

## Supplementally Reducing Supplemental Reductions

Until now, the challenge for state lawmakers this legislative session has been to adjust the state's two-year budget to address a projected \$95 million shortfall in General Fund revenue, with \$37 million of that shortfall falling in the present fiscal year (FY 08) and \$58 million of the shortfall falling in the upcoming state fiscal year (FY 09).

That challenge was doubled in size last week when the Appropriations Committee sent a letter to each of the legislative joint standing committees asking them to recommend spending reductions for the state agencies under their respective jurisdictions to address an additional \$99 million shortfall. The \$99 million shortfall is over and above the \$95 million in reductions that are advanced in the Governor's proposed supplemental budget.

The exact basis of that additional \$99 million shortfall is not entirely clear, but it is apparently an attempt on the part of the Appropriations Committee to combine the potential impacts of a predicted new revenue forecast due at the end of February with reductions in federal financial support to the state associated with impending federal regulatory limitations that are due to sweep through the Medicaid program (MaineCare) over the next several months.

A particularly interesting element of the Appropriations Committee letter reads as follows:

*"We know that committees are unlikely to find sufficient budget savings by cutting small amounts from each of many programs. After years of trying to perform the same functions with fewer*

*resources, we expect that many departments cannot continue to do the same with less. We are asking policy committees to prioritize the programs and functions of each department based on the importance to meeting the needs of the citizens of the State, and make a recommendation as to which lower-priority programs or functions should be eliminated. We are also asking the policy committees to provide the Appropria-*

*tions Committee with an impact statement for each newly proposed program reduction or elimination, explaining its impact on the service needs of the people of the State."* (underline added)

Against that backdrop, the Appropriations Committee will soon be hearing the various recommendations from the 16 other joint standing legislative committees that deal with public policy. We will endeavor to report in next week's *Legislative Bulletin* whatever recommendations are made that directly relate to local government.

**Education Committee and "reconstructing" the ramp to 55%.** With re-

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## LPC Frames Position on Jail Consolidation Effort

On Thursday this week, MMA's Legislative Policy Committee (LPC) framed its position on the financing elements of the proposed state/county jail consolidation proposal. As a result of the discussion at its February 14<sup>th</sup> meeting, the LPC directed staff to develop a package of recommendations, to be shared with the members of the Legislature's Criminal Justice Committee and interested county and state officials, that focus on the financing aspects of the state/county jail consolidation effort.

**1. Property Tax Freeze Calculation.** As provided for in the state/county jail consolidation proposal, property taxpayer exposure to county jail costs would be frozen in time to the amount assessed in 2008. As reported in last week's edition of the *Legislative Bulletin*, it is estimated that in 2007 64% of the total county property tax assessment paid for jail operations and debt, representing

somewhere between \$73-\$78 million, depending on whose accounting system you use.

Maine's municipal officials are willing to take the proponents of the county jail/state prison unification system at their word that a freeze on the property tax exposure to a statewide corrections system is the financial foundation of this proposal, will endure over time, and will be constructed in such a way that it will be an accurate and complete freeze and will not be violated.

Accordingly, the LPC directed staff to craft language for a tax assessment freeze proposal that prohibits the collection of more than the calculated amount necessary to cover the 2008 cost of all jail operations. Under the LPC plan, the actual 2008 jail operation cost figure (excluding debt), an estimated \$63 million, would be written into the law. This

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## REDUCTIONS (cont'd)

gard to the state's General Fund appropriations for education, the total reduction target given to the Education Committee associated with the newly-identified \$99 million shortfall was \$47.4 million. After excluding higher education, the portion of that reduction target associated with K-12 public education was \$37.2 million.

Last week, the Department of Education suggested to the Education Committee that more than 96% of that K-12 target could be achieved by scaling back the FY 09 appropriation for General Purpose Aid to Education (GPA) by \$36 million, from the \$1.017 billion in the Governor's proposed supplemental budget, to \$980.7 million. This reduction represents an effective flat funding of GPA from FY 08. According to the Department of Education plan, the actual mechanics of flat funding GPA would be accomplished by:

- **Freezing the inflation factor.** The proposal is to freeze at previous year levels the inflation rate index that is used to adjust various components of the Essential Programs and Services (EPS) school funding model. The Consumer Price Index (CPI) is currently at 3.3%. According to this plan, the CPI-based adjustment would be frozen at 2.9%;

- **Reducing subsidy to minimum receivers.** The proposal would also cut the special education-based minimum subsidy for "minimum receiver" school systems. The alternative minimum subsidy would be reduced down from 100% of modeled special education costs (which is where that subsidy level is supposed to be according to the original LD 1 ramp) and down from 84% of mod-

eled special education costs (which is where that subsidy has been frozen in the ramp since LD 1 was enacted) to just 50% of the modeled special education costs; and

- **Lengthening the ramp to 55%.** Instead of providing 55% of the cost of K-12 education as measured by the EPS model at 100% (which is where the distribution model is supposed to be according to the original LD 1 ramp), provide approximately 53% of the EPS model. This would be accomplished by providing 53.56% of 97% of the EPS model. (Applying fractional percentages to fractional percentages of the EPS model has been part of the bizarre lexicon of the "ramp-up" to 55% since LD 1 was enacted in 2005.)

The sum of these changes produces a "savings" to the state of \$36 million in state appropriations to support the public schools in FY 09. According to the Department's plan, this would be applied on top of the \$36.5 million in "savings" in state support for the public schools for FY 09 that was booked last year when the school consolidation law was enacted.

**Gubernatorial reaction.** According to a published newspaper report (*Portland Press Herald*, 2/13/08), Governor Baldacci is asking his Education Department to rethink its proposal to meet its targeted K-12 reductions almost entirely by reducing the subsidy appropriation to the public schools. According to that news story, the Governor has asked the Department "to 'come back with new options' because the cut in school aid was unacceptable to him." In that news story, a spokesperson for the Governor was quoted as saying "(The Governor) wants to make sure we explore everything else first."

**Taxation Committee.** In contrast, the policy of exploring the state's service delivery system first was fully adopted by the Taxation Committee, which was charged with identifying \$2.5 million in cuts to the state agency it oversees, Maine Revenue Services (MRS).

In addition to being the state's entire tax collection department, Maine Revenue Services also administers a long list of complex tax benefit programs, including the Homestead property tax exemption program, the Business Equipment

Tax Reimbursement program (BETR), the so-called "Circuit Breaker" property tax and rent rebate program, and the municipal reimbursement systems associated with the Tree Growth program, the Veterans' tax program, etc. Although MRS doesn't technically administer the municipal revenue sharing system (which is done through the State Treasurer's Office), the agency is directly involved in managing the underlying information that supports the municipal revenue sharing distribution.

At the request of the Taxation Committee, MRS provided a list of the projected dollar value of all of these property tax relief and property tax exemption reimbursement programs for the next three fiscal years.

As might be expected, the list generated a number of ideas among the Committee members about how the \$2.5 million target under "Maine Revenue Services" might be easily met.

One idea was to reduce the Homestead property tax exemption from its current level of \$13,000 to \$9,000, to "save" \$8.6 million.

Another idea was to change the law governing municipal revenue sharing to change its gross level of funding from 5.1% of all General Fund sales and income taxes to 5%, to "save" \$2.6 million.

Another idea was to reduce the Homestead exemption (to municipalities), the BETR reimbursements (to businesses) and the Tree Growth reimbursements (to municipalities) by across-the-board factors such as 5% or 10% to "save" similarly significant sums.

At the guidance of Committee Chair Rep. John Piotti (Unity), the Committee elected to first focus on actual restructurings of the state agency's service delivery system before even thinking about making cuts to the property tax relief programs.

As a result of that effort, the Committee ultimately adopted a proposal to restructure MRS auditing staff statewide. The core of that recommendation would be to close the MRS office in Houlton, eliminate 8 currently-filled auditing positions and eliminate 4 currently vacant positions within the department. The net savings associated with that proposal would be \$700,000. In addition,

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# Sensible Transportation Policy Act

The Transportation Committee took testimony last week on a bill with the goal of strengthening the ties between transportation planning and land use planning. The bill is LD 2165, *Resolve, Regarding Legislative Review of Chapter 103: Sensible Transportation Policy Act, a Major Substantive Rule of the Department of Transportation*.

Maine voters at referendum adopted the Sensible Transportation Policy Act (STPA) in 1991 (during the debate over the widening of the Turnpike). The Act contains a series of policy goals some of which have been addressed to a greater degree than others over the years. Five years ago, the Legislature directed the Department of Transportation (DOT) and the State Planning Office (SPO) to develop a rule that links the STPA goals and municipal planning under the Planning and Land Use Regulation Act. Chapter 103 is this rule.

As explained by the DOT, the goal of the rule is to *“encourage a land use pattern that promoted walking, bicycling, transit and rail use. Such land use patterns are envisioned to ultimately reduce the amount of vehicle miles traveled (VMT) and help slow down the detrimental service life and environmental effects that VMT has on the highway system.”*

An often-cited example of what this means is that the State would like to see municipalities promote/force residential development in more dense, compact and mixed-use patterns. It is asserted that more dense development will allow people to either get out of their cars (and walk or bike) or more efficiently use existing roads.

The proposed rule will attempt to influence local planning decisions in three ways. First, the rule will be used by DOT and SPO as they review local comprehensive plans for consistency with the state’s Growth Management Act. To that end, the DOT has commissioned the development of a technical

handbook designed to help municipal planners navigate the rule. MMA was one of many groups and individuals DOT invited to participate in the crafting of the handbook (which should be finalized shortly).

Second, the DOT will undertake further rulemaking to award “bonus points” to communities that have implemented planning policies consistent with the rule as these communities seek DOT funding for various highway projects. That rulemaking is scheduled to begin this spring.

Third, the DOT hopes to provide financial incentives including a reduction in local match requirements or enhanced state funding for certain projects for communities that have adopted planning policies that further the STPA goals.

At the public hearing on LD 2165, only the DOT and Maine Turnpike Authority testified in favor of the bill. The issue that generated the most interest among committee members was where the funds will come from to provide incentives for municipalities. In particular, several committee members were concerned that existing highway budgets that are used for vital maintenance and repairs to Maine’s roads will be depleted for other purposes, such as rail lines or bike paths.

The DOT was clear that the decision about where the funding comes from is a legislative decision. The Legislature directed DOT to develop the rule and provide an incentive program. The next step is for all interested parties to find the revenues to realize those incentives.

No one testified against the bill.

John Melrose on behalf of the Maine Better Transportation Association and Beth Nagusky on behalf of GrowSmart Maine testified “neither for nor against” the bill. The two had similar messages. They each supported the idea of strengthening the connection between state transportation investment policy and local land use

policy. However, they both felt that the rule does not go far enough.

They each felt that since the incentive funds don’t yet exist, the rule would not achieve its purpose. They suggested looking at the way state funds are disbursed to municipalities. In particular, they felt that the state is subsidizing sprawl by providing too much money to rural communities and not enough money to urban areas for various road purposes.

The issue of allocating highway funds, particularly through the Urban Rural Initiative Program (URIP) is a very sensitive issue for municipalities and the Transportation Committee. Representative Doug Thomas (Ripley) challenged the assertion that rural roads are over-subsidized. He also challenged the underlying notion of the government telling Maine citizens where they should live. He believes a central element of “quality of place” is the freedom to choose the place you would like to live.

Ms. Nagusky responded that GrowSmart does not want to tell people where to live, “if people want to live in the willy-wags they can, they should just pay for it.”

Municipalities share the Committee’s concerns about finding the source of incentive funding. That is, incentives are the right way for the state to promote its policies. However, if vital maintenance funds are redirected — especially when there are currently not enough resources to do the job right — either Maine’s roads will suffer or local property taxes will have to increase to make up the shortfall.

MMA hopes DOT and the Legislature are able to keep to the original goal of finding new incentives for the promotion of the state goals in the STPA rather than getting caught-up in the desire of some to revisit URIP funding formulas or other existing programs vital to Maine’s road infrastructure.

## JAIL (cont'd)

approach would set in law the fixed and frozen assessments, from FY 2008 and beyond, to be paid by municipalities through the county assessment for jail operational services.

The process for calculating county jail-related expenditures is also of interest to municipal officials. In order for the freeze to work, all costs associated the county jail operations need to be calculated. That includes the portion of the county administrator's salary used to manage county jail operations, for example. At the meeting, LPC members also suggested looking at the impact the assessments for boarding prisoners have on the total property tax assessment. Municipalities from counties that pay those assessments raised concerns that the snapshot of 2008 costs for county jail assessment could overstate the actual cost of jail operations. In speaking to members of the state/county jail consolidation negotiations team, mechanisms for addressing that "boarding fee" issue are being considered.

For these reasons, municipal officials support the creation of a detailed survey to be completed by all county administrators. Although counties are familiar with the costs associated with jail operations, the way those costs are reported may not be uniform from county to county. To assure uniformity, the survey tool must explicitly define what is to be included in each line of the jail-cost data.

**2. Funding County Debt.** According to data prepared by the State Planning Office, an investment of \$112.6 million is needed to retire existing county debt over the next twenty years (2008-2027). Ten counties currently have debt requirement obligations, ranging in amount from \$26,850 in Aroostook County to \$44.5 million in Somerset County. As part of the state/county consolidation plan, the state agreed to take over the county debt obligation.

Although some may have assumed that the state would use its own revenue to fund the debt payment take-over agreement struck with the counties, tough financial times have caused the state to look to municipal sources of revenue as a mechanism for funding this part of the

agreement. One municipal revenue source considered as a resource used to cover the debt service obligation was revenue sharing. As proposed for consideration, the property taxes paid to counties for debt repayment would be replaced with a corresponding reduction in municipal revenue sharing...a so-called "revenue sharing swap".

While the municipalities were asked to consider the swap idea as being revenue neutral, as well as a being a strategy for mitigating against additional legislative raids of revenue sharing, LPC members weren't buying the arguments. In fact, the LPC directed MMA staff to fight all efforts to raid revenue sharing. Municipal officials agree with others that the first response to dealing with state financial shortfalls should not be raising taxes, and that includes the property tax.

In addition, municipal officials are concerned that the revenue sharing proposal will shift burden away from the county portion of the total property tax assessment to the municipal portion of the property tax burden. While the counties would get "credit" for reducing the portion of the tax assessment they no longer need to collect in order to repay the debt, the municipalities would be on the hook for either a tax increase or for cutting municipal services to account for the reduction in revenue sharing.

The plan presented to the municipalities also recommended that municipalities annually forego \$10.2 million in revenue sharing funds for the rest of time, not only for the purpose of retiring the existing debt (which would mean declining payments over a fixed period of time) but to create a reserve account to fund future jail debt and new program costs.

The LPC recommended cooperating with the state by continuing to fund debt payments through property tax assessments, until all of the debt is finally retired in 2027. After which, all further county debt would be the responsibility of the state to fund with state resources. As designed by the LPC, counties would continue to annually assess municipalities for payment of debt until finally retired. Under the LPC plan, the existing county debt would be aggregated, and that aggregated debt would be retired by all municipalities in a value-based apportionment through county taxes ac-

ording to its current amortization schedule.

**3. LD 1 Limits on County Tax Assessments.** Under the proposed state/county consolidation plan, property tax assessments for county jail operations would be frozen and no longer eligible for the growth increases provided for under LD 1. For that reason, the LPC recommended amending existing LD 1 law to apply the growth limit only to the property taxes necessary to fund non-jail services. Under this approach, the FY 2008 base would be recalculated to include only the property taxes needed to fund non-jail services and the growth limit applied to that newly established base.

As provided for under LD 1, the portion of the total property tax assessment used to fund municipal and county services is limited to the growth in average real personal income plus the growth in new property value in the community. While the state calculates the income growth factor for municipalities and the state, municipalities are required to calculate the property growth factor, which make sense since municipalities have direct access to the necessary data.

However, the counties are also responsible for calculating a countywide property growth factor. The assignment of the property growth factor calculation task to the counties is overly burdensome. In order to obtain the data, the counties must survey communities annually for the information. MMA staff has heard complaints from both municipal and county officials about the current countywide property growth factor calculation process. For that reason, the LPC recommended that the LD 1 laws be amended to require the state tax assessor to annually calculate the property growth limit on behalf of the counties, just as the State Planning Office does for the income growth factor.

**4. Board of Corrections Membership.** Under the state/county jail consolidation plan, the nine-member Board of Corrections is tasked with overseeing the unified system. As reported in several past editions of the *Legislative Bulletin*, elected municipal officials are expressly prohibited from being appointed to the Board. As proposed by the state/county

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## LEGISLATIVE HEARINGS

(Note: Next week there are very few public hearings scheduled due to February vacation. We are therefore posting the hearings that have been scheduled for the following week. That schedule is subject to change, however, so be sure to check the hearing schedule we will publish next Friday.)

### *Monday, February 18 – HOLIDAY*

### *Wednesday, February 20*

#### **Criminal Justice & Public Safety**

**Rm. 436, State House, 10:00 a.m.**

**Tel: 287-1122**

LD 2187 – An Act To Allow Limited Charitable Solicitations by Law Enforcement Associations.

### *Monday, February 25*

#### **Health & Human Services**

**Room 209, Cross State Office Building, 1:30 p.m.**

**Tel: 287-1317**

LD 2166 – Resolve, Regarding Legislative Review of Portions of Chapter 294: Rules Governing the Qualifications for Local Health Officers, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

#### **State & Local Government**

**Room 216, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1330**

LD 1974 – Resolve, To Prevent the Closing of Store Road in Somerset County.

LD 2188 – An Act To Amend the Municipal Boundary Between the Town of Old Orchard Beach and the City of Saco.

LD 2201 – An Act To Require a Municipality To Move a Body Buried in the Wrong Grave.

### *Tuesday, February 26*

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

**Room 208, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1331**

LD 2186 – An Act Regarding the Operations of the Greater Portland Public Development Commission.

#### **Taxation**

**Room 127, State House, 1:00 p.m.**

**Tel: 287-1552**

LD 2151 – An Act To Make Minor Substantive Changes to the Tax Laws.

LD 2154 – An Act Concerning Technical Changes to the Tax Laws.

LD 2202 – An Act To Allow the Town of Kittery To Implement a Program To Abate Taxes for Senior Citizens in Exchange for Public Service.

#### **Transportation**

**Room 126, State House, 1:00 p.m.**

**Tel: 287-4148**

LD 2176 – An Act Relating To Studded Tires.

LD 2196 – An Act To Make Supplemental Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009.

### *Wednesday, February 27*

#### **Judiciary**

**Room 438, State House, 1:00 p.m.**

**Tel: 287-1327**

LD 2198 – An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Training for Elected Officials.

#### **Labor**

**Room 220, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1333**

LD 2177 – An Act To Correct the Law Regarding Portability of Pension Benefits for Law Enforcement Officers and Firefighters.

LD 2205 – An Act To Further Clarify Worker Payments for Clothing and Equipment.

### *Thursday, February 28*

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

**Room 208, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1331**

LD 2179 – An Act To Promote Residential and Commercial Energy Conservation.

### *Friday, February 29*

#### **Health & Human Services**

**Room 209, Cross State Office Building, 9:00 a.m.**

**Tel: 287-1317**

LD 2148 – An Act To Improve the Health of Maine Communities and Reduce Emergency Care Burdens.

## IN THE HOPPER

#### **Appropriations & Financial Affairs**

LD 2208 – An Act To Provide Additional Funding for the Low-income Home Energy Assistance Program. (Sponsored by Rep. Cummings of Portland; additional cosponsors.)

This bill transfers \$5 million from the state's budget stabilization fund, or Rainy Day fund, for the purpose of supplementing the federal Low Income Heating Assistance Program (LIHEAP) which grants an allotment of heating fuel to income eligible households.

#### **Legal & Veterans Affairs**

LD 2206 – An Act To Improve the Operation of "Texas Hold 'Em" Tournaments. (Sponsored by Sen. Schneider of Penobscot Cty; additional cosponsors.)

This bill authorizes non-profit charitable, educational, political, civic, recreational, fraternal, patriotic, religious or veterans' organizations to hold up to six "Texas hold-em" poker tournaments annually provided the Chief of the State Police is notified 24 hours in advance of the tournament.

#### **Transportation**

LD 2209 – An Act To Amend the Axle Weight Laws for Trucks Transporting Unprocessed Agricultural Products and Forest Products. (Emergency) (Sponsored by Rep. Thomas of Ripley; additional cosponsors.)

This bill allows trucks that are hauling unprocessed agricultural products or forest products to exceed their axle weight limits provided they do not exceed their gross vehicle weight limits.

## **REDUCTIONS (cont'd)**

by postponing some projects that were scheduled to be accomplished in FY 09, the total savings associated with the MRS restructuring would be \$1.3 million.

It is clearly this type of thoughtful management restructuring proposal that the Appropriations Committee was looking for as the first step of its difficult budget balancing effort.

Since the management proposal did not completely fulfill the \$2.5 million target given to the Taxation Committee, the next step was to look at the various property tax relief programs.

Instead of just lopping off BETR reimbursements or the Homestead exemption or municipal revenue sharing, the Committee's next recommendation focused on toggling a certain switch in the middle of the Circuit Breaker program.

In 2005, as part of LD 1, the Circuit Breaker program was redesigned in such a way that there is no longer a defined income limit in order to be eligible for the property tax or rent rebates. Instead of an income limit, there is now a limit on the size of the applicant's property tax bill that will be considered when calcu-

lating his or her benefit. For the individual applicant, that property tax limit was set at \$3,000, and for the multi-person household, the property tax limit was set at \$4,000.

The law went on to require both of those limits to be annually adjusted upwards for inflation.

Since the foot-in-the-door eligibility threshold for Circuit Breaker is when the homeowner's property tax (or presumptive property tax in the case of renters) exceeds 4% of income, these limits meant that a single individual with an annual income of up to \$75,000, and a household with an annual income of up to \$100,000, could be eligible for some Circuit Breaker benefits.

The second-tier of the Tax Committee's recommendation, after the MRS restructuring proposal, was to take out the element of the original LD 1 law that indexed those \$3,000/\$4,000 values. By removing the annual indexing of those values, there would be a projected \$2.7 million reduction in FY 09 Circuit Breaker distribution. To put that into context, the Circuit Breaker program is currently issuing over \$46 million in property tax benefits.

## **JAIL (cont'd)**

negotiations team, four of the members would be representatives of state and county government, while the remaining five would be members of the public appointed by the Governor. While nothing in the proposal would prohibit the Governor from appointing a non-elected municipal official as a public member, there is nothing that guarantees a municipal appointment, either.

Considering that the BOC will be monitoring the operations of the jail consolidation effort for its taxpayer savings and program delivery improvements, it is important that municipal officials have a voice at the table to ensure that property tax dollars are appropriately invested. For that reason, the LPC recommended amending the BOC membership to add the municipal voice, or even two municipal representatives, with one member representing local law enforcement.

MMA will be presenting this package of recommendations to both the state/county negotiations team and the members of the Criminal Justice Committee during the week of February 18<sup>th</sup>.