Legislative BULLETIN

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SCHOOL CONSOLIDATION FIX-UP BILLS

Overcoming Barriers

Beginning last September, it became obvious that several major elements of the school consolidation law enacted last June by the Legislature were bogging down the reorganization process on the local level and seriously frustrating the local people who were participating in the process in good faith.

To correct that problem, the Legislature was going to fast track a bill to eliminate the several "barriers" to consolidation that the Legislature had either failed to foresee or actually created as part of the consolidation law. Of all the barriers that were identified, the fast-track bill was going to tackle three: (1) the mandatory cost sharing formulas in statute that would require some towns to pay much more for education than is currently the case (a legislatively-created barrier); (2) the new 2 mill minimum mill rate effort that sent a direct financial message to certain towns not to join up with anyone (a legislatively-created barrier); and (3) negative financial consequences that would come down on certain "minimum receiver" municipalities for joining-up with non-minimum receivers (an unforeseen barrier).

Committee action. The Education Committee added two substantive provisions to LD 1932 before it gave the bill an "ought to pass" recommendation by a 10-3 vote over 45 days ago.

1) Delay school budget validation. Even though it wasn't exactly a "barrier" issue, the Education Committee added to LD 1932 a one-year delay (from 2008 to 2009) of the mandatory school budget "validation" referendum process. Note: municipal and school officials need to understand that this proposed one-year delay of the school validation referendum process, even if enacted, will not take effect unless it is enacted as "emergency" legislation, with at least a two-thirds vote in both the Senate and the House. Since this proposal cannot garner that level of support, the one-year delay of the school budget validation process is meaningless law and should be ignored.

2) Increased local decision making. The Committee also amended LD 1932 to graft onto last year's school consolidation law a more straightforward authority for some limited local governance of the municipal schools (often elementary schools, but not necessarily) that may exist within the new regional school districts. This clarified governance authority includes the ability of municipalities to retain the ownership of their local school facilities.

Senate action. Although it was sup-

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The Budget Validation Process

The second tier of school consolidation fix-up bills is just now being reported out of the Education Committee. The primary focus of the first of those two bills is the set of amendments necessary to make the school budget validation referendum process less impossible to administer. This bill was developed by the Education Committee and doesn't have an "LD" number as of yet, but it will soon. For now, it is referred to as LR 3490.

After a public hearing on Tuesday this week and a couple of work sessions, LR 3490 has now been finalized and released by the Education Committee. In order to have any meaningful impact on the school budget validation referendum process this year, however, LR 3490 will have to be approved with at least two-thirds support in both the House and the Senate.

To understand the following amendments, there has to be a general understanding of the school budget validation referendum process as mandated by the Legislature last year. In summary, it requires all school budgets to be developed and approved in three stages.

Stage #1 – school board approval. The school budget is developed and approved by the school board.

Stage #2 – legislative approval. The proposed budget is approved by the appropriate legislative body (town meeting, town or city council, or school district meeting) in an open (i.e., non-referendum) meeting. At this stage the school budget is provisionally rather than finally approved.

Stage #3 – referendum approval. The school budget as approved at open meeting by the local legislative body must then be sent out for a referendum vote scheduled within a limited number of days after the local legislative body's provisional approval of the budget.

With respect to that general process, LR 3490 accomplishes the following:

A single ballot question. Under the terms of the law enacted in 2007, the

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BARRIERS (cont'd)

posed to be fast-tracked, LD 1932 has barely inched through the legislative process since it was reported out of the Education Committee six weeks ago. In addition to the snail's pace, LD 1932 began taking on a life of its own the minute it landed on the Senate floor.

The Senate released the bill to the House on Monday this week, after adopting three substantive additions to LD 1932 as it came out of Committee.

1) Super school unions. The first Senate amendment expands the school reorganization law to authorize the Reorganization Planning Committees (RPCs), at their option, to construct the new school systems as modified school unions rather than school districts.

Sponsored by Sen. Dennis Damon (Hancock Cty.), this amendment carefully replicates all the minimum standards that exist in current law regarding the newly created school systems (e.g., 2,500 students with certain allowances down to 1,200 students, certain reductions in administrative spending, general goal of around 80 school systems statewide, etc.). The difference is that the Senate amendment allows the newly created school system to be a "Regional School Union" rather than a "Regional School Unit".

A "Regional School Unit" is essentially the same as what we know now as a School Administrative District or SAD. A "Regional School Union" is patterned after the existing school union structure, where the individual schools are locally governed, but share a single superintendent and superintendent's staff.

The individual school systems in a "Regional School Union" would have to share more than just the superintendent, however. Under this Senate amendment, a wide range of administrative services (e.g., accounting, payroll, purchasing, the administration of special education and transportation, curriculum development, calendar development, policy development, etc.) would have to be administered centrally and governed by the Union board rather than by the individual participating school boards. This is why the Senate amendment is described as authorizing the creation of "super school unions".

The proponents of the amendment believe that it merely provides a restructuring option that better fits the culture of certain rural areas of the state without changing the underlying goal of creating administrative efficiency. They believe the local folks crafting a reorganized school system are intelligent enough to pick the structural option that best fits their particular situation.

The opponents of the amendment, including the Governor, the Department of Education, and the legislators most strongly advocating for school consolidation last year, believe that this Senate amendment will allow for the continuation of an inherently inefficient and costly educational structure with too many small school systems and too many school boards, and that if given this option, the people on the local level will gravitate to the union model because efficiency is not their priority.

2) Super school union budget adoption process. The second Senate amendment complements the first by clearly establishing the requirement for the "super union" budget to be adopted by the voters at referendum. Sponsored by Sen. John Martin (Aroostook Cty.), this amendment corrects a shortcoming in the first Senate amendment, which was silent on the issue of how the super school union budget would be adopted. Under current school union law, the school union's budget is adopted by a vote of the school union committee and then assessed to the participating towns. Neither the local voters nor the voters union-wide have a right to vote on the school union budget. Sen. Martin's amendment establishes a clear requirement that the budget of the "super unions" would have to be adopted by the union-wide voters at referendum.

3) Options to Withdraw from School Districts. Sen. Kevin Raye of Washington County advanced the the third Senate amendment which re-establishes the procedures that were once generally available, but which were repealed last year, to: (1) allow for the dissolution of regional school districts; (2) allow for a municipality to withdraw from a regional school district; and (3) allow for a municipality to transfer from one regional school district to another.

House action. LD 1932 has yet to be taken up by the House.

Next steps. If enacted in its present form, LD 1932 will be encumbered with a vague and unquantified fiscal note. This means that the Legislature's nonpartisan Office of Fiscal and Program Review (OFPR) believes that if the super school union opportunity is enacted and super school unions are created, the overall costs of providing K-12 education in the future (as measured by the Essential Programs and Services school funding model) will be greater than it would if only regional school districts were allowed to exist. The fiscal note as developed by OFPR only suggests that some increase in overall educational costs might be the case, particularly in the areas of special education and transportation, but the fiscal note doesn't state with certainty that increased costs will actually result and it doesn't quantify what those actual increased costs might be.

However, any bill that has a fiscal note attached to it cannot be finally enacted without first being parked on the "Appropriations Table". Therefore, if LD 1932 is approved by both the House and Senate in its present form, the fate of the bill could be essentially given over to the Appropriations Committee, which is the legislative committee that was most responsible for, and most strongly supported, the school consolidation law of 2007 that LD 1932 is attempting to correct.

It is also rumored that if LD 1932 is enacted in its present form and somehow escapes from the Appropriations Table unscathed, Governor Baldacci will veto the bill, setting up a clash between the Governor and the Legislature.

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VALIDATION (cont'd)

election clerks were supposed to provide one of two possible ballots to people wishing to cast an absentee ballot at the referendum vote. The required wording of one possible ballot characterized the school budget as being within the school's so-called "EPS allocation". The required wording of the other ballot characterized the school budget as being greater than the EPS allocation. One or the other of those ballots was supposed to be made available for absentee voters at least seven days before the meeting where the school budget is provisionally approved by the local legislative body. The obvious problem is that there is no way to know which ballot to provide to the absentee voter before the legislative approval of the budget, because the local legislative body could change the proposed school budget either up or down. *LR 3490 gets rid of the dual (and dueling) ballot questions and creates a single question that can be printed well in advance of the referendum.*

Budget validation referendum, ballot distribution. As indicated above, the 2007 law requires the absentee ballots for the referendum election to be distributed at least seven days before the adoption of the school budget by the local legislative body. The law then requires the election clerks to reject any absentee ballot that may be submitted before the school budget is adopted by the legislative body. It is unprecedented to issue an absentee ballot that may then be summarily rejected for being submitted too early. *Accordingly, LR 3490 requires the absentee ballots to be made available only after the adoption of the school budget by the local legislative body.*

Scheduling the referendum; absentee balloting period. The 2007 law included a convoluted sentence governing the maximum period of time between the budget adoption meeting (Stage #2) and the referendum (Stage #3). Because of its convoluted grammar, the sentence could be read in a number of ways. *LR 3490 makes it clear that the referendum question must be held within 14 calendar days of the budget adoption meeting. However, the referendum may not be held on a Saturday, Sunday or legal holiday.*

It should be noted that the maximum 14-day period within which to conduct the referendum election presents a compressed period of time for the election clerks to conduct the absentee ballot distribution and collection process, and many municipal clerks are concerned about that. At the same time, if the standard 30-day absentee balloting process is allowed, the timeframe necessary to develop and ultimately adopt the school budget becomes extremely difficult to manage, especially if two cycles of the referendum voting process are necessary to achieve an approved school budget. The 14-day period represents something of a compromise between two competing time-management pressures.

Committing property taxes in the event of a rejected school budget. A significant concern on the municipal level that is associated with the mandatory school budget referendum process is the real potential for a school budget to be not finally adopted by July 1. Some municipalities, and particularly the larger, more urban towns and cities, regularly commit their property taxes in July and need to commit their property taxes during that time of the year for cash-flow purposes. *LR 3490 creates an express authority for any municipality to commit its property taxes in the event the school budget is not finally adopted by July 1 of any year. That property tax commitment may be based, at the municipality's discretion, on either the most recent school budget that was proposed by the school board or the school budget that was provisionally approved by the local legislative body.*

In addition to those changes, LR 3490 corrects a couple of problems with the 2007 school consolidation law that are not directly related to the budget validation referendum process.

The consolidation referendum ballot question. The 2007 school consolidation law requires a certain "explanation" to be included as part the local ballot to approve or reject a school reorganization proposal. The explanation language focuses exclusively on the financial penalties that will be incurred for failing to approve the school reorganization but allows no other "explanation" regarding other financial or governance implications of the proposed reorganization. From the municipal perspective, "explanation" language of this kind violates the doctrine of neutrality that applies to ballot wording. *LR 3490 appropriately removes that "explanation" language from the ballot and allows the normal political process of public hearing and information exchange prior to the referendum vote to take care of "explaining" the potentially complicated impacts of any consolidation plan to the voters.*

The consolidation referendum deadline. The 2007 school consolidation law required the referendum vote to approve the proposed consolidation plans to be held no later than November 4, 2008. *LR 3490 extends that deadline to January 30, 2009.*

Restructuring one of the penalties for failing to consolidate. For any school system that is not a "minimum receiver", the financial penalties for failing to consolidate are: (1) a 50% reduction in the EPS allocation for system administration (which can be precisely calculated as $105 per student); and (2) a higher-than-otherwise required mill rate effort that must be levied in order to receive the school system's full school subsidy. The problem with the second penalty is that it is not only impossible to calculate with any precision in a timely manner, the fundamental structure of the penalty is impossible to explain to anyone who hasn't been totally immersed over the last decade in the dark juices of Maine's school funding law. *Accordingly, LD 3490 converts this second mysterious penalty into a somewhat less mysterious penalty that is, at the very least, easier for the lay person to calculate. Specifically, the second penalty would increase the maximum mill rate effort for the non-compliant school systems by 2%. For example, the maximum mill rate effort that generally applied for this school year was 7.44 mills. 2% of 7.44 mills is .15 mill. Therefore, a non-compliant school system's maximum mill rate effort would be 7.59 mills.*

Conclusion. We understand that the controversies surrounding the school consolidation legislation make it especially difficult for the Legislature to act in a consensus-based manner with re-

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BRED Hears Energy Code Bill

The Legislature's Business Research and Economic Development Committee took testimony Thursday on LD 2179, *An Act to Promote Residential and Commercial Energy Conservation* sponsored by Sen. Phil Bartlett (Cumberland). This is the first of two building code bills that will be heard by the BRED Committee this session. LD 2179 focuses exclusively on the so-called "energy" code.

In 2003, the Legislature directed the Public Utilities Commission (PUC) to craft an energy conservation building code for Maine and to suggest an implementation plan for the code. In 2005, the PUC adopted the energy code for Maine as Chapter 920 of the PUC's rules. The energy code selected was a hybrid of four codes, two published by the International Code Council (ICC) and two published by the American Society of Housing, Refrigerating and Air Conditioning Engineers (ASHRAE). The difficult balance the PUC had to find was between energy efficiency (which requires a building to be well insulated and draft-free), and indoor air quality (which requires a certain degree of ventilation and air circulation). Together, the selected portions of the ICC and ASHRAE codes comprise Maine's energy code.

Also in 2005, the Legislature adopted an implementation plan. That plan consists of three statutes: Title 10, Sections 1415-C and 1415-D and Title 35, Section 121. The first section requires that the new construction of multifamily residential must conform to the energy code. The second section requires that any new commercial building, or any "substantial renovation" to a commercial building, satisfy the code. The Legislature created no mechanism for the enforcement of these two obligations.

The third statute in Title 35 limits home rule in that it only allows municipalities that would like to adopt an energy code to adopt the Maine model. To date, only a handful of municipalities have voluntarily adopted the energy code.

LD 2179 goes much further than current law. First, it extends the energy-based building code to the construction or substantial renovation of all residential properties (e.g., single-family homes). Second, it creates several layers of enforcement for the energy code:

- All commercial and residential projects would have to submit to the municipality construction plans that were "stamped" by a certified energy code inspector as adhering to the model code;
- Developers would have to submit a "high-performance design fee" of an unspecified amount to the municipality which would then be entirely refunded to the developer if the plans are viewed as exceeding the energy efficiency standards in the code by 50% or more. Half of the fee would be refunded if the standards were determined to exceeded the standards by 30%-50%. None of the fee would be refunded for all other plans.
- All construction would have to be inspected for compliance with the energy code and a certification that the building meets the energy code standards would have to be filed with the municipality. When that new construction is sold, the certificate would have to be filed at the registry of deeds.

The energy inspectors who will be doing much of the work spelled-out above apparently do not yet exist. Municipal code enforcement officers are not obligated to be these energy inspectors, but they are encouraged to fulfill that role. At the same time, LD 2179 writes into the code enforcement sections of municipal law this new position of "energy code inspector".

The bill does not contain any contingencies in case there are no energy inspectors available to do the inspections upon the effective date of this legislation.

MMA's Legislative Policy Committee (LPC) was "neither for nor against" this legislation. The LPC cited several objections to the bill. In particular: (1) the placement of this law in Title 30-A (rather than in Title 10 where the existing energy code obligations exist); (2) the confused and inappropriate amendments to the code enforcement officer statutes; and (3) the obligation for towns to assess a "high-performance energy fee" only to then refund all, some or none of that fee based upon some analysis of energy efficiency.

The BRED Committee will be reviewing a more comprehensive code bill in the next few weeks that will implement the recommendations of the "Resolve 46" report that was described in the January 25 edition of the *Legislative Bulletin*. MMA's LPC is supportive of some of the broader goals of that anticipated legislation. In particular, municipalities do not object to the State adopting and mandating that construction adhere to a uniform, statewide building code and energy code. As long as municipalities are not mandated to enforce said code(s) municipalities respect the authority of the State to regulate construction. The Resolve 46 bill has been circulated in draft form and should be available in official "LD" form prior to the hearing (tentatively scheduled for March 11th).

MMA recommends that LD 2179 be set-aside so that the broader Resolve 46 effort can proceed.

State/County Jail Consolidation

On Wednesday this week, the Criminal Justice Committee began reviewing the highly anticipated draft legislation from the state/county jail consolidation negotiations team regarding the corrections consolidation proposal. The more municipally-significant elements of the proposal, which include permanently capping the property tax assessment used to fund county jail operations at the FY 2008 levels, and retiring existing county jail debt with a depreciating-to-zero property tax assessment, were included in the legislation presented to the Committee. For details on the municipal elements of the bill, please see the February 15th and 22nd editions of the *Legislative Bulletin*.

We will keep you informed over the next few weeks as the Committee begins to further develop the proposed county jail legislation.

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/.

Monday, March 3

Legal & Veterans Affairs
Room 437, State House, 1:00 p.m.
Tel: 287-1310
LD 2206 – An Act To Improve the Operation of "Texas Hold 'Em" Tournaments.

Tuesday, March 4

Transportation
Room 126, State House, 1:00 p.m.
Tel: 287-4148
LD 2209 – An Act To Amend the Axle Weight Laws for Trucks Transporting Unprocessed Agricultural Products and Forest Products.

LD 2214 – Resolve, To Provide Temporary Weight Limits for Trucks Carrying Forest Products.

Wednesday, March 5

Labor
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333
(Postponed from Wednesday, February 27)

LD 2205 – An Act To Further Clarify Worker Payments for Clothing and Equipment.

LD 2177 – An Act To Correct the Law Regarding Portability of Pension Benefits for Law Enforcement Officers and Firefighters.

Thursday, March 6

Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125
LD 2122 – Resolve, Regarding Legislative Review of Portions of Chapter 64: Maine School Facilities Program and School Revolving Renovation Fund, a Major Substantive Rule of the Department of Education.

Judiciary
Room 438, State House, 1:00 p. m.
Tel: 287-1327
(Postponed from Wednesday, February 27)

LD 2198 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Training for Elected Officials.

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.)

Legal & Veterans Affairs

LD 2236 – An Act To Clarify the Laws on Licensing for Charitable and Fraternal Organizations and Games of Chance. (Sponsored by Rep. Hanley of Gardiner; additional cosponsors.)

This bill authorizes nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic or religious organizations and volunteer fire departments to hold, conduct or operate "games of chance" without first obtaining a license.

Natural Resources

LD 2235 – An Act To Sustain Maine's Core Wastewater Licensing Program and Adjust Related Provisions. (Sponsored by Rep. Koffman of Bar Harbor; additional cosponsor.)

This bill moves certain fees associated with storm water management law from the statutes governing storm water management into the Department of Environmental Protection's (DEP's) fee schedule and restructures those fees into "processing" and "certification" fees to fit that format. The bill also restructures and expands the wastewater licensing fees to add an "annualized license renewal service fee". The bill also provides that when a wastewater discharge licensee continues to discharge wastewater following expiration of a license, the license fee must continue to be paid.

Newspaper Bill Next Week

LD 1878, *An Act to Generate Savings by Changing Public Notice Requirements,* is on the House's agenda for debate next Wednesday (March 5th). As sponsored by Rep. Terry Hayes of Buckfield, the bill seeks to reduce taxpayer burden by amending existing public notice publication requirements for both state and municipal governments.

For the state, the bill simply requires that the format used to publish state notices of rules in newspapers be reduced in length. The new copy would provide readers with essential information, including a summary of the proposed rule, agency of jurisdiction, public hearing date, time and location, agency contact information, deadline for submitting comments, and a website address and telephone number for more information. The remaining information that is currently printed in the newspaper notices would be posted on the Internet or provided in writing upon request.

For the municipalities, LD 1878 authorizes, but does not mandate, communities that have limited daily newspaper service to post their legal notices in alternative newspapers upon the adoption of a publication policy by the municipal officers. The issue being addressed in the bill is the unnecessarily expensive requirements of Title 1 MRSA, section 601. That law requires municipal public notices to be published in newspapers mailed second class, which are exclusively the state's largest daily and weekly newspapers. The problem with this requirement is that it prevents municipalities from using newspapers that are mailed in bulk, such as advertising shoppers, to provide public notice, except as a redundant additional expense to the municipality.

As proposed in LD 1878, municipalities would be authorized to advertise exclusively in newspapers mailed in bulk *only if all of the six following criteria are met*: 1) the newspaper of general circulation has a subscription rate that is less than 30% in the municipality; 2) municipal officers have adopted a policy regarding the publication of legal notices; 3) the alternative newspaper is distributed to all households in the community; 4) the alternative newspaper is distributed at no greater cost to the consumer than the newspaper of general circulation; 5) the municipality retains a record of all legal notices; and 6) the publisher of the alternative newspaper has a system of archiving past editions of the newspaper.

Municipal officials strongly support LD 1878. LD 1878 is also strongly supported by the State and Local Government Committee, which endorsed the legislation by a 12-1 vote, because the bill enables both the state and the municipalities to publish notices in an effective but more efficient manner. All that being said, there is apparently a movement afoot to amend the bill. Although no amendments have been printed as yet, it is rumored that one amendment would strike out the parts of the bill providing any cost-savings benefit to municipal government. If that amendment is advanced and adopted by the Legislature, it would enable the state to reduce its publication expenditures, but prevent municipalities from securing similar savings for property taxpayers.

Considering all of the talk around the State House associated with putting together ideas that lead to cost savings at the local level (i.e., the efforts to consolidate school administration and the operation of state and county jails), municipal officials will not understand why lawmakers would walk away from an opportunity to help municipalities achieve cost savings in a responsible way. In order to provide all taxpayers some level of relief, LD 1878 should be supported by the Legislature in its entirety.

The debate on LD 1878 should begin next week. Municipal officials are encouraged to contact their legislators this weekend and ask them to support LD 1878.

VALIDATION (cont'd)

spect to any school consolidation fix-up bill. It is the municipal hope, however, that LR 3490 will be understood by Maine's lawmakers for what it is. LR 3490 does nothing more than implement necessary technical changes so that the reorganization law and the school budget validation procedures enacted last year can actually be implemented. To withhold from LR 3490 the two-thirds support necessary to make it immediately effective law would be a tremendous disservice to the officials of local government that need to implement the school reorganization law this year.