STATE-MUNICIPAL PARTNERSHIP PROGRAMS:
PAST, PRESENT AND FUTURE

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January 2015
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Foreword

This report evaluates systems established in Maine law that fall in the general category of state-local partnership programs. For this purpose, a “partnership program” is a state law that compels municipalities to conduct certain activities or provide specific services for the general good, as well as related systems established in law to support or supplement those required activities.

The review involves examining the structure and intention of each partnership program when it was first established and evaluating how the Legislature has managed and further developed the program over time. An attempt is made in each case to judge whether the program under review was created by the Legislature as a true partnership program and been well maintained as such over time or, instead, was created and maintained as a simple unfunded state mandate. In some cases, the program has evolved over time from a partnership program to more of an unfunded state mandate or broken financial commitment. In other cases, the reverse is true and a pure unfunded state mandate has been converted into a functioning state-local collaboration.

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MMA employee, Lisa Rigoulot, captured this image of Mt. Katahdin’s infamous Knife Edge ridge.
Executive Summary

The review of the 20-plus state-municipal partnership programs in this report yields four principal findings.

**Historical Reliance.** The reliance on municipal government to provide programs and services for the general good of the state is deeply embedded in Maine’s history. A surprising number of the programs and services the towns and cities are required to provide have been mandated by state law from the earliest days of the 19th and 20th Centuries. A second major expansion in required municipal services occurred in the decades of the 1970s and 1980s. That long-standing reliance indicates that Maine’s lawmakers recognize the inherent capacity of municipal government to deliver an array of public services more efficiently and effectively than larger, more centrally located governments, at the same time providing the greatest level of accountability to the public being served.

**Elements of partnership.** As these mandated programs have been established in law and maintained in statute by the Legislature over time, the discernible elements of a partnership relationship are identified as the presence (or absence) of the following:

- Program-specific financial support (e.g., 50% state funding for sand-salt sheds).
- Generalized financial support across functional areas (e.g., the 43-year-old Municipal Revenue Sharing Program).
- Tools established in statute to assist in the completion of the task (e.g., laws enacted to assist in the enforcement of mandatory land use regulation).
- State supplied technical assistance and administrative support (e.g., much of the functional purpose of the Maine Waste Management Agency in the late 1980s, as short-lived as it was).
- Direct and comprehensive state agency collaboration (e.g., the structure of the comprehensive planning program, at least for a short time in the 1980s).
- The stability and predictability of state-level support (e.g., the state’s unwavering commitment to its General Assistance reimbursement obligations for nearly four decades reflects stability; the nearly annual restructurings of the Homestead property tax exemption that occurred between 2004 and 2009 reflect the opposite).

**Partnership ebb-and-flow.** Taking these elements of partnership into account, the historical review and assessment of each program reveals a conspicuous ebb-and-flow in tangible legislative support for the programs and services municipalities are required to perform for the general good of the state. Periods of advance are followed by periods of retreat. Not surprisingly, the periods of ebb tide tend to follow economic recessions. The periods of full tide tend to return, at least partially, when the economy recovers.

Prior to the imposition of the state-collected “broad-based” sales and income taxes in the mid-20th Century, the programs required of municipal government were mandated in the softest possible ways. There was an obligation to provide for the basic needs of the impoverished, for example, but how that was accomplished was not dictated by law. Each town needed to have an animal impoundment facility, but the details of compliance were left up to the community.

In the 1970s, with the broad-based taxes flowing to the state’s treasury, the mandated programs became much more “top-down”, sharper, based on standards and legally enforceable. Shoreland zoning, subdivision review, solid waste management… the mandates were strict, the penalties for noncompliance were stiff, the operations of municipal government were required to expand, and the property taxpayers were handed the tab. In an obvious exchange for that change in relationship, the Municipal Revenue Sharing Program was established.
Buoyed by the strong economy in the 1980s, the state’s interest in the strongest possible partnerships with local government reached its zenith. Comprehensive planning, solid waste management and the construction of sand/salt sheds to protect the environment all involved significant state financial participation and state agency collaboration, but then those programs collapsed with the recession of the early 1990s.

Over the last 25 years, the economy has been on a roller coaster, going deeply negative and then recovering in a cyclical fashion over 8-10 year periods. Each successive cycle, it seems, has resulted in greater reductions in generalized state financial support for the partnership programs, scaled-back state technical assistance, weakened state agency collaboration, and sharply decreased programmatic stability and predictability.

**The revenue sharing compact.** Only a few of the state-municipal partnership programs reviewed in this report enjoy any program-specific state financial support. The state reimburses municipalities for at least 50% of their direct General Assistance expenditures. The Local Road Assistance Program is a Highway Fund equivalent to the Municipal Revenue Sharing Program for road and bridge maintenance purposes. The sand-salt shed program was financed 50% by state government. The other 18 partnership programs evaluated in this report are provided by the municipalities, at the demand of state government, without any significant state financial contribution. Those mandates are financed by Maine’s property taxpayers.

The complete legislative record suggests that there are four major public policy underpinnings that support the Municipal Revenue Sharing Program:

- To recognize the role of municipal government in nurturing, supporting and growing local economies, from which all state revenue is derived.
- To mitigate the tax shifts and increased tax rates created by property tax exemptions enacted by the Legislature.
- To implement an obvious goal of the Legislature to reduce the state’s overreliance on the property tax to pay for governmental services, particularly in financially stressed communities and those experiencing a high regional demand for services.
- And, to recognize the breadth of the programs and services the towns and cities are required to provide for the general good of the state and lend a hand with their expense.

All four foundation stones that support the revenue sharing program are important and given treatment in this report. The primary focus, however, is on the issue of relationship, and how the revenue sharing program comes around again and again, in almost every analysis, as the glue that cements the state-municipal partnership.
ELECTIONS

Municipalities have always been and remain the primary administrators of all elections in Maine – local, regional, state and federal – and it is hard to conceive of a more efficient or cost-effective way to manage such a task. Before Maine law was organized into various titles in the mid-1950s, the first several chapters in the law books included six that governed the administration of all elections by municipal officials. Those 80 pages of statute were then, just as they are now, extremely focused on the fine details of elections management. Over time, these procedures have undergone, and will undoubtedly continue to undergo, careful and detailed biennial amendment.

The election mandate precedes the creation of the State of Maine. Because of the need to rely on the municipalities of New England to perform almost all governmental functions in the 17th and 18th Centuries, the concept of “unfunded state mandate” can hardly be applied to the earliest laws governing social organization in colonial America. Municipalities were given the task as a matter of simple necessity; no other organized system of governance was available.

From the municipal perspective some of the Legislature’s management of election law can be annoying. Municipal efforts to find efficiencies (e.g., consolidated polling places) are often resisted, as are municipal efforts to keep the candidates out of the polling place. Because of the associated administrative burdens, municipal administrators unsuccessfully resisted opening up absentee balloting to an unlimited “no fault” process, and there now seems to be some resistance to redesigning the law to allow for a more efficient “early voting” system.

Partnership assessment. Notwithstanding occasional differences of opinion between state lawmakers and municipal officials regarding the administration of elections, there are two bottom lines that influence a positive partnership assessment:

- A healthy working relationship based on mutual respect and trust exists between municipal election officials and the Secretary of State’s Office.
- The Municipal Revenue Sharing Program is the primary way the Legislature can demonstrate its recognition that the on-the-ground management of all regional, state and federal elections in Maine falls on municipal government and the property taxpayers that support municipal budgets.
GENERAL ASSISTANCE

The concept of the towns and cities being responsible for providing assistance so their impoverished citizens could obtain the necessities of life goes back to the English “pauper laws” of the 17th Century, and probably further. That mandate carried over to the colonies, the early New England states, and into this state’s law in 1820. The main thrust of the pauper laws was not how to determine eligibility or what types or value of assistance to provide. Instead, the pauper laws were almost entirely focused on which municipality was financially responsible for the assistance granted to persons in need according to the complicated system of “settlement.” Recipients of public assistance were not the financial responsibility of any town other than their birth municipality until they had “settled” into a new community with five consecutive years of residence.

In the mid-1970s the pauper laws were modernized into the General Assistance (GA) program and the state came in as a financial partner for the first time with the creation of a reimbursement system. The original GA reimbursement was designed as a circuitbreaker in order to protect the property taxpayers in communities with disproportionately large GA programs. When the town or city’s GA expenditures exceeded .0006 of the municipality’s state valuation, the state would provide reimbursement for 90% of GA expenditures exceeding that threshold.

The GA program went through additional stages of modernization and increased accountability in the latter half of the 1970s and early 1980s, when the state partnership was increased through the creation of the across-the-board 50% reimbursement system. The circuitbreaker reimbursement system was retained, but in addition all towns and cities became entitled to reimbursement from the state for 50% of the value of GA benefits issued each year starting with the first dollar up to the state-valuation threshold. (It should be noted that all municipal staffing and other administrative costs associated with the GA program are borne entirely by the municipality.)

In the early 1990s, a series of amendments to GA law were enacted that tightened the program, increased the recipients’ obligation to seek work, be truthful, perform workfare and utilize other available resources.

Most recently, a controversy has arisen between the state and some of the cities in Maine that operate relatively large GA programs that, at least in part, serve populations of asylum seekers and refugees from other countries that have not yet been granted citizenship or secured permission to reside in the U.S. The current Administration holds that federal law enacted 20 years ago requires this class of applicants to be denied GA. The cities hold that even if that is the case, Maine law or regulation needs to be appropriately amended or promulgated so that the municipalities are not put in a position of violating state law by following the Administration’s directives. The issue is being litigated, which is unfortunate. A simple enactment or rulemaking would resolve the matter.

Partnership assessment. General Assistance is not the most popular program to administer at the local level. With that said, over the decades the Legislature has transformed an ancient and completely unfunded mandate into a true 50-50 partnership program. Although the towns and cities from time to time have had to wait for their money, throughout the history of the program the state has never dishonored its statutory commitment to reimburse municipalities for the prescribed state share.

ANIMAL CONTROL

For reasons that appear to be based in simple practicality, municipalities have long been charged with managing animal control. As was the case with many colonial era laws, local officials and constables were typically best suited to deal with the management of domestic beasts when a nuisance situation was created. In Maine’s very first biennium, laws were passed to codify the authority of local governments to impound stray animals. In 1834, all towns were mandated to construct animal pounds and annually elect a pound keeper.
who would maintain and publish the records of the impounded animals. Throughout the remainder of the 19th
Century, state lawmakers built upon those early laws to address animal cruelty and abuse as well as livestock
protection, with almost all enforcement duties resting under local authority.

The various animal control laws were repealed and replaced in 1909 with the provisions of “An Act for the
Licensing of Dogs and for the Better Protection of Sheep.” This law provided the general statutory framework
for today’s animal control laws, with an emphasis on protecting livestock from predation. Municipalities were
allowed to retain 15 cents for each dog license they issued, with the remainder given to the state. By 1941,
municipalities were receiving 25 cents for each dog license issued, and a law was passed directing unspent
licensing funds remaining in the state treasury at the end of the fiscal year to be credited to municipal state tax
assessments. (At the time, the municipalities collected property taxes to fund the state’s treasury.)

For the next 50 years, the animal control statutes were not significantly changed in structure; the
municipal obligation to enforce state animal control laws remained firmly in place. In 1993, the Legislature
made municipalities responsible for managing undomesticated animals that pose a threat to public safety
(e.g., rabid wild animals). This legislation represents one of the first significant unfunded state mandates the
Legislature enacted after Maine voters amended the state’s Constitution for the purpose of limiting that type
of legislation in order to “more fairly apportion the cost of government.”

The next Legislature, in the mid 1990s, amended the dog licensing and vaccination laws to accommodate
the introduction of wolf hybrids. In the late 1990s, the laws were amended to require municipalities to
control all animals that pose a threat to the public health or safety, including dogs running at large and
any domesticated animals that “are a cause of complaint in the community,” further solidifying municipal
responsibility in this policy area. In 2007, the Legislature imposed new training and certification requirements
on all municipal Animal Control Officers (ACOs), expanding those requirements again in 2009.

Currently, municipal clerks or licensing agents may retain $1 for issuing and recording dog licenses, and
the remainder of the fees collected must be deposited in either state or local animal welfare accounts that
are dedicated to covering animal control expenses. The law requires the municipal animal welfare account to
be used to fund the salaries of the ACOs and otherwise cover the costs of animal control, enforcing licensing
laws, caring for abandoned or injured stray animals and supporting animal shelters. Municipalities are allowed
to retain $2 in their animal welfare accounts for licenses issued to neutered dogs, and another $3 goes to the
state’s Animal Welfare Fund. For unneutered dogs, $10 goes to the state’s Fund and no money may be retained
locally aside from the $1 recording fee.

The most recent Municipal Fiscal Survey published by the Maine Municipal Association showed that
the municipalities, on average, spend nearly $5 on animal control functions for every $1 they receive in dog
licensing revenue.

Because people have divergent and often strong views about animal welfare, the animal control mandate
can be a source of considerable expense and frustration at the local level. For some, there is nothing unusual
about keeping a dog outside year round, tethered to a chain with access to a dog house. For others, seeing a
dog chained outside in harsh winter weather is an example of animal cruelty. Some people believe it is an act
of mercy to euthanize a severely ill or injured animal that is found abandoned. For others, it is morally wrong
to withhold medical care from an animal under any set of circumstances. Municipal officials are often caught
in that crossfire of perspectives. In addition, the municipal treasury is held financially accountable for the
medical care of injured or ill animals that are found abandoned, and those bills can be expensive.

**Partnership assessment.** The municipal obligation to control stray and nuisance domesticated animals
and protect them from wild animal predators was established centuries ago, and the dog licensing obligations
that were established over 100 years ago are reasonably conducted at the municipal level for reasons of access
and convenience. That the mandate exists is not the primary issue; the focus should be on how the Legislature manages the mandate in modern times.

On that score, the sense of state partnership isn’t overwhelming. The fees associated with these tasks that are allowed to remain with the municipalities are grossly inadequate to cover the costs. Since the state’s Constitution was amended for the purpose of limiting unfunded state mandates, municipal obligations in the area of animal control have been expanded to include wild animals with rabies and mandatory ACO certification, neither of which was enacted with any state financial assistance. The mandatory training and certification requirements for the local Animal Control Officer are significant and can be inconvenient to access. Finally, the function of controlling animals for both the animals’ and the public’s protection can easily trigger controversy, high emotion and considerable expense in the area of medical care.
The Programs of the Early 20th Century

Local Road Assistance
Cemetery and Veterans’ Graves Maintenance
Junkyard/Automobile Graveyard Management

LOCAL ROAD ASSISTANCE

In 1907 the state entered into a longstanding road-maintenance partnership with the towns and cities of the state. The program was established to financially assist with both voluntary and mandated local-level efforts to maintain, repair and improve state, “state aid” and local roads. Although over the last 100 years Maine’s lawmakers have dabbled and amended the original state aid program, its purpose has largely remained focused on sharing state fuel tax and motor vehicle registration revenue with municipalities for the purposes of maintaining and improving the state’s road networks.

1907 - The Original State Aid Program. As originally enacted, the state aid program required municipalities to annually appropriate funds for the purpose of improving local roads. The required local appropriations were based on each municipality’s taxable value according to a sliding scale, with the lowest-valued communities required to raise 50 cents per $1,000 of value, and municipalities of the highest value required to raise just over 8 cents per $1,000. The “state-aid” element of the early 20th Century program was triggered when communities voluntarily raised an additional 50% or more than the amount required. The state matching funds were also provided according to a value-based sliding scale. At the low end, municipalities with a taxable value under $100,000 received two state dollars for every additional local dollar raised over the required appropriation. At the high end, communities with a taxable value in excess of $1 million received 75 cents in state aid for every additional local dollar raised.

1945 - Town Road Improvement Fund (TRIP). The first significant transformation of the partnership occurred nearly 40 years after the enactment of the original state aid program. In 1945 the Legislature enacted the Town Road Improvement Program (TRIP) to help municipalities develop gravel roads. TRIP funds were commonly referred to as “mud money.” The TRIP program was also the primordial Local Road Assistance Program. As crafted, the Legislature was directed to annually appropriate and distribute to municipalities no more than 10% of the five year average revenue collected from fuel taxes and motor vehicle registration fees. Funds were distributed to municipalities using a formula based on each municipality’s share of unimproved roads statewide. In addition to creating the 10% ceiling on the total statewide distribution, a minimum distribution was created guaranteeing that each municipality would receive at least $200 in TRIP funds. With the exception of the first $200, municipalities were required to invest those funds in unimproved roads.
**1981 – Local Road Assistance Program (LRAP).** The next significant change to the state/municipal local road funding partnership came in 1981, with the adoption of the Local Road Assistance Program (LRAP). LRAP consolidated three programs into a single state aid program: the TRIP program, a separate program for the winter maintenance of state aid roads, and a general state aid program for road construction. The introduction of LRAP was accompanied by a formal reclassification of state highways. The reclassification, often referred to locally as “road turnbacks,” shifted additional road maintenance responsibilities onto some communities.

Under the original LRAP, funds were distributed on the basis of property tax burden, population and the number of miles of road maintained in the winter and summer months. Municipalities were guaranteed 10% increases to their pre-existing levels of road assistance as well as $1,000 for each mile of road maintained by the municipality in the summer, up to a maximum of 5 miles. Communities responsible for maintaining state roads during the summer months were guaranteed $2,750 per mile for those roads. The funds allocated to municipalities under LRAP could be used for no other purpose than maintaining and repairing public roads.

**1999 – Urban Rural Initiative Program (URIP).** LRAP has since undergone two transformations. The first occurred in 1999 when LRAP was converted into the Urban Rural Initiative Program (URIP). URIP was divided into two parts.

One element provided funds for “rural” roads at a rate of $600 per lane mile for all local and state aid roads located outside of the “urban compact”, which is the densely developed area of the state’s most populated communities. A significant break with the past is that Rural Road Initiative funding could be used for “capital” purposes only, which is road or bridge construction with at least a 10 year lifespan. Before URIP, road funding from the state could be used for summer and winter road maintenance purposes (e.g., plowing, ditching, light surfacing, etc.) as well as to make capital improvements to the municipality’s roadways.

The second element of URIP provided funds for the mandatory maintenance of state roads located in the “urban compact” zones of the more densely populated communities. The state aid was distributed at a rate of $2,500 per year per lane mile for summer maintenance for the first two lanes and $1,250 for each additional lane, and $1,700 per lane mile for winter maintenance, regardless of the number of lanes maintained. To finance the URIP program, the Department of Transportation was directed to set aside and distribute to municipalities the equivalent of 10% of its transportation related budget, which is the equivalent level of state sharing established 50 years earlier.

**2011 – Return of Local Road Assistance Program (LRAP).** In 2011 the Legislature renamed the URIP program the Local Road Assistance Program (LRAP). The current program still includes a rural and urban component and the state aid levels are unchanged from those established in the 1999 law. The only difference between URIP and LRAP 2011 are the funding and eligibility standards for the voluntary state aid improvement program. Under URIP, municipalities could receive 67% in matching aid for improvements made to state aid minor collector roads. Under LRAP 2011, municipalities can receive up to 50% in state reimbursement for improvements made to either state aid major or minor collector roads.

**Partnership assessment.** But for the most recent actions of the Legislature, the overall assessment of the state-local road partnership over the last 108 years would be generally positive. Until now, it has been a partnership of deep resilience, withstanding a century’s worth of economic recessions, depressions and recoveries. In 2013, however, the Department of Transportation proposed and the members of the 126th Legislature enacted legislation that reduced state road assistance from 10% to 9% of state highway related resources, a 10% reduction in funding distribution. The reduction was not written into the law as a one-time event or a temporary deviation. Instead, the formula first formally established 70 years ago with the creation of the TRIP program was permanently changed to the municipal disadvantage. While the financial ramifications of this legislative cut, approximately $2 million annually, pale in comparison to those made to the revenue
sharing program, the abandonment of a historic sharing arrangement seriously troubles municipal officials. Sharing programs only work if the commitment to sharing applies in both good times and bad. As significant as the Great Recession of 2008 may have been, it should not have dislodged a century-old transportation compact between the state and the local governments.

**CEMETERIES AND VETERANS’ GRAVES MAINTENANCE**

Municipal officials have been directed by state law to keep in good repair the burial grounds, graves, markers and monuments of veterans of war at least since the earliest decades of the 1900s. For about a century, prior to 2013, the law remained largely unchanged, amended only to redefine the term “veteran” to ensure that the graves of service men and women from all branches of the military were included in the maintenance mandate.

In 2013, however, all members of the 126th Legislature except one voted to expand the mandate and significantly increase the municipal costs of maintaining veterans’ graves.

The 2013 law required municipalities not only to maintain the graves, headstones, monuments and markers of all veterans located in publicly owned cemeteries and ancient burying grounds (whether publicly owned or not), but all graves, headstones, monuments and markers located in ancient burying grounds whether the graves of veterans or not. In addition to expanding responsibilities, standards of maintenance were established in statute. Municipalities were required to keep lawns trimmed to a precise height, as well as ensure that all headstone inscriptions remained legible and all gravestones were perfectly set. The mandate was enacted without any state financial participation.

Although municipal objections and concerns with the expanded mandate fell on deaf ears in 2013, the same Legislature retracted its actions one year later. On the basis of input from veterans’ advocates, cemetery associations and municipal officials, compromise legislation was developed and unanimously enacted in 2014.

As the mandate now stands, municipalities, working in conjunction with veterans’ organizations, cemetery associations and other interested parties, are responsible for keeping in good condition the graves of veterans in ancient burying grounds and municipally-owned cemeteries. The law also establishes minimum maintenance standards that simply require municipalities to keep the grass suitably trimmed, markers free of grass and debris, and the burial place free of fallen trees, branches, vines and weeds.

The current veterans’ graves maintenance mandate nearly replicates the law as originally enacted over one hundred years ago.
Memorial Day flags. In addition to maintaining veterans’ graves, municipalities have the responsibility to place flags on all veterans’ graves every Memorial Day. The requirement to flag gravesites, also enacted in the early decades of the 1900s, has been amended twice. The law was first amended in 1961 to provide municipalities the choice between marking all gravesites for Memorial Day, or erecting a single flagpole in the cemetery in honor of the community’s deceased veterans. In 1989 the law providing some municipal options for showing the flag on Memorial Day was changed back to foreclose the municipal option. Once again, the towns and cities became responsible for providing and placing individual flags before each veteran’s gravesite. The requirement is handed down without any state-level financial support.

Partnership assessment. The history of the state mandates governing the maintenance of veterans graves merits a couple of observations.

First, the expensive mandate enacted in 2013 and then corrected in 2014 demonstrates how easy it is for the Legislature to push large new costs on the cities and towns. This is especially the case when the mandate is to the advantage of a favored constituency such as the state’s veterans or first responders. In this case, even though the 2013 legislation contained the necessary preamble notifying all legislators that the law they were considering was a state mandate, and even though the fiscal note on the legislation identified the financial impact on the municipalities as “significant” (see page 26), all but one of Maine’s 186 legislators voted to pass the expensive new requirements onto the towns and cities.

The second observation is that the veterans’ graves mandate as maintained throughout the decades is simply not a partnership. As is the case with almost all state mandates, the question is not whether the mandated task should be performed. The question is what level of government should be directed to perform the task and where should the financial resources come from to provide the governmental service. It is not hard to imagine a system where the state would provide some financial assistance to help the municipalities keep the graves of veterans well maintained from spring to fall and appropriately marked on Memorial Day, especially in the private, non-municipal cemeteries.

Even more efficient than a separate financial partnership program for just this task, the Municipal Revenue Sharing Program could be honored.

LICENSING AUTOMOBILE GRAVEYARDS

The Legislature’s concerns about “automobile dumps” and “automobile graveyards” first surfaced in Maine’s law books in 1931, when those two terms were added to the long list of objectionable activities and land uses that could be prosecuted under Maine’s nuisance statute. Six years later, the original version of the current junkyard and automobile graveyard licensing statute was enacted.

The 1937 licensing law, just two sentences in length, was simplicity itself. No automobile dump or graveyard could be established without first being formally permitted by the municipal officers in the town where the dump was located. The penalty for non-compliance was not more than $100. The terms “automobile dump” and “automobile graveyard” were not defined. There were no standards provided to guide the permitting procedures. The term of the permit was apparently indefinite.

By 1944, the licensing law had been brushed-up considerably. The standard of three or more unserviceable, discarded, worn-out or junked automobiles was established as the definition of an “auto graveyard”. The permit application included a required $10 fee, retained by the municipality. Public notice and a public hearing became part of the permitting process. A permit, if granted, was good for only one year. Permitting standards were built into the law. For new auto graveyards, a screening requirement was established for all auto graveyards within 500 feet of any state or state-aid road. A stiff annual fee of $500 was established for any auto graveyard within 100 feet of a state or state aid road. A hard setback was established to keep auto graveyards at least 300 feet from public parks, playgrounds, beaches, schools, churches and
cemeteries. A date was established for all pre-existing auto graveyards to come into compliance with the screening requirements.

That law of 70 years ago is easily recognizable in the junkyard licensing statute of today. The screening requirement has been expanded to cover proposed auto graveyards within 1,000 feet of state roads and 600 feet of all other public ways. The permit application fees have been increased to $50, generally, with a $200 fee for auto graveyards located within 100 feet from the right of way. As a general rule, the permit is good for one year. The 300 foot hard setbacks from various public facilities remain in place, along with a newer 100 foot setback from public or private drinking water wells. Although municipal home rule authority was not part of Maine's Constitution when the junkyard licensing laws were first written, the towns and cities are now expressly authorized to utilize that authority if they wish to adopt licensing ordinances with stricter provisions than established in law.

The most recent structural change to the automobile graveyard licensing laws were introduced in 1993, with the creation of a five-year license for “automobile recycling businesses” that meet a higher level of licensing and environmental standards.

**Partnership assessment.** The Legislature’s “Statement of Purpose” which serves as the foundation of the junkyard licensing statute reads today just as it did 70 years ago, when it was first enacted. The purpose statement provides evidence that as Mainers began to purchase and generally consume automobiles with that particularly American passion, a negative phenomenon was occurring on Maine’s roadways that the Legislature was determined to correct.

“Automobile junk yards, or so-called “auto graveyards”, have been steadily expanding and frequently encroach upon highways. These graveyards have become a nuisance and a menace to safe travel on public ways, often detracting the attention of drivers of motor vehicles because it appears cars are parked on the highway, or that an accident has occurred. It is declared that such automobile graveyards are properly subject to police regulation and control.” (PL 1941, c. 296)

In the late 1930s, when the automobile graveyard problem first caught the Legislature’s attention, the towns and cities did not enjoy any “home rule” authority. It would be another 30 years before Maine’s Constitution would be amended to allow municipalities to adopt ordinances to regulate nuisance activities even in the absence of express authorization by the Legislature.

In that context, the junkyard licensing statute is a classic state mandate. The Legislature identified a problem activity that needed to be corrected for the safety of people traveling on Maine’s highways. There were approximately 500 towns and cities available to correct the problem. The solution was no more complicated to the Legislature than simply directing the municipalities to license and control the activity.
The Programs of the Early 1970s

Municipal Revenue Sharing
Subdivision Review and Approval
Shoreland Zoning
Solid Waste Management
Current Use Taxation

The early 1970s was a period of tremendous change for Maine’s state and local governments. The establishment of the state income tax in 1969 led to a remarkable invigoration of the State Legislature, which went from a relatively passive actor to an active policy making entity almost overnight. Between 1971 and 1973, environmental policies, land use management programs and tax reform initiatives flourished. Dozens of new obligations were placed on the towns and cities. It is not difficult to connect the dots between the slate of mandates enacted by the Legislature in the first three years of the 1970s and the drive to amend Maine’s Constitution – adopted by the voters in 1992 – in an attempt to curb the Legislature’s capacity to pass new duties and costs onto local government.

MUNICIPAL REVENUE SHARING

The Municipal Revenue Sharing Program was enacted in 1972. The breadth of the legislative activity that was occurring at the time suggests this sharing program was established with several major public policy underpinnings:

- To replace the municipal revenue lost by the repeal of a component of the property tax known as the “inventory tax.”
- To implement an obvious goal of the Legislature to reduce the state’s overreliance on the property tax to pay for governmental services, a goal made achievable after the adoption of the more progressive state income tax in 1969.
- And, to recognize the impact of the range of state mandates being imposed on local governments, including the “old” pre-existing mandates (e.g., elections management, General Assistance, solid waste management, etc.) as well as the modern mandates the Legislature was in the process of enacting (e.g., subdivision review and approval, shoreland zoning management, junkyard management, solid waste recycling, “current use” taxation administration, etc.).

The program was clearly structured in statute as a “compact” or formal state-local agreement because it was established to operate outside of the normal appropriation system. The original revenue sharing law called for the distribution of 4% of the state’s sales and income tax revenue to the local governments based on a formula involving municipal population and property tax burden. Ten years after its creation, the distribution was increased to 5% of the state’s sales and income tax revenues, as it appears today in statute.

**Partnership assessment.** For the first 34 years of the program’s existence, the Legislature honored the revenue sharing “compact,” with only one major deviation in the early 1990s when the program was raided to balance the state budget during a recessionary period.

Beginning in 2006, at an ever increasing pace, the Legislature has been regularly raiding the revenue sharing program so that it is now operating at just 40% of the “compact” codified in statute.

The Municipal Revenue Sharing Program is the gold standard of measuring the health of the state-local relationship.
SUBDIVISION REVIEW AND APPROVAL

The municipal obligation to review and approve subdivision proposals goes back at least to 1944. As originally enacted, the municipal obligations with respect to subdivision review were an indirect rather than a direct municipal mandate. In fact, it is entirely possible that the earliest versions of subdivision review were put into law at municipal request.

The original obligation to review and approve subdivision proposals appeared to be optional for each municipality, but it was not optional in practice. Because all subdividers needed to record their plats in the county registry in order to convey any subdivided lot, and because no plat could be recorded without the signed approval of the municipal officers, municipal review was effectively required. The statutes provided no standards of review governing municipal approval until the 1950s, when the standard of “reasonableness” was written into the law. Over the years Planning Board review and standards of approval were incrementally woven into the system. The modern mandate to appoint a Planning Board and a Board of Appeals, adopt a subdivision review ordinance and review and approve all subdivision proposals at the local level according to a list of “no undue burden” standards in statute, was created in the early 1970s.

Partnership assessment. The law governing subdivision review and approval may well have been created to provide municipalities with a tool to become aware of the development activity that was occurring and to shape that development to some degree if they so wished. With that said, the simple law that began as little more than a formal for-your-information proceeding has been amended incrementally to become a full-blown, quasi-judicial process at the local level, involving complicated exceptions which invite challenges of interpretation of ordinance and statutory standards. Beyond establishing the local government obligations, state government has never provided much in the way of training or assistance with respect to the administration of subdivision review. Given state government’s interest in orderly and generally uniform land use management practices, the Municipal Revenue Sharing Program, if properly maintained by the Legislature, would be the state program that justifies the local administrative mandate of managing subdivisions.

SHORELAND ZONING

In 1971 the Legislature “authorized” municipalities to plan, zone and control the subdivision of land in the shoreland zone. The term “authorize” was a euphemism because no legislative authorization was necessary. Maine had already become a “home rule” state so statutory “permission” or enabling legislation was no longer necessary to create such an authority. Under the umbrella of that “authorization,” however, the towns and cities were mandated to adopt zoning and subdivision ordinances to achieve those results and given two years to do so. The Environmental Improvement Commission, predecessor to the Board of Environmental Protection, was authorized to force ordinances on all noncompliant municipalities.
In 1973, with the previously established deadlines encroaching, the Legislature beefed up the law it had just enacted by giving further definition to what constituted the shoreland zone, requiring all towns and cities to have an ordinance development committee in place by July 1973, and requiring every municipality to develop and adopt a comprehensive plan, shoreland zoning ordinance, and subdivision ordinance by July 1974. The Attorney General was directed by statute to get injunctions against any noncompliant municipality and the Department of Environmental Protection (DEP) was directed to adopt minimum shoreland zoning standards to assist in that effort. No financial assistance or other form of technical assistance from state government was provided in the legislation.

As far as the state-local “partnership” elements go, little has changed over the program’s 44-year history. For many years the staff in the DEP’s shoreland zoning unit constituted a knowledgeable and helpful resource for municipalities struggling with interpretation issues. On the other hand, the incremental amendments made to the Shoreland Zoning Act have significantly complicated the administration of the program and on occasion have been a matter of significant municipal frustration. In 2007, the shoreland zoning system was amended to include a mandatory 250-foot Resource Protection zone around certain waterbodies identified by the Department of Inland Fisheries and Wildlife as migratory waterfowl resting areas. The information necessary to amend the municipal ordinances was to be provided by state government but the implementation was confusing, involved inaccurate mapping and the overall operation generated a great deal of mistrust between landowners and municipal officials who were only trying to comply with the law. That requirement has since been relaxed. A review of the current Code of Maine Rules as promulgated by the DEP suggests that approximately 60 municipalities in Maine are administering shoreland zoning ordinances imposed on them by the Board of Environmental Protection, which speaks to a significant disconnect between the state’s public policy and the municipal reality.

Partnership assessment. The shoreland zoning obligations to plan, develop and implement zoning ordinances, create planning boards and boards of appeals, eventually hire code enforcement officers and otherwise manage shoreland development was adopted in the top-down, command-and-control style that characterized the mandates enacted in the early 1970s. The mandate was enacted without any state financial support. State technical assistance to implement the mandatory regulation does not go far beyond promulgating the minimally-required guidelines.

The program has become more complicated over time, the implementation of some of the expansions of the program was poorly done, and state support for the training and certification program established for municipal code enforcement officers appears to be slipping. The Municipal Revenue Sharing Program was created in the same year that the shoreland zoning mandate was established. If the state was honoring the revenue sharing program it might be different, but as of now there is little reason to think of shoreland zoning as a shining example of state-local partnership.
Maine’s towns and cities have been mandated to provide disposal services for residential and commercial solid waste for 42 years, since the enactment of the Maine Solid Waste Management Act in 1973.

The mandate was enacted in the rather brutal style that characterized the Legislature’s approach to mandates in the early 1970s. The opening lines made it clear that state government was going to exercise its responsibility to protect the health and welfare of its citizens by “encouraging” responsibly designed solid waste management systems. The rest of the enactment involves:

- Castigating the towns and cities for generating increasing amounts of solid waste.
- Mandating all municipalities to manage all solid waste disposal activities.
- Creating a state board to entirely regulate the municipalities’ solid waste management activities.
- And, providing zero financial resources to assist in that effort.

The period of the 1970s through much of the 1980s involved the operation of approximately 500 open municipal dumps.

Throughout the 1990s, the municipal expense of the solid waste mandate skyrocketed with the required discontinuation of almost all open municipal landfills, which was quickly followed by the requirement that the landfills be capped over to prevent water infiltration, which involved costly engineering and earthwork. For most of the decade state government provided access to reimbursement, ranging from 30% - 50% of qualifying cover expenditures, to assist with the costs of closing a landfill. The municipal financial exposure to the transformation of solid waste management was still very high because it included both the local share of the landfill closure as well as the new costs associated with disposing of solid waste at the private landfills and waste-to-energy facilities that were being established. A double whammy.

In 1989, the modern solid waste management hierarchy was enacted, along with the goal to recycle 50% of all municipal solid waste. The mandates of the 1980s were more partnership-oriented than the mandates of the 1970s. As an example, the new recycling mandate also ushered in the Maine Waste Management Agency to assist municipalities with the task they were given. Funded by the application of various fees attached to the disposal of certain products, this agency was designed to provide grants, technical assistance and data collection capacities to assist local governments with the recycling “mandate.”

The Maine Waste Management Agency was extinguished almost 20 years ago, just six years after its creation.

Out of the dust of 500 shuttered municipal landfills, four Waste-to-Energy facilities were established (now down to three) along with several large-capacity landfills to accept municipal solid waste. Most recently, the waste-to-energy disposal facilities are facing financial challenges associated with the sunsetting of federal subsidies for that type of electricity generation.

**Partnership assessment.** The bottom line is that solid waste management is an expensive municipal mandate which has not been the recipient of sustained financial or technical assistance from state government. There was a brief interlude of partnership two decades ago. Before and since, the state’s approach to the mandate has been has been almost entirely regulatory, from the top down.
Maine’s voters approved the amendments to the state’s Constitution that ushered in the Tree Growth, Farmland and Open Space “current use” tax programs on November 3, 1970. In 1971, the Legislature adopted the statutes that implemented those programs.

As initially enacted, the Tree Growth tax program required participation for all forest land parcels over 500 acres in size. Participation was voluntary for the owners of all forested parcels under 500 acres, with no minimum acreage limit. The core structure of the program was essentially the same as it is today. A calculation is made annually by the State Tax Assessor of the appropriate “current use” valuation rate for forested lands of various types in all the regions of the state and the municipal assessors are required to use those valuations for the enrolled acreages in the municipality. To protect the municipal tax base, the initial program provided municipal reimbursement to ensure that no municipality would lose more than 10% of the property tax revenue it collected off the enrolled forest land during the tax year immediately previous to the implementation of the Tree Growth program.

Many significant amendments have been made to the Tree Growth program over its relatively controversial 44-year history. An abbreviated list of those amendments follows.

In 1973 the law was amended to require at least 10 acres of forested land to enroll. From the municipal perspective, that limit was set too low and there are many small, essentially recreational/residential parcels enrolled in the program today.

There were several attempts during the early years of the program to clarify the municipal reimbursement system. In 1977 the reimbursement system went to an administratively simpler 11 cents per enrolled acre.

In 1981, the mandatory enrollment of parcels over 500 acres was eliminated. Also in 1981 the reimbursement system was amended to include two additional steps in the calculation of reimbursement.

The total level of reimbursement for any municipality had to be reduced or “offset” by the increases in school subsidy the municipality would receive because of its lower valuation associated with enrollment. Less municipal value per student translates to less “fiscal capacity” and, therefore, increased subsidy under the state’s educational funding law.

In addition, Tree Growth reimbursement could not exceed the actual tax loss to the municipality assuming all the enrolled property would otherwise be assessed at the municipality’s “undeveloped acreage rate”.

From the municipal perspective, the required use of the municipality’s “undeveloped acreage rate” in the reimbursement formula causes the reimbursement to be far less than “90%” of the lost tax revenue. Many valuable, relatively small shorefront parcels are enrolled in the Tree Growth program to evade “just value” taxation and the taxable value of those properties far exceeds the municipality’s undeveloped acreage rate.

Also in 1981, persons owning forested parcels less than 100 acres in size were allowed to enroll in the program under the “personal use” provision if they were cutting their own firewood on the property rather than managing the property for the primary purpose of commercial timber harvesting. From the municipal perspective, the “personal use” exception severely undermined the integrity of the Tree Growth tax program. For those personal use parcels, Tree Growth became a tax evasion program.

In 1987, the current reimbursement system was established which purports to provide municipalities with 90% of their lost tax revenue, without fully succeeding. Over the years, different administrations and different legislatures have chosen in negative economic times to only partially fund the Tree Growth reimbursement system. There have been several periods of time, beginning in the middle of the 1990s, when the distribution of actual reimbursement was shortchanged by as much as 50% of what the statutory formula requires. When
that occurs, increased property tax burden is shifted onto those residents of the affected municipalities who do not have property enrolled in Tree Growth.

In 1989, the Tree Growth program was amended to require Tree Growth enrollees to obtain forest management plans for their enrolled parcels and to update those plans every 10 years. In 1993, the “personal use” exception was repealed. From the municipal perspective, these two changes greatly improved the accountability and integrity of the Tree Growth tax program. There remains municipal skepticism about the quality of some of the forest management plans that are written for questionable parcels, where the primary use of the property is clearly not commercial timber harvesting. That some semblance of a management plan must be in place, however, was a strong step in the right direction.

Between 2010 and 2012, in a series of amendments to the Tree Growth law governing the landowner’s obligation to update the forest management plan every 10 years, a convoluted municipal mandate was enacted that requires the local assessor to notify Tree Growth enrollees over and over again with respect to their obligation to submit 10 year updates to their plan. From the municipal perspective, the burden of administering the forest management plan updates should fall on the enrollee enjoying the tax benefits of the Tree Growth program, not the municipal assessors.

Partnership assessment. Maine’s voters amended the state’s Constitution to allow for “current use” taxation for certain non-development land uses in 1972. The implementation has teetered between establishing an accountable tax program and a tax haven. The state's Tree Growth reimbursement obligations have not been rigorously honored in previous decades, and the management of the Tree Growth tax law has created a system that is anything but simple or efficient to administer.
The Programs of the 1980s

Revenue Sharing Expansion

Comprehensive Planning/Mandatory Land Use Zoning

Code Enforcement

Sand Salt Storage Sheds

REVENUE SHARING EXPANSION

In 1984, with legislation entitled “An Act to Provide for Greater Equity in Maine’s Tax Structure,” the Legislature gave the Municipal Revenue Sharing Program a 25% boost.

Almost since the revenue sharing program was created in the early 1970s, 4% of all state sales and income tax revenue was taken from off the top of the state’s tax receipts and dedicated to the “Local Government Fund.” That revenue was then distributed to the towns and cities according to a formula based on each municipality’s relative population and property tax rate.

With the 1984 enactment, the percentage of state revenue dedicated to municipal revenue sharing went from 4% to 4.75% for FY 1985 and then to 5.1% for FY 1986 and thereafter.

As will be noted in the following pages, several major state-local “partnership” programs were enacted during the 1980s. In contrast to the mandates enacted in the 1970s, the programs of the 1980s were enacted with greater investments in state agency resources, both technical and financial, to assist the municipalities in the mandated activities. The significant increase in municipal revenue sharing that was approved by the Legislature in mid-decade is extremely positive from a partnership perspective.

COMPREHENSIVE PLANNING/MANDATORY LAND USE ZONING

Municipally enacted zoning regulations that control and limit various land use activities within designated geographic areas must be supported by a comprehensive land use management plan – or “comprehensive plan” – that has been adopted by the municipality’s legislative body.

In Maine, the first statutory requirement for all municipalities to adopt a comprehensive plan was enacted in 1973 as part of follow-up legislation designed to more rigorously implement and enforce the shoreland zoning mandate enacted two years earlier. As was typically the case with 1970-era mandates, no guidance was provided in statute about what the plans should include, no technical assistance was offered by the state to help in the preparations of the plans, and no state financial participation was offered.

Sixteen years later, in 1989, the Legislature enacted the detailed and comprehensive requirement that all municipalities: (1) develop and adopt a state-approved comprehensive plan, and (2) within one year thereafter implement zoning ordinances that, at a minimum, designate and separate each municipality’s growth and rural areas. The landmark legislation was called the Growth Management Act.

The Growth Management Act was grounded in eight legislative “findings,” designed to address eight separate legislative “purposes,” and identified 10 legislative goals to be achieved, most of which were focused on protecting, preserving, promoting or encouraging something.

The legislative findings speak to a different time. The thrust of those findings were that “(T)he pace of land speculation and development has accelerated and outstripped the capacity of the State and municipalities to manage this growth under existing state and local laws,” and “(T)his unplanned growth threatens the integrity of the State’s natural resource base, the ability of local government and State Government to provide necessary public services, the affordability of decent housing, the long-term economic viability of the State’s economy and the
quality of life presently enjoyed by Maine’s citizens."

The “purposes” of the Growth Management Act also speak to a bygone time. Never before or since in codified Maine statute has the interest in, and expectation of, state-local cooperation and collaboration been so robustly articulated. The centerpiece of that list of eight purposes was to “(C)reate a strong partnership between State Government and local government, while clarifying the respective roles of each, to improve land use planning and management.”

Despite its enthusiastic introduction, the Growth Management Act was essentially repealed two years after its enactment. More accurately, in 1991, the 1989 Growth Management Act was put into a state of induced coma. The “strong partnership” purpose statement was repealed outright. All the words “shall” and “must” in the Act that mandated certain municipal or state actions were converted to either “may” or “should.” Most of the state’s obligation to assist the municipalities were repealed and any state obligations left on the books were made conditional on the availability of program funding, which would not be forthcoming. The Office of Comprehensive Planning in state government, established to provide assistance to the towns and cities, was closed down.

The legacy of the Growth Management Act is the way it epitomizes how “bungee cord” swings in state revenue translate into “bungee cord” public policies. When revenue is available, ambitious state programs are established with a splash. When the economy goes negative, the programs are quietly abandoned by the state, leaving the remnants of the public policy still on the books and the towns and cities holding the bag.

An example of statutory remnants of the Growth Management Act that cause confusion are the mandatory elements of comprehensive planning that remain on the books even when the mandate to adopt a plan has been repealed. That the law details mandatory elements within a voluntary planning process raises questions. What is the legal value of a comprehensive plan that may not be consistent with the mandatory components in statute but was adopted by the voters nonetheless to serve as the foundation of their zoning ordinances?

If not for legal reasons, there is potentially a practical purpose behind state agency review and certification of local plans and ordinances for “consistency” with the Growth Management Act. That purpose is the state agency “preference” system, which is not particularly vibrant. All state agencies that are contemplating issuing grants or making investments in the areas of land conservation, natural resource protection, open space or recreational facilities, or as part of programs encouraging growth and development, or for the purpose of expanding or constructing public facilities, are supposed to give first preference “to the extent feasible” to municipalities with growth management programs that have been certified as “consistent” with the Growth Management Act.

Partnership assessment. The Growth Management Act was a bold legislative initiative that imposed significant mandates on the towns and cities. To be fair, the Act also expanded state agency staff and infrastructure to meet the extensive obligations placed on those agencies to assist municipalities in the collaborative effort. Therefore, the initial partnership grade is relatively high in recognition of the state’s good-faith effort to “walk the walk” with local government.

The state retreated from its stake in the Growth Management Act soon after enactment but the mandates in the Act were significantly tempered to coincide with the retreat. What remains on the books is something of a phantom. It appears to describe a system of managing development activities, it appears to employ a system of state assistance and collaborative effort, and it appears to reward municipalities that are compliant with the statutory approach with first access or first options on state agency grants and investments. Most of what appears to be the case is illusion.
CODE ENFORCEMENT

The obligation for the municipal officers of each municipality to appoint and retain a Code Enforcement Officer (CEO) was first enacted in 1983 for the purpose of ensuring the enforcement of the shoreland zoning laws and regulations enacted a dozen years earlier. Beyond establishing the mandate, the original code enforcement legislation was relatively neutral with respect to municipal impacts and is fairly characterized as an extension of the shoreland zoning mandate. The legislation provided no financial support to the municipalities for hiring hundreds of new municipal officials but it could be pointed out that in the following biennium (1985) the municipal revenue sharing law was amended to distribute 5.1% rather than 4% of state sales and income tax revenue to the municipalities, perhaps in response to the various new mandates enacted in the mid-1980s.

In addition, the original legislation provided both CEOs individually and the municipalities generally with the tools to enforce land use violations, including rights to enter properties for inspection purposes, comprehensive financial penalty systems and attorney fees for successfully prosecuted violations.

In 1989, with the enactment of the Growth Management Act, the law governing code enforcement officers was amended to increase their obligations and establish a comprehensive training and certification for all CEOs, not just those who intended to take cases to court. The 31-year history of the code enforcement officer mandate travels down those two paths: CEO responsibilities and CEO training.

CEO responsibilities 1983-2014. Over the years, the list of duties given to the municipal code enforcement officer by statute has grown considerably. In the original mandate, code enforcement officers were given four statutory duties which essentially fell into the single category of shoreland zoning management:

- Enforce the shoreland zoning laws and ordinances.
- Collect fees associated with shoreland zoning permits.
- Keep records on all permitted shoreland zoning and other land use permitting.
- And, investigate violations of local land use ordinances.

Skip ahead 31 years and the statute describing the duties of municipal code enforcement officers identifies five broad areas of enforcement obligations in the areas of land use and development:

- Shoreland zoning laws and ordinances.
- All municipal land use regulation, including comprehensive planning, growth management, general zoning, subdivision regulation, etc.
- Internal plumbing regulations (Maine State Plumbing Code).
• Subsurface wastewater disposal (Maine State Plumbing Code).
• Building standards established by:
  ◊ municipal ordinance
  ◊ state electrical and plumbing codes
  ◊ general building inspection
  ◊ disability construction standards for places of public accommodation
  ◊ construction standards for multi-family housing, public housing and places of public accommodation under the Maine Human Rights Act
  ◊ and, the Maine Uniform Building and Energy Code.

CEO Training 1983-2014. The general training and certification program for CEOs was not established until the Growth Management Act of 1989. In that legislation, the training and certification was conducted by the Vocational Technical Institute and the Department of Human Services and the curriculum included a list of six specific topic areas (plumbing code, soils analysis, electrical code, state and federal environmental regulations, zoning, and court techniques). Two years later, the list of specific curriculum topics was repealed and replaced with the more general “topics necessary for certification.”

Over the years, the list of entities responsible for developing or conducting the training has expanded. Until 2011, the primary entity responsible for the training program was the State Planning Office. In 2011, when that Office was disbanded, the responsibility went to the Department of Economic and Community Development, Office of Community Development.

In 2009, the law governing the CEO training and certification program was amended to limit the extent of the state's obligation to provide CEO training/certification to the availability of funding. In the absence of available funding, the program would revert to a “registration” rather than a “certification” program.

Also in 2009, presumably in response to the economic downturn, ramped-up pressure on the state's General Fund and the implementation of the just enacted Maine Uniform Building and Energy Code system, two specific sources of funding for the training/certification program were created in statute. 25% of the plumbing permit fees that the municipalities collect and send to the state were dedicated to the training fund as well as a 4 cent per square foot surcharge on the fees levied by the State Fire Marshal's Office to review large-scale development proposals for compliance with the life safety codes. These dedicated resources may not be adequate. In 2014, $30,000 was specially appropriated for the purpose of funding the CEO training and certification program in 2015.

Partnership assessment. When originally enacted 31 years ago, the municipal obligation to appoint a code enforcement officer can be viewed as the enforcement extension of the shoreland zoning mandate and a prompt for municipalities to organize under one official the pre-existing duties of plumbing and building inspection with the new duties of shoreland zoning enforcement. No financial assistance came with the new duties, but towns and cities were provided some tools to assist in their enforcement efforts. Also at the same approximate time, perhaps as pure coincidence, the revenue sharing distribution was increased by 25%.

Over the last 31 years, the statutory duties of municipal code officers have expanded to cover the enforcement of building codes for major commercial development established under state and federal laws as well as the enforcement of the state's uniform building and energy code. Just as the most recent code enforcement mandate was enacted, the training and certification program provided by the state began to teeter. Considering that the lion's share of what code enforcement officers are required to enforce are state codes and programs (shoreland zoning, the state plumbing code, the state electrical code, the state building and energy code), having the state maintain a robust training and certification program should not be too much to ask.
SAND-SALT STORAGE SHEDS

In the mid-1980s the state mandated that municipalities build storage facilities to house the sand and salt that is applied to Maine’s roads during winter time. This mandate was sold to municipalities as a municipal-state partnering concept, establishing an intergovernmental cost sharing program along with the caveat that municipalities would only be required to fulfill this mandate if the state provided its share of funding. As a general rule, the state provided 50% reimbursement for the municipal costs of constructing the sheds, which needed to meet certain specifications. The program was administered jointly by the Maine Department of Transportation (MDOT) and the Maine Department of Environmental Protection (MDEP). Municipalities mandated to build storage sheds began saving for the project, issuing requests for proposals, contracting with engineers to design the facilities, and initiating construction. Every actual or proposed municipal sand-salt pile location was assessed by MDEP for ground and surface water impacts and each municipality was given a priority rating from 1-5, with priority1 representing the highest level of environmental impact and priority 5 the least environmental impact.

Over the following decade, from 1986-1996, the Legislature funded $3.3 million of the state’s projected $29 million share of the program. This sizable gap between actual appropriations and the state’s projected financial exposure to the program led to the creation of a task force in 1998 to examine and reprioritize the sand/salt facilities program. The task force recommendations resulted in legislation in 1999 that, in part, decreased the state’s remaining share from $25.7 million down to $7 million while also guaranteeing eventual state funding, at the 50% level, for all municipalities that had been or would be required to construct the storage sheds.

By 2005, the state had met its commitment for funding the priority 1 facilities. Although many of the participating municipalities waited years for their reimbursement, it is important to acknowledge that the state was striving to meet its obligations. The mandate had been removed in 1999 for the lowest priority areas, rated 4 or 5, but municipalities with priorities of 2 and 3 were still obligated to construct storage sheds. In 2010, state-share reimbursements were provided to twenty-one municipalities. In 2011, eighteen municipalities were still awaiting reimbursement from the state for its share of construction costs. By 2014, that number was reduced to fifteen.

In 2014, the Legislature’s Transportation Committee unanimously supported legislation to retire the sand/salt storage facility funding program on July 1, 2017, and MDOT opened a last-chance process for remaining municipalities to apply for funding. According to MDOT, over the course of the program’s history the state has invested a total of $11 million into the construction of 204 municipal sand/salt storage facilities. Assuming the municipal financial exposure was $11 million as well, the final costs work out to approximately $108,000 per facility.

Partnership assessment. At the local level, there is a stark difference between funded mandates and unfunded mandates. The creation of the sand/salt storage mandate preceded enactment of Maine’s mandate law, but positively included a mandate escape valve that could be utilized by municipalities in the absence of funding. Despite being chronically underfunded, the history of the sand/salt storage program shows that municipalities are able to demonstrate long-term flexibility when working with state agencies provided the state fundamentally honors its initial commitment.
Amendment to Maine’s Constitution to Limit Unfunded State Mandates

On November 3, 1992, Maine’s voters adopted an amendment to the state’s Constitution designed to limit the Legislature’s ability to pass onto local governments expensive new obligations without ponying-up a substantial level of state financial support. The constitutional provision reads as follows:

Section 21. State mandates. For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit’s activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government. Legislation implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the vote of 2/3 of all members elected to each House. This section must be liberally construed.

In 1993, the Legislature enacted the implementing legislation, which is found at 30-A MRSA, section 5685.

Even now, 23 years after the voters approved this policy, there are some misconceptions about what this law does and does not require.

Two-part test. One misconception is that any action the state takes which requires increased municipal expenditure is a “state mandate.” That is not the case. The definition of a state mandate involves a two-part test. Part one of the test is whether state government, through legislation or regulation, is requiring one or more local governments to expand or modify their activities. The second part of the test is whether the required expansion or modification necessitates additional expenditures at the local level. Both parts of the test need to be answered in the affirmative for a state mandate to be created.

For example, if the Legislature decided to slash the amount of school subsidy it currently provides, or to eliminate all reimbursement to the municipalities for their General Assistance programs, those decisions would be very negative for the state’s property taxpayers but they would not be state mandates. Similarly, if a law authorizes, encourages or even incentivizes a certain municipal activity, the law would not be considered a mandate because undertaking the activity would still be optional at the local level. Finally, laws can be enacted that clearly require the modification of a municipal activity, but the modifications do not result in any need for increased local expenditures. Those laws are not state mandates, either.

The fiscal impact of a proposed state mandate on the local governments is estimated by the Legislature’s nonpartisan Office of Fiscal and Program Review (OFPR) and recorded in the legislation’s “fiscal note.” A sample fiscal note is found on page 26. The fiscal note provided as a sample was attached to legislation enacted in 2013 by a unanimous vote in the State Senate and an near-unanimous vote in the House. As will be noted, the fiscal note on the bill informed the Legislature that the proposed new mandate would push “significant” costs on to the towns and cities across the state. “Significant” is the strongest fiscal impact rating issued by OFPR. The enacted legislation did not include any state funding.

Other mandates that are not “state mandates.” The statute governing state mandates makes it clear that the 90% state funding requirement does not apply to mandates established by federal law even if state law implements the federal requirement. If the state law includes requirements that go beyond those required by the federal government, the mandate obligations apply to those additional state requirements. The law also exempts from the state’s funding requirement any activities that may be required of municipalities associated with election district reapportionment or election procedures authorized by the state’s Constitution for referendums, citizen initiatives or a “peoples’ veto” initiative. Finally, OFPR takes the position that no state mandate is created with legislation of “general applicability,” which are laws that may require expanded
126th MAINE LEGISLATURE

LD 274 LR 1259(05)

An Act To Preserve and Protect Ancient Burial Grounds and Burial Grounds in Which Veterans Are Buried

Fiscal Note for Bill as Engrossed with:
C “A” (S-248)
S “A” (S-334) to C “A” (S-248)
Committee: State and Local Government

Fiscal Note

State Mandate - Exempted

State Mandates

<table>
<thead>
<tr>
<th>Required Activity</th>
<th>Unit Affected</th>
<th>Local Cost</th>
</tr>
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<tbody>
<tr>
<td>Municipalities will be required to keep public burying grounds for all veterans in good condition and repair including keeping inscriptions visible and legible, keeping the headstones horizontally and vertically aligned and brush and vine clearing.</td>
<td>Municipality</td>
<td>Significant statewide</td>
</tr>
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Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the state from the constitutional requirement to fund 90% of the additional costs.
municipal activity but are not targeted in any way at municipal government. OFPR bases this position on some opinions issued by the state’s Attorney General shortly after the mandate law was implemented.

**Implementing protocols.** Other elements of the mandate law that can cause confusion are the implementing protocols, which include a required mandate “preamble” and the fiscal note on all legislation that attempts to approximate the fiscal impacts on the local governments.

**Mandate preamble.** If the Legislature intends to enact a state mandate without providing the required 90% state funding, the law requires that the legislation containing the mandate include formal notification to all legislators of that intention. That notification is accomplished by writing into the beginning of the legislation what is referred to as a “mandate preamble,” which reads as follows:

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all the members elected to each House have determined it necessary to enact this measure.

In most cases, the Legislature adheres to this requirement and provides the required notice. There are several examples, however, when decisions were made to not include the required preamble on mandate legislation. The result is a law that was improperly enacted. These improperly enacted mandates cause confusion and something of a legal quagmire. Two examples are described in this report. The law obligating municipalities to enforce the Maine Uniform Building and Energy Code, and the law creating a “rebuttable presumption” under the Workers’ Compensation statute that reverses the burden of proof requirements regarding workplace injury from the employee to the municipal employer.

**Partnership assessment.** The amendment to Maine’s Constitution governing “state mandates” was certainly a large step in the right direction toward a mutually respectful state-local relationship. By raising the consciousness of Maine’s lawmakers with respect to the impacts of their decisions on local governments and the property taxpayers, the benefits of the constitutional provision are enormous. Unlike some other states where constitutional amendments can be initiated by petition, only the Legislature is authorized to get a proposed amendment to Maine’s Constitution in front of the voters for ratification. Municipal officials sincerely appreciate the willingness of the Legislature 23 years ago to place this amendment before the voters for their approval.

The terms of the mandate law appear clear and simple. The Legislature may enact a state mandate by either funding 90% of the mandate’s operational costs or not funding the mandate by formally passing both the new obligation and its costs onto the local governments by a super-majority vote in both the House and the Senate. It turns out not to be quite so simple. There are ways around the mandate law. Enacting the mandate without either funding or the supermajority vote is one loophole. Enacting the mandate without the required notification (mandate preamble) is another. A third approach is to frame a law to suggest there are no mandate impacts in real life when there really are. For the mandate “partnership” to remain intact, these end-runs around the mandate law should be avoided at all costs.

The mandate law is the only provision in Maine’s Constitution that ends with the sentence “This section must be liberally construed.” This means that the stated purpose of the mandate law should be taken into account, in addition to the actual words that comprise it. The stated purpose of the mandate law is to more fairly apportion the cost of government and provide local property tax relief.
Programs of the 1990s

Business Equipment Tax Reimbursement Program (BETR)

Homestead Property Tax Exemption

The halcyon days of the late 1980s that allowed expansive state-local partnerships to be embedded in Maine law came to an abrupt end in the early 1990s. The decade began with an economic recession that caused a precipitous decline in state revenue which resulted in legislative actions that immediately challenged the state-local relationship. The first major legislative raid on the Municipal Revenue Sharing Program was conducted by the Legislature in 1992. Governor McKernan simultaneously proposed the total elimination of the General Assistance program, giving an indication of the depth of the 1991 state budget deficit. By mid-decade, the economic pendulum was swinging the other way and state government engaged in several tax-related initiatives designed to invigorate the economy and protect Maine’s property taxpayers. The 1990s was not a decade associated with the enactment of significant state mandates. The partnership programs of the 1990s are not found in Title 30-A of Maine’s statutes, where municipal activities are generally governed. Instead, they are found in Title 36, where the state’s tax code is located.

BUSINESS EQUIPMENT TAX REIMBURSEMENT PROGRAM (BETR)

What is now known as the Business Equipment Tax Reimbursement program, or BETR, was enacted by the Legislature in 1995. For its first 12 years of existence, BETR was a solid example of a state-local partnership program.

At the time, Governor King and the Legislature became convinced that the application of the property taxes to the value of the personal property used by businesses – everything from machines used in the manufacturing of products down to the normal computer systems that are part of all business establishments – were not applied in other states. The claim was not entirely accurate and loudly overstated, but to the extent it was accepted as true it supported several corollary claims. Maine’s allegedly unique property tax on business personal property: (1) created a disincentive for companies to modernize their manufacturing technologies, (2) made Maine an unattractive state for investments by national or international companies with branches in Maine, and (3) generally contributed to an uncompetitive environment for economic development.

The obvious solution to the identified problem was to make the qualifying business personal property exempt from taxation. To provide some context, approximately 10% of the statewide property tax base was made up of personal property at the time, and in the “mill town” communities where large industrial operations were located, personal property ran from 20% to 80% of the entire municipal tax base.
This is where Maine’s Constitution steps in. In 1978, the voters approved an amendment to the Constitution that requires the Legislature to reimburse all municipalities for at least 50% of the property tax revenue that is lost as a result of any new property tax exemption created in 1979 or thereafter. It’s a partnership agreement, of a kind, embedded in the foundation of Maine law. It is all but certain this reimbursement obligation guided the Legislature’s review of various options to achieve its goal. Ultimately, the Legislature and Governor decided on the BETR program.

**BETR in a nutshell.** The BETR program created an effective tax exemption rather than an actual tax exemption. Under the terms of the BETR program, the owner of the business personal property continued to pay the required property taxes to the municipalities. For the first 12 years of that property’s useful life, however, the state was obligated by the BETR law to reimburse the businesses for 100% of the property taxes they actually paid. After the property was enrolled in the program for 12 years, when its taxable value had likely depreciated significantly, the reimbursements would end. By simulating rather than enacting a property tax exemption, the BETR program held the municipalities harmless with respect to the economic development incentives it was attempting to achieve. BETR also created an ongoing rather than one-time incentive for all businesses to continually upgrade their aging production machinery and equipment in order to fully enjoy the *de facto* tax exemption over time.

**Partnership assessment.** The two core issues for the municipalities whenever state government wants to create property tax incentives are: (1) the degree of state financial commitment to the incentives it wants to create, and (2) who takes the risk if the Legislature fails to meet its commitments.

Under the BETR program, the state was on the books to cover 100% of the impact. Under a straight exemption, the state’s financial obligations drop to 50% of the impact, with the municipalities picking up the difference.

As to the issue of risk, the businesses are exposed if the Legislature fails to honor its financial commitments under BETR. Under a straight exemption, the municipalities assume that risk.

It is perhaps not surprising that 12 years to the day after the start-up of the BETR program it was substantially replaced with a straight-out tax exemption, which is described in the following chapter. Twenty years of history allows for the observation that the BETR program was implemented more as a transition system to pave the way for exemption than as a long-term partnership arrangement.

**HOMESTEAD PROPERTY TAX EXEMPTION**

A $7,000 homestead exemption for Maine’s primary resident homeowners was established by the Legislature in 1998 and Maine’s municipal officials could not have been more appreciative.

The Homestead exemption neatly rounded out a three-point strategy to address the imbalance in Maine’s tax code. The Municipal Revenue Sharing Program bluntts the property tax burden as a form of general relief, for residents, businesses and owners of open land. The “circuitbreaker” property tax relief and rent rebate program was strategically targeted to the state’s low income residents, whether owners or renters. What was needed was a relief program targeted to Maine’s primary resident homeowners, and that is precisely what was delivered by the Legislature just over 16 years ago.

When it was first enacted, and for the first six years of its life, the Homestead exemption was designed to provide the full $7,000 exemption for Maine’s primary homeowners without increasing the property tax burden for all other property owners which would be the normal result of a significant tax exemption. Preventing a tax rate increase was accomplished by the Legislature providing full reimbursement for the lost municipal revenue.
If there is a partnership issue with the Legislature's management of the Homestead property tax exemption, it is only with respect to the way the exemption has been heavily manipulated over the last 10 years. Here's the brief history:

**April 1, 1998.** The taxable value of the homestead property of all primary residents of Maine was reduced by $7,000 (in “full value”). Municipalities were reimbursed for 100% of their lost tax revenue, which ensured no property tax rate increase for businesses and other non-homesteaders.

**April 1, 2003.** Homestead exemption redesigned into a “tiered” system. The $7,000 exemption was retained for homesteads valued at less than $125,000. For homesteads valued at more than $250,000, the homestead exemption was reduced to just $2,500 in value. For homesteads valued between $125,000 and $250,000, a $5,000 homestead was provided. These changes reduced the value of the property tax relief for many and were administratively challenging, a cause for significant complaint and difficult to explain to homeowners.

**April 1, 2005.** Homestead exemption was redesigned yet again. It was returned to a flat exemption with its face value increased from $7,000 (or $5,000 or $2,500) to $13,000, but instead of full reimbursement for lost tax revenue, the state would only provide reimbursement for 50% of the lost municipal revenue. This change pushed 50% of the cost of the exemption onto the municipal tax rate, caused significant tax shifting, triggered widespread complaint, and was difficult to explain to homeowners and non-homeowners.

**April 1, 2009.** The face value of the Homestead exemption was reduced from $13,000 to $10,000, immediately increasing all homeowners’ property taxes.

**Partnership assessment.** The Homestead property tax exemption is an integral part of Maine's overall tax policy. In combination with revenue sharing and the property tax fairness credit (formerly the “circuitbreaker” program), the Homestead exemption helps rebalance a tax code that is overly reliant on property taxes to fund governmental services. Unfortunately, the Homestead exemption has undergone major restructurings since its creation, making it less effective in delivering property tax relief than when it was first established and triggering administrative and public relations challenges for the towns and cities actively managing the program.
Programs of the 2000s

Business Equipment Tax Exemption Program
School Consolidation
Workers’ Compensation Expansion: Cancer Presumption
Maine’s Uniform Building and Energy Code
Raidson Municipal Revenue Sharing

BUSINESS EQUIPMENT TAX EXEMPTION PROGRAM (BETE)

Of the 20-plus partnership programs evaluated in this report, the Business Equipment Tax Reimbursement program (BETR), described in the previous chapter, receives one of the highest state-local partnership ratings. Under BETR, businesses were entitled to receive reimbursements from the state for the personal property taxes they had to pay to the municipalities where the personal property was located. The reimbursements were to be provided to the businesses for the first 12 years of the personal property’s useful life. The tax year that BETR became effective began on April 1, 1996.

With the reimbursement available for just the 12-year term, it might have been expected the program would need to be revisited a dozen years out, and it was. In 2006 the Legislature put BETR out to pasture and established the Business Equipment Tax Exemption program, or BETE. Using the same definitions, “qualifying business property” first installed and made subject to taxation on or after April 1, 2008 became entirely exempt from taxation.

The available data at the time of enactment in 2006 showed that the category of business personal property made exempt by this law represented approximately 7% of the statewide municipal tax base, over $8 billion in taxable value. The enactment of BETE did not make this large component of the municipal tax base exempt overnight, but it put into motion a steady deterioration of the tax base, particularly in those communities hosting large industrial facilities where the personal property in the state is concentrated. Just five years after the implementation of BETE, in 2013, the same source of data (Municipal Valuation Return Statistical Summary) reveals that the personal property category had dropped to just 4.5% of the statewide municipal property tax base, valued at just over $7 billion. The long-term impacts of the BETE exemption are certainly playing out.

In the previous chapter’s discussion of the BETR program, it was pointed out that the state’s Constitution was amended in 1978 to require the Legislature to provide to the towns and cities at least 50% of their lost tax revenue for all new property tax exemptions created in 1979 and thereafter. That requirement clearly applies with respect to the BETE exemption. For communities with a solid level of personal property in their tax base, the Legislature committed itself to even more than the 50% requirement. There is nothing simple about the details of the administration of the BETE program, but generally speaking, as a matter of statute, the state’s reimbursement obligation climbs higher than the 50% minimum guaranteed by the Constitution in proportion to the degree a municipality’s property base is made up of business equipment and machinery and other qualifying personal property.

Partnership assessment. The municipal tax base is not infinitely erodible.

The tax exemptions for “charitable corporations” and “literary and scientific institutions” have been on the books throughout the state’s history, but the charitable corporations of yesteryear were nothing like their counterparts today. Under the umbrella of these two pre-existing categories of exemption alone, big holes are regularly chopped in the municipal tax base.
In the early 1970s, the Legislature repealed the “inventory” component of the property tax for the purposes of taking some burden off businesses and stimulating economic development, and simultaneously established the revenue sharing system to replace the lost tax base with “broad-based tax revenue.”

A quarter of a century later, for essentially the same reasons, the Legislature began the process of repealing the property tax on the personal property owned by businesses. For the first 12 years of that process, under the BETR program, the municipalities were held harmless because of the way that program was designed.

Perhaps it was inevitable that the simulation of an exemption under the BETR system would ultimately convert to a pure exemption, which occurred with the enactment of the BETE program. Maine’s Constitution forces a “partnership” financial approach to all newly created exemptions by requiring the Legislature to reimburse the municipalities for 50% of their lost tax revenue. In the case of BETE, the Legislature went beyond its minimum obligations and provides deeper reimbursement for particularly impacted communities. The state’s commitment to that system, which has held thus far, is much appreciated.

The proliferation of exempt status as authorized by the Legislature is pushing an ever-increasing level of property tax burden on Maine’s homeowners who are, naturally enough, seeking greater relief and their own exemption. Without full reimbursement from broad-based resources, the municipal property tax base cannot be made any narrower.

**SCHOOL CONSOLIDATION**

In 2007 the Legislature adopted a biennial state budget that included the forced, or effectively forced, consolidation of many of Maine’s suburban and rural public school systems. The consolidation legislation was embedded in the state budget because it ostensibly saved the state approximately $38 million in state subsidy by reducing school administrative costs. The math supporting that claim was sketchy at best, particularly the conclusion that nearly $40 million in administrative, transportation and special education savings could be achieved through reorganization in a two-year period. Governor Baldacci’s school consolidation proposal was crafted with no input from the impacted school or municipal communities. As plans of this type go, it was as “top-down” as it gets.

Under the Governor’s proposal, in order to “save” $38 million within the two-year budget cycle, the existing 286 school administrative units would be abolished and reorganized as 26 consolidated units. That massive reorganization was to occur between January 2007 and July 1, 2008. For the first time in this state’s history, local units of government would be abolished and new local units of government would be created.
without allowing the local voters to weigh-in on the question. An alternative approach crafted by the school and municipal communities was presented to the Legislature but rejected out-of-hand. The alternative approach involved the development of local buy-in and the use of some incentives, building on the general success of the school reorganizations of the late 1960s initiated by the Sinclair Act. The alternative plan was rejected because it could not promise an immediate $38 million in state “savings.”

Although the Governor’s original plan was significantly amended before final adoption, both the legislative process and the subsequent implementation process did little to foster a partnership relationship between the state and its local governments. Because the proposal was located in the state budget, four members of the Appropriations Committee were selected to craft the plan rather than the Education Committee. As the plan unfolded, multiple exceptions to the obligation to consolidate were woven into the plan, including island schools, tribal schools, school systems with more than 2,500 students and so-called “high performing” schools.

As finally adopted, the mandate required school systems not otherwise exempt from the process to: (1) file a notice of intent to engage in planning and negotiations with other school systems to meet the consolidation requirements; (2) create “reorganization planning committees” to develop the official consolidation plan to be approved by the Commissioner of the Department of Education; (3) present the consolidation plan to the voters of the proposed new “Regional School Unit” for ratification; and (4) implement the state-approved and regionally ratified plan. Failure to either conduct these activities or obtain voter approval for the consolidation plan resulted in stiff financial penalties.

For the many communities swept into this mandate, the task was complex, confusing, difficult and frustrating. Many hundreds of municipal and school officials and concerned members of the general public were called upon by this mandate to spend thousands of hours, collectively, in meetings, negotiations, public hearings and specially-scheduled elections in response to the legislative mandate.

As sweeping and controversial as the consolidation law was, it turned out to be something of a flash-in-the-pan. Seven years later, much of this law has disappeared. The financial penalty for non-compliance, which was a powerful lever forcing the formation of the new school districts, was relaxed and effectively eliminated soon after the voters made their decisions and the “stick” was no longer needed. After the newly required cost sharing formulas were implemented in the new school districts, a significant “buyers’ remorse” swept the land and community after community started to engage in the equally complicated and arduous process of withdrawing from the school district they were forced to join by threat of penalty.

Partnership assessment. Nothing in the review of the school consolidation law and its aftermath invokes the concept of partnership. The entire effort was a rushed approach to achieve unrealistic state budget savings. The policy was developed with little to no collaborative input from the affected constituencies. Systems that include at least some element of incentive suggest partnership; systems based on the imposition of penalties do not. The implementation required an enormous, contentious and thoroughly thankless effort at the local level. Finally, the post-implementation period revealed little to no discernible savings and delivered negative financial impacts for many municipal partners. A widespread deorganization response rippled throughout many regions of the state as a result.

WORKERS’ COMPENSATION EXPANSION: CANCER PRESUMPTION

Municipal firefighters are Maine’s first responders to emergency situations. It can be dangerous work and the injuries and illnesses experienced by firefighters as a result of their service need to be treated by a prompt and effective medical system. On that issue, there is no dispute. Because almost all the firefighters in Maine are employed by municipal government, the cost of providing medical care for workplace-related injury or illness is borne by municipal employers and governed by the state’s Workers’ Compensation system. What follows
is a description of how Maine's Workers' Compensation law was amended in 2009 to create a "rebuttable presumption" that a firefighter who is diagnosed with one of 10 specific cancers contracted the cancer as a result of employment as a firefighter.

The inner mechanics of the Workers' Compensation system bear little resemblance to the other types of programs that are being evaluated in this report. In managing their Workers' Compensation claims, the municipalities are not providing the same type of public services that they provide when they manage a statewide election, for example, or provide for the disposal of the solid waste generated throughout the community. Managing a municipality's Workers' Compensation exposure is an underlying, “back office” task associated in this case with provision of fire protection services. The issue of state-local partnership associated with this legislation is focused on the Legislature's management of Workers' Compensation law as it applies to the municipal employer. It also describes an example of the Legislature's management of the constitutional amendment designed to limit the enactment of unfunded state mandates.

“Rebuttable presumption.” As a general rule in Workers' Compensation law, the employee must prove in the case of a disputed claim that the illness or injury for which a claim is being filed was work-related. In the entire body of Workers' Compensation law, there are four exceptions to that general rule, one of which applies to all claims regardless of employer and three of which are focused on the municipal employer. Those exceptions are called “rebuttable presumptions.” Under a rebuttable presumption, a certain illness, injury or event is automatically presumed to be work related (“arising out of and in the course of employment”), and the employer is given the task of proving that it was not. In other words, the burden-of-proof obligations are reversed from the general rule and the employer must prove that the workplace or work environment was not the cause of the illness or injury. Given the wide range of workplaces and working conditions in the state, many of which are associated with inherent dangers or risks, it is entirely unclear why the rebuttable presumptions in Maine's Workers' Compensation law are so uniquely focused on the municipal workplace.

The across-the-board rebuttable presumption in Workers' Compensation law is triggered when the employee is killed or suffers a physical or mental inability to testify.

The second rebuttable presumption applies to municipal firefighters who have contracted cardiovascular pulmonary disease or died as a result of such disease within six months of having participated in fire fighting, training or drill. This rebuttable presumption was enacted in 1992, before the state's Constitution was amended to restrict the enactment of unfunded state mandates.

The third rebuttable presumption applies to a municipal firefighter or emergency medical service provider, law enforcement officer or corrections officer who contracts hepatitis, a type of meningitis or tuberculosis. This rebuttable presumption, which was recognized by the Legislature as a state mandate, was enacted in 2002 with the necessary 2/3 vote in both the House and Senate to override any requirement for state funding.

The fourth and final rebuttable presumption in Workers' Compensation law is the cancer presumption which applies exclusively to municipal firefighters. As was the case with the communicable disease presumption enacted in 2002, this legislation was identified by the Legislature's Office of Fiscal and Program Review (OFPR) as a state mandate. Despite concerted efforts by the bill's sponsor and legislative leadership to convince OFPR that the bill was not a mandate, the final fiscal note identified the bill as a “potential” state mandate imposing “significant” increased expenditures on municipalities statewide (see page 35). Ignoring the fiscal note, proponents of the legislation were successful in causing the bill to be stripped of the required mandate preamble, allowing legislators to vote for the bill under the impression that it was not a new state mandate.

The law is now codified in Maine's Revised Statutes as one of those rogue mandates enacted outside of the system established by the constitutional amendment. The Legislature did not vote to fund the new mandate nor did it vote to exempt the state from the requirement to fund at least 90% of the mandated new costs.
124th MAINE LEGISLATURE

LD 621
LR 667(02)

An Act Allowing Workers’ Compensation Benefits for Firefighters Who Contract Cancer

Fiscal Note for Bill as Amended by Committee Amendment “ “
Committee: Labor
Fiscal Note Required: Yes

Fiscal Note

Local government costs - potential state mandate

State Mandates

<table>
<thead>
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<th>Required Activity</th>
<th>Unit Affected</th>
<th>Local Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shifting the burden of proof that a municipal firefighter or volunteer firefighter contracted certain types of cancer as a result of employment as a firefighter from the claimant to the employer and/or the employer’s insurer may represent an indirect modification of a municipal activity.</td>
<td>Municipality</td>
<td>Significant statewide</td>
</tr>
</tbody>
</table>

The indirect modification of local activities in this bill may represent a State mandate pursuant to the Constitution of Maine. Unless General Fund appropriations are provided to fund at least 90% of the additional costs or a Mandate Preamble is amended to the bill and two-thirds of the members of each House vote to exempt this mandate from the funding requirement, municipalities may not be required to implement these changes.

Fiscal Detail and Notes

This legislation will increase costs to local governments in the form of both higher premiums for workers’ compensation insurance and increased legal costs. The impact to individual municipalities can not be determined at this time and will depend on actual experience.
Underlying state law provides that in that circumstance the municipalities have no obligation to abide by the mandate. Unfortunately, there is no way to employ that option at the municipal level because of the way cancer presumption is embedded in the Workers’ Compensation system.

**Partnership assessment.** If the burden of proof in Workers’ Compensation law should be shifted to employers with work environments that carry inherent risks, it should not just be municipal employers that are affected. There is a conspicuous discrimination in Maine’s Workers’ Compensation law if the only employer obliged to take on an unusual burden is the municipal employer.

There can be no doubt that shifting the burden of proof to the municipal employer “requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures” which is how Maine’s Constitution defines a state mandate. The expanded and modified activities and the increased expenditures associated with the new Workers’ Compensation presumptions are now coming home to roost as the law is being implemented. To enact laws that are recognized state mandates by pretending they are not end runs the policy firmly established in Maine’s Constitution.

**MAINE’S UNIFORM BUILDING AND ENERGY CODE**

In 2008 the Legislature enacted “An Act to Establish a Uniform Building and Energy Code.” As the title suggests, the law established in every municipality in the state with more than 2,000 residents a common set of building and energy conservation codes including the multi-volume International Building and Energy Conservation Codes. As a group, they are called the Maine Uniform Building and Energy Code, or “MUBEC.” Under the law, the MUBEC requirements are applied to almost all construction of built property in the municipalities where its use is mandated. There are few exceptions.

With that enactment, nearly 170 Maine municipalities became responsible for the enforcement of a comprehensive set of building and energy codes. Over 80 of those municipalities had never adopted or enforced a building code of any kind. In an attempt to craft the legislation to soften the mandate implications as much as possible, the MUBEC law allows properly credentialed, private, “third party inspectors” to certify MUBEC compliance for construction projects. In theory, a municipality enforcing the MUBEC requirements only has to accept the incoming certifications from the available army of private, third party inspectors.

That theory, unfortunately, was not the way it played out in real life. The enactment of the MUBEC code provides a lesson in the lengths the Legislature will sometimes take to avoid a new
“partnership program” from being defined as a “state mandate.”

The following facts were well known at the time of enactment and are still the case today:

- Municipal officials are responsible under law for building inspection and code enforcement.
- The MUBEC legislation was identified by the Legislature’s non-partisan Office of Fiscal and Program Review (OFPR) as a state mandate.
- The MUBEC legislation, as read, debated and subsequently amended on the floors of the Maine House or Senate did not include the mandate preamble that is required whenever the Legislature intends to enact a state mandate without providing the required share of state funding.
- Under Maine’s mandate law, municipalities are not required to adhere to laws containing mandates unless the law either passed the Maine House and Senate with a 2/3 majority vote or received 90% state funding. In the latter case, if the Legislature chooses not to reimburse the costs associated with otherwise mandated activities, municipalities are not bound to undertake those activities as a matter of law.
- The Legislature did not pass the 2008 legislation by a 2/3 vote, nor did it provide any reimbursement to the municipalities for MUBEC enforcement.
- Since the 2008 legislation allowed either municipal officials or “third party inspectors” to perform inspections used for certificates of occupancy, OFPR labeled this bill an “insignificant” state mandate on the theory the municipalities could make use of the third party inspectors to perform nearly all MUBEC-related tasks.
- Because the buck stops with municipal code enforcement officers in terms of legality, liability, and practicality, and because the general public expects and often demands that the municipality and not the private sector perform building code enforcement, the use of third party inspectors at best reduces, but most certainly does not negate, the burden on municipalities to enforce the state’s building code.
- The 2008 legislation funded three full-time state positions to help oversee the new state-mandated MUBEC training and certification programs for code enforcement officers and third party inspectors.

Since the enactment of MUBEC in 2008, there have been two subsequent developments of significance.

In 2011, legislation amended the mandate so that only the 89 municipalities with over 4,000 residents, rather than the 168 municipalities with more than 2,000 residents, would be mandated to comply with MUBEC.

The three full-time state-level positions devoted to MUBEC training and certification have now been reduced to one part-time position. In 2013, funding for that position was discontinued in the Governor’s proposed budget. Negotiations barely saved the part-time position, for now.

**Partnership Assessment.** Mandatory code enforcement came into being with the shoreland zoning act of 1971 and the duties of the code enforcement officer have been steadily expanded ever since. The MUBEC enactment in 2008 imposed additional requirements on local governments, particularly those 80-plus municipalities that never before adopted or enforced a building or energy code.

That being said, there would have been a way to approach the new MUBEC-related requirements in the spirit of true partnership if there was a legislative will.

The idea of creating private sector third party inspectors has merit because it could help defray some of the costs to government associated with implementing this program. The third party inspection model, however, does not evaporate those costs entirely. Furthermore, the reduced enforcement costs for local
governments would merely be shifted to increased costs of construction for local homeowners and businesses. For the implementation of MUBEC to work on a broad municipal basis, the Legislature should have been willing to work with the municipal officials and the general public in the areas of education, public relations, technical assistance and financial assistance.

That sense of true partnership was nowhere in evidence in 2008. Instead, the purported availability and effectiveness of third party inspections was used by the Legislature as a pretense to strip the mandate preamble off the legislation and act as though the law would have no fiscal, administrative and public relations impact on local government.

RAIDS ON MUNICIPAL REVENUE SHARING

The graph and the spreadsheet on pages 36 and 37 describing the 42-year history of the revenue sharing program say it all. Beginning in 2006, Governor Baldacci and the 122nd Maine Legislature began nipping at the sharing system. Enacted as part of the biennial state budgets, these early “transfers” targeted a relatively small amount of total revenue sharing dedicated by law to the towns and cities and slipped it, instead, into the state's General Fund. For the first four years these raids on revenue sharing were in the range of 2% - 5% of total distribution. They were calculated to hold the amount of revenue being shared relatively flat on a year to year basis, which muted municipal concern.

At the same time, however, the practice of “transferring” revenue sharing resources in the eyes of Maine's lawmakers started to become commonplace, routine, legitimized by repetition.

In 2009, state government’s appetite for revenue sharing resources to finance state government got larger

Percent of Revenue Sharing Funds Redirected to State General Fund 1972-2015

Source: Office of Fiscal and Program Review; State Budget Documents.
by an order of magnitude. Reacting to a slump in state tax revenues caused by the Great Recession of 2008, fully 20% of revenue sharing was taken in FY 2010 to help finance state government. The next Administration and the subsequent Legislatures increased the shift of revenue sharing funds by redirecting 30% of revenue sharing resources away from the towns and cities to the state’s treasury.

By 2014, state sales and income tax revenues had recovered to meet and exceed their pre-recessionary levels, but that had no impact on the state’s insatiable appetite. For the current fiscal year (FY 2015), state government has doubled down on the 30% raids and “transferred” nearly 60% of the revenue dedicated to the Local Government Fund to the state’s General Fund. Governor LePage’s position on the subject is clear. He proposed eliminating the program entirely for the FY 2014-15 biennium, has characterized revenue sharing negatively as municipal “welfare,” and has most recently suggested that revenue sharing provides an excuse for municipalities to retain inefficient systems of service delivery. Many legislators, for their part, may be unaware of the program’s history or purpose and suggest they have no alternative but to cut it, given the state’s budget constraints. The argument to maintain the program according to its original design rests on the four foundation stones that have supported revenue sharing since its inception. Revenue sharing:

- Recognizes and counters against the deep erosion to the municipal tax base caused by exemptions granted by the Legislature.
- Recognizes and counters against the state’s historic overreliance on the regressive property taxes to pay for governmental services.
- Recognizes in good faith the contributions municipal governments make to nurture, support and grow the state’s economy.
- And recognizes in good faith all the programs and services the municipalities are required by state government to provide for the general good. With just a small share of broad based tax revenue, revenue sharing demonstrates the state’s collaboration in that partnership.
### Legislative Transfers Out of Revenue Sharing (1972 - 2015)

<table>
<thead>
<tr>
<th>Year</th>
<th>Calculated Revenue Sharing Distribution</th>
<th>Legislative Raid</th>
<th>Actual Revenue Sharing Distribution</th>
<th>Raid as % of Calculated Revenue Sharing Distribution</th>
<th>% Actual Distribution</th>
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<td>2,900,000</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>1973</td>
<td>3,700,000</td>
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<td>37,724,748</td>
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<td>71%</td>
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<td>40,350,000</td>
<td>96,875,178</td>
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<td>71%</td>
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<tr>
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<td>44,270,000</td>
<td>93,839,890</td>
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<td>68%</td>
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<td>47%</td>
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<td>85,949,391</td>
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<td>41%</td>
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<tr>
<td>2016**</td>
<td>158,218,440</td>
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</table>

*Legislative raids enacted in 2013 State Budget (PL 2013, chap. 368). **Revenue Forecasting Committee, FY 2016 projection
About MMA

Founded in 1936, the Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine. 487 of Maine’s 492 towns and cities are currently members of the Association. MMA is a non-profit, non-partisan organization governed by a 12-member Executive Committee elected from its member municipalities. In 49 of the 50 states there is a municipal league with certain organizational similarities, but each league offers a unique array of services according to the particular interests of its municipal constituency.

MMA’s services include advocacy, legal and personnel advisory services, group insurance self-funded programs, and a number of services under the “communication” umbrella including professional development and training for municipal officials, educational programming and information-sharing for the benefit of membership and the general public, and the publication of an extensive array of manuals, magazines and newsletters, data aggregations and public policy analyses.

With respect to MMA’s advocacy services, the position of the Association on any legislative matter is entirely determined by a 70-member Legislative Policy Committee (LPC). The LPC is made up of two municipal officials from each of the 35 State Senate districts who are elected to serve on the LPC by the boards of selectmen and town and city councils in each district. Using a process that combines a traditional town meeting with some elements of the Legislature’s own procedures, the LPC reviews and votes out a position on each bill of statewide municipal interest that is submitted to the Legislature. Those positions are transmitted to the Legislature by MMA’s advocacy staff.

The Maine Municipal Association has a core belief that local government is a fundamental component – a keystone – of our democratic system of government. MMA is dedicated to assisting local governments, and the people who serve at the municipal level, in meeting the needs of their citizens and engaging as responsible partners in the intergovernmental system.
STATE-MUNICIPAL PARTNERSHIP PROGRAMS:
PAST, PRESENT AND FUTURE