

## Governor LePage’s Regulatory Reform Proposals

Most municipal officials have seen the list of Governor LePage’s 60-plus ideas for environmental regulatory reform that became available on Monday this week. At least 25 of the listed proposals – 40% of the total list – bear some impact on local government, and the general municipal response to most of those ideas will likely be positive. It would appear, in fact, that a solid amount of municipal input was provided somewhere in the process of assembling this list.

For example, the idea of repealing the so-called “culvert law”, Phase I of which was enacted last session, has been previously suggested by MMA’s Legislative Policy Committee. Of greater concern, perhaps, than the piece enacted last session (which only impacts new road crossings) was the follow-up piece municipalities expected to be enacted this year. The follow-up piece would govern (or over-govern, from the municipal perspective) the maintenance, repair and replacement of existing culverts.

The idea of repealing the “Informed Growth Act” (IGA) will also make sense to many municipal officials. The IGA was widely considered an overdetermined and unnecessary regulatory layer. This is particularly the case for those municipalities that have spent much time and planning effort creating areas in the community for the express purpose of siting large and established retail facilities.

Also on the list is redesigning Maine’s solid waste and stormwater regulations to better parallel the federal environmental requirements that must also be achieved.

That type of redesign should go a long way in smoothing out the regulatory friction that can build up when you are trying to deal simultaneously with dif-

ferent regulatory schemes over the same activity, one at the state and one at the federal level.

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### Joint Select Committee on Regulatory Fairness and Reform

#### Off-site Meeting Schedule

*Monday, January 31: 1:00 – 4:00 p.m.*

University of Maine at Machias  
 Performing Arts Center  
 116 O’Brien Ave.  
 Machias, ME 04654

*Wednesday, February 2: 3:00 – 6:00 p.m.*

Eastern Maine Community College  
 Rangeley Hall, Room 501  
 Sylvan Road  
 Bangor, ME 04401

*Thursday, February 3: 3:00 – 6:00 p.m.*

Central Maine Community College  
 Jalbert Hall, Room 115  
 1250 Turner St.  
 Auburn, ME 04210

*Monday, February 7: 3:00 – 6:00 p.m.*

Sanford Town Hall  
 919 Main St.  
 Sanford, ME 04073

*Wednesday, February 9: 3:00 – 6:00 p.m.*

Southern Maine Community College  
 Howe Hall, Room 306  
 2 Fort Road  
 South Portland, ME 04116

# Sex Offender Residency Ordinances

The Criminal Justice Committee hit the ground running this week as it held both the public hearing and a preliminary work session on LD 8, *An Act to Increase the Maximum Distance from a School within Which a Sex Offender May Not Reside That may Be Set by Municipal Ordinance*.

## The Background

As proposed by Sen. Jonathan Courtney of York County, the bill restores some of the community-based decision making authority that was taken away from local legislative bodies with the enactment of LD 385 (PL 2009, c. 351) in 2009. Prior to the adoption of the residency restriction limit found in statute today, municipalities had full “home rule” authority to adopt sex offender residency restrictions of any distance from children gathering areas provided that the restriction was not so broad as to effectively exclude sex offenders from living within the community. Since the enactment of LD 385, locally adopted sex offender residency set backs have been limited to no more than 750 feet from a municipally-owned school or location where children are the primary users.

## The Public Hearing

At Monday’s public hearing, MMA provided “provisional support” for the bill, because the Association’s 70-mem-

ber Legislative Policy Committee (LPC) had not yet taken an “official” position on the initiative. (At its January 26<sup>th</sup> meeting, the LPC had an in depth discussion of LD 8, and then formally voted to support the testimony provided at the hearing.)

However, the position on the use and benefits of sex offender residency ordinances is not unanimously held among town and city leaders. Some municipal officials don’t think sex offender residency restrictions work, while others are convinced that some level of restriction improves public safety. It appears that municipal officials from communities with public safety departments were less concerned with the need to adopt residency requirements. Municipal officials from communities without local-level public safety services are more likely to feel the ordinances provide some level of protection.

Despite this difference of opinion, a majority of the LPC coalesced around the issue of local decision-making. Municipal officials believe that local legislative bodies have the ability to receive and process information and to adopt ordinances that best meet the community’s unique needs, and voted to support the bill.

There were eight opponents to LD 8, including a trial attorney, representatives from the Civil Liberties Union and Department of Corrections, and a handful of reformed sex offenders and their loved ones. These opponents provided information, both documented and anecdotal, about the dangers associated with the adoption of sex offender residency ordinances. According to the opponents’ testimony, sex offender residency ordinances: 1) simply don’t work; 2) are constitutionally suspect; 3) drive offenders underground and out of reach of support systems and necessary rehabilitative services; 4) have the effect of causing sex offenders to move from urban to rural communities; and 5) create a false sense of security.

The Maine Coalition Against Sexual Assault provided testimony “neither for

nor against” LD 8. While the Coalition understands the motivation behind the enactment of residency requirements, they believe the negative consequences outweigh the positives. Instead, the Coalition supports other initiatives for addressing public safety concerns, including increasing the number of probation officers, longer probationary periods, greater use of risk assessment measures, and most importantly, preventative measures.

## The Work Session

On Thursday of this week, the members of the Criminal Justice Committee began the discussion on LD 8. The Committee’s discussion was somewhat reminiscent of LPC discussion.

Many Committee members believe that sex offender residency restrictions are actually detrimental to public safety, as these restrictions segregate offenders from their support networks. Furthermore, while these Committee members understand and appreciate the local decision-making argument, they strongly believe that in times when public safety is at risk the state has a right and a responsibility to preempt local decision-makers.

However, other Committee members believe that local-level legislative bodies can be entrusted with the responsibility for making decisions that best meet their needs. Furthermore, one Committee member shared that after the public hearing he conducted a site visit to see how the provisions of LD 8 would impact his hometown. He found that only four residential units were located within 2,500 feet of the local middle school.

After discussing the issue for well over an hour, the decision was made to table the bill in order to provide Committee members with the time necessary to conduct more research and to digest all of the information provided at the public hearing and work session. Before the tabling motion was made, each member of the Committee was asked if they needed more information.

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### Legislative Bulletin

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**Editorial Staff:** Greg Connors, Kate Dufour, Geoff Herman, and Laura Veilleux of the State & Federal Relations staff.

## Reform (cont'd)

One of the ideas on the list was to address the overregulation of municipal snow dumps. A legislative initiative with the same goal is being advanced by MMA's Legislative Policy Committee.

Not every idea on the Governor's list will be fully supported by Maine's municipal officials. One proposal calls for completely eliminating the implementation of all "product stewardship" systems, where manufacturers bear some financial responsibility for the recycling of the products they make which turn up in the solid waste stream. Given the municipal exposure to the costs of properly managing, recycling or ultimately disposing of items like computer monitors, florescent light tubes, and high-end electronics, we have to ask if these costs are supposed to be entirely borne by the property taxpayers?

There may also be some issues connected with backing off the state's Site Location of Development laws which will leave at least some municipalities unprepared to fill in the regulatory void with respect to certain large development projects.

On balance, municipal officials will undoubtedly be encouraged that the Governor's list presents a clear opportunity for some of these regulatory systems to be given a thorough review. That hasn't happened in the longest time.

A specially-created legislative committee, the Joint Select Committee on

Regulatory Fairness and Reform, is going out on the road to get input on the regulatory reform proposals. Sessions were held this week in Presque Isle and Belfast. The Committee's membership

and the remainder of the Committee's off-site schedule is posted in a sidebar to this article. Municipal officials who want to lend their voice to the discussion should think about attending.

## Joint Select Committee on Regulatory Fairness and Reform

Sen. Jonathan Courtney (York Cty.), Chair

Sen. Christopher Rector (Knox Cty.)

Sen. Thomas Saviello (Franklin Cty.)

Sen. Justin Alford (Cumberland Cty.)

Sen. Seth Goodall (Sagadahoc Cty.)

Rep. Jonathan McKane (Newcastle), Chair

Rep. Stacey Allen Fitts (Pittsfield)

Rep. Dianne Tilton (Harrington)

Rep. Dana Dow (Waldoboro)

Rep. Michael McClellan (Raymond)

Rep. James Parker (Veazie)

Rep. Robert Duchesne (Hudson)

Rep. Sharon Treat (Hallowell)

Rep. Michael Carey (Lewiston)

Rep. Linda Valentino (Saco)

## Sex Offender (cont'd)

As a result, two members requested additional information about the municipal experience with sex offender ordinances. Specifically, these Committee members want to know: 1) how many communities have adopted ordinances; 2) whether there have been any violations of the ordinance; 3) how enforce-

ment works; and 4) any other information the community would like to provide. MMA staff has a list, albeit incomplete, of the municipalities that have adopted sex offender residency ordinances, and will be contacting those communities in the next few days.

With respect to this information re-

quest, we could use your help. If your community has adopted a sex offender residency ordinance, please contact Kate Dufour at 1-800-452-8786 or [kdufour@memun.org](mailto:kdufour@memun.org) as soon as possible. Time is short, as a second work session on the LD 8 has been tentatively scheduled for next Thursday, February 3<sup>rd</sup> at 1:00 p.m.

## 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://www.state.me.us/legis/>.*

### **Tuesday, February 1**

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

LD 25 – An Act To Allow the Registration of a Bus as an Antique Vehicle.

LD 54 – An Act to Revise the Law Regarding Vehicle Turning and Signals.

LD 64 – An Act To Make a Violation of the Laws Governing Seat Belts a Secondary Offense.

### **Wednesday, February 2**

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

LD 84 – An Act To Improve the Sewer District Rate Collection Procedures.

**State & Local Government**  
**Room 216, Cross State Office Building, 10:00 a.m.**  
**Tel: 287-1330**

LD 69 – An Act To Restore the Historical Town Boundary between Harpswell and Brunswick.

**Veterans' & Legal Affairs**  
**Room 437, State House, 10:00 a.m.**  
**Tel: 287-1310**

LD 73 – An Act To Establish a Uniform Deadline for Persons Qualifying as Candidates.

## 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](http://www.memun.org).)*

### **Appropriations & Financial Affairs**

LD 147 – Resolve, To Provide \$1,000,000 to the Fund for the Efficient Delivery of Local and Regional Services. (Sponsored by Rep. Moulton of York; additional cosponsors.)

This bill transfers \$1 million out of the municipal revenue sharing fund during FY 2012 in order to capitalize the Fund for the Efficient Delivery of Local and Regional Services on a one-time basis.

### **Education & Cultural Affairs**

LD 148 – An Act To Set Uniform Standards for School Construction. (Sponsored by Rep. Bolduc of Auburn.)

This bill directs the State Board of Education to adopt rules that establish design standards for the construction of urban, suburban and rural schools. The bill prohibits the State Board from approving the allocation of state funds for a school construction project for a new school unless the construction plan for that school meets the applicable design standards.

### **Environment & Natural Resources**

LD 156 – An Act To Clarify the Regulation of Impacts to Significant Vernal Pool Habitats under the Natural Resources Protection Act. (Sponsored by Sen. Rector of Knox Cty; additional cosponsors.)

This bill amends the laws governing development set backs from significant vernal pools in two ways. First, the bill exempts from regulation any development activities occurring on property abutting a vernal pool if none of the actual vernal pool depression (as distinct from the larger buffer area) is located on the abutting property. The bill also prevents any additional vernal pools from being identified by a state agency as a "significant" vernal pool if the pool dries out after spring flooding by July 15<sup>th</sup> in southern Maine or by July 31<sup>st</sup> in northern Maine.

LD 159 – An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management. (Sponsored by Sen. Saviello of Franklin Cty; additional cosponsors.)

This bill makes a number of changes to the laws governing the state's Site Location of Development Act (Site Law). Most pertinent to municipalities, the bill changes the size-of-subdivision threshold that triggers subdivision review by the DEP under the Site Law. Currently, for subdivisions that are creating nothing other than single-family, detached residential house lots (perhaps with common areas or open space), the size threshold that triggers Site Law review is 15 lots. That threshold would be increased to 30 lots under this bill. For other types of subdivisions (i.e., non-residential or non-detached housing) that include an aggregate land area of over 20 acres, the current size threshold to trigger Site Law review is 5 lots. Under this bill the threshold to trigger DEP review for those subdivisions is 10 or more lots involving an aggregate acreage of 20 or more acres.

LD 180 – Resolve, To Change Rules Concerning Landfill Gas and Odor Management from Routine Technical Rules to Major Substantive Rules. (Emergency) (Sponsored by Rep. Ayotte of Caswell; additional cosponsors.)

This emergency resolve changes the status of certain rules being promulgated by the Department of Environmental Direction governing landfill gas and odor management, which in the development stage were perceived as having significant potential financial impacts on certain solid waste disposal facilities. As originally directed by the Legislature, these rules were to be "routine technical" rules, which can be finally adopted at the state agency level. This bill would require the rules to be "major technical" rules, which must be finally approved by the Legislature.

### **Health & Human Services**

LD 193 – An Act To Require an Applicant for State Assistance To Show Proof of Legal Residence in the United States and Proof of Residency for at Least the Previous 90 Days in This State. (Sponsored by Rep. Cebra of Naples; additional cosponsors.)

This bill requires the Department of Health and Human Services to make sure that all persons receiving benefits under the state's Medicaid program (MaineCare), the Food Stamp program, or the Temporary Assistance for Needy Families program (TANF) be a legal resident of both Maine and the United States.

### **Labor, Commerce, Research & Economic Development**

LD 152 – An Act To Prohibit Employment Discrimination Based on a Prior Criminal Conviction. (Sponsored by Rep. Bryant of Windham; additional cosponsors.)

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## IN THE HOPPER (cont'd)

This bill prohibits employment discrimination against persons with a prior criminal conviction except in the case where the criminal offense has a reasonable relationship to the function of the employment or there is a statutory disqualification.

LD 166 – An Act To Exempt Seasonally Restricted Cottages from the Newly Adopted Maine Uniform Building and Energy Code. (Sponsored by Rep. Chase of Wells; additional cosponsors.)

This bill exempts seasonally restricted cottages from the standards of Maine's Uniform Building and Energy Code. The bill defines a seasonally restricted cottage essentially as a one-story, detached single residential unit that does not have water services from November 1<sup>st</sup> to April 30<sup>th</sup>.

LD 188 – An Act To License Residential Builders and Register Specialty Contractors. (Sponsored by Rep. Pilon of Saco; additional cosponsors.)

This bill, entitled the Maine Residential Builders and Specialty Contractors Act, implements a program to license persons engaged in the practice of general residential construction and specialty residential construction. The bill creates a 9 member Maine Residential Builders and Specialty Contractors Board that is responsible for licensing the residential contractors. The Board includes four residential builders, a municipal code enforcement officer, an engineer or architect, two members of the general public and a firefighter who serves as a nonvoting member. The bill also establishes various exemptions from the licensing requirements, such as for persons performing work on their own property or the property of a family member, persons who are already licensed to perform a certain trade, etc.

### Marine Resources

LD 210 – An Act Regarding the Saltwater Recreational Fishing Registry. (Emergency) (Sponsored by Sen. Trahan of Lincoln Cty; additional cosponsors.)

This emergency bill repeals the saltwater recreational fishing registry system established during the last legislative session and replaces it with a system administered by the Commissioner of the Department of Inland Fisheries and Wildlife. The replacement system relies largely on a free, on-line registration system or registering in conjunction with the purchase of a valid freshwater fishing license.

### State & Local Government

LD 153 – Resolution, Proposing an Amendment to the Constitution of Maine To Provide for the Reduction of the Size of the Legislature. (Sponsored by Rep. Hinck of Portland; additional cosponsors.)

This resolve sends out the voters a proposed amendment to Maine's Constitution that would reduce the size of the House of Representatives from 151 members to 101 members and the Maine Senate from 35 members to 33 members.

LD 174 – An Act To Amend the Law Governing Employment, Discipline and Dismissal of Chief Deputy Sheriffs. (Sponsored by Rep. Dion of Portland.)

This bill appears to take away any authority for the county commissioners to appoint, dismiss, suspend or discipline a sheriff's chief deputy, thereby placing exclusive employment authority for that position with the sheriff.

### Taxation

LD 149 – An Act To Authorize Municipalities To Impose Service Charges on Tax-exempt Property Owned by Certain Nonprofit Organizations. (Sponsored by Rep. Celli of Brewer; additional cosponsors.)

This bill expands the capacity of municipalities to impose service charges on certain properties that are otherwise exempt from taxation. Current law allows service charges to be applied to residential rental property

that is totally exempt from taxation. This bill allows service charges to be applied to "charitable" organizations, "literary and scientific" institutions, the social lodges of veterans and fraternal organizations, and chamber of commerce facilities provided the exempt organization receives more than \$150,000 in gross annual revenues.

LD 191 – An Act To Define Lienholder Rights under the Maine Tree Growth Tax Law. (Sponsored by Rep. Cushing of Hampden; additional cosponsors.)

This bill adds a requirement for municipal assessors who are providing the legally-required notice to persons who have property enrolled in the Tree Growth program that their 10-year deadline for updating their management plan is coming due. The requirement added by this bill is that the municipal assessor also notify any person holding a lien on the property provided that the lienholder has notified the town that it wishes to be provided that notice.

### Veterans & Legal Affairs

LD 142 – An Act To Improve Party Status Requirements. (Sponsored by Rep. Chipman of Portland; additional cosponsors.)

This bill removes the requirement that in order to participate in a primary election, a political party must hold at least one municipal caucus in each county in the state.

LD 169 – An Act To Allow Veterans Who Work for Employers with More than 50 employees To Take Veterans Day Off with Full Pay. (Sponsored by Rep. Beavers of South Berwick; additional cosponsors.)

This bill requires an employer with more than 50 employees to provide Veterans' Day as a paid day off to any employee who is a veteran and requests the day off.

LD 172 – An Act To Exempt Nonprofit Organizations from the Laws Governing Serving Alcohol near a Church. (Sponsored by Rep. MacDonald of Boothbay; additional cosponsors.)

Current law restricts the issuance of a license to an establishment providing for the on-premise consumption of alcohol if the establishment is within 300 feet of a church, chapel or parish house. This bill allows the issuance of such a license within the 300 foot buffer zone if the establishment is a nonprofit organization.

LD 179 – An Act To Prohibit the Issuance of a 2<sup>nd</sup> Absentee Ballot under Certain Circumstances. (Sponsored by Rep. Nutting of Oakland; additional cosponsors.)

This bill prohibits a municipal elections clerk from issuing a second state absentee ballot to an applicant unless good cause is shown, and the "good cause" standard is amended to stipulate that an applicant's decision to change his or her vote after an absentee ballot has been returned does not constitute "good cause".

LD 199 – An Act To Strengthen Maine's Election Laws by Requiring Photograph Identification for the Purpose of Voting. (Sponsored by Rep. Cebra of Naples; additional cosponsors.)

This bill requires that a person provide proof of identity with photograph identification in order to vote.

LD 203 – An Act To Assist Municipal Clerks by Providing Adequate Time To Register Voters. (Sponsored by Rep. Knight of Livermore Falls; additional cosponsors.)

This bill repeals Maine's "same-day" voter registration law, which allows a person to register to vote up to and including election day, and replaces it with the requirement that anyone wishing to vote must register no later than the Tuesday preceding the election.