

## Calculating the State's Share of the Total Cost of K-12 Education

### Appropriators Divided on Methodology

On Tuesday, the members of the Appropriations and Financial Affairs Committee emerged from negotiations to cast straw votes on several noncontroversial elements of Governor LePage's proposed FY 2018 – 2019 General Fund biennial budget. Of particular interest to municipal officials was not the 50-plus initiatives unanimously moved in or out of the Appropriations Committee's version of the two-year budget, but rather the subsequent discussion on how to appropriately calculate the state's share of K-12 public education expenditures.

As hard as it may be to believe after the last 33 years, there remains a concerted push on the part of some legislators, in this case the Republicans on the Appropriations Committee, to redefine the 55% state-share standard in a way that is entirely repugnant to the 55% requirement adopted in express detail no fewer than three times since 1984. The 55% standard has been clearly articulated twice by the Legislature, in 1984 and 2005, and once by an explicit directive from the voters in 2004.

If you can't escape from the voters' simple demand that 55% of the cost of K-12 education be covered by the state's broad-based tax revenue rather than regressive local property taxes, there's a back-up strategy in Augusta. Simply redefine the cost of K-12 education so that it includes a bunch of state financial obligations that are unrelated to the real-life costs associated with providing education to Maine's 180,000 K-12 public school students.

Voila! Without having to expend any

effort, the state's 55% financial obligation is magically achieved.

The key to this sleight of hand is the Unfunded Actuarial Liability in the Maine Public Employees Retirement System (MEPERS). Referred to as the UAL, the state's unfunded actuarial liability has virtually nothing to do with educating the state's public school students. It has everything to do, instead, with the Legislature's practice in the 1980s and early 1990s of chronically underfunding the MEPERS system, which covers both state employees and school

teachers. As a result of that systemic underfunding, the Legislature is now obliged to pay-down the UAL, which for the teachers' side of MEPERS is about \$130 million each year.

As the Appropriations Committee members discussed the issue on Tuesday, it would appear that the Republican committee members believe the UAL expenditure should be somehow recognized as part of the state's obligation to pay for K-12 education. This recognition would either allow the state to not fully

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## LD 848 PTSD Mandate Acknowledged

The Labor, Commerce, Research and Economic Development Committee on Tuesday voted unanimously among the members present to include the legally-required "mandate preamble" on LD 848, *An Act To Support Law Enforcement Officers and First Responders Diagnosed with Post-traumatic Stress Disorder*. The legislation will add a new "rebuttable presumption" to workers' compensation law that when a law enforcement officer, firefighter, or emergency medical services worker is diagnosed by a licensed physician or psychologist as having post-traumatic stress disorder (PTSD), the PTSD would be presumed to be a work related injury and, therefore compensable.

After tabling the question in several work sessions held since the bill's public hearing on March 23, this week the committee ultimately recognized the need

to acknowledge the legislation, which promises significant new costs for local governments statewide, as an unfunded state mandate on municipalities.

Despite its designation as a significant unfunded mandate, LD 848 stands a fairly good chance of garnering enough votes in the House and Senate to be enacted. The reason is that the bill will be presented to the full Legislature with a unanimous "ought to pass as amended" recommendation. This unanimous recommendation marks a first for this committee; previous votes on proposals to create a new Workers' Compensation presumption against municipal employers have been divided.

That is not the only "first" presented by this bill. If LD 848 becomes law, Maine's municipalities will become the first local governments in the nation to be subjected to this new presumption.

cover 55% of the Essential Programs and Services school funding model or, in the alternative, actually force the state's UAL payment into the EPS model. Doing so would make the municipalities pay for roughly half, or \$65 million, of the state government's financial liabilities in the name of public education.

During the Appropriations Committee's discussion on the subject matter, Senator Roger Katz (Kennebec Cty.) explained that to exclude the UAL from the calculation of state's 55% share of school expenditures is akin to changing the rules in the midst of the game. Since 2011, according to Sen. Katz, the Legislature has installed into statute a definition of the cost of K-12 education that includes "state contributions to teacher retirement, retired teachers' health insurance and retired teachers' life insurance." Sen. Katz believes this definition includes not only the "normal" costs of teacher benefits, but also a \$130 million expenditure that is completely unrelated to the cost associated with delivering educational services to Maine students. From Sen. Katz's perspective, if members of the Legislature believe that those costs should not be included in the

mix, then the law needs to be amended.

In truth, the 2011 statute inaccurately defining the 55% standard should be repealed.

The Democratic committee members, led by Representative Brian Hubbell of Bar Harbor, began to outline their funding proposal, which seeks to invest an additional \$120 million in education funding in FY 2018. While the proponents of this funding approach concede that they may not meet the state funding target next year, the methodology in place remains true to the citizen initiated mandate to fund 55% of the costs directly associated with educating K-12 students. As succinctly summarized by Rep. Hubbell, from the perspective of the Democratic members of the Appropriations Committee, it is better to make strides toward achieving the 55% goal honestly, than to achieve the goal by manipulating the definition of 55% in the state's favor.

Representative John Martin of Eagle Lake observed that it was somewhat nonsensical to focus on the issue of 55%, because through the adoption of the 2016 citizen initiative that target became irrelevant. Rep. Martin believes

that Maine's voters have directed the state to increase the previous year's appropriation for K-12 education by the amount raised through the assessment of the 3% surcharge on any portion of taxable income that exceeds \$200,000, yielding roughly \$150 million annually. If that figure achieves an outcome that is less than, greater than or equal to 55% of the cost of K-12 education, regardless of the factors used in the calculation, then so be it.

While municipal officials agree that the voters of Maine have directed the state to invest an additional \$150 million annually in K-12 education funding, they believe it remains necessary for the state to continue to work on its goal to fund at least 55% of the cost of providing K-12 educational services; that is, at least 55% of Essential Programs and Services school funding model. If the Legislature is allowed to redefine the 55% target as it pleases, the entire effort becomes meaningless. Sooner or later, the Legislature could redefine the 55% standard to shift additional burdens onto the property taxpayers rather than compel the state to appropriately fund public education.

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## IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, [www.memun.org](http://www.memun.org).)

### Taxation

LD 1629 – An Act To Protect the Elderly from Tax Lien Foreclosures. (Governor's Bill) (Sponsored by Rep. Espling of New Gloucester.)

This bill amends the law governing the property tax lien mortgage system as it applies to property owners 65 years of age or older. For those property owners, a pre-foreclosure process is established to commence at least 90 days before foreclosure. Under that process, the municipality must contact the owner of the property and assist the owner in applying for a poverty tax abatement. With respect to any property tax obligations not forgiven through the abatement process, the municipality must offer the owner a reasonable repayment schedule. If the owner does not agree to the repayment schedule, the municipality must engage a qualified mediator to negotiate a reasonable payment schedule, with 50% of the mediator's fee being added to the value captured by the tax lien. If an installment repayment plan is established, and the property owner becomes more than 30 days delinquent on that plan, the municipality may issue a demand for the balance of the tax obligation to be paid within 14 days. If during the pre-foreclosure process a municipal official or employee has a reasonable suspicion that the property owner has a physical or mental condition that interferes with the owner's ability to have business dealings with the municipality, the municipality must notify the Department of Health and Human Services.

The bill also provides special foreclosure and sale provisions for any property owner 65 years of age or older after a foreclosure occurs. If such an owner is living in the property and the property is the owner's sole residence, the municipality is prohibited from selling the foreclosed property until the value of the municipal lien exceeds 50% of the assessed value of the property. The owner must be provided a right to purchase back the property prior to any sale. The sale of the property must be accomplished by an independent licensed broker, conducted in a commercially reasonable manner, and the property may not be sold for less than its municipal assessed value unless the municipality can demonstrate through an independent appraisal that the value of the property has deteriorated since the most recent tax assessment. Neither the municipality nor any purchaser of the property from the municipality may take any action to remove the former owner from the foreclosed property until after a sale of the property. All proceeds from the sale of the property in excess of the tax owed, interest and allowable fees must be refunded to the former owner.

### Veterans & Legal Affairs

LD 1624 – Resolution, Proposing an Amendment to the Constitution of Maine To Implement Ranked-choice Voting. (Sponsored by Sen. Breen of Cumberland Cty; additional cosponsors.)

A 2017 Maine Supreme Judicial Court ruling found that the citizen initiated law providing for the rank-choice election of the offices of Governor, State Senator and State Representative to be unconstitutional. This resolution proposes to amend Maine's Constitution to allow the Governor and members of the Maine Legislature to be elected by majority, rather than plurality, vote. If supported by at least two-thirds of the current members of the House and Senate, on November 7, 2017 voters of Maine will be asked to vote on the proposed constitutional amendment.

LD 1625 – An Act To Repeal the Ranked-choice Voting Law. (Sponsored by Sen. Mason of Androscoggin Cty; additional cosponsors.)

A 2017 Maine Supreme Judicial Court ruling found that the citizen initiated law providing for the rank-choice election of the offices of Governor, State Senator and State Representative to be unconstitutional. This bill repeals the citizen initiated law.