

Goalposts Keep Moving For Municipal Marijuana Proceeds

A certain block of legislators appears to be hardening their stance with respect to the proceeds municipalities might collect from the impending non-medical marijuana industry.

The Marijuana Legalization Implementation (MLI) Committee's proposed legislation, LD 1719, levies a statewide 10 percent sales tax on products sold at retail stores and social clubs, as well as an amount roughly equal to ten percent in the form of an excise tax on products sold at wholesale from facilities that cultivate marijuana or manufacture the plant into various consumable items such as baked goods, candies, concentrates and tinctures.

Of these taxes assessed, the committee's bill affords municipalities five percent of each of these 10 percent sales or excise tax assessments, equating at the end of the day to about half a penny on each dollar of product sold at wholesale or retail. LD 1719 also provides that this \$0.005 portion of excise taxes be remitted directly to municipalities.

This municipal revenue proposal appears to be on very thin ice, and open water is in sight. For reasons illustrated below, affording municipalities a half-penny of proceeds on each dollar sold is said to be too much. Furthermore, concerns were raised that the direct-to-municipalities part of the excise tax proposal would somehow become a slippery slope toward state approval of local option taxes, even though the state would set excise tax levels and collect the vast majority of it.

At the time this edition went to print, even a tightly worded proposal to afford municipalities authority to levy an impact fee tied to actual costs is said to

be a non-starter for some legislators. Yet as recently as last week, many of these legislators claimed impact fees were an acceptable alternative to the bill's sales and excise tax approach.

Committee efforts. The MLI Com-

mittee has addressed this topic at work sessions held on Jan. 19 and 26. At its meeting on Jan. 19, Committee co-chair Sen. Roger Katz of Kennebec County boiled down others' criticism of the
(continued on page 2)

Wireless Small Cell Antenna Update

On Jan. 24, the Energy, Utilities and Technology Committee held its work session on LD 1690, *An Act To Facilitate Wireless Broadband Deployment in Maine and Modify the Process for Issuing Utility Facility Location Permits*. The public hearing on this bill, which preempts much of the municipal authority to regulate "small cell" antenna facilities that will be used to transmit the next generation of cellular internet signals, was described in the Jan. 19 edition of the *Legislative Bulletin*.

Rep. Beth O'Connor of Berwick began the discussion by sharing her perspective that, given the number of both proponents and opponents to the bill, all private stakeholders meet privately to attempt to reach an agreement that is different than what was presented in the printed bill. As the committee discussed which stakeholders should be included, committee co-chair Rep. Seth Berry of Bowdoinham pointed out that MMA should also be included in the group in order to represent "a very large constituency that I think we all value" while acknowledging that the association would be outnumbered by industry representatives.

In light of what is perceived to be a narrow window of time to reach agreement in this second, "short" legislative session, members of the committee ulti-

mately decided to move ought not to pass. Proponents of the bill were encouraged to work out a more acceptable proposal for consideration by the next Legislature. Eleven members supported killing the bill, while two members that included the sponsor, Rep. Nathan Wadsworth of Hiram, voted "ought to pass."

Since that vote, the bill's proponents have been working on an amendment that would be more acceptable to the municipal community. At least some of those proponents have also, simultaneously, been running paid phone calls into lawmakers' districts to get them to change their vote to support the bill. For this reason, it is currently in question whether the industry is truly willing to address municipal concerns with the bill's many proposed preemptions of home rule authority.

Either way, the window for amendment consideration appears to be closing. It is still unclear exactly where the proponents stand. We know where municipal officials stand. MMA will continue to oppose any amendment to LD 1690 that preempts municipal home rule authority.

Future editions will update members as to whether this bill is reported out of committee in an "ought not to pass" posture, or whether common ground has been found.

specified municipal allocations into two general perspectives. The first seemed based on a concern that this new source of revenue will incentivize municipalities to authorize marijuana establishments. The second perspective was that municipalities could fully offset locally incurred costs through the licensing fees they collect, cancelling out the need for any allocation to municipalities of the tax revenues received by the state.

Attempting to better understand this second point of view, the committee explored the existing statutory limitations on municipal licensing fees. Title 30-A section 3702 provides: "Unless otherwise provided by law, any fee established by a municipality for any license or permit under this subpart must reasonably reflect the municipality's costs associated with the license or permit procedure and enforcement."

MMA explained to the committee that this limitation has been interpreted by municipal attorneys as only applying to costs associated with the activity of licensing or permitting. This means the word "enforcement" in this law limits municipal fees to ensuring the license or permit holder is complying with the terms of the license or permit. In that context, more general law enforcement needs and a host of other anticipated and unanticipated costs associated with the impacts of people consuming a newly legalized psychoactive substance could not be recouped under the fee authority currently in law.

Appearing to understand that this

existing statute would not allow municipalities enough flexibility to recover their costs, the resulting conversation turned to how to expand in a limited way the municipal fee authority with respect to licenses for marijuana establishments. Rather than specifying fee amounts in statute, the committee chose to list the categories of local impacts that could be offset with licensing or permitting fees (e.g., law enforcement, code enforcement, legal services, etc.).

Sen. Mark Dion of Cumberland County proposed draft statutory language for this local fee authority, describing it as a "public safety impact fee" necessary to account for municipal costs while allowing industry operators to plan and budget accordingly. He predicted that the most difficult part of this approach for municipal officials would be determining the burden that should be borne by the initial applicants for a municipal license. Sen. Dion explained that these questions are best resolved at the local level given the differing variables between communities.

Rep. Patrick Corey of Windham appeared to appreciate this effort to make clear what expenses municipal proceeds could or could not be applied to, expressing the perspective that municipalities that opt-in will do so with open eyes. Rep. Donald Marean of Hollis agreed, calling the fee logical and seeming to prefer it to a revenue allocation that might encourage municipalities to opt-in. Rep. Bruce Bickford of Auburn also relayed the position of some of his colleagues that the amount municipalities are authorized to collect should not entice communities to allow marijuana establishments when they otherwise might not.

Sen. Dion explained that the premise of an impact fee would be to make the municipality whole, not to incentivize municipalities to opt-in. The point would be to ensure that the general property taxpayer is not burdened with the cost of the municipality deciding to allow this particular business enterprise. In supporting the fee proposal, Rep. Erik Jorgensen of Portland shared his city's perspective that even the tax allocations proposed in LD 1719 would not be enough to cover

its costs.

Rep. Lydia Blume of York made a pitch for a local option tax approach that the committee took off the table last year, noting that in her view it would "take care of a lot of these problems." She continued to push for revenue to municipalities that would be allowed in addition to a cost-recovering impact fee authority.

Public Input. On Jan. 19, the committee entertained public comment on this subject. Rep. William Tuell of East Machias, who is not a member of the MLI Committee, appeared for the purpose of speaking in favor of municipal revenue. While he believes it is high time to restore the millions of dollars that communities have missed out on due to raids on the state Municipal Revenue Sharing Program, Rep. Tuell made clear that the marijuana-related proceeds in this committee's purview should be differentiated entirely from the separate issue of general revenue sharing.

Adding to the notion that the fee would help make municipalities whole rather than rewarding or inducing them to opt-in, an attorney representing the City of Portland reminded the committee of the need for towns and cities to be able to afford the staff who will ensure compliance with state law. Robust municipal participation will help ensure a shift from an underground, unregulated marijuana industry to a lawful and regulated market.

Hallowell City Manager Nate Rudy pointed out that to the extent municipalities are not afforded the funds or flexibility to recoup costs, the state is asking towns and cities to accept the burden of generating the state's new source of tax revenue without the funds needed for the partnership to work. The aim is to allow mutually beneficial relationships between these businesses and their host communities, yet municipal managers have serious reservations about entering a bottomless pit of costs that they cannot back out of once permitted establishments are grandfathered.

The cultivation side of this industry, he explained, is heavily resource-intensive and could require costly water and sewer infrastructure investments in

(continued on page 4)

Legislative Bulletin

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

Statewide Commercial Marijuana Moratorium Has Now Expired

Last week's *Legislative Bulletin* alerted municipal officials to the likelihood the Legislature would not amend the statewide moratorium on commercial marijuana licenses before that moratorium expired on Feb. 1. On Thursday the 1st, the Legislature voted on its bill to extend the statutory moratorium deadline to April 18. This is the date the Legislature is scheduled to adjourn, and the aim of postponing the moratorium a couple of months is to buy time for a more comprehensive compromise to be worked out.

The moratorium extension legislation, LD 1775, received a unanimous vote in support in committee, passed the Senate but failed to pass the House by a margin of 65-81. Those who spoke against the bill claimed it is unnecessary. They argue facility operators cannot sell non-medical marijuana without a state license, and the state is not yet even close to being ready to issue licenses. Proponents of the legislation included Marijuana Legalization Committee co-chair Rep. Teresa Pierce of Falmouth, who spoke to the bill on the House floor in support of enacting it for the purpose of safeguarding municipalities from premature applications and providing clarity to law enforcement and the general public.

According to the law as it currently stands, commercial marijuana establishments may not operate without state licenses. As of yesterday, state agencies are supposed to be making license application forms available to applicants. The state licensure aspect of the Act envisions an agency rulemaking process, yet that process never started. It therefore appears the state is not poised to begin accepting applications.

In the extremely unlikely event the state does begin issuing licenses in the near future, those licenses are conditioned upon municipal approval. The Act requires the state to provide a copy of license applications received and fifty percent of the licensing fee to the municipality where the establishment will be located within one week of receiving

the application. The municipality is then charged with informing the state, within two weeks, as to whether the application complies with local land use ordinances and other local regulations. Municipalities may also impose local

licensing requirements in addition to those required by the state.

Questions regarding this development and its impact on your municipality should be directed to MMA's Legal Services Department at 1-800-452-8786.

Regional Control Committees Seek Maine EMS Data Access

On Monday, Jan. 29 the Criminal Justice and Public Safety Committee held a public hearing on LD 1735, *An Act To Authorize Regional Medical Control Committees To Have Access to Maine Emergency Medical Services Data for Purposes of Quality Improvement*. As drafted, LD 1735 would allow the state's six Regional Control Committees (RCC) to access all information and call data identifying patients that is provided to Maine Emergency Medical Services (MEMS) by publicly funded and privately contracted ambulance, fire, and rescue service agencies.

The bill's sponsor, Senate President Michael Thibodeau of Waldo County, testified that the purpose of the bill is to clarify that the RCCs are entitled to review and access the data held by MEMS. Sen. Thibodeau stated that the RCCs had access to the information until last year when the Maine Attorney General's Office determined that RCC access was not authorized per state law.

Proponents of LD 1735 included a regional medical director, a representative from Atlantic Partners EMS, and a current member of a regional control committee. The proponents believe that access to the data is necessary to enable RCCs to provide cost effective quality improvement assessment services to smaller ambulance companies that are required to have quality assurance and improvement plans on file.

Maine Emergency Medical Services opposed the bill as written. In its testimony, MEMS clarified that the decision

to deny RCCs access to the database was suggested by a staff attorney, and not the Attorney General's Office, who reviewed the standards for accessing identifying patients' records and found that quality improvement is not an activity covered under current statute.

Until there was legal certainty about data protection and ownership, MEMS felt that removing access was the best policy. MEMS further suggested that rather than providing unfettered access to this data, regional control committees should work with local providers and enter into federal Health Insurance Portability and Accountability Act (HIPAA) required business associate agreements for access to the data needed to conduct mandated quality improvement assessments. These agreements typically outline exactly what is expected of the entity granted access, how the data will be used and retained, and penalties for failing to protect the personal health data in the entity's possession.

The Maine Ambulance Association (MAA) provided "conditional" support for LD 1735, offering amended language that would restore EMS Board, Medical Practice Board and MEMS director oversight of the entities accessing the sensitive data. Additional oral testimony stressed the need to amend the bill to specify how the data accessed by RCCs will be used, stored and protected, which mirrored MMA's Legislative Policy Committee's (LPC) concerns.

A work session on LD 1735 is scheduled for Monday, Feb. 5 at 11 a.m.

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, February 5

Criminal Justice & Public Safety
Rm. 436, State House, 9:00 a.m.
Tel: 287-1122

LD 1783 – An Act To Amend the Laws Regarding Aggravated Trafficking of Scheduled Drugs.

Tuesday, February 6

Agriculture, Conservation & Forestry
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1312

LD 1773 – Resolve, Directing the Bureau of Parks and Lands To Transfer Land in the Town of Pittston.

Wednesday, February 7

Education & Cultural Affairs
Room 202, Cross State Office Building, 9:00 a.m.
Tel: 287-3125

LD 1666 – An Act To Ensure the Successful Implementation of Proficiency-based Diplomas by Extending the Timeline for Phasing in Their Implementation.

State & Local Government

Room 214, Cross State Office Building, 9:00 a.m.
Tel: 287-1330

LD 1794 – An Act To Allow the Efficient and Responsible Acquisition and Sale of Property by the Department of Administrative and Financial Services.

Thursday, February 8

Agriculture, Conservation & Forestry
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1312

LD 1809 – An Act To Amend the Laws Governing the Issuance of Burn Permits.

Health & Human Services

Room 209, Cross State Office Building, 1:00 p.m.
Tel: 287-1317

LD 1771 – An Act To Stabilize Vulnerable Families.

Goalposts Keep Moving For Municipal Marijuana Proceeds (cont'd)

addition to other costs. Emphasizing the importance of curtailing the black market, Mr. Rudy closed by asking for allocations to municipalities that are fair and equitable so he can provide a straight-faced answer to those who ask him, “if the state is allowed to collect taxes on this product, why shouldn’t the municipalities be allowed to collect a reasonable amount of taxes as well?”

Tabled. On Jan. 26, MLI members broke into private partisan caucuses, the first since the committee was formed a year ago, to discuss this matter. When the caucuses finished, one party was in agreement that it would support Sen. Dion’s impact fee proposal, and the other

party appeared divided. For this reason, the topic was tabled.

The association’s position may be summarized in three points: 1) municipal efforts to comply with and enforce state and local laws should not come at a cost to property taxpayers; 2) because the law envisions a local regulatory process in addition to the state’s, local governments should be afforded some reasonable return on their investments that help ensure a smooth roll-out for this industry; and 3) the return on investment afforded to municipalities should be in line with the levels of proceeds afforded to towns and cities in the other states that have legalized non-medical marijuana.

A fee-only approach would be a first in the nation relative to the seven other states which have legalized non-medical marijuana. For the sake of comparison, all seven other states afford municipalities the authority to impose local option taxes on marijuana. The lowest amount allowed in those states is three cents on each dollar sold. Massachusetts is set to afford its towns and cities both a local option tax as well as an impact fee authority on the order of up to three percent of gross sales for a total of up to six cents on each dollar sold.

The committee’s next meeting is scheduled for the morning of Feb. 2, just as this edition goes to print.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Agriculture, Conservation & Forestry

LD 1809 – An Act To Amend the Laws Governing the Issuance of Burn Permits. (Sponsored by Sen. Saviello of Franklin County)

This bill requires the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry to allow municipalities to use the burn permit software purchased from a private party, provided the software meets certain statutory requirements. The bill establishes that a person may not be charged a fee for a permit obtained through the private party software. The bill requires the director to approve burn permit software within 10 days after a town forest fire warden or deputy submits a request for review. The bill also authorizes the director to adopt major substantive rules relating to burn permit software requirements.

Appropriations & Financial Affairs

LD 1815 – An Act To Authorize a General Fund Bond Issue To Improve Multimodal Facilities, Highways and Bridges. (Governor's Bill) (Sponsored by Sen. Hamper of Oxford County)

This bill sends out to the voters a proposed \$100 million bond issue for transportation purposes. \$80 million of the bond revenue is dedicated to the construction, reconstruction and rehabilitation of Priority #1, #2 and #3 state highways, the municipal partnership initiative, and to replace and rehabilitate bridges. \$20 million is dedicated to capital improvements to ports, harbors, marine transportation, aviation, freight and passenger railroads, and bicycle and pedestrian trails. The bond proceeds are estimated to leverage \$137 million in federal and other funds.

Energy, Utilities & Technology

LD 1798 – Resolve, Regarding Legislative Review of Portions of Chapter 101: ConnectME Authority, a Major Substantive Rule of the ConnectME Authority. (Emergency) (Reported by Rep. Barry of Bowdoinham for the ConnectME Authority)

This resolve authorizes the Legislature to review the ConnectME Authority major substantive rulemaking to revise Chapter 101 of the Authority's operational rules to incorporate statutory changes to Title 35-A, M.R.S., Chapter 93, enacted as LD 1063 during the 127th Legislature. That bill directed the rulemaking to ensure that broadband grants are equitably distributed throughout the unserved and underserved areas of the State and that the grants encourage collaboration between

multiple communities. The rule subject to review pursuant to this resolve includes the following changes:

1. Expands the Authority's membership from 5 to 7 while abolishing its Advisory Council;
2. Reorients the Authority's responsibilities from monitoring and assessment towards grant funding administration;
3. Limits planning grant applicants to individual municipalities and collectives of municipalities, counties, and regional government entities;
4. Limits infrastructure grant applicants to communications service providers, and other entities determined by the Authority to be capable of providing the service;
5. Requires municipal applicants for planning grants to adhere to 12 requirements that include in-kind contributions from the municipality;
6. Requires the Authority to give preference to investments that provide the greatest relative improvement to existing broadband service in an unserved or underserved area and to evaluate planning grant applications according to four scoring categories: community support, project focus, project preparation, and financial commitment;
7. Requires that plans funded through grants include one or more potential network designs, cost estimates, operating models and potential business models based on input from broadband providers and any other parties that submit a design solution in the course of plan development;
8. Prohibits matching funds for broadband planning grants from consisting of in-kind contributions from the municipality or a party with a financial interest in a broadband infrastructure project that would be constructed pursuant to a planning grant; and
9. Requires plans funded through grants to be completed within one year (unless a waiver is granted) and allows the Authority to recapture funds awarded to plans that are not completed.

Transportation

LD 1806 – An Act To Ensure Equity in the Funding of Maine's Transportation Infrastructure by Imposing an Annual Fee on Hybrid and Electric Vehicles. (Sponsored by Rep. Parry of Arundel)

This bill imposes a \$150 surcharge on the annual registration of a hybrid motor vehicle and \$250 surcharge on a battery-electric motor vehicle. All generated revenues accrue to the Highway Fund.