

Municipalities Asked to Review Revised Revenue Sharing Proposal

On Wednesday this week Sen. Justin Alford (Cumberland Cty.) presented a bill to the Taxation Committee that would revise the distribution of municipal revenue sharing resources.

LD 1835, *An Act to Restore Equity in Revenue Sharing*, changes the so-called “Rev II” municipal revenue sharing system. Under current law, Rev II distributes approximately 20% of total revenue sharing resources to municipalities with a full value property tax rate over 10 mills, delivering a proportionately greater amount the higher a particular municipality’s mill rate is over the 10 mill threshold. Instead of that 10 mill trigger, LD 1835 changes the tipping point in the distribution formula to the statewide average property tax rate. The current statewide average property tax rate is 11.76 mills.

Sen. Alford wasn’t alone in his support for LD 1835. Legislators from several of Maine’s largest cities and a galaxy of municipal mayors testified in support of the legislation. Mayor Robert Macdonald of Lewiston, Mayor Bill Stokes of Augusta, Mayor and State Representative Alan Casavant of Biddeford, Mayor Karen Heck of Waterville, and Mayor Mike Brennan of Portland all made a common pitch to redesign the Rev II distribution as LD 1835 proposed. Chris Hall of the Greater Portland Chamber of Commerce also provided supportive testimony.

The several arguments the mayors advanced in support of the bill included:

- As municipal mill rates have increased over the last several years (caused at least in part by the deep, \$40 million annual raids on the municipal revenue sharing account accomplished by the Legislature over the last four years), more and more municipalities are becoming

eligible for Rev II resources, diluting its effectiveness in targeting communities with especially high mill rates.

- The additional services Maine’s shire towns and hub communities must provide to meet the demands placed on them in the areas of social services and providing the necessary infrastructure for economic development.

- The high level of governmental, “charitable”, and “literary and scientific” tax exempt properties located in the service center communities, which all require municipal services without adding to the tax base.

- The observations that: (1) it only makes sense for the Rev II distribution to be provided to municipalities with a tax burden that is at least above average; and (2) the 10 mill threshold in current law may have made sense when it was established

in the year 2000, but that fixed standard has quickly become arbitrary and should be replaced with a rationally justifiable threshold.

After the flush of supportive testimony, MMA testified “neither for nor against” because the Association’s Legislative Policy Committee was sharply divided on the proposal. Although many of the Tax Committee panelists decried the tendency in the State House to resort to “spreadsheet politics”, it cannot be denied that LD 1835, as printed, would result in over 250 of Maine’s towns and cities getting less in the way of municipal revenue sharing next year. In fact, more than 30 of Maine’s 63 designated “service center communities” would lose revenue sharing resources under this proposal. Not to mention that the timing could hardly be

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Pullback on Bill Connecting Circuitbreaker Benefits with Municipal Tax Liens

The February 3, 2012 edition of the Legislative Bulletin featured an article describing the Taxation Committee’s final approval of a bill designed to positively connect the state’s Circuitbreaker property tax relief program with tax abatement and collection procedures at the local level.

LD 1693, *An Act To Amend the Law Governing Abatement of Property Taxes for Infirmary or Poverty*, was originally presented to the Tax Committee for public hearing on January 19 by its sponsor, Rep. Dennis Keschl (Belgrade). After a couple of work sessions, LD 1693 was given a

unanimous “ought to pass as amended” vote by the Committee on January 31.

As amended and supported by the Committee, LD 1693 had three substantive components:

- The bill authorizes a board of municipal officers to consider Circuitbreaker benefits actually received by a person seeking a poverty abatement as having been available to that person for the purpose of paying his or her property taxes when those benefits were received.

- Working in the other direction, the

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“Regulatory Takings” Bill Voted Out of Committee

On Thursday this week a majority of the members of the Judiciary Committee voted to move forward with a significantly modified version of the “regulatory takings compensation” bill that has been previously described in the December issue of the Maine Townsman and the January 27, February 17 and February 24 editions of the Legislative Bulletin. Of the 11 Committee members present, the vote was 6-4-1, with one Committee member opting for an alternative version of the majority report. Instead of creating a hyper-complicated mediation and litigation “takings” construct for the courts to deal with, the approach being supported by a majority of the Committee would create a legislative “Committee on Regulatory Fairness.” This 14-member committee would hold periodic public hearings to listen to actual cases of regulatory overreach and develop legislation or regulatory solutions.

The Committee’s action includes two minority reports. One of the minority reports, which received four votes, would create a regulatory takings compensation system essentially similar to the printed version of LD 1810, *An Act to Implement Recommendations of the Committee to Review Issues Dealing with Regulatory Takings*, as described in the previous editions of the Legislative Bulletin. The significant changes to the bill would be that the takings claims would have to go through the land use mediation program’s process before it could appear in the courts, and language was added to

effectively exempt municipalities from being a party in any regulatory takings lawsuit. More detail on this exemption is provided below.

The other minority report from one committee member supported the majority report that creates the Regulatory Fairness Committee, but in addition to the duties given to the Fairness Committee in the majority report, it would also review recommendations on how to create a more formalized regulatory takings compensation system working off of recommendations appearing in the original bill. In short, this one-member minority report attempts to thread the needle between the two reports.

Background. After the February 21 public hearing on LD 1810, the members of the Judiciary Committee constellated around one of two approaches.

Proposal #1. At the first work session on LD 1810, the bill’s sponsor, Rep. Andre Cushing III (Hampden) provided an amendment to the printed bill that among other adjustments significantly beefed-up a mediation process that a person claiming a regulatory takings would have to go through before taking the claim to court. Even with these amendments, however, it is not an easy bill to read. It comes across as a great tangle of litigious barbed wire, leading to innumerable questions about how a takings claim would actually be adjudicated in the real world.

Proposal #2. In response to other concerns expressed at the public hearing by both proponents and opponents, Representative Brad Moulton (York) and Representative Charles Priest (Brunswick) offered an amendment that would strike all of the original bill and replace it with language that would create the Committee on Regulatory Fairness.

This idea was developed from the success of the Regulatory Reform Committee established in 2011 that was responsible for developing last years “LD 1”, a bill designed to reduce the regulatory burdens on businesses. If the Legislature enacts this version of LD 1810, this newly created committee would meet twice annually, at a minimum. During these meetings, com-

mittee members would solicit feedback from individuals and organizations that represent farmers, woodlot owners and other landowners, and consider impacts of land use laws and regulations on property values. When the committee felt it necessary, it could develop legislative recommendations that would be directed to the appropriate legislative committee of jurisdiction. At that point, the legislative corrections could be advanced as a regular bill.

The Committee on Regulatory Fairness would be comprised of 14 individuals. The committee members would be the Senate and House chairs and the ranking minority Senate and House members from the Judiciary Committee, the Environment and Natural Resources Committee, and the Agriculture, Conservation and Forestry Committee. The two other members would be a member of the House appointed by the Speaker and a Senator appointed by the Senate President.

In addition to the creation of this new legislative committee, a marketing and informational push about the existing Land Use Mediation Program would be initiated by state agencies that are responsible for permitting and licensing decisions.

Finally, a representative from the land use mediation program and the Attorney General’s office (AG) would annually report information to this legislative committee. The mediation program representative would detail the activity in the mediation program and any decisions issued in response to claims brought to the program. The AG official would provide information related to proposed rules that were reviewed by the Office and received public comments suggesting the implementation of the regulation might result in a potential taking of real property.

Work Session #2. The final work session on Thursday this week began with the review of a final amendment to Proposal #1 as detailed above. This amendment provided that municipalities could not be named as a party to any regulatory takings compensation claim either at the mediation stage or court stage of the process.

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Legislative Bulletin

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Old Friend, With Different Benefits

The Local Road Assistance Program (LRAP) Is Back, In Name Anyway

The Transportation Committee met this week to review the amendment crafted for LD 1367, *An Act To Restore Maine's Secondary Roads*. The week before, the Committee had unanimously endorsed a reconstructed version of the printed bill.

As amended by the Committee, LD 1367 creates the Secondary Road Program (SRP) for the purpose of providing municipalities with state matching funds to make improvements to Maine's *state aid collector road system*. Under existing road maintenance law, municipalities are generally responsible for the winter maintenance of collector roads, while the state has capital improvement and summer maintenance responsibility over these roadways.

The SRP replaces the Rural Road Initiative (RRI) program enacted in 1999 as part of an effort to transform what was then the then "local road assistance program" into the Urban Rural Initiative Program (URIP). Under the existing RRI program, state matching funds (when appropriated) are available to municipalities, on a competitive basis, for improving *state aid minor collector roads*. Under the existing program the state share is 66% of the cost of the minor collector road project.

In contrast, under the proposed SRP, municipalities could apply for matching funds to make improvements to state aid *minor* collector roads (as is the case now), as well as to *major* collector roads. While the existing RRI program is focused on minor collector roads, the Department of Transportation (DOT) has for many years been working with municipal officials (at least in an informal capacity) to cooperatively finance and make improvements to state aid major collector roads. The SRP would formalize the process by authorizing such collaboration in state statute.

As proposed in LD 1367, the state share of a state aid road project would be determined by DOT and would range from a low of a 50% state share to a high of an 80% state share. Projects qualifying for the higher state match rate would have to meet one of three criteria: (1) address an existing and potentially high crash location; (2) create a substantial number of new jobs for the region; or (3) have a

greater regional or statewide benefit relative to other similarly classified roads. In determining the municipal share, DOT may take into consideration in-kind services and materials, an agreement from the municipality to assume year-round capital and maintenance responsibilities on the improved collector road, or reductions in future local road assistance program distributions.

Unlike the existing RRI program, which is funded as resources are available, the SRP has a dedicated source of revenue. As provided in LD 1367, the fund would be capitalized by three sources: (1) DOT's share of the leases of right-of-ways for energy infrastructure development projects; (2) unallocated balances in the Highway Fund (estimated to be between \$1 and \$2

million each year); and (3) funds from any public or private source. The SRP fund is capped at \$4 million, with all funds exceeding that cap lapsing to the DOT's Highway and Bridge Capital program.

Since the RRI program is included as part of the current local road assistance program known as URIP, the state financial aid program is renamed the Local Road Assistance Program. Although this program shares the same name as a program from the past, it should be noted that no other changes are being made to either the existing road assistance mileage-based funding formula or the requirement that the revenues distributed under this fund be used for capital improvements only.

LD 1367 is now on the road to the full Legislature for enactment.

Circuitbreaker (cont'd)

bill prohibits a person from applying for Circuitbreaker benefits with respect to a property tax obligation that has been abated at the local level.

- Finally, the bill would allow municipalities to provide Maine Revenue Services (MRS) with electronic listings of the residential property owners whose tax bills have been unpaid and gone to lien. When MRS becomes ready to issue a Circuitbreaker benefit to one of those property owners, the benefit would be issued in both the recipient's and the municipality's name, and the municipality would be authorized to require the benefit to be applied against the lien before releasing any remainder benefit to the recipient.

Before finally sending LD 1693 to the full Legislature with the "ought to pass" recommendation, MRS was provided an opportunity to analyze the impacts of the bill on the agency. MRS outreached to MMA to determine the level of municipal participation that might occur and approximately how many residential properties with tax liens might be placed into a data-base. On the basis of a municipal survey conducted by MMA, the level of municipal interest was determined to be very high, with 90% of respondents

indicating they would participate. The data provided to MRS also indicated that approximately 7,000 Circuitbreaker accounts could be affected by liens in any year, out of 90,000 total Circuitbreaker beneficiaries.

As a result of the MRS analysis, the agency believed it would need approximately \$100,000 to create the necessary computer programs, and hire an additional tax examiner to verify information and manage the issuance of the targeted Circuitbreaker benefits by paper check. Circuitbreaker benefits are now issued electronically.

The Committee balked at the fiscal note and took a step backward. LD 1693 will now go to the full Legislature with just the first two components of the bill in place which address the connection between the Circuitbreaker and poverty abatement programs. Instead of moving forward with the part of the bill connecting Circuitbreaker benefits to tax lien accounts, LD 1693 will direct Maine Revenue Services to further study the issue with MMA and others in an attempt to create a system connecting Circuitbreaker benefits with municipal tax liens in a way that doesn't require an expansion of the state's taxation agency.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Work Session and Hearing schedules by Committee are available at the Legislative Information page at http://www.mainelegislature.org/legis/bills/phwksched_ps.asp?PID=1456.

Tuesday, March 13

Agriculture, Conservation & Forestry
Room 206, Cross State Office Building, 1:00 p.m.
Tel: 287-1312

LD 1830 – An Act To Establish the Department of Agriculture, Conservation and Forestry.

Environment & Natural Resources
Room 216, Cross State Office Building, 1:00 p.m.
Tel: 287-4149

LD 1846 – Resolve, Directing the Department of Environmental Protection To Adopt Rules Pertaining to Petroleum Storage and Gravel Pits.

Wednesday, March 14

Judiciary
Room 438, State House,
Tel: 287-1327

LD 1831 – An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes.

Thursday, March 15

Taxation
Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 1847 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2012-13.

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. 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, http://www.memun.org/public/MMA/svc/SFR/LD/LD_fr.htm.)

Agriculture, Conservation & Forestry

LD 1830 – An Act To Establish the Department of Agriculture, Conservation and Forestry. (Emergency) (Governor's Bill) (Sponsored by Rep. Timberlake of Turner; additional cosponsors.)

This emergency bill would combine the current Department of Agriculture, Food and Rural Resources and the Department of Conservation into a single Department of Agriculture, Conservation and Forestry. One of the divisions within the combined Department would be the Division of Land Use Planning, Permitting and Compliance. Under the state's current structural organization, that department or division is known as the Land Use Regulation Commission (LURC), dealing exclusively with land use planning in the unorganized territories. Outside of the purview of this bill, there are at least two additional moving parts to this legislation currently in play. One bill currently before the Agriculture, Conservation and Forestry Committee (LD 1798) would significantly restructure LURC. Also, a proposal currently before the Appropriations Committee, precipitated by Part FF of the biennial state budget enacted in 2011, would move the comprehensive planning and land use planning assistance currently provided to municipalities by the State Planning Office into the Department of Conservation by July 1, 2012.

Education & Cultural Affairs

LD 1854 – An Act to Expand Educational Opportunities for Maine Students. (Governor's Bill) (Sponsored by Rep. Johnson of Greenville.)

This bill creates the Maine Open Enrollment Program which allows a public school system or an accredited private school to choose to become an Open Enrollment school that allows a certain number of students from other public students to apply for enrollment and attend. The Open Enrollment or "receiving" schools must accept all applicants up to the number of openings without any form of screening or discrimination. For public school students attending private Open Enrollment schools, the "sending" school must provide tuition at the

tuition rates currently calculated for that purpose for those school systems providing choice. For public Open Enrollment schools, the out-of-district student is to be counted as a student of the receiving school for school funding purposes rather than that student's school of residence. For those school systems without school facilities for one or more grade levels, the bill also prohibits any school choice contracts executed after August 1, 2012 from limiting a student's opportunity to enroll in an Open Enrollment school. This bill also formalizes the procedures that allow students from other school systems to attend alternative public schools by mutual agreement between the two school superintendents. This bill requires a school superintendent who refuses such a transfer to commit the reasons for the denial in writing and provides guidelines for the Commissioner of Education to follow when conducting an appeal from that denial.

LD 1866 – An Act To Remove Inequity in Student Access to Certain Schools. (Governor's Bill)

This bill repeals the prohibition in current law that prevents public school funds from being used as tuition to an accredited private religious school on behalf of a public school student attending the sectarian institution.

Health & Human Services

LD 1851 – An Act To Amend the Laws Concerning Municipal Inspections of Establishments. (Sponsored by Rep. Strang Burgess of Cumberland; additional cosponsor.)

This bill corrects an unintentional enactment in 2011 that prohibited a municipality from licensing eating establishments by replacing that enactment with a corrected version, which authorizes municipalities to perform the inspection and licensing functions provided the municipality has been delegated that authority by the Department of Health and Human Services according to certain criteria already established in law.

LD 1862 – An Act To Limit Eligibility under the Municipal General Assistance Program. (After Deadline) (Emergency) (Sponsored by Sen. Saviello of Franklin Cty; additional cosponsors.)

This emergency bill excludes from General Assistance eligibility the persons in a household determined to be no longer eligible for state-federal benefits under the Temporary Assistance for Needy Families program (TANF) because the household has exceeded the 5-year lifetime limit on TANF benefits as enacted by the Legislature in 2011.

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Hopper (cont'd)

Judiciary

LD 1831 – An Act To Allow Forfeiture of Maine Public Employees Retirement System Benefits for Persons Convicted of Certain Crimes. (After Deadline) (Sponsored by Rep. Fossel of Alna; additional cosponsors.)

This bill permits a court to order the forfeiture of benefits of a public employee who is a member of the Maine Public Employees Retirement System if the member is convicted of a crime for which the penalties are equal to or greater than a Class C crime if the crime is committed in connection with the member's public office or public employment or if the member's position places the member in a position to commit the crime. The bill also provides that amounts credited to the account of a member of the retirement system are available to pay any court-ordered restitution for economic loss suffered by the state or a political subdivision of the state as a result of the crime.

Takings (cont'd)

The purpose of this amendment was to ensure that the bill would not include a "municipal mandate" designation. This "municipal mandates" amendment also provides that any party to the type of "takings" litigation contemplated by the bill must compensate a municipality for its expenses if a municipal officer, employee, or representative is called as a witness or asked to produce documents for review in any mediation or a subsequent legal proceeding. At least some of the Judiciary Committee's proponents of the Proposal #1 approach needed powerful language eliminating municipal impacts before they could give their support.

The Final Take. LD 1810 is now headed to the full Legislature with its three separate recommendations from the Judiciary Committee. On the basis of the votes previously taken by MMA's 70 member Legislative Policy Committee (LPC) in opposition to the printed version of LD 1810, it is clear that the LPC would urge municipal officials to support the Judiciary Committee's majority report on the bill, creating the legislative Committee on Regulatory Fairness, rather than the extraordinarily complicated legal construct establishing the regulatory tak-

ings compensation system supported by a minority of the members of the Judiciary Committee.

Revenue (cont'd)

worse. These proposed negative impacts are being suggested to the communities just as their selectmen, councils and budget committees are trying to prepare budgets for the upcoming fiscal year; budgets which in most cases are stretched to the breaking point.

The Tax Committee members heard both sides of the debate and decided to explore an alternative approach. The Committee is clearly not interested in advancing a revenue sharing proposal that would inflict financial harm on hundreds of municipalities statewide. On the other hand, the idea of moving the Rev II distribution tipping point onto a stronger public policy foundation was attractive to some of the Committee members, and an alternative approach was informally crafted for the statewide municipal community to consider.

The alternative approach would make two substantial changes to LD 1835.

First, the change to the Rev II distribution formula would be contingent on the Legislature allowing the full amount of municipal revenue sharing to be distributed

Labor, Commerce, Research & Economic Development

LD 1836 – An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters. (After Deadline) (Emergency) (Sponsored by Rep. Knight of Livermore Falls; additional cosponsors.)

This emergency bill allows an out-of-state business to enter the state when a Governor's or federal-level state of emergency proclamation or disaster declaration has been issued without subjecting that business or its employees to the licensing, registration and taxation requirements imposed on businesses and individuals that reside in the state. This exemption from business licensing or registration requirements, state or local taxes or fees, occupational licensing fees, sales and use taxes on certain equipment used by the businesses, and income tax withholding expires 60 days after the disaster or emergency is over.

as established in statute; that is, the full 5% of sales and income tax revenue would be dedicated to the "Local Government Fund" without the Legislature dipping into the account to balance the state budget. Since over \$40 million has already been scooped out of the revenue sharing account for the upcoming state fiscal year by this current Legislature, the earliest revenue sharing could be fully restored would be beginning on July 1, 2013.

Second, the change from the 10 mill threshold to the statewide average mill rate threshold would be implemented gradually, with no annual change being greater than ½ a mill. Under this scenario, for FY 2014, the threshold would be 10.5 mills, and for FY 2015, the threshold would be 11 mills, and so it would go until the statewide average full value mill rate is achieved. At that point, the annually calculated average mill rate threshold would be put permanently into place.

Spreadsheet politics being what they are, MMA's Kate Dufour has assembled the impact data to show what this proposal would mean on a town by town basis relative to current law. The Association's Legislative Policy Committee is going to give this reworked version of LD 1835 a thorough review when it convenes on Thursday, March 15.