

Ongoing Absentee Status – Mandate or Not?

Earlier this week the Veterans and Legal Affairs Committee tabled debate on legislation seeking to provide voters the option to automatically receive absentee ballots for all statewide and local elections. The bill, LD 2067, *An Act To Authorize the Automatic Continuation of Absentee Voter Status until the Termination of That Status*, was opposed by municipal officials, who in part raised concerns with the burdens this new responsibility would place on the municipal officials tasked with conducting and overseeing elections.

At several points during Wednesday’s work session, the topic of discussion turned to whether the additional duties assigned to municipal election officials via LD 2067 constituted a state mandate.

Article IX Section 21 of the Maine Constitution provides that for “...the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit’s activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not

previously appropriated to that local unit of government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the vote of 2/3 of all members elected to each House. *This section must be liberally construed.*” [Emphasis added.]

Not only does the Constitution instruct the Legislature to broadly interpret the mandate law, the statute enacted to implement this section of the constitution (Title 30-A, section 5685) provides that absent state funding or the addition of a “mandate preamble” on the bill, coupled with a two-thirds vote of the Legislature, there is no obligation on a local government to perform the mandated function.

From the municipal perspective there are two elements of the bill that shift additional burdens and costs onto municipalities.

The first is the requirement that municipal clerks manage, administer and implement a new system requiring absentee ballots to be automatically mailed to all voters enrolled in the program. Under the existing system, clerks only need to provide absentee ballots upon request during each election.

The second mandate in LD 2067 requires clerks to make a good faith effort to notify voters by mail, telephone or email of a discrepancy with a returned absentee ballot and explain the process for addressing the issue. Although the bill as printed, requires notice

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Waste Producer Responsibility Hearing

While all consumers produce waste, in Maine the expense of disposal falls exclusively on the property taxpayers through the local management of “municipal solid waste,” which is the term used to define the trash generated within a community’s boundaries. Municipalities have no say in what materials they must manage and state policy has largely focused on pushing processes that not only are increasingly expensive, but fail to acknowledge or respond to changes the market for recycled material.

Maine is one of several states looking to join its Canadian neighbors in pushing producers to be part of the solution for managing the material they send into the state’s waste systems.

As a result, a public hearing on LD 2104, *An Act To Support and Increase the Recycling of Packaging* will be held next Wednesday, Feb. 26, at 10:00 a.m. in room 216 of the Cross Office Building.

As reported by the Environment and Natural Resources Committee, the bill calls

on producers of packaging to become part of the solution, incentivizes the use of recycled material and encourages changes to product packaging to make it more recyclable, all while providing financial support for municipal recycling and disposal programs.

As drafted, LD 2104 directs the Maine Department of Environmental Protection to seek proposals from independent third party entities to establish a stewardship program designed to collect fees from producers of packaging based on collection, transportation, and disposal costs for each type of material. Packaging that is easily recyclable is assessed lower fees than material that has no recyclability.

Under the terms of the bill, the fees collected are used to reimburse eligible municipalities for recycling and waste management costs. To be eligible for reimbursement, a municipality must share data with the stewardship organization regarding its recycling and waste management costs. Recycling-

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Funding Roads and Other Updates

Throughout the 2019-2020 legislative session the Transportation Committee has moved adeptly and swiftly through their legislative work, with one exception; road and bridge infrastructure funding.

Study. The Blue Ribbon Commission To Study and Recommend Funding Solutions for the State's Transportation Systems, which is the most recently convened group of legislators, industry experts and other impacted parties tasked with achieving bipartisan support for a transportation funding solution seems to have hit a roadblock. While the majority of the commission agrees that some of the \$160 million annual funding gap in the state's highway budget should be resolved, in part, with new and increased taxes, other commission members are not convinced that Maine residents have the appetite for an increase in taxes and fees. Despite support from the trucking industry for a nine cent increase in the gas tax, Sen. Matt Pouliot of Kennebec County remains

steadfast that the solution is to fund the gap entirely with General Fund revenue because the alternative is unpalatable. The commission will meet one more time in March to try to find a less bumpy path forward.

Dangerous Bridges. Last week the Committee held a public hearing on LD 2064, *An Act To Amend the Laws Governing Local Bridges*, sponsored by Rep. Andrew McLean of Gorham.

As printed, the bill clarifies that the Department of Transportation (DOT) is authorized to prevent travel over a municipal or county span due to an imminent hazard if the municipality or county fails post the bridge. The bill also requires department consultation, design approval and inspection for the construction or improvement of any municipal or county span in cases where maintenance responsibility is expected to be shifted to the state.

Proponents of the bill included MMA, Maine Audubon, and The Nature Conser-

vancy, all of whom testified to the need for clarity in the process as new Department of Environmental Protection guidelines requiring replacement culverts to be stream width can cause previously minor spans to extend beyond the 20 feet designation making them a DOT responsibility.

The bill had one opponent, a county commissioner from Piscataquis County who took issue with the bridge posting language. The opposition stemmed from an incident regarding a bridge closure in his district.

At its Feb. 13 work session, the Transportation Committee voted unanimously to support an amended version of LD 2064. The amendment removes the section of the printed bill making state financial assistance to municipalities improving low use or redundant bridges "subject to available funds."

Truck Weights. This Thursday, the committee held the fourth and final work session on LD 1498, *An Act To Provide Equity for*

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Waste Producer Responsibility Hearing (cont.)

related reimbursements to municipalities are based on the median recycling costs incurred by similarly situated municipalities, and disposal-related reimbursements are based on per capita disposal costs.

While the bill does not restrict or require any changes in product packaging, retailers are prohibited from carrying products from producers not in compliance with the requirements of the new program. Any producer that earns less than \$1 million in gross revenue during the previous year, or those that sell less than one ton of packaging material in the state are exempt from the program, but able to participate at a low flat fee rate if they desire.

The bill will likely be amended from its current draft to address several of the issues already being raised by both the proponents and opponents of the bill, including allowing regional waste management efforts to be eligible for program funding, as well as the complex details of what entity - the department or the Legislature - will have final rule making authority over the process. Regardless, the end result should be one where municipalities find some relief from their solid waste management burdens and apply pressure on the system where change can happen. Like Maine's bottle bill, the changes proposed in the bill could also create new local industries in support of these

collection programs.

It is expected that packaging producers, many of whom pay into the Canadian and European systems already, will be present to oppose the legislation. For that reason, it is important that the committee hears directly from officials and waste management professionals who deal with the expanding costs of materials management, the lack of relief from existing state policy and recycling market inadequacies.

Interested municipal officials are encouraged to attend or submit testimony in advance of the public hearing.

If you plan to participate at the hearing, please note that the oral testimony will be limited to three minutes and a sign-up sheet will be used to determine the order of speakers. Interested parties can sign-up to speak between 9 and 9:30 a.m. on the morning (Feb. 26) of the public hearing. The Agriculture, Conservation and Forestry Committee room (214 of the Cross Office Building) is the designated overflow room where the hearing will be broadcast. If you plan to submit written comments, please bring 20 copies.

Additionally, officials who cannot attend but would like testimony delivered directly to the committee may email related documents to Rebecca Graham at rgraham@memun.org before 8:00 a.m. on Feb. 26.

Ongoing Absentee Status – Mandate or Not? (cont.)

to be provided to the voter within 24 hours, the Secretary of State's Office offered an amendment requiring notice to be provided no later than one business day after receiving the questionable ballot.

Proponents of the bill do not believe the mandate provision applies, because the proposed process is not substantially different than the process currently used by clerks to issue absentee ballots and that the "one and done" approach has the potential to over time reduce burdens and costs associated with conducting elections.

However, the municipal clerks who administer elections several times each year remain adamant that the changes proposed in LD 2067 will create more work and costs.

As such, municipal officials urge the committee to either fund the cost of the mandate or develop an amendment that balances the state's interests in providing voters with easier access to the polls with the need to ensure that municipal officials have the resources and time necessary to continue to effectively and efficiently manage and protect the integrity of state and local elections.

The committee will resume its work on the bill on Wednesday, Feb. 26 at 9 a.m.

Hearing Schedule

Monday, February 24

Appropriations & Financial Affairs
Room 228, State House, 10:00 a.m.
Tel: 287-1635

LR 3206 – Governor’s Supplemental Budget in conjunction with the Joint Standing Committee on Education and Cultural Affairs regarding higher education.

1:00 p.m. with the Joint Standing Committee on State and Local Government.

2:30 p.m. with Joint Standing Committee on Inland Fisheries and Wildlife.

3:30 p.m. with Joint Standing Committee on Criminal Justice and Public Safety.

Tuesday, February 25

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635

LR 3206 – in conjunction with the Joint Standing Committee on Judiciary.

2:00 p.m. Appropriations and Financial Affairs.

Transportation
Room 126, State House, 1:00 p.m.
Tel: 287-4148

LD 2100 – An Act To Require Third-party Certification for Persons Undertaking Corrosion Prevention and Mitigation Projects for Public Water Supply and Wastewater Infrastructure and Bridges.

Wednesday, February 26

Appropriations & Financial Affairs
Room 228, State House, 10:00 a.m.
Tel: 287-1635

LR 3206 – in conjunction with the Joint Standing Committee on Labor & Housing.

1:00 p.m. with the Joint Standing Committee on Education & Cultural Affairs – Cultural Agencies and Department of Education.

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

LD 2104 – An Act To Support and Increase the Recycling of Packaging.

Health & Human Services
Room 209, Cross Building, 9:00 a.m.
Tel: 287-1317

LD 2099 – An Act To Amend Provisions of the Maine Medical Use of Marijuana Act.

Judiciary
Room 438, State House, 9:30 a.m.
Tel: 287-1327

LD 2102 – An Act To Implement the Recommendations of the Right To Know Advisory Committee.

LD 2103 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Regarding Public Records Exceptions.

Friday, February 28

Criminal Justice & Public Safety
Room 436, State House, 12:00 p.m.
Tel: 287-1122

LD 2037 – An Act To Amend the Maine Criminal Code.

Funding Roads and Other Updates (cont.)

Commercial Vehicles on Roads and Bridges in Maine, sponsored by Sen. Troy Jackson of Aroostook County.

As described in the May 24, 2019 Legislative Bulletin, the original bill was drafted to increase truck weights to 108,000 pounds on all Maine roads. However, during the public hearing on the bill it was discovered that the intent of the legislation was to remove existing exemptions that allow heavier configured vehicles to travel over certain Maine roads. Currently, Canadian trucking companies apply and pay for an exemption to transport necessary production materials to the few remaining mills in Washington and Aroostook Counties.

While there is nothing in existing law preventing Maine trucking companies from configuring their vehicles in the same way as Canadian trucks and applying for the same exemptions, industry proponents believe the existing process provides an unfair advantage to the Canadian trucking companies, which by their own road standards, are able to operate at a higher weight levels and configurations.

Communities in Baileyville, Madawaska, and Van Buren each have industries that rely on these exemptions to circumvent the bridge weight restrictions, get chemicals,

wood products and pulp from Canada to the mills, and products from New Brunswick to the Van Buren rail terminal.

After significant stakeholder engagement, the committee opted to completely replace the original bill with a six year sunset clause on the existing weight exemption permitting process which will expire in 2026, and require a review of the exemptions by a future Transportation Committee. The amendment also excludes the transportation of chemicals necessary for paper production from the sunset provision.

As with all compromises, no one is particularly happy with the outcome as it simply kicks the can down the road for a future committee to explore. Municipal officials urge future Legislatures to carefully examine the well-intended, but economically impactful legislation and perhaps seek to raise the fee on the permits rather than remove them entirely.

For now, status quo will do.

Parking. The Transportation Committee also unanimously voted “ought to pass as amended” on LD 1966, *An Act To Amend the Laws Regarding Parking for Vehicles with Disability Placards and Plates*, sponsored by Rep. Matt Moonen of Portland. As proposed, the bill allows anyone with a

temporary or permanent disability placard or license plate to park for free on all public ways and other parking areas operated by municipalities, including parking garages and gated lots. Current law allows vehicles displaying these designations to park in any area with a meter for no charge and at twice the limit allowed.

The bill was inspired by an incident in Kennebunkport where the current law was interpreted not to apply to lots with payment kiosks, only on street meter parking. At the request of the individual involved, who also submitted testimony in support of the bill, Rep. Moonen proposed the legislation to encompass all municipal parking facilities.

MMA submitted testimony highlighting the logistical challenges of applying such a benefit in unstaffed gated lots and municipal parking garages. With no equipment known to read disability plates and placards, both temporary and permanent, the only alternatives would be post-payment appeal or constant staffing, with each option presenting a significant mandate.

During the work session, Rep. Moonen agreed to amend the bill to apply provisions of the LD 1966 only to meter and kiosk payment parking spaces in lots and public ways.

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.)

Health and Human Services

LD 2099 – An Act To Amend Provisions of the Maine Medical Use of Marijuana Act. (Sponsored by Sen. Gratwick of Penobscot Cty.)

On Jan. 2, 2021 and after, this bill provides that caregivers can operate retail stores, registered dispensaries, testing facilities and manufacturing facilities in communities where the local legislative body (e.g., town meeting or town/city council) has adopted an ordinance or warrant article authorizing related operations and the caregiver has obtained all municipal approvals, permits and licenses. It is unclear as to whether related caregiver operations can take place prior to the January 2021 date. The bill also requires caregivers interested in operating a retail store to apply for a registration certification and prior to obtaining the certification, provide evidence of compliance with applicable local regulations.

Judiciary

LD 2102 – An Act To Implement the Recommendations of the Right To Know Advisory Committee. (Reported by Rep. Bailey of Saco for the Joint Standing Committee on Judiciary)

This bill amends existing Freedom of Access Act training requirements to: (1) clarify that an official must complete the required training within 120 days of assuming the duties of the position; (2) expand the list of municipal officials that must complete the training to include code enforcement officers, town managers, planning board members and the deputies of municipal clerks, treasurers, managers, assessors and code enforcement officers; and (3) clarifies that school superintendents and assistants, as well as school board members are required to complete the training.