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TABOR Initiative Validated By Secretary of State

On Tuesday of this week, Secretary of State Matthew Dunlap announced that the Mary Adams backed Taxpayer Bill of Rights (TABOR) initiative received enough valid signatures to move on to the Legislature this session and then onto the statewide ballot. The TABOR initiative seeks to slow spending (and in many cases reduce spending) at all levels of government by limiting growth in year-to-year expenditures and placing limits on the ability of governments to establish new fees. (For a detailed description of the TABOR plan, see the December 2005 edition of the *Maine Townsman.*)

According to Secretary Dunlap, the TABOR petitioners submitted 58,151 signatures, 51,611 of which (89%) were certified as valid. Although the number of valid signatures met the 50,519 requirement, the validation of at least 4,024 signatures is being questioned.

The citizen initiative process is governed by certain rules and deadlines, some of which are found in the Constitution and others are found in statutes. As provided for in the Constitution, the number of valid signatures must be equal to at least 10% of the total votes cast for the Governor in the last gubernatorial election and all the valid signatures must be gathered during a one-year period.

The Constitution also establishes certain deadlines to serve a certain function, and the statutes establish another deadline to serve a different function, and sometimes the functional differences between those two deadlines cause confusion.

The Constitution's deadline serves the function of letting petitioners' know when they must submit the signatures to the Secretary of State's Office in order to get the initiative before a certain Legislature, if the petitioner's want to get the initiative before that particular Legislature rather than the next Legislature a year later. That provision of the Constitution specifically requires that the petitions must be submitted to the Secretary no later than 50 days after the convening of the Legislature in its First Regular Session (in an odd numbered year) if the petitioners want the issue dealt with during that legislative session, and no later than 25 days of the convening of the Legislature in its Second Regular Session (in an even numbered year), if the petitioners want the issue dealt with during that second legislative session.

There is also a statutory deadline to file petitioned initiatives which serves a different function. The function of the statutory deadline is to make sure citizen initiatives are processed in a relatively expeditious manner and not allowed to get all built up and dumped on the Secretary of State's Office all at the last minute after a legislative session has begun. To serve that function, as provided for in Title 21-A, Section 903-A, citizens must turn in their petitions within one year of the date the Secretary of State issues the certified petition to the petitioners for circulation. For years that deadline was three years from the date of issuance. In the mid-1990s, it was amended to the current one-year deadline.

As an example of how these two deadlines work together, the "Question 1A" initiative (*The School Finance and Tax Reform Act of 2003*) could have been filed with the Secretary of State's Office at the end of its 365 circulation period in the fall of 2003, but its circulators submitted it in January of 2003 instead, in order to get it before the First Session rather than the Second Session of the 121st Legislature.

According to Deputy Secretary Julie Flynn, petitioners are made aware of both the constitutional and statutory deadlines. All deadlines are printed on the petition forms provided by the Secretary of State (SOS). This information is also posted on the SOS website and labeled as the expiration date for the petition. For example, the expiration date for the TABOR petition was posted as October 21, 2005.

On Friday, October 21, 2005, Mary Adams submitted 54,127 signatures to the SOS for verification, presumably in response to the statutory deadline. On the next business (Monday, October 24) Adams submitted an additional 4,024 signatures. The extra signatures were submitted after the deadline because the proponents realized too late that one box of signatures had not been submitted with the others on Friday, October 21st. Although under a strait reading of the Title 21-A deadline, the deadline had been missed and the last box of signed petitions should not have been counted, the SOS ultimately decided to include the additional signatures in the final count for two reasons.

First, the Secretary believes the statutory deadline may be considered ambiguous, and therefore deference should be giving to the standards established in the Constitution. The SOS

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General Assistance and LD 1

Senator John Nutting (Androscoggin Cty.) submitted a bill this session that was designed to address a problem in the LD 1 spending limitation system for municipal government related to the General Assistance Program. That bill is *LD 1965, An Act to Ensure the Ability of Municipalities to Provide Assistance to Their Citizens.*

Rep. Richard Woodbury (Yarmouth) submitted another bill that was also designed to address the issue, but in a different way.

On Wednesday, February 15th the Taxation Committee used Senator Nutting's bill as a vehicle to move Rep. Woodbury's solution to the full Legislature with a unanimous "ought to pass" Committee report.

The problem. The problem both bills were trying to address is the weird treatment of General Assistance funding under the LD 1 spending limitation system. The LD 1 treatment effectively requires a municipality that is experiencing a growing General Assistance budget to simultaneously increase the municipality's spending limit and also decrease its spending limit, based on the same General Assistance expenditure program. LD is schizoid in this regard because it treats General Assistance expenditures as both an expenditure line and a revenue line in the local budget.

The specific element of the spending limit analysis where municipalities get tripped up is called the "net new funding" calculation. Almost all municipalities get reimbursed from the state for 50% of the dollar value of the General Assistance welfare benefits actually issued. (The municipalities do not get reimbursed for their administrative costs.) Under LD 1's "net new funding" calculation, a municipality that receives increased reimbursement from one year to the next is supposed to trap the value of the increase and, after making an adjustment for a growth allowance, reduce the municipality's property tax limit by the value of the increased General Assistance reimbursement.

This element of the "net new funding" calculation doesn't make any sense to the municipalities. From the point of view of the spending limitation system, the state's entire appropriation for the General Assistance program is entirely covered within the state's spending limit. Similarly, the entire expenditure of the General Assistance program on the local level (both the local share and the state share) is included within each municipality's spending limit.

In short, all General Assistance expenditures, both state and local, get completely accounted for in the LD 1 spending limitation systems. The need to then identify the state's share of the local program and effectively reduce the total municipal spending limit because of variations in the state share artificially reduces the local spending limit without justification.

The solution. The Taxation Committee decided to excerpt Rep. Woodbury's solution to this problem and insert it into Senator Nutting's LD 1965. Rep. Woodbury's solution would put an end to the need to include the year-to-year variations in General Assistance reimbursements in the calculation of a municipality's "net new funding", unless the Legislature were to actually change the structure of the reimbursement formula. If the reimbursement formula is merely operating under the terms of existing statute, the annual variations of General Assistance reimbursement would no longer have to be included in that calculation.

With a unanimous "ought to pass" report from the Taxation Committee, it is very likely this helpful change will become law.

Legislative Bulletin

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Cutting Excise Tax Revenues

Last year, a number of bills that would amend the motor vehicle excise tax laws were introduced, and one particular bill (LD 345, *An Act to Base the Excise Tax on Motor Vehicles on the Purchase Price*) was used as the "vehicle bill" and considered at some length by the Taxation Committee before it was voted "ought not to pass". At the time, the Taxation Committee was considering a number of possibilities with LD 345, including changing the motor vehicle excise tax mill rate structure.

This session, Rep. Jim Schatz (Blue Hill) submitted a "concept draft" bill that was given the number and name of LD 1844, *An Act to Amend the Laws Governing the Excise Tax on New Automobiles*. The "concept" that the sponsor was attempting to propose was nothing more than the bill's title; that is, "This bill proposes to amend the laws governing the excise tax on new automobiles."

With only that information to go on, it was unclear what LD 1844 was intending to do. It was also unclear how the introduction of LD 1844 squares with a joint rule of the Legislature that generally prohibits legislation that is rejected in the first legislative session from being re-introduced in the second legislative session. Maybe "concept draft" bills are exempt from that rule.

Apparently, LD 1844 is now ready to emerge from the Taxation Committee and move to the House of Representatives for initial voting. As structured by the Tax Committee members supporting the proposal, LD 1844 would change the excise tax mill rate that applied to new cars from $24 per thousand to $21.5 per thousand. All the other mill rates that apply for subsequent year re-registrations would stay where they are.

According to the Secretary of State's Office, approximately 65,000 new ve-

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LD 1 Observations Clarified

In an op-ed article in the Maine Sunday Telegram on February 19th, State Planning Office Director Martha Freeman made several positive comments about the effects of LD 1 – the Legislature's implementation of MMA's Question 1A initiative. The primary message was that LD 1 is working to reduce Maine's property tax burden and that message is supported by the analyses completed to date. That is good news.

However, there were some observations in the article which may have caused confusion and this article will attempt to clarify those issues.

Observation: Ms. Freeman noted the criticism that any current analysis of LD 1's impacts on property taxes is premature because information is not available from all communities. She then claims this criticism is unfounded.

Clarification: Information regarding the impact of LD 1's *increased education aid* is available for all communities, and the state's and the schools' first-year response to the LD 1 spending limits. However, the impact of LD 1's spending limitation systems is incomplete on the municipal level because not all communities have had to file a budget pursuant to those limitation systems yet. Communities with a calendar-based fiscal year are filing their first budgets under LD 1 this spring. Preliminary data from communities who have filed budgets under LD 1's spending limitation system in 2005 show that municipalities in the aggregate are staying well below the growth in total personal income, therefore contributing to a reduction in Maine's overall tax burden.

Observation: The article also stated that the state is reimbursing municipalities a total of $33 million for the Homestead Exemption in 2005 and that this is "more than the state paid out in the past."

Clarification: According to the Office of Fiscal and Program Review, the 2005 reimbursement is the *lowest* amount ever – approximately 20% below the average historical reimbursement.

The first year of reimbursement was in 1999 and the amount reimbursed that year was $38.7 million; thereafter it was $39.2 million (2000), $38.9 million (2001), $39.4 million (2002), $39.2 million (2003), $34.4 million (in 2004, after the homestead benefits were cut by the Legislature, at the Governor's recommendation), and $32.3 million in 2005 (which is below the $33 million amount cited in the article). The Office projects that the reimbursement will rise to $35.6 million next year.

Furthermore, 2005 was the first year that the state refunded only 50% of the homestead exemption rather than 100% which had been refunded prior to 2005. As a result, property tax rates had to increase in many municipalities to cover the unreimbursed portion of the $13,000 homestead exemption granted by the state.

Observation: Another confusing statement in the article was that: "*If your property-tax hasn't gone down, ask your community how it used its share of the additional $99 million in 2006 school aid.*"

Clarification: Actually, hundreds of municipalities did not see the type of increase in state aid to education last year that would provide the opportunity to lower property taxes.

The state increased education aid by approximately $99 million. But, that $99 million was not divided evenly among all the municipalities. Plus, the state budget redistributed revenue sharing. Once these actions are accounted for, MMA calculated that LD 1 provided no opportunity to cut property taxes in over 300 municipalities. So, citizens make certainly ask their communities how they used their share of the $99 million as suggested. But, they shouldn't be surprised if the response to the question is "What share?"

As for the approximately 174 municipalities that did get significant increases in state aid and therefore did have an opportunity to cut property taxes, local residents should indeed ask where the money went. For many of those communities, the answer is that the increased education aid went to bring local education spending up to the state-determined adequacy level as defined in the new Essential Programs and Services school funding model.

Observation: Finally, the article asserted that: "*Gov. Baldacci wants 90 percent of state spending under LD 1 to replace property taxes.*"

Clarification: To be more precise, the question is what does it really mean to say that 90 percent of the increase in state aid to education should be used for property tax relief. If taken literally, it means that the total expenditures for public education in Maine should never increase from one year to the next by more than 10% of the state-share increase. The effect is to effectively freeze K-12 spending statewide with total allowed increases of four-tenths of one percent.

LD 1809 is Rep. Glenn Cummings' (Portland) concept draft bill to implement a "90% rule." That bill was heard by the Taxation Committee last month. No one from the Governor's Office testified, at least publicly, in favor of this legislation. Again, there is some confusion on this point.

The overall message of the article is accurate: the Legislature's enactment of LD 1 is helping put Maine on track towards a lower tax burden. Both increased education aid and the spending limitation systems are contributing to this phased-in reduction. This good news should not get lost in the confusion.

EXCISE (cont'd)

hicles are registered in Maine each year. According to the Maine Automobile Dealers' Association, the average list price of a new car is $27,000.

Putting that information together, the financial impact of LD 1844 to municipalities is an annual $4.4 million reduction in excise tax revenue starting next year.

Assuming that local voters want to keep up their investments in Maine's 14,000 miles of local roads, that cut in excise tax revenue will be made up with increased real estate taxes…further concentrating the property tax burden. The people who buy new cars will get a tax break. Everyone else who pays property taxes will pick up the slack. There's something about LD 1844 that just doesn't square up.

Working Waterfront Tax Incentives

On November 8, 2005, Maine voters approved an amendment to Maine's Constitution that creates a new "current use" tax category. The three existing current use tax categories are for Tree Growth land, Agricultural land, and Open Space land. The new current use category is now described in the Constitution as follows:

"Waterfront land that is used for or that supports commercial fishing activities."

Now that the voters have approved that amendment to Maine's Constitution, it is up to the Legislature to enact the detailed legislation that will explain how this new current use classification will be implemented.

That effort got underway on Monday, February 13th when the Taxation Committee held a public hearing on LD 1972, *An Act to Preserve Maine's Working Waterfront.* Sponsored by Sen. Dennis Damon (Hancock Cty.), LD 1972 is a "concept draft" bill that attempts to establish a blueprint for the implementing legislation.

Although it was clear at the public hearing that there is still some confusion by some waterfront property owners on what type of property would be eligible for the exemption, most everyone agrees that the tax benefits would apply only with respect to waterfront land and not waterfront structures. It was only waterfront land that was included in the constitutional amendment.

Additional direction provided by Sen. Damon's concept draft would suggest that the final product should also:

• Define the eligible commercial fishing operations and supportive operations as those located on waterfront land adjacent to salt water.

• Define commercial fishing activities as enterprises directly concerned with the commercial harvesting of wild or aquacultured marine organisms;

• Provide a tax benefit system that increases the value of the benefit when the uses of the working waterfront property are restricted by deeded easements;

• Establish a recapture penalty provision to discourage changing the use of enrolled property to another use that is not connected to commercial fishing operations; and

• Allow for some tax benefits to be provided even for multi-use property when only a portion of the property is connected to commercial fishing activities.

Sen. Damon's concept draft is ambiguous on the issue of municipal reimbursement for the lost tax revenues associated with providing current-use tax benefits. One the one hand, LD 1972 speaks of "mitigating or minimizing the loss of tax revenue experienced by local governments". In the same sentence it also mentions imposing a "recapture penalty provision if the property changes use". On the basis of the discussion at the public hearing, it would appear that the recapture penalty would be considered the mechanism to offset property tax burden shifts associated with creating tax breaks for certain waterfront properties, rather than a direct reimbursement system like the one provided for the Tree Growth program.

The public hearing on LD 1972 drew out the "Maine Working Waterfront Coalition" as the bill's primary supporter. The Waterfront Coalition is made up of a number of interest groups, including the Maine Lobersterman's Association, the Maine Lobster Pounds Association, the Maine Acqaculture Association, and the Maine Marine Trades Association. Also speaking as proponents of LD 1972 were five selectmen, Stephen Train of Long Island, Andrew Anderson of Islesboro, Dana Rice of Gouldsboro, Dexter Lee of Swans Island, and Bruce MacDonald of Boothbay.

Two days after the public hearing, the Taxation Committee held a work session on LD 1972. The purpose of the work session was to provide David Ledew, of Maine Revenue Services' Property Tax Division, with additional guidance. David has been tasked with drafting the actual legislation for the Committee to review and react to.

The Committee's guidance can be condensed as follows:

Avoid the mistakes of the past. Years after the Tree Growth program was established, a standard of eligibility was created (the forest management plan) which caused a great deal of confusion and concern when implemented. To avoid a replay of that phenomenon, the Committee appears interested in beginning with clearly eligible property for which there is a bright-line standard of eligibility, rather than jump into the program too fast with loose eligibility criteria and be forced to tighten up the standards of eligibility in future years. Expansions of the program could be considered in subsequent years after the initial implementing law is monitored.

Valuation method. Based on the blueprint of LD 1972 and much of the public hearing testimony, the Committee is leaning toward an Open Space type methodology, where a range of percentage-based reductions of the land's "just value" would be authorized. After an initial reduction for enrollment, additional reductions would be available depending on the degree the property was legally dedicated to a qualifying use.

Recapture penalty. The Committee appears to be leaning toward a recapture penalty designed after the Tree Growth penalty, which kicks off upon withdrawal at 30% of the difference between the market value of the land and the "current use" value of the land at the time of withdrawal.

Municipal reimbursement. As indicated above, the discussion at the public hearing and work session on LD 1972 suggested that the Legislature is not inclined to support any direct reimbursement to a municipality to mitigate the property tax shifts associated with the reduced assessed values of waterfront property that will result because of this new system. There is some discussion, however, of creating a circuit-breaker system that would provide state financial support to a municipality that experiences an overall valuation impact over a defined threshold.

Local option. Some Committee members are exploring the idea of a two-tiered program whereby some uses of waterfront land would be clearly entitled for the tax benefit and other, mixed-use

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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/.

Tuesday, February 28

Business, Research & Economic Development
Room 208, Cross State Office Building, 1:00 p.m.
Tel: 287-1331
LD 1957 – An Act To Establish a Development Authority for Brunswick Naval Air Station. (Emergency) (Sponsored by Rep. Richardson of Brunswick; additional cosponsors.)

Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125
LD 1988 – An Act To Raise the Debt Limit of the City of Brewer High School District. (Sponsored by Rep. Fisher of Brewer; additional cosponsors.)

Utilities & Energy
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143
LD 635 – An Act To Amend the Maine Sanitary District Enabling Act. (Sponsored by Rep. Koffman of Bar Harbor.)

Wednesday, March 1

Criminal Justice & Public Safety
Rm. 436, State House, 9:30 a.m.
Tel: 287-1122
LD 1825 – An Act To Facilitate Inspections of Heating Appliances and Chimneys. (Sponsored by Rep. Thomas of Ripley.)

Thursday, March 2

Judiciary
Room 438, State House, 1:00 p.m.
Tel: 287-1327
LD 1930 – An Act Regarding Working Waterfront Covenants under the Land For Maine's Future Board. (Sponsored by Sen. Damon of Hancock County; additional cosponsors.)

Labor
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333
LD 430 – An Act To Modify the Obligation To Bargain under the Municipal Public Employees Labor Relations Law. (Sponsored by Rep. Norton of Bangor; additional cosponsors.)

State & Local Government
Room 216, Cross State Office Building, 9:00 a.m.
Tel: 287-1330
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.)

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

IN THE HOPPER

(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.)

Labor

LD 430 – An Act To Modify the Obligation To Bargain under the Municipal Public Employees Labor Relations Law. (Sponsored by Rep. Norton of Bangor; additional cosponsors.)

Under current law, there are matters of "educational policy" that are not subject to labor negotiations between school boards and school teachers. This bill would redefine the definition of "educational policy" so that the following matters would now become subject to labor contract negotiations: (1) the scheduling of teachers' preparation times during the school day; (2) the length of the teachers' working day; (3) the length of the teachers' school year; (4) all matters related to the teachers' work day when the students are not in attendance; (5) teachers' supervisory responsibilities outside of the teacher's own classroom; (6) any impacts regarding teachers' work hours related to Maine's Learning Results system, Maine's student assessment system; or the federal No Child Left Behind Act; and (7) any other subject affecting teachers' workload.

TABOR (cont'd)

believes that the section 903-A of Title 21-A is ambiguous because while it does require petitions to be filed within a year of issuance, that section of law also makes a reference to the deadlines established in the Constitution. In this case, the TABOR proponents met both of the constitutional requirements; that is, none of the signatures were older than one year and the petitions were filed within 25 days of the convening of the Legislature. It was the statutory deadline that the TABOR proponents failed to meet.

Second, according to Deputy Secretary Flynn, the circumstances surrounding the late submission of the signatures also played a role in the determination to include the after-deadline signatures in the verification process. However, Flynn warned that this decision should not be interpreted to mean that the deadline created in statute is meaningless. Under a different set of circumstances, the SOS may have decided not to include the late signatures.

It's hard to believe that a statutory deadline is only meaningful to the extent the Secretary of State decides to give it meaning. This decision making process could potentially set a precedent providing the Secretary flexibility to interpret the meaning of deadlines on a case-by-case basis. Is there an enforceable statutory deadline or not? According to the actions of the SOS, it depends on the circumstances. The statutory deadlines apply to some petitioners and, as illustrated in this case, not to others. Apparently these laws need to be clarified, either by the Legislature or the courts, to ensure that all petitioners are treated equally.

WATERFRONT (cont'd)

properties that are less clearly eligible according to a bright-line standard could be found eligible for a prorated benefit at local option. The Committee's staff analyst from the Office of Fiscal and Program Review is going to research the feasibility of including any local decision making in this process.