

December 2011

# maine townsman

The Magazine of the Maine Municipal Association



**LEGISLATIVE PREVIEW**  
**What's On Tap For**  
**Short 2012 Session**

**ALSO IN THIS ISSUE:**

Collaboration Survey | Revenues in Decline | Waldo's Kathy Littlefield | Youth Movement

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# maine townsman

The Magazine of the Maine Municipal Association

## Getting the Job Done 5

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## Keeping the 'Short' Session Short 7

Maine lawmakers are starting to take seriously the understanding that the second year of a two-year legislative session should focus on "emergency" legislation that can't wait another year for action. MMA's State & Federal Relations staff previews what's likely to happen under the dome in 2012.

## Impressive Collaboration Numbers 17

MMA surveyed members about municipal collaboration examples recently and the results won't surprise municipal officials: Collaboration is alive and well throughout Maine, with 548 examples cited. Many involve public safety, public works and general administration.

## Towns, Cities Lose Revenue 19

Led by dramatic cuts in state revenue-sharing funds, our Fiscal Survey this year shows that overall revenues for towns and cities fell by 6 percent from 2009-2010. Municipal administration, parks and recreation, general assistance and code enforcement saw the biggest cuts in service.

## Anniversary Series: Kathy Littlefield of Waldo 21

The ninth and final installment of our 75th Anniversary profile articles and oral histories features Kathy Littlefield, who for 40 years has served as First Selectwoman in Waldo. A strong proponent of local control, she details many of the lessons learned during her tenure.

## Giving Youth a Chance 27

Voters in some of Maine's largest municipalities elected young councilors, selectmen and mayors in a big way last month. Some see the trend as a sign that voters want new ideas and approaches to municipal issues and challenges.

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LOCAL GOVERNMENT  
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**COVER:** Abbi and Nancy Beal captured this night-time photo of the Town of Beals' lobster trap Christmas tree.



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# A Message From MMA



by Christopher Lockwood, Executive Director

## Delivering, Even in Tough Times

“Municipal government: Getting the job done.” This was the theme of remarks I offered at a recent Kiwanis Club luncheon. After providing a brief overview of Maine Municipal Association, I spoke about a number of recent studies and reports that document the effectiveness and commitment of municipal governments in Maine to “get the job done.”

The most recent of these reports is summarized in Kate Dufour’s article “Taking Inventory of Municipal Collaboration” in this issue of the Townsman. This report helps to document what municipal officials have known all along: That municipalities pursue a wide variety of approaches to provide services and to achieve efficiencies. These are not necessarily headline grabbing stories, but rather the result of thoughtful and pragmatic decisions made in communities throughout the state. The adage “one size doesn’t fit all” certainly applies to the delivery of municipal government services in a state as large and as diverse as Maine.


Kate’s article also supports the findings of Dr. Brian Lee Crowley, a respected Canadian economist who spoke at MMA’s annual convention in October. Dr. Crowley’s extensive research underscores the benefits of a system in which various municipal governments, rather than an “amalgamated” or consolidated government, operate to provide local government services. As Crowley noted, “Local government is not merely a device for *supplying* municipal services, but also for finding out what services people *want* and how much they are willing to pay for them. The smaller the government unit, the better they are at dis-

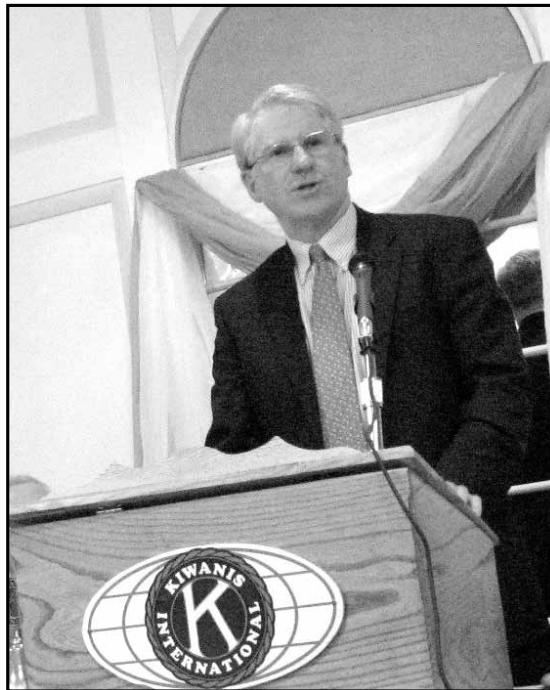
covering this, because the evidence is very strong that local government is *closest* to the people, and the smaller it is, the closer it gets to the population.”

Another article in this issue of the Townsman reports on the *2010 Municipal Fiscal Survey* conducted by MMA in cooperation with the U.S. Census Bureau. Some of the most significant findings of the survey were that overall revenues dropped by 6 percent from 2009-2010. Total state revenue sources were down dramatically, falling 8 percent. One of the biggest hits to municipalities was the 21 percent decrease in state revenue-sharing funding from 2009-2010.

Despite these shrinking revenues, municipalities still needed to provide basic services. The survey sheds light on the difficult decisions made by local officials, maintaining and strengthening commitments to public safety services and road maintenance, while reducing expenditures in other important, but more discretionary or quality of life service areas.

As I indicated in my remarks at the Kiwanis luncheon, the people most concerned about the property tax are local officials – particularly elected municipal officials. You are the people who are giving up your nights and weekends trying to respond to the needs of your citizens, while keeping taxes and fees as low as possible.

Maine Municipal Association is committed to providing high quality professional services to assist municipal officials in your challenging work. We have the utmost respect for municipal officials throughout the state and thank you for your public service – you truly get the job done! 



*Speaking to the Augusta Kiwanis.*

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# Sharper Focus for “Short” Session?

By Kate Dufour, Greg Connors, Geoff Herman,  
State & Federal Relations, MMA

Maine’s Constitution reserves the second regular session of the two-year legislative cycle for “budget matters,” “carryover” bills that overflow from the first year’s session, and new “must do” or “emergency” legislative measures that simply can’t wait another full year to be resolved. Critics have long suggested that lawmakers pay little heed to that particular constitutional restriction and clog up what is supposed to be a short legislative session with too many new bills of a routine nature, where no true emergency exists of any kind.

## ON DECK

Among the municipal issues in play next legislative session: Revenue Sharing, General Assistance, MUBEC, Right to Know law and “Regulatory Takings.”

**New bills for 2012.** For the upcoming short session beginning in January, the first observation is that legislators are beginning to take the “emergency” nature of the second regular session seriously. The list of 288 bills submitted for second-session consideration is significantly shorter than the lists of past years. On top of that, the council of legislative leaders, which plays a gatekeeper role, conducted itself with a particularly sharp pencil. Only 132 of those 288 submissions were actually admitted into the 2012 session by the Council.

Although it is hard to tell on the basis of the bill titles, it appears that just over a dozen of those 132 bills propose changes that would impact Maine’s towns and cities enough to trigger a review by MMA’s 70-member Legislative Policy Committee for the

purpose of identifying MMA’s position on the legislation. Even then, a majority of these newly introduced bills don’t appear to convey earthshaking proposals. They may clarify a certain school budget approval procedure or modify how an existing law should apply to a municipality in a unique circumstance, but the direct municipal impact appears modest. The several new bills that might have some more grist to them range the course from:

- Fixing conflicts that now exist in Maine’s Uniform Building and Energy Code system (MUBEC) because of legislation enacted last spring.
- Restricting in some fashion open burning in neighborhoods.
- Establishing a stronger connection between the receipt of “Circuit Breaker” property tax rebates and the payment of property taxes.
- Prohibiting municipalities from imposing fees on the placement of ice fishing shacks.
- Creating additional options when discontinuing a town way.

**Supplemental Budget.** On the “budget matters” front, the focus will be the supplemental state budget submitted by the Governor. State revenues are holding remarkably close to the projections upon which the biennial state budget was adopted last spring, so the need for a supplemental state budget proposing significant changes is not motivated by slumping tax revenues. Instead, anticipated but not-yet-identified pull-backs in the distribution of federal financial assistance to the state, particularly in the Medicaid program, coupled with chronic over-budget spending in Maine’s Medicaid program will precipitate a call for cuts in Medicaid as well as other state programs.

That ball rolls downhill. The municipal focus with respect to all state budget matters in 2012 will be on proposals that shift the burden of providing governmental services onto Maine’s local property taxpayers. The three major sources of intergovernmental financing where this type of shifting might occur are the [municipal revenue sharing program](#), the [General Purpose Aid to Education appropriation](#), and the state’s reimbursement system for the municipal [General Assistance program](#).

**Revenue Sharing.** For the last four state fiscal years, the Administration and the Legislature have siphoned off approximately 30 percent of the broad-based state tax revenue dedicated by law for property tax relief and used that money to finance state government priorities instead. Over the 2012-2013 biennium, that legislative siphoning will result in \$85 million being pulled away from property tax relief.

In the originally proposed biennial state budget last January, Gov. LePage proposed to eliminate the formula that has been in Maine law for 40 years dedicating a fixed percentage of sales and income tax revenues for that purpose. The Legislature rejected the proposal to eliminate that statutory dedication, signaling an intention to restore the full implementation of municipal revenue sharing when state revenues stabilized. The Governor, however, has made it clear that he still intends to make changes to the revenue sharing system, expressing at various times an interest in tying revenue sharing to regional collaborations and/or withholding revenue sharing to municipalities that adopt ordinances or regulations stricter

than the state. Municipal officials will have to stay tuned.

*General Purpose Aid to Education (GPA).* The following chart details the state appropriations to help finance the cost of providing public elementary and secondary school education. The Essential Programs and Services school funding model (EPS) calculates the total cost necessary to provide an adequate public school education in the context of Maine’s “Learning Results” system. Because of the direct relationship between the level of state financial support for schools and Maine’s heavy reliance on the property tax, Maine’s voters directed the Legislature in 2004 to pay for at least 55 percent of the cost of K-12 education with its broad-based taxes. As the chart indicates, the Legislature was on course to reach the 55 percent goal within five years of implementing the voters’ directive, but all momentum stalled in 2009, even with the infusion of federal stimulus funding. Now we are going backwards. The state share has slipped to the lowest level since the voters’ directive was built into the state’s school financing law.

*Municipal General Assistance and State reimbursement.* Municipal General Assistance (GA) represents a much smaller program than either municipal revenue sharing or General Purpose Aid to Education, but GA reimbursement is also in the sights of the LePage Administration.

According to the information provided by Department of Health and Human Services officials (DHHS),

the Department was asked to cut \$22 million out of its FY 2012 budget. Of that budget cut, nearly \$4 million was targeted to be cut from the state/municipal General Assistance reimbursement program.

Over the last decade, the total value of welfare benefits distributed to applicants under the GA program is approximately \$16 million a year. The state generally reimburses 50 percent of that value to each administering municipality, with a higher-percentage reimbursement going to the more extensive GA programs in the state’s largest cities. When taken together, the state’s share of the total benefit distribution approximates \$10 million annually, or 62 percent of the total. Over the years, however, certain budgeting practices have camouflaged the state’s true financial share and only \$6 million has been formally budgeted for GA reimbursement, with the remaining \$4 million being scraped together at the departmental level for that purpose from other programs.

Under the Governor’s “zero-based” budget process, that level of creative financing is no longer authorized. As a result, the Department has been asked to reduce the actual, total state share to \$6 million, which is a 40 percent cut in state GA reimbursement levels. DHHS officials have outreached to municipal welfare directors to get ideas on how to achieve the cost savings. Whether or not any of the municipally generated ideas will see the light of day will be determined when the Legislature convenes

in January.

**Carryover Bills, Carryover Issues and Working Group Recommendations.** The last category of legislation that could impart special flavor to the upcoming convening of Maine’s lawmakers are the bills that were transferred in one way or another from the 2011 to the 2012 legislative session. Transfers of that kind are accomplished in a couple of ways. In some cases a bill is simply “carried over” without any special guidance or fanfare and will be taken up afresh in January. In other cases, a working group was formed to study the issues that surfaced when the bill had its public hearing last winter or spring. The study group is typically asked to make recommendations to the appropriate legislative committee about how to proceed. What follows are brief summaries of the municipally related “carryover” issues.

**Working the “Right to Know” law.** Earlier this year, Sen. Richard Rosen (Hancock Cty.) sponsored a bill, LD 1465, that would have drastically changed the Freedom of Access Act (FOAA). A few of the more significant “Right to Know” requirements this bill would have activated are:

- Creating an affirmative duty for a governmental entity to provide copies of public records to people at their request rather than just providing an opportunity to examine those records.
- Requiring all records requested to be immediately provided unless the records have to undergo redaction or are not in public use or are in storage.
- Providing the requestor with the right to obtain the copies of those records in all available formats, such as by photocopy, electronic or magnetic formats if available.
- Creating a special standard for “large or multiple requests” which allows for the records to be provided as they become available if they cannot be provided “in the exercise of due diligence” within a five-day period.
- Requiring a cost estimate to be provided within three business days for any request that may exceed \$100 in costs calculated at the maximum \$10 per hour rate allowed under current law for searching for, retrieving and compiling requested records.
- Prohibiting a governmental entity from inquiring as to the purpose of a FOAA request.

**State Share of Essential Programs and Services School Funding Model  
FY 2006-2013**

Fiscal Year	GPA Appropriation	Federal Supplement to GPA – (ARRA)	100% EPS	% of State Share of EPS (incl. ARRA)
2006	\$836 million	-----	\$1.79 billion	46.7%
2007	\$914 million	-----	\$1.83 billion	50%
2008	\$978 million	-----	\$1.89 billion	51.6%
2009	\$957 million	\$27 million	\$1.86 billion	53%
2010	\$909 million	\$43 million	\$1.92 billion	50%
2011	\$873 million	\$59 million	\$1.95 billion	47.8%
2012	\$895 million	-----	\$1.98 billion	45%
2013	\$914 million	-----	\$2.02 billion	45%

Source: Department of Education and the extraordinary graphic produced and regularly updated by Deputy Commissioner Jim Rier detailing K-12 state and local spending



• Treating any failure to comply with the established response-time schedule to be considered a denial of the request and subject to enforcement procedures.

These are just a few of the changes proposed by LD 1465.

Ultimately, the Judiciary Committee decided to carry the bill over to the second session in order to allow the Right to Know Advisory Committee (RTKAC) an opportunity to review the bill and provide recommendations to the Judiciary Committee in January. The RTKAC is a 16-member permanent advisory council with oversight authority and responsibility for activities associated with the FOAA. The RTKAC established three subcommittees to develop these recommendations: a “legislative” subcommittee, a “bulk records” subcommittee and a “public records exceptions” subcommittee.

Although the legislative and bulk records subcommittees have not finalized their recommendations for the RTKAC’s consideration (which should occur by Dec. 8), these subcommittees have been working toward reporting these recommendations to the RTKAC by considering the proposed changes incorporated in LD 1465, researching other states’ “right to know” laws, and drafting rough-cut recommendations. The direction the subcommittees are taking dial back the drastic changes to the current law proposed by LD 1465. Having said that, the recommendations will add a number of new requirements to governmental obligations under the Freedom of Access Act.

The following underlined language represents some of the possible changes to the FOA law being considered by the two subcommittees:

• The agency or official shall acknowledge receipt of the FOAA request within a reasonable time, and shall provide a non-binding estimate of the time within which the agency or official will comply with the request.

• Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, “reasonable office hours” includes all regular office hours of an agency or official. If the agency or official

does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public records must be posted at a conspicuous public place.

• A person may copy a public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. A request may be made by telephone. The agency or official shall

mail the copy upon request.

• As is the case under current law, an agency or official is not required to create or compile a record that does not exist.

• Access to an electronically stored record, or a copy of such a record, must be provided at the requesters’ option in either a printed document or through any other available medium. A computer file is not an avail-

## Decoding the MUBEC Building Code

A number of bills related to the Maine Uniform Building and Energy Code (MUBEC) were introduced last session, ranging from repealing the entire system to strengthening it by adding new standards and expanding the population of “third party inspectors”.

Two bills survived the process – LD 1416 and LD 1253. LD 1253 merely tweaked the underlying MUBEC law; LD 1416 restructured the MUBEC law entirely for all towns and cities with populations of 4,000 or less. The enactment of LD 1416 made the smooth implementation of MUBEC difficult if not impossible for many communities with populations between 2,001 and 4,000. In summary, the current law requires building officials in those communities to inspect all construction for MUBEC compliance and issue occupancy permits only to MUBEC-compliant buildings. The same law says that MUBEC does not apply in any of those 80-plus communities unless expressly adopted by the local legislative body. Since most of those towns and cities have not expressly adopted MUBEC, the inspection/occupancy permit mandates create a direct conflict. Building officials cannot inspect a building for compliance with a code that does not apply in that town or city as a matter of law.

In response, the Legislative Council has admitted into the upcoming legislative session a bill entitled “*An Act to Resolve Conflicts in the Implementation of the Maine Uniform Building and Energy Code*,” which is being sponsored by Senator Tom Saviello (Franklin Cty.). This bill, if enacted into law, will erase the current conflict. As drafted, the bill would make the following substantive changes: (1) target the requirement to inspect all buildings under construction for compliance with MUBEC to those municipalities that are mandated or have voluntarily chosen to enforce MUBEC; (2) target the requirement to issue occupancy permits only to buildings that have been constructed according to MUBEC in those municipalities that are mandated or have voluntarily chosen to enforce MUBEC; and (3) remove the requirement that a municipal code enforcement officer be MUBEC trained and certified if the municipality has not adopted or is not enforcing MUBEC.

In addition to the Legislative Council’s approval to consider the MUBEC fix-up bill in the next session, the Technical Building Code and Standards Board (MUBEC Board) has been working toward the adoption of rule changes associated with the Code. Much of the change is focused on the division of the overall MUBEC code into a subset Uniform Building Code and a subset Uniform Energy Code. This charge was given to the MUBEC Board by LD 1416 so that if municipalities with populations of 4,000 or less want to adopt just the building-related sections or just the energy-related sections of the MUBEC, they would have that option. The MUBEC Board has also been responding to other direction provided by the Labor, Commerce, Research and Economic Development Committee, including adjusting the residential basement insulation standards and studying the need for certain building exemptions (seasonal cottages and agricultural buildings) from MUBEC.

The MUBEC Board will be reporting its recommendations to the Committee in January.

able medium if no means exist to separate or prevent the disclosure of any confidential information contained in that file.

- A public entity is not required to provide an electronically stored record in a different structure, format or organization or provide a requester access to a computer terminal.

- The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time.

Another idea that is being considered by the subcommittees is funding the ombudsman position in the Attorney General's office so that there is an "facilitator" of the FOA law that can push the process along when it stalls and provide counsel to both the requester and the government official. There seems to be broad support for this despite the likelihood a fiscal note would have to be included in the legislation if the funding of an ombudsman position gets incorporated into the bill. As the process continues MMA will keep its membership apprised of recommended changes developed at the RTKAC subcommittee, full RTKAC and Judiciary Committee levels.

**Relaxing Certain Shoreland Zoning Restrictions.** Throughout the public hearing and work session processes on two bills introduced last legislative session, members of the Environment & Natural Resources Committee (ENR) heard testimony from property owners that detailed their objections to the inclusion of high and moderate value waterfowl and wading bird habitat in resource protection districts. Resource protection districts are defined as areas of land specially designated within a shoreland zone where development is very limited. Therein lies the property owners' concerns.

As a result of these concerns, the ENR Committee directed the Department of Environmental Protection (DEP) to review the issue and amend the shoreland zoning rules to allow the removal of this type of habitat from mandatory resource protection zones in the DEP's next revision of Chapter 1000, the minimally required shoreland zoning rules. The ENR Committee requested that DEP notify municipalities of its review of the rules

related to these waterfowl and wading bird habitats and provide the options that would be available to municipalities when dealing with these habitats in the shoreland zone.

If the proposed rules are adopted, it is MMA's understanding a municipality may keep the current resource protection buffer around these habitats if it so chooses, but that buffer area will no longer be mandated by the state. After the revised minimums are promulgated, if the town meeting or town/city council so chooses, the shoreland area around the wading bird habitats could be designated, for example, a "limited residential" rather than "resource protection" zone.

DEP is moving forward with the rulemaking process in order to comply with the ENR Committee's directive. The tentative schedule for the rulemaking process is:

- The posting of the proposed rule changes will occur in late November or early December of this year.

- A public hearing will be held mid-to-late December 2011.

- The changes relaxing the minimum guidelines should be finally promulgated by June or July 2012.

DEP is also spearheading another effort related to high and moderate value waterfowl and wading bird habitat areas as these areas are treated under the state-administered Natural Resources Protection Act (NRPA). On Dec. 1 of this year, DEP is holding a public hearing on a proposed NRPA rule change that would allow new development activities in these habitats through the permit by rule process as long as the development is at least 100 feet back from the wetland and occupies no more than 20 percent of the lot within the habitat.

**Tree Growth.** There are two carry-over bills governing the Tree Growth tax program.

As printed, LD 1138 provides a substantial break to people who fail to update their forest management plans by the 10-year deadline by providing them another year to perform that task rather than withdrawing the property from the Tree Growth program.

LD 1470 is a "concept draft" bill that proposes to amend the Tree Growth tax law in a going-forward way so that only property owners who are engaged in timber harvesting would be determined eligible to enroll in

the Maine Tree Growth program. As a concept draft bill, no details are provided about how that would be accomplished. Those details are left up to the Tax Committee to develop.

No public hearing was held last spring on LD 1470. The Taxation Committee has tentatively scheduled the public hearing on that bill for early January.

The public hearing held for LD 1138 drew out some powerful testimony from municipal officials in coastal towns located in Washington and Hancock Counties demonstrating the enormous and undeserved property tax dodge that some waterfront landowners enjoy without paying the slightest attention to actual timber harvesting. In one case in the Town of Surry, the owner of an essentially residential "Tree Growth" parcel with a market value of \$646,000 pays just \$10 in taxes. In Lamoine, the taxes on a \$415,000 "Tree Growth" parcel are \$21. At the work session on the bill, the Committee voted to carry over the legislation but without particular comment or direction.

Some of the interested parties from the environmental, woodlot owners and municipal communities have been engaging in an informal exploration of combining these two bills into a package that would address to some degree each of their respective interests. An outline of that package could include the following:

- If a person fails to update the forest management plan by the 10-year deadline, even after receiving the mandatory notices from the town, instead of the property being automatically withdrawn from the Tree Growth program it would be automatically converted to an Open Space enrollment for a one year period.

- When any property is converted from the Tree Growth program to the Open Space program, and then subsequently withdrawn from a "current use" tax category altogether, the Tree Growth withdrawal penalty is applied rather than the Open Space withdrawal penalty for the first 10-year period after conversion. This is already the law with respect to conversions from the Tree Growth program to the Farmland program.

- With respect to Tree Growth enrollments within the shoreland zone, when a building exists (for all new

**A “Regulatory Takings” Compensation System.** As printed, LD 1477 was a bill that would establish in Maine a system whereby property owners who believe land use regulation has devalued their real estate could petition to a court and receive compensation for their lost value from the government that adopted and enforced the offending regulation. Either that, or the regulations would be waived for those landowners.

Instead of being enacted, LD 1477 was converted into a resolve creating an 11-member working group charged with reviewing no less than 16 issues associated with adopting a “regulatory takings” system of that kind. (See sidebar.) At least five members of the working group were vocal proponents of the original bill.

After several meetings for discussion and tentative decision-making regarding the 16 issues to review (e.g., what loss of value should initiate compensation, how to establish fair market value, whether to implement the program only prospectively, etc.), a majority of the working group ended up pretty much where LD 1477 began, with a couple of notable differences.

First, the working group decided to exclude land use regulation adopted by municipalities purely by means of home rule authority from the compensation system. State regulations that municipalities must enforce or administer by state mandate, such as the minimum shoreland zoning restrictions, would be fair game for compensation purposes, except the state and not the municipalities would be on the hook for compensation. Purely home-rule regulations adopted on the local level, such as town-wide zoning requirements, would not be subject to compensation claims.

Also, the working group decided that the compensation entitlement would apply only with respect to prospective state law and regulation, not the body of state-level land use regulation that has already been put on the books.

The chart below examines some key elements of a regulatory takings system and identifies what LD 1477 proposed versus what the majority report is recommending to the Judiciary Committee.

In summary, under terms of the working group’s recommendations, a person who believes his or her property value has been reduced by 50 percent or more because of the enactment of state regulation enacted in 2012 or later would have a right to go to court to determine if that regulation has diminished his or her property value by more than 50 percent. If the court so-determines, one of two results could occur: (1) the person would be compensated by the state for the lost value; or (2) the state must negotiate a special variance with the landowner that would have the effect of mitigating the land use regulation impacts with respect to that person’s property.

The vote on most recommendations developed by the working group was 8-2-1. The representative of the Attorney General’s Office abstained from voting on any recommendations. Two members voting to oppose the overall recommendation were Rep. Charles Priest (Brunswick), and the representative from the Natural Resources Council of Maine. The minority report of these two members will be to reject the creation of a regulatory takings compensation system due to its unworkability and the paralysis it will induce in the field of environmental regulation. Instead, the minority report will suggest making improvements to the existing but lightly utilized land use regulation mediation program established in the mid-1990s.

## MEMBERS OF THE REGULATORY TAKINGS WORKING GROUP

### Legislative appointees:

Rep. Andre Cushing III (Hampden) – Sponsor of LD 1477

Rep. Joan Nass (Acton) – House Chair of Judiciary Committee

Rep. Charles Priest (Brunswick) – Ranking House Minority Member Judiciary Committee

Sen. Mike Thibodeau (Waldo Cty.) – Cosponsor of LD 1477

Sen. Troy Jackson (Aroostook County)

### Attorney General’s designee

Peggy Bensinger, Assistant Attorney General

### General Public Members Appointed by Sen. President Kevin Raye (Washington Cty.)

Bucket Davis – Selectman East Machias, designated as the representative of municipal government.

Pete Didisheim – Natural Resources Council of Maine, representing conservation interests.

Don White – President, Prentiss & Carlisle forest management company, representing private property owners with 100 acres of real property.

### General Public Members Appointed by Speaker of the House Rep. Robert Nutting (Oakland)

Clark Granger – Resident of Woolwich, representing the business sector.

Catherine Connors, Pierce Atwood – Representing private attorneys with experience in takings law.

Original Elements of LD 1477	Regulatory Takings Committee’s majority report recommendations
Governmental entities impacted: Agency, board, commission, council or other administrative body of the state <u>or a political subdivision of the state</u>	Impacted: The state, any agency or any other administrative body of the state <b>ONLY</b>
Regulations excluded from takings claim: (1) restricting/prohibiting activities recognized as public nuisances and for the protection of public health/safety (2) complying with federal law (3) adopted and applied to the parcel prior to the date of acquisition of the parcel by the property owner or a family member of the property owner	Excluded regulations: (1) restricting/prohibiting activities recognized as public nuisances and for the protection of public health/safety (2) complying with federal law. (3) <u>enacted prior to the effective date of the proposed legislation</u> (4) <u>municipal regulation adopted pursuant to “home rule”</u>
“Parcel” definition: Portion impacted by regulations	“Parcel definition: <u>The whole parcel</u> including area contiguous to the area affected by the regulation if part of the same parcel
Relief to property owner: Compensation for lost value or a waiver of the regulation	Relief to property owner: Compensation for lost value or a <u>special exemption (variance)</u> of the regulation

enrollments) or when a new building is being constructed (going forward), the minimum building lot and the minimum required shore frontage would be excluded from enrollment. This is already current law with respect to all Open Space enrollments.

- All Tree Growth landowners, at the time of initial enrollment and at the time of all 10-year updates, must positively affirm on their application or update that the primary use of their Tree Growth parcel is commercial timber harvesting, and all other uses are clearly subordinate to that use.

It remains to be seen if this kind of compromise package can gain any traction among the interest groups and with the Taxation Committee.

#### **State's boiler inspection program.**

As is the case in all New England states, there is a long-established program in Maine whereby the state ensures the inspection of large heating boilers, industrial boilers, steam boilers and pressure vessels. For decades, Maine law has exempted all hot water boilers within a certain relatively small size range from that program except for the boilers located in municipal and school buildings. This lack of uniformity initiated the submission of a bill developed by MMA's Legislative Policy Committee to rectify the blatant regulatory discrimination.

During the legislative process, the bill morphed into a resolve directing the Commissioner of the Department of Professional and Financial Regulation to convene a working group with the Board of Boilers and Pressure Vessels as well as other interested parties. The charge to the working group was to review the current lack of uniformity in the laws and rules governing boilers, to develop recommendations to resolve conflicts and improve the regulation of boilers, and to consider options for expanding inspections of boilers located in places of public accommodation.

The working group convened several times over the summer and fall and ultimately developed the following recommended changes to the current law:

1. The state inspection process would apply to all places of public accommodation that had a boiler meeting the identified specifications; including (but not limited to) municipal and school buildings, churches,

retails stores, hotels, restaurants, hospitals, nursing homes and state-owned buildings.

2. The state inspection process would only be required every other year for low pressure boilers, as opposed to the current requirement of

annual inspections, and the state certificate fee would remain at \$80.

3. The boiler's BTU threshold triggering the state inspection process would be increased from over 200,000 BTUs to over 400,000 BTUs.

At the time of the Townsman's pub-

## **Deconstruction of the State Planning Office**

Included in the two-year state budget enacted last spring was the creation of an 11-member committee charged with developing a plan for deconstructing the State Planning Office (SPO) by assigning most of its existing responsibilities to other state agencies and departments. The members of the Committee, nine of whom are state agency commissioners (including the director of SPO), met four times between July and November. The Committee's final recommendations are:

- The SPO Director's position will be eliminated.
- Code enforcement training and certification responsibilities will be transferred to the Department of Economic and Community Development.
- Land Use Planning responsibilities will be transferred to the Department of Conservation.
- Waste Management and Recycling responsibilities will be transferred to the Department of Environmental Protection.
- Ownership of the state's landfills will be transferred to the Bureau of General Services.
- Land for Maine's Future responsibilities will be transferred to the Department of Conservation, Bureau of Geological Services and Natural Areas.
- Maine Coastal Program responsibilities will be transferred to the Department of Conservation.
- Flood Plain Management responsibilities will be transferred to the Maine Emergency Management Agency.
- Maine Commission on Community Services will be transferred to the Department of Education.
- The Office of Energy Independence and Security will be overseen by the Governor's Office.
- The state economists responsible for economic and demographic analysis will be transferred to the yet-to-be created Office of Policy and Management, which will be overseen by the Governor.
- That Office of Policy and Management will be staffed by six employees, including a deputy director, two public service executives, a secretary and two economists. In addition to housing the economists, the purpose of this office will be to conduct investigations of state agencies and to advise the Governor on the policy changes necessary to eliminate fraud and reform state government programs.

Beyond these functional redistributions, the funding that historically passed through SPO to regional councils will be preserved. The proposal is to continue to provide an annual appropriation of \$310,000 to fund the functions of these regional planning entities. A good chunk of that appropriation, however, is proposed to be taken from a federal Coastal Zone Management grant that currently funds the position of an environmental attorney in the Attorney General's Office. The Attorney General has objected. In any event, the regional council grant program will be administered by the Committee's proposed land use planning division within the Department of Conservation.

Before any transfers of responsibility can be implemented, the Legislature will have an opportunity to review the plan and make amendments as it sees fit. It is anticipated that the deconstruction of the SPO will be complete before the end of current fiscal year, which is June 30, 2012.



lication deadline, these recommendations were awaiting the Commissioner of Professional and Financial Regulation's approval. Once the Commissioner reviews these recommendations and signs off on or amends them, the report containing the final recommendations will be presented to the Labor, Commerce, Research and Economic Development Committee for its consideration in January.

**LURC Working Group.** LD 1534, as printed, would have eliminated the Maine Land Use Regulation Commission as of July 15, 2012 and established a process to transfer all land use regu-

latory authority over to each county that includes within its jurisdiction any unorganized territory (UT). The bill was transformed in the legislative process into a resolve that established a 13-member commission to consider reforming the governance of land use planning in the UT, make recommendations on the regulatory role of state agencies and county government and explore opportunities for increased self determination in land use planning in the UT.

The municipal interest in LD 1534 was the role that might be given to county government to manage the

land use regulation throughout 11 million acres of unorganized territory and the impact that new role might have on the municipalities that are assessed the property taxes that fund the general operations of county government. As printed, LD 1534 lacked clarity about the precise role of county government with respect to the regulatory authority and whether the county commissioners were going to be simultaneously responsible for both enacting (as the legislative body) and enforcing (as the administrative body) the land use regulation of the respective unorganized territories.

To obtain public input, the working group established by this resolve held public listening sessions this fall in Bangor, Solon, Ashland, Calais and Greenville. According to press reports, the testimony at those listening sessions varied widely between those advocating for the retention of a unified, single-source land use commission for the UT and those seeking to create county-based or regional land use authorities for the purpose of ensuring greater local control.

It appears the working group is headed toward a recommendation that will address both interests by retaining a unified land use commission, but changing its membership to ensure that a majority of its members are chosen at the county level. The recommendation would also allow the counties to be "delegated" to administer certain smaller-scale land use review and approval functions in the UT if they so-wished. Forestry regulation in the UT would be administered by Maine Forest Service within the Department of Conservation, and industrial wind power projects would be reviewed and permitted by the Department of Environmental Protection.

Except for an ongoing opportunity for a county to petition the land use commission to conduct a region-based comprehensive planning process within that county's UT, the capacity for a county to break away from the land use commission and establish its own comprehensive plan, ordinances, planning board and land use review and approval process is quite limited under this proposal. First, no such withdrawal from the land use commission could occur for several years in order to let the reoriented land use commission get established. Even

## Tax Reform

The tax reform effort this year was somewhat unique because it emanated purely from an interest on the part of the Taxation Committee, rather than a carryover effort or formal act of the Legislature creating a study panel. Simply put, the Taxation Committee used its between-session meetings to explore the Committee's interest in advancing a comprehensive tax reform proposal for the Legislature's consideration and statewide referendum.

As a conceptual starting point, the Committee was describing a proposal that would cut the state's income tax rate in half and expand the sales tax base (or remove exemptions) to cover the revenue loss.

To facilitate its inquiry, the Committee established a subcommittee to take testimony over several days from two dozen economists, academics, accountants, tax lawyers and business leaders in an attempt to ascertain the interest in developing a tax reform plan that achieved a number of established goals. Those goals included modernizing the tax code, simplifying the tax code, creating improved revenue stability, promoting economic development, achieving greater equity, preserving progressivity, etc.

Ultimately, the Committee concluded that there was not enough agreement or support among the wider Maine community to proceed with comprehensive tax reform at this time. Agreement was hard to find all around. There was no consensus over which goals of tax reform should be given highest priority. There were also substantially different views about what changes to the tax code should be employed to achieve any particular goal.

For several reasons, the effort was not a waste of time. The Committee heard many times through the testimony of the assembled experts that the high burden on property taxes in this state is a priority issue that needs to be addressed and that focusing solely on the income tax ignored the property tax problem. Hopefully that testimony will still be echoing in the Tax Committee room this January if there are proposals introduced that could negatively impact property tax rates in a permanent way, such as by doing away with the fundamental design of the municipal revenue sharing program.

Also, as a result of much of the discussion regarding the breadth and depth of the exemptions and credits that punch big holes in Maine's tax code, the Committee intends to advance its own legislation that would guide this and future Tax Committees through the process of reviewing and approving any expanded or newly proposed tax exemption. As drafted thus far, these guidelines would take the Committee through a 10-point evaluation checklist including: the identification of the taxpayers who benefit, public policy justifications for the exemption, fiscal impacts and proposals to address the revenue loss, unintended consequences, similarities with other states, standards of accountability and taxpayer reporting requirements, methods of evaluating the exemption's performance over time, and the process to sunset the exemption.



then, a county would have to jump through a lot of hoops to be allowed to regulate land uses on its own.

The working group will hold its final meeting on Dec. 1 and present all recommendations to the Legislature's Agriculture, Conservation and Forestry Committee on or before Jan. 4, 2012.

**Dig Safe.** As enacted last spring, LD 407 made several changes to the Dig Safe rules, which were described in detail in the July 2011 edition of the Maine Townsman. In addition to those changes, LD 407 established a 23-member working group responsible for reviewing: (1) pre-excavation marking standards for excavators; (2) marking standards for owner and operators of underground facilities; (3) enforcement procedures and appropriate use of penalties; and (4) clarification of incident reporting and incident investigation protocols. The goal was to recommend such additional changes that would clarify and simplify the Dig Safe program and reduce or eliminate regulatory uncertainty.

Some of the working group's suggested rule changes carrying the most impact to municipalities and water or wastewater utilities include:

- Reduce the "tolerance zone" allowed for non-member operators, which include most municipalities and water/wastewater utilities, from 36 inches to 18 inches of each side of the location of the underground facility. Currently, when notified of an upcoming excavation, non-members must mark 36 inches around the underground facility, which is the "tolerance zone", while Dig Safe members (including gas, cable and electric utilities) must mark an 18-inch tolerance zone. This proposed rule change creates a uniform tolerance zone between members and non-members.

- Allow non-members of the Dig Safe program to index their underground facilities by street rather than by municipality, which should serve to better target the notifications made by excavators and decrease the notifications received by non-member underground facility operators.

- Formalize current practice by permitting the use of black or pink paint during snow and ice conditions when pre-marking the locations of the intended excavation.

- Require excavators to provide

notice to private landowners, who are also non-members of the Dig Safe program, of any intended excavations near the privately owned infrastructure, such as sewer or water hook-up lines, but allow the excavators to initiate excavation without waiting 72 hours to allow the private landowner to mark out underground facilities (which is the current requirement). As a trade-off to removing the required waiting period, the proposed rule would require the excavator to be responsible for all damages to the privately owned underground facilities that result from the excavation.

One last item of interest to municipalities is a recommendation that will be included in the working group's report to the Legislature's Energy, Utilities and Technology Committee. A majority of the working group members requested the creation of another working group that would be directed to assess the advantages and disadvantages of a "one-call" system where current non-members (towns, cities, water and wastewater utilities) would be mandated to join the Dig Safe program.

**The Regulatory Arena: Next Phase Stormwater and the MS4 Municipalities.** Along with all the municipalities in Maine that directly or indirectly (through quasi-municipal utility districts) operate wastewater treatment systems, there are 28 additional municipalities within defined "urban areas" in Maine that are operating "Municipal Separate Storm Sewer Systems" regulated under the federal Clean Water Act. Because of the aliteration, these towns and cities are called "MS4" communities. As the name implies, these communities operate stormwater collection, conveyance and discharge systems that are unattached and separate from their sewerage treatment works. The federal Clean Water Act imposes a number of obligations on these so-called MS4 communities. As a "delegated" state, Maine's Department of Environmental Protection (DEP) regulates these MS4 communities with the authority of the Environmental Protection Agency (EPA).

Three events are converging over the next 18 months that could impose significant impacts on the MS4 towns and cities.

One of those events is the prom-

ulgation of new stormwater rules by the EPA. Those proposed rules are scheduled to be posted this month or January, initiating a public comment period.

Along the same timeline, the DEP is scheduled to formally post the list of 28 newly identified "urban impaired streams", which will trigger Clean Water Act obligations on the 17 communities where those streams are located. As noted in the sidebar, some of those municipalities are "MS4" communities and some are not.

Finally, as soon as the new EPA rulemaking is digested, an extended negotiation with the DEP will likely begin over the issuance of the next five-year general MS4 permit, which defines the responsibilities and obligations of the communities governed by this federal mandate.

At the request of a group of the impacted municipalities, MMA has agreed to review the proposed rulemakings and stream listings, work with municipal professionals to ascertain the impacts of the new proposed rules on Maine's affected communities, communicate those impacts to all of Maine's municipal leaders, the State Legislature and Maine's Congressional Delegation, and assist in negotiations with the DEP with respect to the next five-year permit issued in 2013.

**Something New: Municipally Positive Regulatory Fiscal Notes.** When state agencies go through the process of promulgating new regulations, they are required under the state's Administrative Procedures Act to estimate what financial impact, if any, the proposed regulation would have on municipalities or counties. That requirement was established in the early 1990s and it has clearly provided state regulators with a much better understanding of the impacts of their proposed regulations than previously existed. That being said, much of the state agency regulation promulgated since that time has indicated that there is either no financial impact on local government or the financial impact estimates are "minimal." There have been many occasions when the local governments believed the fiscal notes have been understated.

Given that history, it should be noted that some of the regulatory fiscal notes are now describing an actual financial benefit to the regulated local

governments. That appears to be a new phenomenon.

In mid-October, the Department of Environmental Regulation (DEP) posted amendments to two rules governing the operations of wastewater treatment systems, otherwise known as Publicly Owned Treatment Works (POTWs).

The fiscal note for one of those rule changes reads: "This rule revision will benefit municipalities that operate affected Publicly Owned (wastewater) Treatment Works (POTWs) by reducing the time and cost of monitoring."

The fiscal note for the other revised rule reads: "This rule revision will benefit municipalities that operate affected Publicly Owned (wastewater) Treatment Works (POTWs) by eliminating criteria for arsenic that is believed to be unattainable and establishing new arsenic criteria within USEPA guidelines. Further, it will benefit affected municipalities by ensuring that the Department utilizes the most current criteria."

## URBAN IMPAIRED STREAMS

Municipalities Containing Identified Urban Impaired Streams in Draft DEP Posting:

Auburn  
Augusta\*  
Bangor  
Biddeford  
Brunswick\*  
Ellsworth\*  
Freeport  
Hampden  
Lewiston  
Lisbon Falls\*  
Portland  
Saco  
Sanford\*  
Scarborough  
Skowhegan\*  
South Portland  
Topsham\*

(\* = Non MS4 Community)

The legislation precipitating these rules was included in this year's sweeping *Act to Ensure Regulatory Fairness and Reform* (LD 1), designed to move Maine's regulatory provisions closer to the federal standards, where applicable. Also directly affecting these rule changes was LD 515 as enacted this year, *An Act to Review State Water Quality Standards*, sponsored by Sen. Tom Saviello (Franklin Cty.).

In mid-November, the DEP posted a proposed rule change governing the issuance of snow dump licenses, with a fiscal note that reads: "Municipalities are anticipated to incur fewer permitting fees and have an expedited permit process (general permit) available."

This rule change was precipitated by LD 333, *Resolve, Directing the Department of Environmental Protection to Evaluate and Amend Its Rules Regarding Snow Dumps*, sponsored by Rep. Sheryl Briggs (Mexico).

Also in mid-November, the DEP posted a proposed rule change governing underground oil storage facilities with a fiscal note that reads: "Municipalities and counties which own motor fuel underground storage tanks will benefit from this rule, allowing tanks to remain in service beyond their manufacturer warranty in some cases at a moderate cost saving over replacing the tank."

This rule change was precipitated by LD 721, *An Act to Extend the Use of Underground Storage Tanks*, sponsored by Sen. Jon Courtney (York Cty.).


**Elections Management.** Earlier this year the Legislature debated two

election bills that the proponents believed would build accountability into the election process and the opponents believed would place unwarranted obstacles in the way of the ballot box.

The bill enacted by the Legislature repealed Maine's 40-year-old law allowing voters to register to vote up to and including election day. That legislative action was summarily vetoed by Maine voters at the Nov. 8 referendum by a 61 percent to 39 percent margin. As a result, Maine residents have retained the right to register to vote on the day of an election.

The second bill, LD 199, *An Act to Strengthen Maine's Laws by Requiring Photograph Identification for the Purpose of Voting*, was sent to the full Legislature by the Veterans and Legal Affairs Committee but failed passage in the Senate and was ultimately returned to the Committee and carried over into the Second Legislative Session. The "Voter I.D." bill will therefore be a topic of debate when the Legislature reconvenes in January 2012.

As proposed, the bill requires all voters to show some form of state-approved photo identification before being authorized to cast a ballot.

MMA's Legislative Policy Committee voted to oppose LD 199 for much the same reason as the LPC voted to oppose the bill putting an end to same-day voter registration. From the municipal perspective, the legislation is attacking a problem that does not exist in Maine. 



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# 2012 Spring Bond ISSUE SCHEDULE

Capital financing through the Bond Bank's General Bond Resolution Program allows borrowers to take advantage of the Bond Bank's high investment grade rating, low interest rates and reduced issuance and post issuance costs. Traditionally twice a year, in the spring and fall, the Bond Bank will consolidate eligible applicants and engage in a bond sale. From application to receipt of funds the bond issuance process usually lasts three to four months. Below is the schedule for the Bond Bank's Spring Issue.

FEBRUARY						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

MARCH						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**Wednesday, February 1st**

Application Deadline.

**Wednesday, March 14th**

Application approval (Board Meeting).

**Tuesday, April 3rd**

Preliminary opinions and loan agreements due from bond counsel of each borrower.

**Friday, April 6th**

Last date for signing school contracts and rates in place for water districts.

**Monday, April 23rd & Tuesday, April 24th**

Maine Municipal Bond Bank Pricing.

**Wednesday, April 25th**

Maine Municipal Bond Bank Sale Meeting (Board Meeting).

**Tuesday, May 15th**

Final documents due from bond counsel.

**Wednesday, May 23rd**

Pre-Closing.

**Thursday, May 24th**

Closing - Bond Proceeds Available (1:00 PM)

If you would like to participate in or have any questions regarding the 2012 Spring Bond Issue, please contact Toni Reed at 1-800-821-1113, (207)622-9386 or tir@mmbb.com.



# Taking Inventory of Municipal Collaboration

By Kate Dufour, Legislative Advocate, MMA

Maine Municipal Association's 70-member Legislative Policy Committee doesn't often make this request, but in 2011 it asked staff to conduct a survey of all Maine towns and cities. The purpose of the survey was to assemble up-to-date examples of the collaborative and regional relationships in which the municipalities are currently engaged in order to provide local government services as effectively or cost efficiently as possible.

The goal of this effort is to generate a single resource that can be made available to municipal officials, state-level decision makers and the general public documenting examples of the many ways municipalities are working with both public and private entities to provide local government services.

It is a matter of some frustration to municipal leaders when it is alleged that towns and cities shun opportunities to work collaboratively in an effort to find efficiencies when quite the opposite is actually the case. As shown in the preliminary results of this exercise, municipalities are clearly open to providing many municipal services collaboratively and regularly reach out to several different types of providers, including other levels of government, private-sector businesses and regional councils and planning commissions.

A synopsis of the preliminary results is provided below.

**Summary:** Municipal officials from over 90 municipalities, ranging in population from 34 to 35,495 and representing all 16 counties, participated in the study. These municipal officials submitted descriptions of 550 examples of how the towns and cities participating in the study are providing municipal services collaboratively.

Respondents were also asked to provide information on the financial

efficiencies generated as a result of the collaborative efforts. Quantifying the fiscal benefits, however, is difficult. Many municipal officials indicated that equally as important as the financial savings is the ability of their town or city to provide better quality services or a variety of different services that otherwise would not be provided if not for the collaboration.

**Diversity of Partners:** As might be expected, governmental entities (i.e., state, school, municipal or county) were most frequently identified as partners in the delivery of government services (see Table 1). All four levels of governments regularly work together to provide a broad range of services, particularly in the areas of public safety (e.g., dispatching and emergency management services) and public

works (e.g., maximizing snow plowing routes efficiencies, joint purchases on road salt and culverts, etc.).

After other levels of government, private businesses were identified as the second most common partner in the delivery of municipal services. Municipal officials often contract with the private sector to provide winter and summer road maintenance, legal services, assessing services, health and liability insurance services (including those provided by MMA), and all phases of solid waste management, including collection, disposal and recycling.

Regional partners include regional membership organizations, such as councils of government and regional planning commissions. These entities most commonly partnered with municipalities to provide planning and

Table 1 - Partners

	Partners
Government	367
Private	103
Regional	55
Mix (Public & Private)	23
<b>Total</b>	<b>548</b>

## COLLABORATION CORNER

This article continues a regular feature in the *Maine Townsman*, highlighting ways that municipalities work together to become more efficient and better serve citizens.

Maine Municipal Association • [www.memun.org](http://www.memun.org)

joint purchasing services.

The final category of partners includes a mixture of both public and private sectors working directly together to provide a single service. Examples of “mixed” collaborative relationships are found in the delivery of ambulance/rescue as well as some solid waste management services.

**Services Provided Collaboratively:**

In order to manage the data received, examples were divided into four different “departmental” categories, including public safety, public works, general administration and library/parks/recreation. The examples within each department category were further organized by service. For example, the “public safety” department category was further divided into seven functional categories, including ambulance/rescue, animal control, dispatch, emergency management, fire and police.

As shown in Table 2, collaborative efforts were most common in the areas of public safety and public works. Of the nearly 550 collaborations identified, 203 (40%) were found within the “public safety” category. The most common public safety collaborations were within the fire services function.

In the “public works” category, the most common collaborations revolved around the joint purchasing of road salt and other road related joint purchases, as well as in the collection, disposal and recycling of solid waste.

The General Administration category is the broadest of the four and includes all “town office” based functions, such as planning, economic development, social services, election duties, tax assessment, insurances, etc.

**Next Steps:** Great thanks are owed to the municipal officials who took the time to respond to the Association’s

call for collaboration data. This effort was by no means an easy “fill in the blank” process, and we appreciate all the time and effort spent.

As a result of the volume of data provided, MMA staff continues to organize all of the information provided into a searchable and user friendly format. A final report, including access to the searchable data base, will be published in late January and posted to MMA’s website at [www.memun.org](http://www.memun.org).


If you have any questions about this effort, please contact Kate Dufour at [kdufour@memun.org](mailto:kdufour@memun.org). 

Table 2 - Service Department Category	
	Department
Public Safety	203
Public Works	172
General Administration	151
Libraries & Parks and Recreation	23
<b>Total</b>	<b>549</b>

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# Municipal Revenues, Services Drop 2009-10

By Kate Dufour, Legislative Advocate, MMA

Municipal government across Maine received an overall 6 percent reduction in operating revenue from all sources last year, causing Maine's towns and cities to cut back on targeted services including general administration, code enforcement, libraries, parks and recreation and human services.

This trend was recorded in the 2010 *Municipal Fiscal Survey*, which was released by the Maine Municipal Association on Oct. 31. The *Survey* is conducted every year in cooperation with the U.S. Census Bureau and provides a comprehensive look at municipal revenue collection and expenditures over the most recently completed fiscal year.

The *Survey* uses categorized financial data voluntarily provided by municipalities to project total statewide revenue and expenditures. More than 220 municipalities participated in this year's survey, a healthy participation rate of 45 percent of all towns and cities in the state.

The *Survey* found that in 2010 municipalities statewide collected an estimated \$3.5 billion in federal, state and local revenues, expending \$3.4 million in the array of governmental services provided at the local level. That means revenues were down by 6 percent from the previous year. Specifically:

- Total municipal revenue sources (including property taxes, motor vehicle excise taxes, licenses, permits and service fees) dropped by 4 percent between 2009 and 2010. The hardest hit local revenue sources were those that are generally more discretionary in nature, such as permit and service fees. That said, municipalities also collected less property tax revenue in 2010, accounting for a nearly 3 per-

cent reduction.

- Total state revenue sources (including education subsidy, revenue sharing, and homestead exemption reimbursement) were down more dramatically, falling 8 percent. As expected, one of the biggest hits to municipalities was the 21 percent decrease in state revenue sharing funding between 2009 (\$116 million) and 2010 (\$92 million).

- Less federal, surplus and reserve/trust fund revenues were available to help fund municipal services as well. In 2009, these sources generated \$139 million, compared to \$111 million in 2010, a 20 percent reduction.

**Expenditures also reduced.** Between 2009 and 2010, estimated total local government expenditures were reduced by 1 percent. Although, some critics of government spending might classify this spending reduction as modest, the residents who elect their town and city councilors as well as those who participate in town meetings believe that some municipal spending items – public safety and winter and summer road maintenance,

to name two – are too vital to cut.

Instead, cuts were made to programs that our citizens need and enjoy but are deemed less critical during economically challenging times, such as administration, parks and recreation programs and libraries, to name a few. Specifically:

- ➊ Public safety expenditures (including law enforcement, fire, emergency management services and street lighting) increased by 6 percent. This growth was due in large part to a 10 percent increase in law enforcement expenditures. Between 2009 and 2010 expenditures for fire and EMS services decreased by 17 percent and 13 percent respectively.

- ➋ Road expenditures were up by 6 percent in 2010. Investments in capital improvements as well as winter road maintenance were the primary causes of the increased expenditures.


- ➌ General administration expenditures (including employee benefits, administrative offices, legal, economic development and government building maintenance) in 2010 were down by nearly 7 percent.

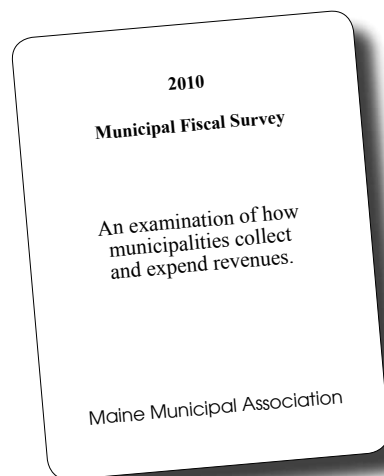
- ➍ Code enforcement and human services expenditures (including land use permitting procedures, General Assistance, social service contributions) fell by 8 percent.

- ➎ Parks, recreation and library expenditures dropped nearly 7 percent.

- ➏ Property tax assessments for county government services increased by nearly 3 percent.

- ➐ Property tax assessments for K-12 education remained flat for the period, at \$1.2 billion each year.

For full details, please see the *Maine Municipal Association's 2010 Fiscal Survey Report*, which is posted on MMA's website ([www.memun.org](http://www.memun.org)). 



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# Waldo's Littlefield: All in For Local Control

By Eric Conrad, Director of Communication  
& Educational Services, MMA

*Kathy Littlefield has been First Selectman in the Town of Waldo for nearly 40 years. This question-and-answer profile marks the ninth and final installment in Maine Municipal Association's 75<sup>th</sup> Anniversary series, which began last April.*

**Q.** Please start with a description of your municipal career. When did you get started and what got you motivated?

**A.** I have to be honest with you, I was upset over a dump issue which was up the road from my farm. But a bigger part of that was being a farmer and raising a family, we could use every bit of money that we could get. I can remember the money was only \$200 a year at the time. But that was something.

As I went on for now, I believe, 40 years, I just got hooked on it. I love the people, even the people who aren't nice! I like the debate. I like the back and forth. I like going back and forth to Augusta. Well, sometimes I say I don't like that part.

Everything goes into a basket, if you're going to help your town. You've got to know what's going on in Augusta. You've got to know what's going on in your county. You better know what's going on with your schools. You better really know what's going on with the legislators in Augusta. To me, that's just always been a big part. And it's been a wonderful experience. There have been good parts and bad parts, you know, but I hope I've influenced the town. I hope I've helped people. And I hope I can still do it for a few more years.

**Q.** You're the chair and the founder of the Waldo County Municipal Association. You have a very interesting philosophy about why you think that's important. Can you share that?

**A.** I just have always thought that selectmen and managers within an area need to have a common sounding board. They need to come together and they need to know they don't have to continually re-invent the wheel. You have to have a discussion. Things work well in one town, maybe they'll work well in my town. If you come across this issue in your town, how did you handle it? And there's always strength in numbers. When the big issues hit in Augusta, you need numbers, you need people who can branch out and get things done.

We've seen it at work time and time again. We've made a big difference in county issues. We've made a big difference with municipal issues – the LD 1s, the TABORs and all these things that sought to reduce local control, to get it to Big Brother government which, in my opinion, is never good. It's always better if you can handle it at the local level because you're not going to call Gov. LePage, or whoever's governor, at midnight and say, "My road is messy, it's potholes, it's got this and that."

You know, you round the corner at the supermarket and I used to look up the aisles to see if there was anyone there who I knew because I was in a hurry to get my groceries and get home. But I've always enjoyed talking about issues with people and helping them solve that. The Municipal Association does just that on a larger scale.

**Q.** The state Board of Environmental Protection, you served on that for eight years. Did that help you as a person, as a selectman? Did it help your citizens? What were some of the issues that you learned about during that period that perhaps you didn't know about when you started?

**A.** Boy that was a real education to

me. Like a lot of people back then, you didn't think much about dumping out old gasoline. You know, there was just a little bit left in the can. You didn't want to mess with that oil pan so you thought, "That's not so bad. I'll just take it a little farther away from the house and dump it."

When I got on the BEP, I learned why you shouldn't do that. I learned why lead paint was bad... It really educated me. It wasn't just somebody saying, "You shouldn't do that." Then I said to myself, "I can't be the only person who didn't know that." So I would get all those brochures from the BEP and I would include them in the Town Reports for people to read about lead paint, to read why you don't dump your gasoline out in the back. I hope that the experience educated not only me, but other people in my town.

**Q.** You have been active with the Waldo County Budget Committee and



*Kathy Littlefield*

you think that's the way to go, that a committee with diverse membership needs to have influence over the county budget. Talk to us about why that's so important to you.

A. I just think, again, the closer

you can keep it to local control, the better off you are. A short time ago, they tried to get a bill through the Legislature that would take away the budget committee's authority over the county budget in Waldo County and

York County. In my opinion, this was very, very dangerous... These budget committees are made up of municipal officials.

Usually, the buck goes up the ladder, but in government the buck really goes down because the selectmen and the local managers are the last ones who have to deal with whatever happens. If the federal government cuts money to the state and the state cuts it to the local people, we're the ones, being the selectmen and the taxpayers in every local town, who have to make up the difference. I always look at it that way. The buck goes down so you have to always look at these issues. A local budget committee that is made up of local, municipal officers is the only way to go.

Q. You can't control school spending if you're a selectman but you can pay attention. School spending is about 78-80 percent of the municipal budget bills that go out in Waldo. You're active in going to school committee meetings and paying attention to their issues. Why is that?

A. School spending is the biggest chunk of the money and school issues



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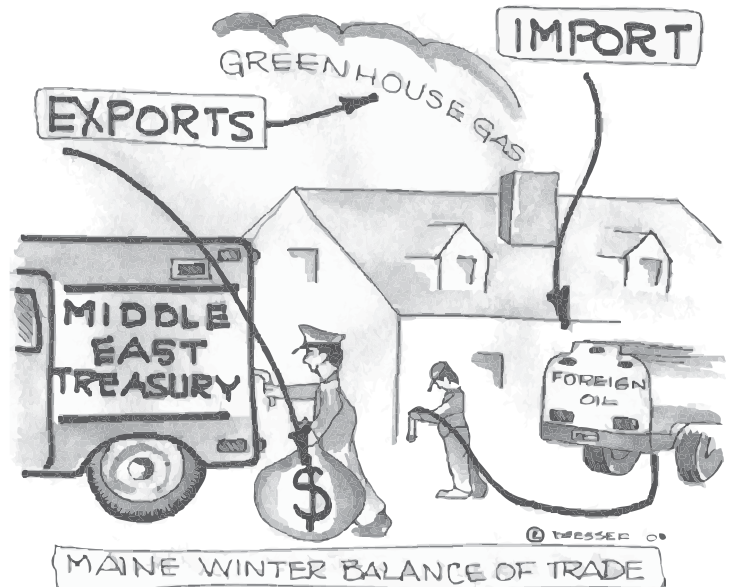
Maine Municipal Association turned 75 this year and to celebrate we produced a series of oral histories at our website ([www.memun.org](http://www.memun.org)) and profile articles such as this month's piece on Waldo First Selectwoman Kathy Littlefield. **Hear Kathy in her own words.** Go to the MMA website, click on the 75th Anniversary logo in the upper left corner and follow the directions from there.

Earlier, this year, MMA asked members to nominate people who served their communities in various municipal roles over a long period of time. The response was overwhelming! Dozens of suggestions came in and everyone who was nominated was recognized at the MMA Annual Convention, Oct. 5-6. Nine subjects were chosen for the in-depth oral history and profile project that began in the April edition of the Maine Townsman and concludes with this month's profile. We hope you enjoy the project.

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are very complicated. There again, they have to deal with what comes down from the state. The state has to deal with what comes down from the feds. But everyone plays a part. You have to get involved. It's like having a broken cog on a wheel: If you don't get in, everything's going to collapse. You have to make what difference you can make. It's not always the cheapest budget that you can get; it's the best budget you can get. Hopefully, sometimes that is the cheapest one.

**Q.** Speaking of rolling downhill, revenue sharing in Maine, I don't know if it's under siege but it's certainly not what it once was. What does revenue sharing mean to Waldo, now that it's significantly down? What are your concerns about the future?

**A.** Municipal revenue sharing isn't a huge part of Waldo's budget but in this day and age, every little bit helps. If that is reduced, then (local) taxes go up. The state Legislature has raided the revenue sharing pot over the years to the point where they just think it's an extra purse of money that they can reach into at any time. It shouldn't be. That was promised to us.

The Legislatures from year to year are not bound by the promises of another. I guess it always comes down to that. When one Legislature promises X, Y or Z the next Legislature can say, "Oh, no, they were wrong; changed our minds. We'll give you back these roads. We're going to borrow a little bit more from revenue sharing because, after all, you don't need it anyway. You can't handle money." That's one of the common mindsets in the

Legislature for the past number of years – that local municipalities can't handle their money. I think that is about as ridiculous as it gets because we handle our money much better than any other entity.

**Q.** The good news on that front is that when MMA sees or is involved with polls, most people agree with you. They feel that handling the money is best done at the municipal level. You go up to the state level, not so well

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done. You go up to the federal level, really not so well done.

You just touched on local roads. Waldo, like all towns and cities, has a mixture of state and local roads. How do you feel about the (Maine) Department of Transportation's mindset along those lines?

A. I attended several meetings – and a lot of other municipal officials did, too – that MMA hosted in conjunction with DOT, and their little proposal to get us to believe, those of us who would be getting roads back, that it was a nice little program, that they're going to fund it, that they're to put the roads in wonderful shape before they give them back to us. Then, they're going to give us a whole pot of money to maintain them.

That's not going to work. That's not going to happen. If anyone thinks it is, they need to research the issue a little further. I go way back. I can remember town road improvement funds. I can remember promises. I can remember when the first roads were turned back to municipalities and what a fiasco that was. Nothing was ever as it was promised from DOT. Nothing.

Q. One thing that you've noticed

over the years is that when people move into a town – and Waldo's a small town, with about 730 people – that their expectations can be out of line sometimes with the municipal reality. That's the bad part. The good part is that getting an outside view sometimes is a healthy thing. How do you deal with that and people who are either new to local government or new to Waldo?

A. In Waldo, we usually get zero people at our Select Board meetings. At Town Meeting, depending on the

issues, we can get 60, 70, 80 people, maybe sometimes more if the issue is really controversial. I always encourage people to ask questions. Don't take status quo. Just because I've been doing this a long time doesn't mean I can't stand a fresh view now and again. I can and I welcome that. I welcome a healthy debate. That can open up some issues that nobody's thought of before.

I started a number of years ago a community breakfast meeting before our town meeting. I always advertise



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it. You know, sometimes people would come (to Town Meeting) and they would wait to ask questions and, as everybody knows, you can only address what's on your warrant. I felt like I was always gagging everybody. "Oh no, you can't speak on that." So then we started having a breakfast meeting. You can have a conversation about anything anyone wants to bring in. If they want to argue about something, if they want to ask about something... there are all kinds of opportunities there. Sometimes I don't have many people but usually I have enough to get a healthy conversation going.

**Q.** Where do you have it, right here in Town Hall?

**A.** We have it right here, just before Town Meeting.

**Q.** Do you remember over the years a particular Town Meeting that, I don't want to say it was contentious, because maybe it was positive, but one Town Meeting that was particularly full?

**A.** I can remember that way back, if you used the word "ordinance" in the town warrant that drew people out, because nobody in this town wanted anything to do with being told what to do, especially with their land. We had a couple of ordinances that people thought we ought to get passed and, boy that really drew people out. As soon as that was taken care of, half the people at that town meeting left.

I got so that I kind of figured that one out. So, when I advertised for Town Meeting, I always used to put in: "And various town ordinances," even though we didn't have any. People would come. Then they got wise to me. They figured it out after a while.

**Q.** One of the previous subjects in our anniversary series, Steve Brown, who's the First Selectman in Carthage, told me that in a small town without a large commercial base, you really run the town from a "what's needed" basis and put basic needs first. Is that the approach in Waldo?

**A.** It really is and I don't like to do it that way but we don't have much of a choice. You put at the top of your list what is the most beneficial to the most people.

You still keep in mind things that are for the next year. We didn't used to have reserve accounts but now we have reserve accounts for those kinds of things. People say, "Well, we're go-

ing to need a computer." That way you can raise a little bit of money for these projects.

Sometimes you just try to keep your head above water. I hate to say that, but you look in the newspaper and there's foreclosure after foreclosure, bankruptcy after bankruptcy.

**Q.** Do you feel that keeping your head above water is something more common in recent years, or was it true 10, 20 years ago, just like it is now?

**A.** That's kind of an interesting question. I've never really thought of that. Years ago, we didn't raise much for our road account and then we made the plunge and said, "These roads are really bad. They're going to be impassable in the spring." I guess you could say it's sort of been that way

for a long, long time.

In recent years, you get used to getting a certain amount of money from somewhere and it's very hard doing without it. With these state promises, like revenue sharing for instance, that's a pot of money that you begin to count on... When it's taken away, there's no place to go other than to raise taxes or cut services. That's what's happening with municipalities. The buck stops with us. We've got to make up for everything that's taken away.

**Q.** Forty years plus as a municipal leader, what would you say is the highlight?

**A.** I like it. There are times when I don't like it so well. The establishment of the (Waldo County) Municipal Association is one of the highlights...

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
We needed a place to meet. This was a growing town, so we petitioned the local school to turn their building over to us. That was quite a process, actually... We closed an old town dump that had to be closed. We built a sand-salt shed down back. The town has no debt.

**Q.** Is there anything for you as a person that you experienced that keeps you coming back?

**A.** It's the people. Even when they're giving me the devil and complaining about things, they keep you on your toes, you know? That's what it's all about. We're here to serve the people.

The hardest part of the job, for me, is the General Assistance. I've seen that grow a lot lately. It's really tough to have people come in and you know they've got a family, you know they're going to be cold this winter if things don't come in. When the feds and state start cutting funds that help these people, there's no place for them to

go except to the town. It's very hard to sit in judgment of whether they get money or not. That's been the hardest thing for me to do.

But I've enjoyed getting to know people at the state level, the federal level and the townspeople so that they can call me at night and they can stop me in the grocery store, if I can't evade them! I just like it. 

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Maine Municipal Association

# In With the Young, Out With Incumbents

By Liz Chapman Mockler

You could say Joshua Shea was fed up last spring when he awoke to learn that several Auburn city councilors had walked out on talks with the school board the previous night.

As the son of two retired teachers, and the father of two young students, Shea asked to meet with his ward councilor that very day. He wanted an explanation for the councilor's "disrespectful" action and reminded him that the city would never prosper without improving education.

Shea, a 35-year-old magazine founder and publisher, had been active in civic affairs in Lewiston and Auburn for years and intended to run for the Auburn council at some point. But the walk-out so outraged him he decided not to wait.

"I told (the councilor) 'You have to explain yourself to me ... and if you are planning to run again, I'm going to run against you,'" Shea said.

The incumbent did not seek reelection and Shea collected the most votes of any contested candidate in Auburn on Election Day, with 2,237.

He did not run on an austerity platform, either.



Joshua Shea

"I don't want to have the lowest tax rate in the country if we have the highest crime rate and the worst roads," he said.

Shea watched the council and school board meetings on local access TV, but

often found himself so frustrated with some of the councilors "that I had to shut it off."

Shea was among three new councilors elected to the Auburn City Council last month – including Jonathan LaBonte, a 31-year-old who garnered nearly 5,000 votes in his unopposed bid for mayor.

LaBonte, executive director of the Androscoggin Land Trust, is believed to be the youngest person ever elected Auburn mayor.

"I want Auburn to be a city of choice in the Northeast," said La-

Bonte, who will formally resign on Dec. 21 as an Androscoggin County commissioner. State and local laws won't allow him to serve on both boards.

LaBonte started talking to the other winners in Auburn right after the election. He also spoke to outgoing Mayor Richard "Dick" Gleason and interim manager Don Gerrish to begin learning everyone's interests and priorities, he said.

Those meetings will inform the new mayor on ways to change what has been seen as a dysfunctional city government, LaBonte said, which climaxed this fall with the firing of City Manager Glenn Aho.

The new mayor, who wants to promote aggressive collaborative efforts with neighboring communities, plans to unveil his ideas during the council's swearing-in meeting this month.



(Amber Waterman/Sun Journal)

Jonathan LaBonte

"Lewiston and Auburn stand as a very small island in a global economy," LaBonte said. "If we don't stand together, then we're all going to sink together."

According to Shea, voters seemed less interested in a candidate's age and experience; they wanted open-minded people who were willing to compromise to move the city forward.

## SAME TREND IN BANGOR

Bangor voters elected two young candidates to the City Council this year for the third election cycle since 2009.

Ben Sprague, 28, won the most votes with 3,763, while another council novice, James Gallant, 31, racked up 2,605 votes.

Last year, Charles Longo won a seat to become the youngest-ever Bangor councilor at age 21. Last month, the new, younger council elected one of the city's youngest mayors and council chairs, Cary Weston, 39, just two years after he won his first election.

The third new Bangor councilor is Joe Baldacci, who received the second-highest number of votes at 3,412. Two incumbents, David Nealley and Richard Bronson, were among five candidates defeated in the election.

Like LaBonte in Auburn, Weston wants to get even more serious about municipal collaboration than his predecessors. Both men will lead twin-city councils which they hope will work even closer together in the coming years to improve their communities and schools.

Both also are keenly focused on improving communication, both internally and with the general public, as well as working to create a better atmosphere to attract new businesses,

*Liz Chapman Mockler is a freelance writer and editor from Augusta, [lizmockler@hotmail.com](mailto:lizmockler@hotmail.com)*





Cary M. Weston

expand the tax base and increase job opportunities.

Weston is a partner in a communications and marketing firm in Bangor.

"I want to create a 'Yes Department' that will be as approachable and responsive as possible," Weston said. Bangor worked diligently for years to improve the city and Weston credits part of the success to people who are willing to take chances.

"This is a city built from within," Weston said. "There is an entrepreneurial spirit here... and we are beginning to see the fruits of our labor."

For Longo, the apparent movement in some communities toward younger civic leaders is gratifying and gives him hope that new people serving in policy-making positions will bring new energy, ambition and ideas to the council.

Longo, who works in the retail sector while studying full-time at Husson University, said he initially thought he was too young to serve on the council. But after talking to friends and neighbors and studying the duties of a councilor, he realized "you don't have to be super, super intelligent or experienced" to make a good leader.

"As long as you have good will and common sense," as well as an open mind and a respect for others, "you can serve successfully," Longo said.

### NEW TREND?

Many of the officials interviewed by the Townsman think the general unease of voters, and a sense that government is not working as it should at any level, have contributed to younger people running for office in recent years. But none thought "change for the sake of change," as Weston said, was good for any city or town.

"There is a general angst over government," said Bangor City Manager Catherine Conlow, immediate past president of the Maine Town, City and County Management Association. "The economic times are tough and people are concerned, so I think you're seeing some of that."

However, Bangor residents have recently elected older candidates as well, she said.

Weston in Bangor and Shea in Auburn are among young Maine business people who have been involved in their cities for many years. They encourage younger people to get involved and to bring new insight and vision to their local governments.

Weston agreed there appears to be widespread discontent among voters in America. He said that uneasiness "is taken out locally" in part because municipal public servants are so close to their constituents and therefore more directly accountable than state and federal officials.

At the end of a campaign, he said,

it is not someone's age a voter considers; it's their ideas for making their hometown and quality of life better.

"No one is serving by accident," Weston said, noting that the winners outlined clear priorities and positions and campaigned vigorously, often door-to-door, to win their contests.

LaBonte, Auburn's new mayor, said success depends on how willing elected officials are to debate issues without preordained positions and put policy before personal differences.

"Municipal government is very complex," he said. "A lot of people think city councilors can do more than they can do. You don't build cities in two-year terms."



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## OTHER ELECTIONS

Voters across Maine decided not only candidate races, but local referendums in the Nov. 8 election.

Many incumbents from municipalities of all sizes were defeated by challengers. Following is a partial list of election results:

*Augusta:* **Jeffrey Bilodeau** and **Daniel Emery** won seats on the City Council, receiving 2,931 and 2,345 votes, respectively. Emery replaces **William Stokes**, who was elected mayor or when **Roger Katz** left to serve in the state Senate. Augusta voters also approved two bonds totaling \$1.5 million for road construction and improvements to a one of the city's elementary schools.

*Biddeford:* Incumbent Mayor **Joanne Twomey** was defeated by state Rep. **Alan Casavant**, who garnered 62 percent of the vote.

*China:* Incumbent Selectman **Irene Belanger** and newcomer **Steven Hughes** collected 679 and 504 votes, respectively, defeating two other candidates.

*Freeport:* Incumbent Councilor **Eric Pandora** was defeated by newcomer **Katherine Arno** by a vote of 497-340.

Another incumbent, **Joe Migliaccio** was defeated by **Kristina Egan**, 494-381. Incumbent **Rich DeGrandpre** defeated a challenger to win re-election by a vote of 1,581-1,391.

*Lisbon:* Voters overwhelmingly approved a charter change that will require a referendum vote on the annual municipal budget. The vote was 2,025-514. Residents also approved eight ordinance changes by wide margins. They elected **Lisa Ward** over incumbent Councilor **Roger Cote** by a vote of 1,361-1,103.

*Lyman:* Voters recalled Selectman **Norm Hutchins** by a vote of 927-607 and expanded the Board of Selectmen from three to five members. The expansion question passed by a 2-to-1 margin. Hutchins was accused of conflicts of interest and failure to work in the best interest of the York County town of about 4,200. Hutchins denied the allegations and said he did not deserve to be removed from the board.

*Old Orchard Beach:* Voters endorsed term limits for councilors, limiting them to seven straight years beginning in 2012. The vote was 2,144-979.

*Portland:* **Michael Brennan**, a former state representative and senator,

was elected as Portland's first popularly elected, full-time mayor in nearly 90 years. Since 1923, the City Council has chosen the mayor.

*Topsham:* **David Douglass Jr.** was the top vote-getter in a three-way race for two seats on the Board of Selectmen. Douglass won 1,823 votes, while incumbent **Ronald Riendeau** garnered 1,754 votes. Incumbent **James Trusiani** lost with 1,697 votes.

*Waterville:* Incumbent Councilor **George Myers Jr.** defended his seat against Patrick Roy by a vote of 345-202. **Karen Heck** was elected mayor over **Dana Sennett** by a vote of 2,021 to 1,344.

*Windham:* Incumbent Councilor **Tommy Gleason** defeated challenger Patrick Corey by a vote of 2,036 to 1,801 to win a three-year term.

*Winslow:* **Jerry Quirion** defeated two other candidates to take the seat vacated early by Roland Michaud. Quirion garnered 124 votes. Former Councilor **Steve Russell**, who has served on the Town Council for 17 years, won re-election as a write-in candidate. There were no formal candidates for the position. [mt](http://www.mt.com)

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**Linda-Jean Briggs** of North Smithfield, R.I., has been hired as the new Dexter town manager. Briggs, 52, returned to college in 2008 to earn a master's degree in public administration after realizing she wanted to move from the private to public sector. She had worked as a top employee for Verizon in Rhode Island. She was hired after Dexter selectmen advertised the job twice and held many interviews over two months. Briggs replaces **David Pearson**, who resigned on Sept. 1 and was then hired as town manager of Sangerville.

After nine months in office, Newburgh Selectman **Mike Burns** resigned in November, citing ongoing frustration and strife with other selectmen. Burns told the Bangor Daily News that most of the infighting on the board centered on road repairs.

**James Butler Jr.** of Jay was promoted from firefighter to Livermore Falls assistant fire chief in November. He replaces **Ron Leclerc**, also of Jay, who was terminated in September. Before joining the neighboring department, Butler worked as a Jay firefighter.

After serving the Bangor Fire Department for 32 years, the past 15 as chief, **Jeffrey Cammack** announced he will retire in February 2012. City officials praised Cammack for his leadership through many changes over the years, including overseeing the successful construction and opening of a new fire station in 2008. The city was expected to begin a search for Cammack's replacement as soon as possible.

Chebeague Island Selectman **Mark Dyer** resigned without giving a reason in late October after serving the town since its inception in 2007. Dyer served as board chairman during his tenure and had been re-elected to a three-year term last year.

Ten Rumford residents who have served the town in various ways were recognized last month by the Board of Selectmen. Those honored were: **Ed Flynn**, for 25 years' service on the school board; **Joe St. Pierre**, for 18 years of work at the town's sewer dis-

trict; **Angela Arsenault**, for 11 years of service as a finance committee member; **Jolan Ippolito**, for 21 years of service on the finance panel, many of them as chairwoman; **Mary Hickey**, who worked for 17 years as the town's health officer, from 1992 to 2009; **Marsha McKenna**, who served as animal control officer for 25 years; **Brian Gagnon**, for 15 years of service on the board of assessors; **Peter Perry**, who died earlier this year while serving his 31<sup>st</sup> year as an assessor; **J. Arthur Boivin**, for his work as a selectman and school board member, with the distinction of serving as chairman of both boards, as well as helping to create the town information center; and **Frank DiConzo**, for his service as a selectman and finance committee member over 18 years, as well as a long-time and still active member of the regional school district board.

Brewer Deputy Mayor **Jerry Goss** was elected mayor during the city council's annual meeting in mid-November, replacing outgoing Mayor **Joseph Ferris**. Goss plans to focus on economic development during his two-year term.

Rockland councilors elected **Brian Harden** as mayor for 2012 in voting held on Nov. 21. Harden's election marked the fourth time he has served as mayor. He said hiring a new manager would be among the council's first tasks. He predicted 2012 "will be ... incredibly challenging."

Saco councilors in November honored Deputy Police Chief **Jeffrey Holland** for 25 years of service to the city. Holland served five years as a reserve officer in his hometown of Old Orchard Beach before joining the Saco force. He lives in Biddeford and has no plans to retire. Holland told the Sun Chronicle he had always wanted to be a police officer. "Twenty-five years is an accomplishment I am proud to have attained," he said. "I thank former Chief **Richard Nason** for making a little boy's dream come true."

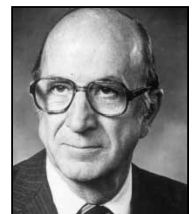
Former Gardiner Mayor **Brian Rines** died Nov. 25 at home at the age of 70. He had served as the city's mayor for 14 years as part of a local gov-



Brian Rines

ernment career that started in the 1980s. Rines was not only popular, but helped lead the city through major projects such as expanding the waterfront park and developing an industrial park. A Gardiner native, Rines left Maine for a time, but he returned in the 1970s. He resigned from the city council in 2006 to seek a seat in the Legislature.

One of Maine's most successful civic and business leaders, **Joseph Sewall**, died on Nov. 23 at a Bangor hospital at the age of 89. Sewall served as an Old Town councilor for nine years before his election to the Maine Senate, where he served as president for four straight terms beginning in 1975. In 1946, Sewall assumed the top leadership role in his family business, James W. Sewall Co., a forestry and surveying firm founded by his grandfather in 1880. Sewall's great-grandfather George Sewall served as Maine House speaker in 1851.



(Bangor Daily News)

Joseph Sewall

Several personnel changes have been made at the Winslow Police Department, including **Joshua Veilleux**, who was promoted to sergeant. Veilleux's replacement as the town's school resource officer is **Ron McGowen**. Meanwhile, reserve Officer **Brandon Lund** was promoted to full-time patrol officer. The department has 23 members, including nine full-time officers and 14 part-time reservists.

Waldoboro selectmen on Nov. 8 confirmed the appointment of **Richard Lash** of Warren as the town's new emergency medical services director. Lash was the unanimous choice of the interview committee, which included the fire and police chiefs and town manager. Lash, a member of the town's EMS since 2002 and a supervisor since 2006, replaces **Mike Monk**, who resigned in the fall.

**Statewide:** The number of Maine cities and towns that have banned fireworks sales and use continued to grow in November. Among the municipalities that prohibited fireworks last month: Augusta, Cape Elizabeth, Falmouth, Rockland, Winthrop and Yarmouth. The City of Ellsworth, meanwhile, imposed a six-month moratorium on the sale and use of fireworks. The City of Brewer passed an ordinance to allow both the sale and use of fireworks.

**Alna:** Selectmen adopted new conflict of interest rules in November following controversy over rental charges paid to a business owned by the road commissioner. The new policy prohibits any deal between the town and a company in which a town employee has a financial interest unless authorized by selectmen. The policy is limited to work or services that cost \$3,000 or less. Under existing rules, the town seeks bids on any work that is expected to cost more than \$3,000.

**Blue Hill:** A dairy farmer is in trouble with the state for selling unpasteurized milk, as allowed under the town's "local food" ordinance. Four other Maine towns have passed similar laws -- Penobscot, Sedgwick, Trenton and Hope -- that allow farmers to sell products without a license but only directly to consumers for home consumption. Blue Hill selectmen have asked the state to drop charges against the local farmer and to respect the town's right to local control, but so far state officials have not changed their minds.

**Cape Elizabeth:** The town council unanimously approved alcohol use at group events at Fort Williams Park as a way to help finance the maintenance required at the oceanside park. For example, the Maine State Troopers Association will hold an event in September 2012 that will generate \$3,600 in fees because of the new policy.

**Eastport:** Two residents filed a lawsuit to stop the pending sale of The Boat School, which includes three buildings, 20 acres of land, a boat ramp and pier, floating docks and a boat lift. The residents allege the property was valued at \$2.2 million and should not

have been sold without seeking bids, a requirement under the city charter, they said. A developer bought the property for \$375,000 with the agreement it would use \$75,000 to build a public access pier.

**Edgecomb:** Selectmen voted unanimously in favor of a second six-month construction moratorium on Davis Island. The action followed recommendations by the town's planning board for changes to the island's land use ordinances. Public hearings will be held during the new moratorium, which will end next May 15.

**Freedom:** The town has finally

bought a pumper tanker for the fire department at a cost of \$115,000 after residents defeated a referendum to allow the town to buy a new truck for \$250,000. Although the truck is used and older than the department hoped it would be, it's newer than others available on the used market, officials said. It also holds less water than what firefighters wanted, came without a warranty and is in less-than-workable condition until some parts are replaced.

**Indian Township:** Disheartened by their chances to build a casino, members of the Passamaquoddy Tribe are seeking investors to build a \$25 million water bottling plant and create nearly

### NEW ON THE WEB

Here are some highlights of what's been added at [www.memun.org](http://www.memun.org) since the last edition of the *Maine Townsman*.

- **Fire Marshal.** The State Fire Marshal issued its yearly Christmas Tree Policy for the use of trees in public buildings. It is important to read these guidelines before bringing a real or artificial tree into a public building.
- **Celebrating Service.** MMA, as part of its 75th Anniversary, is recognizing officials for their tireless years of public service. Oral histories can now be heard at the website. The interview with Carthage First Selectman Steve Brown has been added to a list that also includes: Walter Foster of Friendship, Linda Boudreau of South Portland, Kenneth Michaud of Fort Kent, Roy Gardner of Allagash and Grace Hatton of Charlotte.
- **Fiscal Survey.** Maine Municipal Association Legislative Advocate Kate Dufour recently completed her annual Fiscal Survey, which documents declines in municipal revenue and spending from 2009 to 2010.
- **Regionalization Rarely Works.** Canadian Economist Brian Lee Crowley, who spoke at MMA's 2010 Convention, has posted research showing that small, localized units of government are more efficient and cost-effective than larger governmental agencies. His report is titled: "Surviving and Thriving in an Irrational World."

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100 full-time jobs. The plant would be the only one in North America owned by Native Americans, according to tribal chief Joseph Socabasin. The tribe would pump water from an aquifer under land it owns in Washington County and possibly be able to market it worldwide because of the deep-sea port in nearby Eastport. The tribe's ultimate goal is to produce bottled water under the brand name Passamaquoddy Blue.

**Lewiston:** The AARP, formerly known as the Association of American Retired Persons, has chosen Maine's second largest city as one of the nation's best 10 small cities for retired citizens. AARP cited the museums and art culture, low crime rate, amenities and the number of retired people already calling Lewiston home as the reasons for its choice.

**Lincolville:** The town's boat club is the new owner of an old firehouse and schoolhouse in Lincolville Center, for which it paid \$40,000 in November. The firehouse had been replaced with a new garage and the one-room schoolhouse, located next door, had been used by the boat club for storage and a temporary headquarters.

**Mount Desert Island:** Not all of the economic news is bad. Early reports from chambers of commerce and the state show summer tourism grew in the Greater MDI area, which includes the four towns on the island, as well as the Cranberry Isles, Frenchboro and Swans Island. More than 100 cruise ships anchored near Bar Harbor this year, a critical element in the area's tourism success. "Staycations" also likely played a part in the \$169 million spent in the area from May to September. Meanwhile, visitors to Acadia National Park, which sits primarily in Bar Harbor but straddles other island towns, saw a slight drop in 2011.

**Searsport:** Former Selectman Jack Merrithew presented the Board of Selectmen an original painting of the last full-rigged ship, the *William H. Connor*, built in the town. The gift was offered by Merrithew during a regular selectmen meeting Nov. 15 in honor of the community's seafaring history. [mf](#)



Christmas tree in downtown Portland.

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**PHOTOS:** If your municipality submits a news item for the Townsman, consider sending a corresponding photo to: Eric Conrad or Jaime Clark ([econrad@memun.org](mailto:econrad@memun.org) or [jclark@memun.org](mailto:jclark@memun.org))



## IMPOSING FINES & PENALTIES

*Question:* Can the selectmen or other municipal officials impose fines and penalties for ordinance violations?

*Answer:* If, by “impose,” you mean assess or levy fines and penalties and enforce their collection, the answer is no – only a court can impose legally enforceable fines and penalties for ordinance violations.

Many land use ordinances, however, including virtually all shoreland zoning ordinances, authorize the municipal officers (selectmen or councilors) or their authorized agent to enter into voluntary consent agreements with violators in order to eliminate violations and recover fines in lieu of court action. But these agreements depend on the willingness of violators to agree and to comply with their terms. If a violator is unwilling to cooperate, a consent agreement is not an enforcement option, and court action may be the only alternative for enforcing compliance and recovering fines and penalties.

In a few instances, though, municipalities *are* authorized by statute to assess and collect, via a special tax levy and lien, the municipality’s costs for correcting specific nuisances. These include dangerous buildings (see 17 M.R.S.A. § 2853), malfunctioning septic systems (see 30-A M.R.S.A. § 3428), and the court-ordered clean-up of junkyards and auto graveyards (see 30-A M.R.S.A. § 3758-A). These statutes do *not* authorize municipalities to impose fines or penalties for related ordinance violations, however. Again, only a court can do that.

For the record, in the case of land use ordinances, fines and penalties are established by statute (see 30-A M.R.S.A. § 4452(3)). In general, these fines range from \$100 to \$2,500 per violation for each day the violation remains, payable to the municipality. The violator will also usually be ordered to correct the violation. If the municipality is the prevailing party, it must also be awarded reasonable attorney fees, expert witness fees and costs. (If the violator is the prevailing party, the court may, but is not required to, award fees and costs to the violator.)

In addition to land use ordinances,

the fines and penalties of 30-A M.R.S.A. § 4452(3) also apply to violations of the State plumbing and subsurface wastewater disposal rules, laws administered by local health officers, fire prevention laws, the State junkyard law, and laws, ordinances and regulations pertaining to harbors, among other laws.

These statutory fines and penalties apply whether or not the law, ordinance, rule or regulation in question expressly cites them and even if the law, ordinance, rule or regulation provides differently (see *Town of Holden v. Pineau*, 573 A.2d 1310 (Me. 1990)). Also, the courts may not waive or reduce the statutory minimum per-day penalty unless authorized by statute (see *Town of Orono v. LaPointe*, 698 A.2d 1059 (Me. 1997)).

For more on dangerous buildings, malfunctioning septic systems, and junkyards, see our “Information Packets” on these topics, available free to MMA members at [www.memun.org](http://www.memun.org). (By R.P.F.)

## SPITE FENCES REDUX

Although we wrote about this topic little more than a year ago (see “Spite Fences,” *Maine Townsman*, “Legal Notes,” October 2010), Maine’s highest court recently issued its first decision on the subject in over a century, so we thought our readers might be interested in the details.

In *Peters v. O’Leary*, 2011 ME 106,

upland owners sued their shorefront neighbor for creating a private nuisance pursuant to Maine’s spite fence law (17 M.R.S.A. § 2801). Under this law, a spite fence is “[a]ny fence or other structure in the nature of a fence, unnecessarily exceeding 6 feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property.”

After the upland owners built a new home with improved ocean views, and following some related spats, the shorefront owner planted a row of 74 tall trees – 61 arborvitae and 13 pear trees – on his property, significantly impairing the upland owners’ Atlantic views. There were two issues for the Court: (1) whether these plantings were a “structure in the nature of a fence,” and (2) whether the structure was maintained “for the purpose of annoying” the upland owners.

Given the number, density and height of the plantings, the Law Court had no difficulty concluding that they created a structure in the nature of a fence. And while the Court conceded that the plantings also enhanced the shorefront owner’s privacy, it found their dominant purpose to be the annoyance of his upland neighbors.

In a concurring opinion one of the Justices cautioned that the Court’s opinion should not be read to suggest that planting vegetation as a legitimate privacy barrier constitutes a spite fence

 MMA Municipal Calendar

**JANUARY 2** — New Year’s Day 2012 (Observed) – A legal holiday. (4 M.R.S.A. §1051)

**ON OR BEFORE JANUARY 15** — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

**JANUARY 16** — Martin Luther King, Jr. Day - a legal holiday (4 MRSA §1051).

**BY JANUARY 20** — Treasurer of State

to send notice to chief municipal officer of maximum interest rate which can be charged on delinquent taxes (36 M.R.S.A. §505).

**JANUARY 31** — Deadline to submit quarterly withholding taxes to State Tax Assessor (36 MRSA § 5253).

**DURING JANUARY** — In towns with a March annual meeting, selectmen should begin preparing the town meeting warrant and town report. Obtain reports from all departments: schools, roads, etc. Arrange to have annual audit made before town meeting.





or that the law forces naturally matured vegetation to be cut in order to provide neighbors with a better view.

As we noted in last year's "Legal Note," unless an ordinance regulates them somehow, spite fences are a private civil matter between the parties, and a municipality has no legitimate role in resolving these disputes. (By R.P.F.)

### SUCCESSIVE TAX LIENS DO NOT WAIVE FORECLOSURE

According to a recent Maine Supreme Court decision, the filing of successive tax liens does not waive foreclosure of a prior lien.

In *Town of Blue Hill v. Leighton*, 2011 ME 103, the town acquired title to a residence by automatic foreclosure of a 1991 tax lien. As is common practice and authorized by law, the town allowed the occupant to stay but continued to assess her as person in possession and to file liens when taxes went unpaid. Finally, in 2010, after paying nothing since 1991 and owing \$30,000 in back taxes, she was sued by the town to evict her.

In her defense, she argued, among other things, that the town had waived foreclosure of the 1991 lien by continuing to file liens. The District Court actually bought this argument, but the Superior Court and the Law Court both rejected it, citing a 1952 decision by the Law Court in which the very same claim was dismissed because tax lien foreclosure is governed by statute and the common law doctrine of waiver therefore does not apply.

The Law Court also noted that because the town complied with the statutory procedure for foreclosing on the 1991 lien, it acquired full title to the property and the immediate right of possession. Compliance with the lien statutes was by itself sufficient to prevail in the eviction proceeding; the town had no further burden of proof that it held title.

For more on tax-acquired property and why eviction may not be advisable in most cases, see "Tax-Acquired Property: Eviction Not Necessary," *Maine Townsman*, "Legal Notes," March 2009.

For more on tax-acquired property

and why municipalities should probably not agree to installment payment arrangements, see "Installment Contracts for Sale of Real Estate," *Maine Townsman*, "Legal Notes," January 2009.

For much more on tax-acquired property generally, see our "Information Packet" on the subject. Both our "Legal Notes" and our "Information Packets" are available free to members at [www.memun.org](http://www.memun.org). (By R.P.F.)

### CORRECTING RECORDS

**Question:** We found an error in our former clerk's record of last year's town meeting (a warrant article was recorded as "passed" when, in fact, it failed). How should this be corrected?

**Answer:** According to 5 M.R.S.A. § 95-B(1), when there is an error or omission in any local government records, "those records must be corrected under oath by the person who was responsible for those local government records, whether or not that person remains in office." There is a sample affidavit for correcting a local government record in Appendix 2 to MMA's *Municipal Clerks Manual*. We recom-

mend you contact your former clerk, have him or her complete the affidavit, and file it together with the original record.

What if the official who was responsible for the record is deceased or is no longer legally competent or available?

The statute doesn't say, but we're skeptical that an erroneous record can be "corrected" by anyone other than the official who was responsible for preparing it originally (think of the potential for mischief if this were permissible). Instead, if the original official is not available but a successor has good reason to believe that a record is erroneous, we suggest the successor complete and file an affidavit "supplementing" the record. This could be similar to an affidavit correcting the record, but instead of correcting the record, it should simply identify what the maker of the affidavit *believes* to be the error and the reason(s) for this belief.

For more on the management and preservation of municipal records, see Chapter 2 of MMA's *Municipal Clerks Manual*, which is available free to members at [www.memun.org](http://www.memun.org). (By R.P.F.)

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