

County Government Spending Caps

The State and Local Government Committee held a public hearing yesterday (May 19) on two bills seeking exemptions to the assessment limitation created in LD 1 for the cost of providing county jail services. The Committee drafted the bills at the request of the chairs of the Joint Select Committee on Property Tax Reform to address the problem that the spending limitations in LD 1 have on the ability of counties to properly fund county jail operations.

As enacted in LD 1, the county commissioners may adopt a total county assessment that exceeds or increases the LD 1 county assessment limit if a majority of all the members of the county's budget committee and a majority of the county commissioners agree to exceed or increase the limit. As proposed in the two bills drafted by State and Local Government Committee, that spending limit would be effectively suspended.

LD 1666, *An Act to Allow Counties a One-year Exemption for Jail Costs from the Limitation on County Assessment*, would authorize all counties except for Lincoln and Sagadahoc to exceed the assessment limits established in LD 1 for FY 06 county jail costs, without getting the approval of the budget committee and the county commissioners.

LD 1667, *An Act to Allow Lincoln and Sagadahoc Counties an Exemption from the Limitation on County Assessments*, would exempt Lincoln and Sagadahoc counties from the assessment limits established in LD 1 for the FY 06 and FY 07 costs associated with completing the new jail facility. Special approval from a majority of the county budget committee and the county commissioners to increase the spending limit would not be necessary.

Proponents of the bills included representatives from Cumberland, Kennebec, and Sagadahoc counties, the Maine County Commissioners' Association and the Maine Sheriffs' Association. The proponents supported the bills for two reasons. First, in the case of LD 1666 the one year exemption would provide the time necessary to study county jail funding issues. Included in the Governor's Part II budget is the funding

necessary to study the county jail system and to develop recommendations to appropriately fund and provide county jail services.

Second, with respect to the funding of county jails, administrators and commissioners believe they have little or no control over county costs. They find it difficult to control spending when a large

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Next Week – “Tax Reform” Update

At the time this edition of the *Bulletin* goes to press, the final recommendations of the Taxation Committee on Governor Baldacci's proposal to repeal the personal property tax (LD 1660) is not known.

On Tuesday this week (May 17), the State Planning Office (SPO), the Department of Education and Maine Revenue Services made a combined presentation to the Taxation Committee that was designed to show that repealing the personal property tax would have a modest, manageable, gradual, ultimately absorbable (but admittedly negative) impact on municipalities. The data presented by SPO was constructed on the premise that in 1995, instead of enacting the Business Equipment Tax Reimbursement program (BETR), the Legislature enacted the going-forward repeal of the personal property tax. The data analysis then attempted to take a snapshot of all municipalities in 2001 under that scenario.

The SPO hypothesis is that between direct state reimbursements, school subsidy shifts, county assessment changes, and not having to agree to Tax Increment Financing arrangements any more, most municipalities would be either unaffected

or only mildly affected by the repeal of the tax. The SPO spreadsheet showed an impact of some kind to 100 municipalities, with 30 of those municipalities taking a combined tax revenue hit of \$20 million annually after factoring in the reimbursements.

Maine's industrial communities, service center communities and MMA responded to the SPO data this week with thorough and sharp critiques. The SPO data grossly low-balled the financial impact of repealing 10% of the municipal property tax base. According to the SPO data, most municipalities would actually have a larger active personal property tax base five years after a repeal on that tax is enacted, which is absurd. Multiple other challenges to the accuracy of the SPO data presentation were quickly filed with the Taxation Committee.

Next week's *Legislative Bulletin* will update municipal officials about the Taxation Committee's final recommendation on this proposal to sharply reduce the municipal tax base, as well as the other comprehensive tax reform proposals that the Committee has been evaluating for the last several weeks.

COUNTY (cont'd)

part of the spending is dictated by state statute. Most of the expenditures are driven by the mandates the state places on county jails without providing state funding to provide those mandated services. Counties are experiencing increasing costs due to the numbers of inmates that are sentenced to county rather than state facilities as well as the increasing medical and mental health needs of the inmate population. Proponents are concerned that if the state does not provide the one-year exemption, county officials will have no choice but to “cannibalize” the other services they are providing. County officials will be forced to make cuts in other programs such as probate and deeds in order to fund county jails. From the county perspective, there is no choice but to house and care for inmates.

Although the ability to override the limits established in LD 1 exists, none of the proponents mentioned that option. When members of the Committee asked the county officials whether or not they believe their budget committees would support increasing the limit, the answer was a universal “no”.

Several of the proponents of the bill mentioned the possibility of amending LD 1666. Two amendments were presented at the public hearing. One amendment would exempt from the LD 1 spending limitation only the county jail costs associated with the medical and food costs for inmates as well as the costs associated with boarding prisoners in jails outside the county. The second amendment would limit the annual increase in jail costs to the greater of the cap

established in LD 1 or a percent increase equal to the average annual increase in total county jail costs for the three prior years, except that the cost of boarding inmates at other facilities when required to do so by the state would be exempt from the cap. Both of the amendments would provide a one-year exemption only.

MMA provided testimony in opposition to both bills. Municipal officials believe that exemption from the limitation provided in the bills is unnecessary because LD 1 already provides a uniform mechanism for county officials to override the assessment limit. If jail costs, or any other county expenditure for that matter, exceed the calculated assessment limit, a process exists to obtain authority to override the cap to fund the expenditures that fall outside of the limit. If the county administrators can clearly illustrate to the county budget committee and the county commissioners that an increase is necessary, the permission to override the limit could be provided by a simple majority vote.

Municipal officials do not understand why spending for county jails should be automatically excluded from the assessment limitation. These decisions are rightfully left to the local decision makers to determine. There is no reason for county government to be treated any differently than municipalities or schools. Any municipal or school official could make the same arguments about insufficient state funding, increased health insurance costs or new construction costs. Since mechanisms to override the spending limitations are provided to all levels of government, there is no need to treat one level of government differently than the others. Municipal officials are concerned that if the Committee supports these bills, it will be setting a precedent that fundamentally impairs the uniformity that guided the development of the spending limitation systems in LD 1.

Also, municipalities see the bills as a band-aid solution to a real problem with the state’s financial participation in the county jail system. Currently, the state funds only 10% of the nearly \$50 million expended annually to operate county jails statewide. Although it is state policymakers that determine

which criminals will spend time in a county facility, it is the property taxpayers that are left to fund nearly all of the costs. The issue at hand is not the spending limitations, but the lack of state financial participation in the county jail program.

This state funding concern seems to have been on the minds of several of the State and Local Government Committee members who took the opportunity to express those concerns with Director of the State Planning Office, Martha Freeman. Testifying on behalf of the Administration, Freeman opposed LD 1666. In her testimony Freeman stated the importance of providing spending limitations at all levels of government and enabling the local decision makers to determine whether or not the limits should be exceeded. Although the testimony provided was non-confrontational, the Committee was unhappy with the Administration’s response to the bill.

Many Committee members felt that the Administration had been involved with the decision to ask the State and Local Government Committee to address the county jails spending limit issue. Many members of the Committee were shocked to hear that the Administration opposed the proposal to exempt county jail costs from the LD 1 spending limitations. Other Committee members felt that since state policies and the lack of funding were largely to blame for the county jail funding crisis, it was inappropriate for the Administration to oppose the bill without offering any other suggestions on how to address the issue. In her defense, Freeman pointed to the jail study proposed to be funded in the Part II budget as the Administration’s response to the concern. Director Freeman was asked to meet with Governor Baldacci prior to the work session on the bill to clarify the Administration’s position on the issue.

The Committee will be working these bills today, Friday, May 20th. Municipal officials have worked hard to ensure that the state’s spending limitation system would be applied uniformly to all levels of government. Before the spending limitation systems will actually be implemented, the Legislature appears headed to break with uniformity in favor of special exceptions.

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, Jeff Austin, and Laura Veilleux of the State & Federal Relations staff.

Family Care Bill Gets Unanimous Vote

On Tuesday, May 17th, the Labor Committee voted unanimously to support an amended version of LD 1044, *An Act to Care for Families*. The amendment was the result of a collaborative effort between the bill's sponsor, Senator Beth Edmonds of Cumberland County, and the Maine Chamber of Commerce.

As originally proposed, the bill would have allowed an employee to use any sick, vacation or other benefit time provided by an employer for the purpose of providing care to an immediate family member, which included but was not limited to, a child, spouse, parent or in-law. The bill created an entitlement for the use of paid time off to care for ill family members without taking into consideration the impact that entitlement would have had on employers.

Many employers, including the municipalities, opposed the original bill because it limited the authority of employers to regulate employee attendance. Employers generally agreed that there is a level of unpredictability associated with attendance with respect to sick time. In most circumstances, it is difficult to determine when an employee will be out due to an illness. Under LD 1044, that level of unpredictability would be intensified because sick time, as a matter of law rather than as a matter of employer policy, could be used to care for an ill family member.

This level of unpredictability is further exacerbated when employees are authorized to use vacation time to care for ill family members. Typically vacation time is scheduled well in advance and with ample opportunity for the employer to ensure the workforce needs will be met. As proposed in the bill, the employer's authority to schedule vacation time would be eroded.

Although the amended bill does not address all of the concerns raised by Maine employers, it does limit the

scope of the family care law and provides employers a greater voice in the process.

As amended, the family care law created in LD 1044 would apply to employers with 15 or more employees. The amendment establishes that employees can use earned sick, vacation or compensatory time to care for an ill child, spouse or parent. The amendment allows employers to adopt policies limiting the number of hours of paid leave an employee can use to care for an ill family member. The employer's family care policy limit can be no less than 40 hours per year. If more than one type of paid leave is provided, such as sick leave, vacation time, holiday leave,

etc., the employers can limit the type of leave used under this proposed law provided that the policy is applied uniformly to all employees at the workplace. The employer may also require notice or verification of the illness for which leave is being taken. The family care law applies to employees covered by a collective bargaining agreement, unless the agreement provides paid leave benefits that are equal or greater than the benefits created in LD 1044. Employers are prohibited from disciplining or firing an employee who participates in the family care law. Finally, an employer who violates the family care law is subject to a penalty of \$50 for the first violation, \$100 for the second violation and \$250 for each subsequent violation. The penalty for a violation under this section is for each day that a request for leave is denied.

With its unanimous Committee vote, LD 1044 is headed for enactment.

Role of the State Planning Office Subject of Resolve

The Natural Resources Committee decided to reject LD 286, *An Act to Abolish the State Planning Office*, and instead offer a "Resolve" directing the State Planning Office to take a hard look at its process for reviews of municipal comprehensive plans.

As reported in last week's *Legislative Bulletin*, the bill originally would have abolished SPO and reassigned its functions to other state agencies. The original committee of jurisdiction, the State and Local Committee, amended the bill to preserve SPO but to eliminate its function as reviewer of municipal comprehensive plans.

This decision was rooted in SPO's own testimony which held that regulatory and assistance functions don't often mesh well. Since SPO provides both land use planning assistance to municipalities and functions in a quasi-judicial role as reviewer of comprehensive plans, the State and Local Govern-

ment Committee narrowly approved the amendment to remove SPO's quasi-judicial reviewer role.

The amendment somehow triggered a reassignment of the bill from the State and Local Government Committee to the Natural Resources Committee. The members of the Natural Resources Committee also seemed to broadly agree that there are problems with the State Planning Office's administration of its comprehensive plan review function. However, they wanted to give SPO one last chance to make some substantive changes and improvements to its program.

Accordingly, the Committee unanimously approved a Resolve which will direct State Planning Office to improve its administration of its comprehensive planning program and report back proposed changes to the Second Session of the 122nd Legislature.

Homestead Exemption Changes Look Improbable

On Friday last week (May 13), the Taxation Committee held a public hearing on two bills that in different ways would address the problems many communities are facing with the retroactive implementation of the new \$13,000/50% unreimbursed property tax homestead exemption.

LD 1616 would simply delay the implementation of the new exemption until April 1, 2006. Next year would have been the prospective start-up date of the new homestead exemption had the Legislature not applied a “retroactivity clause” that makes the new exemption apply as of April 1, 2005 even though it does not become law until well after the April 1 date of taxation, when the status of all property is supposed to be fixed for the purpose of taxation.

LD 1625 would not delay the implementation of the new homestead. Instead, it would require the state to fully fund the expanded exemption, which would cost the state treasury an additional \$35 million a year.

The Tax Committee combined the two bills for the purpose of the public hearing. After several of the sponsoring legislators discussed the need for one or the other approach, Caribou’s City Manager, Steve Buck, took the podium and laid out in thorough explanation the actual mechanics of an unreimbursed homestead exemption. The presentation provided detail in a manner that was never provided when the Legislature developed and enacted the half-funded homestead exemption as a part of LD 1.

The thrust of Buck’s testimony was the real-life impact of shifting the property tax burden within a rural municipality, where the shift is essentially a closed-loop transfer...away from ourselves but onto ourselves.

In the rural communities, the non-homesteader population and the homesteader population is largely the same – local small businesses, farmers, woodlot owners, etc. Almost all of these taxpayers are also homesteaders within the same community.

Using carefully produced, poster board-sized graphs and mathematical models, Buck demonstrated to the Committee the effect on an unreimbursed homestead exemption in the rural community. That effect either reduces or negates real property tax relief that could otherwise be cleanly provided in those communities that actually received increased state aid for education.

Through his mathematical modeling, Buck was able to calculate for any municipality the “mill rate transfer” that would have to be applied to cover the unreimbursed homestead costs. In addition, Buck’s modeling can pinpoint the “crossover” point in any municipality, which is the value of a homesteader’s property where the application of the “mill rate transfer” effectively negates the benefit of the increased homestead exemption for the homesteader, and converts what looks like an increased exemption into an increased tax burden.

In Caribou, the “mill rate transfer” is 1.26 mills, increasing the City’s overall tax rate from what it would otherwise be. The “crossover” point in Caribou is reached with homesteads worth \$150,000 or more. Those homesteaders will actually lose benefits even though the face value of the homestead exemption is increased.

Buck asked the Committee, on behalf of the rural communities in Maine, to either defer the implementation of the unreimbursed homestead exemption (LD 1616), fully fund the homestead exemption (LD 1625), or give municipalities the option of implementing either the unreimbursed \$13,000 exemption or the current, fully reimbursed exemption. As far as half-funded homestead exemptions are concerned, Buck reminded the Committee, “one size definitely does not fit all”.

Doug Foglio, a selectman from Waterboro, also testified in support of either LD 1616 or LD 1625. Foglio described the unreimbursed homestead exemption as causing significant confusion among the municipalities, acting

effectively in the same way as an unfunded state mandate, and providing no true tax relief in rural Maine.

MMA testified in support of LD 1625. Municipal leaders are not unified in their support of delaying the implementation of the unreimbursed homestead until next year. The municipal response to that bill, LD 1616, was generally split down urban/rural lines. There is unified municipal support, however, for full state funding of the homestead exemption. That is the way the program was originally designed in 1998, for the express purpose of not internally shifting tax burden within each municipality.

On Wednesday this week, the Tax Committee members who were present voted unanimously to kill LD 1616, the one-year delay in implementing the homestead.

The Committee split along party lines on LD 1625, with the Democrats on the Committee and the one Independent voting “ought not to pass” and the Republicans voting “ought to pass”, although no one believes there is any chance of the exemption being fully funded. The biennial cost to the Legislature would be \$70 million, which is \$70 million that it does not have.

Harbor Master Training

Last week’s Legislative Bulletin described the Marine Resources Committee’s public hearing on LD 1603, *An Act to Establish Harbor Master Standards and Training Requirements*.

Sponsored by Sen. Dennis Damon of Hancock County, the bill as drafted would have required all individuals who desire to serve as municipal harbor masters to be certified by the state. The

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LEGISLATIVE HEARINGS

NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://janus.state.me.us/legis/session/>.

Monday, May 23

**Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635**

LD 1677 — Draft Supplemental Budget Bill – An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2006 and June 30, 2007. With the Joint Standing Committee on State & Local Government.

2:00 p.m.

With the Joint Standing Committee on Legal & Veterans Affairs.

3:00 p.m.

With the Joint Standing Committee on Transportation and the Joint Standing Committee on Utilities & Energy.

3:30 p.m.

With the Joint Standing Committee on Taxation.

Tuesday, May 24

**Appropriations & Financial Affairs
Room 228, State House, 11:00 a.m.
Tel: 287-1635**

LD 1677 — Draft Supplemental Budget Bill. With the Joint Standing Committee on Health & Human Services.

Wednesday, May 25

**Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635**

LD 1677 — Draft Supplemental Budget Bill. With the Joint Standing Committee on Agriculture, Conservation & Forestry.

2:00 p.m.

With the Joint Standing Committee on Business, Research & Economic Development.

2:15 p.m.

With the Joint Standing Committee on Education & Cultural Affairs.

Thursday, May 26

**Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1635**

LD 1677 — Draft Supplemental Budget Bill. With the Joint Standing Committee on Judiciary.

2:00 p.m.

With the Joint Standing Committee on Labor.

2:15 p.m.

With the Joint Standing Committee on Criminal Justice & Public Safety.

3:15 p.m.

With the Joint Standing Committee on Inland Fisheries & Wildlife.

3:30 p.m.

With the Joint Standing Committee on Marine Resources.

3:45 p.m.

With the Joint Standing Committee on Natural Resources.

HARBOR (cont'd)

initially-proposed certification requirements were: (i) be subject to a criminal background check (ii) complete a “basic” training course offered by the Harbor Masters Association (iii) complete an “advanced” training course also offered by the Harbor Masters Association, and, (iv) complete a “refresher” course every two years thereafter.

The Committee unanimously supported an amended version of the bill. As amended, the bill still requires that each individual who is appointed as a harbormaster to be certified by the state.

However, the certification now only requires completion of a “basic” training course within one year of appointment.

Furthermore, the Committee added a mandate preamble to the bill in acknowledgement of the fact that this bill represents a new state mandate on the municipalities.

As was reported last week, many municipalities have sent their harbor master to the training which is currently offered by the Harbor Master's Association. The training appears to be well done and very much appreciated. State training requirements currently exist for any harbor master who will carry a firearm and have the au-

thority to arrest. Beyond this issue, municipal officers do not see a state interest that justifies this mandate for the few towns that do not send their harbor master to the training course now, because their harbor master job description is entirely focused on just mooring assignments.