

# Legislative BULLETIN

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## Palesky Tax Cap Gets Public Hearing

On Monday this week the Taxation Committee held a public hearing on the citizens initiative that would cap property taxes at 10 mills. What is now LD 1893, *An Act to Impose Limits on Real and Personal Property*, is the initiative promoted by the Maine Taxpayers Action Network, headed by Topsham's Carol Palesky.

On Wednesday the Committee held its first work session on the bill. The purpose of this article is to summarize the public hearing testimony and describe what actions the Committee has taken on the Palesky initiative thus far.

The proponents of LD 1893 included Carol Palesky, former State Senator Phil Harriman of Yarmouth, Jack Wibby of Yarmouth, Julian Holmes of Wayne, Mr. and Mrs. Arthur McDermott of Westbrook, and two other MTAN supporters.

Those opposing LD 1893 were Portland City Councilor Jill Duson, the Maine State Chamber of Commerce, the Maine Pulp and Paper Association, the Maine Service Center Coalition, the Maine Citizen Leadership Fund, the Maine Education Association, the Maine AFL-CIO, and MMA.

The main themes of the testimony of those promoting this California-style, "Proposition 13" tax cap initiative were that the Legislature has repeatedly failed to deliver on real property tax relief and comprehensive reform, and voting by a mere majority is a failed democratic system that has to be replaced with "super majority" voting – approval by two-third majorities – on all tax issues.

The Town of Yarmouth also received

a lot of attention from the proponents, especially with the testimony of Jack Wibby and Phil Harriman. Wibby said that the majority of the voters in the town were consistently outvoting a few neighborhoods of people located in those sections of Yarmouth that are growing very rapidly in value, and the decisions of the majority supported exorbitant school programs that were unnecessary to provide a basic education. When proposed budgets are challenged, the local officials threaten to cut the most popular programs, and when the issue comes to a vote, the proponents of the allegedly excessive spending make sure the town meeting is stacked with like-minded voters. As examples, Libby indicated that even now the Yarmouth school board was considering proposing lights on the softball field, and adding a drug abuse counselor and middle-school athletic director to the school budget, none of which Wibby believed necessary. Wibby

also claimed that one couple in Yarmouth was paying a property tax of \$69,000 and their daughter next door was paying \$29,000 in taxes, and that many of the people with taxes of this magnitude could not sell their property because the taxes were too high.

Other testimony themes by those supporting and those opposing the tax cap were:

**Proponents:** The initiative is well researched, carefully thought through, scrupulously fair, and carefully written.

**Opponents:** The initiative is ambiguous, contradictory, uses undefined terms that have no legal meaning in Maine, and presents technical and legal questions of interpretation, not the least of which are three clearly unconstitutional provisions: (1) the "valuation rollback and freeze" provision, violating Article IX, Section 8; (2) the restriction on legislative authority to amend the property tax code, violating Article IX, Section 9; and (3) the authority given to municipalities and counties to levy non-property taxes if approved by supermajority votes, also violating Article IX, Section 9.

**Proponents:** Municipalities will be

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### Hearings Next Week on Gov's Tax Relief

Governor Baldacci's three-piece "tax relief"/education funding package is scheduled for public hearings next week.

On Wednesday, the Governor's school consolidation and regionalization bill, LD 1921, is scheduled for public hearing before the Legislature's ad hoc regionalization committee. On Thursday, the Taxation Committee will be holding a public hearing on the Governor's proposal to repeal personal property taxes and the homestead property tax exemption and place an appropriations cap on municipal government (LD 1923) and his education funding proposal (LD 1924).

Please check the Legislative Hearing Schedule and the Hopper in this edition of the Bulletin to get more details about the time and place of the hearings and the substance of the Governor's proposals.

## PALESKY (cont'd)

able to absorb lost revenues by trimming administrative positions through attrition – no layoffs or critical reductions in services will be necessary.

**Opponents:** If the Palesky initiative is adopted as enacted, using the 1996 tax base without any inflationary adjustment until 2005 and requiring all debt service to be contained within the 10 mill cap unless it was approved “by the voters” prior to 1999, the loss in property tax revenue to the municipalities will be over \$1 billion, which is more than 50% of the projected property tax commitment for that year (FY 06). Revenue reductions of that magnitude will clearly and undeniably result in reduced educational programs and reduced or eliminated police and fire protection services, road construction and maintenance, solid waste removal services, recreational and library programs, and a host of other services that are provided at the local level.

**Proponents:** Systems like LD 1893’s “Proposition 13” are in common use in many states and have not caused the problems that the opponents fear.

**Opponents:** There is only one state with any system resembling “Proposition 13” and that is California, and that state’s financial system is in chaos, was very close to bankruptcy by its Governor’s own admission, and recently had to borrow \$15 billion just to continue governmental operations.

**Proponents:** Because pre-existing debt service is not covered by the cap and because the average municipal mill rate to cover pre-existing debt service is 7 mills, the initiative would allow most

towns to have a mill rate of 17 mills, the state average.

**Opponents:** The average mill rate to cover pre-existing debt approved by the voters prior to 1999 (which is what the initiative allows) is less than one-half a mill in the small towns and 1.5 mills in the largest municipalities. The claim that it is 7 mills is bogus.

**Proponents:** Municipalities are harboring multi-million dollar undesignated fund balances, the result of years of over-taxation.

**Opponents:** The system of maintaining a “surplus” or “undesignated fund balance” is to allow for proper and fiscally responsible cash-flow management. Certain levels of undesignated fund balance are required to mitigate current and future potential shortfalls and unanticipated expenditures, and support long-term financial planning. Credit rating agencies carefully monitor levels of fund balance in the evaluation of a municipality’s creditworthiness. Because property tax revenue is collected only once or twice a year, the result is a remarkable ebb-and-flow of tax resources. Retaining an undesignated fund balance that is at least a certain percentage of the municipality’s total annual budget is an accepted principle of financial management.

**Proponents:** The initiative must be scheduled for the November vote as a matter of fundamental fair play and to present the measure to the full electorate.

**Opponents:** Agreed. The initiative should be scheduled for November, rather than the June primary election, in order to give the voters enough time to truly understand the ramifications of the proposal and evaluate all the financial and service delivery impacts to their communities.

In its testimony, MMA specifically requested that the Legislature employ its special authority to ask the Maine Supreme Court a series of questions regarding the constitutionality of major elements of the proposal. The process is provided for in Maine’s Constitution (Article VI, Section 3), which requires Maine’s Supreme Court to give an opinion upon important questions of law and upon “solemn occasions” when requested by either the Governor, the Senate or the House of Representatives. It is

certainly the case that the voters deserve the clearest and most objective information from the highest legal authority regarding the constitutionality of the proposal that they will be voting on before they step into the ballot box. If what they are voting for cannot ultimately be adopted as law, they should know that.

On Wednesday the Taxation Committee held its first work session on LD 1893 and heard from Maine’s Attorney General Steve Rowe on the process and protocol surrounding the procedure of declaring a “solemn occasion” and getting advice on the constitutional conflicts in LD 1893. The most significant issue is the proposed “valuation freeze” system which would appear to directly violate Maine’s constitutional requirement that all property be assessed at its “just” or “market” value.

Attorney General Rowe provided information on the process of declaring a solemn occasion and revealed that the process of obtaining an opinion from the Supreme Court in no way interferes with the opportunity the voters will get to vote on the initiated bill exactly as it was presented to the Legislature. That is to say, the non-binding advisory opinion that the Supreme Court could provide can not result in altering the proposal as initiated.

What the advisory opinion would provide, however, is a clear indication of what would likely happen if the Palesky initiative were adopted by the voters. For example, if the Supreme Court is asked for its opinion on the constitutionality of a number of provisions in LD 1893, and its advisory opinion is that those elements are unconstitutional, voters would be provided a pretty solid indication of the elements of the initiative that would ultimately be “severed” or struck out of the bill after the vote, if the measure is adopted. From the municipal perspective, that is the way it should be. The request for a solemn occasion can not be perceived as interfering with the citizens’ right to petition. It is merely an opportunity for the voters to get the best legal information that can be provided. What could be the argument against that?

Next week, the Attorney General is scheduled to give the Taxation Committee his opinion on the actual constitutional questions that have been raised.

### Legislative Bulletin

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# Boiler Issue Resolved In Favor of Municipalities

Readers of the *Bulletin* have been following developments of the Boiler Board. Earlier this year, the Board proposed that a never enforced rule requiring municipalities and schools - and only municipalities and schools - to have a licensed boiler operator monitor certain low-pressure hot water boilers daily. MMA's Legislative Policy Committee (LPC) voted to oppose the rule changes that would have brought a modified version of this requirement to life.

The Legislature's Business Research and Economic Development Committee took up a bill that would eliminate the Boiler Board's statutory authority. The bill, LD 1879, *An Act to Amend the Boiler and Pressure Vessel Law* (sponsored by Sen. John Martin of Aroostook Cty.) was unopposed at its public hearing this week. While the bill was not filed by the Department of Professional and Financial Regulation, representatives of that agency, which oversees the Boiler Board, testified that if the bill passes the Boiler Board will no longer have authority to set monitoring requirements. However, the well-known annual inspection and certification will continue to be required. The bill was unanimously supported with one minor amendment.

Certainly there is nothing in the legislation that requires a municipality which is currently conducting the monitoring inspections to stop doing them. Plus, monitoring boilers is always a good idea. Nevertheless, the amount and frequency of monitoring will once again be what it always been, a municipal decision.

## **Harbormaster Bill Grounded**

The Legislature's Marine Resources Committee this week reconsidered its initial, and as yet incomplete, vote on LD 1680, *An Act to Establish Harbor Master Standards and Course Requirements*. The initial committee vote had narrowly passed this bill. The bill requires all harbormasters to be certified by the State. The heart

of the certification requirement was completion of an as yet to be created training course. The course would be modeled on the existing annual 2-day harbormaster training course.

In order to maintain that certification, the harbormaster would have to attend another as yet to be created advanced training class every three years. The cost of the training, while not very high, was to be borne directly by the harbormaster. Even though there was support for harbormaster training, the members of the Committee recognized that harbormaster duties vary widely up and down the coast. Some harbormasters are full-time law enforcement personnel who attend the 100-hour training course at the Maine Criminal Justice Academy and are thereby authorized to carry a firearm and make arrests. Others are part-time volunteers who provide assistance to boaters and oversee moorings.

Senator Richard Bennett (Oxford) summarized the issue well when he said that the Legislature should either totally usurp the municipal discretion to define the duties of the harbormaster, including training, or leave the issue to the municipalities. Sen. Bennett and the rest of the Committee voted overwhelmingly to leave it to the municipalities.

## **Stormwater To Get More Treatment**

The long-awaited stormwater bill, LD 1866, *An Act Relating to Stormwater Management* was heard by the Natural Resources Committee this week. The legislation is actually just a prelude to the stormwater rule, known as Chapter 500, that is still in development. The Department of Environmental Protection (DEP) has been working on the legislation and the rule with a large stakeholder group, including MMA, for close to a year.

A problem with the proposed legislation, in the eyes of some stakeholders, is that it did not give the DEP any policy guidance as to what the rule should be. In fact, DEP proposed two

rules which were quite different in their structure.

The Committee recommended that no statutory changes be made now and that DEP continue to work with the stakeholder group on both the rule and any necessary legislative changes. Both the rule and any necessary statutory changes will be brought back to the Committee next session.

## **Building Code Advances, Energy Code Stalls**

Two "code" bills also received legislative attention this week. First, LD 1025, *An Act to Ensure Uniform Code Compliance and Efficient Oversight of Construction in the State*, is poised to pass the Senate and move to the House. This bill establishes a model building code for Maine and prohibits the adoption of any other code by any town that currently does not have a code. The model code is the 2003 International Code Council's (ICC) residential and commercial codes.

Towns without codes are not obligated to adopt the model code, but are restricted to the model if they do. Towns currently with codes do not have to change. Although, since most existing codes in Maine are BOCA codes, and the BOCA organization has been absorbed into the ICC, change may need to come soon for some. Any town which does adopt the model code may amend the code in order to meet local needs.

Alternatively, a Utilities and Energy Committee bill that would similarly establish a model energy code is stuck in Committee because of the complexities surrounding the scope of the Public Utilities Commission's role. If this bill were to gain momentum, it would need to be amended so that its framework matched that of the above mentioned building code bill.

## **Committee Adds to Subdivision Bill**

The Natural Resources Committee this week added language to LD 1617, *An Act to Improve Subdivision Standards*. The bill is aimed at reducing the profitability of a prohibited form of timber cutting known as liquidation harvesting. The bill prohibits a planning board from approving a subdivi-

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# Win, Lose and Draw: Three Bills Reported

On Wednesday this week, the State and Local Government Committee voted on three bills of municipal interest.

**The Winner.** The Committee unanimously voted to support an amended version of LD 1872, *An Act to Extend the Deadline for Reconsideration by Boards of Appeals*, sponsored by Senator Betty Lou Mitchell (Penobscot Cty.). As amended, the bill requires a person requesting reconsideration of a board of appeals decision to do so within ten days of that decision. The bill also provides the appeals board a total of 45 days from the time of the original decision to act on the motion to reconsider. This provision allows for the time necessary to provide adequate public notice of the request to reconsider, meet and make a final decision. The bill further clarifies that once the board has made its final decision on the reconsideration, the appellant has 15 days to appeal that decision to Superior Court.

**The Loser.** A majority of the Committee voted “ought not to pass” on LD 1873, *An Act to Amend the Requirements for Status as Publisher of Legal Notice*, by a margin of 5 to 3. The bill, also sponsored by Sen. Mitchell and cosponsored by Rep. Barney McGowan of Pittsfield, would redesign an existing mandate by providing municipalities maximum flexibility in the process for notifying residents of important meetings and hearings.

Maine law currently requires that legal notices must be published in newspapers mailed under second class postage. This requirement prevents the use of using newspapers mailed under bulk mail postage, such as advertising shoppers, for providing legal notice, except as a redundant additional expense to the municipalities. As provided in testimony provided by Senator Mitchell, Representative McGowan, the Pittsfield town clerk and MMA, there

are many times and many towns where the local shopper is clearly the most effective way to get information to the public because it is read by the local residents, received by nearly every household and offers more affordable advertising rates.

The newspaper lobby provided testimony in opposition to the bill. The representatives of the major daily and weekly newspapers opposed the bill, because they believe that the newspapers mailed second class are a superior medium for providing public notice. The press lobby’s claim is that their newspapers are more consistent, have a verifiable readership and are archived.

Some of the opponents of the legislation went as far as to question the integrity of municipal officials by suggesting that “governmental bodies or officials could exploit the deficiencies in publications mailed third class to gain an unfair personal or business advantage.” Some opponents also focused on the fact that any newspaper currently mailed bulk could qualify for second class mailing privileges, by simply meeting the standards.

For various reasons, a majority of the Committee sided with the newspaper lobby. However, Representatives Chris Barstow of Gorham, Susan Ketterer of Madison and Gary Sukeforth of Union supported an amended version of LD 1873. As amended, the bill would allow a municipality to advertise exclusively in newspapers mailed under bulk mail postage, as long as the municipal officers notify the local legislative body and archive the publication. The amended bill would also limit the applicability of the change to municipal legal notices only.

**The Draw.** A majority of the Committee also voted to support an amended version of LD 1780, *An Act to Promote Transparency in Budgeting*, by a margin of 4 to 3. As originally

submitted by Speaker Colwell of Gardiner, the bill would have required a municipality to submit a copy of the annual budget to the state. A municipality that failed to submit its budget would become ineligible for state revenue sharing.

As amended, the bill directs the Departments of Administrative Services and Audit, State Planning Office, and Maine Municipal Association to create a voluntary pilot program encouraging municipalities and counties to submit their budgets, in an electronic format, to the state. The work group is required to report its findings and recommendations to the Legislature by January 14, 2005.

While municipal officials do not believe LD 1780, either as it was printed or as amended, meets a priority need or responds to any compelling or emerging issue, if the Legislature believes the pilot project that would be created by the amended bill represents some sort of priority need, so be it.

## BOILER (cont'd)

sion application for any parcel that has been so harvested.

The original bill simply stuck the municipal planning board with the job of actually determining whether a violation of the liquidation harvesting rules had occurred. Yet, these rules are technical and probably beyond the ability (and certainly beyond the authority) of most planning board members. Further, the scope of this unfunded mandate would be substantial if planning boards actually had to make this determination.

The amendments make clear that towns may either request assistance from the Maine Forest Service or require the subdivision applicant to have on file a certified report from a licensed forester. Since Maine Forest Service (MFS) does not actually have to provide assistance to requesting towns (although they must answer the request), most local subdivision ordinances should include provisions seeking MFS assistance, and if refused, a certified report from a licensed forester.

(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](http://www.memun.org).)

### **Appropriations & Financial Affairs**

LD 1919 – An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005. (Emergency) (Governor's Bill)

This bill is Governor Baldacci's proposed follow-up supplemental budget to bring the state's biennial FY 04 – FY 05 budget back into balance. The proposed supplemental budget is designed to fill a \$160 million hole in the biennial budget, created primarily by a combination of increased costs and reduced federal reimbursement in the state-federal Medicaid program. Of municipal interest, the proposed supplemental budget would:

- Establish the state's General Purpose Aid to Education (GPA) appropriation for the upcoming fiscal year (FY 05) at \$734.5 million. That represents an increase of just \$5 million from the current-year levels of state funding. Under conservative estimates, the increased cost of providing K-12 educational services will grow by at least \$60 million between FY 04 and FY 05, so the \$5 million increase in state funding represents a minimum \$55 million increase in property taxes.

- Appropriate \$1.1 million for the state's General Assistance reimbursement account for FY 04 to allow for proper municipal reimbursement.

- Increase the fee for schools to be licensed as "eating establishments" from \$40 to \$100, among a wide range of fee increases.

- Increase the monthly per phone line surcharge to support the state's E-911 program from \$.50 to \$.57, with the 7-cent additional surcharge dedicated to the state's General Fund.

- The state would sell to a bridge over the Maine Turnpike in Scarborough to the Maine Turnpike Authority, and the MDOT building in Augusta would be sold to the Department of Transportation, and \$11.4 million would be generated by those "sales" to the state's General Fund.

- Adjustments would be made to slightly increase the amount of money in the Maine Environmental Protection Fund (MEPF), (relative to the last supplemental budget), to be transferred to the General Fund. The increase would be to \$62,000 in FY 04 and \$60,500 in FY 05. The MEPF is made up of solid waste facility licensing fees paid by municipalities, commercial landfills and industries with waste disposal facilities. MEPF funds are supposed to be dedicated to funding DEP's solid waste regulatory programs.

- Create a special "service provider tax" that would be applied at the rate of 5% against the revenues generated by "private non-medical institution services", which are essentially non medical group homes for Medicaid eligible people. The tax is created to leverage federal dollars because a tax on Medicaid-paid services can

be included within the cost of the service, and the federal government pays 66% of Medicaid costs. In order to pass muster with the federal government, however, the Medicaid-related tax must not be enacted solely to leverage federal dollars. Instead, the Medicaid-related tax must be part of a larger tax system. For that reason, this proposal removes six existing service-related sales tax categories (cable T.V., fabrication services, video rental, furniture rental, telecommunications, etc.) from the sales tax and includes them under the "service providers tax" at the 5% rate. Municipal revenue sharing, however, would not be affected by this tax code reorganization.

### **Criminal Justice & Public Safety**

LD 1903 – An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners. (Emergency) (Reported by Rep. Grose of Woolwich for the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners.)

This bill would implement a series of recommendations of the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners. Among the many recommendations, the bill would create within the Judicial Branch the position of Coordinator of Diversion and Rehabilitation Programs and authorize that coordinator to enter into cooperative agreements or contracts with local and county governmental entities to encourage the development of diversion and rehabilitative programs. The bill would also reward counties that use 50% of their community corrections funding from the state on diversion programs by increasing that funding level by 8%, using funding that would otherwise be provided to other counties when those other counties are not using at least 20% of their community corrections funding to support diversion programs.

### **Inland Fisheries & Wildlife**

LD 1912 – An Act To Implement the Recommendations of the Governor's Task Force on ATV Issues. (Governor's Bill) (Sponsored by Rep. Landry of Sanford; additional cosponsors.)

This bill would establish a civil violation of operating an ATV on a person's land without that person's permission, except that landowner permission would be presumed in the case of operating ATVs on ATV trails or on a landowner's open land when the trails or landowner permission are conspicuously posted. This bill would also authorize the Inland Fisheries and Wildlife Committee to report out additional ATV legislation this legislative session that adopts any of 28 recommendations developed by an ATV Task Force that was convened in 2003.

### **Regionalization & Community Cooperation**

LD 1921 – An Act To Encourage Voluntary Efficiency in Maine's School Systems and Related Cost Savings. (Governor's Bill) (Sponsored by Rep. McLaughlin of Cape Elizabeth; additional cosponsors.)

This bill is Governor Baldacci's "school regionalization" proposal. The bill would create three types of school administrative units which would be eligible for a variety of financial incentives: regional school districts, regional school cooperatives, and "efficient" schools.

Regional school districts are formed by consolidating 2 or more contiguous school administrative units with a single governing

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## HOPPER (cont'd)

board, at least 1,000 students, and at least one high school with at least 300 students. A second-tier regional school district, which is eligible for enhanced state funding, must have at least 2,500 students.

Tier-1 regional school districts would be rewarded by getting a 7.5% bump in their GPA allowance for five years. The state would also take over 25% of their school debt for school construction previously not recognized by the state. For a 2-year period, they would also get 50% of the elementary-school-level “per-pupil guarantee” provided by the state for resident pupils in all-day kindergarten programs.

The Tier-2 regional school districts, with student populations of at least 2,500, would get a 10% bump in GPA for 5 years, a 50% state takeover of non-state-supported debt, and the 2-year all-day kindergarten subsidy.

The enhanced subsidy for regional school districts would be taken away from the new regional school districts on a year-to-year basis for any year that the regional district’s administrative cost fails to be less than 90% of the aggregate administrative cost of the 2 or more participating school administrative units before they consolidated, adjusted annually for inflation.

Regional cooperatives are looser arrangements that would have to be formalized among at least 5 school administrative units with at least 2,500 students. Once forming as a regional cooperative, mission statements, governance plans, cost-savings targets, and a plan to reinvest all savings in school instructional services would have to be adopted by the cooperative and approved by the state. The financial rewards for regional cooperatives are: (1) sliding scale funding for 1 full-time equivalent regional staff member for 5 years (100% the first year, 80% the second year, etc.); (2) 5 years of state support for 25% of the cost of graduate-level continuing courses for the teachers; (3) “regionwide services software”; and (4) state assistance for regional service training programs.

The enhanced funding for cooperatives would also be pulled on a year-to-year basis if the cooperative fails to meet its cost savings projections or fails to reinvest those savings in school instruction, according to its approved plan.

An “efficient” school administrative unit is defined as a school administrative unit that provides K-12 education services, is willing to provide assistance to other school administrative units to teach them how to be more efficient, meets undisclosed cost-efficiency criteria and demonstrates high-level student performance as measured through the Maine Educational Assessment (MEA) program. There are three levels of incentives for “efficient” schools depending on size. For “efficient” schools with less than 1,000 students, the incentives are a 5% bump in GPA for 5 years and state assumption of 25% of non-state-supported debt. For “efficient” schools with 1,000 – 2,500 students, the GPA bump is 7.5% for 5 years, with a 25% assumption of debt. For “efficient” schools with more than 2,500 students, the GPA bump is 10% for 5 years, and the state would take over 50% of non-state-supported debt.

The incentives for “efficient” school funding could also be pulled on a year-to-year basis if the “efficient” school fails to meet its cost-efficiency and high student performance standards each year.

All of the incentives would be funded by setting aside up to 2% of the GPA appropriation each year. That funding source would provide approximately \$15 - \$16 million each year for these incentives and simultaneously reduce general-purpose GPA by that amount each year for the non-participating school administrative units.

### Taxation

LD 1911 – An Act To Authorize Municipalities To Establish Local Tax Relief Programs. (Sponsored by Sen.

Strimling of Cumberland Cty.; additional cosponsors.)

This bill is a “concept draft” that would allow municipalities to establish local tax relief programs.

LD 1923 – An Act To Increase Business Investment, Provide Expanded Property Tax Relief to Low-income and Moderate-income Homeowners and Cap Local and County Spending. (Governor’s Bill) (Sponsored by Sen. Stanley of Penobscot Cty.; additional cosponsors.)

This bill is Governor Baldacci’s tax relief proposal, and is divided in three parts.

The first part of the bill would repeal the personal property tax on all personal property and real estate that is first installed in Maine after April 1, 2004 that would otherwise be eligible for reimbursement under the Business Equipment Tax Reimbursement (BETR) program. The bill would also repeal the personal property tax on all currently existing BETR property when that property eventually comes out of the BETR program because the 12-year period of BETR eligibility expires. Municipalities directly affected by the loss in taxable value would be reimbursed 50% of their lost tax revenue pursuant to the state Constitution, although the bill provides that the reimbursement calculation must be performed by the state and not the affected municipality, and that the “just value” analysis must be calculated according to a uniform methodology. The bill would also provide that all state savings associated with the repeal of the personal property tax and resulting BETR savings to the state must be used for economic development and job creation programs in the municipalities directly affected by the repeal and other “distressed” municipalities.

The second part of the bill would repeal the Homestead Exemption program, which saves the state \$35 million, at property taxpayers’ expense. The bill would take \$25 million of that “savings” and use it to expand the Circuit Breaker program, which is renamed the “Homestead Tax Cap program”. The specific changes to the Circuit Breaker program would be: (1) increase the maximum income threshold for a household from current levels (\$29,900 for a single-person household and \$46,300 for a multi-person household) to \$75,000 for single-person households and \$100,000 for multifamily households; (2) decrease the property-tax-as-a-percent-of-income ratio that triggers benefits from 4% to 3.5%; (3) increase the maximum benefit level from \$1,000 to \$2,000.

The third part of the bill would establish a local and county government budget cap. Under this cap, total county appropriations (excluding the education appropriation, county tax appropriation and state or federal grants) may not exceed the average rate of growth of total personal income (approximately 4.5% as currently calculated) unless one or more “exceptional circumstances” are deemed to have occurred and the legislative body adopting the budget expressly identifies the “exceptional circumstances” that allow a breach of the 4.5% appropriations growth cap. The “exceptional circumstances” are: unfunded or underfunded new state or federal mandates; citizens’ initiatives or referenda that requires increased municipal spending; court orders or decrees that require additional spending; or sudden increases in demand for existing services. School budget increases would not be affected by this cap.

LD 1924 – An Act To Reduce the Cost of Local Government through Increased State Education Funding and Provide Property Tax Relief. (Governor’s Bill) (Sponsored by Sen. Douglass of Androscoggin Cty.; additional cosponsors.)

This bill is Governor Baldacci’s proposal to more fully implement the Essential Programs and Services school funding model (EPS), the mill rate cap expectation system that would control the distribution of state educational subsidy and begin moving school transportation, special education and other “program” costs into the EPS model. The bill is a modified version of the “1B” competing measure adopted by the Legislature last year to compete against the citizen initiated

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## HOPPER (cont'd)

*School Funding and Tax Reform Act of 2003.*

Although this bill would establish that by the year 2010 the state must be paying 55% of school funding as measured by EPS, it commits the state to no particular share of EPS between now and then. The only requirement is that between 2006 and 2010, the state share must move incrementally closer to that 55% goal and not away from it.

The bill would also move into the EPS model a system of defining each school administrative unit's transportation spending level. The law essentially adopts by reference a model developed by

David Silvernail at the University of Maine Muskie School, which relies on "predicted costs based on district pupil transportation densities", in other words, the estimated per-mile transportation costs other than to-and-from school would apparently not be considered "essential".

With respect to special education costs, the bill merely compels those costs to be modeled by EPS by FY 06, and four guidelines are attached to that modeling project: the special ed funding model would have to be "cost-based, equitable, flexible and identification-neutral". The bill also requires the funding formula to include supplemental funds to cover "extraordinary" special education expenses associated with high-cost in-district and out-of-district placements.

## 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/liol/>.*

### ***Monday, March 15***

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

**First Floor, North Wing, Augusta Civic Center, 9:00 a.m.**

**Tel: 287-1316**

LD 1919 – An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005. (Emergency) (Governor's Bill)

For more specific information about the Committee's scheduled review of the supplemental budget, call MMA's Laura Veilleux at 1-800-452-8786 or review the schedule at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>.

### ***Tuesday, March 16***

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

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

**Tel: 287-1316**

LD 1919 – An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005. (Emergency) (Governor's Bill)

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#### **Inland Fisheries & Wildlife**

**Room 209, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1338**

LD 1912 – An Act To Implement the Recommendations of the

Governor's Task Force on ATV Issues. (Governor's Bill) (Sponsored by Rep. Landry of Sanford; additional cosponsors.)

#### **Taxation**

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

**Tel: 287-1552**

LD 1911 – An Act To Authorize Municipalities To Establish Local Tax Relief Programs. (Sponsored by Sen. Strimling of Cumberland Cty.; additional cosponsors.)

### ***Wednesday, March 17***

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

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

**Tel: 287-1316**

LD 1919 – An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005. (Emergency) (Governor's Bill)

For more specific information about the Committee's scheduled review of the supplemental budget, call MMA's Laura Veilleux at 1-800-452-8786 or review the schedule at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>.

#### **Joint Select Committee on Regionalization and Community Cooperation**

**Room 216, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1330**

LD 1921 – An Act To Encourage Voluntary Efficiency in Maine's School Systems and Related Cost Savings. (Governor's Bill) (Sponsored by Rep. McLaughlin of Cape Elizabeth; additional cosponsors.)

### ***Thursday, March 18***

#### **Taxation**

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

**Tel: 287-1552**

LD 1923 – An Act To Increase Business Investment, Provide Expanded Property Tax Relief to Low-income and Moderate-income Homeowners and Cap Local and County Spending. (Governor's Bill) (Sponsored by Sen. Stanley of Penobscot Cty.; additional cosponsors.)

LD 1924 – An Act To Reduce the Cost of Local Government through Increased State Education Funding and Provide Property Tax Relief. (Governor's Bill) (Sponsored by Sen. Douglass of Androscoggin Cty.; additional cosponsors.)

# “Welcome, Stranger!”

A carryover bill that has been sleeping quietly in a warm corner of the Taxation Committee since the 2003 legislative session popped out onto the House Calendar this week. It is a proposed constitutional amendment that would change the way all real estate is assessed in Maine. The bill will likely come to the floor of the House next week for a vote.

The new system proposed by the bill (LD 938, *Resolution, Proposing an Amendment to the Constitution of Maine To Change the Assessment of Lands Used for Long-term Ownership*) is often dubbed, with some sarcasm, the “welcome, stranger” system because it protects existing Maine residents from market-based increases in assessed value and it would expose newcomers to Maine (as well as Maine residents who move within the state) to absorb the brunt of market-based increases in value. Under this system, two identical houses in a town could be assessed at very different values, and the factor that determines whether your tax bill would be relatively high or low in that circumstance is solely based

on your seniority. Generally speaking, newcomers to the state could be easily picked out by their disproportionately high property tax bills.

The majority of the Taxation committee voted “ought not to pass”, but the bill is being recommended “ought to pass” by a party-line Republican minority.

The core principle of property taxation is equity, and when the principle of equity is abandoned, the politics of taxation fills the void. There is no lobby representing the people who might make the choice to move to Maine to take up residence, but the current residents are well represented. LD 938 is a safe bill politically for that reason. And there is the “fleecing the flatlander” element to LD 938 that may be appealing to some.

But at what price do we move property taxation off its foundation? The fundamental purpose of property taxation is to generate equitable contributions to the “public charge” for the purpose of serving all the property in the community that is being taxed. Everyone ben-

efits from the establishment of a functioning system of local roads so that our property is accessible and we can travel easily throughout the community. Everyone benefits from police and fire services that protect our houses and businesses. Everyone benefits from a system of common education, whether or not we are the direct consumers of the educational services because our children are in the public schools.

Property taxes contribute to the public charge that serves the common good, and the core ingredient that holds that system together is equity. Targeted exemptions, like the homestead exemption, do not alter the foundational assessment. There is no quarrel with circuit breaker tax relief programs that require residency for eligibility. But with regard to the basic task of assessing the value of property to calculate the “public charge”, it should not matter if you lived in Maine for a week or a century.

There is no rational basis for fleecing the newcomer, unless the political weakness of the newcomer’s status would suffice. If we’re truly interested in welcoming strangers, “welcome, stranger” assessing should not prevail.