

Maine Municipal Association

# 2018

## Municipal Issues Paper

Reestablishing the State-Municipal Partnership



Maine Municipal Association

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# Introduction

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For over two decades, the Maine Municipal Association (MMA) has published a version of the Municipal Issues Paper in gubernatorial election years. The purpose of the Paper is generally three-fold: (1) to provide candidates for the Office of the Governor and the Maine Legislature with background information on MMA's policy positions and advocacy efforts; (2) to identify legislative issues of municipal interest and importance; and (3) to facilitate pre-election conversations between local officials and candidates for state office. The Association's goal is to help municipal and state officials forge the post-election working relationships necessary to ensure quality, efficient services are provided to all Maine residents, businesses and visitors.

The theme of this year's paper revolves around the need to reestablish a collaborative state-municipal partnership; a time-honored alliance, which has eroded over the last decade. To that end, this year's paper explores five core issues:

1. The evolution of the state-municipal partnership, that has for centuries ensured that a variety of government services are provided to Maine's residents, businesses and visitors;
2. The importance of the state's financial contributions to local governments, including municipalities, schools and counties, as a means of reducing the burdens placed on property taxpayers to fund the provision of mandated and desired services;
3. The impact that unfunded state mandates have on municipal funding priorities;
4. An overview of municipal revenues and expenditures, explored as a way to put the intergovernmental partnership into perspective; and
5. The necessity of rebuilding and strengthening the intergovernmental partnership in order to successfully meet future challenges.

On behalf of MMA's advocacy team, thank you for your attention to the 2018 Municipal Issues Paper. Questions can be directed to Kate Dufour, Director of State and Federal Relations, at [kdufour@memun.org](mailto:kdufour@memun.org) or 1-800-452-8786.

## MMA Advocacy Efforts & the Legislative Policy Committee

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*The positions MMA takes on legislative issues are established by the Association's 70-member Legislative Policy Committee (LPC), which was formed in 1972. LPC members are elected by the boards and councils in each of the State's 35 Senate Districts in the summer of each even numbered year.*

The Maine Municipal Association (MMA) was founded in 1936 and is governed by a 12-member Executive Committee elected from its member municipalities. **MMA is a non-profit, non-partisan, voluntary, membership organization offering an array of professional services to Maine towns, cities and plantations.** Of Maine's 490 municipalities, 485 are members of the organization. MMA is dedicated to assisting local governments, and the people who serve in municipal government, in meeting the needs of their citizens and serving as responsible partners in the intergovernmental system. MMA's services include advocacy, education, training and certification, professional legal and personnel advisory services, and self-funded group insurance programs.

MMA's four-member State and Federal Relations (SFR) Department, the Association's advocacy branch, is responsible for acting as a conduit of information between municipal officials and elected state officials. MMA's

advocacy staff represent municipal officials before the Maine State Legislature and state agencies by providing testimony on bills, rules and policies that impact local government. Through the *Legislative Bulletin*, which is published each Friday the Legislature is in session, MMA also provides weekly updates on the actions of state lawmakers.

The positions MMA takes on legislative issues and initiatives is established by its 70-member Legislative Policy Committee. The Policy Committee, which is represented by two municipal officials from each of the state's 35 Senate Districts, is elected in the summer of each even numbered year by the boards of selectmen and councils in each district. The Vice President of the Association's Executive Committee serves as the LPC Chair, and votes only in cases of a tie. The LPC generally meets monthly while the Legislature is in session and directs staff on what positions to take on proposed legislation.

The LPC is also charged with developing and adopting MMA's two-year legislative agenda. The bills advanced to the Legislature for its consideration typically consist of six to 10 legislative initiatives varying from major tax policy reforms to minor housekeeping measures.

The election of the 2018-2020 Legislative Policy Committee is currently underway. An updated list of its members will be posted on the Legislative & Advocacy section of MMA's website ([www.memun.org](http://www.memun.org)) following the election. Also posted on that site are past MMA legislative agendas, a list of the bills MMA tracked over the 2017-2018 legislative session, and links to past editions of the *Legislative Bulletin*.

## Evolution of the State-Municipal Partnership

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Since the establishment of Maine as an independent state in 1820, state government has relied on local governments to provide a full complement of public services to a common constituency. To be sustained, the state-municipal partnership must be based on a system that shares the burdens of providing needed services among income, sales and property taxpayers.

In 2015, the Association published the *State-Municipal Partnership Programs: Past, Present and Future* report, which provides an overview of the 20-plus state-municipal partnerships established since 1820. As outlined in the introduction, "the purpose of the report is to evaluate systems established in Maine law that fall in the general category of state-local partnership programs"...which are defined as "state law that compels municipalities to conduct certain activities or provide specific services for the general good, as well as related systems established in law to support or supplement those required activities." Of the report's four findings, two are directly related to the evolution and erosion of the state-municipal partnership.

One of those findings concludes that the state's historic reliance on municipal government to provide programs and services for the general good of the state is deeply embedded in Maine's history, with a number of programs and services mandated to be provided by municipalities established as early as the 19<sup>th</sup> Century.

The other finding focuses on the ebb and flow of legislative financial support for the programs and services municipalities are required to perform. In times of economic recession, the Legislature tends to reserve state funding for itself to the detriment of financial aid programs and reimbursements to municipalities, which shifts greater burdens onto the property taxpayers. Generally, during times of economic prosperity, state lawmakers are more willing to share state sales and income tax revenues with municipalities. Recently, this willingness has eroded.

While municipal officials recognize that in some cases local governments are better suited to provide these mandated services, the cost of delivering those services cannot be borne exclusively by the property taxpayers. Funding from significant statewide resources, such as the state sales and income taxes, are necessary to capitalize the programs and services that advance statewide goals.

To help put the municipal contributions to government services into perspective, what follows is a brief summary of some of the programs and services municipalities have been mandated by the state to provide and, in some cases, fund entirely with property tax revenues. These services are sorted by the era in which they were enacted. A more detailed description of each program is published in MMA's *State-Municipal Partnership Programs: Past, Present and Future* report, which is posted on the Legislative Advocacy section of MMA's website ([www.memun.org](http://www.memun.org)).

## Programs of the 19th Century

- *Election Administration.* Municipalities have always been and remain the primary administrator of all elections in Maine – local, regional, state and federal. It is hard to conceive of a more efficient or cost-effective way to manage such a task.
- *General Assistance.* The concept of municipal responsibility for assisting impoverished citizens who need basic necessities of life goes back to the English “pauper laws” of the 17<sup>th</sup> Century. In the mid-1970s, the pauper laws were modernized into the General Assistance program and the state came in as a financial partner for the first time with the creation of a reimbursement system. Under current law, municipalities are responsible for the total cost of administering the program and the state is financially responsible for reimbursing municipalities for 70% of the benefits issued to residents in need.
- *Animal Control.* For reasons that appear to be based on simple practicality, local officials have long been charged with managing nuisance domestic animals. However, the revenue associated with these tasks (e.g., dog registration fees, etc.) that is allowed to remain with municipalities is inadequate to cover the cost of the mandate.

## Programs of the Early 20<sup>th</sup> Century

- *Local Road Assistance.* In 1907 the state entered into a longstanding road-maintenance partnership with municipalities. The program was established to financially assist municipalities with their efforts to maintain, repair and improve state, “state aid,” and local roads. Although over the last 110 years Maine’s lawmakers have dabbled with and amended the original state aid program, its purpose has largely remained focused on sharing state fuel tax and motor vehicle registration revenue with municipalities for the purpose of maintaining and improving the state’s transportation network.
- *Cemeteries and Veterans’ Graves Maintenance.* Since the earliest decades of the 1900s, municipal officials have been held solely responsible for the maintenance of veterans’ graves. As the mandate now stands, municipalities, working in conjunction with veterans’ organizations, cemetery associations and other interested parties, are responsible to keep in good condition the burial grounds, graves, markers and monuments of veterans in ancient burying grounds and municipally owned cemeteries. The law also establishes minimum maintenance standards that require municipalities to keep the grass suitably trimmed, markers free of grass and debris, and the burial place free of fallen trees, branches, vines and weeds.
- *Licensing Automobile Graveyards.* The Legislature’s concerns about “automobile dumps and graveyards” first surfaced in Maine’s law books in 1931, when those two terms were added to the long list of objectionable activities and land uses that could be prosecuted under Maine’s nuisance statutes. In 1937 the licensing law was adopted to require municipal officers to formally permit the activity prior to establishing the dump or graveyard in the community. The junkyard licensing statute is a classic state mandate. The Legislature identified a problem activity that needed to be corrected for the safety of people traveling on Maine’s highways and directed the municipalities to license and control the activity.

## Programs of the 1970s

- *Subdivision Review and Approval.* The law governing subdivision review and approval may well have been created to provide municipalities with a tool to become aware of the development activity that was occurring and to shape that development to some degree if they so wished. However, the simple law that began as little more than a for-your-information proceeding has been amended incrementally to become a full-blown, quasi-judicial process at the local level requiring the appointment of a planning board and board of appeals, adoption of a subdivision ordinance and the review and approval of all subdivision proposals according to a list of state enacted “no undue burdens” standards.
- *Shoreland Zoning.* The shoreland zoning obligations to plan, develop and implement zoning ordinances, and to eventually hire code enforcement officers and otherwise manage shoreland development was adopted in the top-down, command-and-control style that characterized the mandates enacted in the early 1970s. The law was enacted without any state financial support or state technical assistance to implement the mandatory regulations.
- *Solid Waste Management.* The mandate to manage solid waste was enacted in a rather brutal style, going so far as to castigate municipalities for generating increasing amounts of solid waste. The opening lines of the law made it clear that the state was going to exercise its responsibility to protect the health and welfare of its citizens by “encouraging” the creation and implementation of solid waste management systems that shift state responsibility to municipalities. The bottom line is that solid waste management is an expensive municipal mandate which has not benefited from substantial state financial or technical assistance, despite it being a statewide matter.
- *Current Use Tax Program Administration.* On November 3, 1970, Maine’s voters approved amendments to the state’s Constitution that created the Tree Growth, Farmland and Open Space “current use” tax programs. In order to promote commercial forest harvesting activities, conserve environmentally valuable property, preserve access to open space, and (since 2006) protect Maine’s working waterfront, the program allows qualifying properties to be assessed according to “current use” rather than market value, resulting in significantly discounted property tax payments. Since its adoption the program has teetered between being an accountable tax program and an exploited tax haven, which in many cases is neither simple nor efficient to administer.

## Programs of the 1980s

- *The Growth Management Act.* In 1989 the Legislature enacted the detailed and comprehensive requirement that all municipalities: (1) develop and adopt a state-approved comprehensive plan, and (2) within one year thereafter implement zoning ordinances that, at a minimum, designate and separate each municipality’s growth and rural areas. The Growth Management Act was a bold legislative initiative that imposed significant mandates on municipalities. To be fair, the act also expanded state agency staff to assist municipalities in this collaborative effort. Although the state retreated from its stake in the act soon after enactment, the mandates in the law were significantly tempered to coincide with the retreat. As a result, the act was reduced to a program that manages development activities and rewards municipal compliance with the state’s model development practices with preferred access to state agency grants and investments.
- *Code Enforcement.* When originally enacted 35 years ago, the municipal obligation to appoint a code enforcement officer was viewed as the enforcement extension of the shoreland zoning mandate and a prompt for municipalities to organize, under one official, the pre-existing duties of plumbing and building inspectors with the new duties of shoreland zoning enforcement. No financial assistance came with the



new duties, but towns and cities were provided some tools to assist with these enforcement efforts. The statutory duties of municipal code officers have expanded to cover the enforcement of building codes for major commercial developments as well as the state's uniform building and energy code. Just as the most recent enforcement mandate was enacted, the training and certification program provided by the state began to waver. Considering that local code enforcement officers mainly enforce state codes and programs, it is reasonable for local officials to expect the state to maintain a robust training and certification program.

- *Sand-Salt Storage Sheds.* In the mid-1980s, the state mandated that municipalities build storage facilities to house the sand and salt applied to roads during winter months. This mandate was sold to municipalities as a municipal-state partnership, which established an intergovernmental cost sharing program with the caveat that municipalities would only be required to fulfill the mandate if the state allocated its share of funding. As a general rule, the state provided 50% reimbursement for the municipal cost of constructing the sheds, provided that certain building specifications were met. The program was finally retired in 2017.

## Programs of the 1990s

- *Business Equipment Tax Reimbursement Program (BETR).* Under the terms of the BETR program, owners of business personal property continued to pay their required property taxes to municipalities. For the first 12 years of that property's useful life, however, the state was obligated by the BETR law to reimburse the businesses for 100% of the property taxes they actually paid. By simulating rather than enacting a property tax exemption, the BETR program held the municipalities harmless with respect to the economic development incentives the state was attempting to achieve. BETR also created an ongoing, rather than one-time incentive, for all businesses to continually upgrade their aging production machinery and equipment in order to fully enjoy the tax exemption over time. However, 12 years to the day after the start-up of the BETR program, it was substantially replaced with the Business Equipment Tax Exemption (BETE) program, which provides a 100% exemption from local property taxes for qualifying personal property.
- *Homestead Property Tax Exemption.* The Homestead Property Tax Exemption program is an integral part of Maine's overall tax policy. In combination with revenue sharing and the property tax fairness credit (formally the "circuitbreaker" program), the homestead exemption helps reduce reliance on the property taxes paid on primary residences to fund governmental services. Unfortunately, the homestead exemption has been significantly restructured since its creation, making it less effective in delivering property tax relief than when it was first established.

## Programs of the 2000s

- *Business Equipment Tax Exemption Program (BETE).* As noted above, the BETE program was enacted to replace the BETR program. Under the terms of BETE, qualifying business property first installed and made subject to taxation on or after April 1, 2008 became entirely exempt from taxation. As required under Maine's Constitution, the state provided municipalities with at least 50% of their lost tax revenue associated with this new exemption. For communities with significant amounts of personal property in their tax bases, the Legislature committed itself to even more than the 50% reimbursement minimum. Under the terms of the program, the state's reimbursement obligation increases in proportion to the degree in which a municipality's property tax base is made up of BETE eligible personal property.
- *School Consolidation.* In 2007 the Legislature adopted a biennial state budget that included the forced, or effectively forced, consolidation of many of Maine's suburban and rural public school systems. The

consolidation legislation was embedded in the budget because it ostensibly saved the state approximately \$38 million in state subsidy by reducing school administrative costs. Nothing in the review of the school consolidation law and its aftermath invokes the concept of partnership. The effort was rushed, based on an unrealistic budget savings assessment and involved very little to no collaborative input from the affected constituencies. The implementation required an enormous, contentious and thoroughly thankless effort at the local level. Finally, the post-implementation period provided little to no discernible savings and delivered negative financial impacts for many municipal partners. As a result, many regional school units created under the initiative have now deorganized.

- *Maine's Uniform Building and Energy Code.* In 2008 the Legislature enacted “*An Act to Establish a Uniform Building and Energy Code*,” requiring municipalities with more than 2,000 residents to enforce a common set of building and energy conservation codes, more commonly referred to by its acronym, MUBEC. With that enactment, nearly 170 Maine municipalities became responsible for the enforcement of the new state codes even though 80 of those municipalities had never adopted or enforced a building code of any kind. In an attempt to soften the mandate implication as much as possible, the MUBEC law allows properly credentialed, private, “third party inspectors” to certify MUBEC compliance for construction projects. However, since the buck stops with municipal code enforcement officers, in terms of legality, liability, and practicality, and because the general public expects and often demands that the municipality rather than the private sector perform building code enforcement, the use of third party inspectors at best reduced - and most certainly did not negate - the burden on municipalities to enforce the state's code. In 2011, the MUBEC enforcement mandate was softened to require compliance in municipalities with over 4,000 residents.

## Restoring State Funding for Municipalities, Schools & Counties

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*As was noted in the previous chapter, state government relies heavily on municipal government partners for the delivery of important public services. Considering that property taxes account for 56% of total municipal revenue, reductions in state aid without corresponding reductions in state mandates simply shift additional burdens onto the state's property owners. Vital first steps in repairing the state-municipal partnership include:*

- *Restoring funding for revenue sharing at 5% of state sales and income taxes;*
- *Fully and straightforwardly funding 55% of the cost of K-12 education;*
- *Reimbursing municipalities for 62.5% of lost property tax revenue under the Homestead Exemption; and*
- *Providing counties with the funds necessary to operate county jails.*

### State-Municipal Revenue Sharing

The foundation of the state-municipal partnership is the Municipal Revenue Sharing Program, created in 1972 in recognition that the municipal services provided at the direction and on behalf of the state cannot be funded solely on the backs of Maine's property taxpayers. The program was enacted in acknowledgement that municipal, county and school governments deliver important services that, when coupled with state-level support from “broad based tax resources,” provide a full complement of government services and programs to Maine residents, businesses and visitors. In exchange for the provision of these services at the local level, the state has historically shared with municipalities a fixed portion of state sales and income tax revenue, which is required by law to be used to reduce the property taxpayer burden.

However, during the last 14 years (2006-2019) nearly \$695 million in revenue sharing funds have been deposited into the state’s General Fund rather than distributed to municipalities.

The table provided in *Appendix A* shows that the Maine Legislature honored its commitment to the state-municipal partnership by fully funding the revenue sharing program from its inception in 1972 until 2005. However, beginning in 2006, transfers from the revenue sharing program became routine and increasingly more significant. Between 2006 and 2015, \$313 million in revenue sharing funds were redirected to the state.

In 2016, the Legislature took it one step further by reducing for fiscal years 2016 through 2019 the amount of state sales and income tax revenue to be distributed to municipalities from 5% to 2%. Over that four-year period an additional \$382 million in revenue sharing was transferred away from municipal property taxpayers and into the state’s General Fund.

<b>Revenue Sharing FY 06 to FY 19</b>			
<b>Fiscal Year</b>	<b>Statutorily Required</b>	<b>Actual Receipts</b>	<b>Difference</b>
2006	\$123,722,881	\$121,386,963	\$(2,335,918)
2007	128,330,756	121,378,821	(6,951,935)
2008	135,819,468	133,124,059	(2,695,409)
2009	135,468,528	132,759,157	(2,709,371)
2010	131,202,116	112,092,617	(19,109,499)
2011	124,479,621	89,209,367	(35,270,254)
2012	134,350,000	94,000,000	(40,350,000)
2013	138,102,675	93,835,332	(44,267,343)
2014	138,306,246	65,000,000	(73,306,246)
2015	146,678,003	60,728,612	(85,949,391)
2016	156,424,711	62,569,884	(93,854,827)
2017	155,174,541	64,469,816	(90,704,725)
2018	164,527,742	68,211,097	(96,316,645)
2019	172,003,750	71,201,500	(100,802,250)
<b>Total</b>	<b>\$1,461,249,405</b>	<b>\$781,318,225</b>	<b>\$(694,623,813)</b>

Sources: Office of Fiscal and Program Review, Budget Documents, Maine Office of the Treasurer

The full restoration of revenue sharing to 5% of state sales and income tax revenue is important to municipal officials for four reasons.

1. Municipalities Generate Sales and Income Tax Revenue. The state annually collects roughly \$3 billion in sales and income tax revenues because of local level investments in resources and infrastructure (e.g., roads, bridges, sidewalks, water, sewer, broadband, etc.) that lead to economic development. Without these local level investments, much less “broad based” tax revenue would be generated.
2. Balanced Tax Code. The state needs to modernize Maine’s tax code and reduce the problematic historical over-reliance on property taxes as the primary funding mechanism for both mandated and desired services. Roughly \$2.4 billion in property tax revenue is generated annually, compared to the \$1.7

billion and \$1.5 billion generated by the state income and sale taxes, respectively. Revenue sharing keeps property taxes down.

3. Important Element of a Tax Relief Package. Revenue sharing is an important element of a comprehensive property tax relief package that also includes the homestead exemption and the property tax fairness credit. The homestead program provides direct property tax relief to Maine homeowners, the income tax credit supports residents with high property tax to income ratios, and the revenue sharing program directly reduces the property taxes raised, providing generalized relief to all property owners.
4. Services Must Be Provided. When revenues are tight, municipalities cannot stop providing critical and state mandated services. Roads must be plowed in the winter and maintained in the summer. Solid waste must be disposed of in an environmentally sound manner. Water, if provided locally, must be potable. Residents have the right and desire to be safe. School and county tax assessments must be paid.

Municipal officials are calling on Maine's next governor and Legislature to honor this commitment and fully restore funding for revenue sharing to 5% of state sales and income tax revenue. Without this level of financial assistance, municipalities cannot be expected to continue to provide the same level and number of services. Something has to give.

## Homestead Exemption

When it was first established in 1998, the Homestead Exemption Program was designed to provide a \$7,000 exemption to Maine's primary homeowners. Although the state is constitutionally compelled to provide reimbursement for at least 50% of the lost property tax revenue, in the first six years of the program's tenure the state reimbursed municipalities for 100% of the lost revenues, thereby avoiding a shift in tax burden to business and other non-homestead property owners.

However, since its adoption the program has experienced several changes.

First, in 2003, the program was redesigned into a "tiered" system, based on assessed value. Homes valued at less than \$125,000 continued to receive the \$7,000 exemption, qualifying residents with home values between \$125,000 and \$250,000 received a \$5,000 exemption, and those with primary residences worth over \$250,000 received a \$2,500 exemption. Although these changes reduced the state's costs, it also reduced the value of the property tax relief provided to some Maine homeowners and made the local administration of the program far more difficult than necessary.

In 2005, the Legislature felt compelled to tinker with the program once again, this time increasing the value of the homestead exemption to \$13,000 and reimbursing municipalities for only 50% of the lost property tax revenue. As a result of the change in reimbursement policy, \$27.5 million in burden was shifted onto all property taxpayers, including homesteaders.

In 2009, the value of the homestead exemption was reduced to \$10,000, while the state reimbursement rate remained at 50%, causing an immediate statewide property tax increase on all homestead eligible residents.

Since 2009, the Legislature has amended the homestead exemption program twice.

In 2015, the law was amended to increase the value of the exemption from \$10,000 to \$15,000 as of April 1, 2016, and from \$15,000 to \$20,000 as of April 1, 2017. For 2017 and subsequent tax years, the Legislature also voted to increase state reimbursement for the lost property tax revenue from 50% to 62.5%. However by a vote of the Legislature, the increase in state reimbursement was delayed until April 1, 2018.

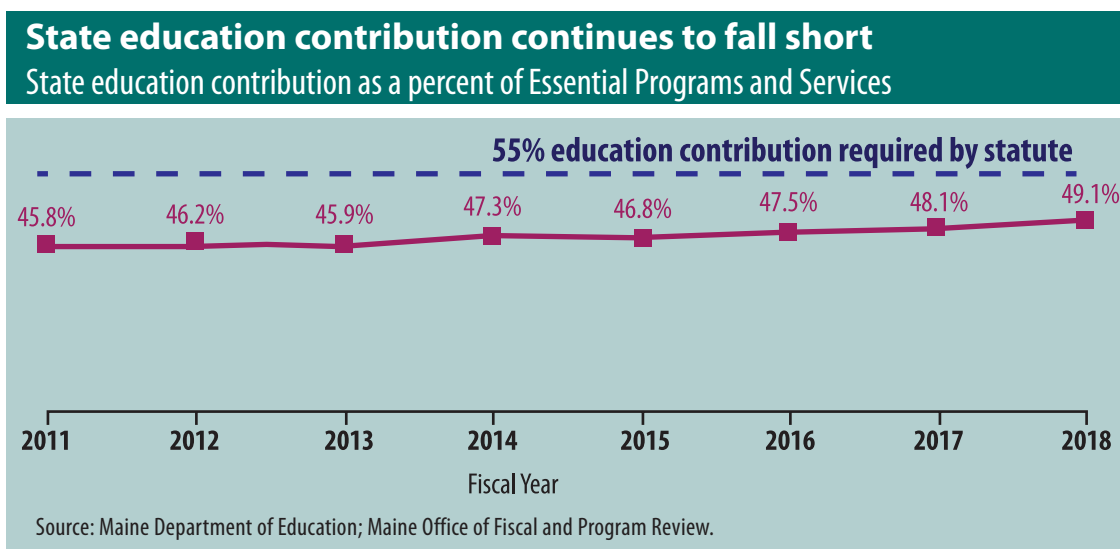
Maine's next Governor and Legislature should honor the promise to fund an increased portion of the \$20,000 homestead exemption. The perennial changes in the value of the exemption and the reimbursement provided to

municipalities serves only to make the administration of the program more difficult and adds an additional layer of unpredictability in the process of adopting local budgets.

## K-12 Education Funding

State financial support for K-12 education has been established by Maine’s voters and the Legislature as 55% of the total allocation as calculated by the Essential Programs and Services (EPS) school funding model. According to existing law, a community’s contribution to K-12 education is set by the annually calculated mill rate expectation, which yields the minimum amount of revenue required to be raised locally. Additional school spending above the EPS model is established by each school district’s voters. Municipalities statewide spend roughly \$1.5 billion annually to fund K-12 education, both in required and additional local expenditures.

Despite the fact that Maine statute has set the state share at 55% of the EPS model, the Legislature has not yet met this obligation. As shown in the chart below, the state’s contribution for K-12 education has remained at levels under 50% of total EPS costs.



In addition to the state not honoring its 55% funding obligation, municipal officials are growing increasingly concerned with legislative attempts to redefine the 55% target in ways that benefit the state. In 2013, for example, the normal costs of the teachers’ retirement premium was placed on the school systems and folded into the model.

In 2017, the Legislature once again redesigned the 55% calculation by including in the state’s share \$150 million in teacher retirement-related unfunded actuarial liability (UAL). The UAL is a state-level financial accounting obligation entirely unrelated to the EPS school funding model. As a result of the inclusion of the retirement-related UAL, the state’s share of K-12 education for FY 2018 is calculated as 49%, rather than 47%. The K-12 funding budget proposed for FY 2019 also includes UAL in the calculation of the state’s share of public education. Under the terms of this calculation, the state’s contribution appears to be 53% of the total cost of K-12 education. A calculation based on actual school related expenditures shows the state’s contribution is 49.5% of total costs.

Prior to 2005, public policy governed future school spending on the basis of previous school spending. The implementation of the EPS model was supposed to fundamentally change the spending-based funding approach by establishing a data-based, rational, measurable and accountable system. For that system to work, however, its terms need to be adhered to, not gamed.

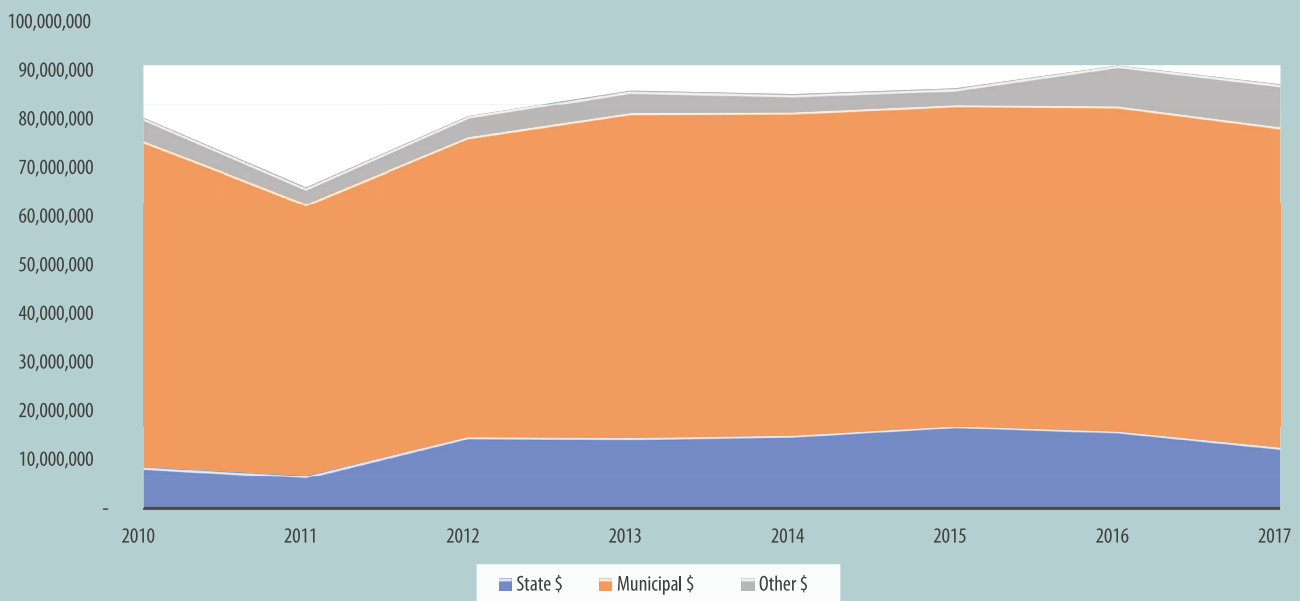
## County Jail Funding

Despite the fact that the state implements the policies dictating who is imprisoned, for what length of time, and whether a sentence is served in a county jail or state prison, the state's share of total county jail costs are not linked to a variable-based formula (e.g. number of inmates, number of bed days, inmate care costs, impact of mandates, etc.).<sup>1</sup> In addition, the state's share does not recognize how reductions in other state programs, such as mental health services and substance use disorder services, impact the burden placed on county jail operations and services.<sup>2</sup> The state provides funding only for a fraction of those total costs and at a level the Legislature determines to be available that year. Since county governments have very few avenues for raising revenues, it is the property taxpayers, through county tax assessments, that are held accountable for funding the majority of county jail operations each year.

A 2013 effort conducted by the Commission to Study the Board of Corrections, which was tasked with completing a comprehensive review of the county corrections system, found that the primary problem with the county jail system is a "Lack of a vision that the jails are part of a Statewide criminal justice system which should be for the common benefit and protection, and the equal distribution of the common burden, of all the people of Maine."<sup>3</sup> Five years later, "equal distribution of the common burden" remains elusive.

Maine's county commissioners and administrators project that in 2019 Maine citizens will spend \$90 million to enforce state law through the operation of county jails, 72% of which will be funded by municipalities through the property tax. As shown in the chart below, the municipal contribution to county jail funding has consistently funded the vast majority of incarceration costs. In 2010, municipal contributions hit their highest level at \$67 million. Since the implementation of a tax cap limiting increases in the use of property tax revenue to fund jail operations, the municipal contribution has been roughly \$65 million annually.

### Municipal vs. State Share 2010-2017



Source: County Administrators

Municipal officials do not believe that the responsibility for taking care of Maine's state-mandated incarcerated population should lie so heavily upon local property taxpayer resources. What is needed is a more comprehensive approach to funding county jail operations that recognizes the state's policy role in driving

incarceration rates, a responsibility to share this burden at least equitably if not entirely, as well as the need for a more realistic state-municipal funding model that is based on actual costs of incarceration.

## Unfunded State Mandates

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*The enactment of unfunded state mandates shifts additional pressures onto Maine property taxpayers, effectively placing the state's funding priorities ahead of a community's desired programs and services. When shifting additional mandates onto communities, state policymakers should carefully assess the local impacts and enact funded mandates only as absolutely necessary. Unfunded mandates are unwelcome, especially in the recent context of substantial shifts of state responsibilities onto local governments.*

### Mandate Law

As defined by Maine's Constitution (Article IX section 21), a state mandate is an action of the state (statutory or regulatory) that requires a local unit of government to expand or modify its activities in a way which necessitates the expenditure of additional local revenue. The term "state mandate" is based on this constitutional definition and only refers to requirements placed on local government, not mandates on the general public or the private sector. Local governmental units (e.g., towns, cities, plantations, school systems, counties, quasi-municipal districts, etc.) are not bound by state mandate requirements unless the state provides 90% of the annual funding for such additional expenditures. The Legislature is authorized, however, to enact a state mandate without any responsibility to provide 90% of the required local level expenditures by approving legislation properly identified as a state mandate with at least a 2/3 vote in both the House and Senate.

The statute enacted to implement the constitutional amendment is found in Title 30-A, section 5686. Important elements of that implementing statute include:

- The state cannot meet its obligation to properly fund a mandate by authorizing the municipalities to levy new taxes or fees or by using funding previously appropriated to the local governments for other purposes;
- The Legislature must expressly and knowingly override its general obligation to properly fund new state mandates. A two-thirds vote by itself, without the "mandate preamble" being part of the bill, is insufficient to override the state's financial obligation; and
- If a mandate is enacted without the necessary two-thirds vote, there is no obligation at the local level to perform the mandated function.

### Workers' Compensation Law

It is common for a number of bills identified as state mandates to be considered during any legislative session. Of the several of bills identified as unfunded state mandates that are enacted by each Legislature, many are identified as mandates for technical reasons, even though the municipal fiscal impacts are truly insignificant in nature. Some mandates enacted in a typical legislative session, however, result in significant local cost.

Two of the more significant recently enacted unfunded mandates have impacted the way public employers and employees are treated under Maine's Workers' Compensation law.

Under Maine Workers' Compensation law, there are currently five so-called "rebuttable presumptions" wherein an injury is legally presumed to have arisen out of and in the course of the worker's employment. These five presumptions apply to: death in the workplace of all employees; cancer contracted by firefighters; cardiovascular or pulmonary diseases contracted by firefighters; communicable diseases contracted by first responders; and, posttraumatic stress disorder (PTSD) contracted by firefighters, law enforcement, and emergency first responders.

In these cases, and only these cases, the employer must compensate the claim, unless it can prove the injury was not in fact work-related.

In recent years, the Legislature has been reluctant to enact new unfunded mandates on municipalities, especially if the cost of the mandate is significant. Moreover, bills that propose to shift new Workers' Compensation burdens onto the state or private sector employers are hardly ever enacted. Yet, the cost of all but the first of these five existing presumptions (which applies to all employers) falls overwhelmingly if not exclusively on local government employers.

The latter of the presumptions, the presumption of PTSD in firefighters, law enforcement officials, and emergency first responders, was enacted in 2017. The legal concept of a "rebuttable presumption" is intended to be applied out of fairness, when clear evidence of work-relatedness is by its nature difficult to obtain. Evidence of the types of traumatic work events that can lead to PTSD is not by its nature difficult to obtain. Without any indication that claims are in any way regularly being denied, imposing a new burden on employers to disprove a claim did not seem to be a sensible solution to the main issue identified by proponents of this new rebuttable presumption. That issue was a clear and pervasive stigma perceived to be present throughout the first responder community against reporting mental trauma and stress.

Legislators must ask whether the solution being proposed addresses the problem being identified. In this case an unfunded state mandate estimated to cost property taxpayers millions of dollars was enacted, yet the odds seem slim that this new rebuttable presumption in Workers' Compensation law will in fact lead to a lower incidence of PTSD and early treatment of traumatic stress.

Furthermore, state policymakers must recognize the over-reliance in this state on local property taxpayer resources, and avoid passing unfunded mandates. The state mandate law affords lawmakers the opportunity to put their money where their policy positions are and fund at least 90% of the mandates it passes along to municipalities. If they are unwilling to back their mandates up with state funds, they should not support the legislation.

## State-Municipal Partnership & Municipal Fiscal Health

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*Maine's property taxpayers fund many programs that are mandated by state government. However, when the state adopts unfunded mandates or reduces the state sales and income taxes it is willing to share with municipalities, greater burdens are shifted onto the property taxpayers. An understanding of how municipalities generate and expend revenue is an important step in building a sound and sustainable state-municipal partnership.*

When municipal officials advocate for the restoration of state funding for important municipal programs, a common legislative retort is that the problem is not with inadequate state funding, but with "out of control" municipal spending. As shown throughout this Paper, the demands the state places on local governments have a tremendous impact on property taxpayers. Much of the services provided locally are actually mandated by the state or are rooted in the need to protect the health and safety of all Maine residents, businesses and visitors. While municipal officials believe that communities are best suited to provide certain services, the state has an obligation to help local governments fund those activities. Without appropriate, reliable and sustainable state funding, the burdens placed on the most regressive tax will continue to increase.

In order to underscore the importance of the state's role in the intergovernmental partnership, it is necessary to understand how municipalities generate and expend revenues. In rough numbers, of the \$2.4 billion in property tax revenue raised each year, 63% of that revenue is used to fund the local share of elementary and secondary



educational services, 6% for county government services, leaving 31% to fund a variety of municipal services, including public safety, public works, parks and recreation, and public administration.

It is estimated that municipalities statewide spend \$1.4 billion to fund eight core municipal government services. The cost of providing public safety services, including police, fire, and emergency medical services (\$334 million) and road maintenance and repairs (\$279 million) alone accounted for nearly 45% of municipal service related expenditures. On average, municipalities statewide also annually spend:

- \$195 million on “other public works” services, including solid waste and recycling management, and water and sewer services.
- \$175 million on employee benefits, including employer contributions to Social Security, the Maine State Retirement System, and other retirement investment accounts (401K, IRA, etc.), the municipal share of dental and health insurance premiums, and contributions to the unemployment and workers’ compensation funds.
- \$152 million on “front office” services (e.g., selling hunting and fishing licenses, collecting property and excise taxes, administering elections, registering motor vehicles, snowmobiles and ATVs, issuing dog licenses, etc.).
- \$90 million on parks and recreation programs, libraries and other cultural activities.
- \$68 million to attract and enhance business activities within the community.
- \$47 million to enforce codes, administer and provide direct benefits to eligible applicants under the General Assistance (GA) program, and support local social service agencies.

**Per Capita Spending.** Although the \$1.4 billion in total municipal services spending could be interpreted as too large of an investment, the per capita spending data provides the relevant context.

Per Capita Spending on Municipal Services (by Population Group and Total)							
	Population Category						Total
	Over 10,000	5,000-9,000	3,500-4,999	2,000-3,499	1,000-1,999	Under 1,000	
Public Safety	\$ 394	\$ 284	\$ 137	\$ 137	\$ 110	\$ 169	\$ 253
Road Maintenance & Repair	216	205	161	220	248	372	222
Water/ Sewer & Solid Waste	225	156	73	72	110	97	148
Employee Benefits	224	147	68	60	40	71	133
Administration	120	112	83	95	120	195	115
Parks, Recreation & Libraries	105	97	37	30	18	22	69
Economic Development	75	21	11	17	13	18	36
Codes /Human Services	97	57	19	6	32	2	52
<b>Total</b>	<b>\$ 1,455</b>	<b>\$ 1,079</b>	<b>\$ 589</b>	<b>\$ 637</b>	<b>\$ 692</b>	<b>\$ 946</b>	<b>\$ 1,026</b>

Source: Maine Municipal Association Fiscal Survey

As shown in the table above, municipalities expend roughly \$1,000 per person to provide a full array of municipal government services. The table also shows the special financial burdens placed on the most populated communities, while also reflecting the challenges facing the most rural communities.

Communities with populations greater than 10,000, many of which are identified as regional service center communities, play host to several nonprofit institutions, including hospitals, colleges, state agencies and other social service providers. Not only are these institutions exempt from property taxes, they attract daytime populations that exceed the resident population. As a result, the few (e.g. businesses and property taxpayers) in these communities fund the services necessary to accommodate the many (e.g., daytime population commuting to these communities for work, services and entertainment).

In communities with populations under 1,000, it is the need to spread the cost of basic governmental services over relatively few resident property taxpayers that drives up the per capita costs. As shown in the table, most of the expenditures in these communities are for road maintenance and repair, public safety and other public works expenditures, including solid waste management.

In neither case is above average per capita spending related to municipal inefficiencies. Instead, communities of all sizes are providing the local services their residents and visitors need, demand and rely upon.

## Forging New State/Municipal Partnerships

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*With this year's election of the Legislature and Governor, the municipal community looks forward to reinstating the intergovernmental partnership in an effort to address future challenges. Some of those challenges will focus on the need to respond to the state's opioid epidemic, while other endeavors will focus on improving the state's ability to attract new business ventures by providing affordable and reliable internet access. Also on the municipal radar is the continued implementation of the citizen initiated adult-use Marijuana Legalization Act.*

### Opioid Epidemic

The opioid addiction epidemic in Maine is the latest challenge warranting the implementation of a state-local response. The epidemic has no bounds, impacting communities of varying populations, persons of all means, and Maine residents of all ages.<sup>4</sup> In 2017 alone, 418 Maine residents lost their lives to opioid overdose incidences. According to the Centers for Disease Control and Prevention, the 2017 death toll represents a significant increase from the 376 opioid related deaths in 2016 and 239 in 2015.<sup>5</sup>

Maine's cities and towns have for many decades effectively delivered a variety of essential public safety services. However, the ability to combat this crisis presents new challenges, since many of the tools necessary to address this substance use disorder are outside municipal control. Despite the delay in the implementation of a statewide response, community-led programs like Scarborough's Operation HOPE show that municipalities are attempting to find creative ways to address these modern day public safety and health issues. Scarborough's success has spread, encouraging other communities like Waterville to follow suit.<sup>6</sup> By holding public suppers, benefit concerts, and pursuing private grants, these communities have pulled together a program that is working. However, a reliable and consistent funding source is necessary in order to sustain these programs.<sup>7</sup> When successful intervention does occur, there is often no next level of support. The crisis is exacerbated by a lack of treatment facilities, inpatient beds and juvenile facilities. The shortages are forcing impacted Maine residents to seek referrals for treatment in neighboring states and sometimes as far away as Florida.

Municipal police agencies and emergency medical professionals are deploying Naloxone (Narcan), a lifesaving counter opioid medicine, at an alarming rate. In 2017, 307 lives were saved by Naloxone administered by first responders. Municipalities have made it a priority to train as many employees as budgets will allow to save lives. Without addiction recovery options available, residents continue to struggle to find a way out of the addiction cycle and make the most of that second chance.

Naloxone medication and training are not the only police expenses. In municipalities where hospital services

are offered, an increasing level of police time is spent sitting in emergency rooms detaining combative patients who are waiting for beds due to a statewide shortage of substance use disorder and mental health treatment options. This activity has blossomed from hours into days, straining police resources in small towns already short-staffed, and delaying much needed care for patients. Long waits often have expensive unintended consequences. Assaults on hospital staff are on the rise, which moves patients from care to incarceration where medical and housing costs are funded almost entirely by the property tax. A memo from the Department of Health and Human Services to the Opioid Task force in September 2017 stated there are currently only 3,063 licensed treatment “beds” available and 9,090 people actively receiving medicinal treatment. The need already significantly outpaces the resources by more than 66%.

Tackling the opioid epidemic requires an intergovernmental solution in order to guarantee its success. Treatment is both physical and mental, and unlike other substance use disorders, recovery has a medicinal component. Municipalities play a key role in recovery aspects while also serving as the frontline contact for residents in crisis, and the state has greater access to necessary resources. For this reason, the partnership between state and local governments is crucial. Coordinating efforts across many government agencies is necessary in order to successfully address the opioid crisis.

## **Broadband Expansion**

Similar to the growing reliance on electricity and its expansion from urban to rural areas in the 1930s, the need for reliable, high-speed (a.k.a. “broadband”) internet has become a key component of economic vitality in the 21<sup>st</sup> Century. In one of the most aged states in the nation, Maine’s largest cities and smallest plantations are finding themselves hard-pressed to attract and retain new residents without dependable internet. In the eyes of businesses and citizens, broadband infrastructure is now as necessary as roads and bridges, water and sewer mains, electricity and heating.

In 2009, the federal government provided \$26 million to build the “Three Ring Binder,” an open-access 1,100 mile network of fiber optic cable capable of transmitting high-speed internet throughout Maine. The binder, completed in 2012, was likened to a highway that all private internet service providers could access and utilize for their traffic.<sup>8</sup>

Since that time, the binder has been described as a highway with too few on- and off-ramps. Despite the infusion of taxpayer resources that helped construct the binder, Mainers’ ability to connect to the internet in a reliable and affordable manner continues to lag behind their peers’ in other states. According to the 2016-2018 Strategic Plan for Broadband Service in Maine issued by the State’s ConnectME Authority, only 12% of Maine households and businesses have access to what it defines as effective broadband speeds of 10 megabits-per-second for uploading and downloading.<sup>9</sup> An article published in a major statewide newspaper in early 2014 ranked Maine broadband service at 49<sup>th</sup> out of the 50 states.<sup>10</sup>

In 2015, the Legislature updated the state’s broadband goals and policies, and added a modest amount of funding for planning grants. A Municipal Broadband Access Fund was established that year with a capitalization of \$500 in state funds. \$80 million in federal funds were awarded that year, albeit to a single private internet service provider.

Recognizing the need for additional state investment in internet infrastructure, in both the 127<sup>th</sup> and 128<sup>th</sup> Legislatures MMA proposed as part of its platform \$10 million in bond funding for broadband internet infrastructure. Under the terms of MMA’s bond proposals, the infrastructure on- and off-ramps to be financed by this bond would be open to all internet service providers. This “open access” provision was seen as necessary for two reasons: (1) to encourage the market competition between providers that would improve service quality and affordability, and (2) to ensure public taxpayer resources are fairly utilized by a variety of private service providers rather than a mere few.

These proposals were not approved by the Legislature for presentation to the voters, thanks at least in part to opposition from some of the major internet service providers.

Municipal officials from all parts of Maine believe robust internet access has become a key component of economic development, that such access has been stalled for too long, and that now is the time for more action. While newly developing countries continue to invest in the internet, Maine's businesses are having trouble keeping up in the global economy. More funding for open-access internet infrastructure is needed in the 129<sup>th</sup> Legislature to help communities throughout the state attract new residents and businesses, providing the growth necessary for the future of Maine's economy.

## **Legalization of Non-Medical Marijuana**

In November 2016, voters approved via statewide referendum the legalization of possession of up to 2.5 ounces per person of non-medical marijuana by persons over 21 years of age, as well as local and state regulation of the commercial "recreational" or "adult use" marijuana industry. Possession of medical marijuana has been legal in Maine since 1999. While the referendum's Marijuana Legalization Act clearly authorizes home rule regulation of non-medical operations, Maine's Medical Use of Marijuana Act contains a significant ambiguity regarding whether or how much municipalities may regulate medical operations.

To date, 29 states have legalized medical marijuana and nine states have legalized non-medical marijuana for adults 21 and older. Federal law continues to include marijuana in its listing of prohibited narcotics, and the U.S. Department of Justice has taken varying positions under different presidential administrations towards enforcement in the states that have authorized commercial medical and non-medical marijuana operations.

On May 2, 2018, the Legislature enacted a law answering the many questions that had been left open by the terms of the voter-adopted Marijuana Legalization Act. The new law re-writes the Act, requiring municipalities to opt-in to allow marijuana establishments, prohibiting online, drive-through, delivery and social club sales, and reserving all sales and excise tax revenues for the state. Efforts to clarify in statute the home rule authority to regulate medical marijuana operations remain in limbo.

Each of the other states that have legalized commercial non-medical marijuana operations afford their municipalities significant local revenues to help offset local costs generated by the impacts of this new and uncertain industry. Maine is the only state which is not allowing for any local revenues, aside from the ordinary licensing fees that are strictly limited by statute. Municipal officials continue to believe a return on their investment of local resources is warranted, especially in light of the law's expectation that both state and local governments enforce the law in order to eliminate the existing, and now flourishing, illicit market. It is also important to the municipal officials statewide who are witnessing questionable activities, ostensibly authorized under the state's minimally-regulated medical market, that the Medical Marijuana Act be amended to clarify municipalities' authority to enforce their local ordinances.

## **Restoring the State-Municipal Partnership**

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The Association's goal in the next four years is to restore the working relationship between state and local leaders and governments. Community leaders from across the state look forward to meeting with candidates for the State House and the Blaine House to discuss issues of municipal interest and significance. As noted in the introduction, it is the Association's hope that this paper will act as a catalyst for encouraging ongoing discussions and the development of positive working relationships between state policymakers and municipal officials well after the November 2018 election.

# Appendix A

## Legislative Transfers Out of Revenue Sharing (1972 - 2019)

	Calculated Revenue Sharing Distribution	Legislative Transfer	Actual Revenue Sharing Distribution	Transfer as % of Calculated Revenue Sharing Distribution
1972	2,900,000		2,900,000	0%
1973	3,700,000		3,700,000	0%
1974	6,200,000		6,200,000	0%
1975	8,000,000		8,000,000	0%
1976	9,870,130	370,130	9,500,000	4%
1977	9,900,000		9,900,000	0%
1978	12,700,000		12,700,000	0%
1979	14,100,000		14,100,000	0%
1980	15,609,880		15,609,880	0%
1981	17,934,892		17,934,892	0%
1982	19,654,260		19,654,260	0%
1983	21,547,832		21,547,832	0%
1984	27,579,003		27,579,003	0%
1985	35,658,816		35,658,816	0%
1986	41,399,922		41,399,922	0%
1987	49,636,300		49,636,300	0%
1988	56,920,102		56,920,102	0%
1989	63,757,298		63,757,298	0%
1990	60,826,462		60,826,462	0%
1991	62,254,009		62,254,009	0%
1992	64,939,137	12,100,000	52,839,137	19%
1993	67,128,500	6,000,000	61,128,500	9%
1994	66,325,845		66,325,845	0%
1995	69,896,500		69,896,500	0%
1996	72,704,600		72,704,600	0%
1997	77,696,000		77,696,000	0%
1998	89,490,000		89,490,000	0%
1999	96,174,000		96,174,000	0%
2000	107,116,000		107,116,000	0%
2001	109,481,753		109,481,753	0%
2002	100,610,139		100,610,139	0%
2003	102,311,399		102,311,399	0%
2004	110,663,051		110,663,051	0%
2005	117,609,820		117,609,820	0%
2006	123,722,881	2,335,918	121,386,963	2%
2007	128,330,756	6,951,935	121,378,821	5%
2008	135,819,468	2,695,409	133,124,059	2%
2009	135,468,528	2,709,371	132,759,157	2%
2010	131,202,116	19,109,499	112,092,617	15%
2011	124,479,621	35,270,254	89,209,367	28%
2012	134,350,000	40,350,000	94,000,000	30%
2013	138,102,675	44,267,343	93,835,332	32%
2014	138,306,246	73,306,246	65,000,000	53%
2015	146,678,003	85,949,391	60,728,612	59%

## Revenue Sharing Distribution - Change in Allocation Formula\*

	Historic 5% State Sales & Income	Legislative Transfer	Temporary 2% State Sales & Income
2016*	156,424,711	93,854,827	62,569,884
2017*	155,174,541	90,704,725	64,469,816
2018*	164,527,742	96,316,645	68,211,097
2019*	172,003,750	100,802,250	71,201,500

\*Effective between FY 2016-2019, the total revenue sharing distribution was statutorily reduced by 60%. Prepared by the Maine Municipal Association.

Sources: Office of Fiscal and Program Review Budget Documents.

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<sup>8</sup> “‘Three Ring Binder’ network complete; Internet superhighway backbone for rural, widespread service in Maine,” Jessica Hall, [Portland Press Herald](#). July 27, 2012.

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# 2018

## Municipal Issues Paper

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