

Subdivision Bill Preempts Home Rule

A serious threat to municipal home rule authority has become part of LD 1278, *An Act to Implement the Recommendations of the Task Force to Study Growth Management*. The express municipal preemption is found in the Natural Resource Committee's amendment to the bill. It is very important that municipal officials concerned about further erosion to local control over the process of reviewing and approving intensive land use development proposals contact their legislators and ask them to vote in opposition to the Committee amendment.

Specifically, the proposed amendment would prohibit a municipality from adopting an ordinance that establishes a more inclusive definition of a "subdivision" than the exempt-ridden definition of "subdivision" in state law. Ironically, the Committee amendment's preemption of local control goes 180 degrees against the recommendations of the task force to study growth management, for which the bill is named.

One of the most flagrant abuses of the current subdivision law is the gifts to relatives exemption, the retention of a phantom lot for the subdivider's place of residence and in some cases the conveyances to an abutter exemption when the conveyed lot is simply reconveyed again, without the benefit of local planning review. As the title of the LD 1278 indicates, a set of recommendations to tighten up subdivision law came out of the Task Force to Study Growth Management which met during the summer and fall of 2000. Though the opinions of the Task Force varied on many issues surrounding growth management, the tightening of

the subdivision law was one point of consonance.

One of the recommendations of the Task Force was to clarify subdivision law to recognize municipal home rule authority with respect to subdivision ordinances. Under the current law, the definition of subdivision is easily circumvented. This has resulted in some municipalities establishing more workable definitions of a "subdivision" in their local ordinances. The Task Force recognized that since the issue of local review of land development activity was such an intrinsically local function, a municipal legislative body should have every right to set its own definition. From the municipal perspective, the state standard has always been viewed as the floor rather than as a ceiling, municipalities have adopted "subdivision" definitions that are at least as comprehensive as the statutory definition.

"Home rule" authority, as a matter of law, is granted to municipalities by statute and by the State's Constitution unless it is expressly preempted by state law or implicitly preempted by the comprehensive nature of the state regulatory scheme. Under the current law, there is neither express nor implicit preemption of home rule authority with respect to subdivision ordinances.

The Committee amendment to LD 1278 establishes a strict preemption to municipal home rule authority. Should this amendment pass, it would make dozens of existing subdivision ordinances illegal and it would prohibit municipalities from addressing the weaknesses in the state law definition through local control. In these times of

aggressive land use development in certain areas of the state, and an abuse of the statutory concept of "subdivision", the towns and cities should not be losing any of their current authority to review and approve land use development at the local level.

In order to protect home rule authority to appropriately review the local impacts of intensive land use development within the municipalities of the state, contact your legislators immediately and ask them to defeat "Committee Amendment A" to LD 1278. (KH)

E 911 Surcharge Will Increase

After much deliberation, the Utilities and Energy Committee amended LD 1467, *An Act to Facilitate the Implementation of the Enhanced 9-1-1 Emergency System* to provide some increased revenues to support the E-911 system, but not quite as much as the Emergency Services department was requesting.

One of the primary objectives of the bill was to increase the surcharge added to telephone bills that is necessary to support the implementation of E-911. Currently, the surcharge is 32¢ per month, per line. LD 1467 requested an increase to 58¢ per month, per line. According to the Department of Public Safety's Emergency Services Communication Bureau (ESCB), the increase was absolutely essential to get the program up and running. The Committee

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Expanded Tax Exemptions, Phantom Reimbursement

The Taxation Committee's agricultural bill (LD 13, *An Act to Amend the Definition of Agricultural Land for Taxation at its Current Use*) was given a unanimous "ought to pass" report on Tuesday this week.

The bill would expand the "Farmland" current use taxation system so that agricultural lots between 2 acres and 5 acres in size could be enrolled in the tax break program starting on April 1, 2002. These micro-farm lots would have a somewhat tighter income eligibility standard than regular Farmland enrollments. The applicant for each lot would have to demonstrate the capacity to produce \$2,000 of farm income from the lot, and the value of farm products consumed by the household could not be included as "income". According to the bill's sponsor, Rep. Bonnie Green (Monmouth), the purpose of the bill is to support greenhouse activities and other intensive, small-scale horticultural operations such as perennial and cut flower businesses, berry operations, small cranberry bogs, etc.

Delayed Reimbursement. LD 13 also would institute a municipal reimbursement program, modeled on the Tree Growth reimbursement system, for all Farmland enrollments. Although the expanded Farmland program for the micro-farm lots would begin on April 1, 2001, the municipal reimburse-

ment program would not be implemented until 2003, with reimbursements delayed into 2004. The reason for the reimbursement delay is so that the \$300,000 annual fiscal note on LD 13 related to the municipal reimbursement program would be "pushed" out of this biennial budget and into a future state budget. Delayed implementations of this kind is a not uncommon legislative strategy to avoid the immediate financial consequences of certain policy changes.

There is almost zero municipal support for expanding the Farmland program to include 2-acre lots. Municipal officials believe the Farmland program was created to help protect sizable productive agricultural acreages, large and viable tracts of prime agricultural soils, and significant open spaces. If the high-value side-yards of retail commercial greenhouse operations are going to be assessed at \$250 per acre (the current average Farmland assessed value according to the state pricing guidelines which are hopelessly out-of-date) the financial impact will be effectively the same as a new 100% property tax exemption, even with a Tree Growth-type reimbursement.

It gets more complicated. Because of its fiscal impact to the state treasury, LD 13 will go to the "Special Appropriations Table" where it will sit with over a hundred other bills seeking funding after the biennial state budget is enacted. At last count, there were 99 bills on the Appropriations Table, seeking a combined funding of over \$62 million. It is safe to say that LD 13 stands no chance of being funded by the Appropriations Committee.

The danger is that the Legislature will still be able to enact LD 13 without funding the reimbursement program. It can simply enact the policy and strip the reimbursement. The Legislature could even enact the reimbursement program (since it doesn't even begin

within this biennium) and then kill the reimbursement program in the next biennial budget bill that will be before the Legislature two years from now.

MMA's Legislative Policy Committee (LPC) has been apprised of the details of LD 13 and asked to weigh the disadvantages of the bill (the expansion of the Farmland program to include 2 acre lots) against the ostensible advantages (Tree Growth-style reimbursement for Farmland enrollments). The LPC response was a very strong opposition to LD 13, lock, stock and barrel. There is a fairly deeply ingrained and growing municipal distrust of property tax policy changes that are attached to phantom financial support, because the financial support never seems to materialize. (GH)

E 911 (cont'd)

amendment changes this proposed 58¢ surcharge to a 50¢ surcharge.

After taking a careful look at the services ESCB was to provide to incoming callers, the Committee was able to amend the bill to do away with the requirement that ESCB provide emergency medical services to those callers while they were awaiting the arrival of the ambulance or emergency medical crew. The removal of this service would shave a few cents off of the proposed 58¢ surcharge.

In an effort to deal equitably with the areas of the state that have thus far not put the local Public Safety Answering Points (PSAPS) into place, the Committee amended LD 1467 to provide that ESCB is not required to provide call answering services in those municipalities that are not participating in the E-911 system. The areas of the state this would include are parts of Hancock and Aroostook counties. This amendment would save an estimated 3¢ per line.

After scaling back the E-911 program, the proposed 58¢ surcharge was amended to reflect the necessary services provided by the bureau at the 50¢ per month, per line surcharge. (KH)

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What's Up With Special Ed?

The towns and cities in Maine have long been calling for the state and federal governments to honor their commitments to provide funding for education.

It was not the municipalities that established these commitments. The state and federal governments established them willingly, voluntarily, on their own...as their fare-share contribution to help finance the educational reform mandates they were enacting. The failure of the state and federal governments to honor their own commitments is extraordinarily frustrating to the municipalities, which are forced to make up the difference by pushing the property tax to the limit.

The municipalities read state law to say that 55% of the costs of providing K-12 education will be paid with state revenues rather than property taxes, but the state is currently providing just 45% of the total, which represents a \$150 million annual shift to the property tax.

Property taxes could drop 10% if the state ponied-up.

Similarly, the municipalities read federal law to say that 40% of the cost of special education will be paid with federal dollars. Congress is currently providing just 9.75% of the costs of special education in Maine. That difference of 30 percentage points represents a \$70 million annual shift to state and local taxes.

The good news is that Congress is beginning to hear the message, and increases to federal financial support for special education appear to be in the offing.

The not-so-good news is that even if Congress enacts increased funding proposals under current consideration, and even if Congress sticks to its long-range funding plan, the federal government won't be meeting its full statutory obligation for many years to come. The actual enactments by Congress that will effect these funding decisions will not be made until October.

On the basis of information provided by Maine's Department of Education and the offices of Maine's Congressional delegation, the following is a status report on the proposed FY 02 special education budget in Washington.

The current federal appropriation for the Individuals with Disabilities Education Act (IDEA) is \$7.4 billion, and the federal government seems to believe that it is meeting close to 15% (rather than 40%) of overall special education costs with that appropriation.

Maine's share of the federal appropriation is \$22 million, which falls just short of 10% of the state's total special education expenditure of \$225 million. It is unclear why the federal government believes it is reimbursing at the 15% level when Maine's share is only at the 10% level. In this state, if the federal government met its full 40% obligation, it would be providing \$90 million in special education support rather than \$22 million, which would translate to \$68 million of state and local tax relief.

President Bush's proposal is to increase funding for IDEA by \$1 billion, to roughly \$8.4 billion. Using straight-line math (which should provide at least a rough indicator) an increase of \$1 billion to IDEA would result in a \$3 million increase in federal special education funding in Maine...\$3 million more federal dollars toward a quarter-of-a-billion dollar special education outlay.

The Senate Education Committee has approved more aggressive funding increases for special education. According to the Senators' staffers, the first of the Senate's numbered bills of the session — S.1, the *Elementary and Secondary Education Reauthorization Act* — has been amended to require \$2.5 billion annual increases to IDEA over the next five years, which will allegedly bring the federal government into compliance with its 40% obliga-

tion in 2007. An increase to IDEA of \$2.5 billion for FY 02, again using straight line math, would increase Maine's share from 22 million to 29.4 million, a \$7.4 million increase.

On the House side, Congressman Tom Allen is offering an amendment to that chamber's counterpart to the Senate's education bill (H.R. 1) which would jump right to full funding for IDEA in FY 02, an increase of slightly over \$10 billion. A funding hike of this magnitude would increase Maine's share according to the Representative's figures to \$88 million, an increase of \$66 million. According to straight-line math, Representative Allen's proposal would increase federal support in Maine to about \$53 million, and increase of \$31 million.

MMA's President and Biddeford City Manager Bruce Benway sent a letter to the Congressional delegation asking for full funding for IDEA. Congressman John Baldacci responded with a letter saying he fully supports full funding, but is also working on some more incremental approaches to the 40% goal should the full funding effort not be successful.

Supplement or Supplant? In MMA's discussions with Congressional staffers, a peculiar twist in the IDEA debate surfaced. Even though the federal government is supposed to be paying 40% of special education and has been falling miserably short on that commitment, there is language in federal law that limits the ability of a state, and presumably a local school system, to use significant amounts of increased federal special education funds to actually reduce its special education appropriations and thereby provide some property tax relief. The state and school systems, as a general rule, are supposed to use the increased IDEA funds to "supplement" rather than "supplant" the state and local appropriations. The general rule, apparently, is

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Timetable for Redistricting Calls for Coordination

Municipalities with multiple voting districts are required by current law to reapportion those districts within 18 months of the publication of official U.S. decennial census data (30-A M.R.S.A. §Title 30-A §2503(2)). The process of reapportionment is accomplished by adopting a redistricting ordinance. The districts in the ordinance must be composed of compact contiguous areas that contain as nearly as possible the same number of residents allowing for a 10% difference between the smallest district and any other district, and include a map and description of the district. If the municipality fails to adopt such an ordinance the residents running for municipal offices must be elected at-large and serve the full length of the term, with the “ at-large” process being in effect until an ordinance is adopted.

According to the State Planning Office, official U.S. Census redistricting data became available for the state of Maine on March 29, 2001. Under the existing law this requires municipalities to adopt a redistricting ordinance by September 1, 2002 or 90 days before an election that occurs within the eighteen-month period. The Maine Legislature, however, will not be addressing its redistricting issues until the winter of 2002-03.

This timing difference between the redistricting for local districts and for the state can cause problems for municipal redistricting efforts. It is not uncommon for the Legislature to create a district that overlaps a municipal district requiring that several state candidate ballots be available in any given ward. For example, it is possible that two voters from the same district living on opposite sides of a street would be represented by a common municipal councilor but two different State House members. The uncoordinated nature of this redistricting schedule plays a role in the election day mishaps that occur in these districts. Conflicting overlaps between local and state

voting districts are sometimes unavoidable but through good planning could be minimized.

One possible solution would be to amend the existing law to authorize municipalities to complete local redistricting within a certain amount of time after the adoption of the state’s process. This would enable local officials to assess state districts and make the best possible decisions regarding the creation of local districts. MMA is interested in receiving your feedback on the existing process and proposed solution. If your municipality is facing the September 1, 2002 deadline, please contact Kate Dufour at 1-800-452-8786 with your thoughts or concerns. If a legislative change to better coordinate state and local redistricting appears to be warranted, MMA will seek sponsorship so that a legislative remedy can be presented during the Second Regular Session of the 120th Legislature. (KD)

\$5 Snowmobile Registration Fee

The Inland Fisheries and Wildlife Committee voted to raise the snowmobile registration fees for both residents and nonresidents. Under current law, resident snowmobile registration fees are \$25. LD 1294, *An Act to Change the Snowmobile Registration Rates*, sponsored by Rep. Joe Clark (Millinocket) seeks an increase in registration fees, with the increased revenue dedicated to snowmobile trail grooming.

The new rate will be \$30 for a resident registration. The new rates for a nonresident will be \$40 for a 3-day registration, \$55 for a 10-day registration, and \$65 for a seasonal registration. \$5 from each of the registration fees will be used by the Bureau of Parks and Lands to assist snowmobile

clubs or entities with snowmobile trail grooming contract with the Bureau to purchase trail grooming equipment. (KH)

Unfunded Election Mandate Avoided

Thanks to the efforts of several Legal and Veterans Affairs Committee members and the many municipal clerks and officials who contacted their legislators, on Thursday, May 17th the Committee reconsidered its support for LD 1686, *An Act to Amend the Laws Governing Elections*. As originally supported by a majority of the Committee, LD 1686 would have required municipalities with populations greater than 100 to open polls by 7 a.m. on an election day. The Committee reversed its decision on Thursday and voted unanimously (11-0) that LD 1686 “ ought not to pass” . Thank you for your prompt response to our action alert. This outcome would not have been possible without your assistance. (KD)

SPECIAL ED (cont'd)

that no more than 20% of any annual increase in federal special education allocations to the states can be used to “ supplant” or replace local appropriations for that purpose. At least 80% of those increases must be used to further “ supplement” the special education programs.

It was with a sense of some accomplishment that MMA was told that the Senate version of the education bill was also amended to allow up to 55% of the increased IDEA allotments to supplant current state and local efforts, rather than the 20% “ supplant” threshold that is generally the rule.

None of that makes any sense. As long as the federal government is so far out of compliance with its own commitment, there should be absolutely no limitation on the capacity of the state and local governments to use long overdue federal funds to “ supplant” property tax appropriations for the local special education programs, thereby delivering some property tax relief. (GH)

Bills on Appropriations Table

When a bill has a financial impact to the state, a “fiscal note” is attached to the legislation that projects the financial impact over the biennium. If the bill and the attached fiscal note receive preliminary votes of approval in the House and Senate, the bill is moved over to the “Appropriations Table” just before it is finally enacted. It is usually the case that after the state budget is enacted, a certain amount of available revenue is left over, and the Appropriations Committee recommends which bills on “the Table” should be funded with that left over money.

At last count, there were 99 bills on the Appropriations Table, with an aggregate fiscal note of over \$62 million. At the same time, the Legislature is struggling to adopt a 2-year state budget within the range of available revenues, and there is little chance that at the end of that process there will be any significant money to fund bills on the Appropriations Table.

Given that background, the following is a list by LD number and bill title of the municipally-related bills that MMA has been tracking that are currently sitting on the Appropriations Table, or will be there shortly.

LD 13 – An Act to Amend the Definition of Agricultural Land for Taxation at its Current Use.

LD 26 – An Act to Expand Eligibility for the Veterans’ Property Tax Exemption.

LD 28 – Resolve, to Extend the Commission to Study Equity in the Distribution of Gas Tax Revenue Attributable to Snowmobiles, All-terrain Vehicles and Water Craft.

LD 29 – An Act to Implement the Recommendations of the Task Force to Reduce the Burden of Home Heating Costs on Low-income Households.

LD 152 – An Act to Require the State to Pay Medicare Costs for Retired Employees, Retired Teachers and Retirees in Participating Local Districts.

LD 259 – An Act to Offer Reciprocity Concerning Concealed Firearms Permits.

LD 260 – An Act to Provide Funds to Purchase Thermal Imaging Cameras.

LD 335 – An Act to Change the Snowmobile Registration Laws.

LD 881 – Resolve, Requiring the Joint Standing Committee on Transportation to Study Passenger and Freight Rail Opportunities in the State.

LD 919 – An Act to Provide for Variance Notification in the Shoreland Zoning Law.

LD 937 – An Act to Improve Washington County’s Economy by Promoting Natural, Historical and Cultural Tourism.

LD 949 – An Act to Fairly Distribute the Payment of Real Estate Transfer Taxes.

LD 970 – Resolve, Establishing an Education Funding Reform Committee to Make Recommendations to Reduce the State’s Reliance on the Property Tax as a Funding Source for Education.

LD 1049 – An Act to Appropriate Funds for the Capital Riverfront Improvement District.

LD 1176 – An Act to Require the State to Purchase the Initial Flags That are Required for Veterans’ Grave Sites.

LD 1465 – An Act to Provide a Death Benefit to the Survivors of a Law Enforcement Officer, Firefighter or Emergency Medical Services Person Killed in the Line of Duty.

LD 1487 – Resolve, to Establish the Blue Ribbon Commission to Review Special Education Laws.

LD 1489 – Resolve, to Create a Task Force to Make Recommendations Regarding Loss of Commercial Fishing Waterfront Access and Other Economic Development Issues Affecting Commercial Fishing.

LD 1632 – Resolve, Directing the Maine Science and Technology Foundation to Determine the Technological, Economic and Public Policy Challenges and Opportunities for the Deployment of Broadband Information Technology Infrastructure to all Parts of the State.

LD 1684 – An Act to Ensure Adequate Funding for School Construction Costs.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill’s summary statement or an excerpt from that summary statement. A comprehensive list of LDs of municipal interest can be found on MMA’s website, www.memun.org.)

Taxation

LD 1801 – Resolve, to Modify the State Valuation for the HoltraChem Property in the Town of Orrington. (Emergency) (Presented by Rep. Rosen of Bucksport; additional cosponsors)

This bill would allow the town of Orrington to apply to Maine Revenue Services for an expedited reduction in its state valuation taking into account the closedown of the HoltraChem property without meeting the requirements established in current law to be granted an expedited reduction in state valuation through administrative procedure.

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).

Agriculture, Conservation & Forestry

LD 946 – An Act to Excuse Animal Control Officers from Attending the Maine Criminal Justice Academy. (Sponsored by Rep. Povich of Ellsworth) (final ONTP)

LD 530 – An Act to Preserve Public Access and Job Opportunities in the Maine Woods. (Sponsored by Rep. Cowger of Hallowell) (final ONTP)

Business & Economic Development

LD 299 – An Act to Implement the Recommendations for the Blue Ribbon Commission to Establish a Comprehensive Internet Policy. (Sponsored by Senator Douglass of Androscoggin

County) (final ONTP)

Judiciary

LD 85 – An Act Requiring Compensation for Loss of Property Value Due to State or Local Regulation. (Sponsored by Rep. Glynn of South Portland) (final ONTP)

LD 698 – An Act to Prohibit Discrimination. (Sponsored by Rep. Perkins of Penobscot) (final ONTP)

LD 751 – An Act to Amend the Maine Tort Claims Act. (Sponsored by Rep. Mendros of Lewiston) (final ONTP)

LD 974 – An Act to Create the Civil Rights in Employment, Education and Contracting Act. (Sponsored by Rep. Waterhouse of Bridgton) (final ONTP)

LD 1482 – An Act to Authorize a School Board to Deliberate in Private. (Sponsored by Rep. Heidrich of Oxford) (final ONTP)

Legal & Veterans Affairs

LD 729 – An Act to Amend the Laws Governing Presidential Primaries. (Sponsored by Rep. Tessier of Fairfield) (final ONTP)

LD 1250 – An Act to Amend the Laws

Governing Registration of Voters. (Sponsored by Rep. Gooley of Farmington) (final ONTP)

Natural Resources

LD 509 – An Act to Regulate Waste Transfer Facilities. (Sponsored by Rep. Lovett of Scarborough) (final ONTP)

State & Local Government

LD 1054 – An Act to Ensure Independent Decision Making in Appeals of Denials of Abatement of Property Taxes. (Sponsored by Sen. Kilkelly of Lincoln County) (final ONTP)

Taxation

LD 577 – An Act to create Equitable Taxation of Leased Property. (Sponsored by Rep. Colwell of Gardiner) (final ONTP)

LD 1654 – An Act to Enhance and Protect Disclosure of Confidential Property Tax Information. (Sponsored by President Pro Tem Bennett of Oxford County) (final ONTP)

Transportation

LD 826 – Resolve, to Restore the Steel Bridge in New Sharon. (Sponsored by Rep. Pineau of Jay) (final ONTP)