

Lake Shore Photography

The Environment and Natural Resources Committee held a public hearing on LD 1744, *An Act To Protect Maine Lakes*, on Wednesday. Over sixty people testified for just slightly longer than it takes a capable swimmer to traverse the English Channel, and the Committee remained buoyantly attentive throughout. The majority of those testifying supported the bill.

MMA's Legislative Policy Committee voted unanimously to oppose the significant unfunded mandates in LD 1744. The Department of Environmental Protection (DEP) also testified in opposition, acknowledging the burdens that LD 1744 would place on local governments and the agency.

Sponsored by Rep. Jeff McCabe of Skowhegan, LD 1744 makes a number of changes to the regulation of activities within the shoreland zone. Beyond the development of educational programs designed to promote lake water quality, the bill: (1) prohibits the application of fertilizers, herbicides, pesticides, and soil amendments within 25 feet of great ponds with certain agricultural exceptions, establishing new enforcement obligations; (2) directs municipalities to create a photographic record of the shoreline of all great ponds bordered by at least 10 developed lots according to a schedule running from now through 2020, with 5-year updates thereafter; and (3) directs the DEP to promulgate rules that require municipal permitting authorities to visit a proposed development site prior to final approval of a permit for development within a shoreland zone.

In its testimony, MMA stressed that while municipal officials have generally been very supportive of efforts to improve and protect the quality of Maine's waterbodies, Maine's towns and cities are simply unable to accept additional unfunded

mandatory responsibilities at this time. To put these new mandates into context, the Legislature decided last June to eliminate \$86 million in municipal revenue sharing for the next fiscal year. In the past, before its decimation, revenue sharing was one way the Legislature expressed its recognition of the unfunded state mandates it imposes on local governments.

Moreover, the state's support of Code Enforcement Officer (CEO) training and licensing has been reduced over the last few years to the point that it is hanging on by a thread. CEOs are being stretched more thinly than ever and the majority of

them are unable to take on a new set of mandated tasks. MMA questioned whether time-consuming shoreline photography and preliminary on-site inspections ought to be prioritized over CEO inspection of public health hazards posed by fire, electrical, septic, and building code violations. MMA also encouraged the Committee to remove the overbroad provision requiring on-site inspections for all shoreland development. Local planning boards and CEOs ought to have the discretion to determine when a site visit is warranted on a case-by-case basis, especially given

(continued on page 3)

Opportunity to Fund Broadband Expansion

Maine Public Advocate Senior Counsel Wayne Jortner has called MMA's attention to an opportunity for municipalities to receive funding for developing and deploying fiber optic, or "broadband", internet infrastructure. The Federal Communications Commission (FCC) recently issued a lengthy and highly technical order, which, among other things, offers to open up a \$4.5 billion portion of the FCC's Connect America Fund to new types of entities, including municipalities. Until recently, this funding was reserved for large telephone companies to provide broadband in unserved and underserved areas.

The FCC is now inviting initial expressions of interest in building new broadband projects, to be filed by **March 7, 2014** (although additional expressions of interest will be considered on a rolling basis). This invitation is open to both big and small entities, and to a very wide variety of entities, from cable operators to municipalities to small internet service providers.

Projects will be chosen by the FCC on a competitive basis. The FCC is looking for innovative ideas that will result in serving as many new broadband customers as possible. The FCC's order lays out some of the details that it expects to see in the expressions of interest while also asking a plethora of questions that need not necessarily be answered in the expressions of interest.

Given that the Public Advocate's Office has not heard about major expansion plans by FairPoint or Time Warner, smaller entities like municipalities may be the best entities to increase broadband access at this time. A fiber optic network throughout towns or cities could be a sensible approach given the state of current technology. Some cities and towns in the US have accomplished this, as well as one small phone company in Maine. Such a fiber network would likely also go a long way toward supporting any number of

(continued on page 3)

Where-Oh-Where Has the Circuitbreaker Program Gone?

Part S, Part O, Part L...For the municipal community as well as Maine's property taxpayers, much of this legislative session has been spent binding up the wounds and attempting to repair the damage caused by the enactment of the S, O and L sections of the two-year state budget last June.

LD 1762, the bill to prevent a \$40 million "sleeper" raid of the municipal revenue sharing program that was tucked into "Part S" of the state budget, received overwhelming support in both the House and Senate over the last two weeks. LD 1762 awaits the Governor's action within the next four days to either veto the bill or allow it to become law.

LD 1627 is the bill that revisits "Part O" of the state budget, which imposes significant "appraisal report" mandates on all municipalities with large industrial or commercial properties that make up 2% or more of the total municipal valuation. Using LD 1627 as a vehicle, the Taxation Committee discussion regarding the degree to which Part O should be scaled back or revised is ongoing.

LD 1607, which is currently awaiting final enactment as emergency legislation, reverses the "Part L" element of the state budget that "terminated" all locally implemented and funded property tax relief programs.

The main thrust of "Part L", however, was the abrupt termination of the state's 30-year old "Circuitbreaker" property tax relief program for low-income residents and the creation of its shadow replacement, a "property tax fairness credit" within the state income tax code.

The bill to begin repairing some of the damage caused by the Circuitbreaker termination is LD 1751, *An Act To Provide Property Tax Relief to Maine Residents*. Sponsored by the Speaker of the House, Rep. Mark Eves of North Berwick, LD 1751 employs several strategies designed to expand the range and the value of the property tax fairness credit.

There are three moving parts to these circuitbreaker-type property tax relief programs:

- The income eligibility threshold,

which establishes the level of income at which a household becomes categorically ineligible to receive a benefit.

- The taxes-as-a-percent-of-income threshold, which establishes the level of property tax burden that triggers the issuance of a benefit.

- And, maximum benefit cap, which is the highest level of benefit issued, no matter what.

For each of these three moving parts, there are big differences between the old Circuitbreaker program and the new "property tax fairness credit". In each case, the changes adopted by the Legislature last June disadvantaged the low income homeowner.

The income eligibility thresholds in the Circuitbreaker program ran in the \$60,000 range for single-person households and \$80,000 for multi-person households. There is a flat \$40,000 income threshold under the new tax credit.

The taxes-as-a-percent-of-income threshold under the Circuitbreaker program started at 4% to trigger some level of eligibility. Under the property tax fairness credit, taxes have to be at least 10% of total household income.

The maximum benefit under the Circuitbreaker program was \$1,600 at the time of its termination. The maximum property tax fairness credit is \$300 for non-elderly households and \$400 for households owned by Maine residents 70 years of age or older.

LD 1751 was presented to the Taxation Committee by Rep. Eves this week as a package that included the printed bill along with some substantive amendments designed to improve the original proposal.

As printed, LD 1751 dedicates a portion of the unappropriated state revenue that is identified at the close-out of each state fiscal year and channels it into an account. When the proceeds in that account build up to a sufficient level, the State Tax Assessor is directed to administratively increase the property tax fairness credit's maximum levels and provide ample notice about the increases to the general public.

The amendments being proposed by Rep. Eves are designed to more thoroughly

reshape the way the property tax fairness credit is both capitalized and structured.

- One restructuring amendment that falls into the category of program accountability amends the definition of household income in the current calculation of tax credit eligibility. The amendment provides that certain types of investment-related income which may be exempt from income taxation would nonetheless be counted for the purpose of determining eligibility for the credit. The thinking is that investment income reflects assets that are pertinent with respect to an applicant's capacity to meet the property tax obligation.

- Another restructuring amendment reorganizes the first priority change to the current property tax fairness credit. Increasing the maximum benefit levels would become the second-priority change. Lowering the taxes-as-a-percent-of-income threshold from 10% to 8% would become top priority. There is always a trade-off when toggling the elements of these assistance programs, but lowering the percent-of-income threshold a couple of points opens up some level of eligibility for thousands of households struggling with their property taxes that don't quite meet the extremely high 10% threshold.

- An amendment designed to help capitalize the enhancement of the tax credit would earmark the current projected value of the tax credit, pegged at approximately \$34 million, and if it turns out that less in the way of credits are actually issued during this income tax year, the unused tax expenditures related to the credit would not lapse and become available for the purpose of redesigning the credit going forward to make it more effective.

Eight organizations testified in support of LD 1751, including the Maine Center for Economic Policy, the Maine Education Association, the Maine Association for Interdependent Neighborhoods, the Maine Women's Lobby, the Homeless Voices for Justice, the Maine Equal Justice Partners, the Maine Community Action Association and the Maine People's Alliance. Rep. Brian Hubbell of Bar Harbor also spoke in support, referring to the problem the

(continued on page 3)

Broadband (cont'd)

WiFi hotspots in public places, which would be a great benefit for people who live, work, or visit your town.

Expressions of interest in this docket (FCC WC Docket No. 10-90) must be filed electronically at the following website: <http://apps.fcc.gov/ecfs/upload/display?z=dr0x7>. The formal proposal stage will follow the expression of interest stage, and submitting an expression of interest is not a precondition for submitting a formal proposal in the second stage.

Information to be included in an expression of interest might include, but is not limited to:

- The nature of the submitting entity or entities (e.g., incumbent LEC, municipality, utility, cable operator, wireless provider).

- Identification of the proposed service area for the experiment, including census block number, with any relevant information regarding the number of locations that could be served, including schools, libraries, and other anchor institutions.

- And, the broadband technology or technologies to be deployed:

- Contemplated service offerings (e.g., description of voice service, broadband speed tiers, nature of video service, if any) and pricing of such offerings.

- If known, expected State and/or local or Tribal governmental participation in and/or support for the project (e.g., expedited permitting, access to rights of way, matching funds, etc.).

- And, whether the proposal is expected to require one-time or continuing funding and a high-level estimate of the amount of funding requested.

Additional relevant aspects of the full order may be found in the following link: http://www.memun.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=7355&PortalId=0&TabId=204. Here is a link to the full order: <http://apps.fcc.gov/ecfs/comment/view?id=6017586854>.

The Public Advocate's Office has expressed a willingness to discuss and work with interested towns or cities. For more information, Counsel Jortner may be reached at wayne.r.jortner@maine.gov and (207) 287-2445.

Circuitbreaker (cont'd)

Education Committee is wrestling with, which is how the state's school subsidy distribution system can be recalibrated to assist the lowest of the low receiver communities. According to many experts, the answer is not in the school subsidy system but, rather, in establishment of a strong Circuitbreaker program that operates independently of the General Purpose Aid distribution system.

MMA also testified in support of LD 1751, which was tentative with the printed bill but found a more solid footing with the inclusion of Rep. Eves' proposed amendments.

There is obviously a role in the state tax code for a property tax relief system that targets benefits to low income households, and the municipal officials' initial concerns were not with the goals of the bill but with the way the changes to the program would be financed.

The municipal concern centered on the observation that when reliance is put on the system of "cascading" surplus state revenues to capitalize budgetary initiatives, it looks from the outside like motives are established to maximize the unappropriated General Fund surplus at the end of the fiscal year to ensure funding for those initiatives. Specifically, it strikes municipal officials that the unappropriated General Fund surplus has been made available to the cascade in large part because of the raids on the municipal revenue sharing program that occur during

the same fiscal year that the "surplus state revenue" is discovered.

The analysts at the Legislature's Office of Fiscal and Program Review have politely corrected the record on that issue. The unappropriated state revenue that is provided to the cascade is revenue that outperforms the last and final revenue forecast. Therefore, the money becomes available to the cascade regardless of budgetary actions taken by the Legislature that impacted the revenue sharing program. Whether the Legislature raids or does not raid the municipal revenue sharing program, the surplus revenue is given over to the cascade precisely because it accrued to the state treasury after the Legislature had any authority to utilize it. How the money goes through the cascade is up to the Legislature, but the cascade itself is not made larger or smaller by virtue of budgetary actions.

For the record, municipal officials would ask the Legislature to honor the statutory commitment to municipal revenue sharing as a top priority. If unexpected state revenue becomes available, it should be channeled directly to the Budget Stabilization Fund or used to honor existing statutory commitments.

With that said, LD 1751 improves the property tax relief system as it is currently provided within the state's existing code. Anything that repairs the property tax negatives enacted as part of last year's state budget would be positive.

Lake Shore Photography (cont'd)

the lack of evidence of existing problems with this approach.

The most notable of LD 1744's problematic proposals is the mandate to photographically document shorelines. This idea was inspired by the work of a CEO who came to believe that his own photographic record saved him a great deal of time on subsequent site visitations and enabled his discovery and enforcement of violations. While this tactic may gain traction on a voluntary basis, the proponents' attempt to mandate it statewide creates problems beyond the initial labor costs involved. MMA was not alone in noting the difficulty of ex-

pecting volunteer organizations such as lake associations and college students to assist with the photography. One opponent cited the serious privacy concern raised by having the state deputize members of the public to photograph private property. The presumption was that photographs would be taken from a public vantage point, i.e. the lake, but the bill potentially encouraged trespassing. Another point raised by a proponent attorney is that volunteers could face exposure to liability by acting as de facto state agents in this effort. Although the private trespass point may be amended, it remains unclear how

(continued on page 4)

Lake Shore Photography (cont'd)

volunteers would avoid liability.

Several proponents claimed LD 1744 would be helpful to municipalities insofar as it protects the main attraction for wealthier lakeside residents who in turn contribute relatively substantial amounts of property taxes. After this point was raised several times, some Committee members questioned why MMA does not make a point of promoting lake and pond protection efforts and why CEO's do not prioritize enforcing shoreline zoning regulations. The first question presumes municipal leaders do not concern themselves with and take proactive measures to ensure the continued viability of their most valued property, which is certainly not the case. The second question demonstrates a lack of appreciation for the breadth of the body of regulations that CEO's are mandated by the state to enforce and the immediate public safety issues posed by many of these laws that are not related to shoreline zoning. That said, CEO's by no means shortchange their obligations to protect shorelands and the Committee seems to have come away with a much better sense of how a rising tide of state support for CEO training could lift at least some boats.

The Environment and Natural Resources Committee has scheduled its work session on LD 1744 for Thursday, Feb. 27 at 1:00 p.m.

LEGISLATIVE HEARINGS

Monday, February 24

Education & Cultural Affairs

Room 202, Cross State Office Building, 2:00 p.m.

Tel: 287-3125

LD 1617 – An Act To Amend the Laws Governing the Approval Process for and the Operation of Virtual Public Charter Schools in the State.

Wednesday, February 26

State & Local Government

Room 214, Cross State Office Building, 1:00 p.m.

Tel: 287-1330

LD 1662 – An Act To Clarify the Law Governing the Maintenance of Veterans' Grave Sites.

Legislative Bulletin

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