

Revenue Sharing Bill Hits Partisan Snag But Gets a Boost in the House

Officials in every town and city are now well aware that a poisonous pill was stuck into last year's state budget that would essentially eliminate the municipal revenue sharing program. After filching \$86 million out of the revenue sharing distribution in the main part of the budget, the poison pill in the fine print put into motion an additional raid of \$40 million in order to allocate even more money to pay for state priorities. The combined budgetary actions leave the revenue sharing distribution for FY 2015 shorted by \$126 million and on the brink of extinction.

Three weeks ago an antidote to the poison pill was advanced within the Appropriations Committee as LR 2721. The legislation would replace the additional \$40 million hit to municipal revenue sharing with an alternative. A tremendous public hearing was held on the bill two weeks ago, featuring very strong municipal turn out and impassioned testimony all around.

The following day the Appropriations Committee scheduled its first work session on LR 2721. The content of the lawmakers' deliberations regarding the bill over the 12-day period between Jan. 23 and Feb. 4 are unknown because they didn't occur in a public forum.

On Tuesday this week, the Committee finally issued its recommendation on LR 2721. The legislation is now officially known as LD 1762, *An Act Related to the Report of the Tax Expenditure Review Task Force*. The Committee's recommendation is cleanly split along party lines, with the Democrats supporting the legislation (as significantly amended from the original version) and the Republicans opposed.

As amended. The original version

of the bill protected the revenue sharing account from an additional \$40 million legislative raid by finding an alternative \$40 million. The alternative was generated by:

- Enacting several changes to the Business Equipment Tax Reimbursement (BETR) and Business Equipment Tax Exemption (BETE) laws that limited eligibility for the preferential tax treatment in several ways.

- Removing from the income tax code an inventory expensing option, known as "Last in First Out", that is used by certain businesses to reduce their income tax obligation.

- Sweeping \$4 million out of a tax relief account established by the Legislature in 2012 that is designed to administratively reduce the state income tax rate.

- And appropriating the remaining amount necessary to get to \$40 million from the state's Budget Stabilization (Rainy Day) Fund.

As reported out of the Committee with an "ought to pass" recommendation, the bill now veers away from any tax policy recommendations. Instead, it generates the alternative \$40 million by:

- Sweeping \$4 million out of the special income tax reduction account as in the original bill.

- Appropriating \$15 million in state tax revenue that has accrued to the General Fund during this fiscal year over budgeted projections.

- Appropriating \$21 million out of the state's \$60 million Budget Stabilization Fund.

- And securing a repayment of the \$21 million to the Rainy Day Fund by recalibrating the "cascade" system that automatically fills up various accounts

(most especially the Rainy Day Fund) with unappropriated state revenue at the close-out of each state fiscal year.

(Note: A municipal argument that has not yet been advanced in any of the debate on this legislation is that the money presently in both the state's Budget Stabilization Fund and the special Tax Relief Fund would not be there but for the raids on municipal sharing that have taken place during previous fiscal years. Revenue sharing resources are "transferred" to the state's General Fund. The General Fund is then found to be in a "surplus" situation at the end of the state fiscal year. The surplus "General Fund" revenues then "cascade" into the Budget Stabilization Fund and Tax Relief Fund. It's a highly contingent, "bank-shot" method of appropriation.)

First Round got ugly. There was an ugly little partisan dust-up over this bill on Monday this week, when the Appropriations Committee voted the bill "ought to pass" by a 7-0 vote, without Republican members of the panel present and only Democrats at the horseshoe. Both political parties had an explanation for why the vote was held without any Republicans being present. There were YouTube expressions of outrage and disbelief, allegations of flagrant acts of disrespect, and accusations that panelists lied about what was said to whom. From the outside, it looked a lot like Junior High School. There were no good guys or white hats in the unpleasantness of this incident. It had the effect of turning LD 1762 into a partisan political football, which is the last thing municipal officials wanted to see happen.

Second Round, discussion turned rational. On Tuesday this week, the

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Committee held a work session on the bill in public. This time the discussion was more rational and substantive.

Democrats' justification to support LD 1762. The Democrat appropriators expressed support for enacting LD 1762 in its amended form and without delay. Their arguments were:

- Municipal revenue sharing is a state commitment that cements a state-local partnership. It is based on solid principles of tax policy, and the commitment should be honored.

- The specific allocation for FY 2015 of \$60 million, although much smaller than what is called for in law, was approved in the state budget in good faith and is now a promise that must be kept.

- If the \$60 million distribution is not honored, significant increases in property taxes will result. The property tax is the most regressive tax in the state's arsenal. The increases will cause great harm to homeowners and small businesses alike. The property tax is a levy against Maine homeowners' most treasured asset. State decisions affecting the property tax should not be treated lightly or deferred to a later date in a cavalier manner. The direct human impacts are too significant.

- The towns and cities are in the process of developing budgets that rely on knowing what revenues are going to be available to reduce the property tax rate. If the Legislature does not act promptly to secure the revenue sharing allocation, property taxes are going to increase regardless of the Legislature's final actions.

- And, the claims of the state being subject to downgraded credit ratings with the utilization of some resources from the Budget Stabilization Fund are inaccurate. The mechanism in the amended bill to

replace the revenue taken from the Fund through the cascade mechanism are sufficiently protective of the Fund to satisfy credit rating agencies.

Another argument expressed by Democrats, but not mentioned at this work session, is that if this legislation is not enacted, and the \$40 million revenue sharing problem gets swept into all the other fiscal issues facing the state, the other demands will inevitably eat into the \$40 million necessary to restore revenue sharing and less money will be available for that purpose, if any at all.

Republicans' justification to oppose LD 1762. The Republicans on the panel explained their opposition to the bill largely for the reason of timing rather than any objection with the goal. Those arguments included:

- Before money is appropriated from revenue rejections, the reprojected revenues have to be formally identified. That information will be available in the last week in February. The Committee should wait to make a decision until at least then, so decisions are based on solid data.

- Rather than relying solely on money being held in various accounts, the Committee should take the time to consider some of the recommendations in the Tax Expenditure Task Force report. There are some ideas in that report that are worth working on.

- Last year, the Republican Committee members, against the inclinations of their Republican colleagues, supported a ½-cent increase to the general sales tax, and a one-penny increase to the meals and lodging tax for the purpose of keeping the revenue sharing system from being totally eliminated. Those sales tax increases generated \$125 million in new state revenue over the biennium for the intended purpose of municipal revenue sharing. There is a powerful interest in making sure the money is used for that purpose and not others.

- The state budget needs to be balanced over the biennium and within each year of the biennium as well. There are some fiscal demands for FY 2014 that could very well need the resources being used in LD 1762 to pay those 2014 bills. The 2015 revenue sharing problem can be solved after all the information is assembled, but the more immediate 2014

problems need to be addressed first.

- There are few if any legislators in the State House not committed to keeping faith with the FY 2015 revenue sharing allocation of \$60 million. It is only the timing of LD 1762 that is the problem.

- This bill appears to be a political vehicle designed to show that the Democrats support the towns, cities and property taxpayers and the Republicans do not. That is not true. The party-line vote on the bill will be used for political purposes, which is unfortunate. Before the session is over, every legislator's true commitment to revenue sharing will be known.

Third Round, Full House weighs in. On Thursday afternoon, LD 1762 was presented to the House of Representatives for its "first reading," which is the stage in the process that accepts (or rejects) the Appropriations Committee "ought to pass" report. This vote is not the equivalent of enacting the bill, but lawmakers who vote to accept the Committee report are reasonably expected to be in support of the legislation.

The three-hour House debate on LD 1762 was both forthright and edgy.

For the Democrats, the arguments listed above as laid out by their colleagues on the Appropriations Committee were expressed in various ways. An additional argument was forcefully advanced as well, particularly by lawmakers representing the state's "service center" communities. Rep. Thomas Longstaff of Waterville made the point that municipal revenue sharing, no matter how legislators might characterize it, is actually the reverse of "state aid" to the municipalities. Because the jobs and infrastructure that generate the sales and income tax revenue are nurtured and supported at the municipal level, revenue sharing represents the funneling of municipal resources to the state treasury.

For the Republicans, the arguments identified by the Republican appropriators were also expressed in various ways, although an unequivocal commitment to protecting the \$60 million revenue sharing distribution called for in the two-year state budget did not appear to be fully supported by all.

Republican House leader Rep. Ken Fredette of Newport pointed out that the \$40 million for revenue sharing locked up

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Legislative Bulletin

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in the poison pill would be approximately the amount needed to cover the so-called “wait list”, which is a term describing a list of disabled people who are in line to receive certain health care services under the Medicaid program, but need to wait if those services are to be supported with federal funds. The implication is that the revenue sharing funds should be used to deal with the “wait list” instead.

Rep. Fredette also thought that there was no need to rush the revenue sharing decision. The fact that towns were currently in the process of developing their budgets and deserved a quick legislative decision was a “red herring” argument.

Rep. Wayne Parry of Arundel said that the loss of revenue sharing in his community would translate to approximately \$100 more in the average property tax bill, which he thought most people would be willing to pay to their local government if it would reduce their exposure to state taxation.

Rep. Michael McClellan from Raymond said his community was not in any hurry for the Legislature to finalize its revenue sharing decision, and Rep. Richard Malaby of Hancock said the revenue sharing distribution to his community was nowhere near as important as the school subsidy distribution.

Interspersed throughout the debate were many references to the “process” and the obviously hard feelings that were generated by the way the bill was initially endorsed at the Appropriations Committee level without Republican Committee members being present. Rep. Joyce Maker of Calais may have been speaking for many Republican legislators when she explained how troubled she was by the way the bill was being presented to the House. She said she was voting for the bill because of her support for her city and local government, but her green light on the bill was being provided under duress.

Another matter of considerable debate was the fact that LD 1762 would appropriate resources for revenue sharing for next year (2015) that are more immediately needed to pay bills due in 2014 to meet the state’s current Medicaid service obligations.

An inexplicably counter-intuitive thread was woven throughout the debate. The Democrats, who are traditionally more supportive of Medicaid and social

service spending than the Republicans, were strongly supporting appropriating available funds to secure the revenue sharing promise and setting aside the Medicaid and other state financial needs for further consideration and debate down the road. At the same time, the Republican side of the aisle was forcefully arguing to forestall encumbering any funds for local government support at this time because of the need to honor Medicaid invoices that might be coming due.

In a parallel universe, each would be on the other’s side.

No less than five attempts were made to stop the House debate on LD 1762, all of which were rejected by the Democrat majority: one motion to table the bill, one motion to commit the bill to the Appropriations Committee, one motion to recommit the bill to the Taxation Committee, one motion to “indefinitely postpone the bill and all accompanying papers”, and one very rarely advanced motion to move the question and end debate.

Rep. Helen Rankin of Hiram closed off the debate with the following observation, which speaks to the tension that was in the air throughout the three-hour debate:

“I cannot believe what’s happening here today. I believe that deep down we are all above this rancor. What is (in) the bill here today is so serious and I think we all have to look inside ourselves and make sure that we know what we’re doing here. If we break a promise to these people, who are so bad off, well your conscience – whoever does that – you’ve got to live with it.

Supposedly, we are adults and we should be able to disagree with each other – and we have been. As other people have said, we have dear friends on both sides of the aisle and it’s very hurtful what’s going on here today. But as I said to somebody here, all I can think of is children, who when they’re playing a game and they know they’re not going to win they say “I want to start over again.” Well, we’ve started over again several times today and we keep going right back to where we were. We are not making any progress at all and in the process we’re embarrassing ourselves not only here in the chamber, but to anybody who sees us or hears us. This is not the proudest moment of the House of Representatives and we all have to take a share of the blame. It isn’t pretty, and

there is no sense in dragging this on any longer. Let’s act like adults and accept the inevitable. None of us can win all the time and whatever happens here we should make the very best decision that we can, know we’ve done the best we can, even if we didn’t win.

Several people have left the House, gone out of the room. Some because they’re just sick and tired of all the rancor, some because they’re rude. If people have the courage to stand up and say what they believe in we should have the respect to listen to them. We don’t have to agree, but we should show respect. We’re Representatives and we should live up to what we are supposed to represent.”

After Rep. Rankin concluded her comments, the vote was conducted. Given the discussion, which advanced several reasons for not supporting the bill, the strength of the 114 - 21 vote in support of LD 1762 was surprising.

The roll call on the vote is provided in this edition of the Legislative Bulletin on page 4. Gov. LePage has made it clear that he will veto LD 1762 if it is enacted by the Legislature, so all municipal officials interested in this legislation should contact their legislators who supported the bill. The question to ask them is whether they will hold to their votes in the face of the inevitable gubernatorial veto.

The first theater of this battle next week will be in the State Senate on Tuesday, Feb. 11. Between now and next Tuesday, municipal officials should be engaging in direct discussions with their senators on the subject of LD 1762.

House Rollcall #479: LD 1762 (HP 1264)

Date: Feb. 6, 2014

Motion: ACC MAJ OUGHT TO PASS REP

Number of Yeas Required: 68 (simple majority)

Outcome: PREVAILS

Tallies: Yeas (Y): 114, Nays (N): 21, Absent (X): 16, Excused (E): 0

Member	Vote	Member	Vote	Member	Vote
AYOTTE of Caswell	N	DUNPHY of Embden	Y	KNIGHT of Livermore Falls	N
BEAUDOIN of Biddeford	Y	DUPREY of Hampden	Y	KORNFELD of Bangor	Y
BEAULIEU of Auburn	N	ESPLING of New Gloucester	Y	KRUGER of Thomaston	Y
BEAVERS of South Berwick	Y	EVANGELOS of Friendship	Y	KUMIEGA of Deer Isle	X
BECK of Waterville	X	EVES of North Berwick	Y	KUSIAK of Fairfield	Y
BENNETT of Kennebunk	N	FARNSWORTH of Portland	Y	LAJOIE of Lewiston	Y
BERRY of Bowdoinham	Y	FITZPATRICK of Houlton	N	LIBBY of Waterboro	N
BLACK of Wilton	Y	FOWLE of Vassalboro	Y	LIBBY of Lewiston	Y
BOLAND of Sanford	X	FREDETTE of Newport	N	LOCKMAN of Amherst	N
BOLDUC of Auburn	Y	FREY of Bangor	Y	LONG of Sherman	Y
BRIGGS of Mexico	Y	GATTINE of Westbrook	Y	LONGSTAFF of Waterville	Y
BROOKS of Winterport	Y	GIDEON of Freeport	Y	LUCHINI of Ellsworth	Y
CAMPBELL of Newfield	Y	GIFFORD of Lincoln	X	MacDONALD of Old Orchard Beach	N
CAMPBELL of Orrington	Y	GILBERT of Jay	Y	MacDONALD of Boothbay	Y
CAREY of Lewiston	X	GILLWAY of Searsport	Y	MAKER of Calais	Y
CASAVANT of Biddeford	Y	GOODE of Bangor	Y	MALABY of Hancock	N
CASSIDY of Lubec	Y	GRAHAM of North Yarmouth	Y	MAREAN of Hollis	Y
CHAPMAN of Brooksville	Y	GRANT of Gardiner	Y	MARKS of Pittston	Y
CHASE of Wells	N	GUERIN of Glenburn	Y	MASON of Topsham	X
CHENETTE of Saco	Y	HAMANN of South Portland	Y	MASTRACCIO of Sanford	Y
CHIPMAN of Portland	Y	HARLOW of Portland	Y	McCABE of Skowhegan	Y
CLARK of Easton	X	HARVELL of Farmington	Y	McCLELLAN of Raymond	N
COOPER of Yarmouth	Y	HAYES of Buckfield	Y	McELWEE of Caribou	Y
COTTA of China	N	HERBIG of Belfast	X	McGOWAN of York	Y
CRAFTS of Lisbon	Y	HICKMAN of Winthrop	Y	McLEAN of Gorham	Y
CRAY of Palmyra	N	HOBBS of Saco	Y	MONAGHAN-DERRIG	
CROCKETT of Bethel	Y	HUBBELL of Bar Harbor	Y	of Cape Elizabeth	Y
DAUGHTRY of Brunswick	Y	JACKSON of Oxford	N	MOONEN of Portland	Y
DAVIS of Sangerville	Y	JOHNSON of Eddington	X	MORIARTY of Cumberland	Y
DeCHANT of Bath	Y	JOHNSON of Greenville	N	MORRISON of South Portland	Y
DEVIN of Newcastle	Y	JONES of Freedom	Y	NADEAU of Fort Kent	Y
DICKERSON of Rockland	Y	JORGENSEN of Portland	Y	NADEAU of Winslow	Y
DILL of Old Town	Y	KAENRATH of South Portland	Y	NELSON of Falmouth	Y
DION of Portland	X	KENT of Woolwich	Y	NEWENDYKE of Litchfield	N
DOAK of Columbia Falls	Y	KESCHL of Belgrade	X	NOON of Sanford	Y
DORNEY of Norridgewock	Y	KINNEY of Limington	Y	NUTTING of Oakland	N

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Member	Vote
PARRY of Arundel	N
PEASE of Morrill	N
PEAVEY HASKELL of Milford	Y
PEOPLES of Westbrook	Y
PETERSON of Rumford	Y
PLANTE of Berwick	Y
POULIOT of Augusta	Y
POWERS of Naples	X
PRIEST of Brunswick	X
PRINGLE of Windham	Y
RANKIN of Hiram	Y
REED of Carmel	Y
ROCHELO of Biddeford	Y
ROTUNDO of Lewiston	Y
RUSSELL of Portland	Y
RYKERSON of Kittery	Y
SANBORN of Gorham	Y
SANDERSON of Chelsea	Y
SAUCIER of Presque Isle	Y
SAXTON of Harpswell	Y
SCHNECK of Bangor	Y
SHAW of Standish	Y
SHORT of Pittsfield	Y
SIROCKI of Scarborough	Y
STANLEY of Medway	Y
STUCKEY of Portland	Y
THERIAULT of Madawaska	Y
TIMBERLAKE of Turner	X
TIPPING-SPITZ of Orono	Y
TREAT of Hallowell	Y
TURNER of Burlington	Y
TYLER of Windham	Y
VEROW of Brewer	Y
VILLA of Harrison	Y
VOLK of Scarborough	Y
WALLACE of Dexter	Y
WEAVER of York	N
WELSH of Rockport	Y
WERTS of Auburn	Y
WILLETTE of Mapleton	Y
WILSON of Augusta	X
WINCHENBACH of Waldoboro	Y
WINSOR of Norway	X
WOOD of Sabattus	Y

BETR-to-BETE Task Force Report

Traction Appears Limited in Taxation Committee

Part K of the state budget enacted last June created a special task force for the purpose of recommending how to “transition” all the taxable property currently enrolled in the Business Equipment Tax Reimbursement Program (BETR) into the Business Equipment Tax Exemption Program (BETE). Put another way, the Task Force was charged with figuring out how to make about \$3 billion worth of taxable property exempt from taxation more or less overnight and not hurt the municipalities too badly.

In summary, the Task Force recommendations are to:

- Exempt the property in 25% increments over a four-year period.
- Make a series of amendments to school funding law and the law governing the determination of each municipality’s “equalized state valuation”. These changes soften the negative impacts of these exemptions on any single town and distribute the negatives, instead, to all municipalities, like peanut butter spread over white bread.
- And, not exempt the BETR property that is located in Tax Increment Financing (TIF) districts until the TIF agreement expires to protect the structure of those financial arrangements.

On Wednesday last week the Taxation Committee held its first substantive review of the Task Force recommendations. Detailed discussions of the BETR and BETE laws, especially when the various types of TIF agreements are mixed in, is becoming a Tower-of-Babel experience. Everyone involved in building this stairway to heaven speaks a foreign language. It is not the fault of the experts. The more carefully Maine Revenue Services personnel or the tax-specialty lawyers explain how these systems work and the interwoven impacts of various proposed changes, the more cross-eyed with bewilderment the audience becomes. It may be possible for normal humans to comprehend the multi-dimensional mechanics of the BETR-BETE-TIF interplay if they really study it, but life is probably too short to make the effort worthwhile. By virtue of its sheer turgidity, the tax code in this area of business property exemption may

have won the battle over rational decision-making.

After letting that first-blush review percolate for several days, the tax panel took up the report again on Monday this week. The primary inquiry advanced by several panelists was the threshold question of why the creation of a massive new property exemption should happen at all? Taking \$3 billion of taxable value out of the system will increase the required local property tax effort for all school systems in the state. Sharply negative impacts could be felt by the communities hosting large industrial properties, and in the subsequent years negative financial consequences would reverberate throughout all the non-industrial municipalities within each county because of the way county taxes are assessed. The complexities of managing a phased-in exemption over a four-year period exposes the towns and cities to even more administrative mandates on top of the big “appraisal report” mandates imposed on municipal government in Part O of the state budget enacted last year. In the middle of all of that, the Task Force recommendation would force the Legislature to make a decision about retail personal property. Currently, retail personal property is taxable but the owners get reimbursed for their tax payments under the BETR program. That level of state generosity for retail personal property is unusual; in most other states, retail personal property is taxable without any special tax break. Under the Task Force proposal, the Maine State Chamber of Commerce is pushing for all retail personal property to become fully exempt from taxation.

The discussion among the Taxation Committee members gave the impression that there was little interest in developing a “Committee bill” to advance the Task Force recommendations to the full Legislature. The discussion may not have entirely concluded, however. The authority remains for the Committee to report out a bill “related to the subject matter of the (Task Force) report”. Although it appears unlikely at the moment, nothing is ever finally decided as long as the Legislature is still in session.

LEGISLATIVE HEARINGS

Tuesday, February 11

Health & Human Services

Room 209, Cross State Office Building, 1:00 p.m.

Tel: 287-1317

LD 1597 – An Act To Clarify Provisions of the Maine Medical Use of Marijuana Act.

Labor, Commerce, Research & Economic Development

Room 208, Cross State Office Building, 1:00 p.m.

Tel: 287-1331

LD 1622 – An Act To Amend the Laws Governing Firefighter Absence from Work for Emergency Response.

LD 1641 – An Act To Amend the Workers' Compensation Laws as They Pertain to Employee Representation.

Wednesday, February 12

Energy, Utilities & Technology

Room 211, Cross State Office Building, 1:00 p.m.

Tel: 287-4143

LD 1714 – Resolve, To Study the Feasibility of Allowing Dispatchers To Transfer E-9-1-1 Calls to Emergency Responders in Other States.

Health & Human Services

Room 209, Cross State Office Building, 9:00 a.m.

Tel: 287-1317

LD 1594 – Resolve, To Improve Access to Emergency Behavioral Health Services and Increase Public Safety.

Marine Resources

Room 206, Cross State Office Building, 10:00 a.m.

Tel: 287-1337

LD 1723 – An Act To Improve Enforcement of Marine Resources Laws.

Taxation

Room 127, State House, 10:00 a.m.

Tel: 287-1552

LD 1547 – An Act To Support Municipal Volunteers.

LD 1707 – An Act To Amend the State's Tax Laws.

Thursday, February 13

Energy, Utilities & Technology

Room 211, Cross State Office Building, 1:00 p.m.

Tel: 287-4143

LD 1621 – An Act To Create the Newport Natural Gas District.

LD 1628 – An Act To Require a Timely Response by a Gas Company to a Municipal Request for Service Expansion.

Environment & Natural Resources

Room 216, Cross State Office Building, 1:00 p.m.

Tel: 287-4149

LD 1744 – An Act To Protect Maine Lakes.