

Municipal Mandates, Educational Mandates

Two Reports, Two Very Different Approaches

As municipal officials are well aware, the state budget enacted by the Legislature last year established a special task force to study municipal mandates passed down to the towns and cities and make certain recommendations. Eight municipal officials from across the state along with Sawin Millett, the Commissioner of the Department of Administrative and Financial Services, met four or five times during the fall of 2013 to fulfill the charge. The report and recommendations of the Mandate Working Group were presented to the Appropriations Committee in preliminary draft last December. The final report, along with draft legislation that incorporates all the Working Group's recommendations, has been subsequently provided to the Committee. To MMA's knowledge, there has been no additional public discussion about the Working Group's report or recommendations, and it is unclear how, when or even whether the recommendations will be advanced.

On a completely separate track, another bill enacted in 2013 established a process for the Department of Education and the various associations of public school administrators to review the impacts of all education-related unfunded state mandates and make recommendations.

The bill that advances the mandate review recommendations from the school group has just been printed as LD 1805, *An Act To Implement the Recommendations of the Review Committee Established To Examine the Impact of Unfunded Education Mandates and Other Regulatory Burdens*.

The approaches taken and the scope of recommendations advanced by the two separate working groups are as dif-

ferent as different can be. The root of the stark contrast is probably found in the municipal allegiance to home rule authority, which is no longer a concept stitched into the fabric of school culture.

The Municipal Approach to Municipal Mandates. The Working Group's recommendation advances a full-scale and multi-dimensional approach to the issue of unfunded state mandates imposed on municipal governments. The report identifies dozens

Attorney General's "Foreclosure" Recommendations

MMA's Feb. 27 Legislative Bulletin chronicled the genesis of Part E of Attorney General Mills' amendment to LD 1389, *An Act To Expedite the Foreclosure Process*. The overall amendment was based on discussions held as part of the Attorney General's 2013 foreclosure working group, where the focus was potential improvements to the mortgage foreclosure process. Part E of the AG's recommendations, however, focused on the tax lien foreclosure process even though no issues were raised in that area during the working group's meetings or listening sessions, etc.

Specifically, Part E would have required any municipal ordinances calling for the return of tax lien foreclosure proceeds to the former property owner to provide exactly one half of the net proceeds to that former owner, or to the state treasury if the former owner did not express an interest in the proceeds. MMA's Legislative Policy Committee voted overwhelmingly to oppose the

of specific state mandates and details recommended amendments or repeal. It also identifies mandates that were enacted without being identified as such by the Legislature, and recommends an objective, nonpartisan review to see if, indeed, the enacted requirements being imposed on local government meet the constitutional definition of "mandate". The report even includes the recommended establishment of a collaborative

(continued on page 3)

provision as an unwarranted manipulation of home rule authority.

As MMA explained to the Judiciary Committee, municipalities generally expend far more on the maintenance and disposition of abandoned or evicted properties than they recover. The great concern, however, is that any "net proceeds" recovered through the tax lien foreclosure process belong indisputably to the inhabitants of the municipality and it is their authority alone that should manage their use.

The Judiciary Committee unanimously agreed to remove Part E from the amendment. The Committee did approve Part D of the amendment, which reduces the amount of time a person can challenge the validity of a governmental taking of property for nonpayment of taxes from 15 years following the period of redemption to five years.

MMA greatly appreciates the Committee's recognition of the philosophical as well as practical difficulties presented by Part E of this amendment.

Utilities, Motor Vehicle Excise Taxes and “Situs”

“Situs” isn’t a word used much in everyday conversation around the coffee pot at the local convenience store, but in old-fashioned tax jargon, situs is the term that establishes which political jurisdiction has the authority to assess and collect the property tax.

A “situs” issue cropped up on Wednesday this week, when a bill was presented to the Taxation Committee that would change which municipalities are authorized to assess the motor vehicle excise tax on the vehicles owned by the companies that operate regulated utilities (e.g., telephone, electric, gas, water and public heating utilities). The bill is LD 1754, *An Act To Amend the Laws Governing the Location of Motor Vehicle Excise Tax Collection for Motor Vehicles Owned by Public Utilities*. LD 1754 is sponsored by Rep. Lance Harvell of Farmington.

Eighty-five years ago, all motor vehicles were subject to a property tax in Maine. In 1929, on the eve of the Great Depression, the property tax system was converted to the motor vehicle excise tax system, essentially in the form that it remains today. Here’s the condensed history of the law governing the application of the motor vehicle excise tax to the fleets belonging to utility corporations.

From 1929 to 1977: *“If the motor vehicle is owned by an individual resident of this State, or a domestic corporation, the excise tax shall be paid in the place where the owner resides....If the motor vehicle is owned by a partnership or a foreign corporation, the excise tax shall be paid in the place where the motor vehicle is customarily kept.”*

Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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

From 1977 to present: The general rule is *“If the motor vehicle is owned by a corporation or partnership other than one described in subparagraph (2) (referring to incorporated regulated utilities), the excise tax shall be paid to the place in which the registered or main office of that organization is located, except that if the organization has an additional permanent place, or places, of business where motor vehicles are customarily kept, the tax on these vehicles shall be paid to the place where such permanent place of business is located.”*

The special rule for utilities is *“In the case of (incorporated regulated utilities), any excise taxes owed shall be paid to the place in which the registered or main office of that organization is located.”*

As would be amended by LD 1754 (as printed): *“The excise tax on a motor vehicle owned by a corporation or a partnership must be paid to the place in which the owner’s registered or main office is located, except that if the owner has an additional permanent place of business where motor vehicles are customarily kept, the tax on these vehicles must be paid to the place where that permanent place of business is located. The temporary location of an office and the stationing of vehicles in connection with a construction project of less than 24 months’ duration are not considered to constitute a permanent place of business.”*

Last minute amendment. A last minute amendment to the bill, as proposed by the sponsor and supported by at least some of the affected utilities, would allow the utilities to choose on a year-to-year basis whether they would excise their vehicles in the municipality of their home office or in their branch locations. It’s an amendment that flies in the face of anybody’s version of coherent tax policy.

The principal proponent of LD 1754 is the Central Maine Power Company (CMP) and several municipalities that host district offices of CMP. Under the terms of the bill, these communities – both Farmington and Fairfield testified in support – would be the recipients of motor vehicle excise tax revenue for fleets garaged within their borders which

they are not currently receiving. Their argument is that motor vehicle excise tax revenue is used to fix roads and since the utility vehicles are using the roads in their communities, the revenue should be available to fix the impacted roads.

In round numbers, if the bill is enacted, CMP would begin paying excise taxes on the roughly 500 vehicles in its fleet in 11 municipalities instead of just the Capital City, which is the location of its corporate headquarters. Other towns and cities where CMP has additional places of business and CMP motor vehicles are customarily garaged include Alfred, Belfast, Bridgton, Brunswick, Dover-Foxcroft, Fairfield, Farmington, Lewiston, Rockland, Portland and Skowhegan.

The principal opponent of the measure is the City of Augusta, which pegs its financial losses if the bill is enacted at well over \$200,000 per year.

The concept of repealing the special “corporate headquarters” provision of excise tax law as it pertains to the utilities has been advanced in the recent past. Rep. Harvell sponsored the same bill in 2011 on behalf of the Town of Farmington. That bill, LD 117, received a disproportionately negative Committee recommendation and was quickly killed by the Legislature. Curiously, one of the chief opponents of that bill was CMP. Three years later, the major opponent has become the chief proponent.

CMP explained its about-face on this issue as the company’s discovery that the special treatment of utilities in the excise tax law is to the disadvantage of the branch-office communities where the utility vehicles are actually located. The company’s representative said CMP is now re-committed to strengthening its partnerships with the host communities in all its branch offices. On top of that, modern technology and web-site registration opportunities offered by many of its branch-office municipalities remove the concerns about inefficiency of administration that was the chief reason for its opposition to the proposal three years ago.

The City of Augusta with ample representation, the 12-member Mayor’s Coalition, and Summit Natural Gas of

(continued on page 4)

Mandates (cont'd)

system, initiated as a pilot program, through which state and local officials would evaluate in an ongoing way how certain state mandates are implemented and enforced by the state at the local level.

The Working Group's specific recommendations:

- Create the State-Local Intergovernmental Working Group for the purpose of establishing a two-way communication system between the oversight state agencies and the municipalities that perform the mandated activities with the goal of establishing more efficient, effective and cost effective approaches to the implementation and administration of the mandated activities.

- Require the Commissioner of the Department of Environmental Protection to waive all licensing and permitting fees assessed against municipal governments for activities or functions that are required of those municipalities as a result of unfunded state mandates, while retaining the obligation for the municipalities to obtain the required licenses or permits.

- Direct the Office of Fiscal and Program Review and the Office of Policy and Legal Analysis to review the entire record of the development, legislative activities, and subsequent impacts associated with LD 621, *An Act Allowing Workers' Compensation Benefits for Firefighters Who Contract Cancer*, enacted in 2009 as PL 2009, chap. 408, to determine whether or not the legislation constitutes a state mandate as defined by Article IX, section 21 of the Constitution of Maine.

- Amend the law governing the municipal requirements to maintain veterans' graves, as mandated in legislation enacted in 2013, to establish that the new and very expensive maintenance requirements must be achieved by the municipality in collaboration with veterans' organizations and other civic groups.

- Require the courts to surcharge all fines or penalties imposed on persons convicted of crimes to obtain and reimburse the actual costs of the municipal police officers who served as witnesses

during the court proceedings. Current law allows for the imposition of that surcharge to be at the courts' discretion.

- Amend the law governing the rate that local police officers are compensated for providing witness services or court officer services in district court to cover the municipality's actual salary expenditures. Current law provides \$50 per day in compensation.

- Amend the law to allow governmental entities to recover their actual costs when responding to large-scale public record requests that require more than 20 hours of staff time in response.

- Require the costs associated with training personnel at public safety answering points according to mandated "quality assurance" protocols to be paid for with E-911 surcharge resources rather than property tax dollars.

- Amend the statute governing the imposition of certain state fees for heating boiler inspections so that municipalities and the schools are treated in the same cost-free way all other owners of heating boilers are treated.

- Amend the notice that must be provided to a landowner who is non-compliant with a requirement to update his or her forest management plan under the Tree Growth tax program so that a single formal notification and penalty assessment system must be imposed rather than the duplicate notification system currently required.

Let Home Rule Principles Apply:

- Amend the law governing dog licensing and animal control ordinances to clarify that the municipality can impose fees necessary and appropriate to finance the cost of animal control services.

- Amend the statutes governing the formation of a municipal board of appeals and board of assessment review, respectively, to establish as a minimum standard in both cases that the boards consist of at least three members, thereby allowing the municipalities through their home rule ordinances to create boards that are larger in size.

- Amend the law governing the annual municipal report to allow a town or city's legislative body to authorize the on-line rather than hard-copy publication of the report.

- Amend the statutes governing the licensing of going-out-of-business sales

and pawnbrokers, respectively, to establish those same licensing requirements only in those municipalities that choose to adopt such a licensing ordinance.

- Repeal the requirements that municipalities administer a licensing program for a range of recreational activities, such as bowling, billiards, roller skating, etc., and expressly authorize the municipal licensing of these activities pursuant to ordinances adopted under municipal home rule authority.

Repeal as Archaic:

- Repeal the requirement that a municipality appoint an inspector of "boats and lighters."

- Repeal the law requiring the local appointment of an inspector of weights and measures.

The Education Community's Approach to School Mandates.

The report of the Unfunded Education Mandates working group provides a fairly complete list of all the unfunded education mandates enacted by the Legislature since the state's Constitution was amended in 1992 for the express purpose of limiting the enactment of unfunded state mandates to protect Maine's property taxpayers. That list identifies 37 education-related unfunded state mandates enacted during the 1993-2013 period, with some of the more significant mandates including:

- 1995: The development of the "Learning Results" standards.

- 2003: The requirement to provide "Gifted and Talented" programs.

- 2007: The requirement to adopt all school budgets by referendum.

- 2011: A range of requirements to address student bullying and provide response protocols for bullying incidents.

- 2011: The requirement to transition to the "Proficiency-based" graduation system.

- 2011: The reinstated requirement to implement "Gifted and Talented" programs.

- 2011: The requirement to adopt and implement policies to manage all sports-related head injuries.

- 2011: The requirement to develop and implement a comprehensive performance evaluation and professional growth system for teachers and principals.

(continued on page 4)

Mandates (cont'd)

– 2013: The requirement to train various school personnel for the purpose of implementing suicide awareness and prevention efforts.

After reviewing those mandates and their impacts, along with other mandatory obligations established by DOE regulation rather than statute, the working group of school officials concluded:

“Despite reviewing the long lists of mandates, regulations, required reports and committees, Review Committee members struggled to identify specific burdensome mandates that were clearly unnecessary, overly burdensome in relation to the benefit derived, or easy to eliminate without significant controversy. Members felt that it was the cumulative impact of state and federal requirements, funded or not, that caused the angst and stress in schools.”

It is safe to say that this would not have been the conclusion if municipal officials were conducting the review.

As a final result of this effort, the legislation submitted by the Review Committee, LD 1805, focuses entirely on tidying up the statutes by removing obsolete mandates that fall primarily on the Department of Education rather than the school systems. The recommendations include:

- Repealing sections of education law that are now inapplicable because they were enacted to apply only for discreet periods of time now gone by.

- Repealing archaic requirements falling on the DOE, enacted in the 1980s and 1990s, for example to create a clearinghouse for information on nuclear weaponry or provide periodic reports to the Legislature on national trends related

to educating the blind.

- Repealing similarly outdated provisions of law enacted in the early 1990s establishing requirements for the DOE to monitor the number of women employed in the profession of school administration, provide information for biennial legislative hearings on that subject and otherwise ensure against discriminatory hiring practices.

- Repealing obligations placed on the DOE to (a) employ staff and make office space available to support school volun-

teer programs and (b) provide detailed types of assistance to school systems regarding school facility maintenance and capital improvement plans.

LD 1805 has been given its public hearing and received a unanimous “ought-to-pass” report from the Education Committee. As indicated above, no clear process has been established for advancing the recommendations from the working group dealing with unfunded state mandates affecting the towns and cities.

Utilities (cont'd)

Maine all testified in opposition to LD 1754. The City’s testimony focused as much on procedural issues and certain legislative responsibilities as it did on the underlying issue of “situs” and tax policy. That a late-session, last-minute, “after deadline” bill would be allowed into this “emergency only” second legislative session, carrying as it does such weighty policy and financial impacts, did not strike the City’s legislative delegation, several City Councilors and the Chief Financial Officer, all of whom testified, as appropriate.

An even greater concern expressed by the City is that LD 1754 appears to be thinly disguised revenge for a decision made to provide Summit Natural Gas of Maine with the contract to supply the City’s buildings with heating fuel rather than a company owned by CMP’s parent corporation. Pat Paradis, a City Councilor who served for many years in the House of Representatives, testified that there were many instances where legislation was submitted during his tenure that was

obviously designed to punish one party or another over a disagreement entirely unrelated to the content of the legislative proposal. In every case, Councilor Paradis said, the revenge legislation was summarily killed in order to protect the integrity of the legislative process.

MMA did not testify on the bill. Three years ago, when LD 117 was introduced, the manner in which the bill would so clearly advantage some municipalities and disadvantage others in a zero-sum-gain manner was brought to the attention of the Association’s 70-member Legislative Policy Committee, which took “no position” on the initiative.

With that said, it is indisputably the case that the proposed amendment to LD 1754 is extremely problematic. Any proposal that would not squarely fix the “situs” issue and, instead, allow the taxpayer to choose on a year-to-year basis what town or city might be the recipient of the excise tax payments runs absolutely contrary to sound tax policy. Nearly everyone knows that.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://janus.state.me.us/legis/lho/>.

Monday, March 17

Criminal Justice & Public Safety
Rm. 436, State House, 10:00 a.m.
Tel: 287-1122

LD 1810 – An Act To Increase the Penalty for Failing To Carry Proof of Motor Vehicle Financial Responsibility.

Tuesday, March 18

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

LD 1808 – An Act To Protect the Public from Mosquito-borne Diseases.

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.)

Judiciary

LD 1809 – An Act Concerning Meetings of Public Bodies Using Communications Technology. (Reported by Rep. Priest of Brunswick for the Joint Standing Committee on Judiciary.)

This bill creates a system by which certain boards and other municipal or quasi-municipal "public bodies" may conduct a public meeting with one or potentially more members at an offsite location but connected to the meeting through telephonic, video, electronic or similar means of communication. The authority to conduct such public meetings with some "remote" attendance is expressly not allowed under this bill for public bodies composed of elected members of a municipality, quasi-municipal entity or school administrative unit. For any other "public body" at the local governmental level, and for any elected or appointed "public body" at the county or state level, this bill allows the remote attendance by one or more members of the body provided a number of protocols are followed, including: (1) the public body must have adopted a written policy authorizing such meetings that includes all relevant criteria; (2) the public meeting must be properly noticed; (3) except in emergency circumstances, a quorum of the public body must be physically present at the meeting; (4) all persons attending the meeting as well as the remote participants must be able to hear all oral discussion and see all visual presentations, and any written or graphic materials provided to the members physically present at the meeting must also be provided to the remote participants; (5) the member of the public body participating from a remote location must identify all persons present at that location; and (6) any votes taken at the meeting must be taken by roll call.

Taxation

LD 1813 – An Act To Hold an Advisory Referendum on Tax Reform. (Emergency) (Governor's Bill) (Sponsored by Sen. Thomas of Somerset Cty.)

This emergency bill sends out to referendum in June 2014 the following question: "Do you favor lowering income tax rates, implementing alternative taxes and reducing overall tax revenues and government spending by at least \$100,000,000 in order to make Maine more economically competitive and improve the job creating environment?"