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Legislature Poised for 12 Day Recess, Repeal of Personal Property Taxes Unresolved

The Legislature will be in recess over school vacation week and will reconvene in the following week to finish up its business for the session.

The municipal issue of greatest significance will remain unresolved over the school vacation hiatus — the proposed repeal of the most personal property taxes (LD 2056).

There has been little public legislative action on LD 2056 during the last week. As reported in last week's *Legislative Bulletin*, it appears that the Taxation Committee will be issuing two separate reports on the bill, but the details of the Committee's final recommendations will not be completely known until after the April vacation.

On the basis of preliminary voting, the Republican members on the tax panel support the repeal as proposed in the printed bill. The Democrats on the Committee are developing a package of amendments to the bill that:

1. Creates a more straightforward and supportive reimbursement formula that puts a safety net under Maine's mill towns that are most directly threatened by LD 2056;

2. Targets the exemption more narrowly to the real machinery and equipment for which economic development incentives should be created, rather than the wide definition of retail personal property that is routinely subject to taxation in almost every other tax jurisdiction in the land. This is a targeting that tries to address the impacts of LD 2056 on the residential property tax rates in service center communities;

3. Applies the exemption only to the targeted business machinery that will installed in the future rather than, as LD 2056 is printed, personal property that has previously been installed, is currently on the tax rolls, but is approaching the end of its 12-year state-funded (BETR) reimbursement cycle; and

4. Attempts to find a replacement tax base for municipalities that LD 2056 would take away.

Late in the week, the State Planning Office (SPO) presented its proposed tweak to LD 2056, which is apparently all the SPO believes is needed to make this prospective repeal of an important chunk of the municipal tax base a palatable proposition for the municipalities and their affected property taxpayers.

The SPO plan accepts all the basic elements of LD 2056. The only change suggested by SPO is a different, complex and multi-layered municipal reimbursement system.

That system begins with a "ramped-down" reimbursement plan whereby the municipalities would receive 100% reimbursement for their lost tax revenues in the first year after the exemption (FY 09), 95% reimbursement in FY 2010, 90% reimbursement in FY 2011, an so on, until 10 years after the exemption kicks in, when the municipalities would be reimbursed for just 50% of their lost property tax revenue.

The rationale for this proposal is unclear, but is at least coincidentally designed to keep the state's reimbursement obligation highest when the state's exposure to the fiscal impacts are more moderate, and reduce the state's exposure to reimbursement obligations as the aggregated value of the exemption and its impact on the municipalities increases.

The SPO plan would also reimburse municipalities for 100% of the lost property tax revenues associated with retail personal property.

The SPO plan also includes another reimbursement component that resembles the school funding formula in its structure and complexity. This element is hard to articulate in words, and was therefore presented with an example.

In words, the supplemental reimbursement would be the percentage of the town's taxable tax base represented by the value of exempt equipment, multiplied by 100% minus the prevailing base reimbursement percentage.

If the words are hard to follow, the example offered describes a town where the value of the personal property made exempt by LD 2056 represents 20% of the town's taxable value, and it is four years after the effective date of the tax exemption so the base reimbursement rate for all municipalities is 80%. Given that scenario, according to the SPO plan, the reimbursement percentage for that community would be increased to 84% because 20% of 100% minus 80% is 4%.

The analogy is the Legislature's ramped-up recognition of its EPS school funding model, which also runs percentages against percentages. In the current fiscal year, for example, the

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Response to Maine Chamber's Pro-LD 2056 Advertising

The following is a handout prepared by the Maine Municipal Association and the Maine Service Center Coalition that was distributed to the members of the House and Senate yesterday in response to some advertising by the Maine State Chamber of Commerce last weekend in its advocacy for LD 2056, the bill that would prospectively repeal most of Maine's personal property tax base.

Reviewing The Real Record On LD 2056 - The "BETR" Bill

The Maine State Chamber of Commerce bought full-page newspaper ads last weekend promoting the enactment of LD 2056, a bill that would prospectively repeal most personal property taxes in Maine. The ads also unfairly attacked MMA's opposition. While MMA understands that legislators are not interested in lobbyist bickering, the advertisement contained a number of misstatements that must be corrected.

For the Record: It is true that the municipalities strongly oppose LD 2056 as printed:

• LD 2056 exempts a significant part of the municipal tax base;

• LD 2056 requires municipalities to rely on a series of promises of state reimbursement;

• LD 2056 will shift property taxes onto Maine residents in the same way that LD 1's unreimbursed homestead exemption shifted property taxes;

• LD 2056 exempts the business equipment of McDonalds, Exxon, law offices and others, even though this property is taxable in almost all the other states;

• LD 2056 is very complicated to administer; and

• LD 2056 squanders an opportunity to accomplish true reform.

However, it is also true that the Maine Municipal Association and the Maine Service Center Coalition support:

1. A comprehensive proposal that would more quickly achieve the economic development goals of LD 2056, more directly manage the financial impacts on Maine's other property taxpayers and achieve structural reform.

2. An alternative approach that would direct a specially-created legislative panel to accomplish the central goals of LD 2056 without the negative municipal impacts.

In addition, another alternative proposal is being developed by members of the Taxation Committee that clearly recognizes some of the significant problems with LD 2056. Municipalities encourage legislators to give alternatives due consideration.

Chamber of Commerce Claim 1: MMA misstates the speed at which the tax base will become exempt.

For the Record: Maine Revenue Services estimated that lost municipal revenues as a result of LD 2056, assuming the Constitutional rate of reimbursement at 50%, would equal: In Year 1 - $6.5 million and in Year 10 - $40 million. MMA's statements on the subject have been an attempt to translate these statewide estimates of loss into town-by-town estimates.

Chamber of Commerce Claim 2: *MMA's position is that municipalities will see revenues collapse.*

For the Record: MMA has never asserted a "collapse of revenue" will occur. Again, MMA has simply tried to explain the reason for the losses that were calculated by Maine Revenue Services and put these losses into town-by-town context. The primary reason for the loss of local revenues is that LD 2056 cuts the normal growth of the personal property tax base. The impact is a steady shifting of the tax pressure caused by that loss onto the remaining tax base – residential property owners. This "cut and shift" effect will be more or less acute depending on the make-up of each town's tax base.

Chamber of Commerce Claim 3: MMA's position is that LD 2056 will only benefit large corporations.

For the Record: This is an astonishing claim given that much of MMA's advocacy has focused on how the LD 2056 exemption would apply to gas stations, retail box stores, national restaurant chains, banks, lawyers, etc. The personal property of these businesses is subject to a property tax in almost every state.

Chamber of Commerce Claim 4: MMA's position is that Maine doesn't need a business tax exemption to compete.

For the Record: Maine's municipalities have always been supportive of the BETR program. The issue today is not whether owners of business equipment should pay taxes – the state effectively answered that question with the creation of the BETR exemption 10 years ago. The current public policy question is whether Maine's residential property taxpayers rather than its income taxpayers should cover the cost of this exemption.

How Did We Get Here?

The Legislature reduced the BETR reimbursements to businesses from 100% to 90% to help balance the state budget. This is understandably aggravating, but shifting this problem of unstable BETR reimbursements to unstable and unsustainable municipal reimbursements is hardly a fair solution.

The proponents of the bill have criticized MMA's work, but never produced a town-by-town fiscal analysis themselves. Supporters claim that exempting millions of dollars worth of

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House Gives Preliminary Support to LD 1481

On Thursday of this week, the House voted in support of LD 1481, *An Act to Amend the Laws Governing the Enactment Procedures for Ordinances,* by a margin of 75 to 70. As amended by the Senate, LD 1481 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 issued.

As has been reported in several articles published in recent editions of the *Legislative Bulletin*, the problem with LD 1481 is not with the number of days provided to amend an ordinance for which a permit has been issued, but rather with an apparent confusion with respect to the procedures and authorities that pertain when citizens choose to participate through the petition process. As proposed, citizens interested in amending an ordinance for which a permit has been issued would be required to initiate and complete the entire petition process, including holding an election on the proposed ordinance, in 75 days. The citizens, of course, have no authority to actually schedule an election. Regardless of whether the citizens kick off the initiative process before or after a developer has been issued a permit, if an election is not held within the 75-day deadline, the citizens have lost their right to impact that particular development.

Much of the arguments made by members of the House mirrored those made over a week ago in the Senate, with both sides promoting the need for fairness and equity.

The opponents of the bill focused on the need to maintain home rule authority, the rights of the citizens to petition their governments, and the fact that every single municipality in Maine could adopt for itself the restrictions imposed by LD 1481 if the community felt those restrictions on the citizen petition process were necessary. Opponents believe that the limit on citizen involvement proposed in LD 1481 should be made locally, as was the case in Belfast when in 2005 the voters supported a charter change preventing residents from using the referendum process to amend land use, zoning and comprehensive plan ordinances. While the opponents of the bill believe that the citizens have a responsibility to keep up-to-date with the development in their communities, whatever process is available to the citizens to address grievances must be fair and within the control of the citizens, which is not the case with LD 1481 as currently drafted. The opponents also pointed out that there is already closure on the permitting process under current law because when a developer begins construction in reliance on a land use permit, any regulatory interference becomes a compensable "taking".

The proponents of LD 1481 focused on the need for creating a process for businesses that guarantees that the land use rules for which permits have been issued will not change midstream. Proponents made it clear that they support citizen involvement in local decision-making, but stated that in order to be fair to businesses, some level of closure on the process is important. The proponents of the bill believe that LD 1481 provides that level of closure and certainty to businesses, without stripping citizens of the right to engage in the local process.

Although the opponents to LD 1481, including MMA, have suffered an initial loss in the House, the debate on this bill is far from over. When the Legislature returns on the week of April 24th, the House will be considering 20-plus amendments proposed for LD 1481. Many of the amendments seek to address the underlying problem with the bill that holds citizens accountable for executing a process that they do not entirely control.

RECESS (cont'd)

state's obligation is to fund 52.6% of 84% of the EPS operational model.

All of this begs the question of why the proponents of LD 2056 are so adverse to designing a clear, rational, stable and predictable reimbursement system to address the negative impacts of LD 2056 and the shifts of tax burden to remaining property tax base as the business exemption is implemented.

Stay tuned for future developments as this repeal proposal rolls forward.

RESPONSE (cont'd)

taxable property and replacing them with a 50% reimbursement (plus promises) will not hurt towns. Some supporters are even claiming that municipalities will benefit from the cut. If the municipalities would actually benefit, they would be the first to figure that out, first to tell you and first to support the bill.

LD 2056, as printed, puts into motion one of the largest property tax exemptions ever enacted by the Legislature. It is complicated, and for many communities it has severe impacts. Please join us in opposing this bill as drafted. Municipalities continue to remain open to alternative approaches to repealing the tax. There are responsible ways to exempt business equipment from taxation. As drafted, LD 2056 is not one of them.

Municipal Commitment

MMA and the Service Center Coalition understand that legislators are frustrated with the back-and-forth "*he said, she said*" dispute that the debate surrounding LD 2056 has become. MMA is committed to providing any data, answering any question or explaining this issue to legislators who are tired of the fighting. MMA will do its best to keep you informed of why municipalities oppose the bill and produce information about alternatives proposed. Thank you.