

State Treasurer and Administration Oppose Revenue Sharing Study

On Tuesday this week Representative William Browne (Vassalboro) presented a simple, non-controversial bill on behalf of the Maine Municipal Association's 70-member Legislative Policy Committee (LPC) calling for a small working group of municipal officials and somebody from the State Treasurer's Office to study the dynamics of the municipal revenue sharing system and develop some recommendations for the 2008 legislative session, if any recommendations seem warranted.

LD 355, *Resolve, To Establish a Committee to Examine Issues Relating to the Administration and Distribution of Municipal Revenue Sharing*, was developed by MMA's LPC for the sole purpose of understanding in more detail why the projected distribution of revenue sharing in the current fiscal year (FY 07) is so abnormally volatile compared to years past and what recommendations might be offered to create more predictability in the distribution system.

The bill is a simple resolve that convenes municipal officials in equal number from both service center and rural communities, along with the state office that administers the revenue sharing program. The purpose of the study is to see why the various legislative changes that have occurred over the last several years have had such a dramatic effect on the stability of the program. The working group would also be authorized to assess the changes to the program that were started in 2000 with the creation of the Rev II system and develop recommendations, if any are warranted, that might be considered by the Legislature in the 2008 session.

According to the official revenue sharing projections for FY 07 the municipalities rely on for their budgeting purposes, over 60% of the towns and cities are scheduled to receive less municipal revenue sharing in FY 07 than received in FY 06. Although the state-wide reduction in revenue sharing according to this projection is scheduled to come in at minus 2.44%, the revenue sharing reduction for over 30% of the municipalities is projected to exceed 10%, and one out of ten of Maine's towns and cities are projected to receive revenue sharing reductions that are greater than 20%. Almost every municipality in Cumberland, Hancock, Kennebec, Knox, Sagadahoc and York counties are scheduled to lose revenue sharing this year according to the posted projections.

The issue the municipalities are

hoping to identify and address, in a collaborative way, are not associated with the overall magnitude of the distribution, or whether the aggregate revenue sharing goes up or down from one year to the next. Instead, the focus is on why the distribution swings as widely as it does from town to town, either positively or negatively, without a lot of reason why. For example, one of the changes affecting this year's distribution was a change enacted by the Legislature as part of "LD 1" that increased the amount of distribution under the "Rev II" formula and decreased the amount of distribution under the "Rev I" formula. That change was generally thought to move proportionately higher levels of revenue sharing to the service center municipalities. The

(continued on page 2)

What's the Question? Initiative Process Debated

The way in which a citizen initiative question is worded can have a significant impact on the voters' perception of the proposal. Case in point, the wording of the TABOR (Taxpayer Bill of Rights) citizen initiative question.

As drafted, the TABOR question read, "Do you want to limit increases in state and local government spending to the rate of inflation plus population growth and to require voter approval for all tax and fee increases?" By using positive terms such as "increases", "plus" and "growth", municipal officials con-

tend that voters were led to believe that the proposal would do nothing more than limit the rate of budget growth. In the twelve pages of proposed law that accompanied the positively-worded question, the TABOR proposal would have in many cases actually cut municipal and school budgets. Only the initiators of the petition, however, had an opportunity to influence the Secretary of State's wording of the question.

To address the single-sided initia-

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REVENUE (cont'd)

distribution spreadsheet suggests that it did not have any remarkable effect in that regard.

David Lemoine, the State Treasurer, testified in opposition to LD 355, and Maine Revenue Services' Mike Allen, speaking on behalf of the Commissioner of the Department of Administrative and Financial Services, testified in the "neither for nor against" category, but spoke against the bill when he testified.

According to Lemoine, his office shouldn't be involved in the study because it will involve "policy issues" that should only be addressed by the Legislature.

According to Mike Allen, LD 355 is unnecessary because the Treasurer posted a memo on his website that explained the volatility of this year's distribution, so there is no need to study the issue at any greater depth. Allen also said that a recent reprojection of state revenue, if accurate, will reduce the negative impacts associated with FY 07 revenue sharing.

Again, the reference to the upward reprojection of state revenue misses the point. It is not the total amount of revenue sharing that is at issue. It is the mechanics of the distribution.

At least one legislator on the Tax Committee panel used the opportunity of the public hearing to question the need for revenue sharing, suggest it be curtailed or converted to something else, or potentially abolished.

The revenue sharing distribution formula has been affected by several changes and actions of the Legislature since the year 2000. Those changes have affected the stability and predictability of the program. If you think it would be

worthwhile to study those changes and develop by consensus any recommendations to improve the mechanics of revenue sharing distribution, you should connect with Taxation Committee mem-

bers or ask your legislators to talk to their colleagues on the Taxation Committee about supporting LD 355. It appears that the Administration would like the study killed.

Intergovernmental Commission's "Blueprint"

On Monday of this week, the State and Local Government Committee voted by a margin of 9 to 2, that LD 214, *An Act to Initiate the Intergovernmental Advisory Commission's Blueprint for Government*, "ought to pass as amended".

As reported in the February 9th edition of the *Legislative Bulletin*, since its initial drafting by the Intergovernmental Advisory Commission (IAC), the "blueprint" for reforming county government has undergone a significant remodeling.

As originally drafted by the IAC, LD 214 proposed to shift budget decision-making authority to the county commissioners by making all county budget committees merely advisory. The original bill also required all counties to increase the number of commissioners from three to either five or seven. After learning that county and municipal officials had concerns with the IAC's proposal, the sponsor of LD 214, Rep. Chris Barstow of Gorham, revised the blueprint to simply mandate that all counties adopt charters.

Although the members of the State and Local Government Committee expressed appreciation for the efforts of the IAC, many were concerned with both the original and revised plans. For several reasons, eight Committee members supported a refurbished version of the original bill, which simply directs the Department of Audit to post a model chart of accounts on its website.

Included as part of both the original and amended versions of LD 214, was a non-controversial directive to the Department of Audit to post on its website the model chart of accounts created by a working group represented by municipal, county and state officials. The model, which is currently posted on MMA's website, provides municipal officials with

a sample financial chart of accounts from which they can create their own. The purpose for creating the model was to provide an avenue for allowing municipalities and counties to share financial data more easily. The adoption of the model chart is voluntary.

Rep. Barstow voted differently from the majority to support a slightly amended version of his original amendment, which mandates counties to undertake the charter adoption process. As tweaked, counties are only mandated to undertake the charter provision once. If the people of the county fail to adopt the charter, repeat attempts are not mandatory.

County Professionalism and Ballot Inspection Update

In other State and Local Government news, the Committee unanimously voted to support LD 142, *Resolve, to Improve the Professional Development of County Officials*. The bill directs the IAC to create a working group responsible for making recommendations on how to improve the professional development opportunities available to county officials. LD 142 also requires the working group to examine the appointment-versus-election of certain officials. The working group members include several county officials, the Maine Municipal Association and the State Planning Office.

The Committee also unanimously voted to support an amended version of LD 202, *An Act Requiring the Municipal Clerk to Inspect Municipal Election Ballots*. As amended, the bill allows, but does not require, municipal election clerks to inspect municipal ballots before an election to ensure that the correct ballots have been received and the information on the ballot is accurate.

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INITIATIVE (cont'd)

tive wording concern, Sen. Ethan Strimling (Cumberland Cty.), submitted LD 176, *An Act to Provide Notice to the General Public about Proposed Initiative Questions*. The bill was the subject of a public hearing held by the Legal and Veterans Affairs Committee on Monday this week. As proposed, the bill directs the Secretary of State to notify the public of a proposed initiative question and to provide an opportunity for public comment on the phrasing of the question 30 days prior to finalizing the wording.

Sen. Strimling believes the proposed change is important to ensure that persons on all sides of an issue are provided an opportunity to make comments regarding the accuracy of a citizen initiative question. Under the current practice, only the initiative applicant has an opportunity to comment. Sen. Strimling believes a more inclusive process that allows the general public to participate is necessary because the phrasing of the initiative's question to the voters has a direct impact the outcome of a vote. The need for accuracy is paramount.

MMA also provided testimony in support of LD 176. Based on the TABOR experience, municipal officials believe that by creating a notice and comment period, there is a far greater chance that citizen initiative questions will be accurately drafted.

Deputy Secretary of State, Julie Flynn, submitted written testimony "neither for nor against" LD 176. In her testimony, Deputy Secretary Flynn supported the idea of providing for public comment, but recommended providing the opportunity for comment only after certifying that the necessary signatures had been collected and the Legislature had debated the merits of the proposal, when the initiative proposal goes through the legislative review process.

The Secretary of State is concerned that as proposed, LD 176 would require a public comment opportunity on an initiative question that may never make it the ballot.

The amendment proposed by the

Deputy Secretary could potentially allow for one version of the question, drafted by the petition initiators, to be used to collect signatures, and a different question, drafted by the Secretary of State based on public comments, to be used on the ballot. MMA believes that accuracy and consistency in the wording of the question is important throughout all stages of the initiative process, including during the signature-gathering stage.

Legal and Veterans Affairs Com-

mittee member Rep. Abby Holman (Fayette) questioned whether or not a process for public comment on question wording currently exists. According to Rep. Holman, she has had an opportunity as an interested party to comment on the wording of past initiative questions. If any formal access to this stage of the process exists for the general public, MMA is unaware of it.

This issue will likely be the focus of the February 28th work session on LD 176.

A Tree For A Tree

Under current law, if a landowner is guilty of cutting trees in violation of a shoreland zoning ordinance the penalties in statute are basically monetary. They range from \$500 to \$25,000 for repeat offenders. In some limited circumstances (a threat to public health or substantial environmental damage) "corrective" actions might be required.

Representative Dawn Hill (York) filed LD 340, *An Act To Require the Replacement of Trees Cut in Shoreland Areas*, in an effort to change that. Representative Hill, and two Kittery officials, Town Manager Jonathan Carter and Planner Steve Burns, recounted different brazen violations of shoreland zoning prohibitions on cutting trees. They testified that for some property owners a penalty of \$5,000 to \$10,000 is a small price to pay in order to get unobstructed views to the water.

Other testimony in support came from environmental organizations such as the Audubon Society and the Natural Resources Council of Maine.

The bill as drafted would require that all trees cut in violation of shoreland zoning ordinances be replaced by trees of "substantially similar size and species." The sponsor indicated that conversations that she had with the Department of Environmental Protection, among others, convinced her that a lit-

eral "tree for a tree" policy might not work. The primary concern is that replacing a 50-foot tree with another 50-foot tree may cause more harm than good due to the intensive process that transporting and planting a 50-foot tree would cause.

The sponsor offered an amendment that would do two things. First, it would still require improperly cut trees to be replaced, but only "to the extent practicable." Second, it would also require the replanting to be part of a "restoration plan" and that the plan be approved by the municipality.

The only opposition to the bill came from Gray Councilor Gary Foster and Peter Strauch of the Maine Forest Products Council. The Forest Products Council observed that the motivations of the bill are understandable. However, he noted that replanting might be more suited for violations by residents, for whom re-blocking the water view would serve justice, rather than foresters, for whom the financial fine is the more painful.

Councilor Foster felt that the entire shoreland zoning scheme was a violation of property rights.

Several Natural Resources Committee members expressed immediate support for LD 340 and even discussed issues such as criminalizing this behavior and whether the bill could be made retroactive.

Rate Caps for Water & Sewer Killed By Committee

A proposal to cap rate increases for certain water and sewer utilities faces an uphill battle in the Utilities Committee. The bill, LD 352, *An Act to Provide an Appeal Process Regarding Rate Increases for Certain Quasi-municipal Districts and Corporations*, was sponsored by Rep. John Tuttle of Sanford.

The bill would only apply to a limited range of water and sewer utilities. Only quasi-municipal districts or corporations are affected – municipal water and sewer departments were excluded. Further, only districts that serve a single municipality would be covered, multi-municipal districts are also excluded.

The proposal essentially does two things. First, if a water or sewer district raises its rates, by any amount, 10 citizens are authorized to petition the municipal officers to review the rates. Municipal officers are then entitled to “overturn” the rate increase.

Second, if the municipal officers uphold the increase, the citizens are given 60 days to collect the requisite number of signatures to force a local referendum on the rate increase. The costs of the election are to be borne by the district.

Rep. Tuttle was the only person to testify in favor of the bill. His concern was that there is no way to challenge a significant rate increase such as one recently enacted by the Sanford Sewer District. This bill is similar in spirit to LD 1. That is, it seeks to impose a limit on increases and enact special hurdles that must be jumped before a rate increase can become effective.

Rep. Tuttle acknowledged that requiring municipal officers to establish rate-review procedures is probably a municipal mandate. Accordingly, he suggested that the Public Utilities Commission might be better suited to undertake the initial rate review.

Testimony in opposition to the bill was offered by the Sanford Sewer District, the Maine Waste Water Control Association, the Maine Water Utilities Association, the Maine Rural Water Association and the Public Utilities Commission.

The primary objection raised by these groups was that most of the cost increases incurred by water and sewer utilities are the direct result of state and federal mandates relative to the environment. In other words, the costs which necessitated the rate increases can not be avoided.

The second consistent objection was that water utility rates are already governed by the PUC. As drafted, the bill could result in the PUC approving a rate only to be followed by a municipality

disallowing it. The amended version, which substitutes the PUC for the municipality, would have the PUC hearing citizen objections to a water rate increase which it had just approved.

Sewer rates are not currently regulated by the PUC. A representative of the PUC indicated that he would attempt to get a cost estimate for establishing this new function.

Other observations included a statement by the Sanford Sewer Utility that while the public was invited several times to participate in discussions regarding its particular rate increase, there was little public involvement and almost no objection.

The committee voted ought not to pass unanimously on Thursday.

GrowSmart Shares Not

Exactly two weeks ago, at the height of Governor Baldacci’s promotional tour for his plan to consolidate all school systems into 26 mega-districts, the GrowSmart Maine group released a public opinion poll it had commissioned that loudly proclaimed that the general public believes “local control is costing us too much money...”

GrowSmart Maine is an interest group originally focused on land use planning and sprawl. It commissioned the Washington D.C.-based Brookings Institution to create a legislative action plan for Maine that was published in the fall of 2006 as *Charting Maine’s Future*. The value of the Brookings report was its foundation in the clean analysis of data and the development of recommendations based on that data, rather than political rhetoric or preconceived notions.

Unlike the Brookings report, though, the GrowSmart sponsors of that report now show a penchant for political campaigning rather than data-based advocacy.

GrowSmart’s survey was conducted by Christian Potholm’s polling firm in Harpswell, Command Research.

Many municipal officials were interested in seeing all the poll questions and the responses so that they could gauge the real meaningfulness of the poll results. It is well established that public

opinion polling can influence responses by the way questions are phrased and ordered, and how much actual detail in response is being solicited from the respondents. The response to “Are you in favor of world peace?” is likely to be very high. At the same time, it is not a response that is very helpful for any purpose.

Over the last year, MMA has been appreciative of GrowSmart Maine’s and Brookings’ efforts to assimilate quality information and provide some objective analysis. Both organizations exhibited a genuine interest in data-based research. MMA worked collaboratively with both GrowSmart Maine and Brookings, and provided Brookings with all the municipally-related data that the Institute requested.

On the basis of that relationship, MMA asked Alan Caron, the president of GrowSmart Maine, for a copy of the poll it conducted – the “top line” results – to identify the exact questions that were asked and the actual responses.

GrowSmart has provided information on just two of the questions in the poll – the same questions it broadcast in its media campaign – but is refusing to provide the overall poll questions and results.

Take the little snippets that GrowSmart will feed you through the press for whatever they’re worth.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Judiciary

LD 681 – An Act Concerning the Examination of Persons in Protective Custody. (Sponsored by Sen. Nutting of Androscoggin Cty; additional cosponsors.)

This bill amends the law governing how a law enforcement officer seeks to have a person involuntarily committed to a mental health hospital on an emergency basis by broadening the list of mental health professionals with whom the law enforcement officer may consult when the consultation occurs outside of a hospital emergency room.

Labor

LD 412 – An Act To Clarify the Application of Prevailing Wage Requirements. (Sponsored by Rep. Clark of Millinocket; additional cosponsors.)

This bill establishes that in a publicly funded construction project under the jurisdiction of the federal Davis-Bacon Act, minimum wages and benefits are the higher of the federal and state rates.

LD 591 – An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects. (Sponsored by Rep. Patrick of Rumford; additional cosponsors.)

This bill requires that a contractor or subcontractor entering into a contract for a public construction project over \$10,000 in value provide documentation demonstrating that all employees working on that project have completed a 10-hour or longer construction safety training course approved by OSHA. The requirement would become effective with any contract executed on or after July 1, 2008.

LD 729 – An Act To Compensate Employees Required To Be “On-call” by Their Employers. (Sponsored by Rep. Greeley of Levant; additional cosponsor.)

This bill prohibits employers, including municipalities, from requiring an employee to be “on call” unless that requirement was agreed to by the employee at the time of hire. The bill also requires all employers to pay the employee for all on-call hours unless both employer and employee agree in writing that such payments are not necessary.

Legal & Veterans Affairs

LD 663 – An Act To Update Absentee Ballot Procedures. (Emergency) (Rep. Barstow of Gorham.)

Current law provides that an immediate family member may request an absentee ballot for a person. This emergency bill amends the definition of “immediate family member” under the election laws to include domestic partners.

LD 683 – An Act To Limit the Activities of Political Candidates at Polling Places to Voting. (Sponsored by Sen. Diamond of Cumberland Cty; additional cosponsors.)

This bill repeals the law that allows candidates to linger in the polling place on election day for the purpose of communicating with the voters.

LD 699 – Resolve, Establishing the Commission To Improve Certain Aspects of the Citizen Initiative Process. (Emergency) (Sponsored by Rep. Craven of Lewiston; additional cosponsors.)

This emergency resolve creates a 9-member commission, made up of legislators, state agency representatives, and two members of the public, that is charged with the task of studying and developing recommendations to improve the constitutional process by which a proposal may be enacted into law by the citizens initiative process. The charge to the commission includes a special focus on the manner in which the initiated questions appear on the ballot. The commission is required to submit its report to the Legislature by January 15, 2008.

LD 731 – An Act To Preserve The Integrity of Elections by Removing the Requirement for a Challenge Affidavit. (Sponsored by Rep. Fletcher of Winslow.)

This bill removes the requirement that a person submitting a challenge at a voting place fill out and sign a challenge affidavit.

Marine Resources

LD 384 – An Act To Further Protect Water Quality in Coastal Waters. (Sponsored by Rep. Percy of Phippsburg; additional cosponsors.)

This bill prohibits the feeding of migratory waterfowl and seagulls on public property in the intertidal zone. The bill also requires the removal of fecal matter of pets on public property in the intertidal zone.

LD 492 – An Act To Clarify Who Receives Money from Fines For Violations of Maine's Soft-shelled Clam Laws. (Sponsored by Rep. MacDonald of Boothbay; additional cosponsors.)

This bill requires that a fine collected for a violation of soft-shelled clam harvesting laws be paid to the municipality in which the violation occurred.

LD 554 – An Act To Amend the Shellfish Laws. (Sponsored by Rep. Gerzofsky of Brunswick; additional cosponsor.)

This bill makes several changes to the laws governing shellfish harvesting, including limiting the amount of shellstock any individual may harvest per day for personal use from ½ bushel to one peck, and preventing persons who have had their shellfish harvesting license suspended from being able to harvest for personal use.

LD 586 – An Act To Simplify Notification Procedures for Water Quality Changes. (Sponsored by Rep. MacDonald of Boothbay; additional cosponsors.)

This bill requires the Commissioner of Marine Resources to promptly notify interested parties when the Commissioner has determined that the water quality has changed to a level that affects the status of an area or waters. The notification procedures must include use of an online notification system, e-mail notification and posting a notice on the department's publicly accessible website.

Natural Resources

LD 444 – Resolve, Directing the Department of Environmental Protection To Review the Maine Pollutant Discharge Elimination System/Waste Discharge License Program Fee System. (Sponsored by Sen. Martin of Aroostook Cty; additional cosponsors.)

This resolve directs the Department of Environmental Protection to review the fee system associated with the Maine Pollutant Discharge Elimination System/Waste Discharge License Program and report back its finding to the Legislature by January 30, 2008.

LEGISLATIVE HEARINGS

NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://www.state.me.us/legis/>.

Monday, February 19th HOLIDAY

Tuesday, February 20th

Appropriations & Financial Affairs

Room 228, State House, 9:00 a.m. (all day)

Tel: 287-1316

LD 499 – Governor's Budget Bill. With the Joint Standing Committee on Health & Human Services.

Natural Resources

Room 214, Cross State Office Building, 9:00 a.m.

Tel: 287-4149

LD 409 – Resolve, To Study Alternative Fuel Use by Schools and Public Buildings.

LD 444 – Resolve, Directing the Department of Environmental Protection To Review the Maine Pollutant Discharge Elimination System/Waste Discharge License Program Fee System.

LD 493 – Resolve, To Require the Department of Environmental Protection To Provide Engineering and Permitting Assistance To Clean Up Toothaker Pond.

LD 333 – An Act To Reward Cooperation in Comprehensive Planning.

LD 345 – An Act To Clarify Recent Changes to the Laws Regulating Land Use Ordinances.

Wednesday, February 21st

Appropriations & Financial Affairs

Room 228, State House, 9:00 a.m. (all day)

Tel: 287-1316

LD 499 – Governor's Budget Bill. With the Joint Standing Committee on Health & Human Services.

Labor

Room 220, Cross State Office Building, 10:00 a.m.

Tel: 287-1333

LD 412 – An Act To Clarify the Application of Prevailing Wage Requirements.

Marine Resources

Room 214, Cross State Office Building, 10:00 a.m.

Tel: 287-1337

LD 384 – An Act To Further Protect Water Quality in Coastal Waters.

LD 403 – An Act to Encourage Municipalities To Abate Coastal Pollution.

LD 586 – An Act To Simplify Notification Procedures for Water Quality Changes.

Thursday, February 22nd

Appropriations & Financial Affairs

Room 228, State House, 9:00 a.m. (all day)

Tel: 287-1316

LD 499 – Governor's Budget Bill. With the Joint Standing Committee on Health & Human Services.

Friday, February 23rd

Appropriations & Financial Affairs

Room 228, State House, 9:00 a.m. (all day)

Tel: 287-1316

LD 499 – Governor's Budget Bill. With the Joint Standing Committee on Health & Human Services.

Transportation

Room 126, State House, 9:00 a.m.

Tel: 287-4148

LD 350 – An Act To Protect Citizens from Physical Injury Due to Obstructed Driveways.