

Who Should Pay for Packaging Waste?

On Wednesday, the Environment and Natural Resources Committee held a public hearing on LD 2104, *An Act To Support and Increase the Recycling of Packaging*. The bill was the result of a resolve passed last year to create an extended producer responsibility program for single use packaging waste, which constitutes roughly 60% of the material in the municipal solid waste stream. If enacted, Maine would be the first state in the nation to follow Canada and Europe in holding producers of packaging financially responsible for a portion of the costs associated with disposing of the waste they generate, especially packaging with little or no recyclability.

As described in greater detail in the Feb. 21 Legislative Bulletin, LD 2104 directs the Maine Department of Environmental Protection (MEDEP) to establish a stewardship program managed by an independent organization and designed to

collect fees from producers of packaging based on collection, transportation, and disposal costs for each type of material. Under the terms of the bill, the fees collected are used to reimburse eligible municipalities for recycling and waste management costs. The bill also exempts producers that earn less than \$1 million in gross revenue during the previous year, or that sell less than one ton of packaging material in the state from mandatory program participation. However, these producers are allowed to participate at a reduced flat per ton fee rate, if they desire.

By the end of the public hearing nearly 120 people had submitted written testimony through the Legislature's online system, with additional in person testimony extending the hearing into the evening. The overwhelming majority of the testimony was provided in support of the proposed legislation with a few, including the MEDEP, offering technical fixes to LD 2104.

In its support for the bill, Aroostook Waste Services testified that in 2019 the program they run for 17 communities was only able to generate 60% of the revenue

(continued on page 2)

Housing Study Greenlighted

Via amendment of LD 1956, *Resolve, To Establish a Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, sponsored by Rep. Ryan Fecteau of Biddeford, the Labor and Housing Committee unanimously supported the creation of a 14-member housing/zoning impact commission.

The bill, which received a public hearing on Feb. 12, is supported by the Maine Municipal Association, as well as several planning, housing, social justice and building trades organizations.

As proposed, the commission is tasked with reviewing data on low and middle-income housing shortages in Maine; state laws that impact the local regulation of housing; and efforts in other states and municipalities to address housing shortages through zoning and land use restrictions. The commission is also directed to consider measures to encourage increasing housing options

in Maine, including but not limited to, municipal incentives, state mandates, the elimination of restrictive zoning practices, and greater housing density allowances near areas of employment and neighborhood centers.

The members of the commission include four legislators, representing each chamber and both of the majority parties; representatives from the Maine State Housing Authority and Governor's Office; members representing the interests of municipalities, affordable housing, and regional planning or smart growth development; representatives from the real estate, agricultural, residential developer and building trades industries; and a low or middle income renter or homeowner.

The commission must submit its findings and recommendations to the Labor and Housing Committee no later than Nov. 4, 2020.

LD 1956 will soon be presented to the entire Legislature for debate.

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
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.

they conservatively forecasted as necessary to fund their efforts, which was in large part caused by the collapse of the Chinese recycling market. The cyclical nature of the plastics market relies heavily on foreign businesses to reuse the material. Without a buyer municipalities are on the hook to dispose of material that will never be recycled despite the valiant recycling efforts of residents. While the revenue from the material may vary, the cost of maintaining a solid waste management program does not go down, thereby forcing communities to make up the difference.

Sen. Cathy Breen of Cumberland County offered testimony in support of the legislation highlighting that the cost of recycling in Gray, a town in her district, constituted 11% of the town's \$6.5 million budget. Joining her in support, Rep. Nicole Grohoski of Ellsworth stated that

residents in her district are disappointed that so little of their plastic waste brought to the facility can find a home outside a landfill or an incinerator.

MMA submitted testimony in support of the legislation offering technical amendments enabling grant revenue to be used to fund existing regional waste and recycling efforts among municipalities, counties, and service providers, while protecting alternative waste-to-energy programs that may be available in the future. Though staff has yet to review the document, it is likely that the department's amendment addresses a number of those points. At the core of the department's proposal is a shift in program regulatory authority from the third party organization to MEDEP, as well as to designate the rules necessary to implement the program as major substantive. As a result of this designation, all rules will receive further

legislative review prior to final adoption.

With municipalities all over the state carefully weighing the use of limited revenue to advance local priorities such as addressing substance use disorder, homelessness, and economic development, it is not surprising that expensive recycling programs that no longer provide revenue or achieve their intended goals are on budget chopping blocks. Municipal leaders view efforts to share these costs with producers as an important step in ensuring the continued and efficient operation of existing local recycling programs.

Additionally, municipal leaders believe, as was the case with the bottle bill, LD 2104 could not only relieve the financial burden on municipalities for managing waste, it could create opportunities for new business creation, similar to redemption centers, to assist with collection or processing of the material for the producer.

Many of those in opposition raised concerns with the proposal's impacts on small producers, increased expense to producers who are already paying into the bottle redemption system, and somewhat ironically, the shift of financial burdens from the few property taxpayers to the many waste generators.

A work session on LD 2104 has not yet been scheduled. However, it is anticipated that it will take the committee several sessions to review the department's amendments, clarify industry concerns, and hear from additional impacted parties. Interested municipal officials are encouraged to share their program costs and pressures with the members of the Environment and Natural Resource Committee directly. Additionally, until the bill leaves committee, officials may submit testimony via the legislative portal <https://www.mainelegislature.org/testimony/> or by emailing it directly to Rebecca Graham at rgraham@memun.org.

While the fine details may need tweaking, LD 2104 is a lifeline for municipal recycling programs and an appropriate shift of responsibility and pressure to the point of origin, where the most change can occur.

Absentee Voter Status – Divided Report

LD 2067, *An Act To Authorize the Automatic Continuation of Absentee Voter Status until the Termination of That Status*, was voted out of the Veterans and Legal Affairs Committee with a majority "ought not to pass" recommendation.

The bill, which was described in the Feb. 14 and 21 editions of the Legislative Bulletin, implements a process allowing voters to apply for ongoing absentee voter status. Under the terms of the bill, an ongoing absentee voter is automatically mailed a ballot for each statewide and local election until that status is terminated.

On the basis of the work session discussion, the minority report provides Maine voters with the option of receiving absentee ballots for all elections conducted during a calendar year, provided the request is made to the municipal clerk either in writing or by telephone on an annual basis.

The minority report retains the provision in the printed bill requiring municipal

clerks to make a good faith effort to notify voters of a discrepancy with a returned absentee ballot, but directs the Secretary of State to establish the process through rulemaking.

Under the terms of the amendment, municipalities are authorized to collect and retain absentee voter applicant email addresses, which are designated as confidential, to more easily inform a voter of a discrepancy with a returned absentee ballot. Furthermore, at the discretion of the clerk, email addresses may be used to inform a voter that his or her absentee status will expire at the end of the calendar year.

The amendment also postpones implementation of the program to Jan. 1, 2022.

Taking into consideration the complexity of the amendment, it is likely the committee will review the proposed language before it is sent to the entire Legislature for consideration.

Hearing Schedule

Monday, March 2

Criminal Justice & Public Safety
Room 436, State House, 2:00 p.m.
Tel: 287-1122

No LD # yet – draft bill creating the Justice Reinvestment Task Force.

Wednesday, March 4

Environment & Natural Resources
Room 216, Cross Building, 10:00 a.m.
Tel: 287-4149

LD 2112 – An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change.

Education & Cultural Affairs
Room 208, Cross Building, 10:00 a.m.
Tel: 287-3125

LD 2113 – An Act To Prevent Charter Schools from Using State Funds for Anti-union Campaigns.

Veterans & Legal Affairs
Room 437, State House, 9:00 a.m.
Tel: 287-1310

LD 2114 – An Act To Implement the Recommendations of the Secretary of State Regarding Automatic Voter Registration.

LD 2120 – An Act Regarding Sales of Alcohol in Municipalities and Unincorporated Places.

Thursday, March 5

Judiciary
Room 438, State House, 1:00 p.m.
Tel: 287-1327

LD 2118 – An Act To Establish an Enhanced Process for Tribal-State Collaboration and Consultation and To Develop a Process for Alternative Dispute Resolution.

Note: As of now, the legislative presiding officers have waived the requirement that bills be advertised for public hearing two weeks in advance; therefore, you should check your newspapers for Legal Notices as there may be changes 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/>.

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.)

Criminal Justice & Public Safety

No LD # yet – draft legislation creating the Justice Reinvestment Task Force: This bill creates the Justice Assistance Council, which, in part, consists of representatives from the law enforcement, public health and mental health, corrections, educator, and district attorney communities. The council is directed to explore a systemic approach to incarceration, restorative justice, pre-arrest diversion and community transitional support services for justice involved populations with the end goal of creating an oversight entity charged with strategically supporting and coordinating state-funded programs and interventions at the local level. The council is further authorized to: (1) enter into contracts for research and data collection; (2) coordinate services between correctional facilities and community support systems; (3) create housing navigator positions to connect previously incarcerated individuals to stable housing post release; and (5) make amendments to the county jail operations fund, pursue grants to support existing pre-arrest diversion programs and coordinate better statewide support for local interventions. The representation on the council may be further amended to include a municipal official and a municipal General Assistance program administrator.

Judiciary

LD 2118 – An Act To Establish an Enhanced Process for Tribal-State Collaboration and Consultation and To Develop a Process for Alternative Dispute Resolution. (Reported by Rep. Bailey of Saco for the Joint Standing Committee on Judiciary)

This bill establishes a requirement that state agencies consult with the tribes prior to engaging in any proposed action that may directly affect the tribes. It requires state agencies to request tribal consultation in writing and to provide the tribes with at least 30 days to respond and to agree to or decline consultation. If a state agency is required by outside legal factors to act earlier, the state must provide as much time for consultation as possible. If a tribe agrees to consultation, the state must provide preliminary drafts or proposals to the tribe and engage in meaningful and timely in-person consultation. The state must explain in writing to the tribe how it has or has not addressed tribal concerns. The bill requires tribal consent prior to proposed actions that could cause substantial or irreparable harm to tribal communities or tribal rights, including but not limited to reserved treaty rights and other tribal rights in land, water and other natural resources. The bill authorizes the state to enter into cooperative agreements with federally recognized Indian tribes within the state to facilitate cross-jurisdictional cooperation and the delivery of government services and to avoid disputes. The bill establishes the annual assembly of the governor and chiefs of each tribe and the biennial legislative assembly to discuss issues relating to the relationship between the state and the tribes. The also bill directs the Maine Indian Tribal-State Commission to report, by Nov. 15, 2020, on its study of alternative dispute resolution options and best practices for facilitating resolution of tribal-state disputes and authorizes the committee of the Legislature having jurisdiction over judiciary matters to report out legislation based on the recommendations of the commission. Finally, the bill directs the

governor to work with the chiefs of each tribe to establish the Bicentennial Accord in order to institutionalize general principles governing tribal state relations. It directs the Maine Indian Tribal-State Commission to provide logistical support and technical assistance in developing the Bicentennial Accord.

Transportation

LD 2124 – An Act to Create the Rail Corridor Use Advisory Council Process. (Governor's Bill) (Sponsored by Rep. McLean of Gorham)

This bill authorizes the Commissioner of Transportation to convene a rail corridor use advisory council to advise and make recommendations each time one or more governmental entities that represent communities along a state-owned rail corridor request the Department of Transportation to review a nonrail use of that rail corridor, as long as any nonrail use is considered to be interim in nature and that all such rail corridors are preserved for future rail use. Upon receiving a report from a rail corridor use advisory council that recommends track removal or another change to nonrail use of the rail corridor, the commissioner is required, if in agreement with the recommendation, to seek legislative approval of the recommendation by submitting legislation to the joint standing committee of the Legislature having jurisdiction over transportation matters prior to removal or another change to a nonrail use.

Veterans and Legal Affairs

LD 2120 – An Act Regarding Sales of Alcohol in Municipalities and Unincorporated Places.

Lodging Tax Revenue Update

By a vote of 7 to 2, members of the Taxation Committee supported two proposals seeking to share additional lodging tax revenue with municipalities. Both bills were carried over from the 2019 session for more debate.

As amended by the committee, LD 1254, *An Act to Authorize a Local Option Sales Tax on Meals and Lodging and Provide Funding To Treat Opioid Use Disorder*, sponsored by Rep. Michael Sylvester of Portland, allows municipalities to adopt, via referendum of the community's voters, a 1% local tax on lodging sales to be collected by the state and distributed to municipalities. After deducting state administrative costs, 75% of the remaining revenue is distributed to the generating community and 25% is used to fund rural development programs.

LD 609, *An Act To Provide Municipalities Additional Sales Tax Revenue from Lodging Sales*, sponsored by Rep. Maureen Terry of Gorham, increases the state sales tax on lodging by 1% and requires the state to distribute those funds, after deducting state administrative costs, to the municipality where the sale was generated.

Assuming the higher rate discourages lodging sales, the Department of Administration and Financial Services estimates that the increase in the lodging tax proposed in both bills could decrease state revenue collections by \$1.5 million annually.

The bill will now make its way to the entire Legislature for further debate.

HOPPER (cont.)

(Emergency) (Sponsored by Sen. Luchini of Hancock Cty.)

Since a municipality may not be able to provide proof that the sale of liquor was authorized in the community, despite the presence in that municipality of establishments licensed by the bureau, the continuation of licensing by the bureau is in jeopardy. In order to prevent the loss of licensing, this bill provides a window, until July 1, 2022, for a municipality to either provide the bureau with proof of an affirmative vote or decision or to hold a local option election. This bill requires the bureau, no later than Oct. 1, 2020, to notify a municipality that the bureau does not have a record of a local option vote or decision authorizing the sale of liquor in that municipality. In order to continue as a municipality in which the sale of liquor is authorized, that municipality must either provide proof of a local option election or decision authorizing the sale of liquor or, before July 1, 2022, hold a local option election to authorize the sale of liquor. Beginning July 1, 2022, if a municipality that has been notified of noncompliance fails to affirm the authorization to sell liquor, the bureau is prohibited from licensing an establishment or agency liquor store in that community. If the bureau fails to notify by Oct. 1, 2020 a municipality in which there is a business licensed by the bureau that the municipality is in noncompliance with the requirement to hold a local option election or issue a decision authorizing the sale of liquor in that municipality, then the bureau may not fail to continue to license a business based on that noncompliance. This bill also reduces the number of signatures of voters needed on a petition to hold a local option election to determine whether the sale of liquor is authorized in a municipality from 15% of the number of votes cast in the last gubernatorial election to signatures of 30 voters in that municipality and allows the municipal officers to hold a local option election.