

Taxation Committee Splits over Repeal of Personal Property Tax

The Taxation Committee will be reporting out two separate recommendations on LD 2056, the bill sponsored by Rep. David Bowles (Sanford) that would prospectively repeal the taxes on most business personal property in Maine that are collected by municipalities and used to support the provision of local services, from education to roads to public safety to solid waste removal.

Seven Committee members, including all six Republicans on the Committee and its lone Independent, voted to support LD 2056 as written.

The six Democrats on the Committee voted to support an alternative plan, the details of which have been laid out in concept and will be provided in complete detail by next Monday. Within four days after that, this enormously complicated bill will be voted on by the full Legislature.

The split on the Committee over the bill is centered on its impacts regarding the increases in property tax rates, and the shift in burden to Maine homeowners, that will occur when several billion dollars worth of business property is exempted from taxation.

The Republicans on the Committee, in their support for the bill, are claiming that when billions of dollars worth of property owned by businesses are exempted from taxation, and the municipalities are reimbursed for just 50% of the lost tax revenue, there would somehow be either minor or zero impacts on the property tax bills paid by Maine's homeowners.

The Democrats on the Committee, through their alternative report, believe the bill as printed will push up the prop-

erty tax rates for Maine's homeowners, farmers, landlords and small businesses – in some communities significantly and in others just by a couple of percentage points – and they want to change the bill to better manage those impacts.

The bottom line is how LD 2056 will change the tax base of your community, and how those changes will impact the local property tax rate.

Here are the major differences between the two reports on the basis of the information provided on the alternative

report at Thursday's work session on LD 2056.

Scope of the exemption. LD 2056 adopts the scope of the Business Equipment Tax Reimbursement Program (BETR) to define all the types of personal property that will be eligible for the tax exemption. With a few specific exceptions (utility property, office furniture, gambling machines, and retail stores over 100,000 square feet in size), that definition sweeps in all personal property that is currently taxable by municipalities, including the personal property of banks, law offices, gas stations, retail stores, national chain restaurants and fast food facilities, as well as the heavier manufac-

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What you can do

LD 2056 was introduced to the Legislature and received its public hearing 21 days ago. The Committee is scheduled to finalize its split recommendations on the bill next Monday and the Legislature is expected to vote on the bill a few days later. LD 2056 puts into motion one of the largest property tax exemptions ever enacted by a Maine Legislature and is extraordinarily complicated in both its wording and its impacts.

For all of that, there is very little information that anyone believes regarding the actual impacts of LD 2056 because the way it is designed, the impacts will be phased-in over the next several years and will entirely depend on the degree to which the Legislature honors its municipal reimbursement promises.

MMA attempted in good faith to model the impacts of LD 2056 by assuming it was enacted in 1995, instead

of the BETR program, and tracking its impacts over time. The proponents of LD 2056, including the Governor's Office, the State Planning Office, the Department of Economic and Community Development, and the industrial lobbyists who wrote the bill, have not provided a municipal fiscal analysis.

Instead, they have attacked the MMA analysis. Senator Jon Courtney (Sanford) told the Tax Committee yesterday that MMA's attempts to model those impacts on a town-by-town basis were both inaccurate and misleading. The accusation that MMA was trying to mislead anyone with its impact analysis is patently offensive.

MMA has a duty to attempt to model the impacts of important legislation that affects every municipality's property tax rate on behalf of its membership. We developed a sophisticated model in a very short period of time, and laid out all

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REPEAL (cont'd)

turing property.

The alternative report will be designed to target the exemption to the personal property of manufacturers (broadly defined), high-tech companies, natural resource-based industries, and other types of job-creation companies.

Municipal reimbursement. Under the current BETR program, qualifying businesses are reimbursed for 100% of the taxes they pay on the qualifying personal property.

For FY 07, that reimbursement rate was dropped by the Legislature to 90% in a one-time reduction to help balance the state budget, along with across-the-board cuts to everyone else, including municipalities and the recipients of state programs, who receive state resources or benefits. It is this "instability" in the businesses' reimbursement rate that is now triggering this business demand for a permanent exemption.

For some reason, the proponents of LD 2056 do not believe that the municipalities deserve anywhere near the 100% reimbursement rate, as has been provided to the business community over the last 10 years. Instead, the supporters of LD 2056 believe that municipalities will generally be fine with just 50% reimbursement, which is all most municipalities would be eligible for under LD 2056.

The alternative report is designed to provide stable and predictable higher reimbursement rates for the communities that would suffer the highest impacts from this proposed exemption, which are the industrial and the service center communities. Those towns and cities have higher levels, in some cases much higher levels, of personal property in their tax

bases than many rural communities. The proportionate reimbursement system would accomplish two results; that is, if it is honored over time by the next or future legislatures. First, it would provide proportionate reimbursement on the basis of impact. Second, by reimbursing the high-impact municipalities somewhat more closely to their losses, the county tax and school subsidy shifts that would otherwise affect the more rural communities are reduced.

Changing the rules. LD 2056 exempts not only new personal property that will be installed in the future but also existing personal property that has been installed anytime after April 1995 and enrolled in the BETR program. When all of that property was enrolled in BETR, the rules were that the owners would be reimbursed for their taxes on the property for twelve years, at which time the property would continue to be taxable but the reimbursement would stop. The design of tax incentive programs, after all, is to encourage new investment rather than simply giving a tax break for investments already made.

LD 2056 would change those rules by exempting the pre-existing property when it emerges from the BETR program. LD 2056 creates a 100% reimbursement for that property, but just like the existing BETR reimbursements, no one expects that reimbursement to be sustained over time.

The fiscal impacts to the state of providing the new municipal reimbursement for this pre-existing property that LD 2056 would now exempt quickly climbs to \$6 million a year. The alternative approach would not exempt the pre-existing property, retargeting the state resources to improve the reimbursement support for the truly prospective investments in the most highly impacted communities.

Replacing lost tax base. Even the alternative version of LD 2056 will result in property tax shifts to residential homeowners. Although the redesigned reimbursement formula reacts to the high impacts of Maine's mill towns, it does little to nothing for the impacts on Maine's cities and urban areas, which would lose some tax base without an easy mechanism to replace it. The half of the Tax panel working on the alternative

plan are exploring the idea of creating a local option for municipalities or multi-municipal regions to adopt a local option real estate transfer tax that would piggy-back on the existing RETT. Details of that element of the plan are apparently being developed.

CAN DO (cont'd)

the assumptions, data sources and methodologies we used for everyone to critique. One input in the model's first run was critiqued by the bill's proponents and we immediately identified and corrected for that input and ran the model a second time. Although not significantly changed, the resulting impact model was immediately distributed to the Taxation Committee and posted on MMA's website.

The model-based impact study, as is the case with any model, is an attempt to generally describe the legislation's impact on municipalities with various tax bases and various type or categories of personal property.

If legislators want to attack the quality of MMA's analysis, that's fair game. It would be a much fairer game, of course, if they provided a competing analysis of their own, showing all sources, methods and assumptions, but that is apparently not going to happen.

What is neither accurate nor fair game is to accuse MMA of trying to mislead or being disingenuous.

In any event, since at least some legislators want to discredit MMA's analysis without providing their own, all we can suggest is that you ask your legislators to explain to you the impacts in your community. The Legislature would never enact a bill that exempted 10% of the state's tax base without an exhaustive impact analysis. You deserve the same.

A starting point is the observation that 50% is not the same as 100%.

If you are concerned about the property tax rate increases that will follow the exemption of much of the collective municipal tax base, you must make direct contacts with your legislators immediately and ask them to calculate the impact of LD 2056 on your town or city,

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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

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Senate Supports An Amended LD 1481

On Wednesday of this week, the Senate voted to support an amended version of LD 1481, *An Act to Amend the Laws Governing the Enactment Procedures for Ordinances* by a margin of 24 to 10. As amended by the Senate, the bill would prohibit municipalities from nullifying or changing a land use permit through the amendment or repeal of an ordinance 75 days after the permit has been lawfully issued.

The Senate debate on the bill focused on the issue of rights. The proponents discussed the rights of retail and housing developers to rely on the permanence of an issued permit. The opponents debated the fundamental rights of citizens to challenge the decision of government officials.

The *proponents* believe that a predictable process that ensures that at some point the permits issued for a development are permanent will promote development in Maine. The *opponents* believe that the bill will limit the ability of citizens to petition government decisions by requiring citizens to initiate a petition, collect the necessary signatures, submit the proposal to the board of selectmen and convince the selectmen or town or city council to schedule and hold a referendum to vote on proposed ordinance changes within the limited time period.

For both the proponents and opponents, the vote on LD 1481 was long in coming. LD 1481 was first introduced in the first regular session (2005) and reported out of the State and Local Government Committee with an “ought to pass as amended” vote. As originally amended by the Committee in 2005, the bill would have prohibited the use of the *citizen initiative* to impact a project for which a land use permit had been granted. However, that version of the bill was deemed unconstitutional by the Attorney General because it placed limitations only on the citizen-based process, which can only be done according to the Constitution at the community level, not by the Legislature.

For that reason, the bill was referred back to the State and Local Government

Committee, carried into the second session (2006) and amended to limit a municipality’s ability to impact an issued permit through an ordinance amendment. The Committee amendment proposed to provide municipalities 30 days to initiate the ordinance amendment process and hold an election on the issue. While a majority of the Senate supported the concept of the limit, some senators disagreed with the limited amount of time provided to municipalities (and therefore their citizens) to amend an ordinance. Although one amendment proposed to expand the deadline to 45 days, the Senate settled on 75 days.

When MMA’s Legislative Policy Committee (LPC) voted to oppose LD 1481, the deadline was a concern. Municipal officials were primarily concerned with the practicality of placing a deadline on a citizen process, which cannot be entirely controlled by the citizens. The scheduling of an election is the re-

sponsibility of the selectmen and not the citizens. Holding citizens accountable for executing and completing a process that they cannot legally control is somewhat unfair. Municipal officials generally try to schedule elections on petitioned issues during regularly scheduled elections in order to save the time and money associated with holding an election and ensure the highest possible turnouts. There are three times in the year when municipalities will most likely conduct an election: 1) the annual town meeting; (2) the November general election; and (3) the June primary, if scheduled. These three normal referendum opportunities would often be outside the 75-day window that is effectively required by LD 1481 is the citizens’ request for a vote is going to be effective.

LD 1481 as amended by the Senate is now before the House. It is anticipated that the House will debate the bill this Friday, April 7th.

‘Net New Funding’ Under LD 1

The February 26, 2006 *Legislative Bulletin* described how the Legislature was dealing with the LD 1 spending limit calculation factor known as “net new funding” – at least with regard to General Assistance reimbursement. That bill, LD 1965, has been enacted as an emergency bill and signed into law.

This week, the Appropriations Committee seemed inclined to provide similar treatment to Local Road Assistance funding (now known as the Urban Rural Initiative Program, or URIP assistance).

As part of the spending limitation calculation, each community must deduct from its LD 1 levy limit the amount of “net new funding” it receives from the state through the URIP program. Assuming a community received \$50,000 last year in URIP funding, and that its LD 1 growth allowance was 3%, the net new funding limit for Road Assistance would be \$51,500 for the following year.

Thus, if a community received \$52,000 in road assistance, the difference, or the “net new funding” amount,

of \$500 would have to be “returned to the taxpayer” by reducing the overall LD 1 property tax levy limit for that town by \$500. This has always proved frustrating to municipalities for a variety of reasons, the primary one being the public policy implication.

Suppose a community which normally receives \$50,000 were to undertake a special state-aid road repair capital project for one year. The state might make a one-time, partnership contribution of money toward that project because the road is a state-aid road. However, that one-time infusion, say \$40,000, is also included in the net new funding calculation. Thus, the community would have to factor in that one-time construction funding in its “net new funding” calculation.

Given the assumption of 3% growth, the community would have a net new funding deduction of \$38,500 (\$90,000 - \$51,500). This is very significant.

If the town’s overall budget last year

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'LD 2' goes in Two Different Directions

The original LD 2, which was presented to the Legislature in December 2004 by Governor Baldacci, was described as a constitutional amendment that would complement LD 1.

As originally proposed, LD 2 would require municipalities to keep two assessing books: one for the purposes of local taxation and another for the purposes of state subsidy.

Assessing book #1, for the purposes of local taxation, would freeze the valuation of the minimum lot under every Maine "homesteader's" home (provided the homesteader elected to enroll in the program), and allow that land value to grow from year-to-year no faster than the rate of inflation (CPI).

Assessing book #2 for the purposes of the municipality's state valuation (which controls school subsidy, county taxation and municipal revenue sharing), would not place any cap on the "homesteader's" land...the second book would keep assessing that land at its "just value".

When the homesteader sells his or her property, the assessed value of the property would jump back to its market value and a penalty would have to be paid to the town. The theory behind the penalty is to provide the revenue for the municipality to use like revenue sharing in order to soften the property tax shifts that LD 2 would otherwise force in every community.

Because this system of capping valuation increases for the duration of home ownership provides advantage to long-term homeowners and disadvantage to new residents, it is referred to sarcastically as a "welcome stranger" method of assessing.

On Friday, March 31, a divided Taxation Committee reported out two versions of LD 2, both of which would be proposed constitutional amendments that are substantially different from the original version.

Version #1. About half the Taxation Committee supported a constitutional amendment that would give the Legislature the right to create a system that deviates from the general rule of

equal property tax apportionment on the basis of all property's "just value". Specifically, this proposed amendment would add a sentence to the Constitution that would read: "The Legislature may establish a system to limit the property tax levied on any resident homeowners to no more than 10 percent of the previous year's income of all residents in the household."

The purpose of this proposed amendment is to authorize the Legislature to design a program that would internalize within the property tax code the Circuit Breaker property tax rebate program, at least to some degree. Under this concept, municipalities would be directed to cap the property tax bill that would be issued to any Maine resident if the property tax bill exceeded 10% of the income of that person's household in the previous year. All the administrative details would be worked out by a future Legislature if the voters were to adopt this new constitutional language.

Those administrative details are not insignificant. They include: (1) how the municipality would know what the property owner's household actually was in the previous year; (2) whether the cap on the qualifying household's tax bill would be reflected by a required reduction to the property's assessed value or a required reduction to the otherwise applicable property tax rate; (3) whether there are any asset tests governing eligibility for their benefit; (4) how much of the property owner's land and buildings would qualify for the focused tax benefit.

Version #2. The other half of the Taxation Committee is supporting an entirely different approach. As presented to the Committee by the State Planning Office on behalf of Governor Baldacci, this new version of LD 2 would also amend the Constitution in a manner that more directly and significantly moves away from assessing property on the basis of its just value and towards a "Proposition 13" assessing method.

Under this proposed system all the land upon which a Maine resident's primary residence sits would be capped at its assessed value on April 1, 2008 and

allowed to increase in assessed value in subsequent years at a rate no greater than the rate of inflation. This would not be an enrollment program; it would require all homestead land to be assessed under the capped system. When all homestead property is sold, a 5-year back-tax penalty would have to be paid. As with the original version of LD 2, the municipality would have to keep two assessing books. One book that reflects the capped value of the homesteaders' land holdings for the purpose of local taxation, and one book that reflects the just value for the purposes of determining state valuation for county tax and subsidy purposes.

To send a proposed constitutional amendment to the voters requires a two-thirds vote in both the House and Senate in order to be placed on the November ballot. With a split Committee recommendation, achieving that super-majority support for either proposal is unlikely.

NEW FUNDING (cont'd)

was \$1,000,000 (increased by 3% to \$1,030,000) it would actually have to cut its budget below last year's amount because of the net new funding deduction. Requiring the municipal budget to actually be cut in order to undertake a capital improvement project relative to a state-aid road is not consistent with rational public policy.

The bill that would clarify the "net new funding" calculation is LD 1909. The Appropriations Committee appeared receptive to fixing this problem as the legislature has already done for General Assistance. [Note: Since the related General Assistance legislation (LD 1965) has been signed into law and become effective, communities may calculate the "net new funding" component of their "property tax levy limit calculation" required by LD 1 without including the normal year-to-year up-and-downs of General Assistance reimbursements.]

Court Rules TABOR Signatures Filed Late

On April 3, 2006 the Kennebec County Superior Court overturned the Secretary of State's decision to accept a box of TABOR petitions that were filed late, placing in doubt the fate of the citizens' initiative.

The case involves two constitutional provisions and one state statute. The first constitutional provision deals with the date that petitions must be submitted in order to give the Legislature enough time to review the proposal (Constitutional Deadline). The second constitutional provision states that signatures on the petitions may not be dated more than one year after the petition was issued (Signature Rule). The statute in question requires that completed petitions be filed with the Secretary of State within one year of taking-out the petitions (Statutory Deadline).

Mary Adams, who spearheaded the TABOR initiative, received her petitions on October 21, 2004. Accordingly, the corresponding Statutory Deadline to submit the completed petitions was Friday, October 21, 2005. All but one box of TABOR signatures was filed by the Friday deadline. The final, and necessary, box was submitted at 8:15 a.m. the following Monday morning.

Despite the Statutory Deadline, the Secretary of State accepted the final box. The Secretary offered the following justifications: only one box was late, there was no evidence of fraud or other activity taking place over the weekend, the box was submitted during the next business day, and that the two relevant Constitutional rules were not violated. That is, the signatures were filed before the Constitutional Deadline (January, 2006) and all of the signatures appeared to be less than one-year old and thereby in compliance with the Signature Rule. According to the Secretary, Ms. Adams had "substantially complied" with the all the laws and the signatures should be accepted.

Ms. Adams, who had her own attorney for the case, went one-step further and argued that the only *real* deadline was the Constitutional Deadline to sub-

mit petitions to the Legislature (which she easily complied with). Since the Constitution trumps statute, Adams' lawyer argued, the Statutory Deadline was really more of an administrative due-date. The due-date would need to be complied with but couldn't be used to knock-out petitions that were timely according to the Constitutional Deadline.

Judge Marden disagreed. He held that both the Constitutional Deadline and the Statutory Deadline were real. Judge Marden reasoned that the Constitutional Deadline was for the convenience of the Legislature. He wrote, "*The constitutional requirement of submission to the legislature provides a deadline designed to assure the legislative body will have sufficient time to . . . give proper consideration to the question and to any competing measure.*"

The Statutory Deadline, by contrast, was necessary to enforce the second Constitutional provision, the Signature Rule. That is, the Constitution provided no mechanism to enforce its Signature Rule, and the Legislature enacted the Statutory Deadline to reasonably implement the constitutional Signature Rule.

According to the decision, "*In addition to meeting the filing requirements of the legislative day [Constitutional Deadline], petitions must be completed within one year of the date of issuance [Signature Rule] . . . It is clear that the legislature did not intend to leave the matter of correct dates on signatures to chance. The enforcement mechanism was to be a requirement that one year*

after the date of issuance, the petitions are not valid unless submitted to the Secretary of State [Statutory Deadline] making it impossible to forge or fraudulently create a signature date."

Instead of seeing the Statutory Deadline as inconsistent with the Constitutional Deadline, the Judge saw it as the necessary companion to the Signature Rule. "*It is patently obvious that the legislature has enacted a mandatory scheme to provide a degree of impossibility in the violation of the [Signature Rule] . . . The essence of the provision is to remove from the Secretary of State the need to substantiate the dates . . . This obligation is achieved by a requirement that the office of the Secretary of State receive the petitions with their signatures no later than one year from the date of the issuance [Statutory Deadline]. Any other interpretation would, indeed, be a result inconsistent with the Constitution and . . . meaningless legislation.*"

The Maine Supreme Court will hear oral arguments regarding this law triangle on April 25 and its decision is due May 7.

CAN DO (cont'd)

as well as the towns and cities in your region that are now shouldering the county tax.

There is \$8.74 billion worth of taxable personal property in Maine. That is the equivalent of the total taxable value of forty average Maine municipalities. Over 260 municipalities have at least \$1 million of personal property in their tax base. Ask your legislator how much taxable personal property he or she thinks will be in Maine 5 years from now, 10 years from now, 20 years from now.

LEGISLATIVE HEARINGS

Monday, April 10

**Business, Research & Economic Development
Room 427, State House, 1:00 p.m.
Tel: 287-1314**

LD 2099 – Resolve, To Provide Assistance to Heating Fuel Customers Who Enter into Prepaid Contracts That Are Not Honored. (Sponsored by Rep. Marraché of Waterville; additional cosponsors.)

This resolve is a "concept draft" that proposes to provide a one-time means of financial assistance to customers who enter into prepaid heating fuel contracts that are not honored by the heating fuel supplier.