Legislative BULLETIN

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Committee Amends "Evergreen" Labor Bill

Under current law, when a public-employee labor contract expires and a subsequent labor contract has not been executed, the labor-management relationship is governed by a partial extension of the expired contract that is known as the "static status quo". The term "static" differentiates the status of the expired contract from its "dynamic" alternative.

Under "static" status quo, the expired contract remains in effect in its basic construction, but the salary and benefit provisions are frozen so that employees are not entitled to step wage increases or other automatic wage increases upon the expiration of the contract until a subsequent contract is negotiated and ratified. Under the "dynamic" alternative, the expired contract would continue in full force and effect until a new labor contract is executed, as though the contract had never expired.

On March 24th, a bill was presented to the Labor Committee that would change current law. LD 1123, *An Act To Promote Stability in Labor Relations*, sponsored by Rep. Robert Duplessie (Westbrook), would make expired public-sector labor contracts subject to a dynamic rather than static status. The so-called "evergreen" bill was written to affect municipal and county labor contracts, University of Maine labor contracts, and Judiciary branch labor contracts. The bill would not affect the ongoing status of expired labor contracts between the State and its executive branch employees. Setting politics aside, it is not clear why this proposed change, if it's such a good idea, would not be applied to all public sector employees across the board.

MMA opposed LD 1123. There are reasons why labor contracts have fixed durations, not the least important of which is to re-evaluate the terms and value of the contract in the context of current market conditions. The rights and responsibilities of both management and labor to engage in the negotiation and ratification of a subsequent contract would be completely upset if expired contracts never expired. By requiring labor contracts to be fulfilled even after the contract expires, LD 1123 would effectively require municipalities to pay wage increases that were neither collectively bargained for nor budgeted for by the municipality. Incentives for both party's to settle the contract would be diminished.

This week, by an 8-5 party-line margin, members of the Labor Committee voted to support an amendment to LD 1123 which will soon be making its way to the House and Senate for floor debates and votes. As amended by the majority report, LD 1123 would no longer go to the extreme of substituting the dynamic approach with the "static" approach. Instead, it would expand the existing list of management actions that would be subject to employee grievance procedures after the expiration of a labor contract.

Under existing law, the employees covered by the expired contract are allowed to file grievances only with respect to disciplinary actions. Some public sector labor contracts expressly

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Restricting Growth Ordinances

Last Tuesday evening, the Natural Resources Committee heard LD 1535, *An Act Making Improvements to the Laws Regarding Local Land Use Ordinances*. The bill, a preview of which was offered in last week's *Legislative Bulletin*, is a small section of a much larger work authored by Professor Orlando Delogu of the University of Southern Maine Law School. It was presented by the Chairman of the Natural Resources Committee, Representative Ted Koffman (Bar Harbor).

The bill contains over a thousand new words of law outlining various hoops that municipalities should be forced to jump through in order to adopt growth management ordinances. Growth rate ordinances regulate the pace of development by establishing a maximum number of permits that will be issued annually. Some municipalities in York County have used these ordinances for 30 years. Thus, creating a new regulatory maze that municipalities must navigate should be carefully scrutinized by the Legislature.

Further, for all its details and provisions, the bill does not resolve the issue about how and when towns may adopt these ordinances. It calls for more rulemaking, to be conducted by the State

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GROWTH (cont'd)

Planning Office.

The only proponents providing written testimony were the State Planning Office, former State Planning Office Director Professor Evan Richert (as Chairman of a group called "GrowSmart Maine") and the Audubon Society. The State Planning Office raised a number of points.

The first point SPO raised was that rate of growth ordinances have been found unconstitutional in "a number of states." Therefore, they need to be "approached carefully." SPO neglected to point out that Maine, as of now, is not one of those states. Nevertheless, a Maine town would be well advised to consider constitutional issues before it adopts any ordinance, not just rate of growth ordinances.

What is confusing to municipal officials is to hear this concern raised by SPO. SPO is not charged with reviewing local ordinances for consistency with the Constitution, a task for which they are not especially qualified. They are planners, not attorneys. SPO is charged with reviewing ordinances for consistency with the Growth Management Act.

SPO's second concern was that growth management ordinances contribute to higher real estate prices by restricting the supply of housing. While that may sound reasonable, for all its resources and research, SPO provided no evidence to substantiate this claim. Before the Legislature sets about restricting the ability of towns to adopt ordinances that have existed for decades, it could reasonably expect proponents to provide credible supporting research. Given that the SPO, Professor Richert and Professor Delogu are the primary proponents of this legislation, one has to wonder why there is no data to support their claim.

SPO's third and fourth claim was that growth management ordinances contribute to sprawl. That is, if a builder is unable to get a permit in a town with a rate of growth ordinance, the developer will seek a permit in a neighboring town. This is a somewhat odd objection given their second concern about affordability.

Unlike the affordability argument, this "sprawl" argument asserts that housing supply is in fact not restricted. This argument asserts that housing is being built in neighboring towns. Thus, if the housing is being built (albeit in a neighboring town) there should not be an "affordability" concern. In fact, the cost in the neighboring town may be less than in the town with growth ordinance. Who knows?

SPO should have chosen one of these two objections, affordability or sprawl, and provided data to support that one claim, rather than make inconsistent arguments to advance its cause.

Because of SPO's perceived problems with growth management ordinances, the state agency offered its ideas about how rate of growth ordinances should be reviewed. This was not the first time the Legislature had heard SPO's views about how growth ordinances should be reviewed. In 2001, SPO submitted a bill (LD 1643) which outlined a 6-part test that towns should meet before they adopt a rate of growth ordinance.

That bill was rejected by the Legislature. Regardless of the rejection, SPO began using this 6-part test to guide its review of comprehensive plans. This review (which SPO characterizes as "stringent)" has led to several municipal comprehensive plans being found inconsistent and thus jeopardized the ability of these towns to have any zoning ordinances at all.

Also speaking in favor of the bill, but not providing written testimony, were the Maine Realtors Association, the Maine Real Estate Developers Association, and the Maine State Housing Authority. The common argument is that rate of growth ordinances impede the real estate industry in southern Maine. One is compelled to ask whether the real estate developers and realtors of York and Cumberland Counties are the industry in Maine that is truly in need of legislative protection, especially given their press releases about the booming real estate market in the southern part of the state.

MMA testified in opposition to the bill. The views of municipalities regarding growth ordinances can best be summarized by the views of the highest court in Maine, the Supreme Judicial Court, in a case concerning these ordinances in 2001:

"Indeed the [rate of growth] ordinance would appear to be the very kind of municipal planning tool that the Legislature had in mind when it set forth its goals for the Planning and Land Use Regulation Act. It signifies the Town's attempt to 'effectively plan for and manage future development,' and satisfies the State's goal for allowing 'orderly growth and development'. The stated goal of allowing municipalities flexibility in establishing comprehensive plans is intended to encompass growth limitation ordinances of this sort."

Municipalities respect the Legislature's concern with the use of local land use controls. For that reason, MMA proposed an alternative approach which allows the state to guide the municipal adoption of growth ordinances while still respecting the municipal perspective. The central element of the approach is that the guidance should be statutory rather than allowed to exist only in the unclear world of SPO's reviews of comprehensive plans. One of the biggest problems now is that towns just can't get a straight answer on what they need to do to satisfy SPO. By putting clear rules right in the statute, the Legislature could solve that problem.

MMA proposes a four-part test which ensures that the State's interests are protected. First, towns must be growing; Second, towns must have comprehensive plans; Third, towns must accept their "fair share" of growth; and, Fourth, towns must revisit and recalculate their ordinance regularly. The actual proposal before the Natural Resources Committee articulates these standards in more detail. We hope the Committee and the Legislature approves of this approach.

Legislative Bulletin

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

Homestead Exemption Would Apply to Cooperative Housing

The Taxation Committee held a public hearing this week on a bill that would open up the benefits of a homestead tax exemption to the people who own shares of cooperative housing.

LD 1552, *An Act To Make Owners of Cooperative Housing Eligible for the Homestead Exemption,* is sponsored by Rep. Charles Crosby (Topsham). LD 1552 would provide the homestead exemption benefit to the people living in cooperative housing projects such as the Highland Green development in Topsham.

Under current law, in order to be eligible for a homestead exemption, the "homesteader" must be exposed to a direct property tax obligation. Shareholders in cooperative housing projects do not qualify. The housing corporation is responsible for paying the property taxes on the entire development, rather than each resident for his or her "shares". Although the individual shareholders live in and have certain legal rights to occupy homes within the development, they do not possess separately deeded real estate interests in their homes and their individual properties are not separately assessed for real estate taxation purposes.

As a matter of practice, the people who live in residential cooperative housing are billed by the cooperative for their prorated share of the total property tax bill and believe they should be entitled to the homestead exemption. A number of legislative proposals to somehow provide the homestead benefit to these coop shareholders have been submitted to the Legislature over the last five years.

LD 1552 essentially has three components.

First, it would require a coop shareholder to meet all the conditions of being a "homesteader" in order to receive the benefit, except the actual ownership of the home. For example, the property must be the person's principal residence, and it must have been in the possession of the person for at least a year previous to the date of assessment.

Second, as the bill is being amended by the Committee, it would require that the assessed value of each shareholder's cooperative property be separately identified, apparently by the municipal assessor. Because cooperative property can currently be assessed as a single property account without separately assessing each home within the entire development, this provision would establish LD 1552 as a state mandate.

Third, LD 1552 would require the parent housing corporation to distribute the homestead property tax benefit to each individual "homesteader" within the coop. It is entirely unclear how that requirement would be enforced except by the shareholders themselves, who could sue the corporation if any shareholders were being shortchanged.

In addition to identifying the bill as a mandate, a state fiscal note is attached to the bill to reflect the expanded population of "homesteaders" eligible for the benefit. With the advent of the new $13,000 / 50% reimbursed homestead exemption enacted by LD 1, the final impact will be shared by both the state and the affected towns, where ever these properties are located.

All of this is especially complicated with respect to the Highland Green development, the residents of which are the driving force behind LD 1552. This particular development is subject to a Tax Increment Financing agreement with the Topsham, so some percentage of the taxes paid by the corporation are returned to it by the town to help finance the overall development. The reduction of taxes paid to the town by the development will result in a reduction in the financial support for the underlying development, which will likely result in an increase in the development costs that have to be borne by the corporation from alternative sources, which could easily result in an increase in the charges to the residents of the housing project. Maine's tax policies are being extended to places where they begin to cannibalize themselves.

In this form, the Committee appears prepared to vote LD 1552 "ought to pass as amended".

EVERGREEN (cont'd)

authorize expanded grievance rights beyond the disciplinary limit, others do not. Under the terms of the amended version of LD 1123, employees would be entitled to "grieve" any management decision that is believed to violate the "static" contract. Scheduled wage increases would remain frozen until the execution of the subsequent labor contract, but all other decisions made by management would become "grievable". Examples of management actions that would become subject to grievance procedures under LD 1123 would include job classification decisions, overtime scheduling assignments, allegations regarding the working conditions, claims of hostile work environment, etc.

The opening up of the entire "static" contract to grievance procedures is less onerous a burden and less disruptive to the labor-management relationship than the dynamic status LD 1123 would impose in its printed form. Just as clearly, however, the Committee's amendment to LD 1123 constitutes an unfunded mandate on local government. By requiring local government to modify its activities (engage in an expanded number of grievance procedures) in a way that will necessitate the additional expenditure of local revenues (increased administrative expenditures and arbitration costs), the amended version of LD 1123 meets the constitutional definition of a state mandate to a tee.

A Permanent Freedom of Access Committee?

Wednesday was "freedom of access day" for the Judiciary Committee. Six different bills were heard that touch upon the general topic of the freedom of access statute, also referred to as Maine's "Right to Know" law. The bills were: LD 301 – establishing an Access Advisory Committee and a Freedom of Access Ombudsman within the Attorney General's Office; LD 466 – allowing attorney's fees to the prevailing party in litigation regarding access to public records; LD 467 – protecting the home contact information for municipal (and other) government employees; LD 1115 – protecting the identification of certain persons in the state's Address Confidentiality program by shielding their names from voter lists; LD 1202 – calling for a study of the need to potentially tighten-up the rules regarding access to vital records such as birth certificates, and, LD 1275 – protecting the email addresses of members of the public if those email address are in the possession of the government.

There was no opposition or dissent expressed for LDs 467, 1115, 1202 and 1275. They are common sense ideas and municipalities support each of them. The only opposition that was raised was to LD 301 and LD 466. The opposition to LD 466, the attorney fee legislation is pretty easy to understand and this article will focus instead on LD 301.

LD 301 was recommended by the *Committee to Study Compliance with Maine's Freedom of Access Laws*. The Committee produced a report which contained a detailed account of the discussions and recommendations of its membership. This "Freedom of Access" Committee, established last session by the Legislature, was the result of the work of the Maine Freedom of Information Coalition. The Coalition is a private group of parties interested in access to government records.

While the Coalition is described as "broad-based", it appears to be press-dominated. Its current president is Mal Leary of the Capitol News Service and the Society of Professional Journalists, its vice-president is Judy Meyer of the Lewiston Sun Journal and the Maine Publishers Association and its Secretary is Jeff Ham of the Portland Press Herald and the Maine Press Association.

In 2002 the Coalition conducted an unannounced state-wide operation (self-styled as an "audit") to request various public records. The "audit" committee of the Coalition was composed of, Judy Meyer, Jeff Ham, Irwin Gratz (Maine Public Radio) and Shannon Martin (a journalism professor).

Three individuals, all members of both the Coalition and the Freedom of Access Committee, provided testimony in support of the bills. They were basically the only proponents of LDs 301 and 466 at the public hearing. The three individuals were, Judy Meyer, Jeff Ham and Mal Leary.

The testimony in support of LD 301, which created an ongoing advisory committee and an ombudsman within the Attorney Generals Office, was pretty general and of a "big picture" nature. That is, it stressed the importance of access to public records and the need for continued "oversight" and "review" of access issues. It was short on the details of how the bill would actually accomplish the goals outlined.

MMA testified against this bill. MMA did not object to the creation of an Ombudsman position within the Attorney General's Office. However, municipalities believe that the Attorney General rather than the Legislature should make this decision. A representative from the Attorney General's Office indicated they would be happy to establish the position, to the extent funds are available.

MMA's primary objection to the bill was its creation of the permanent advisory committee. The bill contains a great deal of language that requires dissection. Once that dissection occurs, what is apparent is that the primary function of the advisory committee is to shadow state and local governments in the course of their operations and "review" each when they don't do what the advisory committee likes. MMA characterized this function as "nagging" the government into doing what it should.

There was some discussion as to whether this "nagging" could not be more positively characterized as "advise and assist". The question was asked: Isn't this Freedom of Access Committee similar to the Criminal Law Advisory Commission?

It does not appear so. Experts typically populate advisory commissions, such as the Criminal Law Advisory Commission (CLAC). The CLAC statute states that its Committee will have 9 members, appointed by the Attorney General, who shall "be qualified by reason of their experience in the prosecution or defense of criminal cases or by reason of their knowledge of the criminal law." There is no apportionment of where these 9 members shall come from.

LD 301, in creating the Freedom of Access Advisory Committee, reads more like a stakeholder group. There would be 13 members on this Committee. No mention is made of the members' qualification, only of their affiliation. That is, one must "represent municipal interests" another must represent "press interests" etc. "Representing interests" is stakeholder group language, not advisory commission language.

MMA supports the creation of stakeholder groups and believes they serve a very important function in distilling issues and resolving disputes without consuming public hearing and work session time. However, stakeholder groups typically are given a clear assignment for a short period of time. This bill creates an ongoing group with a broad and ill-defined range of duties.

Since the composition and purposes of the proposed advisory committee were more policy and opinion oriented rather than expert and technically oriented, municipal officials felt there was no need for the state to create this permanent group in the law. If interested parties would like to get together and review and comment on issues involving freedom of access, MMA would support that effort and hope to participate.

GA for Burials Discussed

On April 25, the Health and Human Services Committee held a public hearing on LD 1036, *An Act to Amend the Laws Governing the Burial or Cremation of Certain Persons*. Senator Arthur Mayo of Sagadahoc County submitted the bill on behalf of the Maine Funeral Directors' Association to address a concern over the amount of time municipal General Assistance (GA) administrators have to determine whether or not the municipality will be responsible for funding the cost of an individual's burial or cremation.

Under existing law, municipalities have a maximum of 10 days in which to make a decision over funding a burial or cremation. During that time, GA administrators can review the assets of the decedent's estate as well as he financial capacity of any relatives that could assist the property taxpayers in paying for the burial. Currently that pool of relatives includes parents, grandparents, children, grandchildren and siblings. As proposed in LD 1036, the amount of time municipalities would have to respond to a funeral director's request would be reduced to just 48 hours. In addition, LD 1036 would limit the relatives of the decedent that could be asked to help cover the burial expenses to just parents and children.

While Sen. Mayo suggested that the number of days GA administrators would have to determine whether the municipality would be responsible for funding a burial could be amended from the proposed 2 days to 4 or 5 days, he strongly believes that change is necessary. As a retired funeral director, Sen. Mayo said there are problems associated with delaying a decision and not moving to embalm or cremate a body. While he admits that it is not often that a municipality takes the full 10 days to respond to the request, it is important that the GA administrator act as quickly as possible. He believes that amending the law will result in more timely decisions. Sen. Mayo also believes that the pool of relatives that could be held financially responsible for paying the cost should also be amended because the definition of "family" has changed over time. Close-knit multi-generational families that live together or interact frequently are a thing of the past. He believes it is unfair to hold family members who are no longer in touch with each other accountable to pay for the funeral expenses of their relatives.

Representatives from the Funeral Directors' Association and Legal Services for the Elderly provided testimony in favor of LD 1036. The funeral directors believe that 5 business days would be an appropriate number of days for the municipality to act. They also believe that by restricting the list of potentially responsible relatives, municipalities would not need as much time to make a determination.

The Legal Services for the Elderly chimed in by suggesting there was no reason that an efficiently run town would need 10 days to respond to a request, and that a rapid response was necessary to ensure "public safety".

The Maine Welfare Directors Association (MWDA) and MMA testified in opposition to the bill, focusing on its unintended consequences. Biddeford's welfare director Vicky Edgerly, speaking on behalf of the MWDA, stated that although the intent of the bill was to ensure that funeral directors get a more rapid response from the municipality, it is possible that reducing the number of days a GA administrator had to respond to a request could have the opposite effect. If the GA administrator does not have the time to properly research and determine if the municipality is responsible for the cost, the administrator may have to deny eligibility. GA administrators understand that time is a factor in these cases, and have no interest in dragging out the process. However, time is needed to insure that the deceased did not leave behind any savings or funeral accounts. It takes time to get this type of information from banks and nursing homes.

In addition to their concerns over the unintended consequences of denied requests, municipal officials raised concerns over the proposed bill because it could lead to hurried decisions. The state/municipal GA program is a resource of last resort for people in need. Although the provision of GA services is a responsibility that municipal officials take seriously, there is also the realization that the program is funded with local property tax revenues. With respect to burial assistance, municipal officials do not think it is unreasonable that GA administrators are provided the time necessary to research who is liable for the cost from the existing pool of relatives, considering that property tax dollars are used to pay the expense.

Many of the questions from the members of the Committee focused on the average cost to the state and municipality for funding burials and cremations and the average amount of days GA administrators take to render a decision. According to the Department of Health and Human Services, the GA programs across Maine pay for approximately $200,000 worth of burials and cremation each year. The question regarding the average number of days GA administrators take to make a decision is not easily answered. In brief discussions with the GA directors attending the public hearing, decisions are typically made within 2 to 3 days, but in some cases more time is necessary. Although there have been some instances in the past where the full 10 days were used, it is not a common practice.

The chairs of the Health and Human Services Committee asked that the funeral directors, GA administrators, Department of Health and Human Services and MMA get together to try and resolve the issues raised in the bill and by the Committee by next Monday. In hallway discussions with the interested parties it was determined that not enough time was being provided to carefully study the issue and report back to the Committee. It is expected that the Committee will be asked to carryover the bill into the second session to allow the interested parties to meet over the summer and fall and report back findings and recommendations to Committee in January of 2006.

LEGISLATIVE HEARINGS

Monday, May 2

Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125
LD 1349 – An Act To Encourage Neighborhood Schools and To Minimize Sprawl Caused by School Siting. (Sponsored by Rep. Piotti of Unity; additional cosponsors.)

Legal & Veterans Affairs
Room 437, State House, 1:15 p.m.
Tel: 287-1310
LD 1026 – An Act To Provide Uniform Voter Verification and Recount Requirements for Voting Machines. (Sponsored by Rep. Pingree of North Haven; additional cosponsors.)

LD 1266 – An Act To Ensure Integrity in the Voting Process. (Sponsored by Sen. Edmonds of Cumberland Cty; additional cosponsors.)

LD 1388 – An Act To Amend Maine Election Law by Instituting a Statewide Vote-by-mail System. (Sponsored by Rep. Glynn of South Portland.)

LD 1436 – An Act To Encourage a Vote-by-Mail System in Maine. (Sponsored by Rep. Glynn of South Portland; additional cosponsor.)

LD 1514 – An Act To Enhance the Transparency of Maine's Elections. (Sponsored by Rep. Pingree of North Haven; additional cosponsors.)

Tuesday, May 3

Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125
LD 1407 – An Act To Allow Municipalities To Offer Subsidies to Parents To Send Their Children to Other Schools. (Sponsored by Rep. Daigle of Arundel; additional cosponsors.)

Labor
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333
LD 1570 – An Act To Require Random Drug Testing for Emergency Vehicle Operators. (Sponsored by Rep. Clough of Scarborough; additional cosponsors.)

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552
LD 484 – An Act To Enact the Tax Fairness Act. (Sponsored by Rep. Watson of Bath; additional cosponsors.)

LD 1437 – An Act To Broaden the Sales Tax Base and Lower the Sales and use Tax and Service Provider Tax Rates. (Sponsored by Rep. Percy of Phippsburg; additional cosponsors.)

LD 1587 – An Act To Modernize Maine's Tax Code. (Sponsored by Rep. Dudley of Portland; additional cosponsors.)

LD 1595 – An Act To Rebalance Maine's Tax Code. (Sponsored by Rep. Woodbury of Yarmouth; additional cosponsor.)

Wednesday, May 4

State & Local Government
Room 216, Cross State Office Building, 9:00 a.m.
Tel: 287-1330
LD 1536 – An Act To Reduce Property Taxes by Reforming County Government. (Sponsored by Rep. Merrill of Appleton; additional cosponsors.)

Thursday, May 5

Utilities & Energy
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143
LD 1591 – Resolve, Regarding Legislative Review of Chapter 920: Maine Model Building Energy Code, a Major Substantive Rule of the Public Utilities Commission. (Emergency) (Reported by Rep. Bliss of South Portland for the Public Utilities Commission.)

Friday, May 6

Taxation
Room 127, State House, 10:00 a.m.
Tel: 287-1552
LD 1557 – An Act To Improve the Business Equipment Tax Reimbursement Program. (Sponsored by Sen. Strimling of Cumberland Cty; additional cosponsors.)

LD 1563 – An Act To Amend the Revaluation Process by Municipalities. (Sponsored by Sen. Sullivan of York Cty; additional cosponsors.)

LD 1584 – Resolve, Directing the State Tax Assessor To Adjust the State Valuation for the Town of Wiscasset. (After Deadline) (Emergency) (Sponsored by Rep. Rines of Wiscasset; additional cosponsors.)