

## Governor Proposes to Repeal Personal Property Tax

Municipalities are getting used to the public hearings on Governor Baldacci's proposal to repeal the personal property tax, at least by now. This is the third year running. The public hearing on the 2005 version held on Monday (May 9) was similar to the unveiling of the 2004 proposal and the unveiling of the 2003 proposal. The proponents spoke of jobs and economic growth and suggested that the lost tax revenue to the municipalities – the shift of millions of property tax burden onto residents, small business and farmers – was *de minimus*, negligible, lost in the sauce.

The bill is LD 1660. It is couched as the Governor's "tax reform Phase II", the first phase being the recently-enacted "property tax reform" of LD 1. This "Phase II reform" proposes two changes. It makes modest, revenue-neutral adjustments to the state's income tax code by freezing the automatic increases to the income tax brackets (costing some taxpayers more money) and reducing the highest marginal income tax rate by five 100ths of a percent, from 8.5% to 8.45% (saving some taxpayers some money).

The guts of LD 1660, however, is the creation of a massive new tax exemption for all "BETR-eligible" personal property introduced into the state after April 1, 2006. A complete description of the bill was provided in last week's edition of the *Legislative Bulletin*.

The Director of the State Planning Office, Martha Freeman, described the proposal to eliminate approximately \$8 billion – roughly 10% — of the total municipal property tax base over time as having a relatively modest impact on municipalities. According to Freeman,

any negative impacts associated with a town losing a substantial amount of its tax base will be generally erased through: (1) a resurgence of business investment that will somehow create new tax revenue for municipal government despite the exemption; (2) changes in education subsidy and the distribution of county assessments that will run to the advantage of the communities that currently rely on personal property tax revenue; and (3) the constitutionally-required 50% state reimbursement to the municipalities for their lost tax revenue. Because the exemption is a going-forward exemption, affecting only newly-installed property, the Administration and other LD 1660 proponents suggest that the negative municipal impacts will affect towns gradually and therefore be "manageable".

In short, \$8 billion of taxable property can disappear from the tax rolls without significant impact.

The Commissioner of the Department of Economic and Community Development, Jack Cashman, followed Freeman to the podium to further promote LD 1660 with a series of somewhat contradictory statements: (1) there haven't been enough investments made to paper mills; (2) no significant investment has occurred in Maine in the last decade except where the host municipality participated with at least a 50% property tax return to industry through Tax Increment Financing (TIF); (3) Maine has a bad reputation for business that discourages investment; (4) there are potentially four major investments on the close horizon; (5) the paper industry is on the rocks; (6) the major investments on the horizon are in the paper industry; (7) the

BETR program is responsible for keeping the businesses going; (8) the municipalities have demonstrated having no real concern for their personal property tax revenue because they give it away through TIF agreements.

The testimony from the business community came from the Maine State Chamber of Commerce, paper mill executives, paper mill labor unions, Tambrands Corporation, Unum Provident Corporation, a tool and die company in Scarborough, a plastics manufacturer in Sanford, and National Semiconductor in South Portland. The common testimony was that the BETR program has saved their industry, they wouldn't be in Maine except for BETR, the Legislature's constant review and tweaking of BETR was frustrating and destabilizing to their corporate parents, and exempting the tax would create stability and eliminate their annual task of defending the BETR program to the Legislature. Some of the proponents mentioned as a side-bar the impacts of the exemption on municipal government

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## Harbor Master Training Mandate

This week, the Marine Resources Committee took testimony and voted on LD 1603, *An Act to Establish Harbor Master Standards and Training Requirements*. This bill is an "after deadline" bill in that it was filed long after the cloture deadline of December 17, 2004. The bill was printed April 28, 2005. It is odd that this bill was filed so late since it is a word for word copy of LD 1680 which was introduced, and defeated, last session. MMA opposed the bill last year and continues to do so this session.

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## GOVERNOR (cont'd)

and the possibility that exempting hundreds of millions of dollars – and ultimately billions of dollars — worth of taxable property over time could result in some shifts in burden to residential property taxpayers.

Maine State Chamber of Commerce President Dana Connors offered municipal government the comfort of his personal commitment to “work with the municipalities on the rough edges” of LD 1660, after it is enacted.

What the business testimony failed to offer were any details regarding the real-life differences between the exemption the businesses currently enjoy through the BETR program and the exemptions they would receive under LD 1660. Presumably that testimony was not offered because there are no real differences (except that the exemption would be forever and the BETR “exemption” is for the first 12 years of the property’s life, stimulating re-investment). Otherwise, these industrial proponents are already tax exempt with respect to their BETR-eligible properties. The differences between LD 1660 and current law that the proponents focused on were largely matters of personal convenience. The business people would no longer have to defend BETR in Augusta or explain BETR to their corporate parents. Sometimes their BETR reimbursement checks are not provided in as timely a manner as they would like. The *function* of the BETR program was described as very important to businesses, but its *administration* seems to be something of a nuisance to them...a nuisance that could be swatted away with a complete property tax exemption.

In contrast, the municipal testimony

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in opposition to LD 1660 was full of details describing the degree to which LD 1660 would increase the property tax burden for Maine residents, small businesses, farmers, woodlot owners and other non-industrial taxpayers.

At least three types of tax shifts are at the heart of LD 1660.

First, shifting the responsibility of financing the BETR program from state resources to property taxes, reversing the public policy that was behind Question 1A and LD 1.

Second, shifting the responsibility of financing municipal services from the industrial corporations who benefit from those services to Maine’s residents and small businesses.

Third, shifting state subsidies in complex ways to spread the negative consequences of LD 1660 to all municipalities in Maine, whether they have no personal property or \$1 billion worth of personal property in their tax base.

MMA’s testimony in opposition to LD 1660 projected the speed with which the going-forward exemption would become a hard-hitting reality. Using the rapid growth of the BETR program as a guide, the lion’s share of the personal property tax base would be exempt from taxation in just 15-20 years. In today’s dollars, the municipalities would lose nearly \$90 million a year in lost municipal tax revenue statewide. If the state truly honored its 50% reimbursement obligation in good faith, the net hit to municipal government (and the remaining non-exempt property taxpayers who would have to pick up the slack) would be about \$45 million a year in today’s currency.

Some legislators would be delighted to cut the municipal tax base to the tune of \$45 million a year. They run on a blind platform of “cutting taxes”, and they consider cutting taxes of any kind to be the equivalent of “tax reform”. What municipal people understand in a way that many legislators do not is that repealing 10% of the municipal tax base will not result in a “cut to municipal government” by \$45 million. Rather, the result is to shift the burden of paying for necessary municipal services from the industrial taxpayers to residents, small businesses and farmers.

Ruth Marden, the town manager of

Jay, focused on the both the severe impacts to her community as well as the sweeping impacts on all the surrounding communities in Franklin County. Nearly 75% of Jay’s entire taxable base is personal property, and when Jay’s state valuation begins dropping in proportion to the value of all the other towns that surround it, those other communities will begin to pick up the costs of Franklin County that Jay will no longer have to pay. Marden explained how the various state subsidy systems (education subsidy and revenue sharing), as well as the county assessment, are structured in a way that would require all communities to fill the financial vacuum created with the industrial exemption. In response to the Administration’s claim that the “going-forward” nature of the exemption gave towns time to prepare, Marden asked how a person should prepare for a slow death. She requested the Administration’s analysis of the financial impacts of LD 1660 for the purpose of objectively verifying their assumptions. (The highly political analysis Maine Revenue Services did on the impacts of LD 1, calculating that the average Maine resident will see a 13% reduction in their property tax bills next September, is still fresh on municipal officials’ minds.)

Marden also said that she or other town managers representing the industrial communities should have been invited to participate in the development of the proposal. She told the Committee that she personally asked for that opportunity, but neither she nor her industrial-town colleagues have ever been invited to participate, despite the Administration’s calls for collaboration and “working together”.

Additional municipal opponents of LD 1660 included Augusta City Manager Bill Bridgeo (representing Maine’s Service Center Coalition), North Berwick’s town manager Dwayne Morin and Rumford’s manager Stephen Eldridge. The City of Portland submitted testimony detailing the negative impacts of LD 1660 on Maine’s largest city, which showed quickly increasing year-to-year revenue reductions until the City would be taking a \$4 million annual hit ten years from now.

Beginning next week, the Taxation Committee intends to take up work sessions on LD 1660.

# Role of the State Planning Office

In the Natural Resources Committee room on Thursday (May 12) Representative Joanne Twomey (Biddeford) presented her common sense legislative philosophy. That philosophy says “If it ain’t broke, don’t fix it.” After the Committee took testimony on LD 286, *An Act to Abolish the State Planning Office*, Representative Twomey declared “It’s broke – Let’s fix it.”

This piece of legislation took a somewhat long route to the Natural Resources Committee. The bill as drafted sought to redistribute SPO’s functions to other existing agencies to promote efficiency. So, for example, the waste management data that is currently collected by SPO would continue to be collected, but from the Department of Environmental Protection instead. Since the DEP is the primary agency responsible for the state’s waste management activities, the bill’s sponsor, Representative Henry Joy (Crystal), felt that both fiscal and programmatic efficiencies could be accomplished.

The State and Local Government Committee has jurisdiction over the functions of the State Planning Office. At the first public hearing on this bill before that Committee, SPO defended its existence by saying that it is unique and different from other agencies. Furthermore, SPO asserted, “sometimes there’s a need to separate program administration from regulation and enforcement, in order to avoid conflicts of interest and administer programs in a fair and balanced manner.”

A majority of the State and Local Government Committee agreed on both points. That is, they agreed that SPO served a unique policy and analytical role and SPO should be preserved. However, they also agreed that combining running an assistance program with regulation/enforcement responsibilities is not always conducive to the fair administration of said program. Consequently, a majority of the Committee voted to amend the bill by leaving SPO intact, but removing SPO’s regulatory role to review municipal comprehensive plans for consistency with the Growth Manage-

ment Act.

Somehow, a decision was made to reassign the bill to the Natural Resources Committee. The logic apparently was that since the Natural Resources Committee generally has jurisdiction over comprehensive planning, this committee should review the majority amendment. Representative Bradley Moulton (York) presented the majority amendment to the Natural Resources Committee.

The next proponent of the amendment was Christina Shipp from Stonington. Ms. Shipp served on the Stonington Comprehensive Plan Committee for 2 ½ years. The plan her committee crafted received overwhelming voter approval in town. When it was submitted to SPO for the first time, it was found inconsistent and the town was told to make changes. The town made changes and resubmitted the plan. This time, a different SPO reviewer gave different advice. Stonington took that advice and resubmitted the revised plan to SPO for a third time. Once again, a new SPO reviewer gave Stonington different advice. In the words of Ms. Shipp “We worked diligently for 2 ½ years to listen to every citizen of Stonington, hold endless meetings, read every survey, passed our Plan, only to have all of this effort cast aside. [SPO] recently told the Selectmen they could not use our material and would essentially have to start from scratch.” As many municipal officials are aware, Stonington’s experience with SPO is not unique.

Following this testimony, SPO spoke in opposition of the proposed amendment. SPO seemed to favor the change in committee venue from the State and Local Government Committee to Natural Resources. In its written testimony to the Natural Resources Committee on Thursday, SPO stated: “Addressing today’s challenges requires all of us to grapple with interrelationships among policy issues and among government actions. *Your committee, with your focus on the environment and its interconnections, may understand this more than some.*”

SPO further asserted that it really was not a regulatory agency. One of the primary reasons it viewed itself as non-regulatory was because “towns don’t have to submit their comprehensive plans to SPO for review.” The Committee discussion on that point focused on the fact that towns must submit their plans to SPO if they receive a planning grant, they must submit their plans to SPO if they want to have zoning and they must submit their plans to SPO if they want to be eligible for numerous state administered grant programs (most of which is federal money).

In fact, when Senator Scott Cowger asked Ms. Shipp of Stonington why Stonington submitted its plan to SPO for review she said “We are a poor, working class town and we need to be eligible for the grants. We had to submit our plan to SPO.”

A parade of supporters, just about all of whom testified against the original bill, from the Audobon Society to the Real Estate Developer’s Association, got in line behind SPO.

One of the more strident supporters of SPO was Cape Elizabeth’s town planner, Maureen O’Meara, representing the Maine Association of Planners. She flatly asserted that without SPO’s reviewing comprehensive plans “there can be no expectation that state planning goals will be part of municipal plans.” SPO reviews, the argument goes, provide “accountability.”

This is rather surprising to hear since state law requires that state planning goals be included in municipal plans. Apparently, the Maine Association of Planners (MAP) believes towns will violate state law unless SPO is there to watch over them. If a municipal comprehensive plan is not consistent with state goals, the town’s land use ordinances, such as local zoning, will not be upheld by the courts.

Ms. O’Meara did not have much respect for the courts either. Case law is quite clear that determining consistency is a legal matter for the courts. Ms. O’Meara disagreed: “MAP also believes that professional planners, because of their professional training, are more qualified to make determinations of consistency that [sic] judges.”

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# Management of Local Government Efficiency Fund

On Wednesday, the State and Local Government Committee unanimously voted “ought to pass as amended” on LD 1637, *An Act to Implement the Fund for the Efficient Delivery of Local and Regional Services*.

The Fund for the Efficient Delivery of Local and Regional Services was one of the core elements of the School Finance and Tax Reform Act of 2003 (Question 1A), developed and supported by municipal officials, and adopted by the voters on June 8, 2004. As created by Question 1A, 2% of the funds municipalities receive from the state through the Revenue Sharing program (approximately \$2 million a year) will be set aside to help fund the study and implementation of municipal proposals for providing municipal services collaboratively, effectively and efficiently. The details of actually managing that Fund were left up to the Legislature, and LD 1637 represents the vision of the Baldacci Administration to implement and manage that revenue-sharing Fund.

That vision could be characterized as being heavy on state government control. As proposed in LD 1637, the state and the state alone would determine who would be included in the review panel, what criteria would be used to review applications and what proposals would qualify for funds under the program.

In contrast to the high-control approach of LD 1637, the municipal vision of the implementation of the Efficiency Fund was to directly involve municipal officials not only in developing the implementation plan, but also by having strong municipal representation on the panel responsible for reviewing and issuing the grants under the program. Based on this vision, municipal officials found the proposal in the bill far too state-government controlled.

At the public hearing, MMA raised three concerns with the printed bill.

First, municipalities, counties or regional governments would be authorized to apply for “efficiency funds” regardless of whether a county or regional government proposal involved a municipal-ity. It was important to municipal offi-

cial that all applications and awards of grants directly involve a municipality because it is municipal revenues that are being distributed. If it were not for the creation of this program, municipalities statewide would receive an additional \$2 million in Revenue Sharing distributions.

Second, the panel overseeing the Efficiency Fund award program would include state agency directors and commissioners and municipal and county representatives selected by the Administration. As drafted, the state would choose all review panel participants. Municipal officials raised a concern with this element of the bill because they believe that municipalities need to have direct input in determining who will represent municipal government on the panel created to review municipal efficiency plans, funded with municipal revenue.

Finally, other than a reference to the fact that any Efficiency Fund proposal would have to reduce the demand for property tax revenue, the bill as presented was light with respect to what the applicants could expect. As drafted, LD 1637 provided no details as to what type of information would need to be included in the application or what criteria would be used to judge the application. Instead, the bill was designed to allow the state agencies involved in issuing the funds to develop and implement the program. Municipal officials raised a concern with this proposal because too many of the details for implementing the program would be left to a state bureaucracy. In addition to choosing every review panel member, the Administration would also set all the rules of the program without the benefit of an outside review.

Due to the concerns raised by the municipal community regarding the implementation of the Efficiency Fund, representatives from MMA, State Planning Office (SPO) and Department of Administration and Financial Affairs (DAFS) were asked to present compromise language to the State and Local Government Committee at its May 11<sup>th</sup> work session on the bill.

After several hours of debate and

discussion on the issues resolved and unresolved by MMA, SPO and DAFS compromise, the Committee unanimously voted to support an amended version of LD 1637.

While several of the issues raised by MMA were addressed, there are still some lingering concerns from the municipal officials that the state has too much control over the process. In an effort to cover those follow-up concerns, should they materialize into real issues, the Committee inserted a provision into the bill which requires DAFS to submit a report to the State and Local Government Committee regarding the implementation of the Efficiency Fund. By adding this provision, municipal officials will have an opportunity to voice their concerns on how the grant process worked in its first year to the legislative Committee.

In addition to the reporting requirement, the amendment to the bill also makes two changes that wrestle some of the control from the state over the Efficiency Fund implementation process.

First, the panel responsible for reviewing the Efficiency Fund application process has been significantly amended to address many of MMA’s concerns. The most significant change allows MMA to appoint two municipal members and the Service Center Coalition to appoint one municipal member to the review panel. As originally drafted, DAFS would have appointed the three municipal members.

Also, as originally structured by the Administration, the State Tax Assessor would have been included as a member of the review panel. As amended, the State Tax Assessor was replaced with a representative of the Department of Economic and Community Development (DECD). Municipal officials believe that inclusion of a representative from DECD was important because the agency has experience both in the grant process and with working with municipalities.

As amended, the seven-member review panel includes: 1) the director of SPO; 2) commissioner of DAFS; 3) a representative from the Department of

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# Governmental Liability Reviewed

On Wednesday, May 11, the Judiciary Committee was presented with a very difficult challenge rooted in the most unfortunate of tragedies. In 1998, a deputy county sheriff crashed her cruiser into a passenger car killing two teenage boys. In the lawsuits that followed, the scope and meaning of various governmental immunities under the Maine Tort Claims Act (MTCA) were debated. In 2003, Maine's Supreme Judicial Court ultimately decided these issues in a split decision known as *Norton v. Hall*.

Representative Janet Mills has filed LD 936, *An Act to Amend the Maine Tort Claims Act*, to overturn the majority opinion in *Norton* case and institute the minority opinion. At the hearing Wednesday, the mother of those boys presented testimony and a video that details the tragic accident. The video is actually a production of the National Police Chiefs Association that is used as a training aid for police officers. The ability of the mother of those boys to turn her personal tragedy into an opportunity to promote better training is remarkable, and the Committee members were unanimous in their admiration and respect for her courage.

The bill focuses on whether there should be governmental immunity from civil lawsuits that result from automobile accidents in which the drivers are public safety officials responding to emergency calls. The way the MTCA is constructed is a little bit like the IRS tax code, it starts with a generality and then whittles down the generality with a series of exceptions.

The first basic rule is that anyone can sue anyone. Smith can sue Jones if Jones negligently injured Smith. A general exception to the basic rule is if Jones works for any level of government. If Jones is a governmental employee, Smith may not sue Jones or Jones' government employer. The theory behind this exception is based on the centuries' old common-law doctrine of sovereign immunity.

In Maine, the common law doctrine of sovereign immunity is governed by statute, the MTCA. Pursuant to MTCA,

there are several exceptions to governmental immunity. One of the exceptions is for injuries that are the result of the operation of a motor vehicle. That is, Smith will in fact be able to sue Jones (and Jones' government employer) if Jones' negligent operation of a motor vehicle caused Smith's injuries.

However, the *Norton* case established that there are exceptions to this exception such that governmental immunity is restored in some cases. The exception to the exception involves the discretionary doctrine. The discretionary doctrine basically holds that there are some decisions that government employees have to make that are so difficult that it would be against public policy to have the threat of civil damages looming in the background in case the wrong decision is made. That is, insurance premiums and financial considerations should not impact certain governmental decisions.

For example, does a firefighter charge into the burning house to see if there are more people inside? For the most part, firefighters do charge into the building. However, at a certain point, it would become so reckless and futile that the only thing charging-in would accomplish would be to endanger the firefighter. Determining where that point is for each particular situation is a discretionary decision. This is especially so when one considers the situation. Firefighters don't have the opportunity to sit down, talk the decision over, get a second opinion from others around the country, to videotape the situation and review the matter from all possible angles. They are under pressure and they need to make a decision – now. These types of discretionary decisions, many feel, should be totally based upon factors of public safety and not on the potential financial impacts of making the wrong choice.

The *Norton* case focused on whether there is, or should be, a distinction between the decision to take a particular action, like a high-speed police chase, and the manner in which the action is conducted. The minority opinion said the decision "whether" the chase should

happen is discretionary and the consequences of those decisions should continue to receive immunity. That is, no one should be able to sue the government if the officer chooses to, or not to, engage in a chase.

However, the minority also felt that the decision as to "how" the chase is conducted should not be viewed as a discretionary decision and that if the chase is conducted in negligent manner, immunity for the officer and the government employer should be liable (up to the limits of established in the MTCA).

The majority of the Supreme Judicial Court felt that splitting the action in two was not possible in the real world. The majority wrote: "*The exercise of discretion involves more than a decision in the abstract to respond. Actions taken by a law enforcement officer in response to an emergency implicate the discretionary judgment of the officer and the immunity protecting governmental entities and their employees extends to those actions. The operation of the cruiser on the way to the emergency is an integral part of, and cannot be separated from, the initial decision.*"

Several law enforcement officers testified to this perspective at the public hearing. They fear that the erosion of the discretionary immunity provision will cause them to "second-guess" their decisions. The law enforcement testimony tried to convey to the Committee that officers are dedicated professionals and that protecting the public is the paramount issue in their minds as they get a call. However, they also indicated that they were human. As such, if immunity is lifted they might begin to fear for their jobs, or fear that they would face some liability every time they had a collision. Officers feel that passing this bill could cause their judgment to become slightly clouded.

A converse concern is that the bill would have no impact on the decision making process. If the bill passes and insurance premiums increase but that does not translate into better training, improved emergency response policies and tougher discipline in cases where policy is violated, then the bill has not served a central policy goal of prevent-

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## PLANNING (cont'd)

After testifying against the original bill, MMA testified in support of the amendment. SPO does many important things which municipalities support. In particular, SPO provides invaluable service to municipalities in the area of comprehensive planning. The land use team at SPO is dedicated and skilled. The amendment will not undo this important relationship, it will strengthen it. No longer will SPO be forced to judge comprehensive plans that it spent years helping towns craft. It will be free to focus on what it does best, planning.

The Legislature should keep SPO and support the amendment. This will re-energize SPO's planning function, strengthen state-municipal relations and relieve the SPO planners of the judicial role to review comprehensive plans that was improperly assigned to them.

It's broke – Let's fix it.

## EFFICIENCY (cont'd)

Economic and Community Development; 4) one county or regional government service provider recommended by a statewide organization representing counties or regional service providers; 5) one representative of a service center community recommended by the Maine Service Center Coalition; and 6) two current or former municipal officers or chief administrative officials recommended by the Maine Municipal Association. With respect to the municipal appointees, one municipal official must represent a rural community with a population of less than 4,000 inhabitants and one municipal official must represent a suburban community with a population of 4,000 or more inhabitants.

Second, the Committee adopted amendment provides the review panel with some limited input on how the process and rules used to rate the applications will be developed. As originally presented, DAFS would have been provided exclusive authority to develop the rules, set the limits and determine how applications would be ranked. Municipal officials were very concerned with this approach because it could have allowed the state to design a process that would provide more points to certain

types of applications, frustrating the creativity and flexibility that the efficiency fund system was designed to foster.

As amended, DAFS is required to consult with members of the review panel prior to issuing the grant rules, procedures and applications. The review panel is authorized to comment on the rules and procedures. Although this language is not as strong as municipal officials would have liked, it does provide the members of the review panel with an opportunity to voice their opinions and concerns with the procedure. This ability to comment, coupled with the State and Local Government Committee review of the Efficiency Fund implementation process, provides some added comfort. If DAFS fails to take into consideration concerns raised by the members of the review panel, those members will have any opportunity to raise their concerns with the State and Local Government Committee. As amended, the bill provides for some checks and balances.

## LIABILITY (cont'd)

ing more tragedies. In other words, the bill essentially "hopes" that increased liability will impact the performance of law enforcement officers.

No academic studies were presented by either side to either establish or refute this hoped-for outcome. Maybe it will work, maybe it won't. It would seem that the Judiciary Committee, all of us, owe it to the Nortons to make sure we have explored all the options for improving emergency response procedures and crafted legislation that does not hope for improvement but guarantees it.

The Committee asked for more information on a variety of issues such as current training policies, insurance coverage and how courts apply negligence standards to high-speed car chases which are by their very nature dangerous.

The Committee is faced with a difficult challenge of deciding how to improve public safety so that more people are not injured as a result of collisions involving officers responding to an emergency without compromising the public safety of those who are experiencing the emergency and are begging the officers to "please hurry."

This is a very tough issue.

## HARBOR (cont'd)

The bill would require all individuals who desire to serve as municipal harbor masters to be certified by the state. The certification requirements are (i) to be subject to a criminal background check (ii) to complete a "basic" training course offered by the Harbor Masters Association (iii) to complete an "advanced" training course also offered by the Harbor Masters Association and (iv) to complete a "refresher" course every 2 years thereafter.

One of the primary proponents of the bill, Senator Nancy Sullivan (York) indicated that she supports mandatory training because "we're asking harbor masters to do so much." This may come as something of a surprise to municipal officials since harbor masters are not state employees, they are municipal employees. The only level of government that does, or should, ask harbor masters to do anything is municipal government.

Maine has never had statewide harbor master requirements for "administrative" harbor masters. An administrative harbor master is one who is hired by a municipality to administer the town mooring program and related activities. However, some towns want their municipal harbor masters to do more than administer moorings. Several harbor masters are either full law enforcement officers or quasi-law enforcement officers.

In order for a municipal harbor master to enforce the state's boating laws, to carry a fire arm and to have the power to arrest, the harbor master must complete a state-established training program. Even though the harbor master is in all respects a municipal employee who is hired, paid and supervised by the municipality, this state involvement in establishing qualifications for municipal employees with police powers is not illogical.

Municipalities think the current state of affairs strikes a good balance. That is, if the harbor master is going to primarily enforce state laws, then the state may establish training requirements; if the harbor master is going to primarily enforce the local harbor ordinance and mooring permit program, then local government should be allowed to establish the training requirements.

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Please review the comprehensive list of LDs of municipal interest that can be found on MMA's website, [www.memun.org](http://www.memun.org).

### **Criminal Justice & Public Safety**

LD 1645 – Resolve, To Establish a Blue Ribbon Commission To Study Maine's Homeland Security Needs. (After Deadline) (Sponsored by Sen. Edmonds of Cumberland Cty; additional cosponsors.)

This bill would establish a blue ribbon commission to study Maine's Homeland Security needs. The Commission would consist of 17 members, one member of which is an elected representative of municipal government, nominated by a statewide organization that represents municipal government. A fire chief, a firefighter, a police chief, and a county sheriff or chief deputy sheriff would also serve on the Commission. The Commission would be charged with: (1) analyzing Maine's homeland security needs; (2) reviewing the current state of homeland security preparedness; and (3) reviewing current federal homeland security spending priorities.

LD 1659 – An Act To Amend the Laws Governing Crimes against People Who Are Homeless. (After Deadline) (Emergency) (Sponsored by Rep. Dudley of Portland; additional cosponsors.)

This emergency bill would direct the Commissioner of the Department of Public Safety and the Attorney General to review the relationship between law enforcement agencies and homeless people and explore methods of encouraging law enforcement agencies where homeless people are located to take concrete steps to improve relations with homeless people and their advocates.

### **Labor**

LD 1652 – An Act To Establish a Fair System for the Protection of Volunteer Firefighters' Employment. (After Deadline) (Sponsored by Rep. Duchesne of Hudson; additional cosponsors.)

This bill would prohibit public and private employers with 5 or more employees from taking disciplinary action against an employee who is late to work or misses work because the employee participated in an emergency call as a volunteer firefighter.

### **Legal & Veterans Affairs**

LD 1608 – Resolve, To Establish a Study Commission To Study Methods To Improve Ballot Access. (After Deadline) (Emergency) (Sponsored by Sen. Gagnon of Kennebec Cty; additional cosponsor.)

This resolve would authorize the establishment of the Commission to Study Methods to Improve Ballot Access, a 15-member panel made up of 8 legislators, the Secretary of State, and 6 representatives of separate political parties (Democrats, Republicans, Green, Libertarian, American Reform, and Constitution party). The Commission would be charged with studying the institution of "instant run-off" and "fusion" voting procedures.

### **Natural Resources**

LD 1633 – An Act To Prohibit the Disposal of Dangerous and Unsafe Material in Solid Waste Facilities. (After Deadline) (Emergency) (Sponsored by Rep. Daigle of Arundel; additional cosponsors.)

This bill would make it a Class E crime to intentionally conceal and dispose of potentially dangerous items, such as propane tanks, in a solid waste facility.

### **State & Local Government**

LD 1666 – An Act To Allow Counties a One-year Exemption For Jail Costs from the Limitation on County Assessments. (Reported by Rep. Barstow of Gorham for the Joint Standing Committee on State & Local Government)

This bill would exempt all the counties' jail costs from the spending limit system established for counties by LD 1 for the counties' 2006 fiscal year.

LD 1667 – An Act To Allow Lincoln and Sagadahoc Counties an Exemption from the Limitation on County Assessments. (Emergency) (Reported by Rep. Barstow of Gorham for the Joint Standing Committee on State & Local Government)

This bill would effectively exempt Lincoln and Sagadahoc Counties from the spending limit system established by LD 1 for those two counties for the next two fiscal years with respect to costs associated with the new jail facility.

### **Taxation**

LD 1595 – An Act To Rebalance Maine's Tax Code. (Sponsored by Rep. Woodbury of Yarmouth; additional cosponsor.)

This bill would comprehensively amend Maine's tax code by:

- (1) establishing a flat 6% income tax rate on all Maine taxable income;
- (2) generally achieving conformity with the federal income tax code;
- (3) increasing the child care income tax credit to 25% of the federal credit, and the earned income tax credit to 25% of the federal credit;
- (4) expanding the maximum benefit of the Circuit Breaker program from \$2,000 to \$3,000 and increasing the maximum amount of property taxes that can be considered when calculating the benefit;
- (5) expanding the base of the sales tax to include a broad range of recreational business, home care and personal services and repealing a long a list of existing exemptions, including the exemption for food;
- (6) dropping the general sales tax rate from 5% to 4%;
- (7) increasing the sales tax rate on liquor sold in licensed establishments and the lodging tax rate from 7% to 10%, short term auto rental rate from 10% to 20%, and the prepared food tax rate from 7% to 8%;
- (8) increasing the real estate transfer tax from \$2.20 per \$500 to \$5.00 per \$500 and providing a credit of 50% of those real estate taxes paid on any permanent residence;
- (9) increasing the excise tax on cigarettes by 50 cents a pack and increasing other excise taxes on various alcohol products.

### **Transportation**

LD 1650 – An Act To Provide Property Tax Relief by Requiring the State To Maintain and Repair All Bridges in Maine. (Sponsored by Rep. Thomas of Ripley; additional cosponsors.)

This bill would require the state to construct, improve and maintain all bridges in Maine regardless of the size of the bridge or whether the bridge is located on a state, state-aid or local road.

### **Utilities & Energy**

LD 1128 – An Act Directing the State Planning Office To Study Municipal Capabilities To Become Providers of Internet Services. (Sponsored by Sen. Bromley of Cumberland County.)

This bill would expressly allow municipalities to become providers of wireless Internet access. The bill would also direct the State Planning Office to study the economic, technological and funding issues associated with municipalities providing Internet services to their communities.

## LEGISLATIVE HEARINGS

*Tuesday, May 17*

### **Natural Resources**

**Room 214, Cross State Office Building, 1:00 p.m.**

**Tel: 287-4149**

LD 1669 – Resolve, To Authorize Certain Host Community Benefits Relative to a Landfill in the City of Old Town Owned by the State. (After Deadline) (Emergency) (Sponsored by Rep. Blanchard of Old Town; additional cosponsors.)

### **Utilities & Energy**

**Room 211, Cross State Office Building, 1:00 p.m.**

**Tel: 287-4143**

LD 1658 – An Act To Expand the Powers of the Stonington Sanitary District. (After Deadline) (Emergency) (Sponsored by Rep. Pingree of North Haven; additional cosponsors.)

*Thursday, May 19*

### **State & Local Government**

**Room 216, Cross State Office Building, 1:30 p.m.**

**Tel: 287-1330**

LD 1666 – An Act To Allow Counties a One-year Exemption For Jail Costs from the Limitation on County Assessments. (Reported by Rep. Barstow of Gorham for the Joint Standing Committee on State & Local Government)

LD 1667 – An Act To Allow Lincoln and Sagadahoc Counties an Exemption from the Limitation on County Assessments. (Emergency) (Reported by Rep. Barstow of Gorham for the Joint Standing Committee on State & Local Government)

## **HARBOR (cont'd)**

It should be noted that the training program is very well respected and appears to be quite popular with municipalities. Most harbor masters have received the basic training and the majority appear to attend the training annually. The municipal objection to the bill is that municipal officials believe they don't need to be told by the Legislature that training is a good idea and that they must send their employees to this training program. This objection was raised by many of the municipal offi-

cials who themselves send their harbor masters to the training program. Just because it's a good idea doesn't mean the municipalities support being mandated to do it.

Furthermore, for the few towns that choose not to send their harbor master to the training program, no showing has been made that there is a state interest in mandating the training.

Some committee members expressed concerns about homeland security and the enforcement of boating laws. If these concerns are widespread, the Legislature should

focus its attention on the two state agencies which are statutorily responsible for enforcement of the boating laws, the Department of Marine Resources and the Department of Inland, Fisheries and Wildlife (neither of whom testified in favor of the bill).

The state's solution to any perceived problems in these areas should not be to turn its attention on the few, small-town, administrative harbor masters who have done their jobs for years without being told to attend a particular training program. MMA urges that the Legislature again reject this unnecessary state mandate.