

TABOR Hearing: No Surprises

The Taxation Committee's room was packed on Thursday this week with proponents and opponents of LD 2075, *An Act to Create the Taxpayers Bill of Rights*, a citizen-initiated measure written by the conservative Maine Heritage Policy Center. The hearing was long and especially drawn out as several Committee members engaged in extended questioning and debate with some of the people testifying. The 1:00 p.m. hearing actually began at 2:00 p.m. By 4:30 p.m., only five members of the general public had testified, of the 50 or so who had turned out.

TABOR is a system imported from Colorado's constitution that would restrict governmental spending at all levels of government and, in addition, restrict the ability of any level of government to increase tax rates or fees. TABOR would be entirely unenforceable with the respect to the Legislature. It would be completely enforceable, however, with respect to its restrictions on municipal, county, school and utility district budgets. If TABOR had been in effect this year, 30% of Maine's municipalities would have to operate under flat or negative budgets. 33% of Maine's schools would have to cut their budgets. To override the budget restrictions, to enact or increase a fee of any kind, to enact a normal budget that might increase the property tax rate (but nonetheless falls within the TABOR budget restrictions), or to conduct a revaluation otherwise required by law, every municipality, school, county or utility district would first have to get a two-thirds "supermajority" vote of the town meeting or legislative body, and then conduct a town-wide, city-wide, county-wide or

district-wide referendum.

Proponents of TABOR included Mary Adams of Garland, Bill Becker of the Maine Heritage Policy Center, the Maine Motor Transport Association, and a number of property tax activists who were involved in collecting the signatures for the TABOR initiative, many of whom also worked for the failed Palesky tax cap campaign in 2004.

Opponents of LD 2075 included rep-

resentatives of the Maine School Management Association, the Maine Children's Alliance, the Maine Center for Economic Policy, the Maine Education Association, the Maine Peoples' Alliance, AARP, the Maine State Employees Association, MMA and the Maine State Economist.

The testimony of the groups oppos-

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Repealing the Personal Property Tax – An Update

There has been no Committee-level activity on LD 2056, which is the bill that would prospectively repeal most personal property taxes in Maine. During the course of the week, MMA has been sharing with municipal officials analyses of the impacts of various pieces of this very broad property tax exemption.

The first analysis described the impact of exempting the state's 1,400 gas stations/convenience stores of their personal property taxes (gas pumps, tanks, cash register/computer systems, etc.).

The second analysis described the impact of exempting the state's 600 fast food and national chain restaurants of their personal property taxes.

The next analysis will describe the impact of exempting the state's banking institutions and law offices of their personal property tax obligations.

99% of the responses we get when we provide this information is that the respondents were not aware that LD 2056 would exempt all the normal personal property (other than "office furni-

ture") of most chain retail stores, professional service establishments, banking institutions, law offices, etc.

These businesses, from what we can tell, are not even asking for the tax break. They pay personal property taxes in very nearly every other state in the nation where they are located. It is astounding how little information is being provided to the general public about LD 2056. The press won't do it, so we are asking you. The goal of the proponents of LD 2056 seems to be to keep the information about what property will actually qualify for the exemption and what the bill would actually do, to a minimum.

For substantial information about LD 2056 and its impacts, please visit MMA's website at www.memun.org. Access to LD 2056 information is on the opening page of that website.

And please ask your residential homeowners if they want to pay more in their property taxes so these businesses can enjoy a tax break. That is the indisputable result of LD 2056 as printed.

TABOR (cont'd)

ing TABOR could be summarized as follows: LD 1's spending limitation system accomplishes the goal of TABOR without disrupting governing procedures and requiring budget cuts; Colorado has suffered under TABOR both in terms of public services and economic growth when compared to its mountain state neighbors; Colorado voters had to suspend TABOR for five years because of its negative effects on lower and higher education, health care services, etc.; minority-rule voting is a significant governing change which requires a constitutional foundation; statewide referendum procedures to increase ATV license fees (for example) is absurd; representational democracy should not be replaced with the referendum democracy that is overtaking the western states; and the TABOR budget restrictions on the state level would impair the ability of the Legislature to provide basic services, particularly for the elderly, children and disabled.

The testimony of the supporters of TABOR could be summarized as follows: the spending limitation system of LD 1 is a failure; there are too many towns and they should be consolidated; Colorado has benefited greatly by TABOR and whatever problems Colorado has are unrelated to TABOR; that the voters in Colorado voted to suspend TABOR's effects for five years actually shows that TABOR works, and the minority-rule voting and mandatory referendum voting elements of TABOR are either a normal procedure or should be.

There was some conflicting testimony among the TABOR proponents

as well. Some proponents claimed that TABOR only requires minority-rule voting and required referendums when a town would exceed the TABOR budget restriction formulas, but other proponents admitted that the special procedures would be required in other circumstances as well, such as when any fee was proposed to be increased or when the property tax rate would increase by any amount, even if the budget restriction was being adhered to.

Some proponents also claimed that TABOR would require absolutely no budget cuts...it would only limit the growth of budgets. Other proponents admitted that "a few" towns would have to cut their budgets under TABOR.

MMA opposed TABOR for its assault on town meeting democracy. What follows are excerpts from that testimony.

Excerpts from MMA's Testimony in Opposition to LD 2075

The TABOR proponents have a particularly hostile view of the rights of local government to make decisions about what needs to be spent on local services, how to finance local government budgets, and even what procedures to follow to make those decisions. Any individual municipality or group of municipalities in Maine could decide to adopt any or every element of this version of TABOR if it made sense for them to do so; much of LD 2075, however, makes no sense to Maine's elected municipal leaders. The proponents of TABOR suggest that their judgment is superior to that of the town meeting or the town or city council. In contrast, we respect the judgment and subscribe to the rights of the local community to make important decisions on its own, including how it will govern itself.

The proponents of LD 2075 make the claim that TABOR does not force cuts in local budgets but merely places limits on the rate of growth of those budgets. This claim is untrue. If the proponents of LD 2075 had not decided to alter Colorado's version of TABOR as it applies to municipalities (and counties and utility districts), they could have made that claim. The bill's proponents, however, decided to change Colorado's TABOR as it applies to local govern-

ment with the result of creating flat budgets and negative budgets for local governments in Maine. The proponents of LD 2075 deliberately chose to make those changes and should not be allowed to misrepresent the effects.

To directly compare this version of TABOR with LD 1, the LD 1 growth limitation formula uses the real growth in total personal income (TPI) plus a local property growth factor. The Colorado formula is similar, using an inflation index (CPI) plus the local property growth factor.

In contrast, the Maine version of TABOR uses only the local property growth factor, without an underlying TPI or CPI index. This change, by itself, cuts the average local budget limitation under LD 1 in half, but it doesn't stop there.

Under this Maine version of TABOR, each local government would also have to calculate a second expenditure limitation, and then choose whichever limitation was more restrictive. The second limit would adjust the rate of inflation (CPI) by the year-to-year change in the municipality's population. A population-based system does not apply to municipal governments in the Colorado version of TABOR.

In order to see how these formulas might work, MMA calculated the TABOR budget restrictions for the first tier of municipalities that participated in the LD 1 spending limitations last year. 100% of the municipalities in that study would have reduced budget growth allowances under TABOR compared to LD 1. 56% of the municipalities would have budget growth allowances of less than 2% under TABOR. 30% of the municipalities would have budget growth allowances of less than 1% under TABOR. 10% of the municipalities would have negative budget restrictions.

For Maine's school systems, the TABOR budget restrictions would be even more severe. The school systems' budget growth restriction under Maine TABOR is the inflation factor (CPI) adjusted by the school's change in student enrollment. As a result, 33% of Maine's school systems would have to implement negative budgets under the Maine TABOR, had it been in effect this year

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Legislative Bulletin

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Working Waterfront Taxation Plan Takes Shape

On Wednesday this week the Taxation Committee reviewed a draft of the “working waterfront” taxation proposal that was developed through the collaborative efforts of Maine Revenue Services, the Maine Municipal Association, and Senator Dennis Damon (Hancock Cty.), representing the collective interests of the Working Waterfront Coalition.

The entire effort is an attempt to implement a new current use taxation system for “waterfront land that is used for or that supports commercial fishing activities.” Last November, the voters amended Maine’s Constitution to add “working waterfront” land to the list of other types of land that can be assessed at their respective “current use” values if they qualify (forest land, farm land, and “open space” land).

The actual bill that is a vehicle for this implementing legislation is LD 1972.

The collaborative draft that was presented to the Committee relies on the general structure of the Tree Growth program and the Open Space program in its administrative details. The property owner has to apply to the assessor in order to enroll the property in the program. A specific map of the parcel of land (or the portion of the parcel of land) that the landowner wants to enroll in the program must be provided. The penalty for withdrawing the land from the program is modeled after the Tree Growth penalty.

For the municipal assessors, the key issues are: (1) how to define whether the land qualifies to be enrolled in the current use tax program; and (2) what guidelines are provided to the local assessors to establish the “current use” value of the qualifying land.

For the existing “current use” categories, the qualifying land is both completely undeveloped and generally used in very uniform ways...it is either forest land, used agriculturally with some variation for different agricultural crops, or merely undeveloped property. For this new program, however, it is recognized that the land will typically be developed parcels that already support structures of different types, and there will be many

different types of commercial uses. A “one-size-fits-all” method with this particular type of land is not going to be easy.

What land qualifies? According to the collaborative draft, the land that would qualify for the program is:

“A parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone, that is primarily or predominantly used to provide access to or support the conduct of commercial fishing activities.”

And further:

“uses of land that “support the conduct of commercial fishing activities” are: (1) the provision of access to the water or the intertidal zone by a waterfront property owner to persons directly engaged in commercial fishing activities; or (2) commercial business activities that provide goods or services to persons directly engaged in commercial fishing activities.”

And finally:

“the retail sale to the general public of marine organisms or their byproducts, or other products or byproducts of commercial fishing activity, does not constitute commercial fishing activities.”

The purposes of this definition are at least fourfold.

First, qualifying land must be waterfront land adjacent to salt or tidal waters. Second, the property owner who engages in mixed uses is permitted to enroll only a portion of his or her waterfront land if that portion of land qualifies. Third, the land must be used directly and primarily by persons engaged in commercial fishing activities or by commercial businesses that own waterfront land, the uses of which primarily support commercial fishing activities. Fourth, the land occupied by retail activities that sell the products of commercial fishing activities (restaurants, tourist shops selling fishing paraphernalia, etc.) does not qualify.

Valuation methodology. The collaborative draft borrows on a central concept in the Open Space valuation methodology. Both in the Open Space law and in the collaborative draft, there are essentially two approaches an asses-

sor may take to determine the current use value of working waterfront land.

The first approach is the data-based approach, whereby the local assessor is instructed to identify and remove from the calculation of the land’s *just value* all the “excess valuation factors” that should not pertain to the land’s *current use value*, such as residential housing factors, aesthetic or recreational water-use factors, or commercial development factors that are not related to commercial fishing activities. Additionally, the assessor is instructed to consider comparable assessments of functionally equivalent commercial property that is being assessed well off the water and therefore is not affected by some of those “excess valuation factors”.

The second approach is available to the assessor when there is insufficient data to determine the current use value of the land in the manner just described. Under the second approach, the assessor would only have to determine if the land is being used “primarily” for commercial fishing activities (which means a use that is greater than 50%) or “predominantly” for commercial fishing activities (which means a use that is greater than 90%).

If the land fits the “primarily” standard, the assessor would reduce its just value by 10% under this alternative approach. If the land fits the “predominantly” standard, the assessor would reduce its just value by 20%.

If the land is also subject to a deeded restriction that permanently limits its use to commercial fishing activities, the assessor would add a 30% reduction to whichever percentage reduction the land would otherwise qualify for. Under this cumulative approach, for example, land that is predominantly used for commercial fishing activities that is also the subject of an enforceable deed restriction would be eligible for a 50% reduction in its “just value” assessment.

A developing data base. Finally, the collaborative draft directs Maine Revenue Services, in consultation with municipal assessors and working water-

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Broadband Access Bill Has “Buildout” Potential

In January of 2005, Governor Baldacci’s State of the State Address outlined a goal for increasing both cell phone coverage and access to broadband (high-speed) internet services by 2010. The effort to get this done was called the ConnectMe Initiative.

This initiative brought together providers of telecommunications services, (cable TV, telephone, cell phone and internet), and state and local government officials, (the Public Utilities Commission, MMA, University of Maine, Public Advocate’s Office) to see what the obstacles were to achieving these expanded access goals.

The basic issue is one of simple finances. Areas that do not currently receive these telecommunications services are unprofitable from a pure market standpoint. That is, the cost to deliver the service is greater than the revenue that could be produced by offering the service. Accordingly, without some type of subsidy, the private sector is unlikely to deliver the service everywhere.

One caveat to that general belief is that market participants are often making decisions on incomplete information. That is, market actors are never quite sure how many people would sign-up for a service if it were offered (the so-called “take-rate”).

LD 2080, *An Act to Accelerate Private Investment in Maine’s Wireless and Broadband Infrastructure*, is the legislation produced by the ConnectMe stakeholders. The Legislation takes steps to address these issues.

It establishes a new government agency called the Advanced Technology Infrastructure Authority (ATI Authority). The ATI Authority is comprised of the Chairman of the PUC, the Chief Information Officer of the State and consumer and industry representatives.

The legislation assigns to the ATI Authority two primary functions. First,

it is to serve as an information clearinghouse regarding unserved needs in terms of both cell phone coverage and broadband access. Many providers of these services will not publicize or share their data with competitors regarding where exactly their investments are, who their customers are and what services their customers purchase. Accordingly, getting a handle on the “need” for this service has always been difficult. A primary role of the Authority is to collect this information in order to be able to identify the unserved areas.

The other function given to the ATI Authority is to develop a public bidding type process that will be utilized to expand services to identified underserved areas. A goal of both industry and government is to not subsidize investments that would otherwise be made.

The ATI will accept requests for service from a community, such as Chebeague Island (a resident of which appeared at the public hearing and provided very instructive testimony about the real-life needs and impacts of high-speed access). Pursuant to the public-bidding process the private market will then be asked if any participant would like to offer broadband services to Chebeague Island (as an example) without subsidy. If none step forward, a process will be employed to determine what is the lowest amount of subsidy that would be needed to induce one participant to provide the service.

It is fairly easy to get people to agree that broadband access is increasingly a necessity for public safety, education and economic development purposes as well as personal enjoyment. It is also easy to understand why delivering that service to all corners of a low population density state like Maine is difficult in a competitive marketplace. The difficult issue for the ConnectMe stakeholders and for the Legislature is finding the source of funds for the

subsidy.

While contentious and difficult, the stakeholders ultimately decided that since the recipient of the subsidy funds would be the providers of the service, the source of the subsidy would be the providers as well.

The original bill contained no ongoing funding methodology but relied on a one-time infusion of surplus funds from the Universal Service Fund (a current assessment imposed to expand access to landline telephone services). The proponents submitted an amendment to the legislation at the hearing to impose a 1/4 % assessment on certain telecommunications services (cable TV, landline telephone, and internet). For a \$50 bill the assessment is equal to 12.5 cents. Excluded from the assessment are cell phone services. Correspondingly, the fund will not be used to invest in cell phone infrastructure.

Municipalities are generally supportive of expanding access to broadband services. Municipalities have long been the recipients of government directed investment in broadband infrastructure pursuant to the Maine Schools and Library program which has helped wire approximately 1,400 sites across Maine. Furthermore, Maine’s municipalities have a record of fighting for expanded broadband services in the course of negotiating so-called “build-out” requirements in local cable franchise agreements.

One concern for municipalities has been the potential that the ¼% assessment, as applied to cable television services, could be viewed as displacing local cable franchise fee revenues. There is a strong legal argument that this assessment is not a franchise fee. Just to be careful, MMA proposed that language be added to the bill to protect these important local revenues in the event of a legal challenge.

There was no opposition to the creation of the authority or the powers and duties of the authority. It remains to be seen if the tentative agreement to impose a ¼% fee will survive legislative review.

Citizen Role in Home Rule

LD 1481, *An Act to Amend the Laws Governing the Enactment Procedure for Ordinances*, is scheduled to be debated in the Senate on Monday, April 3rd. The bill represents a four-year effort of the real estate development lobby to curb the ability of municipalities and citizen groups from influencing high-impact development proposals, most typically by big box stores or retail malls. For years the Legislature has resisted. Now this Legislature, at least in the Senate, is poised to cut off those citizen rights.

The bill would give municipalities and their citizens, acting through the initiative process, just 30 days after a land use permit has been issued to fully enact ordinance changes in a manner that would affect the permit. Otherwise, the permit would be irrevocable and unchangeable. A proposed Senate amendment would make it a 45-day limit.

If the town cannot schedule the ordinance amendment vote to occur within the permitting process time frame (plus the 30 days), the development must proceed unaffected.

LD 1481 essentially pits citizens against high-impact developers in race to see who will get to the finish line first. Will the developer get a permit and exhaust the 30-day waiting period first? Or, will the citizens be able to initiate a petition, collect the necessary signatures, submit the proposal to the board of selectmen and convince the board to schedule and hold a referendum to enact the ordinance within the limited time period? Because the scheduling of a referendum vote is not within the control of the citizen groups, the bill places the citizens at a disadvantage in this race.

In their opposition to LD 1481, municipal officials recognize the value of certain citizen procedures that can influence high-impact development decisions made in their own communities. There is nothing in LD 1481 that cannot be adopted as local procedures by a community if it so chose. The rights of citizens to petition their local government can be entirely regulated at the local level. The proponents of LD 1481 apparently don't think that local govern-

ments are regulating their citizens' petition rights strictly enough.

LD 1481, as currently drafted, will curtail important rights of citizens to challenge local decisions. Perhaps the clearest example is the Fishermans' Wharf case in Portland, where the citizens protected the City's working waterfront from condominium development. If LD 1481 had been in place, their ability to do that would have been cut off.

It has come to MMA's attention that there is confusion on what the drafted bill would actually achieve. Some of the proponents believe that the purpose of LD 1481 is to merely require the citizen group to simply commence the citizen initiative process within the 30 day time period. That is

TABOR (cont'd)

The range of budget restrictions would vary to the point of being irrational, running from a negative 37% to a positive 503%.

In summary, the budget restrictions that apply to local government under the Maine TABOR system as proposed by LD 2075 are very different from the Colorado version of TABOR, much more restrictive on municipal and county government, and wildly ranging from inappropriately generous to forcing budget cuts with respect to Maine's schools. The irrationality of the formulas are a result of using population and school enrollment as the principal component of the TABOR budget restriction system.

Taxation restrictions. In a manner that also does not generally apply in Colorado, Maine TABOR establishes a required voting procedure whenever a municipality, county, school or utility district proposes to do any of the following:

- Increase its budget over the expenditure restrictions established above;
- Enact any budget that would result in a property tax rate increase, even if that budget would not exceed the ex-

penditure limitation established above; Instead, LD 1481 would require that ordinance changes be actually enacted within the 30 day time period. As drafted, LD 1481 establishes a very difficult and sometimes impossible hurdle for the citizens to overcome.

It has also come to MMA's attention that there is confusion about the municipal position on the bill. According to reports from members participating in Senate Republican caucus on LD 1481, it was suggested that MMA might be supportive of 45-day amendment, which does very little with respect to the underlying public policy issues. Those rumors are unfounded. MMA's position on the principles of governance that are in play with LD 1481 have been a matter of record (and this newsletter) for months.

Democracy is messy, to be sure. But at what cost do you clean it up?

penditure limitation established above;

- Create any fee or increase any existing fee by any amount; or
- Equalize the tax base through revaluation.

If the municipal, school, county or utility district budget triggers the special voting procedure requirement, the budget cannot be adopted until the legislative body (the town meeting, school district meeting, town or city council, etc.) first approves the budget by a two-thirds vote, which must then be followed by a mandatory town-wide, city-wide, county-wide or district-wide referendum. In order to hold the referendum, the local government must first mail 500 word summaries both for and against the budget proposals to all registered voters.

Colorado doesn't have town meeting government. As far as we can tell, all government in Colorado is representative government and referendum process, rather than the direct democracy of town meeting. Even with that, the Colorado version of TABOR does not employ minority-rule (two-thirds) budget approval requirements except in the circumstances of making tax increases immediately effective. This "immediately-effective" issue pertains with respect to

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LEGISLATIVE HEARINGS

Monday, April 3

Business, Research & Economic Development
Room 208, Cross State Office Building, 1:00 p.m.
Tel: 287-1331

LD 2091 – An Act To Make Changes to the Laws Regarding Pine Tree Development Zones. (Governor’s Bill) (Sponsored by Rep. Driscoll of Westbrook; additional cosponsors.)

Tuesday, April 4

Labor
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333

LD 2086 – An Act To Facilitate the Regionalization of Emergency

Communications Dispatching Services. (Governor’s Bill) (Sponsored by Rep. Hanley of Gardiner; additional cosponsors.)

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 2096 – Resolve, To Reduce State Valuation as a Result of the Closure of Georgia-Pacific Facilities. (Emergency) (Sponsored by Sen. Schneider of Penobscot Cty; additional cosponsors.)

TABOR (cont'd)

local governments in Colorado to their local option sales taxes, and therefore would not pertain at all in Maine. Even with that, the proponents of LD 2075 decided to apply these minority-rule procedures to almost all municipal budget approvals.

On the issues of minority-rule approval, mandatory referendum voting, and the mandatory aspects of certain referendum voting requirements, the municipal leaders do not accept the premise of the proponents of LD 2075 that the local governments need to be told how to govern themselves within the framework of the current options that are available through the normal democratic process at the local level. In roughly 400 municipi-

palities throughout Maine, the voters gather in the spring and decide at an open town meeting what services should be provided and at what commonly assessed cost. LD 2075 is a frontal assault on that tradition. With its severe restrictions on local government budget growth, its required budget cuts in many circumstances, and its minority-rule procedures and mandated referendum voting that must be applied for the most minor fee increases or the most straightforward and non-controversial local budgets, the proponents of TABOR are making it very clear that they believe the judgment of Maine’s voters acting in direct democracy is flawed and needs to be trumped by the higher wisdom of TABOR. Maine’s elected municipal officers disagree.

WATERFRONT (cont'd)

front interests, to begin collecting the actual sales data of this type of working waterfront property that is subject to enforceable legal restrictions preventing alternative uses. These may be zoning restrictions or privately-created deed restrictions. The purpose of the information-collection effort is so actual data on the current use valuation of this type of property can be presented to future legislatures if the 10%, 20% and cumulative 30% reductions need to be adjusted in the future.

After a very brief review of the collaborative draft was presented, the Tax Committee tabled further discussion on LD 1972 for another day.