

Tax Committee Develops Three Bills Covering Core Municipal Issues

After having secured legislative permission to prepare several “committee bills” covering certain issues carried over from the 2007 legislative session, the Taxation Committee took the next steps this week by preparing them to be printed. There are three bills and each is directly related to municipal government. The first two bills are being developed by the Tax Committee as a result of legislation MMA’s Legislative Policy Committee developed back in the fall of 2006.

Revenue Sharing. The first bill is focused on the administration of municipal revenue sharing. The bill advances a set of administrative recommendations developed by a working group of municipal officials. The working group was convened in response to the FY 07 revenue sharing distribution, which was both sharply negative and unpredictably volatile as a result of several actions of the Legislature in 2005.

The bill doesn’t have an “LD” number as of yet, but when it is printed it will do the following:

Revenue sharing projections by April 15. The bill makes technical amendments to the revenue sharing law so that the State Treasurer can post on the state’s website the projected revenue sharing distribution for each town and city no later than April 15 each year. The bill expressly directs the State Treasurer to make that posting by that deadline.

Stop the legislative raids on revenue sharing. The bill fixes the system of capitalizing the Local Government Efficiency Fund to prevent the Legislature from using that Fund as a vehicle to raid

municipal revenue sharing.

To summarize the issue, on June 8, 2004 the voters of Maine endorsed as part of “Question 1A” the creation of the Local Government Efficiency Fund, which as designed by the municipalities was to be capitalized annually with 2% of revenue sharing resources – about \$2.5 million a year. The purpose of the Fund was to provide grants to multi-municipal groups on a competitive basis to financially assist with the implementation of regionalized service delivery systems.

Instead of following the voters’ directive, the Legislature has dedicated only \$500,000 of revenue sharing resources to the Fund on an annual basis,

and diverted the \$2 million remainder each year to support state government.

To end that manipulation of the Local Government Efficiency Fund, the bill would fix the annual contribution of revenue sharing dollars to the Fund at the legislatively-supported level of \$500,000, and release the remaining revenue sharing dollars back into their original source...the revenue sharing program.

Limits on the Efficiency Fund planning grants. Also with respect to the Local Government Efficiency Fund, this bill would limit the amount of the Fund that is available for planning purposes to 10%, thereby providing 90% of the Fund for the direct implementation of actual

(continued on page 2)

Local Opt-Out of “Informed Growth Act” Killed by the House

On Thursday this week, the House voted by a margin of 73 to 59 to oppose LD 1962, *An Act to Amend the Informed Growth Act*. As detailed in past editions of the *Legislative Bulletin*, the Informed Growth Act (IGA) mandates local planning boards to review comprehensive economic impact studies of large retail developments and determine whether the project will have a positive or negative impact with respect to a dozen factors. As provided for in LD 1962, municipalities would be authorized to “opt out” of implementing the IGA locally, provided the local legislative body (i.e., council or

town meeting) voted to do so, and that the decision of the local legislative body was subsequently validated at a municipal referendum election.

The proponents of the bill, including Augusta representatives, Patsy Crockett and Kim Silsby, believe that LD 1962 was necessary to ensure that the voters in the community have a voice. By enabling a community to opt out of the IGA, municipal officials and voters can engage in discussions to determine what is best for their community. Under

(continued on page 3)

TAX (cont'd)

efficiency projects. In addition, the planning grants would have to be matched on a dollar-for-dollar basis with local funds.

The LD 1 “net new funding” calculation. As enacted in 2005, the LD 1 spending limit system requires municipalities to project how much revenue sharing they anticipate receiving. If they are scheduled to receive an increase in revenue sharing, the municipality must make a downward adjustment to its “property tax levy limit”. This bill would amend that system in two ways. First, all calculations of the “net new state funding” would be based on actual rather than projected revenue sharing receipts. Second, if the revenue sharing distribution is reduced from the previous year rather than increased (as was the case so often with the 2007 revenue sharing distribution), the municipality’s property tax levy limit could be adjusted upwards to reflect that loss in state-based financial support.

Tree Growth Reimbursement. The Tax Committee’s second “committee bill” is focused on the Tree Growth reimbursement formula. When the Committee was considering a carryover bill last fall seeking to comprehensively review the Tree Growth tax program, it came to the attention of MMA and others that the current Tree Growth municipal reimbursement formula is unnecessarily complicated and results in an extremely unpredictable reimbursement distribution. Under the current system, a town might get \$2,000 in reimbursement one year, \$8,000 the next, zero reimbursement the next year, and \$5,000 in reimbursement after that. That reimbursement volatility

occurs without any change in the number of acres enrolled in the program or any appreciable change in the mandated Tree Growth acreage rates. In short, it occurs for no reason.

The two major “data inputs” that are responsible for this reimbursement volatility are: (1) the current reimbursement formula’s reliance on the municipal tax rate rather than the more stable “equalized” tax rate of the municipality; and (2) a weird school subsidy adjustment in the formula that attempts on a town-by-town basis to subtract from each year’s reimbursement the dollar value of the “extra” General Purpose Aid to Education the town is receiving because property in the town is enrolled in the Tree Growth program.

With the considerable help of Maine Revenue Services, MMA developed a modified formula that will be articulated in this bill and distributes the Legislature’s Tree Growth reimbursement appropriation through a much simpler formula that will yield a predictable distribution year after year, assuming that the Legislature appropriately funds the reimbursement program.

Municipal officials should take note, however. Nothing about this proposal increases or otherwise changes the size of the legislative appropriation for Tree Growth reimbursement.

Motor Vehicle Excise Tax Rate Structure. Of the Tax panel’s three “committee bills”, the one that is not being promoted by MMA would amend the motor vehicle excise tax rate structure.

The origin of this bill is the report of a working group created by the Legislature last year in response to the usual clutch of first-session bills that are designed to reduce the motor vehicle excise tax applied to the owners of new cars. The bills submitted in 2007 – all of which would have sharply negative consequences for Maine’s 14,000 miles of local roads – were killed by the Committee and the working group was created through a legislative “resolve”. In accordance with that resolve, the working group was convened by Maine Revenue Services last fall, and included municipal representatives, MMA, a representative of the Maine Auto Dealers Association, and a representative of the Secre-

tary of State’s Office, Bureau of Motor Vehicles.

Anyone interested in obtaining a copy of the working group’s report should feel free to contact MMA’s Laura Veilleux at 1-800-452-8786 or lveilleux@memun.org.

The thrust of the working group’s report is that the essential structure of the motor vehicle excise tax system is sound. The report finds that despite the annual slew of bills that would base the excise tax on the “actual sale price” of the motor vehicle rather than the “list price”, the practice of using the Manufacturer’s Suggested Retail Price (MSRP) is the most equitable and administratively efficient system, least prone to manipulation or abuse, and used in one form or another by the majority of other tax jurisdictions.

The report also corrects some information that was unfairly presented in a similar report by a Secretary of State’s working group in 2002 which compared Maine’s highest excise tax rate (24 mills) with the average excise tax rate in other states (18 mills). This current report points out that “*Maine’s average excise tax rate compares favorably with the average rate found in other states. Furthermore, there are significant differences among the various states with respect to their excise tax systems that need to be considered in any analysis of “average rates” – for example, the practice in some states of fixing the rate and allowing the MSRP to depreciate.*”

Finally, the working group turned its attention to the present excise tax rate structure. The report concludes that the consensus view of the members of the working group is that there is not a fundamental structural problem with the excise tax system in Maine. It is the municipal preference is to keep the law the way it is now.

That being said, the working group did take the time to demonstrate how the excise tax rate structure could be amended without causing a significant reduction in municipal revenues. The way the report frames this recommendation, it is to be considered only “if the Legislature is determined to change the current system” by reducing the top excise tax rate.

The restructuring proposed by the

(continued on page 3)

Legislative Bulletin

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Proposed Amendment to Excise Tax Structure

Year of registration	Current Mill Rate (applied to MSRP)	Proposed Mill Rate (applied to MSRP)
1	24	21
2	17.5	18
3	13.5	15
4	10	11.5
5	6.5	7
6	4	4.5
7	4	4
8	4	3.5

working group – if the Legislature insists on dropping the top excise tax rate for the new car owners — looks like this:

The financial impact of this restructured system on the municipalities is projected to be a reduction of approximately \$3 million in excise tax collections in the first year of implementation compared to what would be collected under current law, or 1.6% of the approximately \$200 million in motor vehicle excise taxes collected each year.

The rationale for the redesigned rate structure rests on a couple of points.

First, even though the major thrust of the proposed rate structure is the reduction of the top rate, the proposal generally preserves the general progressivity of the system by recapturing the lost revenue throughout the rate structure, rather than simply increasing the excise tax rates on older vehicles at the other end of the rate schedule where the owners (presumably, at least, and in general) have less ability to pay. In fact, the progressivity of the system is further enhanced by reducing the lowest excise tax rate for those individuals owning the oldest vehicles.

Second, there is certainly justification for extending the duration of the declining excise tax rate structure from six years to eight years. The creation of the motor vehicle excise tax (out of the pre-existing motor vehicle property tax) occurred over 70 years ago, and the present rate structure was put into law 40 years ago. The working life of an automobile has increased considerably since the 1940s, both in terms of mileage and age.

The working group report, for example, points out that nearly 70% of all automobiles registered in Maine today are over 5 years old.

So it was not as a “call to action” that the working group put this excise tax restructuring plan on the table. It was, instead, an attempt to provide a rational alternative to the current excise tax rate structure if the Legislature was determined to reduce the first-year excise tax rate for people who buy new automobiles.

The Taxation Committee could have read the report, said ‘thank you very much’, and placed the report on the shelf with all the other study-group reports that are passed around the Committee horseshoe each year.

The alacrity with which the Committee is using its authority to put this particular recommendation into the form of a bill suggests an interest among at least some of the Committee members to put this restructuring plan into law.

OPT-OUT (cont'd)

the provisions of LD 1962, the review process provided in the IGA remains available to communities who like the approach found in state law, while the opt-out provision is available to those communities with different ideas on how to rate the merits of proposed large-scale retail developments.

The opponents of LD 1962 made two general arguments for voting against providing a local choice over implementing the “Informed Growth Act”.

First, opponents believe that since the IGA was enacted in 2007, the law hasn’t had an opportunity to work and amendments are not necessary at this time. Second, several opponents pointed out that the existing law already includes a provision exempting qualifying municipalities from the IGA.

As provided for in the law, a municipality that has adopted “economic impact review criteria” for a large-scale retail development proposal is not required to apply the provisions of the IGA locally. Although those words exist on paper, nobody really knows what they mean. The IGA law provides no guidance as to how a municipality determines whether or not locally adopted review standards qualify for the exemption. Absent any guidance in law, municipal officials believe that the towns and cities would essentially have to adopt the IGA law in its entirety in order to satisfy the exemption.

In other words, if a community wants to be exempted from the IGA standards enacted in state law, the community has no other choice but to adopt the state standards, word-for-word, at the local level. Requiring a community to adopt certain standards to obtain an exemption is not an exemption, it’s a distorted mandate.

Some opponents of LD 1962 have acknowledged the problem with the existing exemption standard. In his floor speech on the bill, Rep. Stephen Beaudette of Biddeford suggested that over this summer and fall all interested parties, including the proponents of the IGA and the business and municipal communities, get together to “craft exemption language that is more effective” and to submit recommendations for improving the process to the Legislature in 2009.

While that effort would certainly assist municipalities in determining how to apply the exemption standards, municipal officials question why they should wait another year to correct the problem with the adopted law. If interested parties on both sides of the issue agree that the exemption standard provided for in the IGA does not work, that issue should be addressed straight-up by the Legislature that is insisting on imposing this constitutionally-suspect and sloppy law.

Amended Cable Franchise Bill Moves Forward

The Utilities and Energy Committee unanimously supported an amended version of LD 2133, *An Act To Establish Consistent Consumer Protections for Cable and Video Programming Customers*. The contents of the original bill were described in the February 8, 2008 *Legislative Bulletin*.

Under current law, a cable company must receive a “franchise” from any municipality in which the company would like to operate. The municipal franchise agreement is the most significant regulation governing the operations of cable systems. While limited federal and state law exists, cable services are not a regulated utility as are electric or telephone companies. Without the local franchise agreement, there would be very little government oversight of the activities of cable companies.

The amended legislation provides three benefits for municipalities. First, the bill amends existing state statutes governing cable television franchises to clarify that these laws apply to any entity providing cable television services. Increasingly, telephone companies are beginning to offer cable services. In Maine, Oxford Networks, a regional telephone company in the Lewiston-Auburn area, has been providing cable TV services for some time.

Telephone companies provide the best hope for competition in the cable industry – which is basically a monopoly service in Maine. However, telephone companies should be required to follow the same franchise and consumer protection obligations that cable companies have been subject to for decades. LD 2133 does this and representatives of FairPoint (the successor to Verizon) do not oppose these provisions.

The next two benefits of the bill regard the franchise agreement process itself. The creation of a franchise agreement between a municipality and a cable provider is a negotiation process. However, a municipality has little leverage in the negotiation. (What is a town going to do? An elected official who attempts to

ban a cable company from providing cable services is going to get an earful). However, municipalities don’t have to accept the new franchise agreements that are being offered to them by the industry.

As a result, many municipalities in Maine are operating on “expired” franchise agreements. That is, the franchise has expired and the municipality and the company can’t come to terms on a renewal agreement. As such, the company operates in a “month-to-month” fashion as a tenant would with an expired lease.

The bill assists breaking this logjam in two ways. First, the bill requires cable companies with websites to post copies of all their franchise agreements online. The cable companies know what they have agreed to across the state, an individual town does not. So, requiring these agreements to be readily available will give the municipalities a realistic sense of what is happening in other negotiations.

The second way the bill helps the

negotiation process is by calling for the development of a model franchise agreement. Plenty of model franchise agreements exist today, including one developed by the Maine Municipal Association. However, none of the models was developed through a process where both municipalities and industry had a hand in writing it.

The Office of Information Technology (OIT) does several things including overseeing the State’s efforts to increase broadband availability. OIT will conduct a process this year that will call the parties to the table and hammer out a model franchise agreement. The bill does not mandate that the model be used. However, the hope is that the model will be well developed and strike a fair enough balance between the parties that it will resolve 80-90% of the negotiations. This will benefit municipalities who will be able to save on legal fees. It will similarly save money for industry on legal fees and by creating a more predictable regulatory environment. Lastly, consumers will benefit by breaking the impasse and clearly establishing the consumer protections, local access channels and other franchise issues that impact their use of the service.

Building Code Bill Printed

The long-awaited bill to overhaul Maine’s building code system has finally been printed as LD 2257. A description of its significant provisions is found in the *Hopper* section of this edition of the *Legislative Bulletin*. The thrust of the bill is the creation of a single, state-adopted building code and the nullification of all corresponding municipally adopted building codes.

MMA’s policy committee reviewed a draft version of LD 2257 and voted to support the legislation if certain changes were made from the draft (and the subsequently printed) bill. The primary changes sought by MMA are: an elimination of the bill’s mandate that all municipalities over 2,000 in population enforce the state code; a relocation of where the code will be housed in state government from the

Fire Marshal’s Office to the Department of Professional and Financial Regulation; and a commitment that related issues (including contractor licensing and the harmonization of state codes) be at least placed under an obligatory review to be accomplished in the near future.

The primary reason MMA’s policy committee voted to support a uniform code was to make Maine more business-friendly. The current system of town-by-town code adoption, it is believed, adds a regulatory cost to architects and builders that doesn’t exist for statewide codes such as the plumbing, electrical or life-safety codes. It is the desire of municipalities to lower that regulatory burden for developers, even at some cost to local control, that is behind the policy committee’s conditioned support.

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.)

Business, Research & Economic Development

LD 2257 – An Act To Establish a Uniform Building and Energy Code. (Reported by Rep. Smith of Monmouth for the Joint Standing Committee on Business, Research & Economic Development.)

This bill presents sweeping changes to the regulation of building construction in Maine. Among those changes most pertinent to municipalities, the bill (1) establishes the Maine Uniform Building and Energy Code (MUBEC). The MUBEC consists of the 2009 versions of International Code Council's Commercial Building Code, Existing Building Code, Residential Building Code, Energy Code, the Maine Model energy code and the Maine Model radon code. All residential and commercial construction must comply with the provisions of the MUBEC or a locally adopted building code beginning July 1, 2009. Beginning January 1, 2010, all locally adopted building codes are void and construction will be governed by MUBEC statewide; (2) mandates that all municipalities over 2,000 in population shall enforce MUBEC and mandates that these municipalities establish fees to cover the costs of enforcing the MUBEC. Code enforcement officers in municipalities over 2,000 in population are required to be "certified" by the state in the

MUBEC; and (3) creates an 11-member Building Code Board (including a fire chief and two municipal code enforcement officers) and three full-time positions: the Technical Codes Coordinator and the Training Coordinator and an office assistant, all within the State Fire Marshal's Office, to oversee the code, code amendments, a website, training and other duties.

The Board and the three full-time positions are funded with a 4-cent per square foot surcharge on the existing plan review fees charged by the Fire Marshal's Office.

Utilities & Energy

LD 2255 – An Act To Protect Maine's Energy Sovereignty through the Designation of Energy Infrastructure Corridors and Energy Plan Development. (Governor's Bill) (Sponsored by Sen. Bartlett of Cumberland Cty; additional cosponsors.)

This bill authorizes the Public Utilities Commission (PUC) to designate energy infrastructure corridors within the state for the purposes of siting energy transmission property, including electric transmission and distribution facilities, natural gas pipelines and other energy transport pipelines or conduits. Among the several elements of the authority given to the PUC, this bill authorizes any person to petition the PUC for an exemption from municipal zoning or other land use ordinances. According to the bill, upon receipt of such a petition, the commission shall provide notice and the opportunity for the affected municipality to be heard, after which the PUC may wholly or partially exempt a energy infrastructure project proposed to be located in a designated energy corridor from a zoning ordinance if the PUC determines the exemption is reasonably necessary and in the public interest.

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 17

Agriculture, Conservation & Forestry
Room 206, Cross State Office Building, 1:00 p.m.
Tel: 287-1312

LD 2256 – An Act To Modify the City of Portland's Leasing Authority for the Maine State Pier.

Tuesday, March 18

Natural Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 2249 – An Act To Protect Lake Water Quality.

Taxation

Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 2251 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2008-09 and To Require Notation of Tax Enhancement Programs Approved by the County Commissioners.

Transportation

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

LD 2244 – An Act Concerning Traffic Safety Cameras.

Utilities & Energy

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

LD 2255 – An Act To Protect Maine's Energy Sovereignty through the Designation of Energy Infrastructure Corridors and Energy Plan Development.

The Whole Budget Picture

Recent press accounts of the ongoing budget hearings, opinion-page editorials by legislators, and power point presentations distributed in the State House highlight a particular piece of information...that between FY 06 and FY 09 State aid to K-12 education has increased 33% while state Medicaid funding increased by only 5.7%. The power-point presentation places this information under the banner: “GPA, not Healthcare is driving the budget in recent years”.

While we haven’t reviewed the raw data, the FY 06 to FY 09 figures appear to be correct. However, these numbers provide a picture so limited in context as to be misleading.

According to information produced by the Legislature’s Office of Fiscal and Program Review (OFPR) and posted on the Legislature’s website, between FY 02 and FY 05 state aid to education increased by 5% while spending on Medicaid/MaineCare increased 25%. The FY 02-05 trend was reversed in FY 06-09.

Even this FY 02-05 period could be misleading since it’s so short. OFPR also provides a ten-year budget trend from FY 98 to FY 07 (the site does not show FY 08 and 09, and state spending over those years is still in flux).

As you can see, the share of the General Fund going to every major category except Medicaid/MaineCare has gone down in the past ten years. That’s not to say that state spending on these

categories has gone down – it hasn’t. However, one can not look at these data and suggest that funding for the public schools is crowding out Medicaid spending, higher education spending or any other state programs unless you place that spending in a very narrow temporal context. There is only one category of spending that has taken a bigger bite out

of the General Fund over the past decade.

The task before the Legislature is neither easy nor enjoyable. Lawmakers will have to decide how much pain to distribute across many different and important programs. State aid to education is certainly taking a hit in this fiscal climate.

Utilizing information from a broader fiscal context may not make budget choices any easier, but it hopefully will make them fairer.

General Fund– Major Category Share (%)
(of total General Fund Budget)

