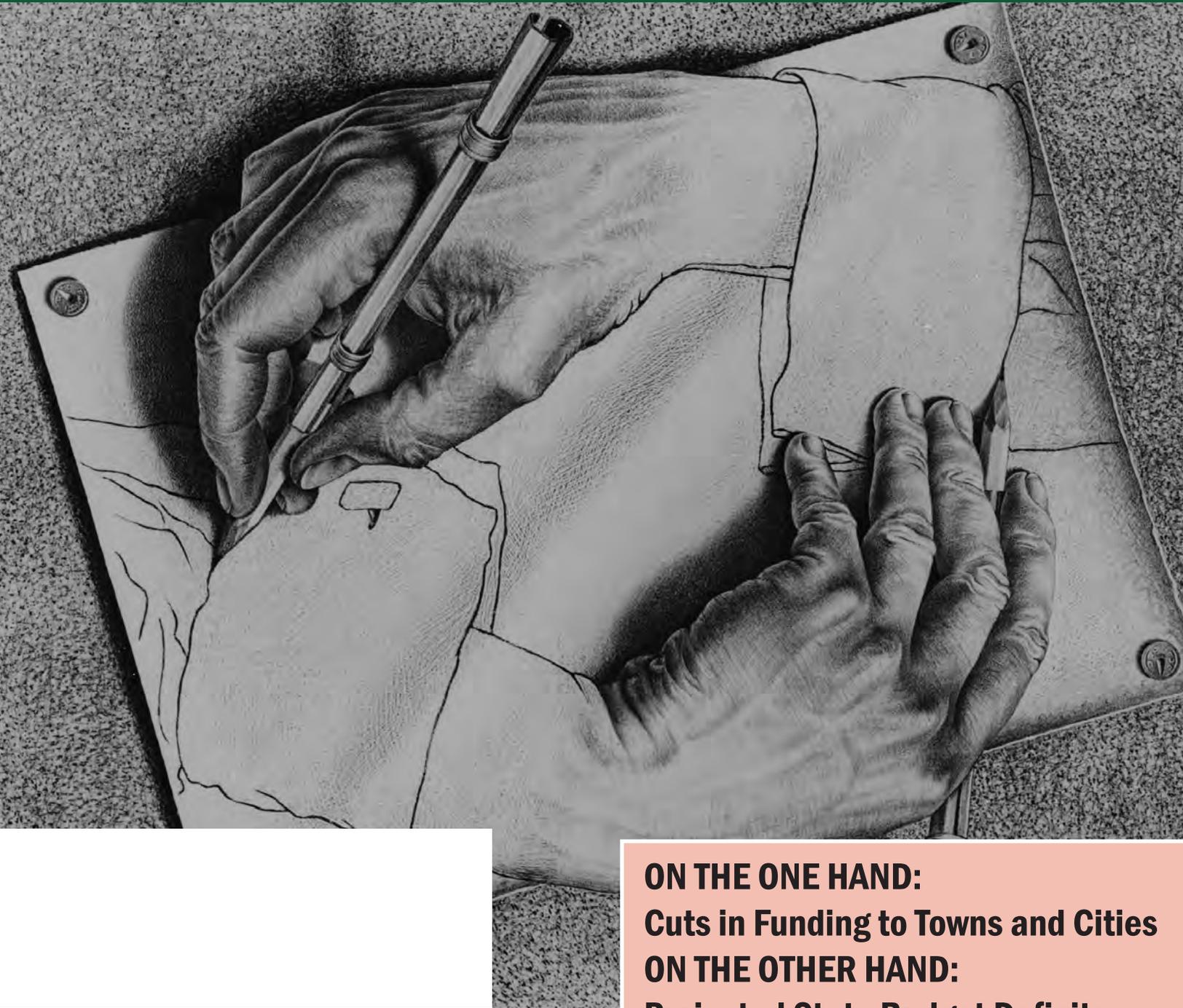


December 2012

maine townsman

The Magazine of the Maine Municipal Association



ON THE ONE HAND:
Cuts in Funding to Towns and Cities
ON THE OTHER HAND:
Projected State Budget Deficits

ALSO IN THIS ISSUE: _____

Analyzing the New Legislature | Working Group Updates | Retirement Benefits & the Law

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The Magazine of the Maine Municipal Association

Protecting Our Core Issues 5

Maine Municipal Association's Legislative Policy Committee has deliberated in advance of the 2013 Legislative session. It adopted a platform of protecting core programs such as Municipal Revenue Sharing.

Who Makes Up the New Legislature? 13

It's well-known that the balance of power in the new Maine Legislature will shift from Republicans to Democrats but this article digs deeper, comparing the Legislature to the electorate in party affiliation, gender and other measures.

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The summer of 2012 saw legislative working groups address issues such as General Assistance, stormwater and Dig Safe – and MMA was part of many of them. Here is an important update and list of recommendations from the various groups.

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The recent election included many town and city referendums, on topics from charter changes to school district withdrawals. This roundup captures many of those local votes.

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COVER PHOTO: The cover this month is an illustration by Dutch artist M.C. Escher, known as "Drawing Hands." It is used with permission from The M.C. Escher Company.



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Our Legislative Agenda: Protect the Core

By Geoff Herman, Director of State & Federal Relations, MMA

In the very near future the Maine Legislature will convene to begin conducting business and establishing the state's priorities over the next two year period. For Maine's municipal leaders, "Revenue Sharing" will be the front-and-center issue.

History of Sharing. The Municipal Revenue Sharing program was established in 1972 and has been modified several times since, in nearly every case to expand its core purpose.

Almost since its inception 40 years ago, revenue sharing has been a statutory dedication rather than an annual appropriation. Revenue sharing resources are not state "General Fund" dollars as a matter of law. Put another way, the revenue sharing program was designed to not compete with other state appropriations. Since the early 1980s the statutory dedication has been 5% of all sales and income tax revenue collected by the state. Revenue sharing resources are distributed to the towns and cities for two reasons articulated in statute. First, in recognition that "*the principal problem of financing municipal services is the burden on the property tax*". Second, the purpose of the distribution is to "*stabilize the municipal property tax burden and aid in financing all municipal services*". The only permitted use of revenue sharing dollars, also written into Maine's tax code, is to lower the town or city's property taxes.

In short, municipal revenue sharing is a structural component of the state's taxation policy. It is based on a legislative "finding" (a conclusion or determination of the Legislature articulated in statute) that a certain share of the state's more progressive consumption tax and income tax resources are needed to blunt the regressive impacts of the property tax,

which falls on too many people irrespective of their ability to pay. Unlike most other states in the U.S., the value of real estate and certain personal property is the only tax base available to Maine's towns and cities to obtain funding to pay for their local government services. There are no "local option" taxes in Maine. Revenue sharing is the alternative.

Also by design, the revenue sharing distribution naturally increases as the state's economy expands and naturally decreases as the state's economy contracts, so as to deliver both the long and the short of it. That is why both the name and the nature of the program is "sharing".

As the chart on page 6 demonstrates, the previous two legislatures decided to ignore this 40 year old law and use the municipal revenue sharing account as their special "rainy day" piggy bank. Accomplished in the first

instance as a one-time emergency, the annual raiding of revenue sharing is becoming a habitual practice. Like most bad habits, the lawmakers' desire to take property tax relief funds to pay for state spending priorities seems to both grow and become harder to break year-over-year. During the last biennium, the 125th Legislature siphoned off nearly \$85 million dedicated by law to help with property taxes and used those relief funds instead to balance the state budget.

New Attitude Emerging? Municipal officials have to wonder. Is a new attitude emerging that supports chronically raiding revenue sharing? As the years go by, how many newly elected legislators are aware of the history and purpose of the municipal revenue sharing program? Other than municipal officials, who is reminding them about this broken commitment?

The current trend represents a new

CORE ISSUES

As established by MMA's 69-member Legislative Policy Committee, the Association's advocacy agenda going into the 2013 legislative session is characterized by the phrase "Protect the Core," which means that the Association's primary advocacy efforts will be focused on:

- **Municipal Revenue Sharing.** Stopping the legislative raids on municipal revenue sharing
- **Funding Public Schools.** Reversing the trend and moving toward (rather than away from) 55% state funding for K-12 education
- **Transportation Investments.** Making appropriate investments in the state's transportation infrastructure
- **Water/Stormwater.** Finding alternative sources of financial contribution and more cost effective ways to comply with the wastewater, drinking water and stormwater mandates that are passed down from the Clean Water Act

In addition to, or in further support of, this "Protect the Core" priority, the LPC approved six specific initiatives to be included in MMA's legislative agenda. Details of those initiatives are provided in this article starting on page 9.

REVENUE SHARING IMPACTS: REGION TO REGION

Aroostook County Region

The Biggest Dollar Loss: Presque Isle

Revenue Sharing Distribution by Law:	\$1,660,138
Actual Distribution by Legislature:	\$1,134,722
Dollar Loss:	\$525,416

The Biggest Impact on Property Tax Rate: Limestone

Revenue Sharing Loss in Dollars:	\$113,459
Property Tax Commitment:	\$1,259,482
Loss as % of Commitment:	9.0%

Revenue Sharing Data for FY 2013

Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary

legislative attitude with respect to the state's intergovernmental financing obligations. During the 40 year history of the municipal revenue sharing program, the Legislature only significantly raided the program once, in 1992-93, before these substantial and annualized raids began with the 2009 state budget. There is no doubt there are some who would like this new attitude to become the "new normal."

Two years ago, Governor LePage recommended structurally modifying the program in a manner that would allow the Legislature to establish each year what amount of state revenue, if any, should be shared with local government. Responsibly, the 125th Legislature rejected that proposal.

Two months ago the Administration advertised its intentions when Commissioner Sawin Millet, who heads the Department of Administrative and Financial Services, told the Bangor Daily News that restoring revenue sharing to its statutory level is "an unlikely scenario."

Despite the Administration's prediction of the upcoming scenario, the ultimate scenario is enacted by the Legislature. The lawmakers coming into Augusta in January have the capacity to recommit to the intergovernmental funding obligations long established in Maine law. Those funding obligations were developed to establish and support the core relationship between state and local government.

The legislative agenda of the Maine Municipal Association over the next two years is to protect that core.

Pulling Revenue Sharing and Edu-

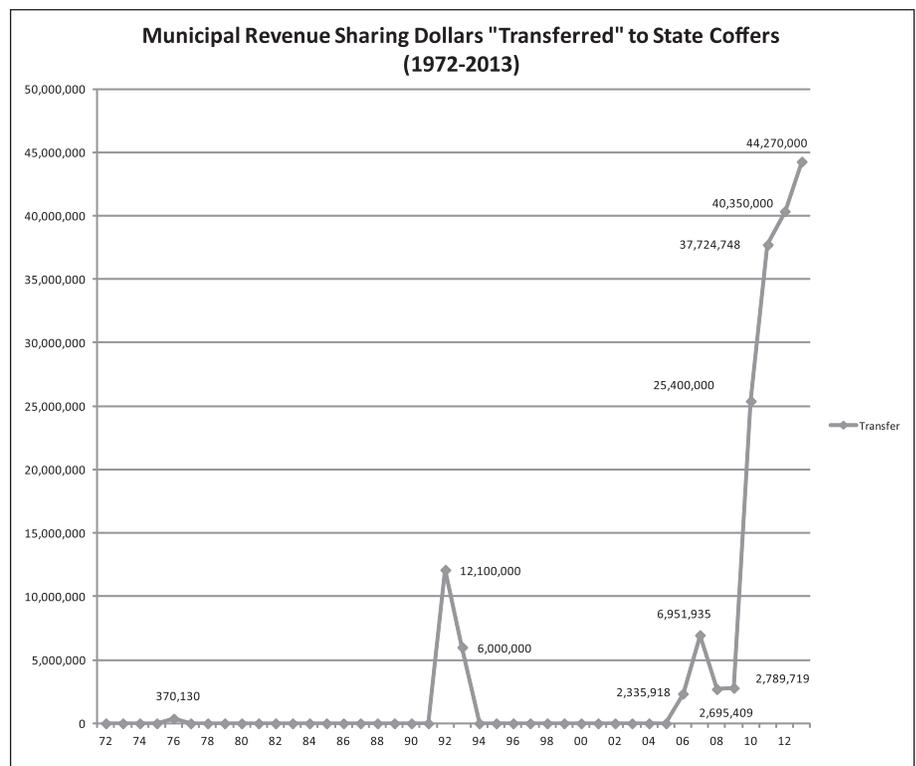
cation Funding into the "Structural Deficit" Discussion. When the Legislature fails to meet a statutory funding obligation, the shortfall is memorialized in a calculation known as the "structural deficit." The calculation of a "structural deficit," as well as the identification of specific spending programs that "cause" the projected deficit, can be managed politically as both a sword and a shield. As an example, the term "deficit" (as shorthand for "structural deficit") was both used and robustly abused in the stream of negative advertising that characterized this

fall's election season.

The structural deficit is a projection (rather than actual deficit spending) that calculates the difference between projected state revenue over the next two fiscal years and projected state expenditures over the same time period based on existing state programs and spending requirements established by law. In late September, the Administration's Bureau of the Budget issued a report that calculated the structural deficit over the next two years at \$756 million. That estimate has subsequently grown in size because the most recent state revenue re-projection is now predicting another \$128 million bucket of red ink over the two-year period. Because municipal revenue sharing is now being underfunded, a chunk of this structural deficit is identified as the revenue sharing shortfall. Because K-12 education is chronically underfunded, a bigger chunk of the structural deficit is identified as the education funding shortfall.

It's a self-fulfilling dynamic. Whatever it is that the Legislature decides not to fund at the levels required by law becomes problematic as a consequence...the cause of potential deficits...and therefore deserving of continued short funding.

All of which introduces the circular M.C. Escher drawing on the cover of



this edition of the Maine Townsman. On the one hand, there is underfunding the state's financial obligations to local government. On the other hand, there is the so-called "structural deficit," created by the shortchanging of statute and creating, in turn, the political challenge of a deficit that has to be solved.

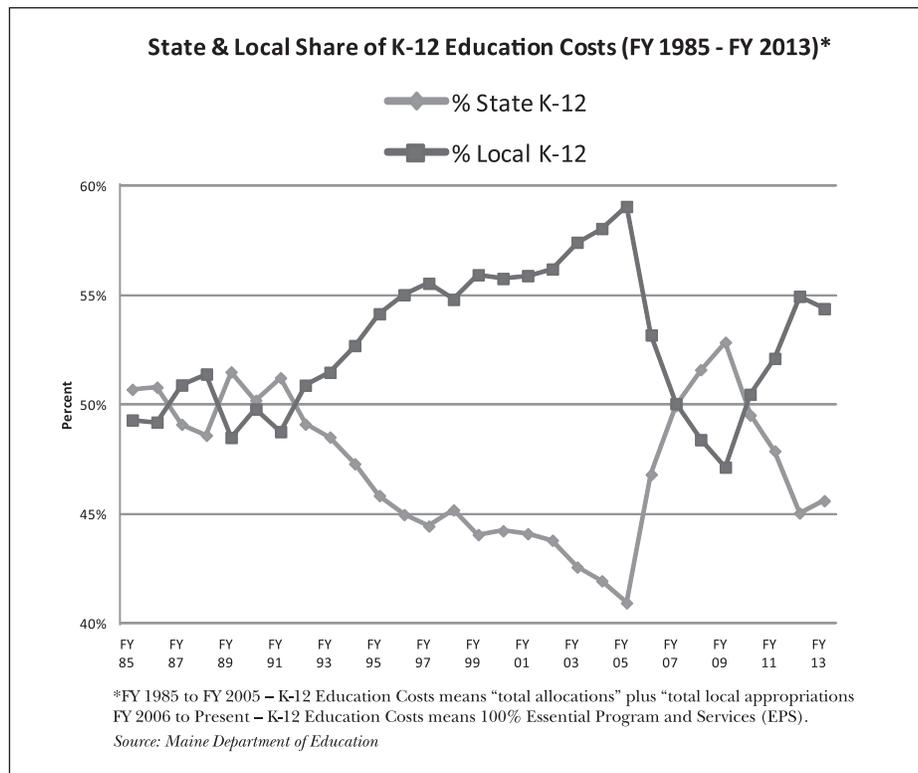
To some policy makers it can seem so simple. Continue underfunding statutory commitments to local government and, voila, the deficit is resolved!

Core Element #2: Education Funding. As indicated above, included in the cluster of spending programs that have unfortunately been branded as causing the "structural deficit" is the Legislature's obligation to pay for 55 percent of the cost of K-12 education out of the state's General Fund.

The 55 percent standard was first enacted by the Legislature in 1984 as an "intention" and reestablished by Maine's voters in 2004 as a requirement. Despite the statute of three decades and the eight year old citizen initiative, that standard has never been met.

The chart on this page tracks the state's progress since the 55 percent standard was first established. The graphic, which looks like some kind of surgical forceps, delivers two conclusions based on the data.

First, even after all these years, the state and local funding obligations are flipped from what they should be. The more progressive, broad-based tax resources are paying for just 45 percent



of the school funding model and the more regressive property tax is paying a 55 percent share, which is the exact share Maine's voters said should be appropriated from the state's General Fund. That reversal in obligation is adding \$190 million a year to the property tax burden.

Second, the graphic shows an unmistakable tendency since 1991 for the state share of education costs to decrease year-over-year and the local share to increase. Except for the three

year period from FY 2006 through FY 2008, where a good faith attempt on the part of the Legislature to "ramp up" to 55 percent was implemented, the 22-year period is characterized by the state contribution going in the wrong direction.

A municipal goal over the next two-year period is to rebuild the ramp to 55 percent. It is realized that this standard, which is important from both an education equity and taxation equity point of view, is not going to be achieved overnight. With that said, a sustainable path toward honoring that commitment – a path that doesn't go backward – needs to be laid out.

Core Element #3: Transportation Infrastructure. It is the municipal experience that a strong economic development program includes soundly constructed highways and well-functioning rail and public transit systems that can efficiently move both freight and passengers. It's not the whole economic development package, but without it you can't move forward.

Against that backdrop, municipal officials generally believe that as a state we are not investing enough in the maintenance of our transportation infrastructure. The observation is that a structural lack of resources is preventing the appropriate level of re-

REVENUE SHARING IMPACTS: REGION TO REGION

Hancock/Washington County Region

The Biggest Dollar Loss: Ellsworth

Revenue Sharing Distribution by Law:	\$751,576
Actual Distribution by Legislature:	\$509,924
Dollar Loss:	\$241,652

The Biggest Impact on Property Tax Rate: Calais

Revenue Sharing Loss in Dollars:	\$153,377
Property Tax Commitment:	\$3,427,070
Loss as % of Commitment:	4.5%

Revenue Sharing Data for FY 2013

Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary

pair for the road and bridge network. They believe shortchanging necessary maintenance creates what amounts to a disguised debt obligation for future generations.

At issue is the static nature of the state's Highway Fund, which pays for the ongoing development and maintenance of Maine's transportation system. Capitalized almost entirely by the excise tax on motor fuels (the "gas tax") and motor vehicle registration fees, the Highway Fund has been stuck in about the same place for the last 10 years, generating approximately \$320 million annually, give or take. Of that total, about \$31 million is used to help fund the Maine State Police, \$33 million is used to fund the Secretary of State's Office, and \$4 million is dedicated to two other state agencies, leaving behind \$252 million each year for the direct needs of the transportation system.

Unfortunately, the costs of maintaining and protecting these highway and bridge assets are not similarly frozen in place. These expenses tend to increase year after year with a decided volatility because the major cost centers for road and bridge repairs (sand and gravel, asphalt, machinery operations, etc.) are either directly or indirectly linked to the price of petroleum.

Unlike the revenue sharing issue, as discussed above, the transportation funding problem is not created because the Legislature is "raiding" the transportation accounts. The Highway Fund is stuck in a ditch because of its inherent structure, which relies on increased consumption of motor fuels for growth. It is a funding model directly at odds with the times.

The municipal proposal is to advance a transportation bond of some substance, the details of which are discussed below. With interest rates at historic lows, it is an ideal time to make an investment in our transportation system to retain its functionality. There are many contributing components to an economic development plan, but transportation infrastructure is a driving force.

Core Element #4: Water Management and Protection Obligations. The federal Clean Water Act is relentless in its demands for ever-higher levels of surface and groundwater management and protection. No level of accomplishment is ever enough; more must

REVENUE SHARING IMPACTS: REGION TO REGION

Penobscot County Region

The Biggest Dollar Loss: Bangor

Revenue Sharing Distribution by Law:	\$ 5,020,169
Actual Distribution by Legislature:	\$3,427,127
Dollar Loss:	\$1,593,042

The Biggest Impact on Property Tax Rate: Patten

Revenue Sharing Loss in Dollars:	\$46,590
Property Tax Commitment:	\$677,973
Loss as % of Commitment:	6.9%

*Revenue Sharing Data for FY 2013
Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary*

always be done.

Perhaps that relentlessness is as it should be, but there is no particular reason why the costs of meeting these obligations needs to be so one-sidedly borne by the local units of government and the property taxes and utility rates upon which they must rely. The larger units of government at the state and federal level have a stake in the results and should put up a larger ante of a financial nature to balance and justify the regulatory presence for which they are well known.

It's not as though these federal requirements stand patiently in place so that they might mesh seamlessly into municipal budgets. At least for some towns and cities, the Clean Water Act mandates are more like waves crashing

on a beach in a constant roll. Waste water treatment standards, drinking water purification requirements, combined sewer overflow construction and discovering and remediating single source pollution discharge points make up the foundation of the mandate. Most recently, an "all other" regulatory category is being implemented that is designed to bring to a braking halt non-point source pollutants (phosphorus, salts, petroleum residues, etc.) that wash off hard surfaces into the waterways of 30 so-called "MS4" Maine municipalities, as those towns and cities are identified by federal standards.

There will be two "Protect the Core" efforts with respect to water management issues. Working with

REVENUE SHARING IMPACTS: REGION TO REGION

Oxford/Somerset County Region

The Biggest Dollar Loss: Fairfield

Revenue Sharing Distribution by Law:	\$1,023,556
Actual Distribution by Legislature:	\$698,754
Dollar Loss:	\$324,802

The Biggest Impact on Property Tax Rate: Mexico

Revenue Sharing Loss in Dollars:	\$179,027
Property Tax Commitment:	\$2,644,140
Loss as % of Commitment:	6.8%

*Revenue Sharing Data for FY 2013
Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary*

REVENUE SHARING IMPACTS: REGION TO REGION

Androscoggin County Region

The Biggest Dollar Loss: Lewiston

Revenue Sharing Distribution by Law:	\$6,001,821
Actual Distribution by Legislature:	\$4,100,556
Dollar Loss:	\$1,901,265

The Biggest Impact on Property Tax Rate: Livermore Falls

Revenue Sharing Loss in Dollars:	\$162,982
Property Tax Commitment:	\$3,041,600
Loss as % of Commitment:	5.4%

Revenue Sharing Data for FY 2013

Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary

other interested parties, MMA will seek alternative funding sources to financially assist with municipal water management obligations. In addition, MMA is committed to helping the affected towns and cities negotiate with federal and state regulators to allow for some cost effective approaches to compliance.

Specific Legislative Initiatives. In addition to these four core areas of priority, the Association's Legislative Policy Committee also developed six specific legislative initiatives, the first three of which are directly related to the task of protecting and upgrading the state's transportation assets.

- **Transportation bond.** The first bill is a \$100 million transportation bond proposal that includes \$65 mil-

lion for highways and bridges, \$20 million for upgrading the railroads, \$10 million for public transit systems, and \$5 million for pedestrian ways. Representative Ann Peoples of Westbrook has graciously agreed to sponsor this bond proposal for MMA.

- **Road "give backs."** Representative Andrea Boland of Sanford will be the prime sponsor of a road "give back" bill for MMA. Under certain circumstances, state roads can be turned back to "urban compact" municipalities provided the roadway is of "good quality." This bill clarifies the definition of "good quality" and creates a more bilateral process whenever a state road is turned back to a municipality by the Department of Transportation.

- **Small regional disasters.** MMA's

Legislative Policy Committee (LPC) is seeking legislative consideration for this bill as a result of serious roadway and railway infrastructure damage caused by a microburst event in the Brownville/Milo region in late June of this year. Former LPC member Representative Beth Turner of Burlington has agreed to sponsor a bill that opens up state-level disaster relief assistance when municipal infrastructure is destroyed by a localized natural disaster that does not quite trigger the level of federal recognition.

The other three bills developed by MMA's Legislative Policy Committee to be advanced to the incoming Legislature fall into the "increased accountability", "anti-mandate," and "general maintenance" categories.

- **Circuitbreaker benefits and property tax payments.** The idea behind this "increased accountability" bill was generated within the Taxation Committee room in the spring of 2012. The idea surfaced in the context of a bill dealing with the relationship between cash "circuitbreaker" payments made by the state to people to help with their property taxes and the actual payment of those taxes. The version that was developed within the Committee room was supported conceptually but had a state cost attached to it because of increased responsibilities on the part of Maine Revenue Services. The state "fiscal note" killed the effort. This version, which improves upon the first draft, more directly links the distribution of circuitbreaker cash benefits to the actual payment of property taxes whenever those taxes, which were levied the previous year, have not been paid. Our thanks to Representative Terry Hayes of Buckfield for sponsoring this proposal.

- **A Mandate Embedded in PSAP Services.** This bill addresses a mandate that was enacted a couple of years ago under the radar. The responsibilities of Public Safety Answering Points (PSAPs) have evolved and expanded over time, most recently in the area of responding to medical emergencies. Not only do PSAP employees who answer calls of medical emergencies have to be specially trained, a separate "quality assurance" system is required that monitors those calls after-the-fact, scores the calls according to a sophisticated rating system, and provides follow-up training to the front line em-

REVENUE SHARING IMPACTS: REGION TO REGION

Knox/Lincoln County Region

The Biggest Dollar Loss: Bath

Revenue Sharing Distribution by Law:	\$1,157,917
Actual Distribution by Legislature:	\$789,468
Dollar Loss:	\$368,449

The Biggest Impact on Property Tax Rate: Warren

Revenue Sharing Loss in Dollars:	\$134,107
Property Tax Commitment:	\$3,953,416
Loss as % of Commitment:	3.4%

Revenue Sharing Data for FY 2013

Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary

ployees to address any issues raised in the quality assurance evaluation. The quality assurance function is handled internally and entirely financed by each individual PSAP; no state resources or phone surcharge resources are made available to help pay for these new operational oversight obligations.

The bill to deal with this emerging unfunded mandate, sponsored by Representative Roberta “Bobbi” Beavers of South Berwick, would require the state to hire a third-party provider to perform this function, to create a more uniform application across all PSAPs, and pay for the services rendered to cover the mandated costs.

• **Right to Know Law Maintenance.**

Even though Maine’s Right to Know (or Freedom of Access) law was significantly amended during the last legislative session, it remains a law that demands ongoing maintenance. The constant march of new technologies and the ever-evolving line between right to know and right to privacy convinced MMA’s Legislative Policy Committee to develop a Right to Know Law maintenance bill which would: (a) create an exemption to the “public re-

ords” definition for e-mail addresses in the municipality’s possession only because the addressee has asked for one-way, non-interactive notifications from the municipality; (b) follow Massachusetts law by creating something more closely resembling an actual-cost-of-compliance obligation for people requesting very large quantities

of public records; and (c) create an exemption to the “public records” definition for information regarding a person’s disability who is seeking a disability variance from the Board of Appeals. Our appreciation is extended to Representative Mary Nelson of Falmouth for agreeing to sponsor this proposal. [ml](#)

REVENUE SHARING IMPACTS: REGION TO REGION

Cumberland/York County Region

The Biggest Dollar Loss: Portland

Revenue Sharing Distribution by Law:	\$9,048,410
Actual Distribution by Legislature:	\$6,169,590
Dollar Loss:	\$2,878,820

The Biggest Impact on Property Tax Rate: Sanford

Revenue Sharing Loss in Dollars:	\$830,381
Property Tax Commitment:	\$23,375,293
Loss as % of Commitment:	3.6%

Revenue Sharing Data for FY 2013

Tax Commitment Data: 2011 Municipal Valuation Return Statistical Summary

OUR SPONSORS:

MMA wants to recognize and thank the following legislators for sponsoring six important bills during the 2013 Legislative Session:



Rep. Roberta “Bobbi” Beavers,
So. Berwick



Rep. Andrea Boland, Sanford



Rep. Terry Hayes, Buckfield



Rep. Beth Turner, Burlington



Rep. Mary Nelson, Falmouth



Rep. Ann Peoples, Westbrook

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2013 SPRING BOND ISSUE SCHEDULE

Capital financing through the Bond Bank's General Bond Resolution Program allows borrowers to take advantage of the Bond Bank's high investment grade rating, low interest rates and reduced issuance and post issuance costs. Traditionally twice a year, in the spring and fall, the Bond Bank will consolidate eligible applicants and engage in a bond sale. From application to receipt of funds the bond issuance process usually lasts three to four months. Below is the schedule for the Bond Bank's Spring Issue.

FEBRUARY						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

Wednesday, February 6th
Application Deadline.

Wednesday, March 20th
Application approval (Board Meeting).

Monday, April 8th
Preliminary opinions and loan agreements due from bond counsel of each borrower.

MARCH						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Wednesday, April 10th
Last date for signing school contracts and rates in place for water districts. PUC Approvals due.

Monday, April 22nd & Tuesday, April 23rd
Maine Municipal Bond Bank Pricing.

APRIL						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Wednesday, April 24th
Maine Municipal Bond Bank Sale Meeting (Board Meeting).

Tuesday, May 14th
Final documents due from bond counsel.

Wednesday, May 22nd
Pre-Closing.

Thursday, May 23rd
Closing - Bond Proceeds Available (1:00 PM)

MAY						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

If you would like to participate in or have any questions regarding the 2013 Spring Bond Issue, please contact Toni Reed at 1-800-821-1113, (207)622-9386 or tir@mmbb.com.



Introducing Maine's New Legislature

By Kate Dufour, Senior Legislative Advocate, MMA

Although the excitement of the November election is fading away, we offer a few statistical observations that if nothing else may provide you with an advantage at the next trivia night.

Party Affiliation. According to information posted on the Maine House of Representatives website, there are now 89 Democrats, 58 Republicans and 4 Green/Independent/unenrolled members in the House, and 19 Democrats, 15 Republicans, and 1 Independent member in the Senate. As shown in *Figure 1*, this party affiliation representation is largely characteristic of the trends that were prevalent in the Maine Legislature between 1997 and 2009, when the Democrats held

majorities in the House, or in the case of the Senate, held majorities or were evenly divided. During that 14 year period, the Democrats had majorities averaging 84 in the House and 19 in the Senate.

The breakdown among the parties in the Maine Legislature falls short of reflecting the make-up of Maine's active registered electorate. As shown in *Figures 2 and 3*, while only 3 percent of the newly elected Legislature is represented by Green, Independent and unenrolled members, 40 percent of Maine's active electorate was either enrolled in the Green party or otherwise unaffiliated.

Gender. According to the most recent U.S. Census data, women ac-

count for 51 percent of Maine's estimated total population of 1.3 million. Based on those statistics, it would appear that women are significantly underrepresented in the Maine Legislature (*Figure 5*), with women accounting for only 29 percent of all members elected to the House and Senate.

That being said, it is impossible to elect a woman to office if she is not willing to run. As a matter of fact, women who ran for state office in 2012 did very well. On Nov. 6 women won 65 percent of the 83 legislative races they participated in (68 in the House and 15 in the Senate). Furthermore, while the Senate has seen a significant loss in the number of

[Unless otherwise noted, the data used in this article come from the information provided on the Secretary of State's website or the 1995-2011 Senate and House Registers.]

Figure 1
Party Affiliation - Maine House and Senate

Legislature	Senate			House		
	Democrat	Republican	Green/Ind/ Unenrolled	Democrat	Republican	Green/Ind/ Unenrolled
2013-14	19	15	1	89	58	4
2011-12	14	20	1	72	78	1
2009-10	20	15	0	95	55	1
2007-08	18	17	0	88	61	2
2005-06	19	16	0	76	73	2
2003-04	18	17	0	80	67	4
2001-02	17	17	1	89	61	1
1999-00	20	14	1	79	71	1
1997-98	19	15	1	81	69	1
1995-96	16	18	1	77	74	0

2013 House & Senate Leadership

HOUSE

Speaker of the House

Mark Eves, North Berwick

Majority Leader

Seth Berry, Bowdoinham

Assistant Majority Leader

Jeff McCabe, Skowhegan

Minority Leader

Kenneth Fredette, Newport

Assistant Minority Leader

Alexander Willette, Mapleton

SENATE

President of the Senate

Justin Alfond, Cumberland County

Majority Leader

Seth Goodall, Sagadahoc County

Assistant Majority Leader

Troy Jackson, Aroostook County

Minority Leader

Michael Thibodeau, Waldo County

Assistant Minority Leader

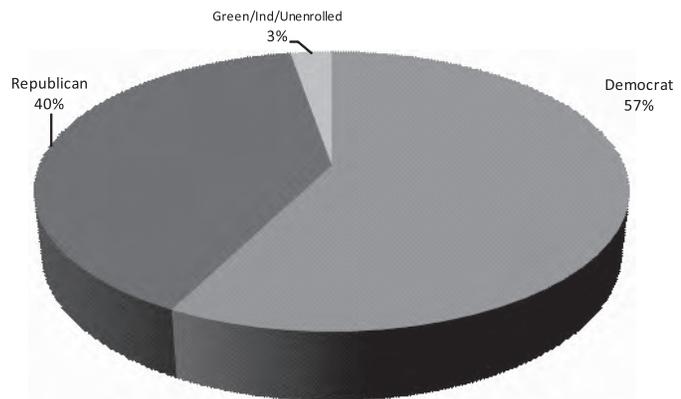
Roger Katz, Kennebec County

women elected, strides in the House continue to move forward. Not only is the current class of women elected to the House the largest it has been in the last 20 years, the success rate for female candidates vying for seats in the House in the 2012 election was nearly 70 percent.

Leadership. With respect to gen-

der and leadership roles, women have experienced many highs and lows during the past 20 years. The 10 leadership positions, which are elected by the members of the Legislature in their respective chambers, include the President of the Senate, Speaker of the House and the majority, assistant majority, minority, and assistant

Figure 2
Newly Elected Maine Legislature - House & Senate



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minority leaders in both the House and Senate. In 2013, no women were elected to leadership positions, and only two of the ten races included a woman candidate. As shown in *Figure 7*, women have held at least two leadership positions and as many as five since the mid 1990s, but none for the

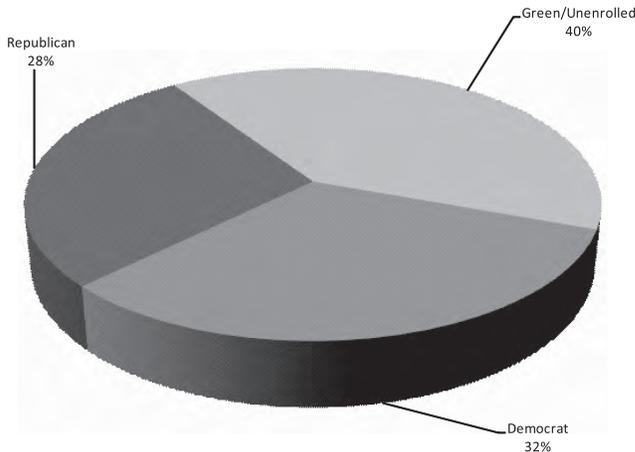
next two years.

Legislative Experience. Historically, the cumulative experience of all Maine legislators, measured in years of service, has been consistent over time. One exception is the first-year implementation of term limits law in 1996, which had a measurable impact

Figure 4
Total Years of Legislative Experience

	Senate	House
2013-14	Unknown	Unknown
2011-12	268	464
2009-10	318	468
2007-08	298	441
2005-06	248	404
2003-04	234	366
2001-02	268	471
1999-00	284	438
1997-98	278	340
1995-96	262	512

Figure 3
Registered Maine Voters - 2012



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in terms of reduced experience levels (see *Figure 4*). Although the information necessary to determine the level of experience of the most recently elected Legislature has not yet been calculated, it is assumed that historical trends will hold, with the cumulative experience hovering around the 430 years in the House and 270 years in the Senate.

Age. Taking into account that age and experience are generally (but not always) related, it is expected that the trends in age will hover around the historical average (see *Figure 6*). Over the last 20 years, the average age of a member of the House has been 53, and just one year older in the Senate (54).

A Toast to Municipal Election Clerks. The election of the members of the 126th Legislature would not have been possible without the efforts of the thousands of election officials across Maine, many of them providing their services on a volunteer or all-but volunteer basis. Municipal election clerks, wardens and other officials deserve our collective appreciation for conducting an exceptionally well run election. With a U.S. presidential race, highly contested U.S. Senate

and House races, as well as a divisive citizens' initiative on marriage equality, Nov. 6, 2012 was by no means "a run of the mill" election.

Based on data found on the Secretary of State's website, 78 percent of Maine's active electorate cast ballots in this election. Despite all of

the distractions of this last election cycle, election officials proved once again that they are above the fray and delivered their services with accuracy and without complaint. Of all the recounts for the Maine Legislature that were conducted, none were overturned and the extraordinary

Figure 5

Breakdown of Gender in Maine House & Senate

Legislature	Senate		House	
	Female	Male	Female	Male
2013-14	20%	80%	31%	69%
2011-12	20%	80%	30%	70%
2009-10	23%	77%	30%	70%
2007-08	34%	66%	30%	70%
2005-06	31%	69%	21%	79%
2003-04	37%	63%	25%	75%
2001-02	43%	57%	27%	73%
1999-00	46%	54%	23%	77%
1997-98	37%	63%	23%	77%
1995-96	31%	69%	24%	76%

Figure 6

Average Age of Maine Legislator

	Senate	House
2013-14	Unknown	Unknown
2011-12	54	53
2009-10	55	54
2007-08	56	55
2005-06	53	54
2003-04	55	53
2001-02	53	53
1999-00	52	50
1997-98	Not Recorded	50
1995-96	Not Recorded	50

Figure 7

Breakdown of Gender in 10 Leadership Positions

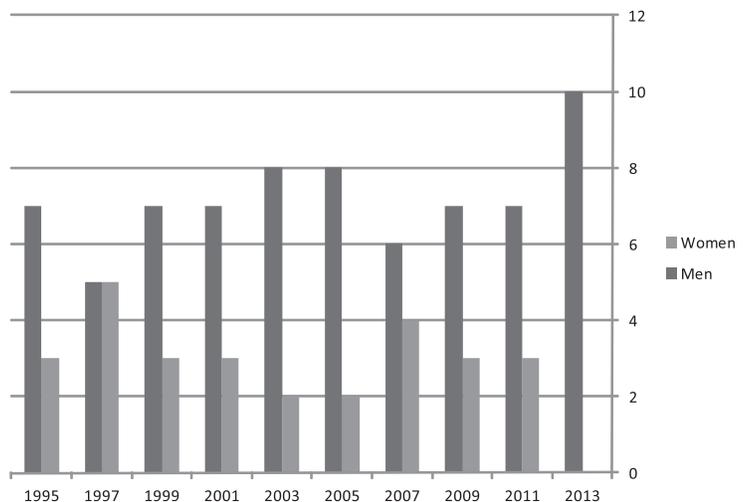


Figure 8

Results of 2012 Recounts in Maine Legislative Races

Recount	Unofficial Results	Official Results	Original Count Upheld
House District 29 - Pittsfield			
Engelhardt, Robert (R)	1,838	1,844	
Short, Stanley (D)	1,853	1,855	√
House District 45 - Palermo			
Harmon, R. Ryan (R)	2,219	2,222	
Jones, Brian (D)	2,252	2,253	√
House District 54 - Winslow			
Morissette, Susan (R)	2,142	2,176	
Nadeau, Catherine (D)	2,196	2,248	√
House District 70 - Auburn			
Bickford, Bruce (R)	2,266	2,264	
Werts, R. Wayne (D)	2,268	2,268	√
House District 80 - Litchfield			
Sukeforth, Rachel (D)	2,454	2,455	
Newendyke, Melvin (R)	2,459	2,459	√
House District 94 - Buckfield			
Turner, Timothy (R)	2,226	2,296	
Hayes, Teresea (D)	2,260	2,338	√
House District 109 - North Yarmouth			
Austin, Susan (R)	2,728	2,734	
Graham, Anne (D)	2,770	2,768	√
House District 127 - Scarborough			
Aranson, Paul (D)	2,720	2,716	
Volk, Amy (R)	2,725	2,728	√
House District 137 - Biddeford			
Guay, William (R)	2,564	2,559	
Casavant, Alan (D)	2,579	2,574	√
House District 144 - Acton			
Archambault, John (R)	2,379	2,351	
Noon, William (D)	2,398	2,374	√
Senate District 17 - Androscoggin Cty			
Quint, Colleen (D)	9,719	9,790	
Mason, Garrett (R)	9,766	9,818	√
Senate District 20 - Lincoln County			
Fossel, Leslie (R)	10,746	10,772	
Johnson, Christopher (D)	10,880	10,943	√

accuracy of the locally determined results as tallied on election night was verified in recount after recount (see Figure 8).

Congratulations are due to all election officials, at the municipal and state level, for conducting such a smoothly run election. Thank you for all your excellent work. 



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Working Group Updates, Recommendations

By Kate Dufour and Greg Connors, Legislative Advocates, MMA

MMA was engaged in several working group efforts over the summer and fall of 2012, three of which are particularly relevant to the upcoming legislative session for Maine's towns and cities: the General Assistance Working Group, the Dig Safe Working group, and a self-created working group of the 30 municipalities in Maine (the so-called MS4 communities) that are required under the federal Clean Water Act to specially control the discharge of stormwater into their waterways. What follows are updates on the work of those three working groups.

GENERAL ASSISTANCE PROGRAM CHALLENGE

On April 12, 2012 the Legislature enacted LD 1903, which was one of the budget bills necessary to make the non-Medicaid related funding changes to balance the FY 2012-13 General Fund budget. Included as part of LD 1903 was a directive to the Commissioner of the Department of Health and Human Services (DHHS) to convene a nine-member working group to review the General Assistance (GA) program and make recommendations for attaining \$500,000 in savings in the state's share of the GA program in the second half of FY 2013 (Jan. 1, 2013 to June 30, 2013).

Starting in early June, the nine-member Working Group, represented by the Department, municipal officials and client advocates, has invested 30 hours over the course of ten meetings to develop its proposals. Three subgroups were appointed by the Working Group and charged with developing recommendations in three specific areas, including: (1) program administration; (2) sustainable, long-term housing affordability

and accessibility; and (3) linking GA clients to more suitable federal programs such as social security and veterans assistance programs.

The Working Group has nearly completed its work and is scheduled to release the final report in mid-December. Once available, that report will be posted on MMA's website.

What follows is a brief summary of the recommendations supported by a majority of the Working Group that pertain to the administration of the GA program. The final report will include all of the Working Group's recommendations including changes to the TANF (Temporary Assistance to Needy Families) program, housing related proposals and recommendations for improving case management services for veterans and GA clients with disabilities.

1. *Linking Clients to Non-GA Benefits.* As part of existing practice, many GA administrators ensure that clients have information regarding the non-GA resources that are available. To further build on the success of this practice, a working group represented by the Department, municipalities, client advocates, CAP agencies and the Maine State Housing Authority would be charged with identifying an entity to act as the clearinghouse of potentially available resources. The intent would be to develop a resource list that would be regularly maintained and updated, and include information about the service, its providers, and eligibility requirements. In addition, the entity assigned the clearinghouse responsibility would be asked to develop a training session designed to help GA administrators and clients make the best use of the resource.

2. *Collaborative Technical Assistance.*

Building on the existing DHHS hotline program, the "collaborative technical assistance" program would be designed to ensure that all interested parties, including administrators, department officials, and clients are aware of program rules and processes. The system would be designed primarily as a means for sharing information and addressing misinterpretations of laws and regulations.

3. *Providing Access to State's Electronic Database.* GA administrators would be provided instantaneous access to the most accurate verified data available to determine client eligibility and benefits. The recommendation seeks to facilitate GA administrator access and use of an electronic database by: (1) directing the Department, in consultation with administrators and client advocates, to create the list of variables to be provided to administrators for the purpose of determining client eligibility; (2) enabling administrators to access the data through one of four means, including Internet, e-mail, fax or phone; (3) identifying incentives to encourage the use of the Internet-based process; and (4) directing the Department to study and report on the effectiveness of this process.

4. *Eliminate GA Funding for Burials.* Under existing law, the GA program pays for burial expenses, which range from \$735 for a cremation and \$1,125 for a burial. The section of law regarding the funding of burials would be repealed and a working group appointed to identify alternatives for funding burial services without directly or indirectly shifting costs to property taxpayers.

5. *Circuitbreaker Benefit as Income.* Under existing law, municipal GA administrators are prohibited from

counting the “circuitbreaker” property tax relief benefit as available income in the determination of eligibility and benefits. Under this recommendation, the circuitbreaker benefit would be counted as income unless used for basic necessities.

6. *Creation of a Guidance Document for Determining Emergencies.* A three member working group would be created to develop a guidance resource for GA administrators to use when determining if emergency assistance should be provided. The purpose of the document is to ensure that, to the extent practical, emergency assistance is uniformly issued from community-to-community. The working group would include a state, municipal and low-income client advocate representative.

7. *Using a Standardized Application Form.* All municipalities would be required to use the same application form.

8. *Amending the State’s Reimbursement Form.* All municipalities would be required to use the State’s revised reimbursement form.

9. *Unemployment Benefits as Available Income in Cases of Fraud.* GA adminis-

trators would be allowed to count unemployment insurance income as available to a client in situations where the client has lost unemployment benefits due to fraud.

10. *Pro-rata Calculation for Disqualifications.* Currently, the pro-rata share of assistance provided to a household when some, but not all, members are disqualified from receiving GA because of a program violation is calculated differently across the state. Existing law would be amended so that the pro-rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

11. *Fleeing Felons Ineligible for GA.* Persons for whom an arrest warrant has been issued after conviction would be ineligible for GA.

12. *Lump Sum Calculations.* As required by state statute, lump sum payments (e.g., inheritances, SSI retroactive payments, court settlements, etc.) provided to applicants must be taken into consideration in the determination of GA eligibility and benefits. Under existing law, the pro-rata calculation for a lump sum payment

is calculated by using the greater of the entire household’s verified actual monthly expenses or 150 percent of the applicable federal poverty level guidelines. This recommendation would require the pro-rata calculation to be based on verified actual monthly expenses only.

Linking TANF Lifetime Limits to GA Ineligibility. Although the summary outlined above focuses only on the “program administration” recommendations supported by a majority of the Working Group, there is one minority recommendation that warrants mentioning. In reaction to the May 2012 implementation of the Legislature’s 60 month lifetime limit on TANF, the Maine Welfare Directors Association (MWDA) advanced legislation to address concerns that the limitation would shift additional burdens from the federal/state funded TANF program to the state/municipal funded GA program. As proposed by MWDA, persons triggering the TANF limit would be ineligible to receive GA. The Legislature failed to enact the legislation. As a result, the proposal was also presented to the Working Group for its consideration. However, by a



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margin of 4 to 3 the proposal failed to garner Working Group support.

THE STORMWATER COALITION OF "MS4" COMMUNITIES

For the 30 municipalities that have to operate according to the requirements in the MS4 (municipal separate storm sewer systems) General Permit, it is that time again. Every five years the Department of Environmental Protection (DEP) issues this MS4 General Permit which affects designated municipalities throughout the state by requiring them to adhere to six minimum control measures (see sidebar). The next General Permit is scheduled to be effective on July 1, 2013 and discussions have commenced regarding a recently

distributed General Permit drafted by DEP. The 30 affected towns and cities are listed in a sidebar to this article.

The Statewide MS4 Effort. Shortly after the draft MS4 general permit was circulated to the regulated communities and other interested parties, MMA hosted a statewide meeting that invited all MS4 communities and their representatives. Approximately 40 individuals attended the meeting and many provided initial comments to the draft permit. It appears at this juncture that the group's general sug-

gestions to the DEP will include:

- Work with the MS4 communities to develop a statewide education/outreach/assessment program so the education and messaging regarding the issues surrounding stormwater is uniform throughout the state, allowing for some flexibility to address particular local situations.

- Coordinate the General Permit with other state stormwater-related regulation and eliminate redundancies in order to reduce confusion and increase predictability on the part of

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the regulated community.

- Allow for consolidated submissions to DEP. Instead of having multiple “awareness plans” for different target audiences, allow them to be submitted as a single awareness plan with separate components.

- Provide some explanation for several of the proposed regulatory expansions, and consider ways to better target those expansions to the actual problem that needs to be addressed.

The real issue. The issue boils down to how to best manage limited financial resources to improve water quality in each MS4 community. Earlier this year, MMA surveyed the MS4 communities in order to determine what financial impact stormwater regulations and implemented programs have on the three levels of government. With just short of 50 percent of the MS4 communities responding, the \$7.8 million cost of stormwater

regulatory compliance was being covered with \$7.5 million of local effort, or 96 percent of the total. The 4 percent balance was split between the state and the federal government.

Because of this lopsided “cost sharing” arrangement, MS4 communities understandably get concerned when the General Permit comes up for renewal and additional regulatory obligations may get added to the mix.

Going Forward. The next step is to assemble the comments generated by the statewide MS4 coalition and provide these to the DEP by a working deadline of mid-December. From there, the DEP will issue another draft to the group in January for further consideration. At the end of January, after the second round of comments are received and reviewed by the DEP, the revised general permit will be submitted to the Environmental Protection Agency’s Region 1 office and the state’s Attorney General’s office for these agencies’ review and comments. If these agencies do not sign off on the document, more drafting, more commenting, and more negotiating will ensue.

MMA will continue to provide support to the statewide MS4 group, as appropriate, and offer its comments to the DEP on the various versions of the draft MS4 General Permit during this process. Updates will appear in the Maine Townsman and the Legislative Bulletin.

DIG SAFE WORKING GROUP & MANDATORY MEMBERSHIP

Background. Most municipal officials are familiar with the Dig Safe system by which utilities are notified when excavation is being proposed in the municipal right of way and other areas where underground infrastructure is located. A background description of the Dig Safe system is provided in a sidebar to this article.

The Dig Safe Working Group consists of 22 members representing contractors, the Dig Safe system, private utility companies, public utilities and municipalities. The state’s Public Advocate chairs the working group. A list of membership is provided as a sidebar to this article.

The principal charge given to the working group for this year was to examine ways to facilitate the creation of a “one-call system” in order to no-

HISTORY OF THE STORMWATER LAW

In 1972, Congress enacted the Clean Water Act (CWA) to control discharges of pollutants to waters of the U.S. from point sources.

The initial effort to improve water quality focused primarily on reducing pollutants from industrial wastewater and municipal sewage discharges – these are the so called “point sources” – by regulating/permitting those discharges through the National Pollutant Discharge Elimination System (NPDES).

In 1990, EPA issued the Phase I stormwater rule requiring these NPDES permits for operators of municipal separate storm sewer systems (or MS4s) serving populations greater than 100,000. This began the process of protecting against “non-point source” pollution.

Phase II came in 1999, which applied the NPDES permit requirement to the smaller MS4s in urban areas.

In Maine, there are 30 MS4 municipalities that fall under Phase II.

These MS4 communities are regulated under a 5-year General Permit.

This MS4 permit establishes the types of activities that each MS4 community must engage in to be compliant with the CWA.

Once the permit is effective, each regulated community develops specific action plans that address the more general requirements under the MS4 General Permit.

The first Permit was promulgated in 2003, the second in 2008. July 1, 2013 is when the next General Permit is expected to be issued.

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tify the operators of underground facilities of pending excavations. Those facility owners are already notified through the operation of the existing Dig Safe system as well as normal municipal or water utility operations. Because the municipalities, which actually manage the entire right of way for the use of the for-profit utilities (gas, electricity, cable, telephone), are currently not required to be members of Dig Safe, the demand from the excavators for a "one call" system is essentially a call for mandatory municipal membership in Dig Safe. Currently, there is no mandatory municipal membership in Dig Safe throughout New England, although some municipalities join Dig Safe voluntarily.

The Working Group's Recommendation. By more than a two-thirds vote of the 23 members, the working group will recommend in their report back to the Legislature's Energy, Utilities and Technology Committee that two proposals be considered by the

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- Promote practices to reduce polluted stormwater runoff.

2. Public Participation

- Involve the public in planning and implementing stormwater programs to improve water quality.

3. Illicit Discharge Detection and Elimination

- Map stormwater infrastructure.
- Implement non-stormwater discharge ordinances.
- Establish a dry weather outfall and ditch inspection program.

4. Construction Site Stormwater Management

- Reduce stormwater pollutants from construction sites greater than one acre.

5. Post-Construction Stormwater Management

- Address stormwater pollutants from completed projects greater than one acre.
- Document proper functioning of stormwater treatment controls.

6. Pollution Prevention and Good Housekeeping

- Implement Operation and Maintenance procedures for all municipal facilities which potentially generate stormwater pollution.
- Train employees.
- Sweep streets and clean catch basins.
- Maintain and upgrade stormwater infrastructure.
- Create stormwater pollution prevention plans.

Source: Stormwater Regulations in Maine session, MMA's 2012 Annual Convention, Augusta Civic Center, 10/31/12

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The initial proposal, which received 17 supporting votes, would mandate Dig Safe membership for all municipalities that own or operate underground facilities (not counting stormwater infrastructure) and all water and sewer public utilities. The conditions of the municipal and public sewer and water utility membership are as follows:

- \$1 will be assessed for each Dig Safe notification regarding pending excavations for both current (voluntary) and mandated municipal and public water and sewer utilities. This assessment replaces the two-tier structure that Dig Safe assesses its members currently.

- No initial “set-up” costs will be assessed to these members (e.g., for Dig Safe to convert existing maps of underground facilities that don’t conform to its technology).

- The tolerance zone, which is the area around where the owner/operator believes the utility line is buried, will be maintained at thirty-six inches surrounding the underground facilities (which is the current standard for non-members of Dig Safe) as opposed to the eighteen inches standard that current Dig Safe members must adhere to when marking their facilities.

- No fines/penalties will be assessed against mandated municipal and public water and sewer utilities for a two-year period. During this time, according to the recommendation, a future working group and the Public Utilities Commission (PUC) will develop best management practices and various promotional efforts encouraging education over penalty assessments. After the two-year period expires, it can be assumed that penalties will be assessed by the Public Utilities Commission (PUC) for violations of Dig Safe regulations.

According to the Hobson’s Choice set up by this Dig Safe Working Group, if the Dig Safe Mandate recommendation is not accepted by all working group members, the fallback proposal will be recommended, as proposed by the state’s Public Advocate, serving as the Working Group chair.

The “fallback” proposal would require all municipalities with underground infrastructure and other public utilities to participate in the OK-to-Dig system currently administered by

BACKGROUND ON DIG SAFE SYSTEMS, INC.

Dig Safe is a non-profit, member-based organization located in Woburn, Mass. The organization was established in 1981 to promote public safety, protect utility services, and to prevent harm to property and environment caused by underground utility damage. Dig Safe receives excavation requests from contractors in Maine, and other New England states, and provides notification service to member utilities, which are gas, electric, telephone, and cable television. These member utilities are then required to mark their facilities according to Dig Safe rules so that when excavation occurs, damage to the utility line is less likely.

Generally, municipalities and public utilities are not required to become members of Dig Safe. As a result, when Dig Safe receives notification of an excavation, a disclaimer is provided to the excavator indicating that not all utilities are contacted through their system. A parallel system is in place at the Public Utility Commission (PUC) to help reach these non-members utilities. The parallel system is called “Ok to Dig”.

According to the current members of Dig Safe and excavation contractors, the advantages of all underground facility owners/operators being members of the Dig Safe system include:

- Increased safety to workers and the public as excavators will not need to make multiple calls.
- More accurate contact information will be available to the excavator as Dig Safe personnel will take ownership of updating their database.
- Upgraded mapping of utility infrastructure for current non-member utilities will occur since Dig Safe has offered to transfer paper maps to digital at no cost to the utility.
- Improved emergency contact protocol since Dig Safe has the mechanism in place to provide this service (and the “Ok to Dig” system does not).

Many municipalities and public water and sewer utilities are currently not voluntary members of the Dig Safe system. Some of the reasons for not becoming a member may include not wanting to:

- Lose direct contact with the excavator/contractor.
- Incur additional administrative expenses associated with managing the municipal right of way, which is already being entirely maintained at significant property taxpayer expense.
- Experience a reduction in the tolerance zone surrounding the underground facilities.
- Incur penalties assessed by the PUC.
- Pay Dig Safe’s membership fee.



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2012 DIG SAFE WORKING GROUP APPOINTEES

Working Group Member	Affiliation	Supported Initial Proposal	Supported Fall-back Proposal
Dana Wardwell	City of Bangor; Representing public works officials	Abstained	NO
Bob Burns	Town of Gorham; Representing public works officials	√	NO
Kevin Murphy	RJ Grondin & Sons; Representing builders/contractors	√	√
Marc Levesque	On Target Utilities Svcs; Representing builders/contractors	√	√
Bruce Hubbard	ETTI directional boring; Representing builders/contractors	√	√
Bruce Brown	Shaw Brothers; Representing general contractors	√	√
Matt Marks (replacing Randy Gardner)	Associated General Contractors; Representing general contractors	√	√
Carl Wallace	Maine Drilling & Blasting; Representing general contractors	Left the meeting before votes were taken	Left the meeting before votes were taken
Stan Grover	Person with expertise in underground facility protection; Former-CMP employee & Former-Dig Safe Exec. Comm. Member	√	√
Kevin Ishihara	Portland Water District (voluntary member of Dig Safe); Representing quasi-muni water/sewer utilities	√	√
Dan Wells	Winthrop Utilities District (voluntary member of Dig Safe); Representing quasi-muni water/sewer utilities	√	√
Ben Sanborn	Telephone Association of Maine; Representing telephone utilities	√	√
Kathleen Dumaine	Fairpoint Communications; Representing telephone utilities; Dig Safe Exec. Comm. Member	√	√
Don Johnson	Time Warner Cable; Representing cable tv providers	Absent	Absent
Alan Dow	Champagne's Energy; Representing underground fuel facilities co.	Absent	Absent
Carl Bisson	Inergy Propane; Representing underground fuel facilities co.	√	√
Sam Murray	Unitil; Representing underground natural gas pipeline companies; Rick Bellemare of Unitil is a Dig Safe Exec. Comm. Member	√	√
Arthur Brown	CMP; Representing T&D utilities; Dig Safe Exec. Comm. Member	√	√
Sharon Staz	Kennebunk Light & Power District; Representing T&D utilites	√	√
Robert Finelli	Dig Safe; Representing the same; Dig Safe Exec. Comm. Member	√	√
Mark Turner	City of Waterville; Representing municipal officials	NO	NO
Greg Connors	MMA; Rep. municipal officials	NO	NO
Richard Davies	Public Advocate; Chair, Dig Safe Working Group	√	√

the PUC. As part of this mandatory participation, these entities will be required to:

1. Register their underground facilities with OK-to-Dig.
2. Provide the PUC with the names of each community in which the underground facilities are located.
3. Provide the PUC with current twenty-four hour personnel contact information to enable anyone planning to excavate in a community to notify that entity on a "24/7" basis of the need to mark its facilities.
4. Update contact information within five business days when necessary.
5. And, respond to any notices received regarding their facilities by marking those facilities within seventy-two hours, unless it is an emergency excavation.

If these five requirements are not met, the municipality or public utility will bear full responsibility for the costs of repairing its underground facilities, as well as any associated costs, if the excavation results in damage.

Both the principal recommendation and the fallback proposal received the support of the necessary two-thirds of the working group (refer to the membership table for the voting record) despite concerns expressed from representatives of municipal officials and public utilities. This mandate to participate in the Dig Safe is at odds with the historical municipal position on this subject. Most municipal officials believe that the current system is not broken and there are cost concerns associated with Dig Safe. Mandating additional municipal expenditures to the management of the municipal right of way, which is currently maintained to the tune of \$250 million a year in municipal expenditures, certainly benefits the Dig Safe system and could reduce the financial exposure to Dig Safe expenses for the for-profit utilities. On the other hand, it is hardly an advantage to the towns and cities that do not choose to voluntarily participate.

Future Action. When the legislation related to the Dig Safe Working Group's recommendations is printed, the Association's 69-member Legislative Policy Committee will review the proposal and determine the Association's position. [\[ME\]](#)

Residents Support, Reject Projects

By Liz Chapman Mockler

Voters in many Maine municipalities opened their wallets in voting on Nov. 6, while others clenched the purse strings tightly as they voted on major capital projects and other requests.

About 70 percent of registered Maine voters cast ballots, about the same amount that turned out for the 2008 election, when the presidential contest also led the ballot.

Lincolnton voted to spend nearly \$700,000 to expand the town office, agreeing to borrow \$220,000 and withdraw another \$470,000 from undesignated or "surplus" funds. The adage "three's the charm" seemed to play out as residents were finally satisfied with the proposal. The vote was decisive at 806-613. The project is expected to be done by next fall.

Falmouth voters supported maintaining Metro bus service by a wide margin, 5,289 to 2,223, although the cost will reach \$105,000 in fiscal year 2013. Residents apparently like the Falmouth Flyer service, which has shown strong ridership numbers since it began running in 2005 with nearly 55,000 trips. By 2011, the number of trips had increased to almost 80,000 annually.

Yarmouth voters agreed to borrow \$1.5 million for a synthetic turf football field at the town high school. They also favored spending \$2.9 million to expand the public works garage. Both votes mirrored the other, with those in favor winning by about 300 ballots. About 5,500 residents turned out to vote.

In **Presque Isle**, voters supported a referendum to build a community center, so long as half of the \$6.8 million price tag is covered by fundraising. If

that goal can be reached, voters agreed to pay \$3.75 million toward the project. The new facility, which will replace the 1964 center, is proposed as a one-level building measuring about 30,000 square feet. An earlier larger proposal was rejected several years ago as the U.S. economy began slipping. The new proposal passed easily. City officials believe the new center will serve the community's needs for at least 70 years.

A number of projects were soundly defeated, however. Those included:

- In **Biddeford**, voters rejected three local bond questions totaling \$9.3 million. The projects were for: road repair; sewer separation and sidewalk improvements; and, repairing the city hall clock tower. All three votes were handily defeated. Residents did approve, on the fourth attempt, a \$32.1 million school budget.

- **Windham** officials were sent a strong message on Election Day by defeating a new sewer system by a vote of 6,513 to 2,036. Under the \$37.8 million proposal, the town of 16,000 would finance the project by raising the tax rate by \$1 per \$1,000 in property value. As well, a one-time fee of \$12.50 would be levied on non-farm property along routes 202 and 302 in addition to a hook-up fee, depending on the property. Businesses would have been mandated to hook up to the new system. Residential owners who chose not to be part of the new system would have been required to pay a \$285 a year as a "ready-to-use" fee. The sewer project was cited as a major reason for high voter turnout.

- **Cape Elizabeth** library supporters were handed a loss when voters rejected borrowing up to \$6 million to build a new library. The vote was 2,696 to 3,566. Library boosters were described as "reeling" after the election loss. The

existing library needed emergency repairs in July of \$9,000. Parts of the building date to 1849. Following the defeat, library officials said they would immediately contract to have other safety improvements done while the town figures out what's next. The plan was to borrow \$6 million and raise \$1.5 million from private sources.

OTHER ISSUES

In other Nov. 6 decisions that did not call for direct spending by taxpayers, numerous cities and towns passed important legislation, while others also suffered setbacks on major proposals.

Lewiston voters approved all but one of 11 charter changes, including increasing the requirements for council hopefuls running as write-in candidates. Residents also passed a proposal to allow the council to more quickly fill vacant seats and increased the term of mayors.

Voters also favored giving the city administrator authority to hire department leaders without council approval, with the exception of the job of Finance Director. Another change directed the mayor to form a charter review commission every 10 years.

The only ballot question that failed would have extended the number of years members of the planning and appeals boards could serve. Others dealt with cleaning up language or effected the school department, including key requirements that the school board build its budget based on council guidelines and to mandate the superintendent live in the city.

Residents of **Westbrook** also made significant charter changes for the first time since 1907. The vote was 5,864 to 2,539. The most noticeable changes involve: how the city holds local elections; extending the terms of council-

Liz Mockler Chapman is a freelance writer from Augusta, lizmockler@hotmail.com.

ors and staggering their tenures; and, appointing a city clerk rather than electing one.

City Manager Jerre Bryant quickly indicated that he and Mayor Colleen Hilton support the current clerk, Lynda Adams, for the permanent appointed position. Hilton said she will make the formal appointment as soon as she can.

Voters in **Sanford**, with a population of about 21,000 in the last Census, decided to incorporate as Maine's newest city. Until the referendum, which garnered 55 percent of the vote, Sanford was the state's largest town and its seventh largest community overall. It will now become the 23rd city out of 492 municipalities, plantations and townships. Major changes include eliminating the annual town meeting in favor of a council-manager form of government, as well as allowing for an elected mayor.

Damariscotta voters settled a lingering issue for selectmen when they voted 732 to 546 to reject an amendment to the town charter that would have allowed selectmen to dissolve the police department in favor of paying for coverage from the county sheriff's office. Although the proposal would have saved taxpayers money, voters preferred to have their own officers, who they know and who have done a good job protecting the coastal community.

In what has become a common governing question in recent years, a handful of municipalities decided whether to remain in the consolidated school districts established under the administration of former Gov. John Baldacci. Voters in **Glenburn** and **Veazie**, as well as in **Dixfield** and **Eustis**, decided to exit their regional school districts, while **North Yarmouth** and **Durham** opted to stay put.

Fireworks were again a hot topic in some towns, following the Legislature's decision in the last session to legalize the party favorites. Towns voting on the issue included: **Newport** and **Mechanic Falls**, which favored allowing fireworks with some restrictions; **Topsham**, which voted narrowly to maintain its ban; **Sabatius** and **Nobleboro**, which defeated a question giving selectmen authority to draft a fireworks ordinance; and **Brewer**, which decided to limit their use. **Waldoboro** voters declined to place restrictions on the use of fireworks. 

MAINE CITIES

Maine includes 22 cities among its 492 municipalities, plantations and townships. On Nov. 6, Sanford voters decided to incorporate as the state's 23rd city. Following is a list of Maine cities; population is based on latest Census.

Auburn	23,388
Augusta	18,330
Bangor	31,807
Bath	8,856
Belfast	6,756
Biddeford	21,329
Brewer	9,180
Calais	3,269
Caribou	8,126
Eastport	1,500
Ellsworth	6,984
Gardiner	6,156
Hallowell	2,465
Lewiston	35,495
Old Town	7,656
Portland	63,103
Presque Isle	9,247
Rockland	7,374
Saco	18,108
Sanford	21,661*
South Portland	23,586
Waterville	15,602
Westbrook	16,409

*Pending

Source: Maine.gov/MMA



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Retirement Benefits: What You Should Know

By Jeffrey T. Piampiano, Esq.

In the spring of 2009, the Millinocket Town Council faced a difficult choice. The Town could either reduce its contribution toward funding retiree health and life insurance benefits – contributions that it had been making at 100 percent for decades – or continue making contributions that the Town simply could not afford. The Town Council, cognizant of the Town's shrinking tax base, grudgingly voted to amend the Town's personnel policy to phase out the Town's contribution over time, while continuing to provide access to affordable benefits for its retirees.

Millinocket's difficult decision was not welcomed by the Town's retirees and in July 2009 roughly 30 of the Town's present and former employees filed suit against the Town, claiming that, because of language in the Town's personnel policy between 1991 and 1999, the Town could not lawfully amend its personnel policy in 2009 to phase out the Town's subsidy of retiree benefits. That lawsuit culminated in the October 2012 decision of Maine Supreme Judicial Court (a/k/a the "Law Court"), which confirmed the authority of the Town of Millinocket to amend its personnel policy to decrease the Town's contribution toward health and life insurance costs

Jeffrey T. Piampiano is an attorney with Drummond Woodsum in Portland. Since joining Drummond Woodsum in 2002, he has represented numerous parties, including secured and unsecured creditors, debtors and bankruptcy trustees in commercial disputes before federal, state, and federal bankruptcy courts. He is a graduate the Northwestern School of Law at Lewis and Clark College, holds a Masters Degree from the University of Maine and a Bachelors degree from Colgate University. He can be reached at: jpiampiano@dwmlaw.com.

for retirees. The case, *Budge v. Town of Millinocket*, has implications for Maine municipalities and municipal employees, as it both: (i) highlights the fact that, in most circumstances, municipalities may reduce certain retiree insurance benefits as a means of addressing budgetary challenges; and, (ii) underscores the need, in instances where municipalities and their employees have negotiated for health and welfare benefits to remain unaltered in retirement, that such arrangements be clearly reflected in writing and approved by the municipal governing body.

The *Budge* case arose out of the confluence of two, long-established principles of law. The first of those principles is that legislative acts (such as statutes at the state level and ordinances or policies at the municipal level) will not create contractual rights unless the legislative language constitutes a clear expression of legislative intent to do so. The second of those principles relates to municipal authority. It states, essentially, that

only actions taken or formally ratified by the municipal governing body (in Millinocket's case, the Town Council) will bind the municipality. Thus, unauthorized or un-ratified statements which are inconsistent with municipal policy (such as, "We'll take care of you in retirement.") by a municipal official (town manager or councilor, for example) will not create binding rights against the municipality.

MILLINOCKET'S POLICY

In *Budge*, the Law Court applied those principles in examining whether Millinocket's personnel policy in effect between 1991 and 1999 created contractual rights for Town retirees. That policy stated as follows:

Employees, other than School Department employees, who retire from town service and qualify for retirement or disability benefits under the Maine State Retirement System, shall continue as members of the town's group hospitalization plan, at the town's expense, to the same extent as current employees. The Town shall



also pay for coverage for the former employee's spouse. This benefit shall apply to former union employees of the town, as well as nonunion employees. *The Town reserves the right to change this benefit in the future as circumstances require. Any such change shall apply only to employees hired after Aug. 8, 1991.*

Despite the fact that nearly all of the plaintiffs were employed by the Town prior to August 1991, the Law Court rejected the plaintiffs' claims that that language (especially the highlighted language) gave rise to contractual rights, instead concluding that, particularly in light of numerous subsequent amendments by the Town council after 1991, the language amounted to "nothing more or less than a declaration of policy to be followed until the Town deemed it could no longer be pursued." The Law Court similarly rejected the argument that statements made by Town officials to employees that the Town paid benefits in retirement were binding on the Town.

That ruling has clear implications for municipal employers and employees alike. From an employer perspective, it means that personnel policy provisions relating to employee benefits can be changed through the legislative process, unless (and only unless) the policy includes explicit language expressing the intent of the municipal governing body to create contractual rights. Because most municipal personnel policies will not rise to that level, the *Budge* decision has the practical effect of paving the way for municipalities to amend their personnel policies to reduce retiree health and life insurance benefits as a means of redressing some of the serious budget shortfalls that many municipalities face.

For municipal employees, the *Budge* decision emphasizes the need to memorialize negotiated contractual benefits clearly and in writing, and to have those arrangements approved by the municipal governing body. All benefits negotiated in collective bargaining contracts should be clearly reflected in approved contracts. Municipal employees should also appreciate that promises regarding benefits made by individuals – even if that individual is the town manager or a town councilor – essentially mean nothing unless that promise is somehow for-

mally adopted or ratified by the municipal governing body.

In the end, the *Budge* case is a keen reminder, in this age when fiscal flexibility is a key issue for municipalities, of the fact that municipalities should carefully review their personnel policies and update those policies if they fail to clearly express the current legislative intent of the municipality. The

decision underscores both the need for clarity when there is true intent to give municipal employees contractual rights to benefits in retirement, and the ability of municipalities to freely amend personnel policies – even those providing for retirement benefits – in the absence of express and duly authorized contractual language to the contrary. ME

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MMA Files Amicus Brief in Tax-Lien Case

By Susanne F. Pilgrim, Staff Attorney, MMA

MMA's Legal Services Department recently filed an *amicus curiae* ("friend of the court") brief with Maine's Supreme Judicial Court in the appeal of *Stoops v. Nelson*. The case involves a parcel of tax-acquired property that the Nelsons purchased from the Town of Madawaska. The former owners (the Stoops) argued that the Nelson's title was void and that all three of the Town's tax liens were invalid because some of the lien notices the Town sent to the former owners via certified mail, return receipt requested, were returned unclaimed.

MMA Legal Services files *amicus curiae* briefs, usually at the request of a municipal member, in cases that we think present significant issues impacting municipal government. This is an important, although lesser known, service of the department. MMA's Executive Committee makes the final decision as to whether a brief will be filed, based upon a recommendation from the Director of Legal Services and on guidelines adopted by the Executive Committee. Generally, MMA seeks to complement the brief(s) filed by the main parties, and we participate only if we believe we can meaningfully contribute to the case by offering the court a municipal perspective on the issues or by addressing subjects on which MMA has particular expertise.

In this case, MMA wished to participate because the appellants challenged the validity of important court decisions concerning Maine's tax lien foreclosure process. The appellants argued that pursuant to a 2006 U.S. Supreme Court decision, *Jones v. Flowers*, the constitution now requires that municipalities "do something more" if *any* tax lien notice is not actually received because for some reason a taxpayer does not claim the certified

mailing. The appellants also argued that the constitution requires that each taxpayer receive at least two notices before property can be taken through Maine's statutory tax lien foreclosure process (36 MRSA §§ 941-948).

In defense of the Town's tax lien process, MMA argued that the holding in *Jones v. Flowers* was inapplicable to the situation, as *Jones* involved a property forfeiture where a state knew that *none* of its notices were received by the taxpayer. MMA also argued that the *Jones* decision does not cast doubt on Maine's statutory tax lien foreclosure procedures, nor has it altered well settled principles concerning state

and federal constitutional due process requirements. MMA also argued in support of previous Maine court decisions holding that one notice of a pending tax lien is sufficient to satisfy the constitution's minimum notice requirements. In its brief, MMA predicted that municipalities will face increased administrative burdens if the court imposes additional lien notice requirements. MMA also argued that a new rule might create new grounds for persons to challenge real estate titles based on tax lien foreclosures.

A decision from the court is expected in several months. MMA's *amicus curiae* brief can be read at: www.memun.org. 

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MMA Personnel Services offers a wide range of specialized on-site consulting services for our members. Personnel management and labor relations expertise is available for direct assistance or general inquiries through a toll-free telephone line. Direct on-site assistance is available in the following areas:

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Buckfield Selectman **Rodney Allen** died of a heart attack on Nov. 25, stunning residents of the small town near Auburn, who knew him well for both his auto business and public service. Allen was elected selectman in 2011, but also served the town's volunteer fire department for two decades, as well as working on the Planning Board, Board of Appeals and Recreation Committee. He also was a former member of the SAD 39 board. He retired in 1996 after owning and operating Allen's Auto Body for 30 years. He is survived by his wife, Alice, two daughters and several grandchildren.

Following a difficult year, the Town of Sumner has a full slate of Planning Board members. Selectmen last month appointed **Ricky Beaudet** and **Dan Perron** as members until 2015 and 2014, respectively, while **Richard Estes** will serve as an alternate for one year.

Paris selectmen reached a two-year contract deal with **Amy Bernard**, a Rumford native, to replace former Town Manager **Phil Tarr**. Bernard, 33, was scheduled to begin her new job in December after finishing some work in Wayne, where she has been manager for four years. She plans to still live in Rumford and commute to Paris. Bernard holds a Master's degree in Public Administration from the University of Maine and bested 53 other candidates from across the country. Meanwhile, Paris selectmen named police Lt. **Mike Dailey** to serve as acting chief while they find a replacement for **David Verrier**, who resigned effective Nov. 30. Verrier will take an investigator's position at the Maine Correctional Center in Windham.

Austin Bless has been named the new Caribou City Manager, replacing **Steve Buck**, who moved to Sanford this fall to manage the southern Maine community of about 22,000. Bless is for the former city administrator of Winnebago, Minn. He assumed his new duties in Caribou on Oct. 29. Bless, who was praised as an effective and responsive administrator by a surprised Winnebago council, served

as the top executive there since June 2010.

Ellsworth City Councilor **Michael Boucher**, who was elected in 2010, resigned in November, citing personal reasons. Boucher, who was serving his first term, resigned effective Dec. 1. His term will remain vacant until next June's municipal election. His brother, **Matthew Boucher**, resigned in June after he accepted a job in New Hampshire.

Winthrop Town Councilor **Jennifer Currier** resigned in late October after less than one year on the job, citing personal reasons for her departure. Currier previously served on the town's recreation committee, as well as the Green and Comprehensive Planning committees. A special election to fill her term is scheduled for Jan. 15.

Freeport Fire Chief **Darrel Fournier** returned from storm-ravaged New York City in late November, where he used vacation time to join other Maine first responders who volunteered to help the city following Hurricane Sandy. "(The) experience that I gained was very beneficial," Fournier told the Tri-Town Weekly. After spending 13 days helping to clean up the storm's wreckage, Fournier added, "God forbid we ever get a (similar) storm here, (the experience in NYC) will pay big dividends."

An estimated 500 hundred people attended the funeral of **Jeff Kuller** in November after the popular 56-year-old Camden Recreation Director died when a tree he was cutting fell on him at his home. Kuller, a Minnesota native, was hired eight years ago and was well known for his management of the annual Camden Snow Bowl. Kuller supervised the municipally owned ski area, as well as working to build recreation programs for residents of all ages. Kuller was known for his love of the outdoors and a quiet, unassuming way of getting things done and



Jeff Kuller

helping others. He is survived by his parents, his wife, Alison, and two children.

Kennebunkport Selectman **Mathew Lanigan** died Nov. 27 at the age of 48, following complications from surgery. Lanigan died just days before thousands of residents celebrated the town's annual Christmas Prelude, of which Lanigan was a longtime organizer, supporter and volunteer. A well-known businessman, Lanigan served as selectmen for the past eight years and as chairman from 2007 to 2009. He is survived by his wife, Jennifer, and three young children.



Mathew Lanigan

Brewer Councilor **Kevin O'Connell** was named mayor by his peers during the council's annual meeting in November. Retired from both the Maine Air National Guard and Bangor Hydro-Electric Co., O'Connell has served on six city committees over the years. He is in the final year of his first, three-year term on Brewer's council.

Waterville councilors have appointed planning board member **Michael Owens** to the council to replace **George Myers Jr.**, who resigned earlier this year. Owens works as a teacher's aide and has lived in the city's Ward 2 for more than 20 years. Owens, one of four candidates for the seat, attended Waterville schools and holds a Master's degree in Public Administration.

Jon Southern decided not to seek another contract as Eastport City Manager, telling councilors he was "burned out" and reminding them that he never planned to make municipal management a career. Southern, 39, will serve through his three-year contract, which expires next April. [me](#)

PHOTOS: If your municipality submits a news item for the Townsman, consider sending a corresponding photo to: Eric Conrad or Jaime Clark (econrad@memun.org or jclark@memun.org)



Statewide: The trade magazine Library Journal named six small Maine libraries as Star Libraries for outstanding service to their communities as well as for attracting public support for their efforts. The magazine evaluated nearly 10,000 libraries and chose 262 for the coveted annual designation. The Maine libraries selected include those in: Camden, Castine, Damariscotta, Guilford, Rockland and Southwest Harbor. The libraries in Camden, Guilford and Rockland are the only Maine libraries to achieve the honor in each of the past five years that the magazine has employed the ranking system.

Auburn: The city's police department now offers residents a computer application for certain cell phones that will allow them to send tips, receive notifications and get access to information from disaster and weather agencies, among other information. The "app" is free to download; residents can find it by searching for My Police Department, or MyPD, and once downloaded navigate to the local department.

Bar Harbor: Town councilors have formed a committee to investigate whether a ban on killing deer ought to be amended due to the number of car-deer accidents, Lyme disease cases and general nuisances caused by the animals grazing on private property. Officials in the other three Mount Desert Island towns – Tremont, Mount Desert and Southwest Harbor – are considering working with Bar Harbor on the issue, possibly by first surveying residents for their opinions. The Bar Harbor committee will seek advice and help from state wildlife experts. The ban on killing deer dates to the 1930s.

Bethel: The Bethel Regional Airport will get a \$450,000 facelift beginning in the spring, including a new terminal building and road leading into the facility. The federal government will pay 90 percent of the cost, with the town and state each chipping in five percent. The airport authority board is working to secure permits for the work, which is part of a 20-year capital improvement plan.

Falmouth: Despite concerns by business owners and others, the town council

in November voted to restrict the size of new developments along Route 1. Under the new policy, new businesses will be limited to 50,000 square feet of ground-floor space. Existing businesses will be allowed a footprint of up to 60,000 square feet for nonconforming tenant space. The size limits are the first step toward future planning for the town's busiest roadway.

Minot: Town officials bought a sample supply of sweetened road salt to determine whether it will do as good a job as regular rock salt. Although the two versions of road products cost about the same in the end, town leaders hope the combination of salt, magnesium chloride and molasses will lower the cost of truck maintenance. The so-called "sugar-coated salt" is one-tenth as corrosive as the regular sand/salt mixture. Officials decided to try the new de-icer since the town will get a 20 percent rebate on the cost for this winter.

Portland: The city's planning board got its first look in November at a mammoth proposal that would include seven towers up to 12 stories tall on about three acres of city-owned land in the Bayside area of the city. The project also calls for 90,000 square feet of retail space, a parking area with 1,100 spaces and 675 apartments. The Maritime Landing complex faces numerous reviews, but the council in September reached agreement with the developers to sell the land for \$2.2 million.

Waterville: The newly elected charter commission is likely to take up party politics during its months-long review of the existing charter. Waterville is one of only three Maine municipalities where candidates for the council and school board run as political party candidates; Biddeford and Westbrook are the other two. The remaining nearly 490 cities and towns elect candidates in nonpartisan voting. [\[m\]](#)

NEW ON THE WEB

Here are some highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

- **U.S. Sen.-elect Angus King.** The former Governor appeared at MMA's 2012 Convention and fielded a bevy of questions about municipal-federal issues. You can hear the questions and his answers by watching this online video.
- **Convention Presentations.** Speaking of the 2012 Convention, many workshop presentations are now available, on topics ranging from employee succession planning to storm water to wind power.
- **Pesticides & Schools.** Best Management Practices have been developed at the state level for the use of pesticides on school lawns, playgrounds and athletic fields.
- **Municipal Directory.** One of MMA's most-used publications is the annual Municipal Directory, the most complete guide to municipal officials and contact information available anywhere.

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MUNICIPAL CLERKS & SAME-SEX MARRIAGE

Question: May a municipal clerk refuse to issue a license for a same-sex marriage?

Answer: No, not in our opinion. We believe a municipal clerk is duty-bound to issue a marriage license to any two parties who otherwise legally qualify for a license. Of course, after last month's citizen-initiated referendum in Maine, this now includes same-sex couples. (The new law becomes effective on December 29, 2012, which is a Saturday; municipal clerks may, but are not required to, be available on that day.)

The new law does include a religious exemption, but it applies only to members of the clergy and religious institutions (see 19-A M.R.S.A. § 655(3)). Municipal clerks, on the other hand, are public officials who have taken an oath to uphold the laws and to discharge all of the duties of their office, one of which is to issue marriage licenses.

Title 19-A M.R.S.A. § 652(1) states, "After the filing of notice of intentions of marriage, except as otherwise provided, the clerk shall deliver to the parties a marriage license." Whereas the statute directs that the clerk "shall" issue a license, this duty is ministerial in nature and clerks have no discretion to refuse.

Nevertheless, if a municipal clerk is unavailable to issue a marriage license to a same-sex couple, a deputy or assistant clerk should be readily available to do so in order to accommodate the couple as well as the clerk.

Some notaries public have wondered whether they too are now bound to officiate at a same-sex marriage if asked. Because the office of notary public is a *state* office, not a municipal one, we suggest that such questions be directed to the Maine Secretary of State's office, which commissions and supervises notaries public. (By R.P.F.)

STATE APPOINTS FIRST FOAA PUBLIC ACCESS OMBUDSMAN

The State Attorney General has appointed Brenda Kielty as Maine's

first Public Access Ombudsman. This new position is one of several Freedom of Access Act (FOAA) developments we wrote about this past summer (see "New Amendments to FOAA 'Open Records' Provisions," *Maine Townsman*, "Legal Notes," July 2012).

The Public Access Ombudsman's responsibilities include reviewing complaints about compliance with the Freedom of Access Act and attempting to mediate their resolution, as well as answering calls from the public, media and government agencies about the requirements of the law. The Ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions.

Municipal officials are, of course, always welcome to ask MMA's Legal Services for advice on "Right to Know" matters, but they should also feel free to ask Brenda Kielty.

Contact the new Public Access Ombudsman by phone (207-626-8577), by mail (Office of the Attorney General, Public Access Ombudsman, 6 State House Station, Augusta, ME 04333) or by email (Brenda.Kielty@maine.gov). (By R.P.F.)

MOVING MOBILE HOMES

Question: How can we be assured that all taxes have been paid before a mobile home is moved out of our municipality?

Answer: Because State law requires

it. Title 29-A M.R.S.A. § 1002(9) prohibits moving a mobile home over a public way unless the operator of the vehicle transporting it has a written certificate from the tax collector stating that all applicable property taxes, including those for the current tax year, have been paid. (The tax year is April 1-March 31.)

Taxes for the current tax year include taxes not yet committed. If the amount of these taxes has not yet been calculated, the amount is presumed to be the same as the previous year's taxes until the current year's taxes have been assessed. If the assessed taxes exceed the previous year's taxes, the taxpayer is obligated to pay the balance. If the assessed taxes are less than the previous year's taxes, the taxpayer is entitled to a refund of the difference, plus interest on the overpayment. If the mobile home was moved into the municipality after April 1 of the previous year so no tax was assessed for that year, taxes for the current tax year must be estimated using the prior year's tax rate.

If a taxpayer is assessed for both a mobile home and the land on which it sits because the taxpayer owns both, only the taxes applicable to the mobile home are subject to this requirement.

Moving a mobile home over a public way without the required certificate constitutes a traffic infraction. If a tax collector, code enforcement officer or other local official suspects that a mo-



JANUARY 1 — New Year's Day 2013 – A legal holiday. (4 M.R.S.A. §1051)

ON OR BEFORE JANUARY 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

JANUARY 21 — Martin Luther King, Jr. Day - a legal holiday (4 MRSA §1051).

BY JANUARY 20 — Treasurer of State to send notice to chief municipal officer

of maximum interest rate which can be charged on delinquent taxes (36 M.R.S.A. §505).

JANUARY 31 — Deadline to submit quarterly withholding taxes to State Tax Assessor (36 MRSA § 5253).

DURING JANUARY — In towns with a March annual meeting, selectmen should begin preparing the town meeting warrant and town report. Obtain reports from all departments: schools, roads, etc. Arrange to have annual audit made before town meeting.



Legal Notes

mobile home is about to be moved without this certificate, law enforcement authorities should be notified immediately.

If a mobile home is moved without compliance with this requirement, it does not mean that taxes are uncollectable. Collection may be more difficult, however, because the collector may not know where the mobile home was moved or how to contact the taxpayer (which is the reason for this law in the first place). But wherever the mobile home was transported, it is still real estate and is still subject to a real estate tax lien for nonpayment of taxes.

Finally, if a mobile home is moved to another municipality, that municipality may not issue any permit required for installation of the mobile home unless the owner provides proof of payment of all property taxes on the mobile home in the municipality where the mobile home was formerly located (see 30-A M.R.S.A. § 4103(3)(B)). If a mobile home has been relocated without payment of all property taxes and local officials know where it was moved, they should contact that municipality's officials and remind them of this requirement. (By R.P.F.)

TAX DISCOUNT FOR SENIORS?

Question: Can we offer a property tax discount to senior citizens?

Answer: No, State law does not authorize it, nor is there any municipal "home rule" in the field of taxation (see Me. Const. art. IX, § 9).

Maine law does authorize the municipal legislative body to give a discount ("abatement") of up to 10% to taxpayers who pay on or before a certain date, but this discount must be offered, if at all, to all taxpayers who qualify, regardless of age (see 36 M.R.S.A. § 505(5)).

Maine law also authorizes a municipality to adopt an ordinance allowing seniors who are at least 60 to work off up to \$750 of their property tax bill. For particulars, see "New Tax Relief Program for Senior 'Volunteers'," *Maine Townsman*, "Legal Notes," June 2008.

In addition, Maine law authorizes a municipality to adopt an ordinance allowing seniors who are at least 70 to defer taxes on their principal dwelling if they have lived there for at least 10

years and their household income does not exceed 300% of the federal poverty level. For details, see "New Tax Deferral Program for Seniors: A Local Option," *Maine Townsman*, "Legal Notes," April 2010.

Although many municipalities annually vote to grant a discount to all early taxpayers, few have actually adopted ordinances allowing seniors to work off part of their tax bills or defer their taxes (no doubt due to the drawbacks we identified in the June 2008 and April 2010 "Legal Notes" cited above).

There is, of course, one other property tax relief program available to seniors and other taxpayers on a limited income – the Maine Residents Property Tax and Rent Refund or "Circuit Breaker" Program. For more information, including an application form and instructions and FAQs, go to <http://www.maine.gov/revenue/taxrelief/tnr.htm>. (By R.P.F.)

CONTACT INFO FOR IRS' MAINE REPRESENTATIVE

Municipal officials in Maine who are responsible for payroll or purchasing or who have questions about withholdings or fringe benefits should have the IRS' Robert C. Westhoven's contact info close at hand. Bob is the IRS's Federal, State and Local Government representative for the State of Maine, and he is available to assist municipal officials with a wide variety of IRS compliance issues. Contact Bob at 217 Main St., Lewiston, ME 04240 or at 207-784-6988 (Tel) or 207-782-4963 (Fax) or at robert.c.westhoven@irs.gov.

For an IRS Information Resource Guide prepared in cooperation with Bob, go to MMA's website (www.memaun.org), enter your ID and password, click on "Information Packets/Guides" and scroll down to "IRS Issues for Municipalities." (By R.P.F.) 

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