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Teachers Want To Negotiate Educational Policy

A 5-hour public hearing filled-out Tuesday afternoon for the Education Committee as it took public testimony on LD 1344, *An Act to Give Teachers a Greater Voice in School Improvement* (sponsored by Rep. Jackie Norton of Bangor). Over a dozen school teachers and teacher union representatives spoke in favor of the bill and nearly 20 school board members, school superintendents, business representatives to the Maine Coalition on Excellence in Education, former members of the State Board of Education, the former deputy commissioner of the Department of Education, and MMA spoke in opposition to the proposal.

Under current law, matters of "educational policy" may not be subject to negotiation in the development of teacher-school board labor contracts. The public policy behind the current law is that the design of the educational program should belong entirely and without compromise to the elected school boards, the citizens who elect the school boards, and the taxpayers who support the local school system. For two reasons, however, it would be inaccurate to suggest that current law leaves the teachers out of the loop with respect to matters of educational policy. First, school boards are currently required to "meet and consult" with the teachers' union on matters of educational policy. Second, school boards are required to bargain with the teachers over the impact of the educational policy decisions that are ultimately implemented.

The spectrum of policy decisions that fall into the category of "educational policy" has been given definition over the years by various court cases. From the teachers' perspective, there are matters that have been defined as "educational policy" that affect the teachers' working conditions, which brings us to the submission of LD 1344.

LD 1344 would open up teacher contract negotiations to matters of educational policy. According to the bill, all matters of educational policy "may" be subject to negotiation, and a few specific matters of educational policy (under current law) would be effectively made subject to mandatory bargaining, including the length of the school year for students, the length and scheduling of the school day for the students, the qualifications of the school personnel who perform teacher evaluations, etc.

The thrust of the teachers' testimony in support of the bill focused on their non-instructional school day. Several of the proponents described how the class work planning time that was formerly provided to them has been replaced by required meetings to deal with the state's Learning Results mandate and the federal No Child Left Behind mandate. Their complaint was that they could not negotiate directly on the issue of scheduled classroom planning time because those scheduling issues directly affect student instruction and are considered "educational policy".

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Casino Bills Abundant

If some members of the Legislature and two special interest groups get their way, blackjack, roulette and video poker could become prolific in the vocabularies of Maine residents. Whether fueled by the success of the citizen initiated petitions forcing two separate statewide referendum votes on gambling or fueled by an interest in stimulating economic growth in Maine, bills addressing gambling and casinos have been popular this session. The seven submitted bills fall into two general categories: 1) bills that seek to legalize gambling and 2) bills that attempt to mitigate the perceived problems associated with gambling and casinos.

Citizen Initiated Bills Of the four bills seeking to legalize gambling in Maine, two were submitted through the citizen initiative process. LD 1370, *An Act to Enact the Maine Tribal Gaming Act*, would authorize the Passamaquoddy Tribe and the Penobscot Nation to open a casino in Maine. According to the bill, the legislative body of a municipality in which the site is located must approve the casino gambling site. The operator of the casino would be required to pay the state an annual fee equal to 25% of the gross revenues of the video gaming machines, 50% of which would be deposited into the Local Government Fund from which municipal revenue sharing is distributed, 40% of which

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Bills to Change Cost-Sharing for State Roads Voted ONTP

This week the Transportation Committee unanimously voted that LD 832, *An Act Clarifying State Financial Responsibility Over State and State Aid Highways* and LD 1392, *An Act to Reform Highway Reconstruction Project Cost-sharing* "ought not to pass".

Both of the bills sought to address an existing Department of Transportation (DOT) funding practice that requires Maine's larger communities to contribute up to 15% of the cost of state principal arterial, minor arterial and major collector road construction projects. LD 832 would have required the state to fund the entire cost of improvements to arterial and major collector roads, unless the local legislative body voted to financially participate in the project. LD 1392 would have brought "equity" to the process by reducing the rate of contribution required by Maine's urban communities and recuperating the lost revenue by requiring all communities with state arterial and major collector roads to contribute to the cost of improvements to those roads.

From the municipal perspective, the problem with the existing DOT cost-sharing arrangement is that the Legislature has never authorized the DOT practice either through statute or rule. Instead, the DOT is authorized by default, or in the absence of legislative guidance, to develop mechanisms for leveraging revenue from municipal property taxpayers in order to fund state arterial and major collector road projects.

Although both LD 832 and LD 1392 provided the Legislature with the opportunity to articulate a position on the existing DOT practice, the Committee instead decided to extend the practice of delegating revenue-raising authority to DOT. Specifically, the Committee will be drafting a letter directing the Department to work with municipalities to create a new cost-sharing practice that, according to Service Center Coalition lobbyist, John Melrose, would "level the playing field" by requiring all impacted municipalities to financially participate in state road construction projects. The Committee will be asking the Department to work with the Service Center Coalition and the Maine Municipal Association to develop and implement, as soon as possible, a practice requiring a local match of up to 7.5% on improvements made to sections of state arterial and major collector roads with posted speed limits of 35 miles per hour.

The positively affected municipalities will be the "urban compact" communities who are currently "required" (without specific authority) to contribute up to 15% of the state road reconstruction projects within their borders. The negatively affected municipalities will be the non-urban compact municipalities with a section of state arterial or major collector road running through them with a posted speed limit of 35 miles per hour or less. DOT will be generating a list of the impacted municipalities. As soon as the list and Committee letter are made available, we will share those documents with all municipal officials.

Legislative Bulletin

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Committee Reconsiders Bill Regarding Ordinance Retroactivity

In the April 25th edition of the *Legislative Bulletin* we reported that a majority (7-5) of the State and Local Government Committee had voted to oppose LD 389, *An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda*. The bill, sponsored by Rep. Ed Suslovic (Portland), would prohibit municipal ordinances or bylaws enacted by citizen initiative or referendum from containing retroactive provisions impacting a land-use development permit that was issued before the enactment of that ordinance or bylaw.

On Wednesday of this week, the State and Local Government Committee met to reconsider its action on the bill. As a result of that reconsideration, the Committee voted "ought to pass as amended" on LD 389 by a margin of 8 to 2. The amendments make two changes to the original bill.

The first amendment prohibits citizen petitions that would initiate ordinance or bylaw changes that have retroactive impacts if the municipality uses a permitting process that includes at least one advertised public hearing. The public policy theory behind the amendment appears to be that if the permitting process involves an advertised public hearing, the general public has access to the process and a citizen initiated petition to reverse the outcome should be prohibited.

The second amendment exempts from that same prohibition on retroactive redress any citizen initiated ordinance or bylaw regulating the disposal of sludge and septage. In other words, even if the sludge permitting procedure involves a public hearing, retroactively effective citizen petitions would be allowed.

Committee Acts on Bills To Give State More Authority Over CATV

The Utilities and Energy Committee recently took action on two bills dealing with cable television – LD 947, *An Act To Create The Cable Television Franchise Board* and LD 222, *An Act Providing For Regulation Of The Cable Television Industry by the Public Utilities Commission*. Each bill sought to add a state-level bureaucracy to the existing procedure for granting franchises to cable TV operators.

Currently, municipalities have sole authority to grant to a cable TV company a franchise to provide cable TV in that locale. The process of granting the franchise can be difficult and complex. Accordingly, some communities, particularly but not exclusively smaller communities, do not negotiate very well and some accept cable companies' first offer. The MMA's Executive Committee recently adopted a resolution to be more proactive in this area, by directing the creation of a cable TV franchising handbook. MMA's recently created ad hoc Cable TV Committee will continue to meet and shape its future as a possible ongoing advisory committee.

An approach that is different from more education and guidance is contained in the two legislative proposals under the Utilities Committee's review. That approach takes the view that some state-level body is needed to protect municipalities.

LD 222 charges the PUC with regulation of basic, or tier I, cable service TV rates. Basic tier are the rates charged for the minimal cable TV package (essentially the major networks, public TV and public access channels). Currently, municipalities have the ability to regulate these rates if they choose. Very few choose to do so because the basic tier is not widely subscribed to and basic tier rates don't rise very much. According to the April 27, 2003 article in the Portland Press Herald, basic tier rates at Time Warner Cable have risen approximately 3% per year for the past 7 years, close to the rate of inflation.

LD 222 mandates that a cable company shall hold hearings to determine if a rate increase or a service change, even if requested by a municipality, is justified. The company must not only hold the hearing, but respond in writing to any complaint, criticism or proposal within 10 days of the hearing. If the cable company moves forward with the increase, any ten customers may request that the PUC intervene and make findings on the rate increase.

Since PUC may not regulate rates, the PUC's intervention is limited to filing a "petition" with the Federal Communications Commission to "stay the unreasonable increase" and to direct the cable company to modify its rate increase to be consistent with the PUC's findings. Petitioning the FCC on increases in the basic rate will generally be pointless. If the modest rate increases of the past seven years at Time Warner Cable are any indication, challenges to basic rates will be rare and unlikely to succeed. Further, if a situation arises where basic rates rise such that regulation were needed, a municipality could get the authority to regulate them itself rather than rely on the FCC. Since Portland has that authority now, its unlikely that basic rates in Maine are going to skyrocket any time soon.

What about rate increases in tiers other than basic? These other tiers include channels such as ESPN and CNN. These tiers are the more commonly subscribed to and the rate increases for these tiers have been much higher and the source for greater consumer complaint. The bill's only problem here is that federal law prohibits the regulation of rates for other than the basic tier.

Not knowing what form the "petition" contemplated by the bill would take, MMA contacted the Federal Communications Commission. According to a representative of the FCC, the FCC can do nothing to stop a rate increase for a tier other than the basic tier. No one can. The FCC representative stated that the bill language of LD 222 is inconsistent with federal law for other than basic service. Thus, the bill will require plenty of hearings, that will lead to PUC findings, that will result in petitions, that will be summarily rejected.

The PUC accordingly opposed the bill because it gives the illusion of regulation without the ability to address the most common consumer complaint – rate increases for other than the basic tier. In PUC's words, LD 222 "would create a level of oversight that does not appear to be necessary to the economic health and safety of consumers in Maine and that would not be particularly effective in dealing with consumers' complaints." Furthermore, PUC researched the potential cost of this bureaucracy, and based upon a similar regulatory framework in Connecticut, PUC estimated that 4 additional staff persons would be needed. The salaries, benefits, overhead, and materials and equipment of four staff persons capable of doing this work would easily cost $400,000 per year.

LD 222, despite these flaws, was "carried over" by the Committee to be reconsidered in 2004 for the supposed purpose of holding MMA's "feet to the fire" to do what MMA has promised to do and has already begun doing. The Legislature's Utilities and Energy Committee indicated it will send to MMA a letter stating its expectations. Since this bill in no way address the process of negotiating franchises by municipalities, its unclear what connection there is between LD 222 and the MMA's work on franchising.

LD 947 goes much further in creating a bureaucracy than did LD 222. This bill would establish a seven-member, governor appointed, state-level franchise board. This board would not be given the authority to grant a franchise, but it would be authorized to deny (or veto) all cable television applications for a franchise or a renewal or transfer of a franchise. This denial would be effective even if the municipality had approved the application.

This seven-member board would

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Increased Dog Licensing Fees Directed to State Agency

The Agriculture, Conservation and Forestry Committee took action on a sweeping animal welfare bill this week. LD 1545, *An Act To Amend the Animal Welfare Laws*, was offered by the Department of Agriculture, Food and Rural Resources. The bill attempts to address a longstanding issue of funding for animal welfare programs, with a focus on state agency funding. An amended version of the bill was passed by the Committee. A related bill, LD 702, also entitled *An Act To Amend the Animal Welfare Laws* and sponsored by the Maine Animal Control Association, was rejected by the Committee.

LD 1545 as proposed had 2 primary provisions affecting municipalities. The first was a requirement that the appointment of all Animal Control Officers satisfy more stringent qualifications, such as expanded criminal background checks, a literacy test and more training. The Committee acknowledged that additional training is always a good idea. Yet, variations in needs and resources from town to town caused the Committee to reject a statewide statutory approach to training. As an alternative, the Department was encouraged to use the power it currently has over certification of ACOs to devise the training programs it feels are necessary. This way, the Department may be able to create different training programs for different areas (i.e. less focus on equine issues for ACOs from large municipalities, more focus in rural communities) without forcing the Legislature to create a one-size-fits-all approach.

The second issue of interest for municipalities, and by far the most difficult one for the Committee, was the issue of funding. The Committee heard a lot of testimony about the inadequacy of funding for animal welfare in Maine. Committee members understand the need for additional funding, but how to raise the funds remains a problem.

The proponents of LD 1545, primarily the Department of Agriculture and the Animal Welfare Advisory Council, offered several suggestions for increased funding. The proposals included a tax on pet food, increased licensing fees, increased rabies vaccination fees and increased fees on animal related companies from kennels and shelters to pet stores.

The proposal which seemed to garner the most support among Committee members and bill proponents alike was the pet food tax. The primary reason for this support is the positive link between those paying the fee and those receiving the services. Animal welfare services are provided to dogs, cats, horses, birds etc. And irresponsible, even criminal, owners of animals purchase pet food at least sometimes. It is was argued that taxing the food for these animals is the easiest and fairest way to insure the burden of animal welfare is spread among most of the relevant communities.

Dog License Fees Doubled. As is the case with many other issues this session, the Committee felt that any proposal appearing to be a tax will fail to pass. So, the Committee is proposing to double dog license fees. The new fee is $8 for spay/neuter and $15 for non-spay/neuter dogs. Doubling the fee was actually less than the tripling of license fees as requested in the original bill. Also, late fees were increased and various business license fees were increased anywhere from 50% to 500% (shelters go from $20 to $100 annually). The table at the bottom of this page outlines the current and proposed license fees and where those fees go.

Municipalities would be keeping little more of the dog licensing fees than they do currently for the local animal welfare program. For either license, the municipality will now receive $2 and the town clerk will receive $2. Currently, clerks receive $1 and municipalities receive nothing for non-spay/neuter license and the current $2 municipal retention for spay-neuter dogs remains the same. So even though the spay/neuter license doubles, town clerks keep $1 extra and the municipality receives nothing extra for animal welfare.

The Committee heard testimony that with greater outreach and education the number of dog licenses issued will go up from the current statewide number of 132,000. That seems very hard to believe. In fact, the apparent reason the Committee rejected the increase in vaccination fees is that the veterinary and public health communities were effective in explaining that an increase in those fees will reduce vaccinations. Thus, it would seem that the logic should hold true for licenses as well. A mere 15% drop in licensing will wipe out 45% of the additional revenue projected by the proponents.

Many Committee members indicated that they had heard from their towns on this issue and were very reluctant to support the fee increase. All of the Committee members expressed frustration at the inequity of an animal welfare system that relies solely on the licensing of dogs for funding. At the end of the day, however, they were convinced that the needs expressed by the animal welfare community required attention, and they approved the increase.

	Current Law		Proposed Changes	
LD 1545	**Spay/ Neuter**	**Male/ Female**	**Spay/ Neuter**	**Male/ Female**
State Animal Welfare Program	$1.00	$6.50	$4.00	$11.00
Municipality	$2.00	$0.00	$2.00	$2.00
Clerk Fee	$1.00	$1.00	$2.00	$2.00
Total	$4.00	$7.50	$8.00	$15.00

CASINO (cont'd)

would be go to supplement the state's appropriation for General Purpose Aid to Education, and 10% would be provided as grants to students in Maine seeking higher education.

The second initiated bill, LD 1371, *An Act to Allow Slot Machines at Commercial Horse Racing Tracks*, would authorize the operation of slot machines at commercial race tracks in Maine. After paybacks to players, 75% of the revenue generated by the slot machines would be retained by the operator, 10% would be used to assist elderly or disabled adults in purchasing prescription drugs, 7% would be used to increase harness racing purses, 3% would be used to fund the Agricultural Fair Support Fund, 3% would be used to fund University of Maine college and technical college scholarship programs, 1% would be used to fund the Sire Stakes Fund and 1% would be used to fund gambling addiction counseling programs.

When taking action on a citizen initiated petition, the Legislature has three options: 1) it can adopt the bill as presented; 2) it can send the bill to the voters for a final decision; or 3) it can send the initiated bill to the voters along with its own proposal to act as a "competing measure" against the initiated bill.

This week both the Judiciary and Legal and Veterans Affairs Committee voted on the initiated bills. The members of the Judiciary Committee voted by a margin of 9-2 that LD 1370 "ought not to pass". If that recommendation is adopted by the full Legislature, the initiated bill would be sent to the voters in November as a stand-alone measure. The two dissenting members supported submitting a "competing measure" that would require the casino to be located in an economically disadvantaged area in Maine. The Legal and Veterans Affairs Committee voted 12 – 1 that LD 1371 "ought not to pass", thereby also sending this initiated bill to the voters in November. Only one member of the Legal and Veterans Affairs Committee supported the bill as presented.

Legislative Bills In addition to the citizen initiated bills, the Legal Veteran Affairs Committee is poised to make recommendations on two gambling related bills submitted by legislators

LD 1361, *An Act to Support Harness Horse Racing in Maine, Equine Agriculture in Maine, Maine Agricultural Fairs and the General Fund of the State*, sponsored by Sen. Ken Gagnon (Kennebec Cty.), would allow video lottery terminals to be placed at licensed commercial racetracks and off-track betting facilities (OTBs). Twenty-eight percent of the income generated by the video gaming devices would be distributed to the state's General Fund, 10% for harness racing purses, 4% for the Agricultural Fair Support Fund, 3% for the Sire Stakes Fund, and 1% for the prevention and treatment of problem gambling. Three percent of the gross terminal income would be distributed to the municipalities that host the racetracks or OTBs, unless all commercial racetracks in Maine are licensed to include video gaming and actually conduct video gaming, in which case 5% of the gross terminal income would be distributed to the host municipalities.

The second bill, LD 1354, *An Act to Permit Video Gaming for Money Conducted by Nonprofit Organizations*, sponsored by Rep. Judd Thompson (China), would permit non-profit charitable organizations to conduct video gaming operations provided they were licensed by the state police according to standards established by the bill. One of those standards would require the applicant to receive local approval, after a public hearing, by the municipal officers. Of all the net revenue generated by the gambling operation, 8% would be dedicated either to the Local Government Fund, from which municipal revenue sharing is distributed, or a newly-created "Public Education Fund", which would operate in the same way as municipal revenue sharing, 2% would be dedicated to a newly-created "Compulsive Gambler Rehabilitation Fund" and 90% of the net gambling income would stay with the charitable organization.

Although the Legal and Veterans Affairs Committee was expected to vote out its recommendations on both LD 1354 and LD 1361 on Thursday, the work session has been postponed until next week.

Mitigation Bills. In anticipation of the passage of a casino or video gaming initiative, three bills have been submitted that in some fashion mitigate the impact of casinos and gambling in Maine: LD 486, *An Act to Protect Communities Affected by Casino Gambling Operations*; LD 1201, *An Act To Require the Owner or Operator of a Casino to Improve or Replace Utilities and Infrastructure in the Vicinity of the Casino* and LD 1242, *An Act to Recognize the Regional Impact of Casino-style Gambling Facilities*.

LD 486, sponsored by Rep. David Lemoine (Old Orchard Beach), is a concept draft that would require that a portion of the revenue received by the community in which a casino is located be distributed to the surrounding towns to offset the impact of the casino on those surrounding towns. The Legal and Veterans Affairs Committee unanimously voted "ought not pass" on LD 486.

LD 1242, also sponsored by Rep. Lemoine, would require that before a casino is authorized to operate, voters of the municipality where the facility will be located and the voters of each municipality that abut the host municipality would have to authorize the operation of the casino. The Legal and Veterans Affairs Committee voted to carryover the bill into the second session.

Even the members of the Utilities Committee joined the casino and gambling debate as they unanimously voted to carryover LD 1201. As proposed, the bill would hold the owner or operator of a casino responsible for the costs of improving or replacing utilities, including water, sewer and roads, located within a 25-mile radius of the casino.

Both committees voted to carryover these bills into the second session on the theory that if the legislature or the voters of Maine fail to enact any of the casino and gambling bills, the legislation would be unnecessary. Both Committees will address the issues once the all casino and gambling decisions have been made.

CABLE (cont'd)

be responsible for providing legal, technical and administrative assistance to municipalities. It would also be responsible for conducting a ten-part review of every new application or a renewal or transfer of a franchise application made anywhere in the state. This ten-step review would involve technical, engineering and financial analysis.

The board would be made up of 2 members of the public, 2 municipal representatives, 1 person from the "education community," 1 from a statewide community television association, and 1 from a statewide municipal government organization. The funds for covering the expenses of the board, including additional staff, would be raised by placing a fee on every cable company with annual Maine revenues exceeding $1million. The bill's authors estimate that a $200,000 surcharge would be sufficient to cover these costs.

The Committee killed this bill.

MMA, as mentioned above, convened a Cable TV Committee to look at the issue of what type of assistance would be welcomed by municipalities. This municipal committee was supportive of greater MMA input, similar to other areas in which MMA provides assistance. The municipal group strongly rejected LD 222, LD 947 and the idea of a new, redundant state-level bureaucracy as unnecessary encroachments on municipal authority. MMA stands ready to provide information and assistance to local communities to help strengthen their hands at the negotiating table.

Stay tuned.

TEACHERS (cont'd)

The opponents of LD 1344 focused on the fundamental public policy issues of who should have the final say over the design of an educational program and whether a public or private process should be used to develop school programs. In both cases, the answer was "the public". The process of democratically electing a school board that is fully responsible for the decisions that affect the students' school experience is the foundation of public education in Maine, as is the public process of making those decisions and designing school programs in open meetings rather than under the cloak of the labor negotiation process. The school boards, municipalities and other opponents to LD 1344 also focused on the readily available right of the teachers to consultation and impact bargaining.

Midway through the lengthy afternoon of testimony, Steve Crouse of the Maine Education Association (the teachers' union) told the Committee that there appeared to be an agreement among the several corners of the education bureaucracy to set the bill aside and establish a task force to study the issue of teacher workload. According to Crouse, LD 1344 should be held over to the 2004 legislative session and revisited after the Department of Education convenes the superintendents' organization, the school boards' organization and the teachers' association to develop recommendations regarding the teacher workload situation.

The irony of the public hearing is that LD 1344, at least in part, is an attempt by Maine educators to be able to bargain for some relief from state and federal educational mandates. The teachers' complaint is their perspective of the same dynamic that frustrates municipal officials to the point of exasperation, a relentless pushing down from above of big-government mandates, some of which make no sense at all. LD 1344, however, is clearly not a solution to that problem and would perpetrate some extremely unsound public policy by further limiting local communities of what remnants of control they still retain regarding the education of their children.

On Thursday this week, the Education Committee voted to "carry over" LD 1344 into the 2004 legislative session, and directed the Susan Gendron, the Commissioner of the Department of Education**,** to frame-out a working group process to focus on the issue of teacher workload and teacher burn-out. At the public hearing, MMA asked for a complementary analysis of the financial implications of any recommendations of the working group, but it is unclear if that type of analysis will be part of the working group's ultimate charge.