

## Eternal Return

That there is nothing new under the sun was reinforced on Tuesday this week when the Taxation Committee began conducting public hearings on the first clutch of printed bills referred to the Committee for its consideration. The initial bills of the session included a proposed mandate and a proposed new property tax exemption.

**The Session's First Proposed Mandate.** Kicking off the Tax Committee's 2009 session, in fact, was a bill mandating all municipalities to strictly enforce the law requiring all motor vehicles "principally garaged and maintained" in this state to be registered here rather than New Hampshire or elsewhere. (LD 35, *An Act to Enforce the Collection of the State Excise Tax on Motor Vehicles...*)

LD 35 was presented by Rep. Walter Wheeler of Kittery and strongly supported by Kittery Police Sergeant Charles Denault who decried the lack of proper auto registration enforcement in other municipalities. According to the Kittery testimony, if the other municipalities were as diligent as Kittery in properly enforcing motor vehicle registration, not only would those municipalities enjoy increased excise tax resources, but the state would realize millions of dollars in lost income tax revenue by snagging cross-border income tax cheats in the process.

MMA testified in opposition to the bill. The very same bill was introduced by Rep. Wheeler two years ago and resulted in Maine Revenue Services being tasked with getting together with municipal officials in Maine's border towns and investigating the depth of the problem and possible solutions. That "study group" report was presented to the Taxation Committee a year ago, nearly to the

day. The principal findings of that report were that: (1) the legal standard was about as clear as it could be; (2) enforcement obviously requires both police and prosecutorial efforts; (3) municipalities with police departments are empowered to invest the necessary resources and directly enforce the law much as Kittery apparently does; (4) municipalities without police departments will have to generally rely on the capacity of the Sheriff's Department or the Maine State Police to investigate possible cross-border violations; and (5) police and prosecutorial resources to fully investigate this infraction are not always available, either on the local, regional or state level.

**The Session's First Proposed Exemption.** Another bill on the public hearing agenda, sponsored by Rep. Pat Flood

of Winthrop, would create a property tax exemption for residential-scale windmills installed by homeowners to reduce, and in some cases reverse, the amount of electricity they otherwise purchase off the grid. The bill is LD 57, *An Act to Exempt Small Privately Owned Windmills from the Property Tax*. Rep. Flood characterized the bill as removing a potential disincentive for alternative energy installation, and pointed out that since there have not been very many residential installations as of yet, the bill would not take revenue away from the municipalities that they are currently receiving.

Four supporters testified in favor of the bill, including an alternative energy engineering consultant from Winthrop, the owner of a business in Augusta that distributes residential-scale wind tur-

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## Barriers To Sun Power

On Tuesday, the Utilities and Energy Committee took testimony on LD 73, *An Act To Protect the Right To Use Solar Energy*, sponsored by Representative Jon Hinck (Portland).

The bill would prohibit any restriction, be it state statute, municipal ordinance or private homeowner association covenants, that either directly bans the use of solar collectors or clotheslines or which has the effect of banning solar collectors or clotheslines.

In presenting his bill, Rep. Hinck stated "We should remove barriers for those who choose to heat and cool their homes with solar collectors or just use simple clothes lines to dry their clothes outside in the sun. In a small but not insignificant way this bill would help

with the development of more decentralized, clean and green energy system."

However, Rep. Hinck cited no state law, or municipal ordinance in Maine which directly prohibited clotheslines or solar collectors. Obviously, many state statutes or municipal ordinances may "have the effect of" prohibiting solar collectors from being installed in certain ways or in certain places. For example, municipal zoning ordinances often contain set-backs which require structures on one's own land to be a certain distance from a property line with a neighbor, for both fire access and neighbor-management purposes. Similarly, height limitations, while neutral towards solar collectors, might prohibit structures that rise

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# Hearing on Charter Commission Bill Delayed

Unfortunately, due to Wednesday's snow storm, the public hearing on LD 34, *An Act to Clarify the Election of Municipal Charter Commission Members* was postponed. The bill, sponsored by Rep. Terry Hayes of Buckfield, makes technical but important changes to the law guiding the timing of the election of charter commission members.

In the second session of the 123<sup>rd</sup> Legislature (2008), the municipal charter commission law was amended. As amended, the law enables municipalities to either elect charter commission members at the same referendum election authorizing the creation of the charter commission or at the next regularly or specially scheduled municipal election, provided that the election takes place within 200 days of the referendum election creating the charter commission.

The problem with the "200 day" requirement is that if the election that created the charter commission was held during the regularly scheduled November election, the regularly scheduled June election falls beyond the somewhat arbitrary 200-day window of opportunity.

For example, if a municipality chose to use the November election to create the charter commission, then the municipality must hold the follow-up charter commission member election no later than May under current law. The problem with this timing requirement is that it does not allow municipalities to hold the election at a time when the voters are accustomed to casting ballots, nor does

it allow the municipalities to hold down election related expenditures by dovetailing the charter commission election with the regularly scheduled June election.

The cost associated with conducting elections is a serious concern for municipalities. According to the results of a 2006 study conducted by MMA, it costs municipalities nearly \$1 million statewide to hold elections. These costs range from a high of \$30,000 in communities with populations over 20,000 to a low of \$700 in communities with population less than 2,000.

In order to allow communities that created charter commissions on November 4, 2008 to schedule the election of commission members on the election day in June, the Legislature must act on LD 34 as soon as possible.

To make this change effective in time to impact this June's election, LD

34 includes an emergency preamble making the bill effective as soon as it is signed into law by the Governor. Without the emergency preamble, the bill will not become effective until 90-days after the Legislature adjourns, which could push the effective date into September.

On an additional matter of implementation, the printed bill needs to be further amended to include a clause making the proposed change retroactive to January 1, 2009. By making the bill retroactively effective, the legislation ensures that the election scheduling decisions being made now to hold the follow-up June election (i.e., properly posting and noticing the election, conducting the absentee balloting process, etc.) will be found to be completely in conformance with the law.

With this amendment, LD 34 will provide municipalities with the necessary flexibility to schedule these important elections. For that reason, we hope the State and Local Government Committee will reschedule the public hearing as soon as possible so that the Legislature has a chance to enact this bill without further delay.

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## ***ETERNAL (cont'd)***

bines and their parts, and the Natural Resources Council of Maine. The substance of the supportive testimony was that: (1) the property tax break was absolutely necessary to financially justify to the homeowner the installation of residential-scale wind turbines, (2) the federal and state tax codes provide incentives for alternative energy development, so the property tax code should, as well; (3) the people installing these windmills are "pioneers" and all tax and regulatory obstacles to their fledgling efforts should be removed.

MMA testified in opposition to LD 57. The proliferation of property tax exemptions – and tax exemptions, generally – has got to come to an end. Although it is politically popular on the state level to enact property tax exemptions on the local level, the incremental enactment of exemptions does real damage to the fabric of the property tax code, exemptions tend to shift greater burden on those less able to pay, and they create

a line-up mentality for all other similarly-situated interests to obtain their parallel exemptions. If windmills are exempt, solar panels will be next, and then geo-thermal installations and the list goes on.

Maine's Law Court said it best well over a century ago when it wrote: "*The just and honest rule in assessments for governmental purposes is equality of taxation. Whatever sacrifices (the property tax) requires from the people should be made to bear as nearly as possible with the same pressure upon all. In this way only will there be the least sacrifice by all....The more numerous the exemptions, the more unequal and burdensome the taxation...Taxation is the general rule; exemption from taxation is the exception...Exemption is a special favor conferred...Such special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens.*" (*City of Bangor v. Rising Virtue Lodge* [1882])

### **Legislative Bulletin**

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# Proposed 2009 Tree Growth Valuations Released for Rulemaking

Maine Revenue Services has published the proposed Tree Growth valuations to be used for the April 1, 2009 assessment. It may not be widely known, but the development and implementation of the annual Tree Growth valuations is actually a rule-making process; most town officials probably think of it as simply automatic. Because it is a rule-making process, anyone is allowed to express their concerns or objections to the proposed rules. The comment period on this year's proposed valuations closes on March 6, 2009.

Unlike previous years, there is a fair amount of volatility in this year's proposal. Five counties – all of Northern Maine (Aroostook, Penobscot, Piscataquis and Somerset Counties) and Hancock County – experience reductions in the mandatory per-acre valuations, generally across all three categories of forest land (softwood, mixed wood, and hardwood). The reductions in valuation range from 1%-17%.

The other 11 counties experience general increases in the Tree Growth valuations, often across all three categories of forest land. The increases tend to average in the 50% range. *[See chart below showing 2008 values, 2009 proposed values and % change]*

The changes in Tree Growth valuation appear to be attributable to at least three changes in methodology used by the Maine Forest Service and Maine Revenue Services to develop these numbers.

First, the Maine Forest Service is using updated growth-rate data. There are two major data inputs that determine the Tree Growth values according to a complex formula that ostensibly produces the "current use" value of forest land: the rate of forest growth per species, and the "stumpage value" of timber. For years, relatively stale, 10-year old, USDA-generated forest growth rate data was being used. The Maine Forest Service is now involved in analyzing growth rate on a shorter schedule. That more-recent data is now being incorporated into the formula.

Second, instead of averaging growth rate data for each species across the entire state, the growth rate data that is being used is region-specific data.

Third, instead of developing specific Tree Growth values for each county, multi-county regions are now being developed for this purpose. The five Tree Growth regions that are being created in this process are:

**Northern:** Aroostook, Piscataquis and Somerset

**Eastern:** Washington, Penobscot and Hancock

**Western:** Franklin and Oxford

**Capital:** Waldo, Knox, Kennebec and Lincoln

**Casco Bay:** Androscoggin, Sagadahoc, Cumberland and York

If all of these changes were fully implemented in 2009, the volatile effects on the Tree Growth valuations would be fairly extreme. Therefore, the state agencies responsible for promulgating the annual valuations have decided to phase-in the impacts over a three-year period, essentially by using ¼ of the mega-region value and ¾ of the county-based values in the first year (2009), 2/3 of the mega-region value and 1/3 of the county-based values in 2010, and fully implementing the new formula in 2011. Therefore, in 2011 and beyond, the Tree Growth valuations in each of the counties that fall within a certain mega-region will be the same.

The state-agency contacts for more information about the proposed 2009 Tree Growth valuations are Dave Ledew at Maine Revenue Services and Don Mansius at Maine Forest Services. Comments on the proposed valuations should be directed to John W. Sagaser at Maine Revenue Services ([john.w.sagaser@maine.gov](mailto:john.w.sagaser@maine.gov)). Again, the comment period closes on March 6, 2009.

County	2008 Tree Growth Valuations			2009 Tree Growth Valuations			Percent Change		
	Soft	Mixed	Hard	Soft	Mixed	Hard	Soft	Mixed	Hard
Androscoggin	\$412	\$232	\$136	\$413	\$304	\$229	0%	31%	68%
Aroostook	\$122	\$101	\$98	\$110	\$100	\$96	(9.8%)	(1%)	(2%)
Cumberland	\$422	\$232	\$135	\$413	\$303	\$224	(2%)	31%	66%
Franklin	\$153	\$125	\$114	\$239	\$176	\$172	56%	41%	51%
Hancock	\$125	\$125	\$120	\$111	\$111	\$100	(11%)	(11%)	(17%)
Kennebec	\$269	\$150	\$111	\$331	\$247	\$155	23%	65%	40%
Knox	\$239	\$118	\$69	\$306	\$207	\$110	28%	75%	59%
Lincoln	\$244	\$135	\$94	\$310	\$229	\$141	27%	70%	50%
Oxford	\$170	\$124	\$101	\$259	\$173	\$156	52%	40%	55%
Penobscot	\$98	\$87	\$96	\$98	\$94	\$82	0%	8%	(15%)
Piscataquis	\$121	\$113	\$118	\$105	\$109	\$114	(13%)	(3.5%)	(3%)
Sagadahoc	\$365	\$215	\$132	\$370	\$290	\$226	1.4%	35%	71%
Somerset	\$136	\$143	\$147	\$123	\$124	\$138	(9.6%)	(13%)	(6%)
Waldo	\$272	\$148	\$102	\$325	\$251	\$164	19.5%	70%	60%
Washington	\$82	\$79	\$35	\$96	\$88	\$74	17%	11%	111%
York	\$415	\$236	\$142	\$413	\$308	\$232	0%	31%	63%

## 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).)*

### **Business, Research & Economic Development**

LD 272 - An Act To License Home Building and Improvement Contractors. (Sponsored by Rep. MacDonald of Boothbay; additional cosponsors.)

This bill creates the Maine Home Contractor Licensing Act, which establishes a 9-member Maine Home Contractor Licensing Board to oversee the licensing of general contractors and trades people who perform framing, roofing, siding, insulating, window work or chimney masonry on residential dwellings. The Board includes two public members, five home contractors, one engineer or architect, one representative of the fire service, and one municipal code enforcement officer.

LD 273 - An Act To Require a Regional Review of Projects That Affect Areas Outside of the Community in Which the Project Is Proposed. (Sponsored by Rep. MacDonald of Boothbay)

This "concept draft" bill proposes to require a regional review of a development project if the project will have an adverse effect on more than the community in which the project will be located.

### **Education & Cultural Affairs**

LD 245 - An Act To Calculate the School Year by Number of Hours. (Emergency) (Sponsored by Sen. Sullivan of York County; additional cosponsors.)

Current law requires all school systems to operate their schools for at least 180 a year, with at least 175 of those days used for instruction. This emergency bill would allow school systems to develop alternative calendars provided the equivalent number of hours of school operation and instruction are provided.

### **Health & Human Services**

LD 254 - An Act To Enact a 5-point Welfare Reform Program. (Sponsored by Rep. Cebra of Naples; additional cosponsors.)

This bill makes a number of changes to the state's Temporary Assistance to Needy Families (TANF) program, such as capping the maximum aggregate benefit, establishing a maximum 60 months of eligibility for adults, and increasing the number of hours of work TANF recipients must perform. The bill also establishes a 90-day residency requirement in order to be eligible for General Assistance at the local level.

### **Legal & Veterans Affairs**

LD 235 - An Act To Modify the Citizen Initiative Process. (Sponsored by Rep. Cain of Orono; additional cosponsors.)

This bill requires a fiscal analysis of any state-level citizen initiative to determine the financial impact of the proposed law on state revenues, appropriations and allocations, including the amounts distributed by the state to local units of government. The bill further provides that if the citizen initiative is determined to have a cost to the state (other than the cost associated with conducting the referendum) and the means of paying for the cost is not included in the legislation, then the direct initiative may not be enacted into law until it is funded through the normal legislative process.

### **Natural Resources**

LD 229 - An Act To Promote Clean Waters in the State. (Sponsored by Sen. Nutting of Androscoggin County.)

This bill prohibits the Department of Environmental Protection from licensing a discharge of untreated sewage to any water of the state by a municipal or quasi-municipal sewerage system beginning on January 1, 2013. The bill also provides that beginning on the same date a municipality that discharges untreated sewage to the water of the state may not receive state-municipal revenue sharing.

### **State & Local Government**

LD 242 - An Act To Repeal the Informed Growth Act. (Sponsored by Sen. Hastings of Oxford County; additional cosponsors.)

This bill repeals the Informed Growth Act, which was enacted in 2007 and establishes a mandatory review of the economic impacts within the region of proposed "big box" development as part of the local development review and approval process.

### **Taxation**

LD 237 - An Act To Impose an Excise Tax on the Extraction of Water for Bottling. (Sponsored by Rep. Hinck of Portland; additional cosponsors.)

This bill establishes an excise tax of one cent per gallon of groundwater or surface water extracted from springs or other underground sources by bottled water operators who extract more than 1 million gallons of water a year. 50% of the revenue collected by the excise tax is being distributed to a state-level "Tax Relief Fund" that has never been capitalized, 25% to the Maine Environmental Protection Fund, and 25% to the municipality where the water was extracted.

### **Transportation**

LD 261 - An Act To Increase Safety in Construction Zones. (Sponsored by Rep. Rotundo of Lewiston.)

This bill prohibits the operator of a motor vehicle from using a mobile telephone or handheld electronic device in any state-level highway construction area that has posted a construction-zone speed limit restriction.

### **Utilities & Energy**

LD 238 - An Act Regarding Consumer-owned Water Utilities and Contracts for Water Extraction and for the Sale of Water. (Sponsored by Rep. Legg of Kennebunk; additional cosponsors.)

This bill prohibits any consumer-owned water utility from entering into a contract with another entity that involves the sale of water by the purchasing entity for purposes other than on-site use or consumption of that water, or the sale or leasing of utility's water rights, unless a public hearing is held by the utility's governing body according to certain specific standards and the contract is ratified by the registered voters of the utility in a referendum election.

LD 264 - An Act to Amend the Surcharge for the E-9-1-1 System. (Emergency) (Sponsored by Rep. Cleary of Houlton; additional cosponsors.)

In the last legislative session, lawmakers reduced the telephone-line surcharge used to generate resources for the E-9-1-1 system from \$.50 per line per month to \$.30. This emergency bill restores the surcharge to the \$.50 level.

## 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://www.state.me.us/legis/>.*

### *Monday, February 2*

**State & Local Government**  
**Room 216, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-1330**

LD 130 - An Act To Allow a Municipality Greater Flexibility To Disburse State Fees.

LD 142 - An Act To Revise the Boundary between the City of Waterville and the Town of Oakland.

LD 143 - An Act To Amend the Process for Secession from a County by a Municipality.

### *Tuesday, February 3*

**Health & Human Services**  
**Room 209, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-1317**

LD 119 - An Act To Amend the Laws Governing Public Water System Operation Fees.

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

LD 15 - An Act To Prohibit the Sale of a Road Sign Originally Placed by the State, a County or a Municipality.

LD 60 - Resolve, To Rename the Father Curran Bridge in Augusta.

LD 126 - An Act To Amend Certain Laws Affecting Transportation.

### *Wednesday, February 4*

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

LD 187 - An Act To Require a Test for Operating Under the Influence for a Driver Involved in an Accident That Caused Bodily Injury.

LD 185 - An Act To Ensure Public Safety during High-speed Chases by Law Enforcement Officers.

LD 69 - An Act To Provide a Reward for Information Regarding the Murder of a Law Enforcement Officer.

**Legal & Veterans Affairs**  
**Room 437, State House**  
**Tel: 287-1310**

**10:00 a.m.**

LD 116 - An Act To Allow Political Signs on Private Property Only.

LD 3 - An Act To Designate Registered Voters Not Enrolled in a Political party as Independent Voters.

LD 28 - An Act To Promote the Integrity of Citizens' Initiatives.

**12:30 p.m.**

LD 129 - Resolve, Directing the Secretary of State To Conduct a Pilot Program for Early Voting for the November 2009 Election.

LD 150 - An Act To Allow Voters To Choose Ongoing Absentee Voter Status.

### *Thursday, February 5*

**Business, Research & Economic Development**  
**Room 208, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-1331**

LD 11 - Resolve, To Encourage the Preservation of Dark Skies.

**Labor**  
**Room 220, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-1333**

LD 27 - An Act To Amend the Definition of Employment for Purposes of Unemployment Compensation.

LD 84 - An Act To Ensure Fair Pay.

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

LD 38 - An Act To Allow the Use of Only 2 Studded Tires on Front-wheel-drive Vehicles.

LD 110 - An Act To Allow School Buses To Travel at the Posted Speed Limit on the Interstate and the Maine Turnpike.

LD 152 - An Act Relating to Autocycles.

**Utilities & Energy**  
**Room 211, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-4143**

LD 131 - An Act To Amend the Charter of the Athens Standard Water District.

### *Friday, February 6*

**Transportation**  
**Room 126, State House, 11:00 a.m.**  
**Tel: 287-4148**

LD 145 - An Act To Require the Secretary of State To Notify Vehicle Owners of Impending Registration Expiration.

## **SUN POWER (cont'd)**

much above a residential roofline. While none are obvious, it is possible that a municipal code or ordinance may impact the ability to use a clothesline (e.g., cluttering a porch on a high-rise apartment with clothesracks may violate emergency egress codes). However, Rep. Hinck cited no instance where a Maine statute or municipal ordinance "had the effect" of prohibiting either a solar collector or a clothesline.

Rep. Hinck did cite two examples in Maine of homeowner association covenants in private subdivisions. One covenant apparently prohibited clotheslines and the other prohibited "electronic towers" including solar collectors. (Note: The term "solar collector" isn't defined in the bill, but it apparently includes equipment such as the standard, roof-mounted solar panels, as well as other devices and even structures that can be in an array of shapes and forms.)

Three people spoke in support of the bill.

The first was a woman from Thomaston who lived in a 10-unit subdivision which had a deed restriction that she did not realize was there. She did not identify any municipal ordinances or regulations as a problem.

The next testimony came from an activist named Bryan Wentzell who is the vice-chair of the Board of Directors of a group called, "Project Laundry List."

Project Laundry List has as one of its central advocacy goals the enactment of "right to dry" legislation such as LD 73. Mr. Wentzell cited no Maine municipal ordinance or regulation that acted as a barrier to drying clothes in the sun.

The last person to testify in favor of the legislation was Richard Davies on behalf of the Public Advocate's Office. Mr. Davies generally promoted the concept of energy conservation and the need to prohibit unreasonable restrictions on solar power. Mr. Davies did not cite any municipal ordinances or regulations which acted as unreasonable restrictions.

Testifying in opposition to LD 73 were representatives of the Maine Real Estate Development Association, the Maine Realtors Association, the Real Estate Managers Association, the Maine Apartment Owners Association, the Maine Planners Association and the Maine Municipal Association (MMA).

The concern for the developers and realtors was LD 73's prohibition on homeowner covenants. These groups felt that people freely purchase property in "planned" communities and these communities have any number of voluntary restrictions built into covenants or deeds. They felt that it was inappropriate for the Legislature to void existing contracts that Mainers had freely entered into and had come to rely upon over years and decades. The apartment owners and managers were concerned that property

owners (as opposed to the tenants) should be allowed to establish reasonable rules and regulations. The planners felt that there was no evidence justifying any state bans on municipal ordinance authority. Furthermore, state laws such as shoreland zoning also needed to be defended (although no one from the state agencies that lobby for these state laws attended the public hearing).

MMA shared the concerns detailed by the planners. In addition, MMA raised another concern about the legislative process generally. The Legislature utilizes any number of stakeholder groups, Governor's councils or other forums to review and develop targeted solutions to Maine issues. That was not done in this case. Consequently, the bill reads more like a solution to Florida or Arizona's problems, not Maine's.

Legislation which broadly sweeps aside hundreds of state statutes and codes and municipal ordinances and regulations because of problems experienced elsewhere may be enough justification to pass a law, but it does not solve Maine's problems. Rep. Hinck is an effective and passionate advocate for alternative energy. Municipal officials are more than willing to work with him and others to comprehensively review issues associated with reducing barriers to utilizing Maine's sunshine, as limited as that seems to be at times.