

Connecting Two Dots: “Circuitbreaker” Benefits and Property Tax Liens

In the January 20 edition of the Legislative Bulletin, the details of a bill submitted by Rep. Dennis Keschl (Belgrade) was described that is now in the possession of the Taxation Committee. LD 1693, *An Act to Amend the Law Governing Abatements of Property Taxes for Infirmary or Poverty*, was submitted at the request of the Mt. Vernon Board of Selectmen. The Mt. Vernon board was concerned about the lack of connection between the State’s issuance of Circuitbreaker benefits to qualifying households and the actual payment of the household’s property taxes.

At the public hearing on LD 1693, two parts of the bill were received favorably by the Tax Committee members, who merely asked the interested parties to craft a quick compromise to address a minor problem with the language of the printed bill. Those two non-controversial elements provided a board of municipal officers with the clear authority to consider Circuitbreaker benefits as available to the recipient for the purpose of paying property taxes when considering the final value of any poverty abatement that may be granted. Along those same lines, LD 1693 provides that an applicant cannot apply for Circuitbreaker benefits with respect to any property tax obligation that may have already been granted. It seems that both points should go without saying, but neither was clearly stated in the law until now.

The more controversial part of LD 1693 was the requirement in the printed bill that an applicant could not apply for a Circuitbreaker benefit unless the property taxes for the tax year in question had already been paid. This provision of the bill was considered an accountability measure to ensure that the benefits were being issued as a refund or a rebate, rather

than an undedicated cash benefit.

There was a great deal of opposition to that element of the bill, with most opponents pointing out that the homeowners who probably need the Circuitbreaker benefits the most are those that are five or six months past their property tax due date and are struggling to get their tax liens discharged.

The Tax Committee took those concerns into account. At the Committee’s request, the interested parties were asked to craft an alternative approach that would improve programmatic integrity without arbitrarily blocking people from access-

ing the program who may be the most seriously in need.

On Tuesday this week, the Committee gave a unanimous “ought to pass as amended” vote on a re-crafted version of LD 1693. In addition to making the positive connection between Circuitbreaker benefits and the poverty abatement process, the bill will also establish the following program. Municipal participation in the program is entirely voluntary.

1. If the municipality is interested, the town or city treasurer could electronically file with the State Tax Assessor (i.e., Maine

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The Tree Growth Compromise Approved By Tax Committee

Two Bills Addressing Tree Growth Issues Appear Headed For Enactment

MMA has been involved in an informally created working group that has had numerous meetings over several months in an effort to develop a bill that all parties can support that would simultaneously improve the Tree Growth tax program from several different points of view.

From the municipal perspective, the bill would improve the accountability of the Tree Growth program, particularly with respect to the use of the program as a tax dodge where people enroll prime waterfront lots – in the 10-20 acre range – and use the property, decade after decade, for purely recreational and residential use.

From the perspective of the Small Woodlot Owners Association of Maine (SWOAM), the bill would create a soft landing for those Tree Growth enrollees who fail to update their forest management

plans on a 10-year basis as required by the Tree Growth statutes. Under current law, the land is removed from the Tree Growth program in that circumstance and the financial penalty is applied, which in the case of high-value property can be many thousands of dollars. SWOAM wants a much smaller administrative penalty applied, instead, and the landowner given every opportunity to remain in either the Tree Growth or Open Space tax program.

The working group started with Maine Revenue Services, MMA and SWOAM. It since expanded to include the Maine Forest Products Council (representing the large and industrial landowners), and then was further expanded to include the Maine Forest Service within the Department of Conservation.

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Tree Growth (cont'd)

This article details the compromise plan as it has been developed thus far, plus a second, companion Tree Growth bill that is also on track to be enacted. The Legislature's Taxation Committee has unanimously approved the more comprehensive package, described immediately below, and MMA is now very interested in hearing from all selectmen and municipal assessors who wish to provide input on this plan. Please send along any comments or suggestions you have to Geoff Herman at gberman@memun.org. The second Tree Growth bill, LD 1470, *An Act To Ensure Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law*, is described in a side bar on page 5.

The Tree Growth Compromise.

The bill that has become the vehicle to advance this compromise was presented to the Legislature a year ago as LD 1138, *An Act to Prevent Unnecessary Expulsion from the Maine Tree Growth Tax Law Program*. There are three major elements to this compromise as developed: accountability, compliance deadlines and a new Open Space Category.

The three "accountability" proposals brought into the compromise package by MMA are:

- Requiring all Tree Growth landowners, at the time of first enrollment and at the 10-year update, to actually attest to the fact that their primary objective with respect to the Tree Growth parcel is commercial timber harvesting, with all other objectives (residential, recreational, scenic, conservation, etc.) being subordinate to that objective.

- Requiring the removal from Tree

Growth enrollment of a swath of land including the minimum waterfront requirement to the area where the building physically exists when a residential structure is built in the shoreland zone. This would apply to residential buildings constructed in the shoreland zone after August 1, 2012.

- Closing a loophole that currently allows landowners to convert their Tree Growth enrollment to an Open Space enrollment immediately before withdrawing the property entirely from current use taxation, all to avoid the Tree Growth withdrawal penalty. This legislation would provide that when a landowner transfers enrolled property from Tree Growth to Open Space after August 1, 2012, and then subsequently withdraws from current use taxation altogether, the withdrawal would be subject to the Tree Growth penalty rather than the softer Open Space penalty for the first 10 years after the transfer.

Compliance Deadlines. SWOAM's interest in reducing the financial penalty for failing to update the forest management plan by the 10 year deadline (even after receiving the mandated and specific "120-day" notice about that deadline from the town) would be addressed as follows:

1. Year 10, Deadline year. The town would still be required to send out the so-called 120-day notice informing the landowner of the exact date of the impending deadline and the landowner's obligation to get the certification that the plan has been updated to the town. Current law allows that notice to be sent by regular mail. It would now have to be sent by certified mail.

2. If the landowner still fails to get the proper certification to the town assessor by the deadline, a \$500 administrative penalty would be supplementally assessed against the landowner. That is, the financial penalty would be assessed against the property just as a property tax is assessed, with all the associated power of enforcement. The property would remain enrolled in the Tree Growth program and in addition to the penalty, the landowner would have to pay his or her Tree Growth taxes.

3. The notice of the supplemental assessment must be sent to the landowner by certified mail, along with the instruction that the landowner must provide either the necessary certification that the forest management plan has been updated

or submit an application to enroll in the Open Space program within six months from the date of that notice.

4. If the landowner still fails to perform either of these requirements by that newly established deadline, a subsequent administrative penalty of an additional \$500 would be supplementally assessed against the property. The property would remain in the Tree Growth program and the landowner would also have to pay his or her Tree Growth taxes.

5. The notice of this second supplemental assessment would again be sent to the landowner by certified mail, along with instructions that the landowner has an additional six months to either become compliant with the 10-year (now 11-year) management plan update requirement or apply for the Open Space program.

6. No additional noticing would be required. If the landowner fails to follow those instructions in the 6-month period, the land would be removed from the Tree Growth program and the withdrawal penalty would be applied.

New Open Space Category. Finally, as indicated above, the package includes a proposed new "managed forest" category in the Open Space tax program.

As municipal assessors are well aware, the taxable value ascribed to property enrolled in the Open Space program is the value the assessors believe the property could command on the market if the property was required to remain forever in its particular open space "public benefit" category (conserving scenic resources, enhancing public recreation, promoting game management, or preserving wildlife or wildlife habitat).

If the assessor is uncertain about what that value should be, the assessor is free to utilize the valuation guidelines provided under the "alternative valuation method" provided in law.

Under that alternative methodology, an Open Space property is given:

- A 20 percent reduction from its full market value just for being enrolled in the program;

- An additional 30 percent reduction if the landowner places a third party enforceable easement on the property permanently preventing development;

- An additional 20 percent reduction if the landowner places a third party en-

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Legislative Bulletin

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Federal Clean Water Act Mandates Flow Into Impaired Urban Streams

On Monday of this week, Maine Municipal Association (MMA) provided comments to the Maine Department of Environmental Protection (DEP) regarding its December 2011 preliminary draft of the Impervious Cover (IC) Total Maximum Daily Load (TMDL) report. The official IC TMDL report will be available for public comment on or about February 13, and DEP is asking for official public comments to be submitted by April 6. The final report is expected to be submitted to the U.S. Environmental Protection Agency (EPA) by April 20 of this year.

All of this flows out of federally mandated Clean Water Act requirements. In Maine, the DEP has been delegated to assume the function of the EPA with regard to stormwater control issues.

What on Earth is the IC TMDL?

Certain waterbodies in Maine's urban areas have been identified by DEP as having not met Maine's water quality standards for aquatic life use. Because of the Department's assessment, these waterbodies have been added to the so-called "303(d)" list, which is reference to the pertinent section of the federal Clean Water Act (CWA) and federal Water Quality Planning and Management Regulations. Once a waterbody is placed on the 303(d) list, the municipality where the impaired water lies is responsible for trying to improve the quality standards of the identified waterbody so it can be eventually removed from the list.

The first step after being placed on the 303(d) list is for a "TMDL" report to be developed that assesses the water impairments and establishes a goal to guide the municipality when determining specific courses of action to address and restore the water's quality. Used as the name of a report, the term Total Maximum Daily Load makes no sense whatsoever. It has simply become the peculiar language of this federal mandate.

DEP felt that a statewide IC TMDL for all "urban impaired streams" located in this state made sense due to the number of waterbodies on the 303(d) list, which totals 29 located in 18 of the state's more urban municipalities. The statewide

TMDL report being drafted assumes that the impervious cover associated with developed areas (roofs, roads, driveways, parking lots, concrete, non-porous areas), increases the stormwater runoff and pollutant loads being deposited into these 29 urban streams resulting in aquatic life impairment. The goal identified in the draft IC TMDL report is to reduce the current impervious cover percentage identified in the stream watersheds (which averages 20%) to approximately 9% in order to assist in the restoration of water quality levels and the aquatic life that should be inhabiting these particular streams. Assuming that the existing impervious cover is not going to be ripped up, this can be accomplished by employing several types of practices and technologies to segregate and control the stormwater runoff so that it will not have deleterious effects on the streams that ultimately accept it. The implementation of those technologies and their necessary infrastructure can be very expensive.

MMA comments. Certain stakeholders have been in contact with DEP in order to express their concerns and provide constructive comments to the Department regarding what should (and should not) appear in the IC TMDL report. As a result, a second draft IC TMDL report was circulated in December and various municipalities are in the process of providing additional comments to DEP.

MMA had the opportunity to review the December draft and submitted its comments this week. The full text of MMA's comments can be found at MMA's website (www.memun.org). The comments provided by MMA strongly recommend three guiding principles be taken into consideration as DEP finalizes its TMDL recommendations. What follows are the key elements of MMA's comments, which focus on *shared financial responsibility*, *achievability* and *regulatory predictability*.

Shared Financial Responsibility.

To the extent the implementation of this TMDL demands financial expenditures at the municipal level, those obligations should be expressly tolled until financial

resources external to the municipality are made available at a significant matching rate. The property taxpayers in the municipality will doubtlessly pay their share and then some, but others at the private-sector, state and federal level must also provide substantial matching contributions, not as a vague promise or a grant program gone dry, but as money on the table.

Achievability. The Report takes up a great deal of its space laying out as its foundation a correlation between the percent of impervious cover in a small stream watershed and the quality of that stream's water. In summary, a percentage of impervious cover that exceeds 10 percent (more or less) is presumptively the root cause of an inability to attain certain water quality standards. Having so strongly underscored the correlation between impervious cover and water quality, there is next to nothing in this Report that provides some surety on the part of the regulated municipality that the aggressive reductions in impervious cover that at least some of these impaired stream communities will need to achieve is even remotely achievable. It is only fair that the mathematics of reducing or removing impervious cover (without necessarily tearing it up with a jackhammer) be clearly provided.

Regulatory Predictability. The presumptions that form the foundation of the Report are something of a one-way street. It is presumed that high levels of impervious cover in a stream watershed is the cause of the stream's poor water quality characteristics and it is further presumed that if the impervious cover tally was reduced to a level somewhere between 5 percent - 16 percent (with most being at 9 percent), depending on the stream, the stream's capacity to reach attainment would be obtained. However, the Report also makes clear that "*If the initial IC target is met but the aquatic life still does not attain criteria of the stream's assigned class, then the process of identifying and evaluating watershed stressors will be revisited.*"

To the regulated communities, this kind of one-way-valve regulatory ap-

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Aircraft Excise Tax –Landing In Municipalities

The Transportation Committee held a public hearing and work session this week on LD 1753, *An Act to Improve Transportation in the State*. The bill was sponsored by Sen. Ron Collins (York Cty.) on behalf of the Department of Transportation.

At Tuesday's public hearing, MMA provided testimony in support of one element of the bill. With respect to another section of the bill, MMA offered a general observation and concern about the condition of Maine's transportation infrastructure.

Aircraft Excise Tax. LD 1753 proposes to shift responsibility for assessing and collecting aircraft excise taxes from the Department of Transportation to the municipality or county where the "aircraft is based". Although municipal officials appreciate the Department's administrative assistance in collecting and redistributing the revenue, municipal officials believe that since the taxes collected benefit the property taxpayers of the community (in cases of municipal airports) and the region (in cases of county airports), the respective municipalities and counties should take on the responsibilities of assessing and collecting the tax.

Of particular interest to municipal officials in Augusta is the change in the bill requiring the excise taxes generated from qualifying aircraft based in the Augusta State Airport to be collected and retained by the City of Augusta. Currently, these tax revenues are collected and retained by the state.

An Observation on Reprioritization. Although very supportive of the aircraft excise tax proposal, municipal officials are concerned with an element of the Department's bill that would refocus the state's limited capital improvement dollars for roads and highways in a more realistic manner, admittedly, but also one that lowers expectations for the future.

Current law establishes a schedule to bring all the various categories of Maine roadways up to a reconstructed standard by 2027. According to the Department's testimony, under the current standard the state's FY 2012-2013 structural gap is

\$358 million. That gap is the difference between the \$563 million that is available to improve Maine's transportation system and the \$921 million necessary to comply with the existing "reconstructed" standard. As proposed in LD 1753, the standard is recalibrated to a "fair or better" standard, which takes into account road safety, condition and serviceability. This lower standard has the effect of reducing the FY 2012-2013 structural gap to \$242 million.

In working with the Department on various road projects and study groups, municipal and state transportation officials have concluded that they are facing a similar conundrum; that is, lack of adequate revenues to properly address rapidly deteriorating roads. While municipal officials appreciate that through LD 1753 the Department is maximizing

the most equitable use of limited dollars, they are concerned that it is a practice that will soon run its course at both the state and local level.

At Thursday's work session on LD 1753, the Committee unanimously voted to table the bill to allow interested parties time necessary to gather additional information on some elements of the proposal. That said, in its initial decision making process, the Committee unanimously supported the aircraft excise tax proposal as drafted and capital improvements reprioritization plan with a technical amendment. The amendment to the capital improvements reprioritization plan clarifies that the "fair or better" standard must be reached for safety, condition and serviceability factors individually, rather than as an average of the three factors.

Clean Water Act (cont'd)

proach (which ascribes the cause of the problem as X but is unwilling to assert that the eradication of X is the solution) paints an entirely uncertain regulatory future. Even if the municipality undertakes every recommended action and implements in good faith all the structural and non-structural "best management practices" that could be reasonably required, it might still be on the hook for further regulatory actions. That all the local efforts could ultimately be recognized as ineffective is not what the regulated community wants to hear. That type of regulatory uncertainty is unfair.

If DEP's final recommendations fail to adequately address financing, achievability and regulatory predictability principles, then the exercise of improving water quality through the "effective" reduction of impervious cover in the watershed will be perceived by the affected communities as never ending.

Your comments. If you prefer not to wait for the official public comment period to commence, the draft IC TMDL report, along with the contact person's information, can be found on the Department's website (<http://www.maine.gov/dep/land/>

[comment.htm](#)). MMA will continue to monitor the development of this document and forward important information related to this issue to its membership as the process moves forward.

Circuit Breaker (cont'd)

Revenue Services or MRS) a listing of all residential property owners who have a tax lien filed against their property. The electronic filing would have to be provided between July 15 and August 1 in an electronic format as required by MRS.

2. Before MRS issues a Circuitbreaker benefit to any applicant whose property is listed in that electronic filing, there would be a double-check process to make sure the tax lien is still in place and has not been discharged since the August 1 deadline when the municipality supplied the listing.

3. If MRS finds that the tax lien is still in place, the Circuitbreaker benefit would be issued as a paper check to the qualifying recipient in both the recipient's name and in the name of the municipality.

4. Upon receiving the benefit, the recipient will have to obtain the municipality's endorsement to cash the check. LD 1693 provides that the municipality

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Tree Growth (cont'd)

forceable “forever wild” easement on the property; and

- An additional 25 percent reduction is the landowner is willing to allow public access on the property.

Generally, in the absence of any third party enforceable easements providing a clear public benefit, a parcel of land is allowed into the Open Space category only if the property’s non-development provides an articulable public benefit to the community.

Against that background, the SWOAM proposal provides an alternative to the “forever wild” category within the menu of Open Space options. The alternative would be a “managed forest” category where the landowner on the Open Space parcel that, in fact, contains forested acreage, has had a forest management plan prepared. In that circumstance, the landowner would be able to enjoy an additional 10% reduction in full market value. The landowner would have to certify compliance with the management plan and update the management plan every 10 years, just as is the case in the current Tree Growth program. Failure to stay compliant with this Open Space-based Tree Growth requirement would result in losing whatever Open Space tax benefit the “managed forest” statutes provided.

This package of amendments to the Tree Growth tax program, after the language has been finalized, is headed to the full Legislature for enactment.

LD 1470, An Act To Ensure Harvesting of Timber on Land Taxed under the Tree Growth Tax Law.

LD 1470 was a concept draft bill submitted by Sen. Kevin Raye (Washington Cty.) proposing to amend the Tree Growth tax law in a going-forward way so that only property owners who are engaged in timber harvesting would be determined eligible to enroll in the Maine Tree Growth program. A public hearing was held on the bill earlier this month, the details of which were reported in the January 20 edition of the Legislative Bulletin. In summary, the public hearing provided an opportunity for selectmen and assessors on the coast and inland to describe to the Tax Committee their frustration with certain Tree Growth enrollments where the primary use of the Tree Growth property is clearly residential and recreational rather than commercial timber harvesting, which is the statutory standard for enrollment.

On Thursday this week the Taxation Committee gave a first reading to the text of legislation developed from that concept draft.

Under current law, the only way that Maine Forest Service can get involved in examining the validity of a Tree Growth enrollment is when asked to do so by a municipal assessor who believes such an audit is warranted. When such a review is requested, the Forest Service comes in and reviews both the landowner’s forest management plan and the actual silvicultural activities conducted on the ground, and then makes recommendations to the town as to how to proceed.

LD 1470 would create a separate authority for the Maine Forest Service to conduct such an audit through a system of sampling whereby the agency could randomly select Tree Growth parcels and, with appropriate notification to the landowner, review the management plan and enter and examine the forest land the purpose of determining compliance.

LD 1470 further requires Maine Forest Service to report the results of its first round of random assessment to the Taxation Committee no later than December 15, 2013.

The bill in its first reading was favorably received by the Taxation Committee, although some of its language needs to be finalized. It appears that LD 1470, along with LD 1138 as described in the companion article, will be sent to the full Legislature for enactment with strong “ought to pass” reports from the Taxation Committee.

IN THE HOPPER

The bill summaries are written by MMA staff and are not necessarily the bill’s summary statement or an excerpt from that summary statement. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would 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.)

Energy, Utilities & Technology

LD 1803 – An Act To Implement the Recommendations of the Dig Safe Work Group. (Reported by Rep. Fitts of Pittsfield for the Public Utilities Commission.)

This bill amends the so-called dig safe law by: (1) clarifying that the law and associated penalties apply to state agencies and departments; (2) specifying that five percent of penalty revenue collected will be used for marketing the dig safe program, 15% used to train utility owners and contractors in the system, and 80% used to provide grants to support the mapping of underground facilities; and (3) directs the Public Advocate to convene a dig safe work group to facilitate the creation

of a centralized one-call system to notify operators of underground facilities of pending excavations. The “one-call” system would result in municipalities, which are currently not mandatory members of the Dig Safe system (as is the case throughout the New England/New York Region), becoming mandatory members and subject to all membership dues and penalty assessments.

Circuit Breaker (cont'd)

would have the right to retain any amount of the Circuitbreaker benefit necessary to discharge the tax lien or liens that may be on the property. Any amount of the Circuitbreaker benefit that exceeded the amount necessary to discharge those liens would have to be released to the recipient if that is what the recipient wanted.

After the language of LD 1693 is finalized, the bill should be heading to the full Legislature for enactment.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Work Session and Hearing schedules by Committee are available at the Legislative Information page at http://www.mainelegislature.org/legis/bills/phwksched_ps.asp?PID=1456.

Tuesday, February 7

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

LD 1697 – An Act Relating to the Calculation of Population for Purposes of the Maine Uniform Building and Energy Code and Public Safety Answering Point Assessments.

Wednesday, February 8

**Education & Cultural Affairs
Room 202, Cross State Office Building, 1:00 p.m.
Tel: 287-3125**

LD 1766 – Resolve, Regarding Legislative Review of Portions of Chapter 61: Rules for Major Capital School Construction Projects, a Major Substantive Rule of the Department of Education and the State Board of Education.

LD 1788 – Resolve, Regarding Legislative Review of Portions of Chapter 64: Maine School Facilities Program and School Revolving Renovation Fund, a Major Substantive Rule of the Department of Education and the Maine Municipal Bond Bank.

**Environment & Natural Resources
Room 216, Cross State Office Building, 1:00 p.m.
Tel: 287-4149**

LD 1793 – Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a Major Substantive Rule of the Department of Environmental Protection.

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

LD 1747 – An Act To Prohibit Municipalities from Imposing Fees on Ice Fishing Shacks.

**State & Local Government
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1330**

LD 1616 – An Act Concerning Copying Fees for Users of County Registries of Deeds.

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

LD 1630 – Resolve, To Establish a Stakeholder Group for the Development of a Plan for the Inventory and Proper Care of Veterans' Graves.

Thursday, February 9

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

LD 1687 – An Act To Clarify the Liability of 3rd-party Building Inspectors.