

## Sampler of This Legislative Session

It's wrong to judge a book by its cover, but in the lull before the legislative session begins in earnest, it's tempting.

The Revisor's Office just released a list of the titles of all the bills legislators submitted before the December 20th deadline. There were 1,630 bill titles on that list, and judging by nothing more than the bills' titles, over 350 would impact municipal government. A similar list issued two years ago, just before the 120<sup>th</sup> Legislature began its first session, contained 1,750 bills, 400 of which appeared to have municipal impact.

So what are legislators concerned about? Setting aside the property tax relief, tax reform and the other municipal issues for a moment, and on the basis of sheer volume alone, the big-picture themes are health care costs, gambling, election reform, jails and corrections issues, and hunting. There also seem to be a slew of proposed constitutional amendments that seek to stamp their imprint on Maine public policy with an especially indelible ink.

To be precise, 32 of the submitted bills seek to amend the state's Constitution. Some of the more general constitutional amendments include reducing the size of the legislature, extending the term lengths of members of the Senate, reigning in state spending by placing limitations on bonded indebtedness and revoking the voting rights of convicted persons. Many of the proposed constitutional amendments would directly affect municipalities. Those proposed amendments include eliminating the personal property tax, requiring a two-thirds super-majority of the House and Senate to enact or

increase a tax, funding 100% of the cost of students enrolled in public education, authorizing the assessment of second homes at twice their assessed value, and reintroducing a measure that failed to be adopted in 2000 which would create a "current use" assessment for land and structures primarily used for commercial fishing purposes.

The seemingly uncontrollable costs of providing health care coverage is a center-stage issue for both the Legislature and the Baldacci administration, and there is no shortage of bills in the hopper seeking to address what is often described as a cost-of-care crisis. On the basis of their title only, it is hard to know which of these proposals has discovered the elusive solution to this problem. The strategies range from study commissions to expanded health insurance mandates to sweeping proposals that would somehow bring the uninsured into large already insured groups.

As citizen initiatives regarding casino gambling and racetrack gaming in Maine continue to circulate, several legislators are focusing their attention on that industry. A full ante of bill requests were submitted seeking to amend existing laws regarding harness racing and games of chance. A few bills seeking to identify the regional impacts of a casino were also submitted.

Jails and the extended community correctional system have captured the attention of legislators this session. Many of the bills in this category focus on the perennial issues of strengthening the sexual offender statutes and providing effective mental health services to incarcerated persons.

After several turbulent races and

recount processes, and in a clear response to the negative campaign tactics used to some degree during the November 2002 election season, it should come as no surprise that bills amending the election process were plentiful. These proposals range in scope from implementing instant runoff elections, addressing the specific manner in the way elections are conducted (for example, by defining a "spoiled ballot"), and abolishing the term limit law adopted at referendum in 1993 or, as an alternative, extending the number of terms a legislator may serve before being precluded from re-election.

**Property Tax Relief, Tax Reform and other Municipal Themes.** Of the 350-plus bills that would directly impact municipal government, 70 separate bills strive to relieve the property tax burden or significantly redesign Maine's tax code. Of the 39 property tax relief bills, several seek to increase the value of the homestead exemption, expand the circuit breaker program, create a local option sales tax or initiate property tax caps. Other tax reform bills seek to expand the sales tax base, replace the sales tax with a gross receipts tax, establish a flat income tax rate and entirely fund public education with state revenue. In addition to these tax relief and reform proposals, a handful of bills seek to amend or repeal the BETR program or, alternatively, eliminate the tax on personal property.

While the number of property tax relief and reform bills dominate the portfolio of municipal legislation, there is also a gaggle of bills directed at county government that could have

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an appreciable municipal impact. A sampling of those bills include increasing the number of county commissioners, strengthening the county budget advisory commissions, amending the county surplus fund allowance, and changing some county positions from elected to appointed office.

Bond proposals are always popular, perhaps more so in tight budget times. Added together, the proposals on the bill title list are seeking about \$200 million in General Fund bond requests, \$135 million of which would be targeted to municipal public infrastructure, affordable housing and economic development needs. Some of the more specific municipal bond proposals would seek borrowing for civic centers, energy conservation, and riverfront cultural centers.

In the roads and transportation area, there are several bills to amend the motor vehicle excise tax to reduce local revenue from that source. There are also several proposals to repeal the law enacted last spring that automatically adjusts the motor fuels tax for inflation. The "gas tax" supports the state's Highway Fund.

Municipally-related environmental bills will include a measure to tighten-up Maine's junkyard statutes and move the focus of that law toward the environment in addition to the essentially aesthetic focus of current law. Another bill would require the State Planning Office to create a set of standards to govern its review of municipal comprehensive plans for "consistency" with state law and certain local ordi-

nances. There will be several bills that address aquaculture, mooring assignment issues and the municipal authority (or lack thereof) to influence the placement of finfish pens and shellfish rigs. There is also a small flock of animal welfare bills, many of which have the uninformative title "An Act to Amend Maine's Animal Welfare Laws."

**Repeaters.** Just as there are bills every session to repeal recent enactments, many bills are submitted every two years to recycle legislation that has not been enacted in previous sessions. The 121<sup>st</sup> Legislature is no different. Over 25% of the municipal bills on the list have been submitted in past legislative sessions but were never enacted. Examples is this category include enhancing lights and sirens on various types of emergency vehicles, mandating statewide building codes, weakening the so-called "retainage" allowances on school construction projects, and changing the motor vehicle excise tax to apply it to the negotiated sales price rather than the manufacturer's suggested retail price.

In the area of property tax administration, there is the usual handful of bills that would shift the legally enforceable obligation to pay a property tax from the owner of record to the buyer of property at the time of sale, a transition that would greatly complicate the tax lien and collection process.

A package of growth management bills will also be re-submitted this session at the request of the Community Preservation Advisory Committee (CPAC). Created by the Legislature last session, CPAC is a semi-permanent panel of legislators, state agency and municipal representatives focused on addressing growth management and land use "sprawl" issues. The panel's first legislative recommendation will be the recycling of six growth management bills revived from the last legislative session. Topics include the use of growth caps, affordable housing, citizen initiated referenda, and the adoption of a statewide building code.

**Affordable Housing.** From the municipal perspective, one of the most controversial bills making a comeback this session is "An Act to Promote Live-

able, Affordable Neighborhoods." In its original form, this bill created a state review board for developers allegedly blocked or frustrated by municipal land use ordinances with their road frontage and minimum lot size standards. Under the bill, developers could take their plans for large-scale residential housing developments, including some affordable housing, to a new state-level planning board and receive a "precertification" approval from Augusta. Throughout southern and coastal Maine, the state approval in several respects would preempt locally adopted minimum lot size and road frontage standards.

It appears that this session, the liveable, affordable housing bill will appear in two forms – once in its original incarnation and again with a new twist. Some CPAC members believed that designing the "All American Neighborhood" had merit and should be further explored. In an effort to make the bill more palatable to the municipalities, the CPAC or a CPAC subcommittee created an incentive-based version of the original bill. Municipalities and developers that agree on constructing the affordable-housing planned unit development would turn to the state review board for financial and technical assistance. The municipality accommodating the precertified development would be eligible for funds to offset the increased costs of that development due to school renovation needs, sewer and water extension, open space preservation, and expanded transportation systems. As in the original bill, at least 25% of the units must be affordable and the dimensional standards of 6,500 sq ft. lot size and 50 ft. of frontage would apply.

While some members of the CPAC were only willing to submit legislation that would create an incentive-based initiative promoting affordable housing, the majority of the legislative members of the Committee were willing to submit the bill in its original, mandatory format. Therefore, both versions will be submitted in a classic hedge on the bet.

**Growth Caps.** This session municipalities will face at least two bills

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### Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: [www.memun.org](http://www.memun.org)

**Editorial Staff:** Geoffrey Herman, Kate Dufour, Kirsten Hebert, and Laura Veilleux of the State & Federal Relations staff.

# South Portland Wins Tax Exemption Case

Maine's Supreme Court handed down a decision on Friday last week that supports South Portland's position that a not-for-profit debt management counseling agency, Consumer Credit Counseling Services (CCCS), does not meet the "charitable" threshold and should pay its property taxes.

Handed down a year-and-a-day after both sides presented their arguments to the Law Court, the decision focuses entirely on the facts of the case (which everyone agreed to) as they relate to a stipulation in Maine law that requires all exempt "charitable" organizations to be "organized and conducted *exclusively* for benevolent and charitable purposes."

The real and personal property of CCCS in South Portland was assessed at over \$820,000 in 1998, when the agency sought an exemption from property taxes as a charitable organization. CCCS enjoys a so-called 501(c)(3) exemption from any income tax obligation as a "charitable" organization under federal law.

The City's tax assessor denied the request for an exemption and CCCS appealed to the South Portland Board of Assessment Review. That Board ultimately denied CCCS for the reason that it *"failed to carry its burden of proof that it was organized and conducted exclusively for benevolent and charitable purposes in that significant benefits were accorded to creditors of consumers and such benefits were not merely incidental to any benevolent and charitable purposes that CCCS may have."* The case was then appealed to Superior Court, which overturned the decision of the South Portland Board of Assessment Review and found CCCS to be deserving of exempt status.

When that decision was appealed, however, the Supreme Court came full circle back to the reasoning of the South Portland board. The facts of the case that the Court focused on were that a central service provided by CCCS is the administration of a "debt manage-

ment program" for clients that are getting swamped by consumer debt but are determined to have the financial capacity to escape bankruptcy. CCCS negotiates a "debt accommodation" with the creditors and establishes repayment plans that typically run four to five years in duration.

In return for its services, CCCS charges the debtors an average fee of \$15 per month and seeks voluntary "fair share" contributions from the creditors, which average 8.5% of the debt that is repaid. The Court records show that in the course of a 5-year

## New Stormwater Regulations Become Effective Next Month

Recent changes in "stormwater" regulation will soon change the process by which construction activities are conducted in Maine. Planning Board members and Code Enforcement Officers are typically the first stop in the regulatory process for any individual seeking a building permit. For this reason, the DEP would greatly appreciate the assistance of municipal officials in educating and notifying the regulated community about the new requirements of the "stormwater" permit. The requirements of the new permit become effective on February 17, 2003. For many small scale developers and subdividers, these will be new requirements.

All of this is thanks to federal stormwater management law, the enforcement of which has been "delegated" to Maine's Department of Environmental Protection (DEP) by action of the Maine Legislature.

The changes require permit applicants proposing to disturb one or more acres to obtain a stormwater permit called a Construction General Permit from DEP. Planning Board members should be familiar with the requirements of the new regulations since it

period, CCCS returned over \$60 million to creditors through its debt management program.

The pertinent part of the law court decision reads: "The magnitude of the amounts collected for creditors clearly demonstrates that CCCS's business is not 'conducted exclusively for benevolent and charitable purposes' or that the revenue generated is not 'purely incidental to a dominant purpose that is benevolent and charitable'. The organization, the Court concluded, did not prove that it comes "unmistakably within the spirit and intent" of the charitable exemption statute.

For a full copy of the decision please contact Laura Veilleux at 1-800-452-8786 or log on to [www.courts.state.me.us/opinions/2003%20documents/03me2cccs.htm](http://www.courts.state.me.us/opinions/2003%20documents/03me2cccs.htm)

will impact many of their applicants. For instance, individuals appearing before the board seeking a permit to subdivide a parcel may fall under this new regulation. If the individual will disturb one or more acres as a result of a single development or a "common plan of development" (e.g., a subdivision), and that development results in the discharge of stormwater, then he or she must obtain a Construction General Permit from the DEP before beginning any construction activity on the parcel. If there is any doubt as to whether a permit is needed, Planning Board members and CEOs should have the applicant call the DEP.

In order to flag applications that may require the Construction General Permit, DEP suggests amending the municipal building permit applications to identify whether the applicant will disturb one or more acres.

The Construction General Permit works in concert with the existing Stormwater Management Law and Site Law to provide coverage for stormwater discharges. Since much of the regulated community is familiar with the "Permit By Rule" process used under

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## STORMWATER (cont'd)

the Natural Resource Protection Act and other DEP programs, the DEP structured this permitting process in a similar fashion.

As of February 17, 2003, applicants must file a "Notice of Intent" with the DEP. The notice is deemed approved 14 days after the DEP receives it, unless the applicant receives notice to the contrary.

The actual substantive requirements of the Construction General Permit include the following three elements:

- Compliance with erosion and sedimentation control standards
- Inspection and maintenance of the site throughout the construction activity
- "Housekeeping" measures taken to prevent spills and the exposure of materials that could result in polluted runoff.

Projects that disturb 3 or more acres, or one or more acres in the watershed of an "impaired waterbody" must prepare an erosion and sedimentation control plan. This plan contains more requirements than simple compliance with the erosion and sedimentation control standards mentioned above. For example, the plan might require sequencing the construction activity so as not to disturb more land than necessary, or creating berms and swales along

with the installation of silt fencing.

The person receiving the Construction General Permit must provide the DEP with a "Notice of Termination" within a 20-day period of completing the construction and perform any stabilization measures required.

The bottom line is that municipal

officials in contact with the subdividers, developers, and contractors that may be disturbing an acre or more of land either as a single project or in the aggregate through a "common plan of development" should be informing those folks of this new permitting requirement.

## MS4 Municipalities

For 28 Maine municipalities, additional regulation will become effective March 10, 2003. Under Phase II of these federal-origin-but-state-delegated stormwater regulations, small municipal separate storm sewer systems (MS4s) located within an "urbanized area" will be subject to regulation. In Maine, the following communities have been designated as "MS4 Municipalities": Kittery, Eliot, Berwick, South Berwick, Biddeford, Saco, Old Orchard Beach, Scarborough, Cape Elizabeth, South Portland, Portland, Westbrook, Gorham, Windham, Falmouth, Cumberland, Yarmouth, Freeport, Lewiston, Auburn, Sabattus, Bangor, Brewer, Hampden, Veazie, Orono, Old Town and Milford.

MS4 municipalities are required to develop a plan to reduce the impact of Stormwater discharges. The plan is comprised of six minimum control measures:

- Public Education and Outreach (brochures or fact sheets, educational programs for school-age children, storm drain stenciling)
- Public Participation and Involvement (volunteer water quality monitoring, public meetings/panels, community clean-ups)
- Illicit Discharge Detection and Elimination (develop a program to detect and eliminate illicit discharges and non-stormwater discharges, creating an ordinance to deal with these discharges)
- Construction Site Runoff Control (implement a program to reduce pollutant runoff from the construction site)
- Post-Construction Runoff Control (create an ordinance requiring vegetative buffer zones)
- Good Housekeeping Measures (develop and implement an operation and maintenance program designed to reduce pollutant runoff from municipal operations and include training for municipal employees and contractors.)

For more information on the Construction General Permit or the MS4 municipalities, contact David Ladd at DEP, 287-5404, or visit the DEP web site [www.state.me.us/dep/blwq/comment.htm](http://www.state.me.us/dep/blwq/comment.htm)

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that pertain to the use of growth caps or building permit limitation ordinances. The CPAC has resubmitted one of the two bills. "An Act to Clarify the Use of Growth Caps" is identical to the original bill submitted in the 120<sup>th</sup> session. The centerpiece of the proposal, which is significantly more than a "clarification", limits a municipality's use of caps to a "temporary" cap with a duration of two years. The cap may only be enacted once within a ten-year time frame and the number of building permits issued per year must be no less than the average number of permits issued for the prior ten-year period.

**Adoption of a Building Rehabilitation Code.** During the last legislative session, the State Planning Office was directed to work with a legislatively appointed advisory council for the purpose of constructing a model building rehabilitation code. This time around, the CPAC will be submitting legislation that would provide financial incentives to municipalities that voluntarily adopt a nationally recognized building code and rehabilitation code. Though not submitted by CPAC, there will be a number of bills submitted this session to either encourage or mandate the adoption of a statewide building code.

**Citizen Initiated Referenda.** "An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda," is another bill recycled by CPAC. The bill establishes that ordinances enacted by the citizen-petition process could not invalidate or effectively invalidate any building or zoning permit or land use approval that had been previously approved prior to the citizen-initiated ordinance. Although strongly opposed two years ago by groups intent on protecting citizen access to the local referendum process, CPAC members believe that this bill injects an element of predictability and fairness into the land use regulatory system.

(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).)

### **Business, Research & Economic Development**

LD 39 – An Act to Authorize a General Fund Bond Issue in the Amount of \$10,000,000 to Promote Affordable Housing. (Sponsored by Sen. Brennan of Cumberland County; additional cosponsors)

This bill would send out to the voters a \$10 million bond proposal for affordable housing.

LD 42 – An Act to Establish Rent Caps on Property in Southern Maine. (Sponsored by Rep. Laverriere-Boucher of Biddeford; additional cosponsors)

This bill is a concept draft that proposes to establish caps on residential rental property rates in southern Maine communities commensurate with the average wages earned by area residents.

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

LD 48 – An Act to Reduce Jail Overcrowding. (Sponsored by Rep. Watson of Bath; additional cosponsors)

This bill would require that a person whose probation is revoked be resentenced to that person's original place of imprisonment.

### **Education & Cultural Affairs**

LD 23 – An Act Authorizing the University of Maine System to Enter into Cooperative Agreements with Local Law Enforcement Agencies. (Sponsored by Rep. Dunlap of Old Town; additional cosponsors)

This bill would authorize the University of Maine System to enter into cooperative agreements with municipal law enforcement agencies for the provision of law enforcement services.

LD 69 – An Act to Clarify the Intent of School Budget Referendum Language. (Sponsored by Speaker Colwell of Gardiner; additional cosponsors)

This bill would add explanatory language to the three required statutory articles governing school budget appropriations (foundation allocation, debt service allocation, and "additional local funds") to more clearly explain to the voters the purpose of each type of appropriation.

### **Labor**

LD 34 – An Act to Ensure that Child Labor Laws Apply to Public Sector Employers. (Sponsored by Sen. Edmonds of Cumberland County; additional cosponsors)

This bill would provide that the state's child labor laws which apply to private employers also apply to state and local governments.

LD 35 – An Act to Increase the Assessment on Workers' Compensation Insurance To Fund the Workers' Compensation Board Administrative Fund. (Reported by Sen. Edmonds of Cumberland County pursuant to the Maine Revised Statutes, Title 39-A, section 152, subsection 11.

This bill would set the maximum allowable assessments against insurance companies, associations and self-insured employers to support the activities of the Workers' Compensation Board for FY 04 (at \$8.35 million) and FY 05 (at \$8.525 million).

### **Natural Resources**

LD 30 – An Act to Appropriate Funds for Special Testing at the Norridgewock Landfill. (Sponsored by Rep. Cowger of Hallowell; cosponsor)

This bill would appropriate \$25,000 from the General Fund for the purpose of testing for methane gas and other health and safety concerns at the Crossroads Landfill in Norridgewock.

### **State & Local Government**

LD 66 – An Act to Repeal the Mandate to Perambulate the Municipal Boundary Lines when there is No Boundary Dispute. (Sponsored by Rep. Heidrich of Oxford)

This bill would limit the requirement that the municipal officers perambulate the municipal boundaries with their municipal neighbors to only those circumstances where there is a boundary dispute.

### **Taxation**

LD 1 – An Act to Increase the Property Tax Exemption for Veterans. (Sponsored by Rep. Pineau of Jay)

This bill would increase the value of the veterans' property tax exemption, which is currently either \$7,000 or \$5,000 depending on the time of war-related service, to a flat \$10,000 and remove the stipulation that the exemption be based on "just value". Therefore, the value of the exemption would be \$10,000 regardless of the municipality's assessment ratio.

LD 17 – An Act to Increase the Homestead Property Exemption from \$7,000 to \$20,000. (Sponsored by Rep. Davis of Falmouth; additional cosponsors)

This bill would increase the value of the homestead property tax exemption from \$7,000 to \$20,000.

LD 22 – An Act to Expand the Sales Tax. (Sponsored by Rep. Bull of Freeport)

This bill is a "concept draft" that proposes to eliminate some of the existing sales tax exemptions and use the increased revenue to fund General Purpose Aid to Education at the level of 55% of costs and support other property tax relief programs.

LD 29 – An Act to Eliminate the Telephone Service Tax Dedicated to Libraries and Schools. (Sponsored by Rep. Gagne-Friel of Buckfield; additional cosponsors)

This bill would eliminate the "telecommunications education access fee" which is a .5% cost-of-services surcharge assessed against telecommunication consumers for the purpose of providing discounted telecommunications services, internet access, internal connections, computers and training to qualified libraries and schools.

LD 38 – Resolution, Proposing an Amendment to the Constitution of Maine to Protect the Commercial Fishing Industry. (Sponsored by Sen. Brennan of Cumberland County; additional cosponsors)

This resolution would send out to the voters a proposed constitutional amendment to expand the list of properties eligible for "current use" (rather than "just value") property tax assessments to include waterfront land and structures used primarily for commercial fishing purposes. A similar or identical proposal was on the statewide ballot in 2000, but failed to be adopted by the voters.

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## HOPPER (cont'd)

### Transportation

LD 12 – An Act to Enhance School Zone Safety. (Sponsored by Rep. Marley of Portland; cosponsors)

This bill would identify the school safety zone which requires reduced speed limits to be the area within a ¼ mile radius of the perimeter of improved school property.

LD 33 – An Act to Repeal the Annual Indexing of Motor Fuel Taxes. (Sponsored by Rep. Gagne-Friel of Buckfield; cosponsors)

During the last legislative session, a law was enacted that annually adjusts the tax rates on most motor fuels for inflation. The automatic increase is subject to a required legislative authorization every odd-numbered year. This bill would repeal that automatic indexing law.

LD 63 – An Act to Protect Motor Vehicles From Dangerous Pedestrians. (Sponsored by Rep. O'Neil of Saco)

This bill would repeal the requirement that a motor vehicle operator must yield the right-of-way to a pedestrian crossing within a marked crosswalk controlled by a traffic control signal when that traffic control signal is not in operation.

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