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School Consolidation Plan Goes to Full Legislature

After five months of developing, reviewing, discarding and rearranging various plans to restructure, reorganize, regionalize and consolidate Maine's school systems, the Legislature's Appropriations Committee has finally decided on the plan that will be presented to the full Legislature next week as part of the biennial state budget.

The 58 pages of new statutory language mandates a complex series of actions, procedures, elections, budget cuts and policy decisions that will affect every municipality and every school system in the state.

The Appropriation Committee's plan is best described as having five major moving parts: mandatory reductions in spending for all school systems, mandatory consolidation votes on January 15, 2008, penalties for failing to consolidate, the mandatory "school budget validation" process, and a process to govern the closing of schools. Because the budget bill will likely be taken up by the full Legislature next week, this is the weekend to contact your legislators and let them know how you feel about the Appropriations' school consolidation plan.

Overview. As a general overview, the proposed state budget calls for all school systems to consolidate into Regional School Units (which is really just another name for SADs) unless they are already municipal school systems or SADs that are serving at least 2,500 students and have a least one publicly-supported secondary school. The intent is to create large SADs to replace municipal schools (with less than 2,500 students), all community school systems (CSDs), all school unions, and all small SADs. The required consolidations would not be applied to offshore island schools, tribal schools, or school systems that are serving somewhat less than 2,500 students that can justify their exemption to the Department of Education according to unquantified criteria somehow relating to geography, demographics, economics, transportation, or population. Without quantification, these "exception" criteria would be evaluated at the discretion of the Commissioner. The consolidations cannot involve any school closings and all teacher contracts, labor contracts, and superintendent contracts must be honored.

Mandatory reductions in spending. The proposed budget requires virtually all school systems, both those that

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House to Debate Informed Growth Act

It is expected that the members of the House will debate the merits of LD 1810, *An Act to Enact the Informed Growth Act,* on Friday this week. As amended by a majority of the State and Local Government Committee, the bill requires all retail development projects greater than 75,000 square feet to undergo an economic impact study as part of the local development permitting process.

Although the bill clearly mandates the use of an impact study at the local level, it has come to MMA's attention that some proponents of LD 1810 believe the use of the impact study is voluntary. Contrary to that perception, the majority report mandates the use of the impact study at the local level, whether or not the residents of a community believe the study necessary. (It should be noted that while the bill directly mandates the study, it requires the State Planning Office to collect a $40,000 fee from the project developer to be doled out to the municipality as necessary to cover the costs of the impact study. In other words, LD 1810 is clearly a mandate, but by imposing the state fee which is then transferred to the municipality, the mandate is funded.)

Municipal officials oppose this version of the bill because it intrudes on the home rule rights of residents to determine how best to manage the development permitting process in their communities. By endorsing the amended version of LD 1810, the Legislature is sending a message that state government is in a better position to determine what is best for

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SCHOOL (cont'd)

must consolidate and those that are exempt, to reduce the amount they spend on special education by 5%, transportation by 5%, and facilities and maintenance by 5%. Those cuts must be implemented without affecting a labor contract and without closing any school buildings. In addition, the component of the Essential Programs and Services (EPS) school funding model that calculates the total expense of a school's "system administration" (superintendent's office) will be cut in half, and all school systems must budget for their "system administration" at or below the new 50% rate established in EPS.

There is no known precedent for state law compelling a reduction in spending in a school budget, and the legal implications for violations of the reduced spending mandate are unclear. If, for example, a school board is unwilling or unable to reduce the special education or transportation budget by 5%, the school board members would appear to then fall into violation of this proposed law.

Mandatory vote on January 15, 2008. The proposed budget requires that a mandatory referendum vote on consolidation be held on January 15, 2008 in all the municipalities that either have their own schools with less than 2,500 students or are within school districts that do not currently serve at least 2,500 students (or are otherwise exempt for being off-shore island schools, etc.). The costs of the January 15th election will be borne by the Department of Education. The time frame over the next 7 months to get to the January 15th referendum breaks down as follows:

• **No later than July 15, 2007,** the Commissioner of Education will convene meetings of school board members, municipal officials and the general public, using the 26 career and technical education regions in the state as geographic platforms. The purpose of the meetings will be for the Commissioner to show maps and suggest possible consolidations that achieve the 2,500 student standard. There are only 16 non-holiday weekdays between the Legislature's scheduled adjournment date and July 15th, which suggests that the Commissioner will be convening two regional consolidation meetings each working day beginning on June 21st in order to meet this deadline. How reasonable notice about those meetings will be provided is a mystery.

• **No later than August 31, 2007**, each school system must file a "notification of intent" to consolidate with other identified school systems in a manner that achieves compliance with the 2,500 standard.

• **In September 2007**, the municipalities (rather than the school systems) that fall within the geographic area covered by the "notification of intent" must form a "reorganization planning committee". The membership make-up of the planning committee, its roles and responsibilities, the timelines for its activities, and the format for its final report will all be governed by guidelines to be developed by the Commissioner of Education.

• **No later than December 1, 2007**, each municipality (rather than the school systems and rather than the reorganization planning committee) must submit one of two possible plans to the Commissioner.

— A consolidation plan if the municipality is part of a school system that must consolidate because it serves less than 2,500 students. The consolidation plan would be a comprehensive document describing the make-up of the new school board and its voting methods; disposition of existing school property, financial assets and assignment of debt; assignment of all school contracts and collective bargaining agreements; a fall-back plan if one or more of the participating members of the consolidated school system fail to ratify the consolidation; a detailed estimate of how cost savings will be achieved, etc.

— A cost reduction plan if the municipality is part of a school system that does not need to consolidate because is serves more than 2,500 students. The cost reduction plan must show how the school system will reorganize administrative functions, duties and non-instructional personnel in order to achieve the mandated 5% reductions in the expenditures for special education, transportation, and facilities and maintenance. The plan must also show how the school system's budget for "system administration" will conform to the EPS model.

• **Commissioner approval.** If the consolidation plan is approved by the Commissioner, the municipalities must prepare for the January 15th election. In order to meet the January 15th deadline and conform to election law, the Commissioner's approval would have to be immediate.

• **Commissioner's disapproval.** If the Commissioner disapproves the consolidation plan, the governing bodies of the affected school systems (even though it is the "municipalities" that were required to submit the plans) would be notified by December 15, 2007 and have 30 days to submit a revised plan. The Commissioner must approve or disapprove the revised plan within 14 days of submission, or by sometime around January 30th, 2008.

• **January 15th referendum**. All municipalities affected by the mandatory consolidation plans must hold a referendum on January 15, 2008, which presupposes the plan would be finalized for public hearing and ballot preparation by December 1, 2007. It is unclear how the mandatory referendum could be held on January 15th if the Commissioner's approval of the proposal plan is provided anytime after December 1.

• **Ballot phrasing**. In addition, the municipal officers who are trained to avoid phrasing ballot questions in any manner that attempts to lead the voters will likely be surprised to see that the statutorily required ballot language includes an "Explanation" for the Yes-No vote on the consolidation proposal which must read as follows:

— "A "YES" vote means that you approve of the (municipality or SAU)

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Editorial Staff: Geoffrey Herman, Kate Dufour, Jeff Austin, and Laura Veilleux of the State & Federal Relations staff.

joining the proposed regional school unit, which will be provided with the following incentives:

(1) More favorable consideration in approval and funding of school construction projects; and

(2) Eligibility for additional financial support for reorganization costs.

— A "NO" vote means that you do not approve of the (municipality or SAU) joining a regional school unit, which will result in the existing (municipality or SAU) receiving the following penalties:

(1) Less favorable consideration in approval and funding of school construction projects; and

(2) A reduction in state funding of education costs in an amount estimated to be $_____ for school year 200__ and $_____ for school year 200__, with the possibility of ongoing penalties for continued failure to join an approved regional school unit. Reductions in state education funding will likely result in an increased mill rate expectation to meet the local share of education costs."

Penalties for voting against consolidation. As the required wording of the January 15th ballot suggests, the municipal school systems and school districts that vote against the consolidation proposal (as well as those that vote for the consolidation but are unable to implement the consolidation because of the votes of others) will be financially penalized in the following ways:

— The non-compliant "minimum receivers" will become ineligible to receive even their minimum state subsidy;

— All non-compliant school systems will receive zero financial support from the state for "system administration";

— The non-compliant rural schools will lose the "isolated small school adjustment";

— All non-compliant schools that might otherwise receive the so-called transition funds that are provided when they lose significant school subsidy from the previous year because of spiking state valuations will be ineligible for that "transition" or "cushioning" relief.

— All non-compliant schools will have their "maximum mill rate effort" increased by 5%. If the maximum mill rate effort is (for example) 7.4 mills, the maximum mill rate effort for noncompliant schools would be 7.77 mills. The maximum mill rate system is hydraulic in the sense that a mill rate effort increase for some school systems will presumably result in a concomitant mill rate effort decrease for the compliant school systems and those systems that do not have to consolidate; and

— All non-compliant schools will receive less favorable consideration for school construction funding.

The imposition of these financial penalties will not occur until the school year that begins on July 1, 2009. Therefore, if the voters say "NO' to the consolidation proposal that is presented to them at the mandatory January 15, 2008 election, the consolidation proposal could be reworked and represented to the voters at a subsequent referendum — perhaps at the June 2008 primary or November 2008 general elections — for a second bite at the consolidation apple.

Budget validation process. The budget proposal requires all school systems, beginning in 2008, to both format and adopt their budgets according to the so-called budget-validation process. The code term in the State House for the budget validation process is "transparency" in budget format, but the process also includes mandatory referendum voting for all school budgets.

The "transparency" element of the budget validation process is a prescribed budget presentation format that lays out every proposed school budget according to 11 separate cost centers (regular instruction, special education, system administration, transportation and buses, facilities maintenance, etc.). In addition, the dollars proposed to fund each cost center must be compared to the comparable dollars to support the same cost center in a "high performing" school, as determined by the Department of Education. That "transparent" budget must be presented in an open district meeting, which operates like a town meeting, where the proposed budget is debated, perhaps amended, and ultimately adopted.

The "validation" part of the budget validation process then requires a referendum vote to be held within 10 working days of the open meeting where the voters at secret ballot can either accept or reject the budget that was adopted at the open meeting 10 days before. If the voters reject that budget, the process starts over again. To put this mandate into some context, a statewide ballot referendum costs property taxpayers just shy of $1 million in local administrative costs.

School closing process. One of the often expressed concerns about the creation of much larger school systems is that over time it will lead to the closing of small rural schools because it will be in the financial interest of the larger school district to close out school systems that don't conform to the EPS school funding model. The proposed state budget deals with the school closing issue by defining the term "school closing" and amending the process in existing law by which a school facility within a larger district can be shut down.

The definition of a "school closing" in the budget bill is "any action by the regional school unit board that has the effect of providing no instruction for any students at the school". In other words any reorganization or redesign of an existing school's function, or any alternative use to which an existing school may be put that falls short of a complete shutdown, would fall with the purview of the regional school unit board.

The change to the school closing process with respect to current law in the proposed budget is that it would first require a "super majority" two-thirds vote of the elected directors of the regional school unit before the school facility could be closed down. If that vote of the school board is achieved, there would then have to be a referendum vote in the municipality where the school facility is located, and if the voters in that municipality vote to keep the school open, the school will remain open. As is the case with current law, there would be a financial impact associated with keeping the school open against the wishes of the regional school board. The financial impact would be that the municipality would be entirely responsible for the difference in expense between keeping the school open and closing the school.

To that extent, the financial interests of the regional board would be realized. Assuming there would be a strong interest within the municipality to keeps the community's school open, it is less of a school closing process and more of a subsidy-withholding process.

Revenue Sharing Study Legislation Killed

MMA Encouraged To Formulate Recommendations

On Friday, May 18th the Taxation Committee killed a bill that MMA initially developed which was designed to provide greater stability and predictability in revenue sharing distribution. LD 355, *Resolve, To Establish a Committee to Examine Issues Relating to the Administration and Distribution of Municipal Revenue Sharing*, was designed by MMA's Legislative Policy Committee and sponsored by Representative Bill Browne from Vassalboro. LD 355 would have directed the State Treasurer to convene a working group made up equally of municipal officials from rural and urban communities to study the internal mechanics of the municipal revenue sharing distribution formulas. That working group would be authorized to develop recommendations (if any seem to be required) to smooth out the marked volatility of revenue sharing distribution experienced throughout the state this year.

According to the projections published last July for the current fiscal year (FY 07), over 60% of the towns and cities in Maine were scheduled to receive less municipal revenue sharing this year than last. Because the Legislature appropriated $5 million out of this year's revenue sharing account to help balance the state budget, the statewide reduction in revenue sharing was scheduled to come in at minus 2.44%. Against that backdrop, the revenue sharing reduction for 30% of Maine's municipalities was projected to exceed 10%. For one out of every ten towns and cities in Maine, the revenue sharing reduction was scheduled to exceed 20%. Almost every municipality in Cumberland, Hancock, Kennebec, Knox, Sagadahoc and York counties were scheduled to lose revenue sharing during this current fiscal year.

In addition to looking at the volatility of revenue sharing, LD 355 offered an opportunity to develop recommendations on how to provide projected revenue sharing distributions in a more timely manner. As an example, municipal budgets are currently being adopted without the availability of any published information regarding the projected revenue sharing numbers upon which those budgets are partially based. Although the numbers are smaller by an order of magnitude, the analogy would be to adopt a school budget even though you are in the dark about the state's GPA contribution.

And finally, LD 355 offered an opportunity to develop recommendations on how to better integrate the revenue sharing distribution information with the "LD 1" spending limit calculation system. Under current law, municipalities are struggling with the task of accurately calculating their "property tax levy limits" as required under LD 1 when the revenue sharing distributions, which are part of that calculation, are so volatile.

Both the State Treasurer, David Lemoine, and the Department of Administration and Financial Services opposed LD 355, and the Tax Committee unanimously rejected the bill. At the same time, the Committee suggested that MMA convene its own working group and develop recommendations for the Committee to consider next year or at some later time. Although both Representative Browne and the municipalities thought the program deserves both a formal study and a two-way conversation between the municipalities and the folks who actually administer the program, that interest in dialogue is clearly not reciprocal.

GROWTH ACT (cont'd)

every town and city in the state.

There's a simple compromise solution. Municipal officials would support a version of the bill that makes using the impact study easily available to every municipality. That "opt-in" alternative will be promoted in a House amendment sponsored by Rep. Henry Joy of Crystal. As proposed by Rep. Joy, the amendment would allow communities to adopt the Informed Growth Act by reference if the local legislative body believes it to be necessary. As proposed by Rep. Joy, the "tool" of the Informed Growth Act is made entirely available within state law, and the decision to use this development tool remains with the local communities that need it.

A second House amendment has also been submitted. Sponsored by Rep. Stephen Beaudette of Biddeford, this amendment provides communities with an opportunity to "opt-out" of the Informed Growth Act. As proposed by Rep. Beaudette, the Informed Growth Act would not apply to any municipality that incorporates an economic impact review as part of the local permitting process for large-scale retail developments. Although the effort is appreciated, a question remains as to how and by whom it would ever be determined whether the analytical efforts triggered by a local ordinance meet the "opt-out" standard. Without specific guidance, the "opt-out" provision may be difficult to trigger.

If you believe that LD 1810 as presented in the majority "ought to pass" report infringes on local home rule authority, we urge you to contact your legislators this weekend and ask them to oppose the mandatory application of the Informed Growth Act and support Rep. Joy's amendment.

The Goose and the Gander of Solid Waste Policy

The Natural Resources Committee has supported amended versions of three bills regarding waste management. It appears that some of the policy choices are inconsistent with recent recommendations of the legislatively created "Blue Ribbon Commission" and do so in ways that impact municipalities.

The Blue Ribbon Commission was created last session in order to explore the many open policy questions raised by waste management. The chairs of the Commission were two Natural Resource Committee members, Senator John Martin (Aroostook Cty.) and Rep. Bob Duchesne (Hudson). The Commission made recommendations regarding several issues including out-of-state waste and host community benefits.

The three bills dealing with these issues are LD 935, *An Act To Continue to Ensure Long-term Capacity of Municipal Landfills*; LD 1435, *An Act to Provide for the Protection of Communities that Host a Solid Waste Disposal Facility of Incineration Facility*; and LD 1908, *An Act To Implement Recommendations of the Blue Ribbon Commission on Solid Waste Management*.

Out of State Waste

LD 935 and LD 1908 primarily deal with the issue of importing waste from other states. The general policy in Maine is to discourage the importation of out-of-state waste. Landfills are seen as "necessary evils" rather than as industries for which the State would like to encourage growth. Thus, the space available in Maine landfills should be preserved for Maine-generated waste.

However, there are limits on the ability of the State to preserve privately-owned landfills.

The U.S. Supreme Court has held that a state may not bar a privately-owned waste facility from importing waste. Waste is a commodity and state government-imposed bans on "out-of-state" waste violate the federal Interstate Commerce Clause.

Obviously, any state that owns a solid waste facility is as free as any free-market participant to refuse to accept out-of-state waste.

An issue has emerged whether Maine should ban municipally-owned landfills from importing waste. Quasi-municipal incinerators (waste to energy facilities) currently do import waste – for good reason. There are some periods of the year when there is not enough in-state waste available to keep the incinerators operating efficiently. Out of necessity, it is argued, they must import waste on occasion in order to continue running optimally. Municipal landfills do not import waste today. However, for many reasons the City of Lewiston has been reviewing the operation of its landfill. Included in that review is the potential for importing waste.

In response to Lewiston's review, LD 935 was drafted to prohibit municipal landfills from accepting out-of-state waste. Because only one municipality has expressed any interest in importing waste, MMA's policy committee viewed the bill as having a very localized impact and it decided not to take a position on the bill, despite the fact that the bill does curb local control.

An amended version of the bill attempted to reach a compromise. The compromise allows a municipal landfill to import waste, but only if the importation satisfies a "public benefit determination" test. Currently, the Department of Environmental Protection applies the public benefit test to applications for expansions to landfills. The bill would utilize that test for decisions regarding the importation of out-of-state waste. As amended, if a municipal landfill can prove to DEP that the importation actually serves the public interests of Maine then the importation would be approved.

The amended version also sought to implement the recommendation of the Blue Ribbon Commission to have the public benefits test apply to state-owned facilities. Currently, the public benefit test is applied to applications by any solid waste facility – landfill or incinerator - that would like to expand its operations except for state-owned facilities. There is only one operating state-owned facility, the Old Town/Juniper Ridge Landfill.

The Legislature's Blue Ribbon Commission proposed having the public benefit test apply to "any proposal for a new or expanded solid waste disposal facility." The amended version of LD 935 sought to implement that recommendation and remove the State's exemption. However, the Committee felt it should not make that decision in the context of LD 935. Accordingly, it rejected the proposal to eliminate the state's exemption and a late-session bill — LD 1908 — was filed to deal specifically with state-owned facilities.

As drafted, LD 1908 expressly implemented the Blue Ribbon Commission recommendation to have state-owned facilities comply with the public benefit determination requirements for expansions. However, the Committee voted to exclude any state-owned facilities that are in existence today – thereby excluding the Old Town/Juniper Ridge Landfill from the public benefit determination process.

The explanation for this exclusion involves the sale of the Old Town Mill, the purchase of the Mill's landfill by the State and its contract with Casella Waste Systems to operate the landfill. That contract "contemplates" an expansion of the landfill beyond its current size of 10 million cubic yards. The Natural Resources Committee apparently felt that the intent of this contract is for the State to not impose additional statutory hurdles in the way of that landfill's expansion.

Host Community Benefits

Another recurring waste management issue is that of Host Community Benefits. This topic is addressed in LD 1431. Under current law, a commercial or state-owned solid waste facility (but not a municipally-owned facility) must execute an agreement with the municipality in which the facility is located — the "Host Community". These agreements seek to compensate the Host Community for costs associated with impacts on: (1) traffic/roads, (2) emergency re-

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SOLID WASTE (cont'd)

sponse capacity, (3) the need to hire consultants to help interpret technical data regarding the facility, and (4) other issues.

Municipalities have been exempted from the requirement to execute Host Community Agreements for municipally-owned facilities since it would be absurd to ask a municipality to negotiate with itself.

An issue that has lingered around for years is whether waste facilities should have to execute Host Community Agreements with municipalities other than the actual Host Community. That is, some communities that are adjacent to the Host Community may face many of the same traffic, noise and smell issues that Host Communities deal with.

The Blue Ribbon Commission recommended that commercial and state facilities, which are currently required to have Host Community Benefit Agreements, should also execute similar contracts for adjacent communities if the adjacent community can demonstrate adverse impacts resulting from the facility. The Blue Ribbon Commission did not recommend including municipalities in this expanded Host Community benefit requirement.

The Natural Resources Committee voted to include municipally-owned facilities. The stated reason was that if the State is going to be obligated to execute the host community agreements for adjacent municipalities there is no policy-based rationale to exclude municipal facilities.

This decision might make sense. That is, there is no inherent reason why a municipal landfill couldn't have negative impacts on its neighbors. However, neither the Blue Ribbon Commission Report nor the public hearing on LD 1431 produced any evidence that municipal facilities are adversely impacting their neighbors. For that matter, neither did the State's Waste Management Task Force in its 5-year review of waste issues. Thus, while there may be "no reason" to exclude municipal facilities, the Legislature has "no reason" to include them either.

The Committee simply decided to apply a "if its good for the state its good for municipalities" policy. This policy is also not without merit. MMA often promotes this kind of policy in reverse.

What is curious though is that the Committee specifically excluded the State's facility in Old Town from the public benefit test with its actions on LD 935 and LD 1908; only municipal facilities are included. It then applied the "goose-gander" policy in connection with Host Community benefits in LD 1431.

A final issue is that of municipal mandates. As the Committee worked LD 1431 and it became apparent that the Committee was going to depart from the Blue Ribbon Commission recommendation and apply the Host Community benefit requirement to municipalities, the prospect emerged that the bill would constitute a municipal mandate under Maine's Constitution. The question was posed to the Office of Fiscal and Program Review, which decided that the bill was a mandate.

When the Natural Resources Committee was confronted with the issue, it was suggested that the mandate (which requires the state to either fund the mandate or pass the legislation by a 2/3 vote) might kill the bill and that MMA should bear the responsibility if that were to occur.

That assertion is flatly wrong for multiple reasons. First, the Committee or the Legislature could remove the mandate label by removing municipal facilities from the purview of LD 1431 – as the Legislature's own Blue Ribbon Commission recommended. That would preserve the bill and the policy goals of the Blue Ribbon Commission while removing the mandate issue.

Second, and most importantly, the Constitutional requirement must be given its own integrity. It must not be ignored by the Legislature just as no provision in the Constitution should be ignored. It often falls to MMA to raise the possible existence of a Constitutional mandate issue in connection with legislation. It is entirely inappropriate to attempt to lay political blame at MMA's feet for pointing out Maine's Constitution to Maine's lawmakers.

Sometimes MMA supports mandates, but mostly MMA opposes them. Regardless of MMA's position on a piece of legislation, the integrity of the Constitution's provisions must be respected - even if certain legislators find it bothersome.