

No Resolution Yet on Senior Tax Foreclosure Bill

Taxation Committee to Decide the Fate of LD 1629 on Monday

Two out of three of Governor LePage's most recent weekly radio addresses focus on MMA's opposition to LD 1629, *An Act To Protect the Elderly from Tax Lien Foreclosures*. The Governor has been strident in his criticism of the Association's stance on the bill. However, what is missing from the most recent dialog on LD 1629 is the fact that MMA has worked with proponents, primarily Pine Tree Legal Services and Legal Services for the Elderly, on an amended version of the bill. The amendment negotiated by the interested parties includes changes to Maine laws impacting both pre-foreclosure and post-foreclosure practices.

Compromise Pre-Foreclosure Approach. The pre-foreclosure changes proposed in the compromise amendment would require municipal officials to provide delinquent property taxpayers with notice that a property tax lien has been filed with the registry of deeds. The notice would inform the recipient of the right to apply for a poverty tax abatement and the right to contact the Bureau of Consumer Credit Protection regarding options for finding a financial advisor.

Compromise Post-Foreclosure Approach. The post-foreclosure changes proposed in the compromise amendment would require municipalities to enter into a six month contract with a licensed real estate broker to sell tax-acquired property owned by a resident 65 years of age or older, provided the resident is receiving the homestead exemption, has a household income of less than \$40,000 and liquid assets of less than \$50,000 (\$75,000 for a multi-person household). If the property does not sell in six months or the community is unable to find a broker

willing to list the property, the municipality may sell the property according to the method used to dispose of all other tax acquired property. Seventy-five percent of the net sales revenue, less the cost incurred by the municipality to manage and dispose of the property, as well as taxes, interest and fees, must be returned to the previous owner.

Governor's Response. Through his staff, as well as his radio address, Governor LePage has raised two objections with the compromise amendment. First, he wants the property to be listed for sale at 90 percent of assessed value, rather than at the price established by the broker, and the price reduced if not sold in 90 days. Under the Governor's approach, the property would remain on the market until finally sold. Second,

the Governor wants 100 percent of the net sales revenues to be returned to the previous owner.

The Association respectfully disagrees with the Governor's criticism of the proposed post-foreclosure amendments. First, there needs to be a limit on the number of months a home is listed with a broker. The amendment drafted by MMA, working with others, authorizes the community to sell the property through the process used to dispose of all other tax acquired property only if the property cannot be sold in a timely manner or a real estate broker is unwilling to list the property. This represents a good compromise, as it requires the municipality to try to sell the property through the open market, but recognizes

(continued on page 2)

Funding for County Jail Operations Falls Short...Yet Again

Counties Make Case for Supplemental Funding

In the absence of a supplemental state General Fund appropriation, it is anticipated that 10 of the state's 15 county jails will experience a projected \$2.7 million funding shortfall during the current fiscal year (FY 2018).

The information presented in a sidebar to this article, generated by Cumberland County using data provided by county officials, shows the current corrections-related needs, revenues and shortfalls, if any, for all counties and the Two Bridges Regional Jail facility. As shown in the table (on page 3), county

leaders project that in 2018 it will cost over \$90 million to incarcerate individuals throughout the statewide county jail system, with aggregate revenues generating only \$88.5 million. Although the statewide deficit is calculated as \$1.9 million, when calculating the shortfall on a jail-by-jail basis the amount of additional revenue necessary to operate jail operations grows to \$2.7 million. The revenue collected in seven counties covers all projected expenditures.

Of the total county jail operating

(continued on page 2)

No Resolution on Senior Tax Foreclosure Bill (cont'd)

that this process may not be the best approach, in some cases, for disposing of tax acquired property.

Second, municipal officials believe there needs to be some level of personal responsibility built into the property tax payment process. While under the terms of the amendment municipalities are required to provide taxpayers with notice of an automatic foreclosure 18 months in advance and inform the homeowner of potentially available resources, nothing requires the property taxpayer to follow through on the offer of assistance. Amending policies in a way that allows certain classes of taxpayers to walk away from their tax obligations will shift additional burdens to all other property owners. Requiring municipalities to return 75 percent, rather than 100 percent, of net sales proceeds to the previous owner will help incentivize senior homeowners to either pay their property taxes or seek assistance.

MMA's opposition to LD 1629, as described in its testimony, is based on the fundamental principle that all property owners, young and old, residential and commercial, deserve relief from the increasing property tax burden. Of the three major taxes – property, sales and income – used to pay for state and local government services, the property tax carries the greatest burden. In 2007 the property tax contributed 42 percent of the total revenues raised by the three taxes. In 2016, property tax revenues generated 45 percent of the total revenue.

Rather than imposing the several mandates proposed in LD 1629, as originally printed, municipal officials believe the Governor and the Legislature can reduce the burdens placed on all property taxpayers by honoring the financial commitments made to communities that provide both locally desired and state mandated services to a common constituency.

First, and most importantly, the Legislature and the Governor could restore funding for the revenue sharing program from 2 percent to 5 percent of state sales and income taxes. Between FY 2010 and FY 2018, the Legislature has diverted \$580 million of the state tax revenue that should have been distributed to communi-

ties under the Municipal Revenue Sharing Program to instead fund state priorities.

Second, the Legislature and the Governor could fund 55 percent of the cost of K-12 education. Proposed funding for FY 2019 not only falls short of that goal, but the state's overstated \$182 million in unfunded actuarial liability (UAL) contribution for retired school teachers is included in the mix. These school-related expenses were created by the decisions of previous Legislatures, which resulted in short-changing funding for the retired teachers' pension program. By including UAL in the calculation, the state share is calculated as 53.3 percent of K-12 education expenditures. When the state share is based on the total amount

of revenues the Essential Programs and Services (EPS) school funding model calculates as necessary, the state's share is reduced to 49.5 percent.

Finally, the Legislature and the Governor should honor the promise to increase state funding for the homestead exemption. In 2017, the Legislature increased the value of the exemption from \$15,000 to \$20,000, but delayed the scheduled increase in state reimbursement from 50 percent to 62.5 percent of lost property tax value. This last minute change resulted in an additional \$12 million shift to the property taxpayers.

The fate of LD 1629 is slated to be decided by the Tax Committee on Monday, April 9.

Funding for County Jail Operations Falls Short...(cont'd)

expenses, 72 percent (\$65 million) are funded with property tax assessments. The state, which directs the standards of incarceration, determines sentencing, and causes the detention of individuals who cannot make bail prior to their court date, provides only 17% of the cost to carry out those mandates. The remaining 8% comes from county sources of revenue (e.g., revenue received from boarding federal or other county inmates, etc.) and an additional 3 percent from the state as direct appropriations to counties facing identified shortfalls.

According to some county officials, funding inadequacies are compounded by a provision in existing law that limits the growth in the amount of property taxes available to fund county jails to no more than 4 percent of the previous year's tax assessment. The purpose of the limit is to protect property taxpayers from exposure to unreasonable growth in jail cost increases. Some county officials believe increasing or removing the cap on the property taxpayers' exposure to jail operations is a viable option that should be further explored. Although municipal officials agree that jail operations need to be adequately funded, the entity mandating provision of services – in this case the state – should fund a greater share of total expenses.

Not surprisingly, the fastest increas-

ing expenditures facing county jails are health related, stemming from the need to provide correctional services to a population suffering ailments that cannot be addressed by Maine's inadequately funded substance abuse, mental and cognitive care system. In addition, any state or federal health benefit received by individuals prior to their detention are terminated after they are held for more than 30 days, including those detained but not yet adjudicated for an offense simply because they cannot afford bail. This policy shifts the full burden of healthcare for some of the state's most vulnerable individuals, who would otherwise be covered by Medicaid or Medicare, entirely onto county budgets.

Ironically, some incidents of incarceration stem from in-hospital assaults that occur while an individual, who has been involuntarily committed, waits for one of the few secure or detox beds in the state. As a result, the act of seeking help becomes the mechanism for the loss of medical benefits once detained.

Reps. Karen Gerrish of Lebanon and Martin Grohman of Biddeford, who serve on the Criminal Justice and Public Safety Committee, volunteered to work with interested parties to come up with a proposal to adequately fund county jails without shifting additional costs on the

(continued on page 3)

Funding for County Jail Operations Falls Short... (cont'd)

state's overburdened property taxpayers.

On Monday, the two legislators presented their recommendations to the committee.

The report presented by Reps. Gerish and Grohman recommends that the Department of Health and Human Services explore suspending, rather than terminating, the health-care services provided to individuals during pre-trial detention to ensure that citizens can continue their care once they are released without conviction, or amendments to bail conditions that would allow these otherwise incarcerated individuals to be released while awaiting trial.

Other jail-related cost savings measures promoted in the report include: (1) authorizing correctional facilities to

utilize generic medications; (2) employing licensed practical nurses rather than registered nurses to reduce staffing costs; and (3) requiring video court appearances. In addition, the report contains a recommendation that criminal justice systems partners review and amend bail conditions to prevent lengthy pre-trial detention, when appropriate.

Recognizing that some of the recommendations presented in the report fall outside the committee's jurisdiction, the members voted to unanimously support two funding-related recommendations.

The first recommendation retains the tax levy restriction, limiting increases in property tax obligation to no more than 4 percent of the previous year's assessment.

The second recommendation asks the Appropriations and Financial Affairs Committee to appropriate \$15.2 million to fund FY 2019 county jail expenditures. Of that total, \$1.7 million would be used to fund community corrections programs (e.g. work release, community service and education programs, etc.) throughout the state, \$120,000 for Kennebec County's CARA (criminogenic addiction and recovery academy) program intent on providing the education and resources necessary to break the cycle of recidivism, and an additional \$3 million in supplemental funding distributed to counties that experience funding shortfalls in fiscal year 2018.

The next hurdle for county jail funding will be the appropriations table.

Jail Funding Projected Shortfalls by county								
	Expenditures		Revenues					Individual Shortfalls
	FY18-Budgeted	FY18-Projected	TOTAL REVENUE	County Taxes	DOC Operations	Other Revenue †	Transfers	
Androscoggin	6,026,914	6,521,866	6,166,971	4,684,891	1,356,158	125,922	---	(354,895)
Aroostook	3,522,145	3,522,145	3,454,718	2,531,484	888,234	35,000	---	(67,427)
Cumberland	18,749,327	19,214,693	18,913,739	12,621,594	3,050,576	3,421,569	---	(300,954)
Franklin	2,013,310	2,079,328	1,957,970	1,719,932	234,038	4,000	---	(121,358)
Hancock	2,396,519	2,471,270	2,379,187	1,778,873	425,936	174,378	---	(92,083)
Kennebec	7,426,474	8,167,601	8,167,601	6,106,533	1,861,610	199,458	---	0
Knox	4,386,969	3,826,778	4,013,137	3,382,892	578,050	52,195	---	186,359
Lincoln	498,824	498,824	610,730	2,758,990	294,828	26,000	(2,469,088)	111,906
Oxford	2,407,967	2,482,967	1,791,249	1,329,660	461,589	---	---	(691,718)
Penobscot	9,040,652	9,040,652	8,571,788	6,374,152	2,040,636	157,000	---	(468,864)
Piscataquis	1,453,794	1,528,488	1,302,862	912,515	89,297	301,050	---	(225,626)
Sagadahoc	462,553	462,553	497,381	2,657,105	294,828	14,500	(2,469,052)	34,828
Somerset	6,529,247	6,849,784	6,655,030	4,863,215	704,495	1,087,320	---	(194,754)
Waldo	3,368,007	3,523,698	3,647,099	2,998,262	593,837	55,000	---	123,401
Washington	2,446,170	2,638,225	2,638,226	2,000,525	273,847	363,854	---	1
York	10,427,423	10,505,893	10,812,779	8,662,310	2,054,142	96,327	---	306,886
TBRJ	7,194,814	7,114,839	6,920,510	----	----	1,982,370	4,938,140	(194,329)
TOTAL	88,351,109	90,449,604	88,500,977	65,382,933	15,202,101	7,915,943	0	(1,948,627) * (2,712,008) **

* = system shortfall | ** = total of individual shortfalls | † = ie: surcharge, boarding, Social Security recovery, special project funding

Developed with materials from the MCCA and MACCAM

Printed with permission of Travis Kennedy, Director of Public Affairs, Cumberland County.

Non-Medical Marijuana Bill Reviewed, Approved by Committee

Enactment Predictions Still Hazy

On Tuesday, the Marijuana Legalization and Implementation Committee held a final language review of LD 1719, *An Act To Implement a Regulatory Structure for Adult Use Marijuana*, capping off over a year of effort aimed at filling in the blanks of the voter-enacted Marijuana Legalization Act. Since the last update provided in the Feb. 23 edition of the *Legislative Bulletin*, legislative staff have been working to translate the committee's various proposals into the amendments to this bill.

The committee's two amendments were made public just prior to the meeting. The majority amendment, which is supported by 16 of the committee's 17 members, largely rewrites the existing Act while the minority amendment, put forth by Rep. Craig Hickman of Winthrop, instead makes a series of amendments to the Act.

A description of how these two amendments address the ambiguous aspects of the referendum-adopted law is provided below. Once the bill is reported out of committee in the coming weeks, the full Legislature will determine its position on whether or not to let the terms of the current law stand.

Since last year, MMA has been advocating for:

(1) Clear authorization for broad local regulation of all types of non-medical marijuana establishments, in accordance with home rule.

(2) Explicit recognition that commer-

cial non-medical marijuana operations are only permissible in municipalities which have authorized such activity, a.k.a. "opt-in."

(3) Some allowance for municipalities that opt-in to receive a return on their investment, in line with the local revenues granted in all seven other states that have adopted legalization laws.

(4) A action, or, in other words, enactment into law of provisions that patch the many potholes existing in the current Marijuana Legalization Act.

From a municipal perspective, there are several aspects of the voter-adopted Act which should be clarified as soon as possible. Most of the questions left unanswered by the Act pertain to the privilege of commercial activity, which requires licensure, as opposed to the right of private personal use and cultivation, which is automatically granted under the terms of the law to persons 21 years of age and older.

Personal cultivation. The main question regarding personal use is the extent to which the law intends to authorize "grower cooperatives." The Act allows individuals to cultivate up to six flowering marijuana plants on that person's property, or on someone else's property with written permission of the property owner. Cooperatives may be formed as a result of this ability to grow one's plants on another's property, and it is unclear whether the Act allows a single person to grow personal-use marijuana for others. Short of agricultural zoning, that type of agricultural operation could be beyond the reach of local regulation.

The majority amendment to LD 1719 attempts to address this ambiguity by limiting personal cultivation to three mature plants, 12 immature plants, and unlimited seedlings, with the added requirements that these plants only be grown on land where the person is domiciled, or on land owned by the person, or on land owned by another person pursuant to a written agreement. This amendment also allows local governments to adopt regulations further limiting personal cultivation,

including imposing restrictions on the number of mature plants that may be cultivated on any one parcel, provided the limit allows for the same numbers of plants (3 mature and 12 immature) for each adult 21 years of age or older who is domiciled on the parcel.

The minority amendment retains the Act's personal cultivation provisions.

Local Regulation. While the existing Act requires the five types of commercial establishments (cultivation, manufacture, testing, retail, and social clubs) to obtain a state license and municipal approval before operating, it is not clear which municipal entity may provide that approval—code enforcement officer, law enforcement, selectboard or council or manager—nor is it clear how a municipality which has not adopted a prohibition or moratorium ordinance should manage requests for approval prior to enacting local regulations addressing commercial non-medical marijuana activities. Moreover, the Act's 14 day window for municipalities to approve or deny applications is impractical, and the language of the Act raises a question as to whether municipalities may prohibit or regulate non-retail marijuana establishments (i.e., wholesale cultivation, manufacturing, and testing facilities).

The majority amendment includes an entire subchapter (subchapter 4) addressing these weaknesses in the Act. It explicitly acknowledges municipalities' constitutional home rule authority to separately regulate each type of establishment, while stating clearly that municipalities must opt-in by generally authorizing establishments before applicants may request municipal approval. The amendment specifies that such authorization is achieved when the legislative body of the municipality votes to adopt a new ordinance, amend an existing ordinance, or approve a warrant article allowing for some or all types of establishments.

Additional local regulation clarifications to the current Act made by the

(continued on page 5)

Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

Editorial Staff: Kate Dufour, Garrett Corbin, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

majority amendment include:

- Requiring all necessary municipal approvals to be in place before a state-issued license becomes effective.
- Clarifying that municipalities without town-wide zoning systems have the same home rule regulatory authority as towns with zoning.
- Allowing municipalities to adopt and apply licensing standards that may be different in nature than the state's licensing standards.
- Exempting the potential application of Maine's "Right to Farm Act" to non-medical marijuana activities.
- Removing the allowance for cultivation facilities to expand their operations to include retail sales even if that expansion exceeds any municipal cap on retail stores.
- And, establishing a statewide setback on establishments which prohibits them from locating within 1,000 feet of schools, unless the municipality wishes to lower that setback to a minimum of 500 feet.

The minority amendment does not include these changes and retains the Act's local regulation provisions.

Types of Municipalities. Because the existing Act references municipalities, and the statutory definition of municipality only incorporates cities and towns, a question exists as to whether and how plantations or townships are authorized to regulate non-medical marijuana establishments. The majority and minority amendments answer this question by adding plantations to the definition of municipality for purposes of the Act. The majority amendment goes a step further by indicating that the opt-in requirement applies to towns and plantations in the unorganized territory as well, that in the case of townships the legislative body required to opt-in is the relevant county commissioners, and that all activities in unorganized or de-organized areas must also obtain the approval of the Land Use Planning Commission.

Tax and Revenue. The referendum-approved law applies a 10 percent retail sales tax and dedicates to municipalities 50 percent of the state licensing fee. The majority report levies a 10 percent tax on

retail sales and a 21.5 percent excise tax on wholesale sales, amounting to what state officials believe would yield an overall effective tax rate of 20 percent. As described in the Feb. 23 edition of the *Legislative Bulletin*, the majority amendment removes the provision in law requiring the state to split its licensing fees with municipalities, and only authorizes municipalities to establish licensing fees within the confines of the limited scope of existing state statute. Some portion of the state Adult Use Marijuana Public Health and Safety Fund which would be created by this amendment may also eventually trickle down to local entities.

As amended at Tuesday's language review, the minority amendment would levy a 17 percent statewide retail sales tax, retain the current requirement for the state to share half its licensing fees with municipalities, and also authorize two additional local revenue authorities. One is to establish a local public health and safety impact fee that is reasonably related to costs incurred by virtue of the municipality's regulation of marijuana establishments, including administrative, law enforcement, health and welfare, water and sewer, and legal expenses. The other authority is a local option sales tax, up to 3.5% and subject to local referendum approval, that would be applicable to retail sales.

Social Clubs. The current act provides for the licensing of "social clubs", which would be the only type of establishment where public consumption of non-medical marijuana by persons 21 years of age or older is allowed. The majority amendment removes any allowance for social clubs while the minority amendment would continue to provide for their licensure at both the state and local levels. The minority amendment would also allow for consumption of marijuana on the premises of licensed retail stores that are not licensed as social clubs, but only on a temporary or pilot project basis.

Employment Policies. The majority amendment replaces the employment-related sections of the Act, while the minority amendment retains the same language found in current law. Three similar provisions are included in each

amendment. First, each begins by recognizing the continued application of existing employment laws related to medical use by qualifying patients. Second, the two amendments state that employers do not have to permit or accommodate the use, consumption, possession, trade, display, transportation, sale, or growing of marijuana in the workplace. Third, both amendments allow employers to restrict the use of marijuana by employees, and to discipline employees who are under the influence in the workplace.

The new language in the majority amendment expands these employee restrictions and discipline allowances beyond the workplace, to any employee activity within the course and scope of employment. The minority amendment keeps the provision in current law which prevents schools, employers and landlords from refusing to enroll, employ, or lease to adults 21 or older "solely for that person's consuming marijuana outside of the school's, employer's, or landlord's property."

Marijuana Advisory Commission. Each amendment creates a Maine Marijuana Advisory Commission. The minority amendment provides for one member of the commission to be a representative of a statewide association representing municipalities, while the majority amendment does not include a representative of municipal interests as a member of the commission.

The provisions described above are the most municipally-relevant highlights of each amendment to LD 1719. Additional statewide regulatory details, such as residency requirements for applicants for state licenses and limitations imposed on commercial cultivator licenses, may be found in the draft amendments now available on MMA's website. The link to the majority amendment is <https://bit.ly/2uQV5dm> and the link to the minority amendment is <https://bit.ly/2GCvM4s>.

Future editions of the *Legislative Bulletin* will provide updates on the enactment status of LD 1719, and the end-of-session edition of MMA's *Maine Town and City* magazine will contain a thorough summary of any changes made to Maine's Marijuana Legalization Act.