

Tax Reform Package Comes Before Full Committee

On Wednesday this week, a month to the day after LDs 2086 and 2087 received their public hearing, the tax reform subcommittee presented to the full Taxation Committee the product of its work over these last several weeks.

At the same time that major state-wide newspapers are stating in their news stories that “No (comprehensive tax reform) proposals...are pending at the State House this legislative session.” (Portland Press Herald, 3/13/02), and in their editorial pages that “Unfortunately it will take another year, with new legislative leaders and a governor, before proposals like these can receive a real debate” (Maine Sunday Telegram, 3/17/02), a refined, simplified and detailed comprehensive tax reform package is on the verge of being reported out to the full Legislature for just that...a “real” debate.

Chaired by Rep. Barney McGowan (Pittsfield), the tax reform subcommittee has spent many hours over these last several weeks trying to fit the substantive, procedural and political pieces of the tax reform jig-saw puzzle together.

The result of that effort is a trim package of legislation that would go out to the voters as two questions on a November 5, 2002 ballot.

The first question to the voters is a constitutional amendment that would provide the Legislature with the authority to establish different property tax rates for different classes of property for the purpose of funding K-12 education. As explained below, this constitutional change is needed to implement the guts of the tax reform package.

The second question to the voters would ask whether they wanted to adopt changes in state law that would:

- Establish a maximum property tax mill rate for education purposes of 12 mills for secondary residential property (camps, vacation homes) and 6 mills for virtually all other taxable property (homesteads, commercial, industrial, personal, undeveloped, rental, Tree Growth/Farmland, all other agricultural property, etc.).

- Establish in statute an honest, real-world and accurate definition of the total amount of state and local resources that should be necessary (on the one hand) and sufficient (on the other) to pay for K-12 education. It is that “total allocation”, and each school unit’s share of that total allocation, against which each municipality would have to contribute no more than the revenue generated by the 6 mill/12 mill property tax cap.

- Require school budget and municipal budget documents to include a statement indicating estimated mill rate impacts of the proposed budgets on the taxpayers. The legislation also requires property tax bills to identify the year-to-year impacts on the educational and non-educational property tax rates.

- Establish a powerful school funding stabilization account that would be automatically capitalized when state tax revenues accrue to the treasury faster than the percentage growth in total personal income. These high-yield state revenues that flow into state coffers during robust economic times would be automatically captured, up to reasonably necessary levels, and

put into trust to become available for school funding purposes in slow economic periods.

- Permit the legislative body of the school administrative units (town meeting or town or city council for municipal school systems, district meeting or referendum for school district systems) to approve a school budget that is richer than the “total allocation” for the school system, but those extra appropriations would have to be assessed against the primary residential property owners only – not against the business, agricultural, undeveloped, or second home properties. The only exception would be school construction costs that exceed state approved projects or the local share of school renovation costs, which would be assessed against the entire municipal tax base equally.

- Reinvest the circuit breaker savings. It is estimated that the property tax relief provided by these changes would allow a 10% reduction in the appropriation for the “circuit breaker” property tax relief rebate program, or

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State Budget in a Nutshell

In January, at the beginning of this legislative session, MMA described Governor King’s proposed supplemental state budget, which at the time was designed to bridge a \$272 million hole in the remaining 18 months of the 2002-2003 biennial state budget. The elements of that proposed budget of municipal pertinence were identified as:

- No reduction to the previously-adopted \$718 million GPA appropria-

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TAX REFORM (cont'd)

\$2.4 million per year. The subcommittee recommendation is to reinvest that savings back into the program by expanding the eligibility rules.

This proposal would shift about \$265 million in education funding obligation off the property tax and onto the state's broad-based tax system. To help pay that cost, the homestead exemption would be repealed, freeing-up \$40 million, and the business tax rebate program (BETR) would see a \$12 million savings annually as a result of reduced business property taxes. Netting-out these savings, there remains a \$210 million shift from the property tax to the state.

On this element of the tax reform package, the subcommittee is offering a set of options for the full Taxation Committee to consider.

Option #1 is to go with the tax reform legislation (LD 2086) as printed, which directs the next Legislature convening in 2003 to make the final decision on the state tax code changes that will be necessary to fully fund the state's K-12 education funding obligation. This next-session responsibility would be contingent, obviously, on the voters approving the tax reform template in November. The printed bill also strongly suggests that the next Legislature take a good look at expanding the sales tax base, but it doesn't compel the next Legislature to make any specific choice.

Option #3 is on the other side of the spectrum. This option would be to put the actual set of state tax code changes into the bill, to be adopted by the voters, so both the Yin and the

Yang of the tax reform proposal would be laid out in black and white.

Option #2. The middle-road, "Goldilocks" option is where the Taxation Committee may be headed. This option would be to describe in sufficient detail a recommended set of tax code changes that would

- raise the necessary revenue to adequately fund education;
- widen and improve the sales tax base so as to reduce the volatile nature of the sales tax and, potentially, reduce the overall sales tax rate; and
- balance the burden of the sales tax expansion on consumers, businesses and nonresidents.

The first run at such a model has been performed by Maine Revenue Services (MRS). At the direction of the tax reform subcommittee, MRS plugged into its computer "tax incidence" model the property tax changes

accomplished by this legislation and a 2% sales tax on a broad range of presently exempt services. The 2% rate was used because that was the highest rate needed over the wide services base to generate the \$210 million necessary to cover the property tax relief.

The results of that modeling showed solid improvements to the overall state tax code in terms of reducing overall volatility and reducing the burden of the property tax while at the same time avoiding the replacement of an equally regressive sales tax. The Taxation Committee is currently working on modifying the recommended package of state tax changes to even further improve the package, perhaps by actually reducing the overall sales tax rate.

The Taxation Committee may take up voting on the tax reform package on Monday, March 25th. (GH)

Gas Tax Revenue Update

As reported in the March 8, 2002 edition of the *Legislative Bulletin*, a slim majority of the Inland Fisheries and Wildlife Committee voted to support LD 2081, *An Act to Implement the Unanimous and the Majority Recommendations of the Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft*. As initially proposed, LD 2081 would have annually shifted \$1.1 million of fuel tax revenue from the Highway Fund to the General Fund. Although receiving a majority "ought to pass" report, Committee Chair Matthew Dunlap (Old Town) encouraged the interested parties develop a compromise balancing the concerns over "equitable" funding for snowmobile, ATV and watercraft programs and the preservation of Highway Fund revenue.

On Wednesday, March 13th the Inland Fisheries and Wildlife Committee met again to discuss LD 2081 and unanimously supported the comprise bill crafted and supported in part by the Maine Department of Transportation. As proposed, the amended bill takes effect on July 1, 2003 and effectively shifts \$750,000 of fuel tax revenue to the General Fund for the purpose of supporting snowmobile, ATV and watercraft programs. The percentage of the fuel tax revenue dedicated to snowmobile programs is proposed to increase from 0.670% to 0.978% and for ATV programs from 0.045% to .1069%. While the percentage of fuel tax revenues dedicated to watercraft programs decreases from 2% to 1.35%, the existing \$2 million cap on fuel tax revenues receipts is repealed.

The bill will now move through the chambers of the House and Senate for enactment and, if enacted, placed on the Highway Fund table for final approval. Once delivered to the Highway table, the Transportation Committee will have one last opportunity to determine whether or not the bill should be funded with Highway Fund revenues. MMA continues to oppose the diversion of Highway Fund revenue to support snowmobile, ATVs and watercraft programs. As important as the recreation program are, their funding should not compete with road repair. (KD)

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An Open Letter: Affordable Housing vs. Home Rule?

LD 2099, *An Act to Provide for Livable, Affordable Neighborhoods*, has been tabled in the House all week, it is impossible to know when it will come up for debate. The bill pits affordable housing against home rule authority by establishing *maximum* lot size (6,500 square feet) and road frontage (50 feet) standards that would apply to housing developments to be located in labor market areas with a designate affordable housing “crisis” that are “pre-certified” by a special board established in Augusta.

This week, a brochure printed under a State Planning Office appropriation that advocated legislative report for the bill was distributed to all State Representatives. The brochure lists the agencies and organizations that support the bill, which include the State Planning Office, the Maine State Housing Authority, the Department of Economic and Community Development, the CAP Agency Association, Brunswick Housing Authority, the Maine Council of Churches, the Roman Catholic Diocese of Portland, and the real estate development lobby.

The municipalities, on the other hand, and regardless of whether they fall within one of the designated “crisis” labor market areas, take offense to this legislation and take particular offense to the three state agencies that are lobbying so hard for its enactment. From our perspective at MMA, it will take years to repair the damage this legislation has done to the relationship between the “granting” agencies (SPO, MSHA, DECD) and the towns and cities of Maine.

And regardless of the final outcome of LD 2099 and another bill that would strip home rule out of subdivision law (LD 2119), the debate over the meaning, purpose and value of home rule will most assuredly spill over into the campaign debates this fall as the legislative candidates get up on the stump for election to the 121st Legislature.

Chris Fee, the editor of an electronic newspaper in the mid-coast area with whom we communicate regularly, contacted us the other day and asked for

our point of view on LD 2099. With some slight embellishments and updates, this was our response.

“The Maine Municipal Association’s 70 member Legislative Policy Committee voted overwhelmingly to oppose LD 2099, and there are many reasons (and some core principal values) from the municipal perspective that support that vote of opposition. The short list includes a distrust of centralized planning, the belief that local government is as sensitive to and capable of working on affordable housing issues as effectively as any state mandate might accomplish that goal, a belief that state command-and-control strategies are offensive and counterproductive, a question about whether the state is going to address the property tax impacts and tax exemption issues associated with state-approved housing projects, and a concern about the disregard LD 2099 shows for existing and ongoing municipal efforts.

Centralized planning doesn’t work. LD 2099 establishes a centralized, Augusta-based planning board that would pre-approve or pre-certify large-scale residential developments that include a certain percentage of the “affordable” housing units within the development, as calculated by some income-to-housing-cost criteria. Once approved by the centralized planning board, that housing development could be located in any sewered area in any municipality in any region that the Maine State Housing Authority defines as having an affordable housing “crisis”. The municipality’s minimum lot size and road frontage requirements would be thrown out the window and replaced by state imposed *maximum* lot size of 6,500 square feet and road frontage maximum of 50 feet.

Municipal zoning ordinances and neighborhood design standards are developed over a long period of time. They require a lot of maintenance, a lot of “buy-in” from the affected community, and they are constantly evolving. Ironically, the essential structure and standards of land use regulation in Maine

today are based on model codes developed by the State Planning Office and regional planning agencies that are funded in large part through the State Planning Office. At the same time, the State Planning Office wrote LD 2099 and is trying to preempt the very land use regulatory system it had a hand in creating. The municipalities do not believe that the State Planning Office or the state Legislature, for that matter, always knows best, and the creation, maintenance and evolution of local neighborhood design standards is a matter of ultimate municipal concern.

“Snob zoning” claims unfounded.

Much of the rhetoric advanced by the real estate development interests, which are also lobbying to get this bill enacted, suggests that “snob zoning”, or overly inflated minimum lot sizes, is creating the affordable housing problems where they exist and therefore these excessive minimum lot sizes needed to be preempted or overturned by state law. Our research does not support that claim. First, there is no discernable difference in the zoning and minimum lot size patterns in regions that are identified as having an affordable housing “crisis” and those that are not. Although it is true that the suburban towns tend to have 1 or 2-acre minimum lot sizes in their designated rural areas, the minimum lot sizes in their village or designated growth areas drop down to the sub-acre minimum lot sizes that are the norm in the more urban communities. Again, the established pattern of minimum lot size and road frontage standards, with large lot zoning in the rural acres and reduced lot size in the development growth areas, has been established by models developed and advanced by the State Planning Office over the decades.

For some reason the State Planning Office, the Maine State Housing Authority and the real estate development industry want to abandon the education and technical assistance approach that has been in use for at least 30 years in favor of a command-and-control, centralized planning approach. The municipalities don’t think that approach establishes the proper foundation for an effective state-local partnership around land use planning. Instead, it exacerbates a

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AFFORDABLE (cont'd)

significant municipal distrust of the State Planning Office and the Maine State Housing Authority that already exists.

Who deals with the impact of large-scale housing development? The imposition of dense, large-scale residential development on a community has the clear potential of creating both short-term neighborhood disruption impacts and significant long-term financial impacts for the municipality's property taxpayers. Residential development typically places financial stress on almost all aspects of municipal service, from education to solid waste to water/sewer delivery to traffic to public safety. From the municipal perspective, the state is falling short of paying its share of K-12 education to the tune of \$160 million a year. The state does not financially participate in the operational costs of solid waste collection and disposal. Similarly, the operational costs of sewer and water systems, local and regional public safety, and the vast majority of the costs associated with traffic control infrastructure are borne by the local property taxpayers. Given the state's relative lack of financial participation in the short and long-term consequences of growth area residential development, where does the state draw the moral authority to force it on the municipalities, overriding their orderly neighborhood development planning process?

Tax exemption issue. Affordable housing development projects are often accomplished by agencies that are organized as "charitable" "501 (c) (3)" corporations under the IRS tax code and therefore assert a right to property tax exemption under Maine's tax code, which has no qualifying standards that define true charity. It is entirely possible – in fact, it is probable – that the housing projects envisioned by LD 2099 would be wholly or partially exempt from property taxes, and would therefore not contribute (or not fully contribute) with respect to the municipal services that the project would demand.

The overly broad brush. According to the Maine State Housing Authority, 130 municipalities in Maine would be potentially subject to the state-im-

posed minimum lot size and road frontage standards imposed by LD 2099. Many of these communities are trying different strategies to create affordable housing, such as donating or rehabilitating buildings, working with developers on creative development proposals, relaxing their land use regulations or working with their landlords to encourage or facilitate subsidized rentals. What sense of fairness is remotely at play with this proposal that would strip municipalities of their home rule authority, impose upon them the neighborhood disruption and development accommodation costs, all in complete disregard of the efforts those municipalities are making?"

Alternatives. The alternatives to the centralized planning approach taken by LD 2099 are both plentiful and various. First, the state agencies that the municipalities formerly thought were technical assistance agencies, like the State Planning Office, could produce some quality model ordinances with the performance and land use standards it is now advocating. Municipalities tend to gravitate toward good quality ordinance models; indeed, model ordinances developed and promoted by the planning agencies is how the existing land use codes have been developed thus far. Sec-

ond, the way the state chooses to distribute its non-property tax resources to municipal government for the purposes of growth management is clearly the prerogative of the Legislature, and if the Legislature wants to financially participate in the development of growth areas in such a way that links state financial assistance for growth infrastructure to certain zoning rules of the Legislature's preference, that is certainly one way to achieve what the proponents of LD 2099 apparently want to achieve.

Which brings us to the third and most significant point. The state does not participate financially in any meaningful way in the costs of underwriting development in designated growth areas. The Municipal Investment Trust Fund was created for this purpose a decade ago, and to date the grand sum of \$300,000 has been put into the Fund by the Legislature...enough for a down payment on a small sewer extension. The municipalities are starving for non-property tax resources to put infrastructure into their designated growth areas. The state's tax structure and reliance on property taxes to fund education makes these growth-related investments impossible.

Centralized planning and zoning is not the answer. (GH)

Future of the Highway Fund

On Thursday, March 21st the Transportation Committee voted (10-3) to support an amended version of LD 2020, *An Act to Promote the Fiscal Sustainability of the Highway Fund*.

As amended the bill proposes to first make a one-time adjustment to the fuel tax rate, effective on July 1, 2003, by the growth in the Consumer Price Index since 1999. This adjustment is estimated to raise an additional \$46.4 million and address over one-half of the anticipated FY 04-05 \$88 million Highway Fund structural gap. After the initial adjustment to the fuel tax rate in 2003, the fuel tax rate would increase (or decrease) by the consumer price index for that year. The amended bill also directs the Maine Department of Transportation (MDOT) to submit

in every odd numbered year, beginning in 2003, a bill to repeal the indexing mechanism.

The design of the proposed amended legislation is important for two reasons. First, the bill makes it possible for the MDOT to propose a balanced budget to the Committee on Transportation in each biennium based on the revenues generated by the indexed fuel tax model. Second, by requiring the DOT to submit legislation to repeal the indexing model, the Legislature is provided an opportunity to fund transportation infrastructure needs by any funding mechanism, including indexing, or to cut the proposed transportation budget to meet available rev-

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(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 2189 – An Act to Authorize a General Fund Bond Issue in the Amount of \$15,000,000 for the Construction of a Civic Center and Auditorium in Eastern Central Maine. (Reported by the Majority from the Joint Standing Committee on Business and Economic Development pursuant to Joint Order 2001, H.P. 1610.)

This bill would send out to the voters a proposed bond issue of \$15 million for the purpose of constructing a Civic Center in Eastern Central Maine.

LD 2191 – An Act to Authorize a General Fund Bond Issue in the Amount of \$29,400,000 for Economic Development. (Reported by the Majority from the Joint Standing Committee on Business and Economic Development pursuant to Joint Order 2001, H.P. 1610.)

This bill would send out to the voters a proposed bond issue of \$29.4 million for economic development purposes. Of specific municipal interest, \$4 million of that total would be used to capitalize the Municipal Investment Trust Fund.

LD 2192 – An Act to Amend the Laws Governing the Unlawful Sale of Personal Sports Mobiles and the Registration of New Snowmobiles. (Reported by the Majority of the Joint Standing Committee on Business and Economic Development pursuant to Joint Order 2001, H.P. 1586.)

This bill would seek to restrict the sale of new “personal sports mobiles” and new snowmobiles by persons who are not franchised to make those first retail sales by the manufacturer. Pertinent to municipalities, this bill would require the municipal clerk who registers snowmobiles as an agent of the Department of Inland Fisheries and Wildlife to determine prior to issuing a registration for a new snowmobile that it was sold by a dealer holding a valid franchise.

Labor

LD 2185 – An Act to Amend Maine State Retirement System Statutes. (Reported by Rep. Bunker for the Joint Standing Committee on Labor pursuant to Joint Order 2001, H.P. 1591.)

This bill would repeal the current law that provides for reduction in benefits for retirees of participating local districts under the Maine State Retirement System who return to employment in a participating local district covered by the retirement system if they exceed certain earnings limitations. The bill would permit retirees to return to covered service and keep both their pension and their full earnings. Retirees who take advantage of the provisions of the bill would not be eligible to earn additional retirements based on their return to service employment. This bill is similar to Public Law 2001, chapter 442 enacted last year and covering state employees and teachers.

Legal and Veterans Affairs

LD 2182 – An Act to Establish a Centralized Voter Registration System for the State. (Reported by Rep. Tuttle for the Joint Standing Committee on Legal and Veterans Affairs pursuant to Joint Order 2001, H.P. 1622.)

This bill would put into a process whereby a centralized voter

registration system would be fully created by 2007. A centralized voter registration system is defined as a single electronic information system and database for voter registration information maintained by the Secretary of State and used by all municipal jurisdictions in the state. The first tier of municipalities involved in the initial pilot program would be the top 10 municipalities in terms of registered voters, and other municipalities that want to join the pilot program voluntarily. The bill also creates a 12-member advisory committee to oversee the implementation of the centralized voter registration system, 2 members of which are municipal election officials.

Natural Resources

LD 2176 – An Act to Ensure Consistent Regulation of Air Emissions in the State. (After Deadline) (Sponsored by Rep. Daigle of Arundel; additional cosponsors)

Current law specifies that the body of Maine law and regulation governing industrial air emissions may not be construed as either an express or implied preemption of municipal home rule authority to enact stricter air emission standards. This bill would delete that language from current law, effectively establishing the state's air emission standards as the maximum standards that could be imposed at the local level. In an ostensible exchange for home rule authority, the bill would allow municipalities to request that the Board of Environmental Protection consider attaching special standards or conditions on an air emissions license which the BEP would have to attach to the license if it found that the municipality proved that the pollutant emitted by the industry was being discharged in an unusual manner with respect to quality or quantity compared to similar industrial sources, or that there are unique factors regarding the pollutant's source's operations or location which indicate its discharges may have a significantly higher impact on baseline air quality than the emissions from similar sources.

HIGHWAY (cont'd)

enue. As proposed the bill allows MDOT to present to the Committee its needs and requires the Transportation Committee and the entire Legislature to determine the appropriate level of transportation funding.

Those in opposition to the majority report voted to support a Highway funding mechanism that shifts 25% of automobile-related sales tax revenue from the General Fund to the Highway Fund. From a staff perspective, MMA is concerned that the minority proposal would create a Highway Fund revenue sustainability solution at the expense of municipally significant General Fund programs such as General Purpose Aid for Education and programs of statewide significance such as human services programs.

MMA would like to commend the members of the Transportation for supporting a long-term Highway Fund revenue mechanism that is both sustainable and encourages the entire Legislature to take part in the discussions to appropriately fund Maine's transportation infrastructure. (KD)

STATE BUDGET (cont'd)

tion for FY 03. That appropriation represented a 2.3% increase over the current-year GPA appropriation of \$702 million. For comparison purposes, the property tax appropriation for K-12 education, to match the state share of \$702 million, is \$909 million.

- The identification of a new \$8 million hole in the state's education budget to reimburse school systems for the special education services provided to the children who are wards of the state.

- A Medicaid "Crossover B" state share reduction that would eliminate the Medicaid copayment for transporting low-income senior citizens in ambulances.

- A \$200,000 revenue raising system whereby the 39 municipalities and plantations within the jurisdiction of the Land Use Regulation Commission would be assessed \$5,000 a year each for LURC's services.

- A \$75,000 cut to the State Planning Office program providing comprehensive planning grants to municipalities.

- A "push" of the scheduled increase to municipal revenue sharing out of this biennium. Last session, the Legislature scheduled an increase to municipal revenue sharing to begin on

January 1, 2003. That increase would provide about \$2.5 million more per full fiscal year in property tax relief once implemented. The proposed budget would delay that scheduled increase until July 1, 2003.

It is two months later, and the revised supplemental budget has been reported out of the Appropriations Committee with an all-but unanimous report. Here are the changes on the municipally-related elements:

- The original fight was to make sure GPA would not be decreased in spite of the revenue shortfall. At the end of the day, GPA was actually increased by \$19 million. \$6.7 million was used to patch-up the "state agency client" special education reimbursements for the current fiscal year (FY 02), and \$12 million was used to push the GPA appropriation for FY 03 to \$730.8 million, a 4% increase over the current fiscal year.

- The cut to Medicaid "Crossover B) has been restored, so Medicaid will still be available to cover those ambulance co-pay costs.

- The reduction in comprehensive planning grants issued by the State Planning Office for this fiscal year of \$75,000 remains in the budget.

- The scheduled implementation date of the revenue sharing increase has been moved up to begin on May 1,

2003, one month before the end of the fiscal year. This change will provide approximately \$500,000 in additional revenue sharing support at the tail end of FY 03.

The Governor's proposed budget, as well as the final product, also includes an expansion of the Real Estate Transfer Tax to include transfers of "controlling interest", which occurs when the ownership or "controlling interest" of a corporation changes, but there is no deed transfer of the real estate owned by the corporation. These effective transfers of ownerships of large tracts of land in northern Maine have occurred in recent years through stock transactions rather than deed transfers, and the changes to the transfer tax statutes in the budget bill make sure the traditional transfer tax would apply to the real estate value associated with those corporate (rather than land) transactions. As is the case with the existing transfer tax, 10% of the new real estate transfer tax revenue will be retained by the counties that collect it. The remaining 90% of the new transfer tax revenue will go directly into the state's General Fund.

The debate on the budget begins in the House of Representatives today (March 22). (GH)