

MMA/Chamber's LD 1 Analysis Almost Ready

For the last couple of weeks, the Legislature has been absorbing and discussing a report commissioned by the State Planning Office on the first-year impacts of the governmental spending limitation systems established by LD 1. The principal author of the report is University of Maine Professor of Economics, Todd Gabe.

The report generally describes LD 1 as a success story, working to restrain the growth of government spending at all levels. For example, although the state government appropriations were capped by LD 1 at a growth factor of 3.11%, they only grew 1.2% according to the SPO report. Although the municipally-related property tax commitments were capped at 4% according to the report, they also grew only at the rate of 1.2%. The SPO/Gabe report describes the schools' spending limitation performance by noting that although overall school spending was over the "EPS"-based school funding model, it only exceeded that model by 3.4%.

Next week a second, independently researched LD 1 study is scheduled to be printed and available for distribution. This second report was produced as a collaborative project by the Maine Municipal Association and the Maine State Chamber of Commerce, and its principal authors are Chamber and MMA staff. This second report on LD 1 and the SPO/Gabe report will include many shared findings, but there also will be differences. The differences occur because the Chamber/MMA report draws upon additional data that were not included in the SPO/Gabe analysis.

The reason for drawing additional

information into the Chamber/MMA LD 1 study is to present a more complete review of the effect of LD 1 on Maine's overall tax burden, the reduction of which is LD 1's paramount goal.

The SPO/Gabe study did a good job of identifying the level of compliance of state, school, municipal and county governments within the definitions and parameters of LD 1. The Chamber/MMA study covers that same ground, and then goes beyond the strict "within-LD 1" analysis in order to account for certain revenue sources and accounting changes. It is the view of the authors of the Chamber/MMA report that the accounting changes and revenue sources should at least be recognized if the effort is to track actual spending growth on an apples-to-apples basis, and if the effort is to try to make sure all tax revenue is accounted for in the measure of tax burden.

For example, there were some so-called "transition" funds that flowed to many schools but were not included in the strict analysis of school spending compliance with the EPS-based spending limits. LD 1 did not require those transition funds to be included when each school measured its budget up against the EPS standard, so the schools were following the law when the transition funds were not included in the local benchmark. However, for the larger purpose of calculating real compliance with the spending benchmark system for the schools, it makes perfect sense to at least recognize those transition funds.

The same type of data from outside the boundaries of LD 1 allows for reasonable but alternative approaches to understanding the LD 1 impacts on other levels

of government as well. None of this expanded analysis is done to discredit LD 1 in any respect or the good faith efforts at all levels of government to both administer and comply with the spending limits. It is, rather, an attempt to make sure that for this first year out, we have as thorough a baseline analysis as possible so that all the follow-up analysis in subsequent years can truly and accurately measure our progress.

The final draft of the Chamber/MMA LD 1 study is undergoing final proofing and should be available for review by mid-week. Anyone interested in obtaining a copy should call MMA's Laura Veilleux at 1-800-452-8786.

Home Rule Threatened

LD 1481, *An Act to Amend the Laws Governing the Enactment Procedures for Ordinances*, sponsored by Sen. Lynn Bromley (Cumberland Cty.) is now on the Senate calendar. As amended, the bill prohibits municipal government from adopting or amending an ordinance in a manner that would impair the ability of a developer to construct a development project for which he or she has received a permit. The proponents of LD 1481, including the Maine Association of Real Estate Developers, the Maine State Housing Authority, and a strong majority of the State and Local Government Committee, want very much to trump home rule authority. Their principal target is citizens who attempt to utilize the petition process to protect their communities.

When a major development project

(continued on page 4)

Transportation Funding Shortfall

In late November, the Department of Transportation (DOT) sent notices to over 100 municipalities across the state indicating that the construction projects scheduled to take place within their communities in 2006 and 2007 had been deferred. In that communication to the municipalities, the Department stated that a \$130 million Highway Fund revenue shortfall in the FY 06-07 biennium was the cause for the deferral.

According to DOT, one of the reasons for the shortfall in transportation revenue was the result of the way in which the recently reauthorized federal Surface Transportation Act appropriates and distributes revenues to the states. Although under the Act Maine's overall federal allocation has increased, the distribution of those funds will be "back-loaded". The federal funding will not flow evenly over the next 5 years, and Maine will receive larger payments toward the end of the 2005-2009 period, and relatively lighter subsidy over the next couple of years. Unprecedented increases in the cost of construction materials, including petroleum, concrete and steel also contributed to the funding gap, as well as lower-than-expected fuel tax revenues associated with high fuel prices and therefore slower consumption rates.

In order to address the shortfall, the Governor's Capital Transportation Funding Working Group was created. The Working Group includes representatives of the Legislature, the Department of Transportation, the Maine Better Transportation Association, Maine Municipi-

pal Association, Maine State Chamber of Commerce, Maine Turnpike Association, and the Associated Constructors of Maine. The Working Group has been meeting over the last couple of months to develop a plan to address the \$130 million shortfall.

On Tuesday of this week, Senator Dennis Damon (Hancock Cty.) presented the Working Group's findings and recommendations to the Transportation Committee. Although \$130 million worth of projects have been deferred, the Working Group's recommendations focused on finding the revenue to fund \$90 million worth of deferred projects. The Working Group funding target was reduced for two reasons.

First, due to the delays to the projects, the Department will not have the time necessary to fully implement \$20 million worth of projects in the current biennium. Instead, those projects will be funded in the next biennium (FY 08-FY 09). The specific projects that have been pushed to the next biennium have not yet been determined. Second, the Department estimates that changing the way in which the projects are delivered will save an additional \$10 million. These savings can be achieved by reducing treatments, simplifying specifications for certain types of work, and changing policies that allow contractors to completely close sections of road, rather than keep one lane open.

With a \$90 million gap left to fill, the Working Group focused its attention on cash and bonding options. After several meetings and debates, the Working Group recommended that one-third of the shortfall (\$30 million) be funded through cash allocations to be shared equally between the state's Highway and General Funds. The \$15 million Highway Fund allocation would come from the sources already allocated to the Department.

The report does not specify how the General Fund share is to be raised. However, it is important to note that since 1988 Highway Fund revenues have been used to supplement the General Fund during hard times and the General Fund has on occasion supported the Highway

Fund. According to the running tab being kept by the Legislature's Office of Fiscal and Program Review, over the last 18 years the General Fund has provided the Highway Fund \$131.9 million of support, both in the form of cash and bonds, and the Highway Fund has provided the General Fund \$129.5 million in assistance. Over the FY 06-07 biennium, the same time period in which the Department is experiencing a shortfall, the Highway Fund will be providing \$10.3 million to support the General Fund.

The Working Group also recommended that the remaining \$60 million gap be funded through borrowing. The Working Group examined three borrowing mechanisms: general obligation bonds; GARVEE bonds; and revenues bonds. General obligation bonds are issued by the state, require a two-thirds majority vote of the House and Senate and require ratification of the bond by Maine's voters.

Grant Anticipation Revenue Vehicle bonds (GARVEE) allow transportation departments to borrow against future federal transportation revenues in order to finance long-term capital investments. In order to issue a GARVEE bond, legislation must be adopted by a simple majority of the House and Senate. The issuance of a GARVEE bond does not need to be ratified by the people.

Finally, revenue bonds, somewhat similar to GARVEE bonds, allow the state to borrow funds from a third party, such as the Maine Municipal Bond Bank, with a promise to repay the bond through a dedicated source of revenue (i.e. percentage of the fuel tax) or annual appropriation. As is the case with GARVEE bonds, revenue bonds need only a simple majority vote of the House and Senate for adoption. Again, the citizens do not need to ratify the use of a revenue bond.

The Working Group had several debates over how best to approach the bonding issue. At its final meeting, the Working Group members agreed to leave the final decisions regarding the value of the bond and which bonding option to use to the Legislature. However, in order to provide some level of guidance, the Working Group recommended issuing a

(continued on page 3)

Legislative Bulletin

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

Waste Bills Tabled

Last week's bulletin reported that LD 141, *An Act To Ensure Proper Disposal Of Debris and Protection of the Environment*, which in its amended form would prohibit the use of any construction and demolition debris in biomass facilities, was tabled pending action by the Board of Environmental Protection. This week, the Natural Resources Committee tabled a few more waste management bills.

LD 1777, *Resolve, To Direct the Department of Environmental Protection to Consolidate the Management of Solid Waste*, as originally drafted would have folded the policy making functions of the State Planning Office (SPO) into the Department of Environmental Protection. This bill received no supporting testimony from anyone other than the sponsor, Senator Scott Cowger (Kennebec Cty.). At the work session, Senator Cowger offered a concept amendment.

This amendment would scrap the bill and instead establish a "blue-ribbon" commission to study waste management policy in Maine. The group would study issues such as out of state waste, construction and demolition debris, landfill capacity, recycling goals and management strategies Rep. Bob Daigle (Arundel) reasonably questioned the need for this review. He noted that this review was redundant since SPO's five-year Waste Management Policy review will be concluded within a few months. This review included a stakeholder group (the Task Force) of approximately 40 representatives of groups having an interest in waste management. (Note: Several municipal officials participated in this Task Force, as well as MMA staff.)

According to Sen. Cowger, the commission would not be a stakeholder group but a "higher-level" group of legislators and executive branch staff from SPO and DEP, and maybe a few private sector voices.

In a "straw" vote, a majority of the Committee decided to support the idea. What seemed most disappointing to the dozen or so members of the Task Force who attended the work session was that the Natural Resources Committee con-

cluded that a new blue-ribbon review is needed, even before it sees the Task Force report yet.

Lastly, despite the fact that this blue-ribbon commission has just about nothing to do with the original bill, it does not appear that there will be a public hearing to allow members of the public to weigh in on whether the State should spend money on two task forces on waste management in one year.

The bill was tabled pending the conversion of this concept to actual language.

Also tabled was LD 1795, *An Act To Ensure the Long-Term Capacity of Municipal Landfills*. This bill was also filed by Sen. Cowger and it was Sen. Cowger's amendment which was discussed by the Committee. The original bill would have prevented municipal landfills from accepting out-of-state waste. This proposal raised some constitutional concerns in that the U.S. Supreme Court had already ruled that states could not prohibit commercial landfills from accepting out-of-state waste. Today, the Circuit Courts are split on whether states may ban municipalities from accepting out-of-state waste, and the Supreme Court has yet to weigh-in on the issue.

The amended version essentially tries to ban municipal landfills from accepting out-of-state waste, just as the original bill had done but in a more convoluted fashion. The amendment states that any municipal landfill which accepts out of state waste would lose its current exemption from the statutory definition of "commercial solid waste facility." The impact of this language was never clearly explained. It would appear that the significance of this lost exemption is that since new commercial facilities are banned in Maine, the DEP would not be able to issue or renew a permit for and "municipal" solid waste facility that has been deemed a "commercial" facility by the Legislature.

Senator Cowger indicated that the purpose of this language was to accomplish the out-of-state ban goal while not violating the US Constitution. It is not clear that the Legislature can sidestep

the Constitutional issue by simply calling a municipal facility a commercial facility because it accepts out-of-state waste.

No one identified a municipal facility which currently accepts out of state waste. However, there is a proposal in Lewiston to turn over management of the City's landfill to a private operator. This raised concerns that the facility would begin to accept out-of-state waste. City Administrator Jim Bennett testified that Lewiston was going to contractually ensure that this arrangement would not result in any net new out-of-state waste entering Maine. The bill was tabled at the request of Sen. Lois Snowe-Mello (Androscoggin Cty.) and Representative Lillian O'Brien (Lewiston) (who is not on the Committee but attended both the hearing and the work session) pending further work on the Lewiston contract.

Lastly, if you are wondering what was happening with LD 1578, *An Act To Ensure Certain Protections to Communities Hosting Waste-To-Energy Facilities*, that was tabled too.

TRANSPO (cont'd)

\$40 million GARVEE bond and a \$20 million general obligation bond.

Senator Damon concluded his presentation by stressing that the recommendations of the Working Group focused only on the immediate shortfall. Sen. Damon believes that the work to identify sources of revenue for the Highway Fund has just begun and must continue. The Legislature and all interested parties must continue to find avenues for ensuring that the revenues dedicated to the Highway Fund are sustainable and adequate to meet the needs of the Department. If long-term solutions are not found, the Department will regularly be delaying important transportation projects.

Although the members of the Transportation Committee were reserved, some members raised important issues. Rep. Soyna Sampson of Auburn asked if the Appropriations Committee had been involved with the recommendations of the Working Group. Sampson believes, as did some

(continued on page 4)

Identity Theft and Privacy Bill

The Judiciary Committee took testimony late Tuesday evening on LD 1817, *An Act to Protect Access to Social Security Numbers*. The bill as drafted would have prevented any entity, business or government, from using social security numbers for all but three purposes. Those three exceptions are: employment, federally mandated uses, and actually dis-bursing social security funds.

The bill sponsor, Rep. Randy Hotham (Dixfield) indicated that he is very concerned with identity theft and protecting the privacy of Mainers. His concern is that the very widespread use of social security numbers just makes the life of identity thieves easier. He related a personal story of how his spouse's social security number was used, in his opinion carelessly, as an identification number by a university in Maine.

Municipal officials share Rep. Hotham's concerns about identity theft. It is a serious and fast growing crime. However, because it is the most reliable form of identification, municipalities rely on social security numbers for a variety of governmental purposes. Some examples are marriage licenses, death certificates, and the determination of identity in the administration of local welfare programs. Schools use these numbers as do law enforcement. A police officer or a district attorney could not prosecute an identity theft case without access to social security numbers. A literal reading of the proposed bill could block such a use.

Municipal governments were not the only entity concerned with the bill. Representatives of the insurance, banking, credit union and electric utility industries all indicated they relied on social security numbers. Further, representatives of AARP, the Department of Professional and Financial Regulation and Maine Revenue Services also expressed reservations.

Representative Hotham proposed an amendment that would apply the prohibition against using social security numbers to post-secondary institutions. Further, the prohibition would only prevent the institution for using the number as an identification number. The school could

still collect and maintain the number as a condition of enrollment.

However, everyone agreed with the bill's goal of reducing identity theft. One option for the Committee is to restrict access to important documents used by identity thieves. For example, the Judiciary Committee supported Resolve, 2005, Chapter 107, *Resolve, To Study the Accessibility of Birth Certificates and Other Vital Records*.

This Resolve required the Department of Health and Human Services to study the current level of public access to vital records such as birth and death certificates. Vital records are presently treated as "public records" for freedom of access purposes. The public policy issue is whether the public interest in having these documents open to anyone who wants them outweighs the public interest in preventing identity theft.

HOME RULE (cont'd)

is proposed that could significantly alter the nature of a neighborhood or community, this bill would effectively require the municipality to adopt, amend or modify its land use ordinances (and very probably its comprehensive plan) before the permit is issued, or else live with the development as proposed. Amending comprehensive plans and zoning ordinances often takes longer than the time it takes to get a building permit, so LD 1481 would provide a big leg-up to developers when they surprise a municipality with large, unexpected development.

Currently municipalities are authorized (along with state government) to enact their responsive ordinances (or laws) without being under the gun of the permitting deadline, provided the developers have been put on notice that a change in the land-use rules is in the works. LD 1481 would overturn two Law Court decisions on the subject, the most famous of which is the "Fisherman's Wharf" case in Portland, where a citizens' initiative ultimately protected Portland's working waterfront from condominium development.

LD 1481 is targeted toward block-

ing citizen initiatives that attempt to block or influence significant development proposals. It turns out, however, that citizen initiatives can only be limited by local charters and not state law. Unable to shut down just the citizen initiative process, the proponents of LD 1481 decided to limit the authority of all municipal government so they could sweep-in a limit on citizens' rights to petition.

This bill comes out of what can only ironically be called the "Community Preservation Advisory Committee" (CPAC), a permanent sort-of-subcommittee attached to the Legislature. The irony is that CPAC must have a very different sense of "community" than the average municipal official, who holds much closer to the heart the principles of local decision making, rights to petition, and access to community-based decision making. The majority of the members on the State and Local Government, similarly, appear with their support for LD 1481 to be adverse to the core principles of home rule in its purest, citizen-rights form.

The debate on LD 1481 is scheduled to begin in the Senate next week. Please take the time necessary to contact members of the House and Senate and ask them to oppose this bill. Members of the House can be reached at 1-800-423-2900 and members of the Senate can be reached at 1-800-423-6900.

TRANSPO (cont'd)

members of the Working Group, that support from the Committee responsible for monitoring state finances is essential for implementation of the Working Group's recommendations. Sampson also raised a concern with using a GARVEE bond because it would not require a vote of the citizens of Maine to be issued. (Some members of the Working Group also raised this issue.) Rep. Sampson believes that in order to send a message to the people that Maine's Highway Fund is chronically underfunded, the voters of Maine should be included in the solution by being asked to approve the borrowing. Rep. William Browne of Vassalboro echoed that point by raising concerns about financing plans that were dependent on future state revenue.

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, February 6

Appropriations & Financial Affairs

Room 228, State House, 9:00 a.m. (all day)

Tel: 287-1316

LD 1968 – An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2006 and June 30, 2007. (Emergency) (Governor's Bill) (Sponsored by Rep. Brannigan of Portland; additional cosponsor.)

For more details on the supplemental budget, see <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280020163>

Tuesday, February 7

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1316

LD 1968 – Supplemental Budget Bill.

Business, Research & Economic Development

Room 208, Cross State Office Building, 1:00 p.m.

Tel: 287-1331

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

Labor

Room 220, Cross State Office Building, 1:00 p.m.

Tel: 287-1333

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

Wednesday, February 8

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1316

LD 1968 – Supplemental Budget Bill.

State & Local Government

Room 216, Cross State Office Building, 3:00 p.m.

Tel: 287-1330

LD 1762 – An Act Authorizing the Deorganization of Drew Plantation. (Sponsored by Sen. Raye of Washington County; additional cosponsors.)

Taxation

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

Tel: 287-1552

LD 1965 – An Act To Ensure the Ability of Municipalities to Provide Assistance to Their Citizens. (Emergency) (Sponsored by Sen. Nutting of Androscoggin County.)

Thursday, February 9

Appropriations & Financial Affairs

Room 228, State House, 1:00 p.m.

Tel: 287-1316

LD 1968 – Supplemental Budget Bill.

Education & Cultural Affairs

Room 202, Cross State Office Building, 1:00 p.m.

Tel: 287-3125

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

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.)

Utilities & Energy

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

Tel: 287-4143

LD 1708 – An Act To Allow the Buckfield Village Corporation To Be Dissolved and Combined with the Town of Buckfield. (Emergency) (Sponsored by Rep. Hanley of Paris.)

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

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Education & Cultural Affairs

LD 1988 – An Act To Raise the Debt Limit of the City of Brewer High School District. (Sponsored by Rep. Fisher of Brewer; additional cosponsors.)

This bill would amend the private and special law that established

the City of Brewer High School District to increase the district's debt limit and clarify certain property conveyance and financing authorities.

Taxation

LD 1989 – Resolve, Directing the State Board of Property Tax Review To Accept and Review the Appeal Filed by the Town of Palermo. (Emergency) (Sponsored by Sen. Weston of Waldo County; additional cosponsor.)

This resolve requires the State Board of Property Tax Review to hear the appeal filed by the Town of Palermo on December 8, 2005 regarding the 2006 valuation of the town as determined by Maine Revenue Services. Although an appeal was filed by the town, it did not contain a sworn affidavit and was sent to Maine Revenue Services instead of the State Board of Property Tax Review.