

Legislative Session Begins Businesses Rally for Personal Property Tax Exemption

The third floor of the State House was awash in a sea of orange-shirted business representatives on the Legislature's opening day this week. They were there to rally for the exemption of personal property taxes.

The event ultimately got subsumed under other stories of the day, including the emergency approval of \$5 million to supplement the federal government's FY 06 appropriation for the Low Income Heating Assistance Program, and the partisan wrangling over which political party holds majority power in the House of Representatives, if any.

The obsessive interests regarding political control over the House of Representatives is largely a matter of indifference to the municipal world. The LI-HEAP appropriation, on the other hand, should help to take some of the edge off the sharp pressure on local general assistance programs across Maine for heating assistance.

The personal property tax rally was conducted with the all the subtlety of a financially powerful political group slamming what they identify in their handouts as a "bad tax" that they shouldn't have to pay. (By comparison, apparently, the property tax that is applied to the real estate of Maine's residents, small businesses and retailers, apartment owners, and the owners of both open land and apartment buildings is a "good tax".)

Governor Baldacci and three of the four legislative leadership corners of the State House stood among the throng of orange-shirts to demonstrate their solidarity with the businesses' efforts to exempt a big chunk of the municipal tax

base. An array of business speakers lamented the existence of this "bad tax" which, because they must pay it, stunts their ability to buy machinery and equipment and create jobs in Maine.

If you attended the rally you would get the distinct impression that these businesses were actually suffering this business tax on their bottom lines. You would not learn in their advocacy rhetoric that for the last ten years, as a matter of state law, these very same businesses in their blaze orange regalia have already enjoyed a complete exemption from the taxes they now claim are so onerous. It has been the public policy of this state since 1995 that there be an effective exemption from taxation of an extremely broad range of business personal property. This exemption is created by fully reimbursing the businesses for their tax obligation through the Business Equipment Tax Reimbursement program (BETR).

The BETR program is no longer enough. Now the business lobby wants a complete and permanent exemption, and so does the Governor and legislative leadership. BETR is too unstable, they say. BETR is always under attack. They say BETR is subject to legislative changes over time. Just last session, they point out, the BETR reimbursement rate was dropped from 100% to 90% for a single year as the business contribution toward a statewide sacrifice to balance the state budget. Any adjustments to BETR are totally unacceptable to the business community, so a permanent exemption is necessary.

For the legislative leaders the mes-

sage seems to be that since the Legislature cannot be trusted to leave the current BETR program completely alone, a exemption of the municipal tax base is necessary. It's "shoot me before I kill again", or some variant of that theme.

The proponents of this very large property tax exemption want to convey the distinct impression that – as legislators and Augusta insiders like to say it – "the train is leaving the station"; that is, the exemption will most certainly be enacted this legislative session. At the same time, there is an obvious political sensitivity that the over-the-top big-business bluster of the orange-shirted rally was obviously trying to minimize, and that political sensitivity is slowing the train down a bit for some refueling.

What politicians are sensitive about is the negative property tax impacts that the exemption will deliver to everyone else. It's one thing to not want to pay any taxes. It's another thing altogether to make someone else pay them on your behalf. Under the BETR program in current law, the state's income taxpayers pay the personal property taxes for the BETR businesses. Under the permanent exemption being proposed by the businesses and legislative leadership, that burden will become permanent rather than temporary, ever-growing rather than stabilizing, and fully half of that burden will be shifted from state's income taxpayers to its property taxpayers. When you boil down all the rhetoric, it is to shift tax burden from income to property that is what this proposal is all about.

Several weeks ago the Governor

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Media Watch: How Objective are Maine's Broadcasters?

Recent news story errors by multiple media outlets on issues regarding personal property taxes and local governments may not be due to good faith mistakes. The media, like the rest of us, make mistakes. However, the consistency of the same mistake being made over and over by different media outlets raises some flags here at MMA.

The two primary errors that have repeatedly appeared in news accounts over the past few months are that Maine has 286 school districts (it doesn't, it has approximately 90 school districts...the vast majority of Maine's 286 school administrative units are part of town or city government and directly controlled by the town meeting) and that most states exempt business personal property taxes (the opposite is true). The significance of these errors will be discussed below.

After a little research, a potential explanation for these "mistakes," at least on the part of the broadcast media, has become apparent. It turns out that the spin on these stories may be part of a larger legislative advocacy effort by the media. This private advocacy effort raises questions about the capability of Maine's journalists to do "neutral" reporting on local tax and government issues.

Most of Maine's larger radio and television stations belong to an industry special interest group called the Maine Association of Broadcasters ("Broadcasters"). The Broadcasters are currently engaged in an advocacy effort in con-

junction with several other industry special interest groups such as local chambers of commerce and the Maine Motor Transport Association.

This advocacy effort has been given the uninspired title of "Campaign for Maine." (CFM). This campaign has no candidate, no platform and no proposals. But it does have a website (www.campaignformaine.com). The CFM website has produced the following statement of purpose:

"Our aim is to push for legislative and structural changes that will help improve our economy and allow businesses to grow and create jobs."

And this how they propose to get there:

"To improve our economy, we need to address the drags on business growth and job creation — our high tax burden, our regulatory burden, and the overall high cost of government in Maine."

CFM has not specifically identified how to "address" these various drags. That is, which regulations should be cut? What taxes should be reduced and how should they be paid for? Should other tax exemptions be eliminated, such as the sales tax exemption for broadcast television advertising revenue? Should there be spending reductions? If so, which services should get cut?

While CFM is short on specifics, it has produced and aired three different television advertisements. Those ads can be viewed on the CFM website. One of those ads could easily be regarded as supporting the Taxpayers Bill of Rights (TABOR) citizen initiative which will likely be before the voters next November. Another squarely targets municipal government by claiming that Maine has too many units of local government and that consolidation is needed.

As for proof, the Broadcasters allege that Maine has over 1,000 units of local government. In order to understand that number you need to do some "anchor-man" math.

First, the Broadcasters note that

Maine has 493 municipal governments. Then, according to the Broadcasters, there are another 286 school *districts*. Then they assume another 230 or so water and sewer districts to get a nice media friendly number like 1,000 supposed "units of local government".

The only problem with this math is its accuracy.

According to the U.S. Census' freely available information on the web, Maine has 826 units of local government (including counties, actual school districts, municipalities, utilities and other special districts). This places Maine 34th in the nation in terms of units of local government; that is, two-thirds of the states in this country have more units of local government than Maine.

It is unclear why the media advocacy group didn't bother to do five minutes of online research for its television ad, but instead decided to exaggerate the number of local governments in Maine by 20%.

Furthermore, the Census explains that this 826 number does not treat municipal school departments as separate units of local government. That is, the City of Augusta is a local unit of government but its school department is not. The Broadcasters, however, count them as two units of local government. The Census, MMA and most people with an elementary understanding of local government do not double-count school departments as "school districts" or otherwise independent units of local government.

The real issue here is not that the Broadcasters' lobbyist organization that produced these numbers doesn't do research and doesn't understand the difference between a school district and a municipal school department. The question is whether it is merely coincidence when the local television or radio reporter doesn't bother with the facts, either.

This comedy of errors also occurs in connection with property taxes. The media incessantly misreports that "most" states exempt business personal property. In fact, most states tax business personal property. Now, many of these states that tax personal property have rebate and other programs similar to

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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.

(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.)

Appropriations & Financial Affairs

LD 1909 – An Act To Make Minor Technical Changes to Maine's Spending Growth Benchmarks. (Sponsored by Rep. Woodbury of Yarmouth.)

This bill would make several technical and clarifying changes to the state, county and municipal spending limitations enacted as part of LD 1. Among the changes related to the local government spending limitation systems, this bill would: (1) correct several references to the calculation of county and municipal limitations by specifying that adjustments are calculated by multiplying the prior year's limit by one plus the growth limitation factor; (2) establish the Director of the State Planning Office as the person determining the "average real total personal income growth factor" and the annual date for that determination (October 1); (3) provide that adjustments to county and municipal limitations should be available for decreases in state funding as well as increases; and (4) establish that municipal limitations do not need to be adjusted for changes in state reimbursement under the general assistance program or the Urban-Rural Initiative Program if those changes are the result of operation of the existing statutory formulas governing those programs.

Criminal Justice & Public Safety

LD 1781 – An Act To Require Mandatory Training for Law Enforcement Officers and Prosecutors Regarding Interaction with People with Developmental Disabilities, Including Autism Spectrum Disorders. (Sponsored by Sen. Bartlett of Cumberland County; additional cosponsors.)

This bill would require mandatory training for law enforcement officers and prosecutors regarding people with autism and developmental disabilities.

LD 1825 – An Act To Facilitate Inspections of Heating Appliances and Chimneys. (Sponsored by Rep. Thomas of Ripley.)

This bill would provide immunity to a municipal fire department, volunteer fire association or fire ward that inspects a chimney or wood stove or any other heating device or appliance if alterations are made after the inspection has taken place.

LD 1831 – An Act To Allow Law Enforcement Agencies To Maintain Public Sex Offender Registry Websites. (Sponsored by Rep. Curley of Scarborough; additional cosponsors.)

Current law prohibits any law enforcement agency other than the State Bureau of Identification to maintain a sex offender registry that is accessible to the public. This bill would allow other law enforcement agencies to maintain a sex offender registry that is accessible by the public.

LD 1879 – An Act To Enhance Firefighter Safety. (Sponsored by Rep. Duplessie of Westbrook; additional cosponsors.)

This bill would require structures that use roof or floor trusses to display an emblem on the building identifying that construction

and the materials used in the truss construction. The purpose would be to increase the protection to firefighters by informing them that trusses are present. A violation for noncompliance would be a Class E crime. The bill would also authorize municipalities to adopt a voluntary statewide recommendation for uniform standards of identifying dangerous or vacant properties to further protect firefighters.

Education & Cultural Affairs

LD 1766 – An Act To Further the Implementation of the Essential Programs and Services Funding Model. (Sponsored by Sen. Mitchell of Kennebec County; additional cosponsors.)

This bill would amend the laws governing the required wording of the school budget warrant articles dealing with budgets that exceed the 100% EPS allocation.

Judiciary

LD 1817 – An Act To Protect Access to Social Security Numbers. (Sponsored by Rep. Hotham of Dixfield.)

This bill would expand the prohibition under current law on use of social security numbers to prohibit all businesses, organizations, government entities and all other entities operating in the state from requesting a person's social security number for any purpose, with limited exceptions.

LD 1870 – An Act To Clarify Laws Governing Eminent Domain. (Sponsored by Rep. Pelletier-Simpson of Auburn; additional cosponsors.)

This bill would provide more limited-use eminent domain power than was allowed in a recent U.S. Supreme Court decision known as the "Kelo" decision. Specifically, the bill would prohibit the use of eminent domain authority for purposes of private retail, office, commercial, industrial or residential development. In addition, the bill would prohibit the use of eminent domain primarily for the enhancement of tax revenue or to transfer property to a person, nongovernmental entity, public-private partnership, corporation or other business entity. The restriction would not apply to an area upon a finding of blight. The restriction would not apply to utilities.

LD 1904 – An Act To Protect Businesses from Unnecessary Eminent Domain Takings. (Emergency) (Sponsored by Rep. Merrill of Appleton; additional cosponsors.)

This emergency bill applies to all takings under the eminent domain authority of the state, any political subdivision or any other entity that has eminent domain power. The bill would require that the taking be an "absolute necessity" to carry out the public purpose that is the basis of the taking and would also require the taking of property on which a business is located to be limited to the minimum amount necessary to carry out the public purpose, thus allowing the business to continue. This bill would be retroactive in that it would explicitly apply to takings that have not been completed as of the bill's effective date.

Labor

LD 1747 – An Act To Assist Maine Military Families. (Emergency) (Sponsored by Sen. Schneider of Penobscot County; additional cosponsors.)

This emergency bill, modeled after recently enacted law in Illinois, would require that businesses with 50 or more employees give up to 15 days of leave, which may be unpaid, for employees who are spouses and parents of Maine residents who are serving in the military after those employees' other leave balances have been used.

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HOPPER (cont'd)

Legal & Veterans Affairs

LD 1889 – An Act To Amend the Election Laws. (Emergency) (Sponsored by Rep. Fisher of Brewer; additional cosponsors.)

This emergency bill would make several changes to election laws. Among other changes, the bill would: (1) restore the voter address confidentiality provisions and requirements for counting valid write-in votes that were eliminated during the last session; (2) grant authority for the municipal clerk to conduct the duties of the registrar of voters and remove a redundant provision about the certification of the list of absentee voters; (3) prohibit a candidate from assisting voters who are unable to sign their own names with signing candidate petitions or Maine Clean Election Act forms; (4) clarify that township voters may choose the most convenient municipality in which to register to vote only if the county commissioners have not provided for a voting place either in the township or in another municipality; (5) remove an inconsistent provision for the retention of voter registration documents; (6) make a technical change to the ballot retention period; (7) change certain requirements for reporting to the Secretary of State by qualified political parties and the municipal clerks; (7) prohibit the unauthorized reproduction of unmarked official ballots; and (8) make changes to the zones in which political activities are restricted, both for election day and for absentee voting, from the current 250 feet of the entrance to the clerks office to 100 feet of the entrance to the building in which the clerk's office is located.

Marine Resources

LD 1697 – An Act Regarding the Appointment of Harbormasters. (Sponsored by Sen. Hastings of Oxford County; additional cosponsors.)

Current law mandates that a town appoint a harbormaster upon the request of any person desiring mooring privileges. This bill would remove the requirement that the municipal officers appoint a harbormaster at the request of a single person.

Natural Resources

LD 1777 – Resolve, To Direct the Department of Environmental Protection To Consolidate the Management of Solid Waste. (Sponsored by Sen. Cowger of Kennebec County; additional cosponsors.)

This resolve would direct the Department of Environmental Protection (DEP) to meet with the State Planning Office and all "interested stakeholders" and provide a report to the Natural Resources Committee by January 17, 2007 regarding the consolidation of solid waste management in Maine government under the DEP.

LD 1795 – An Act To Ensure the Long-term Capacity of Municipal Landfills. (Emergency) (Sponsored by Sen. Cowger of Kennebec County; additional cosponsors.)

This emergency bill would prohibit the disposal of waste that originated out of state in a solid waste facility of any kind owned by a municipality in Maine. The bill would also authorize a municipality to enter into a contract with a private entity to operate a municipal solid waste facility only as long as the municipality accepts only waste that is generated within the state and otherwise controls the decisions regarding the type and source of waste that is accepted at the facility. The bill would also specify that upon the sale or transfer of a municipal solid waste facility to a private entity, the license issued by the Department of Environmental Protection for that solid waste facility is terminated.

State & Local Government

LD 1712 – An Act To Restore the Funding to the Fund for the Efficient Delivery of Local and Regional Services. (Emergency) (Reported by Rep. Barstow of Gorham for the

Intergovernmental Advisory Commission.)

In the final budget bill adopted by the Legislature last June, the state raided the Fund for the Efficient Delivery of Local and Regional Services (which before the raid was to be capitalized with 2% of all municipal revenue sharing revenue) and appropriated that \$2.4 million of annual revenue to the state's General Fund for both this fiscal year (FY 06) and next. This emergency bill would require the Legislature to return that revenue to the Local Government Efficiency Fund so that it can be used as originally intended and expressly adopted by the voters when they voted for "Question 1A" on June 8, 2004.

LD 1713 – Resolve, To Direct the State Planning Office To Establish a Working Group To Standardize Accounting Standards at All Levels of Government. (Reported by Rep. Barstow of Gorham for the Intergovernmental Advisory Commission.)

This resolve would direct the State Planning Office to establish a working group to standardize governmental accounting standards at all levels of government. The working group is to include representatives of the State's Department of Audit, the Maine Municipal Association, and the Maine County Commissioners' Association. The working group's recommendations would be reported back to the Intergovernmental Advisory Commission no later than November 1, 2006.

LD 1728 – Resolve, Directing the Cumberland County Commissioners To Establish a Task Force To Establish New County Commissioner Districts. (Sponsored by Rep. Barstow of Gorham.)

This resolve would direct the Cumberland County Commissioners to put together a task force to establish 7 county commissioner districts and to submit its report no later than December 1, 2007 to the State and Local Government Committee.

LD 1735 – An Act To Authorize Chebeague Island To Secede from the Town of Cumberland. (Sponsored by Rep. McKenney of Cumberland; additional cosponsors.)

This bill would authorize the separation of Chebeague Island and certain surrounding islands from the Town of Cumberland and their incorporation as the Town of Chebeague Island.

LD 1846 – An Act To Streamline Criteria for Municipal General Assistance for Heating and Utility Assistance. (Sponsored by Rep. Schatz of Blue Hill; additional cosponsors.)

This bill is a "concept draft" that proposes to streamline the criteria for municipal general assistance for heating and utility assistance, without further explanation.

Taxation

LD 1739 – An Act To Clarify the Taxable Status of Lobster Traps. (Sponsored by Sen. Andrews of York County.)

This is a "concept draft" bill that proposes to clarify the law regarding the taxable status of lobster traps, thus eliminating the inconsistent treatment of lobster traps from municipality to municipality.

LD 1796 – An Act To Ensure the Continued Viability of Affordable Housing. (Sponsored by Sen. Perry of Penobscot County; additional cosponsors.)

Sponsored by the Maine State Housing Authority, this bill would overturn existing Maine case law by expressly defining the "just value" of low income housing property to exclude from any valuation consideration any intangible assets or rights, such as contracts and agreements, government subsidies that run to the property's owners, tax credits and permits and licenses.

LD 1799 – An Act To Exempt Snow Grooming Equipment and Machinery from the Personal Property Tax.

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HOPPER (cont'd)

(Sponsored by Sen. Davis of Piscataquis County; additional cosponsors.)

This bill would exempt from personal property taxation snow grooming equipment and machinery.

LD 1809 – An Act To Provide Additional Property Tax Relief to Maine Citizens. (Sponsored by Rep. Cummings of Portland; additional cosponsors.)

This is a “concept draft” bill that proposes, without explaining how, to require municipalities to use 90% of any increase in state funding for education for property tax relief.

LD 1836 – An Act To Amend the Laws Governing the Assessment of Property Taxes in the Event of a Change of Ownership of the Property. (Sponsored by Rep. Craven of Lewiston; additional cosponsors.)

Under current law, if real property is transferred after April 1st of each year, the owner of record as of that April 1 is liable for taxes assessed against the property. This bill would mandate the assessor to change the records once any notice of the change of ownership is received. Additionally, this bill would exempt the previous owner from liability for any taxes incurred after the change in ownership as long as the previous owner provides certain information, such as a copy of the executed deed, to the assessor.

LD 1844 – An Act To Amend the Laws Governing the Excise Tax on New Automobiles. (Sponsored by Rep. Schatz of Blue Hill; additional cosponsors.)

This bill is a “concept draft” that proposes to amend the laws governing the excise tax on new automobiles, without further explanation.

LD 1857 – An Act To Clarify Municipal Valuations of

Resort Property. (Sponsored by Rep. Duplessie of Westbrook; additional cosponsors.)

This bill would establish a statutory standard to determine the “just value” of time share estate property. The bill would provide that the tax assessments of time-share estates must be calculated in the same manner as if the unit were a residential condominium unit owned by a single taxpayer, even though they are not. The tax obligation would then be divided proportionately among the time-share owners. The bill would also require municipalities to bill the managing entity of the time-share property as agent for the time-share owners for tax assessments on their time-share estates. The managing entity must collect the taxes paid by the time-share owners and place the money into an escrow account. The managing entity would be required to certify to the municipality the names of the time-share owners who fail to pay their real estate taxes so that the municipality could place a tax lien on the time-share estate of any delinquent time-share owner.

Transportation

LD 1706 – An Act To Prohibit Parking in Access Aisles. (Emergency) (Sponsored by Rep. Marley of Portland.)

This bill would clarify the current prohibition on parking a motor vehicle in the access aisles that are immediately adjacent to parking places designated for the disabled. The bill extends the prohibition on parking in an access aisle to all motor vehicles, even those that are otherwise entitled to park in the designated parking place.

LD 1730 – An Act To Ensure Business Equity in Commercial Vehicle Registration. (Sponsored by Rep. Blanchard of Old Town; additional cosponsors.)

This bill would require the registration in Maine of all construction and road maintenance vehicles being rented in Maine for operation on public ways.

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/>.

Tuesday, January 10

Inland Fisheries & Wildlife

Room 206, Cross State Office Building, 1:00 p.m.

Tel: 287-1338

LD 1695 – An Act To Authorize the Commissioner of Inland fisheries and Wildlife To allow the Operation of Snowmobiles Registered outside the State at Special Events Occurring in the State.

(Emergency) (Sponsored by Sen. Martin of Aroostook County; additional cosponsor.)

Wednesday, January 11

Marine Resources

Room 214, Cross State Office Building, 10:00 a.m.

Tel: 287-1337

LD 1697 – An Act Regarding the Appointment of Harbormasters. (Sponsored by Sen. Hastings of Oxford County; additional cosponsors.)

Thursday, January 12

Transportation

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

Tel: 287-4148

LD 1706 – An Act To Prohibit Parking in Access Aisles. (Emergency) (Sponsored by Rep. Marley of Portland.)

MEDIA WATCH (cont'd)

Maine's Business Equipment Tax Reimbursement (BETR) program which effectively negate the tax on a temporary basis. However, if a business reimbursement program were equivalent to "exempting" the tax, then Maine should be counted among those states that have already exempted business personal property taxes for many of Maine's largest employers with business equipment.

Are these consistently repeated errors just simple mistakes? Or, should we assume that the reporters are trying to advance the policy agenda of the special interest advocacy organization that they created and funded? Maybe this explanation of the television advertisement campaign offered by the Broadcasters will cast some light:

"Broadcasters are Mainers too. We are in the business of helping others to market and grow their businesses. We want our advertisers to succeed, because their success means we've succeeded in helping them."

And they mean it. The Broad-

casters' lobbyist was "rallying" with the business community in the Hall of Flags on Wednesday during their kick-off effort to repeal personal property taxes (see related article). It appears that if business advertisers want a tax cut, the Broadcasters want the cut as well.

While the Broadcasters' lobbyist was in the back of the Hall of Flags rallying for a property tax exemption, the reporters were in the front row taking notes and filing reports. Just keep that in mind as stories on these and other local issues get projected through what we might hope to be the objective lense of your television station.

SESSION (cont'd)

asked if MMA could work up a proposal that would accomplish the goal of exempting the tax on business equipment without causing undue harm to the municipalities. Some elements of legislative leadership have more recently made the same request. These requests appear to have been made in absolute good faith. It is a thorny challenge, there's no

perfect solution, and consensus on this subject is no more readily available within the municipal community than elsewhere, but our Legislative Policy Committee will give it a try.

It's a challenge that is not constructively assisted, however, with gaudy, highly-choreographed State House rallies where big corporate and state agency spin machines spit on the "bad tax". Why is it that for the people who are so desperate to eliminate this "bad tax", no "good tax" alternatives are ever discussed?