

Legislative **BULLETIN**

A PUBLICATION OF MAINE MUNICIPAL ASSOCIATION

Vol. XXIII No. 21

June 1, 2001

Legislative Session Status Report

The bells to call a vote are ringing relentlessly throughout the day at both ends of the State House as the Legislature crunches through the remaining bills before it with a marked determination.

Setting aside two big exceptions, it is fair to say that the municipally-related bills have been dealt with one or another or are in the final stages of getting wrapped up. The two exceptions are the "Part II" (new or expanded programs) state budget and the package of bond proposals that will be approved to go out to the voters in November.

What follows is a brief summary of the this week's legislative action on five bills of some municipal significance and a status report on the "Part

II" state budget as it is being developed by the Appropriation's Committee.

LD 796, An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda. As amended by a majority of the State and Local Government Committee, this bill effectively prohibits a citizen-initiated ordinance to retroactively impact development projects authorized under existing municipal regulations. The bill was strongly supported in the Senate by a vote of 21 to 11, but LD 796 faced a rockier road in the House. Ultimately, the House defeated an "ought not to pass" motion by a vote of 71 to 59. LD 796 bill is now tabled in the House pending acceptance of the majority "ought to pass as amended" report. Several amendments are going to

be proposed to the bill which would have the effect of rendering it meaningless.

Legislators opposing the bill believe that the citizen initiative process is an important tool for citizens to use in order to ensure that elected officials are making the right decisions. Other opponents believe that the bill is unnecessary because the several citizen initiated municipal referenda that sought to impose retroactive effects within the last year, in Topsham, Farmington and Portland, were ultimately defeated by the residents of the community.

Proponents of the bill, including the Maine Municipal Association, be-

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PAYING FOR THE PART II BUDGET

Expenditures

General Fund Balance After Part I Budget
"Must Do" and Federal Leverage Items
GPA "3%" in FY 03
Higher Education Increases for FY 03
1st Tier Prioritized Items of Appropriations Committee
2nd Tier Prioritized Items of Appropriations Committee
3rd Tier Prioritized Items of Appropriations Committee
4th Tier Prioritized Items of Appropriations Committee

Total Shortfall

New Revenues

Disallow Net Operating Loss Carry-backs (corporate income tax code)
Real Estate Transfer Tax for Controlling Interests
Tax on Prepared Food from 5% to 7% (effective October 1, 2001)
Cigarette Tax Increase (effective October 1, 2001)

Total New Revenue

Cumulative Balance (Shortfall)

\$1.77 million
(\$19.3 million)
(\$32.7 million)
(\$38.2 million)
(\$42.6 million)
(\$57.4 million)
(\$62.1 million)
(\$64 million)

\$64 million

Biennial Value

\$1.6 million
\$2.6 million
\$23.5 million
\$37.3 million

\$65 million

STATUS REPORT (cont'd)

lieve that the bill is necessary to ensure that a level playing field is created in the arena of development. If a developer fulfills all the information submission requirements, meets all the regulatory standards that the local ordinances may require, and receives final approval from a municipal board, then that approval should be honored. The House will be addressing this issue again next week when it takes up some proposed amendments that would unravel the bill. Please contact your legislators in the House and seek their support for LD 796.

LD 1168, An Act Concerning the Sentencing of Persons to County Jails. On Wednesday, the Senate voted (21-12) to accept the minority "ought to pass as amended" report. As amended the bill makes two changes to existing laws regarding where convicted persons serve their imprisonment terms. First, the bill requires that a person convicted of a crime and sentenced to county jail must be imprisoned in the county where the crime was committed. Second, the bill requires that if a sentence to a term of imprisonment in a county jail is either consecutive to or followed by a sentence to a state facility, the court imposing the sentence must order that both terms are served in a state facility.

MMA supports the minority "ought to pass" report, as it has been supported by the Senate. LD 1168, at least in small part, will tend to shift the cost of longer jail sentences from the county to the state, thereby slightly reducing

the dependence on the property tax for funding county jails. The bill is currently tabled in the House.

LD 1719, An Act Regarding Dismissal of Municipal Employees for Cause should be rejected by the Legislature. The Senate has accepted the Labor Committee's minority "ought not to pass" report. The bill is currently in the House where it has been on the table for over a week pending the acceptance of the Committee's majority "ought to pass" report.

Under current law, certain municipal employees are "for cause" employees and special due process notice and hearing procedures must be followed in order to dismiss those employees from employment. Maine's Supreme Court as clarified that municipal employees appointed to a position that was created by charter, law or ordinance are deemed "for cause" employees. Employees that are appointed by a municipal manager are also entitled to these due process rights.

At the same time, Maine's Law Court has determined there are "at will" municipal employees that are not granted these special due process rights.

LD 1719 would expand these due process rights to cover all municipal employees, even those that are currently "at will" employees. Municipalities strongly believe that the current law sufficiently protects municipal employees while at the same time allows municipalities to operate in a cost-effective and administratively efficient manner. The significant change in law proposed in LD 1719 would require municipalities to undertake additional tasks and face exposure to more wrongful discharge lawsuits. LD 1719 would be a fundamental change of the current law and is certainly an unwelcome mandate.

Please call your legislators in the House and ask them to adopt the Minority 'Ought Not to Pass' report on LD 1719.

Supervisor Liability. Another bill of municipal interest that has been on the table in the House is LD 1599, *An Act to Clarify the Maine Human Rights Act Concerning Responsibility for Employment Discrimination.*

The intention of the bill was to clarify existing law on supervisor liability. Under the current state law, employers have traditionally been considered the responsible party with respect to employment discrimination, not the individual acting in a supervisory capacity. State law closely follows the federal law in this regard, but a Maine Supreme Court decision has clouded the interpretation of state law on the subject. LD 1599 was submitted to erase that cloud.

During the work sessions, several of the members of the Judiciary Committee expressed a desire to hold the supervisor responsible for employment discrimination, either instead of the employer or in addition to the employer.

Structurally speaking, the supervisor liability scheme would be extremely problematic for municipalities. One of the characteristics of municipal government is the multiplicity of its departments and its horizontal organization. Each municipality employs many individuals in a supervisory capacity and a decision to hold each one liable would expose those supervisors to the possibility of extensive litigation, almost all of which would ultimately fall back on the municipality.

The Judiciary Committee has issued a report that is divided in three ways. There are five members on the Report "A" "ought not to pass" report. There are five members on Report "B", which is an "ought to pass as amended report" that is faithful to the intention of the original bill. The final three members have signed onto Report "C", an "ought to pass as amended" report which would actually impose supervisor liability in certain circumstances. The pending motion before the House is the Report "A", 'ought not to pass' report.

From the municipal perspective, Report "B" is the most appropriate choice. This Committee amendment would expressly state that an individual acting as an agent of the employer, or in the interest of the employer, is not personally liable for unlawful employment discrimination. This would

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Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428.

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STATUS REPORT (cont'd)

clarify the existing law and appropriately hold that the employer is the party liable for employment discrimination.

Please contact your legislators and urge them to vote for Committee Report " B" on LD 1599.

LD 1812, An Act to Prevent Investation of Invasive Aquatic Plants and to Control Other Invasive Species. The Natural Resource Committee has submitted a "Committee bill" designed to assist in preventing Maine's lakes from becoming infested Eurasian Milfoil. The first component of the bill establishes a " Lake and River Protection Sticker." The two-part sticker will be sold at a cost of \$15, of which the agent will retain \$1. These stickers would be sold for the 2001 summer boating season. The bill also establishes monetary penalties for the failure to purchase and display the sticker. Funds received from the sale of the stickers will be deposited in the Lake and River Protection Fund.

According to the bill, during the 2001 boating season, the Departments of Environmental Protection and Inland Fisheries and Wildlife shall spend at least 5000 person hours inspecting watercraft, trailers, and outboard motors at selected launching sites and at no fewer than 10 roadside locations near the border. In 2002 and subsequent years, the program effort and design will be administered according to the recommendations of the Commissioners of DEP, IF&W and the Interagency Task Force on Invasive Aquatic Plant and Nuisance Species.

The second component of the bill establishes the Interagency Task Force. The Task Force would consist of 17 members, one of which represents municipal interests. Of specific interest to municipalities, the Task Force will make recommendations on the feasibility of implementing lake protection assessment districts that would allow the residents and owners of waterfront property to impose a special property tax on themselves to assist in the prevention and protection from milfoil.

The bill authorizes the State Con-

troller to transfer \$230,000 from the state's Rainy Day Fund into the Invasive Aquatic Plant and Nuisance Species Fund established in DEP and \$330,000 from the Rainy Day Fund to the Lake and River Protection Fund established in IF&W. The bill requires both DEP and IF&W to reimburse the Rainy Day Fund in full no later than June 30, 2002.

LD 1812 is tabled in the House where efforts were being made to strip off the \$15 boat sticker fee and strip the public membership on the Interagency Task Force down to one representative of a statewide sporting organization (i.e., the Sportsman's Alliance of Maine) and one representative of the state's lake associations.

MMA is urging support of the printed bill that came out with unanimous support of the Natural Resources Committee.

Part II State Budget. After the enactment of the Part I, " current services" state budget last Friday, there was a mere \$1.8 million General Fund balance to pay for the new or expanded state programs that would make up the Part II budget.

Over the past month, the Appropriations Committee has been reviewing and prioritizing the many-dozen state agency requests for additional program funding, additional state employee positions and job reclassifications.

The Committee's work began with LD 885, which is Governor King's proposed Part II budget. Working from that starting point, the Committee has organized the various state agency proposals according to categories of " must do" , " items that leverage federal funds" , and then a numerical priority rating system that identifies the level of Committee support for the wish-list proposals that do not fall under the " must do" or " federal leverage" categories.

One element of the Part II budget that is hanging out there is the funding level for General Purpose Aid to Education (GPA) in the second year of the biennium (FY 03). As reported in last week's edition of the *Legislative Bulletin*, GPA for FY 03 was essentially flat funded in the Part I state budget

enacted a week ago. During the enactment of that budget in the House, promises were made with an especial and bipartisan passion that this Part II budget would include a minimum 3% GPA increase for FY 03.

(The term " 3%" in this context has a legislative rather than literal meaning. It means 3% more than a base GPA appropriation for FY 02 that does not include the \$6.2 million hold harmless cushion appropriations that are attached to GPA but for the purpose of year-to-year increases are not considered to be part of GPA.)

When the costs of all the " must do" and " federal leverage" and variously prioritized state agency requests are added up, the price tag comes to \$50 million more than is available to fund the budget. When the \$13.5 million is added to bring the GPA appropriation up to the so-called " 3%" level, the hole in the state budget climbs to \$64 million.

Coincidentally, \$65 million of additional revenue for state government has been identified in a package of potential tax increases, made up primarily of a 26 cent increase to the per-pack excise tax on cigarettes and a 2% increase to the meals tax in certain restaurants (from 5% to 7%).

The question before the Appropriations Committee, and ultimately the full Legislature, is how much of the identified state agency " need" is worth the political act of raising the sales tax on meals and excise tax on cigarettes?

Before breaking for the night on Thursday this week, the Appropriations Committee unanimously agreed that \$19 million of " must do" and " federal leverage" items had to be funded, as well as funding GPA at the " 3%" level for FY 03. With those decisions, the Committee is in the hole to the tune of \$32.7 million, and another \$10 million of need was being seriously considered.

Although in a technical sense the Appropriations Committee was merely identifying its expenditure priorities rather than approving the necessary tax increases to support those priorities, it would seem that the recommendation for tax increases is soon to follow. (GH)

Highway Fund Part II Budget

At a Transportation Committee Part II Highway Fund budget meeting held on Wednesday, May 30th, Sen. John Nutting (Androskoggin Cty.) and municipal officials from Leeds and China spoke to the Committee about the importance of funding the sand/salt facilities program that was adopted by the Legislature over 15 years ago.

When the Sand / Salt program was first enacted in 1986, it was sold to municipalities as a state/municipal partnering concept. This partnership created a municipal-state cost-sharing program for the purpose of building sand and salt storage facilities. Based on an environmental priority rating assigned by DEP, municipalities were required to build permanent storage facilities according to a schedule established in statute. Priority ratings (ranging from 1 = high to 5 = low) assigned to each municipality were based on the sand/salt pile location impact on *groundwater* contamination.

Unfortunately, the Legislature has been unable to meet its financial obligations and since 1986, only \$3.3 million of the state's \$29 million share of the program has been funded. In 1998, a task force was created to examine and reprioritize the sand/salt facilities program. The outcome of the task force work was legislation that reprioritized municipal salt/sand pile locations according to that location's *surface and groundwater* impact. Those locations receiving a priority 4 or 5 rating would no longer be mandated to build facilities. Those locations receiving a rating of 1, 2 or 3 would still be required to build facilities.

The 1999 legislation also guaranteed that all facilities that had been constructed up to that time would be funded regardless of current or future priority ratings. To meet that promise, the formula now requires that 20% of any allocation to the municipal sand/salt facilities program be set aside to fund priority 4 and 5 buildings that had already been constructed, and the remaining 80% is dedicated to fund built and unbuilt priority 1, 2, 3 sand/salt

storage facilities.

The changes recommended by the task force and enacted by the Legislature last session decreased the state's remaining share of the program from \$25.7 million to \$7 million.

The Transportation Committee is currently debating whether Highway Fund can afford to spend \$1.1 million to fund municipal sand/salt facilities. According to the existing formula, of the \$1.1 million, \$880,000 would be used for priority 1, 2 or 3 facilities and \$220,000 to reimburse priority 4 and 5 municipalities for the facilities they constructed before the change in the law that removed the construction mandate.

According to a report prepared by the Departments of Transportation and Environmental Protection in January, 2001, \$7.2 million is needed to complete the municipal portion of the this program. Of the \$7.2 million need, \$2.2 is needed to reimburse municipalities for built facilities and the remaining \$5 million to fund priority 1, 2 and 3 unbuilt facilities. If the Committee supports the \$1.1 million rec-

ommendation, all priority 1 buildings and some priority 2 and 4 municipalities would receive state reimbursement.

Municipal officers support the \$1.1 million appropriation because they believe the state should be held accountable for funding it's share of the programs it deems so necessary that it requires municipalities to implement costly construction projects. The predicament of the current Transportation Committee is that it is being "forced" to find the revenues to pay for a program that was established by a Legislature elected fifteen years ago. At the same time, the lack of funding suggests that what was once considered an important environmental concern is no longer so, and that municipal officials have no other avenue but to request that this program be funded by whatever means possible.

Also included in the Highway Fund Part II budget is \$44 million over the biennium to fund the Urban Compact / Rural Road Initiatives, the former Local Road Assistance Program. Although in January it was projected that

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Senator John Nutting (Androskoggin Cty.) and Jane Wheeler, the Administrative Assistant for the Town of Leeds, confer in the Transportation Committee room as they try to shore-up support to properly fund the sand-salt shed construction mandate.

The following bills have been reported out of their respective committees with unanimous "Ought Not to Pass" reports, which all but guarantees a final rejection by the full Legislature, or have been finally rejected by the full Legislature (final ONTP).

Banking & Insurance

LD 1420 – An Act to Require Employers to Offer Benefits to Cohabitants of Employees. (Sponsored by Rep. Mendros of Lewiston) (final ONTP)

Business & Economic Development

LD 780 – An Act to Promote Economic Growth in Penobscot Valley. (Sponsored by Sen. Cathcart of Penobscot County) (final ONTP)

Criminal Justice

LD 885 – An Act to Prohibit Issuance of a Concealed Firearms Permit to the Subject of a Permanent Protection from Abuse Order. (Sponsored by Sen. Douglass of Androscoggin County) (final ONTP)

LD 1315 – An Act to Expand the Crime of Assault on a Law Enforcement Officer. (Sponsored by Sen. McAlevee of York County) (final ONTP)

LD 1662 – Resolve, to Study the Emergency Medical Services System. (Sponsored by Rep. Bull of Freeport) (final ONTP)

Health & Human Services

LD 1188 – An Act to Provide for the Withdrawal of a Municipality from Hospital Administrative District No. 1 in Penobscot County. (Sponsored by Rep. Bunker of Kossuth Township) (final ONTP)

Labor

LD 871 – An Act to Clarify Work Search. (Sponsored by Rep. Bryant of Dixfield) (final ONTP)

LD 1537 – An Act to Increase Access to Unemployment Compensation for School Bus Drivers. (Sponsored by Pres. Pro Tem Bennett of Oxford

County) (final ONTP)

Legal & Veterans Affairs

LD 755 – An Act to Clarify Referendum Wording. (Sponsored by Rep. Shields of Auburn) (final ONTP)

LD 1619 – Resolve, to Establish a Commission to Study Maine's Election Procedures and Voting Laws. (Sponsored by Rep. Shields of Auburn) (final ONTP)

Marine Resources

LD 1786 – An Act to Amend the Review Criteria for Submerged Leases of Coastal Waters. (Sponsored by Sen. Abromson of Cumberland County) (final ONTP)

Natural Resources

LD 907 – An Act to Address Sludge-spreading Licenses. (Sponsored by Sen. Douglas of Androscoggin) (final ONTP)

LD 1155 – An Act to Protect Maine Lakes from Milfoil and Other Invasive Plants. (Sponsored by Rep. McKee of Wayne) (final ONTP)

LD 1045 – An Act to Ban the Permitting or Expansion of Existing Sewage Outfalls into the Ocean. (Sponsored by Rep. Shields of Auburn) (final ONTP)

State & Local Government

LD 1633 – An Act to Clarify Rights of Retainage in Public Construction Contracts. (Sponsored by Sen. Mills of Somerset County) (final ONTP)

LD 1686 – An Act to Amend the Laws Governing Elections. (Sponsored by Rep. Colwell of Gardiner) (final ONTP)

Taxation

LD 1375 – An Act to Establish Minimum Standards of Eligibility for the Property Tax Exemption for Charitable Institutions. (Sponsored by Rep. Gooley of Farmington) (final ONTP)

LD 1780 – An Act to Support Businesses that Reduce Pollution. (Spon-

sored by Rep. Murphy of Berwick) (final ONTP)

LD 1801 – Resolve, to Modify the State Valuation for the HoltraChem Property in the Town of Orrington. (Sponsored by Rep. Rosen of Bucksport) (final ONTP)

HIGHWAY FUND (cont'd)

a \$3 million cut over the biennium would be made to this municipal program, the reduction in the program is currently projected for \$1.5 million over the biennium. The local road assistance distribution is now based on a formula change that was enacted in 1998.

The new local road funding levels are indexed to the value of the total transportation-related element of the Highway Fund rather than flat funded as an annual appropriation. Specifically, the formula is based on 9.6% of the Department of Transportation's total transportation-related budget. Since the enactment of this new formula, funding for the municipal program has increased from an annually flat funded allocation of \$19.5 million, to one that was funded at \$22.1 million in FY 2000, \$23 million in FY 2001 and projected to be funded at \$22.5 million in FY 2002 and \$21.5 million in FY 2003.

In order to meet the Highway Fund Part II budget request, the Committee is considering increasing the motor vehicle title fee from \$15 to \$23 as originally proposed by Governor King's administration. Although the Committee has not agreed to the \$8 increase, it is anticipated that the final budget will include some level of increase to the title fee.

MMA's 70-member Legislative Policy Committee supports the increase and encourages municipal officers to contact their representatives to encourage them to support the Highway Fund Part II budget not only for its impact on municipalities, but also for its funding of state transportation infrastructure programs. (KD)