

## Committee Decides Tax Foreclosure Bill

After a heated discussion on Monday, the Taxation Committee – some members more reluctantly than others – voted unanimously to support an amended version of LD 1629, *An Act To Protect Homeowners Affected by Tax Lien Foreclosure*. Bluntly put, the bill, which was sponsored on behalf of and vigorously supported by Governor LePage, amends the existing pre- and post-foreclosure processes by removing the consequences for certain homeowners from the obligation and personal responsibility of all property owners to contribute to the cost of providing municipal services.

**LD 1629 Pre-Foreclosure Process – All Homesteaders.** Under the terms of the amended bill, within 30 days of filing a tax lien certificate with the registry of deeds, municipal officials are required to provide a delinquent property taxpayer who is receiving a homestead exemption notice of the recipient’s right to apply for a poverty tax abatement. The notice must include contact information for the Bureau of Consumer Credit Protection, which is directed to help homeowners find a financial advisor able to work with the taxpayer and the municipality in an effort to avoid foreclosure. The bureau is also required to provide MMA with the information to be included in the notice, and the Association is in turn tasked with making the information available to municipalities.

**LD 1629 Post-Foreclosure Process – Homesteaders Age 65+.** After the foreclosure process is complete and the right of redemption has expired, LD 1629, as amended, requires a municipality 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 that prior to the foreclosure the resident received the homestead exemption, had 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 is then authorized to sell the property according to the method used to dispose of all other tax acquired property.

In order to determine eligibility for the special process, a municipality is

required to provide a potentially eligible former homeowner with an application and instruction form at least 90 days before listing the property for sale. The former homeowner is provided 30 days to complete and submit the application and the municipality is required to approve or deny the request within 30 days of receiving the application. The amended version of LD 1629 also allows the former owner to appeal a municipal decision to deny the application.

Although the amended version of the bill includes many of the provisions  
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## Marijuana Legislation Update

### Municipal Regulation Poised For State Authorization

In the halls of the State House, the term “gray market” has become part of the dialect used to describe much of the marijuana-related commerce taking place throughout the state. There seems to be a reluctance to call operations not expressly prohibited at the state level “black market.” Regardless of the terminology, it is now obvious that both medical and non-medical marijuana business enterprises are increasingly operating without the state licenses required in statute.

Major steps were taken this week to oil the rusty medical marijuana regulatory machine and install spark plugs into the state’s non-medical licensing engine, so to speak, in order to clarify state law in a way that realizes the regulation of commercial activities.

### Non-Medical Bill Enactment

LD 1719, *An Act To Implement a Regulatory Structure for Adult Use*

*Marijuana*, described in detail in previous editions of the *Legislative Bulletin*, is the product of the heavy lifting done by the Marijuana Legalization Implementation (MLI) Committee. After the veto of the committee’s previous recommendation to revise Maine’s Marijuana Legalization Act was sustained by a vote of 74 to 62 in the House last November, the committee rolled up its sleeves and went back to work this year, trying to address critics’ concerns. Initial votes in the two legislative chambers seem to indicate the committee’s efforts were a success. Each body passed the bill by margins able to override a potential veto.

**House Vote.** On Tuesday, the House of Representatives voted 112 to 34 to pass LD 1719. Support for the bill was aimed at the need for clearer rules and regulation, while opposition cited three principal concerns: federal law, substantial excise taxes on wholesale product  
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## Committee Decides Tax Foreclosure Bill (cont'd)

MMA, and other interest groups, advanced to the committee in the spirit of compromise, the element retaining the last bastion of personal responsibility was excluded. As a result, the committee's amendment requires that 100 percent of the sales revenue, less the costs incurred by the municipality to manage and dispose of the property, back taxes, interest and fees, be returned to the previous owner. The amendment negotiated by MMA would have required 75 percent of the net sales revenue to be returned to the former owner. The purpose for retaining some of the sales revenue is to balance the interest and investments of the former owners with the interest of all other property taxpayers called upon to pick up the delinquent homeowner's property tax tab.

**State Reimbursement.** The silver lining in the amended bill is the committee's willingness to fund a majority of the new municipal costs imposed by LD 1629. As provided in current law, the Legislature must either fund 90 percent of newly mandated costs or shift 100 percent of those costs to municipalities by a two-thirds majority vote in both the House and Senate. Failure of the Legislature to fund or override its financial obligation would render the municipal implementation of the newly adopted requirements an option, rather than a mandate.

**Next Steps.** Once the amendment language is finalized and the state calculates the amount municipalities are to be reimbursed, LD 1629 will be sent to the entire Legislature for a vote. Since the bill received a unanimous report from the committee, it will be presented on a "consent agenda" and is unlikely to benefit from a debate. The bill's

last stop before enactment will be the Appropriations Committee, which will determine if the funding is warranted and available for the bill. If not funded, LD 1629 could be further amended to include the mandate preamble and sent

back to the Legislature for a two-thirds majority vote before finally enacted.

Municipal officials concerned with the outcome of LD 1629 are urged to contact their legislators as soon as possible.

## Marijuana Legislation Update (cont'd)

(\$335 per pound of flowers or buds and lesser amounts for trim, saplings, seedlings, and seeds), and the proposed reduction to the number of mature plants an individual may possess from six in current law down to three per person.

Recognizing that the status quo is not working, MLI committee House Chair Rep. Teresa Pierce of Falmouth urged her colleagues to vote in favor of the bill on the premise that "our town officials, our local businesses, our parents, our families, our communities that each of us represent are all asking us to put a reasonable, highly structured regulatory system in place for the adult use marijuana industry in our state."

After thanking the committee for its work, Rep. Kenneth Fredette of Newport stated he could not support the legislation in light of the U.S. Constitution's Supremacy Clause and the fact that marijuana is still an illegal substance under federal law, even though he recognized LD 1719 "certainly is an improvement over the language that was passed in the referendum."

**Senate Vote.** On Wednesday, the Senate passed LD 1719 by a vote of 24 to 10. While opposing the bill due to concerns regarding its tax structure and personal use restrictions, Sen. Eric Brakey of Androscoggin County coun-

tered Rep. Fredette's basis for opposition by distinguishing the Supremacy Clause against the 10<sup>th</sup> Amendment (reserving to the states those powers not delegated to the federal government or prohibited to the states by the Constitution), which he views as providing legitimate constitutional grounds for Maine's legalization law.

Former deputy sheriff and long-time state coordinator of the Drug Abuse Resistance Education (D.A.R.E.) program Sen. Scott Cyrway of Kennebec County spoke in opposition to the bill on behalf of "the children [who] had no opportunity to vote" against the referendum. In Sen. Cyrway's view, the state should not be normalizing a substance scheduled as prohibited under the federal Controlled Substances Act. He characterized the Senate's choice not as an option of bad versus worse, but as between terrible and terrible.

Speaking in favor, MLI committee Senate Chair Sen. Roger Katz of Kennebec County explained the senators' choice did not entail a decision on whether or not to approve of marijuana use. Instead, the question was whether the bill improves upon the current law. As he described it, LD 1719 provides funds to prevent use by children and

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## Legislative Bulletin

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to support law enforcement, while also prohibiting internet sales, home deliveries, social clubs and drive-through sales, all with a “strong prejudice in favor of local control and opt-in.” He also justified the combination of both sales and excise taxes as an effort to provide for steady and predictable state resources, avoiding swings in revenue experienced in other states that only impose a sales tax. According to Sen. Katz, not passing the bill would prompt cheers from the illicit market operators who do not want their products taxed, labeled or tested.

LD 1719 received its final enactment vote in the House on Thursday and is scheduled for a final enactment vote in the Senate after this edition goes to print.

### Medical Law Amendments Advance

After months of work, the Health and Human Services (HHS) Committee has put forth two bills – LDs 238 and 1539 – that would amend Maine’s Medical Use of Marijuana Act.

**New and Improved Local Control.** As municipal officials throughout the state have learned, the Act has established a significant ambiguity regarding local authority to regulate medical marijuana caregivers. Apart from dispensaries, it is very unclear in state law whether or how municipalities are authorized to regulate caregivers’ cultivation and distribution operations.

In an effort to address the current state of affairs, MMA’s Legislative Policy Committee included in its platform for the 128<sup>th</sup> Legislature LD 672, *An Act To Clarify a Municipality’s Authority To Adopt and Enforce Land Use Regulations for Marijuana Facilities*. As the title suggests, MMA’s proposal sought to authorize municipalities to adopt and enforce land use regulations applying to medical and non-medical marijuana facilities alike, “in the same regulatory manner as any other activities generating similar land use and compatibility effects.”

In LD 1719 the MLI committee

provided clear local regulatory authority over non-medical establishments. In order to address widespread reports of abuses of state law and violations of ordinary ordinances by medical marijuana operations, the HHS committee elected to advance language authorizing local regulation in an even broader way than the Association proposed in LD 672. To that end, MMA worked with the committee and stakeholders over several weeks to strike the best balance possible.

The straightforward, single sentence unanimously agreed on by all members of the committee is: *Pursuant to the home rule authority granted under the Constitution of Maine, Article VIII, Part Second and Title 30- A, section 3001 of the Maine Revised Statutes, a municipality may regulate registered medical marijuana caregivers, testing facilities, processors, and dispensaries, except that municipalities may not prohibit or limit the number of registered caregivers.*

**LD 238.** A blank canvas “concept draft” sponsored by Sen. Brakey, LD 238, *An Act To Amend the Maine Medical Use of Marijuana Act*, has now been amended unanimously by the committee to provide for accredited third-party testing of medical marijuana while imposing safety and compliance measures on currently un-regulated or lightly-regulated extraction and concentration processes which often utilize hazardous substances. This bill, which would become effective immediately upon enactment as emergency legislation, also replaces the current municipal school setback and dispensary regulation authorities in the Act with the more comprehensive home rule regulatory authority sentence above.

**LD 1539.** The terms of the bill advanced by Rep. Deborah Sanderson of Chelsea, LD 1539, *An Act To Amend Maine’s Medical Marijuana Law*, include several substantial revisions to the Act that will be summarized in greater detail once the finalized amendments are made public. Among other changes,

these revisions are slated to include: (1) removing existing restrictions on the types of conditions for which doctors may issue medical marijuana certifications to patients; (2) removing the 5-person cap on the number of patients a single caregiver may treat; (3) authorizing registered caregivers to operate retail stores; (4) increasing the limit on state certificates to operate dispensaries from the current eight up to fourteen until 2021 when the limit would be repealed; and (5) tightening the definition of caregiver co-operatives which would continue to be prohibited under state law.

Two members of the committee, Rep. Paul Chace of Durham and Rep. Jennifer Parker of South Berwick, voted Wednesday for a minority report that would include the same amendments to current law with the exception of repealing the state limit on dispensary certificates as soon as the bill takes effect.

Both the majority and minority reports include the local regulation sentence above, while adding “registered caregiver retail stores” to the list of entities which may be locally regulated in order to emphasize the point that such stores are not exempt from municipal oversight. Additionally, the two reports expand the state Department of Health and Human Services current authority to share certain caregiver information with local law enforcement officers to allow information sharing with code enforcement officers as well. Although the provisions retain the Act’s requirement that caregiver information be kept confidential, the Judiciary Committee will be asking the Right to Know Advisory Committee to weigh in on whether the caregivers’ right to confidentiality outweighs the public interest in disclosing their information under Maine’s Freedom of Access Act.

With final adjournment still scheduled for April 18, the Legislature is expected to vote on LDs 238 and 1539 in the coming week.