tax exemption for leased hospital property.

Divided Support for Local Option Tax Authority. The Taxation Committee's 6 to 5 vote in support of an amended version of LD 1522, *An Act To Authorize a Local Option Sales Tax*, came as a surprise to many in attendance at Wednesday's work session. For a variety of different reasons (e.g., burden on business community, competition between municipalities, creation of a "patchwork quilt" of taxing authority, etc.), the Legislature has historically opposed efforts seeking to provide municipal governments with the authority to enact local option sales taxes.

As amended by a majority of the Taxation Committee, the bill authorizes municipalities, via referendum, to assess a tax of not more than 1% on prepared meals and lodging sales. Of the total revenue generated by the tax, 65% would remain with the municipality, 25% would be distributed through the revenue sharing program, and the remaining 10% used to capitalize the Regional Economic Development Revolving Loan program used, in part, to fund entrepreneurial ventures.

Although as of Thursday afternoon there remained majority support for LD 1522, two members of the Taxation Committee had not yet voted and there was an error in the official recording of the original vote that needed to be corrected. That said, at least six members of the Taxation Committee support this amended version of the bill.

LD 1522 will now head to the House and Senate for another round of debate and votes.

Leased Hospital Property. LD 1212, *An Act To Amend the Definition of "Eligible Business Equipment" for the Purposes of the Business Equipment Tax Exemption Program*, was sponsored

by Senator Roger Katz (Kennebec Cty.) on behalf of MMA's Legislative Policy Committee.

LD 1212 seeks to repeal existing law that extends a personal property tax exemption to businesses that lease property to hospitals, health maintenance organizations or blood banks. Under Maine's tax code in all other circumstances, unless the lessor is also exempt from property taxation, the property leased by a tax exempt entity is subject to property taxation. Even property leased by municipal, state or federal governments is subject to property taxation unless the lessor is exempt.

The proposed change does not have an impact on the bottom lines of leasing companies or hospitals, because the bill also provides that the property leased to hospitals can be exempt from taxation through enrollment in the Business Equipment Tax Exemption (BETE) program.

The proposal would, however, benefit communities with hospitals within their municipal boundaries. As the leased property is enrolled in the BETE program the host municipality would be eligible for state reimbursement equal to 50% of the lost property tax revenue associated with that personal property. Under the current exemption system, 100% of the lost revenue is borne by the local property taxpayers.

The Taxation Committee's unanimous vote in support of LD 1212 includes an amendment for a fiscal note. The state share of the exemption is estimated to be \$250,000 annually.

LD 1212 is likely to be supported by the members of the House and Senate. However, the bill's real challenge will come when placed on the Appropriations table to compete with all other bills needing financial support to secure final enactment.

Assessing Large Industrial Properties. At Thursday's work session the Taxation Committee also voted by a margin of 7 to 3 to request permission from the presiding officers to carry over into the next session LD 1479, *An Act To Modernize and Improve Maine's Property Tax System*. As reported in the April 28th

edition of the Legislative Bulletin, the bill seeks to advance several changes to the laws guiding the assessment of large industrial properties that upends the balance that currently exists between the treatment of the municipalities and industrial property owners in the tax assessment and appeals process.

The request to carryover LD 1479 was made by the bill's sponsor, Representative Stephen Stanley of Medway, who is a member of the Taxation Committee. Rep. Stanley informed the Committee that some of the proponents and opponents had been working on amendments to the legislation and needed more time to develop the proposal. With reassurances that all parties were interested in working on the issue, a majority of the Committee supported the carryover request.

Assuming the carryover request is honored, over the summer and fall interested parties will gather to craft an amendment to LD 1479 to be presented to the Taxation Committee in January 2018 for consideration.

Nomination Deadline (cont'd)

potential candidates being asked to pick up their nomination papers a little after Thanksgiving for a mid-March election.

In response to the municipal concerns, the committee shaved down the secretary's recommendation by 10 days, to establish the nomination filing deadline for municipal elections at 60 days before the election.

As a unanimous committee recommendation supporting a Secretary of State's "fix-up" bill, it is very likely the new 60-day deadline will become the law of the land. As a tangential result, but only after the date this change becomes legally effective, municipal clerks will need to make nomination papers available 100 days before the municipal election instead of 85 days as established in current law. Assuming the final enactment of this bill, municipal clerks will need to consider bolstering their educational and outreach efforts to smoothly implement this change, especially during the first few municipal election cycles after the effective date of LD 1384.

Election Bills Round-up

Over a dozen bills were submitted this legislative session with a focus on Maine's citizen initiative process. Most of the bills in this clutch were designed to make it more difficult to advance legislation to the voters through the citizen initiative process. Several others were designed to shine more light on an initiative's content or impact as it makes its way from the petitions in the parking lots to the ballot box.

Since the voters' right to the citizen initiative process is established in Maine's Constitution, many of the bills came in the form of resolutions to amend the Constitution to put a little more grist in the signature gathering process. Legislative resolutions of this kind need to be supported by super majority votes in both the House and the Senate (two-thirds or better) and then ratified by the voters statewide before any change to the Constitution goes into effect.

Last week the Veterans and Legal Affairs Committee reduced all those bills down to just three, two of which left the Committee room limping a little bit.

LD 31, *Resolution, Proposing an Amendment to the Constitution of Maine To Require That Signatures on a Direct Initiative of Legislation Come from Each Congressional District*. The current constitutional requirement to advance a citizen initiative is to obtain signatures from supportive registered voters in an amount equaling or exceeding 10% of the number of votes cast statewide in the most recent gubernatorial election. LD 31 would change that requirement so that the number of valid signatures in each of the state's two congressional districts would have to equal or exceed 10% of the number of votes cast in each respective district in the most recent gubernatorial election. The total number of required signatures statewide remains the same, but the apportionment of those signatures would need to be more geographically spread out.

The purpose of LD 31 is to ensure that the initiative has at least some broad-based measure of support throughout the state. Before getting to LD 31, the committee rejected at least a half-dozen other proposals that would have separately or in combination: (1) increased the total number of signatures required, (2) applied the signature requirement against a different base (e.g., against the number of voters in the most recent presidential rather than gubernatorial election, or against the entire voter registration list), or (3) required the signature percentage threshold to be achieved in every county or every state senate district.

The committee voted by a margin of 11-2 "ought to pass" on LD 31.

LD 53, *Resolution, Proposing an Amendment to the Constitution of Maine To Prohibit Payment Per Signature for Citizen Petition Drives*. Although this bill as printed would have amended the state's Constitution to prohibit the practice of paying petition circulators on a per-signature basis, the committee members didn't think such a detailed procedural standard belonged in the state's Constitution. The committee's 10-3 "ought to pass as amended" vote was in support of a statutory rather than a constitutional prohibition on this signature-gathering inducement.

When LD 53 was given its public hearing in mid-February, the Secretary of State's Office described the difficulty this prohibition on a specific signature gathering payment system would have if challenged in the courts. A Maine-based decision previously handed down by the First District Federal Court in the 1990s expressly found no compelling evidence to support the claim that there is a higher level of signature fraud associated with the piece-work payment method compared to any other payment method. In that ruling, the court found that a state law along the lines of LD

53 could limit the pool of circulators, increase the cost of petitioning, and otherwise violate First Amendment-based political speech rights provided in the U.S. Constitution.

In the committee's majority vote for the amended version of LD 53, the earlier case law was recognized, but at least some committee members believe that more recent evidence would support a different judicial outcome if challenged.

LD 795, *An Act To Require the Text of a Direct Initiative To Be Printed on the Ballot*. As was the case with LD 53, the committee substantially changed this bill prior to unanimously supporting an "ought to pass as amended" recommendation.

The printed bill required that the full text of any citizens' initiative be printed on the statewide ballot. Just using last November's citizen initiatives as an example, the printed version of LD 795 could lead to single ballot questions that would be over 30 pages in length.

In the alternative, the committee's amended version of LD 795 will require that a document already prepared by the Secretary of State for every statewide election that includes referendum questions be made available at every polling place, as may already be the case. The document prepared by the Secretary includes summaries of each initiated question as well as the full text, the supportive or oppositional statements by interested parties that can be generated in the process, and the fiscal impact information. Since the Secretary's document is already at the polling place, the practical substance of LD 795 will be that a notice of the availability of the Secretary's informational document must be posted at the polling place in the same location and manner as other informational documents are posted on election day.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

Monday, May 15

Criminal Justice & Public Safety
Rm. 436, State House, 10:00 a.m.
Tel: 287-1122

LD 1429 – An Act Regarding the Epidemic of Opiate Abuse.

Tuesday, May 16

Judiciary
Room 438, State House, 1:05 p.m.
Tel: 287-1327

LD 1264 – Resolve, Regarding Court Facilities in York County.

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 1565 – An Act To Ensure the Effectiveness of Tax Increment Financing.

LD 1570 – An Act To Make Technical Changes to Maine’s Tax Laws.

IN THE HOPPER

State & Local Government

LD 1588 – An Act To Maintain Mail Routes and Access to Residential Structures. (Governor’s Bill) (Sponsored by Rep. Hilliard of Belgrade.)

This bill amends the laws governing the process of discontinuing a town way to municipal maintenance, the presumption of road abandonment, and a very old statute regarding “mail routes”. Specifically, the bill: (1) prohibits the discontinuation of a town way that includes the discontinuation of the public easement if the public easement provides the sole access to any property; (2) provides that if public easement is retained in a discontinuation order, the purpose of the retention must be stated in the order and the municipality must keep the public easement passable for that purpose; (3) provides that no town way can be discontinued if there is a residential structure on the roadway and the town way is the only way to provide access to that residential structure, and that any town way that cannot be discontinued for that reason must be maintained by the municipality for motor vehicle access; (4) allows for any presumption of road abandonment after 30 consecutive years of no municipal maintenance to be rebutted upon the showing of evidence that a residential structure was on the town way and depended on the town way for sole access; and (5) mandates the year-round municipal maintenance of any established mail route in the municipality regardless of the legal status of the town way or discontinued, abandoned or private road.

Taxation

LD 1599 – An Act To Improve the Maine Tree Growth Tax Law. (Governor’s Bill) (Sponsored by Rep. Stanley of Medway.)

This bill proposes to make the following substantive changes to Maine’s Tree Growth Tax program:

April 1, 2018 Eligibly – Minimum Acreage. Beginning on April 1, 2018, the number of acres eligible for enrollment in the Tree Growth program would increase from 10 to 25 acres.

Pre- April 1, 2018 Enrollments. Parcels between 10 and 25 acres enrolled in the program before April 1, 2018 could: (1) continue to stay enrolled in the program in a grandfathered status; (2) be moved from the Tree Growth program to the Open Space tax program; or

HOPPER (cont.)

(3) be completely withdrawn from any current use tax program. The penalty assessed for withdrawing from the program would be equal to the full value taxes that would have been assessed on the property over the past five years less the taxes actually paid.

Eligibility – Qualifying Uses. Program eligibility standards would be amended to expressly include tree harvesting as a necessary element of enrollment in the Tree Growth program and exclude parcels not used for commercial timber harvesting, including parcels used for cultivating and harvesting Christmas trees and gathering nursery products used for ornamental purposes, such as wreaths, bough material or cones or other seed products. Enrollment for maple syrup operations would still be allowed.

State Review for Compliance. An existing compliance pilot program would be extended to January 1, 2020. The Bureau of Forestry within the Department of Agriculture, Conservation and Forestry, would be authorized to review the forest management and harvesting plans developed for the property enrolled in the Tree Growth program to determine if the landowner is making “reasonable” efforts to manage the property according to the plan. In the process of reviewing the plan, the Bureau would be authorized: (1) to enter and examine the forest land after notification to the land owner; (2) to request and review a current forest management and harvesting plan; and (3) to request and review and expired forest management and harvesting plan. The Bureau’s focus would be on parcels in coastal or waterfront enrollments where there is a significant deviation from the per acre market value and Tree Growth values of the enrolled property. If the Bureau determines that a land owner is not in “substantial” compliance with the plan, the landowner would be provided 90 days to come into substantial compliance with the statutory standards governing enrollment and one year to come into compliance with the parcel’s forest management plan. If the landowner fails to come into substantial compliance with either the Tree Growth standards within 90 days or the forest management plan within one year, the Bureau will inform the municipal assessor that the parcel must be removed from Tree Growth enrollment.

Municipal Enforcement. Upon receiving notification from the Bureau that a landowner has failed to comply with the directives to come into compliance with the Tree Growth statute or forest management plan, the municipal assessor would be required to withdraw the land from the program. Any municipality failing to withdraw the noncompliant parcels from the program would be ineligible to receive any state Tree Growth program reimbursement in the following year.

Other Changes. As printed, LD 1599 would also make several less substantial changes. For example, to ensure landowner compliance with management and harvesting plans, landowners would be required to provide a copy of the current management plan, as well as, any plan that had expired within 2 years, at the request of the municipal assessor, State Tax Assessor of the Bureau of Forestry.

Veterans & Legal Affairs

LD 1571 – An Act to Amend the Election Laws Relating to Party Qualifications. (Sponsored by Rep. Luchini of Ellsworth.)

In response to legal issues raised by the Libertarian Party of Maine in a lawsuit filed in 2016, *Libertarian Party of Maine v. Dunlap*, and addressed by the United States District Court, this bill creates a new category of political party, defined as a “minor party,” with a minimum of 5,000 and a maximum of 50,000 enrolled voters. A party with more than 50,000 enrolled voters is defined as a “major party” and nominates candidates through the primary election process. Minor parties do not participate in primary elections but instead nominate candidates for office at state conventions and are required to file consent forms and statements of qualification for those candidates with the Secretary of State within 30 days of the convention or by August 8th of the election year, whichever first occurs.

Amending the Labor Contracting Laws (cont'd)

Municipal officials oppose LD 1358 because binding arbitration over salaries and benefits bequeaths the control over a significant portion of municipal budgets to a single, unelected and entirely unaccountable individual. For example, if a municipality provides a 3% raise and the arbiter decides to make that raise 5%, the elected officials are placed in a public policy pigeonhole. Taxes must be raised or, when prohibited by an “LD 1”-type property tax levy restriction, the workforce must be reduced or other services cut. Since salaries and benefits are estimated to constitute 60-70% of the municipal budget, there are very few “elsewhere” places to cut.

With respect to LD 1348, municipal officials believe the charge to municipal governments to protect the public’s health and safety must supersede the right to strike. Police

and fire protection, the availability of drinking water and wastewater management, the functionality of transportation systems, school operations – the provision of these services is too fundamentally necessary to a functioning society to even consider their discontinuation.

The Department of Administrative and Financial Services provided testimony in opposition to both LD 1348 and LD 1358. The Department opposed the right-to-strike bill primarily for reasons of health and safety. The Department’s opposition to LD 1358 was based on the concern shared by municipal officials of removing decisions from accountable public governing bodies and transferring “it to independent arbitrators who are not accountable to taxpayers and who may not understand the financial consequences of their decisions.”