

Legislative BULLETIN

A PUBLICATION OF MAINE MUNICIPAL ASSOCIATION

Vol. XXIV No. 13

March 29, 2002

Tax Reform, Legislative Vision

tsu·na·mi \ (t)su -'näm-e\ n [Jap] : a great sea wave produced by submarine earth movement or volcanic eruption - **tsu·na·mic** \-ik\ *adj* (Webster's Dictionary)

Occasionally there is a story on the nightly t.v. news about a tsunami rolling through the South Pacific and crashing into a seaside village, obliterating the entire community, pulverizing it into the sand.

The property tax payers inhabit just such a village, and there is a tsunami of educational spending curling over that unprotected community. Battered by the special education mandates that Congress refuses to cover, hit by a big wave with Maine's education reforms in 1985, and crushed after the last recession when the Legislature effectively flat-funded its contribution to education between 1991 and 1997 (see Fig. 1), the property tax should be renamed the school tax. Municipal expenditures have become an afterthought or an addendum to school expenditures. The incoming tsunami was triggered by the Maine Legislature's Learning Results and is picking up energy from a massive federal education mandate enacted by Congress this year. When this big wave comes down, property tax revolt will likely be the tsunamic reaction.

The tax reform legislation that will be submitted to the full Legislature next week, with a near-unanimous "ought to pass" report from the Taxation Committee, provides the citizens of Maine with a clear choice. It is an act of optimism, a "we can do it" Act. We can meet that tidal wave head on. As a state, we can prepare for it responsibly and consciously. We can work to

make sure that the Maine's entire tax code is designed to predictably and equitably generate the revenue we collectively agree is necessary to pay for K-12 public education in this state. We can redesign our tax code to reduce the volatility of state tax revenues and improve their predictability. We can give balance to the tax code and impart equity to the school funding system.

Or we can pretend. We can pretend the state's tax code is in good shape and is well structured to withstand the new tidal wave of educational spending that is about to crash over us. We can pretend that the current educational funding system is equitable and adequate and competently deposits appropriate resources behind each school student in Maine no matter where that student lives. We can pretend that the General Purpose Aid system responsibly apportions the property tax demands among all the communities in Maine, and that the burden

on the property tax relative to the burden on state tax revenues is fairly distributed. We can pretend that a good way to control school spending is to crush the property taxpayers with an obligation so great, the voters will oppose their own school budgets. We can pretend that it is good stewardship of our tax code to always say 'no' to change and frustrate every opportunity for its redesign.

Tax reform is in the Legislature's hands now. In the course of the next week the potential and the politics of comprehensive tax reform will enter the legislative arena and the collective vision of our State Representatives and State Senators on the issue of tax and education funding reform will emerge.

What does the tax reform legislation do?

On Monday this week the two bills that together represent the comprehen-

(continued on page 2)

Education Spending 1990-2002

% Increase GPA	GPA	Year	Local Raised Education	% Increase Local
	523,535,768	1991	498,401,866	
-2.0	512,925,568	1992	531,496,570	6.6
0.6	516,204,022	1993	547,687,083	3.0
0.7	519,850,486	1994	579,323,658	5.8
0.4	521,910,194	1995	616,551,745	6.4
2.3	534,148,396	1996	653,448,261	6.0
1.9	544,460,070	1997	687,218,671	5.2
2.2	556,290,235	1998	722,412,628	5.1
6.6	593,048,207	1999	752,942,136	4.2
5.5	625,785,284	2000	788,962,864	4.8
6.1	664,131,846	2001	841,816,265	6.7
5.7	701,963,438	2002	909,268,285	8.0

Source: Maine Department of Education

TAX REFORM (cont'd)

sive tax reform package, LD 2086 and LD 2087, received a 12-1 "ought to pass" report from the Taxation Committee. Most of those Committee members completely support the legislation. Several members do not, but they indicated an appreciation for the tremendous effort that went into crafting the tax reform package, and they believe the voters statewide should have a right to pass judgment on the package directly.

This is what the two bills, in combination, would accomplish.

Voter approval. Nothing in this legislation would happen without a majority of the state's voters giving a stamp of approval. The entire package is subject to a vote of the people of Maine on November 5, 2002, and the proponents of this tax reform would have to make their case to the voters at large.

Property tax cap for education. If approved by the voters in November, the Act would establish property tax caps for the purpose of funding K-12 education of 6 mills for virtually all taxable property in the state of Maine except summer homes and vacation property, which would be assessed no more than 12 mills for education purposes. The current average mill rate for education is just short of 12 mills, so the higher mill rate for education for the "secondary residential property" would be the current state average. Maine's homesteaders, all business property in Maine (real estate and personal property), all farmland, forested land and open space, and all undeveloped property would enjoy the 6 mill

cap for education. The mill rate caps would go into effect for the tax year beginning on April 1, 2004. For obvious reasons of equity, the 6 mill and 12 mill caps would be adjusted according to the equalized state valuation.

Homestead exemption and BETR preserved, Circuit Breaker enhanced. Because of the lower property tax rates, the Legislature would not have to appropriate as much money to support the Homestead exemption and BETR, but the laws governing these programs are untouched by this legislation. The reduced property tax rates would also mean that less money would need to be appropriated to support the Circuit Breaker property tax rebate program. Rather than booking the Circuit Breaker savings, the Act reinvests those savings into the program by expanding the eligibility standards.

Education spending accountability. The 6 mill/12 mill property tax cap for education is a circuit breaker system of a kind. LD 2086 establishes the maximum local obligation for the school budget, *but not an unlimited budget*. This Act complements and would serve to implement the Essential Programs and Services (EPS) school funding system. EPS is designed to determine the total amount of resources each school system should reasonably need to educate its students. The implementation of EPS will allow the state and the communities to get their arms around both the individual school budgets and the aggregate school budget, called the "total allocation", which is the total sum of state and local money needed to support K-12 education.

This Act, however, does not impinge on the local voters right to appropriate more for their local education program than the EPS model identifies as the adequate amount. Under the terms of the Act, the school budget document would have to identify any proposed spending that exceeded the total amount necessary according to the EPS funding model. If the local voters approve those additional appropriations, the extra school operational costs would be assessed against the primary residential property owners only, not against the business, farm-

land, undeveloped or secondary residential property. This targeted supplemental assessment would not apply with respect to any school capital construction costs that are being proposed outside of the state-approved school construction system. Those over-EPS school facility costs would be assessed evenly across the entire municipal tax base.

Paying for the shift. Some people believe that this tax reform package should also be a tax reduction package. Tax reform concentrates on how to most fairly distribute the burden of generating governmental revenue, whatever that burden may be. Tax reduction focuses on the size of the burden. This is an Act of tax reform. By establishing the property tax caps for education, a \$250 million property tax burden is shifted to the state tax system. About 10% of that shift can be paid for with the reduced appropriations for the Homestead Exemption and BETR program and other residual savings. Under this Act, the rest of the revenue would be generated by expanding the sales tax base. If approved by the voters in November, the Legislature's Taxation Committee in 2003 would be directed by this Act to identify the amount of revenue necessary to provide the full state share for K-12 education and amend the state's sales tax code in two ways to generate that revenue. The meals and lodging sales tax rate would be increased by one penny on the dollar, bringing that rate up to 8%. In addition, the base of the "general" sales tax would be expanded to include a broad range of services that are currently exempt from the sales tax, including personal, business, professional, amusement and recreation and membership services. At the direction of the Taxation Committee, Maine Revenue Services put that sales tax base expansion through its computer model and the results showed that a responsible expansion of the sales tax base would generate the revenue necessary for the state to meet its share of K-12 education under this plan.

Revenue neutrality through income tax reduction. Some legislators will undoubtedly paint this tax reform

(continued on page 3)

Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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

Plumbing Code Controversy

LD 2127 is a bill that, if enacted, will give the Legislature's final approval to a rule adopted by the Plumbers' Examining Board which creates a new internal plumbing code for the state. The new international code would replace Maine's home-grown plumbing code.

The controversy around LD 2127 is that the Plumbers' Board adopted a code that appears to advantage plumbers, disadvantage consumers, and be quite incompatible with the building codes that are adopted on the municipal level in Maine. There is another international code that the Plumbers' Board could have adopted which is equally protective of Maine's citizens, does not require increased plumbing installation costs, and integrates easily with the BOCA-based codes adopted on the municipal level. For reasons that are unclear to us, the Plumbers Board rejected that code.

Both international codes have very similar names. The BOCA-based code which is favored by the Maine Building Officials and Inspectors Association (MBOIA) is called the International Plumbing Code (IPC). The code adopted by the Plumbers' Board is called the Uniform Plumbing Code (UPC). The UPC has its roots in the western U.S. The IPC has its roots in the east. The tussle between the two international code organizations for Maine jurisdiction is no fun to watch.

On March 14th, the Business and Economic Committee sat through hours of conflicting testimony on LD 2127, *Resolve, Regarding Legislative Review of Chapter 4: Installation Standards, a Major Substantive Rule of the Department of Professional and Financial Regulation*. The Committee has ultimately given the bill a 7-5 "ought to pass" report.

Proponents of the UPC primarily consist of plumbers and tradesmen, while the opponents of the legislation consisted of municipal plumbing code inspectors and code enforcement officers. There are several key issues surrounding the adoption of the UPC:

cost, compatibility, and the ease and expense associated with training code officials on the mechanics of a newly adopted code.

According to a side-by-side cost analysis received by MBOIA, the UPC could increase the plumbing costs of projects such as homes, schools and commercial buildings by 35% or more, depending on the size of the project. Even small, residential plumbing projects would cost more under the UPC code because they require more separated venting for plumbing fixtures. The UPC is a more labor-intensive code that requires more pipes, vents, and drains, thereby driving up the cost of construction.

The UPC is much less compatible than the IPC with the BOCA based building codes currently used in 73 of Maine's towns and cities. These communities contain 53% of the State's population. The BOCA-based IPC code is the norm throughout New England.

The adoption of the UPC would require more training than the IPC for municipal plumbing code inspectors and code enforcement officers. Though the State Planning Office will be required to supply the training manuals and conduct the hands-on training sessions, municipalities will be required to send their code officers for training.

LD 2127 has left the Committee and should appear on the House calendar next week. Call your legislators and urge them to vote against LD 2127 thereby retaining the existing plumbing code. (KH).

TAX REFORM (cont'd)

legislation as a "tax grab" or "tax expansion" bill because it calls for a broadening of the sales tax base. The Act itself, however, requires complete revenue neutrality. The Act provides that any state revenue generated by broadening the sales tax base, *over and above what is necessary to provide the full state share of K-12 education*, must

be converted into direct tax relief with a focus on reducing the individual income tax rates.

Create a powerful "Rainy Day Fund" for Education. The Act creates a school funding stabilization fund to ensure the availability of state revenues for education even during slow economic periods. The fund is automatically capitalized with state tax revenues when they accrue to the state treasury at rates that exceed the rate of growth of total personal income. This mechanism will help keep tabs on the Maine's overall tax burden, which goes up when state spending (rather than state savings) exceeds the rate of growth of personal income.

Enhanced voter information. The Act will require all school budget and municipal budget documents to provide information to the voters regarding the property tax impacts if the proposed local budgets are adopted. The Act also requires property tax bills to clearly identify the impact of the tax reform changes on the local property tax rates for education and non-education municipal services.

There is a certain political taboo about speaking favorably about broadening a tax base, even when the tax base expansion is accomplished for the purpose of reducing another extremely unpopular tax. In the coming week, the legislative debate on tax reform will undoubtedly spill over into a debate about tax burden. Legislators will undoubtedly proclaim that this tax reform legislation is not about lowering taxes, it is about raising taxes.

In truth, it is about neither. It is about getting back to the fundamental principles of taxation. It is about fairly distributing the burden whatever that burden might be. It is about equity, predictability, progressivity, balance. It is about preparing for the tax burden of the future that is bearing down on us. It is about vision.

The municipal vision is clear. Municipal leaders believe that the state must modernize and reform the entire tax code as a matter of fundamental governmental obligation. This week the Legislature's vision on tax reform will finally come into focus. (GH)

Interest Rates on Delinquent Taxes

The maximum rate of interest that a municipality may establish and apply to delinquent property taxes is established by state law. Calculated by the State Treasurer at the first of the calendar year, the maximum rate is “the highest conventional rate of interest charged for commercial unsecured loans.” For each tax year, municipal legislative bodies (the town meeting or town or city council) are authorized to set any interest rate they wish, up to the maximum.

Last year, the maximum interest rate was 11.75%. This year it plummeted to 6.75%. From the municipal perspective, the problem with the current state law occurs when the maximum interest rate drops to levels that are low enough to entice some taxpayers to see if their money can outperform the maximum municipal interest rate. For some taxpayers it is credit card interest rates of 18%, 20%, or more. For other taxpayers it is the alternative of the stock market or other investment strategies. Either way, a relatively low, fixed interest rate on property taxes is capable of making a prompt property tax payment an unfavorable financial decision for taxpayers in different financial circumstances.

Rep. Nancy Sullivan (Biddeford) submitted a bill to the Legislature to address the problem by making sure that the maximum interest rate for delinquent taxes would continue to serve the essential function of establishing an effective incentive for taxpayers to pay their taxes promptly.

LD 2166, *An Act to Provide Flexibility in the Rate of Interest Charged on Delinquent Taxes*, was given its public hearing by the Taxation Committee on March 19th. Rep. Sullivan, Biddeford City Manager Bruce Benway and MMA spoke in favor of the bill, which in its printed form would allow a municipality to choose a local maximum interest rate up to the rate established by the State Treasurer in the current year or in the previous year, whichever was greater. Although several Committee members expressed the opinion that businesses generally would

not play the interest rate margin between a delinquent tax interest rate and a more advantageous alternative, there was a general recognition that a 5% drop in the maximum interest rate (which locks-in for the tax debt for the lifetime of that debt) was deserving of some adjustment.

Among other observations that were made at the public hearing, MMA noted that there is no consensus in the banking world with respect to the “rate

of interest charged for commercial unsecured loans”. It is not a term of art. The various banks that MMA contacted said they generally did not offer commercial unsecured loans, and suggested various prime rate-plus-plus options if they were asked to guess at such a rate.

Although the Committee felt the bill had merit, there was no consensus that the printed bill was the way to go. Rep. David Bowles (Sanford) was asked to work out an alternative way to put some kind of “governor” on the

(continued on page 6)

Updates on Aquaculture, Air Emission Control Legislation

Aquaculture. During the closing weeks of the session, the Marine Resource Committee, having never officially voted out HP 1570, “*An Act to Make Changes to the Aquaculture Leasing Laws*”, voted to kill the bill in Committee due to lack of agreement among Committee members. It is the intent of the Committee to convene during the summer in order to revisit the various issues raised by the legislation.

Of municipal interest, members of the Committee were sharply divided on the amount of authority a municipality should have to review aquaculture lease applications directly. Members of the Committee supporting a ‘home rule’ approach believed that municipalities have the expertise to adopt performance standards necessary for the aquaculture ordinance that will ensure local values are maintained through local regulation. Other members of the Committee believe that a local harbor or area offshore is a state resource and the interests of all Maine’s citizens are best served with Department of Marine Resources reviewing lease proposals. Committee members discussed the need for further study and noted that perhaps the issue will come up once again in the 121st Legislative Session.

Air emissions. Once again, the Natural Resources Committee found itself debating the topic of home rule

with LD 2176, “*An Act to Ensure Consistent Regulation of Air Emissions in the State*” (Sponsored by Rep. Bob Daigle of Arundel). The bill, submitted in response to the air emissions ordinance adopted by the City of Biddeford, would have erased the language in Maine law that expressly allows a municipality to adopt air emission control ordinances that are stricter than state law. Under the printed bill, municipalities seeking more stringent standards on emissions would be required to present sufficient evidence to the Board of Environmental Protection of the need to adopt special conditions on an air emissions license for a particular facility.

In a compromise action, the City of Biddeford agreed to provide an additional public hearing on the Biddeford Air Toxics Ordinance before the full City Council within 60 days. After this 60-day period has lapsed, the City agreed to provide an additional 60-day comment period during which time the Council will consider the solicited comments. During this 120-day period, the City has agreed not to enforce the ordinance or penalize any regulated entity for the failure to comply with the ordinance. Finding that the proponents of LD 2127 on the Committee were satisfied with the City’s offer, the full Committee voted “*ought not to pass*” on LD 2176. (KH).

A "Non-Mandate" Mandate

LD 2119, "An Act Relating to Subdivision Review and Title Search Procedures" (Sponsor Sen. John Martin of Aroostook Cty.) appeared in the House on Tuesday evening this week, receiving a vote of 85-47 in support of the Natural Resource Committee's majority "ought to pass" report.

Representative David Tobin (Windham) asked Speaker Mike Saxl (Portland) for a determination of whether or not the bill was a mandate. After tabling the bill to research the matter, Speaker Saxl ruled that LD 2119 was *not* a mandate.

As amended by the Senate, LD 2119 would add the following paragraph to Maine's subdivision law:

"A municipality may not enact an ordinance that expands the definition of 'subdivision' except as provided in this subchapter. A municipality that has a definition of 'subdivision' that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located."

It is not clear to MMA why this bill is not a mandate. On the face of it, the bill effectively requires all municipalities to amend their subdivision ordinances no later than January, 2006 to conform exactly to the state definition of subdivision, with all the various exemptions that have been embedded into the statutory definition over time. MMA's review of 250 subdivision ordinances last summer shows that a majority of municipalities, for what appears to be various reasons, have not adopted in the local definition the complete set of exemptions that are found in the statutory definition. The most-abused exemption provided in state law is the "gift lots to relatives" exemptions, which if not more closely

regulated on the local level can result in real-life subdivisions being developed without any local review.

Our conversations with the Office of Fiscal and Program Review (OFPR), which has the sole authority (except for the courts) to determine what is and what is not a "mandate", have yielded mixed results. One interpretation of the unfunded mandate law that OFPR is considering resorts to what is referred to as the "Lexington tough choice doctrine".

The Lexington tough choice doctrine emanates from Massachusetts case law, when the Town of Lexington argued that state law creating certain firefighting procedures was an unfunded state mandate. The Massachusetts Supreme Court ruled that since towns are not legally required to offer fire protection, the law regulating fire

protection services was not a mandate because the Town of Lexington could choose not to provide fire protection services of any kind. Thus, the "Lexington tough choice doctrine".

To its credit, the Legislature's OFPR has up until now not followed the conclusion of the Lexington tough choice doctrine. If a law represents an effective state mandate in real life, the OFPR identifies it as a state mandate.

In this case, however, OFPR is contemplating a different approach. After reviewing the new paragraph proposed by LD 2119, OFPR is suggesting that the legislation, as a matter of law, does not require municipalities to take any action.

The OFPR interpretation of LD 2119, at least at the moment, is as follows. All the 300-plus municipalities that have not incorporated all the exemptions to subdivision review that

(continued on page 6)

Bond Framework Outlined

On March 29th the Appropriations Committee met to discuss and vote on over \$242.7 million worth of bond requests funding fourteen different initiatives. Although the Committee met for over nine hours, at the end of the day the panelists reached agreement only about the framework of the bond package and remained uncertain as to what projects would be included within that framework and the value of the total package.

Thus far the Committee has determined that there will be three General Fund bond proposals.

The first is a facilities bond that will include some funding for the school renovation revolving loan fund and to cover some of the cost of installing sprinkler systems in college dormitories. It is possible that other facility related issues will be addressed through this bond.

The second is an environmental bond that will include some level of funding for the requested \$19.3 million in environmental needs (wastewater and drinking water facilities, small community program, landfill remediation, tire stockpile abatement, etc.) and a \$9.5 million agricultural bond. Although nothing is set in stone, at Thursday's meeting it was suggested that the \$8 million request for water pollution control facilities could be pared down to the minimum required to raise the \$12.5 million matching federal funds. The \$4 million request for GIS is also being considered for a \$2 million cut.

The third and final bond proposal would be an economic development bond. The Governor is proposing that \$4 million of that bond package be earmarked for Municipal Investment Trust Fund (MITF), but it is not clear at this point at what level the MITF will be supported by the Appropriations Committee, if at all.

The Committee is meet again on Monday, April 1st to continue its deliberations over the bond issues. (KD)

INTEREST RATES (cont'd)

maximum interest rate statute to keep it from dropping into the ineffective range.

On Monday this week, Rep. Bowles presented the Tax Committee with the option he had crafted, which met with unanimous approval. According to the Committee amendment, a tag-on provision will be appended to the current statute that establishes the maximum interest rate. The tag-on provision will kick in whenever the maximum interest rate in the current year is established at 2 or more percentage points below the maximum interest rate established in the preceding year. In those circumstances, the municipality will be authorized to add up to 2 percentage points to the maximum rate established for the current year.

For example, last year the maximum interest rate was 11.75%, this year it is 6.75%. The rate drop is well over 2%. The Committee amendment would allow a municipality to establish a maximum rate up to 8.75% (2% over the established rate) in order to cushion the dramatic drop in rate and hedge against the possibility of interest rates rising in the near term.

The unknowns about this legislation is whether the Legislature will enact it as “emergency” legislation so that it could be made effective immediately and put into use this year on the municipal level, when the interest rate adjustment is needed. If the Legislature does create this opportunity as

emergency law, the 2-percentage-point option would be available to any municipality that has not yet had its town meeting and established its maximum interest rates. An emergency enactment would also create an opportunity for a municipality that already established its maximum rate at the March town meeting to hold a special town meeting before the commitment of taxes to consider amending the maximum interest rate. We should know within the week whether this bill will be enacted as emergency law. If it is, and if your community has already fixed its maximum interest rate, you should contact MMA’s Legal Services Department at 1-800-452-8786 for advice on how to give your community an opportunity to amend that decision. (GH)

MANDATE (cont'd)

state law provides can simply elect to abandon their ordinance and let state law, by default, take over. It’s a “choice” thing. Because LD 2119 requires municipalities to act only if they wish to protect their ordinances, the “Lexington tough-choice doctrine” kicks in. Even beyond the issue of mandate or no-mandate, the full implication of LD 2119 suggests that in 2006, the definition of “subdivision” in most municipal ordinances would be misleading, and that would be o.k. The state definition would be the only definition that would apply, but the

municipalities would not be required to amend their inapplicable definitions.

In real life, if LD 2119 is enacted, 300-plus municipalities will be compelled to amend their subdivision ordinances in the next 3 years, and in the meantime, they will be compelled to file their ordinances in the registry of deeds to protect them.

From the for-what-it’s-worth department, MMA has repeatedly offered what we believe to be a very reasonable middle ground. Two or three definitions of “subdivision” would be available under law, one with the full-bore of exemptions that exist in current law, and one or two others with more limited exemptions. In this way, the municipality could choose the definition that best meets its need, and the filing in the registry of the municipal definition would not have to be pages and pages of complicated ordinance definitions. The several definitions would merely be coded as “Definition A”, “Definition B”, or whatever.

LD 2119 is satisfied with nothing less than a total preemption.

LD 2119 will appear on the Senate calendar this week. Please contact your legislators and ask them to allow municipalities to continue to have choice with respect to the exemptions in the subdivision definition. Just because the subdivision definition gets amended on an annual basis to create a dizzying string of exemptions to subdivision review, the municipalities – who actually review the subdivisions – do not always agree. (KH/GH)