

## Tax Committee Makes Revenue Sharing Recommendations

As reported in last week's *Legislative Bulletin*, the Taxation Committee spent Wednesday this week considering alternatives to the deep cuts to the municipal revenue sharing and "Circuit Breaker" property tax relief programs that are found in Governor Baldacci's proposed supplemental state budget.

The result of that effort would accurately be described as a mixed-bag.

Delivered to the Appropriations Committee on Thursday this week, the Taxation Committee's unanimous recommendation is to reject the proposed \$27 million in cuts to municipal revenue sharing and \$5.6 million in cuts in Circuit Breaker benefits. Instead of those cuts, the Committee offered two separate lists of recommended alternatives, one list supported by the Democrats on the panel and the other list supported by the Republicans. In both cases, the alternatives are meant to eliminate the proposed cuts to revenue sharing and the Circuit Breaker program as much as possible.

**The Democrats' Alternatives.** The list of alternative ideas proposed by the Democrats to the \$33 million in proposed reductions to property tax relief programs includes:

- **\$4.6 million: Amend the electricity and fuel sales tax exemption provided to manufacturers.** Under current law, manufacturers are provided a 95% sales tax exemption with respect to the electricity or fuel used in the manufacturing process. This amendment would drop that down to an 85% exemption, providing \$4.6 million per year to the General Fund.

- **\$3.9 million: Increased corporate filing fees.** Limited Liability Companies and "S Corporations" currently pay annual

corporation filing fees of \$85. Increasing the annual filing fee to \$250 would generate \$3.9 million in General Fund revenue.

- **\$40 million: Increased taxes on tobacco.** Increase the cigarette tax by \$1.00 per pack, and implement parallel fee increases to other tobacco products, to generate approximately \$40 million annually.

**The Republicans' Alternatives.** The Republicans' list of alternatives to the revenue sharing/Circuit Breaker cuts is easily distinguished from the Democrats'. It includes:

- **Unknown savings: General Assistance programmatic changes.** Imple-

*(continued on page 5)*

### Municipal Priorities Whitepaper Provided to Gubernatorial Candidates

An "Open Letter to Maine's 2010 Gubernatorial Candidates" is now posted at MMA's website at this link. <http://www.memun.org/public/news/PrioritiesPaper.pdf>

Written as a municipal priorities whitepaper, the Open Letter is a 28-page introduction to the issues MMA's Executive Committee believes should be at the center of any dialogue between local government and the next occupant of the Blaine House. A copy of the Open Letter has been mailed to all the gubernatorial candidates, with the hope that some level of dialogue will ensue.

The Open Letter leads-off with a review of three core issues: home rule, state mandates, and the myths and realities regarding the municipal approach to the regional delivery of governmental services.

From there, the Open Letter provides an overview of municipal thinking regarding such public policy topics as taxation and intergovernmental finance, K-12 public education, transportation, labor-management relations at the local government level, the state and local system of land use controls, and more.

The Association's Executive Committee hopes that town and city leaders from across the state feel entirely free to use the Open Letter as a discussion-starter as they begin to engage in conversations about the future of the State with the various candidates who are aspiring to be its next Governor.

If you would like a hard copy of the Open Letter, do not hesitate to contact MMA's Laura Veilleux at 1-800-452-8786 or [lveilleux@memun.org](mailto:lveilleux@memun.org)

# State Wants Piece of Vital Records Fees

The notion that the “train has left the station” and the municipal community needs to be on board appears to have been an underlying theme of a public hearing held on Wednesday of this week with respect to LD 1592, *An Act To Update the Laws Affecting the Maine Center for Disease Control and Prevention*. Sponsored by Rep. John Martin of Eagle Lake, LD 1592 proposes to increase several of the municipal vital records fees for the benefit of the programs under the purview of the Maine Center for Disease Control and Prevention (CDC).

Local officials oppose LD 1592. They are mostly concerned with the proposed increase to the vital records fees that are currently assessed and retained at the local-level because LD 1592 requires that the municipalities remit 25% of the collected fees to the state to financially underwrite its programs. Under the terms of LD 1592, the fee for original birth, marriage and death certificates is increased from \$10 to \$15, thereby (after subtracting the state’s proposed 25% share) generating an additional \$1.25 per certificate at the local-level. The fee for copies of these vital records is increased from \$5 to \$6, which decreases local-level revenues by \$0.50 per copy after subtracting the state’s newly-created 25% share. The biggest “gain” for municipalities is found in the proposed fee increase to the burial permit fee from \$5 to \$40, an 800% fee increase that was opposed by the Maine Funeral Directors Association.

In its testimony in support of the bill, the CDC argued that the vital records fee increase was necessary in order to enable the state to continue to provide the same level of vital records services. Under current design, the program is funded from “other source revenue” (i.e. fees) and is expected to generate enough revenues to fund itself without additional General Fund appropriations. The CDC believes that requiring the municipalities to remit 25% of the collected revenues to the state is fair and appropriate because the Department provides municipalities, free-of-charge, all of the paper that is used to print official vital records certificates.

Augusta City Clerk, Barbara Wardwell, speaking on behalf of the Maine Town and City Clerks Association; Helen Shaw, a certified genealogist; the Maine Funeral Directors Association and the Maine Municipal Association provided testimony in opposition to the proposed fee increases.

Generally, while opponents believe that a reasonable increase to the existing fee structure is warranted, they also believe that the funds should remain with the municipality that provides the record management service. In her testimony, Ms. Shaw suggested that it was not good public policy to simply raise fees to provide more funding for the state. Fees should be linked to the services actually provided.

MMA raised three concerns in its testimony against the bill.

First, while the state enjoys most of the financial benefits associated with the increase, it is the municipal clerks responsible for collecting the increased fees that have to deal with angry residents who are being asked to pay the increased charges. The public relations cost associated with implementing these state fees are borne solely by the municipal employees, not to mention the municipal cost incurred to manage and track the dollars that must be remitted to the state. Incidentally, the Health and Human Services Committee is also reviewing a bill to repeal the fee increases to state-level vital records that

were adopted in 2009 by the CDC through its rulemaking process. Some municipal officials view the movement to increase local-level fees as a way for the state to shift its public relations burdens onto the municipalities.

Second, municipal officials are not confident that the state will remain content with its 25% share of the collected revenues. Municipal officials believe that the next time the state falls on hard times, perhaps as early as next year, the state’s share of these municipally-collected fees will jump to 30%, and then 50% and in no time at all, municipalities will be collecting the fees and remitting almost all of the revenue to the state.

Third, municipal officials question why representatives from the Center of Disease Control (CDC) didn’t even have the courtesy of reviewing these proposed fee increases with municipal clerks prior to the submission of the proposal. LD 1592 clearly changes the relationship municipalities have with the CDC, yet no outreach was made until a couple of days before the bill’s public hearing. Good communication, even more than free paper, helps establish a constructive state-local working relationship.

MMA also raised concerns with the plumbing permit fee increases proposed in LD 1592 because it once again places municipal officials in the unenviable position of having to be the messenger of bad news. Those fees would increase from \$100 to \$250 (not including the \$15 surcharge) for septic system permits.

A member of the Committee expressed an interest in learning whether municipal clerks had any suggestions about how these state-level services could be provided without the proposed fee increases. As a result of this request, MMA has asked the Clerks’ Association to poll its members (although a question remains about which state-level services are associated with the management of vital records certificates). In addition, MMA expressed an interest in working with interested parties to see if an alternative solution can be crafted. We look forward to having those conversations.

The work session for LD 1592 is scheduled for next Wednesday, February 10<sup>th</sup> at 1:00 p.m.

## Legislative Bulletin

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# Proving the Cause of a Heart Attack

On Monday this week, the Labor Committee took testimony on a bill to provide a unique benefit to firefighters in Maine. The bill is LD 1558, *An Act Regarding Accidental Death Benefits for Beneficiaries of Deceased Firefighters*, sponsored by Senator Troy Jackson (Aroostook Cty.).

The bill would change the level of benefits provided to firefighters who are members of the Maine Public Employees Retirement System (MainePERS) via a Participating Local District (PLD). PLDs are typically municipalities, counties and other units of local government. Municipal officials oppose LD 1558.

Currently the MainePERS system for PLDs offers two types of death benefits. Ordinary death benefits are provided to workers whose death is not “as a result of an injury arising out of and in the course of employment.” For cases where death was work-related, an “accidental” death benefit is provided.

The purpose of the “accidental” benefit is to give a higher amount of compensation to the survivors of those whose family member died while working than is provided under the “ordinary” death benefit. According to information provided by the Department of Labor, the accidental death benefit can be more than double the ordinary benefit. Municipalities support having two tiers of benefits where a higher award is provided to those who died in the line of duty.

LD 1558 breaks with the current system by allowing certain firefighters’ beneficiaries to receive the higher “accidental” death benefit if they have a fatal heart attack within 6 months of last being employed as a firefighter. Not within 6 months of actually participating in a response to a fire, but simply within 6 months of being employed as a firefighter.

LD 1558 lacks basic elements of sound public policy with respect to employee benefits.

Under the terms of the bill, there is no obligation for the claimant to show that the heart attack was the result of working as a firefighter. One would need to only show that the heart attack occurred within 6 months of the time of employment. No other employees in the state are afforded

such a benefit.

Under LD 1558 there is no requirement that the person seeking the benefit show that the firefighter participated in any of the actual firefighting activities associated with elevated risks of heart attacks. There is research demonstrating that firefighters are exposed to a significantly higher risk of heart attacks when actually responding to a firefighting emergency. However, this same research has found:

*“The risk of coronary heart disease events during fire suppression may be increased because many firefighters lack adequate physical fitness, have underlying cardiovascular risk factors, and have subclinical or clinical coronary heart disease....Such problems are compounded during career tenure because more than 70% of fire departments lack programs to promote fitness and health. Most fire departments do not require firefighters to exercise regularly, undergo periodic medical examinations, or have mandatory return-to-work evaluations after a major illness. In addition, several studies have shown the high prevalence of risk factors [e.g., obesity, high cholesterol etc.] as well as lower-than-expected exercise tolerance.”* New England Journal of Medicine, 2007.

Heart disease is an ailment with potentially several causes. One possible cause is work as a firefighter. However, that risk level lowers considerably as time passes after participating in an actual firefighting event. Reviewing the facts of a case to determine if work was the cause of a firefighter’s after-the-fact heart attack, rather than other risk factors, can be difficult but necessary work.

LD 1558 provides the retirement system with no opportunity to inquire or review in any way the cause of a particular firefighter’s post-employment heart attack. It is possible, perhaps, that a heart attack in September was related to being last employed as a firefighter in March, but as the medical research has shown, maybe it is due to other risk factors such as family history, smoking or high cholesterol. LD 1558 slams the door shut on any review of the facts of the actual cause. Again, no other employee class in the entire state

would have this process for guaranteeing a claim, only firefighters.

The bill is crafted in such a fashion that there will be few beneficiaries and so it is our understanding that insurance premium rates will not increase. However, just because there may be no rate increase does not mean this bill costs no money.

The MainePERS system did “extensive research” into this issue and provided the Committee with a hypothetical analysis (that approximates an actual case currently before the system) that the monthly benefit for a surviving spouse in her late 40s would increase by \$1,500 if the accidental benefit were provided rather than the ordinary benefit. If that spouse reaches the typical life expectancy of 77, the increased benefit could cost the system over half-a-million dollars in total.

The PLD retirement program administered by MainePERS covers approximately 10,000 active employees and 7,000 retirees. It is entirely funded by local governments. It is one of a handful of retirement systems in the country that is at or near “full funding.” That is, the funding ratio for the PLD retirement system is 98%. It is only due to the recent drop in the economy that the funding ratio has dipped below the 100% fully-funded status for the first time in its history. In response, MainePERS immediately announced a series of premium rate increases for each of the next three years (average cumulative increase of 16% in premiums) that municipalities who participate in the system will have to pay.

In contrast, the state retirement system is woefully underfunded. As of June 30, 2009 it has an unfunded liability totaling \$4 billion. Its funding ratio is approximately 67%. A constitutional amendment passed in the 1990s by the voters requires the state to fully-fund its retirement system by 2028. The combination of these two factors is going to force the Legislature to increase its contributions to the retirement system dramatically in the next biennia. [Note: The Legislature agreed in 2007 to provide the firefighters with a subsidy to purchase health insurance when the firefighter retired early. The assessment

(continued on page 7)

# School Subsidy Spreadsheet Released for FY 2011

On Monday this week, the Department of Education (DOE) released its preliminary FY 2011 General Purpose Aid for Local Schools (GPA) funding spreadsheet. Although color-coding data-filled spreadsheets can be very helpful, the amount of red used in this spreadsheet only helps to illustrate the devastating impact the state's proposed budget will have on GPA funding.

The spreadsheet is posted on the DOE website at the following link:

<http://www.maine.gov/education/data/eps/epsmenu.htm>

In FY 2010, the state's share of K-12 education actually going to the local schools, including federal stimulus funds, was \$919.7 million. In FY 2011 the state's share, which again includes federal stimulus funds, is projected to be \$829.5 million, a loss of \$90.2 million. Of the state's 218 school units, only 12 (5%) will see increases in the amount of GPA revenue received between FY 2010 and FY 2011. 95% of the state's school

units are projected to experience decreases in GPA, ranging in impact from a few hundred dollars to over \$3 million in the City of Portland.

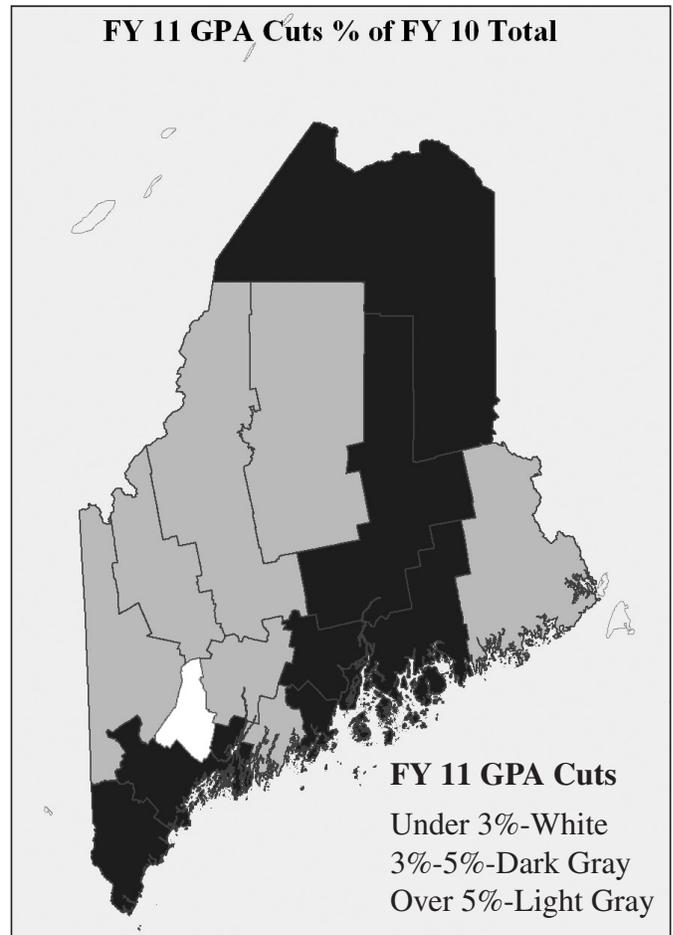
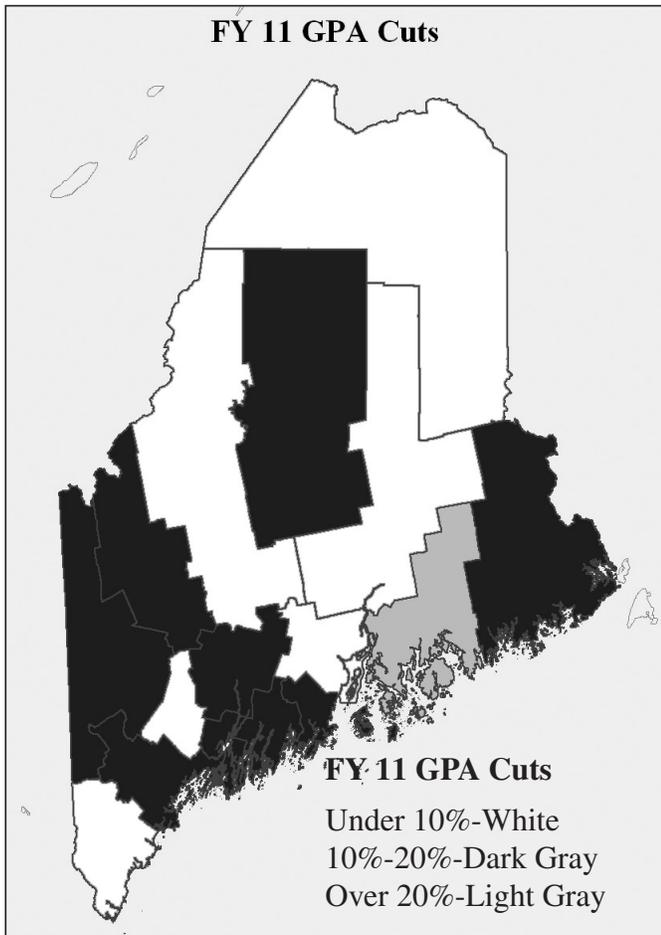
One caution about the data. In communities with school related debt, the impact of the cuts on classroom funding may be either over or under-projected unless the debt service data in the DOE spreadsheet is taken into account. For example, while the simple math suggests that the Portland school system will lose \$3.3 million, nearly \$1 million of its FY 2011 GPA distribution is reimbursement for the state's share of school construction debt service. Therefore, the amount of funds used to provide services to students is actually decreased by an additional \$1 million, making the year-to-year cut to "in-the-classroom" funding approximately \$4.3 million. The inverse is true for communities that received their last debt service reimbursements in this current year's funding. For these school units the funding cuts appear somewhat

over-projected, in that the state is no longer providing funds to cover debt service for those systems because the state's debt service reimbursement was entirely completed in the preceding year.

A preliminary county-level review shows that school units in Hancock County were hardest hit based on the measure of year-to-year subsidy reduction by percent. As shown in the chart and map titled "FY 2011 GPA Cuts", in the aggregate, school units in Hancock County are expected to lose \$3.9 million in state funding, accounting for a 23.5% reduction in GPA. In contrast, school units in Androscoggin County are projected to lose \$4.7 million in GPA funding between FY 2010 and FY 2011, which represents a 4.6% reduction in state aid.

When reviewing the FY 2011 cuts as a percentage of total school budgets (state and local) for K-12 education funding, the preliminary county-level review shows that school units in Washington County

*(continued on page 5)*



## SCHOOL (cont'd)

were hardest hit. As shown in the chart and map titled "FY 2011 GPA Cuts as % of FY 2010 Totals", the FY 2011 \$4.3 million loss in Washington County accounts for nearly 10% of the total school budget in FY 2010. In this analysis, the impacts in Hancock County are not as severe,

with the \$3.9 million loss accounting for 4.5% of the FY 2010 total school funding budget. By that measure, again, the \$4.7 million loss among the school systems in Androscoggin County represents the least severe loss of 2.9% of the FY 2010 aggregated school budgets.

### FY 11 GPA Cuts as a % of FY 10 Total

County	\$ Gain/(Loss) FY 10 - FY 11	FY 10 Total	Cut as % FY 10 Total
ANDR	(4,675,616)	159,924,391	-2.9%
AROO	(4,400,524)	108,473,731	-4.1%
CUMB	(19,282,838)	424,688,956	-4.5%
FRAN	(3,314,793)	42,146,482	-7.9%
HANC	(3,914,158)	87,753,508	-4.5%
KENN	(9,272,026)	162,690,952	-5.7%
KNOX	(3,485,280)	77,965,056	-4.5%
LINC	(2,501,654)	29,679,691	-8.4%
OXFO	(6,237,372)	112,040,863	-5.6%
PENO	(7,141,323)	226,909,341	-3.1%
PISC	(1,848,733)	25,063,247	-7.4%
SAGA	(2,505,291)	59,483,224	-4.2%
SOME	(4,276,968)	79,691,603	-5.4%
WALD	(2,407,420)	54,304,697	-4.4%
WASH	(4,313,583)	44,956,097	-9.6%
YORK	(10,612,352)	322,843,836	-3.3%
<b>Total</b>	<b>(90,189,932)</b>	<b>2,018,615,673</b>	<b>-4.5%</b>

### FY 11 GPA Cuts

County	FY 10 Adjusted State Share Includes ARRA	FY 11 Adjusted State Share Includes ARRA	\$ Gain/(Loss) FY 10 - FY 11	% Cut
ANDR	100,642,155	95,966,539	(4,675,616)	-4.6%
AROO	73,937,339	69,536,814	4,400,524	-6.0%
CUMB	132,436,530	113,153,691	(19,282,838)	-14.6%
FRAN	19,093,320	15,778,527	(3,314,793)	-17.4%
HANC	16,662,002	12,747,844	(3,914,158)	-23.5%
KENN	92,702,329	83,430,303	(9,272,026)	-10.0%
KNOX	19,845,557	16,360,277	(3,485,280)	-17.6%
LINC	4,629,400	12,127,747	(2,501,654)	-17.1%
OXFO	56,483,369	50,245,996	(6,237,372)	-11.0%
PENO	133,831,541	126,690,218	(7,141,323)	-5.3%
PISC	14,846,435	12,997,702	(1,848,733)	-12.5%
SAGA	24,019,778	21,514,487	(2,505,291)	-10.4%
SOME	48,377,902	44,100,934	(4,276,968)	-8.8%
WALD	27,254,199	24,846,779	(2,407,420)	-8.8%
WASH	22,484,027	18,170,443	(4,313,583)	-19.2%
YORK	122,430,105	111,817,753	(10,612,352)	-8.7%
<b>Total</b>	<b>919,675,987</b>	<b>829,486,055</b>	<b>(90,189,932)</b>	<b>-8.7%</b>

## TAX COMM. (cont'd)

ment programmatic changes to the General Assistance program as previously recommended by members of the Maine Welfare Directors' Association in the context of a broader review of state mandates on municipalities.

• **\$850,000: Close the Houlton Maine Revenue Services Office.** Consolidate the services provided by the Houlton Maine Revenue Services Office into the Augusta operations generating \$850,000 in savings

• **\$5 million: Reduce the Maine Revenue Services budget by 15%.**

• **\$37 million: Reduce the number of state employees by 1,000.** (Because the salaries and benefits of many state employees are at least partially covered by Federal Fund accounts, "Other Special Revenue" Fund accounts, or Highway Fund accounts, it is unclear if the \$37 million savings estimate represents a General Fund impact or a total-funds impact, or something in between.)

Municipal officials can judge for themselves the political viability of these various alternatives, and the probable degree to which any revenue saved or generated if they are implemented would actually be used to reduce the cuts to municipal revenue sharing.

**Expanding municipal revenue options.** The Taxation Committee's agenda on Wednesday included a reconsideration of a bill that was introduced last session on behalf of MMA which would expand the law authorizing municipalities to charge larger tax exempt organizations for the institution's share of the road, fire and police protection services the institutions receive directly from the municipality.

That bill was LD 1290, *An Act to Amend the Law Authorizing the Application of Service Charges to the Owners of Certain Real Property Exempt from Property Taxation*. LD 1290 would authorize municipalities to assess those service charges against property that is 100% exempt from taxation as long as the institution's property is at least \$1,000,000 in value or greater or the institution's gross annual revenues exceeds \$1,000,000 a year. LD 1290 also provides a system of calculating each institution's service fees based on its road frontage and built-

(continued on page 7)

# Fish Passage and Pricy Culverts

On Friday last week, the Natural Resources Committee reviewed a Resolve, LD 1725, which seeks to implement an amendment to the Natural Resource Protection Act (NRPA) rule standards for culvert repair and maintenance. The change is found in Chapter 305 of the rules of the Department of Environmental Protection (DEP).

LD 1725 is an outgrowth of a law enacted last session (PL 2009, c. 460 / LD 1333) which required the DEP to undertake rulemaking to amend its Permit By Rule standards “to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings.” The rule as drafted would accomplish this directive in two ways. First, by generally prohibiting the maintenance of culverts by “slip-lining” or other useful life-extending methods that further reduce the opening of a culvert. In addition, the proposed rules require the installation of larger culverts or more involved stream-crossing infrastructure.

The public policy goals of the rule change, while a bit unclear from the awkward drafting of the law last session, were very clear from the DEP-led stakeholder group. The bill seeks to accomplish three results by requiring culverts to be larger and embedded within a river or streambed rather than laid upon it. They are:

1. Natural stream flow;
2. Fish Passage; and
3. Passage for “aquatic organisms”.

Culverts are installed to allow vehicle traffic to pass over the river or stream. According to the DEP and an assortment of environmental groups including the Natural Resources Council of Maine, Maine Rivers, Atlantic Salmon Federation, the Nature Conservancy and others, the historical method of installation is problematic because the culverts are either too small or installed incorrectly from a hydrologic and biologic standpoint.

According to the proponents of LD 1725, if a culvert is “undersized” it restricts or pools water in a heavy rain event. Another way of saying this is that it prevents the stream from flowing as it

otherwise would naturally. Achieving “natural stream flow” essentially requires sizing the culvert to be equal to the width of the stream at its widest point in the immediate area.

The problem associated with undersized or poorly installed culverts that has received the most attention is the negative impact it has on “fish passage”. Fish that are swimming upstream may not be able to pass through a bad culvert. The most common reason for a culvert inhibiting fish passage is that the culvert is “perched” above the stream bed (as may be the case when the culvert is installed over ledge). If the culvert is too high above the water at the downstream end, the fish simply can’t get up and through the culvert.

Another cause is the collection of debris or sediment, or a beaver has decided to build its dam at the culvert. This blockage may also prevent fish passage.

The best way to achieve a natural stream bed beneath a road, proponents say, is to install an “open bottom arch” culvert rather than the most common pipe culverts. In some cases, the rule would require a culvert replacement to be so large as to extend above the roadway; this situation would require an engineered solution (e.g., a bridge).

The proponents, including the DEP, readily admitted that the rule would increase the “upfront” costs associated with repair and maintenance activities. However, they also argue that the lifetime costs (both replacement and ongoing maintenance costs) would be lower for culverts installed pursuant to the rule as compared to existing culverts. However, there is very little evidence to support this claim with respect to municipal maintenance costs for culverts. In fact, the DEP’s memo to the Board of Environmental Protection regarding this rule clearly indicated that cost-benefit data is hard to come-by.

The Natural Resources Conservation Service (NRCS) in Maine, which is working with Project SHARE (a river restoration project) in Washington County to replace undersized culverts with arched culverts in an effort to restore Atlantic Salmon habitat, produced just such a cost-benefit report in July.

Its analysis looked at four different

types of culverts and arches. It presumed that normal culverts would have to be replaced every 10 years (at a cost of \$3,000-\$5,000) and require annual maintenance costs of \$600 per culvert. The analysis also predicted the cost of each arch-culvert installation at \$50,000 and presumed no need to replace those installations for 50 years and no maintenance costs.

This NRCS analysis produced a cost increase that ranged from 80% to 263% for the arched culverts over a 25 year amortization period.

Charlie Baeder of the Sheepscot River Watershed Council produced an estimate for the cost to replace 65 culverts that were considered by a 2008 survey to be severe barriers to fish passage in the Sheepscot watershed. That estimate, roughly \$10 million or \$150,000 per culvert, apparently used actual data from over 20 National Oceanographic and Atmospheric Administration (NOAA) culvert replacement grants.

Municipalities oppose LD 1725. The primary municipal concern is cost. Over the biennium, the Legislature is poised to cut close to a quarter billion dollars in municipal aid. Although these are very difficult financial times, it seems to municipal officials that the DEP and environmental advocates continue to feel like it is “business as usual”. Programs, permits, rules and standards must be ever-expanded, tightened, raised and generally made more expensive.

Testifying in opposition to LD 1725 was Steve Bradstreet of Oak Engineering in Portland. Mr. Bradstreet serves on the board of the Maine Chapter of American Public Works Association (MCAPWA). He noted that the rule will dramatically increase costs for municipalities based upon his experience designing culverts for municipal clients. He pointed out that there are cost considerations other than just the cost to install a new structure. He noted that he recently worked on a project where the culvert had 19 feet of fill between it and the roadway above. The cost to excavate that culvert in order to install another “fish friendly” structure would be significant.

Also testifying in opposition were

*(continued on page 7)*

## **FISH PASSAGE (cont'd)**

Michael Claus, the Public Works Director in Kennebunk and Rob Pontau the Public Works Director in Topsham. Mr. Pontau is the current President of the MCAPWA.

Mr. Claus noted that the effect of the rule is to essentially prohibit routine maintenance and repair of existing culverts. It will require many existing culverts to be replaced. This is a dramatic cost increase. Also, in Kennebunk there are many vernal pools which are in some way connected or caused by the pooling effect of the existing culvert system. He indicated that the town's conservation committee doesn't believe these vernal pools should be extinguished.

Mr. Pontau testified that the ongoing maintenance costs are not that significant for existing culverts and that replacement is not as frequent as once every ten years. He believes his budget will not increase to correspond with increased costs from these and other legislative actions. Instead, some work won't get done. The unintended consequence of this rule may be that one culvert gets replaced to be fish friendly per year rather than repairing and extending the life of 3-5 culverts using existing tools.

Also testifying in opposition was the Maine Realtors Association. The realtors noted that the bill passed last session was expressly directed at municipalities. No one else, they argued, was supposed to be swept into this law. The realtors argue that the DEP went beyond its authority by making the rule changes applicable to the activities of individuals.

The realtors argument raises a serious issue. The rule, and the underlying public law, expressly exempt forestry activities from the obligation to meet a fish passage standard when the forest products industry does culvert repair and maintenance. How can the Legislature grant special-interest exemptions for thousands of miles of private roads in Maine's wilderness and yet mandate that municipalities spend millions of dollars on the thousands of culverts in municipal public ways? Either this is an issue of such environmental importance that it outweighs financial impact considerations, or it is not.

MMA made two requests. First, that

the Legislature take no action on this rule until 2011. The underlying public law requiring the rulemaking included a report-back date of January 1, 2011. For some reason, the DEP did not feel it could wait and completed the rulemaking in 6 months so that it could enact the rule this session.

The second request is for the Natural Resources Committee to give the DEP direction to make the rule less onerous and more equitable for all involved.

The work session has been scheduled for Tuesday, February 9<sup>th</sup> at 1:00 p.m.

## **HEART ATTACK (cont'd)**

of that program is that it is already underfunded, actuarially speaking, by about \$20 million.]

While the terms of this bill are small compared to the overall financial scope of the retirement system, as municipal officials have seen in environmental policy, social service policy and tax policy, the numerous incremental changes can have a rather dramatic financial impact when taken cumulatively.

Typically, and in the case of this particular bill, municipal officials object to the use of the legislative system to increase and expand the benefits provided to local employees outside the confines of the local bargaining process. It is possible for a municipal employer and a firefighter union to negotiate for these types of benefits at the local level, outside of the MainePERS system and statutory directive. However, this would require that the firefighters actually negotiate and not simply demand a benefit.

## **TAX COMM. (cont'd)**

structure square footage.

The Committee reviewed the details of LD 1290 on Wednesday morning and at least some members of the panel appeared to support its inclusion in the set of recommendations to the Appropriations Committee as a different kind of alternative to the deep cuts in municipal revenue sharing. That is, instead of raising revenue at the state level to offset these cuts, this recommendation would allow

the municipalities some access to a local source of revenue other than the property tax. Municipalities have long held that the major tax exempt institutions should make at least some contribution to cover the municipal services they rely upon.

In the afternoon, however, when it came time to vote on its actual recommendations, the Committee decided not to advance the idea to the Appropriations Committee. Instead, it is going to consider advancing LD 1290 as an alternative "local option" when the Committee takes up a bill later this month that would authorize local option sales taxes.

The same result happened last week with the Tree Growth issue. The Governor is proposing deep cuts to Tree Growth reimbursement, and in response the municipalities asked the Committee to take the opportunity to advance some responsible changes to the Tree Growth program to get at the issue of people using the program merely as a property tax dodge, primarily with respect to small-parcel, waterfront enrollments. The Committee seemed favorable to tightening up the program, but decided not to advance those changes in the budget because they were "policy changes". The Committee, therefore, is electing to use a separate bill to advance those Tree Growth amendments, just as it has now decided to deal with the service charge legislation outside of the budget in some stand-alone legislation.

The state budget is just as squarely a policy document as is any other legislation, and cutting Tree Growth reimbursement or municipal revenue sharing by 25% is just as clearly "policy" as providing programmatic improvements to Tree Growth or alternative revenue sources to municipalities. Moving these potentially controversial but not unreasonable responses to the municipal cuts out of the budget into stand-alone bills significantly reduces their chances of ultimately being enacted. Municipal officials need to understand that when they are talking to their legislators. If the towns and cities are going to be provided at least a few tools to deal with the deep cuts they are being handed in the budget, those tools need to be advanced within the budget document, not promised to be advanced outside of it.

## LEGISLATIVE HEARINGS

*NOTE: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules and supplements are available at the Senate Office at the State House and the Legislature's web site at <http://www.state.me.us/legis/senate/Documents/hearing/ANPHFrame.htm>. If you wish to have updates to the Hearing Schedules e-mailed directly to you, sign up on the ANPH homepage listed above. Work Session schedules and hearing updates are available at the Legislative Information page at <http://www.state.me.us/legis/>.*

### **Monday, February 8**

**Criminal Justice & Public Safety**  
**Rm. 436, State House, 10:00 a.m.**  
**Tel: 287-1122**

LD 1745 – An Act To Amend the Laws Governing County Jail Budgeting for York County.

**Legal & Veterans Affairs**  
**Room 437, State House, 1:00 p.m.**  
**Tel: 287-1310**

LD 1690 – An Act To Prevent Predatory Signature Gathering and Ensure a Clean Citizen Initiative and People's Veto Process.

LD 1692 – Resolution, Proposing an Amendment to the Constitution of Maine To Amend the Requirements Governing Direct Initiatives.

LD 1730 – An Act To Strengthen the Ballot Initiative Process.

### **Tuesday, February 9**

**Education & Cultural Affairs**  
**Room 202, Cross State Office Building, 1:00 p.m.**  
**Tel: 287-3125**

LD 1750 – An Act To Require the State To Pay the Costs of School Administration Consolidation.

LD 1757 – An Act To Create Fair Education Funding for Regional School Units.

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

LD 1514 – Resolve, To Promote Efficiency and To Streamline Access to the Circuitbreaker Program Application Process.

LD 1635 – An Act To Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program.

**Transportation**  
**Room 126, State House, 1:00 p.m.**  
**Tel: 287-4148**

LD 1728 – An Act To Make Supplemental Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2010 and June 30, 2011.