

## Committee Eyes Property Tax State's Jail Funding Agreement At Risk

On Wednesday of this week, the Criminal Justice Committee held a public hearing/work session on an amended version of LD 1824, *An Act to Provide Additional Authority to the State Board of Corrections*. The bill provides the vehicle necessary to implement the recommendations proposed by the legislatively created 13-member Commission to Study the State Board of Corrections and the Unified County Corrections System.

The State Board of Corrections (BOC) was created by the Legislature six years ago and directed to oversee the unified state/county corrections system. In a nutshell, LD 1824: (1) provides the BOC with the tools and authority necessary to accomplish its charge; (2) specifies that the \$62 million in capped property tax contributions are to be used for operational purposes only; (3) allows for "LD 1" based increases in the jail budgets annually prepared by county officials and authorized by the BOC; and (4) reduces the membership of the BOC from nine to five, by eliminating the two county commissioner level members, the only municipal member and one of two public members.

Although municipal officials are generally supportive of the initiatives found in the amended version of the bill that seek to strengthen the BOC, they are concerned with the lack of specificity regarding which level of government, state or local, will be responsible for funding the allowed growth in jail budget expenditures. The property tax exposure to jail operations was capped in 2008 at \$62 million as part of the overall agreement to unify the jail correctional system. LD 1824, in its current posture, does not on its face remove or soften the existing property tax caps, nor

does it explicitly hold the state responsible for funding authorized budget increases.

When calculated on a per-capita basis, current property tax contributions for jail operations range from a low of \$21 per resident in Oxford County to \$103 per resident in Somerset County. As shown in the accompanying table, if the state breaks its promise and goes back to the property

tax to fund jail cost increases, the per capita burdens in Oxford County increase by 70 cents, while the burden in Somerset County grows by over \$3.00. Sticking to its promise, and funding increases in jail operations costs using General Fund resources (based on an assumed "LD 1" growth rate), spreads the cost uniformly

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## Municipal Mandate Report and Recommendations

### Delay Any Action for Another Year?

The March 14 edition of the Legislative Bulletin described the final report of a working group that was formed by the Legislature in 2013, asked to review the unfunded state mandates imposed on Maine's towns and cities and make recommendations about which of these mandates, if any, could be repealed or redesigned so as to be less burdensome on local government. The specific charge to the working group is provided in a sidebar to this article (page 4).

Under the chairmanship of Sawin Millett, the Commissioner of the Department of Administrative and Financial Services, the working group took up its charge in good faith, convened several times in the fall of 2013 for highly productive deliberations, and delivered a report that by all accounts is thorough, clear, competent, and replete with about 20 specific recommendations, all of which are encapsulated in draft implementing legislation.

In addition to the Commissioner, the working group included John Bubier (Biddeford City Manager), Clint Deschene

(Auburn City Manager), Paul Castonguay (Waterville City Assessor), John Madigan (Town Manager of both Mexico and Rumford), Roger Raymond, (Hermon Town Manager), and Michael Brennan (Bucksport Town Manager at the time). MMA also had a seat at the table.

The formality of presenting the working group's report and recommendations of the working group to the Appropriations Committee was accomplished last December, and the delivery of the final report occurred shortly thereafter.

On Tuesday this week, the Appropriations Committee reviewed the report and recommendations in earnest. Commissioner Millett described to the Committee each recommendation in the order they appeared in the draft legislation, and the questions from Committee members about any detail or the problematic aspect of a particular mandate were answered either by the Commissioner or MMA. Because the Appropriations Committee is particularly sensitive to proposals that

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# Diverting the Motor Vehicle Excise Tax Controversy

## Study Group to the Rescue

The March 14 edition of the Legislative Bulletin described the public hearing on a bill that could change which municipalities are eligible to receive motor vehicle excise taxes related to fleets belonging to utility corporations. The bill stimulated a good deal of controversy and the presentation of the bill to the Taxation Committee felt very much like the residual energy steaming off a hot dispute between the Central Maine Power company and the host community of its corporate headquarters, the City of Augusta.

On Friday last week, the Committee held a work session on LD 1754, *An Act To Amend the Laws Governing the Location of Motor Vehicle Excise Tax Collection for Motor Vehicles Owned by Public Utilities*.

In brief summary, current law says that the excise tax on corporate vehicles is paid in the municipality in which the

owner's registered or main office is located except that if the owner has an additional permanent place of business where motor vehicles are regularly garaged, the excise taxes are paid in the municipality where the vehicles are actually kept.

An exception to that general rule applies to the vehicle fleets owned by the corporations regulated by the Public Utilities Commission, including the telephone, electric, water, gas and public heating utilities. For those companies, the excise taxes for all the vehicles they own, regardless of where they are garaged, are paid to the single municipality where the main corporate office is located. LD 1754 repeals that exception to this general rule.

Instead of implementing the change, the Taxation Committee rewrote the bill to establish a five-member legislative study group to meet after the final adjournment

of the 126<sup>th</sup> Legislature for the purpose of further evaluating the change LD 1754 is proposing. Three of the legislators on the task force must be members of the Taxation Committee and two must be members of the Energy, Utilities and Technology Committee.

The specific charges to the study group are to determine the fiscal impact and additional administrative duties on municipalities if the utility corporations were required to pay their excise taxes where their vehicles are customarily kept, and otherwise analyze the impact of corporate motor vehicle excise tax location policies on utility rate payers, property taxpayers and municipal budgets.

The study group's report and recommendations must be reported back to the Legislature no later than November 5, 2014.

### Jail Funding (cont'd)

across the taxpayers in all counties.

Committee level response to MMA's concerns is somewhat troubling because there appears to be the appetite for shifting additional burdens onto the property taxpayers and more deeply exploiting the disproportionate burden that exists from county-to-county in the funding of jail operations. In addition, some Committee members expressed interest in reducing the size of the BOC. The proposal currently on the table eliminates the municipal representative, thereby removing the property taxpayers from the process of establishing the budgets they would be disproportionately required to fund.

Although the Committee's initial discussion on LD 1824 suggests some lawmakers on the Committee would like to open up the property tax piggy bank, work on this bill is far from over. Municipal officials believe that the goal of this Committee should be to honor its commitments and to eliminate rather than further exacerbate the county-to-county funding inequities that exist under the current property tax funding model.

The Committee will begin working the bill today (Friday, March 28).

### Per-Capita Distribution of LD 1-based Increase in Jail Operations Costs Using Either Property Tax or General Fund Revenues

| County       | 3.2% (LD 1)        | Per Capita   |           |
|--------------|--------------------|--------------|-----------|
|              | Adjustment         | Property Tax | State Tax |
| Androscoggin | \$137,195          | \$1.27       | \$1.50    |
| Aroostook    | \$74,133           | \$1.05       | \$1.50    |
| Cumberland   | \$370,419          | \$1.30       | \$1.50    |
| Franklin     | \$51,878           | \$1.69       | \$1.50    |
| Hancock      | \$53,444           | \$0.98       | \$1.50    |
| Kennebec     | \$178,827          | \$1.47       | \$1.50    |
| Knox         | \$102,038          | \$0.57       | \$1.50    |
| Lincoln      | \$85,027           | \$2.49       | \$1.50    |
| Oxford       | \$39,320           | \$0.68       | \$1.50    |
| Penobscot    | \$189,412          | \$1.23       | \$1.50    |
| Piscataquis  | \$28,126           | \$1.63       | \$1.50    |
| Sagadahoc    | \$85,027           | \$2.42       | \$1.50    |
| Somerset     | \$171,637          | \$3.31       | \$1.50    |
| Waldo        | \$90,635           | \$2.33       | \$1.50    |
| Washington   | \$64,017           | \$1.97       | \$1.50    |
| York         | \$268,378          | \$1.35       | \$1.50    |
| <b>Total</b> | <b>\$1,989,516</b> |              |           |

## Municipal Mandate (cont'd)

would impact the state's treasury, all recommendations affecting state finances were specifically identified.

The report in its details was graciously received and various Committee members in different ways thanked the working group for its effort and treated the report it produced with respect.

What happens at this point, however, appears to be somewhat up in the air.

MMA was asked to identify the high-

est municipal priorities from among the 20 separate recommendations. With the observation that there is a fairly strong correlation between the municipal top priorities and public policy issues that might generate a certain level of controversy, MMA picked out five recommendations from the list:

- As a #1 priority, create the *State-Local Intergovernmental Working Group* for the purpose of establishing a two-way communication system between the oversight state agencies and the municipalities

### A New Mandate Loophole: Refuse To Admit It's A Mandate.

One of the recommendations in the working group's report concerns a bill enacted in 2009 that establishes what is called a "rebuttable presumption" in Workers' Compensation law. Under the rebuttable presumption, several types of cancer that may be contracted by a municipal firefighter are presumed to be a compensable workplace-related injury unless the municipality can prove otherwise. Because the law shifts the normal burden of proof under Workers' Compensation law, and thereby requires the municipalities to engage in defensive litigation not normally required, the legislation was identified as a state mandate by the Office of Fiscal and Program Review. Despite that finding, the law was enacted without the necessary "mandate preamble", which is required by statute. The mandate preamble, like a similarly required "preamble" for emergency legislation, is an identification system that puts legislators on formal notice that they either have to vote to fund the mandate at 90% of the mandated new costs or decide by a 2/3 super-majority in both House and Senate that the mandated costs should be entirely borne by the local property taxpayers. The recommendation in the working group's mandate report is to review whether the firefighter cancer presumption legislation was, in fact, a state mandate as that term is defined in Maine's Constitution.

A conversation after the work session with the Director of the Office of Fiscal and Program Review, a gentleman who is consistently helpful to MMA in explaining how things actually work, suggests that such a review would not likely move the ball any farther down the field. All the information on that subject is already a matter of public record and there does not seem to be anything for either OFPR or the Office of Policy and Legal Analysis to further review.

It is apparently undisputed that when the cancer presumption legislation was going through the process, a decision was made by elements of legislative leadership to enact the bill without a mandate preamble even though the bill was flagged as a mandate. The general sense was that it was recognized at that time that a 2/3's vote would not be forthcoming if the preamble was placed on the bill. In other words, certain legislative leaders and/or the Legislature made the conscious decision to enact the law without funding and without overriding the funding requirement.

Legislation enacted in that ambiguous posture by mistake is one thing, but legislation enacted that way on purpose is quite another. Because the law implementing the constitutional provision regarding state mandates provides that a local unit of government does not have to comply with a mandate that is not properly funded or exempted from funding, the legislative thinking at the time must have been to enact the mandate without recognizing it as a mandate, and see what happens. Since there is no clear way a municipality can unilaterally not recognize the rebuttable presumption that is now a part of Workers' Compensation law, the only viable next step for the municipalities is to seek to amend the law or seek redress in the courts.

that perform the mandated activities with the goal of establishing more efficient, effective and cost effective approaches to the implementation and administration of the mandated activities;

- To correct the record, direct the Office of Fiscal and Program Review and the Office of Policy and Legal Analysis to review the entire record of the development, legislative activities, and subsequent impacts associated with LD 621, *An Act Allowing Workers' Compensation Benefits for Firefighters Who Contract Cancer*, enacted in 2009 as PL 2009, chap. 408, to determine whether or not the legislation constitutes a state mandate as defined by Article IX, section 21 of the Constitution of Maine (see additional discussion on this issue at sidebar);

- To fairly recognize disproportionate demands on local administration, amend the Freedom of Access law to allow governmental entities to recover their actual costs when responding to large-scale public record requests that require more than 20 hours of staff time in response;

- To reduce extraordinarily redundant administration, amend the over-and-over-again notice that must be provided to a landowner who is noncompliant with a requirement to update his or her forest management plan under the Tree Growth tax program so that a single formal notification and penalty assessment system must be imposed rather than the duplicate notification system currently required;

- To address an overtly discriminatory, unfair and archaic fee assessment system, amend the statute governing the imposition of certain state fees for heating boiler inspections so that municipalities and the schools are treated in the same cost-free way that virtually all other owners of heating boilers are treated.

The resulting discussion had the effect of creating three rather than two categories into which the various recommendations of the working group might fall: (1) recommendations that would impact the state treasury, which are presumptively dead-on-arrival; (2) recommendations of some controversy, which cannot be included as part of any bill people actually want to see enacted; and (3) noncontroversial recommendations with no fiscal impact to the state. Not surprisingly, it is this third category that legislators are willing to

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## Municipal Mandate (cont'd)

reach consensus about.

But even then, not so fast.

Rep. Anne Graham (North Yarmouth), the House Chair of the State and Local Government Committee, addressed the Appropriations Committee at the work session and asked that nothing be done with the working group's recommendations this year. Rep. Graham's suggestion, instead, was that the set of recommendations that might be packaged by the Appropriations Committee be then referred to the State and Local Government Committee for further review, discussion and amendment...not this year but in 2015.

What follows are the 20 recommendations in the mandate report listed according to the three categories, as best as MMA can decipher.

Municipal officials who think that some action should be taken on the recommendations in this report should talk to their legislators and urge action without another year's delay.

### **Recommendations that cost the state money or reduce state revenues:**

- Amend the law governing the rate that local police officers are compensated for providing witness services or court officer services in district court to cover the municipality's actual salary expenditures. Current law provides \$50 per day in compensation.

- Require the courts to surcharge all fines or penalties imposed to obtain the actual costs of the municipal officers who provided witness services. Current law allows for the imposition of that surcharge to be discretionary.

- Require the costs associated with training personnel at public safety answering points according to mandated "quality assurance" protocols to be paid for with E-9-1-1 surcharge resources.

- Amend the statute governing the imposition of certain state fees for heating boiler inspections to exempt municipalities and the schools in the same way all other owners of heating boilers are exempted.

- Require the Commissioner of the Department of Environmental Protection to waive all licensing and permitting fees assessed against municipal governments for activities or functions that are required of those municipalities as a result of un-

funded state mandates, while retaining the obligation for the municipalities to obtain the required licenses or permits.

- Appropriate \$500,000 in FY 15 for the purpose of capitalizing the Fund for the Efficient Delivery of Local and Regional Services in response to findings of the Mandate Working Group that state mandated consolidation programs have not proven effective and that in some cases the design of state mandates is an impediment to municipal efforts to develop collaborative or consolidated service delivery systems.

### **Recommendations that do not cost the state but could stir some controversy:**

- Amend the law to allow governmental entities to recover their actual costs when responding to large-scale public record requests that require more than 20 hours of staff time in response.

- Amend the notice that must be provided to a landowner who is noncompliant with a requirement to update his or her forest management plan under the Tree Growth tax program so that a single formal notification and penalty assessment system must be imposed rather than the duplicate notification system currently required.

- Direct the Office of Fiscal and Program Review and the Office of Policy and Legal Analysis to review the entire record of the development, legislative activities, and subsequent impacts associated with LD 621, *An Act Allowing Workers Compensation Benefits for Firefighters Who Contract Cancer*, enacted in 2009 as PL 2009, c. 408, to determine whether or not the legislation constitutes a state mandate

as defined by Article IX, section 21 of the Constitution of Maine (for further discussion of this issue, see sidebar).

### **Recommendations that do not cost the state and are not controversial:**

- Create the State-Local Intergovernmental Working Group for the purpose of establishing a two-way communication system between the oversight state agencies and the municipalities that perform the mandated activities with the goal of establishing more efficient, effective and cost effective approaches to the implementation and administration of the mandated activities.

- Amend the law governing dog licensing and animal control ordinances to clarify that the municipality can impose fees necessary and appropriate to finance the cost of animal control services.

- Repeal as archaic the law requiring the local appointment of an inspector of weights and measures.

- Amend the statutes governing the formation of a municipal board of appeals and board of assessment review, respectively, to establish as a minimum standard in both cases that the boards consist of at least 3 members, thereby allowing the municipalities through their home rule ordinances to create boards that are larger in size.

- Amend the law governing the annual municipal report to allow a town or city's legislative body to authorize the on-line rather than hard-copy publication of the report.

- Repeal as archaic the requirement that a municipality appoint an inspector

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## Legislation Establishing Mandate Working Group (Part WW of the 2013 State budget)

**Section 1. Working Group.** The Commissioner of Administrative and Financial Services or the commissioner's designee shall convene a working group to review mandates imposed by the State on municipalities and invite interested parties including a statewide association representing municipalities to participate in the review. The working group shall identify the financial impact of state mandates on municipal budgets, those mandates that can be mitigated or eliminated and the cost to the State of mitigating or eliminating the identified mandates.

**Section 2. Report recommendations.** No later than December 1, 2013, the working group shall report to the Joint Standing Committee on Appropriations and Financial Affairs the working group's findings and recommendations pursuant to section 1, including priorities for mandates that can be mitigated or eliminated, and any necessary implementing legislation. The joint standing committee is authorized to report out a bill related to the subject matter of the report to the Second Regular Session the 126th Legislature following receipt of the report.

# The Future of Solid Waste Management in Maine

Previous editions of the Legislative Bulletin have described the enactment of legislation this year (LD 1483) to place greater emphasis on Maine's solid waste management hierarchy and direct Maine's Department of Environmental Protection (DEP) to implement routine technical rules to incorporate that hierarchy as a review criterion when licensing waste disposal facilities. The hierarchy prioritizes solid waste disposal in the order: reduce, reuse, recycle, compost, incinerate, landfill.

As a follow-through to that legislation, the Energy and Natural Resources Committee finalized a letter this week to DEP requesting a departmental evaluation of the need for further legislation to address Maine's solid waste management needs and provide suggestions pertaining to the following five aims:

- Incentivizing the increased use of source reduction, reuse, recycling and composting as a means of achieving the state-mandated recycling goal of 50% and creating a methodology to accurately measure future achievements toward that goal.
- Achieving economic stabilization of the three existing waste-to-energy facilities in Maine by January 1, 2016

with options for funding that stabilization.

- Planning for minimizing the need for future expansion of landfill capacity in Maine.
- Identifying additional strategies to increase beneficial use of materials.
- And identifying additional components of an overall comprehensive implementation plan believed to be necessary and appropriate to better advance the goals of the state's solid waste management hierarchy.

Committee member Senator Tom Saviello (Franklin Cty.) and Committee House Chair Representative Joan Welsh of Rockport are encouraging MMA to help municipalities assemble proactive recommendations that would provide guidance on future state-level policy deliberations in a way that is manageable at the local level and acceptable to municipalities statewide. To that end, MMA is collaborating with the Maine Resource Recovery Association (MRRA) on holding a solid waste management policy session at MMA's annual Convention in October.

In the meantime, interested municipal officials are encouraged to attend MRRA's annual solid waste conference at the Samoset Resort in Rockland on Apr. 28 and 29.

## Municipal Mandate (cont'd)

of boats and lighters.

- Repeal current requirements that municipalities administer a licensing program for a range of recreational activities, such as bowling, billiards, roller skating, etc., and enact a single statute expressly authorizing the municipal licensing of these activities pursuant to ordinances adopted under municipal home rule authority.
- Amend the statute governing the licensing of going-out-of-business sales to establish those same licensing requirements only in those municipalities that choose to adopt such a licensing ordinance.
- Amend the statute governing the licensing of pawnbrokers to establish that the requirement for pawnbrokers to be locally-licensed applies only in those municipalities that choose to adopt such a licensing ordinance.

### **Recommendations being addressed during this legislative session in separate legislation:**

- Amend the law governing the municipal requirements to maintain veterans' graves, as substantially amended by PL 2013, c. 421, to relax the excessive costs associated with that enactment. (Addressed, but not yet enacted, in LD 1662)
- Amend the law establishing the municipal obligation to prepare certain "appraisal reports" for all large industrial properties, as created in Part O of the state budget enacted in June 2013 (Addressed, but not yet enacted, in LD 1627).

## 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/>.

### *Tuesday, April 1*

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

LD 1831 – An Act To Allow Signs for Areas of Local, Regional and Statewide Interest on the Interstate System.

### **Legislative Bulletin**

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**Editorial Staff:** Geoffrey Herman, Kate Dufour, Garrett Corbin and Laura Ellis of the State & Federal Relations staff.

# State Saves, Property Taxpayers Lose

## Enhanced GA Reimbursement in the Crosshairs

Within a 24 hour period, the Health and Human Services Committee heard, worked and voted along party lines “ought not to pass on LD 1844, *An Act to Increase Local Responsibility for General Assistance*. This late session bill, sponsored by Rep. Heather Sirocki of Scarborough on behalf of Gov. LePage, proposes to reduce the amount state reimbursement provided to municipalities that incur GA expenditures greater than .0003 times the municipality’s taxable valuation. For spending that exceeds that level, the state reimbursement is 90% rather than 50%. LD 1844 eliminates all enhanced reimbursement.

According to the testimony offered by a representative of the Governor’s Office, if LD 1844 is enacted the state will save an estimated \$3.7 million in its share of the state/municipal General Assistance (GA) program. What the Governor’s representative failed to mention however, is that \$3.4 million (93%) in those state

level savings come at the expense of the property taxpayers residing in Maine’s three largest service center communities.

The trigger for enhanced reimbursement has been part of Maine’s General Assistance law for 42 years in recognition that some communities are more heavily burdened by the requirement to provide assistance under the mandatory General Assistance (GA) program than others. It is, in fact, the original municipal reimbursement system, established in 1973 for a good reason.

The provision of a “circuitbreaker” is just as important today as it was over four decades ago. The enhanced funding acknowledges the additional burdens experienced by communities that serve as the hubs for the services that GA recipients often need, such as shelters, housing, clinics, medical facilities, social services, food kitchens, etc.

The most powerful testimony was provided by the GA program administra-

tors from three hardest hit communities of Portland, Bangor and Lewiston.

If LD 1844 is enacted, the City of Bangor stands to lose \$675,000 in state reimbursement. According to Rindi Fogler, Bangor’s GA administrator, that reduction is equal to the costs of employing 12 full-time law enforcement officers, or maintaining 6.5 miles of roads, or the City’s share of the public library budget. Portland’s Bob Duranleau, Social Services Director, testified that the \$2.6 million hit would severely impact the ability of the City to provide assistance to 4,300 needy residents each year. Sue Charron of Lewiston, who as that City’s GA administrator is dealing with increases in its GA program as a result of the state’s 60-month lifetime limit on TANF benefits and an increase in the number of asylum seekers settling in the City, noted that her community is estimated to lose \$152,000 in state reimbursement by the bill.

The Health and Human Services Committee’s 8 to 5 “ought not to pass” recommendation will soon be before the entire Legislature for final action.