

Tax Reform Update

Fridays seem to be the day of the week that the Taxation Committee makes the most progress developing its comprehensive tax reform plan. The formalities are reduced, the guards are dropped down a notch, the conversation gets targeted and genuine.

Last Friday the Committee took in some legal analysis from the Attorney General's Office regarding what is and is not a "competing measure" to a citizens' initiative, as well as the order of events to follow in order to enact a package of tax changes that includes a constitutional amendment. The citizens' initiative, of course, is the *School Finance and Tax Reform Act of 2003*, currently before the Legislature as LD 1372. The measure was initially developed by a group of municipal leaders working within MMA, received a record-breaking 100,000 signatures on November 5, 2002, and is now being advanced by a wider Political Action Committee organized as the Citizens to Reduce Local Property Taxes Statewide.

The Tax Committee also took an important first step in developing consensus on tax reform with respect to the meaning of a "revenue neutral" tax reform package.

First steps are important, but it is hard to ignore that it's the 9th of May, there's one month left in the legislative session, and the Committee seems to be a very long way off from even framing out the four corners of a tax reform plan.

The "Competing Measure" Doctrine. Assistant Attorney General Linda Pistner briefed the Committee on the question of what a competing measure to a citizens initiative is and what it isn't. According to Pistner, the AG's Office

believes the state's Supreme Court would likely hold that a competing measure is virtually any proposal developed by the Legislature that would have the effect of influencing voters with respect to the citizen initiated measure.

In laying out this interpretation Pistner reasoned as follows. Maine's Constitution directs the Legislature upon receiving a properly endorsed citizens initiative, to do one of three things: (1) adopt the measure as proposed by the citizens word-for-word; (2) fail to enact the measure, thus automatically sending it out to the voters at referendum; and (3) attach an alternative proposal of any stripe – by changing just one word of the citizens initiative or offering a completely revamped approach to the gen-

eral subject – and sending that alternative proposal out to the voters on the same ballot as the citizen initiated measure to compete with it *mano y mano* in the polling place. According to Pistner, no other alternative would be allowed, such as enacting an alternative measure prior to the citizen initiated referendum, or sending out more than one alternative proposal on separate ballots for alternative consideration of the electorate.

In explanation, the Assistant Attorney General said that she believes that the state Supreme Court, which is the ultimate arbiter of this matter, would take the position that the citizen initiated process needs to be protected from attempts by a Legislature not disposed to adopting the initiative outright from attempting to influence the citizens' vote on the matter by acting in any other venue than the referendum process itself. What this interpretation would mean with

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The Latest State Budget

Governor Baldacci has submitted the latest in what seems like a long series of state budget bills. Two budget bills this session were designed to balance the state's FY 03 budget in the face of dwindling revenues, and this latest bill is designed to balance the FY 04-05 biennial budget, the bulk of which was enacted just a month ago.

Among other purposes, this most recent budget balancing measure is designed to fill a last-minute \$48 million shortfall in biennial revenues identified by the Revenue Forecasting Committee in late winter. The budget plan submitted by the Governor contains a range of subtractions and additions to the recently enacted two-year spending plan in all revenue areas, including the state's General Fund, High-

way Fund, federal revenue funds, and various special revenue funds.

Some cuts made in the two-year budget just enacted are restored in this proposal. Merit pay increases for state employees in FY 05, for example, are unfrozen, and the state's share of the school teachers' retirement premiums is increased. A \$9.4 million increase to the state's educational subsidy for FY 05 is budgeted, but on the contingency that lapsed balance revenue will be available at the close-out of the state's FY 03 and FY 04 fiscal years, which is a very optimistic contingency. In other areas of the budget, controversial cuts to social service programs are proposed.

There are no direct municipal impacts in the latest budget proposal to

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Mandate Study and Other "Carryover" Bills

In the March 14th edition of the *Legislative Bulletin* we reported that the State and Local Government Committee had postponed taking a position on LD 419, *An Act to Repeal Outdated and Unfunded Municipal and Education Mandates*.

The originally proposed concept draft bill, sponsored by Rep. Sawin Millet (Waterford), sought to reduce property taxpayer burden by requiring the Legislature to review and repeal the outdated and unfunded mandates currently placed on municipalities and school administrative units. In an effort to move the legislation forward, MMA offered the Committee an amended version of the bill. The proposed MMA amendment expands on the concept provided in LD 419 by creating the Municipal and Educational Mandate Audit Commission. The twelve-member commission, made up of legislators, representatives of state agencies and representatives of municipal and county government, school administrative units and quasi-municipal special purpose districts, would be charged with identifying costly mandates and submitting legislation to repeal, modify, redesign or delay the implementation of the identified mandates.

Unfortunately, for reasons that are not entirely clear, LD 419 will not be implemented as of yet. Instead

it will be "carried over" into the 2004 legislative session.

For a variety of reasons, a legislative committee may decide that it is not able to complete its work on a bill that it is considering. Perhaps the bill is too complicated and needs more study. Perhaps there are external contingencies at play, and the committee decides to wait to see if the matter can get resolved without a change in law. What follows is a sample of some other bills that have been "carried over", and will re-emerge in 2004 for further legislative consideration.

LD 103, *An Act to Establish the Regional County Corrections Construction Authority*, was sponsored by Rep. Lois Snowe-Mello of Poland and would establish the Regional County Corrections Construction Authority, a board comprised of state, county and local officials authorized to issue bonds for the construction of regional county correction facilities.

LD 158, *An Act to Limit Agent Fees to the Number of Transactions*, was sponsored by Sen. Bruce Bryant of Oxford County and would limit the aggregate transaction fee that can be charged by agents of Inland Fisheries and Wildlife for the issuance of certain hunting and fishing licenses to \$2 per transaction regardless of the number of licenses or permits being issued during that transaction.

LD 401, *An Act To Require the Plumbers' Examining Board To Adopt the Uniform Plumbing Code*, was sponsored by Sen. Dennis Damon of Hancock County and would require the Plumbers' Examining Board to Adopt the Uniform Plumbing Code.

LD 688, *An Act To Provide Incentives for Municipalities To Adopt a Building Rehabilitation Code*, was sponsored by Rep. Ted Koffman of Bar Harbor and would give preference for any economic development

grants administered by the Department of Economic and Community development to a municipality that has adopted an international building rehabilitation code.

LD 700, *Resolve, To Create the Task Force To Study County Government Efficiency*, was sponsored by Rep. Chris Barstow of Gorham and would establish a 14-member Task Force charged with examining several issues associated with county-government efficiency, including the roles and responsibilities of county government in Maine and other states, ways that state and municipal government can take better advantage of county government, the geographic boundaries of the counties and how county government is financed.

LD 1025, *An Act To Ensure Uniform Code Compliance and Efficient Oversight of Construction in the State*, was sponsored by Sen. Chris Hall of Lincoln County and would establish the Office of Building Codes within the Department of Professional and Financial Services. The new Office would be responsible for licensing all building inspectors who may or may not be municipal or state employees. All residential and commercial buildings constructed in the state would have to be inspected by an inspector licensed by the Office to ensure that the buildings were constructed according to the applicable municipal and state building codes. Municipalities are authorized but not required to provide the building inspection service under this bill.

LD 1070, *An Act To Increase Traffic Fines and Apportion a Part of the Increase to the Issuing Jurisdiction*, was sponsored by Rep. Ed Suslovic of Portland and would increase traffic fines by 5% every 2 years beginning on January 1, 2004 and ending on January 1, 2012. This bill would also distribute 10% of all traffic fine revenue to the law enforcement agency that issued the traffic summons, beginning in 2004. That percentage of fines allocated to the law enforcement agencies would increase every two years until 2012, when it would level off at 50% and stop increasing.

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BUDGET (cont'd)

speak of. The proposals that tangentially impact the municipalities and schools are:

GPA debt service. The proposal would delay the issuance of bonds for four school construction projects from the fall of FY 03 to the spring of FY 04. The measure apparently has no effect on the actual construction schedule or the municipalities' financial exposure to the construction projects, but delays the timing of the first principal payment in a way that saves the state \$1.4 million in FY 04. Approximately the same amount of money is anticipated to be saved over the biennium because of reduced borrowing costs, generally, and through "audit recoveries", but there is the general recognition that this is the last sweep of the GPA debt service account for potential change-in-the-couch revenues for some time to come.

No Child Left Behind. The supplemental budget provides that over the FY 04-05 biennium, \$26.8 million in federal funds will be provided under the No Child Left Behind Act. Some or all of that federal support is just the conversion of an existing program under a new name. These funds replace the federal revenues that were previously provided to the state under the Eisenhower grant and "class size" programs. School units will apparently be able to apply to the Department of Education for revenues to fund teacher and principal professional development programs and to increase the number of classroom teachers in order to reduce teacher-student ratios where they are higher than recommended.

Help America Vote Act. The federal Help America Vote Act (HAVA) provides matching funds (5% state/95% federal) to address the federal mandate placed on states to facilitate the voting process. Since the creation of HAVA in 2002, Maine has received \$5 million from the federal program and is requesting an additional \$4.1 million in federal funds in this budget. In order to receive the additional federal revenue, the state must raise the \$218,420 state match. Through an \$118,420 General Fund appropriation

and a transfer of \$100,000 from the unencumbered funds in the Secretary of State's FY 03-04 budget, the necessary state funds are raised. The Secretary of State will use the \$9.1 million in state and federal funds to meet the federal mandates that require the creation of a state-centralized voter list and to provide each of Maine's approximate 650 polling places with a \$4,500 voting machine that will enable disabled residents to vote without assistance.

Prisoner Reduction Program. Included as part of the budget proposal is the creation of a commission to study and develop mechanisms for reducing the overall costs of corrections at the state level and community corrections at the county level. The sixteen-member *Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners* includes representatives from the executive, judicial and legislative branches of state government, as well as members representing county commissioners and sheriffs, trial lawyers and the general public. The Commission is tasked with developing recommendations that meet the goal of controlling correctional costs by reducing the population of non-violent and repeat offenders in the corrections while at the same time protecting community safety and holding offenders accountable for their actions. To accomplish that balance, the Commission is directed to study the reasons that overcrowding exists in correctional facilities (i.e., demographics of the prison population, length of sentences, impact of mental illness, impact of substance abuse, etc.), determine how existing sentencing laws impact prison and jail overcrowding, and determine the effectiveness of current programs and treatment plans for deterring repeat offenders. The Commission is required to report its findings and recommendations to the Legislature by January 2, 2004.

Budget Stabilization Fund. In the two-year state budget enacted a month ago, the Commissioner of Administrative and Financial Services was directed to submit legislation creating a General Fund stabilization program for enactment by the Legislature during this legislative session. In response to that directive, this follow-up budget includes an initiative to replace the

state's existing Rainy Day Fund with the Maine Budget Stabilization Fund.

As proposed, the initiative places a cap on the amount of General Fund revenue the state can spend in any year. The spending cap is called the "Long Term Growth Rate Limitation". This limitation is adjusted annually using a formula based on the percent increase in real personal income and projected consumer price index (CPI). The ten-year average growth in Mainers' real personal income, as identified by the federal Bureau of Economic Analysis, would be added to the average CPI based inflation rate as calculated by Maine's Revenue Forecasting Committee. That calculated percentage would control any increase in state spending. For example, if the ten-year average growth in real personal income was 2.5% and the projected CPI was 2.7%, the state could increase its General Fund expenditures in the next fiscal year by 5.2%. Any General Fund revenue generated in excess of the cap would be captured and dedicated to the Stabilization Fund. In addition, 50% of unappropriated state revenues at the close of each fiscal year would be transferred into the Stabilization Fund.

Generally, the Stabilization Fund could only be accessed by the Legislature when General Fund revenues are less than the total amount of expenditure allowed under the limitation.

The revenues dedicated to the Stabilization Fund would be capped at 20% of the total General Fund revenues generated in the previous fiscal year and could not be reduced below 1% of that General Fund aggregate, although there is an exception to that lower limit. If the Legislature has adjourned prior to the close of a fiscal year and it is determined that the available General Fund revenue will not meet General Fund appropriations, the Governor would be authorized to reduce the Stabilization Fund below the 1% minimum in order to balance the budget. The 20% cap creates a significantly larger stabilization fund than the current Rainy Day Fund, which is capped at 6% of General Fund revenues. At a 6% cap, the existing Rainy Day Fund could contain as much as \$145 million. At a 20% cap, the Stabilization Fund could contain as much as \$485 million.

Labor Bill Focuses On "At Will" Employees

An amended version of LD 1117, *An Act Regarding Wrongful Discharge*, sponsored by Rep. Deborah Hutton (Bowdoinham), is currently making its way through the House and Senate. On Thursday of this week, the amended version of the bill received initial approval from the members of the House and is now before the Senate.

As originally proposed, LD 1117 would have defined as a wrongful discharge an employee firing that is in violation of the employer's own written personnel policy. MMA opposed the printed bill because of potential disproportionate effects. A minor or technical noncompliance with the procedures of a personnel policy should not overrule the termination of an employee who commits a serious or egregious violation of an employer's rules. The reason an employee is being terminated should be the primary factor in determining whether the termination was just, and a mere procedural error that does not ultimately interfere with fair process should not be a "wrongful discharge" (thus requiring reinstatement) as a matter of law.

The amended version of the bill, supported by eight members of the Labor Committee, significantly changes the original bill and perhaps more accurately defines the bill's original intent. Under the terms of the amended bill, when an employer provides a personnel policy to its employees, the employer must include as part of the personnel policies for all "at-will" employees a "clean and conspicuous" statement that the employee is an "at-will" employee. If the employer fails to meet that notification requirement, the employer cannot terminate an employee according to the employer's right to terminate "at will" employees without the "for cause" procedures that certain governmental and unionized employees enjoy. Instead, the employer would be required to use the procedures and standards of termi-

nation, if any, provided in the personnel policy.

This amended version of LD 1117 creates a new problem for municipalities. The bill seems to regard all employers as having either "at will" employees or "for cause" employees. Municipalities, typically, have a mix of both. Some municipal employees (e.g., any position created by statute, and employees covered by labor contracts) are "for cause" employees, while other municipal employees are "at will". In order to meet the requirements of the amended version of LD 1117, communities would have to print two versions of the personnel policy, one including the appropriate disclaimer for at-will employees and another for

all other employees, and make sure the appropriate personnel policy is provided to each employee.

LD 1117 unnecessarily complicates the existing system by adding the notification requirement and creating a shifting and uncertain set of employer obligations that kick-in by default depending on what is *not written* in certain personnel policy documents. If any change is necessary, MMA would support the minority amendment to LD 1117 that would require the Department of Labor to **bold typeface** the section of the employment poster describing at-will employees.

Members of the Labor Committee are interested in hearing your position on this issue. Please contact your Representatives and Senators and ask them to share your opinion of the amended version of LD 1117 with the members of the Labor Committee. If you are interested in obtaining a list of the Labor Committee members, please contact MMA's Laura Veilleux.

'Tax On Paint' Bill Gets Divided Committee Report

The Natural Resources Committee has split over the issue of whether the state should raise taxes to help fund the collection of household hazardous waste (HHW). LD 1549, *An Act To Fund Municipal Collection of Household Hazardous Waste*, was voted "Ought To Pass" by a margin of 9-4. This bill would place a \$0.20 per gallon tax on the retail sale of paint and most general pesticides. The tax is expected to generate approximately \$500,000 annually, which would be used to help defray the municipal costs of collecting HHW (TVs, paints, oils, household cleaners, pesticides, etc.) The bill's proponents do not believe it will cover all costs associated with operating a HHW collection program. The funds are being described as the state's share of the funding.

LD 1545 does not address the important long-term question of how

HHW will be managed statewide. Currently, only a handful of communities have a HHW collection program at all. These programs generally involve the one-day per month (or year) HHW drop-offs at local storage sheds. Many communities are wary of taking on the responsibility of handling HHW without a better understanding of the long-term solution.

Nevertheless, the bill does recognize the need for state assistance in what has historically been a local obligation – trash collection. Further, any additional funding assistance to local communities in this fiscal environment is very hard to come by. This vote signals the Natural Resources Committee's strong interest in the issue. Yet, the vote seems to have set a collision course with the Governor's Office, which has maintained a strict no-new-taxes policy.

Bill To License Home Building Contractors Carried Over

The April 25 *Legislative Bulletin* summarized LD 1551, *An Act to License Home Building and Improvement Contractors*, in anticipation of last week's hearing of the bill. As it turned out, the bill was technically not heard. Immediately after Rep. Scott Cowger (Hallowell), sponsor of the bill in conjunction with the Attorney General's Office, indicated that he and the AG were in agreement that the bill should be "carried over," the Business, Research and Economic Development Committee moved out of its public hearing status into its work session status and promptly voted to carry over the bill.

While in work session, the Committee then invited all interested individuals to speak on the issue. The bulk of the testimony came from people who had had harrowing experiences with home contractors. Common elements of their testimony were that many were unaware Maine did not have a building code until after their troubles began; they were surprised to learn that contractors do not have to be licensed; that the Attorney General's office is not authorized to do much more than mediate complaints, and that pursuing unscrupulous contractors on one's own can be costly and ineffective if the contractor declares bankruptcy. The Committee and the Attorney General patiently listened to often emotional and upsetting testimony.

The primary criticism of the bill was that its licensing requirements are much more extensive than for other licenses, and even impossible to satisfy (does the bill's "honesty" requirement go so far as to require a contractor to tell a homeowner that his choice of paint is ugly?) The AG's Office was clear that it wanted to work with various stakeholders to review the bill and clarify the licensing criteria.

Further, since the bill establishes a new state license, the Committee will likely request that a "sunrise" review

of the legislation be conducted. The review, performed by the proponent of the legislation (the AG) at the request of the Commissioner of Professional and Financial Regulation, is a comprehensive 13-part analysis of the bill. The review includes an analysis of the proposed public health and safety benefits, the cost of licensing, clarification of where enforcement responsibilities lie, etc. Also, an ad hoc group is meeting to review which building code would be the best voluntary model building code for the State. While the simultaneous adoption of a statewide voluntary code and licensing requirements is a daunting task for next session, it is something to keep an eye on.

Local Control Option for Water Districts In Doubt

The April 18th *Legislative Bulletin* outlined the public debate over LD 1359, *An Act to Establish the Locally Governed Water District*. The bill would allow for the exemption from PUC governance of those water districts where the town (or towns representing a majority of citizens in a multi-town district) and the governing board of the water district elect to be exempted. The Utilities Committee has voted 7-6 that the bill "Ought Not To Pass." The tight Committee vote mirrored the spirited testimony on both sides of the issue.

The vote breaks-down as follows:

Majority – Ought Not To Pass

Rep. Herb Adams (Portland)
Rep. Al Goodwin (Pembroke)
Rep. Peter Rines (Wiscasset)
Rep. Don Berry (Belmont)
Rep. Philip Cressey, Jr. (Baldwin)
Rep. Ken Fletcher (Winslow)
Rep. Maitland Richardson (Skowhegan)

Minority – Ought To Pass

Sen. Chris Hall (Lincoln Cty.)
Sen. Lynn Bromley (Cumberland Cty.)
Sen. Ed Youngblood (Penobscot Cty.)
Rep. Larry Bliss (South Portland)
Rep. Jacqueline Lundeen (Mars Hill)
Rep. Stan Moody (Manchester)

The bill will likely hit the floor shortly. Municipal officials with questions or concerns about this bill should contact MMA's Jeff Austin (1-800-452-8786 ext. 208, Jaustin@memun.org) or their elected officials in order to be heard on this issue.

Applications Due Soon for Public Transit Bonus

In 2002 the 120th Legislature enacted the Transit Bonus Payment Program. Under the program, the Department of Transportation is authorized to distribute additional funds to municipalities that provide public transportation. For every additional "new" dollar over a base year a municipality invests in public transit, that municipality qualifies for up to an additional dollar the Urban Rural Initiative Program (URIP) payments. The Transit Bonus Payments are covered by an additional allocation from the Highway Fund to the URIP program of no more than 2.5 percent of the total URIP allocation. In order to qualify for the bonus payments, municipalities must: 1) demonstrate an increase in the local funds invested in public transit over a base year; 2) verify that their public transit system has been established for at least three years; and 3) provide seasonal or year-round regularly scheduled services at least three days per week.

Qualifying communities interested in participating in the FY 04 transit program must submit their requests for funds to the Department of Transportation's Office of Passenger Transportation by June 1. If you need a copy of the program application, please contact MMA's Laura Veilleux at 1-800-452-8786.

TAX REFORM (cont'd)

respect to the citizen initiated tax reform measure is that the Legislature is prohibited from directly enacting a tax reform measure in 2003 except for the purposes of placing it on the ballot as a competing measure to the citizen initiated proposal. The interpretation would also act to prohibit the Legislature from sending out to the voters multiple alternative proposals, straw poll advisories, or separate ballot proposals with both constitutional and statutory elements.

In summary, the Attorney General's Office appears to interpret the doctrine of competing measure to mean that if the Legislature doesn't like the citizens initiated tax reform proposal, it has one bite at the competitive apple, and a single alternative proposal of any kind – friend or foe, complimentary or uncomplimentary to the citizens' approach – can be placed on the ballot if the Legislature is willing to provisionally adopt it as a recommendation.

The other issue reviewed by the Assistant Attorney General was the procedure that must be followed to adopt a package of tax reform legislation that has both constitutional and statutory elements. Following the same line of reasoning that was previously provided by the Committee's legal analyst, the Assistant Attorney General said that the constitutional changes must chronologically precede any statutory changes that depend on the constitutional changes in order to be constitutional. For example,

if the current Constitution maintains (as it does) that property taxes must be apportioned equally according to the "just value" of the property that is being taxed, a statutory provision that would allow for any split-rate taxation system could not be enacted by the Legislature even provisionally or conditionally until the Constitution itself is first appropriately amended by the people. Pistner was asked by the Committee if a single ballot question could be presented to the voters that contained both a constitutional amendment and the implementing statutory changes as one question, and she said she would research the matter and provide a response at a later date.

Given the general rule system that has already been laid out, however, which requires constitutional amendments to stand alone in the ballot box and prohibits the Legislature from even provisionally or conditionally enacting unconstitutional legislation, the answer to the Committee's question would appear to be a flat 'no'.

Revenue Neutrality. Also on Friday, Senate Chair of Taxation Steve Stanley (Penobscot Cty.) asked the Committee if there is a common understanding among the membership that the aggregate financial impact of the tax reform package should be "revenue neutral", and whether there was an agreement about the meaning of that term.

The conclusion of the lively discussion that followed appeared to be a 'yes' to both questions. Although some Committee members might see an opportu-

nity in tax reform to expand the capacity of state government to provide certain programs, most notably in the social services area, other Committee members clearly interpret the term "tax reform" to be the equivalent of tax reduction. In something of a compromise most carefully navigated between Senator Strimling (Cumberland Cty.), Senator Richard Nass (York Cty.) and House Chair of Taxation Dave Lemoine (Old Orchard Beach), there seemed to be consensus that the ultimate tax reform package crafted by the Committee would be "revenue neutral" according to the following definition: Laying all state and local taxes on the table, the final package would be designed to generate no more additional tax collections than would be generated if the existing tax system were left unchanged, and the tax bill produced by the Committee would have a zero fiscal note, meaning that all new revenue that might be generated through reform would be expended to the relief of other taxes within the aggregate tax system.

Although Senator Nass articulated the strong interest among his Republican colleagues in the Senate to include in the final package mechanisms to control the rate of growth of governmental spending, he said that an agreement on the principal of revenue neutrality was an important first step to move the development of a proposal forward without triggering a retreat by the various partisans around the horseshoe into their respective political corners, which would destroy any chances of success.