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Municipal Losses Confirmed

Personal Property Tax Repeal

A fiscal analysis of LD 2056, the prospective repeal of most municipal personal property taxes proposed by Rep. David Bowles (Sanford) and especially championed by the Republicans on the Taxation Committee, was presented to the Committee on Thursday this week by Maine Revenue Services (MRS).

The MRS analysis confirms the projection MMA has previously provided; namely, that the prospective repeal of certain business taxes as proposed by LD 2056 will begin cutting off tax revenue to the municipalities soon after its implementation, and ten years after its enactment the annual revenue loss to the municipalities will be $40 million. And that's after the state reimburses the municipalities for 50% of their tax revenue losses.

It actually could be worse than that, according to the state's own fiscal analysis. If the Legislature in future years to decides to only reimburse municipalities to the degree it is constitutionally required, the annual municipal revenue loss ten years after enactment would be over $46 million a year.

If the Legislature chooses to honor all its reimbursement promises in LD 2056 in future years (which virtually no one believes will happen, most especially the supporters of LD 2056) the municipalities will be losing $34.5 million a year ten years after enactment.

Either way, whether cutting municipal revenue by $46 million a year or $35 million a year, the legislators supporting LD 2056 appear indifferent.

According to the MRS analysis, the worst case/best case scenarios regarding the municipal tax losses, along with the state's savings from no longer having to honor business tax breaks, would play out as shown below:

The Republican proponents of LD 2056, House Speaker Rep. John Richardson (Brunswick), the industrial lobbyists who actually wrote the bill, and Governor Baldacci's lobbyists from the Department of Economic and Community Development (DECD) dismiss the negative municipal impact analysis and the tax shifts to residential homeowners who will either have to pick up the tab in their property tax bills or accept cuts in local services.

One Republican legislator proponent of LD 2056 indicated that the residential property tax increases that will occur in response to the special exemption for industrial corporations would be an entirely acceptable trade-off. Other legislators on the Tax Committee openly supporting LD 2056 just repeat over and over again the claim that there will be no financial impact regardless of what the independently-verified various analyses show.

The other major argument that DECD and the industrial lobbyists are pushing in their support of LD 2056 is that to the extent municipalities may experience a loss of funding to support local services, they really don't need the tax revenue anyway…the claim is that they already give it away through Tax Increment Financing agreements (TIFs). Municipal leaders may be surprised to learn that the industrial beneficiaries of TIFs are now testifying to the Legislature that TIFs are living proof that municipal tax revenue

(continued on page 2)

Municipal Tax Losses from LD 2056

Years after exemption	Worst Case Municipal Revenue Loss	Best Case Municipal Revenue Loss	State's Savings
1	$8.2 million	$4.7 million	
2	$15.5 million	$12.3 million	
3	$22.0 million	$17.2 million	
4	$27.7 million	$21.6 million	$2.5 million
5	$32.5 million	$35.3 million	$6.5 million
6	$36.5 million	$28.4 million	$10.3 million
7	$39.7 million	$31.1 million	$13.8 million
8	$42.0 million	$32.7 million	$16.7 million
9	$44.5 million	$32.7 million	$16 million
10	$46.4 million	$34.4 million	$17 million

**From Maine Revenue Services' Fiscal Analysis*

REPEAL (cont'd)

should be cut.

The Tax Committee work sessions on LD 2056 this week were predictable, if unimaginative. Aside from the financial impacts to the state (which are favorable, as explained above), the Committee only asked for information about the types of personal property that would become exempt under LD 2056 (an odd question given that it is the exact same property that the state has been effectively exempting-through reimbursements-under the BETR program for the last 10 years).

A clear impression that is being suggested is that the decisions about LD 2056 are not going to be made by the Taxation Committee. Much of the time, many of the Taxation Committee members are not present during the work sessions. At one point, an assessor for several of Maine's industrial municipalities was providing detailed information that the Committee had actually requested on the substantial differences between a municipal TIF agreement and the impacts of LD 2056, and there were only three Committee members (out of 13) sitting around the horseshoe to hear what was being explained.

What the Committee is not asking for is more telling that the information it is requesting. The Committee has not asked for any more detail about an alternative approach – known as the "jail swap" alternative — that was developed by a working group of municipal officials in response to a request by the Governor and a parallel request by group of legislative leaders. The jail-swap alternative achieves the economic development goals of LD 2056 in a revenue neutral way without shifting property tax burden onto Maine's residents. At the public hearing on LD 2056, that alternative approach was described in broad concept for the Committee, but at this week's work sessions, zero interest in the details of that alternative approach was expressed. It is as though the word from above is to keep the focus, such as it is, on nothing other than LD 2056. Alternatives are not to be nurtured.

High Hand/Low Hand. In some poker games the high hand wins, in others the low hand wins. Still other poker games allow the player to try for high hand or low hand, playing the best 5 cards out of 8. The most aggressive players in these games, in order to win the whole pot, try to take both the high and the low hands.

The Taxation Committee, or at least some of its members, seem interested in going both high and low with respect to the elimination of the personal property tax. If the big exemption won't get it all, a smaller exemption will help sweep up the remainder.

Low Hand. On a parallel track with LD 2056, the Taxation Committee gave strong majority support (8-3) for LD 2052, *Resolution, Proposing an Amendment to the Constitution of Maine to Create a Property Tax Exemption for Property Owners with Limited Personal Property Assessments.*

As supported by the Committee, LD 2052 would send out to the voters a proposed amendment to the Constitution that would exempt from taxation all personal property accounts with a just value of $20,000 or less.

The Committee opted for the so-called "cliff" approach, where two almost identical taxpayers would be treated very differently. The taxpayer owning $20,000 worth of personal property would be exempt from taxation, the taxpayer owning $20,001 worth of personal property would be liable for the full taxes on all $20,001 worth of personalty.

The $20,000 figure would be annually adjusted, presumably at the rate of inflation as measured by the Consumer Price Index. Because the exemption would be created by a constitutional amendment, there would be no municipal reimbursement associated with the new exemption. The Committee members did not ask for an impact analysis before they cast their votes, but MMA calculates the annual statewide lost property tax revenue at $5.6 million. This estimate is based on a sampling from municipalities of various sizes. According to the samplings conducted, municipalities with populations of over 20,000 people would average annual losses of $165,000; municipalities with populations between 5,000 and 20,000 would average annual losses of $41,000; municipalities with populations between 2,000 and 5,000 would average annual losses of $15,000; and the smallest municipalities would average annual revenue losses of $2,000.

Some of the Committee members supporting LD 2052 describe the bill as a way to reduce administrative responsibilities at the local level. It actually doesn't achieve that goal because in order to determine eligibility or ineligibil-

(continued on page 4)

LD 2056 Impacts on Website

The Maine Revenue Services' statewide impact analysis of LD 2056 has been posted on MMA's website (www.memun.org). Just click on "LD 2056, The Repeal of the Personal Property Tax".

Also posted at that same website location is MMA's town-by-town impact analysis. The town-by-town analysis is similar to the analysis recently mailed to each municipality, although it has just been slightly revised. Critics of the original town-by-town analysis suggested that the methodology was skewed by inflated depreciation rates. The revised analysis utilizes revised depreciation rates to address those concerns.

Additional information about LD 2056 is also posted on the website, including the alternative "jail swap" plan that was developed by a working group of municipal officials at the request of Governor Baldacci and legislative leadership.

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State Gives ATV Riders More Rights on Town Roads

The Inland Fisheries and Wildlife Committee took testimony on LD 2057 on Tuesday afternoon and unanimously supported the bill at the work session held immediately thereafter.

The bill, *An Act To Implement the Recommendations of the ATV Trail Advisory Council*, had several sections dealing with ATV issues such as age restrictions, training requirements and registration fees.

Section 6 of the bill changes the law regarding the operation of ATVs on public rights of way. Currently, the operator of an ATV is allowed to travel no more than 300 yards along a public right of way for the purpose of crossing a road. The statute does not require that the crossing be done so that the rider can get from one trail to another. A rider may cross a road for any purpose — seeing a friend, going to the store or simply to get to the other side.

LD 2057 would increase the distance from 300 yards to 500 yards – a full quarter mile.

Three groups spoke in favor of the bill, ATV Maine (an umbrella group of ATV clubs), the Department of Inland Fisheries and Wildlife and the Department of Conservation. No one spoke against the bill although MMA provided testimony expressing concern with this section.

Current law allows a municipality to increase the distance an ATV may travel on a public way beyond the 300 yard limit. However, before the extension is allowed, the law requires that the municipality make a determination that ATV travel on the public way can be done safely and will not interfere with other vehicles. Further, signs must be posted alerting the public to the fact that ATVs will be traveling on that portion of the road. As a result of this bill, no one will be conducting a review of the road or the traffic pattern for use of a public way when that use is less than a quarter mile.

Only one argument was advanced in favor of the change – consistency. Currently, there is a separate right to travel on a public right of way for 500 yards if that right of way is a bridge or underpass/overpass. Yet, this very limited 500 yard exception was only created, according to the Department of IF&W, because bridges were being built longer and longer such that the standard 300-yard exception was outdated. So in classic, bootstrapping fashion, the limited exception is now being identified as the justification for making the exception the rule.

A warden with the wardens' service actually stated that the current distinction was causing confusion. Apparently, some riders were crossing culverts (for which the 300 yard exception applies) and claiming they thought they thought they were bridges (for which the 500 yard exception applies).

LD 2057 was completely amended by the Committee except for Section 6 dealing with this 500-yard issue. Section 1 of the bill, regarding license suspension, was re-written and then adopted. Sections 2, 3, 4 and 5 were deleted because they were controversial and so that the interested parties could continue to work on the issues over the summer. MMA simply asked that Section 6 also be deleted so that municipal concerns could be heard and potential alternative solutions could be explored.

The Committee rejected this request.

TABOR Public Hearing on Thursday

The Taxation Committee has scheduled the public hearing on LD 2075, *An Act to Create the Taxpayer Bill of Rights*, for 1:00 p.m. next Thursday (March 30th) in Room 127 of the State House (Taxation Committee Room).

Commonly referred to as TABOR, LD 2075 is the citizen initiative that attempts to import into Maine law some constitutional law from Colorado that would impose on top of LD 1 an entirely new system of spending caps on municipalities, counties, schools and utility districts, and establish a minority-rule system in order to override those limits. The proponents of Maine TABOR have significantly amended the Colorado version as it applies in Colorado to local governments to make it incoherent, irrational and extremely hostile to local decision making. Some school budgets under the Maine version of TABOR would be required to be cut by over 30%. Others would be allowed to grow by 40%, 50% and even 500%.

TABOR would also establish a minority-rule system, plus a required town or city-wide referendum, before any municipal tax rate could increase, any new fee could be created, or any existing fee could be increased.

If TABOR was already the law, all the municipalities in Maine would have had to operate under significantly reduced growth rates compared to the LD 1 limits, and 10% of Maine's municipalities would have had to actually reduce their budgets this year compared to the previous year.

33% of all school systems in Maine would have also had to cut their budgets this year from the previous year.

A complete analysis of TABOR was provided in the December issue of the *Maine Townsman*. With its irrational spending restriction formulas and insistence on minority-rule decision making, TABOR is extremely hostile to fundamental issues of local decision making and local governance. Municipal, school and county officials should try to attend the public hearing on TABOR on Thursday or contact their legislators to express their concerns about TABOR at their earliest convenience.

100% of the Tax Committee Opposes the "90% rule"

Rep. Glenn Cummings (Portland) introduced a "concept draft" bill to the Taxation Committee several months ago, LD 1809.

The "concept" being proposed by the bill was "to require municipalities, beginning in fiscal year 2006-2007, to use 90% of any increase in state funding for education for property tax relief."

Until recently it was entirely unclear what Rep. Cummings actually meant to accomplish. If every school community had to reduce the property tax effort to support education by 90% of any increase in state funding for education, school budget increases would be negative or flat. Even if the property taxes to support the school budget were frozen, the capping of all school budgets at 10% of the increase in state funding would typically allow only minor year-to-year increases in school budgets, way below the rate of inflation. 10% of the increase in state funding for most school systems represents a very small percentage of the school's overall budget.

The detail of LD 1809 finally came out this week. As drafted by Rep. Cummings, with input from the Department of Education, the bill moves away from the imposition of any "90% rule". Instead, LD 1809 would create a new and special benchmark for the voters to consider before adopting a school budget. The supplementary step would be required only when the school's proposed spending plan not only exceeds the EPS-based budget for that school system, but is also greater than the previous year's budget at a rate of growth that is outpacing the EPS-based rate of growth for that particular school system.

An example, perhaps, would be helpful.

Community School District #10, located in Readfield, had a 100% EPS allocation for the current fiscal year of $7,621,736.

For the upcoming fiscal year, the 100% EPS allocation will be $7,804,171, which represents an increase of $182,435, or 2.4%.

Last year, because the budget proposed by the school committee was greater than the EPS allocation, a special article was on the warrant and a special vote had to be taken by written ballot in order to approve that budget. By a wide margin, the voters approved a budget that was greater than the EPS allocation.

Now let's suppose that the proposed budget for CSD #10 this year also will exceed the 100% EPS allocation, and let's further suppose that the proposed FY 07 budget is 4% greater than the current FY 06 budget.

The way LD 1809 has been developed, the voters would be asked another question before that proposed budget could be adopted. The supplemental question would be whether the voters supported the budget knowing that it was increasing at the rate of 4% even though the EPS allocation for CSD #10 was increasing only at the rate of 2.4%.

The theory is that the voters in some communities may very well be inclined to support a budget that exceeds the EPS model — every year and as a general rule. The EPS model, after all, does not pretend to be more than a model that defines an adequate spending benchmark, and there are certainly public schools in Maine that will predictably spend over the EPS model for the foreseeable future. That doesn't necessarily mean that the voters within that school system are supportive of a school budget that is growing at a rate that is outpacing the EPS model's rate of growth.

LD 1809, as presented to the Tax Committee on Wednesday this week, would formally provide the voters with additional information on the budget approval article if the proposed school budget was both greater than the EPS allocation and was outpacing the year-to-year EPS allocation growth rate for that particular school system.

Municipal officials would likely support the increased voter information provided by this approach.

After reviewing the bill as drafted, and after considering but not moving forward with an amendment to the bill that would require referendum votes in those special circumstances, the Democrats and the Republicans on the Taxation Committee went into their private caucuses, which they now routinely do before voting on any bill of substance or controversy.

When they returned from their caucuses, the Committee voted unanimously that LD 1809 "ought not to pass".

REPEAL (cont'd)

ity for the exemption, the same administrative work that currently needs to be done would still be required.

The supporters of LD 2052 appear also indifferent to the fact that it would be very easy for a taxpayer to manipulate this exemption. The personal property tax is assessed against the owner of the personal property, and ownerships of specific items of personal property are very easy to create. Single ownership, joint ownership, ownership by several individual family members, ownership by shell corporations…there are any number of ways that the ownership of hundreds of thousands of dollars of personal property could be divided among enough separate legal "persons" so that not one of them would have a tax obligation.

It's hard to tell what the Legislature actually intends to do with LD 2052 The Committee, like the entire Legislature of which it is a part, seems intent on kicking the property tax code around like a cat with a catnip ball. Maybe the Legislature actually believes the assessment of small scale personal property is matter of such high importance the state's Constitution must be amended. On the other hand, LD 2052 may be a piece of distraction legislation…a throw-away bill.

Our advice is to not get distracted. Focus on the high hand and contact your legislators about the big repeal of the personal property tax – LD 2056 – and ask them to explain the state's own fiscal note and how, based on that information, they are able explain why LD 2056 will not result in a higher property tax burden on their residential constituents.

Natural Resources Update

The Natural Resources Committee recently reported out two bills relative to solid waste issues that have been repeatedly debated by the Committee for months. And then brought a third bill back for reconsideration.

Another Solid Waste Study. LD 1777, Resolve, To *Direct the Department of Environmental Protection to Consolidate the Management of Solid Waste*, as amended by the Committee, establishes a "blue-ribbon" commission to study waste management policy in Maine. The group would study issues such as out of state waste, disposal of construction and demolition debris, landfill capacity, recycling and host community benefits.

The bill calls for 10 meetings, SPO staffing, and would appropriate approximately $15,000 from the Solid Waste Management Fund. The Solid Waste Management Fund was established to provide funding for "*actions by the department necessary to abate threats to public health, safety and welfare posed by the disposal of solid waste*" and for "*the development and operation of publicly owned facilities*."

The Blue Ribbon Commission's work will follow immediately on the heels of the legislatively-mandated, SPO-staffed, 5-year review of solid waste policy issues by the Solid Waste Management Task Force, a study which has cost the state $18,000. The Task Force held four meetings and included approximately 40 stakeholders, ranging from environmentalists to waste haulers, consultants, state and local officials and owners and operators of disposal facilities. The Task Force Report should be available by the end of the legislative session.

Out-of-state Waste. The Committee reached some compromise on LD 1795, *An Act To Ensure the Long-Term Capacity of Municipal Landfills.* The original bill would have prevented municipal landfills from accepting out-of-state waste. While the proposal raised some constitutional concerns regarding the Commerce Clause in the U.S. Constititution, the Attorney General's Office felt the ban would be on fairly solid footing.

The Committee made two basic changes to the bill. First, the Commitee added state-owned facilities to the ban. The state is the owner of the landfill in Old Town formerly owned by Georgia Pacific and the Committee rightly recognized that "protecting" municipal landfill capacity while ignoring state-owned landfills was an inconsistent policy.

The second change the Committee made was to make this ban temporary. The Committee did not want to enact something that would be so politically difficult to undo until the Blue Ribbon Commission had reviewed this issue further.

Construction and Demolition Debris. Finally, the Committee brought back LD 141, *An Act To Ensure Proper Disposal Of Debris and Protection of the Environment*. This legislation has focused on a very contentious issue of the use of construction and demolition debris in energy producing biomass facilities. Approximately 45 municipalities currently segregate their CDD piles and then have their wood chipped for use in biomass facilities. The costs to dispose of CDD in this manner is cheaper than normal landfill tipping fees for those communities.

The concern with burning CDD wood chips is that some non-wood elements such as plastics, paint and other contaminants also get burned.

The Department of Environmental Protection recently proposed rules on this topic and the rules are currently before the Board of Environmental Protection. The DEP is proposing what appear to be the first-in-the-nation fuel quality standards for biomass facilities. These facilities have long had air emissions licensing standards. Further, disposal of the remaining ash has also been regulated. The rules add an additional layer of regulation.

The rules set fairly high standards for the chips that will be used in facilities that burn a 50-50 mix of CDD chips and "clean" chips produced from the forest. While the CDD chips most municipal suppliers produce fail at least some of the proposed standards, the standards should be attainable.

The proposed rules are even higher for a facility that would burn 100% CDD chips. (No facilities currently burn 100% CDD chips, but a developer has proposed a $100 million plant in Athens.) Many individuals and environmental groups objected to allowing a plant to burn 100% CDD.

The Board of Environmental Protection (BEP) has held a public hearing and three work sessions on the proposed rules. At the last work session held on March 16, a majority of the BEP stunned most of the observers and the DEP by proposing to dramatically tighten the DEP's standards. BEP members who supported the revised rules understood that their proposal would require significant adjustments in the world of CDD, but they felt significant adjustments were needed.

In particular, they observed that the current process of demolishing a building, and thereby creating the CDD pile, was the real problem. Several BEP members indicated they thought a building could be disassembled rather than demolished. The increased time and cost would be worth it for the environmental benefits, they asserted.

Two BEP members felt the rules were sufficient as proposed by the DEP.

When the Natural Resources Committee voted on this issue a few weeks ago in connection with LD 141 the vote was split 6-6-1. Six Committee members would only allow the burning of CDD in a 50-50 mix with clean chips. Six Committee members voted ought not to pass (with the presumption being that they would support allowing 100% burning of CDD – albeit with more environmental controls than would be required for 50% mixes) and one vote to prohibit the use of CDD in biomass facilities altogether.

A central reason for bringing the issue back, besides giving themselves an opportunity to avoid a 6-6-1 vote, is the recent announcement to close the Georgia Pacific mill in Old Town. The owner of the mill has indicated that it will only keep the mill operational for another 60 days. That 60 day period will end before the BEP will be able to make any final ruling on fuel quality standards.

(continued on page 6)

LEGISLATIVE HEARINGS

Tuesday, March 28

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1316
LD 1909 – An Act To Make Minor Technical Changes to Maine's Spending Growth Benchmarks. (Sponsored by Rep. Woodbury of Yarmouth.)

LD 1960 – An Act To Authorize a General Fund Bond Issue To Create a Block Grant Program To Promote Economic and Cultural Development. (Sponsored by Rep. Cummings of Portland; additional cosponsors.)

Natural Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-4149
LD 2070 – An Act To Ensure the Availability of Public Drinking Water Supplies. (Sponsored by Sen. Watson of Waldo; additional cosponsors.)

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552
LD 2073 – An Act To Bring Maine's Sales and Use Tax Law into Conformity with the Streamlined Sales and Use Tax Agreement. (Reported by Rep. Woodbury of Yarmouth for the Dept. of Administrative and Financial Services.)

LD 2079 – An Act To Encourage the Preservation of Historic Structures. (Sponsored by Sen. Gagnon of Kennebec Cty; additional cosponsors.)

Utilities & Energy
Room 211, Cross State Office Building,
Tel: 287-4143
LD 2078 – An Act To Establish the Island Falls Water District. (Sponsored by Rep. Joy of Crystal; additional cosponsors.)

LD 2080 – An Act To Accelerate Private Investment in Maine's Wireless and Broadband Infrastructure. (Governor's Bill) (Sponsored by Rep. Pingree of North Haven; additional cosponsors.)

Thursday, March 30

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552
LD 2075 – An Act To Create the Taxpayer Bill of Rights. (Transmitted to the Clerk of the 122nd Maine Legislature by the Secretary of State on March 15, 2006 and ordered printed.)

IN THE HOPPER

Natural Resources

LD 2070 – An Act To Ensure the Availability of Public Drinking Water Supplies. (Sponsored by Sen. Watson of Waldo; additional cosponsors.)

This bill would provide that the withdrawal of water from a water source by a public water utility must be consistent with the sustainable yield for the water source as determined by the Drinking Water Program within the Department of Health and Human Services.

RESOURCES (cont'd)

This impacts the sale of the mill because one of the mill assets is a biomass facility. One of the primary problems faced by the mill as reported in the media is the high cost of energy in Maine. The biomass facility allows the mill to generate its own energy from its wood by-products as well as CDD. The GP biomass facility has been held dark pending the establishment of fuel quality standards. Thus, a prospective buyer of the GP mill will not know the viability and value of the biomass asset before the 60-day window closes.

Accordingly, the Natural Resources Committee felt compelled to bring the bill back to Committee and see if they could resolve these vexing issues in a more expedited manner than could the Board of Environmental Protection.