

Legislature Recesses for Three Weeks

The Legislature adjourned for a three week break very early Saturday morning after enacting mandatory increases to starting teachers' pay (LD 1381) and the bill that would prospectively repeal most personal property taxes in Maine (LD 2056).

Less offensive than the printed bill, it was the Taxation Committee's version of LD 2056, the prospective repeal of personal property taxes, that was given overwhelming support in both House and Senate on Friday evening.

On much closer votes, LD 1381, the bill that would require starting teachers to receive at least \$27,000 in pay over the next fiscal year (FY 07) and \$30,000 in pay over the following fiscal year (FY 08), was also enacted into law on Friday night. Although the differentials between actual pay and mandated pay will be covered by the state for the first two years under the terms of LD 1381, it is the long-term impacts the legislation creates for school budgets and teacher negotiation procedures that concerns local officials.

The Legislature is now scheduled to reconvene on May 22 for a three day conclusion to this long-extended "short" second legislative session. The municipal issues that are still on the table are:

The Taxpayers' Bill of Rights (TABOR). Whether the Legislature will have to deal with TABOR (LD 2075) depends on a ruling by the Maine Supreme Judicial Court that is scheduled to be handed down by the end of this week. The issue is whether the proponents of the TABOR-style spending and tax limitation initiative submitted all the required signatures by the statutory deadline, where a few boxes of the necessary signatures were actually submitted to the Secretary of State a day late. The Superior Court ruled

that the statutory deadline was a firm deadline in fact, and therefore the late-submitted signatures should not have been accepted by the Secretary of State. If the Law Court affirms the decision of the Superior Court, the TABOR initiative will not have to be further decided by the Legislature and will not be placed before the voters on November 7th. If the Law Court reverses the decision of the Superior Court, the Legislature will have to vote on the TABOR initiative when it reconvenes on May 22.

Restrictions on citizen initiatives. LD 1481 is one of the most controversial

bills of this legislative session. It has been written about extensively in previous issues of the *Legislative Bulletin* and its current status is described in more detail below. In essence, the bill imposes a constraining 75-day time limit on the rights of citizen groups to petition for ordinance changes that may impact pending development. The most recent development around LD 1481 is the revelation that the intention of the bill is to compel off-schedule referendum elections whenever they might need to be held by the

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Fate of Ordinance Bill Undecided

Prior to adjourning for its three-week recess, the Legislature was unable to act on LD 1481, *An Act to Amend the Laws Governing the Enactment Procedures for Ordinances*. As initially supported by the House and Senate, LD 1481 would prohibit municipalities from nullifying or changing a land use permit through the amendment or repeal of an ordinance 75 days after the permit had been issued.

Although on Thursday of last week (April 27th) it appeared that LD 1481 would be enacted by the Legislature, final action on the bill was delayed in order to provide the time necessary to address a mandate concern regarding the scheduling of special elections.

Under existing law, municipal officials determine when an election on a petitioned ordinance will be scheduled. There are a number of factors that need to be considered before scheduling an election, including costs, voter turnout, en-

suring the necessary time period for impact analysis and voter education, whether other referenda have just been held, etc. In order to ensure participation and to save the cost associated with holding special elections, the municipal officers generally schedule an election on a significant or controversial petitioned issue at the same time as the regular town meeting, November election or June primary (if scheduled).

Legal experts who have reviewed LD 1481 believe that as drafted the bill will compromise the municipal officers' discretion to determine when an election on a petitioned ordinance amendment is scheduled. At first blush, LD 1481 provides that if the citizens fail to convince elected municipal officials to hold an election within the 75 day limit, then the citizens lose the right to impact an issued

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terms of LD 1481. In other words, it is the intention of the bill to mandate off-schedule elections on the local level, at considerable local expense. Because those intentions have never been clearly expressed within the bill itself, LD 1481 has yet to be properly designated at a state mandate. If you are concerned about the Legislature enacting a law that will mandate the scheduling of out-of-synch special elections so that they will oftentimes have to be held at the time of greatest possible local expense and lowest possible voter turnout, you should be expressing those concerns to your legislators over the course of the next three weeks.

Highway Funding. Included as part of the supplemental Highway Fund budget (LD 1974) is a controversial proposal seeking to fund part of the existing \$90 million Highway Fund budget gap with a \$60 million bond to be paid for with future federal funds. The bonding proposal has been criticized as being unfair because some legislators believe that the

negotiations on the General Fund budget, which provided \$15 million in revenue to address the Highway Fund gap, were contingent on the fact that no bonds would be issued this year. Due to the controversy over the bonding proposal, the Legislature was unable to enact the supplemental Highway Fund. The Legislature will resume its negotiations on the Highway Fund budget gap when it returns on the week of May 22nd.

With the exception of the final report on these three legislative actions, a complete wrap-up of this legislative session, including descriptions of all enacted legislation affecting municipal government, will be provided in the May issue of the *Maine Townsman*.

FATE (cont'd)

permit. Legal experts believe that the courts would find the failure of the municipal officers to hold an election within the time limit "unreasonable", thereby mandating that the municipal officers schedule and hold an election within that 75-day period, a service municipal officials are not currently required to

provide.

For example, if the 75-day period ends on Halloween, LD 1481 would require the referendum to be held in late October even though the regular November election was just days away.

From the MMA staff perspective, we believe that LD 1481 does constitute a mandate. This new legal opinion makes it clear that in order to honor the intent of LD 1481, which is to provide citizens the opportunity to challenge an issued permit through an ordinance amendment, the municipal officers will be mandated to hold elections within the 75-day limit.

If you are concerned with the special election consequences of this bill, we encourage you to contact your legislators and ask them to oppose LD 1481.

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