

Tax Committee Splits on 5% Reduction to Excise Tax Revenue

As reported in last week's *Legislative Bulletin*, the Taxation Committee held a public hearing on four bills March 17, all of which would make changes to the motor vehicle excise tax system.

Three of those bills would change the structure of the excise tax system by reducing the excise tax base. That base, currently and for the last 80 years, has been the "list price" of the motor vehicle. The fourth bill would change the excise tax credit system. The Committee's decision on that bill is discussed below.

Changing the base. Of the three bills changing the excise tax base:

- LD 436 would require municipalities to use the motor vehicle's actual purchase price as the base
- LD 79 would require the list price to be reduced by 10%

• And, LD 706 would require the list price to be reduced by 10 percent but simultaneously redesign the excise tax rate structure to make up the lost municipal tax revenue.

On Thursday this week, the Tax Com-

mittee voted unanimously (of members present) "ought not to pass" on LD 436 and LD 706. The only bill left on the table was LD 79, *An Act to Base the Excise Tax on Vehicles on a Percentage of the*

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Penetrating the Breadth of Maine's Property Tax Exemptions

Three bills were presented to the Taxation Committee on Monday this week that would in very different ways address a long-time municipal concern with the breadth and width of the exemption given in Maine's tax code to "charitable" corporations and "literary and scientific" institutions.

- One of those bills deals with the

very narrow issue of the motor vehicle excise tax exemption that is gratuitously provided to those exempt institutions over and above their blanket real estate tax exemptions.

- One of those bills would provide an authority for municipalities, at local option, to impose limited service charges on

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LD 493: Street Lights: and the Survey Says...

On Tuesday, March 22, Maine Municipal Association emailed a survey to municipal managers and first selectmen related to LD 493, *An Act to Provide Municipalities with Reciprocal Rights to Rent Space for Street Lights on Utility Poles in Municipal Rights-of-way*. This was in response to an inquiry made by the Public Utilities Commission (PUC) concerning whether there was a genuine municipal interest in owning and maintaining their own street lights.

The task LD 493 proposes to give the PUC is to create an environment for direct municipal control over street light operations, at local option, by: (a) establishing installation fees that the regulated utility may charge for the service of installing the municipally-owned street lights; and (b) exploring the issue of whether properly-credentialed licensed electricians not under the direct employment or control of the regulated public utility should be allowed to conduct the installations.

PUC's concern was that the agency would be directed to undertake this task, expend a lot of time, money and energy,

only to find out that just a few municipalities would take advantage of what LD 493 would permit, if enacted.

The survey was sent to 234 municipalities in the Central Maine Power service area. The focus on CMP's service area is because Bangor Hydro has indicated that it already provides municipalities with the opportunity to own and maintain their own street lights.

Even though the survey was distributed just a couple of days ago, MMA has already heard back from over 20% of the distributees. Twenty-four of those responding communities, about 50 percent, expressed an interest in having the option of owning and/or maintaining their street lights. Of these 24 municipalities, 21 have a population of 3,000 or greater.

MMA wants to hear from the rest of the survey recipients. If at all possible, please respond by Tuesday, March 29 so that we can compile the results and report this back to the PUC and the Energy, Utilities and Technology Committee.

Thank you!

Tax Committee (cont'd)

Manufacturer's Suggested Retail Price, sponsored by Taxation Committee House Chair Rep. Gary Knight (Livermore Falls). As printed, LD 79 would reduce the excise tax base to 90 percent of the list price, cutting municipal revenue statewide by \$20 million. The "ought to pass" motion on LD 79 would amend the bill to reduce the excise tax base to 95 percent of list price, cutting municipal revenue statewide by \$10 million.

The "ought to pass" motion on LD 79 as amended was supported by three of the eight members of the Tax panel present. Five members of the Committee voted "ought not to pass." The reason given for their 'no' vote was a lack of appetite for further cutting municipal revenues in light of the deep reductions in municipal revenue sharing that have occurred over the last two years and are now proposed for the next two years. The 5 members of the Taxation Committee not present on Thursday will have a limited opportunity to cast their vote on the measure. We will report the final Committee vote when it becomes available.

Every town and city can easily figure out what impact LD 79 would have on their operating revenues. It's a straight 5% reduction to the excise tax revenue that would otherwise be available to the town or city for road and bridge infrastructure maintenance. The hit to Maine's largest municipalities, already reeling from revenue sharing cuts, school subsidy reductions and other sharp limits in operating revenue associated with the 2008 recession, begins at \$460,000 for Portland, \$250,000 for Bangor and South

Portland, \$200,000 for Lewiston, and on down the line. Maine's 63 service center municipalities, taken together, are asked to absorb over \$4 million worth of the \$10 million cut associated with LD 79.

Rep. Knight justifies this cut to municipal revenues by describing it as a small percentage of total municipal revenues. That's one way to think about it. A cut of \$10 million to the state's Highway Fund would also be a small fraction of state revenue, but it's nothing this Legislature is proposing to do with its own Highway Fund, particularly in light of the extremely rough condition of Maine's roads.

LD 79 could be scheduled for full debate in the House and Senate within a week or two. Municipal officials should contact their legislators and urge them not to add \$20 million in biennial cuts in municipal operating revenues to the nearly \$100 million in revenue sharing reductions already endorsed by the Taxation Committee over the next two-year period.

Excise tax credit rebates. The other excise tax bill considered by the Taxation Committee on Thursday was LD 462, *An Act to Amend the Laws Governing Excise Tax Credits*. LD 462 would require municipalities to issue rebates to people transferring their registrations from one car to another whenever the excise tax credit (i.e., the excise tax paid for that year on the previously owned junked, sold or abandoned car) is greater than the amount of excise taxes required to register the new car. Those rebates can be provided currently if the town's or city's legislative body so authorizes.

There were several reasons MMA opposed LD 462 when it came up for public hearing last week. A primary reason is that the town meetings and town and city councils are already authorized to make the decision whether or not to provide the rebate, and there is no need for the Legislature to substitute its decision for the decisions decided at the community level. Also, in the circumstance where people move from one town to another, the town providing the rebate may never have received the excise tax payment being partially rebated.

The Taxation Committee agreed and voted "ought not to pass" on the bill. Having done that, however, there was some interest on the part of the Commit-

tee to make sure the boards of selectmen and town and city councils throughout Maine were fully aware of this option to provide the rebate. At the public hearing last week testimony was provided that the legislative bodies in some towns and cities had expressly considered the option of providing this rebate. Some had chosen to provide the rebate and others had decided not to.

By voting "ought not to pass" on LD 462, the Taxation Committee was indicating its support for this local decision-making process rather than handing down the requirement as a state mandate.

The flip side of trusting the municipal town meetings and councils to make the appropriate decision for their communities is an interest in encouraging the communities to actually engage in that debate by putting the option in front of the voters as an article on the town meeting warrant or town or city council's agenda.

In an effort to raise consciousness about this option, MMA agreed to point the readers of the *Legislative Bulletin* to the appropriate statute.

36 MRSA, Section 1482, sub-section 5(D) currently reads in pertinent part that "*If the (excise tax) credit available under this subsection exceeds the amount transferred to another vehicle, a municipality may choose, but is not required to, refund the excess amount. If a municipality chooses to refund excess amounts it must do so in all instances where there is an excess amount.*"

Our understanding is that when a state law gives this type of authority to "a municipality", without making an express reference to a particular municipal official or the municipal "governing body" (e.g., board of selectmen), the authority is being given to the municipality's legislative body to make the decision.

Accordingly, if any municipal officers are interested in putting this option in front of their town meeting or town or city council for consideration, please feel free to discuss the option with their fellow board members and the town's or city's tax collector. You may also want to connect with the town attorney or MMA's Legal Services Department to help you craft the article warrant if you are interested in proceeding.

Legislative Bulletin

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Property Tax (cont'd)

the exempt institutions to cover some of the costs of the municipal services they directly receive.

- One of the bills has the temerity to incorporate into Maine law, for the first time in its history, an actual definition of what “charity” means.

All three bills were slammed by a wall of tax exempt institutions. Nearly 30 nonprofits and lobbyists representing nonprofits spent over four hours on Monday vigorously opposing any attempt to expose their agencies or institutions to an obligation to make financial contributions of any kind toward the services provided by their host communities. From their perspective, their respective missions entirely constitute their fair share contributions to the public good. Any attempt to leverage a modest financial contribution would require them to fire employees, stop providing services, and ultimately force the local governments to provide those services instead.

The opponents included at least six veterans representing various veteran organizations, a couple of representatives of fraternal organizations, a domestic violence agency, two representatives of the YMCA, the Community Housing Association, a private library, the Jackson Laboratory, the Iris Network, the Maine Maritime Museum, the Maine Association of Community Service Providers, the Maine Association of Independent Schools, the Maine Independent Colleges Association, the Maine Association of Non-profit Organizations, the Maine Community Action Association, no less than five owners of summer camps for the Maine Youth Camps Association, the operator of a Boy Scout camp, and the Maine Hospital Association.

Most fire. The bill drawing the most fire at the public hearing was LD 149, *An Act to Authorize Municipalities to Impose Service Charges on Tax-exempt Property Owned by Certain Nonprofit Organizations*. Sponsored by Rep. Michael Celli of Brewer, the bill would authorize municipalities to adopt ordinances that would allow the municipality to charge tax exempt institutions for certain services directly provided by the municipality to the institution. According to Rep. Celli’s bill, these municipal service charges could

only be applied to tax exempt institutions with gross revenues exceeding \$150,000.

MMA testified in support of LD 149, but included in its testimony a version of the same concept developed by the Association’s Legislative Policy Committee two years ago and advanced in 2009 as LD 1290. Among the substantive differences between these two approaches, the bill from two years ago would exempt all institutions from service charges unless the institution owned property in the specific municipality that exceeded \$1 million in value or received revenue at that facility’s location in excess of \$1 million annually. Also, the version from two years ago specifies that the only municipal services subject to a service charge are road services, police services and fire protection services, and LD 1290 provides a standard way to calculate the service charge based on the exempt building’s road frontage or square footage.

East Machias selectman Will Tuell also testified in support of this legislation, as did the Maine Service Center Coalition and Ken Capron of the Maine Center for Constitutional Studies.

Aside from being flat-out opposed to the fundamental concept of being subject to a service charge, the long line of opponents to the bill objected to the \$150,000 gross revenue threshold as created in LD 149. The veteran organizations, especially, pointed out that the operations of the Bingo-type gaming functions they sponsor tend to push their gross revenue to levels well over this threshold, although most of that gross revenue is the winners’ take and the actual net revenue accruing to the veterans’ facilities amounts to just a fraction of the gross. Other relatively small-scale nonprofits made the same point.

Very few opponents even recognized that Rep. Celli’s bill, like the bill that preceded it two years ago, merely authorizes a municipality to adopt a service charge ordinance. Opponent after opponent repeated the point that if services charges were imposed, the non-profit’s services would cease and the local municipality would have to pick up the service at taxpayer expense. Rep. Paul Waterhouse, a Tax Committee member from Bridgton, kept asking these opponents why they thought a municipality would choose to adopt an ordinance that would be to its

obvious disadvantage, but he was given no clean answer.

Least fire. The bill catching the least amount of opposition on Monday was LD 238. LD 238 has a long title, but in summary it would repeal the motor vehicle excise tax exemption that is provided to all “literary and scientific” institutions (primarily private colleges and preparatory schools) and it would limit the excise tax exemption that is provided to the “charitable corporations.” The way LD 238 is written, motor vehicles owned by charitable organizations that are used primarily for transporting or delivering tangible goods to persons who are eligible to receive charitable services would remain eligible for the excise tax exemption. The motor vehicle excise tax would have to be paid, however, for those motor vehicles not used for that service-delivery purpose. These would include motor vehicles used for administrative purposes, courier services, “company cars”, etc.

LD 238 is one of the bills advanced by MMA’s Legislative Policy Committee this year. The financial impacts of LD 238 are not that significant. Two of Maine’s largest cities calculated that the increased excise tax revenue associated with LD 238 falls in the \$25,000 to \$45,000 range, which is a small fraction of total collections. Instead of being a “money bill,” LD 238 is a bill of principle. The motor vehicle excise tax is basically a user-fee system. If you drive motor vehicles on Maine’s roads, and therefore contribute to the need for their repair and maintenance, you should contribute financially to that purpose. That should be regardless of your eligibility for a real estate tax exemption. The tax exempt entities have to pay their light bill and their water and sewer bill. They should contribute, also, to the repair of the road systems upon which they rely.

LD 238 sets one of the lowest bars imaginable with respect to the issue of Maine’s policy on tax exempt properties. If the Legislature believes that the state’s tax exemption policy should extend so far as to provide a motor vehicle excise tax exemption for the hospital’s or college’s routine motor vehicle use for administrative purposes, there is probably nothing that can be done politically to penetrate the much larger exemptions enjoyed by

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Redesigning the State Planning Office

It appears that the roles and responsibilities of the State Planning Office (SPO) will undergo a change of some kind during the next two years. Whether or not the blueprint for the change will take the form of outright demolition or a targeted remodeling has yet to be determined by the Legislature.

Demolition Blueprint. On Monday of this week, the jointly convened Appropriations Committee and State and Local Government Committee had an opportunity to review a demolition proposal. Within the Governor's proposed FY 2012-2013 biennial General Fund budget is a proposal ("Part FF") to abolish SPO and shift its responsibilities to other state agencies.

As proposed, the Commissioner of the Department of Administration and Financial Services (DAFS) is directed to convene and chair a nine-member working group tasked with drafting the legislation that meets the Governor's SPO dissolution goal. In addition to the DAFS commissioner, the working group includes representation from SPO and the commissioners of the Departments of Labor, Public Safety, Defense, Veterans and Emergency Management, Conservation, Economic and Community Development, Marine Resources, and Environmental Protection. Under this proposal, that actual movement of responsibilities from SPO to other state agencies would be accomplished after January 1, 2012. In the meantime, SPO functions would be accomplished through the Executive Office.

Deputy Chief of Staff to the Governor, Kathleen Newman, provided the members of the Appropriations Committee and State and Local Government Committee with a brief overview of the proposal.

In response to the Administration's presentation, the members of the Committees asked several questions. Specifically, members of the Committees wanted to know: 1) why legislators were not included in the working group; 2) why other committees of jurisdiction, such as the State and Local Government Committee, are not provided an opportunity to vet the working group's final recommendations; 3) whether there is a plan for ensuring municipal access to the planning-related technical assistance currently provided by

SPO; 4) whether or not any thought has been given to determining what role SPO should play in the larger picture; and 5) whether or not the working group process would be open to the public.

Ms. Newman indicated that all of the questions posed would be answered at the work session.

Remodeling Blueprint. As would be expected, members of the legislative branch also have ideas for restructuring the Planning Office. One of the ideas being floated by the Legislature shifts responsibility for the Land for Maine's Future program to the Department of Agriculture. Another proposal shifts code enforcement officer (CEO) training to the state's community colleges and CEO certification to the Department of Professional and Financial Regulation.

There is also an alternative proposal to comprehensively remodel SPO. That approach is being forwarded by Rep. Brad Moulton of York as LD 769, *An Act to Review the Functions of the State Planning Office*. Although LD 769 is currently in "concept draft" format, it would appear that the intent of the sponsor is to create the process necessary to determine what functions are best performed by SPO and what functions would be better provided by another state agency or entity.

Public Input. At Monday's hearing, MMA provided testimony in opposition to the Governor's proposal. While municipal officials have no objections with the idea that the responsibilities and roles of SPO should be reviewed and possibly restructured, they believe that the proposal to completely dissolve the state agency goes too far. One appropriate role of SPO, from the municipal perspective, is to provide municipalities with the resources and technical assistance necessary to meet the state's planning goals. For that reason, municipal officials support a more deliberative approach for addressing SPO, such as the proposal found in LD 769.

Furthermore, municipal officials believe that in order to mitigate the unintended consequences associated with a hasty dissolution of SPO, all interested and affected parties need to be involved in the process. While state agency input is vital, contributions from other interested parties will help to unearth the information

necessary to determine how best planning services can be provided to end users.

A representative from the Washington County Council of Governments as well as the Southern Maine Regional Planning Commission also provided testimony in opposition to the Governor's proposal. The concern raised by these representatives was primarily driven by a potential loss of state-level funding that is currently passed through SPO to regional planning organizations. According to their testimony, that funding is vital as those revenues are used to provide member municipalities with the technical assistance necessary to meet the state's planning goals.

Choosing a Bid. The State and Local Government will be discussing the Governor's SPO abolishment plan, Part FF, on Monday, March 28 at 1:00 p.m. The Committee must report its recommendations to the Appropriations Committee by Thursday, April 7.

Property Tax (cont'd)

these corporations and institutions.

A smaller group of opponents singled out LD 238 for their objections, including the YMCA, Maine Independent Colleges Association, Maine Association of Independent Schools, Maine Association of Nonprofits, and the Maine Hospital Association.

The lobbyists for the colleges and preparatory schools objected to the fact that LD 238 repealed the exemption for those institutions but preserved a limited exemption for the charitable organizations if the vehicles were being used for the charitable purpose. It was not made clear what the parallel carve-out exemption would be for the colleges and prep schools, which do not have a mission of providing charitable services.

One legitimate issue raised by some of these opponents was that LD 238 allows an excise tax exemption for vehicles that take charitable goods or services to people, but does not recognize programs that take eligible people to the places where services are provided. That's a part of the printed bill that should be corrected.

Medium fire. Maybe it was just because everyone had talked themselves

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Green Light Turns Red on Streamlined Sales Tax Study

A couple of weeks ago, the Taxation Committee held a hearing on LD 451, *Resolve, To Study Adoption of the Streamlined Sales and Use Tax Agreement*. Sponsored by Rep. Cynthia Dill (Cape Elizabeth), this resolve directs Maine Revenue Services to identify all changes necessary to the state's sales tax code in order to allow Maine to become a full member to the Streamlined Sales and Use Tax Agreement, and to submit that report and proposed legislation to the Taxation Committee by January 15, 2012.

No less than two "MMAs" testified in strong support of LD 451. The first "MMA" was the Maine Merchants Association. The second was the Maine Municipal Association. No one spoke in opposition to the measure.

From the municipal perspective, LD 451 provides an opportunity to take a very modest step toward giving the state's sales tax code a much needed review. At the same time, the resolve allows Maine to collaborate with a majority of the other sales tax states in the nation to create a tremendously simplified sales tax system that is applied evenly to all the retail transactions that the Maine Legislature, and only the Maine Legislature, believes are appropriate.

The Sales and Use Tax Agreement was initiated a decade ago through the work of the National Governors' Association and the National Conference of State Legislatures. A remarkable amount of effort has been invested in the Agreement over that 10-year period. Forty four states are participating in this Agreement. More than half of those states have undertaken the task of amending their sales tax codes into conformity and become full members. MMA's Legislative Policy Committee believes Maine should take the steps necessary to become a full member state.

When the Agreement was first initiated in 2000, the fundamental structure of retail sales transactions was undergoing significant change. Ten years later, that change has now substantially occurred in

many retail environments. Retail activity has migrated from physical stores to virtual stores. There is nothing inherently wrong with that transformation, as long as the application of the sales tax is equitable and doesn't favor one system of retail over another.

That's where the Maine Merchants' Association comes in.

As retail systems have evolved, the Internet is now the shopping mall of America and the virtual stores are doing business in what is effectively a tax exempt paradise. The brick-and-mortar stores in the municipal downtowns are now at a tax disadvantage. The Maine Merchants' Association has members on both sides of the tax system, but recognizes that a fundamental issue of fairness is at play.

It is not the levy of the sales tax that is inequitable, because the Internet and catalogue shoppers are supposed to be paying to their respective states the appropriate "use" tax. We all acknowledge that we don't do that, and we don't do it with impunity. It is generally the case that if the sales tax is not collected at the point of transaction, it will likely not be collected at all.

At the end of the process, it will take an act of Congress to finally overcome the tax discrimination and rebalance the tilted playing field. Until then, however, thousands of retailers in the full member states are voluntarily collecting the sales taxes in "remote" transactions.

It cannot be denied that when the Agreement is fully implemented there will be a financial benefit to the states. It is the financial benefit of collecting the use tax that is not currently being paid by retail shoppers. The sales transactions conducted within the electronic walls of the exempt Internet retailers will become subject to a sales tax levy, and the member states will see greater strength and improved stability in their sales tax collections.

As might be expected, some of the biggest on-line businesses are fighting

the streamlining movement. Despite that resistance, there are many elements of the Agreement that are favorable to retail businesses, which is another point made by the Maine Merchants Association. Within the Agreement there is a major recognition that businesses currently bear too much of the burden of administering a cacophony of sales taxes. The entire process of administration would be significantly simplified through the Agreement by implementing common definitions, common exemptions, grossly simplified rate structures and instantaneous programming technologies. Business liability associated with administrative errors will be greatly reduced, in some administrative applications down to zero. On top of that, the Agreement provides the opportunity for state funding of the administrative costs borne by the businesses, whether remote or physically present.

On Tuesday this week, the Taxation Committee gave a unanimous "ought to pass" report on LD 451.

On Thursday this week, the Committee elected to reconsider its vote. Several Committee members who originally supported the study had subsequently turned against it. Arguments were made that: (1) the study had already been done (in 2006) and didn't need to be re-done; (2) that if the Legislature ever wanted to enter into the Agreement it could do so easily, without the need for a study of the decisions that would have to be made; (3) that the real effort should be comprehensive tax reform and the sales tax was only an incremental piece; (4) that the Agreement is an unconstitutional overreach trying to collect taxes from non sales tax states; and (5) that the effective exemption on Internet sales is a good thing for consumers and shouldn't be tampered with.

When it came to a vote, the Republicans on the Committee voted "ought not to pass" and the Democrats on the Committee stuck with their original "ought to pass" vote.

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://www.state.me.us/legis/>.

Monday, March 28

Appropriations & Financial Affairs
Room 228, State House, 10:00 a.m.
Tel: 287-1316

LD 1043 – (Governor's proposed biennial budget)

With the Joint Standing Committee on Marine Resources.

1:00 p.m.

With the Joint Standing Committee on Transportation.

2:30 p.m.

With the Joint Standing Committee on Energy, Utilities & Technology.

Inland Fisheries & Wildlife
Room 206, Cross State Office Building, 1:00 p.m.
Tel: 287-1338

LD 289 – An Act To Amend the Laws Governing Municipal Recreational Vehicle Registration Agent Fees.

LD 634 – An Act To Allow a Person To Designate Information Submitted for a Hunting or Fishing License as Confidential.

Tuesday, March 29

Appropriations & Financial Affairs
Room 228, State House, 1:00 p.m.
Tel: 287-1316

LD 1043 – (Governor's proposed biennial budget)

With the Joint Standing Committee on Inland Fisheries & Wildlife.

Energy, Utilities & Technology
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1018 – An Act To Amend the Charter of the Anson Water District.

LD 890 – An Act To Create the Anson and Madison Water District.

LD 909 – An Act To Provide Additional Flexibility for the Funding of Infrastructure Improvements by Consumer-owned Water Utilities.

LD 1061 – An Act To Amend the Lien Process for Unpaid Water Rates.

Judiciary
Room 438, State House, 1:00 p.m.
Tel: 287-1327

LD 573 – An Act To Protect the Civil Rights of Citizens.

Wednesday, March 30

Environment & Natural Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1015 – An Act To Reduce Unnecessary Reporting Requirements for the Department of Environmental Protection.

LD 1022 – An Act To Amend the Law Concerning Overboard Discharge Systems.

LD 1009 – Resolve, Directing the Department of Environmental

Protection To Work with the Town of Sanford To Develop a Plan To Clean Up Number One Pond in Sanford.

LD 159 – An Act To Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management.

Inland Fisheries & Wildlife
Room 206, Cross State Office Building, 1:00 p.m.
Tel: 287-1338

LD 108 – An Act To Amend the Fees for Infant Lifetime Hunting Licenses.

LD 692 – An Act To Reduce Nonresident Hunting and Fishing License Fees and To Add Archery Hunting to Combination Licenses.

Veterans & Legal Affairs
Room 437, State House, 1:00 p.m.
Tel: 287-1310

LD 901 – An Act To Prohibit Individuals under 21 Years of Age from Being in Certain Establishments Licensed To Sell Alcohol.

Thursday, March 31

Labor, Commerce, Research & Economic Development
Room 220, Cross State Office Building, 1:00 p.m.
Tel: 287-1333

LD 584 – An Act To Appropriate Funds for the Maine Downtown Center.

LD 771 – An Act To Establish the St. John Valley Regional Planning Commission.

LD 799 – An Act To Provide Capital for Economic Development in Aroostook County.

Marine Resources
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1337

LD 992 – An Act To Amend the Depuration Laws.

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

LD 9 – An Act To Reduce Income Tax to 4.5% and Remove Low-income Families from Taxation.

Transportation
Room 126, State House, 1:00 p.m.
Tel: 287-4148

LD 249 – An Act To Allow Trained Local Law Enforcement Officers To Enforce Federal Motor Carrier Regulations.

LD 770 – Resolve, To Establish a Study Group To Update Weight Regulations.

LD 796 – An Act To Continue the Axle Fine Waiver during the Midwinter Season.

Friday, April 1

Appropriations & Financial Affairs
Room 228, State House, 10:00 a.m.
Tel: 287-1316

LD 1133 – An Act To Reform the Maine Public Employees Retirement System.

Criminal Justice & Public Safety
Rm. 436, State House, 10:00 a.m.
Tel: 287-1122

LD 523 – An Act To Modify the Regulation of Fireworks.

HEARINGS (cont'd)

LD 562 – An Act Regarding Municipal Authority To Review Construction Permits for Public Buildings.

LD 737 – An Act To Grandfather Certain Existing Buildings and Structures with Respect To Fire Safety Codes and Standards.

1:00 p.m.

LD 717 – An Act To Increase the Penalties for Possessing and Displaying a Firearm on School Property.

Environment & Natural Resources
Room 214, Cross State Office Building, 9:30 a.m.
Tel: 287-4149

LD 872 – An Act To Clarify the Natural Resources Protection Act.

LD 156 – An Act To Clarify the Regulation of Impacts to Significant Vernal Pool Habitats under the Natural Resources Protection Act.

LD 341 – An Act To Exempt Artificial Wetlands and Artificial Significant Vernal Pool Habitats from State Regulation.

IN THE HOPPER

(During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the Legislative Bulletin to describe. We would therefore advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website: http://www.memun.org/public/MMA/svc/SFR/LD/LD_fr.htm.)

Agriculture, Conservation & Forestry

LD 1120 – An Act To Move the Land for Maine's Future Program to the Department of Agriculture, Food and Rural Resources. (Sponsored by Rep. Moulton of York; additional cosponsor.)

This bill transfers responsibility for the Land for Maine's Future Program from the State Planning Office to the Department of Agriculture, Food and Rural Resources.

Health & Human Services

LD 1296 – An Act To Amend the Maine Medical Use of Marijuana Act To Protect Patient Privacy. (Sponsored by Rep. Sanderson of Chelsea; additional cosponsors.)

This bill sweeps through the Maine Medical Use of Marijuana Act and makes dozens of changes. Among those changes most pertinent to municipal government, the bill retains the language in existing law that expressly permits a municipality from limiting the number of dispensaries and enacting reasonable regulations applicable to dispensaries, but then prohibits a municipality from adopting any ordinance or regulation concerning the sale, purchase, purchase delay, transfer, ownership, use, possession, bearing, transportation, licensing, permitting, registration or taxation of medical marijuana or any other matter pertaining to medical marijuana other than the regulations established in state law. The bill also prohibits a law enforcement officer from seizing or possessing marijuana in the lawful possession of a qualifying patient, primary caregiver or dispensary, and "clarifies" that a person may not be subject to arrest or prosecution for engaging in conduct authorized by the Maine Medical Use of Marijuana Act.

Inland Fisheries & Wildlife

LD 913 – Resolve, To Consolidate the State's Boat Launch Programs. (Sponsored by Rep. McCabe of Skowhegan; additional cosponsors.)

This resolve directs the Department of Conservation and the Department of Inland Fisheries and Wildlife to develop a plan that combines their boat launch programs into one program under the Department of Conservation. A progress report on the plan must be submitted to the Legislature by December 1, 2011 and the proposed legislation to implement the plan must be submitted to the Legislature by March 1, 2012.

Judiciary

LD 939 – An Act To Enhance Mandated Reporting and Prosecution of Elder Abuse, Neglect and Exploitation. (Sponsored by Rep. Nass of Acton; additional cosponsors.)

This bill adds a number of officials and professionals to the list of people that are mandated to report suspected cases of elder abuse to the

Department of Health and Human Services. Among the mandatory reporters add to the list by this bill are municipal code enforcement officials, firefighters or volunteer firefighters, and persons providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation.

LD 1135 – An Act To Protect the Rights of Property Owners. (Sponsored by Sen. Snowe-Mello of Androscoggin Cty; additional cosponsors.)

This bill requires the state, a municipality and a county to pay compensation for the enactment of application of land use regulations that reduce the fair market value of private property, with limited exceptions. The bill requires the compensation to be provided to the property owner within 180 days after making a written demand for payment. If the compensation is not provided in that time, the property owner has a cause of action in Superior Court for damages and other costs. If the compensation is not paid within two years, the property owner may use the property according to the land use standards that were in effect when the owner acquired the property.

LD 1154 – An Act To Implement the Recommendations of the Right To Know Advisory Committee. (Sponsored by Rep. Nass of Acton.)

This bill makes a number of amendments to Maine's Freedom of Information Act (FOIA) as recommended by the "Right to Know Advisory Committee". The amendments affecting municipal government include: (1) a clarifying paragraph in the opening statute declaring FOIA policy that Maine's Right to Know law "does not prohibit communications outside of public proceeding between members of a public body unless those communication are used to defeat the purposes of the law"; (2) exempting all social security numbers from the definition of a "public record"; and (3) adding a new requirement that public bodies keep records of their meetings if the public body is required to give notice of the meeting and is not purely advisory in its authority. The minimally required contents of the minutes include the date, time and place of the meeting, the members of the body holding the meeting as either present or absent, and all motions and votes taken. If the vote is taken by "roll call", the record must reflect the individual member's votes. An audio, video or other electronic recording of the public proceeding is considered an acceptable record.

LD 1256 – An Act Concerning Tort Claims and Governmental Entities. (Sponsored by Sen. Bartlett of Cumberland County.)

Under Maine's Tort Claims Act, governmental entities such as municipalities are liable for their negligent acts or omissions in their ownership, maintenance or use of vehicle, motor vehicle, aircraft, watercraft, snowmobiles and other machinery or equipment. This bill further defines the term "use" to provide that a governmental entity is liable for such use regardless of whether its employee is operating the vehicle, machinery or equipment at the time of the occurrence, but a is not liable for the negligence of any nongovernmental person or entity in connection with such use. The bill further provides that a governmental entity may be jointly and severally liable with a nongovernmental person or entity only if the negligent acts or omissions of the governmental entity were the cause of the injury or damage.

Property Tax (cont'd)

out after nearly 4 hours of testimony, but the bill that caught a medium amount of oppositional fire was LD 405, *An Act to Clarify Charitable Status for Property Tax Exemption*, sponsored by Rep. Diane Tilton of Harrington.

The beauty of LD 405 is that it points out the fact that something has been missing all along in Maine's tax code regarding tax exempt charitable organizations. Current law is quick to point out how a corporation has to organize itself in order to be eligible for the exemption, and the law makes it clear in the sternest of terms that the organization must be devoted solely to its "charitable purpose". What the law fails to actually define, however, is what "charity" or a "charitable purpose" actually is. It's a magician's sleight-of-hand; charity is an abstract concept unless defined.

To address that blind spot in the statute, LD 405 borrows from Pennsylvania law to add two definitions of a charitable organization. First, the organization must "*donate or render gratuitously a substantial portion of its services*". Also, it must "*benefit a substantial and indefinite class of persons who are the legitimate subjects*

of charity."

Rep. Tilton presented the bill as a way to provide better guidance to municipal officials who have to determine whether an organization is eligible or ineligible as a "charity" without being provided any statutory guidance as to what charity is. MMA testified in support of LD 405, as did Selectman Will Tuell from East Machias. MMA testified that to its knowledge the framework of the charitable standards established in Pennsylvania law have been codified into measurable standards that use the financial statements of these organizations, as filed with the Internal Revenue Service, to calculate whether the charitability standard has been met.

Opponents were the Maine Hospital Association, the Maine Youth Camp Association, the YMCA, the Iris Network, the Maine Maritime Museum, Community Housing of Maine and an attorney with an Augusta law firm who advertises as an expert advisor for tax exempt entities. This attorney told the Committee he was speaking as a "concerned citizen" and a board member for an unnamed nonprofit organization.

The thrust of the oppositional testimony was that the term "substantial" in

this definition is vague and unquantified and would only serve as a "lawyer's paradise". The assertion that "the only people benefiting from this bill are the lawyers" is a rhetorical self-deprecation that lawyer-lobbyists use to oppose bills their clients want killed. The diversionary claim is that even though the lawyer-lobbyists would benefit from the bill personally because it would increase their workload, they are opposing it against their financial self interest for the public good. Some people actually buy into this blarney.

The substantive oppositional testimony came from the Maine Youth Camp Association which asserted the infusion of this definition of "charity" would substantively change the eligibility of some current beneficiaries of Maine's overly broad exemption.

The question to the Legislature is whether the municipalities deserve a definition of what "charity" actually means in the state tax code, as is offered in other states. If so, and if there is something about the Pennsylvania standard, how should that definition be worded?

The Committee's work session on these three bills is scheduled for Monday, March 28th at 10:00 a.m.