Legislative BULLETIN
MAINE MUNICIPAL ASSOCIATION
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The Culvert Rules: Property Taxpayer v. Aquatic Organisms

The Natural Resources Committee has taken its vote on LD 1725, which seeks to change the standards for culvert repair and maintenance. LD 1725 is the "culvert bill" which adopts a change to Chapter 305 of the rules of the Department of Environmental Protection (DEP). The February 5th *Legislative Bulletin* described this issue in detail.

LD 1725 is an outgrowth of a law enacted last session (PL 2009, c. 460 / LD 1333) which required the DEP to undertake rulemaking to amend its Permit By Rule standards "to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings." The rule as drafted would accomplish this directive in two ways. First, by generally prohibiting the maintenance of culverts by "slip-lining" or other life-extending methods that further reduce the opening of a culvert. In addition, the proposed rules require the installation of larger culverts or more involved stream-crossing infrastructure.

The goal of the rule is to not only make it easier for fish to swim upstream through culverts, but also to allow any "aquatic organism" to be able to make such journey.

MMA opposed the resolve because the draft rule is going to increase costs to municipalities and taxpayers, in some cases dramatically.

For example, an Aroostook County municipality slip-lined a 50 year old corrugated metal pipe which carries a very small brook under a town way. This brook is 2 to 3 feet wide and the deepest spot in sight of the pipe is six inches. In most places it is only two inches deep. It flows year round and there are fish in it. The town employees slip-lined the existing 60" X 60' long culvert with a 54" X 75' long high density polyethylene pipe for $13,000. It took less than two days with no interruptions to traffic.

The contractor's estimate to dig and replace the 5 foot diameter pipe rather than repairing it in the ground was $42,000 and the road would be closed for at least one day and traffic reduced to one lane for up to four days.

But if the town had to follow the LD 1725 rules for this project, it would have had to install a structure that is not a 5 foot diameter culvert but a 14 foot bridge spanning the waterway in order to achieve the "bank-full width" measurement requirement. The cost of that is anyone's guess, but clearly in the hundreds of thousands

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Tax Committee Proposes Additional Tree Growth Mandate

Committee members now claim "lack of time" to address program abuses

There is a fair amount of irony in this story, or perhaps it represents something that should always be understood about the legislative process. Actions speak louder than words.

In the context of $250,000,000 in cuts to local government that have been enacted and are being currently considered, lawmakers have expressed an interest in repealing, reducing, modifying or otherwise limiting unfunded municipal mandates. This is characterized as an effort to soften the financial blow to the towns and cities, even if only in a modest way, and work creatively to reduce the impacts where practicable.

That was the talk, anyway. The call to consider a thorough-going review of unnecessarily expensive unfunded mandates actually originated in the Taxation Committee, and a list of possible mandates to repeal or modify was provided to the Appropriations Committee by the Taxation Committee.

Two weeks later, that same Taxation Committee is recommending the enactment of a new administrative mandate on the municipalities to solve a Tree Growth management problem that the Legislature initiated and Maine Revenue Services implemented in the Unorganized Territories. The problem does not exist at the municipal level.

As reported in last week's *Legislative Bulletin*, a couple of Tree Growth property owners in the unorganized territories failed to properly update their forest management plans and/or supply

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TREE GROWTH (cont'd)

their statement certifying compliance with the plan by the 10-year deadline, and Maine Revenue Services withdrew their property from the program and assessed the withdrawal penalty. The landowners hired lawyers, began the process to appeal the decisions, and caused legislation to be submitted to reverse the State Tax Assessor's decision. That legislation is LD 1635. The bill would effectively give landowners another year to file the compliance information about their forest management plans, extending the deadline from 10 years to 11 years.

MMA opposed LD 1635. The 10-year deadline has been the law since 1989, and from a tax administration standpoint, there is nothing worse than a deadline that is not really a deadline. The Tree Growth enrollees are getting a sweet property tax advantage out of this program; one would think they could keep a tickler file in their tax records or make appropriate arrangements with a forester in order to meet a simple deadline. Two years ago, MMA even supported legislation that mandated municipalities to provide 60-day written notice before the property could be withdrawn from the Tree Growth program for failure to file the plan updates and compliance certification. That law was enacted, but it was written poorly, and within its poor construction, Maine Revenue Services elected to follow a hyper-strict interpretation, which created the mess.

The Taxation Committee's proposed solution is the following:

1. Repeal the current language creating a 60-day written notice period prior to withdrawing Tree Growth property for failing to provide the appropriate updates.

2. Clarify that the 10-year deadline to update a forestry plan and provide the sworn statement of compliance falls on the appropriate April 1 date of assessment, rather than at some odd day within the year representing the day the plan was first developed.

3. Require municipalities to issue two written notices to Tree Growth enrollees who are facing an impending April 1 deadline and have failed to provide the plan update and compliance certification. Where the current law requires one written notice providing a 60-day window to comply, the new proposal requires two written notices providing a 150-day window to comply.

4. The first written notice would have to be provided in the first week of January, informing the enrollee that if the necessary documentation is not

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Legislative Bulletin

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Telco Tax Proposal Would Expand Municipal Tax Base

A discussion has been going on at the Taxation Committee level for over a year about the way the state's tax code deals with the personal property used to deliver telecommunications services. Certain telecommunications companies believe there are inequities in how the state's tax code is applied to various service providers within the industry who rely on different technologies. Telecommunications services used to be provided on simple wire-and-pole telephone infrastructure owned and operated by a single regional monopoly. A lot has changed. The term "telecommunications services" now includes telephone, television and Internet services, delivered either by landline or wireless systems that are owned and/or operated by over a hundred different companies. There is a municipal connection to the debate.

In summary, under current law the landline telephone and Internet providers – the owners of the "two-way" or "interactive" telecommunications personal property -- are assessed a property tax that is applied by the state and not the municipalities where that property is actually located. The state-imposed property tax rate is a flat 22 mills. In contrast, the personal property of cable television providers, who are increasingly able to also provide Internet and telephone services, is taxed by the municipality where the property is located. In almost all cases, the local mill rate is far less than 22 mills.

This disparity in property tax rates is a matter of concern to the landline telephone and Internet providers, such as FairPoint Communications. The concern is exacerbated by the fact that a legislative attempt to address that disparity enacted a decade ago has stalled so completely it looks to be abandoned. In 2001 the Legislature enacted a law that would steadily reduce the state-imposed mill rate with the goal of equalizing the state's rate with the statewide average municipal property tax rate by the year 2012. Two occurrences have frustrated that goal.

First, beginning in 2009 the Legislature suspended the annual reduction in the state-imposed property tax rate, keeping it stuck at 22 mills rather than allowing it to drop to 18 mills, which was considered to be the statewide average property tax mill rate in 2001, when the legislation was enacted.

Second, substantial growth in the assessed value of all taxable property occurred between 2001 and 2007 which far out-stripped the limited growth in local government spending. As a result, the statewide average municipal mill rate (in full value) has plummeted from the 17-plus mill rate average in 2000 to a mill rate average below 12 today.

All of this has precipitated ideas about revamping the system of taxing telecommunications companies from top-to-bottom. Some of those ideas included giving over to the municipali-

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TREE GROWTH (cont'd)

provided by April 1, he or she will be "non-compliant".

5. If the Tree Growth enrollee does not comply by April 1, a second written notice would have to be issued in the first week of April, informing the enrollee that he or she is non-compliant and must now provide the documentation within a 60-day period or else the property will be withdrawn from the Tree Growth program and the landowner will be charged significant financial penalties.

6. Finally, the State Tax Assessor or a municipal assessor would be authorized to retroactively apply the pertinent parts of this new law. The only reason for this provision is so that Maine Revenue Services, under the color of retroactivity, can reimburse penalties to the two landowners who brought forth this legislation, and reinstate their property into the program. (On that score, one of the penalized lots was described as an inaccessible 25 acre camp lot on the Chain of Ponds in Franklin County where access is only by water, which is governed by a forest management plan that requires nothing more of the landowner than cleaning up the deadwood and slash. It's a great tax break for your summer camp, if you can get it.)

Program abuses. Taxation Committee members are now saying that there is not enough time left in the legislative session to make changes to the Tree Growth tax laws to address the abuses typified by waterfront landowners who put their residential land into the Tree Growth program to avoid paying their share of the property taxes. Everyone familiar with these enrollments know that there is no bona fide intention to use the property for commercial timber harvesting purposes, but forest management plans can be written so obliquely that the landowners can forever claim that intention without ever acting on it.

Back in January, MMA advanced a number of proposed changes to address that problem to the Taxation Committee. Those proposals never went to the Appropriations Committee, even though there seemed to be interest at that level because the proposed supplemental state budget makes deep cuts to Tree Growth reimbursement and some sort of programmatic adjustments seemed both relevant and warranted. Instead, the Taxation Committee said out loud that it was going to take up the task of addressing those abuses.

Taxation Committee members are now saying they won't have time this legislative session to deal with program abuses, and therefore the Committee should enact a resolve to create another working group to recommend changes for the next Legislature to consider.

That's a euphemistic way to simply kill any changes that would put more accountability into this tax dodge program. Municipal officials are asked to review the sidebar that describes the changes to the Tree Growth program that MMA is recommending to tighten up on program abuse. If you think those changes should be adopted by this Legislature during this legislative session, call your representatives and senators and tell them so. At the moment it looks like the Tax Committee is hoping to dodge this assignment.

Proposed Tree Growth Accountability Changes

The legislation MMA is proposing to address problematic enrollments in the Tree Growth program would amend the program in the following way:

The legislation would require all enrollees to write into their forest management plans a statement that attests to the fact that the primary purpose of the enrolled land is to grow trees for commercial harvesting purposes, and that recreational, residential, preservation and conservation purposes are incidental and subordinate to the primary purpose.

The legislation would also incorporate into Tree Growth law a provision that already exists with respect to the enrollment of land under the "Open Space" tax category, found at 36 MRSA §1109(3), which prohibits including within the Tree Growth enrollment the minimum lot upon which a structure sits, **and for structures that are located within the shoreland zone, prohibits the inclusion of the land between the structure and the minimally-required water frontage**. The legislation clarifies that land excluded from the Tree Growth program because of statutory amendments enacted after the property is otherwise properly enrolled does not meet the definition of "withdrawal" and is therefore not subject to the withdrawal penalties.

The legislation would also provide that the "10% "discount factor" that is applied in the calculation of Tree Growth acreage values for the stated purpose of "reflecting the growth that can be extracted on a sustained basis" does not apply with respect to the acreage of any enrolled parcel that is located within the state's minimally-required shoreland zone. This change would have the effect of increasing the Tree Growth acreage rate for land enrolled within the shoreland zone by 10%, or between $10 and $40 per shoreland acre depending on the county. This should have the effect of at least slightly reducing the state's reimbursement obligation.

Finally, the legislation would remove the confidentiality provisions that apply to forest management plans prepared for Tree Growth parcels that are smaller than 100 acres in size so some sunshine could be directed on the substance of these plans which are the magic key to Tree Growth enrollments. "Transparency" is a big buzzword at the legislative level, but the real standards of eligibility for this considerable tax break are about as transparent as India Ink. Currently, the only people who can even see these plans are municipal assessors, and as a rule the assessors – especially the private-sector assessing agents -- do not get involved in the details or policies of proper forest management or the public policy issues associated with bogus enrollments.

How to Fund the State's Vital Records Program?

Given the current shortfalls in state General Fund revenue, an ever-more popular way of funding core state services is to establish "other special revenue" accounts funded by the assessment of fees, and dedicate those funds to a particular state agency program.

When the "other special revenue" funding alternative is employed, state agencies that would normally receive General Fund appropriations to finance their programs are required to provide services within existing self-generating revenue, such as fee and grant revenues. While the funding alternative has the short-term effect of reducing General Fund obligations, it has the long-term effect of putting state agency programs in peril.

A case in point - the funding of the state's vital records operation.

According to representatives of the Maine Center for Disease Control and Prevention (CDC), this "other source revenue" funding alternative is wreaking havoc on the state's vital records operation. Since the state vital records service does not receive a General Fund appropriation and is primarily funded with fee revenues, the program is severely underfunded. Without any additional support, the CDC's "bare-bones" vital records program is projected to face a $340,000 shortfall in FY 2011.

For that reason, the CDC drafted and submitted LD 1592, *An Act to Update the Laws Affecting the Maine Center for Disease Control and Prevention.* As drafted, one section of the bill increases the vital records fees that are currently assessed and retained at the local-level and requires that the municipalities remit 25% of the collected fees to the state to financially underwrite its programs. At the bill's public hearing earlier this month, MMA and the Maine Town and City Clerks Association provided testimony in opposition to the proposal.

At its first work session on the bill, the Health and Human Services Committee asked the interested parties to develop an amendment to LD 1592 that would accomplish the following: 1) increase the municipal vital records fees, but require the collected fees to stay with the municipalities; 2) require the CDC, through the rule making process, to adopt rules governing the assessment of a fee for the state-level vital records services provided to municipalities, such as providing towns and cities with the archival paper which makes up the vital records that are issued; and 3) provide an exemption from the burial permit fee assessed to funeral directors for General Assistance burials.

Prior to the Health and Human Services second work session on LD 1592, the CDC was made aware that including the rulemaking process in the bill triggered the state's municipal mandate provision. Since the assessment of the proposed vital records fee assessment requires municipalities to expand or modify their activities and that the modification of activity requires the expenditure of local revenues, the new requirement for municipalities to track, segregate and remit to the state a certain percentage of the fees they collect meets the definition of a state mandate. As such, the Legislature must either fund 90% of the cost for providing the new service or enact the law by a two-thirds vote after clearly defining it as a state mandate. If that is done, the state doesn't have to cover the costs of the new mandate.

In addition to the proposed vital records fee increases, LD 1592 also includes increases to fees that fund other CDC programs, such as the drinking water program. Fearing that the required mandate preamble would create problems for the entire package of fee increases, the Department recommended creating a separate bill that would authorize the rulemaking process for the assessment of vital records service fees on municipalities into a separate piece of legislation.

For that reason, at its Thursday work session, the Committee was presented with a two-part compromise.

First, the state service fee assessment on municipalities would be segregated into separate legislation that directed the CDC to promulgate rules establishing the assessment system. Second, the proposed vital records fee increases included as part of the original bill would be preserved, but rather than requiring municipalities to remit 25% of those revenues to the state, all revenues would be retained by the municipality. The proposed fee increase in the printed bill from $5 to $40 for burial permits would be reduced to $20 and an exemption from the burial permit fee assessed to funeral directors for General Assistance burials would be provided. All other fee increases proposed in the original bill would be included in the amended version of LD 1592.

MMA supported the CDC's recommendation.

At Thursday's work session on the bill, the Committee voted by a margin of 11 to 1 to support an amended version of LD 1592. As amended, the bill increases the fees for municipal vital records. At the request of the municipal clerks association, the bill also directs the CDC to undertake a major substantive rulemaking process for the adoption of the state's vital records services fee assessment on municipalities. By requiring the major substantive rulemaking process, the Legislature will have final say over the adoption of the state fee assessment schedule. Many members of the Health and Human Service Committee felt that legislative oversight over the rulemaking process provided the necessary level of checks and balances.

While the newly developed bill will be identified as a state mandate, municipal officials acknowledge that this approach enables all interested parties to participate in the process for setting the state fee to be assessed to municipalities. The amendment ensures that municipal officials will have a role in the assessment of the state fee and will be able to ensure that the fee is based on actual services provided to municipalities and/or the individuals who actually pay the licensing fees, rather than merely fill a hole in general revenue.

Statewide Building Code Update

Maine is moving full steam ahead toward the current statutory deadline to adopt the Maine Uniform Building and Energy Code (MUBEC) by June 1, 2010.

In 2008, the Legislature enacted Public Law 2007, chapter 699 calling for the repeal of existing town-by-town adopted building codes and instead establishing a statewide building code no later than January 1, 2010 with an effective date of July 1, 2010.

The original law was slightly modified and clarified in 2009 with Public Law 2009, chapter 261. Included in those changes was an extension of the deadline to adopt the code to June 1, 2010, with an effective date of December 1, 2010.

This article will review the basic elements of Maine's statewide building code law, describe the efforts of the state to implement this code over the past year and to identify the upcoming issues that will occur in 2010.

Statutory Background. The most significant element of the statewide building code (known as MUBEC) is that it is statewide. Despite some confusion over this issue, the MUBEC will be the law of the land in every municipality in Maine.

The confusion regarding this point stems from the fact that enforcement of the code will only be required (one way or another) in municipalities that have a population over 2,000. However, even in smaller communities where enforcement is not required, construction will be governed by the MUBEC.

The MUBEC is comprised of 6 different codes: (1) a residential building code, (2) a commercial building code, (3) an energy code, (4) an existing building (rehab) code, (5) indoor air quality standards for both residential and commercial buildings, and (6) a radon standard. The different codes and standards that will form the MUBEC will be based on national model codes in each of these areas.

The MUBEC is to be adopted and overseen by an 11-member board known as the Technical Building Codes and Standards Board and a new Department of Public Safety employee known as the Director of Building Codes and Standards.

One of the more confusing elements of the statewide building code are the provisions related to enforcement. There are three tiers of enforcement and multiple enforcement options.

The reason for the division between municipalities over and under 2,000 in population is the existence of a hundred-year-old law requiring municipalities over 2,000 in population to have an "inspector of buildings." Because the state had never adopted a code to which these local building inspectors had to conduct their activities, this statute was viewed by most as largely meaningless. A companion statute prohibits anyone from occupying a building in a municipality over 2,000 in population without a municipally-issued certificate of occupancy. It was onto these old laws that the building code enforcement obligation was grafted.

The division between municipalities (over 2,000 in population) currently with codes vs. those without codes is the legislative assumption that municipalities that currently have a code will be able to absorb the MUBEC more easily into their existing operations than will municipalities that don't have building codes. There are approximately 150 municipalities over 2,000 in population, and they are split evenly between those with codes and those without.

One of the most persistent misunderstandings regarding the statewide building code law deals with how enforcement is required to take place in municipalities over 2,000 in population. Much of the statute reads as if these municipalities are mandated to enforce the code – that is, enforcement is an obligation on municipal government. However, this is absolutely not the case.

The heart of the building code enforcement provision from the municipal perspective is that properties may not be occupied without a municipally-issued certificate of occupancy. These certificates of occupancy, in turn, may not be issued without a report by either a municipal building inspector or a certified third-party inspector indicating that the construction meets code.

Since municipalities are not obligated to actually do those inspections and reports, the real mandate is on citizens to independently hire private, third-party building inspectors to review their construction project and determine whether it meets code. This third-party building inspector would then submit his/her report to the municipality whose only responsibility would be to issue a certificate of occupancy. Municipal inspections conducted by municipal building inspectors, even in communities currently enforcing a building code, is completely voluntary.

The reason for this framework is Maine's Constitutional "mandate" provision which requires a supermajority vote to adopt unfunded mandates - such as mandates to enforce building codes. The Legislature chose not to frame the MUBEC law as an unfunded mandate in

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Municipalities Over 2,000 in population	With an Existing Local Building Code	Enforcement begins in December, 2010
Municipalities Over 2,000 in population	Without an Existing Local Building Code	Enforcement begins in July, 2012
Municipalities Under 2,000 in population	Either with or without a locally adopted building code	No required enforcement, but any local code is superceded by MUBEC

order to avoid the necessity of passing the law by a 2/3 vote (or absent such a vote, reimbursing municipalities for 90% of the costs of the mandate).

The Building Code Board. The legislation adopted two years ago established a Technical Standards Board to actually adopt the code, among other responsibilities. The Board met for the first time in November 2008 and has been meeting regularly every 2 to 4 weeks ever since. Despite meeting nearly 30 times in less than 18 months, the Board has been hamstrung for most of this time from resolving many of the issues they are obligated to address.

The Board was supposed to be assisted by a full-time director to manage its duties. The director position is funded by a surcharge on commercial development in Maine. However, due to the dramatic downturn in the economy beginning in 2008, when the Board was established, the surcharge did not generate enough revenue to allow the state to move forward and fill the position. The original fiscal note estimated that the state would receive just over $312,000 in FY 2008-09 from the surcharge. In fact, the surcharge generated less than half that amount ($139,000) in FY 2009.

The new director, Richard Dolby, formerly with the code enforcement office in the City of Augusta, was finally hired in January, 2010, almost a year after it was scheduled to occur.

The Board has two primary obligations in the near term.

First, it must adopt the MUBEC code by June 1, 2010. The Board just received copies of the 2009 model codes a few months ago and the director position has been filled for less than 60 days. Consequently, the Board had voted to seek a further extension of their deadline. However, the Governor, through the State Planning Office, has indicated that the Administration would not support an extension. Accordingly, the Board has not pursued one.

This is somewhat surprising. The Board members are in the second year of their three-year term; they will still be around when this code goes live in December. In contrast, the Governor and this administration will not.

The MUBEC code itself is a Department of Public Safety rule that must be adopted pursuant to the time frames and procedures of the Maine's Administrative Procedures Act. It appears that this code will be adopted as a "routine technical" rule as opposed to a "major substantive" rule. In order to have the code adopted with an effective date of June 1, 2010, it appears that the Board must preliminarily adopt the code in March.

With a March deadline, the Board is essentially forced to adopt the substance of the six model codes comprising the MUBEC without substantial review.

More importantly, this tight timeframe will leave no opportunity for outreach and inclusion of the public in the adoption of the code – except via the formal rulemaking process. It is the custom in Maine for state agencies to do extensive "pre-rulemaking" meetings, stakeholder groups, and public education and outreach before making a major rule change. The reason is that the tight timeframes and formal nature of the rulemaking process prevent the kind of thoughtful give-and-take that can otherwise occur.

Furthermore, the national codes upon which the MUBEC are based are privately-owned, copyrighted material. The public is not allowed to see what these codes say before the rule is adopted unless one either purchases the codes, or travels to Augusta and sits in the Department of Public Safety and reads the state's copy. (We believe the radon code is available for viewing without purchase.) Thus, there is an even greater need for public education and outreach in these cases because the code elements are unknown by so many.

In addition to that, unless the Board is able to rapidly review the national model codes in the next 6 weeks, the ability of the Board to "harmonize" the MUBEC with Maine's existing fire codes or otherwise customize the codes for Maine's needs will be significantly compromised.

The second primary obligation of the Board is to help establish a training and certification program for code enforcement officers and third-party inspectors. In addition to the director position, the building code law also created a new position of training coordinator. This position has just been filled and the individual hired will begin working this week. Unfortunately, it appears that the short-term training efforts will be focused exclusively on municipal code enforcement officers. The reason for this focus appears to be based on an assumption that those municipalities with building codes will all agree to voluntarily enforce the entire MUBEC.

It is MMA's understanding that larger municipalities that currently employ code enforcement officers will likely enforce some elements of the MUBEC. However, many if not most of these "code towns" are not enforcing an energy code or radon code today and they have no obligation to enforce these elements of the MUBEC once adopted. They are as entitled as any other municipality to rely on reports from third-party inspectors.

It is likely that a municipal code enforcement officer in a community currently enforcing a building code would continue to conduct inspections for compliance with the residential building code aspect of MUBEC, but rely on a certified third-party inspector to produce, for example, the radon inspection report.

However, the ability of private citizens to hire these certified third-party inspectors is entirely dependent upon the state creating a certification program. There is significant municipal concern that the state will not have met its duty to create certified third-party inspectors in time for a December 1, 2010 effective date in 75 of Maine's largest municipalities. This could have a significant negative impact on the real estate development community if projects are completed but can not receive municipal certificates of occupancy because there is no one available to certify that the building meets all of the MUBEC codes.

The Next Steps. Municipalities and interested municipal officials should be prepared to comment on: (1) the MUBEC code elements adopted by the board, (2) the training and certification standards that may be established for code enforcement officers, and (3) their anticipated need for third-party inspectors. The Building Code Board will have its website up-and-running in the next few weeks. MMA will post a link on its website once the Board's website is available.

The Legislature may want to consider whether an extension would serve Maine's long-term goal of successfully adopting a functional building code with adequately prepared public and private inspectors. Otherwise, it appears Maine is poised to rush the job to meet a deadline.

CULVERTS (cont'd)

of dollars.

The public works director asked: why would the DEP and the Legislature want to limit our options and force us to spend scarce maintenance dollars constructing unwarranted stream crossing structures?

The Committee split along party lines in its voting.

The majority report supported by the Democrats on the Committee will adopt the rule "as is" but extend the effective date until 2012. The delay is designed to allow for three possibilities: (1) time for the economy to turn-around and the revenue situation of municipalities to improve; (2) time for education, training and outreach to municipalities by the DEP to help ease the transition to the new standards; and (3) time to give DEP and other stakeholders an opportunity to either suggest further amendments to the rule or develop guidance documents to better explain the different exemptions and options that are contained in the rule.

The minority report, supported by the Republicans on the Committee, is to oppose the rule.

Municipal officials certainly appreciate the majority report's extension of the effective date for two years. The additional time might help ease the burden of compliance with the new rule.

However, LD 1725 ultimately presents a choice: aquatic organisms vs. property taxpayers. Although for technical reasons LD 1725 is not being considered a "state mandate" by the Legislature, there is very little about LD 1725 that does not have the exact same effect as an unfunded state mandate.

A vote to adopt the rule "as is" even with a delay until municipalities can hopefully get their fiscal heads above water is a vote to protect aquatic organisms.

A vote to oppose the rule is a vote to protect the property taxpayers.

MMA encourages municipal officials concerned with the culvert rule to contact their legislators and urge the adoption of the minority report.

TELCO (cont'd)

ties the authority to tax the "two-way" or "interactive" telecommunications property currently taxed by the state. If the municipalities taxed all telecommunications personal property, and not just the cable t.v. personal property, the issue of disparity would completely disappear.

Many of these ideas, however, are no longer on the table. The original thinking was that if the towns and cities were given authority to tax approximately $830 million worth of personal property currently taxed by the state, they should give over to the state a revenue source of comparable value. A municipal revenue sharing "swap" was considered but rejected. A cable t.v. franchise fee 'swap" was considered, but rejected.

The Taxation Committee's final recommendation, soon to be printed as a "Committee bill" and put through the public hearing process, would give over to the municipalities the roughly $830 million worth of "interactive" telecommunications personal property to tax, and replace the lost state revenue with a flat 3% sales tax on the value of telecommunications services. The goal of this plan is threefold.

It completely eliminates the constitutionally problematic disparity in property tax rates applied to functionally identical telecommunications personal property located in the same tax jurisdictions.

The plan also increases the degree to which telecommunications services are taxed on the basis of the value of the service provided rather than the property value of the service provider, because some telecommunications services are property-dependent and others are not.

Finally, it gives municipalities some additional tax base in partial response to the deep cuts in municipal revenue sharing that have been enacted and are being proposed. Adding $830 million of value to the aggregate municipal property tax base could reduce the municipal property tax rate on a statewide basis by .05 mills, in full value.

The public hearing on this proposal is tentatively scheduled for March 2nd.

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 23

Business, Research & Economic Development
Room 208, Cross State Office Building, 1:00 p.m.
Tel: 287-1331

LD 272 – An Act To License Home Building and Improvement Contractors.

Wednesday, February 24

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

LD 1778 – An Act To Enable the Installation of Broadband Infrastructure.

Thursday, February 25

Labor
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333

LD 1552 – An Act To Improve Employment Opportunities for Maine Workers in the Forest Industry.