

Regulatory Takings, Required Municipal Compensation

The Judiciary Committee held public hearings this week on a couple of bills that would allow a property owner to receive compensation for a governmental entity's regulatory "taking" or diminution in value of that property associated with a land use regulation. Maine's municipalities had the same concerns with both bills.

LD 1135, *An Act to Protect the Rights of Property Owners* requires the state, a municipality and a county to pay compensation for the enactment of application of land use regulations that reduce the fair market value of private property, with limited exceptions. The bill requires the compensation to be provided to the property owner within 180 days after making a written demand for payment. If the compensation is not provided in that time, the property owner has a cause of action in Superior Court for damages and other costs. If the compensation is not paid within two years, the property owner may use the property according to the land use standards that were in effect when the owner acquired the property.

LD 1477, *An Act to Protect Owners of Real Property* establishes a right of action in the courts for a person to be compensated for a reduction in the value of their real property, as a result of the enforcement of state or local land use regulation, where the reduction does not rise to the level of a "regulatory taking."

Both bills were heard at the same time due to their similarities.

Legislators. Senator Lois Snowe-Mello of Auburn, a self-proclaimed strong property rights supporter, introduced LD 1135 in order to address the devastating effects governmental regulations have on a property's allowed use and financial value.

Representative Andre Cushing, III, of Hampden, the sponsor of LD 1477, said his bill is trying to counter the application of zoning laws which negatively impact the prized right of property ownership. Rep. Cushing went on to say that every man considers his home his castle and doesn't want to see the value of his property taken away.

Other legislators testified in support of the bills, including Rep. Beth O'Connor of Berwick who stated that it is tempting to believe government would use its power justly and with restraint and perhaps solely against big interest but government doesn't fare well against political pressure;

Rep. Kathy Chase of Wells who shared a personal experience with property difficulties she and her husband experienced when dealing with the Department of Environmental Protection, warning that her experience is just the tip of the iceberg; and Rep. Heather Sirocki of Scarborough, who liked the fact that the bills would not have a fiscal note because they allowed the governmental entity to avoid a compensation liability by simply not enforcing the offending land use regulation.

Business and property owners. Approximately 15 or so individuals, ranging from representatives for SkiMaine,

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Redefining "Use" Under the Maine Tort Claims Act

On Wednesday, May 4 the Judiciary Committee held a work session on LD 1256, *An Act Concerning Tort Claims and Governmental Entities*.

Background. Currently, under Maine's Tort Claims Act (MTCA), governmental entities such as municipalities are liable for negligent acts or omissions in their ownership, maintenance or use of a motor vehicle, aircraft, watercraft, snowmobile and other machinery or equipment.

LD 1256 expands the definition of "use" to provide that the governmental unit is liable for such use regardless of whether it is a municipal employee operating municipally-owned equipment or machinery or a contractor-owned and operated vehicle, machinery or equipment at the time of occurrence.

How this all got started. Please refer

to the April 8 edition of the *Legislative Bulletin* for a description of the public hearing on this bill and the arguments made to change the definition of use in the Tort Claims Act as that definition was recently articulated by Maine's Supreme Court. Here's a summary.

On June 3, 2010, the Maine Supreme Judicial Court overturned a lower court's decision made by the Superior Court in Androscoggin County in the above-cited case. In that case, the lower court denied the City of Lewiston (City) a motion for summary judgment in a wrongful death suit brought by the estates of three Lewiston High School students. The students passed away in a 2006 plane crash while attending an Air Force Junior Reserve Officer Training Corps program sponsored by

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Regulatory Takings (cont'd)

builders and contractors, the Maine Farm Bureau, blueberry growers, woodlot owners, various concerned citizens, and the Governor's Office, expressed their support for either LD 1135 or LD 1477 by sharing specific experiences they or their clients had when dealing with governmental regulations and the dissatisfaction they experienced with these encounters. According to the first two supporters to testify, the bills were modeled after laws in two other states. The language drafted for LD 1135 was based on a law in Oregon, apparently, and LD 1477's verbiage stemmed from a regulatory takings statute in Florida.

Certain proponents felt that property is taken by governmental entities in this state everyday and these bills would motivate regulators to talk to property owners before imposing regulations on properties. Other comments offered to the Committee members included: (1) there shouldn't be a difference in the way the law treats physical takings versus regulatory takings; (2) there needs to be a balance between the government regulating property and the rights of property owners; and (3) the government should no longer live by the maxim of "if you don't own it, zone it."

Local government and environmentalists. Four opponents testified against both LD 1135 and LD 1477, including the Natural Resources Council of Maine, the Maine Municipal Association and two concerned citizens, one of whom is a planning board member in his town and the other a former attorney in the Natural Resources Division of the Attorney Gen-

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eral's Office. The unified message from these opponents was:

- The enactment of LD 1135 or LD 1477 would paralyze the capacity of local government to enforce land use regulation.

- By subjecting local government to open-ended liability claims for the simple offense of enforcing land use regulation, these bills would attack the capacity of the community to protect and further the community's interests as enacted by the local legislative body.

- The determination of appropriate compensation would be an extraordinarily complicated task which is not addressed in any respect in LD 1135 or LD 1477.

- Land use ordinances are developed through a public forum where public input is welcomed and encouraged. They are developed for the community's common good and not to "take" property.

- The costs associated with insuring and defending municipal entities and their employees that enact and enforce land use ordinances could be very expensive for Maine's towns and cities financially, and the property taxpayers that support them.

- By allowing a governmental entity to not enforce a land use regulation in lieu of paying compensation for damages or takings of property under the bills, all land use regulation would be totally unpredictable.

- These bills would alter longstanding constitutional principles that have been tested by the courts at the national and state levels.

The Committee's Take. During the public hearing, various Committee members were

curious about similar laws that have been enacted in Oregon and Florida, as stated by the bills' supporters. They asked a number of testifiers to bring information about these laws and the impacts (financial and otherwise) they have had on the state and local government entities since enactment. According to one of the opponents to both bills, 6,857 claims representing approximately \$19 billion in compensation have been brought by property owners in Oregon during a three year period. Confirmation of that claim along with more information regarding the laws in these two states will be provided to the Committee for its consideration at the upcoming work session.

On Monday, May 9, it will be the Committee's bill for the taking.

MTCA (cont'd)

the school department of the City.

According to the estates of the three students, the City "used" the aircraft when it employed Twin Cities Air Services (Twin Cities), the aircraft contractor that provided the aircraft and employed the pilot. Based on the plaintiff's testimony, prior to the students boarding the plane, a City employee, who was also the commander of the Junior ROTC program, noticed an unusual landing of an earlier flight by the pilot for Twin Cities. After that observation, the City employee allowed the students to board their flight piloted by the same individual that performed the earlier landing. The aircraft carrying the students subsequently crashed, killing everyone on board.

The City claimed it was immune from any liability related to this lawsuit because: (1) it did not own, maintain or "use" the aircraft; and (2) the City employee was performing a discretionary function when he made the decision to allow the three students to board the plane. The Superior Court denied both motions. The City appealed. The Law Court of Maine determined in a 4 to 3 decision that "use" did not mean "employed for the benefit of" (as the plaintiffs and Superior Court defined it) but rather was more narrowly defined as "operated" and therefore the City was immune to liability because it did not meet the exceptions to immunity listed in the MTCA.

Recap of the Public Hearing. Senator Phil Bartlett (Cumberland Cty.), the sponsor of the bill, introduced LD 1256 to the Committee. According to Senator Bartlett, LD 1256's purpose is to try to carefully define the term "use" in Section 8104-A, subsection 1 of the Maine Tort Claims Act. The sponsor said that if "use" as defined by the Maine Law Court in the *Estate of Shannon J. Fortier et al. v. City of Lewiston et al.* was, in fact, the intent of the original legislation, then the issue of defining "use" is worthy of reconsideration by this Committee.

Two trial lawyers testified in support of this bill.

MMA and the chief legal counsel for the Governor's Office testified in opposi-

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tion to LD 1256.

The Work Session. After some debate over the bill, a motion of “ought to pass as amended” was made and seconded. Of the Committee members present, 5 members voted in favor of this motion and 5 opposed. The 5 opposed to this motion thought the bill “ought not to pass”. The amendment that was included in the motion was to delay the effective date until January 1, 2013. Therefore, if this bill was enacted as amended, a governmental entity could be liable for negligent acts or omissions by contracted parties occurring on or after January 1, 2013.

Based on Committee members’ comments made at work session, this bill: (1) will change a municipality’s world and more people will be drawing municipalities into law suits; (2) will effectively require contractors to insure both themselves and name the governmental entity as an insured party under the policy; (3) will expose municipalities through the “joint and severally liable” language to assume liability for the negligence of others; (4) is a slippery slope; (5) will mandate oversight of contractors that governmental entities hire; and (6) will no longer allow a governmental entity to hide behind a contractor when the contractor is performing a function that the governmental entity would normally do on their own and be held liable for.

Apparently, some legislators believe municipalities deliberately hire the many private-sector contractors the average municipality regularly engages for the purpose of skirting liability.

One Committee member wanted to see if governmental entities could insure against this expanded definition of “use” without great expense and felt the amendment of deferring the effective date to January 1, 2013 allowed this change to be tested so that if there was a “major insurance crisis” the Committee would have time to hear about it.

Reaction. MMA’s Legislative Policy Committee and members of the Risk Management Services (RMS) group feel this bill would negatively impact municipalities. If enacted, LD 1256 would:

- increase the exposure to liability for injuries or damages for which the governmental entities were not responsible;

- increase the cost of insurance;
- increase the number of lawsuits being filed;
- decrease governmental activities due to the threat of increased exposure to liability;
- promote irresponsible behavior by contractors;
- create more ambiguity under the MTCA;
- increase administrative burden and complexity; and
- hold governmental entities jointly and severally liable with a non-governmental entity or person if the negligent act

or omission of the governmental entity was a cause of the damage or injury. “Joint and several liability” means the town could be held financially liable for damage caused by its contractor.

Clueing In Your Legislator. If you agree with MMA and RMS, we strongly encourage municipal officials to voice their concerns regarding LD 1256 to their respective legislators and let them know how this bill, if enacted, will affect the municipal costs associated with certain activities and how municipal services will be impacted if the town or city has to assume the liability of its contractors.

Fireworks on the Horizon

On Monday this week, eight Criminal Justice Committee members voted in favor of amended legislation to expand the use, sale and possession of fireworks in Maine. Municipal officials believe that the amended version of LD 83, *An Act to Legalize the Sale, Possession and Use of Fireworks*, sparks the municipal mandate fuse.

Under existing law, only sparklers are authorized to be sold and used in Maine. As amended by a majority of the Committee, LD 83 expands the list of authorized fireworks to include “consumer fireworks” as defined in federal regulations (27 Code of Federal Regulations, Section 555.11). Although the federal definition of consumer fireworks applies to rocket-style fireworks (i.e. missile, sky and bottle) and helicopters and aerial spinners, the use of those fireworks would be prohibited in Maine. The expanded list of authorized fireworks would include, for example, firecrackers, smoke balls, fountains, and strobe/flash fireworks.

As proposed in the amendment to LD 83, municipalities retain the right to adopt ordinances regulating the sale or the use (but not the possession) of fireworks. Municipalities adopting ordinances to either restrict or prohibit the use or sale of fireworks are required to provide a copy of the ordinance to the State Fire Marshall’s office within 60 days of adoption.

In communities where sales are allowed, the municipality is mandated to issue firework sales permits. The permit can only be issued to an applicant that: 1) has a federal permit to sell fireworks; 2)

is at least 21-years of age; 3) meets the state’s storage and handling requirements and; 4) has been approved by the municipality’s police chief, fire chief and code enforcement officer, if these positions exist. Municipalities are authorized to assess permitting fees to cover the costs.

Clearly the requirement that municipalities manage the permitting process steps over the mandate threshold. The permitting process would require municipalities establish a new local-level service. The only way to avoid this mandate is to develop, adopt and enforce an ordinance prohibiting the sale or use of fireworks, which is another type of mandate. Either way, municipalities are going to be required to do something with respect to the expanded use of fireworks.

Furthermore, the provision in the amended version of LD 83 authorizing municipalities to assess fees to cover the cost of the new mandate does not mitigate the state’s mandate enactment requirements.

As a result, the Legislature must either fund 90% of the new cost incurred by municipalities or further amend the bill to include a mandate preamble. The mandate preamble enables the Legislature to pass the mandates without funding, but only if enacted by a two-thirds vote of the House and the Senate.

As amended, LD 83 also: 1) establishes merchant storage and handling, insurance and advertising requirements; 2) restricts the hours that fireworks can be used to 9:00 a.m. and 10:00 p.m.,

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Tree Growth Bills: Require More Municipal Notification, Weaken Landowner Responsibilities

On Friday last week, the Taxation Committee held public hearings on four bills dealing with the Tree Growth tax program. The bill that drew the most attention was LD 1138, *An Act to Prevent Unnecessary Expulsion of Landowners from the Maine Tree Growth Tax Law Program*. The bill is sponsored by the House Chair of the Taxation Committee, Rep. Gary Knight of Livermore Falls.

LD 1138 amends the mandate enacted just last year requiring towns to provide formal notice to every landowner with property enrolled in the Tree Growth tax program reminding them of their requirement to file a 10-year update of the forest management plan. The 10-year update is a standard of eligibility to remain in the Tree Growth program, but some property owners enjoying the Tree Growth tax break are apparently unable to remind themselves of the deadline. Specifically, the municipal assessor must now provide the landowner with formal notice of the impending deadline within a 6 month window of the anniversary date, and in every case allow the landowner at least 120 days to provide the required update to the forest management plan.

Under current law, if that plan update is still not provided in the required timeframe, the property is withdrawn from the Tree Growth program and the withdrawal penalties are applied.

LD 1138 does not allow the property to be withdrawn from the program or the penalties applied if the deadline is not adhered to, even after the formal notice has been provided and the 10 years elapsed. Instead, a maximum fine of \$100 would be applied for failing to meet the required deadline, and the landowner allowed an additional year to comply with the plan update requirement. The 10-year deadline becomes an 11 year deadline, for a \$100 nuisance fee.

The main supporter of this extension in deadline is the Small Woodlot Owners Association of Maine (SWOAM). SWOAM pushed for a similar bill last year, and MMA understood the notification mandate developed last year to be the compromise agreement addressing SWOAM's concern. Apparently that

wasn't SWOAM's understanding. After signing on to the 6-month notification mandate, SWOAM is now aggressively pressing for the one-year extension in addition. Might as well eat your cake if you can have it, too.

Other proponents of this element of LD 1138 were the Department of Conservation's Maine Forestry Service, the Maine Audubon Society, the Maine Nature Conservancy, the Maine Forest Products Council, and a licensed professional forester from Raymond.

Opponents to LD 1138 included the town of Perry in Washington County, the towns of Surry and Lamoine in Hancock County, and MMA.

There is a significant concern on the municipal level with abuses of the Tree Growth tax program, particularly in coastal and high-value waterfront settings where small residential lots are placed in the program for the tax benefits, there is no observable wood lot management, and the "management plan" is written in such a way that there is no programmatic accountability. MMA did not cause any legislation to be introduced on the subject this session, hoping to work out a balanced proposal addressing some of these accountability issues. There is nothing balanced about LD 1138. It represents a one-sided approach that makes mush out of the only clean management-plan standard of eligibility for this tax break.

The three towns all gave examples of relatively small lots, located in high-value waterfront areas, which are not being used for commercial timber harvesting purposes. The only obvious use of these Tree Growth parcels is for residential and recreational purposes, not timber harvesting.

For example, a 21 acre lot in Lamoine has a just value of \$415,000. Its "Tree Growth" value is just \$2,100, and the landowner pays a tax of \$21 a year on the property. The representative from the Lamoine Board of Assessors asked the Taxation Committee why the Legislature is making the municipal assessors assume the role of steward and administrator for the property owners enrolled in this tax break program. The land owners should

be responsible for their own obligations, especially given the benefits they are being provided.

In Surry, there are two side-by-side lots. The taxable lot is assessed at \$646,000. The "Tree Growth" lot is valued at \$1,100 and the Tree Growth landowner pays an annual property tax of \$10, with nothing in the way of observable timber harvesting. The selectman from Surry pointed out that the strong majority of properties enrolled in the Tree Growth program in his town are not conducting any observable timber harvesting. He noted that the owners who are actually engaged in commercial timber harvesting are always compliant with the rules of the program and have no problem getting their management plans in on time. He also described the new phenomenon where a landowner converted his Tree Growth property into the "Open Space" program immediately prior to withdrawing the property from its "current use" enrollment, all for the purpose of taking advantage of the softer, Open Space withdrawal penalty.

The Committee's work session on LD 1138 is being held today (May 6). MMA was asked to provide a list of the communities that are experiencing the types of Tree Growth enrollments experienced by Perry, Lamoine and Surry. Thus far, MMA has received 65 responses to its survey on the question, with an additional 26 communities, identifying Tree Growth enrollments such as described by Surry and Lamoine. In the aggregate, well over 200 troubling Tree Growth enrollments were identified by these communities.

Additional notification to "lienholders." A second Tree Growth bill presented to the Taxation Committee would add yet another notification requirement to the town assessors. In this case they would be required to formally notify entities that are holding liens on Tree Growth property in the same way they are currently mandated to notify the actual landowners of the upcoming deadline for their forest management plan 10-year update.

Just as every tax exemption generates more tax exemptions in the interest of "fairness," every new notification man-

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MMA's Homestead Exemption Bill Tagged as Unconstitutional

One of the bills MMA's 70-member Legislative Policy Committee wanted to advance to the Legislature this session is LD 838, *An Act to Make the Homestead Property Tax Exemption More Flexible for Municipalities and Remain Revenue Neutral for the State*. That bill was presented to the Tax Committee on Monday this week.

Sponsored by Rep. Kathy Chase of Wells, LD 838 would amend the law governing the Homestead property tax exemption to give the legislative body of each town and city more direct authority over the unreimbursed portion of the Homestead exemption. MMA testified along with Rep. Chase in support of LD 838.

The Homestead exemption has been heavily manipulated by the Legislature since its enactment in 1998. It started as a \$7,000 property tax exemption for all Maine homesteaders, with the tax revenue losses fully reimbursed by the state so the municipal property tax rates would not be increased.

The Legislature then jumped it to a \$13,000 exemption, but with just 50% reimbursed by the state. Under this version of the Homestead, the local mill rate is necessarily increased and one-half of the exemption is effectively paid for by the property taxpayers in the community.

The Homestead exemption has subsequently been reduced to just a \$10,000 exemption, 50 percent reimbursed.

LD 838 would create a state-provided Homestead exemption of \$5,000, which would be fully reimbursed. In addition, the bill would allow each municipality to create a local Homestead exemption of up to \$10,000 in value, with no reimbursement. In this way, each community could decide for itself how much of a local Homestead exemption was appropriate for that town or city.

In some communities, the town meeting or town or city council might decide to bring the Homestead exemption back up to the \$13,000 level by adding a \$8,000 local Homestead exemption to the \$5,000 state-provided base exemption. Other communities might even decide to max-out the exemption at the \$15,000 level

(\$5,000 state exemption, \$10,000 local exemption).

And other communities, that see no real value in increasing an exemption just to pay for it with a higher mill rate, could decide to add nothing to the base \$5,000 exemption provided by the state.

LD 838 would have no fiscal implications to the state.

At the public hearing, Rep. Chase was confronted with a memo from Maine Revenue Services (MRS) opining that the bill was unconstitutional. According to the memo, the provision in Maine's Constitution that requires all property in a municipality to be "apportioned and assessed equally according to its just value" would prohibit the Legislature from allowing a municipality to decide the value of a Homestead exemption by local option. The theory is that no law could allow similar

property to be given a different assessed value for taxation purposes, although that is precisely what the Homestead exemption, which has been on the books for 13 years, accomplishes.

The second point made by MRS is that another provision in the state's Constitution provides that the Legislature "shall never surrender" the power of taxation, implying that local option taxation is impermissible.

The second leg of the MRS argument conflicts with a written opinion from the Attorney General's Office issued in 1979 that indicates that the "never surrender" clause does not prohibit, for example, the Legislature from providing municipalities with a local option sales tax authority because all the terms and conditions of the local option would remain entirely in the Legislature's control.

We will see how the alleged constitutional barrier is dealt with by the Tax Committee. The work session on LD 838 is scheduled for Monday, May 9.

Tree Growth (cont'd)

dated by the Legislature generates the need for additional notification mandates.

This bill is LD 191, *An Act to Define Lienholder Rights under the Maine Tree Growth Tax Law*, sponsored by Rep. Andre Cushing III of Hampden. The chief proponent of this bill is the H.C. Haynes corporation of Winn. According to the Haynes' representatives, the bill is necessary because the company holds the mortgages on various Tree Growth properties, and in the circumstances where the company forecloses on the property, it is sometimes the case that the mortgagor has failed to make the forest management plan deadline and the foreclosed property comes back to the "bank" after foreclosure with the further encumbrance of a Tree Growth withdrawal penalty.

LD 191 has been presented to the Legislature in years past. This time around, the sponsors have tried to minimize the "mandate" impacts by requiring any lienholder who wants this service to formally request it from the town and reimburse the municipality for the direct costs associated with providing that notice to the lienholder.

MMA testified in opposition to LD 191. The Tree Growth notification mandates have already reached a dispro-

portionate level. Personal responsibility should apply not only to the Tree Growth landowners but also to the institutions that loan them money to purchase the Tree Growth lots. The information the financial institutions want is available at the town offices where the Tree Growth enrollments are located. It should be up to these lending institutions to do their homework.

What is unclear about LD 191 is what happens if the municipality fails to provide the lienholder with the requested notice? Language in the bill suggests that the lienholder assumes the right of the landowner with respect to filing the updated management plan. It would appear that the supporters of LD 191 would also like the lienholder to have the rights of the landowner with respect to the enrollment or withdrawal of the property from the Tree Growth program. If that is what LD 191 provides, then the town will have the potential of dealing with two completely separate entities for any Tree Growth property that is subject to a lien – both the actual enrollee and the lienholder, each with the landowner's rights.

LD 191 is also being "worked" by the Taxation Committee today.

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 the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://www.state.me.us/legis/>.

Monday, May 9

Criminal Justice & Public Safety
Rm. 436, State House, 9:00 a.m.
Tel: 287-1122

LD 1514 – An Act To Amend the Sex Offender Registration Laws.

Energy, Utilities & Technology
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1521 – An Act To Amend the InforME Public Information Access Act.

Health & Human Services
Room 209, Cross State Office Building, 9:00 a.m.
Tel: 287-1317

LD 1511 – An Act To Impose a Lifetime Maximum on the Receipt of Welfare Benefits.

Inland Fisheries & Wildlife
Room 206, Cross State Office Building, 9:00 a.m.
Tel: 287-1338

LD 1375 – An Act To Require a Boating Safety Course for New Boat Registrants.

State & Local Government
Room 216, Cross State Office Building, 9:00 a.m.
Tel: 287-1330

LD 769 – An Act To Review the Functions of the State Planning Office.

LD 1002 – An Act To Encourage Affordable Housing in Municipal Zoning.

LD 1128 – An Act to Modify the Requirements for Municipal Code Enforcement Officer Training.

LD 1518 – An Act To Make Changes to the Laws Regarding Notice and Publication of Unclaimed Property.

1:00 p.m.

LD 1476 – An Act To Streamline the County Budget Process.

LD 1499 – An Act Concerning Fees for Users of County Registries of Deeds.

LD 1533 – An Act To Provide for a Method To Remove an Elected Municipal Official.

Veterans & Legal Affairs
Room 437, State House, 9:30 a.m.
Tel: 287-1310

LD 1376 – An Act To Preserve the Integrity of the Voter Registration and Election Process.

LD 896 – An Act To Adopt the Uniform Military and Overseas Voters Act.

LD 1000 – An Act To Require the Secretary of State To Verify Voter Signatures.

LD 1134 – An Act To Make Municipal Recounts Consistent with State Recounts.

LD 1478 – An Act To Fully Enfranchise Voters.

1:00 p.m.

LD 1126 – An Act To Require That the Governor Be Elected by the Ranked-choice Voting Method.

LD 1528 – An Act To Amend the Election Laws and Other Related Laws.

LD 1541 – An Act To Amend the Campaign Finance Laws.

Tuesday, May 10

Criminal Justice & Public Safety
Rm. 436, State House, 1:00 p.m.
Tel: 287-1122

LD 1453 – An Act To Legalize and Tax Marijuana.

Environment & Natural Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1387 – An Act To Restore Exemptions in the Natural Resources Protection Act.

Judiciary
Room 438, State House, 1:30 p.m.
Tel: 287-1327

LD 1365 – An Act Regarding Protection Orders and the Prosecution of Domestic Violence Cases.

LD 1426 – An Act Concerning Notification to an Employer of Misrepresented Medical Information under the Maine Human Rights Act.

LD 1496 – An Act To Enforce Immigration Laws and Restrict Benefits to Legal Citizens.

LD 1530 – An Act To Amend the Housing Provisions of the Maine Human Rights Act.

Marine Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1337

LD 1522 – An Act To Make Technical Changes to Marine Resource Laws.

Wednesday, May 11

Insurance & Financial Services
Room 427, State House, 1:00 p.m.
Tel: 287-1314

LD 1326 – An Act To Allow School Administrative Units To Seek Less Expensive Health Insurance Alternatives.

Friday, May 13

Criminal Justice & Public Safety
Rm. 436, State House, 9:00 a.m.
Tel: 287-1122

LD 1404 – An Act To Enhance Public Safety Response to High-risk Events.

LD 1484 – An Act Regarding Retired Law Enforcement Officers' Retirement Credentials.

LD 1439 – An Act Regarding Permits To Carry Concealed Firearms.

LD 1489 – An Act Regarding Regulation of Emergency Medical Services.

LD 1525 – An Act To Expand Reciprocity by Allowing Certain Nonresidents To Possess a Firearm in Maine.

Fireworks (cont'd)

except that on July 4 and December 31 fireworks can be used until 12:30 a.m.; 3) requires fireworks to be used on the person's property, or with permission on the property owned by another; and 4) requires the State Fire Marshal to annually submit a report to the Criminal Justice Committee providing information on issuance and oversight of fireworks licenses, reported fireworks-related

injuries, fires and property damage, and the municipal restrictions or prohibitions adopted.

It will soon be up to the Legislature to determine whether or not the expansion of Maine's fireworks law will see the light of day. Municipal officials have long opposed legislation seeking to expand the use of consumer fireworks in Maine. Add to that the mandates included in the amended version of LD 83, municipal officials will likely be opposed to this

legislation.

If enacted, LD 83 will go into effect this fall, so municipal officials should stay closely tuned to this bill. If enacted, all municipalities will need to decide whether to proceed with an ordinance regulating the sale and use of fireworks or merely establish the required permitting program, or some combination of both.

Municipal officials who are concerned about LD 83 should contact their legislators.

IN THE HOPPER

Criminal Justice & Public Safety

LD 1439 – An Act Regarding Permits To Carry Concealed Firearms. (Sponsored by Rep. Hanley of Gardiner.)

This bill makes the following changes to the laws governing permits to carry concealed firearms: (1) it adds a definition of "handgun" to the laws regarding permits to carry concealed firearms; (2) it clarifies that concealed firearm permits allow permittees to carry only handguns, such as pistol-type firearms, on the person, not long guns or machine guns; (3) it lengthens the amount of time issuing authorities have to process applications for concealed handgun permits; and (4) it prohibits criminal justice agencies from charging fees to conduct record checks in relation to background checks that are conducted by issuing authorities as part of the process of reviewing a permit application.

Judiciary

LD 1496 – An Act To Enforce Immigration Laws and Restrict Benefits to Legal Citizens. (Sponsored by Rep. Chase of Wells; additional cosponsors.)

This bill requires a law enforcement officer who legally detains a person for suspected crimes or civil violations to require the person to provide proof of citizenship. If the officer has a reasonable suspicion that the person is an illegal alien, the officer must attempt to determine the immigration status. The bill also requires all recipients of MaineCare, TANF, food supplement benefits and General Assistance to be legal residents of the United States and Maine.

State & Local Government

LD 1533 – An Act To Provide for a Method To Remove an Elected Municipal Official. (Emergency) (Sponsored by Rep. Sanderson of Chelsea; additional cosponsors.)

This bill provides a procedure for the recall of a municipal officer that would apply in every town and city that does not have a specific recall system established by ordinance or charter. Specifically, this bill provides that a recall election may be initiated by a petition signed by at least 10% of the number of voters who participated in the last gubernatorial election. In addition to the recall petition and election procedures established by this bill, the legislation provides that a municipal officer may only be recalled for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges.

Veterans & Legal Affairs

LD 1134 – An Act To Make Municipal Recounts Consistent with State Recounts. (Sponsored by Sen. Goodall of Sagadahoc Cty; additional cosponsors.)

This bill repeals the laws governing the procedures of post-election ballot inspection and election recount procedures in municipal law and applies state election recount procedures to all recounts of municipal elections for office and referenda.

LD 1376 – An Act To Preserve the Integrity of the Voter Registration and Election Process. (Sponsored by Rep. Nutting of Oakland; additional cosponsors.)

This bill makes a number of changes to the state's election laws, including: (1) establishing the deadline for voter registration before an

election as the 21st day before an election if registering by mail or 3rd person and 3 business days before an election if registering in person; (2) requiring the municipal registrar's office be open on the 3rd business day before an election for the purpose of accepting registrations at least 2 hours for municipalities with populations of 500 or less, at least 4 hours for municipalities with populations of 501-2,500, and at least 6 hours for municipalities with populations of 2,500 or more, with at least 2 of those hours between 5:00 and 9:00 p.m.; (3) establishing a process for a voter whose name does not appear on the voting list to self declare as an eligible voter and be provided a provisional ballot; (4) establishing a process for managing all provisional ballots; and (5) prohibiting the issuance of absentee ballots after the 3rd business day before an election except when the voter signs an application designating one of three possible good-cause reasons for needing to vote absentee.

LD 1528 – An Act To Amend the Election Laws and Other Related Laws. (Sponsored by Rep. Crockett of Bethel; additional cosponsors.)

This bill makes many changes to Maine election procedures. Among the many changes, this bill: (1) adds a voter's year of birth to the information that must be included on the incoming voting list; (2) specifies that the incoming voting list is a public record after it is unsealed following the election; (3) creates a new requirement that a municipality must apply to the Secretary of State at least 60 days before an election to change the location of a voting place; (4) requires all municipal voting places to open no earlier than 6:00 a.m. on election day for a state election and no later than 8:00 a.m., regardless of municipal population; (5) reorganizes and expands the sections of law governing the instructions that the Secretary of State must prepare for election officials and voters, and details how information materials must be made available to the voters; (6) reorganizes the section of law governing how official ballots are provided to the municipalities and how the chain of custody must be maintained; (7) reorganizes the section of law governing how voted ballots are sealed and secured following the election and creates a section to describe the ballot security materials supplied by the Secretary of State; (8) provides that the absentee envelopes and applications are to be sealed separately from the ballots so that they become public records after they are unsealed; and (9) requires the municipal clerk or registrar to keep a log of the petitions that are submitted to the municipal office for certification.

LD 1541 – An Act To Amend the Campaign Finance Laws. (Emergency) (Sponsored by Sen. Farnham of Penobscot Cty.)

This bill makes sweeping changes to the state's campaign finance and campaign finance reporting laws. Among the two dozen changes, the bill reorganizes the current statutory requirements that municipal candidates in towns and cities with populations greater than 15,000 are subject to the campaign finance reporting laws, as well as municipal candidates in any smaller towns or cities that have voted to adopt the campaign finance reporting requirements for their municipal elections. Under current law, the municipal campaign finance reports in the communities over 15,000 in population are filed with the Governmental Ethics Commission. The campaign finance reports in the smaller communities are filed with the municipal election clerk and retained for an 8-year period. This bill would require all municipal campaign finance reports to be filed with the municipality and retained for the 8-year period, regardless of the size of the municipality. The Governmental Ethics Commission would no longer be required to accept and file any municipal reports.

Municipal Elections and Declaration Day

On Monday this week, the Veterans and Legal Affairs Committee unanimously voted “ought to pass as amended” on LD 832, *An Act Regarding Write-in Candidates in Municipal and City Elections*. As sponsored by Rep. Cynthia Dill of Cape Elizabeth, the bill would require write-in candidates to declare candidacy 45-days before the election.

Under current law, a municipality must adopt a provision in its charter in order to establish a local requirement for write-in candidates to declare their candidacy a certain period of time before an election. That requirement cannot be established by ordinance.

The need for the change was advanced and championed by three municipal clerks. The proponents of the bill included Cape Elizabeth Town Clerk Deb Lane, Lewiston City Clerk Kathy Montejo and South Portland City Clerk Susan Mooney.

All three agreed that the proposal in LD 832 would save clerks time after the polls close on election night. In addition to tending to post-election duties, municipal clerks are under significant pressure

from the media and candidates to produce results as soon as possible. By eliminating the need to record and tabulate votes for undeclared candidates, municipalities could save up to an hour in the counting process.

That said, at the March 23 public hearing, all three proponents testified that the 45-day timeframe was too restrictive. Instead, these clerks supported moving the declaration deadline to the Friday before the election.

In addition to the restrictive nature of the 45-day timeframe, municipal officials opposed the bill because it would prevent municipalities from using the existing system to recruit “last minute” volunteers to run for municipal office.

As amended by the Committee, in communities with populations greater than 1,000, write-in candidates would have to declare candidacy 2 business days before the scheduled election. Only the votes cast for candidates that meet the declaration deadline would be counted on the night of the election.

As amended, the provisions of LD

832 do not apply to communities with populations of 1,000 or less. In these communities, the current law would apply.

While municipal officials appreciate the Committee’s work to develop an amendment to LD 832 that tries to address both the concerns raised by the proponents and the opponents, it does not resolve all of the issues. It is possible, for example, that even under this amended process a community above the population threshold may have to hold a subsequent election because a candidate could not be found in time to meet the new declaration requirement, leaving no candidate on the ballot and effectively voiding the election even before it is conducted.

What is not clear is why the Committee rejected the simpler solution of leaving this decision to the municipalities by authorizing these write-in declaration time periods to be established by ordinance in addition to the much more cumbersome charter amendment process.

In any event, this issue is now in the hands of the Legislature.