

State Budget Uncertainties

All other matters of legislation being considered this session pale away to nothing in comparison with Governor LePage’s proposed state budget, which launches a broadside attack on Maine’s property taxpayers by eliminating or nearly eliminating the state’s three major property tax relief programs: municipal revenue sharing, the homestead property tax exemption and the Circuitbreaker property tax relief program.

The public hearings on the proposed budget have long since concluded and all the Legislature’s joint standing committees of jurisdiction have finalized their recommendations regarding the parts of the proposed budget pertinent to their responsibilities. The task of rewriting the Governor’s proposal and presenting it to the full Legislature for consideration now rests entirely and exclusively with the Appropriations Committee.

The deliberations process of the Appropriations Committee has changed remarkably over the past 20-plus years. As recently as the early 1990s, the Appropriations Committee conducted the vast majority of its deliberations in full open session. It may not have been pretty, but it was as open as open can be.

Since then, and incrementally more and more each legislative session, the use of partisan caucusing on the Committee level has moved much of the deliberative process behind closed doors. Under this system, the appropriators from one political party meet in one room by themselves and the appropriators from the other political party meet in another room by themselves and each group develops their respective positions on each line in the budget outside of the public eye. Some level of signaling must occur between the two groups because when the full

Committee finally convenes in public, the decisions to move certain proposals “in” and other proposals “out” of the budget are adopted with a remarkably smooth choreography.

This is a long way of explaining why we don’t have any tangible knowledge about what ideas are and are not being considered to replace the Governor’s proposals to balance the state budget on the backs of Maine’s towns, cities and property taxpayers.

All we have is the chit-chat of the

grapevine, and that information suggests that the Republican position in the state budget negotiation process is that no new state tax revenue will be provided to restore funding to support the property tax relief programs the Governor is proposing to eliminate.

The only way these programs will be restored from the Republican side, at least as the grapevine has it, is by making unspecified additional cuts to state programs.

(continued on page 2)

Transportation Committee At Work

Excise Tax Proposal Out, Local Road Assistance the New Target

The Transportation Committee met several times this week to wrestle with the FY 2014 – FY 2015 Highway Fund budget, printed as LD 1480. Over the next two years the LePage Administration is proposing to expend \$1.2 billion in state, federal and “other source” resources for transportation-related services.

Of significant interest to municipalities is the proposal in the budget that unabashedly appropriates \$8 million of municipal excise tax revenue for state programs. By simply raiding municipal resources, the Administration solves its revenue problems without consideration of the impacts to municipal road and bridge programs, the partnerships created between the state and the municipalities, as well as the property taxpayers who support local government.

Members of the Transportation Committee on both sides of the aisle objected to the excise tax approach as simply an erosion of the municipal property tax base

and a shift onto the already over burdened property taxpayers. As a result, Bruce Van Note, Deputy Commissioner of the Department of Transportation (DOT), was asked to provide the Committee with alternatives to the excise tax proposal.

On Thursday of this week, the Department presented an alternative that would reduce revenues distributed to municipalities under the Local Road Assistance Program (LRAP). Under the existing program, approximately 10% of DOT’s Highway Fund budget is distributed to municipalities to provide financial support for the maintenance municipalities provide to state-aid roads. As proposed in the Department’s alternative, the payments to municipalities in FY 2014 would remain at the 10%, or \$24.1 million. However, beginning in FY 2015 the municipal share of DOT revenues would be reduced to 9%, thereby decreasing the revenues annually distributed to municipalities to

(continued on page 3)

The Motor Vehicle Excise Tax Credit

A Controlled Change Moves Forward

A bill submitted very late in the legislative session (LD 1534, *An Act to Allow a Motor Vehicle Excise Tax Credit for a Vehicle No Longer in Use*), was given its public hearing on Monday, May 20 and its follow-up work session on Tuesday May 21. The Taxation Committee voted unanimously that LD 1534 “ought to pass as amended”, but the actual amendment was left up to a number of parties to work out. In its printed form, LD 1534 attempted to do the following:

Under current law, a person who registers a car (Car A) and pays the motor vehicle excise tax is allowed to transfer that excise tax payment when transferring that vehicle’s registration to another car (Car B) within the registration year. The statute governing that process is an old law that has been scarred many times over the years by amendments. Although that statute can be confusing, it is generally interpreted to require that Car A is either no longer in the possession of the person seeking the excise tax credit or has been made completely unusable (destroyed by fire, junked, abandoned, etc.). In other words, under current law, a person cannot retain the ownership of a functional Car A and receive the excise tax credit toward Car B. As an example, the current law prevents a person who owns a summer car (Mazda Miata convertible) and a winter car (Ford 250 plow truck) from paying the excise tax for the Mazda in early May, transferring it to the Ford before the snow flies, thus paying a single

excise tax for two vehicles, and do this year after year while simultaneously owning both vehicles.

As printed, LD 1534 would allow the excise tax credit to be applied in the circumstance where Car A is “totally discontinued,” which was not defined in the printed bill. According to the bill’s sponsors (Sen. Mike Thibodeau of Waldo Cty., and Rep. Joe Brooks of Winterport), the intended meaning of “totally discontinued” is that the owners of Car A would like to retain ownership for the purpose of selling the vehicle, but are willing to agree that their use of Car A is totally discontinued.

Aside from the sponsors, no one testified either in support or opposition to LD 1534. MMA testified “neither for nor against” because the bill was printed so late in the legislative session the Association’s Legislative Policy Committee did not have a chance to look at it. In addition, MMA had to admit that the current statute governing the excise tax credit is open to multiple interpretations. As currently written, that statute can be interpreted as allowing for the credit merely on transferring registration without disowning the vehicle.

The Taxation Committee’s interest was to amend the statute so that the credit would be provided in a uniform way from town to town across the state, clearly prohibiting the summer vehicle/winter vehicle phenomenon, and yet allowing for a limited circumstance where the excise tax credit would be provided even though Car A was being retained by the owner under a “totally discontinued” theory. Maine Revenue Services, the Secretary of State’s Office, the Taxation Committee’s policy analyst, and MMA were asked to draft an amended version of LD 1534 for the Committee to consider.

On Thursday this week the draft amendment was reviewed by the tax panel and is now headed toward enactment with unanimous Committee support.

The amended version of LD 1534 makes two substantive changes to the governing statute.

First, it reorganizes the gnarly paragraph of law so it reads more straight-

forwardly and clearly establishes that the credit is only available when the vehicle’s ownership is transferred; the vehicle is totally lost by fire, theft, or accident; the vehicle is totally junked, or abandoned; the use of the vehicle is totally discontinued, or in the case of a leased vehicle the registration is transferred.

Second, it defines “totally discontinued” as meaning permanently discontinuing all use of the vehicle by that owner in any way except to sell, transfer ownership, junk or abandon that vehicle. The owner of the vehicle must provide a signed statement attesting the fact the vehicle from which the credit is being transferred is totally discontinued. If the owner who has totally discontinued use of a vehicle later seeks to register that vehicle, no excise tax credits may be applied with respect to the registration of that vehicle or any subsequent transfer of that vehicle’s registration.

State Budget (cont’d)

On the other side of the aisle, the Democrats are firmly on the record in support of suspending the package of income tax cuts enacted in 2011 for a two-year period in order to restore municipal revenue sharing and the homestead property tax exemption, as well as a somewhat scaled-back version of the Circuitbreaker program. The Democrats held a press conference this week espousing that solution.

The Appropriations Committee is scheduled to complete its development of a state budget package for the full Legislature to consider by Thursday next week (June 6). There is no longer any excuse for vague and ambiguous “political” statements from your legislators when asked for concrete information about the developing state budget. Municipal officials, whose own budgets are hanging in the balance, deserve to know exactly what their legislators are recommending as an alternative to the Governor’s budget.

Buttonhole your legislators this weekend. You deserve to know what proposals are on the table.

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Tax Reform Opportunity Slides Into Gracious Limbo

On Thursday this week the Taxation Committee held what might be its last work session of this legislative session. The primary topic of review and discussion was LD 1496, *An Act to Modernize and Simplify the Tax Code*.

Detailed in several previous editions of the Legislative Bulletin, LD 1496 in simple terms accomplishes comprehensive tax reform by enacting:

- Income tax reductions, and the development of a simple and flat income tax code.
- A significant sales tax base expansion, along with more incremental increases to various sales tax rates.
- And, a restructuring of the way property tax relief resources are provided to local governments and the property taxpayers that support local government.

At the request of the Taxation Committee, Maine Revenue Services (MRS) spent the last 10 days analyzing the bill to determine its overall fiscal impact on the state's General Fund as well as the individual taxpayer impacts for Mainers in various income tax brackets as compared to current law (distributional analysis).

After reviewing the MRS analysis, two major issues emerged for Committee discussion.

First, the overall fiscal impact of the bill showed an increase in state tax revenue over the biennium of \$343 million, all of which is dedicated by the bill to property tax relief in the form of a significantly expanded homestead property tax exemption and a smaller, more targeted revenue sharing system.

Inexplicably, the fact that LD 1496 would increase state revenue relative to current law for the purposes of financing the state's three property tax relief systems confounded some Committee members, who apparently thought the tax reform initiative would finance Maine's long established property tax relief systems without raising the revenues necessary to do so.

On top of that confusion, the distributional analysis generally indicated that although thousands of Maine taxpayers in all income categories would see substantial tax relief if LD 1496 was

enacted, there would also be thousands of Mainers in all tax categories that would see no benefit under this proposal and would, in fact, experience a tax increase. Although in general the beneficiaries from this proposal were projected to be greater in number than those disadvantaged, the distributional analysis failed to demonstrate clear improvement to the tax code with respect to progressivity within any income tax category.

As a result of this analysis, the Tax Committee, which includes strong supporters of LD 1496 but was never 100% behind LD 1496 as a Committee, has dropped back to a position of protecting

Transportation Committee (cont'd)

\$21.4 million.

In addition to reducing payments to municipalities, the proposal includes three "administrative" changes, one more contentious than the others. One of the proposed changes would cause LRAP funds to be distributed in one lump sum in the month December, rather than under the existing quarterly payment schedule.

The second change would repeal the "hold harmless" clause embedded within the local road funding program, which ensures that communities, at a minimum, receive the same level of funding provided before the program was overhauled in 1999. According to the Department, this would result in "*many municipalities*" collectively losing \$300,000.

Finally, the Department's proposal includes a requirement that municipal excise tax revenue must be used solely for transportation related purposes, including maintenance, construction, repairs and traffic enforcement, unless the municipal officers "*find that all local and minor collector highways in that municipality are in satisfactory condition and that traffic enforcement is adequately funded.*"

Not only does the Department's proposal reduce municipal road assistance, for some inexplicable reason the Department has decided that it knows how best the residents of each of Maine's 492 municipalities should expend their locally generated tax revenues. In addition to

it from oblivion or being put on the sagging and overburdened shelf holding the mouldering tax reform proposals from the past. The intention at this point is to craft a letter to the Appropriations Committee that extols the virtues of the tax reform proposal from some perspectives, and identifies its weaknesses from other perspectives, and generally gives over to the Appropriations panel the authority to take from this initiative whatever might be a more policy-centered way to address the revenue needs of the state budget.

Given that the Appropriations Committee will have completed the budget task by next Thursday according to its current schedule, it appears that the appropriators' process and the Taxation Committee letter will pass by each other like two ships in the night.

advancing a change that is offensive to very capable local-level decision makers, it proposes a significant policy change without the benefit of notice, public hearing and debate on the issue. The very people affected by the policy have no say.

While the Committee was unanimous in its opposition to the excise tax proposal, there was less consensus in opposition to the LRAP proposal. On Thursday, some Transportation Committee members expressed interest in exploring the option of reducing LRAP payments to municipalities. However, the Committee ran short on time and postponed a detailed discussion on the issue to next Monday afternoon.

As a result, municipal officials concerned about this alternative are encouraged to communicate with their legislators over the weekend. Legislators should be asked to share any municipal level concerns with their colleagues on the Transportation Committee.

As far as the Highway Fund budget review process goes, the members of the Transportation Committee deserve credit and accolades for working through the budget in a deliberate manner, paying close attention to its treatment of municipal resources, and discussing issues in public rather than behind closed doors. The Committee's dedication to a transparent and thoughtful budget development process is greatly appreciated and highly lauded.

Mandate Watch Update

Articles were published in the previous two editions of the Legislative Bulletin describing several bills that propose to shift additional costs and administrative burdens onto municipalities. What follows is an accounting of the progress made during this past week on mandate bills or “watch bills” MMA is following closely. Municipal officials are encouraged to contact their legislators if they have concerns or input regarding these bills.

Progress on Previously Listed Mandate Bills

Update: *LD 235 – Firefighters and “Tone-to-Tone” Workers’ Compensation.* This bill expands the Workers’ Compensation law to provide a “rebuttable presumption” that a fire fighter or EMS provider who gets injured after receiving an emergency tone or call was injured in the course of employment, even if the injury occurs at home or some other place entirely outside the control of the municipal employer. After receiving initial approval from the Senate last week

by a vote of 18 to 17, LD 235 received an initial 96 to 42 “ought to pass” vote in the House. The House will have one more chance to vote on LD 235 before sending it to the Senate next week for its final vote.

Update: *LD 977 – MUBEC.* This bill requires municipalities over 2,000 in population to enforce the Maine Uniform Building and Energy Code and further provides that MUBEC applies in all municipalities in the state regardless of population. The three reports on the bill have just been released by the Committee. The minority amendment is slightly more palatable as it exempts municipalities that do not employ building officials or do not have the financial resources to comply with the enforcement requirements. Rep. Lawrence Lockman of Amherst was the sole committee member to vote Ought Not To Pass.

Update: *LD 1133 – Municipal Employees – All for Cause.* Current law provides that certain municipal employees appointed directly by a board of selectmen are “at will” employees. LD 1133

mandates that all municipal employees are categorized as “for cause” employees and entitled to heightened job protection and due process proceedings in the event of termination from employment. On Thursday this week LD 1133 was given initial approval in the Senate by a vote of 20-15.

New Mandate & “Watch” Bills

LD 865 – Contract Indemnification clauses. This bill effectively prohibits the use of broad form indemnification provisions that are often negotiated into construction contracts to protect the owners, such as municipal owners, from being exposed to Workers’ Compensation and other sources of litigation actions based on injuries or damages related to construction site activities, which are largely or entirely under the control of the contractor and not the owner. **Update:** LD 865 has received preliminary approval in the Senate. The proponents plan to offer an amendment to the bill which explicitly states the LD 865 prohibition does not apply to municipal construction contracts. That amendment will likely be considered by the House early next week.