

Legislature's Property Tax Reform Package Takes Shape

This has been anything but a normal beginning of the first session of any legislative session in memory.

At the behest of Governor Baldacci and legislative leadership, a special legislative committee was appointed in early December to review and report out a recommendation on the first two bills submitted this legislative session, LD 1 and LD 2, which represent the Governor's proposed "property tax reform" package. The package includes the Governor's approach to implementing the *School Finance and Tax Reform Act of 2003* (Question 1A), which was adopted by the voters on June 8th, 2004.

Question 1A, which gets written into the law books a week from today on January 14, requires the Legislature to fund 55% of the cost of K-12 education, and within that financial obligation provide 100% of the cost of state and federally mandated special education costs to each school system. In addition, Question 1A requires the Legislature to:

- adopt a comprehensive tax burden management plan for the state,
- establish management systems for two efficiency fund systems capitalized by Question 1A that provide specialized grants to both local governments and school administrative units, and
- engage in comprehensive, revenue-neutral tax reform in the process of securing the necessary state resources to meet the state's financial obligation to K-12 education.

As municipal officials are well aware, Question 1A was originally put

on the ballot in November 2003 against a "competing measure" crafted by the Governor and the Legislature, known as "Question 1B". As an alternative to Question 1A, Question 1B would have not required the Legislature to fund 55% of K-12 education until FY 2010, and would have expanded the circuit breaker property tax and rent rebate program by increasing the income eligibility threshold from approximately \$45,000 a year to \$75,000 a year and increasing the maximum benefit from \$1,000 to \$2,000. The voters favored Question 1A over Question 1B in November 2003, and then adopted Question 1A into law on June 8th 2004 by a decisive 55%-45% margin.

As printed, Governor Baldacci's

proposed LD 1 looks very much like Question 1B and unlike the law adopted by the voters. LD 1 would "ramp-up" the state's obligation to fund K-12 education at the 55% level over a four-year period, increase the circuit breaker program's income eligibility threshold to \$75,000 a year, and sets the goal of getting the circuit breaker's maximum benefit to \$2,000 by 2009. In these respects, LD 1 is almost exactly like the Legislature's Question 1B from 2003. In addition, LD 1 would institute a system of spending limits on state, county, school and local governments, consisting of varying standards, complicated formulas, an array of governance procedures, and with very broad exemptions available to the Legislature.

Because the Governor was able to advance his proposal to implement Question 1A fully a month before any other bill could be printed, LD 1 and

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the special Committee's review of LD 1 has commanded all the attention, as though it is the only approach to implementing Question 1A. Now that the normal release of legislation is taking place, it is becoming clear that there is at least one other approach to implementing Question 1A that is more faithful to the law adopted by the voters on June 8. LD 12, *An Act to Implement the School Finance and Tax Reform Act of 2003*, has just been printed. As should be noted in the sidebar that lists the sponsorship of LD 12, it is an approach that comes with strong bipartisan support.

In addition to LD 1, Governor Baldacci also proposed LD 2 as part of his overall property tax reform package. LD 2 is a proposed constitutional amendment that would authorize municipalities to cap the year-to-year growth in the assessed value of the buildable lot under the primary residence of all homesteaders at the rate of inflation (e.g., 2.27% in 2003). The valuation limitation system would not apply to any physical structures and it would only pertain to the amount of the land reasonably necessary to support a primary residence. When the property is sold, the valuation of the land under the homesteader's primary residence that was constrained in valuation growth by the local option would be restored to its market or "just" value. In addition, the capped value of all the homestead land would only apply with respect to the local taxation of that property. The "just value" of that "homestead land" property would also be recorded separately by the municipality for the purposes of determining the municipality's state valuation for

school subsidy, revenue sharing and county assessment purposes.

Over the last five weeks, the *Select Joint Committee on Property Tax Reform* has been holding hearings and work sessions on both LD 1 and LD 2. MMA has been distributing to interested municipal officials almost daily reports on the progress the Committee has been making on its review and amendments to the two bills. Those daily summaries and a great deal of background information about both Question 1A and the Legislature's developing alternative to the law adopted by Maine's voters can be found at MMA's website (www.memun.org). Municipal officials who do not regularly use e-mail or access websites should feel free to contact MMA's Laura Veilleux (1-800-452-8786) to get on a mailing list to receive those materials.

Fast track. Both the Administration and legislative leadership are trying to put LD 1 and LD 2 on the fast track, insisting that the bills be presented to the full Legislature by January 20th, although at this point the reason for that deadline is entirely unclear. The ostensible reason is so the Legislature can act before elements of LD 1 could be construed as a "competing measure" to one or two proposed citizen initiatives that may be filed with the Secretary of State by a January 20th deadline. It now appears that neither of those initiatives (the TABOR initiative sponsored by Mary Adams and the Chamber of Commerce initiative which has been in large part incorporated into LD 1) will be filed by the January 20th deadline, but the "competing measure" reasons are still being advanced as a justification for legislative action by that date.

At press time. It is not clear at this point if the Committee is on track in its efforts to pull together a package that will receive widespread legislative support. What follows are the elements of the "property tax reform" package that has thus far been moved "in" the final package by the Committee, along with the major elements that have yet to be fully developed or agreed to.

Getting to 55%. By several straw-poll votes, the Committee has agreed

that the package will not require the Legislature to engage in any comprehensive tax reform as required by Question 1A; that is, there will be no effort to adjust or redesign Maine's overall tax code in order to raise the necessary revenue to properly fund K-12 education at the 55% level in any immediate way. Similarly, the Committee has decided not to try to more aggressively meet its K-12 funding obligation by reprioritizing existing state expenditures. As a result, the Committee has agreed to adopt LD 1's four-year ramp that would not fully fund K-12 education at the required 55% level until FY 2009.

EPS model. In accepting this four-year phased-in approach, the Committee is supporting the fact that in the first year (FY 06), the state would pay for 46.5% (rather than 55%) of the cost of education as measured by the essential programs and services school funding model (EPS). Specifically, by the terms of a double-ramp school funding "target" system that defies coherent explanation, the state would pay 52.6% of just 84% of the EPS model. (Technically, it is not 84% of the entire EPS model. It is the EPS model with the operational element reduced by 84%.)

According to a spreadsheet provided by the Department of Education and now generally available, next year's distribution of school subsidy under LD 1 would provide increased school subsidy to 177 of the 285 school systems in Maine (62%), and decreased school subsidy to 108 school systems (38%).

It is presumably fair to say that decreased school aid from the state — or even flat school funding — across broad regions of the state is not an expected result of the "property tax reform" effort.

In terms of dollar increases to school systems, the ten biggest subsidy increases would be provided to Sanford, Windham, Lewiston, SAD 6 (Buxton), SAD 35 (Eliot), Brunswick, Gorham, Westbrook, SAD 49 (Fairfield), and Bangor. The ten school systems losing the most state aid would be SAD 61 (Bridgton), SAD 37 (Milbridge), SAD 34 (Belfast), SAD 55

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According to the Department of Education, the two major factors driving reduced subsidy distribution are a reduction in student count and sharp increases in municipal valuation. Municipalities experiencing both circumstances simultaneously are most likely to experience the sharpest declines in state aid. There is nothing new to this phenomenon; it is equally true with respect to the existing school funding distribution system that has been in place for many years. Under the EPS model, however, the impact of these two driving factors are easier to see. The EPS system makes naked the underlying public policy, removing it from the nest of incomprehensible language that characterized the existing school funding distribution formula.

According to the Department's spreadsheet, approximately 50 school systems would be receiving somewhat enhanced school subsidy because of the requirement established by Question 1A that the state pay, at a minimum, 100% of the schools system's mandated special education costs. An analysis of the spreadsheet suggests that examples of those schools systems are Baileyville, Bar Harbor, Blue Hill, Bremen, Castine, Georgetown, Rangeley, Southwest Harbor, Tremont, North Haven and the Wells-Ogunquit CSD.

On that subject, the Committee has agreed to accept the EPS amendments to the EPS funding model in LD 1 governing the modeling of special education funding and transportation costs.

Most school budgets exceed EPS. During this process, the Department has also provided spreadsheets that show the total school budgets adopted this year (FY 05) for each school system, the modestly projected growth of each school budget (at 2.5%) for FY 06, and how that projected budget compares with the FY 06 EPS allocation for each school system at 100% of the model. According to that spreadsheet, approximately 215 of the 285 school systems will be above the EPS model in

FY 06.

School spending caps. The Committee has yet to finalize or agree upon the spending limitation it would like to apply to either the state, county or municipal governments, but it has made progress on the mechanics of the school spending caps it will propose to implement. As printed, LD 1 would require every proposed school budget that exceeds the 100% EPS allocation for that school by one penny or more to be adopted by secret ballot referendum, regardless of whether it is a municipal school system or school district (SAD or CSD).

Although the Committee has yet to decide the threshold that would compel the "override" vote, it has decided on the mechanics of the override procedure. For schools whose budgets are ultimately adopted by town or city councils, the vote to override whatever spending limit threshold is established by the Legislature would be by simple majority vote of the full membership of the school committee along with a simple majority vote of the full membership of the town or city council. In addition, if the town or city charter does not otherwise establish a system for the citizens to petition for a reconsideration of the school budget adopted by the council, a default "peoples' veto" process would be established by law. For SADs that already adopt their budget by referendum, the spending limit override procedure would require a referendum vote on a specially-worded article. For SADs and CSDs that normally adopt their budgets at open meetings, and for the town meetings that adopt the budgets of municipal schools systems, the special override procedure would require a vote by paper ballot, conducted at the open meeting.

Constitutional amendments. The Committee is recommending a raft of constitutional amendments, no less than four so far. The several proposed constitutional amendments would:

1. Create an authority for municipalities to adopt locally administered homestead exemption programs.
2. Create an authority for municipalities to adopt locally administered circuit breaker programs, that would perhaps piggy-back on the state's cir-

cuit breaker program for eligibility purposes.

3. Create a new "current use" category for both waterfront land and structures associated with the commercial fishing industry. This proposed amendment would be identical to the proposed constitutional amendment that was narrowly rejected by the voters in 2000. The language of that proposed amendment would add to the existing list of "current use" applications (Tree Growth, Farmland, and Open Space) the following category:

"Waterfront land and structures used primarily for commercial fishing purposes, including, but not limited to, access, dockage, processing, vessel and gear storage and the purchase of marine products from a person who fishes commercially."

4. Create an authority for municipalities to tax secondary homes (residential properties that are not the owner's primary residence), or a portion of the assessed value of secondary homes, at a property tax rate that exceeds the rate that is applied to all other classes of property.

A fifth proposed constitutional amendment being further developed by the Committee would be an amended version of LD 2. As described above, LD 2 would authorize municipalities to cap the year-to-year growth in the assessed value of the buildable lot under the primary residence of all homesteaders at the rate of inflation. The Committee amendment to LD 2 would establish a minimum financial penalty that could be increased or adjusted by the Legislature over time that would be applied at the time of sale to property enrolled in the program and be provided to the municipality to mitigate the general mill rate increases that would occur over time because of the limitations on assessed value.

Homestead Exemption. The Committee has moved "in" a proposal to increase the face value of the homestead exemption to approximately \$13,000 (exact value to be determined), but only reimburse municipalities for 50% of their lost revenue, so there would be no increased cost to the state for this expansion. As municipal officials are well aware,

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the Legislature took its first shot at the homestead exemption during the last session by reducing the \$7,000 exemption value to \$5,000 for homesteads worth more than \$125,000 and to just \$2,500 for homesteads worth more than \$250,000. The express purpose of this new Committee proposal is to shift the unreimbursed costs of this expanded exemption (approximately \$36 million a year in municipal services) to businesses, renters and vacation homeowners. There is some disagreement in the legal community as to whether this provision conflicts with the principal constitutional provision on the subject, which requires equal assessing and equal apportionment of all property taxes.

Revenue sharing. Without full commitment yet, the Committee has voted to continue the development of a proposal that would shift revenue sharing funds from rural to urban communities. The specific proposal would change the distribution formula to recognize only the municipality's full-value property tax rate related to non-education costs, rather than its total full value mill rate. The proposal is a plank in the 2005 legislative platform of the Maine Service Center Coalition. The impact of the proposal is very significant, taking revenue sharing away from 363 municipalities and providing it to 122 municipalities, with dramatic impacts in many cases.

Circuit breaker. The Committee has moved "in" a proposal to redesign the circuit breaker property tax and rent rebate program by removing the income thresholds that currently govern potential eligibility and replacing them with a maximum property tax threshold. Specifically, the program would recognize just the first \$4,000 of any applicant's property tax bill, and provide a sliding-scale rebate to the extent that the "recognized" property tax bill exceeds 4% of an applicant's household income, up to a maximum benefit of \$2,000. The proposal would also increase the presumptive property taxes that renters "pay" from 18% of the annual rent (current law) to 20% of the annual rent. It is unclear what this re-designed circuit breaker program will cost the state each year.

What is left to be finalized. The Committee is scheduled to finalize its preliminary assembly of its property tax

reform proposal today. There are a great number of decisions yet to be made, including:

- **State spending limits.** A very controversial issue, at least for the Legislature, that includes: (1) what will be the state's allowed spending growth allowance; (2) what exemptions will be built into the system that will allow the state to exceed that allowance in "exceptional circumstances"; and (3) what procedure will the Legislature have to follow to exceed the growth limit, generally?

- **Municipal and county spending limits.** Generally, the same decisions still have to be made with respect to the limitation system on both municipal and county governments. Lobbyists for county government have asked for there to be a two-year exemption on any limitation system regarding the increasing costs of county jails while the issue is further studied. The counties are also seeking additional exemptions from the limitation if the counties receive grants to regionalize the delivery of municipal services. In addition, the counties have asked for an exemption from any required referendum voting approval in order to exceed any other limits that may be imposed, requiring instead that the override decision would be made by a unanimous vote of all three county commissioners. In addition, the counties have asked for direct access to any grants that may be funded by the municipal revenue sharing-based Local Government Efficiency Fund.

- **School spending limits.** What should be the trigger point when school boards would be required to use the special procedures (outlined above) to have their proposed budgets adopted? Should it be based on the EPS allocation or some other growth allowance formula?

- **Limiting assessed values.** The final details of the fifth proposed constitutional amendment (described above) to somehow limit increased assessments in the assessed value of Maine residents' "homestead" land.

What has received no consideration. In addition to calling for the Legislature to engage in comprehensive tax reform (which will apparently not be an aspect of the Committee's report on LD 1), Question 1A requires the Legislature to write into law the comprehensive

management of the two efficiency funds the June 8th law created, a local government efficiency fund and a school efficiency fund. LD 1 simply gives over to two state agencies the responsibility for managing those funds. MMA takes the management of those funds very seriously, and LD 12 would put into law comprehensive management systems for both funds that rely on the creativity and knowledge of municipal and educational practitioners who have extensive experience in actually providing the local government services. The Committee has thus far paid no attention to either the LD 1 approach or the LD 12 approach to this very importation element of Question 1A.

What to do with Question 1A? LD 1 incorporates within it the language of the law adopted by the voters on June 8th and amends that language in an attempt to make it conform with the alternative direction created by LD 1. That approach begs the question of what the Legislature intends to do with the actual law adopted by the voters. The voters' law could not exist in the law books without being in conflict with the alternative approach of LD 1, at least as it is currently being developed by the Committee. The Committee has not talked about effectively repealing and replacing the language of Question 1A, so it remains to be seen how the law adopted by the voters will be ultimately reconciled with the law that the Legislature appears interested in adopting in its stead.

LD 12 – An Act To Implement the School Finance and Tax Reform Act of 2003

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Charles William Harlow (D-Portland)
James M. Schatz (D-Blue Hill)
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