Legislative BULLETIN
MAINE MUNICIPAL ASSOCIATION
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Election Legislation Wrap-Up

Proposal to Eliminate "Same Day" Registration

Over the past several weeks, the Veterans and Legal Affairs Committee has taken public testimony and held work sessions on several election bills. The three elections bills described below are of particular interest to municipalities.

Signature Verification Responsibility. LD 1000, *An Act to Require the Secretary of State to Verify Voter Signatures*, requires the Secretary of State (SOS), within existing resources, to verify signatures on candidate, citizen initiative and people's veto petitions. Currently, that responsibility rests with the municipal registrars. The purpose of the bill is to relieve municipalities of the verification burden and to eliminate duplicative signature verification efforts.

While admittedly LD 1000 would save municipal clerks time and resources, municipal officials were concerned that not only would the SOS workload be increased, so would the number of signatures unnecessarily determined invalid. Municipal officials believe that locally based staff are more familiar with the residents and street addresses in their communities and are therefore able to verify signatures most efficaciously.

At its work session, the Committee unanimously voted to support an amended version of LD 1000. As amended, the bill is converted into a resolve directing a working group of interested parties to explore ways to conduct the verification process in a more effective manner. The working group must report its findings and recommendations back to the Committee next January.

Uniform Process for Conducting Recounts. LD 1134, *An Act to Make Municipal Recounts Consistent with State Recounts*, seeks to replace the recount process found in Title 30-A, which is generally used for municipal elections, with the recount process found in Title 21-A that is used for statewide election recounts.

Although the two existing recount processes are similar, the printed bill included two provisions causing some

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Public Notice "Newspaper" Bill – In Memoriam

STATE CAPITOL – LD 392, *An Act to Amend the Requirements for Publishing Municipal Legal Notices*, died on Monday, May 23, 2011 at 4:03 p.m. in the Senate Chamber. LD 392 was given birth by the Maine Municipal Association's 70-member Legislative Policy Committee on November 22, 2010 and sponsored by Rep. Terry Hayes of Bucksport. LD 392 was the youngest in a long lineage of proposals to allow for more effective and cost-effective legal notice requirements at the local level.

During its six short months of life, LD 392 made every effort to amend existing law mandating that all legal notices be advertised in newspapers mailed second class, which are the state's largest daily and weekly newspapers. The bill would have enabled municipal officers to adopt policies to use alternative newspapers, such as free weekly papers and electronic media, provided certain criteria were met to ensure the notice is effectively provided.

Throughout its uphill battle against a newspaper lobby openly focused on the financial impacts on newspaper operations, LD 392 fought to be inclusive of other more effective and cost efficient ways of providing public notice. At no time during its fight did LD 392 prohibit municipalities from using newspapers of general circulation as the way to provide public notice. Instead, LD 392 suffered only to enable municipalities to provide alternative effective notice at the most efficient price.

LD 392 will be greatly missed by the municipalities that are duplicating public notice advertising efforts and spending taxpayer dollars ineffectively because they are forced to do so in order to comply with state law. To meet the letter of the law, many communities across the state publish notice in newspapers of general circulation that are mailed second class just to satisfy the law, and then to actually provide effective notice, these municipalities publish notices in other more known, universally distributed and user-friendly mediums.

LD 392 is survived by a cousin, LD 940, *An Act to Increase Access to State Rule-making Notices*, which will soon be debated by the members of the Legislature. Among other things, LD 940 generates state-level savings by relaxing the state's rulemaking publication requirements. A provision in the developing state budget, similarly, would direct all state agencies to provide their notices on the Internet.

In lieu of flowers, residential, commercial and industrial property taxpayers are asked to save resources in order to continue to subsidize the state's struggling newspaper industry.

Replacing LURC with County-level Land Use Controls

A number of bills were submitted to the Legislature this session that in one way or another would change the way land use activities in the state's unorganized territories are regulated. A public hearing on those proposals was held on May 17 before the Agriculture, Conservation and Forestry Committee (ACF). An overflow crowd attended the public hearings, and it took over 6 hours for everyone to get their say. At the end of that process, there were two bills that had any legs: LD 1534, *An Act to Reform the Land Use and Planning Authority in the Unorganized Territories*, and LD 819, *Resolve, To Improve the Predictability of Land Use Regulation in the Unorganized Territories.*

The focus of LD 819 is to reform Maine's Land Use Regulation Commission (LURC) without eliminating it, and MMA's Legislative Policy Committee took no position on that legislation. For a couple of very important reasons MMA's Policy Committee did vote to oppose the core elements of LD 1534 where the counties are given all planning and regulatory authority over the unorganized territories. First, municipal officials are convinced that so substantially expanding the role of county government will fall down as a state mandate where the property taxpayers in the organized municipalities would have to pick up some of that tab. Second, the task of developing and adopting homegrown land use regulation should be given over to a legislative body, not an administrative body. An active, functioning legislative body does not really exist on the county level.

From the beginning, LD 1534 has been something of a moving target.

It actually started as another bill altogether, LD 17, which was a 2 page bill printed in January that was more "concept draft" than a fully fleshed-out piece of legislation. LD 17 would eliminate LURC as of July 15, 2012. Between now and then, the bill established the "Unorganized Territory Transition Advisory Board" to advise the Legislature's Agriculture, Conservation and Forestry Committee on matters relating to the transfer of all land use regulatory authority over to each county that includes within its jurisdiction any unorganized territories. The counties could charge fees to provide these services as long as those fees do not exceed the current LURC fees.

Several months later, LD 1534 emerged as a 12 page bill falling somewhere in between a detailed piece of legislation and a "concept draft" bill. As printed, LD 1534 included all the language of LD 17, and then added detail by sweeping through 10 pages of existing municipal law regarding land use regulation, such as subdivision law and zoning law, just to add the words "or county" after every place where the word "municipality" appears. Presto! The counties become land use regulators.

At the public hearing, however, the printed version of LD 1534 had morphed again into a 35-page document that was offered as a replacement to the printed bill. The amendment consisted largely of taking big blocks of statutory language governing LURC currently found in Title 12 of Maine's law books and transferring that language to municipal law (Title 30-A), roughly empowering the eight "UT" counties to either individually or cooperatively manage the land use regulation within their jurisdictions. This version of the bill resembles a scrapbook with a half-dozen chunks of separate state statute bound together by Scotch tape.

Three areas of regulatory authority under this version would be given over to the state. The Department of Environmental Protection would perform the review and approval of all development projects triggering the Site Location of Development Act (Site Law) and the Natural Resources Protection Act (NRPA). Maine Forest Service would inhabit the entire regulatory field for timber harvesting operations.

Other than those three areas, the county commissioners would assume the role of both legislative body (adopting comprehensive plans and land use regulations) and administrative body implementing those regulations. The county commissioners would be defined as a "municipal legislative body" in state law, as well as "municipal officers". The aggregate unorganized territories in each county would be "deemed" a "municipality" for the purpose of fitting them into the existing construct of municipal land use regulation.

In addition, an 8-member Land Use Review and Appeals Board would be established, made up of one county commissioner from each of the eight most affected counties (Aroostook, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset and Washington). This Review and Appeals Board is authorized to provide the direct regulatory service in any area where no county or group of counties is providing the service. Otherwise, this Board would act as the Appeals Board for all the regulatory decisions made at the individual county level.

Public Hearing. The public hearing began with a two hour opening presentation by 10 supporters of the amended version of LD 1534, which was for the first time being distributed to the general public. Those supporters included Senate President Kevin Raye (Washington Cty.), a representative from the Governor's Office, the Commissioner of the Department of Conservation, five county commissioners, and one former and one

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Honing in on Zoning in the Shoreland Areas

Several bills were submitted this year that would impact the current laws governing Maine's shoreland zoning system. Generally speaking, the legislation would have eased existing restrictions within the shoreland zone to benefit the property owner and allow for more development. MMA's Legislative Policy Committee took positions on all of the shoreland zoning bills, or at least offered input to the Legislature's Environment and Natural Resources Committee (ENR) which considered all this legislation. What follows is a recap of those bills and their current status. As will be noticed, the ENR Committee was very attentive to and respectful of the municipal input that was provided.

The Dead Zone

LD 339, ***An Act to Prohibit Municipal Ordinances More Stringent than State Guidelines,*** would have prohibited municipalities from adopting shoreland zoning standards that are more stringent than the minimum state guidelines. The LPC voted to oppose this bill at its February meeting due to the limiting effect the bill would have had on home rule authority. This bill was killed by the Legislature even before it was referred to a legislative committee.

LD 434, ***An Act to Exempt Wetlands Created by Obstructions or Barriers from the Shoreland Zoning Laws,*** would exempt freshwater wetlands created as a result of artificial or natural obstructions or barriers from regulation under the state's shoreland zoning laws. MMA opposed LD 434 due to some question as to the intent of the bill based on an overly broad definition of "non-original wetlands" and the potential negative impacts on the environment.

LD 434 was killed in Committee earlier this month.

LD 733, ***An Act to Allow a Person Who Has Lost a Home in a Shoreland Zone to Obtain a Building Permit,*** would allow for the rebuilding of a nonconforming structure in the shoreland zone that gets removed, damaged or destroyed by any cause such that it loses more than 50% of its value. Under current law the reconstruction has to occur within one year. Under this bill it could occur within 3 years. MMA took a "neither for nor against" position on the bill, but expressed concern about some of the printed bill's wording. LD 733 was killed in Committee earlier this month.

LD 888, ***An Act to Allow Flexibility under Municipal Shoreland Zoning Ordinances,*** would allow a municipality to adopt both systems available under law to calculate the degree to which a nonconforming structure can be expanded within the shoreland zone – the "30%" system and the "fixed-footprint" system – and apply whichever system the property owner chooses. MMA testified "neither for nor against" this proposal, but LD 888 was killed in Committee earlier this month.

Still Alive (but just barely)

LD 219, ***An Act to Amend the Laws Governing Shoreland Zoning,*** would reduce the width of land that is subject to the shoreland zoning land use controls from 250 feet to 75 from the high water line or upland edge of any body of water, river or wetland. The legislation would not affect any existing municipal ordinances, except for allowing those ordinances to be amended accordingly. The LPC voted to oppose this bill based on several concerns. Current shoreland zoning laws provide important protections for the environment and water bodies around the state and work to protect the value of waterfront property and contribute to the State's "brand" and character. The municipal view is that if LD 219 is enacted, the high quality of Maine's lakes, ponds and streams could not be maintained over time. The ENR Committee voted 11-2 "ought not to pass" on LD 219. The bill has yet to be placed on the Senate calendar for debate.

LD 872, ***An Act to Clarify the Natural Resources Protection Act,*** would amend the law governing the buffer zone around vernal pools, "inland waterfowl and wading bird habitat," and "shorebird nesting, feeding or staging areas" to a uniform 75 feet. It would also create a compensation system whereby the Commissioner of the Department of Environmental Protection would award financial compensation to landowners for any losses in property value attributable to setback or buffer zone restrictions. MMA testified in opposition to LD 872. The LPC was open to reviewing and properly dealing with the setbacks around these various habitats (see LD 159, below), but did not support the compensation requirement. The issue of compensation is enormously complicated and was not adequately addressed in LD 872.

LD 872 was given a 12-1 "ought not to pass" report by the ENR Committee and the bill is currently tabled in the Senate.

Headed Toward Enactment

LD 552, ***An Act to Exclude Cupolas from the Measurement of Height for Structures in the Shoreland Zone.*** As printed, LD 552 excluded the height of a cupola, dome, widow's walk or similar structure with respect to building height limitations in the shoreland zoning standards, provided the base size of those roof structures are 100 square feet or less. MMA's Policy Committee didn't support the original bill because of the sudden change in the rules the bill would create, and the friction it could generate among waterfront or near-waterfront property owners. The LPC felt the issue would be better addressed at the local level so that impacted residents could voice their interests and concerns in public forums held within their communities.

The ENR Committee rewrote the bill to provide that a municipal ordinance may allow a cupola, dome, widow's walk or similar structure to be added to a legally existing and conforming building without violating height standards if the added structure meets a number of qualifications. First, the building cannot be located in a resource protection district or a stream protection district. Also, the added roof structure: (a) cannot extend beyond the exterior walls of the existing structure; (b) must have a floor area of 53 feet or less; and (c) cannot be in excess of 7 feet in height.

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Election Wrap-Up (cont'd)

municipal concern.

First, LD 1134 repeals the "ballot inspection" process that is currently available to candidates in municipal elections. Under the existing system, candidates can inspect the ballots before deciding whether to engage in the recount process. The inspection process is an option and not mandatory. Clerks report that this process deters unnecessary recounts.

The second problematic element in LD 1134 as printed is that it authorizes only the clerk, clerk's designee or police in the performance of official duties to participate in a recount. No other municipal employee or elected official can participate. Municipal officials are concerned that this change would have an adverse impact on the state's smallest communities, where "volunteers," such as firefighters, election clerks, or transfer station attendees who receive a nominal stipend could be considered municipal employees and held ineligible to participate. In these communities, it could be very difficult to staff the recount process, if "municipal employees" are prohibited from participating. Under the existing system, it is the clerk's responsibility to designate appropriate election officials and ballot clerks.

After debating the merits of the bill, the Committee unanimously voted to support an amended version of LD 1134. As amended by the Committee, the ballot inspection process is preserved and municipal clerks are allowed to assign recount duties to "election officials."

Same Day Registration and Absentee Ballot Reforms. LD 1376, *An Act to Preserve the Integrity of the Voter Registration and Election Process*, proposes among other election law changes to repeal same-day voter registration and amend the absentee ballot laws to accommodate changing the required voter registration deadline to 3 business days before the election. In summary, all persons would have to be registered to vote no later than 3 business days before an election, therefore any absentee ballot requested by an unregistered voter would have to be returned to the municipal election clerk no later than that deadline, as well. In addition, all absentee ballot requests made after that deadline but before election day would have to be "for cause" (e.g., for reason of illness, disability or absence from the municipality on the day of the election).

Municipal officials recognize that the alternatives proposed in LD 1376 would relieve municipalities of election related burdens and costs. However, they also believe that the reforms proposed in this bill, as well as voter photo identification bill also supported by a majority of the Committee (LD 199), need to be assessed together to determine the aggregate and potentially negative impacts on voter access to the polls.

At its work session on LD 1376, the Committee vote was divided along party lines. The 7-member majority report is "ought to pass." The 6-member minority "ought to pass as amended" report authorizes municipalities to opt out of allowing in-person absentee voting on the Friday, Saturday and Monday prior to the election rather than foreclosing that option throughout the state as a matter of law.

The election reform recommendations found in these three bills will soon be before the entire Legislature for a final vote.

LURC (cont'd)

current state legislator. The supportive testimony relied on three central themes: (1) the LURC regulatory system is out of touch with the actual land use goals and aspirations of the people living in the unorganized territories; (2) the resident population of the unorganized territories, generally, has the lowest income and highest unemployment levels in the state, indicating a need for economic development that LURC is suppressing; and (3) the counties are ready, willing and able to provide the service and infuse local control back into the system.

Opponents to LD 1534 included two sitting legislators, a former director of LURC, several business people and developers who work within the LURC jurisdiction, a Piscataquis County Commissioner on behalf of that board, environmental advocates and many others. The opponents did not buy into the claim that LURC should be blamed for the economic circumstances of the unorganized territories. Also, there was near consensus that certain issues with LURC need to be addressed, but "throwing the baby out with the bath water" was not the answer. In various ways, the opponents expressed significant concerns about increasing the functions of county government and the financial impacts of that mandate, creating something like nine new "bureaucracies" to govern the unorganized territories. Shifting the cost of these services from Augusta to the counties was expressed by more than just the municipal community. From the developers' perspective, a tremendous uncertainty is created by LD 1534 where no one would know, at least for several years, what each county's land use standards might become and whether the review, approval and enforcement process would be accomplished at the individual county level, by a multi-county collaborative, through contracted municipalities, or by the full 8-county Board.

Many of the opponents of LD 1534 were supportive of the alternative approach laid out by LD 819, which focuses on making structural improvements to the existing LURC process.

Work Sessions. The ACF Committee has conducted several work sessions on the two bills since the public hearing, but little progress has been made on systematically evaluating the various elements of LD 1534 so as to get a good understanding of its real-life impacts.

This week alone, a number of work sessions were conducted which could be fairly characterized as awkward, with an unpleasant partisan overtone. What finally developed, however, is the fourth and what looks to be the final version of LD 1534, at least for 2011. This version would replace all previous iterations of the bill with a resolve that directs a 13-member "stakeholders" group to develop over the summer and fall a recommendation about reforming or restructuring the system of land use regulation in the unorganized territories.

The Committee was divided along partisan lines on this final amendment over the issue of how the stakeholders in the working group would be chosen, whether the membership of the working group is predisposed to ultimately recommend the original version of LD

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LURC (cont'd)

1534, and how the charge to the working group is specifically worded. As adopted by the majority Republicans, the stakeholders will include the Commissioner of the Department of Conservation, two residents of the UT, one large UT landowner engaged in timber harvesting, one small UT landowner engaged in timber harvesting, two county commissioners, a regional planner from a Council of Governments, and a representative from each of the following areas of interest or organizations: tourism, hunting/fishing, a statewide environmental/conservation, a regional environmental/conservation, and regional or local economic development. The Governor, the President of the Senate and the Speaker of the House are the various appointing authorities.

In any event, it appears that the rush to abolish LURC and give over to the counties a new land use regulatory authority has been put on hold pending further study. The working group's recommendation must be provided to the Legislature by January 2012.

Shoreland Zoning (cont'd)

In the amended form, LD 552 was reported out of Committee with a 9-4 "ought to pass" vote. Currently, this bill is scheduled for a second reading in the Senate, and the House has already accepted the Committee's majority report.

LD 1108, ***An Act to Modify the Requirement to Replace Trees Cut Down in Violation of Local Laws.*** When trees are cut down in the immediate waterfront areas in violation of the shoreland zoning standards, current law requires them to be replaced as they were. It was beefed up to that strict standard within the last couple of years because there were cases where people were deliberately cutting themselves waterfront vistas because the penalties for doing so, if the violators got caught, were "worth it".

As printed, LD 1108 softened the existing penalties by allowing the court to issue a vegetation replacement order that does not require one-for-one replacement or the replacement trees to be necessarily the same size as the removed trees. MMA expressed concern over the weakening of this shoreland zoning law. The LPC voted "neither for nor against" the original bill but was hesitant to support removing specific replacement requirements and otherwise signaling to the courts that penalties somewhat commensurate with the violations are merely optional to the court. In the testimony provided to the Committee, MMA urged members of the Committee to retain or include language in an amended bill that would compel the court to levy a meaningful penalty, whether financial or otherwise.

The Committee amended LD 1108 to require the court to order a remediation plan that requires at a minimum at least 50% of the basal area illegally cut to be replanted with trees of varying sizes and species such that the visual impact from cutting will be remediated and the previous tree canopy will be restored within a reasonable time period. The amendment also requires a 5 year management plan be developed, which must address how the replacement trees will be maintained to allow the healthy growth needed to achieve an appropriate height at maturity.

LD 1108 was given a 12-1 "ought to pass as amended" report by the ENR Committee and is now very close to final enactment.

Wading Through Waterfowl Habitat

LD 159, ***An Act to Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management.*** Initially, this bill might not have belonged in this shoreland zoning article but as LD 159 was worked by the ENR Committee it became more relevant to this discussion. The amended bill received support from all ENR Committee members present, with a final vote of 11-0. The bill is currently tabled in the Senate.

Part of the amended bill directs the Department of Environmental Protection (DEP) to adopt rules to allow activities in, on or over "moderate and high value waterfowl and wading bird habitat" in shoreland zones to be eligible for permit by rule under the Natural Resources Protection Act. In addition, it allows the ENR Committee to report out a bill relating to these habitats during the second session of the 125th Legislature, if it so chooses.

Related to this bill, the ENR Committee will apparently be sending a letter to the DEP that will direct the agency to amend the minimum shoreland zoning guidelines to provide municipalities more discretion with respect to which category of shoreland zoning these wading habitats should be designated, and to make sure the municipalities are made aware of their options to reconsider the zoning designation of these areas. Therefore, any municipality wanting to allow for less stringent setbacks around these moderate and high value waterfowl and wading bird habitats, which are currently mandatory "resource protection" zones, should stay tuned.

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/.

Thursday, June 2

Labor, Commerce, Research & Economic Development
Room 220, Cross State Office Building, 2:30 p.m.
Tel: 287-1333

LD 309 – An Act To Make Voluntary Membership in a Public Employee Labor Organization in the State.