

Legislative **BULLETIN**

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Retroactivity – It’s Back, Again

The goal to preempt the authority of Maine’s citizens to retroactively impact municipal land use ordinances through the citizen initiative process has been an issue of debate for the Legislature over the past five years. Every session, a bill is introduced, amendments are developed, an opinion of the Attorney General (AG) is requested, and based on the AG’s opinion, the bill subsequently dies.

Last year, Sen. Lynn Bromley (Cumberland Cty.) sponsored LD 1481, *An Act to Amend the Laws Governing the Enactment Procedures for Ordinances*, on behalf of the Community Preservation Advisory Committee (CPAC). The bill sought to limit the ability of citizens to retroactively amend land use ordinances in a manner that would stall development projects which because of their size, location or impact were of a concern to the voters. The State and Local Government Committee debated and ultimately amended the bill. Two amendments emerged.

The majority amendment, which was supported by the Maine Real Estate and Development Association (MEREDA), would have prohibited the application of any new ordinance enacted by direct initiative on projects for which land use permits or approvals had been granted. The minority amendment, which MMA supported, would have prohibited the application of any new ordinance enacted by direct initiative on land use permits or approvals that had been granted and for which the appeals process had been exhausted.

As LD 1481 made its way between the House and Senate, the Senate Chair of the Committee, Peggy Rotundo (Androscoggin Cty.), asked for an AG’s opinion regarding the constitutionality

of the amended versions of LD 1481. In response, the AG issued an opinion on June 10, 2005, stating that both of the proposed amendments to the bill were unconstitutional. The AG stated that while the Legislature could prescribe uniform *methods* for conducting citizen’s initiatives (e.g. the minimum number of required signatures, or by what deadline signatures must be submitted, etc.), the Legislature is not authorized to determine the *substance* of what can be done by municipal initiative. Under their home rule authority, only municipal legislative bodies can limit the substance or scope of citizen initiatives, not the Legislature. By focusing on just citizen-based initiatives and by limiting the preemption to land use permits, the amended version of LD 1481 violated the constitution. A reading of the AG’s opinion seems to suggest that in order to legally achieve their goal, the proponents would have to either: 1) utilize the local democratic process to advance and adopt ordinances limiting retroactive initiatives; or 2) preempt municipal government, generally, from the right to apply any standards retroactively, a practice commonly practiced by the Legislature.

Although in the past, an AG’s opinion has led to a retroactivity bill’s demise, this time the retroactivity bill survived the initial process, was re-referred to the State and Local Government Committee and carried over into the second session. On Wednesday of this week, the Committee met to discuss its LD 1481 options. Singling out all municipal government for this preemption seemed to please the Committee, and Committee members appear unified behind an amendment that will limit home rule authority in a general way in order to reach down and limit

citizens’ authority. The Committee plans to formally vote on the bill next week.

As crafted by Rep. Brad Moulton of York, the amendment would directly prohibit a municipality from nullifying or amending a land use-related municipal permit by the subsequent enactment or modification of a local ordinance.

The developers’ lobby and other proponents of this approach want to provide developers an assurance that they will be able to develop projects under existing rules free from the uncertainty that those rules could be changed at any time through a retroactive citizen initiative. There is a concern that developers spend thousands of dollars to get permits through a public process, and then are forced to eat those costs when the rules are changed by the citizens. While most municipal officials agree that the rules of the game should not be changed mid-stream, municipal officials also agree that zoning ordinances aren’t changed overnight, and if a developer is made aware that the rules are likely to change—whether through an initiated process or through the regular ordinance amendment process—then the developer’s entitlement to a guaranteed permit is not absolute.

Although many proponents of the amendment speak anecdotally of all the development that is foiled by retroactive citizen initiative, there are few cases to review where the citizens actually stopped a proposed development. One is the 1988 Fisherman’s Wharf case (*City of Portland v. Fisherman’s Wharf Associates II*, 541 A. 2d 160) in Portland, where the residents were successful in changing land use ordinances to prevent a working waterfront area from being developed into condominiums. The second is a more recent (2004) case in Kittery (*Kittery Retail Ventures, LLC v. town of Kittery* 856 A.2d. 1183), where the residents were

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Fire Districts Go Up in Smoke

On Wednesday this week, the ability of municipalities to charge all property owners, including tax exempt property owners, a service fee for fire protection all but dissipated as the State and Local Government Committee voted "ought not to pass" by a margin of 6 to 2 on LD 1414, *An Act to Authorize Municipalities to Create Municipal Fire Districts*.

The bill, sponsored by Rep. Robert Duplessie of Westbrook on behalf of the Maine Service Center Coalition would have provided municipalities with the necessary flexibility to determine how the community will raise the revenues necessary to provide fire protection to all properties in the municipality.

Currently, communities wishing to provide fire protection do so through assessments on property taxpayers. In 2004, it is estimated that property taxpayers statewide were assessed \$90 million for fire protection. LD 1414 would relieve some of that property tax burden by allowing municipalities to create municipal fire districts. Through the creation of a fire district, municipalities would be authorized to assess a service charge based on the physical nature of all structural properties within the district, including structural property that is currently exempt from taxation, to cover the cost for providing the service. The tax exempt "charitable" institutions and colleges would have to pay their fair share of fire protection, just as they pay for their water and sewer utilities.

Municipal officials supported the bill because it would have enabled mu-

nicipalities to assess fees for the service against all property owners. The provision of fire services knows no boundaries. Exempt properties require the same fire protection services as taxable property. Municipal officials feel that it is only fair that the owners of exempt property in Maine contribute for that service. To put it into perspective, \$5 billion of state property, charitable property, "literary and scientific" property, and leased hospital property is currently exempt from taxes. Municipal officials do not believe that assessing a service fee to protect that property places an inappropriate demand on those institutions.

A strong majority of the State and Local Government Committee felt otherwise. State and Local Government Committee Chair, Elizabeth Schneider (Penobscot Cty.), an original co-sponsor on the bill, led the charge to defeat it. According to Senator Schneider, while LD 1414 shines a light on the bigger problem of tax-exempt property, a lot more work of some kind needs to be done before the problem can be addressed.

Other opponents to the bill, including Senator Mary Black Andrews (York Cty.) and Representative George Bishop (Boothbay), raised concerns that the bill might have some unintended consequences. These members of the Committee were concerned that if communities collected fees, those municipalities could lose the valuable services that tax exempt corporations provided at no or little cost to the residents in the community.

Representatives Chris Barstow (Gorham) and Brad Moulton (York) voted "ought to pass as amended" on LD 1414. Although neither representative supported the printed bill, they thought there would be some value in discussing the tax-exempt issue further. The amended version of the LD 1414 would create a working group of interested parties to resolve the issues raised in the bill. If enacted, the working group would be authorized to submit a report and recommendations for legislation to the State and Local Government Committee by February 15, 2007.

While the municipal community appreciates the last ditch effort to keep this bill alive, we all need to be honest. Proposals to address the problem of the property tax exemption provided to the ever-expanding "charitable" institutions are submitted to and rejected by the Legislature every year. On top of the charitable exemptions, the Governor, legislative leadership and the business lobby is now pushing for an equally massive exemption for business equipment. The Governor and some legislators are also pushing for the a further exemption for homesteader's house lots, and municipal officials are very well aware of the recently expanded homestead exemption enacted by this Legislature, but unreimbursed.

Property exemptions translate directly to increased property tax rates. This 122d Legislature seems to be focused on exempting from taxation as much property as possible.

Harbormaster Mandate

A little known provision in Title 38 gives to any person the ability to single-handedly override the democratic process. Section 1 of Title 38 says that upon the request of any person a town must appoint a harbormaster. Even if the town has no moorings, and no requests for moorings, a person may request that moorings be regulated and that a harbormaster be appointed. Even if the entire town meeting disagrees, a single person may compel this appointment.

Recently, in the Oxford County town of Otisfield, which borders several water bodies including Thompson Pond, a single individual walked into Town Hall and asked the town to appoint a harbormaster. The board of selectmen had discussed this issue previously and unanimously believed that a harbormaster was not needed.

Thompson Pond has had approximately two dozen moorings for many years and no problems. Thus, when one individual requested the harbormaster,

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Legislative Bulletin

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(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.)

Agriculture, Conservation & Forestry

LD 1881 – An Act Amending the Animal Welfare Laws. (Sponsored by Rep. Piotti of Unity.)

In addition to amending several definitions in the animal welfare laws, this bill would repeal the surcharge currently assessed for unneutered cats and dogs sold by a breeding kennel, enact a civil violation and a crime of endangering the welfare of a “companion animal” or “companion livestock”, and amend the domestic relations laws providing relief from abuse to allow judges to write protection from abuse orders to protect both “companion animals” and “companion livestock”.

Appropriations & Financial Affairs

LD 1956 – An Act To Recapitalize the Maine Downtown Center. (Sponsored by Rep. Richardson of Brunswick; additional cosponsors.)

This bill would provide a one-time appropriation of \$300,000 for recapitalization of the Maine Downtown Center for fiscal year 2006-07. The Maine Downtown Center is an organization charged by statute to advocate for downtown revitalization. The State Planning Office serves on the Board of Directors of the Maine Downtown Center.

LD 1960 – An Act To Authorize a General Fund Bond Issue To Create a Block Grant Program To Promote Economic and Cultural Development. (Sponsored by Rep. Cummings of Portland; additional cosponsors.)

This bill would authorize a General Fund bond issue in the amount of \$50,000,000 to create a block grant program to promote economic and cultural development.

Business, Research & Economic Development

LD 1955 – An Act To Provide Emergency Regional Economic Development Assistance for Brunswick Naval Air Station. (Sponsored by Rep. Richardson of Brunswick; additional cosponsors.)

This bill would amend the Pine Tree Development Zone laws to provide eligibility for certain properties within commercial, industrial or military sites with a greater than 25% loss of employed workers over a 4-year period.

LD 1957 – An Act To Establish a Development Authority for Brunswick Naval Air Station. (Emergency) (Sponsored by Rep. Richardson of Brunswick; additional cosponsors.)

This emergency bill would establish a development authority for the Brunswick Naval Air Station.

Education & Cultural Affairs

LD 1742 – An Act To Amend the Law Governing Warrant Funding for Education. (Sponsored by Sen. Schneider of Penobscot County; additional cosponsors.)

This is a “concept draft” bill that proposes to amend the language regarding “warrant funding to municipalities” for education to ensure

that the language regarding increases in spending is not presented in either a positive or negative manner, but rather is presented in a manner that is entirely neutral. It is not clear what is meant by the term “warrant funding to municipalities”.

LD 1867 – An Act To Amend the Elementary School Closing Process for School Administrative Districts and Community School Districts. (Sponsored by Rep. Stedman of Hartland; additional cosponsors.)

This bill would eliminate the requirement for a referendum vote in a member municipality of a school administrative district (SAD) or community school district (CSD) when the school board has voted to close an elementary school. A referendum vote could still be triggered by a petition signed by 10% of the number of voters in the affected municipality who voted in the last gubernatorial election.

LD 1903 – An Act To Restore the Cost-sharing Agreement Established by the Voters of Maine School Administrative District No. 40. (Emergency) (Sponsored by Rep. Miller of Somerville; additional cosponsors.)

This emergency bill would reestablish the cost-sharing agreement established in 1992 at a referendum election by the voters of Maine School Administrative District 40, replacing the cost-sharing system that was imposed last year as mandated by state law. The bill would also preserve the right of the voters of the school district to amend that formula in the future according to the procedures to amend cost-sharing arrangements that are available under current law.

LD 1953 – An Act Regarding the Sharing of Costs in Certain School Districts. (Emergency) (Sponsored by Sen. Mayo of Sagadahoc County; additional cosponsors.)

This emergency bill would provide an adjustment to the transitional cost sharing changes implemented by previous state law for certain member municipalities in school administrative districts and community school districts when one or more member municipalities, but not all the school district's member municipalities, have a local contribution that is below the “mill rate expectation”, which was 8.26 mills in FY 06.

Health & Human Services

LD 1875 – An Act To Improve Substance Abuse Rehabilitation Services. (Sponsored by Rep. Millett of Waterford; additional cosponsors.)

This bill would direct the Department of Health and Human Services, Office of Substance Abuse to evaluate need when issuing licenses for substance abuse clinics and to create a process to involve the local community in the licensing process. The bill would establish a local advisory committee to advise the Office of Substance Abuse during the licensing process for such clinics and to review the operation of the clinics. The bill would also establish a moratorium on licensing such clinics until certain rule changes are made as to the administration and distribution of pharmaceuticals on site.

Judiciary

LD 1930 – An Act Regarding Working Waterfront Covenants under the Land For Maine's Future Board. (Sponsored by Sen. Damon of Hancock County; additional cosponsors.)

Working waterfront covenants, like other deed restrictions, could affect the valuation assessments of certain waterfront properties. This bill would implement authority given to the Land for Maine's Future Board to be a party to working waterfront covenants and would also provide the definitions and provisions for creation, conveyance, acceptance and duration of working waterfront covenants, along with provisions for the scope and validity of such covenants, as well as applicability provisions.

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HOPPER (cont'd)

Labor

LD 1699 – An Act To Improve Workplace Safety. (Sponsored by Rep. Fischer of Presque Isle.)

This bill is a “concept draft” that would require the Department of Labor to develop a policy on violence in the workplace and require employers to post the policy, educate their employees about the policy, and install security systems with “panic buttons” for all employees who may work outside of “regular business hours”.

Natural Resources

LD 1768 – An Act To Prevent Motor Fuel Spills from Aboveground Storage Tanks That Have Underground Piping. (Sponsored by Sen. Cowger of Kennebec County; additional cosponsor.)

This bill would require aboveground motor fuel storage tanks that have underground piping to be registered with the Department of Environmental Protection, assessed an annual \$35 registration fee and inspected annually in the same manner as is currently required for underground oil storage tanks. The bill would also require that beginning January 1, 2011, underground piping installed at an aboveground motor fuel storage facility before June 24, 1991 meet the same leak detection requirements that apply to piping installed after that date.

LD 1802 – An Act To Sustain Good Local Planning Practices. (Emergency) (Sponsored by Sen. Edmonds of Cumberland County; additional cosponsors.)

This emergency bill would provide that a municipality that has adopted a comprehensive plan could enforce an ordinance that defines “subdivision” as the creation of two or more lots within a 5-year period.

LD 1860 – An Act Concerning Certain Provisions Regarding Protection of Natural Resources Related to Activities in Coastal Areas. (Sponsored by Rep. Koffman of Bar Harbor; additional cosponsors.)

Among other changes, this bill would clarify certain emergency actions that may be taken without a permit when the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened by specifying that protective materials may be left in place to shore up a structure for no more than 18 months and by providing that actions taken to strengthen structures must be limited to those necessary to alleviate the imminent threat. Also, the list of those persons authorized to make determinations concerning the integrity of a structure would be expanded beyond the local Code Enforcement Officer to include state licensed professional engineers and geologists.

State & Local Government

LD 1865 – An Act To Clarify the Time Period in Which Municipalities Must File Notices of Intent with the State for Purposes of Issuing Building Permits. (Sponsored by Rep. Barstow of Gorham.)

This bill would clarify that a municipality must be informed “as

soon as practicable” in the design process of a state construction project or public improvement within that municipality’s boundaries. The bill would also require a municipality that intends to review or issue permits for that project or improvement to file notice of intent within 30 days of notification of the project or improvement.

LD 1880 – An Act To Promote Youth Involvement in County and Local Government. (Sponsored by Rep. Cain of Orono; additional cosponsors.)

This bill would create the County and Local Government Internship Program, administered by the Margaret Chase Smith Center for Public Policy at the University of Maine, which pairs college-age students with county and local governments. Students must have completed at least 2 years of college or have just graduated from college and must be Maine residents or out-of-state students attending college in the state.

Transportation

LD 1731 – An Act To Require That New Road Construction or Repair Include Sidewalks or Bikeways or Both. (Sponsored by Rep. Craven of Lewiston; additional cosponsors.)

This bill would require bikeways and pedestrian ways to be established in conjunction with the construction or reconstruction of a state road, with limited exceptions.

LD 1750 – An Act To Amend Certain Transportation Laws. (Sponsored by Sen. Damon of Hancock County; additional cosponsors.)

This bill would make several technical changes to the laws governing highway lighting and signage. Of particular interest to municipalities, the bill would: (1) allow for an exception to the outdoor highway “luminaire” requirements if the Commissioner of Transportation determines that the lighting is related to a Department of Transportation project of state and regional significance and is supported by municipalities directly affected by the installation; (2) require local administration of municipal ordinances regarding changeable signs; and (3) add language to and remove requirements from the provisions of law regarding the amber lights on snow removal and sanding vehicles to reflect current technology.

Utilities & Energy

LD 1931 – An Act To Encourage Energy Independence for Maine. (Emergency) (Sponsored by Sen. Bartlett of Cumberland County; additional cosponsors.)

Among other directives to state agencies and changes in law related to energy conservation efforts, this emergency bill would: (1) mandate that all public school “facility managers” complete a “building operators certification program” established and conducted under the authority of the Public Utilities Commission; and (2) impose on every municipality the adoption of the “model building energy code” unless the municipality expressly notifies the Public Utilities Commission by January 1, 2008 of its decision not to adopt the model code.

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, January 16 – HOLIDAY

Tuesday, January 17

Taxation

Room 127, State House, 1:00 p.m.

Tel: 287-1552

LD 1711 – An Act To Make Minor Substantive Changes to the Tax Laws. (Sponsored by Rep. Woodbury of Yarmouth; additional cosponsors.)

LD 1836 – An Act To Amend the Laws Governing the Assessment of Property Taxes in the Event of a Change of Ownership of the Property. (Sponsored by Rep. Craven of Lewiston; additional cosponsors.)

LD 1857 – An Act To Clarify Municipal Valuations of Resort Property. (Sponsored by Rep. Duplessie of Westbrook; additional cosponsors.)

LD 1809 – An Act To Provide Additional Property Tax Relief to Maine Citizens. (Sponsored by Rep. Cummings of Portland; additional cosponsors.)

LD 1751 – An Act Concerning Technical Changes to the Tax Laws. (Sponsored by Sen. Perry of Penobscot County; additional cosponsors.)

Transportation

Room 126, State House, 1:00 p.m.

Tel: 287-4148

LD 1730 – An Act To Ensure Business Equity in Commercial Vehicle Registration. (Sponsored by Rep. Blanchard of Old Town; additional cosponsors.)

LD 1731 – An Act To Require That New Road Construction or Repair Include Sidewalks or Bikeways or Both. (Sponsored by Rep. Craven of Lewiston; additional cosponsors.)

Wednesday, January 18

Criminal Justice & Public Safety

Rm. 436, State House, 1:00 p.m.

Tel: 287-1122

LD 1831 – An Act To Allow Law Enforcement Agencies To Maintain Public Sex Offender Registry Websites. (Sponsored by Rep. Curley of Scarborough; additional cosponsors.)

State & Local Government

Room 216, Cross State Office Building, 1:00 p.m.

Tel: 287-1330

LD 1694 – An Act To Allow the Towns of Mapleton, Castle Hill and Chapman to Deposit All Tax Revenues, Grant Revenues and Other Income and Revenues into One Depository Account. (Sponsored by Sen. Martin of Aroostook County.)

LD 1712 – An Act To Restore the Funding to the Fund for the Efficient Delivery of Local and Regional Services. (Emergency) (Reported by Rep. Barstow of Gorham for the Intergovernmental Advisory Commission.)

LD 1713 – Resolve, To Direct the State Planning Office To Establish a Working Group To Standardize Accounting Standards at All Levels of Government. (Reported by Rep. Barstow of Gorham for the Intergovernmental Advisory Commission.)

LD 1714 – An Act To Increase Staffing for the Intergovernmental Advisory Commission. (Reported by Rep. Barstow of Gorham for the Intergovernmental Advisory Commission)

Taxation

Room 127, State House, 1:00 p.m.

Tel: 287-1552

LD 1844 – An Act To Amend the Laws Governing the Excise Tax on New Automobiles. (Sponsored by Rep. Schatz of Blue Hill; additional cosponsors.)

Thursday, January 19

Natural Resources

Room 214, Cross State Office Building, 1:00 p.m.

Tel: 287-4149

LD 1802 – An Act To Sustain Good Local Planning Practices. (Emergency) (Sponsored by Sen. Edmonds of Cumberland County; additional cosponsors.)

LD 1768 – An Act To Prevent Motor Fuel Spills from Aboveground Storage Tanks That Have Underground Piping. (Sponsored by Sen. Cowger of Kennebec County; additional cosponsor.)

Taxation

Room 127, State House, 1:00 p.m.

Tel: 287-1552

LD 1739 – An Act To Clarify the Taxable Status of Lobster Traps. (Sponsored by Sen. Andrews of York County.)

LD 1796 – An Act To Ensure the Continued Viability of Affordable Housing. (Sponsored by Sen. Perry of Penobscot County; additional cosponsors.)

LD 1797 – An Act To Clarify the Qualifications for the Maine Residents Property Tax Program. (Emergency) (Sponsored by Sen. Sullivan of York County; additional cosponsors.)

LD 1799 – An Act To Exempt Snow Grooming Equipment and Machinery from the Personal Property Tax. (Sponsored by Sen. Davis of Piscataquis County; additional cosponsors.)

Transportation

Room 126, State House, 1:00 p.m.

Tel: 287-4148

LD 1816 – An Act To Clarify the Intent of the Law That Allows Retired Firefighters To Retain Their Firefighter License Plates. (Emergency) (Sponsored by Rep. Jackson of Fort Kent.)

Utilities & Energy

Room 211, Cross State Office Building, 1:00 p.m.

Tel: 287-4143

LD 1736 – An Act To Amend the Charter of the Boothbay Harbor Sewer District. (Emergency) (Sponsored by Rep. Bishop of Boothbay.)

LD 1740 – An Act To Establish the Athens Standard Water District. (Sponsored by Sen. Mills of Somerset County; additional cosponsor.)

LD 1744 – An Act To Create the Washburn Water and Sewer District. (Sponsored by Sen. Martin of Aroostook County.)

LD 1833 – An Act To Change the Charter of the Saint Francis Water District. (Sponsored by Rep. Jackson of Fort Kent.)

RETRO (cont'd)

successful in changing the zoning ordinance to prevent the development of a large retail outlet mall. In both cases the developers were aware throughout the permitting process that there were procedures in motion to change the land use ordinances.

Although citizens infrequently use the initiative process to retroactively impact land use ordinances, the members of the State and Local Government Committee still believe it is necessary to enact legislation preempting municipal home rule authority in order to reach down and eliminate the possibility. Not only is the Committee fully supportive of the change, some members believe that by tying the hands of municipal government the Legislature is doing municipalities a welcome favor. Thanks to the Legislature, they say, municipalities will not have to make any hard decisions regarding the citizen's initiative process.

From a staff perspective, we find this limitation on municipal authority disturbing. As provided for in the rule of construction under Title 1, section 302, both the municipal governments and the

state government have the right to apply rules or standards or laws retroactively in order to ensure the appropriate result. After the implementation of LD 1, much of which was accomplished retroactively, municipal officials are well aware of the Legislature's use of that tool. The amendment to LD 1481 seeks to overturn that right for municipal government, only. A clear double standard.

The State and Local Government Committee will be voting on this issue next week. If you would like to share any comments or concerns about this new development on LD 1481, please feel free to e-mail Kate Dufour at kdufour@memun.org.

HARBOR (cont'd)

the town felt it was reasonable to decline.

However, the individual was aware of Title 38 MRSA §1's mandate and insisted that the Town must appoint a harbormaster. Otisfield contacted MMA's legal staff to see if the town was mandated to appoint a harbormaster just because one individual requests it. MMA said the law required it.

However, there is some confusion in

the statutes. Title 12, which governs internal waterbodies (among other things) has a provision related to the appointment of harbormasters. It states that towns on internal waters *may* appoint a harbormaster. There is no mandate to appoint a harbormaster upon the request of one individual in Title 12.

Title 38, however, does not distinguish between inland and other water bodies. Thus, MMA's legal interpretation has been that the mandate in Title 38 applies to inland towns, despite the language of Title 12.

LD 1697, which was submitted on behalf of the Town of Otisfield, addresses this issue. The original bill would have eliminated the mandate for all towns, coastal and inland. However, several groups want the mandate of one-person-one-harbormaster to exist for coastal communities. Groups such as the Harbormasters Association and two state agencies, the Department of Marine Resources and the Bureau of Public Lands, each felt that coastal towns must have this employee.

A compromise was proposed where the mandate will be repealed for internal waters but will be maintained for coastal waters. It appears that many members of the Committee support this compromise.