

Legislative BULLETIN

A PUBLICATION OF MAINE MUNICIPAL ASSOCIATION

Vol. XXIII No. 20

May 25, 2001

State Budget Lurches Out of Impasse

A new version of the “ Part I” or “ current services” biennial state budget came screaming out of the Senate yesterday with a 34-1 “ ought to pass” endorsement. This was after nearly two months of budget impasse where the House and Senate have sharply disagreed on how to fund state government over the next two years.

The House gave a somewhat cooler reception to the measure, voting to support the measure 90-55 in a preliminary vote taken six hours later, after extended debate. Because the budget now needs a two-thirds vote to be enacted as an emergency measure in order to be in effect at the start of the next state fiscal year on July 1, the initial House vote fell 11 votes short of

those necessary to put the current services budget in place.

Driving the budget impasse of the last seven weeks was a difference of opinion between the chambers on how to pay for approximately \$70 million worth of the \$5.2 billion 2-year spending plan. The original version of the Part I budget called for that amount of tax increases, principally by means of a 26 cents per pack increase in the cigarette excise tax and an increase to the non-Class A restaurant meals tax from 5% to 7% (to match the meals tax charged at Class A restaurants).

That initial version of the Part I budget hit a brick wall in the Senate, which insisted on no new tax increases and instead funded the \$70 million gap

in large part by drawing down the \$50 million that was set aside last year to provide an endowment for Governor King’ s laptop computer program for middle school students.

This newest version of the Part I budget is called the “ leadership proposal” . It would bridge the \$70 million gap differently from its predecessor proposals. It would cut out some expenditure lines. Of particular municipal interest, the leadership proposal would zero-out any increase to K-12 education subsidy (GPA) in the second year of the biennium. Higher education (the Technical College and University systems) gets a similar flat-funding treatment for FY 03.

K-12 school funding has been a core component of the budget since the beginning of the budget review process last January. As Table #1 indicates, the starting point was the Commissioner of Education’ s recommendation for a 6% increase over each year of the biennium. Governor King scaled back the Commissioner’ s recommendation by offering a 5% increase for FY 02 and a 3% increase for FY 03. Each of the subsequent proposals has sweetened the first year of the biennium, not by increasing the overall GPA distribution but by creating ever larger “ hold harmless cushion” add-ons which are designed to soften the cuts in GPA that certain school districts face even with a 5% increase in overall GPA appropriation. GPA subsidy follows students and retreats from property valuation, so certain school units experience losses in subsidy even when the overall state valuation is increased.

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Various GPA Proposals

GPA FY 01 (current year): \$664,131,846

PROPOSAL	FY 02	FY 03
6% increase	\$703,979,756	\$746,218,542
Governor’ s Budget	\$697,338,438	\$718,258,591
	5% increase	3% increase
Appropriations Committee	\$700,338,438	\$718,258,591
	(includes \$4.65M cushion)	2.56% increase
	5.45% increase	
Senate Version	\$701,338,438	\$718,258,591
	(includes \$4.65M and	2.4% increase
	\$1M “ Tier2” cushion)	
	5.6% increase	
Leadership Version	\$703,538,438	\$704,838,438
	(includes \$5.2M cushion	0.2% increase
	and \$1M “ Tier2” cushion)	
	5.93% increase	

BUDGET (cont'd)

The "hold harmless" cushions added on to the GPA appropriation are presenting a real problem for the Legislature. Their political necessity serves to embarrass and ultimately impugn the basic distribution formula, and although there are threats every year that the cushions will not be there in subsequent years, the cushions are only growing bigger and more complicated.

It is the equivalent of the Legislature pouring gas down the open choke valve to keep the education engine running, rather than properly adjusting the carburetor.

And the more immediate concern during this budget debate is the degree to which a zero-increase to GPA distribution in FY 03 is the type of public policy the Legislature should be endorsing. House leaders from both parties and members of the Appropriations Committee promised many times over that the "Part II" or "new programs" budget, to be developed immediately after the passage of the Part I budget, would be guaranteed to restore the second year GPA appropriation to its 3% level. Just as many other legislators refused to take the bait. If there is consensus that GPA should be funded at least at a 3% increase for FY 03, they asked, why is that increase not in the Part I budget? Isn't GPA a "current service"? Several Republican House members called for the presentation of a complete biennial budget, without the "Part I/Part II" choreography. The concern is that the Part I budget will leave so much necessary spending unaddressed, the Part II budget will necessitate the tax increases that a block

of legislators is trying to avoid.

In the midst of all this, at least two points should be made.

First, the degree to which the GPA distribution is "cushioned" is beginning to blur the actual percentage increases that are being provided to education subsidy. Because the "cushion" appropriations are not considered to be part of the GPA base, the Legislature could begin claiming to be providing a certain percentage increase to GPA when in reality there is less being appropriated for K-12 education statewide than in a previous year. As an example, the proposed Part I budget claims to be adding a modest \$4.5 million to GPA for the second year of the biennium which is alleged to be a 1% increase. In reality the proposed FY 03 appropriation would be \$1.3 million more than the overall FYY 02 appropriation, which is just two-tenths of a 1% increase. For the purpose of apples-to-apples comparisons, MMA calculates the "hold harmless" cushions as an integral part of the annual GPA appropriation.

Second, the most direct way to

provide property tax relief would be to fulfill the funding component of the Revenue Sharing II proposal that is languishing on the table in the House (LD 209) and was a part of the Senate's Part I budget proposal. The need for property tax support was not lost on at least some Senators as they debated this new version of the Part I budget. Immediately after the Senate vote on the Part I budget, Senators Neria Douglass (Auburn) and Peggy Rotundo (Lewiston) issued a press release that reads in part:

"(We) are pledged to continue fighting for property tax relief in the Part II budget. In a letter to leadership, we have communicated the serious need for Revenue Sharing for service center communities such as Lewiston and Auburn. We have informed them that we will not support a Part II budget that does not contain additional property tax relief for our communities."

As this edition of the Bulletin goes to press, it is unclear if the "leadership proposal" Part I budget will accumulate the necessary final votes to be enacted. (GH)

Municipal Revenues and Expenditures

It is not uncommon in the halls of the State House to hear legislators and others complain about the level of municipal spending. Property taxes are too high, MMA is told, and municipalities don't do enough to keep property taxes in check. Increases in state support, to the extent they are generated, are allegedly subsumed in almost a conspiratorial way by the municipal officials, rather than being used to drive down the property tax rates.

MMA's Year 2000 Municipal Fiscal Survey is now complete and is being distributed to all the municipalities in Maine, so everyone can see what is actually going on.

The fiscal survey allows the town-by-town comparison of spending priorities and starkly demonstrates the extraordinary demand on the property tax for financing public education. A remarkable phenomenon jumping out of the survey shows the number of towns whose entire property tax commitment is roughly equal to the local share of K-12 education, leaving the municipality to subsist on its excise tax revenues and revenue sharing.

The financial information contained in the report was collected from municipal officials who filled out the fiscal survey. MMA's approach to the 2000 Fiscal Survey was different than from prior years. In the past, the Fiscal Survey report would show spreadsheet type data for only those municipalities that had completed the survey. This year's survey report includes a financial profile illustrating both sources of revenues and municipal expenditures, on a single page, for every municipality in Maine. The amount of data included in the profile is based on the information provided by the municipality. At minimum, each fiscal profile shows the amount revenue generated by the property tax and through state support. Each municipality will be receiving a copy of the fiscal survey report in the next few weeks. For the convenience of legislators, a copy of the 2000 Fiscal Survey will be placed in the State's law library. (KD)

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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Compromise Struck on Subdivision Bill

In last week's edition of the Legislative Bulletin, we reported on the Committee amendment to LD 1278, *An Act to Implement the Recommendations of the Task Force to Study Growth Management*, that would preempt home rule authority with respect to subdivision ordinances. The Committee amendment would have permanently prohibited every municipality from using a definition of "subdivision" that departed from the definition in state law. The definition in state law is characterized by its exemptions – for "gifts" to relatives, conveyances to abutters, and a retention of a phantom residential lot – which allow what could only be called "subdivisions" to be developed without local review.

At issue is a complaint from the attorneys who perform title searches that their job would be made harder to the extent different municipalities were using different definitions of "subdivision". It has in fact been alleged by at least one of those attorneys that unlimited home rule authority over subdivision ordinances would shut down real estate transactions in Maine...perhaps an overstatement.

During the course of this week, the Committee amendment has been appropriately amended through a compromise that allows for further study of the issue and the development of an alternative approach that will protect a municipality's right to review and regulate intensive land use development and at the same time accommodate title search procedures.

First, as background, the entire thrust of LD 1278 (except for the Committee amendment) is to improve the statutory definition of "subdivision" by tightening-up the several exemptions. LD 1278 would establish that in order to discount the subdivider's residential lot from a subdivision, it must have been the subdivider's "principal residence" for at least a period of five years prior to the subdivision. The bill would also establish that in order to

exclude a "gift lot" to a relative from subdivision review, the lot must have been in the ownership of the person making the gift conveyance at least five years before the subdivision, and the price paid for the "gift" lot would have to be less than 50% of the assessed value of the conveyed lot. LD 1278 also provides that a subdivided lot that is conveyed to an abutter shall not be discounted from the subdivision law if that subdivided lot (without all the rest of the merged real estate) is subsequently reconveyed to a third party within five years of the subdivision. These are positive changes that will prevent some future abuses of the subdivision exemptions.

Second, the compromise amendment clarifies that all existing municipal subdivision ordinances are valid, even if their definition of "subdivision" is more inclusive than state law.

Third, the compromise amendment establishes a temporary moratorium on the adoption of a new definition of "subdivision" that goes beyond the (new and improved) statutory definition. The moratorium would run through October 1, 2002 in order to allow for an appropriate resolution to be enacted during the second legislative session next year.

Finally, the compromise amendment directs the State Planning Office to: (1) catalogue existing ordinance definitions of "subdivision" to determine the extent to which municipalities have gone beyond the statutory definition to protect themselves from unreviewed development; (2) prepare an analysis of the legislative history of subdivision law with a focus on its relationship to home rule authority; and (3) prepare a list of strategies for the Natural Resources Committee to consider that would properly coordinate subdivision review procedures and the title search procedures. One idea that has already been suggested would be the development of several definitions of "subdivision" that a municipi-

ality could adopt – the current version and a couple of more inclusive versions – as best suits its needs. That choice would then be put on record for the notice of the title attorneys.

The House and the Senate have given their preliminary approval of LD 1278, as amended by the compromise, and it is headed for enactment. MMA appreciates the response of municipal officials across the state who expressed deep concern to their legislators about relinquishing home rule authority over this important local matter. It was that response that yielded this satisfactory compromise solution.

Selectmen, ordinance review committees and planning boards should be on the lookout for LD 1278 after its final enactment so that they can review the improved definition of "subdivision" and present those amended definitions to the local legislative body (town meeting or council) for adoption. (GH)

Retroactivity Update

On Wednesday, May 23rd the Senate voted to support the State and Local Government Committee's majority "ought to pass as amended" report on LD 796, *An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda*. As amended, the bill prohibits residents from circulating petitions that contain retroactive effective dates that serve to invalidate, repeal, revoke or modify an existing land use, zoning or other building permit requirement enacted by the local legislative body.

LD 796 clarifies that a citizen initiative petition or referendum must be prospective and that the proposed changes to a development ordinance or regulation must impact future developments and not development proposals that have received authorization under existing local ordinances and regulations.

This bill is currently before the House and may be brought up for debate at any time. Please contact your Representatives (1-800-423-2900) and encourage them to support LD 796, as a matter of fairness to the property developers subject to the land use regulatory process. (KD)

Animal Welfare Overhauled

After many work sessions and compromises, the Agriculture, Conservation and Forestry Committee has unanimously voted out two animal welfare bills “ought to pass as amended” : LD 1170, *An Act to Amend the Animal Welfare Laws* and LD 1695, *An Act to Clarify, Enhance and Strengthen the Animal Welfare Laws of Maine*. After realizing that the existing Animal Welfare Program within the Department of Agriculture needed to be substantially reformed, legislators, animal advocates, animal control officers, and veterinarians offered suggestions to improve the enforcement of the animal welfare laws, as well as the Program itself.

One of the core problems with animal welfare enforcement at the state level is the lack of a sufficient source of supporting resources. As it stands, all of the state’s animal welfare protection efforts rest on the relatively paltry revenues derived from the state’s share of dog licensing fees.

One of the proposed supplemental funding mechanisms in LD 1170 is the increased registration fee on commercial feed. Under the current law, manufacturers and distributors pay an annual fee of \$40 per brand of pet food sold in the state. LD 1170 increases this fee to \$80 per brand of pet food and \$80 for all other commercial feed. This registration fee expires annually. According to the new language, one half of the fees collected will be deposited in the General Fund and the other half will be deposited in a nonlapsing Animal Welfare Fund.

Another issue at the core of the problem is the structure of the state’s oversight council which could be providing guidance to the Animal Welfare Program. In the vehicle of LD 1695, the Committee redesigned the existing Animal Welfare Advisory Council (AWAC) into an 11 member panel and charged it with the responsibility of closely examining the feasibility of strengthening existing animal welfare laws as well as making recommendations regarding innovative funding,

training, and other suggestions related to the animal welfare program.

In an effort to increase the number of dogs licensed in the state, the Committee debated many proposals to amend the licensing process. In addition to assigning AWAC the responsibility of assessing the feasibility of altering the licensing program, the Committee has included in LD 1170 an authorization for licensed veterinarians to become agents that will have the power to issue dog licenses. The

rationale to adding vets as agents was the “one-stop-shop” approach that may attract those individuals that have not previously licensed their dogs. The Committee hopes that the mere convenience of licensing the animal at the veterinarian’s office will capture more than the estimated 40% of the population that currently registers their dog. Licensing fees will not be increased. In order for municipalities to continue to receive the licensing fees, the vets will ask customers to write two separate checks, one for the veterinary services and the other check is to be made payable to the town office in which the

(continued on page 6)

Voluntary Cat Identification Program

The Agriculture, Conservation and Forestry Committee has turned the always-controversial concept of cat licensing into a voluntary cat identification program. The vehicle for this proposal, unanimously supported by the Committee, is (as retitled) LD 1435, *An Act to Authorize Animal Shelters to Accept and Provide for Stray Cats* sponsored by Representative Laverriere-Boucher of Biddeford.

LD 1435, which is headed for enactment, provides guidelines for shelters to follow when dealing with the many cats that are dropped off at the shelter. The intention of the program is to provide those individuals that choose to identify their cats the added protection of knowing if the cat should get lost and is taken to a shelter that the cats with identification will not be adopted, sold or euthanized for a certain period of time.

Under the bill, proper identification can consist of a simple tag or collar identifying the owner, or may be as sophisticated as implanting a microchip under the animal’s skin and notching the cat’s ear.

For unidentified cats, the hold time at the shelters under current law is a period of 24 hours. After this period of time, the shelter is given the legal authority to offer the cat for adoption, sell the animal or euthanize the animal. Under the terms of LD 1435, the hold time for properly identified cats would be six days. The shelter is required to make reasonable attempts to contact the cat’s owner. Both notice via telephone or mail is sufficient as long as it is done within 24 hours of accepting the animal, and the shelter may release the cat to the owner after any municipal impoundment fees and direct fees (food, shelter, veterinary costs) are paid.

LD 1435 clarifies that animal shelters, animal control officers and humane agents may authorize the immediate euthanasia of severely sick or injured, or extremely vicious cats.

The identification program proposed in LD 1435 would provide a method of distinguishing between owned cats and those that are feral, thus assisting animal control officers and animal shelters in carrying out their duties. Another important element of this bill is that a veterinarian, humane agent, animal control officer and animal shelter are generally immune from civil liability. However, if the shelter, animal control officer, humane agent or veterinarian should transfer the animal to a research facility, there is no protection from civil liability. (KH)

Tax Committee Says 'No' To Charitable Exemption Standards

On Friday last week the Taxation Committee unanimously voted to kill LD 1375, *An Act to Establish Minimum Standards of Eligibility for the Property Tax Exemption for Charitable Organizations*.

As the bill's title indicates, LD 1375 would have set some quantifiable standards for municipal assessors to use as guidelines to determine if a corporation organized as a charitable organization was really delivering a sufficient level of charitable services such that it deserved the 100% property tax exemption that is provided under current law. The standards contained in LD 1375 were taken from Pennsylvania law, and established a low bar that any truly charitable organization would be able to easily meet. In fact, the bill provided the charitable organizations with five separate ways to demonstrate they were providing a substantial amount of goods or services "with no expectation of return", which is the classic definition of "charity".

The bill was submitted at MMA's request by Representative Walter Gooley (Farmington) and was given its public hearing on March 26. The YMCAs in Maine took particular exception to the bill at public hearing. The Taxation Committee never actually worked on the bill in a substantive way. After languishing for two months on the Taxation Committee's "table", it was summarily given a unanimous "ought not to pass" report.

This is certainly not the first year that the Legislature has expressed a singular indifference to the fact that large concentrations of exempt medical corporations, nursing homes, low-income housing complexes, social service agencies, certain summer camps, group homes, etc. are seriously eroding the tax base, particularly in Maine's shire towns and hub communities...the same place where the property tax burden is the most acute. Over the last decade, in a variety of ways, MMA has

been working to establish some basic standards to govern this forgiveness of any obligation to contribute to the municipal charge, all with no success. If the municipalities are really interested in effecting any change to the archaic law governing the charitable tax exemption, it is apparent that new strategies will have to be developed. (GH)

Continued Focus On Mercury

LD 1665, *An Act to Further Reduce Mercury Emissions from Consumer Products*, sponsored by Representative Robert Duplessie (Westbrook) takes another look at eliminating the presence of mercury from the environment. The bill has four crucial segments; the most controversial is a section which would require manufacturers to disclose the mercury content of disinfectants, laboratory chemicals and other formulated products sold to hospitals. According to the DEP, this provision is essential in assisting Maine hospitals to attain their goal of virtually eliminating mercury emissions. The Maine Hospital Association voluntarily agreed to eliminate mercury by 2005. Representatives from the Hospital Association testified in support of the bill stating that they needed the assistance of the manufacturers in determining the presence and quantity of mercury in the products used in hospitals.

Several representatives of Maine's sewer and wastewater districts support this section of the bill. LD 1665 would assist the hospitals in reducing the mercury content in their discharge, which, in turn, impacts the district's mercury discharge levels. Having the actual quantity and contents of the so-

lutions that enter the waste stream would assist the districts in better controlling the water quality.

The second component of the bill would require manufacturers to notify the DEP prior to the sale or distribution of mercury-added products in the State. The DEP hopes to use this provision as an investigatory measure to determine whether manufacturers should be required to establish collection programs for their mercury products.

In an effort to remove mercury from the environment, LD 1665 includes an outright ban on the sale of both fever thermometers and manometers. The bill also restricts the sale and use of mercury and bans the use of mercury and mercury compounds in schools. According to the DEP, numerous incidents across the nation resulted in school shutdowns and expensive cleanups.

The Committee Amendment "A" to LD 1665 requires a manufacturer to report the total amount of mercury in all units of a product or product components every three years, rather than the original requirement of "whenever there is a significant change."

The original bill would also prohibit selling or providing elemental mercury to another person without providing that individual with a material safety data sheet and requiring the purchaser to sign a statement that certifies the mercury will be used for only a specific purpose and that it will be properly stored. The Committee amendment provides an exemption from these requirements for those individuals purchasing elemental mercury to be used in manufacturing or recycling purposes.

There are some final-wording amendments to the measure passing back and forth between House and Senate, but LD 1665 is headed for enactment. (KH)

ANIMAL (cont'd)

customer is a resident.

Among additional changes proposed in LD 1170, the Commissioner of Agriculture (or the commissioner's designee) would be authorized, in conjunction with the appropriate attorney, to serve subpoenas requiring an individual to disclose or provide information that is considered relevant and necessary to an investigation held under the animal welfare laws. The bill provides both civil and criminal immunity for those individuals that comply with the subpoena.

LD 1170 also provides that a licensed veterinarian who has reasonable cause to suspect that an animal has been the subject of cruelty or neglect may report this violation to the commissioner, an animal control officer or a law enforcement officer without having to fear civil, criminal or professional disciplinary action.

Further changes in LD 1170 would amend the animal welfare criminal code to include the requirement that law enforcement officers, animal control officers and state humane agents shall investigate alleged violations of animal cruelty. This section also imposes a duty to maintain a record of all alleged cases of cruelty to animals that have been investigated by a humane agent. If a law enforcement officer or animal control officer investigates the allegation, then they must make a report to the commissioner on the final

disposition of the case. One of the intentions the Committee frequently expressed was the required cooperation between agencies. Law enforcement officers, animal control officers, the commissioner and the state veterinarian are encouraged to exchange information regarding investigations of animal cruelty. (KH)

LD Post-Mortem

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).

Appropriations & Financial Affairs

LD 1316 – An Act Requiring Reimbursement to Counties for Courthouse Facilities. (Sponsored by Sen. Ferguson of Oxford County) (final ONTP)

Education & Cultural Affairs

LD 1390 – An Act to Reinstate the Cost-of-living Factor in the School Funding Formula. (Sponsored by Rep. Andrews of York) (final ONTP)

LD 1403 – Resolve, to Establish the Task Force on School Governance. (Sponsored by Rep. Rosen of Bucksport) (final ONTP)

Labor

LD 1224 – An Act to Provide Public Employees Equal Access to Personnel Files. (Sponsored by Rep. Hutton of Bowdoinham) (final ONTP)

Legal & Veterans Affairs

LD 123 – Resolution, Proposing an Amendment to the Constitution of Maine to Require Signatures From All Counties of Direct Initiative Petitions. (Sponsored by Rep. Mayo of Bath) (final ONTP)

Marine Resources

LD 1327 – Resolve, to Allow Coastal Municipalities to Regulate the Use of Personal Watercraft. (Sponsored by Rep. Bull of Freeport) (final ONTP)

Natural Resources

LD 787 – An Act to Require the Filing of Soils Tests. (Sponsored by Sen. Goldthwait of Hancock County) (final ONTP)

State & Local Government

LD 61 – Resolution, Proposing an Amendment to the Constitution of Maine to Eliminate the Ability of the Legislature to Pass Legislation Imposing Mandates on Municipalities. (Sponsored by Rep. Perkins of Penobscot) (final ONTP)

LD 1444 – An Act to Enhance Local Accountability. (Sponsored by Rep. Kasprzak of Newport) (final ONTP)