

## Solid Waste Fee Proposals: An Update

Last week’s Legislative Bulletin described a public hearing on a bill (LD 1578) that would make a number of changes to the state’s solid waste management policies. Of most significant municipal concern, LD 1578 as printed would impose new \$1/ton fees on all municipalities that landfill their solid waste and further impose a \$1/ton fee on all municipalities for the solid waste they collect and transport to waste-to-energy facilities for incineration. Depending on how the revenue from the new fees would be dedicated, the fees would generate somewhere between \$500,000 and \$800,000 in new revenue for the Department of Environmental Protection in order to provide grants to municipalities and other public and private-sector entities to create or expand composting programs.

During a work session on Thursday this week, a new, scaled-down version of that element of LD 1578, crafted by the lobbyist for the waste-to-energy facilities, was at least tentatively adopted by the Environment and Natural Resources (ENR) Committee, apparently in consensus.

**Revenue neutral.** The new solid waste fee proposal is designed to be “revenue neutral.” The solid waste fee structure as it directly applies to the municipalities and their disposal of “municipal solid waste” currently generates approximately \$258,000 which is combined with other “special waste” fees to fund the DEP’s staff oversight of the solid waste management operations throughout the state. The new fee proposal as adopted by the ENR Committee is calculated to generate approximately the same amount. In other words, the Committee has agreed not to try to generate additional revenue from the towns and cities than is already

being generated.

**Establishing and shifting burden.** The newly proposed fee structure would establish an across-the-board 70-cent fee for every ton of the following products deposited in a landfill: (1) municipal solid waste, (2) ash produced by waste-

to-energy facilities, and (3) “front end process residue” (FEPR) produced by waste-to-energy facilities.

A new burden of 70 cents per ton will be applied primarily to the 120 towns and cities that rely on landfills to dispose of

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## Bill Bequeaths Perpetual Land Use Permits to Existing Shooting Ranges

On Tuesday of this week, the Legislature’s Judiciary Committee held a public hearing on LD 1500, *An Act To Protect and Promote Access to Sport Shooting Ranges*. Sponsored by Rep. Patrick Corey of Windham, this bill would invalidate any municipal ordinance adopted after the establishment of a sport shooting range if the law, rule or ordinance would cause the shooting range’s closure, or if it would substantially limit sport shooting at the range. The bill would also authorize these ranges as a matter of state law not only to expand but also to resume the use of a

nonconforming building or structure after it had been damaged by fire, collapse, explosion, etc., and immunize shooting ranges from lawsuits that are based on state or local regulations. About eight people testified on each side, both for and against the bill, and it was difficult to discern the Committee’s position on the proposal by the end of the hearing.

The premise of the proponents’ testimony was the vital importance of firearm sporting throughout Maine history and the variety of beneficial services Rod & Gun

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**Short Notice on Bill to Increase Funding for County Jails**

It has just been announced that the Criminal Justice and Public Safety Committee will be holding a public hearing this coming Monday, Feb. 29, at 2:30 pm, for LD 1614, *Resolve, To Provide Funding for the County Jail Operations Fund*. Printed just yesterday, LD 1614 appropriates nearly \$4.94 million in state General Fund revenues over the current biennium – \$2.47 million in both FY 2016 and FY 2017 – to the Department of Corrections to be distributed to the county jails to supplement the state share of county jail operations costs. Because of the short notice, MMA’s Legislative Policy Committee has not yet had a chance to take a position on the bill. Municipal officials who wish to comment on LD 1614 may send written testimony to the committee clerk, Suzanne Armstrong, by email at: [suzanne.armstrong@legislature.maine.gov](mailto:suzanne.armstrong@legislature.maine.gov) or by regular mail at:

Committee on Criminal Justice and Public Safety  
 c/o Legislative Information  
 100 State House Station  
 Augusta, ME 04333

## Shooting Ranges (cont'd)

clubs offer to Mainers. Explaining the rationale behind LD 1500, the sponsor noted his impression that shooting ranges do not easily fit into ordinary types of planning zones, often necessitating conditional use permits. He also made a case that these ranges, once closed, will be unlikely to receive permission to re-open in the same town. Testimony on the part of members of clubs with sport shooting ranges from throughout southern and central Maine cited the need to protect their ranges from potential over-regulation, without citing any significant existing issues outside of Cape Elizabeth.

The Sportsman's Alliance of Maine (SAM) confirmed that this legislation is a response to "a classic case of NIMBY" (Not In My Back Yard) sentiment on the part of some neighbors in Cape Elizabeth who SAM believes are pulling out all the stops to close the range in that town. Representatives of the club housing that range for 61 years referred to these neighbors

as a "gang" who had been harassing the club since moving into a development constructed nearby in the 1990s. The club's spokesperson characterized the opposition as out-of-state and well-heeled, just before the lobbyist for the National Shooting Sports Foundation testified in favor of the bill, repeatedly calling its scope "targeted."

MMA opposed LD 1500 on the grounds that its scope is anything but targeted, creating an entirely new land use exemption category in response to an issue at one club whose inspection had found its range did not adequately contain fired rounds. LD 1500 carves out for shooting ranges special exceptions and privileges that guarantee the right to a never-ending land use in a highly unrestricted way, flying in the face of longstanding land use regulatory doctrine established by both statutory and case law. At particular issue is the unprecedented special exception granted by the bill to

this one type of land use from ever being subject to the status of legal nonconformance. That exception would explicitly authorize future range expansions and reconstructions to neglect modern code standards.

MMA obtained the assistance of University of Maine School of Law professor Sarah Schindler to help further explain the fundamental legal issues posed by LD 1500. Professor Schindler teaches courses on property, land use, real estate law and local government law. Professor Schindler testified that by carving out sweeping and special exceptions for one type of land use activity (shooting ranges), LD 1500 undermines some fundamental principles supporting zoning law as developed over the last century as well as the public policy that supports placing control over zoning in the hands of our local legislative bodies. She explained how most communities

*(continued on page 3)*

## Solid Waste (cont'd)

their solid waste, generating an aggregate new cost to them of approximately \$130,000. The existing landfilling burden on the municipalities using waste-to-energy facilities for depositing their ash and FEPR will be reduced from \$1 per ton to 70 cents per ton, generating an aggregate annual savings for those municipalities of approximately \$50,000.

There are essentially two arguments made by the Committee members in sup-

port of this proposal. As a revenue neutral proposal, it is spreading the current cost of paying for the solid waste management services provided by the DEP among all the municipalities receiving those services, and not so heavily on just the waste-to-energy municipalities. Also, it targets the fees to all and not just some landfilling, thereby being more consistent with the established "solid waste management hierarchy," which places landfilling

as the solid waste management option of last resort.

The chart explains how the proposed fee restructuring would impact the towns and cities. The numbers used in this chart are rough approximations based on the information discussed at the ENR Committee's work session. The DEP has been asked to shore up the fiscal estimate to ensure that the proposal is actually revenue neutral.

Landfilled product	Current tonnage landfilled fee	Current tonnage subject to a fee	Revenue generated by current fee	Revenue generated by new proposal
Municipal solid waste	257,000	44,000* @ \$2/ton	\$88,000	\$180,000 (257,000 tons @ 70 cents/ton)
Ash and FEPR from Waste to Energy facilities	170,000	170,000 @ \$1/ton	\$170,000	\$119,000 (170,000 tons @ 70 cents/ton)
Total	427,000		\$258,000	\$299,000

*\*Note: Under current law, the only landfilled municipal solid waste subject to the \$2/ton landfilling fee is MSW that is not being deposited in a municipally owned landfill and is not being deposited in a commercial landfill under the terms of a contract with the municipality that is at least 9 months in duration. Therefore, most municipal solid waste that is being landfilled in Maine is currently not subject to the \$2/ton fee. The 44,000 tons of MSW currently subject to the fee is either out of state MSW or "spot market" MSW.*

nationwide now create comprehensive zoning and planning schemes in furtherance of public health, safety, and welfare, determining that certain uses should be in one area, while other uses should be in another area. In her view, in order for these comprehensive zoning and planning schemes to be successful, the local government needs the ability to implement and ensure conformity with those plans. She added that courts are very deferential to these local determinations as zoning ordinances are presumed to be valid because courts see zoning as a result of a legitimate, local, democratic process.

Since LD 1500 would effectively exempt shooting ranges from ever falling into a “non-conforming” status, Professor Schindler also explained the theory underlying the allowance of non-conforming uses on a limited, conditional basis. Municipal ordinances do not force legal and conforming existing uses to shut down because such actions would likely result in a governmental “taking” requiring full compensation. Rather, the implementation of a community’s comprehensive land use plan allows existing legal uses to continue until the non-conforming use ceases. The idea behind grandfathering a non-conforming use is that the private property owner should be allowed to continue to use the property as it was used at the time the new ordinance was adopted, provided that the non-conforming use is not expanded (to avoid increasing the non-conformity) nor restarted after being discontinued for an extended period of time. Upon restarting, the law requires the land to be used in conformity with the current zoning provisions.

Describing this as a “delicate balance” that the law has struck between protecting private property rights and allowing for comprehensive community planning in the public interest, Professor Schindler made a strong case that permitting both perpetual and expanded non-conformance will diminish the ability of a municipality’s legislative body to organize or reorganize its land use patterns into the future. In so doing, LD 1500 would take power away from local citizens and decision-makers by elevating a single private use above the broad public

benefit, violating both the democratic principles of local government as well as the rules and laws on which zoning is founded.

The rest of the opposition to this legislation came from several members of the public, most of whom specifically stated they do not intend to shut nearby ranges down but, rather, are trying to ensure they play by the same rules that apply to everyone else in their respective communities. To the extent these overarching special privileges are granted by the state, they are paid for at the expense of the rights of the local communities, through their legislative bodies, to give some shape to the future of their municipalities.

Where the state has enacted a host of laws governing land use planning and authorized, if not mandated, municipalities to enforce them over the past century,

it would seem odd for the state to allow such an unprecedented carve-out in the case of shooting ranges. The public interest in regulating the safety of venues with live fire is self-evident. Moreover, shooting ranges already benefit from a very high regulatory threshold. There are existing state laws that grandfather pre-existing shooting ranges from both municipal and private noise-related enforcement actions.

For the sake of not upending the structure of zoning law by establishing a special exception that applies to no other land use activity, and for the sake of not inviting a host of other special interests to get in line for similar perpetual immunities, LD 1500 ought to be recognized as a substantial overreach. The work session has been scheduled by the Judiciary Committee for the afternoon of March 2.

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## Jailing Addicts: Bill Promotes Treatment Over Incarceration

On Thursday last week, the Judiciary Committee held a public hearing on LD 1488, *An Act To Establish the Law Enforcement Assisted Diversion Program in Maine*, sponsored by Rep. Mark Dion of Portland at the request of the Mayors’ Coalition. This legislation allocates \$2 million of state General Fund revenue to the Attorney General’s Office to establish the Law Enforcement Assisted Diversion Program. The program implements eight pilot projects around the state to help divert certain drug offenders into community-based treatment and support centers rather than jail.

Municipal officials have received the message that alternative treatment programs targeting the drug abuse crisis should be “evidence based.” The aim of LD 1488’s pilot programs would be to gather the best evidence on which to base future treatment initiatives. Police chiefs and deputies from Sanford, Westbrook, Brewer, and Augusta testified in support of the legislation, with several of them likening the public health emergency created by the disease of addiction to that of cancer. One asked the committee to imagine where cancer treatment would

be today without the initial investments in evidence-gathering medical research decades ago. Cumberland County’s Sheriff acknowledged forty percent of his inmates have co-occurring disorders that probably ought to be treated in a hospital rather than a jail.

In addition to addicts in recovery, public health professionals, Homeless Voices for Justice, the Tri-County Workforce Investment Board, Maine Harm Reduction Alliance, and the National Alliance on Mental Illness, three municipal officials testified in support of the legislation: Augusta Mayor David Rollins, Brewer Mayor Bev Uhlenhake and Saco City Administrator Kevin Sutherland. Along with the bill’s sponsor, these municipal officials spoke to the effectiveness of the Law Enforcement Assisted Diversion (LEAD) program in King County, Washington, on which the LD 1488 pilot projects would be based. When asked what differentiates the LEAD program from Scarborough’s Operation HOPE, Mayor Rollins testified that a key difference is LEAD would help ensure those in need of treatment receive it within the state,

*(continued on page 6)*

# Public Meetings and Board Member Participation from Remote Locations

An article in the Jan. 22 issue of the Legislative Bulletin explained the Judiciary Committee's decision to move forward with printing a new bill to address the question of whether members of public boards and commissions may participate in public meetings via phone or video conferencing. That bill, LD 1586, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings*, received its public hearing on Wednesday this week.

In summary, LD 1586 establishes a procedure that allows boards and commissions consisting entirely of appointed officials to conduct meetings with one or more of their members participating in the meeting from an offsite location. The bill effectively prohibits boards comprised of elected members from allowing any member to participate in a public meeting from an offsite location.

Two members of the Right To Know Advisory Committee explained their reasons for supporting the legislation, as did the Maine Press Association, Maine Housing Authority, Maine Municipal Bond Bank, and the general manager of the Brunswick Sewer District. Four water or wastewater district representatives testified in opposition to LD 1586, as did MMA. The Public Utilities Commission and University of Maine testified in a relatively supportive "neither for nor against" posture.

Those speaking in favor of LD 1586 described how the bill would set the guidelines by which the state's public bodies could "get with the program" and legally utilize technology in a way fit for modern times where "electronic communication is how we communicate." They explained that, in certain instances, remote participation technologies can be a lifesaver, enabling necessary meetings on time-sensitive matters.

MMA, in testifying in opposition to the bill, generally agreed with the supportive arguments, further noting how a measure in the bill protects the public access interest by requiring each public entity to first adopt a policy that

authorizes and guides any use of remote technology. That said, MMA's opposition testimony seriously questioned the need for the state's remote communication policy to unnecessarily discriminate against the many hundreds of boards of elected municipal officials that would be prohibited from ever calling or video-conferencing into a public meeting under the terms of the bill, even in an emergency situation.

The Committee's questioning revealed what seemed to be a general concern that those who are elected to municipal boards will attempt to shirk public confrontations and overuse the availability of remote meeting technology by voting from home. Given the remote meeting technology currently available, and with not a single instance of such neglectful abuse having ever been reported, MMA repeatedly questioned the basis for this concern for elected officials but not for appointed officials.

Other members mentioned that remote technology may be more necessary for statewide bodies due to the geographic disbursement of their members. Elected officials who live on Maine's island communities, or in former mill towns and now commute long distances for work, likely feel differently. Testimony submitted by North Haven Administrator Joe Stone on behalf of North Haven's Select Board described their experience, "Board members who are young parents occasionally teleconference when needing to stay home with a sick child. Board members have participated remotely when stranded on the mainland by cancelled ferry runs." To this Board, "the convenience of teleconferencing means consistently full board participation, particularly important for a Board which meets weekly and whose five members are drawn from such a small island population pool of 355." Another opponent, Jonathan Ziegra, General Manager of the Boothbay Region Water District, claimed one of his most long-serving and valued trustees is unable to make it

to all meetings due to certain physical limitations, but if you count his remote participation, that trustee is the only one with a perfect attendance record. In addition to the testimony in support of the measure from or on behalf of the Bond Bank Board, the Public Utilities Commission and the Housing Authority Board, entities such as the Bureau of Alcoholic Beverages and Lottery Operations, Bureau of Financial Institutions, and the Land Use Planning Commission will all be able to participate in public proceedings from off-site premises, while all manner of local boards with elected officials will not.

Allowing members of an appointed planning board in one town to participate remotely when necessary, while not allowing elected planning board members in the next town over to do the same, seems neither consistent nor sensible. In Maine's 245 municipalities governed by three-member select boards, the outright prohibition proposed by LD 1586 will at some point become downright unworkable. MMA hopes the Judiciary Committee at its work session, scheduled for 1pm on March 2, will find a way to balance the needs of public access with the simple, occasional need to use a phone or video conference to ensure that the wide array of obligatory functions that must be executed at the municipal level can be accomplished in a timely manner.

## Legislative Bulletin

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# Behind the Counter Narcan

On Thursday of this week, the Health and Human Services Committee held a public hearing on LD 1547, *An Act To Provide Access to Affordable Naloxone Hydrochloride for First Responders*.

As originally submitted by Rep. Sara Gideon of Freeport, LD 1547 proposed to establish a naloxone hydrochloride bulk purchasing program. Naloxone hydrochloride, more commonly known as Narcan, is a prescription medication used to reverse the effects of an opiate-based drug overdose. The bill further directed the Office of the Attorney General to oversee the program and to make the emergency medication available to Maine's first responders at a discounted price.

At the public hearing, however, Rep. Gideon asked the Health and Human Services Committee to consider a completely overhauled version of LD 1547, now titled *An Act to Increase Access to the Lifesaving Overdose Antidote Naloxone Hydrochloride*.

As amended, the bill would require

the adoption of rules to enable appropriately trained pharmacists to prescribe and dispense Narcan behind the pharmacy counter. Under current law, naloxone hydrochloride can only be dispensed to an individual holding a physician-issued prescription or by other appropriately licensed and trained medical personnel.

Rep. Gideon believes that the change in direction proposed for LD 1547 is necessary to ensure that the lifesaving overdose treatment is readily available.

Sixteen members of the public, including physicians, pharmacists, pharmacy representatives, recovery-based organizations and the Maine Police Chiefs' Association provided testimony in support of the amended version of LD 1547. According to the proponents of the amended bill, in order for Narcan to be effective, the emergency medication must be dispensed immediately. Proponents believe that the people closest to those struggling with addiction – friends, family, spouses, adult children – are often in “the right place at the right time”

and best suited to perform the lifesaving function in a timely manner.

No testimony was offered in opposition to the amended bill.

At the Maine Municipal Association's Legislative Policy Committee meeting in January, municipal leaders from across the state voted to support the original version of LD 1547 as a means for ensuring that first responders are able to obtain Narcan at an affordable price. According to the municipal officials who oversee emergency medical services programs, the demand for naloxone hydrochloride is on the rise. As a result of this increased demand, the costs for purchasing the medication has also increased.

Considering the change in bill's direction, MMA provided “neither for nor against” testimony on LD 1547. MMA urged the Committee to include costs concerns as part of the overall Narcan access and affordability debate.

The work session on the amended version of LD 1547 is scheduled for next Tuesday, March 1.

## IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's 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](http://www.memun.org).)

### Appropriations & Financial Affairs

LD 1606 – An Act To Provide Funding to the Maine Budget Stabilization Fund. (Emergency) (Governor's Bill) (Sponsored by Sen. Hamper of Oxford Cty.)

This bill directs the State Controller to transfer \$72.7 million in state tax revenue, \$67.3 million in FY 2016 and \$5.4 million in FY 2017, to the state's Budget Stabilization Fund, colloquially known and still regarded as the state's “Rainy Day Fund.” After the most recent re-projection by the Revenue Forecasting Committee, the \$72.7 million represents the amount of tax revenue now projected to accrue to the state treasury during this biennium over and above the amount previously projected and upon which the two-year state budget was enacted in July 2015.

### Transportation

LD 1592 – An Act To Amend the Maine Traveler Information Services Law. (Reported by Sen. Collins of York Cty. for the Joint Standing Committee on Transportation.)

In response to a U.S. Supreme Court decision decided in 2015 (*Reed v. Town of Gilbert*), this bill significantly amends the statute governing the placement of what are referred to as categorical signs both within and outside of the public right of way in order to regulate

in a content neutral manner, as the Supreme Court decision generally required. Specifically, the bill deletes references in the current law to: (1) signs showing the place and time of service or meetings of religious and civic organizations; (2) memorial signs or tablets; (3) signs bearing political messages relating to an election, primary or referendum; (4) signs erected by a producer that directs travelers to the location where farm and food products are grown; and (5) signs erected for a farmers' market that are directional in nature. Instead of referring to allowable signs by content, the bill provides that any temporary sign bearing a non-commercial message and not exceeding 4 feet by 8 feet in size may be placed in the right-of-way for a maximum of six weeks per calendar year during the time period from May 1<sup>st</sup> to November 15<sup>th</sup>. The temporary sign may not be placed within 200 feet of another temporary sign bearing the same or substantially same message. Each temporary sign must be labeled with the name and address of the individual, organization or entity that placed the sign within the public right-of-way and the designated time period the sign will be maintained there. The bill similarly repeals the content-based elements of current signage law governing the placement of signs outside of the right of way and replaces with a content-neutral standard allowing the installation and maintenance of signs no greater than 50 square feet in size, without time limitation.

whereas HOPE typically sends people to out of state recovery programs. Augusta's Deputy Chief Jared Mills explained how his city already has all of the components in place for programming to address substance abuse, except for the funding.

The common thread throughout the several hours of testimony, all of which was in support of the measure, was acknowledgment of how important counseling is to reducing recidivism. As Mayor Uhlenhake testified, "if death won't stop [addicts], the threat of jail time will not." With too many inmates in the jails and too few state resources allocated to support them, Maine's LEAD program would help accomplish the local goal of reducing jail costs in an effective and responsible manner. For this reason, members of MMA's Legislative Policy Committee voted by a decisive margin to support LD 1488 in an effort to alleviate the burden low-level crimes are placing on limited local resources. Although the price tag may seem high up front, several sources cited at the hearing indicate that community-based treatment costs far less per person than incarceration, and such treatment reduces the chances of relapse, more crime, and more demands on law enforcement.

The Judiciary Committee will hold its work session on LD 1488 on Tuesday, March 1 at 1:00 p.m.

*Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. For the Legislative Events Calendar, see the Legislature's web site at <http://www.mainelegislature.org/legis/calendar/>. If you wish to look up schedules by Committee, go to <http://www.mainelegislature.org/legis/bills/phwkSched.html>.*

### ***Monday, February 29***

**Criminal Justice & Public Safety**  
**Rm. 436, State House, 2:30 p.m.**  
**Tel: 287-1122**

LD 1614 – Resolve, To Provide Funding for the County Jail Operations Fund.

### ***Tuesday, March 1***

**Transportation**  
**Room 126, State House, 1:00 p.m.**  
**Tel: 287-4148**

LD 1608 – An Act To Allow the Placement of Road Signs Advertising Events That Benefit Certain Organizations and Allow Free Admission to Military Personnel.