

Strong Votes in Both Chambers Enact Revenue Sharing Bill

Last week’s Legislative Bulletin described an impassioned debate in the House of Representatives that preceded a very strong, bipartisan vote (114-21) in support of the bill that would prevent any additional legislative raids on the municipal revenue sharing allocation for the next fiscal year (FY 2015) .

On Tuesday this week the Senate followed suit with near unanimous support of the measure. By a vote of 33-2, the bill was put on track for enactment, which occurred two days later, as a strong Valentines’ Day storm was moving into the Capitol area. The bill to protect the FY 2015 revenue sharing allocation is now on the Governor’s desk. The roll call on the Senate’s vote is included in this edition of the Legislative Bulletin.

Over the next 10-day period, the Governor is authorized to take one of three possible actions:

- Sign the bill into law.
- Allow the bill to become law without his signature.
- Veto the bill.

According to news reports, the Governor and his spokespeople have said, at various times, that he will veto the bill, that he won’t veto the bill, and that he won’t decide one way or the other until the bill reaches his desk.

How we got to this point is very familiar to municipal officials by now. Beginning with the previous administration in 2009 and continuing without let-up ever since, policy makers in Augusta have been disregarding the revenue-sharing statute on an annual basis. In ever-increasing amounts, lawmakers have taken funds dedicated to property tax relief in order to pay for other state spending priorities.

For FY 2015, in the biggest raid to date, the Legislature decided to “transfer” \$86 million from the revenue sharing program into the state’s General Fund, leaving just \$60 million for actual distribution...a mere 41% of what the law calls for. On top of that, an automatic \$40 million additional cut was buried in the fine print of the state budget so deeply that both

the municipalities and many legislators were unaware of this additional “sleeper” revenue sharing raid until after the budget was enacted.

LD 1762, *An Act Related to the Report of the Tax Expenditure Review Task Force*, repeals the built-in revenue sharing grab and backfills the \$40 million hole in the *(continued on page 2)*

Senate Roll-call #396 LD 1762

Date: Feb. 11, 2014
Number of Yeas Required: 18 (simple majority)
Outcome: PREVAILS
Yeas (Y): 33 Nays (N): 2 Absent (X): 0 Excused (E): 0

Member	Vote	Member	Vote
ALFOND of Cumberland	Y	LACHOWICZ of Kennebec	Y
BOYLE of Cumberland	Y	LANGLEY of Hancock	Y
BURNS of Washington	Y	MASON of Androscoggin	Y
CAIN of Penobscot	Y	MAZUREK of Knox	Y
CLEVELAND of Androscoggin	Y	MILLETT of Cumberland	Y
COLLINS of York	Y	PATRICK of Oxford	Y
CRAVEN of Androscoggin	Y	PLUMMER of Cumberland	Y
CUSHING of Penobscot	Y	SAVIELLO of Franklin	Y
DUTREMBLE of York	Y	SHERMAN of Aroostook	Y
FLOOD of Kennebec	N	THIBODEAU of Waldo	Y
GERZOFSKY of Cumberland	Y	THOMAS of Somerset	Y
GRATWICK of Penobscot	Y	TUTTLE of York	Y
HAMPER of Oxford	Y	VALENTINO of York	Y
HASKELL of Cumberland	Y	VITELLI of Sagadahoc	Y
HILL of York	Y	WHITTEMORE of Somerset	Y
JACKSON of Aroostook	Y	WOODBURY of Cumberland	N
JOHNSON of Lincoln	Y	YOUNGBLOOD of Penobscot	Y
KATZ of Kennebec	Y		

Revenue Sharing (cont'd)

budget with funds from three sources: the state's Budget Stabilization Fund; a special "Tax Relief Fund" that traps excess state revenue for the purpose of reducing the income tax rate; and, tax revenues that have accrued to the state over the revenue levels the state was expected to receive when the budget was enacted last year. Under the terms of the bill, the \$21 million withdrawal from the state's Budget Stabilization Fund would be re-deposited through the so-called "cascade" system using unappropriated General Fund revenue identified at the close-out of the state's fiscal year.

The Senate debate was not dissimilar to the debate in the House the week before. Members of both political parties expressed forceful support for their communities and the importance of keeping the commitment in the state budget to distribute \$60 million in revenue sharing in FY 2015. Almost all the Senators who spoke made it clear that they had been hearing about this subject in full strength from the municipal officials within their districts.

The two sides of the debate focused on how to achieve that goal and by when.

The Democrats speaking from the Senate floor said time was of the essence because the towns and cities were in the process of preparing their budgets and needed to know with some certainty what non-property tax resources were going to be available to offset the property tax burden. The term "commitment," they argued, meant that the decision had to be made with certainty and enshrined in the law. Delays in making the decision could only suggest that the "commitment" was somehow contingent on future events. When meeting a commitment is contingent on future events, it is something less than a real commitment.

The Republican senators joining the debate expressed concern about how LD 1762 proposed to fill the \$40 million hole created by taking revenue sharing off the chopping block. There was objection to dipping into the state's rainy day fund on the belief that it could negatively affect the state's credit rating. There was also objection to relying on revenues that have accrued to the state treasury in excess of

previous revenue projections because the formal recognition of those excess state revenues by the Revenue Forecasting Committee has not yet occurred.

The other Republican objection was the process by which LD 1762 was developed and advanced by the Appropriations Committee. In this case, the legislation was not developed through the consensus method under which the Committee most typically operates, or attempts to operate, on state budget matters.

With their objections noted, and with some expressing concern that they had been put into a tight box with only one way out, all but one Republican joined the Democrats and gave LD 1762 a green light.

Sen. Patrick Flood (Kennebec Cty.) voted 'no' from his perspective as a member of the Appropriations Committee who was very uncomfortable supporting a bill that appropriated \$15 million of revenue that is not yet available to appropriate. Sen. Richard Woodbury (Cumberland Cty.) provided the only other vote in opposition on the concern that LD 1762 is a miniscule band aid being applied to a gaping state wound caused by chronic over-commitment of state resources... resources which are being generated by

an archaic and unbalanced tax system.

Municipal officials statewide are grateful for this unequivocal legislative decision that protects revenue sharing from additional cuts during this biennium. By design, the legislative process runs a torturous gauntlet from the inception of a bill to enactment; a process that most often ends in failure. For this particular effort to succeed, the determination of a few legislators passionately dedicated to righting a wrong and honoring a commitment was successfully nurtured into the near consensus of the many. Special appreciation goes out to the originators of this legislation for their vision and pluck. It was a bumpy ride, but the final days of debate were gratifying to the municipal ear because the acknowledgement of the value of municipal services by lawmakers was genuine, the impact of the Legislature's decisions on local services and property tax burdens was expressly recognized, and the high level of communication between legislators and municipal officials was readily apparent.

For whatever it may be worth, the Maine Municipal Association most sincerely appreciates this legislative enactment.

Gambling for Charitable Purposes

By a margin of 6 to 4, the Veterans and Legal Affairs Committee has given a green light to a bill that would allow veteran organizations to supplement their charitable activities through the generation of gaming revenue.

As amended by a majority of the Committee, LD 31, *An Act to Increase Gaming Opportunities for Charitable Fraternal and Veterans' Organizations*, authorizes qualifying veterans' organizations to operate up to three slot machines on their premises. The ability to offer gaming opportunities is contingent on the organization's ability to meet pertinent state licensing, permitting and operating requirements. The expanded gaming opportunities can only be offered by veterans' organizations that have owned or leased their facilities where the slot machines are to be operated for a minimum of two consecutive years and in municipalities where the voters have

approved through referendum the operation of slot machines by these types of nonprofit organizations. 70% of the net revenues, less reasonable expenses, must be used to supplement the organization's charitable activities. The remaining net revenues must be distributed to the host municipality (10%), Gambling Control Board (10%), the state's General Fund (8%), and Gambling Addiction Prevention and Treatment Fund (2%).

Not surprisingly, representatives of veterans' organizations support LD 31. Due to declines in membership, cash donations and non slot-related gaming revenues (e.g., from bingo, pull tickets, etc.), these organizations are finding it more difficult to fund their various activities. The proponents believe that LD 31 "levels the playing field" between the nonprofit "charitable" organizations and the for-profit gaming operations in efforts

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Committee Votes to Shift Significant Road Mandates onto Municipalities

On Wednesday this week, the legislative committee responsible for the oversight of state and local government issues voted just shy of unanimously to support an amended version of LD 1177, *An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group*. This bill shifts additional litigation risks, substantial road maintenance responsibilities, new “damages” obligations and significant road inventory costs onto municipalities and property taxpayers.

As finally adopted by the State and Local Government Committee, the bill:

1. Repeals the Abandonment Law. Under current law, a town way which has not been kept passable for motor vehicles at public expense for a period of 30 or more consecutive years is presumed abandoned, and a municipality is relieved of the obligation to maintain the town way. Abandonment occurs by the passage of time coupled with the lack of maintenance or request for maintenance by an abutter.

Under the Committee’s proposal, the existing statutory abandonment law is repealed on of Jan. 1, 2015. As a result, municipalities with town ways that have not exhausted the 30 year non-maintenance period are mandated to either maintain the town way at public expense or to discontinue the town way and pay damages to abutters. This massive mid-game rule change will shift significant costs onto municipalities.

2. Mandates Comprehensive Road Inventories. By Jan. 1, 2016 municipalities are mandated to prepare comprehensive road inventories that specifically identify: (1) all currently maintained town ways; (2) town ways or portions of town ways discontinued since 1965; and (3) town ways or portions of towns ways abandoned since 1965.

3. Mandates Municipalities to Record Inventories. Municipalities are mandated to record the road inventories with the county registry of deeds at a cost of \$19 for the first page and \$2 for each subsequent page. This element of the mandate was enthusiastically supported

by the Maine County Registers of Deeds Association.

4. Mandates a 20 Year Discontinuance Vote Review. Municipalities are mandated to reconsider every decision to discontinue a road 20 years after the original vote. If a community fails to conduct the reassessment, a single abutter on the road can call a town meeting to force the municipality to revisit the 20-year old vote.

Below the mandate line, LD 1177 also:

5. Amends and Clarifies the Discontinuance Process. The Committee proposal restructures and amends the procedure that must be used when a municipality discontinues a town way, which includes: (1) providing public notice; (2) conducting a public hearing on the proposed discontinuance order no less than 10 days before the meeting of the local legislative body; and (3) describing in the order of discontinuance the location and abutters to the town way, damages, if any to be paid to the abutters, nature of the easement (retained, extinguished or limited), and the level of municipal maintenance provided, if any.

6. Establishes a Right for Civil Action. Authorizes abutters on discontinued or abandoned roads with retained public easements to file a lawsuit for damages and injunctive relief against a person causing damage to the road that impedes access to the property by a motor vehicle. If successful, the abutter may also be awarded reasonable attorney’s fees and costs.

7. Includes a Mandate Preamble. The Committee was informed by its analysts that LD 1177 will include a mandate preamble, which is a formal recognition that the bill is an unfunded state mandate. As a result, LD 1177 will need to be supported by a two-thirds majority vote in the House and Senate in order to be finally enacted. A near-unanimous Committee vote is a first step in that direction.

The bill will soon make its way to the members of the House and Senate for debate and a final vote. Municipal officials are urged to contact their legislators and ask them to oppose the costly and unwelcome mandates found in LD 1177.

to collect limited gaming revenues from Maine residents and visitors.

Opponents of LD 31 (and five other bills seeking to expand gaming opportunities in various regions of the state), included representatives from Maine’s two for-profit gaming facilities, as well as the City of Bangor.

In her testimony before the Committee, City Manager Catherine Conlow pointed to the negative financial impacts expanding gaming opportunities would have on the property taxpayers in Bangor. One hundred percent of the revenue the City receives from Hollywood Casinos is used to support the debt and related obligatory costs for the newly built auditorium. Any reduction in gaming revenues would shift additional costs onto the property taxpayers that play host to the facility that provides regional and statewide benefits.

MMA also provided testimony in opposition to LD 31, but not with respect to the gaming expansion policy. MMA’s Legislative Policy Committee opposed the bill over a growing municipal concern regarding the state’s policy on tax exempt facilities and the degree those facilities can engage in revenue raising activities unrelated to their missions and still retain their exempt status.

In a ruling issued a year ago, Maine’s Law Court cracked open the door a little wider on this issue when it held that tax-exempt Hebron Academy can engage in various revenue raising activities (e.g., renting its facilities to outside organizations for a fee) as long as the revenue generated is “incidental” to the activities of the school and the revenue generated is “de minimus.” No one knows what the definition of “de minimus” is; apparently you know it when you see it. Whether tax exempt veterans’ halls or private colleges or charitable organizations of various kinds, there should be a “bright line” in the law that separates tax exempt institutions by their activities and their missions from other types of organizations that concentrate their activities on raising revenue and incidentally provide charitable services.

LD 31 will soon be debated by the entire Legislature.

The 2013 “Appraisal Report” Mandate: An Update

In Part O of the two-year state budget enacted last June, a very large mandate was imposed on municipal assessors in those communities that include large industrial or commercial properties owned by a single taxpayer that comprise 2% or more of the total municipal value. A paper mill town is a classic example, but communities with other large-scale manufacturing, commercial, electricity-producing or food processing facilities also qualify. Using data in the Municipal Valuation Return Statistical Summary as a guide, it appears that somewhere around 60-80 towns and cities are implicated by this mandate.

The requirement enacted in Part O requires those municipalities to either prepare or purchase an “appraisal report” for each of these properties no less often than every five years. Failure to comply blocks the municipality’s eligibility for: (1) statutory state reimbursement provided for newly exempted property under the Business Tax Equipment Exemption law (BETE); and (2) slightly expedited state valuation adjustments under the “sudden and severe disruption” program. “Sudden and severe” is designed to help communities that experience sudden catastrophic drops in municipal valuation such as a paper mill closure. By speeding up their state valuation adjustments by one year, their revenue sharing and school subsidy distributions are adjusted in a way that

buffers the loss of taxable value.

The key element of these “appraisal reports” is an analysis of the value of the industrial or commercial facility using the “income approach to value.” In the marketplace, full scale appraisal reports of these properties can cost over \$100,000. Some municipalities will have to either prepare or purchase appraisal reports for more than one property.

In order to make sure the municipal assessors have the income and expense information they need to prepare the required “appraisal reports”, the 2%-or-greater businesses are required to submit their income and expense information every year to the assessor when they apply for their BETE tax exemptions.

The businesses object to that information requirement and a bill submitted on their behalf (LD 1627, *An Act To Amend the Reporting Requirements for the Business Equipment Tax Exemption*) was given its public hearing weeks ago. LD 1627 removes the obligation for the businesses to provide income and expense information, but retains the municipal obligations to prepare or purchase the appraisal reports...an unbalanced solution to which MMA objected. Subsequent to the public hearing, the bill has been tabled so the interested parties (businesses, municipalities, Governor’s Office) could try to reach an alternative to the business and municipal mandates.

No consensus has been reached on how to solve the problems created by Part O so the Taxation Committee will now take up the legislation and decide

how to proceed. MMA remained the spoiler on reaching a consensus decision for the same reason, the alternative proposal is also an unbalanced approach that retains the obligation for municipalities to prepare or purchase the appraisal reports but eliminates the clear obligation for the 2%-or-more businesses to provide income and expense information to the municipal assessors.

More specifically, the business lobbyists and representatives from the Governor’s Office were willing to jettison all the Part O BETE-related obligations for both the municipalities and the businesses. The appraisal report mandate on municipal assessors, however, would be retained because it is also found in the just-rewritten “sudden and severe” law and the Governor’s Office is unwilling to relax any municipal requirements that are now necessary in order to receive the benefits of that program. Therefore, any municipality that hosts a 2%-or-more business entity must prepare or purchase the required appraisal report or forego the relief provided by the sudden and severe program when experiencing significant or catastrophic value reductions.

At a minimum, the municipalities that need the pertinent income and expense information to meet this mandate should be clearly entitled to receive that information from the businesses in a timely manner. That’s not an unreasonable request, but it doesn’t look like either the businesses or the Governor’s Office will be supportive. Maybe the Taxation Committee will be more open to a balanced approach.

Legislative Bulletin

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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://janus.state.me.us/legis/ljo/>.

Monday, February 17 – HOLIDAY

Tuesday, February 18

Energy, Utilities & Technology
Room 211, Cross State Office Building, 1:00 p.m.
Tel: 287-4143

LD 1647 – An Act To Make Changes to the So-called Dig Safe Law.

Transportation
Room 126, State House, 1:00 p.m.
Tel: 287-4148

LD 1758 – An Act To Clarify the Use of the Term “Civil Violation” in the Motor Vehicle Statutes.

Wednesday, February 19

Environment & Natural Resources
Room 216, Cross State Office Building, 9:00 a.m.
Tel: 287-4149

LD 1744 – An Act To Protect Maine Lakes.

State & Local Government
Room 214, Cross State Office Building, 1:00 p.m.
Tel: 287-1330

LD 1753 – An Act To Redistrict the Knox County Budget Committee Districts.

Taxation
Room 127, State House, 10:00 a.m.
Tel: 287-1552

LD 369 – (carryover) An Act To Redesign Maine's School Funding Model.

LD 1751 – An Act To Provide Property Tax Relief to Maine Residents.

Thursday, February 20

Environment & Natural Resources
Room 216, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1755 – An Act To Amend the Mandatory Shoreland Zoning Laws To Exclude Subsurface Waste Water Disposal Systems from the Definition of “Structure.”