

The Crawl of Tax Reform

Not much work in Augusta was done on tax reform this week in a public or deliberative way. That Taxation Committee met for short, sporadic intervals, and the only legislatively-developed tax reform plan that is being developed over-the-table is the "Chairs' Plan" by Sen. Steve Stanley (Penobscot Cty.) and Rep. Dave Lemoine (Old Orchard Beach).

The Chairs' Plan is now in its third iteration and is provided in the accompanying sidebar. The way the Chairs' Plan provides for increased education funding is to repeal the personal property tax and repeal the Homestead property tax exemption. Even then, the plan falls far short of actually working financially, causing some members of the Tax panel to suggest repealing some or all of the motor vehicle excise tax as well.

The reference in the Chairs' Plan to \$110 million "in valuations" is misstated. What the explanation appears to be saying is as follows: Currently, approximately \$8 billion of personal property is subject to the personal property tax, generating about \$173 million in tax revenue statewide. With the elimination of the personal property tax on all business machinery and equipment and other personal property that is currently enrolled in the BETR program, as well as all future personal property that would have been eligible for the BETR program, the municipalities will lose \$63 million in revenue in the first year, but will continue to be able to tax all the older pre-BETR personal property and non-BETR personal property, which in today's currency is worth \$110 million to the municipali-

ties. What is not discussed in the explanation is the rapid drop-off in both the existence and the taxable value of the older personal property.

It should also be noted that this new-tax tax reform plan does not pay for itself. On the face of the explanation

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Proposal of the Tax Chairs [May 19, 2003] Sen. Steve Stanley and Rep. Dave Lemoine

TAX REFORM that Strengthens Schools, Relieves the Property Tax Burden, Promotes Economic Development and Adds No New State Taxes.

1. Stabilized School Costs

a. Adopt Essential Programs and Services (EPS) Education Model and the 10 mill local expectation, including Special Education and make the change effective for the next fiscal year. This is \$187 million line item, but it funds the full EPS model that DED had not expected to roll out for another five years.

b. Eliminate BETR program as of 07/01/01 and Homestead Exemption program as well

c. Amend the Constitution to eliminate the taxation of business equipment (as defined in BETR) for all such property placed in use on or after 04/04/95. This frees up the \$62 million in annual BETR funding and achieves the goal of saying that we are doing away with this tax. However, it allows municipalities to tax about \$110 million in valuations on business equipment that does not qualify for BETR.

2. Provides Targeted Property Tax Relief to Those who need it Most Through the Circuit Breaker Program.

a. Double the size of the Circuit Breaker Program and move the application form onto the income tax form. The cost is \$23 million

b. Retain Veterans Exemption.

3. Exporting our Tax Burden.

a. Allow municipalities the local option of a one-cent tax for a meals and lodging sales. These funds must be used for the municipal side of a town ledger and cannot be used for education. It also allows more local decision-making on taxing and spending issues.

4. Using State Revenues to Subsidize Municipal Operations.

a. Continue the existing Revenue Sharing Formula

b. Retains Municipal Sales, Use and Gas Tax Exemptions

c. Continues Local Road Subsidies, etc.

5. Consolidation Incentives:

a. Use \$4 million remaining BETR/Homestead money to fund a consolidation support program.

Home Rule Supported in Tax Lien, Shooting Ranges Debate

In two debates on municipal issues, the Legislature has illustrated support for local control and the work of municipal officials as the House defeated a measure that would mandate certain tax lien foreclosure procedures and both the House and Senate defeated a measure to prohibit the use of municipal noise ordinances as they might apply to shooting ranges.

Foreclosure Process. On Wednesday the members of the House rejected a bill seeking to amend the foreclosure process by a margin of 74 to 69. Although a majority of the Taxation Committee had recommended that LD 937, *An Act to Require the Net Proceeds from the Sale of a Foreclosed Property to Be Returned to the Former Owner* “ought not to pass”, the bipartisan minority report appeared to be gaining some level of support. The minority report would have required municipalities to sell tax-acquired property through a competitive bidding process and return to the former owner any funds remaining after making all authorized “deductions”. If the former owner cannot be located, the remaining funds would be sent to the state treasury. (For a detailed description of the minority report please see the May 16th edition of the *Legislative Bulletin*.)

Proponents of the minority report argued that out of fairness to elderly

and poor residents who cannot afford to pay their property taxes, the former owners of tax-acquired property should at a minimum receive the net proceeds from the sale of tax-acquired property. However, a majority of the members of the House disagreed with that rationale, trusting the judgment of the municipal officers who have been given the responsibility of adjudicating the non-payment of property taxes throughout the state’s entire history.

The opponents of the bill did an excellent job of separating the emotional arguments from the practical aspects of the debate by explaining the impact the proposed change would have on municipalities. Rep. David Lemoine (Old Orchard Beach) led the discussion in opposition to the bill as he outlined three reasons why the proposed change was unnecessary. First, Rep. Lemoine argued that there is nothing in existing statutes that prohibits municipalities from sharing any of proceeds from the sale of tax-acquired property with the former owner if they so choose, and the Legislature should not override the good judgment of the municipal officers who take their responsibilities very seriously. Second, Rep. Lemoine felt that municipalities should not be placed in the position of acting as banks on behalf of the former property owners. Third, Rep. Lemoine believes that the existing tax lien process is fair because it provides the home owner ample time to meet with municipal officials to make the necessary arrangements to pay back the owed taxes.

Rep. Stephen Bowen (Rockport) debated the bill from the perspective that communities do not voluntarily take property, but are forced to use the foreclosure process because no other alternative exists for recuperating the loss tax revenue. He also stated that communities generally incur costs when acquiring property through the foreclosure process, because more often than not the property has been aban-

doned and is in a state of disrepair. Under this scenario the property becomes a liability (i.e., properties with condemned buildings, drinking water and sewerage problems, etc.) rather than an investment.

Rep. Peter Mills (Cornville) also provided comments opposing changes to the existing system because in his experience the process that has been in place since Maine became a state provides a long period of time — approximately three years — for a property tax obligation to be settled. Rep. Mills explained both the procedural and public policy differences between a tax lien foreclosure and a mortgage foreclosure, and told his colleagues in the House that a mandated manipulation of the foreclosure process is unnecessary.

Rep. Ray Pineau (Jay) also shared his opposition to the bill from his experience as a member of the Jay Board of Selectmen. Rep. Pineau stated that it was his responsibility to first protect all elderly, poor and other property taxpaying residents who are forced to carry a disproportion share of the property tax burden by ensuring that all property owners pay their fair share of the property tax burden, and although the settlement of difficult cases is a tough responsibility, the municipal officers are very capable of accomplishing the task fairly.

The bill is now tabled in the Senate and will be debated soon. Please contact your Senators today and ask them to support the majority “ought not to pass” report on LD 937.

Noise Ordinances vs. Gun Clubs.

Thanks to the unwavering efforts of Sen. Margaret Rotundo (Androscoggin Cty.), Rep. Janet McLaughlin (Cape Elizabeth) and Rep. Gary Sukeforth (Union) LD 917 was defeated this week. On Monday, 94 members of the House supported the “ought not to pass” recommendation from the Senate as they defeated passage of LD 719, *An Act To Protect and Encourage Firearms Shooting Ranges Throughout the State*. The bill would have prohibited municipalities from applying noise limit standards to applications for the establishment of new firearm shooting ranges.

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Water Districts

Following relatively heavy lobbying from both supporters and opponents, the fate of LD 1359, *An Act to Establish the Locally Governed Water District* has not yet been decided. The bill would exempt water districts from being governed by the Public Utilities Commission (PUC). Eligible districts would be 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.”

MMA’s Legislative Policy Committee supported the bill and MMA testified in support of the bill at the public hearing. The bill strengthens home-rule by eliminating an unnecessary level of state oversight. The oversight agency, the PUC, agrees and supports the bill. Furthermore, the bill only establishes a test pilot program so that self-governance can be assessed. Lastly, the pilot program is voluntary in that water districts and municipalities must agree to participate in the program.

Unfortunately, there appears to be some confusion concerning the position of MMA with regard to this bill. MMA supports this bill as a home-rule friendly approach which has the potential to eliminate burdensome and pointless state regulation with no depreciation in service.

ATVs

The printed version of LD 1482, *An Act To Revise Certain Provision’s Of Maine’s Fish and Wildlife Laws*, made a number of changes to hunting, fishing, and snowmobile laws enforced by the Department of Inland Fisheries and Wildlife, none of which had any significant impact on municipal government. For that reason, MMA was surprised to see this week the printed copy of an amendment to the bill which was crafted last week that completely prohibits municipalities from enacting any ordinances that affect the “op-

eration” of All Terrain Vehicles (ATVs).

The bill has now been “reported out” of the Legislature’s Inland Fisheries and Wildlife Committee as a unanimous committee amendment, and the bill is poised for enactment. Because it is a unanimous committee report, there will likely be no debate on the bill and it will proceed to enactment on a consent agenda.

When MMA discovered the Committee’s amendment on Thursday morning this week, a communication went out to local officials for the municipal response to this proposed pre-emption. Approximately 45 towns responded in less than 24 hours, 95% of which strongly opposed the amendment. Several towns have ordinances which would be directly preempted. ATV use is presenting numerous problems on the local level, and it appears that some federal grants to maintain trails may be in jeopardy due to the federal requirement that towns prohibit ATVs from federally funded trail ways.

MMA will renew its standing request to the chairs of the Inland Fisheries and Wildlife Committee, Sen. Bruce Bryant (Oxford Cty.) and Rep. Matt Dunlap (Old Town), to cause the bill to be tabled before proceeding to enactment.

Liquidation Harvesting

The Agriculture, Conservation and Forestry Committee unanimously passed LD 1616, *An Act to Promote Stewardship of Forest Resources*. The bill, sponsored by Rep. Pat Colwell (Gardiner) and produced by the Department of Conservation, defines “liquidation harvesting”, declares that liquidation harvesting is a threat to Maine, and directs the Department to promulgate rules by February 1, 2004 that would substantially eliminate the practice of liquidation harvesting in Maine.

Liquidation harvesting is defined in the bill as the sale of property within 5 years of its purchase and after the purchaser had removed most of the “commercial value in standing timber, without regard for long-term forest

management principles.” This definition was actually first developed by the Legislature in a law enacted in 2002, which requires harvest management plans pursuant to the Tree Growth tax law.

The Maine Forest Service (MFS) has been studying the extent of the practice of liquidation harvesting for the past several years. Given the 5 year-plus timeline from purchase to sale, the MFS estimates that only 11% of all harvested acres would even be subject to the law. Of those acres subject to the law, the MFS believes that no more than half of those acres could be characterized as being subject to liquidation harvesting. Accordingly, the bill would have a focused approach from the outset. It is likely that in the course of the rulemaking process, the Department would even more narrowly define the issue with exemptions and refinements.

There was widespread support for the bill at the hearing. Many in the logging industry support the concept so that there is a clear distinction between responsible logging and the practitioners of liquidation harvesting. MMA pledged its support to work with the MFS in crafting the rules.

TAX REFORM (cont'd)

tion, the state would need to raise \$187 million to meet the education increases, \$23 million to expand the Circuit Breaker program, and \$4 million to fund some sort of local government consolidation program, for a total of \$214 million. The revenues to pay for that are \$62 million through the repeal of the personal property tax (and therefore a repeal of the BETR program) and \$35 million through the repeal of the Homestead Exemption, for a total of \$97 million. When the explanation was presented, Rep. Lemoine indicated that some of the \$117 million difference between revenues and expenditures would be made up by putting only \$70 million into education in the first year, and “ramp up” to the full \$187 million state contribution over a 5-year period. In short, the new Essential Programs & Services education funding model would be underfunded from the get-go.

Legislative Studies

The following is a partial list of “study bills” that pertain in some way to municipal government and that have been enacted or are on their way to enactment this legislative session. As the nickname suggests, study bills guarantee the convening of a working group or task force to gather specific information and develop recommendations regarding a matter of public policy. MMA will provide more notice and detailed information to municipal officials about the various study groups after the Legislature finally adjourns, but any municipal folks interested in learning about or getting connected with the study projects that are identified below should feel free to contact MMA’s Laura Veilleux at 1-800-453-8786 or lveilleux@memun.org.

LD 472 – *Resolve, To Establish the Task Force To Study Regulatory Barriers to Affordable Housing*. This emergency resolve would direct the legislatively created Community Preservation Advisory Committee (CPAC) to conduct a comprehensive review of state-level, local-level, and market-level barriers to the creation of affordable housing. Specifically, CPAC would be charged with examining state rules and local regulations that inhibit the construction of new affordable housing units; zoning practices that create barriers to affordable housing; local impact fee regulation, develop-

ment moratoria, and rate-of-growth ordinances, and the degree to which affordable housing should be exempt from those regulatory systems; and the degree to which the unavailability of financial assistance for security deposits creates a barrier to the creation of affordable rental housing. The resolve stipulates that CPAC must consult with at least 21 “stakeholders” while conducting this study, including the Maine Municipal Association, the Maine Association of Planners, a city councilor, a municipal officer and an planning board member, as well as developers, bankers, homeless advocates, labor representatives and state agencies. CPAC is authorized to develop legislation to implement its recommendations. **Current status: Placed on special study table pending final passage.**

LD 1045 – *Resolve, Directing the Community Preservation Advisory Committee To Study the State Planning Office’s Review of Municipal Comprehensive Plans and Growth Management Programs*. This resolve would direct the Community Preservation Advisory Committee to study the State Planning Office’s (SPO) system of reviewing municipal comprehensive plans, growth management programs and local ordinances for consistency with state goals. The study must include a review of the SPO rules that govern the review process and the time

frames within which those reviews are supposed to be conducted. The Community Preservation Advisory Committee is directed to submit its report to the Natural Resources Committee by December 1, 2003. **Current status: Finally passed**

LD 1079 – *Resolve, To Establish the Committee To Study Compliance with Maine’s Freedom of Access Laws*.

This resolve would establish a 16-member Committee to study compliance with Maine’s Freedom of Access laws. The Committee is charged with the task of: (1) reviewing the Report on Public Records Audit conducted and prepared by the Maine Freedom of Information Coalition in November, 2002; (2) studying what measures are taken to train governmental employees about their freedom-of-information responsibilities; (3) recommending ways in which governmental compliance can be improved and the costs of making those improvements; (4) reviewing all the exceptions to public access and proceedings and identify changes to those exceptions to “streamline” the law; (5) reconsidering the need for any of the exceptions; and (6) studying the degree the freedom of access laws are used to harass local government entities and what remedies may be available to deter that harassment. The Committee is scheduled to provide its report and recommendations to the Judiciary Committee by December 15, 2003. **Current status: Placed on special study table pending final passage**