

Arbitration with a Twist

The much-anticipated binding arbitration bill was finally printed this week confirming what public employers feared.

LD 2090, *An Act to Amend the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws*, in part, proposes to amend the labor relations laws impacting municipalities, schools and counties, by making arbitrator decisions on salaries, pensions and insurance binding on all parties. Currently, the final decision on these matters

rests with the duly appointed and elected representatives of the impacted public entities.

Although similar to the legislation (LD 1177) submitted in 2019, which failed passage by veto of the governor, the 2020 version of the measure includes several twists.

One of the more surprising elements of the bill provides that if a public employer fails to implement the binding determinations, employees represented

by the bargaining unit, except those responsible for protecting public safety, are authorized to strike.

The 2020 proposal includes both a provision delaying the implementation of the binding cost items to the next fiscal year's budget and a list of factors an arbitrator must consider when controversies between the employer and bargaining agent are not resolved.

(continued on page 2)

Legislative Bulletin

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Legislative Bulletin, Maine Municipal Association
60 Community Drive, Augusta, ME 04330. Tel: 623-8428
Website: www.memun.org

Editorial Staff: Kate Dufour, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

Layout: Sue Bourdon, of Communication & Educational Services.

Abandoned Roads Reboot

On Wednesday, Jan. 29 the State and Local Government Committee held a work session to accept the Abandoned and Discontinued Roads Subcommittee's recommendations on LD 1415, *An Act To Improve the Laws Regarding Discontinued and Abandoned Roads*.

As proposed by the subcommittee, after Oct. 1, 2020 the existing road abandonment law is repealed and replaced with a new process that shifts a severely burdensome administrative mandate onto municipalities and counties.

In essence, the proposal requires municipal officers to vote to declare a road abandoned at a regularly scheduled meeting provided that two conditions are met. First, the road has not been kept passable at municipal expense for 30 or more years, as is the case in existing law. Second, that the municipality has not received more than 84 months' worth of revenue under the Local Road Assistance Program (LRAP) for any segment

of the road in question during the period of non-maintenance.

At least 30 days prior to the meeting, municipalities must provide notice to all "affected property owners," who are defined as owners of property that abut the road to be declared abandoned and the property owners for which the road is the only access route. The notice must include information regarding the potential retention of a public easement, the affected property owners' maintenance obligations, the right of affected owners to enter into road maintenance agreements, including the right to create private easements and a description of the evidence used to determine the road abandoned.

Upon a written request signed by at least 25% of the affected property owners, the municipal officers must conduct a public hearing prior to holding the declaratory vote. If the municipal officers declare the road abandoned, the clerk must record an attested certificate

(continued on page 2)

Abandoned Roads Reboot (cont.)

of the declaration of abandonment with the register of deeds. If a public easement is retained, it is limited to foot or motor vehicle traffic. The definition of a motor vehicle is the same as found in the motor vehicle statutes (Title 29-A, §101, sub§ 41), which defines a vehicle as a self-propelled vehicle not operated exclusively on railroad tracks, excluding snowmobiles, non-permitted ATVs, motorized wheelchairs and electric bicycles.

Lastly, the amendment allows any person impacted by the vote of the municipal officers to file an appeal within 10 days of the vote with either the local board of appeals, if one exists, or with the county commissioners if the road is located in a community without a local appeals board.

Interestingly, a third option is also provided. As proposed, it is unclear whether the option allows an impacted person to file an appeal of the decision of the municipal officers with the county commissioners, even in cases where a local board of appeals exists, or if it authorizes impacted parties to appeal the decision of the county commissioners to the county commissioners.

While the Association maintains that

the current law works and towns and cities should not be required to engage in an overly prescriptive process anytime someone uncovers an overgrown road that may (or may not) have been public in a bygone era, staff worked with stakeholders to find common ground. Despite all efforts, some proponents of this legislation continue to maintain that it is the widespread practice of municipalities to willfully and intentionally violate Maine's complicated road laws.

Municipal officials are sympathetic to the abutters of discontinued and abandoned roads who are doing their best to maintain access to their property only to have those efforts destroyed by the thoughtlessness of off-road vehicle operators or the heavy use that can result when an easement is retained to ensure public access. However, the solution should not come in the form of a costly municipal mandate. Instead, legislation criminalizing the misuse of the public easement and authorizing abutters to pursue remedies from operators for damages should be enacted.

Furthermore, the element of the proposal making the acceptance, receipt and use of LRAP revenue contingent on

the ability to declare a road abandoned is alarming. The number of road miles for which a community receives state funding is routinely reviewed by the Department of Transportation staff, with errors immediately corrected. Through these review efforts, the department has found that the amendments in the number of road miles maintained swings both ways. In some cases, it is discovered that a segment of a locally maintained road is not included in the total road miles figure. Hinging the ability to declare a road abandoned on distributions of LRAP is too high of a price to pay for an unintentional error in a road mile count.

Rep. Will Tuell of East Machias, a member of the subcommittee, suggested that another public hearing was in order due to the overhaul of the original bill. It's unclear if a second public hearing will be held, as the committee unanimously endorsed the subcommittee's recommendations without additional direction. What is clear, however, is that the complex laws regarding roads, easements, and the layered history of abandonment may get muddier.

Arbitration with a Twist (cont.)

Those factors include:

- The interests and welfare of the public and ability to finance the cost items;
- A comparison of the wages, hours and working conditions of the impacted employees with other employees performing similar services in public and private employment;
- The overall compensation presently received by the employees including direct wage compensation, vacation, holidays, excused time, insurance and pensions benefits;
- Other factors that are traditionally

considered through the voluntary collective bargaining process; and

- The need of the public employer to retain qualified employees, maintain appropriate relationships between different occupations in employment, and establish fair and reasonable conditions in relation to job qualifications and responsibilities.

Finally, existing labor relations laws governing municipal, university, state and judicial employees require that each party select one arbitrator and those two arbitrators select a neutral third arbitrator. LD 2090 requires that the neutral

third arbitrator be selected from a panel of arbitrators appointed by the governor from a list of nominations supplied by the Maine Labor Relations Board. Appointees to the panel must reside in Maine.

The effective date of these proposed changes is July 1, 2021.

Municipal officials interested in receiving regular updates on the bill's progress are encouraged to contact Kate Dufour at kdufour@memun.org or 1-800-452-8786.

Hearing Schedule

Monday, February 3

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

LD 1971 – An Act To Allow Certain Retired Law Enforcement Officers and Trained Law Enforcement Officers To Serve as School Security Officers.

LD 1983 – An Act To Amend Certain Record-keeping and Reporting Requirements Imposed on State and Local Law Enforcement Agencies and the Department of Public Safety.

Wednesday, February 5

Criminal Justice & Public Safety
Room 436, State House, 10:00 a.m.
Tel: 287-1122

LD 2037 – An Act To Amend the Maine Criminal Code.

Judiciary
Room 438, State House, 10:00 a.m.
Tel: 287-1327

LD 2040 – An Act To Eliminate the Requirement That Municipalities Retain Paper Copies of Certain Vital Statistics Records.

Thursday, February 6

Agriculture, Conservation & Forestry
Room 214, Cross Building, 1:00 p.m.
Tel: 287-1312

LD 1888 – An Act To Protect Children from Toxic Chemicals.

Education & Cultural Affairs
Room 208, Cross Building, 1:00 p.m.
Tel: 287-3125

LD 1947 – An Act To Fund Capital Improvements to Career and Technical Education Centers.

LD 2022 – An Act To Provide Funding for Capital Improvements and Equipment for Career and Technical Education Centers and Regions.

Health Coverage, Insurance and Financial Services
Room 220, Cross Building, 1:00 p.m.
Tel: 287-1314

LD 30 – An Act To Improve Health Care Data Analysis.

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 2011 – An Act To Update Certain Provisions in the Income Tax and Service Provider Tax Laws.

LD 2045 – An Act Relating to the Valuation of Certain Retail Property.

LD 2047 – An Act To Amend the State Tax Laws.

LD 2061 – An Act Regarding the Transportation of Products in the Forest Products Industry.

Note: You should check your newspapers for Legal Notices and there may be changed in the hearing schedule. Weekly schedules for hearings and work sessions can be found on the Legislature's website at: <http://legislature.maine.gov/calendar/#Weekly/2020-01-12>.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's official summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Agriculture, Conservation & Forestry

LD 1788 – An Act To Eliminate Online Burn Permit Fees for All Areas of the State. (Sponsored by Sen. Dill of Penobscot Cty.)

This bill eliminates online burn permit fees for all areas of the state.

Inland Fisheries & Wildlife

LD 2065 – An Act To Address Decibel Level Limits for Airboats. (Sponsored by Rep. McCreight of Harpswell)

This bill exempts airboats, which are defined as flat-bottomed watercraft propelled by an aircraft-type propeller and powered by either an aircraft engine or an automotive engine, from the noise level limits imposed on other watercraft. Instead, this bill allows the Commissioner of Inland Fisheries and Wildlife to establish noise level limits for airboats by routine technical rules. This bill also requires the department and the Department of Marine Resources to jointly solicit and collect information regarding airboats, including uses of airboats, noise levels and complaints and suggestions for reducing complaints regarding the use of airboats, from interested parties, such as harbor masters, town clerks and residents of coastal towns and airboat users and sellers. Based on the suggestions, the commissioners are authorized to submit legislation in 2021 to implement necessary changes.

Labor and Housing

LD 900 – An Act To Expand the Rights of Public Employees under the Maine Labor Laws. (Sponsored by Rep. Sylvester of Portland)

This bill allows public employees, including municipal and county employees, state and legislative employees, university, academy and community college employees and judicial employees, but not including employees whose duties include protecting public safety, to strike pursuant to the official procedures of the employees' employee organization or under a process in which an affirmative vote to strike is held. The bill requires that notice be given to the public employer stating the dates upon which the strike will begin and end. The bill also provides that the employee organization or public employer may call for emergency bargaining within three days prior to the intended start of the strike.

LD 2087 – An Act Relating to Fair Chance in Employment. (Sponsored by Rep. Talbot Ross of Portland)

This bill prohibits an employer from requesting criminal history record information on an initial employee application form, subject to certain exceptions. An employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position. The bill prohibits an employer from stating on an initial employee application form or advertisement or otherwise asserting that a person with a criminal history may not apply or will not be considered for a position, subject to certain exceptions. The bill provides that if an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the

HOPPER (cont.)

position under applicable federal or state law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including conviction rehabilitation.

LD 2090 – An Act To Amend the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws. (Sponsored by Sen. Jackson of Aroostook Cty.)

Of greatest significance to municipalities, this bill amends the labor relations laws governing municipal public employees, including counties and schools, to provide that determinations by arbitrators with respect to controversies over all subjects, including salaries, pensions and insurance, are final and binding on the parties and provides that, if a public employer fails to implement the binding determinations, non-public safety employees are authorized to strike. The bill adds specific factors an arbitrator must consider when a controversy is not resolved between a public employer and bargaining agent, including: (1) interest and welfare of the public and financial ability; (2) comparison of conditions of employment wages, hours and working conditions of employees performing similar services in the public and private labor market; (3) overall compensation presently received by employees, including benefits; (4) the need of the employer for qualified employees; (5) the need to maintain appropriate relationships between different occupations in public employment; and (6) the need to establish fair and reasonable conditions in relation to job qualification and responsibilities. The bill also requires that cost items in a collective bargaining agreement arrived at through arbitration may not be included in the state or local operating budget, as relevant, for the current fiscal year, but must instead be submitted for inclusion in the operating budget for the following fiscal year. Finally, under existing labor relations laws governing municipal,

university, state and judicial employees require that each party select one arbitrator and those two arbitrators select a neutral third arbitrator. This bill requires that the neutral third arbitrator be selected from a panel of arbitrators appointed by the governor from a list of nominations supplied by the Maine Labor Relations Board. Under the bill, appointees to the panel of arbitrators serve as impartial arbitrators of the interests of the public in the settlement of disputes between employers and employees or their representatives, and each appointee must reside in the Maine. The effective date of these proposed changes is July 1, 2021.

Taxation

LD 451 – An Act To Repeal the Recently Enacted Changes to the Law Governing Tax Lien Foreclosure. (Sponsored by Sen. Moore of Washington Cty.)

This bill repeals provisions enacted in 2018 establishing new procedures for foreclosing on or disposing of tax acquired homesteads when the homeowner is 65 years of age or older and has income and liquid assets below specified limits.

Veterans & Legal Affairs

LD 999 – An Act To Allow Medical and Adult Use Marijuana Stores To Share a Common Space. (Sponsored by Sen. Miramant of Knox Cty.)

This bill allows the use of a shared facility for retail sale of adult use and medical use marijuana and products, provided that the sales transactions are conducted from separated cash registers.