

School Budget Validation Referendum Fix-up Bill Just Printed

Municipal and school officials across the state are struggling right now with the administrative difficulties of implementing the mandatory school budget validation referendum process as enacted in 2007. That mandatory law was written with obvious haste and with a lack of solid understanding of municipal election practices. A primary characteristic of municipal election clerks is that they rightfully insist that all election procedures are followed to the letter. Unfortunately, the 2007 school reorganization law was enacted in such a way that following the law to the letter actually sets the municipality up for election irregularities.

A bill to fix those problems has just been printed. LD 2280, *An Act to Clarify and Improve the Laws Governing the Formation of Regional School Units*, is one of two school consolidation “fix-up” bills generated by the Education Committee.

It is imperative that LD 2280 be quickly enacted with the necessary two-thirds support in both the House and Senate to make it immediately effective law. The time to begin the school budget adoption process is upon us, and municipal officials are urged to contact their legislators over the next few days and urge them to quickly enact LD 2280 as “emergency” legislation.

What LD 2280 does:

Validation referendum: a single ballot question. Under the terms of the law enacted in 2007, the election clerks were supposed to provide one of two possible ballots to people wishing to

cast an absentee ballot at the validation 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. *LD 2280 gets rid of the conflicting 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

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Criminal Justice Committee Still Working County Jail Bill

The Criminal Justice Committee met several times this week to discuss and work on the state/county jail unification proposal. Although the Committee has made considerable process on several elements of the bill, the issue of greatest municipal concern is still unresolved. That issue is the 2008 cap on property taxes to fund the unified state/county corrections system, which was the highly advertised centerpiece of the entire proposal.

A subcommittee of the interested parties, including state and county representatives, members of the Criminal Justice Committee and MMA will be meeting over the next few days to try to work out an agreement over the implementation of the property tax cap. As described in detail in the March 21st edition of the *Legislative Bulletin*, the

unresolved issue is how to appropriately fund 2009 county jail operations.

The county representatives on the negotiations team are concerned that the Board of Corrections (the body responsible for overseeing the unified system) will not be operational in time to address and fund the 2009 cost of county jail operations that exceed the 2008 property tax freeze. Currently, the 2008 property tax liability for county jail operations is estimated to be capped at \$60 million. The county representatives have proposed to adjust the 2008 operational budget figures by 5% to provide the funding necessary to get through the six-month (January 1, 2009 to June 30, 2009) transitional phase. Although the county representatives believe that an

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SCHOOL (cont'd)

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 mark “rejected” on 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, LD 2280 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 and the validation referendum. Because of its convoluted grammar, the sentence could be read in a number of ways. *LD 2280 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 that a municipality’s school is 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. *LD 2280 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 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, at the municipality’s discretion.*

In addition to those changes, LD 2280 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. *LD 2280 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 consolida-

tion law required the referendum vote to approve the proposed consolidation plans to be held no later than November 4, 2008. *LD 2280 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 2280 converts this second mysterious penalty into a somewhat less mysterious penalty that is, at the very least, easier for the voter 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 respect to any school consolidation fix-up bill. It is the municipal hope, however, that LD 2280 will be understood by Maine’s lawmakers for what it is. LD 2280 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 LD 2280 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 budget validation referendum right now.

Legislative Bulletin

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Public Hearing Held on Motor Vehicle Excise Tax Bill

A bill that would restructure the motor vehicle excise tax rate structure was given its public hearing on Wednesday this week. The details of LD 2270, *An Act to Change the Formula for the Calculation of the Motor Vehicle Excise Tax*, were detailed in the March 14th edition of the *Legislative Bulletin*.

The origin of LD 2270 was the report of a working group initiated by the Legislature and tasked with studying the excise tax rate structure in response to the chronic complaints legislators receive about the motor vehicle excise tax, particularly from people who purchase new cars. 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 Secretary of State's Office, Bureau of Motor Vehicles.

In summary, LD 2270 would drop both the highest and lowest excise tax rates by 12.5% but preserve the general progressivity of the rate structure by incrementally increasing the intermediate rates in such a way that all car owners will continue to experience year-to-year excise tax rate reductions. LD 2270 would also stretch out the current six-year declining rate structure to eight years.

On a rate-structure-to-rate-structure basis, LD 2270 would reduce municipal excise tax collections by approximately \$3 million, or 1.6%, in its first year of implementation.

At the public hearing, nobody spoke either for or against LD 2270. MMA testified "neither for nor against", and attempted to explain to the Taxation Committee that the redesigned excise tax structure was not being recommended by the municipal representatives on the working group as a "call to action". Instead, the municipal representatives on the working group developed the redesigned structure as a reasonable alternative system to be considered if the Legislature feels compelled to lower the excise tax rate obligations of new car

owners. Municipal officials are far less inclined than legislators to restructure the excise tax rate structure to benefit the new car owners at the expense of people who do not own new cars.

MMA also pointed out that the proposed redesign of the excise tax rate structure was developed last fall, before the working group participants were aware of the depth of the tough economic times that are now depressing motor vehicle excise tax revenues. The redesigned rate structure was also developed before the arrival of a very punishing winter that has contributed to the deterioration of Maine's 14,000 miles of local roads and severely depleted municipal public works budgets.

Based on the reaction of the Taxation Committee members to LD 2270, it seems unlikely the bill will be given a

favorable Committee report.

In the first place, the Tax Committee members were legitimately concerned about putting into a motion a proposal that would reduce revenues to support the state's local road structure in this difficult environment.

In addition, more than a few Committee members suggested that the restructuring proposal they might support should focus more on the excise tax base (the Manufacturer's Suggested Retail Price or "MSRP") than the rate. According to these members of the Taxation Committee, the principal concerns expressed by their constituents are focused on the use of the MSRP as being an inaccurate proxy of the price paid.

The Committee is scheduled to finalize its recommendation on LD 2270 within the next few days.

Local Option "Tax Benefit" Program

Several weeks ago a bill submitted on behalf of the Town of Kittery was given its public hearing before the Taxation Committee. The bill was LD 2202, *An Act To Allow the Town of Kittery to Implement a Program to Abate Taxes for Senior Citizens in Exchange for Public Service*.

As printed, LD 2202 would authorize Kittery to implement a tax "abatement" program whereby citizens in Kittery at least sixty years of age could perform volunteer services for the town in exchange for a tax abatement of no more than \$750 in value. Each volunteer hour would have to be valued at least at the minimum wage rate, the volunteer would have to be considered a public employee of the town and therefore eligible for unemployment compensation, and the value of the abatement could not be considered

income for the purposes of Maine's income tax law.

The bill has been amended by the Taxation Committee in several ways and given a unanimous "ought to pass" recommendation, suggesting that it will become law in its amended form.

As amended by Committee, LD 2202 would authorize the following:

Any municipality, not just Kittery, is authorized by LD 2202 to adopt an ordinance that would create a so-called "volunteer property tax assistance program". This enabling legislation is located in the same section of law that currently allows municipalities to adopt so-called "local option circuit breaker" programs, and therefore incorporates an underlying standard in that law that any beneficiary of the program must be a person who has a

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The Mixed-Up Building Code Bill

Here's an allegory for you.

Last night I read my 2-year old one of his favorite bed-time books. It's called *The Mixed-Up Chameleon* by Eric Carle. At the beginning of the book there is an illustration of how a warm and well-fed chameleon is sparkling green, but when the chameleon becomes tired and hungry it turns dull and grey.

The troubles begin for the Mixed-Up Chameleon when it goes to the zoo and sees all the different animals and wants to be more than just a Chameleon who eats flies and sparkles green. He wants to have all the wonderful qualities of the animals at the zoo — and his wish comes true.

He wants wings like the Flamingo and fins like a fish. He wants a neck like a giraffe and a trunk like an elephant. He wants the antlers of a deer and the tail of a fox.

After a while he becomes hungry. But when a fly passes by, the chameleon can no longer capture it. His new wings and trunk and tail have become a burden to his eating flies and being a sparkling green chameleon.

LD 2257, the statewide building code bill is becoming the mixed up chameleon.

MMA's Legislative Policy Committee supported LD 2257 in order to assist the effort to adopt a single, uniform statewide building code in Maine. In all previous sessions where this issue had been debated, MMA opposed the efforts to adopt a uniform code. That former position, while unpopular, was principled. The principle being that if municipalities were going to be responsible for enforcing the code, they should have the authority to adopt the code.

This session, the municipal officials on the MMA policy committee decided to change their opposition and support the uniform code. This is a loss of home rule and a sacrifice of principle. But the LPC members were clearly influenced by the argument that different codes across the state can be

a burden to designers, builders and property owners. The original principle yielded to a new reality.

Unfortunately, some proponents of a uniform building code want more.

A small group of proponents is insisting that around 100 municipalities that have never in their history even adopted a building code be compelled to enforce this new code. Perhaps their interest in demanding a very significant municipal mandate is understandable given their perspectives, and some may feel that they are standing on principle to pursue it, but it doesn't make a great deal of sense. The municipalities enforcing a comprehensive building code today will continue to do so once a uniform code is adopted by the state. However, demanding that another 75-100 municipalities who have chosen not to adopt a building code be mandated to do so is adding a very heavy burden on the goal of a uniform code.

LD 2257 also establishes a new board to do the work of adopting a building code. A board of some kind is essential. A code cannot simply be adopted and then abandoned. The establishment of training opportunities and certification procedures, refereeing code disputes and issuing code amendments all take time and money. In these budget times, however, establishing a new board that looks more and more like additional bureaucracy is a burden on the goal of a uniform code.

Some proponents would also like homeowners to be mandated to hire third-party, private-sector inspectors to verify that their projects meet the energy code. Perhaps some homeowners may seek out those services. Some private-sector capacity to provide voluntary inspections may make sense. However, in this economy, requiring every new building project to have an inspection costing hundreds of dollars is yet another burden on the goal of a uniform code.

MMA and a coalition of residen-

tial builders, commercial contractors, developers and service center communities support a comprehensive bill that ensures the adoption of a uniform statewide building code, creates a board to do the work and promotes, but does not require, third-party inspections.

Proponents are demanding more and more. Maybe to some their case is compelling. Maybe to some they are standing on principle. Meanwhile, Mainers who would like a uniform building code are hungry.

JAIL (cont'd)

additional \$1.5 million — a 2.5% adjustment to the 2008 cap — is necessary to get through the transitional phase, the proposal calls for a 5% adjustment, generating \$3 million. Once fully operational, the county representatives believe the Board will have the authority and time necessary to appropriately fund future county jail operational budgets, after which no additional adjustments to the "frozen" tax assessments will be necessary.

While the county representatives' concerns may be understandable, state officials point out that flat funding is the level of funding most governmental bodies are facing today.

Municipal officials are very concerned with the precedent of making amendments to the property tax freeze before it is even implemented. From the municipal perspective, if the property tax freeze is "unfrozen" even before it is implemented, the property tax freeze is just a myth...an empty and inaccurate slogan. This first-year adjustment to the tax freeze that is being proposed will provide a road map leading directly to the property taxpayers whenever the unified system runs into funding problems in the future. If the property taxpayers are tapped to provide the funding safety-valve this one time, it will become standard practice

The concept of the property tax

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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/>.

Wednesday, April 2

Legal & Veterans Affairs
Room 437, State House, 1:00 p.m.
Tel: 287-1310

LD 2261 – An Act to Allow a Casino in Oxford County. (Initiated bill)

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.)

Criminal Justice & Public Safety

LD 2279 – An Act To Ensure Equitable Payment for E-9-1-1 Services. (Emergency) (Sponsored by Sen. Mitchell of Kennebec Cty; additional cosponsors.)

This bill requires every municipality to contract with a qualified entity to provide public safety answering point (PSAP) services, and if any municipality fails to contract for those services, this bill requires the Department of Public Safety to provide those PSAP services and requires that municipality to pay the Department for those services.

Education & Cultural Affairs

LD 2272 – An Act To Reduce the Percentage of the Cost of Local Schools Paid by the State from 55% to 49%. (Emergency) (Sponsored by Rep. Joy of Crystal; additional cosponsors.)

This bill would reduce the state's obligation to financially support K-12 public education from 55%, as directed by the voters in a 2004 statewide referendum, to 49%. The money "saved" by this reduction in state obligation would be redirected by this bill to the state's community college system and several programs administered by the Department of Health and Human Services.

LD 2281 – An Act To Amend the Laws Governing the Reorganization of School Administrative Units. (Reported by Rep. Norton of Bangor for the Joint Standing Committee on Education and Cultural Affairs.)

This bill exempts certain school systems from the mandate to adopt the school budget by the "school budget validation referendum" process. Those exempted school systems include: (1) municipal

school systems in which the responsibility for the approval of the school budget is vested in a town or city council; and (2) school systems where the school board has approved a budget that proposes to raise an amount that exceeds the Essential Programs and Services (EPS) allocation for that school system by less than 5%.

Taxation

LD 2274 – An Act To Amend the Municipal Tree Growth Reimbursement Formula. (Reported by Rep. Piotti of Unity for the Joint Standing Committee on Taxation.)

This bill amends the municipal Tree Growth reimbursement formula for the purpose of improving its stability and predictability. The bill does not change the overall amount of reimbursement that would be annually appropriated for that purpose by the Legislature, but it smoothes out the distribution system by: (1) utilizing each affected municipality's full value (or "equalized") mill rate instead of the municipality's municipal mill rate; and (2) removing the town-by-town adjustment in the current formula that purports to subtract from the reimbursement that would otherwise be distributed the alleged value of the extra General Purpose Aid to Education school subsidy that the municipality receives because of the land that is enrolled in the Tree Growth program.

LD 2276 – An Act To Improve the Administration of State-Municipal Revenue Sharing. (Reported by Rep. Piotti of Unity for the Joint Standing Committee on Taxation.)

This bill includes the several recommendations of a working group made up of municipal officials by implementing several technical amendments with respect to the administration (but not the distribution) of the municipal revenue sharing program, as well as amendments to the way municipal revenue sharing affects the municipal "LD 1" spending limit calculations. Specifically, this 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, and expressly directs the State Treasurer to make that posting by that deadline. This bill also 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 by fixing the annual contribution of revenue sharing dollars to the Fund at the level of \$500,000. This bill would also limit the amount of the Local Government Efficiency Fund resources that is available for planning purposes to 10% of the Fund's annual capitalization, thereby providing 90% of the Fund for the direct implementation of actual efficiency projects, and further requires that those planning grants be matched on a dollar-for-dollar basis with local funds. This bill requires that all calculations of "net new state funding" would be based on actual rather than projected revenue sharing receipts. Finally, if the revenue sharing distribution is reduced from the previous year rather than increased, this bill allows the municipality's property tax levy limit to be adjusted upwards to reflect that loss in state-based financial support.

TAX BENEFIT (cont'd)

homestead property in the municipality.

In addition to that underlying standard, LD 2202 requires that the local volunteer property tax assistance program be applied to homesteaders who are at least 60 years of age, the maximum "benefit" may not exceed a \$750 tax credit, and the benefit must be related to the amount of volunteer services provided. As was the case with the printed bill, the benefits can not be considered as income for state income tax purposes, although it is MMA's understanding that the benefit would be considered income for federal income tax purposes.

LD 2202 authorizes the municipal ordinance to provide additional procedures or standards of eligibility beyond the three minimum standards of: (1) a homesteader; (2) sixty year (or older) age limit; and (3) \$750 maximum benefit value.

For example, the municipal ordinance might include an income-test for eligibility, reduce the maximum benefit level or apply more specificity with respect to what type of volunteer services may be provided, identify who within the municipality administers the program, and how the actual "benefit" is delivered, etc.

Assuming LD 2202 is enacted, any municipality that wants to be more forward with this local-option "volunteer property tax assistance" program would be well advised to consult with

the municipal attorney before presenting an ordinance to the voters in order to be absolutely clear about all the issues associated with implementing this volunteer program that are not expressly addressed in LD 2202. Such additional issues may include the employment status of the volunteers with respect to workers' compensation and unemployment insurance, the degree to which the municipality's insurance program provides liability coverage for their activities, the administration of tax-related documentation, and whether the volunteers' benefits are provided directly in the form of remuneration or in the form of a set-off against their property tax obligation.

JAIL (cont'd)

freeze originated with the Administration, and there was obviously a plan to finance the unified corrections system using the capped property tax revenue as a base. It is time for that plan to fully reveal itself.

One issue of municipal interest that has been decided by the Committee is how to fund the existing county jail debt. In response to a request from the Criminal Justice Committee, MMA reviewed and would have supported a proposal whereby all municipalities would help to retire the counties' aggregated existing debt, including those municipalities in counties that currently do not have any debt. As proposed by MMA's Legislative Policy Committee (LPC), each municipality,

based on its proportionate share of the total state value, would fund a portion of the debt in order to help the corrections consolidation plan to move forward. However, the debt retirement proposal ultimately endorsed by the Criminal Justice Committee requires the county that issued the debt to remain financially responsible for retiring the debt. The state, however, would remain responsible for funding the cost of retiring all debt issued after 2008.

Please stay tuned throughout the next week for further information and potential action alerts on the Committee's progress on the property tax freeze. If you have any questions about the state/county jail unification proposal, please feel free to contact Kate Dufour at 1-800-452-8786 or kdufour@memun.org.