

# Legislative BULLETIN

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## Catching Up With Appropriations

The Appropriations Committee has held public hearings for the last two weeks covering all elements of Governor King's proposed supplemental budget which attempts to bridge a \$272 million gap between revenues and expenditures over the remaining 17 months of the FY 02-03 biennium. The public testimony has helped better identify the impacts of the proposed budget on municipal government. What follows is a list of those municipal impacts roughly assembled according to their financial priorities.

**GPA.** Just as Governor King announced when he initially unveiled his budget on January 8, the document proposes no reduction to the \$718 million appropriation for General Purpose Aid to Education for FY 03. Although many legislators left the State House last spring with the intention of boosting next year's GPA appropriation this session, the legislative and gubernatorial game plan for education subsidy has now switched from offense to defense. Many of the proposed cuts in the supplemental budget, as unpalatable as they are, are only there because they are slightly less unpalatable than wholesale reductions in state subsidy for K-12 education. The municipalities recognize how difficult it is to protect such a large part of the overall state budget from reductions, and they very much appreciate the efforts of the Governor and the Legislature to do so.

**Curtailed of special education reimbursement for state agency clients.** Protection of the \$718 million FY 03 appropriation of GPA is a good thing, but at the same time there are growing signs that the gross appropriation for GPA is inadequate. In the

list of hits to municipalities, the most pernicious is actually nowhere to be found within the supplemental budget document. It is the recently announced curtailment by the Department of Education of reimbursement to municipi-

palities for the special education costs associated with state agency clients.

"State agency clients" are children who are wards of the state and who live in foster care or group home settings throughout Maine. It is the state's policy to pay 100% of the special education costs that a municipality

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## MMA Position Misreported

In its January 17, 2002 issue of *Impact*, the Maine State Chamber of Commerce published a list of organizations that opposed the proposed local option sales tax, LD 883, *The Debt Avoidance Act*.

In that published list of opponents, the Maine State Chamber erroneously included the Maine Municipal Association. MMA's testimony in support was not particularly subtle or hard to follow, so it is difficult to understand how the business lobby might confuse our supportive testimony with opposition.

Many of the state's service center communities need some help, it is as painfully simple as that. Throughout the last several weeks of formal and informal debate on the local option sales tax proposal, no one has denied the need for the regional capital investments envisioned in the bill. There is also a general recognition of the need to finance these investments with a mechanism other than the property tax, which is maxed-out in many of the communities where this infrastructure belongs.

MMA's 70-member Legislative Policy Committee voted almost unanimously in favor of the Debt Avoidance Act and that vote was conveyed to the

Taxation Committee at the public hearing on LD 883. The municipalities favor the local option because the Debt Avoidance Act provides a reasonable tool for communities that strongly support regional economies and it has been tailored for maximum accountability. It can only be employed by a vote of the people, for specific capital projects that benefit a region, to raise specific amounts of money, and for limited durations.

At this same public hearing, the Maine State Chamber agreed that the regional service center communities needed to be able to finance important, regionally valuable projects. The Chamber of Commerce objected, however, to the proposed local option tax as a solution. Instead, the Chamber argued somewhat cryptically, government should be organized more efficiently and regional governance authorities should be created and authorized to finance regional facilities. This new level of district governance, the Chamber is suggesting, would result in greater efficiency.

The record should show that notwithstanding the Maine State Chamber's reporting, MMA strongly supports the Debt Avoidance Act. (GH)

## APPROPRIATIONS (cont'd)

might be exposed to with respect to these children, but that policy does not have the force of law because it only applies to the extent the Legislature appropriates money for that purpose. The appropriation for this purpose is a "special adjustment" line within the overall GPA appropriation. For the present fiscal year (FY 02) the Legislature's appropriation for special ed reimbursement for state agency clients was \$21 million. The Department of Education recently revealed that the appropriation would be insufficient, and that these state agency client reimbursements for the current fiscal year (FY 02) will be postponed into FY 03, and those state obligations as well as the FY 03 obligations will be "prorated" among the affected school systems, rather than fully funded.

There are between three and four thousand "state agency clients" in Maine, approximately 1,400 of whom receive special education services. Short funding in this area has occurred before during the 1990s, and it appears that within the turbulent political dynamic that ultimately results in the Legislature's appropriation for GPA, there are political pulls and tugs between the various structural lines that make up the whole GPA appropriation... a tension between the various special adjustment lines, the hardship cushion appropriations that have become a structural part of the GPA formula, and the general operational and program "allocation" lines. All of these tussles can result in this special education appropriation being

short-changed.

Failure to properly reimburse for the special education costs associated with state agency clients is a kick in the teeth. This decision, which is ultimately the Legislature's, puts immediate, unexpected and significant holes in existing school operating budgets, affecting both rural and urban school districts throughout the state. The projected shortfall in this reimbursement line for the current fiscal year is \$8 million. Even though the Department is recommending shifting some accounts around to provide a 25% increase to this appropriation for the next fiscal year, the costs of special education services for these children are spiking so fast, even a budgetary boost of that magnitude will be too little, too late. The gross transfer to the property tax and the extraordinary disincentive this decision creates with respect to the establishment of group homes add up to remarkably bad public policy.

**Medicaid cuts and ambulance co-pays.** There are a range of cuts in Governor King's proposed budget in the Medicaid area including reducing Medicaid reimbursements to nursing home and physician providers, dropping of some extended Medicaid services such as podiatry and chiropractic, and of particular interest to municipalities the "Medicaid Part B Crossover" cut that would discontinue covering a portion of the ambulance fee that is charged to senior citizens who require ambulance services and who are also Medicaid eligible.

The government based senior citizen medical insurance program, Medicare, covers 80% of the purported (but less than actual) costs of an ambulance charge to a senior citizen. The Medicaid Part B Crossover program allowed for the 20% co-pay to be covered under the Medicaid program for all senior citizens who qualify for Medicaid. This co-pay coverage would be eliminated according to the proposed supplemental budget, "saving" the state about \$300,000 for this fiscal year and \$1.25 million for FY 03. This cut also helps relieve the federal budget by twice those sums because two federal dollars match every state dollar under Medicaid.

These "savings" for the state and federal government are direct losses at the local level because those ambulance transports for the senior citizens will still be provided, but the municipal and municipally subsidized ambulance companies will simply have to eat the co-pay.

This Medicaid cut is one among several that the Governor has already proposed to restore should the state revenue projection improve when the Revenue Forecasting Committee looks into its crystal ball again at the end of February. If the state revenue does not improve and the Legislature enacts this particular Medicaid cut, municipal officials can expect immediate requests for increased support from the property tax for ambulance services, whether provided by a municipal department or under contract with a public or private regional ambulance company.

**The LURC tax.** The proposed budget also tosses in a revenue raising proposal to shift some support for the Land Use Regulatory Commission (LURC) from the state's General Fund to the property tax. LURC is the planning board for the unorganized territories and 39 plantations and municipalities that were unorganized territories 30 years ago when LURC was created.

The revenue-raising scheme would assess a new \$5,000 tax against each of the 39 organized municipalities within LURC's jurisdiction.

Ron Lovaglio, the Commissioner of the Department of Conservation, told the Appropriations Committee that LURC provides about 450 land use permits a year to property owners living in the 39 organized communities. During the last six year period, people in the most populous of these small communities received as many as 55 permits per year on average but in the smaller plantations the annual permitting rate is less than 1 permit a year. Despite that disparity in activity, the proposal would allow LURC to assess \$5,000 annual assessments against each community. These proposed assessments are in addition to the permit fees that the applicants are required to pay.

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### Legislative Bulletin

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# Solid Waste and the Public Benefit Test

The Natural Resources Committee held a work session this week on *LD 2005, An Act to Ensure the Public Benefits of Solid Waste Facilities* (Sponsor Rep. Glenn Cummings, Portland).

Supported by MMA's Legislative Policy Committee, LD 2005 would extend the applicability of the public benefit determination test to include large commercial transfer stations and would also require solid waste disposal facilities that currently have a license for a particular classification of waste to receive a determination of substantial public benefit prior to accepting another class of waste.

The Committee seemed to be all over the place on this bill. The first motion coming right out of the gate was "ought not to pass".

Rep. Dick Crabtree (Hope) wanted to penetrate the issue a little deeper. Framing the question, Rep. Crabtree asked his colleagues on the Committee why it shouldn't be the case that when the Legislature identifies a problem (e.g., solid waste disposal) and then through legal mandates, regulatory mandates and "regulatory enthusiasm" induces the municipalities to build and operate waste to energy facilities at a long-term financial commitment, the Legislature should provide some protection to those financial commitments as a matter of public policy?

Sen. John Martin (Aroostook Cty.) agreed that it was legislative action that enticed municipalities such as Regional Waste Systems to go into operation.

Rep. Scott Cowger (Hallowell) said he would have a difficult time placing transfer stations in the same category as end-use disposal facilities and thus he would not support that component of the bill. On the

other hand, Rep. Cowger thought an application to receive another class of waste may be the appropriate time to revisit the disposal permit since Maine has limited disposal capacity.

Rep. Bob Daigle (Arundel) stated that he could not support LD 2005. Rep. Daigle believes the more ratio-

nal solution is to remove solid waste disposal from the competitive market and deem it a utility, thereby falling under the Public Utility Commission's regulation.

In an attempt to wade through the disparate opinions, Sen. Martin suggested that the private disposal facilities, quasi-municipal facilities, and DEP hammer out a framework agreement that would govern the flow of municipal solid waste for the extended duration. The Committee will be reviewing the efforts of the three interest groups at the next work session on February 5<sup>th</sup>. (KH)

## Dig Safe Blues

On Thursday this week the Utilities and Energy Committee held a public hearing on *LD 2024, An Act to Improve the Safety Provided by the Underground Facilities Protection Law*. Developed by the Public Utility Commission, this bill would sweep municipalities with water or sewer systems into "Dig Safe" membership, for a fee.

From the municipal perspective, one of the most troublesome aspects of the bill is the mandatory Dig Safe membership by public water and sewer systems. The PUC testified that the purpose of the Dig Safe system is to avoid hitting underground facilities during excavation. Historically, the system was created to ensure safety during excavation with respect to gas and electric lines buried below the ground, but the PUC testified that including sewer and water utilities in the program would provide an increased public benefit, not to mention increased fees for the program.

The Committee heard testimony from the Superintendents of the Augusta Sanitary District, Kennebunk Water District, the Assistant General Manager of the Brunswick Sewer District and MMA that the costs associated with participation in the

system would be an unwelcome expense to pass on to the ratepayers. According to Dale Glidden, Superintendent of the Augusta Sanitary District, mandated participation would hit the Augusta ratepayers twice, once on the sewer bill and once on the water bill.

A representative of the Maine Water Utilities Association testified that there is a lack of documented incidents and violations that could have been avoided if the utilities were Dig Safe members. A representative from the Maine Waste Water Control Association, as well as several other water utilities echoed this sentiment.

The second component of the bill that was particularly troublesome for public utilities is the requirement that the utility would also become responsible for locating the sewer lines from the road to the home owner's property. According to the Maine Waste Water Control Association, accurate records depicting these private lines do not exist and furthermore, they are under the ownership and control of the individual homeowner rather than the utility. The Maine Rural Water Association testified as to the intrinsic difficulty of locating these private lines. (KH)

# Reapportionment Bill Supported By MMA

On Monday of this week, the State and Local Government Committee unanimously voted to support an amended LD 1943, *An Act to Clarify Municipal Reapportionment Authority*.

As originally proposed, LD 1943 would have amended Title 30-A, section 2503 to enable local officials in municipalities with election wards to maximize the time allotted in existing law to enact reapportionment ordinances. Current law suggests that municipalities have 18 months after the release of U.S. Census data to establish new ward boundaries to ensure that each ward contains an equal number of voters in order to preserve the one-voter-one-vote principle.

Some lawyers interpret that law, however, to mean that the effective widow of reapportionment is much shorter than that 18 month period because that same statute requires that reapportionment to also occur 90 days before any elections held after the release of U.S. Census data.

For example, the official release date of the 2000 US Census data was March 2001. If the existing law is strictly applied, municipalities with wards and November elections had only five months in which to adopt a reapportionment ordinance. Because the general election is held in November, municipalities would have had to adopt a reapportionment ordinance by August 6, 2001, which was ninety days before the November election. The penalty for failing to meet the deadline is to elect candidates "at large" rather than by ward, completely disrupting the local ward process.

Although the printed bill was merely clarifying the existing process to make it more workable for municipalities, another issue cropped up during the debate. Thanks to the efforts of the bill's sponsor Rep. Bill Schneider (Durham), the second issue was addressed as well, and LD 1943 was

amended to allow a municipality to postpone adopting its reapportionment ordinance up to twelve months after the Legislature has reapportioned its own legislative districts.

According to the Maine Constitution, the Legislature is required to adopt its own reapportionment recommendations for the legislative districts in every year that ends in '3'. Due to the timetables established in current Maine law, municipalities must adopt their ordinances nine months before the Legislature adopts its new districts.

The municipal officials in ward municipalities believe that allowing municipalities to reapportion local wards based on the outcome of the reapportioned state districts would assist in alleviating some of the election day problems that can occur. Often when the wrong state ballot is issued to a voter, it is because the state and local districts do not coincide. In some of Maine's larger cities, it is possible for two neighbors in one ward to be represented by one municipal councilor, but by two different House members.

MMA believes that LD 1943 will assist municipalities in creating local election wards that coincide insofar as possible with state districts, all for the purpose of enhancing the election process. The State and Local Government Committee has given a unanimous "ought to pass as amended" report to LD 1943. (KD)

## TIF Overhaul

On Tuesday, January 29<sup>th</sup> the Taxation Committee held a public hearing on, LD 1966, *An Act to Amend the Laws Relating to Development Districts*. LD 1966 restructures the tax increment financing laws (TIF) that since 1985 have been amended into an unorganized, user-unfriendly patchwork.

According to Alan Brigham, Policy

Director for Maine's Department of Economic and Community Development (DECD), LD 1966 addresses many concerns that have been raised over the past few years regarding the confusion and lack of organization within the existing TIF law.

Although most of the twenty-four pages of underlined text in the bill is merely existing TIF law in a reorganized format, LD 1966 does address two new policy issues.

Under existing TIF laws the cost of improvements made outside the TIF district with the increment's revenues are limited to those that directly or reasonably relate to the district, such as hard costs for water and sewer and related soft costs for public safety, economic development and employee training.

As proposed, a new provision in the TIF law would authorize municipalities to utilize revenues generated in one TIF district for reinvestment downtown. For example, the change would authorize the City of Augusta to invest TIF revenue generated by a cross-town mall development in the City's downtown tax increment financing district. The intent of this provision is to provide municipalities with a tool to mitigate the adverse impacts new mall development could have on an existing downtown.

A second policy change proposed in LD 1966 more narrowly targets the use of revenue generated in special exception TIF districts.

Under existing TIF laws the assessed value of a proposed TIF district cannot exceed 5% of a community's total assessed value as the general rule. There is an exception, however, when the development in the TIF district exceeds \$10 million. Currently, as is the case with regular TIF districts, a municipality can use the TIF revenue generated by these larger projects outside the TIF district when those expenditures are directly or reasonably related to the district. LD 1966 amends TIF law to limit the use of these special exception revenues to purposes exclusively within the TIF district.

The Taxation Committee will be working the bill on Friday, February 1<sup>st</sup>. (KD)

# LEGISLATIVE HEARINGS

NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and at the Legislature's web site at <http://janus.state.me.us/legis>. If you would like to be notified by e-mail of updates to the schedule and web page, send your name, e-mail address, and a message that includes "ANPHUPDATE" to the Senate Webmaster at [webmaster\\_senate@state.me.us](mailto:webmaster_senate@state.me.us).

## Monday, February 4

### Inland Fisheries & Wildlife

Room 206, Cross State Office Bldg., 10:00 a.m.

Tel: 287-1338

LD 1895 – An Act to Clarify the Lines of Effort in a Search and Rescue Operation. (Sponsored by Sen. Cathcart of Penobscot County; additional cosponsors)

### Natural Resources

Room 437, State House, 1:30 p.m.

Tel: 287-4149

WORK SESSION: LD 1964 – An Act to Amend Certain Laws Administered by the Department of Environmental Protection. (Sponsored by Sen. Martin of Aroostook County; additional cosponsor)

## Tuesday, February 5

### Education & Cultural Affairs

Room 214, Cross State Office Building

Tel: 287-3125

1:00 p.m. (Work Session will immediately follow hearing)

LD 2074 – An Act to Increase the Debt Limit of the Calais School District. (After Deadline) (Emergency) (Sponsored by Sen. Shorey of Washington County; additional cosponsor)

### Judiciary

Room 438, State House, 1:00 p.m.

Tel: 287-1327

LD 2019 – An Act to Protect Victims of Domestic Violence, Sexual Assault and Stalking. (Sponsored by Speaker Saxl of Portland; additional cosponsors)

LD 1904 – An Act to Require Tax-exempt Corporations to File Copies of Federal Internal Revenue Service Form 990 with the Secretary of State. (Sponsored by Sen. Bennett of Oxford County)

LD 2083 – An Act to Correct Errors and Inconsistencies in the Laws of Maine. (Emergency) (Reported by Rep. LaVerdiere for the Revisor of Statutes pursuant to Maine Revised Statutes, Title 1, section 94)

### Labor

Room 220, Cross State Office Bldg., 1:30 p.m.

Tel: 287-1333

WORK SESSION: LD 1946 – An Act to Safeguard Volunteer Firefighters' Regular Employment. (Sponsored by Rep. Hutton of Bowdoinham; additional cosponsors)

## Wednesday, February 6

### Transportation

Room 126, State House, 1:30 p.m.

Tel: 287-4148

LD 2020 – An Act to Promote the Fiscal Sustainability of the Highway Fund. (Sponsored by Rep. Fisher of Brewer; additional cosponsors)

## Thursday, February 7

### Legal & Veterans Affairs

Room 436, State House, 1:00 p.m.

Tel: 287-1310

LD 2063 – An Act to Require Timely Consideration of Appeals of Decisions of the Registrar of Voters. (After Deadline) (Presented by Rep. Lemoine of Old Orchard Beach)

### Marine Resources

Room 437, State House, 1:00 p.m.

Tel: 287-1337

Draft proposal to make changes to the laws governing aquaculture leasing.

## Monday, February 11

### Inland Fisheries & Wildlife

Room 206, Cross State Office Bldg., 10:00 a.m.

Tel: 287-1338

LD 2081 – An Act to Implement the Unanimous and the Majority Recommendations of the Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft. (Reported by Rep. Clark for the Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft pursuant to Resolve 2001, chapter 68)

### Natural Resources

Room 437, State House, 9:00 a.m.

Tel: 287-4149

LD 2049 – An Act to Authorize the Transfer of Development Rights. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330.)

LD 2094 – An Act to Encourage Regionalism in Municipal Growth Management. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330)

LD 2070 – An Act to Establish the Community Preservation Advisory Committee. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330)

LD 2061 – An Act to Establish a Pilot Project Program to Provide Incentives for Multimunicipal Development. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330)

LD 2062 – An Act to Clarify the Use of Municipal Rate of Growth Ordinances. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330)

LD 2071 – An Act to Amend the Law Relating to Growth-related Capital Investments. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management pursuant to Joint Order 2001, H.P. 1330)

## IN THE HOPPER

*(The bill summaries are written by MMA staff and are not necessarily the proposed bill's summary statement or an excerpt of that summary statement. A more comprehensive list of LDs (of municipal interest) that have been put in the Hopper can be found on MMA's website, [www.memun.org](http://www.memun.org))*

### Natural Resources

LD 2094 – An Act to Encourage Regionalism in Municipal Growth Management. (Reported by Rep. Koffman for the Joint Study Committee to Study Growth Management Pursuant to

Joint Order 2001, H.P. 1330)

This bill would define a single municipality or a group of municipalities as a “planning district” and then sweep through Maine’s Growth Management Act replacing the term “municipality” wherever it is found with the term “planning district”, all on the theory that the new designation would encourage regional approaches to planning. The bill would also add some new concepts and requirements to the Growth Management Act, such as defining: (1) designated “rural areas” as places “away from which most development projected over 10 years is diverted”; (2) “critical rural areas” as subsections of the rural areas that deserve maximum protection, further suggesting that the “planning districts” should identify their critical rural areas and implement “proactive” management strategies; (3) “transitional areas” as designated portions of the “planning district” that can accept some growth but not the amount of growth that should be directed to the growth areas; and (4) “critical waterfront areas”.

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### APPROPRIATIONS (cont'd)

The Commissioner said that the proposal was seeking a certain type of equity because 10% of the entire LURC budget is assessed against the property owners in the unorganized territories, but there is no parallel assessment against the organized communities.

On a related issue, MMA testified that some of the affected communities have begun to look into the process of establishing a municipal land use regulatory system to get out from under LURC, but the rules governing that process are not entirely clear. Some parts of the law suggest that the adoption of some minimum ordinances is all that is necessary; others suggest the need to develop a full-blown growth management program including a comprehensive plan determined to be “consistent” with the Growth Management

Act by the State Planning Office (SPO). MMA suggested that as a matter of fairness the process to get out from under LURC should be clarified if the new taxes are going to be levied.

**Comprehensive Planning Grant Reductions.** The Governor’s proposed budget cuts \$75,000 in Growth Management planning grants to the municipalities in the present fiscal year. To put that cut into context, the annual legislative appropriation to provide a range of land use planning grants is \$250,000, 10% of which is used by SPO for technical assistance purposes and 90% of which is distributed as grants to the towns and cities. According to the land use planners at SPO, this 33% cut to the state’s Growth Management budget represents approximately 5 comprehensive planning grants that won’t be offered, or 8 implementation grants or 7 grants for comprehensive

plan updates.

In another context, over the next several weeks a gaggle of growth management bills will be reviewed by the Natural Resources Committee and considered by the Legislature. Most of this legislation was generated by a legislatively-created growth management study group or SPO directly. Several of these bills in different ways restrict home rule authority regarding land use regulation, establish additional comprehensive planning requirements, promote “planning districts”, preempt local minimum lot sizes in sewer areas, and add yet another layer of preferential priority for “smart growth” communities to access economic development capital from the CDBG program and a similar state program that has never in its history been capitalized. (GH)