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## Property Tax: A Primer and a Modest Proposal for Maine

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# PROPERTY TAX: A PRIMER AND A MODEST PROPOSAL FOR MAINE

*Clifford H. Goodall and Seth A. Goodall*

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## PROPERTY TAX: A PRIMER AND A MODEST PROPOSAL FOR MAINE

*Clifford H. Goodall,\* and Seth A. Goodall\*\**

### I. INTRODUCTION

Property taxation has been viewed for years as the perfect “dragon to be slain”<sup>1</sup> and by most “as both bad and doomed.”<sup>2</sup> In spite of being one of the most commonly questioned and scrutinized issues by voters and politicians, property taxation survives as the primary revenue source for local governments.<sup>3</sup>

Maine’s experience is an example of this continuing debate. The 2005 reform attempt by the Legislature known as LD 1 is the most recent example.<sup>4</sup> Municipal over-dependence on the property tax, rising property values, unfunded state mandates, loss of federal revenues, and increased spending has significantly increased the percentage of Maine taxpayers’ personal income needed to pay the tax, raising Maine’s property tax burden to one of the highest in the nation.<sup>5</sup> In spite of a general consensus that Maine must ameliorate its property tax burden and provide significant relief to those for which the tax is most burdensome, the means to that end is not obvious or simple, but still needs to be pursued.

This Article provides a context for the discussion that frequently demonstrates a lack of understanding of the tax’s historic base, evolution, and its many-faceted aspects. This is an opportunity to step back and view the whole of the tax, which so many believe is in need of reform. There are a variety of legal limitations, reform alternatives, and experiences that need to be understood for reform discussions to be successful.

In this Article, and in conjunction with explaining the alternatives for property tax relief, the authors have made some modest proposals for additional property tax reform in Maine to go beyond Governor John Baldacci’s and the 122nd Legislature’s efforts in the January 2005 enactment of LD 1.<sup>6</sup> Some of these proposals are simple and practical; others are not. These proposals and others need to be considered for the welfare of Maine taxpayers and the state’s future. All pro-

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1. Edward Zelinsky, *The Once and Future Property Tax: A Dialogue With My Younger Self*, 23 CARDOZO L. REV. 2199, 2199 (2002).

2. *Id.* at 2200.

3. See, e.g., Kirk G. Siegel, Comment, *Weighing the Costs and Benefits of Property tax Exemption: Nonprofit Organization Land Conservation*, 49 ME. L. REV. 399 (1997).

4. See H.P. 6, L.D. 1, 2005 Leg., 122nd Sess. (Me. 2005).

5. Tax Foundation, *The Facts on Maine’s Tax Climate*, at <http://www.taxfoundation.org/maine/> (reporting that Maine state and local tax burden has ranked the highest among the states since 1997).

6. *Id.*

posals must be considered in the context of the history of the property tax and its legal limitations.

Finally, but outside the scope of this Article, is the ever-present dilemma of ideology and politics, which, if allowed by the participants in the decision-making process, can hamstring even simple and necessary reforms.

## II. A SHORT HISTORY OF A VERY OLD TAX

Since ancient times, property taxation has provided a tax base and revenue for governments.<sup>7</sup> Historically, land and tangible property have been viewed as the principal indices of wealth, and as providing the best available measure upon which taxes could be levied.<sup>8</sup> The taxation of real property became fossilized as a taxation form in the medieval times, when revenue yields from goods declined and reductions in personal property occurred, thereby creating the optimum circumstances for solidifying the general property levy as the land tax.<sup>9</sup>

The character of Maine's laws and taxes are derived from an Anglo-Saxon heritage, which set the elements of the state's tax structure in feudal times.<sup>10</sup> It also set in place a heritage of tax reform.<sup>11</sup> In 1086, William the Conqueror sent English public servants throughout the Kingdom to inventory the Domesday Book.<sup>12</sup> His intent was to reform property taxes by equalizing the tax burden amongst his subjects after the Norman Conquest.<sup>13</sup> This is similar to what Maine's local assessors do on a regular basis in determining the value of taxpayers' homes.

In Colonial America, property taxation quickly took a foothold, especially in New England, where it focused around three related taxes: polls (voting rights), property, and faculty (a tax on potential income earning capacity).<sup>14</sup> Maine's maternal state, Massachusetts, was not atypical and began collecting the property tax annually in 1646.<sup>15</sup> In contrast to present *ad valorem* taxes,<sup>16</sup> Massachusetts's property tax was often levied on a specific type of property and frequently on property considered to be essential in character.<sup>17</sup> Massachusetts levied the property tax against the "visible estate" of a taxpayer's total estimated real and personal property.<sup>18</sup> In the 1700s, the property tax accounted for two-thirds of the tax

7. Arthur D. Lynn, Jr., *Property-Tax Development: Selected Historical Perspectives*, Property Taxation USA 8 (Richard W. Lindholm ed., 1969).

8. *Id.*

9. *Id.* at 9.

10. Peter Mills, *Maine Tax Policy: Lessons from the Domesday Book*, in *Changing Maine* 153, 156 (Richard Barringer ed., 2004).

11. *Id.*

12. *Id.*

13. *Id.*

14. Lynn, *supra* note 7, at 10.

15. *Id.* at 11.

16. *Ad valorem* tax, Latin for "according to the value," is defined as a "tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure." BLACKS LAW DICTIONARY, 1469 (8th ed. 2004).

17. Lynn, *supra* note 7, at 11.

18. *Id.*

base revenue in Massachusetts.<sup>19</sup>

In 1820, Maine's first year of statehood, the legislature adopted a similar state-wide property taxation scheme of enumerating specific property to be taxed in order to avoid a comprehensive general uniform property tax scheme.<sup>20</sup> This predecessor to the uniform property tax levy was on polls and estates, and included levies on specific types of personal property, as well as the estimated value of a taxpayer's total personal and real property, although some types of personal property were exempt.<sup>21</sup> This was commonly referred to as the state tax.<sup>22</sup> The resulting property tax rate and generated revenue varied between different tax jurisdictions because rates depended on the number of polls (voters) and estates in each jurisdiction.<sup>23</sup>

In 1845, the property tax levy was revised to focus on real and personal property in order to create a more equitable general property tax.<sup>24</sup> This change from a collection of specific property taxes to a uniform tax created demand for the enumeration of comprehensive statutory definitions and property exceptions.<sup>25</sup> The creation of a general uniform property tax scheme thrust the legislature into a reactive political role, acting to refine and modify the tax laws, as it deemed appropriate.<sup>26</sup> However, the tax scheme in 1845 was not completely uniform, due to the numerous exceptions continued by the legislature.<sup>27</sup> Nevertheless, this goal of uniform property taxation has endured, along with the legislative process that undermines it.

Pure uniformity in property taxation has probably never existed and is not a realistic goal. There have always been exceptions and exemptions<sup>28</sup> based on the public policy that exempted the basic necessities for living, such as tools, livestock, and some household furniture. Many property tax exemptions, historically, and at present, are attempts to create a targeted tax relief program, which can make the tax less regressive, based on an ability to pay.<sup>29</sup> For example, Maine's current circuit breaker program is an exemption, which undermines pure uniformity of property taxation. This program has been a significant part of Maine's property

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19. Lynn, *supra* note 7, at 11.

20. FRED E. JEWETT, A FINANCIAL HISTORY OF MAINE 112 (1968).

21. *Id.*

22. *Id.*

23. *Id.* at 113.

24. *Id.* at 116.

25. *Id.* at 117.

26. *Id.* at 120.

27. *Id.*

Since this law marked a change from a specific property tax to a general property tax, exemptions had to be enumerated. The following property was exempted: the property of schools and of benevolent, charitable and scientific institutions incorporated in the state; all property of the United States or of this state; household furniture not exceeding \$200 to any one family; farming utensils and mechanics' tools; churches with their furnishings; mules, horses, neat cattle, swine and sheep not exceeding six months old; property of Indians and property of all persons who, by reason of age, infirmity or poverty were in the judgment of the assessors unable to contribute toward the public expenditure.

*Id.*

28. *Id.*

29. *Id.* at 117-18; *see, e.g.*, L.D. 1, pt. E (122nd Legis. 2005).

tax relief strategy since the late 1980s, with the beginnings of the circuit breaker strategy occurring in the early 1970s for qualified elderly beneficiaries.<sup>30</sup>

The goal of uniformity in property taxation was also apparent in Maine in 2004. In LD 1924, the legislature created a cap on the municipal mill rate for education<sup>31</sup> that was later modified by the state's most recent property tax reform effort, referred to as LD 1.<sup>32</sup> This is a uniform property tax limitation. Similarly, in LD 1, the legislature created a property tax levy limit for the non-school side of municipal budgets.<sup>33</sup>

Maine has almost always been over-dependent on the property tax. From 1820 to the beginning of the Civil War, property taxation accounted for at least fifty percent of the state's revenue.<sup>34</sup> By 1870, property taxation rose to ninety-eight percent of the entire state revenue.<sup>35</sup> As Maine went, so did the rest of the nation. At the turn of the 19th century, property taxes were the largest revenue source for state governments.<sup>36</sup>

Early in the 20th century, revenues from general uniform property taxes declined as a share of state revenue as a series of new taxes were levied on automobiles, gasoline, sales, and income.<sup>37</sup> This shift away from the less-than-perfect uniform property tax goal, with new taxes on specific types of property and commodities, such as automobiles and gasoline, represents a partial reversion to the taxing of specific types of property that were becoming and are now "essential." This mix of "uniform" *ad valorem* taxation and specific property taxes is the multifaceted mixed bag of property taxes that exist today.

In the 1930s, the New Deal commenced an overall shift in government revenue collection away from states and localities to the federal government, with the property tax remaining the primary revenue source for local governments.<sup>38</sup> This greater local use of, and dependence on, the property tax generated greater scrutiny of property taxation, eventually leading to the enactment of property tax limits in many localities and in the majority of states across the nation by 2002.<sup>39</sup>

Until 1951, one-sixth of Maine's general fund was raised through a statewide property tax collected by municipalities.<sup>40</sup> In 1952, Maine enacted a sales tax, beginning the transition away from the statewide property tax and toward a revenue collection system of broad-based taxes on sales and income.<sup>41</sup>

The adoption of a Maine state income tax in 1969<sup>42</sup> dramatically changed the state's revenues. The adoption, however, was not easy—it passed both the state

30. Jeff Austin, *Circuit Breaker Program Increased Under LD 1*, MAINE TOWNSMAN, Mar. 2005, at 27.

31. See L.D. 1924 (121st Legis. 2004).

32. See L.D. 1 (122nd Legis. 2005).

33. See *id.*

34. JEWETT, *supra* note 20, at 117.

35. *Id.* at 121.

36. PROPERTY TAXATION AND LOCAL GOVERNMENT FINANCE 125 (Wallace E. Oates ed., 2001) [hereinafter OATES].

37. *Id.* at 128.

38. *Id.*

39. NATIONAL CONFERENCE OF STATE LEGISLATURES, A GUIDE TO PROPERTY TAXES: PROPERTY TAX RELIEF 30 (2002) [hereinafter A GUIDE TO PROPERTY TAXES].

40. MILLS, *supra* note 10, at 155.

41. *Id.*

42. *Id.* at 153.

Senate and House by only one vote in each chamber.<sup>43</sup> In 1971, the opponents forced a statewide referendum by citizen petition, which instead of repealing the tax, resoundingly approved it by seventy-five percent of the vote.<sup>44</sup>

Maine's reliance on the state income tax grew rapidly. Between 1970 and 1980 the personal and corporate income tax revenue grew by twenty-two percent.<sup>45</sup> In the next decade the tax grew fifteen percent and another six percent in its third decade.<sup>46</sup> Maine state government now receives no revenue from municipal collection of property taxes.<sup>47</sup> Maine's dependence upon sales and income tax collection is clear and is not likely to change in the near term.

As of 2004, forty-three percent of revenue collected was sent back to municipalities and property taxpayers in the form of school aid, revenue sharing, homestead exemptions, property tax rebates, business equipment tax reimbursements, local road assistance, tree growth refunds, and general welfare assistance.<sup>48</sup>

Maine's current effort to reform and provide targeted tax relief began in 2005 with LD 1.<sup>49</sup> LD 1 utilizes several targeted tax relief programs including the circuit breaker program, which targets classes of taxpayers based on income<sup>50</sup> and the homestead exemption, which applies to the assessment of primary residences, but not to second homes, undeveloped land, or businesses.<sup>51</sup>

### III. THE GOOD AND BAD OF PROPERTY TAXATION

The property tax is essential to local governments in Maine because the tax has the ability to produce large amounts of revenue, is administratively feasible, encourages political accountability, and is a stable source of revenue.<sup>52</sup> Additionally, it yields fiscal and political autonomy to municipalities by providing a dependable source of revenue to keep communities vibrant and effective.<sup>53</sup>

Nonetheless, property taxes create discontent for many reasons. First, the tax is regressive, proportionally collecting more money from the poor and middle class than the rich.<sup>54</sup> Second, property taxpayers cite inequitable assessments that translate into inequitable tax bills.<sup>55</sup> Third, the tax is highly visible and imposes unnecessary financial burdens on taxpayers, such as large lump sum payments.<sup>56</sup> Lastly, rising residential property values and reassessments shift the property tax burden from commercial and business property onto residential property, thus increasing residential property taxes and resentment.<sup>57</sup> Tax reform can shift the burden from

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43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 157.

47. *Id.* at 156.

48. *Id.*

49. *See* L.D. 1 (122nd Legis. 2005).

50. *Id.* pt. E.

51. *Id.* pt. F.

52. STEVEN C. DELLER, PROPERTY TAX RELIEF: OPTIONS AND ISSUES, 4 (1989).

53. DAVID BRUNORI, LOCAL TAX POLICY: A FEDERALIST PERSPECTIVE 126 (2003).

54. DELLER, *supra* note 52, at 5-6.

55. *Id.* at 5.

56. *Id.*

57. Jeff Austin, *Homestead Exemption Not Fully Reimbursed*, MAINE TOWNSMAN, Mar. 2005, at 24.

residential to commercial property without an impact on a municipality's or a state's economic viability.

The burden of property taxation has continually increased in Maine due to numerous factors, including increased property values, increased local and state spending, population growth, unfunded state mandates, and limited alternatives for local revenue generation. Maine is well above the national average for percentage of personal income subject to property taxation.<sup>58</sup> A failure to address the continually increasing property tax burden and resulting high taxation rates cause property taxpayer revolts, as illustrated in Maine by the November 2004 Palesky Initiative.<sup>59</sup>

For better or worse, Carol Palesky succeeded in placing a property tax reform citizen initiative—the Palesky Initiative—on Maine's ballot.<sup>60</sup> The Palesky Initiative, drafted very similarly to California's Proposition 13, aimed to limit *ad valorem* taxes on real and personal property to a maximum of one percent of full cash value.<sup>61</sup> Immediately upon the initiative's certification for the referendum ballot, parties on both sides of the issue began to campaign. Proponents praised the potential for long overdue property tax relief, while opponents intensely scrutinized the initiative's language, legal flaws, and its alleged blindness to fiscal realities.<sup>62</sup> The initiative received significant publicity, spurring fiscal projections, praise for long overdue relief, fears of political fallout, and worries that state government would come to a grinding halt were the initiative to pass.<sup>63</sup> In addition, the legislature, suspicious of the initiative's legality, asked the Maine Supreme Judicial Court to offer its opinion as to the constitutionality of two pieces of the proposal.<sup>64</sup> A majority of the court concluded that, even though specific parts of

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58. Siegel, *supra* note 3, at 421.

59. L.D. 1893 (121st Legis. 2004) [hereinafter Palesky Initiative].

60. *See id.*

61. *Id.*

62. *See In Depth: Tax Reform, Shifting the Burden in Maine*, at <http://news.maintoday.com/indepth/taxreform/moreviews.shtml> (hyperlinks to various editorials and columns from the viewpoint pages of the Portland Press Herald, Maine Sunday Telegram, Kennebec Journal, and Morning Sentinel) (last visited Apr. 29, 2005) [hereinafter *Tax Reform*].

63. *Id.*

64. Opinion of the Justices, 2004 ME 54, 850 A.2d 1145. In April 2004, the Law Court was asked to weigh in on the proposal. *Id.* ¶ 1, 850 A.2d at 1147. The legislature sought their opinion on two specific sections of the Palesky Initiative. *Id.* The first was whether the proposal's attempt to roll back current property assessments to their full value in 1996, which would be subject only to a maximum two-percent increase per year, unless transferred, at which point the property would be reassessed to current full market value, was unconstitutional. *Id.* ¶ 8, 850 A.2d at 1148. Second, if in fact that roll-back section was unconstitutional, the court was asked if it would be "severable" from the remaining sections of the proposal, allowing the remainder to stand. *Id.* ¶ 20, 850 A.2d at 1151. A majority of the court, determining that it was a "solemn occasion," answered the two questions by stating that the roll back provisions were unconstitutional, but severable from the proposal. *Id.* ¶ 21, 850 A.2d at 1151.

The court reasoned that the Maine Constitution does not allow unequal taxation and that all taxes should be assessed equally for similar properties. *Id.* ¶ 9, 850 A.2d at 1148. For example, it would be unconstitutional to tax two identical homes differently because one home was purchased prior to 1996 and the other home was purchased after the 1996-97 assessment. *See id.* Furthermore, the court stated that the elimination of the proposal's 1996-97 roll back provision would not be "so integral to the initiative as to render the entire bill invalid." *Id.* ¶ 31, 850 A.2d at 1153. Therefore, the roll back provision would be unconstitutional and severable from the proposal, which would allow the remainder to stand. *Id.*



the Palesky Initiative were unconstitutional, such as the property tax roll-back provisions to 1996-1997 levels, the cap on property taxes at one percent was constitutional.<sup>65</sup>

Nevertheless, the legal debate over property tax limitations remained an integral component of the initiative's campaign. Although Maine voters convincingly rejected the initiative, many stated that they agreed with the underlying purpose of reforming property taxes.<sup>66</sup> Regardless of the losing effort, the initiative spawned a long-overdue debate on property taxes in Maine and elevated the issue to the top of the legislative agenda for Governor Baldacci and the new 122nd legislature.<sup>67</sup>

#### IV. LEGAL REQUIREMENTS OF PROPERTY TAX REFORM IN MAINE

Tax reformers in Maine must remember that any reform effort must stay within the confines of specific laws and constitutional provisions that control taxation and revenue generating authority. Although this seems like an obvious point, it was missed by those behind the Palesky Initiative.<sup>68</sup> A full and in-depth discussion of Maine's legal requirements for property tax legislation is beyond the scope of this Article. However, a broad stroke discussion of property taxation laws and constitutional provisions regarding taxation and revenue generating authority is a necessary prerequisite to understanding the essential legal principles of property tax reform legislation in Maine.

##### A. *Property Taxation Laws of Maine: Equality and Uniformity*

In Maine, property taxes are levies on the ownership of property<sup>69</sup> that must be assessed based on fair market value.<sup>70</sup> Any tax assessment must be apportioned equally on all real estate.<sup>71</sup> Without assessment and apportionment, property taxes are facially invalid.<sup>72</sup> These unequivocal terms are constitutional mandates.<sup>73</sup> The Uniformity Clause of the Maine Constitution<sup>74</sup> "mandates equality, according to 'just value'" in the apportionment and assessment of property taxes.<sup>75</sup> Moreover, "[j]ust value is the equivalent of the property's 'market value.'" <sup>76</sup> The determina-

65. *Id.*

66. Victoria Wallace, *New Leaders Emphasize Bipartisanship*, THE TIMES RECORD, Dec. 2, 2004, available at <http://www.timesrecord.com/website/archives.nsf56606056e44e37508525696f00737257/8525696e00630dfe05256f5e00579024?OpenDocument>.

67. See *Tax Reform*, *supra* note 62; L.D. 1 (122nd Legis. 2005).

68. Opinion of the Justices, 2004 ME 54, ¶¶ 8-19, 850 A.2d at 1148-51.

69. *Eastler v. State Tax Assessor*, 499 A.2d 921, 924 (Me. 1985).

70. *Id.*

71. See *Brewer Brick Co. v. Inhabitants of Brewer*, 62 Me. 62, 73 (1873); *Delogu v. City of Portland*, 2004 ME 18, 843 A.2d 33; *Ram's Head Partners, L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916; Brief for Amicus Curiae, Orlando Delogu, Opinion of the Justices, 2004 ME 54, 850 A.2d 1145.

72. *Eastler v. State Tax Assessor*, 449 A.2d at 924.

73. Opinion of the Justices, 2004 ME 54, ¶ 15, 850 A.2d at 1150.

74. ME. CONST. art. IX, § 8 provides, in pertinent part: "All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."

75. *Delogu v. City of Portland*, 2004 ME 18, ¶ 12, 843 A.2d at 36.

76. *Shawmut Inn v. Town of Kennebunkport*, 428 A.2d 384, 389 (Me. 1981) (citing *Sweet, Inc. v. City of Auburn*, 134 Me. 28, 180 A. 803 (1935)).

tion of just value must consider all possible land use alternatives and relevant factors.<sup>77</sup> The law permits local governments considerable leeway in the choice of method employed to achieve these so-called “just” valuations.<sup>78</sup> Furthermore, validity is presumed for municipal assessments of property.<sup>79</sup> The result of any methodology in determining assessment and apportionment in Maine “must be a reasonable determination of ‘market value,’” and apportioned and assessed equally on property.<sup>80</sup> The courts deem property tax reform measures that violate the above-described requirements invalid.

Additionally, the Uniformity Clause requires uniformity of just values in assessments.<sup>81</sup> In short, similar property must be assessed similarly; to assess similarly situated properties differently results in unjust discrimination. Unjust discrimination occurs when similarly situated properties are under or overvalued.<sup>82</sup>

Furthermore, the creation of two separate classes of assessments also violates equal apportionment.<sup>83</sup> Hence, after the assessment of properties, municipalities must apportion the property tax equally, according to the market value.<sup>84</sup> Municipalities are prohibited from engaging in unjust discrimination in the apportionment of real estate taxes,<sup>85</sup> as well as in the assessment of market value. Disparate levy of taxation on similar or identical properties is unjust discrimination.<sup>86</sup> Recently, the Maine Supreme Judicial Court, sitting as the Law Court, examined unequal assessment and apportionment in *Delogu v. City of Portland*.<sup>87</sup> Citing the

77. ME. REV. STAT. ANN. tit. 36, § 701-A (West 2004).

[A]ssessors in determining just value are to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. In determining just value, assessors must consider all relevant factors, including without limitation, the effect upon value of any enforceable restrictions to which the use of the land may be subjected, current use, physical depreciation, functional obsolescence, and economic obsolescence. Restrictions include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is deemed to arise from it attributable to legally permissible use or uses only.

*Id.*

78. *Shawmut Inn v. Town of Kennebunkport*, 428 A.2d at 390.

79. *Ram's Head Partners, L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 9, 834 A.2d at 919.

80. Opinion of the Justices, 2004 ME 54, ¶ 16, 850 A.2d at 1150.

81. ME. CONST. art. IX, § 8.

82. *Ram's Head Partners, L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 11, 834 A.2d 916, 919 (citing *City of Biddeford v. Adams*, 1999 ME 49, ¶ 13, 727 A.2d 346, 349).

83. Opinion of the Justices, 2004 ME 54, ¶ 17, 850 A.2d at 1150.

84. ME. CONST. art. IX, § 8; see also *Shawmut Inn v. Town of Kennebunkport*, 478 A.2d 384, 390 (Me. 1981).

85. *Delogu v. City of Portland*, 2004 ME 18, ¶ 12, 843 A.2d 33, 36.

Article IX, § 8 mandates equality, according to ‘just value,’ in the manner by which property taxes are both ‘apportioned and assessed.’ It prohibits municipalities from engaging in unjust discrimination in the assessment of real estate taxes or the apportionment of real estate tax burdens . . . . The underassessment or overassessment of one set of similarly situated properties supports a finding of unjust discrimination. The same result occurs when selected properties receive an assessment reduction that does not benefit similarly valued properties.

*Id.* (citations omitted).

86. *Id.*

87. *Id.* ¶ 1, 843 A.2d at 34.

Uniformity Clause, the Law Court explicitly stated that municipalities are prohibited from engaging in unjust discrimination in the assessment and apportionment of real estate taxes.<sup>88</sup> Discrimination is apparent when a municipal assessment system “necessarily results in unequal apportionment.”<sup>89</sup> Moreover, an underassessment or overassessment of similarly situated property requires other taxpayers to pay the deficit.<sup>90</sup> The intent of these two requirements, assessment and apportionment, is to “equalize public burdens,” so that taxpayers contribute to the entire tax burden proportionally to the total value of their property.<sup>91</sup>

In order for a taxpayer to demonstrate a “manifestly wrong” or unjust assessment, the property owner must show “that the property is substantially overvalued, there was unjust discrimination, or that the assessment was fraudulent.”<sup>92</sup> Taxpayers do not have “to present credible affirmative evidence of [the] just value of each property at issue”<sup>93</sup> to demonstrate unjust discrimination, but they must present more than limited “specific instances, sporadic differences,” or an assessor’s error of judgment.<sup>94</sup> Any property tax reform proposal, unless seeking an amendment to the state constitution, must equally assess and apportion property taxes according to the property’s just value.

### B. Balkanized Equality and Uniformity

Because the requirements for equality and uniformity are in Maine’s Constitution, one might assume that these requirements are applied statewide. They are not. They apply separately within each municipality and taxing district. Equality and uniformity stop at each town’s line because each municipality has its own assessors,<sup>95</sup> its own assessment formula for determining market value,<sup>96</sup> and its own appeal process,<sup>97</sup> which are all wrapped in discretionary latitude at each level of decision-making. In addition, small towns frequently have the elected selectman serve as the assessors, whereas larger municipalities either contract out the task to professional appraisers/assessors or have their own professional staff.<sup>98</sup> As a result, Maine has a balkanized property taxation process that can have disparate effects from town to town where the local assessor must satisfy the legal standards within the geographic area of that town only. There is no statewide assessment criteria. For example, the Town of Yarmouth has an assessment formula that assigns different values to the different viewscapes a property might enjoy. For a

88. *Id.* ¶ 12, 843 A.2d at 36; see also *Ram’s Head Partners L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 11, 834 A.2d 916, 919.

89. *Delogu v. City of Portland*, 2004 ME 18, ¶ 12, 843 A.2d at 36 (internal citations omitted).

90. *Opinion of the Justices*, 161 Me. 182, 208, 210 A.2d 683, 698 (1965).

91. *Eastler v. State Tax Assessor*, 449 A.2d 921, 924 (Me. 1985).

92. *Ram’s Head Partners, L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 9, 834 A.2d at 919 (quoting *City of Biddeford v. Adams*, 1999 ME 49, ¶ 13, 727 A.2d 346, 349).

93. *City of Biddeford v. Adams*, 1999 ME 49, ¶ 20, 727 A.2d at 350.

94. *Ram’s Head Partners, L.L.C. v. Town of Cape Elizabeth*, 2003 ME 131, ¶ 11, 834 A.2d at 919 (internal citation omitted); see also *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 353 (1918) (“[m]ere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”).

95. ME. REV. STAT. ANN. tit. 36, §§ 703, 841 (West 2004).

96. *Id.* § 701-A.

97. *Id.* § 841.

98. See *id.* § 703.

coastal or hilly community these views can add significantly to a property's assessed value. Next door, in the Town of Freeport, views are not considered because in that town they are considered too subjective. Thus, a property in Freeport with dramatic views will be assessed at a significantly lower rate than a similarly benefited property in Yarmouth.

### C. Municipal Taxation and Revenue Generation

In Maine, taxing authority rests exclusively in the hands of the state legislature,<sup>99</sup> and that power cannot be constitutionally transferred to the municipalities.<sup>100</sup> Any newly instituted local tax (i.e., local option taxes) must have express legislative authority.<sup>101</sup> This same rule applies for other revenue generating schemes as well, such as the creation of special districts, and the expansion of user fees and charges.<sup>102</sup>

Further, property tax reform efforts cannot place other constitutional guarantees and statutory mandates in jeopardy, such as education. Maine's Constitution recognizes education as essential.<sup>103</sup> This is expressed by the requirement that Maine municipalities support and maintain their public schools.<sup>104</sup> Property tax limitations and/or educational funding reforms that prevent municipalities from adequately funding education have the potential to create disparate education across the state, which would place the proposal's legal standing in jeopardy.<sup>105</sup>

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99. ME. CONST. art. I, § 22.

100. See *Brewer Brick Co. v. Inhabitants of Brewer*, 62 Me. 62, 71 (1873).

101. ME. CONST. art. IX, § 9.

102. See ME. REV. STAT. ANN. tit. 36, § 652(1)(L)(2) (West 1990 & Supp. 2003).

103. ME. CONST. art. VIII, pt. 1, § 1.

104. *Id.*

105. For example, the Palesky Initiative was blind to the public's right to education in Maine, and the contractual obligations of municipalities. As applied, the proposal may have unconstitutionally discriminated against children and prevented many municipalities from paying their statutorily mandated county tax and constitutionally mandated education expenses.

Maine's Constitution recognizes the importance of education as being essential in the preservation of the rights and liberties of the people. *Id.* The legislature is required to make the towns, at their own expense, support and maintain the public schools. *Id.* The legislature has expansive authority to provide for education and it is not unconstitutional to require towns to pay for educational services. *Id.* However, the state has historically subsidized education; recently, state aid has paid for approximately forty-four percent of local education costs. See MAINE MUNICIPAL ASSOCIATION, HOMEOWNER'S GUIDE TO PROPERTY TAX IN MAINE, at [http://www.memun.org/public/local\\_govt/property\\_tax.htm](http://www.memun.org/public/local_govt/property_tax.htm) (last visited Apr. 29, 2005); Paul Carrier, *Analysis: Tax Cap Holds Revenue Bomb for Towns*, PORTLAND PRESS HERALD, Feb. 11, 2004, available at <http://news.maintoday.com/indepth/taxreform/040211taxcap.shtml>.

The state must be cognizant of the effects of educational funding on property taxes and its disparate consequences to public education. The current "essential program and services" funding scheme in LD 1 may further attenuate the levels of education in this state between rich and poor towns. As a result of LD 1 funding, many rich towns may receive more money, while poorer towns receive less. Furthermore, these rich, affluent towns historically offer more, and arguably better, educational programs and services, and will most likely exceed the limitations (caps) instituted by LD 1. They will be able to continue offering programs outside essential programs and services because they have the means to do so. The poorer towns will most likely not offer services outside the state-prescribed essential programs and services because they lack the means to do so. If the funding inadequacies in LD 1 are not addressed, the funding mechanism will result in many rich towns having better schools than the poorer towns, which

## V. PROPERTY TAX LIMITS

Efforts to set local property tax limitations first appeared in the 1870s and 1880s.<sup>106</sup> In principal, the limitations aimed to disable local governments' ability to assume large sums of debt.<sup>107</sup> However, many individuals campaigned for limitations to restrain governmental expenditures and to protect property owners from unwarranted increases in their tax burden after the panic of 1870 and the subsequent depression.<sup>108</sup> In 1875 and 1884, Alabama and New York, respectively, were the first states to enact constitutional amendments limiting property taxation.<sup>109</sup>

For the next fifty years, new statutory and constitutional tax limitation efforts were more or less dormant until the depression of the 1930s.<sup>110</sup> As a result of the Great Depression, tax delinquency rose as personal income declined.<sup>111</sup> Between 1929 and 1932, personal incomes were cut in half, while property taxes only decreased by nine percent.<sup>112</sup> For many individuals, property tax liabilities became greater than their willingness or ability to pay.<sup>113</sup> These disproportionate effects culminated in the first property tax revolt in America.<sup>114</sup> Taxpayer leagues were formed, demanding governments to scale back expenditures to correspond with declining income levels, while businesses fearing defaults on municipal bonds and their effects on the economy funded elaborate campaigns urging people to pay their taxes.<sup>115</sup> As a result of these revolts, sixteen states passed property tax limits lowering the percentage of each property owner's personal income subject to property taxation.<sup>116</sup> In 1940, the average share of personal income used to pay the tax dropped to 5.8 percent from a high of 11.3 percent in 1932.<sup>117</sup> The trend continued into the late 1950s, reaching a low of 3.3-3.5 percent.<sup>118</sup> Property tax limitation efforts again became relatively dormant until the average share of personal income needed to pay property taxes began to rise to the five-percent level by the late 1970s.<sup>119</sup>

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may cause equal protection issues in statewide education very similar to what has been occurring in New Hampshire.

Discussing educational funding is well outside the realm of this article and deserves an article of its own. However, educational funding is the leading appropriation of money for most municipalities and, as a result, it directly affects property taxes. Therefore, alterations to the educational funding system and/or impacts on the current system must be considered when seeking to provide property tax relief.

106. See, e.g., M. David Gelfand, *Seeking Local Government Financial Integrity Through Debt Ceilings, Tax Limitations, and Expenditure Limits: The New York City Fiscal Crisis, The Taxpayers' Revolt, and Beyond*, 63 MINN. L. REV. 545, 551 (1979) (discussing property tax limitations).

107. *Id.*

108. *Id.*

109. *Id.* at 551-52.

110. *Id.* at 552.

111. *Id.*

112. OATES, *supra* note 36, at 179.

113. See *id.* at 178-79.

114. *Id.*

115. *Id.* at 179.

116. *Id.* at 180.

117. *Id.* at 179-80.

118. *Id.* at 180.

119. *Id.* Personal income attributable to property taxes rose to levels of 4.1-4.3 percent in 1940. *Id.*

History demonstrates an apparent property tax tolerance if the average share of personal income needed to pay the tax is below five percent, which is consistent with the targeted tax relief in Maine's current circuit breaker program embodied in LD 1.<sup>120</sup> The circuit breaker benefit is only available, or "trips," when a taxpayer's property tax bill (or eighteen percent of the taxpayer's rent) exceeds four percent of the taxpayer's income.<sup>121</sup>

In order to reign in rising property taxes to the more recent historical levels of less than five percent of income, several states employed a technique called the levy limit.<sup>122</sup> In contrast to the earlier approach of restricting the tax rate applied to assessed property values, levy limits were established to cap local governments' annual revenue generated from property taxes.<sup>123</sup> Simply put, levy limits targeted the amount of money governments could collect.<sup>124</sup> The object of these limitations was to provide tax relief for homeowners faced with rising assessments due to inflation.<sup>125</sup>

In 1978, California took center stage with the most infamous of all tax revolts, known by most as Proposition 13—formally known as the Jarvins-Gann Initiative.<sup>126</sup> Proposition 13 rolled back assessed property values to 1975 levels, set property tax rates at a maximum of one percent of assessed value, and limited annual reassessment rates to two percent.<sup>127</sup> During the next four years, sixteen states, including Michigan and Massachusetts, enacted property tax limits<sup>128</sup> with the intended purpose of providing property tax relief.<sup>129</sup>

Modern property tax limits use a variety of techniques, including direct limits on revenue growth, levy limits, and property tax caps that indirectly limit tax revenue growth, as well as limiting growth rates for assessed values.<sup>130</sup> The purposes for property tax limitations are simple and straightforward. Tax limitations represent an attempt to achieve reductions in the share of personal income attributed to property tax.<sup>131</sup> Limitations at the local level generally attempt to shift the property tax burden onto other revenue sources,<sup>132</sup> such as other taxes and user charges, or state government revenue generation and sharing. Other limitations attempt to reduce the tax by curbing expenditures that create the need for tax revenues.<sup>133</sup>

120. See L.D. 1 (122nd Legis. 2005) (proposing changes to ME. REV. STAT. ANN. tit. 30-A, § 5721-A (West 2004)).

121. Austin, *supra* note 30, at 27.

122. Gelfand, *supra* note 106, at 552 (citing as examples ARIZ. REV. STAT. ANN. § 42-304(C) (Supp. 1978); IND. CODE ANN. §§ 6-1.1-19-1 – 6-1.1-19-2 (Burns 1978) (school corporations only); KAN. STAT. ANN. §§ 79-5001 – 79-5018 (1977); MINN. STAT. §§ 275.50 – 275.59 (1978); WASH. REV. CODE ANN. § 84.55.010 (West Supp. 1979) (applied to all taxing districts except state and school districts); WIS. STAT. § 70.62(4) (1975).

123. *Id.* (citing U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE LIMITATIONS ON LOCAL TAXES AND EXPENDITURES 12-14 (1977)).

124. *Id.*

125. *Id.* at 553.

126. CAL. CONST. art. XIII A, amended June 6, 1978 [hereinafter Proposition 13]. Howard Jarvis and Paul Gann were the authors and lead campaigners for Proposition 13 in 1978.

127. OATES, *supra* note 36, at 180.

128. *Id.*

129. Gelfand, *supra* note 106, at 553-54.

130. OATES, *supra* note 36, at 180-81.

131. See *id.* at 182.

132. *Id.* at 177.

133. *Id.* at 180-81.

## VI. RESULTING IMPACTS OF PROPERTY TAX LIMITATIONS

Limiting property taxes through caps or other instruments will have impacts on revenue streams, and may have impacts on services, local control, and funding for education and county governments. Limiting the property tax levy has impacts on municipal revenue generation because it is the only significant revenue generating mechanism afforded municipalities.<sup>134</sup> Property tax limitations also directly impact county governments and services because counties are funded by municipal property taxes. Understanding the impacts is essential to effectively crafting property tax relief.

*A. Revenue Impacts*

It is obvious that property tax limitations decrease property tax revenue. This, in turn, forces revenue increases in alternative sources, or reductions in services equal to the loss in property tax revenue.<sup>135</sup> In Massachusetts, Proposition 2 $\frac{1}{2}$  decreased property tax revenue by eighteen percent and “significantly constrained local spending.”<sup>136</sup> Similarly, some analysts predicted significant cuts in revenue if Maine’s most recent tax reform measure, the Palesky Initiative, passed.<sup>137</sup> The Palesky Initiative is summarized in section III of this article.

*B. Service Impacts*

Even though property tax limitations by their nature may affect local services, some proponents deny claims of reduction in the quantity and quality of services upon passage of such limits.<sup>138</sup> Voters also hold this belief. Prior to the vote on California’s Proposition 13, thirty-eight percent of voters believed state and local services could continue at the same level with up to a forty percent decrease in tax revenue.<sup>139</sup> Likewise, in Massachusetts, eighty-two percent of supporters of Proposition 2 $\frac{1}{2}$  believed that, if passed, the quality of services would not be reduced.<sup>140</sup> There is some truth to this belief because the aggregate of service impacts cannot be objectively estimated prior to the enactment of a property tax limitation measure. Only the relationship between current funding levels for services and the proportion in which revenue will be reduced upon implementation of a limitation can be estimated. Even though simple math suggests that a reduction in revenue will cause a proportional reduction in services, it is in reality only speculation to assume services will be cut, and it is impossible to predict *which* services will be cut. Opponents arguing against a tax limitation because services will be drastically cut assume that there will be no other alternative revenue source created. In short, the argument assumes a passive political response.

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134. ME. REV. STAT. ANN. tit. 30-A § 5685(1)(a) (West 2004) (defining local revenues).

135. OATES, *supra* note 36, at 190.

136. *Id.* at 189.

137. See Palesky Initiative, *supra* note 59.

138. See *id.*

139. OATES, *supra* note 36, at 191.

140. *Id.*

In Maine, the municipal revenue stream is primarily the property tax.<sup>141</sup> On average, the property tax accounts for seventy-one percent of municipal revenue.<sup>142</sup> All other significant revenue comes from state and federal intergovernmental aid.<sup>143</sup> If local revenue is reduced by the enactment of property tax limits in Maine, services may be cut unless alternative revenue sources are utilized and/or created.

Not all proponents of property tax limitations are necessarily advocating for property tax burden reductions while ignoring the potential for unreasonable reductions in municipal services. Other revenue sources are available for shifting the property tax burden. In Maine, the circuit breaker and homestead exemption programs are revenue-shifting techniques that shift the tax burden from municipal property taxes to state revenue generation mechanisms,<sup>144</sup> such as sales and income taxes.

Some proponents of property tax limits may have as their primary goal, or as a secondary goal, not the reductions of the property tax burden, but rather a reduction of the size of government itself. These advocates want to cut services. It is a disservice to the discussion of property tax relief to huff and puff with doomsday scenarios of lost services, or to indulge in ideologically-motivated attempts to axe down big government or to advance special interests. All sides of the debate have some reasonable basis for their positions. Reasonable people can even find some merit in the concerns and arguments of the various approaches and solutions that lead to property tax reductions.

The rejection of the Palesky Initiative by Maine's voters in 2004 can be interpreted as a vote for moderation, but not a vote for the status quo. Governor Baldacci and the legislature advanced this interpretation, which resulted in the beginnings of a moderate approach, LD 1.<sup>145</sup> It is not perfect and it has unintended consequences.<sup>146</sup> This Article concludes with some proposals that could further advance this moderate and balanced approach for Maine.

### C. Local Control

For better or worse, property taxes create local control by providing municipalities with discretionary funding for operations and services. Thus, if alternative locally-controlled discretionary revenue sources are not available, property tax limitations reduce this local control by limiting the amount of local discretionary funds a municipality can raise and spend on its own.

In Maine, the property tax is the revenue backbone ensuring adequate revenue generation to operate local governments. The state's legal,<sup>147</sup> political, and economic restraints limit local governments' ability to raise additional revenue outside the property tax.<sup>148</sup> Limitations on local governments' capacity to raise and

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141. ME. REV. STAT. ANN. tit. 30-A, § 5685(1)(a) (West 2004) (defining local revenues); Kate Dufour, 2002 Fiscal Survey Report & Analysis 5-6 (Mike Starn, ed.), available at [http://www.memun.org/public/local\\_govt/DATA\\_tax/fiscalsurvey/2002/analysis.pdf](http://www.memun.org/public/local_govt/DATA_tax/fiscalsurvey/2002/analysis.pdf) (Jan. 2003).

142. Dufour, *supra* note 141, at 5-6.

143. *Id.*

144. See L.D. 1 (122nd Legis. 2005).

145. See *id.*

146. Michael L. Starn, *School Funding: The Unintended Consequences of LD 1*, MAINE TOWNSMAN, Mar. 2005, at 5.

147. These include limitations imposed by ME. CONST. art. IX, § 9.

148. See BRUNORI, *supra* note 53, at 123.



rely on their own property tax revenue will diminish local autonomy. Local autonomy generally leads to a system capable of ensuring democratic processes and providing locally-controlled public services effectively and efficiently.<sup>149</sup> “Without a viable local revenue source, localities will be forced to rely on the state to fund” local services.<sup>150</sup>

Increasing dependence on state aid gives lawmakers and agencies an opportunity to add rules and regulations as conditions to intergovernmental aid.<sup>151</sup> As a result, local autonomy and decision-making is restrained or ceded to the state. Furthermore, this restraint can weaken local democracy by limiting the interplay between citizens and officials who must work collaboratively in determining allocations for local services, and the appropriate use of available revenue.

This loss of local control, historically, has not been experienced in Maine because the present revenue-sharing program provides revenue to municipalities with no strings attached.<sup>152</sup> Increased state aid for property tax relief will test Maine’s tradition of granting discretionary state funds to municipalities. Advocates for property tax limitations need to be aware that they may also be advocating for a reduction of local control over policies and services. This runs counter to the belief held by many that local governments are more responsive and better suited to handle local issues due to their administrative flexibility and capacity to offer services in an efficient manner.<sup>153</sup> Obviously, locally-elected and appointed municipal officials are closer to the voters than any other level of government. The new property tax levy and spending limitations created in Maine’s 2005 LD 1<sup>154</sup> acknowledge the value of this local control by providing authority for municipal legislatures to override state-imposed limitations.<sup>155</sup>

#### *D. Impacts of Statutory and Constitutional Funding Mandates on Education and County Government*

Funding mandates derive from statutory or constitutional provisions requiring funding of specific services and programs by municipalities.<sup>156</sup> For example, in Maine, the constitution and state statutes require municipalities to pay county taxes and fund “adequate educational services.”<sup>157</sup>

The mandated municipal funding of county governments in Maine is a continuously contentious subject at the local level because it is a budget item over which municipalities have no control.<sup>158</sup> County governments create their own programs and budgets and then simply assess each municipality in the county its

149. *See id.* at 125.

150. *Id.*

151. *Id.*

152. Maine state government shares 5.1 percent of all sales, individual, and corporate income tax revenue with its municipalities. Maine State Treasurer’s Office, *State & Municipal Revenue Sharing*, at <http://www.state.me.us/treasurer/revenue.htm>.

153. *Id.*

154. L.D. 1 (122nd Legis. 2005).

155. *Id.* pt. C.

156. ME. CONST. art. IX, § 21.

157. ME. CONST. art. VIII, § 1.

158. ME. REV. STAT. ANN. tit. 30-A, § 706 (West 2004).

proportional share.<sup>159</sup> Counties can and do create programs that municipalities must pay for, even if the municipality does not want the program, does not use it, or has an identical locally-operated program.<sup>160</sup> A recent example of this is the 911-dispatch center created by Penobscot County pursuant to state-enabling statutes, which the City of Bangor (the largest payer in the Penobscot County budget) did not want and does not use, but must subsidize.<sup>161</sup> These types of county assessments are paid for with property taxes; therefore, any effort to limit or cap property taxes in fairness needs to limit the county assessment authority.

Educational funding mandates from state governments and indirect federal mandates may also affect property taxes. Regarding state funding mandates, property tax limitations significantly lowering the mill rate may jeopardize a municipality's ability to fund education to the level required by the state constitution.<sup>162</sup>

The sharing of the cost of education between local, state, and federal governments is a very complex subject matter, which is beyond the scope of this Article. Limiting property taxes, shifting revenue sources, and paying for mandates for educational purposes are equally complex subjects. Altering any part of the formula for financing education will have unintended consequences.<sup>163</sup> This huge piece of the property tax burden cannot be ignored and deserves its own separate discussion within the context of property tax reform.

## VII. PROPERTY TAX RELIEF ALTERNATIVES AND PROPOSALS

Property tax relief can be achieved by utilizing a variety of alternative techniques that are discussed in this section. Examples include the targeting of groups of taxpayers who need the greatest relief using exemptions, caps, and/or reimbursements. The homestead exemption is the classic manifestation of the technique and has recently been used in Maine with several different configurations.<sup>164</sup> Maine's circuit breaker program is a pure reimbursement.<sup>165</sup> Across-the-board relief can be achieved by diversifying local revenue sources, increasing state aid, setting caps for the property tax levy, and/or implementing expenditure limits which can be general or targeted.

### A. *Proposal Assumptions*

An examination of underlying assumptions is necessary before reviewing the available relief techniques, evaluating their utilization, and proposing their continued use, modification, or elimination.

The first assumption is that total elimination of the property tax is not an option. It is too radical and too disruptive. Maintaining stability through gradual reform is assumed to be imperative for tax reform. Property tax is a stable source

159. See *City of Bangor v. Penobscot*, 2005 ME 35, ¶ 1, \_\_ A.2d \_\_.

160. See *id.* ¶ 1, \_\_ A.2d \_\_.

161. *Id.* ¶¶ 5-6, \_\_ A.2d \_\_.

162. ME CONST. art. VIII, § 1.

163. Starn, *supra* note 146.

164. Compare ME. REV. STAT. ANN. tit. 36, § 683 (West Supp. 1998) with ME. REV. STAT. ANN. tit. 36, § 683 (West Supp. 2003).

165. Austin, *supra* note 30, at 27.

of revenue for municipal government and has some positive attributes as previously discussed in this Article.

The second assumption is that a pure, simple, uniform property tax is regressive because wealthy individuals are generally required to pay a smaller percentage of their annual incomes than those of modest means. In other words, the more money the taxpayer has, the less the taxpayer pays proportionately to that taxpayer's wealth. The poor pay more of their limited wealth to discharge this tax burden than do the rich. The converse of a regressive tax is a progressive tax, which is structured to reflect the taxpayer's ability to pay. Maine's graduated income tax is the obvious example.<sup>166</sup> The assumption is that the progressive model is preferable to regressive taxation if extreme applications are avoided and disproportionate burdens on the poor, middle class, and rich are avoided. The regressive nature of the property tax can be ameliorated using targeted tax relief techniques. For example, if the homestead exemption is applied equally on all homesteads, it offers limited progressive relief, but if a graduated system based on homestead valuation is applied, it offers greater progressive relief.

The third assumption is that no one likes to pay taxes. Its companion assumption is that few elected officials will vote for obvious increases of tax burdens or for new taxes. Even the shifting of the tax burden can be an anathema if not clothed with positive results, such as making a tax less regressive.

Using these assumptions, the following discussion of relief techniques and proposals seeks to continue the current use of the property tax, which provides a stable source of revenue for Maine municipalities, and to provide additional relief by gradually building on the 2005 reforms of LD 1,<sup>167</sup> without creating new state-wide taxes or tax increases, while modifying the regressive nature of the property tax.

### 1. Homestead Exemption

The homestead exemption is the most commonly used form of property tax relief.<sup>168</sup> Forty-eight states and the District of Columbia presently use homestead exemptions or credits.<sup>169</sup> Homestead exemptions were fashioned during the Great Depression to provide poor homesteaders relief to avoid foreclosure,<sup>170</sup> and are grounded in the political belief that home ownership is beneficial to society and should be encouraged.<sup>171</sup> Today, the exemption reduces property taxes on primary residences by exempting an amount of the home's value from taxation.<sup>172</sup> The exemption may also grant relief to specific classes of individuals, such as senior citizens.<sup>173</sup> In the majority of states, however, the exemption is adminis-

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166. See ME. REV. STAT. ANN. tit. 36, § 5111 (West 2004).

167. L.D. 1 (122nd Legis. 2005).

168. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 7.

169. *Id.*

170. *Id.* at 8.

171. BRUNORI, *supra* note 53, at 65.

172. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 8.

173. *Id.* at 9-14. Seventeen states offer the same benefits to elderly and non-elderly households; twelve states offer benefits only to senior citizens; and twelve states and the District of Columbia have programs for the elderly and non-elderly alike, but offer more generous programs to seniors. *Id.*

tered through reductions in the amount of assessed value to every property owner regardless of income, property value, or ability to pay (i.e., uniform relief).<sup>174</sup> When uniformly applied, the homestead exemption only marginally reduces the regressive nature of property taxation.

Generally, homestead exemptions are mandated by state law and require local governments to absorb property tax revenue losses.<sup>175</sup> The degree of relief and state reimbursement for loss of property tax revenue varies from state-to-state.<sup>176</sup> Only twelve states reimburse local governments for some or all of the cost.<sup>177</sup>

Maine's homestead exemption program began in 1998 with a flat, uniform exemption of \$7,000, deducted from the assessed value of the primary in-state residence of Maine residents only.<sup>178</sup> It is one of the most popular property tax relief programs because it is so broadly available, with approximately 310,000 households receiving property tax relief.<sup>179</sup> "From the municipal perspective, it was also well-received because the State was reimbursing the full amount of the lost property tax revenue created by the exemption to municipalities."<sup>180</sup> Until 2002, the program provided \$40 million of property tax relief for Maine residents.<sup>181</sup>

Maine's homestead exemption program was modified in 2002 to make its relief more progressive, while reducing its cost to the state.<sup>182</sup> This was achieved by creating a tiered system, which reduced the exemption to \$5,000 for properties having an assessed value between \$125,000 and \$250,000, and to \$2,500 for properties valued at \$250,000 and over.<sup>183</sup> The 2005 tax reform, LD 1, significantly changed this exemption by reverting to the more regressive uniform flat exemption, and no longer reimbursing municipalities for their total amount of lost revenue, as it had done since 1998.<sup>184</sup> This new exemption, \$13,000, is applied uniformly and flatly to all primary in-state residences of Maine residents, and state reimbursement to municipalities is reduced to fifty percent.<sup>185</sup>

A modest change to this new homestead exemption would make it more progressive and less costly to the state. The precedent and the example tiered-exemption system, in effect from 2002 to 2005, is the model. Based on that model, the \$13,000 flat across-the-board exemption should be changed to a graduated five-tiered exemption program. The \$13,000 exemption should be applied to Maine taxpayers' primary in-state residences that have an assessed value of less than \$150,000; \$10,000 exemption for residences assessed at \$150,000 to \$224,999; \$5,000 for residences assessed at \$250,000 to \$324,999; \$2,500 for residences assessed at \$325,000 to \$500,000; and no exemption for residences having an assessed value of \$500,000 or more. This reduces the burden of Maine's low and medium income residents, while not benefiting Mainers who are fortunate enough to live in expensive homes.

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174. BRUNORI, *supra* note 53, at 65.

175. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 8.

176. *See id.* at 10-15.

177. BRUNORI, *supra* note 53, at 66.

178. Austin, *supra* note 57, at 22; ME. REV. STAT. ANN. tit. 36, § 683 (West Supp. 1998).

179. Austin, *supra* note 57, at 22.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. L.D. 1 (122nd Legis. 2005).

185. *Id.*

Of course, some Maine residents living in homes with high full-assessment value, not by choice, but because of the market-driven inflation of real estate prices, especially for waterfront property, will not see significant relief. This group gets some relief from the circuit breaker program that benefits all Maine residents. A separate circuit breaker program could be fashioned for the homestead exemption, which would enhance the progressive nature of the exemption for senior citizens, the disabled, and others on fixed incomes, as well as those who find themselves living in homes that now have a value far beyond their wildest imaginations. A windfall recapture of this circuit breaker tax, collected at the time of sale, could be crafted similarly to the open space<sup>186</sup> and tree growth tax<sup>187</sup> exemption recapture provisions. Such a recapture is not recommended because it creates unnecessary complexity, interferes with transferability, and creates a delayed penalty for circumstances unintentionally created by the taxpayer.

The tiered homestead exemption is attractive because of its progressive simplicity, precedent in Maine, and because it modifies an already existing and popular plan—the homestead exemption. Adding a tiered circuit breaker to the homestead exemption for additional targeted property tax relief can be tied into the existing state-income tax reporting and collecting system, in the same fashion as is proposed in this Article for the existing circuit breaker program. The tiered system of homestead exemptions should also reduce the reimbursement cost to the state because the graduated exemptions would remove portions of the exemption which would be reimbursed by the state.

The 2005 homestead exemption legislation's reduction of state reimbursement from one hundred percent to fifty percent<sup>188</sup> has changed the program from straight property tax relief to one-half of it now being a property tax shift.<sup>189</sup> The fifty percent non-reimbursed portion of the \$13,000 exemption is re-distributed and layered on all non-qualifying Maine resident property owners, and on all commercial property, property owned by non-residents, second homes, and undeveloped land in a municipality.<sup>190</sup>

Taxpayers in municipalities with a large residential tax base will see little benefit from the 2005 homestead exemption changes. Communities with large commercial or industrial tax bases, or a large number of second homes, on the other hand, will see the greatest benefits.<sup>191</sup> The frustration this creates in largely residential municipalities derives from the illusory benefit of the increased exemption to \$13,000, from \$7,000. This, in fact, provides no benefit when the necessary increase in the mill rate offsets the effects of the exemption increase.<sup>192</sup>

The reimbursement savings created by the proposed tiered system can be used to offset the costs of restoring the one-hundred-percent state reimbursement that was in place from 1998 to 2005. Additional revenue for this one-hundred-percent reimbursement could also come from the state sharing in the new local revenue generated by local option taxes proposed in this Article.

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186. ME. REV. STAT. ANN. tit. 36, § 1106-A (West Supp. 2003).

187. ME. REV. STAT. ANN. tit. 36, §§ 571-83 (1990).

188. L.D. 1 (122nd Legis. 2005).

189. Austin, *supra* note 57, at 22.

190. *Id.* at 23.

191. *Id.*

192. *Id.*

## 2. Circuit Breaker Programs

Circuit breaker programs provide progressive relief to the taxpayer from regressive property taxes. Named after electric power devices that prevent overloads, these programs were established to prevent “overloading” the taxpayer.<sup>193</sup> Circuit breakers involve setting an income threshold that cannot be exceeded by property tax liability for homeowners or renters.<sup>194</sup> The program affords relief by rebating or crediting a percentage of the tax bill paid in excess of the proportion of the taxpayer’s or renter’s income.<sup>195</sup> The program seeks to reduce the property owner’s proportion of income paid to the property tax.<sup>196</sup> Circuit breakers provide relief to those who need it most—those with low and moderate incomes.

Circuit breaker programs are currently in effect in thirty states and the District of Columbia, and twenty-six states offer the program to renters.<sup>197</sup> In Maine, the circuit breaker is available, or “trips,” when a taxpayer’s property tax bill exceeds four percent of the taxpayer’s income or eighteen percent of rent if the taxpayer is a renter.<sup>198</sup> This targeted tax relief program in Maine goes back to the 1970s, and the benefits were increased in 2005 under LD 1.<sup>199</sup> The details of the program are described in various journals and are not reported here.<sup>200</sup>

The implementation of the program, rather than the substance of the program, needs modification in order to simplify it and cause its intended benefits to reach the targeted taxpayers. The problem that needs to be addressed is a simple taxation disconnect that is easily corrected. Ingrained in our collective consciousness is the fact that April 15th is tax day, the deadline to declare to the state and federal governments the amount of our previous year’s income. This is the same income disclosure that is used for the circuit breaker program.<sup>201</sup> However, the circuit breaker application process, which uses the April 15th or earlier tax information, does not begin until four months later, in the middle of the summer on August 1st.<sup>202</sup> Consequently, circuit breaker applicants must apply at a time of year when tax filing is not customarily a requirement or even a consideration.

As a result, the target population often fails to take advantage of the property tax relief available. But these administrative problems can be avoided. Since the circuit breaker is tied directly to personal income, the relief could be tied to state income tax filing. As a result, the Maine Revenue Service would administer both income taxation and the circuit breaker program at the same time and by the same revenue source—the Maine income tax—that currently funds it. Instead of filing a separate application with the Maine Revenue Service at a different time for the circuit breaker program, eligible Mainers could apply for their benefit as a refundable credit to offset any payment necessary for income tax owed on their annual

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193. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 16.

194. BRUNORI, *supra* note 53, at 66.

195. DELLER, *supra* note 52, at 12.

196. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 16.

197. *Id.* at 17.

198. Austin, *supra* note 30, at 27.

199. L.D. 1 (122nd Legis. 2005).

200. *See* Austin, *supra* note 30.

201. *See* ME. REV. STAT. ANN. tit. 36, §§ 6201-20 (West 2004) (Maine Resident’s Property Tax Program); L.D. 1, pt. E (122nd Legis. 2005).

202. L.D. 1, pt. E (122nd Legis. 2005).

state income tax returns, or they could apply for the benefit to be added to any income tax refund owed them. Eligible Mainers must already file and reference their state income tax returns to apply for the benefit; therefore, tying the two together would increase participation rates and lower program administration costs.

### *B. Diversifying Local Revenue Streams*

Reducing local dependence on property tax requires diversifying municipalities' revenue streams and tax bases. Diversification lessens property tax burdens and also allows the revenue needs of a taxing jurisdiction to be met. This section describes different methods that can be used to diversify local revenue streams, and their respective advantages and disadvantages. Ultimately, a combination of these alternative taxes can eliminate property tax overdependence.

#### *1. Local Option Taxes*

Local option taxes include, but are not limited to, sales, income, meals, and accommodation taxes, which are applied within the local taxing jurisdiction, such as a municipality. As discussed earlier, the taxing authority in Maine rests exclusively in the hands of the Legislature;<sup>203</sup> therefore, application of municipal local option taxes requires legislative authorization, which to date has not occurred.

A majority of states have some form of local option sales tax in place.<sup>204</sup> Local option taxes are increasingly important and are a direct result of the imposition of property tax limitations in many jurisdictions.<sup>205</sup> Maine's legislature need not require municipalities to enact local option taxes, but, at a minimum, the legislature should allow municipalities to reduce the property tax burden through such alternatives in order to advance home rule and reduce dependency on the state. This is the essence of a "local option tax." The legislature always has the option to limit the extent of local option taxes and even require that the revenue be shared.

The state's sharing of local option taxes spreads the benefits of revenue collected by the few municipalities that may have the retail and/or lodging markets that justify a local option tax, especially when non-residents of the municipality pay the tax. In addition, the state's share of this revenue could be used for the state's reimbursement costs for the homestead exemption and circuit breaker programs.

The proposal for shared local option taxes should be considered and implemented soon. There are numerous models to consider from other states.<sup>206</sup> At some time in the not-too-distant future, consideration should also be given to enabling legislation, which would permit several municipalities to form local option taxing districts, with the purpose of avoiding the negative effects of local option taxes inter-municipally and intra-regionally. These districts would also share the revenue with the state. Local option taxing districts might also use the revenues to advance the efficiencies of regionalization and inter-governmental contracts.

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203. ME. CONST. art. IX, § 8.

204. BRUNORI, *supra* note 53, at 71 (stating that "33 of 45 states imposing a sales tax allow their local governments to impose similar taxes").

205. *Id.* at 72.

206. *Id.* at 109.

*a. Local Sales, Meals, and Accommodation Taxes*

These local taxes are a levy on the sale of goods, food, or accommodations and are traditionally similar in nature to their statewide equivalent, but are comparatively smaller.<sup>207</sup> In most cases, the tax is imposed as part of the general state tax.<sup>208</sup> The state collects the tax from the vendor and then remits the local tax revenue to the municipality, limiting the costs on the vendor and the municipality.<sup>209</sup>

Local tax benefits speak for themselves. They have modest administrative and compliance costs for local governments and taxpayers.<sup>210</sup> They are collected along with the same "state sales tax and then returned to the locality that levied the tax," reducing the administrative and overall costs.<sup>211</sup> In contrast to the property tax, which is labeled as the "worst" tax, the local sales tax is the least objectionable tax in the United States.<sup>212</sup> Local option taxes diversify the tax base, enhance the stability and reliability of municipal revenue systems, allow localities to cope with varying economic conditions, and avoid overdependence on state aid and the property tax itself.<sup>213</sup> Moreover, increasing and diversifying revenue streams with local option taxes assures a measure of local autonomy "because the local [option] tax revenue is not dependent on yearly appropriations by the Legislature."<sup>214</sup>

Local option taxes are not immune from criticism. Besides a general discontent toward any newly imposed tax, local option taxes are potentially regressive. For example, poorer residents may pay a larger percentage of their income toward the tax than wealthier residents when the tax focuses on essential services and goods rather than luxury goods and services. The regressive potential can be avoided by exempting essential services and goods from local option taxes in the enabling legislation. Additionally, the local option tax is horizontally inequitable between taxing jurisdictions. In Maine, some towns benefit from a strong retail and/or tourism sector (i.e., service-center communities), such as Bangor, Bar Harbor, Boothbay Harbor, Freeport, Kittery, Portland, and South Portland, and may potentially reap a windfall in revenues.<sup>215</sup> In contrast, other Maine towns lack such sectors and would receive insignificant funds to provide adequate property tax relief. The "share the revenue" provision proposed in this Article would help alleviate this problem and provide property tax relief statewide.

The local option tax revenue is also susceptible to shrinking tax bases over economic cycles<sup>216</sup> and from movement to electronic commerce.<sup>217</sup> Opponents

207. *See id.* at 71-84.

208. *Id.* at 73.

209. *Id.*

210. *Id.*

211. DELLER, *supra* note 52, at 12.

212. BRUNORI, *supra* note 53, at 74. Brunori states that this favorable rating would likely extend to the local-option sales tax. *Id.* "The public also accepts the [sales] tax because it is consistent with notions of free market. Citizens feel in control of their tax burden since they choose whether to purchase goods and services subject to the tax." *Id.* at 74-75.

213. *Id.*

214. *Id.* at 73.

215. John Melrose, *Revitalizing Maine's Service Centers*, 12 ME. POL'Y REV., 48 (2003), available at <http://www.umaine.edu/mcsc/MPR/Vol12No3/Melrose/Melrose.htm>.

216. DELLER, *supra* note 52, at 13.

217. BRUNORI, *supra* note 53, at 75-76 (discussing the move from traditional retail economies to electronic commerce).



of the tax increasingly argue that consumers may be willing to avoid local sales taxes by traveling to neighboring towns,<sup>218</sup> thereby making the tax an inefficient means of collecting revenue in a competitive inter-local government system.<sup>219</sup> However, there is no empirical evidence to support such a claim, just speculation that it "could" happen.<sup>220</sup> It is more reasonable to believe that consumers and shoppers are influenced by market techniques, convenience, and general offerings than de minimis savings from avoiding a local option tax. After imposing a local option tax, such as the sales tax, municipalities may also compete to attract retail stores by offering property tax incentives.<sup>221</sup> These incentives weaken the property tax base by shifting the burden onto homeowners, who must pay the businesses' share of property taxes.

### b. Local Income Taxes

A second major form of local option tax is the local income tax, which is far less common in the United States and is not proposed in this Article. Currently, local governments in only fifteen states employ the local income tax.<sup>222</sup> Local option income taxes take one of two forms: a payroll tax, or a general income tax, commonly referred to as a "piggyback tax."<sup>223</sup> Payroll taxes are the most common, and impose a tax on wages earned within the taxing jurisdiction.<sup>224</sup> A piggyback tax, by contrast, is levied on all residents' income, creating a much greater tax base than a payroll tax.<sup>225</sup> Generally, the state assumes all administrative duties of the local option income tax.<sup>226</sup>

The local income tax has the benefit of progressively equalizing taxation at the local level through the payroll tax, by requiring participation from commuters who import financial burdens into municipalities where they play and work.<sup>227</sup> The local income tax is politically unpopular.<sup>228</sup> Due to its failure to be broadly utilized,<sup>229</sup> many commentators argue that the local income tax is not a viable alternative.<sup>230</sup> This Article concurs with that conclusion.

## 2. User Fees and Charges

Another alternative technique for reducing the burden of the property tax is to impose various types of user fees and charges for services, in lieu of taxes. In

218. See DELLER, *supra* note 52, at 13.

219. BRUNORI, *supra* note 53, at 76.

220. *Id.*

221. *Id.* at 76-77.

222. *Id.* at 86. "The states that allow local-option income taxes are Alabama, Arkansas, Colorado, Delaware, Georgia, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, and Washington." *Id.* at 86 n.1.

223. *Id.* at 86.

224. *Id.*

225. *Id.* at 87. "The piggyback tax is levied by local governments in Iowa and Maryland." *Id.*

226. *Id.*

227. *Id.* at 90.

228. *Id.* at 91.

229. *Id.* at 85.

230. *Id.* at 93.

contrast to a tax, which is a payment into a governmental fund with no individual benefit, user fees and charges are payments that go directly to the cost of the service provided.<sup>231</sup> Increasingly, local governments are relying on user fees and charges for the generation of revenue to pay for activities and services, especially in states that have imposed property tax limitations.<sup>232</sup> California, for example, has become dependent upon user fees since the passage of Proposition 13.<sup>233</sup>

The traditional fee for service (license and activity fees) is one type of user fee that is widely regarded as an effective supplement for raising local revenue streams because these pay-as-you-go fees do not present the same obstacles as taxes.<sup>234</sup> Additionally, they have little effect on the redistribution of wealth.<sup>235</sup> Sometimes, user fees are regarded as a disguised tax;<sup>236</sup> however, they are simply a pay-as-you-go cost for a public activity or service.<sup>237</sup>

Another form of user fees and charges is commonly thought of as a special assessment or service charge for a specific benefit conferred. These are governed by statute in Maine.<sup>238</sup> Municipalities or special districts charge or assess for services such as fire, police and safety, public works, and sanitation.<sup>239</sup> Typically, each property owner or entity must be within the defined class and not pay for anything in excess of the service provided.<sup>240</sup> Assessment amounts must be fair and determined by usage.<sup>241</sup> User charges improve horizontal equity by redistributing payments among all users in the municipality, including tax-exempts.<sup>242</sup> Presently, in Maine, user fees and charges are applied in water, sewer and sanitation districts, and on residential property “exempt from property taxation, yet used to provide rental income.”<sup>243</sup>

This Article does not propose any state action or legislation to advance user fees because the local authority is already in place. However, this property tax

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231. DELLER, *supra* note 52, at 14; *see also* Butler v. Supreme Judicial Court, 611 A.2d 987, 990 (Me. 1992).

232. BRUNORI, *supra* note 53, at 105.

Local governments raised in aggregate \$195 billion, or 20 percent of their total revenue, from user fees and charges in 1999, compared with \$132 billion, or 12 percent of total revenue, in 1992. This rapid growth largely reflects limitations placed on localities' ability to increase revenue sources, particularly the property tax.

*Id.*

233. *Id.* at 106. The State of California has implemented fees, such as new building/developer fees, real estate transfer fees, new or higher business license fees, utility user fees, sewer charges, and increased park and recreation fees—to offset lost property tax revenue. From 1978 to 1993, current service charges for all California cities combined increased 193 percent, from 25 percent of city revenue to 40 percent of city revenue.

*Id.*

234. *Id.* at 107.

235. *Id.*

236. *Id.* at 109.

237. *Id.* at 107; *see also* United States v. Maine, 524 F. Supp. 1056, 1059 (D. Me. 1981).

238. *See* ME. REV. STAT. ANN. tit. 20-A, § 4741 (West 2004); ME. REV. STAT. ANN. tit. 30-A, § 5211(1) (West 2004).

239. BRUNORI, *supra* note 53, at 106.

240. Butler v. Supreme Judicial Court, 611 A.2d 987, 990 (Me. 1992).

241. *Id.*

242. DELLER, *supra* note 52, at 15.

243. ME. REV. STAT. ANN. tit. 36, § 652(1)(L)(2)(a) (West Supp. 2003).

relief technique should be encouraged. For example, a town's costs for its harbor master and its dockage and boat launch facilities can be supported without property taxes, by mooring, launching, and other boat user fees. The upland property taxpayer, who gets seasick just thinking about being in a boat, should not be required to subsidize the yacht owner's recreational activities. Every municipality can take its financial spreadsheets, do the math, calculate the costs, and defray all or some of that cost through user fees. The fees must be reasonably related to the costs of offering the service<sup>244</sup> because to exceed the cost may convert the user fee to an excise tax, which the municipality does not have the authority to impose unless authorized.<sup>245</sup>

A word of caution about user fees is appropriate because of the assumption in this Article that regressive revenue sources should be avoided or minimized. User fees on essential services can be regressive. Some services need to be provided regardless of the user's wealth or ability to pay. The legislature can provide some oversight if this local revenue generating technique is abused.

Municipalities also have the option to expand user charges by increasing the number of special districts to include fire, police and safety, public works, rescue, first responders, snow plowing, and any service outside education and welfare. Such action would expand the revenue base and hold tax-exempt properties financially accountable for presently free public services and benefits they receive.

### C. Spending and Revenue Collection Caps

Spending caps attempt to create property tax relief by limiting the growth of state and local spending.<sup>246</sup> Across the country, states have applied constitutional and statutory spending caps to state and local governments and special districts, such as school districts.<sup>247</sup> To date, expenditure-limiting mechanisms exist in over half the states and display the capability of restraining fiscal growth.<sup>248</sup> Colorado has the most severe spending limit, capping spending to the previous year's level, plus inflation and any growth in population.<sup>249</sup> Traditionally, most state spending limits are tied to population growth and inflation, absent voter approval to override the limits.<sup>250</sup>

Maine's 2005 LD 1 property tax reform legislation creates caps intended to control and limit both the amount and rate of the property tax levy, as well as caps limiting the rate of increases in the expenditure of property taxes for education, and municipal and county governments.<sup>251</sup> These caps are novel for Maine. Time

244. *Butler v. Supreme Judicial Court*, 611 A.2d at 990.

245. ME. CONST. art. IX, § 9; *see also* ME. REV. STAT. ANN. tit. 30-A, § 5685(1)(a) (West 2004).

246. MAINE BUSINESS ASSOCIATION ROUNDTABLE, MAINE TAX REFORM CONSIDERATIONS 41 (2005), available at <http://www.mecb.com/pdf/Maine%20Tax%20Reform%201-12-2005.pdf> (last visited on April 27, 2005).

247. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 32 (noting that eight states currently limit school district spending, New Jersey limits the spending of its municipalities, and Arizona, California, and Colorado limit the spending of all localities).

248. Robert W. Shaw, Comment, *The States, Balanced Budgets, and Fundamental Shifts in Federalism*, 82 N.C. L. REV. 1195, 1235 (2004).

249. *Id.* (citing Michael J. New, *Limiting Government Through Direct Democracy: The Case of State Tax and Expenditure Limitations*, POL'Y ANALYSIS No. 420, Dec. 13, 2001, at 4).

250. A GUIDE TO PROPERTY TAXES, *supra* note 39, at 32.

251. *See* L.D. 1 (122nd Legis. 2005).

and experience will disclose if and to what extent they need to be modified to avoid unintended consequences, as well as to determine how well they achieve their intended goals, including a fairer distribution of Maine's overall tax burden.

This Article proposes no changes to these caps that are the result of an obviously thoughtful, creative, and successful effort by Governor Baldacci and the 122nd Legislature, which began reform of an incredibly complex issue.

## VII. CONCLUSION

Property tax reform efforts began at roughly the same time as the enactment of the first property tax.<sup>252</sup> In 1086, William the Conqueror attempted property tax reform when he created the Domesday Book that was intended to equalize the King's property taxes among his subjects after the Norman Conquest.<sup>253</sup> In 2005, Governor Baldacci and the 122nd Legislature again attempted to promote fairness and reduce the burden of Maine's property taxes. This Article has attempted to put the reform into an appropriate context. This context is necessary to understand the additional reform measures, including modifications to the homestead exemption and circuit breaker programs, and to new local revenue sources in the form of local option taxes. These proposals are modest, incremental steps in a 917-year-old tax reform effort that began when William the Conqueror first planted the roots of our property tax system.

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252. Mills, *supra* note 10, at 156.

253. *Id.*