

## Cobbling Together a “Supplemental Budget” Public Hearing Squares Off on Four Tax Policy Issues

It’s well known that Gov. LePage is not directly participating in the process of developing a specific proposal to re-adjust the balance between spending and revenue in the two-year budget enacted last June. Notwithstanding the nonparticipation, a supplemental budget process is under way.

Usually, the Governor would submit a bill that details in statutory language all the proposals to adjust the budget to address imbalances. The expenditure needs would be identified in that bill down to the dollar sign; the fiscal analysis on the revenue side would be vetted and dependable. After such a bill is printed and made available to the general public, a hearing would be scheduled so that the Appropriations Committee could receive input and begin its deliberations on behalf of the Legislature, working off the foundation of the Governor’s proposal.

Because of the atypical process this year, the Committee issued two spreadsheets a week ago rather than fully developed legislation. The spreadsheets list various funding needs for each year of the biennium that have been brought to the Committee’s attention as well as a range of ideas, described in narrative “blippies,” that secure various amounts of roughly-estimated revenue in order to address the funding needs. What’s missing is a whole lot of detail, which is understandable. It’s like a city council trying to craft a budget without the informed assistance of the City Manager and the department heads.

On Wednesday this week the Appropriations Committee held a public hearing to receive input on the 139 lines that make up the “supplemental budget” spreadsheet for FY 2015, with each line identifying either a funding issue or revenue idea. Thirty-five people testified and

everyone seemed to be taking in stride the unusual nature of the supplemental budget presentation. Even without all the details in place, the testimony presented was clear and substantive. One hundred thirty-three lines in the spreadsheet received scant attention. Four tax policy issues, described in just six of the 139 lines in the spreadsheet, were the focus of the hearing:

- Increasing the tax on cigarettes and other tobacco products.
- Capping the value of income tax credits to be made available under the Historic Property Rehabilitation Tax Credit.

- Removing the blanket sales tax exemption provided to hospitals and private colleges.

- And, eliminating eligibility under the Business Equipment Tax Reimbursement program (BETR) and the Business Equipment Tax Exemption program (BETE) for retail personal property and personal property used in professional office locations.

**Tobacco.** The biggest money is found in the tobacco tax proposals, and it was that topic that generated the most public input, with eight people from the convenience

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## Who Should Issue Concealed Handgun Permits?

### Committee Says....Selectmen are out

Under existing law, the authority to issue resident concealed handgun permits resides with the municipal officers. Boards of selectmen and town or city councils may choose to issue the permits, or delegate that responsibility to the municipal police chief, if one exists, or to the State Police. According to the information posted on the Maine Department of Public Safety’s website, 289 municipalities statewide have voluntarily transferred the authority to issue concealed handgun permits to the State Police, while 200 municipalities have retained the local authority.

Proponents of the existing policy believe that there is a public safety benefit associated with the local decision-making authority, and that the issuance of concealed handgun permits at the local level is a convenience to the residents and

property taxpayers responsible for funding local government services and programs.

Opponents have raised concerns with the lack of permitting uniformity between the issuing authorities. Some of the issued permits resemble drivers’ licenses, some include a photograph on the back of the card, and some use a plain permit without a photograph. The lack of uniformity makes it difficult for law enforcement officials to determine whether or not the permit is valid.

On Wednesday of this week, the Criminal Justice Committee sided with the opponents of the existing system and voted nearly unanimously to support an amended version of LD 222, *An Act Designating the Chief of the State Police as the Only Issuing Authority of a Permit*

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## “Supplemental Budget” (cont’d)

store and retail trade sector testifying in opposition and six people from the medical care and anti-cancer groups testifying in support. The proposal would increase the tax on a pack of cigarettes by \$1.50 (from \$2.00 to \$3.50 a pack) starting June 1, 2014, generating \$47 million in FY 2015 for the state’s General Fund. When combined with the parallel proposal to “equalize” impact of the excise tax on cigarettes across all tobacco lines (pipe tobacco, rolling tobacco, cigars, chewing tobacco, etc.), as much as \$60 million in additional state revenue would be generated in FY 2015 according to estimates.

The opponents cited negative economic impacts, loss of stores, driving business out of state, and the growth in bootleg tobacco operations, all of which, it was claimed, would result in unpredictable and fast-declining revenue for the state. The supporters of the proposal challenged some of the most dire claims of the opponents and touted the overall health benefits associated with reducing the purchase of tobacco through taxation.

**Historic Property Rehabilitation Tax Credit.** The next tax policy issue on the controversial scale, at least as measured by the number of people objecting, is the proposal to cap the value of the historic property rehabilitation tax credit at \$5.9 million for FY 2015. Based on projections, \$7.9 million of tax credits will be taken during that fiscal year unless a limit is established, so capping the value of the credit will save \$2 million for the General Fund.

Nine people testified in opposition to this proposal, none in support. Opponents to the idea of capping this credit

included real estate developers, historic property preservationists, downtown revitalists, Smart Growth proponents, and a municipal economic development director. The testimony cited the robust economic development that is spurred by incentivizing the rehabilitation of historically important architecture, both directly in the form of construction activity and indirectly in the form of community and downtown revitalization that is often generated in the vicinity of these projects. The tax credit was described as the “but for” element of the financing packages that are developed for these projects; that is, without the availability of the credit, the very significant reconstruction investments would not be made. Finally, the opponents to capping this tax credit described the potential for actual defaults on the financing of existing projects in the worst case scenario if the cap is created, and the more general effect of depressing the investment market by creating programmatic uncertainty, to which investors are allergic.

**Hospital/Colleges Sales Tax Exemption.** Hospitals and private colleges enjoy a blanket exemption from any sales tax obligations, along with a wide range of other organizations and institutions that are deemed to be “charitable” or “literary and scientific” entities. The proposal to remove the exempt status of just the hospitals and colleges is estimated on the spreadsheet to provide \$18 million to the state’s General Fund in FY 2015 from the hospitals and \$3 million from the colleges. The opposition testimony from the hospitals suggests that the fiscal note may be low-balling the true fiscal impacts, but the details of the proposal are not clear enough to know for sure. Seven people testified in opposition to these proposals, two from the private schools, four from the hospital side, and one on behalf of both types of institutions. The testimony stressed the missions of these institutions, the degree to which they work in concert with the direct governmental interests of health care and education, and the impact on their capacity to carry out their missions if the tax is imposed.

MMA testified “neither for nor against” this proposal, with the suggestion that there is a place in the state’s tax policy for large, tax-exempt institutions to make some level of financial contribution

to the public charge, at least in certain circumstances. The proposal to remove the entire blanket of sales tax exemption, however, has the look of being a somewhat discriminatory, arbitrary and naked mechanism to generate General Fund revenue. A more thoughtful alternative, at least from the municipal perspective, is the fee-for-service proposal that was developed by the Tax Exempt Review Task Force. That Task Force was established by the Legislature in last year’s state budget and charged with making a recommendation in this precise area of public policy. The recommendation advanced by the majority of that Task Force (with the representatives of the tax-exempt institutions dissenting) was to expand an existing municipal authority to adopt ordinances that carefully prescribe the service charges that can be applied against the tax exempt institutions within the municipal boundaries that are the direct recipients of valuable municipal services. It’s a different, more targeted, more thoughtful way to balance the services and contributions of these large nonprofits.

**BETR-BETE Limitations.** Like the proposals to increase the cigarette tax, the proposals in the spreadsheet to “exclude retail property in BETR and BETE beginning in 2015” and “excluding professional services in BETR and BETE beginning in 2015” triggered mixed testimony, with some in support and some in opposition. Like the Historic Property Rehab Credit cap, the BETR-BETE proposals were also advanced by the Tax Expenditure Review Task Force.

Four people representing general business interests and grocery retail stores testified in opposition to the proposals, arguing that retail personal property fully deserves the effective property tax exemption it has received over the years as “qualifying business property” in the BETR program. The argument is that retail personal property is as important to the state’s economy as manufacturing and production equipment. The fact that the Legislature has been providing reimbursement to retail facilities for their property tax obligations since 1996 is offered under this perspective as proof that these tax breaks are sound public policy.

As a property tax matter, MMA and

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### Legislative Bulletin

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# Lake Quality and Invasive Plant Control Efforts

## Kick it up a notch or leave to the locals and volunteers

The title of LD 1626, which takes the award for the longest bill title of the year (and perhaps the oddest), belies its simplicity. Entitled *An Act To Leverage Expert, State-based Resources for Emergency Intervention and Long-term Comprehensive Resource Protection of Lakes*, what the bill accomplishes, as finally reported out of the legislative committee, is simply this:

- Increases the lakewater protection “invasive species prevention” fees that are embedded within all watercraft registration fees (for fresh water operation) from \$10 to \$15 across all horsepower categories.

- And, dedicates the increased revenue to the existing “Invasive Plant and Nuisance Species Fund” administered in the field by the Department of Environmental Protection (DEP).

The bill did not get out of the Inland Fisheries and Wildlife Committee unscathed. Almost half of the Committee split away from the majority and signed onto a minority report that keeps motorboat registration fees where they are and merely requires the two state agencies that are charged with administering the invasive plant fund (the DEP and the Department of Inland Fisheries and Wildlife) to provide annual progress reports to the Legislature.

LD 1626 received its public hearing in mid-January. Along with the bill’s sponsor, Rep. Michael McClellan of Raymond, several Raymond residents testified in support of the bill, as well as representatives of the statewide lake association and regional lake associations from the greater Sebago Lake area, the greater Cobbossee lake area in the Manchester-Readfield region, and the greater Damariscotta Lake area. The thrust of the supportive testimony was that invasive plants are getting a foothold in Maine, at least in certain regions, and the volunteer systems that are on the front line of the identification, control and eradication efforts cannot successfully combat the problem without some help.

The arguments were made that the DEP’s administration of the invasive

species program has provided welcome assistance to the overall effort of identifying and monitoring the introduction of such invasive plant species as milfoil and hydrilla, but now that infestations are developing, the efforts need to be kicked-up a notch to allow for more direct forms of eradication.

The additional argument is that increasing the inland waters motorboat registration fees is an appropriate financing mechanism because it levies a charge on those most directly using a valuable state resource rather than further burdening general fund taxation at either the state or local level.

The Commissioners of the DEP and IF&W submitted testimony in opposition to the printed bill, but much of that oppositional testimony focused on elements of the printed version of LD 1626 which have been subsequently taken out of the majority “ought to pass as amended” report. For example, the printed bill focused added control efforts on lakes over 10,000 acres in size, and that provision has been removed. The printed bill also established separate fee increases for residents and nonresidents, which struck the Commissioners as difficult to administer. The Committee’s amended report takes out that provision as well. In fact, a full page of new directives to DEP that were part of the original bill has been taken out of the measure. All that is left is the \$5 increase and the dedication of the additional revenue to the existing program.

With a 7-6 Committee report divided closely (but not perfectly) along party lines, LD 1626 has rough waters to navigate before enactment. The issues for debate are whether:

- The problem of non-native invasive plants infesting Maine’s lakes needs to be more aggressively and proactively addressed with greater resources.

- State government has a role to play in the greater effort or the volunteer systems and local approaches are sufficient and equitably capitalized.

- And, a \$5 increase for utilizing Maine’s lakes by motorboat is an appropriate user-based system for generating

additional resources, or whether tapping into general tax revenue, even if possible to achieve, would distribute the burden more fairly.

### “Supplemental Budget” (cont’d)

two other groups testified in support of the proposals that put some limits on the BETR and BETE programs with respect to retail personal property and the back-office personal property, such as networked desktop computers, that are part of every law firm, accounting company or other professional office.

MMA’s testimony focused on the lack of legislative governance over the BETR-BETE programs. The hot new focus in legislative parlance is ensuring the maintenance of targeted, performance-based, and highly accountable “tax expenditures.” If that’s the direction we’re going, the BETR and BETE programs are certainly one very good place to start. The rhetoric when BETR was put in place in 1996 and BETE in 2008 was that these programs would incentivize the purchase and installation of modern, efficient manufacturing and production machinery and equipment with a focus on businesses that might consider tax policy for their location decisions. Despite the rhetoric, the definition of qualifying property for exemption was written as wide open as the barn door. Wide enough so that types of retail personal property that are routinely subject to taxation throughout the nation are made exempt here in Maine. Retail chains, law offices, even national soda vending machine companies are enjoying tax rebates and exempt status under Maine’s BETR and BETE laws. Although the BETR program should have been retired when BETE was created in 2008, it was inexplicably given life everlasting. If there was ever a time to fully retire BETR and give BETE an accountability tune-up, it’s now.

Next week will mark the beginning of the Committee’s work session phase for the FY 2014 and 2015 supplemental budgets.

# Property Tax Cash Register Under Committee's Consideration

In order to address increasing county jail costs, limited jail and prison bed space and a need to provide a more streamlined and financially sustainable corrections system, state and county officials developed the unified state/county corrections system in 2009. In addition to capping the property tax exposure to county jail costs at \$62 million each year, the legislation created the Board of Corrections (BOC), represented by county, municipal and state officials, and charged it with overseeing the unified system.

One less frequently mentioned change adopted as part of the unified system law is a measure that caps the property taxpayers' exposure to post-2008 jail-related debt. As enacted, the property taxpayers are required to continue to retire the \$112 million in jail related debt that was on the books in 2008, and the state is required to annually capitalize an improvement fund to cover the post-2008 capital needs of jail facilities. Unfortunately, the state has not made the required capital improvement contributions and the BOC has been utilizing operating revenue to fund capital expenses. As a result, the members of the Criminal Justice Committee are now grappling with how to address the unified system's FY 2014 \$2.4 million funding shortfall and the FY 2015 funding shortfall of approximately \$5 million.

In efforts to resolve the funding deficiencies, the Committee is in the process of soliciting information and feedback from the interested parties. On Monday of this week, MMA was invited to meet with the Committee to discuss the \$62 million property tax cap and options for addressing the FY 2014 and FY 2015 funding shortfalls.

MMA's presentation, guided by the results of a survey of its 70-member Legislative Policy Committee, largely focused on the municipal community's

strong support for the capped property tax financing system and the continued municipal support for the provision of correctional services through the unified system.

Through the course of the conversation it became clear that there is an interest among some members of the Committee to amend the cap, thus increasing the property taxpayers' financial exposure to the unified system. Some members of the Committee argued that the cap was erroneously set by the county officials charged with determining the operating costs of jail services. Others argued that annual cost of living adjustments should be made to the property tax cap to ensure that municipal contributions are sustained throughout time. Still others suggested that increased financial participation at the local level was necessary and warranted because the state had no control over county level labor negotiations.

Although some Committee members were quick to look to the property taxpayers as the way out of this current funding bind, it should be noted that the property taxpayers continue to fund a majority of the unified system's costs. In FY 2014, the capped property tax contributions will account for 74% of the \$84 million unified state/county corrections program. The state's contributions, \$18.5 million, account for 22% of total costs, with the remaining funding coming from the prisoner boarding fees.

Although the Committee has not yet advanced a proposal to address the funding shortfalls, municipal officials should take an opportunity to ask their legislators to resist the quick fix of further burdening Maine's property taxpayers. Instead, members of the House and Senate should be encouraged to support all efforts made by the Criminal Justice Committee to ensure that the unified system receives the promised and necessary state level resources.

## Concealed Weapons (cont'd)

*to Carry a Concealed Handgun.*

As amended by Committee, only communities with "full-time police chiefs" would be authorized to issue concealed handgun permits locally. In communities without a full-time law enforcement presence, that authority would be delegated at the community's discretion to either the state police or county sheriff. If LD 222 is enacted, sometime in late July (90 days after the adjournment of the Legislature) municipal officers in an estimated 95 communities will no longer be authorized to issue concealed handgun permits.

In addition to restricting the municipal authority to issue concealed handgun permits, the Committee amendment:

- Directs the State Police to develop and make available by Jan. 1, 2016 the uniform permit forms to be used by all issuing agencies. The form must include the permit issuance and expiration dates, and the permittee's name, address, recent photograph, physical description and signature.

- Requires that the fees collected, less the authorized issuing agent's processing fees, be remitted to the Treasurer of State and deposited into a dedicated public safety fund.

- Increases the resident licensing fee from \$35 to \$52.50 and from \$60 to \$120 for nonresidents.

- Increases the resident permit renewal fee from \$20 to \$52.50 and from \$60 to \$120 for nonresidents on the premise that the process for a renewal is just as costly as that for an initial applicant.

- Increases the life of the permit from four years to six years.

- And, directs the State Police to establish a confidential database containing information about concealed handgun permit holders and provide law enforcement officers 24-hour access to the database.

The Committee's amended version of LD 222 is now on its way to the entire Legislature for what is anticipated to be a robust debate.

# Committee Removes Mandates From Lake Protection Bill

As documented in the Feb. 21 Legislative Bulletin, the Environment and Natural Resources Committee has been considering LD 1744, *An Act To Protect Maine Lakes*. As originally drafted, LD 1744 would have made the following three key changes to the regulation of activities within the shoreland zone: (1) The application of fertilizers, herbicides, pesticides, and soil amendments within 25 feet of great ponds would have been prohibited, establishing new enforcement obligations; (2) Municipalities would have been directed to create a photographic record of the shoreline of all great ponds bordered by at least 10 developed lots according to a schedule running from now through 2020, with 5-year updates thereafter; and (3) The Department of Environmental Protection (DEP) would have been required to promulgate rules requiring municipal permitting authorities to visit a proposed development site prior to final approval of a permit for development within a shoreland zone.

MMA's Legislative Policy Committee voted to oppose LD 1744, and the Environment and Natural Resources Committee fortunately heard where municipalities are coming from. The committee is reporting out two different versions of the bill, each of which strips the provisions that would have mandated municipalities to increase site inspections and photo-document shorelines.

The Committee's majority report prohibits the use of fertilizers, and only fertilizers, within 50 feet of the shoreline of great ponds, except for agricultural purposes, or establishing turf or planting vegetation pursuant to a recommendation from a soil sample test. At the time of publication it is unclear exactly what type of enforcement is envisioned for this provision but MMA expects DEP to provide guidance on that question. The majority amendment also allocates \$10,000 to Maine's Joint Environmental Training Coordinating Committee to support their pollution control and water quality protection education efforts.

The minority report, supported by House Republicans on the committee,

removes all provisions of the original bill except for Section 5, which requires the DEP and the Department of Agriculture, Conservation and Forestry to develop and provide training on surface water quality protection to municipal officials and code enforcement officers. Those two departments would also be required to include in their training any changes in DEP rules relating to shoreland zoning, as well as municipal enforcement obligations, and the training would have to be provided in various locations throughout the State. Section 5 was not included in

the majority report.

Assuming one of these reports is approved by both House and Senate, the bill will head to the Appropriations Committee's "table" given its anticipated fiscal note. The majority report's fiscal note is expected to be roughly \$70,000 – in addition to the \$10,000 mentioned above, the report allocates \$40,000 to DEP to support the Maine Lakes Society's implementation of its LakeSmart program as well as \$20,000 for the purpose of managing and analyzing data gathered by the Maine Volunteer Lake Monitoring Program.

## 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://janus.state.me.us/legis/lio/>.

### Monday, March 10

**Education & Cultural Affairs**  
**Room 202, Cross State Office Building, 2:00 p.m.**  
**Tel: 287-3125**

LD 1638 – An Act To Improve Educational Outcomes for Students in Poverty in Maine's Public Schools.

### Wednesday, March 12

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

LD 1754 – An Act To Amend the Laws Governing the Location of Motor Vehicle Excise Tax Collection for Motor Vehicles Owned by Public Utilities.