

One Citizen Initiative That's Being Given Its Due The Marijuana Legalization Implementation Committee (MLI) is getting its trip together

Over the last couple of weeks, the MLI panel has made a great deal of progress constructing the framework of how the local government regulatory system will apply to the five types of retail marijuana facilities established by the Marijuana Legalization Act adopted by the voters last November. The five separately licensed retail establishments include cultivation facilities, manufacturing facilities, testing facilities, retail stores and social clubs. A description of that framework, although still preliminary and a long way from being cast in stone, is described below.

The committee's schedule going forward is also coming into view.

From the outset last January it was recognized that the task of establishing the statutory and regulatory oversight of the retail marketplace of a newly legalized intoxicating substance is a project that no *ad hoc* legislative committee, working on a part-time basis, could accomplish within the legislative session. Rubbing up against that recognition, however, is the grand scheme. The implementation schedule under the initiated law, even as adjusted by the Legislature at the beginning of the session, requires that all the necessary state regulation to govern marijuana production and retailing activities be provisionally adopted as "major substantive rules" by the several designated state agencies no later than January 2018. With just seven months to go, those state agencies are not able to even begin their work without the explicit authority and the detailed direction of the enabling legislation to guide their way.

At the Committee's work session on June 2 it was announced that the MLI panel will continue meeting with scheduled regularity throughout July, after the adjournment of the legislative

session. The committee will use that time to complete its development of a comprehensive re-write of the Marijuana Legalization Act. The enactment of that rewrite is necessary to allow the rulemaking process to begin. Later this summer, a public hearing on the omnibus bill will be held and public comment taken. After further consideration in response to the public input, the bill will be presented to the full Legislature during a special legislative session set to be scheduled in September. Prior to adjournment this

month, however, the committee will forward to the Legislature for consideration a proposal fast tracking the licensing requirements for testing facilities in recognition that manufacturers and retailers of legalized recreational marijuana and related products will need to rely on testing services once authorized to be licensed to operate next year. A description of the testing facility bill, *An Act To Amend the Marijuana Legalization Act Regarding Retail Marijuana Testing* (continued on page 2)

Weapons in Municipal Buildings House Supports Local Control

By a single vote (74-73), the members of the House of Representatives supported an amended version of LD 351, *An Act to Allow Municipalities to Prohibit Weapons at Municipal Public Proceedings and Voting Places*.

The printed bill, sponsored by Representative John Spear of South Thomaston, was amended by eight members of the Criminal Justice Committee to allow but not mandate municipalities to adopt ordinances prohibiting the carrying of dangerous weapons in municipal buildings, at municipal public proceedings and at voting places. As amended, LD 351 further requires that the adopted ordinances provide an exemption for the carrying of handguns by law enforcement officers and clarifies that the municipal ordinance can provide additional exceptions allowing the carrying of certain dangerous weapons (e.g., kitchen and other knives, etc.) in municipal buildings and at public proceeding. The amended version of LD 351 also requires municipi-

palities to post notice of the prohibition outside of all municipal buildings and other places subject to the ordinance.

Municipal officials greatly appreciate support for this bill and the acknowledgment that local residents can be trusted to make the decisions that best meet their community's unique needs. Attached as a sidebar to this article is a list of the 74 House members who supported LD 351 (see pg 5).

The bill is now tabled in the Senate and could be debated as early as today (June 9). MMA's Legislative Policy Committee supported LD 351 on the belief that the state government's right to ban dangerous weapons from its offices, and the courthouses' rights to do the same, should be a decision similarly allowed to municipal legislative bodies. Municipal officials are urged to contact members of the Senate as soon as possible and ask for their support of home rule authority through passage of LD 351.

Facilities, is found in a sidebar article.

The municipal regulatory authority and the choreography between the state and local regulatory systems will be an element of the omnibus bill to be fully developed this summer. What follows is how that public policy is getting framed out. Again, there is a fluidity to the committee's process, so at least some of the decisions described below are tentative and will be reviewed several more times by the Committee in the weeks ahead.

Separate state and municipal licensing procedures. For municipal officials familiar with the initiated law, the licensing procedure for each of the various types of retail marijuana establishments, from cultivation operation to retail store, involved a coordinated interplay between the state licensing process and the municipal approval process. The developer would submit a licensing application to the state. The state would, in turn, send that application to the municipality, which would be given just 14 days to inform the state licensing authority whether the application was in compliance with municipal standards. It was a system that clearly wouldn't work and the Committee quickly sensed the state licensing process had to shift one way or the other. Either the applicant had to secure full municipal approval before obtaining a state license or, in the alternative, the applicant needed to secure a generic state license to operate, with that license being entirely contingent on the

proposed development ultimately receiving full municipal approval. At this stage of policy development, the Committee has opted for the second approach.

The state licensing criteria haven't been hammered out in complete detail but the concept is that the developer would seek a license first from the state. In the application, the proposed development would be detailed except there would be no need specify municipal location. The state-level licensing standards would cover such issues as ownership and management qualifications, financial capacity, corporate organization and ownership, owner and employee criminal background history, and perhaps a range of other demonstration-of-competency standards whereby the applicant would be required to satisfy the state licensing authority that the proposed development, no matter where located, would not adversely affect the environment, water quality, solid waste management systems, etc. Although the applicant might have a specific host municipality and location in mind at the time of the state license application, that information would not be a necessary part of the state licensing procedure. A developer passing muster on the overarching state standards and receiving a state license would be free to fully effectuate that license by subsequently obtaining municipal approval for the development in any municipality the developer wishes, provided the designated host municipality is willing, through its regulatory system, to allow the facility to be developed. The developer with a state license would have one year under that license to obtain final municipal approval.

Full home rule authority. An element of the Committee's policy development that seems unlikely to waiver is a full commitment to municipal home rule authority with respect to all five types of retail recreational marijuana facilities. The Marijuana Legalization Act as adopted by the voters gave a generous nod to the concept of home rule, but in the detailed wording of the initiated law there were actual limitations on municipal regulatory authority... limitations that appear to have been entirely unintentional. To remove any ambiguity,

the Committee appears headed toward embedding the following clarifications in the amended version of the legalization law.

- All retail marijuana business operations within a municipality would be expressly prohibited by statute unless and until approved by the municipality.

- Municipal land use approval authority would be provided pursuant to both home rule authority and/or zoning authority, so municipalities without town wide zoning systems could still regulate marijuana establishments pursuant to their site plan review ordinances or other similar types of commercial development regulation.

- Full municipal licensing authority, in addition to full municipal land use authority, would be provided to the extent the municipality chooses to apply ongoing operational performance standards to marijuana establishments. Municipalities would be authorized to establish licensing standards governing the types of operational practice and performance requirements that will not likely be part of the state licensing standards.

- Municipal licensing fees would be authorized to cover all costs associated with administering and enforcing the license.

- The initiated law establishes a clear right for a municipality to prohibit any or all of the five types of retail marijuana establishments and to limit the number of "retail marijuana stores". The initiated law is less clear about the municipal right to limit the number of the other types of retail marijuana establishments, such as cultivation facilities. The Committee is proposing to establish the municipal right to limit the number of any or all of the five types of retail marijuana facilities.

- Plantations would be provided the same authority as municipalities to regulate retail marijuana businesses.

State-municipal communication. As can be seen, the Committee is taking a "to each its own" approach to the state-local regulatory interface. The state will regulate marijuana establishments according to its primary interests and the local governments will be allowed to regulate those same facilities according

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Editorial Staff: Geoffrey Herman, Kate Dufour, Garrett Corbin and Laura Ellis of the State & Federal Relations staff.

to the primary local interests and neither level of government will impinge upon the other. That doesn't mean, however, that the state and local governments shouldn't communicate their regulatory decisions freely between one another. To that end, the Committee is drafting into its omnibus bill a requirement that the state licensing authority notify the appropriate municipality within 14 days of any decisions to approve, renew, deny or revoke a license, or approve a relocation or transfer of ownership. Each municipality would be similarly required to notify the state licensing authority within 14 days of making any of those same decisions at the local level.

Taxation decisions yet to be decided. Although the Committee has reviewed the structure and rates of retail marijuana taxation in the other legalized states, it has yet to develop Maine's policy in that extremely important subject area. It is not uncommon among the supporters of legalization attending the Committee meetings to find support for a taxation system that ensures a flow of that tax revenue to the municipalities that host retail marijuana facilities, although nothing along those lines was written into the initiated law. Taxation policy will clearly be a front-and-center topic of discussion during the Committee's meetings in the weeks ahead.

Summing it up. All of the Committee's decisions reflect a refreshingly positive acknowledgement of the home rule spirit embedded within the initiated law and a healthy dose of respect at the Committee level for the local decision making process. With that said, more than one MLI Committee member has pointed out that municipal home rule is exerted both as a cherished right and a considerable responsibility.

One example of the responsibility that attaches to the right of home rule is found in the authority to limit the number of marijuana facilities by number. To the extent a municipality limits various marijuana facilities by number, the municipality will be obliged to manage the system that decides which applicants among many will be provided the limited number of approvals. By all accounts,

and especially for the purpose of avoiding litigation, that process needs to be very carefully thought through, expressly codified in ordinance and sometimes administered in consultation with third-party industry experts.

More generally, the Legislature's endorsement of the fullest possible range of home rule authority with respect to all five types of retail marijuana facilities provides municipal planners and the municipal legislative bodies with every tool they could ask for to address the challenge of accepting this newly legalized industry. The municipal authority ranges from outright prohibition to time-limited moratoria to facility limitation by number to all available zoning and non-zoning regulatory approaches. Whatever approach the citizens of every town, city and plantation in the state wish to adopt can be articulated into a local regulatory scheme.

But that doesn't mean getting to that decision is not a lot of work. Outright prohibition is relatively straightforward, but for any welcoming community, the

task of developing the local regulatory structure requires a great deal of self-education about the nature of the industry and industrial practices, the nature of the marketplace and the industry-specific public health, safety and welfare impacts that need to be controlled. Although recreational marijuana, like medical marijuana, is clearly an "industry" in the sense of being a distinct group of profit-making enterprises focused on a specific product, the industry is far from monolithic. It includes everything from factory-scale, high-tech indoor cultivation and manufacturing operations that feed a wholesale market to niche local farmers working the land and hoping to nurture a "clean" marijuana local brand. Among all the other tasks a municipal planner will face when preparing the local regulatory package for town meeting or council approval, there will be the challenge of tailoring the municipal regulatory system to the community's collective vision regarding the aspects of this emerging industry it wishes to welcome, if it wishes to welcome any at all.

Prohibiting Medical Marijuana Distribution Near Schools

In contrast to the significant deference to home rule authority included in discussions regarding recreational marijuana, medical marijuana continues to be a field dominated by near-exclusive state authority. On Thursday, the Health and Human Services Committee held a public hearing, work session, and vote on an emergency bill just printed to clarify a nuance in state medical marijuana law which has become problematic at the local level. That bill is LD 1636, *An Act to Allow Municipalities to Establish Ordinances Banning or Restricting Marijuana Caregivers within 500 Feet of a School*. The legislation, sponsored by Representative Seth Berry of Bowdoinham, would explicitly authorize municipalities to adopt and enforce ordinances that either prohibit the location of registered

primary medical marijuana caregivers within 500 feet of the property line of a preexisting public or private school or limit the number of primary caregiver facilities within that buffer zone.

In addition to the sponsor, the code enforcement officer for the Town of Richmond, James Valley, as well as Legalize Maine and MMA testified in support of the bill. The sponsor explained his pursuit of the bill was due to the inability of the Town of Richmond, which is located in his district, to refuse to issue a permit for multiple medical marijuana caregivers in a former industrial building located just a couple of hundred feet from a public middle and high school building.

Currently, Maine's Medical Use of Marijuana Act is interpreted by some

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Retail Marijuana Facility Legislation Beginning to Roll

Committee bill on testing facilities gets public hearing

On Thursday, the Marijuana Legalization Implementation Committee held a public hearing on a bill developed by the Committee that will allow for the rulemaking process to begin with respect to the licensing of retail marijuana testing facilities. Ensuring the safety of the marijuana products to be sold at retail, as well as the accuracy of their labeling, is a step in the process that needs to be in place before any retail activity can proceed. The experience in other legalized states has shown that a bottleneck to the implementation of the legal retail distribution can occur if the appropriate testing facilities are not licensed on the front end and made operational.

The bill, which has yet to be given an LD number, is aptly entitled *An Act To Amend the Marijuana Legalization Act Regarding Retail Marijuana Testing Facilities*. The bill mandates that any licensed retail marijuana facility, prior to selling or furnishing retail marijuana to a consumer or to another licensee, must submit the marijuana to a licensed testing facility to ensure the product does not contain one or more contaminants, over acceptable levels, that are injurious to health. The testing facility must also ensure that the labeling information on the product is accurate.

Details about the specific contaminants and contaminant threshold levels are given over by the bill to rulemaking by the Department of Agriculture, Conservation and Forestry (DACF). At a minimum, however, the bill requires testing for residual solvents, poisons and toxins, harmful chemicals, dangerous molds and mildew, harmful microbes such as e-coli and salmonella, pesticides, fungicides and insecticides. The testing must also compare the potency of the product in terms of THC levels to the potency level claimed on the label. The marijuana product's overall homogeneity and its "cannabinoid profile" must also be verified.

For these mandatory testing requirements, the testing facility rather than the retail establishment licensee must control the sampling of the facility's product to be tested. The bill prohibits a testing facility license to be issued to persons with financial interests in any other form of retail marijuana establishment.

For marijuana products that are created for the purpose of research and development and that will not be made available for sale to consumers, the bill authorizes the testing facilities to provide "non-mandatory" testing services. The primary difference between the mandatory and non-mandatory testing services is that if problems are identified with the product undergoing mandatory testing, the testing facility must quarantine the product and notify the DACF.

Testing facilities are also authorized under the bill to conduct non-mandatory testing of marijuana products on behalf of producers or consumers of marijuana grown for personal use or medical marijuana.

The bill gives a range of rulemaking direction to DACF governing all aspects of providing a state license for these facilities to operate. The bill expressly provides that a testing facility may not commence or continue operation unless the facility is approved or licensed by the municipality in which the facility is located and notice of that approval has been provided by the municipality to the state licensing authority.

In addition, the bill significantly amends the section of the initiated law governing the inspection of books and records. As re-written in the Committee's bill, all retail marijuana licensees are required to maintain and retain their business transaction records, which must be open to inspection by the state licensing authority upon demand and without notice during normal business hours. The state licensing authority may require any licensee to submit to an audit.

The bill also requires each licensee to submit to an inspection of its licensed premises, including any places of storage, upon demand and without notice during all business hours (and other times of apparent activity) by the state licensing authority, law enforcement agency or authorized officials from the municipality in which the licensed premises are located. Locked areas within the licensed premises must be unlocked to facilitate such inspections.

The public hearing on this bill was relatively uneventful. Six people testified in support of the bill, none in opposition, with almost all of the supporters representing entrepreneurs engaged in the legalized marijuana industry. Although generally supportive of the bill, certain concerns were expressed. The primary concern was an interest in allowing for some level of "cross investment" opportunities whereby licensees with retail marijuana cultivation licenses could also be affiliated with testing facilities licensees, as long as there was some sort of firewall between the affiliated licensees such that no licensee had "controlling interest" in an affiliated licensed activity that could present a conflict of interest.

After the public hearing concluded, the Committee gave its unanimous support to the recreational marijuana testing facility bill without significant amendment, sticking with the policy that the people holding licenses for marijuana product testing facilities must have zero financial interest in any of the other recreational marijuana retail businesses.

Prohibiting Medical Marijuana Distribution Near Schools (cont'd)

to limit municipal regulation of medical marijuana facilities to marijuana “dispensaries” only, leaving the state as the sole regulatory authority for caregivers. Because a provision in the Act prohibits dispensaries from being located within 500 feet of the property line of a preexisting public or private school, it made sense to the sponsor to extend this limitation to caregivers, too.

Mr. Valley helped paint a picture of the context in which Richmond is grappling with this issue, and Legalize Maine offered general support on behalf of the caregivers the entity represents. MMA expressed support for this measure because, as Mr. Valley testified, certain municipalities are at this very moment unable to deny requests to permit a facility which would cultivate and

distribute a psychoactive drug in close proximity to schools. The Association acknowledged that the Legislature’s Marijuana Legalization Implementation Committee will be devoting attention to the wide-ranging land use implications of soon-to-be-licensed recreational marijuana facilities in the coming months. In the meantime, in the interest of protecting the well-being of children, it makes abundant sense for state law to make clear that municipalities may adopt ordinances which create the same buffer zones around schools for state-certified medical marijuana caregiver facilities as for state-certified medical marijuana dispensaries.

The Maine Commercial Growers Association was the sole opponent of the legislation at the hearing. The As-

sociation viewed LD 1636 as a broad-brush approach to a specific problem that could result in negative unintended consequences.

The result of the Committee’s deliberative process was a unanimous vote in favor of an amended version of LD 1636. That amendment will authorize municipalities to adopt moratorium ordinances on proposals to permit new or expanded cultivation of medical marijuana by registered primary caregivers within 500 feet of a school building, with the caveat that the moratoriums expire on July 1, 2018 when the regulations implementing the legalization of recreational marijuana are finally in place. As emergency legislation, if enacted by the full Legislature, LD 1636 will take immediate effect.

Members of the House of Representatives

Voting in Support of: LD 351, *An Act to Allow Municipalities to Prohibit Weapons at Municipal Public Proceedings and Voting Places*

Kent Ackley of Monmouth	Bob Duchesne of Hudson	Walter Kumiega of Deer Isle	Lois Reckitt of South Portland
Robert Alley of Beals	Richard Farnsworth of Portland	Mark Lawrence of South Berwick	Christina Riley of Jay
Betty Austin of Skowhegan	Ryan Fecteau of Biddeford	Thomas Longstaff of Waterville	Deane Rykerson of Kittery
Christopher Babbidge of Kennebunk	Aaron Frey of Bangor	Louis Luchini of Ellsworth	Heather Sanborn of Portland
Donna Bailey of Saco	Roger Fuller of Lewiston	Colleen Madigan of Waterville	John Schneck of Bangor
Dillion Bates of Westbrook	Drew Gattine of Westbrook	John Madigan of Rumford	Bettyann Sheats of Auburn
Kevin Battle of South Portland	Sara Gideon of Freeport	Richard Malaby of Hancock	John Spear of South Thomaston
Pinny Beebe-Center of Rockland	Jared Golden of Lewiston	Anne-Marie Mastraccio of Sanford	Paul Stearns of Guilford
Seth Berry of Bowdoinham	Gay Grant of Gardiner	David McCrea of Fort Fairfield	Michael Sylvester of Portland
Lydia Blume of York	Scott Hamann of South Portland	Jay McCreight of Harpswell	Rachel Talbot Ross of Portland
Heidi Brooks of Lewiston	James Handy of Lewiston	Andrew McLean of Gorham	Denise Tepler of Topsham
Barbara Cardone of Bangor	Denise Harlow of Portland	Gina Melaragno of Auburn	Maureen Terry of Gorham
Ralph Chapman of Brooksville	Llyod Herrick of Paris	Kim Monaghan of Cape Elizabeth	Ryan Tipping of Orono
Benjamin Collings of Portland	Norman Higgins of Dover-Foxcroft	Matthew Moonen of Portland	Ralph Tucker of Brunswick
Janice Cooper of Yarmouth	George Hogan of Old Orchard Beach	Catherine Nadeau of Winslow	Will Tuell of East Machias
Matthea Daughtry of Brunswick	Brian Hubbell of Bar Harbor	Margaret O’Neil of Saco	Raymond Wallace of Dexter
Jennifer DeChant of Bath	Patricia Hymanson of York	Jennifer Parker of South Berwick	Charlotte Warren of Hallowell
Dale Denno of Cumberland	Erik Jorgensen of Portland	Anne Perry of Calais	
Donna Doore of Augusta	Victoria Kornfield of Bangor	Teresa Pierce of Falmouth	