

## A Taxation Potpourri: TIFs, Personal Property Exemptions and Tax Acquired Property Rebates

The Taxation Committee always deals with a great deal of proposed legislation, and at this mid-point time in the session the Committee's public hearing schedule is characterized by clusters of bills dealing with the same general topic. On Monday afternoon this week there was a personal property tax cluster, and Tax Increment Financing cluster and a cluster of bills dealing with the administration of the property tax.

**Property Tax Administration.** For example, the property tax administration bills included LD 229, which would require municipal tax collectors to notify a taxpayer whenever a third-party made a payment against a tax lien on the property owner's behalf. The bill was submitted by Rep. Alan Casavant (Biddeford) in response to a constituent whose property was apparently put up for sale on Craig's List by a person claiming ownership as a result of paying off the property's tax lien. Although paying off a tax lien before the point of foreclosure has absolutely no bearing on property ownership, some people believe it creates an ownership interest. Apparently in this case, the person unscrupulously used the fact of his payment to support selling the property on line.

MMA, along with Bangor's David Little representing the Maine Municipal Tax Collectors and Treasurer's Association (MMTCTA), testified in opposition to LD 229. Even Rep. Casavant admitted the bill was too broadly worded to capture his intent because it requires municipal tax collectors to notify the property owner by certified mail every time any person makes any payment toward a tax lien, including financial institutions, relatives and other parties who are clearly acting with the full

knowledge of the property owner. After hearing about the issue LD 229 was trying to address, MMA's testimony focused on the inherent difficulty of a notice requirement applied to tax collectors adequately dealing with the problem of people misrepresenting an ownership interest in real estate being sold online.

Another tax administration bill heard

on Monday of particular municipal interest was LD 764, *An Act to Ensure That Municipalities Refund Amounts Collected in Excess of Tax Liens*. Sponsored by Rep. Mike McClellan of Raymond, LD 764 would require municipalities to sell tax acquired property within 180 days of tax lien foreclosure and return to the former

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## Excise Tax Evasion 101 – Shifting Burdens to Property Taxpayers

On Thursday this week, the Transportation Committee held a public hearing on LD 1047, *An Act Pertaining to Vehicle Registrations*. The bill, sponsored by Rep. John Tuttle of Sanford, would enable motor vehicle owners who fail to register their cars in a timely manner to gain advantage by that delay by re-setting their registration month as the month they decide to reenter the registration system.

At the public hearing Rep. Tuttle testified that he had submitted the legislation on behalf of a constituent who had registered his car late and at great expense. Rep Tuttle believes that the change proposed in LD 1047 would help Maine residents who simply forget to register their automobiles on a timely basis.

Sen. Douglas Thomas of Somerset County, a co-sponsor on the bill, also testified in support of LD 1047, but admitted that amendments were necessary. Sen. Thomas believes that the benefit of re-setting the registration month should be reserved for registrants who are six or more months late. Sen. Thomas is interested in providing a break to residents who may

not use their vehicles six months or more out of the year.

The opponents of LD 1047, which included MMA, the Department of Motor Vehicle's Gary Hinckley, and Bangor Treasurer David Little who submitted written testimony on behalf of the Maine Municipal Tax Collectors' and Treasurers' Association, raised common concerns with the bill.

As proposed, LD 1047 would generally reduce the amount of excise tax revenue collected by municipalities, and therefore reduce the resources communities have to repair and maintain 13,000 miles of local roads. Of even greater concern, LD 1047 would actually encourage and reward being delinquent in reregistering a motor vehicle. Every month a person could avoid registering a motor vehicle would be less excise taxes this person would have to contribute to public road maintenance.

Under existing law, when a person postpones registering a vehicle, the impact to the community is a delay in the receipt

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## Taxation Potpourri (cont'd)

property owner all proceeds from the sale after subtracting back taxes, interest and costs. The idea for the bill came to Rep. McClellan, but not from an actual example of a town profiting largely from the sale of exempt property. Apparently a family in Rep. McClellan's area got behind in their taxes and because the husband had severe medical issues, disregarded their tax deadlines and the property was acquired by the town. In this particular case, the woman approached the town manager, a plan was worked out, and the situation ended favorably for the property owner. The circumstance prompted Rep. McClellan to submit the bill, however, because he learned that a different result would be possible; that is, the property could be sold for more than the back taxes and the difference would not have to be returned to the homeowner.

David Little of the MMTCTA along with MMA testified in opposition to LD 764. The MMA testimony focused on the half-dozen reasons the Association's Legislative Policy Committee voted to oppose the bill.

For starters, the decision about what to do about tax acquired property rightfully belongs to the legislative body of the town or city that acquired the property, and MMA attached to its testimony just a few samples of the many detailed and comprehensive policies on that subject adopted by the town meetings and town and city councils across the state. Municipal officials can get concerned when the Legislature seeks to impose its judgment over the judgment of the municipal leg-

islative bodies, especially when the town and city officials are already taking the issue seriously and dealing with it both comprehensively and responsibly.

MMA also pointed out that although the municipalities go to great lengths and employ various strategies to keep the former owners in their homes and get the title to the foreclosed property back to the former owners, LD 764 would completely frustrate that intention by forcing the immediate sale of the property. On top of that, the municipalities do not believe they should be saddled with the mandate of becoming property managers for the former owners, subject to all the potential claims of mismanagement and attendant liabilities.

Finally, consideration should also be given to the fact that in most cases the disposition of tax acquired property results in a net loss to the municipalities, which often have to deal with dilapidated buildings, environmental liabilities, and managing abandoned personal property in the process of getting the property back to a saleable status.

The kicker provision in LD 764, also triggering municipal objection, is the requirement that the rebate to the former property owner must be sent to the State's General Fund in the event the former owner can't be found by the town or city!

The Committee's work session on LD 764 is Monday, April 11.

### Personal property tax exemptions.

Two bills were presented to the Taxation Committee that would create or expand tax exemptions for owners of personal property.

LD 686, sponsored by Rep. Cornell du Houx of Brunswick, would create an exemption for any small business owning less than \$75,000 worth of taxable personal property. LD 822, sponsored by Rep. Doug Damon of Bangor, would exempt all office furniture and fixtures from the personal property tax. LD 822 would also move the personal property of almost all retail stores, except for the larger supermarkets and big box stores, from the Business Equipment Tax Reimbursement (BETR) program to the Business Equipment Tax Exemption (BETE) program.

MMA testified against both bills for similar reasons. The state's policy with respect to the taxation of personal property has been evolving since the enactment of

the BETR program in 1994, but certain principles have always been in place.

First, neither BETR nor the BETE exemption created a retroactive effect of taking property off the tax rolls after becoming taxable. In all cases, the tax changes were made prospective for the express reason of not cutting sharply into an existing tax base. In contrast, both LDs 686 and 822 would exempt property from taxation that is currently being assessed as taxable by the municipalities.

In addition, Maine's policy regarding personal property exemptions has always focused on property that contributes directly to the production of goods and delivery of services. Office furniture and fixtures have never been included in that category.

Finally, there were several reasons why retail personal property was put in the reimbursement category (BETR) rather than the exemption category (BETE) when the exemption law was enacted in 2006, including: (1) retail location decisions are less affected by tax policies than manufacturing location decisions; (2) retail personal property is commonly taxed in other states; (3) the treatment under BETR provides the same benefit to the property owner without hurting the municipal tax base; and (4) Maine's service center communities would be particularly negatively affected if retail personalty became exempt, pushing the residential tax burden in those communities even higher.

### Tax Increment Financing (TIF).

The public hearing cluster on TIF issues included four bills; MMA weighed in on three.

LD 823, developed by Biddeford's Community Development Director Daniel Stevenson, would make some strategic adjustments to the TIF law to provide a somewhat greater opportunity to spur economic development in a particularly tough economy. Specifically, LD 823 would relax the requirement that bond-funded projects in a TIF development program must be accomplished within 5 years to accommodate the financing delays that inevitably occur in a sour economy. LD 823 also increases the maturity date on those bonds from 20 years to 30 years, allows funding to establish or obtain grants, rather than just loans, to be part

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### Legislative Bulletin

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# Enhanced General Assistance Reimbursement Cliffhanger

On Thursday this week, the Health and Human Services Committee voted by a margin of 6 to 5 to oppose the Governor's proposal to reduce the state's share of "enhanced" General Assistance (GA) reimbursement from 90 percent to 75 percent. Although a "majority" of Committee members present opposed the Governor's recommendation, the two members absent at the time of the vote could have an impact on the final outcome.

The "enhanced" state reimbursement is provided to municipalities that because of their exceptional exposure to the claims of GA recipients provide especially high levels of GA benefits as measured by the taxable value of the municipality. Although the general level of state support for a town or city's direct GA expenditure is 50%, the reimbursement level climbs to 90% for these over-threshold expenditures. The Governor's proposal to reduce that reimbursement rate from 90% to 75% would shift \$1.4 million of burden to five municipalities; three of which - Portland, Bangor and Lewiston - are the state's largest service center communities.

Although most of the Committee votes on the social service elements of the budget were along party lines, with the six Republicans in the room supporting the Governor's proposal and the five Democrats opposing the recommendations, there was a shift in the vote on the GA reimbursement funding.

Sen. Nichi Farnham of Penobscot County strayed from the party line for this one vote.

Concerned that the \$1.4 million dollar hit would primarily impact the state's largest service center communities, Sen. Farnham voted to preserve the enhanced funding for at least two more years. In order to limit the increasing burden the GA program places on property taxpayers, Sen. Farnham conditioned her vote with support for legislation to study ways to make the GA program more efficient, uniform, and accountable to the taxpayers.

The Committee also voted to table decisions on the three other elements of the Governor's budget seeking to tighten up the GA program by holding recipients more accountable for their actions. As pro-

vided in Part JJ of the proposed 2012-2013 General Fund budget, these accountability measures include proposals to: 1) increase from 120 to 180 days the ineligibility timeframes for GA applicants who commit fraud or violate work requirements; 2) enable administrators to include the value of the Circuit Breaker benefit as income in the calculation of GA eligibility; and

## Taxation Potpourri (cont'd)

of a development program, and allows job training programs in a development program to include persons who may not be residents of the municipality.

MMA testified in support of LD 823, characterizing the changes as modest but necessary to give some economic development opportunities a chance of happening. As Daniel Stevenson put it, a TIF agreement doesn't make economic development occur all by itself. Instead, TIFs are way to bridge the final hurdle or that last obstacle preventing a financing package from getting off the table. A small amount of additional flexibility can make all the difference.

MMA also testified in support of LD 855, sponsored by Sen. Doug Thomas (Piscataquis Cty.), which provides plantations with the same authority to enter into TIF agreements as provided to municipalities. Generally, plantations are considered municipalities because they are so closely aligned in authority and structure. Their exclusion from TIF authority is most probably a legislative oversight.

With respect to both these bills, there appeared to be some resistance on the Tax Committee for relaxing or expanding any TIF standards. One concern is that sheltering TIF value from a municipality's state valuation is unfair or inappropriately reduces the tax base available to contribute to K-12 education. Ironically, the creation of TIF law was to address an inequity in the other direction. Before the TIF system was authorized, economic development success stories on the local level resulted in negative effects to the host communities in terms of reduced school funding, reduced municipal revenue sharing and increased county taxes. To criticize the

3) make applicants who refuse to use or voluntarily abandon available resources ineligible to receive GA for 120 days.

Apparently, the tabled items will be somehow addressed in the Committee's response to the budget "change package", a yet-to-be-released revision of the proposed budget to be submitted by the LePage Administration.

The recommendations of the Health and Human Services Committee will now be forwarded to the Appropriations Committee for consideration.

TIF law for trying to mitigate the disincentive associated with trying to attract economic development brings us back to square one.

Finally, MMA testified neither for nor against the final TIF bill, LD 1036, *An Act to Clarify the Municipal Development District Law*. Sponsored by Rep. Heather Sirocki of Scarborough, this bill was most strongly advocated by Steven Scharf of Portland. The bill creates a new authority to establish a "credit enhancement" TIF in a "blighted area", but requires certain new-employee thresholds to be met before a municipality would be authorized to release the credit enhancement payments to the newly established business in those TIF districts. The motive behind LD 1036, it would appear, is Mr. Scharf's concern with TIF agreements that assist businesses moving from one part of a community to another, or across municipal lines, without actually providing increased net employment. As an example, he cited a TIF agreement in Portland involving the relocation of the PierceAtwood law firm.

MMA's Legislative Policy Committee is supportive of creating new economic development tools for disadvantaged or blighted areas, but TIFs can already be created in those neighborhoods. In addition, municipal officials had many questions about how the increased employment thresholds would be managed. LD 1036 also mandates additional and expansive public notice requirements for TIF public hearings. One of those requirements would obligate the municipality, after employing all the other notice requirements already on the books, to send a letter to any person the municipality knows or would have reason to know has an interest in the proposed TIF. A tough standard to satisfy.

# The Maine Tort Claims Act and What the Meaning of ‘Use’ Is

On Wednesday, April 6<sup>th</sup>, the Judiciary Committee heard testimony on LD 1256, *An Act Concerning Tort Claims and Governmental Entities*. Currently, under Maine’s Tort Claims Act (MTCA), governmental entities such as municipalities are liable for negligent acts or omissions in their ownership, maintenance or use of a motor vehicle, aircraft, watercraft, snowmobile and other machinery or equipment. LD 1256 expands the definition of “use” to provide that the governmental unit is liable for such use regardless of whether its employee or a contracted individual is operating a municipally-owned or contractor-owned vehicle, machinery or equipment at the time of occurrence.

**Opening Remarks.** Senator Phil Bartlett (Cumberland Cty.), the sponsor of the bill, introduced LD 1256 to the Committee. According to Senator Bartlett, LD 1256’s purpose is to try to carefully define the term “use” in Section 8104-A, subsection 1 of the Maine Tort Claims Act. The sponsor said that if “use” as defined by the Maine Law Court in the *Estate of Shannon J. Fortier et al. v. City of Lewiston et al.* was, in fact, the intent of the original legislation, then the issue of defining “use” is worthy of reconsideration by this Committee.

**Precedent.** On June 3, 2010, the Maine Supreme Judicial Court overturned a lower court’s decision made by the Superior Court in Androscoggin County in the above-cited case. In that case, the lower court denied the City of Lewiston (City) a motion for summary judgment in a wrongful death suit brought by the estates of three Lewiston High School students. The students passed away in a 2006 plane crash while attending an Air Force Junior Reserve Officer Training Corps program sponsored by the school department of the City.

According to the estates of the three students, the City “used” the aircraft when it employed Twin Cities Air Services (Twin Cities), the aircraft contractor that provided the aircraft and employed the pilot. Based on the plaintiff’s testimony, prior to the students boarding the plane, a City employee, who was also the commander of the Junior ROTC program, noticed

an unusual landing of an earlier flight by the pilot for Twin Cities. After that observation, the City employee allowed the students to board their flight piloted by the same individual that performed the earlier landing. The aircraft carrying the students subsequently crashed, killing everyone on board.

The City claimed it was immune from any liability related to this lawsuit because: (1) it did not own, maintain or “use” the aircraft; and (2) the City employee was performing a discretionary function when he made the decision to allow the three students to board the plane. The Superior Court denied both motions. The City appealed. The Law Court of Maine determined in a 4 to 3 decision that “use” did not mean “employed for the benefit of” (as the plaintiffs and Superior Court defined it) but rather was more narrowly defined as “operated” and therefore the City was immune to liability because it did not meet the exceptions to immunity listed in the MTCA.

**Trial Lawyers support.** Two trial lawyers testified in support of this bill.

The first individual focused most of his testimony on the dissenting opinion from the Law Court decision. This claim was that “use” had a broader definition than the majority’s opinion. By quoting the dissenting opinion, this individual felt that “using” is better defined as “employed” versus “operating”. He then went on to mention that it was common for local governments to contract with independent operators to provide transportation services as well as to perform activities such as garbage collection or street maintenance. It was this individual’s opinion that the Law Court’s majority opinion defining the term “use” would render the law outmoded and unresponsive to the frequency with which governments contract for transportation (and probably other services) in today’s economy. It was assumed by this individual that this could not be the intention of the Legislature when crafting the MTCA and requested the Committee to restore what he believes to be the legislative intent.

The other proponent of this bill was a representative from the Maine Trial Law-

yers Association. His addition to the previous testimony related to the infrequency of lawsuits like this that were on record. According to his testimony, these types of cases are few and far between, but this issue needs to be addressed because more and more governments are contracting out services to private individuals due to these difficult economic times. According to this opinion, it was stated that there would be no significant financial impact to governmental entities if this bill is enacted.

The other point made by this trial lawyer was that many municipalities have insurance for this type of claim and expect to incur losses as a result. By allowing immunity, this provides these municipalities with unexpected “cash windfalls” when court decisions are made similar to the Lewiston case.

**The Governmental position.** The same number of individuals testified in opposition to this bill. MMA and the chief legal counsel for the Governor’s Office provided similar testimony to the Committee. The argument made by both parties was that by enacting LD 1256 and broadening the definition for “use” under the Maine Tort Claims Act, governmental entities would experience: (a) increased exposure to liability for injuries or damages for which the governmental entity was not responsible; (b) increased cost of insurance; (c) increased number of lawsuits being filed; and (d) decreased governmental activities due to the threat of increased exposure to liability.

Based on the testimony provided by the opponents, the term “use” as defined in the bill is so expansive that it would include virtually any direct or indirect utilization of motor vehicles, aircraft, watercraft, snowmobiles or other equipment—whether owned and operated by the municipality or not – and would make it much more difficult to dismiss an unfounded case on the grounds of immunity under the Act.

The other concern raised was related to the use of the term “jointly and severally liable” in the bill. It was mentioned that there was contradictory language in the bill as presented. According to LD 1256, a governmental entity may be jointly and

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# Down the Drain: The Flushables Bill

On March 25, the Environment and Natural Resources Committee heard testimony on LD 781, *An Act To Establish Flushability Standards for Consumer Products Advertised as Flushable*. LD 781 prohibits the packaging or labeling of paper or non-woven consumer products for distribution or sale in Maine if the package is labeled as a “flushable” product or as otherwise safe for sewer or septic systems unless the product meets a certain published acceptance criteria for flushability. According to the bill, “flushable” means that a product will be able to clear toilets and properly maintained drainage pipe systems under expected product usage conditions. The definition goes on to require that the product be compatible with wastewater conveyance, treatment, reuse and disposal systems and it becomes unrecognizable in a reasonable period of time.

**Plunging In.** The bill’s sponsor, Representative Melissa Walsh-Innes of Yarmouth, introduced the bill to the Committee members. During the introduction, the Representative stated that LD 781 is a “truth in advertising” bill. It was never intended to restrict or impede a private company’s right to create, market, sell, or profit from consumer convenience products. In addition, the bill was never supposed to prevent consumers from purchasing or enjoying convenience products.

Representative Walsh-Innes disclosed that the issue came to her attention through discussions with the superintendent of the Yarmouth wastewater system.

The sponsor wrapped up her introduction of the bill by detailing a trip down the grocery store aisle only to discover that there was no uniformity in the labeling of these products and why this could be a source of some confusion on the consumer’s part.

**Accurate Labeling.** The supporters of LD 781 testified that this bill made sense due to financial, environmental and worker safety considerations.

According to proponents, when certain products are dispersed into a municipal sewer system that should not be, sewer system employees are often called out to fix the associated problem, such as a pump failure. Emergency service calls

often add overtime wage expense to the operating budget. Specialized equipment such as grinders or screens may have to be purchased to deal with this problem so that employees are not always being called upon to fix clogged sewer mains. Also, system user education is an approach taken by some sewer departments and districts in order to curb this practice, which costs these systems money as well.

In addition to the financial implications, if the system cannot handle the product that has been flushed, the sewer system employee is required to perform tasks to try to alleviate the problem which may jeopardize that worker’s safety due to necessary straining in compact spaces.

The other ramification from a compromised sewer main or pump would be environmental concerns due to sewage spills occurring. These equipment failures and resulting spills can also impact sewer systems financially due to possible compliance penalties.

**Mercy Flushing.** One proponent, a waste water and storm water engineer, drove home these arguments by sharing results of a survey that was sent to various Maine sewer departments and districts. One of the findings from the survey indicated that 90% of the 57 respondents realized problems with their systems that could be tied back to “flushable” products. With 36 entities responding to the follow up question, approximately 64% of them, or 23 sewer system facilities, had experienced more than 10 incidents related to this issue of “flushable” products in 2010.

This same individual then moved onto a “show and tell” presentation for the benefit of the Committee members. As part of this “good, bad and ugly” performance, one product that was marketed as “flushable” had still not broken down after soaking in water for approximately a week.

Other individuals testifying in favor of the bill included representatives from Maine Waste Water Control Association, MMA, Portland Water District, and Brunswick Sewer District along with a “jack of all trades” sewer department superintendent, a plumbing and heating contractor, and the owner of Colin Canning & Sons (a septic tank cleaning & pumping business).

**More Educating.** One individual

testified in opposition to LD 781. A lobbyist for the INDA (U.S. Association of non-woven fabrics industry) made the case that this bill would not solve the problem that sewer systems are experiencing related to flushing non-flushable products. Since no other state has adopted a law similar to this bill, Maine would be the first and it could open up a “patchwork” of legislation across the nation. According to this individual, one of the ramifications of this possible “patchwork” of laws is that manufacturers of these products will remove any “flushable” label and could exacerbate the problems that sewer systems are experiencing related to these products.

The sole opponent to the bill also thought that this legislation was taking a “ready, fire, aim” approach to the issue. He felt that more discussions between the manufacturers of these products and the sewer system operators would make sense for all parties so that the real issue of consumers flushing “non-flushables” (regardless of labeling) could be addressed. Rather than labeling standards, improving education efforts by sewer system operators was a major thrust of the opponent’s solution to this pesky problem.

**Committee Response.** During the public hearing, committee members had a number of questions, which included:

- How do you combat the manufacturer that says they will pull out of Maine because of this labeling requirement?
- How will INDA have their members comply with this bill, if enacted?
- What educational efforts have occurred in the past?
- How do you enforce something like this? The Department of Environment Protection expressed some concern about being required to perform this function.
- How can you do this without tying the hands of business?

At the work session on Tuesday, April 5<sup>th</sup>, the Committee decided to jiggle the handle and carry this bill over to the second session of the 125<sup>th</sup> Legislature. By carrying the bill over, this allows members of INDA and waste water treatment plant operators the necessary time to discuss this matter in greater detail, conduct evaluations of sewer systems as it relates

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# Subsidizing Recreational Vehicle Services

On Monday this week, the Inland Fisheries and Wildlife (IF&W) Committee quickly and unanimously voted “ought not to pass” on LD 289, *An Act to Amend the Laws Governing Municipal Recreational Vehicle Registration Agent Fees*”.

As described in detail in the April 1<sup>st</sup> edition of the *Legislative Bulletin*, LD 289 would have increased the fees municipalities collect for registering snowmobiles, boats and ATVs on behalf of the state and for the convenience of recreational vehicle owners. The fees collected by municipalities are used to recoup some, but not all, of the costs associated with providing the registration service locally.

As proposed in LD 289, the fee for registering a new recreational vehicle would have increased from \$2 to \$4 and from \$1 to \$3 for renewals. While as a matter of percentage the fee increase may appear steep, the increase is actually long overdue when taking into account the last

time these fees were adjusted. The fee for a new registration was last adjusted in 2001 when the then \$1 agent fee was increased to \$2. The \$1 fee for renewal registrations has not been adjusted since its enactment in 1985, over 25 years ago.

The fact that not one of the special interest groups affected by the fee increase testified in opposition to LD 289 had no impact on the Committee. During the brief discussion on the merits of the bill (or alleged lack thereof), the Committee determined that the proposed fee increase was too much of a burden to shift to the owners of snowmobiles, boats and ATVs. The uncontested municipal testimony is that the fees are not carrying the actual costs of administering this revenue collection program for the State, and therefore the property taxpayers are picking up the tab. Either the Committee was not persuaded by the testimony, or it supports that result.

## Excise Tax (cont'd)

of the excise tax revenues that are used to support local road and bridge programs. While the delay of the revenue can be an inconvenience, the revenues are eventually received.

As proposed by LD 1047, however, not only is payment of the excise tax delayed, the amount of excise tax paid to the community is reduced. The loss of revenue would occur because between the expiration month of the original registration and the new registration month no excise taxes would be assessed or collected. This loss of revenue could result in a reduction in resources for road maintenance and repair, an increase in property taxes for those services, or a combination of both.

The opponents also find LD 1047 to be fundamentally unfair to persons who register motor vehicles on a timely basis. The fair and equitable collection of excise tax revenue is important to municipal officials because they believe the users of the road system should be contributing to the cost of maintaining the community’s infrastructure rather than shifting additional burdens onto the property taxpayers.

Although a few of the Committee members expressed some level of interest in the proposal, it is too soon to tell whether or not there will be significant support for this idea. Although the intent is to help out residents who simply forget to register their vehicles or those that use their cars only part of a year, the consequence is that additional burdens are shifted onto the property taxpayers. This is a consequence that municipal officials strongly oppose.

The Committee will be taking a vote on LD 1047 next Friday, April 15th at 9:00 a.m.

## Maine Tort Claims (cont'd)

severally liable with a non-governmental entity or person only if the negligent act or omission of the governmental entity was a cause of the damage or injury but earlier in the bill it specifically states a governmental entity is not liable for the negligence of any governmental person or entity. Depending on how this contradiction is resolved, the result could be a governmental entity found to be 5% at fault for failing to properly supervise a contractor and the contractor, a non-governmental entity, is found to be 95% at fault, but cannot pay 95% of the judgment, then the governmental entity is on

the hook for 100% under the “joint and several” liability provision.

To address the proponents’ claim that these types of cases are few and far between and therefore would not represent a significant financial impact to governmental entities, opponents to the bill made the case that past performance is no indication of future performance. By broadening this definition of “use”, the boundaries of immunity will significantly change.

**Unbiased Risk Manager.** The director of risk management for the State of Maine testified neither for nor against LD 1256. As part of his testimony, he indicated that he was not surprised by the Law Court’s decision in the City of Lewiston case and that he defines “use” as “operating” as well. He also made a request of the Committee to clarify the definition of “use” in this bill so that it is understandable. Apparently, even after his request of the Attorney General’s Office to do so, he was not provided a straight answer regarding the proposed definition of “use” under LD 1256.

## Committee’s Cross Examination.

Before explaining that a work session had yet to be scheduled, Committee members had a number of questions for the individuals testifying. A few of these inquiries included: (a) questions related to various hypothetical situations where a municipality contracts a private individual or company to plow roads or operate a bus and what responsibility the governmental entity has over that contracted party’s negligence with their maintenance or operation of the vehicle; (b) if anyone knew of other cases like the Lewiston case in which a plaintiff sues a governmental entity for negligent actions by contracted parties; and (c) based on the proponent’s testimony, what kind of “cash windfall” accrues to a governmental entity’s insurance program when the government unit is found immune under the MTCA.

Stay tuned!

## Flushables (cont'd)

to “flushable” products to provide further evidence of the problem, brainstorm for more educational ideas for the benefit of the consumers of these products and the sewer operators, and develop a work plan to address issues identified and agreed upon by the participants in this exercise.

## 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, April 11*

**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 1347 – An Act Relating to Locations where Concealed Weapons May Be Carried.

LD 658 – An Act To Modify the Requirement of a Permit To Carry a Concealed Weapon.

LD 1232 – An Act To Enhance Self-defense by Removing Restrictions on the Carrying and Use of Weapons.

LD 1176 – An Act To Enhance Reciprocity Agreements Regarding Permits To Carry Concealed Firearms.

LD 35 – An Act Relating to Concealed Firearms Locked in Vehicles.

LD 446 – An Act To Allow Law Enforcement Officers from Out of State To Carry Concealed Weapons.

LD 578 – An Act To Allow Municipalities To Restrict the Possession of Firearms in Certain Circumstances.

**Inland Fisheries & Wildlife**  
**Room 206, Cross State Office Building, 10:00 a.m.**  
**Tel: 287-1338**

LD 749 – An Act To Allow Sunday Hunting in Northern Maine.

**State & Local Government**  
**Room 216, Cross State Office Building, 10:00 a.m.**  
**Tel: 287-1330**

LD 1079 – An Act To Authorize Peaks Island, House Island, Pumpkin Knob and Catnip Island To Secede from the City of Portland.

**Taxation**  
**Room 127, State House, 10:00 a.m.**  
**Tel: 287-1552**

LD 474 – An Act To Reduce the Property Tax Burden and Improve the Circuitbreaker Program.

LD 1341 – An Act To Provide Rent Relief to Low-income Maine Residents.

### *Tuesday, April 12*

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

LD 375 – An Act To Exempt Boilers in Municipalities and Schoolhouses from State Inspection Requirements.

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

LD 808 – An Act Regarding Property Taxes in the Unorganized Territories.

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

LD 1148 – An Act To Improve Vehicle Safety for First Responders.

LD 1167 – An Act To Protect the Privacy of Persons Involved in Reportable Motor Vehicle Accidents.

LD 1189 – An Act To Require Bicyclists To Contribute to the Improvement of Bikeways.

LD 1219 – Resolve, To Require the Department of Transportation To Designate the Park Street Bridge in the Town of Presque Isle the Gold Star Memorial Bridge.

### *Wednesday, April 13*

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

LD 693 – An Act Concerning Solid Waste Facility Citizen Advisory Committees.

LD 879 – An Act To Ensure Adequate Landfill Capacity in the State for Solid Waste.

LD 1255 – Resolve, to Study Initiatives To Increase Recycling in Maine.

LD 1320 – An Act To Increase the Recycling Rate in Maine.

LD 524 – An Act To Charge a Fee for Garbage Disposal To Encourage Recycling.

LD 1278 – An Act To Stabilize Solid Waste Management Funding.

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

LD 913 – Resolve, To Consolidate the State's Boat Launch Programs.

LD 641 – An Act To Allow a Portion of Snowmobile Registration Fees To Be Used for the Repair of Trail-grooming Equipment.

LD 993 – An Act To Allow a Snowmobile Registered in New Hampshire To Be Operated in This State.

### *Thursday, April 14*

**Criminal Justice & Public Safety**  
**Rm. 436, State House, 1:00 p.m.**  
**Tel: 287-1122**

LD 1227 – An Act Concerning the Disposal of Unclaimed, Lost or Stolen Personal Property by Law Enforcement Agencies.

LD 1143 – An Act To Require That Law Enforcement Officials Collect DNA Samples from Persons Arrested for Certain Crimes.

LD 1315 – An Act To Establish an Integrated Statewide System To Manage and Enforce Electronic Warrants.

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

LD 383 – An Act To Eliminate the Annual Indexing of Fuel Tax Rates.

LD 426 – An Act To Amend the Laws Governing the TransCap Trust Fund.

LD 432 – An Act To Authorize a GARVEE Bond for the Interstate 95 Bridge at the Maine-New Hampshire State Line.

LD 471 – An Act To Reduce Certain Highway Fund Obligations.

## HEARINGS (cont'd)

LD 597 – An Act To Provide Funding for the State Transit, Aviation and Rail Transportation Fund.

LD 618 – An Act To Authorize a GARVEE Bond for the Memorial Bridge in Kittery.

LD 697 – An Act To Provide Funding for the Maine Gateway Bridges.

### *Friday, April 15*

#### **Environment & Natural Resources**

**Room 214, Cross State Office Building, 9:00 a.m.**

**Tel: 287-4149**

LD 1324 – An Act To Create Consistency and Fairness in Maine's Bottle Bill.

LD 1417 – An Act To Exempt Wine Bottles from Maine's Container Redemption System.

#### **Labor, Commerce, Research & Economic Development Room 220, Cross State Office Building, 1:00 p.m.**

**Tel: 287-1333**

LD 1117 – An Act To Promote the Hiring of Seasonal Workers.

LD 1378 – An Act To Create a State-sponsored 401(k) Retirement Plan for Participation by Private Employers.

LD 1241 – An Act To Remove the Requirement That Employers Offer Substance Abuse Services to Employees Who Fail Drug Tests.

LD 1346 – An Act To Enhance Access to the Workplace for Minors.

## IN THE HOPPER

This edition of the Legislative Bulletin is filled with copy which has crowded out the "In the Hopper" space to file descriptions of recently printed bills. Please review the comprehensive list of LDs of municipal interest on MMA's website: [http://me-mun.org/public/MMA/svc/SFR/LD/LD\\_fr.htm](http://me-mun.org/public/MMA/svc/SFR/LD/LD_fr.htm) The municipally related bills released over the last week begin at LD 1378.