

Tax Reform Project Takes Shape

As reported in the March 30 and April 6 editions of the *Legislative Bulletin*, a proposal to take another crack at comprehensive tax reform is beginning to work its way through the legislative process.

Among the several bills submitted this session dealing with tax reform, the Taxation Committee chose as the vehicle bill LD 970, *An Act to Limit the Use of Property Taxes to Fund Education*, sponsored by Rep. Barney McGowan (Pittsfield). As originally printed, LD 970 would have established a cap of 4 mills on all property taxes for the purpose of funding education, and secured the remaining revenue to pay for K-12 education by expanding the sales tax base to include unspecified goods and services that are currently exempt from the sales tax.

The Tax Committee first formed a subcommittee and charged the panel of four to redevelop LD 970 into a bill that would create a legislative commission to take on the task of tax reform during the summer and fall of 2001.

On April 12, the subgroup reported back to the full Taxation Committee with its redrafted version of LD 970.

According to the draft, the 14-member commission would be called the "Education Funding Reform Committee." Seven members would be Democrats and seven members would be Republicans. Eight members would be drawn from the Taxation Committee, three from the Appropriations Committee and three from the Education Committee.

LD 970, as redrafted, further establishes that if the Education Funding

Reform Committee develops a legislative product to implement its recommendations, that legislation would be presented to the Legislature in 2002 and either rejected wholesale or passed along to the voters as a referendum question in November, 2002.

The guts of LD 970 – the specific charge to the Education Funding Reform Committee – reads as follows:

• "The committee shall make recommendations regarding the following:

A. Funding most of elementary and secondary education from tax revenues other than the property tax;

B. Providing new methods of raising revenue for education funding that provide a more equitable balance among property taxes, sales taxes and personal income taxes;

C. Stabilizing the State's tax structure to resist, to the greatest practicable extent, fluctuations in revenues, particularly in times of economic downturns;

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Governor's Bond Package Gets Its Hearing

On Wednesday this week the Appropriations Committee held public hearings on a number of bond proposals.

On behalf of Governor King's administration, State Planning Office Director Evan Richert outlined a new bond limit policy that the Governor is suggesting the Legislature consider.

The existing policy, such as it is, is known as the "90% rule". The 90% rule is not written down anywhere. It is, instead, a hand-me-down, semi-agreed to, quasi-honored policy that has been in place for a decade or two. The "90% rule" holds that the state should not issue more bonds over the course of any biennium than 90% of the value of the bond indebtedness that is being retired over that biennium.

As Richert pointed out to the Appropriations Committee, the "90% rule" has its flaws. The first flaw is that

if the 90% rule is rigorously applied, the state will eventually be borrowing no money for capital projects, which doesn't make sense from a finance-management point of view. The second flaw is related to the first flaw in that the Legislature breaks the unwritten 90% rule from time to time because of its constraints. A third flaw with the 90% rule is that it focuses only on the taxpayer-supported borrowing that is put out to the voters at referendum, and it doesn't include other state bonds, such as those issued under the Government Facilities bond authority.

The alternative bond limit policy that Governor King is proposing would establish that the state carry a bond limit, *including all bonds issued under state authority*, that would not exceed 5% of the total General Fund and Highway Fund state revenues. Over the FY 02-03 biennium, those revenues ap-

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Occupancy Permits and Sales Tax Compliance

The question is whether some houses are being built in Maine with a wholesale disregard for the sales tax payments on the lumber and other building materials that go into the construction.

That is the perceived problem that LD 1056, *An Act to Enforce the Taxation of Building Materials and Modular Homes*, was designed to address. Sponsored by Senator Rick Bennett (Oxford County), LD 1056 would have implemented a number of initiatives to prevent the possibility that prospective homeowners can go to Canada, or New Hampshire or other jurisdictions and purchase manufactured houses or the building materials to construct a site-built home and have these materials delivered in Maine without paying the 5% sales or use tax.

Both Maine's manufactured housing industry and the Maine Lumber Dealers' Association are concerned that business is going out-of-state in avoidance of the sales tax obligation. The proponents of LD 1056 suggest that municipalities should be concerned about large-scale sales tax noncompliance because 5.1% of those sales tax revenues are distributed as municipal revenue sharing.

One of the elements of LD 1056 would have required municipal code officers to verify the full payment of sales taxes on a building's construction materials before an occupancy permit could be issued. This municipal mandate would parallel a mandate in current law that requires municipalities to verify sales tax compliance

before issuing an occupancy permit for any manufactured housing.

The obligation to verify full sales tax compliance for a site-built home is a considerably more labor-intensive mandate that the verification of sales tax payment on a single-unit purchase manufactured home. MMA's Legislative Policy Committee voted to oppose this new and unwelcome mandate, and a survey MMA conducted among all municipalities showed a strong 3:1 opposition to the measure. The code officials did not feel they had the time to verify an owner's or general contractor's sales tax compliance, they did not believe sales tax compliance was a proper function of code enforcement, the task would place an unnecessary obstacle and additional point of friction between the owner and occupancy, and many respondents questioned whether the paperwork, friction and municipal mandate were proportionate to the size of the alleged problem.

On April 12, the Taxation Committee finished its work on LD 1056 and the amended bill does *not* include a new mandate on code officials to verify sales tax compliance on site built

homes.

In response to the questions about the scope of the problem, MMA has agreed to do some research.

The research project will be conducted during the 2001 construction season. MMA will first identify all the municipalities in Maine that issue occupancy permits. From among those municipalities, particularly in the towns within commuting distance from the New Hampshire or Canadian boarder, MMA will attempt to recruit willing code officers who agree to make some observations and inquiries when issuing the occupancy permits this year. Ideally, the code officers would determine if the building materials for the home were purchased out-of-state and if the sales tax (called the "use tax" in that circumstance) has been paid. To the extent those inquiries are met with resistance on the part of the owner or general contractor, that resistance will also be noted as part of the informal study.

MMA will collect all the information from the volunteer code officers and report back to the Taxation Committee by December 1, 2001. (GH)

Eminent Domain Process Amended

On Wednesday, April 18th the State and Local Government Committee voted that LD 103, *An Act to Amend Eminent Domain Powers* "ought to pass as amended."

Currently a municipality through eminent domain can acquire a piece of property for a municipal purpose. If at any time the municipality decides that the property will not be used for the purpose for which it was taken, the municipality may sell the parcel to any willing buyer for its fair market value. As amended, LD 103 makes three significant changes to both the existing process and the bill as originally proposed.

First, the changes to the eminent domain process apply to all entities

that have this "condemnation" authority. As originally drafted, the changes pertained to municipalities only. Although the description below focuses on municipal responsibility, all eminent-domain entities are required to follow the same procedures.

Second, as amended, LD 103 establishes a new requirement whenever the municipality or eminent domain authority abandons the project for which the property was originally taken. In that circumstance, the municipality would be required to provide a right of first refusal to the original landowner or heirs so that he or she can repurchase the acquired property at the price the "condemner" (e.g., municipality) originally paid plus ad-

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GOV'S BOND PKG. (cont'd)

proximate \$5.5 billion, suggesting the bonding cap over the biennium under this policy could be as much as \$275 million.

The Governor is not, however, suggesting that the 5% cap should be maxed-out. Keeping an eye on the state's current level of indebtedness, the Governor's proposed bond package for voter-approved bonds for this year is \$124 million, with another \$70 million in voter-approved bonds scheduled to be considered next year. When the non-voter approved Government Facilities bonds are included, the total biennial package supported by Governor King would be approximately \$200 million.

15 separate bills proposing bond issues have been submitted to the Legislature this year. If all were approved, the bond issue for this year alone would be \$225 million, not counting duplicate proposals for the same purpose.

The total list is as follows:

LD 39 – \$9 million for school buses

LD 342 – \$10 million for ADA construction in court facilities

LD 653 – \$2.9 million for snowmobile crossings over bridges

LD 1135 – \$5 million for testing/dispersing of dredging spoils

LD 1138 – \$8 million for homeowner energy conservation grants/loans

LD 1166 – \$15 million for municipal parking garages

LD 1319 – \$28 million for the school renovation revolving loan fund

LD 1378 – \$65.2 million for capital construction at higher education facilities

LD 1439 – \$7 million for technology labs at applied technology centers

LD 1440 – \$7 million for speculative buildings for business expansion/relocation

LD 1504 — \$61 million for transportation infrastructure

LD 1582 – \$4.25 million for grants and loans to farmers for capital construction

LD 1593 – \$20 million for affordable housing

LD 1663 – \$17.2 million for envi-

ronmental infrastructure

LD 1707 – \$15 million for the school renovation revolving loan fund

LD 1709 – \$26.5 million for higher education facilities and research and development

From among this list, the Governor's package is LD 1504, LD 1582, LD 1663, LD 1707, and LD 1709.

On March 29th, MMA's Legislative Policy Committee (LPC) reviewed and prioritized all the bond proposals that had some relationship to municipal government. Although the LPC was not made particularly aware of which proposals were in the Governor's package and which were submitted to the Legislature independently, the LPC's top priorities tended to match the Governor's package exactly.

Top priority for the LPC was the \$61 million bond for transportation purposes. Without the offsetting effect of this General Fund transportation bond, the \$40 million-plus deficit in the Highway Fund would have some significantly negative effects on state and local roads and bridges.

The next municipal priority is a bond issue for the school renovation revolving loan fund. Implemented by the Legislature in 1998, the school renovation grant and loan program is an extraordinarily important public policy initiative that provides state financial participation in the repair and renovation of our existing school infrastructure. Until this initiative was put into place, the state only participated financially in new school construction, creating predictable results. The Legislature has thus far appropriated slightly over \$70 million to this program, toward a \$100 million goal. This \$100 million in state funds is designed to match \$100 million in local effort. Until now, that financial assistance has been devoted to life safety, ADA and environmentally necessary renovations. With another bond issue to further capitalize the fund, important "learning space" renovations can begin to become eligible for state financial participation as well.

The third highest priority bond issue, from MMA's perspective, is the \$17.2 million environmental bond.

These bond proceeds would be used for loans and grants for wastewater treatment facility and public drinking water facility upgrades, the "Small Community Program" which provides grants for the repair of failed septic systems in the rural communities, land-fill remediation, and tire stockpile abatement. This is a traditional bond issue, elements of which leverage significant amounts of federal revenue to provide low-interest loans for the sewer and water facility upgrades.

An extremely important new element of the environmental bond proposal is that \$2 million of the bond proceeds would be placed into the Municipal Investment Trust Fund for the first time in the Fund's eight-year history. The Municipal Investment Trust Fund is designed to be the place municipalities could go to obtain the non-property tax resources they need to finance growth-management related infrastructure projects. From parking garages to GIS tax mapping systems, from building rehabilitation to water and sewer extensions, from industrial park infrastructure to affordable housing initiatives...the sky is theoretically the limit for the type of growth-related project that could be assisted with resources from the Trust Fund. A good comprehensive plan and a commitment to growth management are supposed to be the keys that unlock the Fund's door.

The fourth highest priority bond issue in the LPC's list is the \$26.5 million bond for higher education facilities and research and development. Although perhaps not of direct municipal impact, the municipal officers and officials on MMA's Legislative Policy Committee believe that the key to unlock the state's full economic development potential lies in a strong university system, with increased support for public-private research and development efforts and the spin-off economic activities that those efforts generate.

Other priority bond proposals for the LPC were for purchasing school buses, providing buildings for business attraction or relocation, assisting the service center communities in financing parking garages, and affordable housing. (GH)

Excise Tax on Special Mobile Equipment

Representative Randy Bumps (China) submitted LD 944, *An Act to Provide Equity in the Payment of Excise Tax on Rented Equipment*, to address a perceived inequity in the motor vehicle excise tax burden on road construction equipment that is rented on the short term.

Here's the way the current law works.

"Special mobile equipment" is defined in law as self-propelled machinery including ditch-digging apparatus, stone crushers, power shovels, graders, cranes, rollers, etc. When a contractor rents "special mobile equipment" from an equipment leasing company, there are circumstances under which the motor vehicle excise tax must be paid on that equipment. If the bulldozer or excavator is just going to be used on a building construction site, the equipment does not need to be registered and no excise tax needs to be paid. On the other hand, if the equipment is going to be used on road construction projects, the motor vehicle excise tax must be paid before registration.

The excise tax obligation for this equipment is not insignificant. A large piece of road machinery may have a base value of \$200,000 or \$300,000, which pegs the annual excise tax obligation in the \$5,000 range.

Special mobile equipment is provided a fixed-year registration period running from February 1st to January 31st. When registered, the special mobile equipment is given a "tractor" license plate.

The tax "situs" of this excise tax obligation—the town where the excise tax is supposed to be paid—is the town where the contractor renting the equipment has a principal place of business.

Nobody denies that the excise tax often goes unpaid in these circumstances. If the contractor is going to use the equipment for two or three months, the annual excise tax bite is hard to swallow. Because there is a

total disconnect between the municipality where the excise tax is supposed to be paid and the municipality where the road work is being done, the local enforcement capacity of this tax obligation is extremely low. Enforcement is conducted, instead, by the Department of Transportation officials or the State Police who may at the road construction site and remind the contractor that the road equipment needs a license plate.

It is that increased enforcement, in fact, which prompted LD 944.

As printed, the bill would have required that a contractor would only be responsible for 50% of the annual excise tax obligation if the contractor's rental agreement for the equipment was for four months or less. The proponents of the bill suggest that municipal excise tax revenues would actually increase under the pro-ration system because the contractors that are avoiding paying any excise taxes under the current system would be more likely to meet their obligation if the excise tax burden was not so great.

MMA's Legislative Policy Committee voted to oppose LD 944 over concerns for the loss of revenue, the difficulty in verifying claims that a rental agreement is scheduled to expire at a certain time, and the administration of partial year registrations. The municipal officials had trouble buying the claim that a tax that goes largely unpaid now will suddenly be complied with at a 50% rate.

After a couple of work sessions, the Taxation Committee reworked the bill to provide something of a local option regarding this narrow class of road construction equipment.

First, the bill would be rewritten so that it would clearly and expressly apply only to "special mobile equipment" that is rented for a short-term duration.

The bill would also be amended so that there would be no short-term registration period. Instead, the contrac-

tor would continue to register the "special mobile equipment" for a full year, paying the full excise tax as must be done under current law.

The new authority created by this amended bill would allow those contractors to turn their registration plates into the municipality after they return the equipment to the rental company. The municipalities, in turn, would be authorized – but not required — to adopt an ordinance that would allow those contractors to be rebated for the pro-rated excise taxes they have paid for the remainder, unused months on the registration. The decision to adopt such an ordinance would be up to the municipal legislative body.

As amended, LD 944 received an "ought to pass" report from the Taxation Committee, although the tax panel is still scheduled to review final wording before the bill is sent to the full legislature. (GH)

EMINENT DOMAIN (cont'd)

justments for any capital improvements and inflation.

To ensure that the original landowner is notified, the municipality in this circumstance would be required to give the original landowner or heirs written notice, by certified mail, return receipt requested, of the right to repurchase the condemned land. If after reasonable diligence the municipality has not located the original landowner or heirs, publication of notice twice consecutively in a daily or weekly newspaper of general circulation is considered sufficient notification. If after ninety days of the issuance of the written notice or the second publishing date, the landowner of record or heirs either refuse the option to repurchase or fail to respond to the notice, the municipality is authorized to sell the acquired property to any willing buyer at its fair market value.

Third, if after eight years of a taking through eminent domain, and every three years thereafter, a municipality has not started the public purpose for which the property was originally taken, the municipality is required to reauthorize the condemnation follow-

(more on page 6)

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 at the Legislature's web site at <http://janus.state.me.us/legis>. If you would like to be notified by e-mail of updates to the schedule and web page, send your name, e-mail address, and a message that includes "ANPHUPDATE" to the Senate Webmaster at webmaster_senate@state.me.us.

Monday, April 23

Agriculture, Conservation & Forestry

Room 209, Cross State Office Building, 1:30 p.m.

Tel. 287-1312

LD 1191 – An Act to Amend the Maine Arborist Licensing Laws. (Sponsor: Murphy, T.) (Department Bill) (Submitted by the Department of Agriculture, Food and Rural Resources)

State & Local Government

Room 216, Cross State Office Building, 10:00 a.m.

Tel. 287-1330

LD 1766 – Resolve, to Authorize the Northern Maine Technical College to Transfer .26 Acres of Land to the City of Presque Isle to Ensure Road Safety. (Sponsor: Kneeland)

Transportation

Room 126, State House, 9:30 a.m.

Tel. 287-4148

LD 881 – Resolve, Establishing the Blue Ribbon Commission on the East-West Rail Corridor. (Emergency) (Sponsor: Jones)

Tuesday, April 24

Agriculture, Conservation & Forestry

Room 206, Cross State Office Building, 1:30 p.m.

Tel. 287-1312

LD 530 – An Act to Preserve Public Access and Job Opportunities in the Maine Woods. (Sponsor: Cowger)

Legal & Veterans Affairs

Room 436, State House, 1:30 p.m.

Tel. 287-1310

LD 1715 – An Act Relating to Video Gaming Machines. (Sponsor: Michael)

Wednesday, April 25

Health & Human Services

Room 209, Cross State Office Building, 1:30 p.m.

Tel. 287-1317

LD 1188 – An Act to Provide for the Withdrawal of a Municipality from Hospital Administrative District No. 1 in Penobscot County. (Sponsor: Bunker)

Labor

Room 220, Cross State Office Building, 1:30 p.m.

Tel. 287-1333

LD 1719 – An Act Regarding Dismissal of Municipal Employees for Cause. (Sponsor: Douglass)

Friday, April 27

Natural Resources

Room 437, State House, 9:00 a.m.

Tel. 287-4149

(No bill #) – An Act to Prevent Infestation of Invasive Aquatic Plants and to Control Other Invasive Species. (LR 2559)

Tuesday, May 1

Labor

Room 220, Cross State Office Building, 1:30 p.m.

Tel. 287-1333

LD 62 – An Act to Create a Uniform Standard Governing Legislative Leaves of Absence. (Sponsor: Perkins)

TAX REFORM (cont'd)

D. Establishing reasonable caps on local real and personal property taxes that do not prevent municipalities from providing services to residents;

E. The need for property tax relief and exemptions in the event of a substantial reduction in property taxes as a funding source for elementary and secondary education; and

F. Expanding the sales tax base by eliminating exemptions and exclusions and extending the sales tax to services and products not currently taxed.

• *The committee's review shall include, but not be limited to, consideration of the following:*

A. Funding the cost of elementary and secondary education under the following options:

- (1) Exclusively from the sales tax;
- (2) From a combination of taxes other than the property tax; or
- (3) From a combination of taxes including the property tax with a cap of 4 mills on the property tax used for education

B. Eliminating some or most sales

tax exemptions and exclusions;

C. The practicality of reducing the sales tax following elimination of most or all exclusions and exemptions;

D. Adjustments to current income tax brackets and rates; and

E. The need for changes in the educational funding formula as a result of changing education funding sources.”

Although there may be another review of the finalized language, on April 12 the Taxation Committee gave its “ought to pass as amended” approval to LD 970. (GH)

EMINENT DOMAIN (cont'd)

ing the same process that was used in the original taking.

For example if a municipality, as authorized by the local legislative body, took a piece of property to build a library and if after eight years the project had not been started, the municipal officers would have to reauthorize the taking with the legislative body. This process is merely to ensure that the legislative body continues to support and approve the project for

which the property was originally taken. This reauthorization process does not involve any renegotiation of the purchase price with the original landowner. Furthermore, if at any time the original owner of the condemned property indicates in writing that that they relinquish their rights to the property, the municipality does not have to periodically reauthorize the project and may sell the property to any willing buyer for its fair market value.

The amendment also exempts from the proposed new eminent domain procedures any property that is acquired in whole or in part using federal funds (because the federally-required process controls), any “condemned” property that does not meet state or municipal lot size or frontage requirements, or any property that is acquired before October 1, 2001. (KD)

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