

Federal Stimulus Package Pokes Hole in State Budget

Let's see if we can keep track.

In January 2001 the Legislature began working on the two-year, 2002—2003 state budget, and it was facing a \$200 million gap between projected revenue and state spending obligations.

In May 2001, the Legislature adopted a balanced \$5.5 billion, 2-year spending plan.

In November 2001, the Revenue Forecasting Committee identified a new \$248 million revenue shortfall, throwing the new budget out of bal-

ance.

In January, 2002, Governor King submitted a revised spending plan that addressed the \$248 million revenue shortfall, as well an additional \$24 million to cover some emergency spending needs and the reduced tax revenues associated with conforming Maine's income tax code to the federal IRS code, which Congress had just amended on an economic stimulus theory.

In mid-February, the Revenue

Forecasting Committee re-entered the picture with a rosier snapshot of state tax revenues that put \$91 million back on the table to soften the blow of the \$248 million shortfall it had forecast just 10 weeks earlier.

Last weekend President Bush signed another economic stimulus bill enacted by Congress that provides more federal income tax breaks. If Maine sweeps these new tax code changes into state law, a new \$28 million hole in the state budget will be created.

The bottom line of this state budget is like the ball under one of the cups of a carnival shark. Wherever you think it is, it isn't.

This latest \$28 million wrinkle stems from a policy the state is struggling to follow which calls for a gen-

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Citizens Want Tax Reform

MMA recently commissioned a statewide public opinion poll in an effort to determine if Maine's citizens believe the state's tax system needs to be comprehensively reformed.

The answer was a resounding "yes".

The polling was a statewide omnibus survey of 500 Maine citizens conducted by Command Research, a national independent polling firm based in Harpswell, Maine. The telephone polling was conducted over a 10 day period in early March, and included a broad range of questions with some focus on the comprehensive tax reform legislation embodied in LD 2086 and LD 2087, the recommendation of the Education Funding Reform Committee, which is in the process of being simplified, refined and given its final touches by a special subcommittee of the Legislature's tax panel.

The polling results are decisive.

- By a margin of 70% to 6% Maine's citizens believe we need a major overhaul of the state's entire tax code. An even higher percentage of Maine's residents think that political leadership is the key to tax reform. Fully 80% of the respondents to this survey said that Maine needs more courageous leadership from the Governor and the Legislature on the issue of tax reform.

- Mainers also favor getting the voters directly involved. 79% of the respondents said they would be more in favor of a major overhaul of the tax

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Excise Tax Out of Committee

On Thursday, March 14th three members of the Transportation Committee voted to support an excise tax proposal that authorizes municipalities to reduce the amount of revenue they collect from the excise tax assessed on motor vehicles. It's a downward "local option" to drain municipal resources.

As proposed and authored by Rep. Edgar Wheeler (Bridgewater) and Rep. Gary Wheeler (Eliot), a municipality would be authorized to discount up to ten percent the excise tax owed on a motor vehicle so long as the local legislative body had enacted an "excise tax discount" ordinance. For example,

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STATE BUDGET (cont'd)

eral harmony between Maine's income tax code and the federal code with respect to allowances and depreciations. Setting financial impacts aside, it is much easier for both taxpayers and Maine Revenue Services if the federal income tax filing can be directly cross-referenced.

The financial problem for the states occur when Congress, which up until recently was looking at stunning financial surpluses and which has no obligation to balance its budget, enacts tax code changes which will significantly reduce state tax revenues for those states who wish to follow...states like Maine that do not have a surplus of any kind and who are constitutionally compelled to balance their budgets.

With the advent of the re-projected \$91 million in mid-February, the Legislature was poised to conform to the federal income tax code as that code was on the books as of December 31, 2001. The question now is whether Maine should also conform to the changes in the federal code that went into effect on March 10, 2002.

As if to twist the state budget knife just a little further, the bulk of these most recent changes to the federal code were enacted by Congress retroactively, to affect the 2001 tax year.

On Thursday this week, State Tax Assessor Tony Neves presented the "tax conformity" bill to the Taxation Committee (LD 216, *An Act to Conform the Maine Tax Laws for 2001 with the United States Internal Revenue Code*) and explained the Administration's proposal

for tackling this latest obstacle to closing the state budget.

The bulk of the tax revenue impact associated with the most recent federal tax changes is a new first year, "stimulus" 30% bonus depreciation allowance that can be applied to business investments made after September 11, 2001 and before September 11, 2004. Governor King is proposing to completely cover the revenue losses associated with 2001 conformity, which are pegged at \$6.5 million this biennium. The Governor is less convinced that the state can afford full conformity with the accelerated depreciation schedule for 2002, which carries a \$21.7 million fiscal note for just this biennium. The Administration is proposing to create a "tax conformity fund" that would be capitalized with the lapsed balances of the state agency accounts at the close-out of the fiscal year on June 30. The degree of full conformity to the "stimulus" depreciation schedule that Maine would embrace would depend on the amount of revenue made available in the new special fund, and would be up to a subsequent administration and legislature to adopt. (GH)

CITIZENS (cont'd)

system if they had an opportunity to vote for or against that overhaul before it would go into effect.

- In response to a question that asked whether the respondent was personally prepared and willing to deal with the changes and adjustment that would be associated with restructuring the state's tax system, 62% of the respondents said they were ready, and only 8% said they were not.

- Property taxes continue to be major source of concern for Maine people. To the question of which taxes were most objectionable, 36% of the respondents said the property tax, 20% said the state income tax, and only 7% said the sales tax.

- By a margin of 62% to 6%, the state's citizens believe there should be a limit on the amount raised from the local property taxpayers to support local education and the state should pay the rest from sales and income taxes.

- 70% of the respondents said they would be more likely to support an expansion of the sales tax base – a key component to the tax reform effort – if that expansion would reduce their property taxes. Command Research conducted a similar public opinion poll for MMA in 1996 when the Association began concentrating on comprehensive tax reform, and the results of this 2002 poll show that the citizen interest in and demand for tax reform and property tax relief is even stronger.

- When the polling questions began to focus on the tax reform legislation being considered by the Legislature right now, respondents supported by a 63% to 24% margin a proposal that would reduce the property tax burden on primary residences, businesses and farms, but retain somewhat higher property tax rates on second and vacation homes.

Status of Tax Reform Legislation

To summarize the comprehensive tax reform legislation being considered by the Legislature, LDs 2086 and 2087 would establish a property tax cap of 6 mills for the purposes of funding education that would apply to virtually all taxable property in Maine except for second homes and vacation properties, with respect to which there would be a property tax cap for education of 12 mills.

Under this proposal the state would be required to provide all additional financial resources to support K-12 education within the boundaries established by the Essential Programs and Services (EPS) education funding model.

In addition, the tax reform legislation establishes a very powerful Rainy Day Fund for education, requires a higher level of mill rate impact information to be provided to local voters when approving their school and municipal budgets and directs the Legislature to generate the education funding revenues necessary to offset this property tax relief in 2003 by taking a strong look at expanding the base of Maine's notoriously narrow sales tax to cover a range of services that are currently exempt from taxation. (GH)

Legislative Bulletin

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

Real Estate Developers, Housing Authority Attack Home Rule

The assault on municipal home rule authority perpetrated by the real estate development lobby, the Maine State Housing Authority and the State Planning Office continues. The two bills that directly attack local control over land use regulation are LD 2119 and LD 2099. The real estate developers are pushing these two bills to allow a sidestepping of local regulations.

Subdivision. On Friday, March 8 a majority of the Natural Resources Committee voted *“ought to pass as amended”* on LD 2119, *An Act Relating to Subdivision Review and Title Search Procedures.* (Sponsored by Sen. John Martin, Aroostook Cty.)

The printed bill was drafted by the State Planning Office (SPO) and linked the ability of a municipality to regulate subdivisions more strictly than state law with the municipality’s “compliance” or “consistency” with comprehensive planning.

The SPO version of subdivision ordinance restriction has now been abandoned by the Natural Resources Committee and replaced with a complete preemption bill advanced by the Maine Association of Realtors. Linda Gifford, a lobbyist for the Realtors’ Association, provided written testimony to the Natural Resources Committee which alleged that a complete preemption of home rule authority with respect to the local definition of a “subdivision” was endorsed by the Maine Association of Realtors, Maine Real Estate and Development Association, Maine State Housing Authority, Maine Chamber of Commerce, Maine Bankers Association, Maine Community Banking Association, and the “environmental lobby”.

Specifically, the real estate developers and the Maine State Housing Authority want to mandate that all municipalities adopt nothing other than the exemption-riddled definition of “subdivision” which exists in state law

by January 2006. In the interim, the developers want to mandate that all existing municipal definitions of “subdivision” must be filed with the Registry of Deeds.

In an effort to ascertain the true position of each of the organizations that the developers testified were in support of the preemption of municipal home rule authority, MMA contacted the Maine Bankers Association and the Maine Community Banking Association. The representative of both associations was unaware that they had pledged their support for the preemption of municipal home rule authority. The representative noted that both interest groups would be supportive of legislation that simply required the municipality to file the definition of subdivision (whatever definition that may be) in some central clearinghouse, thus allowing for public inspection.

The Maine Chamber of Commerce was also unaware that they were supporting the amendment as offered by the Maine Association of Realtors. As a point of reference, the Chamber did not take a position on LD 2119.

Both of the Natural Resources Council of Maine and the Maine Audubon Society testified in support of LD 2119, but only with reference to a side-bar issue that deals with the 40-acre lot exemption found in current subdivision law. The Maine Audubon Society did not take a position on the preemption of home rule authority. The Natural Resource Council of Maine was very surprised to hear that an amendment supporting the preemption of home rule had been offered in their name.

Against this background, a common-sense minority report on LD 2119 is an amendment offered by Representative David Tobin (Windham). Rep. Tobin’s amendment in a very straightforward way addresses the core issue all of this legislation was intended to

focus on; namely, the difficulty the title bar and lending institutions may have when attempting to obtain the municipality’s most current definition of “subdivision” from town offices that are not open during regular business hours. Rep. Tobin’s simple amendment would merely require that any municipality that has a definition of “subdivision” which varies from the state’s definition must file that definition in the local Registry of Deeds.

“Pre-certified” Development.

The Natural Resources Committee continues to amend LD 2099, *An Act to Provide for Liveable, Affordable Neighborhoods* (Sponsor Rep. Koffman of Bar Harbor).

This bill proposes the creation of an Augusta-based review board that would pre-approve large-scale affordable housing developments to be sited within nine of the State’s 35 labor market areas that have been identified by the Maine State Housing Authority (MSHA) as having an affordable housing “crisis”. There are approximately 130 municipalities within the nine labor market areas that MSHA would designate as in “crisis” status. The pre-certified development could then be sited in sewer-service areas in any of those 130 municipalities without regard to the local minimum lot size or road frontage standards.

The Committee has amended the bill to establish the maximum square footage for a single-family home in these pre-certified developments to 6,500 sq. ft. with no more than 50 ft. of frontage.

The Committee also amended the bill to require that the precertified development be located *“at least partially within a growth area”*. Apparently, it is perfectly all right for the bulk of the large scale housing development to be sited by the Augusta-based planning agency outside the designated growth areas of the municipality.

Municipal officials who care about the perennial attacks on and relinquishment of municipal home rule authority are asked to contact their legislators and ask them to vote against LD 2119 and 2099. (KH)

Solid Waste Analysis

A draft report of a comprehensive analysis of solid waste management in Maine has been released for public comment.

Authored by Ralph Townsend, a Professor of Economics at the University of Maine at Orono, and Francis Ackerman, an Assistant Attorney General, the 108 page report provides a thoroughly researched review of the current status of market competition with respect to Maine's solid waste collection and disposal industry.

Among the findings and recommendations contained in the draft report:

- Like the rest of the nation, Maine has witnessed a remarkable consolidation and vertical integration of solid waste companies in Maine over the last 15 years.

- The high degree of consolidation in the areas of solid waste collection and hauling is not explained by a clear economic rationale.

- Solid waste disposal rates have stabilized nationally, but Maine has experienced an increase in rates during the late 1990s.

- A key factor to ensure competition in solid waste disposal rates is the entry of new state and municipal landfill capacity.

- So-called "evergreen" solid waste collection and hauling contracts act to restrict competition. Evergreen contracts are automatically self-renewing contracts that have extensive notice of termination procedures and provide the contractor with right of first refusal over competing bids.

Recommendation #1. Expand Maine's solid waste policy to expressly include the public policy benefits of competition. As part of this recommendation, the draft report suggests the State Planning Office's data collection program be expanded to more rigorously track municipal per-ton disposal costs for all the separate categories of solid waste.

Recommendation #2. State government should assume primary responsibility for making sure the state has adequate landfill capacity, rather

than relying on the hit-or-miss development of additional municipal capacities.

Recommendation #3. Legislation should be enacted that significantly limits "evergreen" solid waste collection contracts by prohibiting first-refusal clauses, limiting the duration of notice-to-terminate provisions, and restricting termination penalties.

Recommendation #4. The current law that requires notification to the Attorney General's Office when solid waste companies intend to merge is scheduled to expire. This recommendation would remove that expiration provision so the Attorney General's Office could review the restraint on competition issues that industry mergers could create.

The final report will also include the results of a municipal survey being conducted by Professor Townsend, where a sample of municipalities that operated the same type of solid waste management system from 1996 through 2001 have been asked to provide disposal cost data for both municipal solid waste and construction and demolition debris. Any municipality that has yet to respond to that survey is encouraged to do so. Accurately tracking solid waste disposal costs over time is a critical component in studying the impact of reduced competition on cost.

Anyone interested in obtaining a copy of the draft report should contact MMA's Laura Veilleux at 1-800-452-8786 or lveilleux@memun.org. A presentation of the draft report by its authors to the Natural Resources Committee is scheduled for Wednesday, March 20th at 1:30 p.m. in Room 437 of the State House. (GH)

EXCISE TAX (cont' d)

if a community adopted an ordinance authorizing a 10% discount, a person owing \$500 in excise tax would receive a \$50 tax break.

Although the supporters of the bill sold the proposal as merely providing local control over the excise tax, the

remaining members of the Committee, as well an overwhelming number of MMA's Legislative Policy Committee (LPC), opposed the concept. Many of the reasons the Transportation Committee stated for opposing the proposal mirrored those concerns raised by MMA's LPC. In poll of the LPC conducted on March 12th, MMA found that municipal officials opposed the "downward option" excise tax discount proposal for three reasons: 1) lack of uniformity which is an essential principle of value-based taxation; 2) increased competition between communities; and 3) the eventual shift of excise tax burden to the property taxpayer.

Municipal officials believe that the excise tax, which has its roots in property tax law, must be assessed equitably across the state. Regardless of a person's ability to negotiate a bargain, there should be an essential uniformity with respect to a tax on value, as is the case in the assessment of the property tax.

Second, under the guise of local control, the proposal would increase the competition between municipalities by enticing corporations with large fleets, such as rental cars, utility vehicles and moving trucks, to shop around for the community with the most favorable excise tax rates.

Finally, municipal officials believe that eventually a discount offered to an excise taxpayer will shift that burden to the property taxpayer.

In the next few weeks, as the minority proposal winds its way between the House and the Senate, we encourage you to take the opportunity to contact your representatives and ask them to oppose the minority report.

Also, on behalf of the Legislative Policy Committee MMA would like to thank the following members of the Transportation Committee for their support on this very important issue: Senate Chair Christine Savage (Knox Cty.), House Chair Charles Fisher (Brewer), Sen. William O'Gara (Cumberland Cty.), Rep. Gerald Bouffard (Lewiston), Rep. Boyd Marley (Portland), Rep. Rossaire Paradis (Frenchville), Rep. Terrence McKenney (Cumberland) and Rep. Deborah McNeil (Rockland). (KD)

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the proposed bill's summary statement or an excerpt of that summary statement. A more comprehensive list of LDs (of municipal interest) that have been put in the Hopper can be found on MMA's website, www.memun.org)

Business & Economic Development

LD 2127 – Resolve, Regarding Legislative Review of Chapter 4: Installation Standards, a Major Substantive Rule of the Department of Professional and Financial Regulation. (Emergency) (Reported by Rep. Richardson for the Department of Professional and Financial Regulation pursuant to the Maine Revised Statutes, Title 5, section 8072.)

This resolve would provide final legislative review and approval of the adoption of a new plumbing code for the state. On December 12, 2001, the Plumbers Examining Board “provisionally adopted” the Uniform Plumbing Code 2000 of the International Association of Plumbing and Mechanical Officials (UPC) as the state’s internal plumbing code, to replace the Maine State Plumbing Code. The BOCA-based International Plumbing Code (IPC) was rejected by the Plumbers Examining Board despite a substantial amount of testimony from Maine local plumbing inspectors that the IPC is more compatible with existing municipal codes and imposes less costs on both residential and large-facility users without sacrificing any public protection.

Criminal Justice

LD 2148 – Resolve, to Require the Maine Fire Protection Services Commission to Report Regarding Methods to Improve the Recruitment and Retention of Firefighters and the Provision of Healthcare. (Reported by Rep. Quint for the Maine Fire Protection Services Commission pursuant to the Maine Revised Statutes, Title 5, section 3371)

This resolve continues for the remainder of the year a multi-year ongoing study commission with the same goal of recommending ways to increase the recruitment and retention of firefighters in Maine and providing them healthcare benefits. The entity performing the continuing study is the Maine Fire Protection Services Commission.

LD 2167 – An Act to Improve Public Safety by Regulating the Installation and Inspection of Fire Alarm Systems. (Reported by Rep. Quint for the Maine Fire Protection Services Commission pursuant to the Maine Revised Statutes, Title 5, section 3371.)

This bill would create a system administered by the Department of Public Safety to regulate the installation of fire alarm systems in DHS-licensed facilities, high-rise buildings and education facilities by 2003, and by 2005 for dormitory and hotels, business facilities over 12,000 square feet, places of public assembly holding more than 300 people, apartment buildings and municipal and state-owned buildings. The bill establishes the minimum credentials of the fire alarm system installers, the fire alarm system permitting process administered by the State Fire Marshal’s Office, the inspection and inspection sticker requirements, and authorizes the State Fire Marshal to implement the fee system necessary to implement the program. The bill also provides that no municipality may issue a local permit to install fire alarm systems unless the local permitting authority is satisfied that there is compliance with the minimum requirements established by this bill.

Taxation

LD 2166 – An Act to Provide Flexibility in the Rate of Interest Charged on Delinquent Taxes. (After Deadline) (Emergency) (Sponsored by Rep. Sullivan of Biddeford; additional cosponsors)

Under current law, the maximum rate of interest that can be applied by a municipality with respect to delinquent taxes is the highest conventional rate of interest charged for commercial unsecured loans by banking institutions in Maine on the first business day of the calendar year in which the municipal legislative body votes the local interest rate. This bill would allow the legislative body of a municipality to vote for a maximum rate of interest that is either within the guidelines established by current law or for the interest rate charged by the municipality during the previous property tax year.

Transportation

LD 2150 – An Act to Facilitate Water Well Drilling if Necessitated by Current Conditions. (Emergency) (Governor’s Bill) (Sponsored by Sen. Nutting of Androscoggin County; additional cosponsors)

This emergency bill would create a special treatment with respect to the operation of well drilling trucks over roads posted to heavy trucks during the 2002 soft-road season provided the Governor has declared a drought emergency. Specifically, the bill would allow well drillers to drive over posted roads to drill a replacement well for residential or agricultural purposes and the well driller could not be required to carry a permit provided by the municipality. The well driller would be required, however, to contact the municipality before traveling over the posted road and the well driller would have to comply with restrictions (other than obtaining a paper permit) established by the municipality, such as time or temperature restrictions.

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 “ANPH UPDATE” to the Senate Webmaster at webmaster_senate@state.me.us.

Thursday, March 21

Utilities & Energy

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

Tel: 287-4143

LD 2147 – An Act Providing for the Supply of Water to the City of Brewer. (After Deadline) (Sponsored by Sen. Youngblood of Penobscot County; additional cosponsors)

Cut- and- Run Timber Harvesting and Tax Law

The Agriculture, Conservation and Forestry Committee has given a unanimous "ought-to-pass" report on LD 1920, "*An Act to Address Liquidation Harvesting*" (Sponsored by Sen. Marge Kilkelly, Lincoln Cty.). The Committee had heard testimony previously from the Director of the Maine Forest Service (MFS) that the cut-and-develop practice called "liquidation harvesting" has created a "black-eye" on forestry practices in Maine.

From the municipal perspective, LD 1920 contains elements that will be a big help in the administration of the Tree Growth tax program. Under the existing Tree Growth law, there is no formal notification process that would alert the municipality if a parcel in Tree Growth is being harvested for development, and therefore should be withdrawn from the special tax break program that is designed to support forest management.

LD 1920 addresses that problem by requiring that when the landowner

fills out a notification of harvest form to MFS (as must already be done under current law for any commercial harvest on a parcel 10 acres or greater), the landowner must indicate if the property is enrolled in the Tree Growth program and formally indicate on the form that the timber harvest will be consistent with the parcel's forest management plan. There is also a place on that form to indicate if the land is being harvested to convert to another use within two years.

If the landowner is unable to indicate that the timber harvest will conform to the management plan, or if the harvesting operation is for the purpose of preparing for development, that information on the MFS notification form will constitute automatic removal of the property from the Tree Growth program. Once a parcel has been withdrawn from Tree Growth, MFS will provide notice to the municipal tax assessor. This provision will help relieve municipal assessors from the in-

efficient system of discovering the development of Tree Growth parcels after-the-fact and tracking down the owners of parcels in order to process the withdrawal of the property and the application of the withdrawal penalty.

As amended, LD 1920 also requires that after a transfer of ownership of parcels enrolled in Tree Growth, the new landowner has one year from the date of transfer to file either a sworn statement indicating that the new forest management plan has been prepared or a statement from a licensed professional forester that the parcel is being managed in accordance with the management plan prepared by the former owner.

Finally, LD 1920 allows municipal tax assessors to obtain a copy of a forest management plan that has been prepared for a Tree Growth parcel. Current law only requires a certification that a management plan exists; the management plan itself is not provided to the municipal assessors. LD 1920 provides that if the tax assessor requests assistance evaluating the plan, the Maine Forest Service will provide the technical assistance necessary to determine whether the harvest complies with the plan. (KH)