

Informed Growth

On Monday this week, a majority of the State and Local Government Committee voted to support an amended version of LD 1810, *An Act to Enact the Informed Growth Act*.

LD 1810 would require that an economic and environmental impact study be conducted by a consultant chosen by the municipality from a “qualified preparers” list generated by the State Planning Office for any proposed large-scale retail development project of 75,000 square feet or more. While every community would be “mandated” to implement the process, funding for each study would come from a \$40,000 fee assessed to the developer of a qualifying project, thereby making the process a “funded state mandate”. The \$40,000 would be first paid to the State Planning Office (SPO) and paid-out by SPO to the consultant and to cover direct municipal expenses. In other words, since the \$40,000 paid by the developer is assumed to cover all municipal costs associated with the implementation of the impact assessment, the bill would not need the special mandate designation and could be enacted by the Legislature with a simple majority vote.

Although several newspapers simply reported that the Committee voted that LD 1810 “ought to pass as amended” by a margin of 9 to 2, at this time the Committee is actually split three ways. While nine members of the Committee support the concept of the bill, there is disagreement over how this “Informed Growth Act” should be implemented.

Committee Report 1: Six members of the State and Local Government Committee, including Senators Elizabeth Schneider (Penobscot Cty.) and Paula

Benoit (Sagadahoc Cty.) and Representatives Christopher Barstow (Gorham), Jim Schatz (Blue Hill), Andrea Boland (Sanford), and Larry Sirois (Turner) voted “ought to pass as amended” on LD 1810.

The majority report makes several amendments to the original bill. First, the amendment clarifies that the impact study is one of several factors that a planning board must take into consideration when issuing a permit, rather than the sole determining factor. Second, the impact study would need to be completed in three months, rather than six.

Third, rather than directing the preparer to make subjective determinations on the “positive and negative” effects of the development, the preparer would be directed to merely focus on “effects” of the development. Finally, the amendment directs the State Planning Office to develop minor technical rules for creating the “qualify preparer” list.

While Rep. Schatz admitted that he is “never ready to apply a governance process that is not of local making”, he believes that at times a state response is necessary, just as it was with the state’s response to shoreland zoning. Based on this tenet, Rep. Schatz led the charge by

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Municipal Board Vacancies

On April 26, 2007, the Maine Supreme Court held that where a municipal board is required by statute, charter or ordinance to have a certain number of members but there is a vacancy, the board is not legally constituted and has no authority to act (*Stevenson v. Town of Kennebunk, 2007 ME 55*).

This decision came as a surprise to the municipal community and has raised some alarm, not only about the ability of boards with vacancies to function right now and in the future, but also about the validity of past actions.

Maine Municipal Association is preparing emergency legislation that would address this issue. Representative Deborah Simpson (Auburn), who is the House Chair of the Judiciary Committee, is providing much-appreciated assistance in satisfying the parliamentary process for filing an emergency “after-deadline” bill.

The “after-deadline” filing process is outlined in Joint Rule 205. It requires that the proposed legislation receive approval of a majority of the Legislative Council in order to be considered. The Legislative Council comprises the ten elected members of legislative leadership: the President of the Senate, the Speaker of the House, the Majority and Minority Floor Leaders and the Majority and Minority Assistant Floor Leaders for both the Senate and House of Representatives.

Please contact your legislators and urge them to expedite the enactment of this emergency legislation to restore local government’s ability to function effectively, reliant as it is on the good work of local volunteer boards. If you have any questions or comments about this issue, please contact MMA’s Jeffrey Austin: jaustin@memun.org or 1-800-452-8786.

Binding Arbitration

The Labor Committee took testimony on a binding arbitration bill that has appeared, in one form or another, in every legislative biennium for at least the past twenty-five years. This session's version is LD 814, *An Act To Incorporate Binding Arbitration for Monetary Issues in Collective Bargaining for All State, County and Municipal Employees*.

Like its numerous predecessors, LD 814 would statutorily require binding arbitration for issues involving salaries, pensions and insurance benefits during the collective bargaining process between public sector employees and employers, including municipalities. Current law requires that these monetary issues be fully negotiated, and potentially mediated, sent to fact-finding, and subjected to some level of arbitration, but not binding arbitration.

Proponents included organized labor organizations such as AFSCME (particularly the Corrections Officers), the Maine Education Association and the AFL-CIO. Opponents included representatives of state, county, school and municipal employers.

The primary argument offered by proponents was that since public unions are prohibited from conducting a strike, their negotiating strength is weakened and that binding arbitration will help "level the playing field". Too often, supporters asserted, the government employers make low offers knowing that the unions have no choice but to accept it. One proponent labeled this behavior as "economic starvation."

Representative Rick Burns

(Berwick) suspects that prohibiting a union from striking is a violation of the U.S. Constitution's 13th Amendment (prohibiting slavery) and requested that the Committee chairs seek an Attorney General's opinion on the matter.

Several proponents confused the issue of collective bargaining, which is contract formation, with the enforcement of an already executed contract. Several accusations were leveled by proponents alleging that public sector employers have executed contracts and then "walked away" without honoring them. This only confused the Committee since LD 814 has nothing to do with the enforcement of contracts already executed; it only impacts the bargaining process. Most collective bargaining agreements already provide for binding arbitration as the grievance process.

Opponents, including MMA, raised several concerns. First, the proponents of LD 814 established a false dichotomy between the right to strike and binding arbitration on monetary matters. This dichotomy ignores the democratic process within which public sector agreements are executed.

Unions are able to greatly influence collective bargaining in the public sector by participating in the democratic process. Unions endorse candidates, raise money, provide campaign workers and do other things to support elected officials and policies they support, including monetary issues for government workers.

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the study will focus on the needs of the impacted community and region.

Although the proponents of the bill had also recommended amending the bill to exempt from the LD 1810 process any municipality that had adopted similarly extensive impact study ordinances, the majority opted to exclude that exemption.

Committee Report 2: Three members of the Committee, Representatives Stephen Beaudette (Biddeford), Teresea Hayes (Buckfield) and David Cotta (China), voted to support an amended version of LD 1810, but they do not support the amendment proposed by the majority. The details of minority "ought to pass as amended" report are not yet available.

Committee Report 3: Representatives Henry Joy (Crystal) and Windol Weaver (York) both voted "ought not to pass" on LD 1810.

Municipal officials question the need for a mandatory (albeit "funded") implementation of an impact study, since there is nothing in state statutes or regulations that prevents municipalities from adopting this type of impact study locally. As amended by the majority, the bill would strip the electorate of its right to manage this development by forcing every community in the state to undertake the same process.

A mandatory approach to managing large retail development is strongly opposed by municipal officials who trust that residents will take the necessary steps to adopt local ordinances that manage development in a manner that suits the character of the community. The municipal community disagrees with the sentiment, shared by some members of the State and Local Government Committee, that the local electorate is incapable of addressing development management issues "before it is too late", thereby justifying the state's hands-on management of the local process. Instead, municipal officials believe that with the right resources, such as model development ordinances, residents are more than capable of making decisions that impact their communities.

Please talk with your legislators and ask them to illustrate their support for community-based decision-making by opposing LD 1810.

Legislative Bulletin

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GROWTH (cont'd)

moving the majority "ought to pass as amended" report. Although he understands the opponents' "one size *does not* fit all" argument, Rep. Schatz believes that the one-size approach is the strength of LD 1810, as it provides a uniform process for underscoring the unique characteristics of a community. While the process requires all municipalities to undertake the same process, the result of

LD 1 Overrides

On Monday this week, the State and Local Government Committee held a public hearing on two bills seeking to amend the LD 1 override process used by municipalities, counties and schools. Both bills, LD 1618, *An Act to Seek Direct Voter Approval to Exceed Government Spending Limits*, sponsored by Sen. Richard Rosen (Hancock Cty.) and LD 1776, *An Act to Strengthen Budget Caps for Counties, Municipalities and School Districts*, sponsored by Sen. Jonathan Courtney (York Cty.), would require an automatic referendum vote to exceed the LD 1 limits. Under the existing override procedures, a majority vote of the legislative body, whether the town meeting, council, school district meeting or county commissioners, can authorize the override. The direct government legislative bodies (town meeting, school district meeting) must cast that vote by a written ballot. The town or city council can override the LD 1 limit by a regular majority vote, but that decision is subject to a “people’s veto” referendum process.

Sen. Rosen believes the mandatory referendum is necessary because local government officials are not appropriately communicating to the voters the reason for exceeding the LD 1 spending limits. Instead, at the town meeting these officials are dismissing the LD 1 limits as unimportant and unworkable and are merely shifting blame to the state for the cumbersome process. Sen. Rosen believes that by requiring the referendum process, the voters will be provided an opportunity to determine if the override is warranted without being negatively influenced by the presentations of local officials. In addition, Sen. Rosen believes it is important that voters are provided an opportunity to decide the override process in the privacy of a voting booth, rather than the privacy of the written ballot.

Sen. Courtney was unavailable to participate in the public hearing, but will be provided an opportunity to testify at the Monday, May 14th work session.

The Maine Municipal Association, Maine County Commissioners Associa-

tion and the Maine School Boards Association provided testimony in opposition to the bills. Although municipal officials oppose the mandatory referendum override approach proposed in both bills, they do support making amendments to the override process.

Municipal officials support changes that initiate the need for a more stringent override procedure when the local government is the recipient of increased state aid, known in the parlance of LD 1 as “net new state funding”. If a municipality, school or county receives additional state assistance that is being provided for the purpose of property tax relief, then it should be expected that those funds will be used to reduce the property tax burden. If those additional state revenues, for whatever reason, are not used to reduce property taxes, then a higher standard to override the limit is appropriate. That approach to the override procedure is promoted in LD 804, a bill supported by a broad collation including the MMA, Maine Education Association, Maine Chamber of Commerce, Maine Service Center Coalition and Maine Hospital Association.

(It is important to note that this coalition’s entire package would have also placed more stringent LD 1 override requirements on the state, similar in nature to the requirements being proposed for the local governments. Applying more stringent standards on the Legislature is not part of either LD 1618 or LD 1776.)

In response to MMA’s testimony, Committee Chair Sen. Elizabeth Schneider (Penobscot Cty.) reiterated Sen. Rosen’s concern that municipal officials are misinforming voters about the process. Sen. Schneider stated that she knows of several communities that have misrepresented the LD 1 process and blame Augusta (i.e., the state Legislature) for all the problems. She also noted that these same communities often do not acknowledge the good the state does for municipalities. Finally, the Senator asked how MMA proposes to address this concern.

While the solution to Sen.

Schneider’s concerns clearly falls in the area of communication and education, MMA needs more concrete information in order to define the problem and address it. It is unfair for members of the Legislature to assert that a problem exists without providing specific information concerning the communities involved and the perceived offense. Which municipalities are providing false or misleading information to their voters? What are the municipal officials stating? On a town meeting warrant, where every single spending article is clearly laid out for voter approval or rejections, how do the municipal officials misrepresent the reasons for the override? Without more specific information, it is very difficult for the Association to provide assistance to the municipal officials who these legislators believe are misleading their voters.

Although municipal officials may not agree with all of the decisions made by the Legislature, once a policy decision is made municipal officials strive to administer programs and laws as intended. The administration of LD 1 on the municipal level is an example of that good-faith effort. Over the first two years of LD 1’s existence, the growth rate of the property tax related to municipal government (not counting the schools and the counties) has grown each year in the 2% to 2.5% range, easily below the growth of Maine’s total personal income. The municipalities as a whole should take pride in their LD 1 record.

However, if there are problems that need to be addressed, the Association invites legislators to provide specific information regarding the problems in LD 1 communication they have encountered on the local level. Our goal is to take that information, research the whole story and determine what type of communications municipal officials should be using properly administer the override process, at least from these legislator’s perspective. Legislators, municipal officials and other interested parties are welcome to contact MMA’s Kate Dufour at kdufour@memun.org or 1-800-452-8786 to provide the information necessary to help resolve the perceived problem.

Access to Public Records

The Judiciary Committee took testimony on two bills this week which address the laws dealing with access to public records, LD 1822, *An Act to Implement the Recommendations of the Right to Know Advisory Committee* and LD 1881, *An Act to Improve Transparency and Accountability in Government*.

LD 1822

This bill makes two suggestions for improvement to the administration of the public Right to Know laws. The first suggestion is to require all “elected officials” to complete an on-line training course on the topic. That course has not yet been developed. The second suggestion is to establish an ombudsman within the Attorney General’s Office whose duties would be to assist the public and issue advisory opinions with regard to disputes over alleged Right to Know law violations.

The Right to Know Advisory Committee was established last session as a ongoing group that would assist the Legislature as it confronts public access issues. The diverse group has several press representatives, government representatives (including MMA) and members of the public and the Legislature. The two recommendations in LD 1822 were unanimously supported by the Advisory Committee. There was much testimony in favor of the bill (primarily by members of the Advisory Committee) and none opposed.

MMA made several small suggestions to improve the bill. On the training issue, MMA had two proposals. First, the training should be made available in paper-form as well as on-line – many local elected officials prefer to work with paper rather than the Internet.

Second, officials who attend existing training programs, such as those offered by MMA or the Maine School Management Association, should be exempted from the requirement to take the on-line training. Existing training is more tailored to particular government employees than the on-line course will be. Furthermore, existing training allows for the give-and-take of panel discussion and question-and-answer peri-

ods.

MMA also encouraged the Committee to make some minor modifications to the “ombudsman” idea. In particular, it would be nice to have the ombudsman annually report the outcomes of the various complaints that may be lodged each year. This will help give policy makers a good sense of where the problems exist (or don’t) and might help focus interested parties on specific issues.

LD 1881

The second bill contained several changes to the public access statutes. While it was not reviewed by the Right to Know Advisory Committee, some of its provisions had been presented to the Advisory Committee in previous years and had failed to garner consensus support. There is no requirement that proposed public access legislation be reviewed by the Advisory Committee before it is presented to the Judiciary Committee. However, the review of legislation is a central purpose of the Advisory Committee and if it is not so-utilized, the ongoing need of an ignored Advisory Committee is questionable.

The bill has essentially four components. First, it requires public record custodians (governments) to provide copies of public records, not just access to them. Second, it requires custodians to mail copies to requestors. Third, it establishes fairly hard-and-fast deadlines by which time record requests must be satisfied. Lastly, it calls for each municipality to appoint a “public information officer” who will handle and facilitate responses to the requests.

Testimony in support came from two members of the Advisory Committee (Jeff Ham on behalf of newspapers and Shenna Bellows on behalf of the Maine Civil Liberties Union). In addition, former Representative David Trahan supported the bill and explained his feelings that the state Office of Information Technology was violating public records laws. Also, a consultant who provides “school facility condition assessments” and who files dozens of requests about school buildings with the Department of Education in connection with his business also

testified as to the need for the bill.

Testimony in opposition focused on the fact that the bill would have benefited from a review by the Advisory Committee and several speakers suggested that the bill be referred to the Advisory Committee for review and report-back next session.

MMA and others raised concerns about some of the details of the bill as well. Those concerns included the costs of complying with the mandates to provide copies of any and all documents requested, as well as the appointment of a new “information officer.” Additionally, the hard-and-fast deadlines can create distinct hardships on certain government agencies and departments that receive frequent and extensive document requests.

The bills are scheduled for work session on Wednesday the 16th.

BINDING (cont'd)

The protection of the democratic process was the second concern raised by opponents of LD 814. When public sector employers sit-down at the bargaining table to negotiate monetary issues, they are bargaining with the taxpayer’s money. The taxpaying public should have some influence over these monetary issues as well. What binding arbitration does is turn over the keys to the public treasury to an unelected, unaccountable third party. No longer would monetary issues, which comprise the vast majority of public budgets, be subject to the democratic process. Instead an arbiter would decide if the pay raises would be 3%, 4%, 5% or more. The taxpayers’ voice would be muffled.

Interestingly, the hearing was conducted and concluded without a single reference to the actual wages and benefits being received by public sector employees. It is hard to judge the necessity of LD 814 and binding arbitration without knowing the current level of wages and benefits.

Ultimately, the Labor Committee decided by a 9-2 vote to remove local governments from the bill, thereby removing the mandate preamble, and apply its binding arbitration provisions to the state government only.

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, May 14

**Appropriations & Financial Affairs
Room 228, State House, 9:00 a.m.
Tel: 287-1316**

LD 64 – An Act To Recapitalize the Maine Downtown Center.

LD 603 – An Act To Support the Capital Riverfront Improvement District.

LD 647 – An Act To Encourage Economic Development.

LD 874 – An Act To Provide Funding for the Low-income Home Energy Assistance Program.

1:00 p.m.

LD 58 – An Act To Ensure State Budget Funding for Wastewater Treatment Facilities and Water Supply Facilities.

LD 59 – An Act To Restore Continuing Funding for the Maine Institute for Public Safety Innovation.

LD 93 – An Act To Appropriate Funds from the General Fund to the Maine Correctional Center.

LD 186 – An Act To Provide Funding to the St. Francis Water District for New Wells.

LD 305 – An Act To Increase the Availability of Cellular Telephone Service for Rural Residents.

LD 674 – An Act To Restore Funding to the Maine Joint Environmental Training Coordinating Committee.

**Criminal Justice & Public Safety
Rm. 436, State House, 9:30 a.m.
Tel: 287-1122**

LD 632 – An Act To Reduce Maine's Property Tax Burden by Funding County Jails.

LD 1321 – Resolve, to Require the Office of Program Evaluation and Government Accountability To Provide Audit and Oversight Services Regarding Medical and Dental Services Provided in the County Jails and State Prisons.

LD 1826 – An Act To Allow a County Jail To Assess a Surcharge on Bail as a Processing Fee.

LD 1895 – An Act To Implement the Recommendations of the Corrections Alternatives Advisory Committee.

Tuesday, May 15

**Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1316**

LD 804 – An Act To Ensure Responsible Government Spending, Investment and Educational Efficiency.

LD 1199 – An Act To Resolve Unfunded State Mandates.

LD 1848 – An Act To Promote Sustainable Prosperity.

LD 1852 – An Act To Provide Taxpayer Relief.

LD 425 – An Act Regarding the Accounting Procedure for Certain State Programs.

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

LD 1872 – An Act To Preserve Maine's Quality Places.

Natural Resources

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

LD 1888 – An Act To Implement Recommendations of the Drinking Water Program Regarding Public Water Supply Protection.

Wednesday, May 16

**Appropriations & Financial Affairs
Room 228, State House, 9:00 a.m.
Tel: 287-1316**

LD 118 – An Act To Provide Funding for the Drinking Water Program.

LD 502 – An Act To Ensure That Maine Residents Have Reliable Winter Heating Assistance.

Taxation

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

LD 1243 – An Act To Allow Local Administration of the Maine Residents Property Tax Program.

LD 1096 – An Act To Make Circuitbreaker Program Benefits Proportional If a Resident Moves.

LD 1067 – An Act To Require the Payment of Property taxes before a Refund May Be Issued under the Circuitbreaker Program.

LD 849 – An Act To Amend the Laws Governing Eligibility for the Maine Residents Property Tax Program.

LD 1189 – An Act To Expand the Maine Residents Property Tax Program.

LD 1478 – An Act To Reduce County Tax on Certain Municipalities.

LD 877 – An Act Regarding the Homestead Exemption as It Applies to Certain Housing Cooperatives.

LD 582 – An Act To Create Fairness in Maine's Property Taxes.

LD 1001 – An Act To Eliminate the Property Tax on Business Equipment Owned by Small Retailers.

LD 1610 – An Act To Preserve Manufacturing in Maine.

(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.)

Appropriations & Financial Affairs

LD 1848 – An Act To Promote Sustainable Prosperity. (Sponsored by Sen. Edmonds of Cumberland Cty; additional cosponsors.)

This bill implements the recommendations of the "Charting Maine's Future" report issued in 2006 by GrowSmart Maine and the Brookings Institution. The bill: (1) establishes a Government Efficiency Commission to identify savings in government; (2) establishes a Maine Government Efficiency Fund to collect the identified savings once they are certified; (3) proposes to the voters a \$180 million bond proposal to provide targeted economic development grants in the areas of research and technology development and commercialization; (4) establishes a Maine Cluster Development Fund within the Department of Economic and Community Development to support targeted technology sectors; (5) establishes an order of prioritized spending out of the Maine Government Efficiency Fund; (6) establishes the Maine Community Enhancement Fund and capitalizes it with a \$20 surcharge for all real estate transactions recorded at the Registries of Deeds; (7) establishes the purpose of the Maine Community Enhancement Fund to provide resources to municipalities for planning and for facilitating and implementing comprehensive plans; (8) directs the State Planning Office to establish a pilot project for a regional planning initiative; (9) provides resources from the Maine Community Enhancement Fund to assist municipalities in the implementation of a statewide building code; and (10) directs Maine Revenue Services to implement a property tax loss reimbursement program for municipalities with a disproportionate share of tax exempt property.

LD 1852 – An Act To Provide Taxpayer Relief. (Sponsored by Rep. Lansley of Sabattus; additional cosponsors.)

This bill is a modified version of the Taxpayer Bill of Rights (TABOR) initiative that was rejected by the voters at referendum in November 2006. The bill creates certain limits on the ability of a state,

regional, school or municipal legislative body to exceed certain spending restrictions or enact a new tax or fee, increase the rate or expand the base of an existing tax or fee, or repeal or reduce any tax exemption. In order for the state legislature to accomplish any of those results, there would first have to be 2/3 approval in both the House and the Senate, and then the proposal would have to go out the voters in a statewide referendum. In order for a school legislative body, a town or city council or the county commissioners to accomplish any of those results, the budget would have to be adopted first by the legislative body and then at referendum. In order for a town meeting to accomplish any of those results, the budget or ordinance would have to be adopted in the same manner as the "LD 1" spending limit is exceeded or increased; i.e., by written ballot.

Taxation

LD 1067 – An Act To Require the Payment of Property Taxes before a Refund May Be Issued under the Circuitbreaker Program. (Sponsored by Rep. Webster of Freeport; additional cosponsor.)

This bill requires an applicant for Circuit Breaker benefits to show proof that the property taxes have been paid.

LD 1243 – An Act To Allow Local Administration of the Maine Residents Property Tax Program. (Sponsored by Sen. Rotundo of Androscoggin County.) (By request)

This bill allows a municipality to apply to Maine Revenue Services for the authority to directly administer the Circuit Breaker property tax and rent rebate program for all the residents within the municipality, further allowing the municipality to directly provide the benefit as an offset against the claimant's property tax bill.

LD 1478 – An Act To Reduce County Tax on Certain Municipalities. (Sponsored by Rep. Berry of Bowdoinham; additional cosponsors.)

This bill requires the county commissioner to reduce the county assessment for those municipalities with their own law enforcement agencies by 33% of the assessment that would otherwise be applied for that municipality's county-based law enforcement services.

LD 1610 – An Act To Preserve Manufacturing in Maine. (Sponsored by Rep. Simpson of Auburn; additional cosponsor.)

This bill would extend the property tax exemption provided to non-retail, BETR-eligible personal property as enacted in 2006 to all existing qualifying property installed and taxed for the first time on or before April 1, 1995.