

Increased Tipping Fees Could Mean Pain at the Dump

The term “municipal solid waste” (MSW) is a misnomer for the residential and commercial trash managed – not generated – by municipal governments across Maine. While the trash or “materials” management is a mixture of public and private interests, municipal waste management professionals statewide work diligently to encourage composting, recycling, and the sorting of all waste, including bulky and construction waste. In addition, municipal level efforts help reduce the likelihood of unreported hazardous waste dumps through annual special waste clean-up programs that keep toxic materials from residential sources from contaminating the state’s rich water resources.

A bill, LD 988, *An Act to Reduce the Landfilling of Municipal Solid Waste*, sponsored by Sen. Benjamin Chipman of Cumberland County, would increase the cost of managing solid waste in certain communities by removing the long held exemption of a \$2 surcharge on every ton of waste a municipality sends to a landfill or on the waste sent to municipally owned and operated landfills. A public hearing and work session have recently been held on the bill, with yet another work session planned as the members of the Environment and Natural Resources Committee continue to debate the merits of this municipal exemption.

During the public hearing, the Maine Department of Environmental Protection testified that the municipal exemption from the MSW per ton surcharge was initially adopted in the 1980s when municipalities expressed concerns with the high cost of solid waste disposal, which was “particularly acute in municipalities operating their own landfills.” While the department testified “neither for nor against” the bill, they expressed a desire

to change the fee structure as part of their Solid Waste Management plan that promotes a fee increase as a means of encouraging recycling.

At the work session, the department estimated that the fee increase would generate \$400,000 in revenue. While the bill directs that the money be deposited into a grant program for municipalities, currently the department uses fee revenue to assist in funding the state’s solid waste management program and deposits only a small portion of the fee revenue into the municipal grant program account.

The department informed the committee that they had just recently started awarding grants to municipalities out of those funds.

Little has changed regarding municipal budgets since the 80s. What has changed significantly, however, is the market available for recycled material and the cost to recycle materials. Recycling programs across the nation have collapsed as the cost of operating the programs continue to outpace the cost associated with landfilling waste.

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A Positive Revenue Projection

According to the Revenue Forecasting Committee’s preliminary May 2019 revenue forecast report, FY 2019 General Fund revenues are up by \$67 million, due in large part to the collection of higher than anticipated individual and corporate income tax revenue. The increase in income tax revenue has a \$1 million impact on the State/Municipal Revenue Sharing Program, increasing the total distribution under the program in the current fiscal year (July 1, 2018 to June 30, 2019) to \$73.7 million.

For the FY 2020 - FY 2021 biennium, the forecasting committee anticipates that general fund revenues will exceed the December 2018 projections by \$21 million and by an additional \$33 million in the FY 2022 - FY 2023 biennium.

The data presented in the committee’s report assumes that the revenue sharing program will be funded at 5% of state sales and income tax revenue. Under a fully restored program, the projections show revenue sharing distributions increasing to \$175 million in FY 2020 and to \$191

million in FY 2021.

However, if the figures presented in the forecasting committee’s report are adjusted to reflect the revenue sharing funding levels proposed in Governor Mills’ two year budget – 2.5% in FY 2020 and 3% in FY 2021 – funding for the municipal sharing program decreases to roughly \$89 million in FY 2020 and \$116 million in FY 2021. The incremental approach to restoring funding for the revenue sharing program generates an additional \$160 million for the state in general fund revenue.

That revenue sharing impact has not gone unnoticed by the Appropriations and Financial Affairs Committee, which is now armed with the necessary fiscal information to finalize a proposed FY 2020 - FY 2021 General Fund budget for the Legislature’s consideration.

Although the journey is far from over, municipal leaders are now one step closer to learning just how much state sales and income tax revenue the Legislature will be willing to share with their local government partners.

Increased Tipping Fees Could Mean Pain at the Dump (cont'd)

Ecomaine, a quasi-municipal waste-to-energy plant that collects material from 73 towns in southern Maine, testified that the municipal exemption for solid waste encourages landfilling and stated “pinching” municipalities who landfill will achieve the goals of moving waste management streams upward in the solid waste hierarchy, encouraging alternative waste disposal.

Four hours and 51 minutes away, Fort Fairfield, Limestone, Caribou, and Presque Isle are not close enough to a viable alternative destination for their solid waste. Testifying in opposition to the bill, Mark Draper, Director of Aroostook Waste Solutions (AWS) owned by those municipalities, informed the committee that in The County, landfilling is the only feasible option for disposal. AWS testified that assuming that landfills simply bury waste oversimplifies the operational reality. With abundant land and few people, Aroostook County is not a sustainable location for a waste-to-energy plant.

Committee members learned earlier this session that some waste-to-energy plants import waste from out of state sources in order to have enough material to generate energy. That waste, once imported and on the ground, becomes Maine waste. What cannot be incinerated or recycled ends up in Maine landfills.

MMA also testified in opposition to LD 988 and reminded the committee that not only have municipalities worked diligently to close municipal landfills, several communities have invested fi-

nancial resources in facilities designed to safely compost material, investments that may now be all for not as concerns over increased amounts of PFAS (polyfluoroalkyl substances) in the composted material continue to be raised. Additionally, municipal solid waste professionals hold public education campaigns and events in their communities focused on increasing recycling rates even though they lack a viable market to take recycled material. Any increase in fees puts cities and towns between a rock and a hard place. Producers make decisions on packaging, consumers are left with waste they discard and municipalities are left with managing that waste using existing resources.

Maine towns and cities that have contracts to landfill MSW or that own and operate a landfill are not importing waste to maintain operations. They are managing residential consumer generated waste to the best of their ability, with property taxpayer burdens and proximity to viable alternatives in mind. Municipal landfills also run recycling programs and offer hazardous waste collection points. The Association hopes the committee will sort through the waste issue and support – not punish – municipal efforts to manage solid waste. Statewide improvements to this important program should not come as new costs to property taxpayers, when most consumers generate waste.

Small Cell Bill Advances

On Wednesday of this week, the State and Local Government Committee voted unanimously in favor of passing LD 1517, *An Act To Facilitate the Deployment of Small Wireless Facilities in Maine*, as amended. The legislation, sponsored by Rep. Teresa Pierce of Falmouth and described in last week’s edition of the *Legislative Bulletin*, would allow small cell wireless antennae in public rights of way, subject to the same permits and permitting standards that apply to other utility facilities in the right of way.

The amendment to the bill includes two technical clarifications to ensure it would not impact the terms of existing

cable franchise agreements, as well as define what “permit” means (allowed and subject to permitting).

At the work session, committee members appeared to support this legislation out of concern for Maine’s need for improved internet access.

If LD 1517 is enacted, municipalities will no longer be able to prohibit small cell facilities, though they would be able to apply “non-discriminatory” conditions to necessary permits. The Association is working on a model small cell ordinance with recommended permit standards for consideration by Maine’s towns and cities.

Legislative Bulletin

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Layout: Jaime Clark, of Communication & Educational Services.

No One Shows For Bill To Stall Municipal Broadband

LD 1651, *An Act To Promote Equitable and Responsible Broadband Investment*, had its public hearing before the Energy, Utilities and Technology Committee on Thursday. The legislation proposes a new chapter of law titled, “Municipal Broadband Private Industry Safeguards,” which lays out seven pages worth of statutory restrictions on the municipal ability to undertake activities relating to broadband.

Under the terms of LD 1651, municipalities interested in expanding broadband infrastructure in their communities would be subject to several arduous tasks, including establishing via ordinance an expedited process for private providers to sue the municipality and three-month time limit to complete a newly mandated private sector feasibility study.

If this sounds familiar, it may be be-

cause a bill with the same language but a different title was introduced and killed in the last Legislature.

While no one appeared in support of this bill, during the public hearing it was revealed in written testimony that the bill was submitted on behalf of the Maine Heritage Policy Center, and that the legislation “creates requirements the municipality must meet.” Yet the Center, in its written testimony, stated, “Critics of this bill have claimed that it undermines local control by imposing state regulations on towns and cities. That simply is not the case.” Their testimony went on to detail the numerous new requirements the proposed state law would impose on municipalities, without citing a single example of an actual issue in any town or city anywhere.

MMA and the ConnectME Authority testified against the bill at the hearing, and written opposition testimony was submitted by the Sanford Regional Economic Growth Council, a member of the Chebeague Island Select Board, the Calais and Baileyville Downeast Broadband Utility, GrowSmart Maine, Pioneer Broadband, a resident of Portland, and a resident of Northeast Harbor. Common to all testimony was an understanding that state support for local public-private broadband projects is what Maine needs today, not a laundry list of new legal hurdles. Each community can determine what measures it is comfortable with for itself, on its own terms.

Following the hearing, the committee moved immediately into work session and voted unanimously “ought not to pass.”

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/>.

The Legislature is no longer obliged to provide two weeks’ notice for public hearings, and beginning Monday, April 29 until the end of the 2019 legislative session, the Legislature will no longer be advertising public hearings in the newspaper.

In some cases, bills are being printed and scheduled for a public hearing within two days. If you would like to receive notice of a public hearing on any particular bill, please contact Laura Ellis at lellis@memun.org or 1-800-452-8786.

Monday, May 6

Education & Cultural Affairs
Room 208, Cross Building, 10:00 a.m.
Tel: 287-3125

LD 296 – An Act Regarding Student Privacy with Respect to Video Recordings.

LD 1592 – An Act To Allow the Dissolution of Regional School Units Composed of a Single Municipality.

Judiciary
Room 438, State House, 9:00 a.m.
Tel: 287-1327

LD 666 – An Act To Protect Pregnant Workers.

LD 847 – An Act To Ensure Persons with Disabilities Have Access to Public Rest Rooms.

Labor & Housing
Room 202, Cross Building, 9:00 a.m.
Tel: 287-1331

LD 756 – An Act To Improve the Maine Workers’ Compensation Act of 1992.

LD 1500 – An Act To Improve Workers’ Compensation Protection for Injured Workers Whose Employers Have Wrongfully Not Secured Workers’ Compensation Insurance.

LD 1501 – An Act to Change the Law Governing Occupational Disease Claims under the Maine Workers’ Compensation Act of 1992.

LD 1600 – An Act To Support E-9-1-1 Dispatchers and Corrections Officers Diagnosed with Post-traumatic Stress Disorder.

Taxation
Room 127, State House, 10:00 a.m.
Tel: 287-1552

LD 1265 – An Act To Establish a Maine Low-income Housing Tax Credit.

LD 1643 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2019-20.

LD 1645 – An Act To Create Affordable Workforce and Senior Housing and Preserve Affordable Rural Housing.

LD 1647 – An Act To Provide Tax Fairness to Maine’s Middle Class and Working Families.

LD 1652 – An Act To Make Technical Changes to the Taxation of Marijuana.

Veterans & Legal Affairs
Room 437, State House, 10:30
Tel: 287-1310

LD 1663 – An Act To Clarify Ranked-choice Voting Laws.

LD 1665 – An Act To Automatically Change a Voter Registration Address upon Change of Address for a Driver’s License.

LD 1680 – An Act To Authorize Auxiliary Liquor Licenses for the Consumption of Alcoholic Beverages within Designated Entertainment Districts.

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LEGISLATIVE HEARINGS (cont.)

Tuesday, May 7

Energy, Utilities & Technology
Room 211, Cross Building, 1:00 p.m.
Tel: 287-4143

LD 1494 – An Act To Reform Maine’s Renewable Portfolio Standard.

LD 1542 – An Act To Allow a Municipality To Choose Its Power Provider.

Judiciary
Room 438, State House, 1:30 p.m.
Tel: 287-1327

LD 1113 – An Act To Change Procedures of the Governor’s Board on Executive Clemency and To Seal Marijuana Convictions.

LD 1381 – An Act To Create a Post-judgment Mechanism To Provide Relief to Victims of Sexual Exploitation and Sex Trafficking.

Wednesday, May 8

Criminal Justice & Public Safety
Room 436, State House, 1:00 p.m.
Tel: 287-1122

LD 1169 – An Act to Provide Ready Access to Defibrillators in Businesses and Pharmacies.

Environment & Natural Resources
Room 216, Cross Building, 1:00 p.m.
Tel: 287-4149

LD 1668 – An Act To Implement Recommendations of the Department of Environmental Protection Regarding the State’s Mercury-added Lamp Law.

Labor & Housing
Room 202, Cross Building, 1:00 p.m.
Tel: 287-1331

LD 1639 – An Act To Require Comprehensive Responsible Contracting Practices for Public Construction Projects.

LD 1654 – An Act To Create Veteran-friendly Workplaces.

LD 1658 – An Act To Clarify Prevailing Wage Rates on State Projects Using Federal Funds.

LD 1664 – An Act To Place Funds for the Retired County and Municipal Law Enforcement Officers and Municipal Firefighters Health Insurance Program into a Trust.

LD 1674 – An Act To Amend the Laws Concerning the Retired County and Municipal Law Enforcement Officers and Municipal Firefighters Health Insurance Program

Friday, May 10

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

LD 516 – An Act To Establish a Statewide Voluntary Firearm Collection Day and Ongoing Program.

LD 869 – An Act Regarding Gun Control.

LD 1569 – An Act To Prohibit Untraceable and Undetectable Firearms.

Education & Cultural Affairs
Room 208, Cross Building, 9:00 a.m.
Tel: 287-3125

LD 718 – An Act To Increase Funding for Adult Basic Literacy, Workplace Education and College Preparedness.

LD 1382 – An Act To Establish Computer Science Courses and Content in Kindergarten to Grade 12 Schools.

1:00 p.m.

LD 1593 – An Act To Support Infrastructure Improvements in Schools.

Environment & Natural Resources
Room 216, Cross Building, 10:00 a.m.
Tel: 287-4149

LD 112 – An Act To Implement Changes to Maine’s Solid Waste Laws Pursuant to a Review of the State Waste Management and Recycling Plan.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill’s official 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.)

Education and Cultural Affairs

LD 1592 – An Act To Allow the Dissolution of Regional School Units Composed of a Single Municipality. (Sponsored by Rep. Gramlich of Old Orchard Beach)

This bill provides the steps necessary to dissolve a regional school unit composed of only one municipality.

LD 1593 – An Act To Support Infrastructure Improvements in Schools. (Sponsored by Rep. Brennan of Portland)

This bill makes changes to the laws governing energy conservation improvements at school administrative unit facilities, including amending the definition of “energy services company” and removing the requirement that an agreement with an energy services company must have a total contract cost of less than \$2.5 million in order for the agreement to be deemed a professional service and not subject to competitive bidding requirements.

Energy, Utilities & Technology

LD 1542 – An Act To Allow a Municipality To Choose Its Power Provider. (Sponsored by Rep. Denk of Kennebunk)

This bill provides a process to allow a municipality to choose a single transmission and distribution utility via a referendum when that municipality is served by more than one utility. The decision to hold a referendum must be made by a majority vote of the municipal officials. A referendum to choose a single utility must occur during a gubernatorial or presidential election in November and must be called, advertised and conducted according to the law relating to municipal elections. The bill also requires the choice of a single utility to be approved by the Public Utilities Commission. The commission is required to approve the choice if the commission finds that the chosen utility is willing to furnish service to the entire municipality, has the financial ability to meet its obligations and is willing and able to pay a fair and

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HOPPER (cont.)

reasonable price, as determined by the commission, for the assets of the second utility needed to furnish service to the entire municipality. Upon approval, the commission is directed to order the second utility to sell its assets used to serve the municipality to the chosen transmission and distribution utility. This bill also allows the commission to adopt routine technical rules to implement these provisions.

LD 1634 – An Act To Create the Maine Clean Energy Fund and To Authorize a General Fund Bond Issue To Capitalize the Fund. (Sponsored by Rep. Zeigler of Montville)

This bill creates the Maine Clean Energy Fund within and with oversight from the Efficiency Maine Trust to support the development of renewable and clean energy technologies and infrastructure by providing financing support including loans, loan guarantees and other financial and risk mitigation products. The fund is administered by a nine-member board of directors consisting of certain government officials and members of the public appointed by the Governor. This bill also provides for a bond issue in the amount of \$100 million to be used to capitalize the Maine Clean Energy Fund.

Labor & Housing

LD 1501 – An Act to Change the Law Governing Occupational Disease Claims under the Maine Workers' Compensation Act of 1992. (Sponsored by Rep. Jackson of Aroostook Cty.)

This bill amends the law governing occupational disease claims under the Maine Workers' Compensation Act of 1992 by: (1) Repealing the "Occupational Disease Law" chapter; (2) Defining "personal injury" to include any condition or disease contributed to by an employee's occupational cumulative trauma or exposure that arises out of and in the course of employment; (3) Specifying that the employer in whose employment the employee was last injuriously exposed is fully liable for all incapacity resulting from the occupational trauma or exposure, and the date of injury is the date that the employee becomes incapacitated from the occupational cumulative trauma or exposure; (4) Providing a method for calculating the amount of the employee's compensation if, on the date of incapacity resulting from occupational cumulative trauma or exposure, the injured employee no longer works in the same occupation in which the employee worked; and (5) Specifying that, with respect to a personal injury that involves a condition or disease contributed to by the employee's occupational cumulative trauma or exposure that arises out of and in the course of employment, the employer in whose employment the employee was last injuriously exposed is fully liable for all incapacity resulting from the occupational trauma or exposure.

LD 1600 – An Act To Support E-9-1-1 Dispatchers and Corrections Officers Diagnosed with Post-traumatic Stress Disorder. (Sponsored by Rep. Dillingham of Oxford)

This bill adds corrections officers and E-9-1-1 dispatchers to the list of employees for whom there is a rebuttable presumption under the laws governing workers' compensation that when the employee is diagnosed by a licensed psychiatrist or psychologist as having post-traumatic stress disorder resulting from work stress that was extraordinary and unusual, the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment.

Taxation

LD 1647 – An Act To Provide Tax Fairness to Maine's Middle Class and Working Families. (Sponsored by Rep. Berry of Bowdoinham)

For property tax years beginning on or after April 1, 2020, this bill increases the total amount of the Maine resident homestead property

tax exemption to \$25,000. For tax years beginning on or after January 1, 2020, the bill requires payment of a tax equalization assessment if a tax family has an expanded income of at least \$250,000 for a tax family filing as a single individual, \$325,000 for a tax family filing as a head of a household or \$400,000 for a tax family filing a married joint return or filing a joint return as a surviving spouse, and an effective tax rate that is less than the average effective tax rate on state and local taxes paid by the bottom 99% of tax families. The tax equalization assessment is an amount equal to the difference in the average effective tax rate on state and local taxes paid, calculated by decile, and a tax family's individual effective tax rate on state and local taxes paid, the sum of which is multiplied by a tax family's expanded income. Finally, this bill increases the earned income tax credit from 5% of the federal earned income tax credit to 10% of the federal earned income tax credit and reduces the threshold amount from 6% to 5% to qualify for the property tax fairness credit.

LD 1652 – An Act To Make Technical Changes to the Taxation of Marijuana. (Emergency) (Sponsored by Rep. Tipping of Orono)

This bill: (1) Authorizes the Department of Administrative and Financial Services to deny, suspend or revoke an adult use marijuana establishment license for failure to cooperate with Maine Revenue Services in the payment of a final tax liability; (2) Excludes foods containing marijuana and marijuana products from the category of tax-exempt grocery staples; (3) Imposes the 10% tax rate on adult use marijuana on all related products sold to an individual who is not a qualifying medical marijuana patient; (4) Requires that applicants for an adult use marijuana license, except a testing facility license, register with the state tax assessor to collect and remit sales tax as a condition for obtaining the license; (5) Requires cultivation facilities to register with the state tax assessor to collect and remit the adult use marijuana excise tax as a condition for receiving a cultivation facility license; imposes penalties on cultivation facilities that sell marijuana without registering with the tax assessor; and allows for the suspension and revocation of the registration for failure to comply with the adult use marijuana excise tax laws; (6) Clarifies that the adult use marijuana excise tax is imposed when a person holding both a cultivation facility license and either a marijuana store license or products manufacturing facility license transfers marijuana from the cultivation facility to either the marijuana store or products manufacturing facility or otherwise undertakes an activity with the marijuana pursuant to the marijuana store license or products manufacturing facility license; and (7) Moves the adult use excise tax due date from the last day of the month to the 15th day of the month to coincide with the sales tax due date.

Veterans and Legal Affairs

LD 1631 – RESOLUTION, Proposing an Amendment to the Constitution of Maine Concerning Early Voting, Voting by Absentee Ballot and Voting by Mail. (Sponsored by Rep. Schneck of Bangor on Behalf of the Secretary of State)

This resolution proposes to amend the Constitution of Maine to allow the Legislature to authorize a process to allow voting to occur in the same manner as on election day during a period immediately preceding an election. It also allows for voting by absentee ballot by citizens for reasons deemed sufficient without requiring in the Constitution of Maine that the citizens be absent or physically incapacitated. Additionally, this resolution allows the Legislature to authorize a process of voting by mail for all citizens of the State as an alternative to voting by absentee ballot.