

## Repealing The Personal Property Tax

### **Legislative leaders reject MMA's reform-based approach**

Over the last 40 days, MMA has been responding to a request from legislative leadership to craft a way to repeal the property tax on business equipment and machinery in a revenue-neutral manner that would not shift the property tax burden onto residential and small business property taxpayers.

A working group of municipal representatives from the industrial towns, service center communities, and rural/suburban communities developed just such an approach, and it was presented to legislative leaders on January 26<sup>th</sup>.

It is a reform-based approach that targets the exemption to manufacturing, technology-based and natural resource-based machinery and equipment, and directly links the exemption to changes in the way the county jail system in Maine is financed, all in a way to mitigate property tax rate increases. The result would be revenue neutral to both the state, the counties and the municipalities as a whole, and the differential impacts among the individual municipalities would be adjusted to the penny through a redistribution of existing revenue sharing funds. In the overall, the restructuring would create immediate governmental efficiencies as well as ongoing opportunities for a strengthened regional service delivery system.

The legislative leaders who asked for

MMA's input rejected that plan on Wednesday this week, and are apparently going forward with essentially the same approach that Governor Baldacci has been advocating for three years. Identified most recently as "LD 1660", this is a decidedly anti-reform proposal that narrowly focuses on repealing the personal property tax in a manner that will ultimately exempt 10% of the municipal tax base and increase property tax rates for everyone except the major industrial corporations that will benefit from the exemption.

Next week's *Legislative Bulletin* will include a complete description of the plan legislative leadership has rejected, and over the next several weeks we will be detailing the size, scope, duration and timing of the property tax rate increases that will likely result from the bill being developed by legislative leadership.

The Legislature's plan to exempt industrial taxes to the disadvantage of other property taxpayers joins a number of other bills this session that makes you wonder who it is that lobbies for the regular person.

- LD 1481, which would significantly impair the ability of local citizen groups from proposing, and municipalities enacting, changes to local land use ordinances in response to development proposals that impose major community impacts.

- LD 1968, the Governor's proposed budget bill, which would divert a good chunk of increased state aid to education (which was supposed to be earmarked for property tax relief) into funding a new teacher salary matrix put into effect by a mandated minimum salary.

- LD 1931, requiring municipalities to adopt and enforce certain building codes, whether or not they have the staff to do so and whether or not their voters want the program, unless someone in the municipality sends the right letter to the right person by the right deadline.

### **Brookings Study**

GrowSmart Maine, an anti-sprawl advocacy group from Yarmouth, is coordinating a study by the Brookings Institution, a Washington D.C think-tank. The study will look at three broad areas of policy: the future of economic development in Maine; growth, land use development and the revitalization of 'historic' downtowns; and government, governance and regionalism. The study is scheduled to be published in September and include a series of policy recommendations.

The Brookings research team is conducting a series of meetings with different groups including economists, environmentalists, developers and, this past week, approximately 30 municipal officials in order to get first-hand accounts of what is right and wrong in Maine.

Local officials generally made three points. First, that the local tax structure, including Maine's over-reliance on property taxes, negatively impacts all of these issues: economic development, land use and regionalization. However, the concern of municipal officials is that there is

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# MMA-DOT Group Finds Local Road Program Is Working

In the first session of the 122<sup>nd</sup> Maine Legislature, the Transportation Committee addressed bills seeking changes to the existing state/municipal road assistance program. In response to the issues raised in those bills, the Committee directed the Maine Department of Transportation (DOT) to partner with the Maine Municipal Association (MMA) and convene a working group to explore the issues raised with the existing state-local road program. The working group was directed to report back to the Transportation Committee before February 1, 2006. Specifically, the group was asked to report its findings and recommendations for:

- addressing inequities in the distribution of Urban/Rural Initiative Program Funds (URIP),
- the limitations on the uses of the URIP funds, and
- how Maine compares with other states in its allocation of funds to municipalities.

On August 16, 2005 a group of municipal officials representing urban, suburban and rural municipalities and DOT representatives met to address the questions asked by the Transportation Committee. The working group met only once and its recommendations were unanimous. While some members of the working group expressed concerns with URIP, overall the group

believed that: 1) the URIP funds are being equitably distributed to municipalities; 2) the limitations on the use of the revenue are acceptable; and 3) the program is appropriately funded.

**Funding Inequities.** In the simplest terms, the state distributes URIP funds to 491 municipalities and 10 counties each year in quarterly payments. Each entity receives \$600 per year per lane mile for all rural state aid minor collectors and all public roads maintained by the municipality located outside of the urban compact area and \$2,500 per year per lane mile for summer maintenance and \$1,700 per year per lane mile for winter maintenance on state highways located within the compact area (i.e., the more built-up sections of the state and state aid highway system within the 43 designated urban compact municipalities). The program also ensures that each municipality will receive a minimum state subsidy for roads, regardless of the number of lane miles. The “hold harmless” clause in current law guarantees that future payments will not fall below the 1999 payment amount.

Although the working group acknowledged that the amount of URIP revenue distributed to rural and urban communities varies, the group also understood that the higher distribution amounts for urban areas are directly associated with the higher costs for maintaining the busier state and state aid roads. The “hold harmless” guarantee in the law also assures that all municipalities received some assistance.

**Limitations.** Under URIP, state funds must be used for capital improvements. However, there are two exceptions to that rule. One exception allows URIP funds to be used for maintenance or improvements of public roads located in urban compact areas. The second exception allows the URIP funds to be used for both capital and maintenance expenses in a community

where there are no state aid minor collector roads and the town affirmatively votes that local roads and bridges located in the community are in good condition as to not require significant repairs or improvements for at least ten years.

When the local road assistance program was reformulated into URIP in 1999, one of the basic tenets that guided the transformation was a commitment to making capital improvements to Maine’s rural local and minor collector transportation infrastructure. Municipal officials believed in that goal then, and still do today. For that reason, municipal officials supported keeping the limitations on the use of URIP revenue to ensure that all communities continue to use this state revenue to make capital improvements to local roads.

**State Funding.** In addition to exploring the URIP mechanisms, the Transportation Committee also asked the working group to explore how Maine compares with other states in its allocation of funds to municipalities for transportation projects.

According to MMA staff’s interpretation of some of the Federal Highway Administration’s (FHWA) 2003 Highway Statistics Report data, Maine allocates \$17 on a per capita basis and \$1,551 per local road mile in state aid to municipalities, which in both cases is 38<sup>th</sup> in the nation. It is assumed that most states have a similar “grant-in-aid” program as Maine does in the form of URIP.

According to the DOT’s interpretation of other FHWA 2003 Highway Statistics, Maine ranks rather high in its level of state funding for minor collector roads. In most states, the maintenance of these roads rests with the local agencies.

Regardless of the data and the interpretation of that data, which can vary widely, all members of the working group, including DOT representatives, agreed that the state’s current level of funding to the Urban/Rural Initiative Program is appropriate.

On Thursday, February 2<sup>nd</sup>, DOT and MMA presented these findings to the Transportation Committee.

## Legislative Bulletin

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# Campaigning at Polling Places

Freedom of speech and political electioneering took center stage as the Legal and Veterans Affairs Committee debated the merits of LD 1899, *An Act to Amend the Election Laws* on Wednesday this week. The bill, sponsored by Rep. Dusty Fisher of Brewer on behalf of the Secretary of State, is a multi-part proposal that generally makes technical and house-keeping changes to the existing election laws, but also opens a very big door to election day campaigning within the “no-influence” zone around the polling place.

Two of the more significant changes proposed in the bill amend the laws regulating the “no influence” zone around polling places. One change proposes to reduce the size of the zone where campaign advertising material is not supposed to be posted on public property from 250 feet to 100 feet of the entrance of a polling place.

The other change is to actually allow campaign advertising material within the “no influence” zone. Currently, no campaign material of any kind is allowed within the “no influence” zone. LD 1899 would allow materials advertising candidates and various positions on other campaign initiatives as long as the candidates or initiatives were not on the ballot that particular election day. Under LD 1899, for example, a candidate not in a Primary race but scheduled to be on the November ballot could present his or her campaign material within the “no influence” zone during the Primary election.

According to Deputy Secretary of State, Julie Flynn, the reduction of the size of the “no influence” zone is needed in order to protect the state from lawsuits. Although Flynn admitted that no claims or suits had been filed against the state of Maine, several other states have had court battles about limiting speech in and around the polling place. She believes that the state should be proactive with respect to this issue, rather than reactive. Flynn also noted that other state courts have upheld the 100-foot setback limitation on advertising.

MMA’s Legislative Policy Committee (LPC) took a “neither for nor against”

position on LD 1899 because there were some elements of the sweeping bill that municipal officials supported and some they opposed. The municipalities opposed the amendments to the “no influence” zone. First, the LPC believes that 100-foot setback is too close to the polling place. Second, municipal officials are concerned that allowing some advertising to take place within the “no influence” zone damages the integrity of the polling place and could make the task of the election warden much more difficult.

During the work session on the bill, Senator Ken Gagnon (Kennebec Cty.) raised a concern with allowing election-influencing materials within in “no influence” zone. Sen. Gagnon believes that allowing any interest group or candidate that is not on the ballot to advertise within the 100 foot setback of the polling place could create a “free-for-all” atmosphere, and the voting place should be one area where people can cast votes in peace, without being harassed.

Unfortunately, Sen. Gagnon’s motion to strike from the proposed bill the changes that would allow political influence within the “no influence” zone failed by a margin of 3 to 6. And then all the Committee members turned around and voted to pass the bill.

Some of the proponents of the change stated that the need to protect the people’s constitutionally provided freedom of speech prompted their support for the change. The proponents believe that the people should be able to politic and advertise issues of importance within the polling place. Apparently, the members of the Legal and Veterans Affairs Committee do not accept the rational basis for limiting politically-influencing speech in the immediate vicinity of a polling place. The arguments about being sued for a rational limitation just don’t add up.

Although one member of the Committee suggested that all lobbying and campaigning activity should be excluded from the polling place, he could not support Sen. Gagnon’s motion without receiving additional public comment.

While municipal officials believe

that the people’s freedom of speech should be protected, they also believe that the polling place should not become the campaign headquarters for all future issues and candidates.

After much debate, the Committee unanimously voted “ought to pass as amended” on LD 1899. With a unanimous Committee vote, LD 1899 is on its way to become law without much in the way of debate. Although the “no influence” rule has applied for decades, it could be undone by this legislative Committee’s single vote.

As amended, the LD 1899 includes a mandate preamble, which recognizes that one element of the bill would place notification requirements on municipal officials. The proposed change would require municipalities to provide the Secretary of State with the names of the clerks, deputy clerks and election assistants within ten days of appointment or election. Although municipalities are currently providing the information, the responsibility to do so is not in statute.

Another municipally-relevant change included in the bill requires municipal officials to automatically appoint the clerk as the deputy registrar of voters. The Deputy Secretary of State believes that the change is necessary to ensure that someone at the municipal building can act on election and voter issues in the absence of the registrar of voters. Flynn indicated that there have been some problems, particularly in the summer months, when the registrar is unavailable to accept and verify petition signatures. She believes this change will address those problems. While municipal officials understand the need to cover the registrar’s duties, they are concerned that the state, rather than the municipalities, is making the determination about who is best qualified to serve in that capacity.

Somewhat reluctantly, Senator Gagnon voted to support LD 1899 even though the bill included the proposal to allow some advertising within the no influence zone. Although uneasy with the change, Senator Gagnon took some comfort in the fact that election wardens have the authority to remove from the polling place those persons that are impeding the rights of citizens to cast a vote.

# Energy Bill Generates Controversy

The Utilities and Energy Committee took well-over four hours of testimony on LD 1931, *An Act To Encourage Energy Independence*, from at least two dozen supporters and opponents. The testimony was diverse, generally very well-informed as well as passionate and even entertaining. The bill had 9 parts that were not interconnected but each touched upon energy related issues.

Sections 1 bill dealt with promoting energy efficiency in schools; sections 4, 5 and 6 seek to account for any savings in school energy costs that might result from efficiency efforts. Section 2 would switch the current energy code adoption policy from one where towns opt-in to one where they opt-out. That is, instead of being left to adopt the code or not, municipalities would be forced to adopt the energy code unless they specifically sent a letter to the state indicating they would not adopt the energy code.

Section 3 would double the current fee on electric rates in order to provide more funding for the Efficiency Maine program which gives grants to promote energy efficiency. Section 7 directs the PUC to study alternative energy rates that would, to some degree, decouple the energy rate from energy consumption. Section 8 deals with efficiency standards for boilers and Section 9 with fuel-saving tires.

Supporters of the bill included a commercial building owner, a farmer and a school superintendent, each of whom had received Efficiency Maine grants; a Maine General Health official; a Professor of Economics and a Professor of Criminology; several environmental consultants from Massachusetts, the Coordinator of USM's Office of Sustainability, and college students from Colby and USM. Opponents included representatives of a lumber company, a paper mill, CMP, the Industry Energy Consumers Group, Rubber Tire Manufacturers, Maine Oil Dealers, Specialty (Auto) Equipment Market Association and the Eastern Maine Energy Cooperative, and others.

The municipal community had three basic concerns. The first was an objec-

tion to changing the energy code adoption policy from one of opt-in to opt-out. Forcing municipalities to opt-out is the equivalent of legislative spamming. It forces a community to either perform a particular act or else be automatically signed-up to administer a program that was not approved by the local democratic process. Municipal officials do not feel that this kind of mandate is the best way to build a healthy state-local partnership. Furthermore, none of the proponents of LD 1931 presented any testimony as to why the current opt-in policy needed changing.

In addition, the bill did not specify if the opt-out was an administrative function or required a legislative action. It didn't indicate if a public meeting were necessary or even public notice that a decision was being made. There was no indication as to what the consequences were for failure to send the letter. That is, how were non-compliant municipalities going to be forced to adopt the energy code? Furthermore, it wasn't clear if towns were going to be forced to enforce the code they were being forced to adopt. Lastly, since so many municipalities have neither building codes or building inspectors, it doesn't make sense to force these communities to adopt a code.

Municipalities would support more education and promotion of the possible benefits of the energy code. Some municipalities have adopted it and find it to be easily workable. Furthermore, many of the proponents were confident that savings from electric bills makes energy efficiency an easy sell from an economic standpoint.

MMA would support greater outreach and education on energy codes rather than a statutory deadline. The biggest problem with a statutory deadline to send an opt-out letter (with nothing more in terms of education or process) is all it will produce is hundreds of opt-out letters. This isn't the best way to accomplish the proponents' goals of getting the conversation on energy codes started.

Most of the testimony focused on the Efficiency Maine program. Municipi-

palities didn't have an objection to doubling the Efficiency Maine fee as such. Local governments have even benefited from Efficiency Maine grants. The issue is just simple frustration with having the Legislature simultaneously demand that municipalities live within spending caps and help lower the tax burden while at the same time raising the costs municipalities incur.

## **BROOKINGS (cont'd)**

a library full of studies that have documented Maine's over reliance on property taxes. The hope is that Brookings may be able to present this problem in a manner that will finally convince policy makers to do something about it.

Second, people have to stop marketing regionalism as a cost saving tool. Too much focus on regionalism has been on the misguided hope that it is the silver bullet to lower taxes. Since only 30% of Maine's local spending is on municipal issues – fire, police, waste management, roads, parks and recreation, administration etc. - (70% is on schools), regionalization of municipal services is focused on a too small part of the pie to have a big cost saving impact.

Furthermore, local officials are not convinced that larger governmental units are models of efficiency. The Brookings Institution and all of its talented researchers may be able to point out some areas of unnecessary duplication by municipal governments in Maine. However, local officials believe they can point to 2,000 years of Western Civilization for the nearly self-evident proposition that smaller governments cost less and larger governments cost more.

Municipal officials agree that larger governments are able to provide more, and "bigger" services and that regionalism could improve some services. They disagree that there is any government more frugal than municipalities. In other words, while municipalities reuse their nails, the larger units of government tend to lose track of their nails because their software doesn't work, and then mandate the smaller units of government to finish the job.

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## LEGISLATIVE HEARINGS

*NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://www.state.me.us/legis/>.*

### *Monday, February 13*

#### **Taxation**

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

**Tel: 287-1552**

LD 1972 – An Act To Preserve Maine's Working Waterfront. (Sponsored by Sen. Damon of Hancock County; additional cosponsors.)

### *Tuesday, February 14*

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

**Room 228, State House, 1:00 p.m.**

**Tel: 287-1316**

LD 1956 – An Act To Recapitalize the Maine Downtown Center. (Sponsored by Rep. Richardson of Brunswick; additional cosponsors.)

#### **Taxation**

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

**Tel: 287-1552**

LD 1989 – Resolve, Directing the State Board of Property Tax Review To Accept and Review the Appeal Filed by the Town of Palermo. (Emergency) (Sponsored by Sen. Weston of Waldo County; additional cosponsor.)

#### **Transportation**

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

**Tel: 287-4148**

LD 1974 – An Act To Make Additional Allocations from the

Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2005 and June 30, 2006. (Emergency) (Governor's Bill) (Sponsored by Rep. Marley of Portland; additional cosponsors.)

#### **Utilities & Energy**

**Room 211, Cross State Office Building, 1:00 p.m.**

**Tel: 287-4143**

LD 1969 – Resolve, To Evaluate the Public Safety Answering Points for the State of Maine. (Emergency) (Reported by Rep. Blanchette for the Maine Fire Protection Services Commission.)

LD 1970 – An Act To Amend the Charter of the Lisbon Water Department. (After Deadline) (Emergency) (Sponsored by Rep. Berube of Lewiston; additional cosponsors.)

### *Thursday, February 16*

#### **Judiciary**

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

**Tel: 287-1327**

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

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

#### **Natural Resources**

**Room 214, Cross State Office Building, 1:00 p.m.**

**Tel: 287-4149**

LD 1860 – An Act Concerning Certain Provisions Regarding Protection of Natural Resources Related to Activities in Coastal Areas. (Sponsored by Rep. Koffman of Bar Harbor; additional cosponsors.)

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## **BROOKINGS (cont'd)**

If there are examples of governments getting cheaper by getting bigger, municipal officials would like to see it.

Third, local officials fear that Brookings has already made up its mind about what it wants to say and that the study is simply going to "prove" these prejudices. In particular, months ago Brookings' representatives parroted the tired and unproven assertion that the high number of municipal governments in Maine was a central problem with the state. This simply echoed the existing advocacy position of Brookings' sponsor, GrowSmart Maine. The fear is that GrowSmart is buying a study to bolster its advocacy rather than seeking an objective analysis.

Brookings representatives seemed to genuinely appreciate the municipal feedback and strenuously asserted that they were entirely objective and were going to let their research lead the study. In particular, Brookings indicated they were not going to be "tilting at the windmill" of eliminating local governments. However, they do believe that they will be able to recommend efforts that could be made to encourage better development patterns which would strengthen both Maine's service center communities and its rural municipalities.

Municipal officials are hopeful they can deliver.