

Tax Reform Morphs to Budget Cutting

Last week at this time the Taxation Committee was poised to make all its final decisions on its "tax reform" recommendations to the full Legislature for 2005. The general public was told that the final deadlines had to be met...that all bills had to be reported out of Committee...that in order for the Legislature to finish its work, the final decisions on tax reform had to be made. That didn't happen.

With respect to Governor Baldacci's proposal to repeal the personal property tax, the Committee made two recommendations on Friday, but then pulled them back on Monday. On Friday, the Committee voted unanimously to "carry over" LD 1660, the Governor's personal property tax repeal bill, into the 2006 legislative session. The Committee also voted along party lines to create a 15-member legislator-stakeholder commission to study LD 1660 over the summer and make recommendations next year about what to do with the bill. On Monday this week (May 23), the Committee voted to "reconsider" those decisions, and so now everything is back on the table.

Committee deliberations on the tax reform package have stalled like the low pressure system in the Gulf of Maine.

The reason for the delay and the stalled Tax Committee deliberations appears to be because a shift has occurred with respect to the "why" of tax reform. Until now, the Tax Committee discussions were focused on a "revenue-neutral" tax reform package with a centerpiece of expanding the sales tax base and capturing the increased state revenue to either reduce the in-

come tax rates or increase the household income level when the highest rates would kick-in. What has been on the table was a closed-loop reform proposal that would generate no additional state revenue.

During the Committee's brief discussions on the subject early this week, House Chair Rep. Dick Woodbury (Yarmouth) made a reference to the recent announcement of the military base and shipyard closings as one reason the tax reform discussions should be delayed.

Reference was also made to a new assignment given to all state agencies to show what a 5% reduction in funding would do to the various programs the agencies provide. This exercise is related to a possible re-design of the recently enacted state budget – the so-called "Part I" budget – which relies on

\$450 million in non-capital borrowing. Press reports suggest that Governor Baldacci and Democrat party leaders are attempting to enter into a dialogue with Republicans about structuring an alternative to approximately \$250 million worth of that borrowing proposal, some of which would be achieved by cuts in state programs and some of which would be achieved through taxation. As a political party, the Republicans have not supported any increases in taxation for any purpose, whether to provide increased state support for education or to rebalance the tax code in a tax reform effort. The 5% exercise put into motion by the Democrats is clearly an attempt to jog the Republicans into identifying the specific cuts to state programs they

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Election Bills Plentiful

This session the Legal and Veterans Affairs Committee was asked to weigh in on no less than seventy-five bills that sought to amend the citizen initiative process, change the way Maine voters cast ballots or otherwise change the existing election laws. Unfortunately for the members of the Legal and Veterans Affairs Committee, their decisions to support or oppose proposed legislation caused problems for one interested party or another. Any Committee vote on these bills opened the members to an onslaught of criticism from some element of the public supporting or opposing a bill.

Although MMA continues to pro-

cess the votes taken on the election bills, the results reported so far are commendable. Where possible, the Committee created opportunities to study the issues and concerns raised in the submitted bills. The Committee also made changes to existing laws to make the election process more manageable for election officials. What follows is a summary of the issues of municipal interest addressed by the Committee.

Polling Place Controls

The Committee was asked to debate many bills seeking to amend sev-

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ELECTION (cont'd)

eral of the laws regulating elections. The bills reviewed by the Committee sought to revoke the voting privileges of felons, abolish Maine's long-standing tradition of providing election day registration, place additional restrictions on the use of campaign signs, and allow for processing of absentee ballots prior to the election. The Committee voted to support three election law bills that MMA was tracking.

LD 1598, *An Act to Prevent Campaigning at Polling Places*. As supported by nine members of the Committee, this bill would prohibit candidates and the spouses or surrogates of candidates from "repetitively" or "systematically" communicating with incoming voters within 100 feet of the polling vote. However, candidates, spouses or surrogates would be allowed to vote, monitor the polls and inspect the voting place. Essentially, the bill would prohibit candidates from lingering around the polling place to "greet" voters. Unfortunately, as could have perhaps been predicted, the bill's "ought to pass" recommendation failed passage in both the House and Senate.

Voter Registration Lists

The Committee unanimously voted "ought not to pass" on two election bills that if enacted would have shifted additional cost and responsibilities to municipal election officials. Although the ideas proposed in LD 1266, *An Act to Ensure Integrity in the Voting Process* and LD 1602, *An Act Regarding Voter Registration Cards* were rejected by the Committee, the bills have been retained to serve as vehicles to make changes to existing

laws regulating the centralized voter list.

As mandated by Congress through the enactment of the Help America Vote Act (HAVA), all states receiving federal HAVA funds must have a state-wide-centralized voter registration (CVR) database operating by January 1, 2006. The electronic statewide voter list will be maintained by the Secretary of State and made available to municipal clerks and registrars over a secure Internet connection. The goal of the CVR is to merge the 500 municipal voter lists maintained by each municipality into one statewide list.

The state will be purchasing and delivering the equipment necessary to fully implement the CVR system to every municipality by July of this year. Each community will receive a computer, monitor, printer and image scanner. Depending on the size of the municipality's voter list, some communities will also be provided with bar-code scanners and label printers. The Secretary of State's office will also be providing the training necessary to use the equipment. Information about this process is available on the Secretary of State's website (<http://www.state.me.us/sos/cec/elec/hava/clerk.html>).

LD 1602 will be used as a vehicle to update existing election laws to reflect the new CVR system. In addition to minor amendments to election terminology, the bill also make more substantive changes.

As originally proposed by the Secretary of State (SOS), three of the proposed changes placed additional mandates on municipalities. MMA, SOS and legislative staff met this week to discuss the mandates included in LD 1602. As a result of that meeting, two of the three mandates have been excluded from the bill. Since the interested parties were unable to address the third mandate, the Committee will be advised to include a mandate preamble on the bill. The mandate preamble allows the Legislature by a two-thirds majority vote in the House and the Senate to override any responsibility to fund 90% of the new state mandate.

One of the mandates in the SOS bill would require registrars in communi-

ties with populations less than 2,500 to have their offices open on the last business day before the election to accept "in person" voter registration applications. Currently, the law requires these communities to take "in person" voter registrations until the last business day the office is open before the election. The last-business-day provision will be excluded from the amended version of LD 1602.

The second mandate found in the SOS bill requires the registrar within 20 business days after the election to update the central voter registration system by indicating which voters participated in the election. Registrars are not currently required to perform this task. The bill has been amended to make this new responsibility discretionary. Municipalities choosing to participate in this process will be able to shift some of their voter list purging responsibilities to the SOS.

Finally, the SOS bill would amend the way in which registrars notify voter registration applicants. Current election laws require the registrar to notify an applicant as to whether the application to register to vote is accepted, rejected or incomplete, but leaves the method for notification to the registrar. As proposed in the SOS bill, the registrar would be required to send the applicant written notice using a process that *prevents* mail from being forwarded to a new address. If the initial mailed notice to an applicant is returned as undeliverable 15 days after it is sent, the registrar must reject the application and mail a notice to that effect using a process that *allows* mail to be forwarded to a new address. The interested parties were unable to make this particular new mandate disappear.

Although the bill will contain a mandate, municipal officials understand that when the CVR system is finally implemented municipalities will find the voter registration process easier to administer. For that reason, municipal officials have no intention of complaining about the enactment of this bill with the mandate preamble.

In addition to the changes described above, the amended bill proposed to: 1) replace the definition of

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ELECTION (cont'd)

street address with residence address, which is defined as the street and number or other indicator of physical location; 2) define voter participation history as an indicator in the CVR system to determine if a voter has cast a ballot; 3) require municipalities to use the CVR system to notify SOS of the appointment of a registrar, rather than mailing that information; 4) repeal from the list of duties placed on the registrars the responsibility to prepare the voter list used during a statewide election; and 5) clarify that the voter list used at municipal caucuses must include only the name, residence, enrollment status, electoral district, voter status, voter record number and any special designation (i.e., uniformed service, overseas voters, etc.).

LD 1266 will be used as a vehicle to address how the information gathered for the CVR will be disseminated and used. The specifics on the bill are currently being developed. MMA will share the details of LD 1266 once that information is made available.

Citizen Initiative Bills

The Legal and Veterans Affairs Committee also reviewed several bills seeking to amend the citizen initiative process. The solutions proposed in the bills sought to limit financial contributions made to citizen initiative campaigns from out-of-state resources, to prohibit petition blockers from polling places, and to ensure statewide participation in a citizen initiative by requiring that a certain number of signatures were collected in each county.

After sorting through all of the information, the Committee voted "ought not to pass" on many of these bills. Two of the citizen initiative related bills survived the Committee review process.

LD 374, *An Act to Create a Protected Zone Around the Voting Place*. As amended by the Committee, this bill clearly defines the limits placed on petition supporters and blockers in the polling place. As amended, the bill regulates the petition process by designating additional roles to the wardens and clearly defining what petition circulators and opponents can and

cannot do within in the confines of the polling place.

As amended, the municipal election wardens must: 1) designate a space in the polling place for signature collectors that is large enough to accommodate an opponent to the petition; 2) limit the collectors and opponents to one for each issue; 3) locate signature collectors and opponents within the same area, whether it is inside or outside of the polling place; and 4) remove from the polling place any petition circulator or opponent who does not comply with the requirements of this law.

As amended, the petition circulators or opponents may not: 1) approach voters and collect signatures until after the voter has cast a ballot; 2) interfere with the voters' access to the voting booth; 3) advertise the petition, except that a sign containing the petition title or question may be displayed; 4) distribute literature related to the petition until the voters have cast a ballot; 5) influence voters who have not yet voted regarding another issue or candidate on the ballot; and 6) obstruct, disrupt or otherwise interfere with the circulators' or opponents' ability to communicate with voters concerning the petition. The petition circulators are further required to notify the municipal clerks by noon on the day before the election that they wish to collect signatures at the polling place.

The bill also reduces the "no-influence" zone around the entrance to the polling place from 250 feet to 100 feet. Although the bill received unanimous Committee support, the bill failed enactment in the House by a margin of 66 to 69. The bill is currently tabled in the House.

LD 929, *An Act to Create Freedom of Citizen Information Regarding Ballot Questions and Political Action Committees*. As amended by the Committee, this bill would require petition circulators to provide signers of a petition an opportunity to read the summary of the initiative prior to signing the petition. The amendment also requires that the cost of placing the citizen initiative on the ballot and the right of the signers to read a summary of the proposed citizen initiative would

have to be printed on the petitions. LD 929 is tabled in the Senate.

TAX REFORM (cont'd)

would like to see take place and/or the tax increases they support in order to replace the borrowing plan they oppose.

The activities of the Tax Committee during this stalled tax-reform NorthEaster were halting, intermittent, unpredictable and eclectic. On Monday the Committee reversed itself on the decisions it made regarding the repeal of the personal property tax and put that debate back on the table. On Tuesday the Committee did not meet. On Wednesday, the Committee hosted a presentation from several of Maine's Service Center Communities (Portland, Bangor and Lewiston), the Greater Portland Chamber of Commerce, and a lobbying firm, all promoting the adoption of a local-option meals and lodging sales tax in order to finance the construction of civic centers. The Committee also heard a report from the State Tax Assessor about how the \$32 million operating budget of Maine Revenue Services might be reduced by its 5% quota, or by \$1.5 million.

Thursday was the most bizarre day of a relatively bizarre week in the Tax Committee. House and Senate Chairs Rep. Dick Woodbury (Yarmouth) and Sen. Joe Perry (Bangor) instructed the Committee, most of whom were absent, that deeper Maine Revenue Services cuts were necessary. According to the chairs, the Committee's charge should be interpreted to mean that municipal revenue sharing, Tree Growth reimbursements and the business reimbursements under the Business Equipment Tax Reimbursement program (BETR) should all be cut back under the 5% rule. In response to this request from Democratic leadership, an apparent majority of the Committee will be recommending to the Appropriations Committee that Tree Growth reimbursements, municipal revenue sharing and BETR reimbursements, collectively, should be cut by \$16 million a year.

So much for property tax relief in FY 06.

New Labor Mandate Likely

An amended version of LD 1123, *An Act to Promote Stability in Labor Relations*, received initial support from the members of House and Senate this week. As amended, the bill would allow municipal, county, university and judicial branch employees to grieve all aspects of an expired contract, with the exception of the elements of the expired contract dealing with wage and step-pay increases.

Under existing law, employees can grieve only the disciplinary aspects of an expired contract unless the labor contract provides otherwise. For example, even under current law the decision of the police chief to suspend an officer because of reckless driving can be “grieved” by the disciplined officer even though a contract is expired.

As amended, LD 1123 expands the entitlement for “grieving” management decisions to include non disciplinary matters, including job classification decisions, overtime scheduling assignments, allegations regarding the working conditions, claims of hostile work environment, etc. For example, if the police chief makes an error in assigning overtime by giving the wrong officer on the rotation the overtime, the officer who was due the overtime assignment could grieve the decision of the chief. Under existing law, unless the labor contract waived the employer’s right to these limitations in grievable actions, the officer would not have a right to grieve that decision.

The amended bill clearly requires municipalities to modify its activities by engaging in an expanded number of grievance procedures. While MMA believes that this expansion is an unfunded mandate, the Office of Fiscal and Program Review (OFPR), which is responsible for identifying mandates, disagrees. According to OFPR, the amended bill is not a mandate because it is a prospective legislative change. Municipalities are being put on notice that employees will be provided additional opportunities to grieve elements of expired contracts. According to the OFPR analysis, this notice provides time for municipalities to prepare for the change (whatever that

means) as well as provide an opportunity to negotiate in future contracts the costs associated with the additional grievance that could be filed.

MMA strongly disagrees. LD 1123, as amended, meets the constitutional definition of a state mandate about as squarely as it can. There are two elements to the mandate test. First, does the law require a municipality to modify its activities? Second, do those modifications lead to increased municipal expenditures? LD 1123 clearly modifies the activities of schools, counties and municipal employers. Many of them who have not waived their rights under current law to limit grievable actions when labor contracts expire will now have to engage

in new grievance procedures with the attendant costs in each case of administrative time, down time, possible arbitrator costs, etc. The OFPR argument that these new costs can be negotiated in new contracts is bogus. Of course they can be negotiated, by increasing the costs of the contract. Converting the direct new costs triggered by LD 1123 into increased contract costs doesn’t make the increased costs go away.

Please take the time over the long weekend to connect with your representatives and senators at home and ask them to vote “ought not to pass” on this new labor mandate. When the Legislature reconvenes in Augusta on Tuesday, May 31st, members of the Senate can be reached at 1-800-423-6900 and members of the House can be reached at 1-800-423-2900.

Freedom of Access Bills Worked

The Judiciary Committee voted on six bills dealing with “Freedom of Access” to government documents, also known as the “Right to Know” laws. The Committee recommended that three bills “ought to pass”, two bills “ought not to pass” and that one bill be “carried over” into the 2006 legislative session.

Ought to Pass

LD 301, which establishes a permanent “Freedom of Access” advisory committee, passed the committee after considerable amendments. The bill originally established a stakeholder-group advisory committee and created an Ombudsman within the Attorney General’s Office. The bill as amended does not create the Ombudsman. The permanent Advisory Committee was supported, however, along with its 13 members and its 12 duties.

The thrust of the 11 new subsections of law is to allow this advisory committee to provide comments on the comings and goings of the Right to Know public access laws. If the Advisory Committee actually focuses on resolving difficult challenges concerning access, such as how to deal with e-mail data and voice mail messages and the ever changing technology that contains information,

then this bill may serve a useful purpose. If the Advisory Committee is merely another outlet for the Maine press to criticize government officials when the press doesn’t get its way, then the consequences of this bill will be a waste of time.

LD 467 deems the personal contact information of government employees (except elected officials) to be non-public. This non-controversial legislation passed unanimously.

LD1202 calls for the creation of a study (to be federally funded) of whether vital records such as birth certificates should be treated as non-public. Currently, anyone may get a copy of another’s birth certificate. In the era of identify theft, many have an interest in limiting access to such potentially exploitable information.

Ought Not to Pass

LD 466 would grant attorney fees to the prevailing party in litigation involving public access requests. The attorneys fees could only be granted if the losing party acted in bad faith. Some Committee members were clearly against the bill. Others were not adamantly op-

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Counties Seek Spending Limit Exemption

On Monday of this week (May 23rd), the State and Local Government Committee voted to exempt some of the most costly elements of county government from the counties' spending limitation system enacted in LD 1. The Committee achieved this result by supporting an amended version of LD 1666, *An Act to Allow Counties a One-year Exemption for Jail Costs from the Limitation on County Assessments*, by a margin of 7 to 3 and by unanimously supporting LD 1667, *An Act to Allow Lincoln and Sagadahoc Counties an Exemption from the Limitation on County Assessment*.

As amended by the Committee, LD 1666 would exempt the FY 06 inmate medical and boarding cost from the LD 1 spending limitations. The bill would also require counties to participate in state or county programs to reduce the cost of providing correctional services. LD 1667 would exempt Lincoln and Sagadahoc counties from the assessment limits established in LD 1 for the FY 06 and FY 07 costs associated with completing the new jail facility. (On Thursday of this week (May 26th), LD 1667 received initial support from both House and Senate.)

The majority of the Committee was adamant that counties needed some relief from the spending limitations in LD 1. Some members of the Committee believe that current and past administrations and legislatures are largely to blame for the problem counties are facing in funding community corrections. Although study after study has been conducted regarding jail funding, nothing has been done. These members of the Committee see the exemption as providing the current Administration and Legislature one last opportunity to address and fix the issue. Counties should not be held to limitations since the cost associated with county jails are the fault of the Legislature. The pressure needs to be applied to the Administration and the Legislature to remedy the problem, and the State and Local Government Committee believe that the only way this can be achieved

is by exempting these costs from the limitations created in LD 1.

Although municipal officials agree that the state has been lax in funding county correction costs, they disagree with the solution being offered. Municipal officials believe that is it through the application of the spending limitation system, and not its relaxation, that we will begin to be able to better manage, as a state, the funding of the county corrections system. One of the purposes of the caps established in LD 1 was to shed light on the programs that are being inadequately funded. By exceeding the cap on county corrections, the Legislature would quickly learn that the state is not appropriately funding the jail system. Municipal officials believe that this process would force the Legislature to act appropriately. Their concern is that rather than addressing the issue head on, the exemption provides the Legislature a way out. Rather than fixing the county jail system, the state can annually vote to exempt those costs from the cap. Nothing will need to be done. The "out" has been provided.

The municipal reaction to the votes on LD 1666 and LD 1667 can be summarized in three simple words: we get it. The spending limitation systems created in LD 1 were apparently created for municipalities only. For all the initial talk about the application of a uniform system on all levels of government, the Legislature is moving to create a lopsided Animal Farm-type system where all the animals are equal, but some of the animals are more equal than others.

FREEDOM (cont'd)

posed to the idea but were unconvinced that the award of attorney's fees would help solve any problems.

LD 1275 would have protected the e-mail address in the possession of the government from public disclosure. The issue is that internet "spammers" are increasingly using government databases for lists of email addresses. The e-mail addresses are useful because they enable

marketers to target their unwanted solicitations. For example, dog food makers would use the e-mail database of those who renewed a dog license online while car makers would use the e-mail database of those who renewed a motor vehicle registration.

The public testimony on the bill was virtually non-existent. There were no opponents of the bill, and the only supporter, bill sponsor Rep. Earl Bierman (Sorrento) was tied-up by other committee work. However, Rep. Bierman did attend the work session and stressed that he did not seek to protect any of the substance of a transaction from the public records, only the email addresses of the public.

Thus, if an individual, BeerLover@IHatePoliticians.com sent the city council an email which asserted that a bunch of drunken monkeys could do a better job amending the city's land use ordinance, that statement would still be a public record available for the world to see. The only item that would not be public is the email address. Even so, the Committee killed the bill.

Carry Over

LD 1455 represents a tremendous effort on the part of the Judiciary Committee's analyst to gather into one document the myriad sections of law that grant confidentiality to various government documents. However, while the work is entirely worthwhile, its utility as a piece of legislation was called into question for two reasons.

First, the list is not comprehensive. The list does not include every exception to the public records laws. The Committee needs to decide if every exception will be included or not, and if not, where to draw the line.

Second, it is unclear what purpose is served by placing this list in statute. While a very useful list to those few (mostly the press) who have occasion to need a single source for all of the state's exceptions to public records law, the list purports by its very prologue to have no impact. That is, inclusion or exclusion from the list is deemed to have no legal effect. It is odd when a law is passed which by its very terms is not to be viewed as a law.

The Committee was unsure what to do with this bill and decided to carry it over until the second session.

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://janus.state.me.us/legis/session/>.

Wednesday, June 1

**Health & Human Services
Room 209, Cross State Office Building, 1:00 p.m.
Tel: 287-1317**

LD 1614 – An Act To Sustain and Strengthen Community Health Coalitions. (Sponsored by Sen. Rosen of Hancock Cty; additional cosponsors.)