

State Budget Update

On Friday last week the Appropriations Committee voted unanimously to support a \$6.35 billion, two-year state budget, the municipal elements of which are described in this article. That budget has now been approved by the full Legislature and awaits Governor LePage's promised veto.

It is a glass-half-empty, glass-half-full budget.

If you are looking at the Committee's budget from the perspective of what Governor LePage was originally proposing, the glass is half full because many of his proposals to eliminate or greatly reduce property tax relief programs were either rejected outright or so significantly modified the negative impacts were mitigated or eliminated altogether.

If you are looking at the Committee's budget from the perspective of current law and long-established public policy governing the state-municipal intergovernmental financial relationship, the glass is half empty. Presuming it survives the veto attempt, this budget will directly impact the quality of the relationship between the municipalities and state government because of its mistreatment of the municipal revenue sharing program. The level of trust between state and local government has for the last several years been stretched very thin and then roughly laid across the stained base of the guillotine. This budget cuts it off.

• **Revenue Sharing.** The budget reduces municipal revenue sharing over the biennium by one-third relative to the distributions over recent years, and cuts the program by over 55% relative to the distributions that are supposed to be provided as a matter of law. Specifically, \$65 million in revenue sharing will be distributed in FY 2014 and \$60 million

in FY 2015. This compares to approximately \$95 million that was distributed each year of the present biennium, which was itself a 33% reduction of the \$135 million to \$145 million that is supposed to be distributed as a matter of long-established law. The Legislature, as it often makes abundantly clear, is above the law. This part of the budget also amends the law governing the calculation of a

municipality's "property tax levy limit" to allow for an upward adjustment to the tax levy limit to reflect the revenue sharing reduction at the same time that the reduction is occurring, rather than one or two years after the fact.

• **Education Funding.** The budget appropriates \$942 million for General Purpose Aid to Local Schools for FY

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It's Not You, It's Me

Highway Fund Adopted, Municipal/State Relationship Eroded

If you've ever been on the short end of a dissolving relationship, you've undoubtedly heard the phrase "it's not you, it's me." This expression is normally used to reassure the one who is being dumped that he or she is not at fault for the relationship coming to an end. By conveying the impression of mastery and control, the act of graciously assuming full responsibility provides a psychological benefit to the one calling it quits.

On Monday of this week, municipal government found itself on the short-end of the state funding relationship stick, yet again. By a margin of 11-2, the Transportation Committee supported an amendment to the FY 2014-15 Highway Fund budget (LD 1480) that permanently reduces the amount of state aid provided to municipalities under the Local Road Assistance Program (LRAP).

As municipal officials are well aware, the Governor proposed to seize for the state's Highway Fund budget the municipalities' motor vehicle excise tax revenue collected on truck tractors. The majority of the Transportation Committee voted to replace that idea with a proposal to

decrease the financial assistance provided to municipalities under the Local Road Assistance Program (LRAP). Under the existing road assistance program, approximately 10% of DOT's Highway Fund budget is distributed to municipalities to provide financial support for the maintenance municipalities perform on state-aid roads. As amended, the payments to municipalities in FY 2014 would remain at 10%, or \$24.1 million. Beginning in FY 2015, however, the municipal share of DOT revenues would be reduced to 9%, thereby reducing the revenues annually distributed to municipalities to \$21.4 million, a \$2.7 million annual reduction. The proposal adopted by the Committee also makes two policy changes to LRAP. One directs the Department to issue all funds in the month of December, rather than quarterly. The second eliminates the "hold harmless" clause that was enacted when the program was overhauled in 2000, which guaranteed that municipalities would receive no less in state road aid than provided in 1999.

In the process of discussing the pro-

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2014. This appropriation represents 46.3% of the total cost of K-12 education as measured by the Essential Programs and Services school funding model, which will now include the total “normal costs” of the teachers’ retirement premium. The appropriation represents approximately \$29 million over the distribution of school subsidy for the current fiscal year before that was reduced by \$12.6 million through a curtailment order issued by Governor LePage in December 2012 as an emergency procedure to keep the state budget in balance. The \$29 million increase, however, is not new money to the school systems because the budget also places the financial obligation on the schools, rather than the state, to pay for the “normal costs” of teachers’ retirement under the Maine Public Employees Retirement System. That new cost to the school systems statewide is \$29 million a year.

• **General Assistance.** The changes to the General Assistance program in this budget include: (1) adjusting the “overall maximum level of assistance”, which for 20 years has been calculated at 110% of the HUD “fair market rental” values, to be 90% of that calculation; (2) creating an express General Assistance ineligibility for fugitives from justice and applicants who have committed unemployment fraud; (3) amending the system for calculating a prorated benefit when a member of the household has been disqualified; (4) amending the calculation of the duration of ineligibility related to the receipt of lump sum income to base it entirely on actual basic needs; and (5) counting Circuitbreaker benefits as income.

• **Circuitbreaker Program.** The Circuitbreaker property tax relief and rent rebate program as it is currently administered is repealed by the budget bill and replaced with a similarly, but not identically designed refundable “property tax fairness credit” within the state’s income tax code. The refundable “property tax fairness credit” will kick-in for the 2013 state income tax filings submitted in 2014. Therefore, there will be no traditional Circuitbreaker application period beginning on Aug. 1 of this year. The income tax credit will

be available to Maine resident filers who own or rent a primary residence with incomes up to \$40,000. The benefit is 40% of the amount of property taxes (or assumed property taxes in the case of renters) that exceed 10% of income. Benefits are capped at \$300 for a qualifying homeowner or renter under the age of 70 and \$400 for applicants 70 years of age or older. For renters, the assumed property tax “benefit base” is 25% of the gross rent actually paid. The program is projected to provide \$36 million a year in property tax relief benefits, which represents approximately 80% of the total benefits issued under the current Circuitbreaker program.

• **Charges to various working groups.** The budget includes several study groups designed to explore other revenue-raising or expenditure-reducing options and perform other tasks. Those recommendations are to be reported back to the Appropriations Committee for possible implementation in 2014.

○ One of those study groups is designed to thoroughly review municipal mandates and identify any mandates that should be repealed or actually funded by the state.

○ Another study group is charged with identifying how to impose a temporary tax on large-scale tax exempt institutions for the purpose of providing municipal government with additional revenue.

○ Another study group is charged with examining all “tax expenditures”, which is the formal term for tax exemptions, including exemptions from state-level taxes and exemptions from local property taxes, and recommending the repeal or adjustments to those exemptions that would provide \$40 million in revenue to the state budget.

○ A fourth study group is charged with exploring how the non-retail property currently enrolled in the Business Equipment Tax Reimbursement program (BETR) can be converted to tax exempt status.

• **“Sudden and Severe Valuation Adjustment” and “Enhanced BETE Reimbursement.** Several substantive changes are made in this budget with respect to the “sudden and severe” valu-

ation disruption program and the administration of the Business Equipment Tax Exemption program (BETE) as it relates to receiving enhanced reimbursement over the normal 50% reimbursement rate, including:

Sudden and Severe. Applications for an expedited state valuation to compensate for a sudden and severe loss in municipal valuation attributable to a large, single taxpayer will remain in the circumstances of cessation of business operations, the removal of the taxable property from the municipality, the destruction or damage to the property resulting from a disaster, and losses related to functional or economic obsolescence that are not due to short term market volatility, provided these occurrences either happened in the tax year immediately prior to the year of application or, in the circumstance of obsolescence, could not have been “earlier determinable.”

Qualifications of applicants. The applications for a sudden and severe valuation adjustment or enhanced BETE reimbursement request with respect to a property that is valued at 2% or more of the municipality’s entire tax base must either include a property appraisal report prepared by a third-party professional appraiser or be submitted by a qualified municipal assessor. A qualified municipal assessor is defined as a Certified Maine Assessor with at least five years’ experience determining the just value of real and personal property of a commercial and industrial nature using the three standard methods of valuation, and who attests in writing to those qualifications to the State Tax Assessor.

Required information from the taxpayer, municipal certification. The large, single property taxpayers, whose property is valued at 2% or more of the entire municipal tax base, must provide in their applications for BETE status sufficient information to allow the municipal assessor to determine the value of the subject property, including income and expense information as necessary. Failure to provide that information to the municipal assessor disallows a BETE exemption for that tax year. As a follow-

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Revenue Sharing: 2% - 4% of Municipal Budgets?

In last weekend's radio address, Governor LePage made the observation that "Revenue sharing accounts for only 2 to 4 percent of the budgets of Maine's largest municipalities. Many Mainers have trimmed their household budgets far more than that over the past few years."

Since the Governor is pushing for the elimination of municipal revenue sharing, the point to be made, apparently, is that the towns and cities should be able to absorb the cuts because those broad-based tax resources represent just a fraction of the overall municipal budget. Put another way, if revenue sharing becomes small enough, the taking of it becomes inconsequential.

It is not entirely clear how the Governor applied the math to come to that conclusion.

The total amount of property taxes raised to pay for municipal operations in the last year for which there are published statistics was \$920 million.

On top of that, the counties levied a tax assessment against all property owners of \$140 million, which is the primary way county government is financed.

And on top of that, the schools laid down a property tax assessment of over \$1 billion as the local share of K-12 public education, and it is well known that there is already a state cost-share program for the school budgets known as General Purpose Aid for Local Schools (GPA). GPA during that year was provided to the tune of \$900 million, at a 45%-55% state-local ratio.

So the real question is the degree to which the revenue sharing program financially supports municipal operations, as a matter of percent.

At a statewide level, the municipal revenue sharing system (if allowed to operate as required by law) would provide \$138 million in financial support to Maine's towns and cities, representing 15% of the property tax levy for municipal operations.

If for some reason it was deemed appropriate to compare municipal revenue sharing against the total municipal tax levy, not only for municipal operations but for county operations and school operations as well, the appropriate statewide

percentage designation would be 6.6%.

Only if you throw into this analysis the comparison of municipal revenue sharing with the total municipal tax levy plus the total school subsidy provided by the state (GPA), does the statewide percentage designation get closer to the 4% range, at 4.6%. Why revenue sharing would be compared with this gross aggregate of school spending by the state, school funding by the locals, county spending and municipal appropriations is entirely unclear. It is a statistic without meaningful foundation.

The Governor's observation is focused on Maine's "largest municipalities". The information provided in the following chart identifies the 20+ larger municipalities for which MMA has information because of their participation in a recently conducted "LD 1" survey. The true municipal appropriations in the

chart are compared with the municipal revenue sharing that would be provided if the revenue sharing law was allowed to operate as designed in statute.

Municipal revenue sharing, just like school subsidy, is designed to provide financial assistance in inverse proportion to a municipality's "fiscal capacity" as measured by taxable value over population; therefore, there will always be some "minimal receiver" municipalities with respect to revenue sharing just as there are minimal receiver school systems with respect to GPA. The primary function of revenue sharing, in fact, is to distribute some broad-based tax resources to those communities that are overly reliant on property taxes to provide core governmental services.

As will be noted, the claim that revenue sharing represents a small fraction of a municipal budget does not hold a lot of water.

Revenue Sharing as Percent of Municipal Appropriations					
2012					
		Pop	Municipal Appropriations	Rev Share \$138 M	Rev Share % Muni
Biddeford	YORK	21,329	17,146,522	2,329,195	14%
Brewer	PENO	9,180	12,254,257	1,309,868	11%
Buxton	YORK	8,188	5,176,408	555,450	11%
Cape Elizabeth	CUMB	8,750	8,865,608	943,427	11%
Cumberland	CUMB	7,592	8,123,316	876,690	11%
Falmouth	CUMB	11,021	18,885,460	982,954	5%
Freeport	CUMB	8,270	8,758,553	769,237	9%
Gorham	CUMB	15,738	12,148,463	1,602,552	13%
Lewiston	ANDR	35,495	41,432,387	5,945,251	14%
Old Town	PENO	7,647	8,455,360	1,104,332	13%
Orono	PENO	9,723	8,794,427	1,726,157	20%
Portland	CUMB	63,061	66,832,954	9,002,830	13%
Presque Isle	AROO	9,241	7,434,160	1,642,943	22%
Sanford	YORK	21,559	43,725,045	2,596,943	6%
South Portland	CUMB	24,344	28,585,997	2,744,446	10%
Standish	CUMB	10,070	6,242,631	605,655	10%
Topsham	SAGA	9,816	7,294,216	1,058,268	15%
Waterville	KENN	15,602	15,303,760	2,290,440	15%
Wells	YORK	9,742	15,947,758	524,223	3%
Windham	CUMB	16,846	13,721,631	1,507,851	11%
Winslow	KENN	7,765	6,665,545	878,660	13%
Yarmouth	CUMB	8,062	10,926,451	1,112,062	10%
York	YORK	13,865	16,354,001	682,837	4%

Investments Worth Borrowing For

On Thursday this week, the Appropriations Committee held a public hearing on 35 bond bills. The bills propose to ask the voters of Maine to borrow money to fund a variety of capital projects in the areas of transportation, environmental protection, economic development, marine resources management, riverfront development and post-secondary education.

In an attempt to gauge the municipal interest in a bond package, in every odd numbered year MMA's 70-member Legislative Policy Committee (LPC) is asked to design a comprehensive bond package that they would like the Legislature to support. This year the LPC developed a FY 14 – FY 15 biennial bond package worth \$229 million. Although as shown in the accompanying chart, the LPC's recommended borrowing package was diverse, nearly \$167 million (73%) was focused on three categories: transportation, economic development and water/wastewater/storm water infrastructure.

Faced with deteriorating road and bridge infrastructure and the accompanying maintenance challenges, it is no surprise that funding for transportation-related projects rose to the top of the LPC bond list. Although municipal officials have historically supported transportation bonds, this year the LPC took the support one step further by including a \$100 million bond bill in its 2013-2014 legislative agenda. LD 16, *An Act To Authorize a General Fund Bond Issue to Invest in Transportation Infrastructure*, was graciously sponsored by Rep. Ann Peoples of Westbrook at the request of MMA.

As would be expected, the municipal bond package includes funds for road and bridge improvements to the tune of \$65 million. However, the package also includes funding for rail (\$20 million), transit (\$10 million) and trails (\$5 million). The diversity of the bond package seems to have led to its popularity. At the hearing on Thursday the bill was strongly supported by Maine based bicycle and trail coalitions.

MMA also supported the economic development bond proposals found, LD 1163, *An Act to Authorize a General Fund Bond Issue To Fund Main Street and Downtown Economic Development Projects* and LD 1105, *An Act to Authorize a General Fund Bond Issue to Revitalize Maine's Downtowns through Innovative Business Development and the Creative Economy*. These bills ensure that grant opportunities will be available to all communities, both those that automatically receive direct federal assistance and those that do not. These bills also make the revenue available to fund a variety economic development projects from the traditional industrial park-based developments to the more unique downtown revitalization and development proposals.

Finally, on behalf of its members, MMA supported two environmental bonds, LD 1010, *An Act to Authorize*

a General Fund Bond Issue to Ensure Clean Water and LD 1455, *An Act to Authorize a General Fund Bond Issue to Ensure Clean Water and Safe Communities*. These bills are designed to help communities take the pressure off utility ratepayers and property taxpayers to finance the municipal obligations to meet federal Clean Water Act mandates. If enacted, funds would help municipalities to make much needed improvements to water and wastewater facilities and meet the challenges associated with stormwater management, which is an emerging component of Clean Water Act pressures.

The fate of the bond package now rests in the hands of the Appropriations Committee, legislative leadership and the Governor's Office. The Appropriations Committee plans to conduct work sessions on the 35 bond bills over the next few days.

Recommended Bond Package for FY 2014-15 Biennium Maine Municipal Association - June 2013

Aggregate value - \$229 million

	\$ (in millions)	% (rounded)
Transportation: Highways/Bridges	\$90.00	40%
Transportation: Rail	\$20.00	9%
Transportation: All Other	\$15.00	7%
Economic Development	\$22.00	10%
Water/Wastewater/Storm Water/Environment	\$20.00	9%
Public Facilities/Downtown Revitalization	\$13.50	6%
Research and Development	\$12.00	5%
Energy Conservation/Weatherization	\$9.00	4%
Low Income Housing	\$6.00	3%
Land for Maine's Future	\$5.00	2%
Other*	\$16.50	8%

Total **\$229.00**

* Other (municipal)

Riverfront Development Projects

Investments in Collector Roads (DOT)

Capital projects related to Local Government Efficiency Fund

Mandate Watch Update

Articles were published in the previous four editions of the Legislative Bulletin describing several bills that propose to shift additional costs and administrative burdens onto municipalities. What follows is an accounting of the current status of the mandate or “watch” bills of municipal significance still in play at the Legislature, with the exception of the biennial General Fund budget (LD 1509) and Highway Fund budget (LD 1480) which are described separately. MMA is following these bills closely. Municipal officials are encouraged to contact their legislators if they have concerns or input regarding these bills.

Mandate Bills

Update: *LD 1133 – Municipal Employees – All for Cause.* Current law provides that certain municipal employees appointed directly by a board of selectmen are “at will” employees. LD 1133 mandates that all municipal employees are categorized as “for cause” employees and entitled to heightened job protection and due process proceedings in the event of termination from employment. LD 1133 was passed to be engrossed in the Senate by a vote of 20-15. LD 1133’s fiscal note designates this legislation as an unfunded state mandate with a moderate fiscal impact, however the text of LD 1133 does not contain a mandate preamble. The legislation passed the House by a vote of 84 to 57 on Monday and it is now on the Special Appropriations Table.

Update: *LD 235 – Firefighters and “Tone-to-Tone” Workers’ Compensation.* This bill expands the Workers’ Compensation law to provide a “rebuttable presumption” that a firefighter or EMS provider who gets injured after receiving an emergency tone or call was injured in the course of employment, even if the injury occurs at home or some other place entirely outside the control of the municipal employer. The House and Senate passed this bill to be enacted and it is now on the Special Appropriations Table. The fiscal note attached to LD 235 identifies the bill as a potential state unfunded mandate with significant

statewide local costs.

Update: *LD 977 – MUBEC.* This bill requires municipalities over 2,000 in population to enforce the Maine Uniform Building and Energy Code and further provides that MUBEC applies in all municipalities in the state regardless of population. Approximately 66 municipalities that have never had building codes before would be required to enforce the MUBEC code under this bill. The fiscal note to the original draft of this bill designates it as an “insignificant” unfunded state mandate, which is not an accurate assessment of its fiscal implications. Despite the designation, the text of LD 977, at least currently, does not contain a mandate “preamble”, which is the only way legislation is formally identified as a mandate before a bill is enacted.

LD 977 has still not yet been reported out of the Labor, Commerce, Research and Economic Development Committee.

“Watch” bills

Update: *LD 1154 – An Act To Establish the Maine Length of Service Award Program.* This bill establishes the framework for a statewide pension-type “Length of Service Award Program” for volunteer firefighters and emergency medical services personnel.

LD 1154 has just now been reported out of the Labor, Commerce, Research and Economic Development Committee with an ought-to-pass recommendation. Given its fireworks tax implications, it is likely to be sent to the Appropriations Committee if given initial approval by both the House and the Senate. Municipal officials generally believe the town or city employees should work directly with their employers to obtain the compensation packages they believe they deserve, rather than creating centralized pension systems administered by third-parties. Aside from logistical issues, there is a real concern with the fairness implications of this legislation, where some municipal employees of long service would be receiving a pension where others are not.

Budget Update (cont’d)

up to that requirement, the municipal assessor must ultimately certify to the State Tax Assessor that the taxpayers receiving the BETE reimbursement have provided the municipality with the required information and that the assessor has considered that information in the determination of the assessed value of the BETE property. This certification will presumably be built into the Municipal Valuation Return. Failure to provide the necessary certification will result in the municipality losing its enhanced BETE reimbursement for that year.

Tax changes. Because the beginning point was the Governor’s original proposal, which provided little or no funding for most of the programs outlined above, much of what has been described could not have been part of this budget without the infusion of additional revenue to balance the budget. During the course of developing the final budget recommendation, the Appropriations Commit-

tee either found or created sources of revenue by making numerous changes throughout the entire budget document. Some of these changes created modest amounts of available revenue, some of them relatively significant amounts. The total amount of revenue made available by these adjustments was not sufficient to restore (or partially restore) both the municipal programs as well as some other restorations in the area of social service programs, merit and longevity pay to state employees, etc. To bridge that gap, the proposed budget increases the general sales tax rate from 5% to 5.5% for the biennium and the meals-and-lodging sales tax rate from 7% to 8% for the biennium, with both increases beginning on Oct. 1, 2013 and running through June 30, 2015, at which point they would be automatically repealed. Those two rate increases generate approximately \$180 million in additional revenue to fund the various budget restorations.

Highway Fund (cont'd)

posed amendment, there was a horseshoe full of commentary designed to justify the taking.

- “Yes, we are taking from the towns, but the revenue has to come from somewhere.”

- “I don’t like the proposal, but I don’t have another answer.”

- “These are not tax shifts. They are, rather, project delays on the local level.”

The Department of Transportation was heavily praised for developing an acceptable alternative to the excise tax proposal and preserving the state’s light capital program.

There was no need for two Committee members to articulate justification for their actions. Senator Linda Valentino (York Cty.) and Representative Wayne Wertz of Auburn stood up against the LRAP funding reduction proposal, and they deserve municipal thanks.

Although the Transportation Committee members may feel better about taking the revenues, municipal officials are disappointed by this turn of events. Not

only has the Committee decided to solve its problems on the back of the property taxpayers, it has initiated a significant change in policy without inviting or receiving input from the municipal community. At the very least, the Committee should have provided municipal officials with an opportunity to publicly express concerns with the LRAP proposal.

In addition, on the premise of allowing the Committee to debate the reduction in LRAP on its policy-based merits rather than “spreadsheet politics”, the Department did not provide any information showing the town-by-town impacts of the specific proposal. Instead, the spreadsheet provided by the DOT merely showed the loss to each community under the original truck tractor excise tax proposal compared with existing LRAP distributions.

Unfortunately, MMA staff does not have access to all the variables needed to calculate the town-by-town impacts. However for purposes of a ballpark impact analysis, it is safe to assume that amount of Local Road Assistance issued

to each community in FY 15 (December 2014) will be 90% or less than the LRAP issued in FY 14 (December 2013). In all likelihood, the so-called “hold harmless” communities can expect to lose more.

Municipal officials on MMA’s Legislative Policy Committee are being polled to determine the Association’s position on the amended FY 14 – FY 15 Highway Fund budget. We will be communicating the LPC’s final position with MMA’s membership and the Legislature early next week.

Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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