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Changes Proposed to Local Road Assistance Program

On Thursday this week, the Transportation Committee briefly reviewed an amended version LD 1790, *An Act to Secure Maine's Transportation Future*. The bill, authored by the Maine Better Transportation Association (MBTA) seeks to find the additional state and municipal revenue necessary to fund improvements to the state's transportation infrastructure.

To meet the road and bridge improvement objective, the bill establishes seven state goals. Of municipal interest is the fourth goal, which is to "reconstruct state aid highways that meet statutory eligibility requirements to a joint state-municipal design standard if a municipality elects to reconstruct". In plain English, this means that municipalities will be encouraged to voluntarily invest municipal resources to make improvements to the state aid system (i.e., major and minor collector roads).

To meet the municipality-related goal, the local road assistance program, now known as the Urban/Rural Initiative Program (URIP), would be repealed and replaced with the State-Municipal Transportation Assistance Program. Although the URIP program would be repealed and replaced, only the rural funding formula elements of the existing program would be changed.

As proposed, municipalities would receive state assistance either on a state aid road formula basis, providing $2,250 per year per lane mile for all state aid highways located outside of the urban compact area, or on a new local road formula basis, providing for $400 per year per lane mile for year local roads, whichever is greater. Under the existing formula, municipalities are reimbursed at a rate of $600 per year per lane mile for all local roads. In a nutshell, the proposal would redistribute the existing $26 million in URIP revenue among the municipalities in a different way.

In addition to making changes to the funding formula, the bill also encourages municipalities to use the road assistance revenues to match additional state funds for the purpose of voluntarily investing in state-aid minor and major collector road improvements. If additional state funds are available, the local legislative body could vote to expend local revenues for the purpose of receiving an additional 85% match (not to exceed $510,000 per mile) for a major collector road capital improvement project. Municipalities could receive an additional 70% match (if available) not to exceed $315,000 per mile for a minor collector road capital improvement project.

Although the Department of Transportation has not calculated the impacts of the proposed change, it is safe to say that the redistribution will have a positive impact on some communities and a negative impact on others. By reducing the per mile reimbursement rate for local roads, municipalities with fewer state-aid highway miles on average will experience a reduction in state funding. Com

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Municipal Board Vacancies - Update

The Judiciary Committee unanimously supported an amended version of LD 1906, *An Act to Clarify the Authority of Municipal Boards and Committees*. This bill addresses a shadow of doubt that had been cast by a recent Law Court decision over the authority of boards to act during times when there is a vacancy on the board.

The case that raised this issue, *Stevenson v. Town of Kennebunk* was briefly described in the May 11, 2007 *Legislative Bulletin*.

The Judiciary Committee passed an amended version of the bill. The original bill amended Title 30-A, the municipal law. Many felt that the *Stevenson* case also placed the actions of state, county, school and quasi-municipal boards into a state of uncertainty. The Committee decided to make the change in Title 1 which has a much broader reach than Title 30-A.

The only other substantive change was that the Committee adopted a more comprehensive "validation" provision. The *Stevenson* case appeared to impact future decisions of boards and also decisions previously made. Consequently, the legitimacy of thousands of past votes that had been taken by boards with vacancies were questionable. The Committee adopted a comprehensive validation statement which affirms decisions made both since the *Stevenson* decision was rendered, and prior to the decision.

Tax Committee Votes to Expand Personal Property Exemption

On Wednesday this week the Taxation Committee voted 9-3 "ought to pass" on LD 1001, *An Act to Eliminate the Property Tax on Business Equipment Owned by Small Retailers.*

Sponsored by Senator Jon Courtney (York Cty.), the bill would expand the property tax exemption granted last year so that the personal property in retail facilities that are less than 20,000 square feet in size would also be exempt from property taxation.

The public hearing on LD 1001 was held on May 16th. Senator Courtney testified that the enactment of the personal property tax exemption last year (LD 2056) resulted in the personal property of retail establishments not being included in the exemption, and a promise of some kind was made to come back this session to look at providing the exemption to retail establishments as well. Because there was little likelihood of getting political support for exempting the big box establishments (WalMart, Target, Lowe's, Home Deport, etc.), Sen. Courtney targeted the expanded exemption to retail establishments of less than 20,000 square feet (gas stations, retail chain stores, chain restaurants, mom and pop stores, etc.).

The Maine Merchants Association, the Maine State Chamber of Commerce, the Maine Pulp and Paper Association and the National Federation of Independent Businesses (NFIB) all testified in support of LD 1001.

The Maine Merchants Association asked for the square foot threshold of 20,000 square feet to be increased, to cover stores like Mardens and Renys. It was unclear why the Maine Pulp and Paper Association would support the exemption, except for an apparent interest in further cutting the municipal tax base. The Maine State Chamber of Commerce's support for the exemption is hard to square with the personal property exemption package that the Chamber agreed to last year, which kept the retail personal property program in the BETR program, but expanded its eligibility for BETR reimbursement for the lifetime of the property rather than for just the 12-year BETR period. Although that was the agreement then, it is apparently not the agreement anymore. Some agreements have a remarkably short half-life.

MMA testified in opposition to expanding the property tax exemption that was created last year. All prominent and respected tax policy recommendations over the last twenty years suggest expanding the tax base and reducing the rate, and that is exactly what the Tax Committee is trying to do with state's tax code in its well-thought out approach to comprehensive tax reform. When it comes to the municipal tax base, however, the Legislature – and in this case the Tax Committee — seems committed to moving in the other direction…to shrink the municipal property tax base and increase the tax rate.

When the personal property exemption was enacted last year, the municipalities were told that the public policy rationale behind the exemption was to provide a property tax incentive to manufacturers and other businesses that utilize personal property and that might not otherwise locate in Maine. That was the argument for the exemption propounded by the Administration, Legislature, Chamber of Commerce and paper industry lobby. It was agreed at that time that the Valero gas stations, McDonald and Arby restaurants, Old Navy and Pac Sun clothing stores, Radio Shacks and similar stores that establish themselves in Maine are not dissuaded from locating in the Vacation State because of a personal property tax that they may have to pay on their cash registers or underground fuel tanks or shelving stock.

There are very few states in this country where these establishments do not pay taxes on the value of their personal property. In many of those other states, unlike Maine, the retail stores often pay a tax on that property at a greater effective rate than the homeowners in those states pay on their residential property. LD 1001 would increase the property tax on homeowners so Pier I Imports and Longhorn Steakhouse could enjoy a tax break.

For all of that, the retailers were still cut a substantial break when the personal property tax exemption was enacted last year. Their qualifying personal property was already eligible for BETR reimbursement. As part of last year's legislation, the 12-year life of BETR reimbursement was extended to forever (i.e., the life of the personal property), with a phased-in reduction in reimbursement after the end of the 12-year cycle from 100% reimbursement to a final floor, five years later, at 50% reimbursement.

This isn't good enough for the retailers. Last year's observation that retail facilities pay the tax in 40 other states in the nation has flown out the window. Last year's observation that retail facilities are not making location decisions on the basis of their personal property tax obligations has flown out the window. The Chamber of Commerce, the Maine Pulp and Paper Industry and now the Taxation Committee are employing a new argument…the age-old tax-exemption-as-viral-contagion argument. Once somebody gets an exemption, everyone else deserves one, too.

As Sen. Courtney explained to the Tax Committee just before it voted LD 1001 "ought to pass", the municipalities really don't like assessing this property anyway…it's a nuisance for them, but if they don't assess it they are breaking the law. Therefore, according to Sen. Courtney, the Legislature would be doing the municipalities a favor by exempting even more of this type of property from taxation.

Although further Committee votes

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Legislative Bulletin

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Editorial Staff: Geoffrey Herman, Kate Dufour, Jeff Austin, and Laura Veilleux of the State & Federal Relations staff.

Door Number Three

For almost two months, the Judiciary Committee has been reviewing a bill regarding the Maine Human Rights Act (MHRA). The MHRA, among other things, prohibits workplace discrimination against individuals with disabilities. The MHRA is administered by the Maine Human Rights Commission (MHRC).

As reported in the April 6, 2007 *Legislative Bulletin*, the Maine Law Court recently threw out the rules that had been adopted by the MHRC to implement the MHRA. Those rules, which had been in place for approximately the last 20 years, had been interpreted fairly consistently with the federal Americans with Disability Act (ADA). The Court held by a 4-3 decision that the definition of "disability" in the rule was too restrictive as compared to Maine's unique version of "disability" provided in the MHRA.

Following the decision, the MHRC adopted a new set of rules. Many employers in Maine felt that these new rules were far too broad. The primary concern was that the term "disability" had been redefined to include every ailment above the level of the common "upset stomach".

In response to the ruling, Senator Peter Mills (Somerset Cty.) submitted LD 1027, *An Act to Clarify the Definition of "Physical or Mental Disability"* in the Maine Human Rights Act. That bill repealed the definition of disability in the MHRA and replaced it with a single sentence which mirrors the federal ADA: *"Physical or mental disability" means any physical or mental impairment that substantially limits one or more of a person's major life activities*.

Just as employers expressed concern about the new judicial interpretation of the MHRA, attorneys who represent workers claiming discrimination expressed concern about Maine enacting the federal standard. While the literal words of the ADA might not be a problem, they believe that the courts have been particularly restrictive in their interpretation of it. They feel the ADA standard is "too narrow a door" for workers with legitimate disabilities to pass through in order to be protected.

So, the Judiciary Committee convened a working group of interested parties to see if there was a chance to find a middle ground between the ADA and the newly adopted MHRC rule.

The working group agreed on the following two issues fairly quickly. First, the federal ADA standard could be part of the MHRA. This would provide employers a certain level of continuity with the body of law and practice that had developed over the past 20 years. However, the disability advocates insisted that the ADA standard could not be the only door.

The parties agreed that a second option consisting of a "per se" list of health conditions that are deemed to be "disabilities" might be helpful to both sides. That is, there are certain medical conditions that are serious enough to not require an "effects" test. Individuals with impairments like mental retardation, missing limbs and muscular dystrophy should not have to litigate whether these impairments produce "a substantial limit on a major life activity" in order to be deemed disabled.

Where the first ADA door is an effects-based standard, the second "per se" door is a list containing specific conditions or health-based standards.

The challenge for the group was deciding whether or not to have a third "door" and if so, how to frame it. Advocates felt that a third door was essential because there are too many serious impairments that were not on the *per se* list. Employers were concerned that a third standard would be so low that it would render the ADA standard meaningless.

Drafts and redrafts followed meeting after meeting. The Committee's work session on the bill had been pushed back until Thursday night. Finally, a somewhat uncertain compromise was reached.

A third door was opened that combined the health-based standard of the "per se" list and the restrictive tone of the ADA standard. It states that individuals with physical or mental impairments that "significantly impair" physical or mental "health" would also be protected.

What does this mean? Neither side really knows, further rulemaking and judicial interpretations will be required.

The Judiciary Committee supported the compromise unanimously.

EXEMPTION (cont'd)

on the bill may be necessary, as it stands now LD 1001 will go to the full Legislature with a majority "ought to pass" report. Of the seven Committee members present at the time of the vote, only Rep. Thom Watson (Bath) explained his opposition to the bill on the basis of the arguments and understandings established last year that in Rep. Watson's view were both well funded and deserve to be honored.

Please contact your legislators and ask them to stop creating additional property tax exemptions which ratchets-up the property tax rate for Maine's homeowners.

LOCAL ROAD (cont'd)

munities with more state-aid highway miles on average will benefit from the new formula.

The LD 1790 amendment change also institutes a policy change to the way municipalities and the state share maintenance responsibilities over the state-aid road system. Under the current partnership model, municipalities are responsible for the winter maintenance, while the state is responsible for summer maintenance and capital improvements. Under the existing local road assistance program, municipalities are encouraged to use local funds to help make repairs to minor collector state aid roads. LD 1790 would add major collector roads to the list of projects municipalities could voluntary choose to repair.

Finally, the change would overturn the "hold harmless" policy decision made in 1999 when the Local Road Assistance Program (as it was called in the past) was converted into the existing Urban/Rural Initiative Program (URIP). As originally agreed to by the Department in 1999, every community was guaranteed a program allocation that was equal or greater than the FY 99 allocation. No community would suffer reduced road assistance funding below the 1999 base. That "hold harmless" provision would come to an end under LD 1790.

The Committee will continue its deliberations on LD 1790 next Wednesday.

Committee Supports Adding More State-required Language to Property Tax Bills

The Taxation Committee has given near-unanimous support to LD 1144, *An Act to Provide Information to Property Tax Payers*. Sponsored by Rep. Mark Samson of Auburn, the bill will require municipalities to put additional information on all property tax bills, starting next year.

As local officials are well aware, current law requires municipalities to include on their property tax bills a statement (or a calculation) that demonstrates the amount (or percentage) by which the taxpayer's bill has been reduced because of the distribution of revenue sharing, state reimbursement for the homestead exemption and state aid for education.

LD 1144 would require the addition of two additional statements on the property tax bill. One statement would indicate the percentage of property taxes funding municipal, school and county programs. The other statement would indicated the bonded debt of the municipality.

The final language of the bill is being worked on, and it is unclear at the moment if the "bonded debt" statement is supposed to cover municipal debt only, municipal "general obligation" debt only, or if it is also supposed to cover all school debt (general obligation or otherwise) that is being paid for with property tax dollars. That calculation becomes especially complicated in the case of multi-municipal school systems.

The Tax Committee voted 9-1 that LD 1144 "ought to pass". The bill is recognized as a state mandate, and the Tax Committee proponents of the bill will hope to convince the Legislature to approve LD 1144 with the two-thirds vote necessary to exempt the state from having to cover any of the costs associated with re-programming and re-printing the property tax bills to accommodate these new language requirements.

MMA conducted a survey of municipal tax collectors in an attempt to ascertain what those additional costs may be, along with any other issues associated with the mandate. In a short turnaround time, 60 municipalities responded.

• 19 respondents indicated there would be only minimal costs associated with the mandate.

• 14 respondents indicated there would only be minimal costs associated with the mandate, but they thought: (1) the requirement was entirely unwarranted; (2) the information is already being provided in the town report and other forms of communication; and (3) there is no room on the bill to provide additional language without reducing the size of the print, making the property tax bill way too "busy", or going to a larger property tax bill at a greater expense.

• 11 respondents worked with their software vendors or in-house information technology employees and calculated the cost ranging from $35 to $1000 for the tax bill transformation. One town reported just having purchased bills for next year at a cost of $2,300, which would have to be scrapped.

• 9 respondents expressed significant concerns about how the presentation of the debt information was going to be required. There are multiple types of borrowing instruments at play, particularly among the larger municipalities, including general obligation bonds, various forms of revenue and enterprise bonds, and non-bonded borrowing, and there are considerable complexities associated with calculating the school-re-

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Excise Tax Changes Punted to 2008

On Thursday night this week, the Taxation Committee decided what is was going to do this session with the motor vehicle excise tax issue which as been presented to the Committee by a number of bills, most of which were designed to reduce the motor vehicle excise tax rate for new cars in their first one or two years of registration, when the rates are the highest, and make the municipalities eat the lost revenue.

A few weeks ago, the Committee killed most of those bills, retaining only one bill – LD 789, *An Act to Decrease the Excise Tax Imposed on Motor Vehicles* – to serve as a "vehicle" bill that would be amended by the Committee to address its recommended changes to the current motor vehicle excise tax system.

On Thursday the Committee voted unanimously to convert LD 789 into a resolve that would direct Maine Revenue Services to confer with interested parties, including the Maine Automobile Dealers Association, the municipalities and the Secretary of State's Office, and develop a recommended restructuring of the excise tax system with several apparent goals in mind. According to the Committee's discussion, those goals would be to reduce either the rate or the base of the excise tax as applied to new motor vehicles in their first year of registration, with balancing adjustments made to the application of the rate structure for vehicles in their later years of registration so as not to create a significant fiscal impact for the municipalities. The recommended changes to law that are developed by that Maine Revenue Services study will then be reported to the Taxation Committee in the 2008 legislative session for further action.

Before the amended resolve is finally released from the Committee to go to the full Legislature, Committee members will have a chance to review its final language. We will provide the municipalities with that finalized language as soon as it becomes available.

Details of Latest School Regionalization Plan are Hard to Pin Down

It looks as though we will have to wait until the Appropriations Committee finalizes its recommendation for the biennial state budget to learn the details of the school regionalization package that will be placed before the Legislature. As has been the case throughout the legislative session, there are two plans – now imaginatively labeled as "Plan A" and "Plan B" – from which the Appropriations Committee may draw its recommended language. The likelihood is that the Appropriation's Committee, based on its previously expressed predilections, will draw almost entirely from Plan A.

Plan B is the regionalization plan written out in full language by Rep. David Farrington (Gorham) and described in detail in the May 4th issue of the Legislative Bulletin ("More Sensible School Regionalization Plan Emerges").

Plan A, sometimes referred to as the "Leadership Plan", was developed at the request of Senate President Beth Edmonds (Cumberland Cty.), under the shepherdship of Senate Majority Leader Libby Mitchell (Kennebec Cty.), and with the input of a subcommittee made up of legislators from both the Appropriations Committee, the Education Committee, and legislative leadership.

Plan A has yet to be written up in statutory language, but it was described this week in two separate sessions, once before the Education Committee and once before the Appropriations Committee. From what we can tell from those presentations and supplemental information available of the Department of Education's website, Plan A would work as follows:

• In a four and one-half month time period, from July through October 2007, Reorganization Planning Committees would be formed in the 26 vocation educational regions throughout Maine and required to develop detailed consolidation plans affecting school systems throughout the state.

• During that 18-week period, the Planning Committees would be required to develop school consolidation plans for most of the school systems in the state. The standards of consolidation are not entirely clear, but it would appear that if the population density of the proposed consolidated school unit is greater than 100 inhabitants per mile, the consolidated unit would have to serve at last 2,500 students. If the population density of the proposed consolidated school unit is less than 100 students per mile, the school system would have to serve at least 1,200 students. All other details regarding the newly consolidated school districts (assets, governance, financing, cost-sharing, etc.) would have to be hammered out during that 4-month period of time.

• Under Plan A, the "legislative intent" is that the state have no more than 80 school districts, which would appear to authorize the Commissioner to deny approval to proposed consolidations that are deemed by their size to undercut that 80-district standard.

• A map of what the new consolidated systems might look like has been developed in advance by the Department of Education and published on the Department's website. That map shows 62 school systems, including seven single municipal systems (Portland, Lewiston, Bangor, Scarborough, Gorham, Westbrook and Biddeford) and systems as large as 27 municipalities (Houlton), 26 municipalities (Millinocket), 23 muncipalities (Dover), and 22 municipalities (Machias). From a student-count perspective, the largest multi-municipal school districts would be Auburn (5,208), Bridgton (4,669), Oakland (4,459), and Kennebunk/Wells (4,319). It is not clear what the relationship is between Plan A and the Department's proposed 62-district map, but there appears to be a connection of some kind.

• A referendum vote on school consolidation proposals would be mandated to occur seven months from now, in January 2008, two months after the general election, two months before town meeting time and six months before the primary election. This off-schedule January referendum means that the detailed plan would have to be finalized about 60 days before the mandated election to accommodate public hearings and absentee voting, sometime in early-November 2007. Any consolidated schools that are approved by the voters in January would have about five months to elect a new school board, hire a superintendent, and develop and cause to be adopted a budget for the new school system.

• If a proposed consolidation is not approved by the voters in the January 2008 vote, the voters would be given a second bite at the consolidation apple before the financial penalties for failing to consolidate would kick-in. Plan A would schedule the second referendum vote for June 2008, although it is unclear what the consequences would be if any of these mandated votes were held at some other time, as long as the job got done.

• If the voters fail to create the consolidated district after the second (or subsequent) votes, and the consolidated school district is not up-and-running by July 1, 2009, certain financial penalties would be experienced by the non-consolidating communities. At a minimum, that penalty would be a 50% reduction of the state's financial support for "system administration", which is the bureaucratic name for the "superintendents's office". For the so-called "low receiver" municipalities under Plan A, the financial penalty could be greater than the 50% reduction, including a potential total loss of state subsidy.

• Each newly consolidated school system must be governed by an executive board assisted by local school com-

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PROPERTY TAX (cont'd)

lated debt in school district systems. Additional concerns were that the amount of outstanding debt, when stated as a fixed number in the absence of any broader context, is very isolated data, and the mandated requirement would effectively require more locally-generated language to put the debt information into a coherent context.

• 7 respondents did not know what the costs might be without more information from their property tax bill vendors.

Representative Herb Clark (Millinocket) voted against the bill saying he was not interested in supporting any more unfunded state mandates, no matter how minor the financial impacts might be. Legislators often talk in their campaigns about going in the other direction by actively identifying and repealing state mandates that are no longer necessary. Against that backdrop, Rep. Clark thinks it's an odd time to be actually adding to the state mandate list.

SCHOOL (cont'd)

mittees, but it is not clear what the term "assistance by local school committees" means. It appears that under Plan A, the school union governance structure would not be allowed.

On Wednesday this week, the Commissioner of the Department of Education distributed a time frame that lays out the schedule of required activities between now and July 1 of next year under Plan A. A timeline of Plan A is available on the MMA website at: www.memun.org.

More information about Plan A can be found on the DOE website:

http://www.maine.gov/education/supportingschools/reporta.html