

Proposal for State Two-year Budget: Cut Property Tax Relief Programs by \$70 million

Governor Baldacci's proposed adjustments to the state budget to address a recent negative reprojection of state revenue were released Friday last week.

The reprojection punched a new \$570 million hole in the state budget covering a three-year period: a \$129 million hole in the current fiscal year and a \$440 million hole in the FY 2010-2011

biennial budget. With just two months to go in the current budget year, the Governor is proposing to address the FY 2009 problem with Rainy Day funds, some construction contingency funds, and some federal stimulus funds that can be spent at the Governor's discretion.

The programmatic changes are found in the Governor's revised propos-

als for the next two fiscal years. The lion's share of the negative impacts are found in the combined areas of state school funding and property tax relief programs.

\$70 million in cuts to property tax relief: The cuts announced on Friday to the various property tax relief programs are proposed additions to the various cuts to property tax relief that were found in the originally-proposed budget (see chart on page 3). This time around, the Governor is proposing:

- An additional 5% cut to municipal revenue sharing, making it a 15% reduc-

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Tax Committee Unwilling to Give Local Voters Any Say on "Service Charges"

A week ago the Taxation Committee held a public hearing on three bills that each in their own way would expand the authority of the voters at the local level to levy limited service charges on the tax exempt institutions that have no legal obligation to contribute financially toward the basic services that the host municipality provides them, such as fire protection.

Each of the three bills would have required any interested municipality to adopt an ordinance governing the service charge authority. In other words, no service charges would be levied against any exempt institution unless the local voters and local legislative body believed the service charge was appropriate.

On Thursday this week, the Taxation Committee killed-off all three bills. There is apparently zero legislative interest in giving authority to the local voters to establish any obligation on the part of nonprofit tax exempt institutions (such as the richly-endowed private colleges, medical institutions, the YMCAs, and the "501 (C)(3)" summer camps) to con-

tribute financially toward the fire protection, police protection and roadway repair and maintenance services they receive.

These committee decisions are not made in a vacuum. The Taxation Committee is speaking for the full Legislature. The Legislature is saying that all regular property taxpayers in those communities where tax exempt property is concentrated are appropriately required to pay for the protective services that the exempt institutions may require, and those taxpayers should not have any say in the matter. From the Legislature's perspective, that policy of privileged exemption promotes some form of "equity" in taxation.

The bills were:

LD 1146, sponsored by Representative Michael Celli of Brewer.

LD 1290, advanced by the Maine Municipal Association and sponsored by Senator Lisa Marché of Kennebec County.

LD 1314, sponsored by Representative Patsy Crockett of Augusta.

Highway Fund Reductions Lead to URIP Cuts

On Friday last week, the Transportation Committee received word from the Office of Fiscal and Program Review (OFPR) that the Highway Fund revenue projections for the current fiscal year (FY 2009) were down by \$16.7 million. In other words, the Transportation Committee is now tasked with balancing a nearly \$17 million gap in the Highway Fund with just two months to go in the fiscal year.

The Highway Fund picture for the upcoming biennium is not any rosier. Over the next two years (FY 2010 and FY 2011), Highway Fund revenues are expected to be down by \$42.3 million (\$16.0 million in FY 10 and \$26.3 million in FY 11).

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tion in total. That is on top of significant “natural” reduction in revenue sharing funds due to the negative economy. For example, between the December 1, 2008 and May 1, 2009 state revenue forecasts, the gross municipal revenue sharing value projected for FY 2010 dropped by 6.7%;

- A 10% reduction in the value of the Homestead Exemption (from a \$13,000 exemption to \$11,700), to be implemented retroactively to April 1, 2009;

- An additional 5% cut to Tree Growth reimbursement, making it a 15% reduction in total; and

- An additional cut to the Circuit Breaker program by imposing a stricter income limit to eligibility.

(Note: In the original round of budget cuts, the 10% reductions to all property tax relief programs included a 10% cut to the Business Equipment Tax Reimbursements (BETR), valued at \$12 million over the biennium. Although additional cuts are now being proposed for homeowner property tax relief programs (Circuit Breaker and Homestead), no additional reduction is being proposed for BETR.)

The value of the additional reductions in property tax relief programs announced on Friday is approximately \$28 million over the biennium. When combined with the property tax relief cuts originally proposed, the full impact is nearly \$70 million over the biennium.

\$78 million in cuts to K-12 education subsidy. For the first year of the biennium (FY 2010), the state subsidy cut to K-12 education associated with the latest round of negative adjustments is about \$9 million. That state-share cut,

however, is replaced with federal stimulus money originally allocated for the subsequent fiscal year (FY 2011). The more significant state-share cut to the public schools is a \$69 million reduction for FY 2011 relative to the flat funding base of \$956.5 million for the current year (FY 2009). Even when buttressed with the (revised) federal stimulus funding allocated for that year, the total state-plus-stimulus support for K-12 education is projected to be 48.5% of the total EPS allocation. The state share by itself would be just 45.5% of the total EPS allocation. There is now open discussion at the legislative level of entirely repealing the law adopted by the voters in 2004 which directed the Legislature to fund K-12 education at the 55% level.

Other cuts. It should be noted that there are additional cuts and “revenue enhancers” being recommended by the Governor outside of the realm of local government and property taxes. Some of those additional cuts are:

\$77 million in state income tax adjustments/increases and enhanced collection. The proposal to obtain more revenue from the state’s income tax comes in two categories: (1) effective increases to both individual and business income tax obligations during the biennium; and (2) increased efforts to improve income tax collections. An example of the first category is a freezing of the income tax brackets, which are otherwise indexed annually to inflation, as well as retaining the current level of the standardized state income tax deduction rather than going along with the more generous standard deduction being offered at the federal level. Freezing the four income tax brackets keeps more income taxpayers exposed to the higher marginal income tax rates than would otherwise be the case. Another example is a two-year elimination of an option businesses have to deduct from their taxable income certain losses previously experienced (the so-called net operating loss carryforward, or NOL). The elimination of the NOL carryforward option is slated to generate nearly \$17 million over the biennium, and its recommendation here may be why no additional cuts to the BETR program are also being recommended.

Examples of the “enhanced collection” category include a tax amnesty-

type program, the hiring of two additional income tax enforcement staff, etc.

\$37.5 million in cuts/efficiencies to be identified by a streamlining commission. Creating commissions charged with identifying efficiencies and spending reductions and then booking those presumptively-created savings is becoming commonplace. During the administration of Governor Angus King, the so-called “Productivity Realization Task Force” was created to find \$45 million in state savings. In this case, a streamlining commission made up of state finance commissioners and several legislators from both political parties is charged with looking at certain aspects of state government and identifying ways to save \$7.5 million in FY 2010 and \$30 million in FY 2011.

\$36 million in cuts to Human Services programs. There are five specific categories of proposed cuts to programs overseen by the Department of Human Services. We are not qualified to describe those programs with any expertise, but they appear to tighten-up eligibility and reimbursement for certain children services programs, discontinue the utilization of multiple case managers in the Medicaid program, reduce state financing of home support services, and reduce in a relatively modest way access to certain pharmaceuticals through Medicaid.

\$27 million in cuts to state employees. The reductions in state employment are achieved by scheduling 12 “state shutdown” days for each year of the biennium, which are to be scheduled adjacent to existing holidays when possible. Also, new state employees would be required to contribute 15% toward their health insurance. In addition, all state employee merit pay increases that would be provided over the biennium would be cancelled. Merit pay increases tend to apply to state employees who have been employed in their positions for less than six years.

\$15 million in hospital reimbursement reductions. According to a previously-established, multi-year schedule to pay Maine’s hospitals for long-past-due Medicaid reimbursement, the hospitals were going to be paid \$57 million next year. This proposal would cut that payment by \$15 million, but place the

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Municipal Program Cuts In Governor's Budget Review

Property Tax Relief Program	Original budget cut (over biennium)	5/1/09 additional cut (over biennium)	Total
Revenue sharing 15%	\$26.5 million	\$12.5 million	\$39 million
Revenue sharing (efficiency fund)	\$4 million	No change	\$4 million
Circuit Breaker reductions	\$8.6 million	\$9 million	\$17.6 million
Homestead exemption	— \$0 —	\$5.7 million	\$5.7 million
Tree Growth reimbursement reduction	\$1.2 million	\$.6 million	\$1.8 million
Total	\$40.3 million	\$27.8 million	\$68.1 million

BUDGET (cont'd)

hospitals as the first-in-line recipients of any unappropriated state financial surpluses in the future until that \$15 million is paid.

MMA's response. On Monday this week, MMA responded to the Governor's proposal during a comment period scheduled by the Appropriations Committee for that purpose. The comments incorporated three observations:

1. The Legislature and Administration should be cognizant of the impacts of its decisions on local government and Maine's property taxpayers, and discontinue their assertions that they are going to balance the state budget "without raising taxes".

2. At whatever value the Legislature is going to set the Homestead Exemption, it should be a rounded-off and preferably even-numbered value, and the change in exemption value should not be put into effect retroactively to April 1 because some municipalities have already committed (or are about to commit) their taxes with the exemption established at the \$13,000 level, as currently required by law.

3. The municipalities can no longer wait to find out what precisely the Legislature is going to do with the Homestead Exemption, Revenue Sharing and Tree Growth reimbursement programs. The proposed municipal budgets, which are heading off to the voters, need to be finalized.

HIGHWAY (cont'd)

The major culprits of the decrease in revenues are declines in fuel tax revenue and motor vehicle registration fees. In

FY 09, the decline in these two resources account for \$16.3 million, which is 98% of the total shortfall. In FY 10, fuel tax revenue and motor vehicle registration revenue is projected to account for \$14.9 million (93%) of the shortfall and in FY 2011 \$25 million (96%).

At a minimum, the impact on municipalities will be a loss of local road assistance funding provided under the Urban/Rural Initiative Program (URIP). Since the amount of revenue dedicated to the program is 10.4% of the funds dedicated to the state's bridge and road maintenance and repair program, it is expected that reimbursement to municipalities will be reduced by \$1.6 million in FY 2009. Over the FY 10 – FY 11 biennium, the reduction to URIP is expected to be \$4.2 million.

While the impact to municipalities over the next three years would appear to be \$5.8 million, it does not take into account any other changes the Transportation Committee and the Legislature might make when it tackles this new

funding hurdle. For example, the FY 2010-2011 biennial Highway Fund budget includes a \$5 million deappropriation from the local road assistance program.

Representatives of the Department of Transportation (MDOT) are suggesting that the \$5 million in "cash" being deappropriated from municipal URIP funding will be replaced with \$5 million in borrowed bond revenue; that is, if the voters approve the transportation bond in June. It is unclear why MDOT doesn't expose itself rather than the municipalities to the \$5 million Fund-to-Bond exchange if it is such a good idea.

Municipal officials oppose the proposal as it could shift additional burden onto the property taxpayers. Municipal officials also find the proposed deappropriation unfair, especially since the state received \$130 million in federal stimulus funds, not a penny of which was spent on local roads.

As of Thursday of this week, the Transportation Committee had not yet addressed the URIP issues in detail.

LEGISLATIVE HEARINGS

Tuesday, May 12

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

LD 1467 – An Act Relating to the Carrabassett Valley Sanitary District.

Thursday, May 14

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

LD 1472 – An Act To Require a Municipality to Quiet Title to Certain Roads Acquired by Adverse Possession.

LD 1475 – An Act To Correct Errors and Inconsistencies in the Laws of Maine.

Greater Permitting Efficiency

Developing a commercial real estate development project can be a long a process. It requires a gauntlet of reviews, meetings, hearings, permits and approvals. This process, while arduous, helps protect important public interests and concerns such as traffic, noise, environmental protection, utility/infrastructure sufficiency and safety.

While eliminating the process is not an option, improving it is always a goal. LD 1242, *An Act to Streamline the Regulatory Process for Commercial Building Construction Projects*, sponsored by Representative Anne Haskell (Portland) seeks to provide a modest improvement in the efficiency of the current process. This bill is a priority for Maine Municipal Association this session.

The bill would allow one of the “plan reviews” now conducted by the State Fire Marshal’s Office to instead be reviewed by a qualifying municipality. The qualifying municipality would be delegated the review function by the Department of Public Safety. The bill is closely modeled on the existing delegation statute in environmental law which authorizes the Department of Environmental Protection to delegate some of its permitting authority to municipalities.

Under current law, the Fire Marshal’s Office reviews the architect’s plans of commercial projects to determine if the project is in compliance with the state’s fire code. However, in larger municipalities most other code reviews – building code, electrical code, and plumbing code – are conducted locally. A modest improvement in efficiency could occur if the municipality doing the building, electrical and plumbing code reviews also had the authority to do the fire code review.

Fire code review is a serious function and should only be delegated to qualifying municipalities. The bill establishes several preconditions that must be met in order to qualify for delegation. Those qualifications include – the municipality must have a building inspector who is inspecting according to the standards of the the statewide building code, it must have a plan reviewer certified by the National Fire Protection As-

sociation (the group that writes the fire code) on staff, it must adopt the fire code locally, and it must demonstrate it has the resources to enforce the code, and others.

To put this in context, under existing “Site Law” delegation statutes only fifteen municipalities have been delegated permitting authority from the state today. There is no reason to believe that there would be any more or less than this seeking fire plan review authority.

Also, the state currently provides plan reviews for several sensitive developments for which the bill would not allow local reviews. For example, LD 1242 does not allow the state to delegate plan review authority for hospitals, nursing homes, schools, state buildings and other similar structures. Municipalities are only seeking plan review for “routine” commercial projects.

Finally, the bill does not remove from the Fire Marshal’s Office its current responsibility to review plans for compliance with the Maine Human Rights Act (e.g., accessibility issues).

In addition to the Maine Municipal Association, supporters included the Maine Service Center Coalition, the Maine Real Estate and Development Association and Associated General Contractors of Maine. The two primary arguments offered in favor of the bill are that it would improve the efficiency of the review process and that it might even improve public safety. Currently, the Fire Marshal’s Office lacks the staff to conduct field inspections for the majority of the projects it permits (it appears that they inspect approximately 10% of the projects they permit.). It only reviews the “paper plans” for the project and does not do the on-the-ground inspections. By contrast, municipal inspectors routinely visit a project, and larger commercial projects are inspected multiple times by municipal inspectors. Thus, municipalities are often in a better position than the state to verify that a code is being followed.

The only opponent of the legislation was the Fire Marshal’s Office (FMO). The first argument offered by the FMO was that since it would still be doing

accessibility reviews, the degree of efficiency achieved by the bill is modest. While true, that’s akin to saying that a lifeboat can only save a few people and so why bother having any lifeboats at all. Even modest improvements in efficiency are worth exploring.

The second argument offered by the FMO is significant and the Committee appeared interested in understanding this issue further. The Fire Marshal’s Office alleged that it receives calls on a daily basis from municipal inspectors who “are being pressured to overlook certain regulations to allow buildings to be built.” In other words, senior town officials can be indifferent to public safety and sometimes instruct employees to disregard state law and municipal ordinances.

Rich McCarthy, a plan reviewer in the FMO, went further and testified that he had received a call the morning of the public hearing from an “ex-municipal” employee who was fired from his job because he wouldn’t compromise public safety and ignore a code as he was pressured to do. The municipality and the ex-official were not named.

This allegation surprised the Criminal Justice and Public Safety Committee. The Committee asked what steps the FMO was taking to see that the proper authorities were going to investigate the issue. Mr. McCarthy indicated that he had just received the call that morning and would report back to the Committee at the work session.

MMA was also very surprised to hear such an allegation. As many legislators will recall from last session’s debate on a statewide building code, one of the central issues was whether municipalities should be required to enforce the code. The issue was debated from every angle, but not once did any proponent or opponent suggest that municipalities should not be trusted to enforce the statewide building code because of inappropriate influence. In fact, the Fire Marshal’s Office was a strong and visible proponent of the statewide building code, yet not once did the FMO suggest that it received “daily” complaints from municipal inspectors complaining of undue pressure from municipal officials to permit non-code compliant projects.

Finally, this allegation was particu-

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Noncitizen Voting Rights

On Monday this week, the Legal and Veterans Affairs Committee held a public hearing on LD 1195, *An Act to Allow Noncitizen Residents to Vote in Municipal Elections*. The bill, sponsored by Sen. Justin Alford of Cumberland County, would authorize municipalities to adopt ordinances allowing noncitizen residents to vote in municipal elections.

As would be expected, the bill generated much attention and during the two hour public hearing the Committee heard from many proponents and opponents of the bill.

On behalf of MMA's Legislative Policy Committee, MMA submitted written testimony in opposition to the bill. The issue for municipal officials is not whether noncitizens should be afforded the right to vote; rather, it is that if this right is to be provided, it should be provided uniformly both across municipal lines and with respect to both state and local elections. As a matter of public policy, municipal officials believe that the existing voter qualification requirements are well-founded, important and should be applied uniformly at the state and local level. The state has already determined that the right to vote in state or local elections is based on several eligibility requirements, including U.S. citizenship.

If the Legislature believes that non-citizens deserve the opportunity to participate in the electoral process, then municipal officials believe that the right should be extended to all state and local elections. This is too important of an issue to be applied piecemeal across the state.

Municipal officials also believe that the implementation of the proposal, albeit voluntary, would be costly. It is not as simple as merely allowing noncitizens the right to vote. Municipal election officials would be required to create, monitor and manage a separate voter system for noncitizen voters. Furthermore, while the choice to allow noncitizens the right to participate in municipal elections is left to the community to decide, it puts municipal

officials in the unenviable position of having to say no.

Deputy Secretary of State, Julie Flynn, testifying "neither for nor against" LD 1195, provided the Committee with technical information regarding voter eligibility standards as well as guidance as to how the bill should be amended. As provided by Maine statutes, Title 21-A guides federal, state and county elections and Title 30-A, guides municipal elections. In the "Title 21-A elections", voters must be U.S. citizens. In the "Title 30-A elections", voter eligibility standards are governed solely by Title 21-A. In other words, under existing law participants in elections at all levels of government must be U.S. citizens.

However, due to the fact that voter eligibility standards are addressed in two different statutes, Ms. Flynn suggested that if the Committee wanted to adopt the policy change proposed in LD 1195, the Committee should amend Title 30-A to authorize municipalities adopt ordinances allowing noncitizen residents to vote in municipal elections. The Deputy Secretary's proposed amendment also clarifies that the municipalities would have to maintain a separate noncitizen resident voter registration system. This provision was included as part of the Secretary's proposed amendment because municipalities would not be able to use the existing central voter registration (CVR) system. The CVR system is designed to meet federal and state voter registration requirements.

ACTION ALERT

Senate Approves Cancer Presumption Legislation

As a dozen uniformed firefighters watched from the sidelines, the Senate debated and voted on LD 621, *An Act Allowing Worker's Compensation Benefits for Firefighters Who Contract Cancer*. The Senate vote was 22-13 in favor of the bill as amended by the Committee.

MMA strongly opposes this legislation. There were three primary arguments in favor of the bill made by Senate supporters. First, firefighters do a dangerous job and we should be thankful. Municipal officials are, but that does not justify the bill. Second, there is some science that indicates that firefighting may increase a person's chance of contracting cancer. While true, the science is not settled, applies to dozens of private-sector occupations for which there are no "rebuttable presumptions", and the issue of causality should be debated in the existing workers compensation process, not in the Legislature. Third, other states have adopted this bill without significant financial cost. Proponents have offered no evidence of the cost of this bill in other states. They repeatedly point to the workers compensation rate in Vermont following enactment of a similar cancer presumption bill in 2007. There, the overall workers compensation rate dropped. Are we really to believe that this bill will lower workers compensation rates? There is a reason twelve firefighters lined the halls on Thursday – this bill provides a significant benefit that Maine's property taxpayers will pay for.

A more-carefully crafted amendment was offered by Senator Peter Mills (Somerset County) but was defeated by a vote of 18-17. Unless the Senate amends the bill, action next moves to the House of Representatives. MMA would urge municipal officials concerned with this legislation to contact their State Representatives.

(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.)

Business, Research & Economic Development

LD 1473 – An Act To Reaffirm Maine's Commitment to Business by Amending the Pine Tree Development Zone Laws. (after deadline) (Sponsored by Rep. Smith of Monmouth; additional cosponsors.)

This "concept draft" bill proposes to expand the eligibility for designation as a Pine Tree Development Zone to the entire state.

Criminal Justice & Public Safety

LD 1466 – An Act To Establish the Maine Fire Protection Services Commission Length of Service Award Program. (Reported by Rep. Haskell of Portland for the Maine Fire Protection Services Commission.)

This bill establishes what appears to be a defined-contribution pension program for volunteer firefighters, emergency medical services personnel and ambulance personnel. The administration of the pension program would be administered by the Maine Fire Protection Services Commission, which is the sponsor of the bill. Under the terms of the bill, the Commission would accept and manage funds provided to the Commission for this pension purpose from the state, municipalities, federal government, non-profit fire companies, or actual participants. The Commission would manage the funds according to a menu of investment strategies for each participant. The firefighters or EMS/ambulance personnel would vest in the system after achieving 5 years of creditable service, and could draw down their pension funds at the age of 60 or after achieving 20 years of service. In order to be credited as achieving a year of service, each municipal fire department would have to post a list of firefighters/EMS/ambulance personnel that should be credited with a year of service. That posting would have to be made locally for a minimum 30-day period in order to allow local appeals with respect to who is on or not on the list. No later than May 1, the

listing would have to be transmitted to the Commission. The structure of this legislation is to set up a pension system for volunteer firefighters/EMS workers but no actual funding mechanism is provided. The pressure to fund the system will presumably follow. The bill would nonetheless mandate the annual municipal identification of eligible volunteer firefighters or other qualifying employees for the pension.

Judiciary

LD 1472 – An Act To Require a Municipality to Quiet Title to Certain Roads Acquired by Adverse Possession. (after deadline) (Sponsored by Sen. Marraché of Kennebec County; additional cosponsors.)

This bill establishes that if a municipality obtains a public road by means of adverse possession and subsequently abandons the road, the municipality must prove that the title to the road was established by court decree or else the claim of ownership by adverse possession is void.

EFFICIENCY (cont'd)

larly unexpected because the FMO currently encourages municipalities to enforce the state's fire code for residential property. The FMO adopts a fire code governing residential property but it does not enforce it. The only entities to enforce the fire code for residential property are municipalities. If the FMO is aware of routine "undue political pressure on the fire or building official", why would the FMO encourage municipalities to enforce the fire code for residential property at all?

MMA questions this allegation of inappropriate influence offered by the FMO in its opposition testimony. The fact that municipalities routinely enforce the State-adopted fire code (for residential property), electrical code, plumbing code and some environmental statutes should provide legislators a high degree of comfort that qualifying municipalities will professionally enforce the fire code for commercial property.

The work session is scheduled for Friday, May 8th