



LEGISLATIVE BULLETIN



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County Jail Funding Positioned for Informed Future

As this Legislature debates the merits of the supplemental budget, an interconnected dialogue around the housing of incarcerated individuals is also being debated in the Committee on Criminal Justice and Public Safety. On Wednesday, the committee held a work session on LD 1654, *An Act To Stabilize State Funding for County Corrections*, sponsored by Rep. Charlotte Warren of Hallowell.

After two years of stakeholder work, the associations of county sheriffs (MSA), county administrators and clerks (MCAACA), county commissioners (MCCA) and MMA worked together in compromise to attempt to solve the annual battle of county jail funding with the Maine Department of Corrections (DOC).

County jails are the emergency room of the criminal justice system. Like emergency rooms, jails are triage centers with a revolving door of patrons established to stabilize a public safety threat and house individuals until they have received their due process. Increasingly, county jails are being asked to provide significantly more specialized treatments with structures, staffing, and available services built for emergency stabilization— not wrap around care. These are statewide priori-

ties that do not have statewide resources dedicated to the task, nor ubiquitous community service providers available in every county.

Since the demise of the Board of Corrections, municipalities via county property tax bills have funded 80% of jail operations. The state, which sets the standards for incarceration, determines what services must be provided, and in which facility an individual will reside, increasingly earmarks funding for specific services, and contributes roughly 20% of total operational costs, but only after a legislative battle. This dance to secure annual funding finds sheriffs patrolling the State House halls

more frequently than town roads.

Jail operators have little ability to stop the flow of individuals placed in their care, and the county officials must creatively fund the unpredictable activity, while the property taxpayer has little voice in the operation of jails, or the state's role in setting obligated standards and services.

The state is obligated to both provide basic services to the indigent, while also appropriately raising revenue proportionally for the delivery of those services. The property tax is not a proportional tax instrument, but one constitutionally based on highest and best use, not the capacity of the

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Schrodinger's Permit – Concealed Handgun Questions Cloudy

What is both unnecessary for Mainers to have by statute, yet necessarily robust in standards to obtain? A concealed handgun permit.

Last Friday, the Criminal Justice and Public Safety Committee held yet another work session on LD 1446, *An Act To Aid Municipalities in the Issuance of Concealed Handgun Permits*, sponsored by Rep. William Pluecker

of Warren. The original bill, carried over from the first session (2021), mandated Maine State Police (MSP) to assume the role of providing concealed handgun permit issuance assistance to all municipalities not covered under a grandfathered agreement with the state when the “constitutional carry” or LD 652 (Public Law 2015, Chapter 327) was enacted in 2015.

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County Jail Funding Positioned for Informed Future cont'd

homeowner to shoulder the burden. Ironically, the legislative conversations around the affordable housing market, homelessness, and criminal justice diversion rarely consider the impact of county jail funding on the non-means tested property tax which carries the bulk of the incarceration burden statewide.

Under the pre-vaccination stages of the pandemic, county jails faced an unprecedented challenge of mitigating an internal public health crisis, while simultaneously addressing severe staffing shortages. While courts ceased operations, and the state prisons stopped accepting transfers, increased reliance on jail services caused county assessments to outpace the increases for municipal services growing by an estimated \$7.2 million statewide.

	FY 2019	FY 2020	County Tax Expenditure as a share of FY 2020 Revenue
County Tax Expenditure	\$150,565,833	\$157,285,338	
Total Municipal Revenue	\$3,640,727,853	\$3,869,333,164	4.1%
Property Tax Revenue	\$2,749,377,237	\$2,673,785,656	5.9%

To better balance this financial relationship, the first draft of LD 1654 created a class of prisoners that are placed in county custody via state pressures. However, concerns expressed by the DOC around predictable budgeting, and what one snapshot appeared to indicate that nearly 40% of the inmates house in county facilities would meet the new classification, sent the group back to the table for further discussion.

As amended, LD 1654 creates a County Corrections Professional Standards Council with membership that includes municipal stakeholders, county administrators, commissioners, sheriffs, and the Department of Corrections to evaluate and advise the commissioners with regard to the programs and services required in jails. The Council will also have rule making authority to establish a centralized database to capture already required data needed by the DOC including financial, program, and service data that will provide real time information to direct future policy.

Designed by the county and local government council, the data collected will not only serve to illustrate the pressure the state places on the county system, but also empower the

council to make stronger recommendations for increased state funding. The hope is this process will better inform policymakers in the future to resolve deficits and needs in the county system that are hidden by the current siloed approach.

To avoid the perennial legislative ask for greater state funding, the DOC will make the state’s share of county jail funding a permanent part of their budget recommendation, advised by the needs of the counties through the work of the council. This will allow county sheriffs and administrators to spend less time working the halls to make ends meet, and the council data system to inform that need with consistent and timely information. Furthermore, Governor Mills agreed to place the additional \$3.7 million in her change package budget equaling 20% of the statewide costs to operate jails during the biennium, avoiding the need to fight for the funding on the appropriations table.

The bill also updates the county base tax assessment limit for each county— which has not been updated in statute since 2008— to reflect the growth in assessments over that time and the current funding necessary to operate jails in each county. It also changes the county annual growth limit from 4% annually or the growth limiting factor known as LD 1, whichever is lower, to 5% or the same LD 1 calculation, whichever is higher.

The counties will not be able to return to the legislature to increase the base tax assessment for four years without detailed information regarding justification and alternatives explored, audited financials, and a recorded vote from their budget committee and commissioners in support of the request. Counties who fail to report their data to the council system lose their ability to ask for the local increase entirely.

The bill represents a compromise between all the stakeholders, with pain points universally felt, to achieve a structural foundation that will hopefully lead to a more stable and informed future where evidence, collaboration, and partnership replace political debate. During the work session on Wednesday, four of the stakeholders, MCC, MCAAC, MMA and DOC showed up in good faith to support this unprecedented effort. In the eleventh-hour, the sheriffs’ association pulled their support for the bill.

Uncomfortable with the establishment and role of the

(continued on next page)

County Corrections Council, and disappointed at the loss of the state sanctioned inmate model proposed in the original bill, some sheriffs advised they did not support the amended compromise because it fell short of the aspirational goals of stabilizing county funding. Following this disclosure, the governor’s policy adviser indicated she would recommend that the proposed \$3.7 million in jail funding in the budget change package be removed and leave the stakeholders to fight for the funds with the other matters competing with funding on the appropriations table should the committee pass the bill without the sheriffs’ support.

Following a deeper discussion around the relationship between the department and county jails now, and the improvement in those dynamics under the amended bill, the committee members caucused with MSA representation. On return, the sheriffs expressed their displeasure at what felt like a hostage situation over funding but opted for the incremental change proposed in the bill. Committee members also expressed displeasure around the ultimatum issued regarding state funding, but unanimously supported the passage of LD 1654.

The bill now needs to beat the path to the governor’s desk so that the real work to design a structure to tell this system narrative more assuredly can begin. It will just need to have the local government partners in the driver’s seat, and ready to maximize the potential.

Remote Meeting Wrap Up

The Judiciary Committee conducted a work session last Friday on LD 1971, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation*. Committee chair, and bill sponsor Rep. Thom Harnett from Gardner, reported that the goal of the work session was to come to a consensus on the proposed bill amendment.

As described in a previous Legislative Bulletin, the bill aims to provide municipalities the flexibility to adopt a remote meeting policy by a remote method, when such a policy does not currently exist. Committee members generally support the bill but discussed a proposed amendment that would impose the requirement to have a two-thirds majority vote to pass.

A motion to support LD 1971, as amended, passed unanimously.

The committee also discussed a proposed amendment to MMA’s bill, LD 1772, *An Act To Amend the Remote Meeting Law in Maine’s Freedom of Access Act*. The goal of this bill is to allow a public body to restrict public participation to only remote methods when the body itself has determined it is appropriate to meet solely by remote means. Additionally, the amendment allows any subcommittees that fall under the public body to follow the same remote meeting policies.

There was concern among committee members that this would allow remote meetings in perpetuity, therefore demeaning the impact of public meetings. The bill sponsor, Rep. Harnett, clarified that the intent of the bill was to provide flexibility for a public body to deem an emergency and that the bill was in no way trying to impede transparency or the public process.

Sen. Heather Sanborn of Portland expressed strong support for the bill and provided an example to prove the intended benefits of the bill. As a result, a motion was made in support of the bill as amended to include the provision allowing subcommittees of the public body to follow the same remote meeting policy as the governing board.

The motion carried with three opposed.

Envisioning that a concealed handgun permit would no longer be necessary with the passage of LD 652, the Legislature removed the staff from the division supporting the background process. However, the obligation to issue a concealed handgun permit was added back in without the obligatory staffing during enactment.

Six years later, all agencies—state and local—involved in the processing of permits report no decline in requests, with some experiencing a marked increase in more complex background investigations.

During the summer, MMA staff worked with the Department of Public Safety, Division of Weapons and Professional Licensing to develop an understanding of the scope and need for municipalities that lack the specialized law enforcement involvement in the background process for the issuance of the permits in line with state statute. Staff and MSP explored possible ways to arm the committee with data regarding the number of communities who fell through the cracks during the enactment of LD 652 that are now without an MSP contract or police department. The committee also desired to know how those communities were meeting their statutory requirements for background checks without law enforcement or if they were not issuing the credential at all.

A subsequent survey uncovered many alarming matters, including an inconsistent approach to how those uncontracted municipalities conduct background checks, a lack of ability to conduct the statutory background

checks without law enforcement involvement, confusion about the difference between the State Bureau of Identification (SBI) and the Maine State Police, ambiguity in the interpretation around the authority in statute of other law enforcement agencies to provide the service, and a lack of capacity for most police agencies to shoulder additional burdens from other communities. Both sheriffs and some municipal agencies have been assisting their neighbors without explicit ability in statute to do so.

Law enforcement involvement in a background check for this purpose is vital. Many of the necessary inquiries for applicants are restricted to law enforcement officials only and are not available to municipal officials. Many of those resources provide information that have led law enforcement agencies to decline the issuance of a concealed handgun permit. These include bail conditions for pending charges that restrict the possession of a firearm, court ordered protection from abuse orders, and certain adjudicated mental health conditions that do not result in involuntary confinement in a facility.

For example, if an individual was arrested for an altercation involving a handgun and charged with reckless conduct with a dangerous weapon—a felony—and subsequently pleas down the charge to a misdemeanor assault, the final conviction would not prohibit the individual from carrying or owning weapons. However, the behavior contained in the narrative around the incident is a clear indicator that such an individual would not meet the “good

moral character” standard in statute to receive a concealed handgun permit. None of the details of the incident would be available to a municipal official.

Similarly, if an individual applicant has been convicted of a disqualifying charge in another state, such as domestic abuse or a drug offense, a municipal official has no access to this information. A simple SBI query only provides what is publicly available to non-law enforcement, meaning municipal officials are making permitting decisions without access to complete information or fully adhering to the required background standard prescribed in statute.

The burden of out-of-state permit requests, which tallied over one thousand last year alone, makes it hard for the MSP to assume actual increases in Maine resident permits. However, because the permit allows for expanded ability to carry in other states, and to carry in Baxter and Acadia Parks, it has value to the permitted individual. While out of state residents may apply

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for a permit, there is no obligation for them to ever visit Maine for the service, though the permit is frequently sought by non-residents for its reciprocity agreements in 23 other states.

The draft amendment to LD 1446 proposed by the sponsor, MSP and MMA requires law enforcement involvement in the background check process, makes participation of a county sheriff or adjacent municipal agency permissible with an agreed contract for that service allowable, and relieves MSP of the obligation to issue permits to non-residents. This would permit the department to dedicate its services to those who live in Maine communities without local law enforcement services and without the grandfathered contract.

As with all things Zoom related, even unanimous consensus among the stakeholders involved with the bill can be disrupted. While no testimony was provided before the fourth work session, the National Rifle Association, sent an eleventh-hour letter to the committee indicating they were in opposition to the repeal of the requirement that MSP issue concealed handgun permits to non-residents, as offered in the amendment. Removing the obligation to issue the non-resident permit directly endangers MSP's ability to assume additional responsibilities to issue permits to Maine residents without requiring additional staff.

From MMA's point of view, the level of staff necessary to meet the burden for non-resident applicants is simply not a public safety priority, unlike many of the other positions stripped from the DPS budgets that

HEARING SCHEDULE

For the week of March 21, 2022

WEDNESDAY, MARCH 23

**Education & Cultural Affairs
Room 208, Cross Building
9:30 a.m.
Tel: 287-3125**

Draft legislation – An Act To Reorganize the Provision of Services for Infants, Toddlers, and Children with Disabilities from Birth to 6 Years of Age and Extend the Age of IDEA Eligibility to 22.

Note: As of now, the legislative presiding officers have waived the requirement that bills be advertised for public hearing two weeks in advance; therefore, you should check your newspapers for Legal Notices as there may be changes in the hearing schedule. It is not uncommon at this time of the session to have a bill printed one day and a public hearing within a couple of days. Weekly schedules for hearings and work sessions can be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/>.

Due to COVID-19 related restrictions (and until further notice), all public hearings and work sessions will be conducted remotely. Municipal officials interested in providing live remote testimony will need to email lio@legislature.maine.gov or call (207) 287-1692 no later than 5 p.m. the day before the hearing for information on how to participate. Comments on bills can be submitted in advance of a public hearing using the Legislature's testimony submission form ([Online Testimony Submission \(mainelegislature.org\)](https://www.mainelegislature.org/OnlineTestimonySubmission)) and interested parties can view committee proceedings, both live and recorded, on the Legislature's YouTube channel ([News | Maine State Legislature](#).)

improve public safety in those same 70 communities, including academy training officers and regional crisis and support coordinators. However, the bifurcated permit process based on zip code endangers the integrity of the permit since municipal officials are unable to access and receive the necessary information to guarantee a valid decision regarding permit issuance. It seems unpalatable to either water down the permit by demanding status quo, or to demand additional resources to issue unnecessary permits to non-residents at the expense of not meeting the needs of Mainers.

Legislators were equally perplexed at the handgun permit legacy from the passage of LD 652 in 2015. After

considerable debate, the committee moved to amend the statute to permit county sheriffs and other municipal agencies to aid those 70 municipalities without a police department, provided they contract willingly with that agency for the service. Additionally, the committee included a resolve to direct the MSP to continue to study the issue with municipal and law enforcement stakeholders and possible solutions during the intersession and report back in January.

The good moral standing of a permit in a permit-less state will likely haunt the halls next session, with or without the full approval of the legislature set to retire this year.



Around the Horn: ENR Talks Trash

For anyone interested in hearing informed legislators at work, the brief Monday work session for LD 259, *An Act to Improve Solid Waste*, amended by Rep. Ralph Tucker of Brunswick, was a full course in waste management.

The work session opened with a splash as the amendment's sponsor proposed a new approach. Before the Environment and Natural Resources Committee, Rep. Tucker dropped the proposed increase in fees on construction and demolition debris (CDD) and residuals from processed CDD entirely and reduced the proposed municipal solid waste (MSW) fee of \$5 per ton to \$2, making for an increase of just \$1. Something smelled funny.

Hanging over this work session are many unresolved pieces of legislation that would compound the benefits and impacts of LD 259. Of note, the committee kept returning to impacts of this bill in conjunction with LD 1694, *An Act To Create the Maine Redevelopment Land Bank Authority*, sponsored by Rep. Melanie Sachs

of Freeport, which adds \$3 per ton to the CDD landfilling fee to be used for redevelopment of blighted, abandoned, or environmentally hazardous property.

The committee's remarks stretched far beyond the scope of LD 259 and revealed larger themes and motivations for each member. The moments of candid and theoretical discussion deserve more than a depiction, and so legislators' own words are best for detailing the work session. Included as a sidebar to this article are comments grouped by legislator, their order does not reflect the sequence of remarks during the work session.

One phrase was repeated nearly verbatim by every member who spoke, "Too much all at once." MMA is in full agreement with that sentiment. Formally, MMA is neither for nor against the newly proposed \$1 per ton fee increase for landfilled MSW.

At the end of their discussion eight committee members voted ought to pass as amended with Rep. Tucker's lower fees, two committee members voted ought not to pass, and Sen. Bennett stood by his words with a minority ought to pass as amended approach adding a matching \$1 per ton fee increase on CDD to begin 12 months after the bill's enactment.

The Environment and Natural Resources Committee posts all their work sessions on YouTube for those that want to see the action in color. The bill now heads to the full Legislature for further debate.

TRASH TALK WITH ENR COMMITTEE

Comments from Rep. Ralph Tucker of Brunswick:

The rational tends to be public policy and politics as much as science. At the present time we are having huge debates about solid waste.

We have two tremendous bills coming down the tracks... We are going to be banning sludge, which has the entire waste community up in arms.... We also have Senator Carney's bill which is going to completely turn the processing of CDD and the definition of what CDD is for a loop. We're going to be entering into a situation where we don't know where we're going to end up with the amount of CDD coming in from out of state, coming in from within state. And so, at this point it just seems so uncertain in the field of CDD.

[The Municipal Landfill Closure and Remediation Program] is a good program, it's taking a long time for the money to come through the pipeline. The towns eventually get their money, but it takes a while. They get a little piece each quarter.

In talking with different towns, I've heard different ranges from \$75 to \$120 [per ton]. It varies tremendously based on how far the stuff has to be trucked. It can also depend on economies of scale; a big town can negotiate a contract with a hauler at a lower rate than a small town. So, there is tremendous variability.

As much as I would like anymore tranquil period to gradually increase the fee on CDD, we have some political dynamics at this time that create so much uncertainty that I didn't think in a short session like this, that I would be able to pass it and escape a veto.

I would rather get something, rather than overreach and have the bill collapse. And that is my honest rationale.... This situation is not as dire as I thought it might be.

Comments from Sen. Richard Bennet of Oxford County:

I'm more in line with looking at the CDD fee as well in some modest fashion... This is a real problem, and I think the out of state waste is a problem. The municipal solid waste does not seem to be troubled as much by the out of state component as much as the CDD does. And so, my focus is more on that side than the MSW.

I appreciate the argument regarding uncertainty, we are living in volatile times. I am thinking that maybe it would be appropriate, having heard what Rep. Tucker said, of putting in statute the expectation of a fee increase on CDD. Not this year, maybe starting a year out, maybe two years out.

But putting it in so that people know it's coming. The next Legislature can make some adjustment depending on what happens. I'd rather take some action now on that front than just letting it sit in the soup of policy going forward.

When it comes to voting on this, I am going to be putting forward an amendment proposal were the CDD fee would be increased either next year or the year after in some fashion.

The CDD fees go to precisely the issue that Rep. Tucker discussed when presenting his amendment which is really to help municipalities with landfill closing costs and dedicated to that purpose. The MSW is often distributed back to the municipalities in grant programs. If public testimony means anything, looking at what people expressed, seems to me that CDD is better, more appropriate place to focus attention. I would be willing to go along with the increase in MSW if I was presenting that in the spirit of comity and compromise.

MSW is coming from Mainers. CDD is coming in large portion from out of state. And to focus on MSW... makes no sense to me.

Comments from Rep. Vicki Doudera of Camden:

I did hear from people in my district who felt like they really do want to move us further in the direction of increased recycling, and they were encouraging about increasing the CDD fee even by just a smaller amount. So, I am a little conflicted with the discussion today. I appreciate hearing the other side of it.

Comments from Rep. Beth O'Connor of Berwick:

At another juncture I might be able to support this, at this time I don't support the proposal from Senator Bennett or [Rep. Tucker]. The reason being that right now we have [LD] 1911, 1639, 1694. We have multiple pieces of legislation that are already going to be putting additional costs and effort into changing behaviors. This will increase all the costs of doing business. At this time I think it will be detrimental to do this.

Comments from Rep. James Boyle of Gorham:

We need to, in my judgement, move to increase the fees over time in order to change people's behavior. And that is my main focus. If you can make a choice to throw your trash in the trash, and not into recycling, and there is no financial pain around that decision, that includes at the municipal level, then we're not moving the needle far enough in that direction.... I am supportive of getting half a loaf while we can.



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IN THE HOPPER

Education & Cultural Affairs

Draft LD - An Act To Reorganize the Provision of Services for Infants, Toddlers, and Children with Disabilities from Birth to 6 Years of Age and Extend the Age of IDEA Eligibility to 22. (Submitted by the Joint Standing Committee on Education and Cultural Affairs)

This draft bill makes many changes to the provision of services for children with disabilities from birth to age 22. Among those pertinent to municipalities, beginning July 1, 2023, School Administrative Units (SAUs) are responsible for child find and the provision of free, appropriate public education for children with disabilities from 3 years of age to under 6 years of age. Every school administrative unit shall take responsibility for its own resident children whether or not they operate a public preschool program. SAUs shall provide services using their own employees or through contracts with public or private providers. SAUs may contract with the Child Development Services System to provide services until July 1, 2026. Other resources available to SAUs for providing special education and related services for children at least 3 years of age and under 6 years include Priority 1 status under the School Revolving Renovation Fund, use of shared space with a community partner, and inclusion of seat belts and car seats as an allowable component for bus purchases. Also, this bill extends eligibility for special education services to children with disabilities until their 22nd birthday, rather than their 20th.

Beginning in fiscal year 2023-2024, SAUs must receive the following funding: the public preschool subsidy under Chapter 606-B; for each child with a disability who is three years of age to under 4 years of age, a per-pupil allocation that covers 100% of the cost based on the average of the pupil counts for October 1st of the 2 most recent calendar years prior to the year of funding; and funding for 100% of the special education and related services

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

costs for a child with a disability. The SAU may use such funding and subsidy to provide services through private prekindergarten programs, public-private partnerships or the school administrative unit's public prekindergarten program.

Beginning in 2026, and in accordance with Part C of the federal Individuals with Disabilities Education Act, 20 U.S.C. §1401, the State of Maine commits to ensuring that all eligible infants and toddlers with disabilities are identified, evaluated, and provided with the early intervention services selected by their Individualized Family Services Plan Team and described in their Individualized Family Services Plan. In July of that year, the State Intermediate Educational Unit (SIEU) is established for the purpose of identifying, evaluating and providing early intervention services to eligible infants and toddlers with disabilities from birth to under age three and their families. Funding for the SIEU will be provided in part from the US Department of Education's Part C grant program, and through billing of private insurance and MaineCare, contingent on the delivery of early intervention services.