

Gubernatorial Candidates Forum on October 13th

What questions should be asked of Maine's next Governor?

All five candidates in the running to be the next Governor of Maine have been invited to participate in a Candidates' Forum to be held the morning of the second day of MMA's annual convention, on October 13th, at the Augusta Civic Center. All but one will be attending.

Every four years MMA organizes this opportunity for the gubernatorial candidates to address several hundred elected and appointed municipal officials from across the state and share their views on such matters as intergovernmental relations, school funding, maintaining transportation infrastructure, state tax policies, unfunded mandates, property tax relief programs, and balancing environmental regulation against its costs.

The only candidate who has bowed out of the Forum is Paul LePage. His campaign staff has informed us that the Waterville Mayor has a scheduling

conflict on October 13th which prevents him from participating.

We appreciate the willingness of the four other candidates for Governor – Eliot Cutler of Cape Elizabeth, Elizabeth Mitchell of Vassalboro, Shawn Moody of Gorham, and Kevin Scott of Andover – to share their views in October with a concentrated gathering of municipal officials, all of whom will be very eager to hear how each candidate proposes to communicate and interact with their town and city partners.

The Forum will be moderated by Tory Ryden, the former anchor of WMTW-TV Channel 8. We are currently developing the several prompting questions that will be used to stimulate the discussion. If you have a specific question you think should be asked of the candidates, please forward it to Geoff Herman at gberman@memun.org so that it can be considered for the final script.

MMA's Legislative Policy Committee

Developing the Association's 2011-2012 Legislative Agenda

The 70 members of MMA's Legislative Policy Committee (LPC) were finally elected or appointed in early August, and the process of developing MMA's legislative agenda for the next two-year period was immediately initiated.

A final list of the LPC membership, along with contact information, is provided on MMA's website at this

address: <http://www.memun.org/public/MMA/svc/SFR/LPC/phone.pdf>. Municipal officials are encouraged to connect with their LPC representatives whenever there is a legislative or regulatory matter that they believe needs to be addressed. MMA's entire advocacy system relies on a strong communication

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November Statewide Ballot

Question 1: Citizen Initiative

Do you want to allow a casino with table games and slot machines at a single site in Oxford County, subject to local approval, with part of the profits going to specific state, local and tribal programs?

Question 2: Bond Issue

Do you favor a \$5,000,000 bond issue to be awarded on a competitive basis to increase access to dental care in Maine, \$3,500,000 to be used for a community-based teaching dental clinic affiliated with or operated by a college of dental medicine to be matched by \$3,500,000 in other funds, and \$1,500,000 to be used to create or upgrade community-based health and dental care clinics across the State to increase their capacity as teaching and dental clinics?

Question 3: Bond Issue

Do you favor a \$9,750,000 bond issue to invest in land conservation and working waterfront preservation and to preserve parks to be matched by \$9,250,000 in federal and other funds?



What Makes Up the State's "Structural Deficit"

During this election season there will be a lot of talk about the state's "structural deficit", which will often be pegged by the various candidates and the media at the \$1 billion dollar mark. For all of that talk, it is important that the meaning of the term "structural deficit" is fully understood. The following information was gleaned from a review of data made available by the Legislature's Office of Fiscal and Program Review (OFPR).

A two-year calculation. All references to a structural deficit are referring to a projected gap between anticipated state expenditures and estimated state revenue over the full two-year, biennial period beginning on July 1, 2011 and ending on June 30, 2013. The term "structural" is meant to convey the sense that both the revenue and expenditure elements of the calculation are controlled by the structure of current law.

To the extent that the current revenue structure is insufficient to meet the current expenditure obligations, there is a structural gap. To bridge that gap, the Legislature would need to change the laws governing its revenues, the laws governing its expenditures, or some combination of both.

State revenue. The first step in these calculations is the estimate of state revenue. According to the OFPR analysis, the state's General Fund revenue was \$5.53 billion in the current FY 2010-11 biennium. However, some of that revenue only existed because of certain "one-time" adjustments enacted by the Legislature. A good example of which

is the \$60 million worth of municipal revenue sharing that the Legislature transferred from the municipalities to the state treasury. OFPR's revenue estimate assumes that these one-time adjustments will not be repeated in the next biennium.

Going forward, after recognizing and correcting for the various one-time revenue adjustments that were made by the Legislature, the state's General Fund revenue is projected to be \$5.68 billion in the next biennium. This represents a 2.8% increase from the current biennium. The lion's share of that relatively modest increase is projected to occur in second year of the biennium (FY 2013).

"Baseline" budgets and "Reality" budgets. In recent years, what goes into calculating the "structural deficit" has been undergoing some refinement by OFPR. In summary, the staffers at OFPR have been calculating two versions of the gap between anticipated expenditures and available revenues.

One of those versions utilizes the so-called "baseline budget", which is the more conservative of the two analyses. A baseline budget is roughly a "flat" budget. However, even a flat budget can mask significant internal changes.

The "baseline budget". The state's "baseline budget" is essentially what used to be referred to as the "current services" or "Part A" budget. It contains the following authorized expenditures:

- The most recent year's authorized ongoing personnel positions, plus, additional expenditures for increased salary and benefits over the next biennium (recognizing an "attrition factor");
- No additional capital expenditures; and
- The most recent year's "All Other" funding held flat, but only after correcting for one-time measures enacted by the current Legislature. For example, prior to some one-time changes, the Legislature appropriated \$957 million from the state's General Fund for K-12 education aid for FY 2011. \$20 million was subsequently cut from that amount in one-time, "curtailment" reductions

enacted as a result of reduced state revenues. Also, approximately \$60 million of that General Fund appropriation was replaced with a federal fund appropriation because federal stimulus money became available on a one-time basis for that purpose. Because \$957 million would have been the General Fund appropriation but for those one-time reductions, \$957 million becomes the "baseline" amount of school subsidy for the next fiscal year.

When all of the baseline budget adjustments are made, the current biennial gap between the revenues estimated for FY 2012-13 and these core "baseline" appropriations is \$514 million.

The "Reality" Budget. The budget against which the entire "structural deficit" is measured is the baseline budget plus some other expenditures that are required by current law. The reality budget is less conservative than the baseline budget but it is more conservative than a "wish list" budget because it does not include funding for any new programs or services that are not already required by law. Put another way, the baseline budget does not cover 100% of the state's statutory obligations. For example, \$957 million appropriated for K-12 education for FY 2012 will fall more than \$137 million below the 55% level required by state law. Accordingly, OFPR calculates a budget that is faithful to current law for the purpose of defining the full structural deficit.

What follows are the various items that drive the \$514 million "baseline" budget deficit toward the \$1 billion structural gap:

- Constitutionally required payments to state debt obligation and retirement obligations over and above current levels. **\$172 million.**
- Providing the statutorily-required 55% of the costs of K-12 education (as defined by the Essential Programs and Services). **\$240 million.**
- Projected increases in Department of Health and Human Services/Medic-aid programs. **\$162.5 million.**
- Inflation-based increases for Higher Education and other state programs. **\$50 million.**

Total state budget structural gap for the FY 2012-2013 biennium = \$1.14 billion.

Legislative Bulletin

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MMA LPC (cont'd)

network that connects elected and appointed municipal officials throughout each State Senate District with their LPC representatives.

Legislative Agenda. In order to assist the Legislative Policy Committee (LPC) with the development of 2011-2012 legislative agenda, MMA staff outreached to all of Maine's elected municipal officers and asked them to submit ideas for necessary legislative changes.

In response to that request, 90 municipal officials from 85 communities generated over 235 policy ideas for the LPC's consideration. That brainstorming list has been sent to all 70 members of the LPC and it is now posted on our website at this address: <http://www.memun.org/public/MMA/svc/SFR/LPC/ideas.pdf>.

Although the LPC is in the process of reviewing and prioritizing the comprehensive list of legislative ideas, it is not too late to include your ideas in the mix. Please take a moment to review the list and if an issue important to you is not mentioned, contact your LPC members and ask that they consider advancing your idea.

As might be expected, the ideas submitted for possible legislative initiatives range from comprehensive and complex proposals like tax reform to relatively simple administrative measures such as increasing municipal boat registration fees. Big or small, all these ideas are important to consider as the municipal community tries to find ways of providing quality local services with less resources. The ideas generated have been organized into seven general topic categories, including: 1) tax policy; 2) state aid to municipalities; 3) transportation; 4) mandates; 5) environmental issues; 6) economic development; and 7) education policy. In addition to the ideas falling into these general categories, there were several miscellaneous suggestions forwarded to the LPC for its consideration. Those ideas ranged from proposals to increase the public's awareness of how state-level funding decisions impact the delivery of local government services to a proposal to prohibit the further consolidation of

existing PSAPs.

Additionally, five respondents suggested that MMA not advance a legislative agenda this biennium.

What follows is a summary of the ideas generated by municipal officials in four of the more popular categories.

Tax Policy – State & Local. As has been the case year-after-year, municipal officials are interested in addressing the property tax burden shifts that occur as a result of the state's relatively lax property tax exemption laws. Municipal officials, particularly in the state's service center communities, are frustrated with providing basic services, such as road maintenance, sewer treatment and public safety services "free of charge" to entities that seem to be expanding by taking more and more taxable property off of the assessment roles. As a result, several municipal officials proposed enacting solutions that would require non-profit organizations to contribute financially for the services provided; including: 1) limiting the benefit to primary structures only; 2) enabling municipalities to assess fees for services provided; or 3) amending the definition of a "charitable" organization so that it is more narrowly applied.

The second most cited tax policy problem is with the Tree Growth Program, particularly the use of the program by some to dodge property tax obligations. Potential remedies for healing the controversial program include increasing the minimum lot size for program participation, as well as making the enrolled property open to the public.

Other tax-policy related ideas include stabilizing the Homestead Exemption program by ending the seemingly annual downward adjustments to the value of the benefit. Also, municipal officials have not given up on comprehensive tax reform.

State Aid to Municipalities. Taking into account the Legislature's most recent treatment of municipal state aid programs, it is not surprising that municipal officials want to battle against future raids on municipal funding programs. Holding the state accountable for its legislative requirement to fund 55% of the statewide costs of K-12 education

and protecting against future revenue sharing raids received top honors.

Transportation. The Highway Simplification Study seems to be on the minds of many municipal officials. The draft proposal seeks to change the system by shifting year-round maintenance and capital funding responsibilities over an improved minor collector road system to the municipalities, and the year-round maintenance responsibilities over the major collector road system to the state. (A related article in this edition of the *Legislative Bulletin* provides more detail on study). As a result of this ongoing study effort, it was suggested that the Association monitor this process closely.

Mandates. It is clear that municipal officials would prefer that members of the Legislature find the funds necessary to implement and manage the mandates that get passed down to the town and city governments. If state-level policymakers believe that a particular program needs to be initiated, then the state should find the resources necessary either by raising the revenue or eliminating other programs. As a result, there is strong support among the municipal officials to guard against the enactment of unfunded state mandates. Municipal officials are also advocating against the enactment of "backdoor mandates", which occur when the state cuts funding for municipal programs with the expectation that the same (or better) levels of service will be provided.

Frustration. In reading the narrative responses from the municipal officials responding to this brainstorming request, it is apparent that the municipal community is frustrated by the unfounded claims made by some politicians and the media that local services are provided redundantly or inefficiently and municipalities do not collaborate. They are also frustrated with the propensity of the legislative and executive branches to boast of balancing the state budget "without increasing taxes", all the while shifting additional costs to the property taxpayers. And they are frustrated by the "double-whammy" of the last two biennia where financial support to local governments was slashed but the mandates and expectations for expanded or increased services kept on coming.

PUC Undertakes Two Studies

Further Consolidation of E-9-1-1 and Dig Safe Issues Being Reviewed

The Legislature directed the Public Utilities Commission (PUC) to create a plan to reduce the number of Public Safety Answering Points (PSAPs) from the current 26 to between 15-17. A PSAP is the call-center which receives emergency 9-1-1 calls from the public. PSAPs are operated by 9 municipalities, 13 counties and the State Department of Public Safety which operates 4. In 2003, the Legislature closed several PSAPs reducing the number then in existence from 48 to the current 26.

The PUC sought public input on the issue of further consolidation and received comments from over 70 entities, mostly municipal and county groups, including MMA. All of these comments and the PUC's Notice of Inquiry may be found online at the PUC website: http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_query.

On August 5th, the PUC released its draft plan. The plan has three major elements.

First, it calls for the reduction of PSAPs from 26 to 17, with only one in each county except Cumberland, which would get two. Ten existing county-based PSAPs are unaffected and would continue to exist following consolidation: including the Franklin, Hancock, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Washington and Waldo Regional Communications Centers (RCC).

The plan recommends the consolidation of the Androscoggin Sheriff's Office with the Lewiston/Auburn 9-1-1 (the 11th). It recommends that Brunswick, Westbrook and the state-operated PSAP in Gray all close and merge with the Cumberland County RCC (the 12th). This would leave the City of Portland's PSAP (the 13th) in place, but with the recommendation that Scarborough close and become a client of Portland's.

The PUC also recommends that Sanford's PSAP be the only one in York County (the 14th) thereby absorbing both the Town of York and City of Biddeford PSAPs. The plan recommends eliminating the City of Bangor PSAP and having the Penobscot County RCC (the 15th) be

the sole PSAP in that county. Also, the plan suggests that the state-operated PSAP in Orono consolidate into the Penobscot County RCC.

The plan recommends that the state-operated facility in Houlton become the PSAP for Aroostook County (the 16th) and that the state-operated facility in Augusta become the PSAP for Kennebec County (the 17th).

In all, two state PSAPs and seven of nine municipal PSAPs would be eliminated; all existing county PSAPs would remain.

The second recommendation is that "*all towns would be expected to be served out of their designated regional communications centers.*" While the plan is a bit vague on this point, it suggests that the state will grant to each PSAP a monopoly over that service in their jurisdiction. Municipalities and counties who currently have the freedom to compare rates and service quality and switch PSAP providers would be stripped of that right. Several municipalities in Kennebec and Aroostook counties exercised that right in 2008-09 by switching away from two state operated PSAPs because of significant rate increases. The plan forces these municipalities to go back to the state operated PSAPs. The plan states that the substantial rate increase issue would need to be "resolved" but does not suggest how.

Finally, the draft plan calls for an "incentive" program to encourage consolidation. The PUC's goal is to have municipalities use a single PSAP for both answering and dispatching services. This recommendation targets the 30 or so municipally-operated dispatch centers that are not PSAPs. The amount of the proposed incentive is \$1 per capita for three years. Under the recommendation, a community like Waterville, which operates as a dispatch center for itself and other municipalities, would receive a total of approximately \$45,000 spread out over a three year period if it relinquished its dispatch operation.

The draft PUC plan can be seen on the MMA website. The draft plan and

all comments may be found at the PUC website previously identified. To access the file, enter the "Case ID" for this issue, which is the number 2010185.

A public hearing is scheduled for September 22nd at the PUC building in Hallowell.

The PUC is obligated to produce its final plan by November 1, 2010.

Improving the Dig Safe System. The PUC is also contemplating potential changes to the Underground Damage Prevention Program, more commonly known as "Dig Safe".

The Dig Safe program requires anyone performing an excavation to first determine if there are underground utilities in the area of the excavation before digging. In order to facilitate that search, Maine belongs to the "Dig Safe" system which allows excavators to notify the Dig Safe system of the area of the excavation site. The Dig Safe system in turn notifies area utility owners in the vicinity of the excavation site; these utility owners must then go and mark the site (generally by spray paint) for the location of any underground utility property.

The PUC is exploring many operational issues associated with the Dig Safe program. Issues such as defining the excavation area for big projects that take a long time to complete and how to manage sewer connections that are privately owned by homeowners.

The PUC is also reviewing the issue of "non-members." Non-members are primarily government owned utilities such as water and sewer systems. Municipal and quasi-municipal utilities such as these are not obligated to be members of Dig Safe. Some would like municipal water and sewer districts to be mandatory members of the Dig Safe program.

MMA submitted comments to the PUC on its inquiry into the Dig Safe program.

The comments of MMA and others as well as the PUC's Notice of Inquiry may be found online at the PUC website: http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_query.

To access the file, enter the "Case ID" for this issue, which is the number 2009371.

Contact Jeffrey Austin with questions or suggestions.

Highway Simplification Study Update

Since December 11, 2009 a group of 15 municipal, regional, state and road construction industry representatives has met on a nearly monthly basis to answer a legislative charge to change the existing state and local road classification and maintenance responsibility systems. The group is known as the Policy Working Group (PWG). The PWG has a report deadline of January 15, 2011. As discussed below, the draft recommendation changes the state and local road maintenance system by assigning year-round (rather than seasonally-based) maintenance and capital improvement responsibilities for “collector” roads to either the municipalities or the state.

Under existing law, municipalities are responsible for maintaining “minor” and “major” collector roads in the winter and the state is responsible for the summer maintenance and capital improvements of these same roads. Under the PWG’s “fix and swap” proposal, municipalities would become responsible for the year-round maintenance and capital improvement costs of the minor collector road system and the state would become responsible for all aspects of the major collector road system. Before a shift in responsibilities could occur, however, the state would be required to improve the minor collector road inventory so that local-level capital investments would not be necessary for at least 10 years. The estimated cost of bringing the 4,700 lane miles of minor collector roads up to this standard is \$305 million.

The draft proposal also includes recommendations for increasing local road assistance to municipalities from the current \$23 million per year to \$37 million per year to help cover the added expenses associated with the new summer maintenance responsibilities. It should be noted, however, that those communities with more major collector road miles than minor collector road miles may experience the additional benefit associated with shifting their winter maintenance responsibilities on major collector roads to the state. Therefore, the proposal is designed around the net effect of the shift, and the number of miles of roadway shifted both to and away from municipal responsibility will determine the level of

benefit. For example, a community with 25 major collector lane miles may be able to reduce its winter workforce and experience real savings, while a community that is currently required to maintain just a single major collector lane mile will not experience overwhelming savings.

Also included in the PWG plan is a recommendation to amend the existing “urban compact” program to redefine compact communities as those that have 2.5 or more miles of dense development along state roads. Under existing law, 43 municipalities are defined as urban compacts and 13 as winter compacts. Those 56 communities either have year-round or winter-only maintenance responsibilities over state and state aid roads within the community’s compact area (i.e., the densely developed areas of the community).

As proposed by the PWG, the program would be expanded to add 19 communities to the mix of municipalities mandated to provide year-round services on state roads in the compact area. In

addition, the 13 existing winter-only compact municipalities would be required to provide year-round services as well, and the existing 43 year-round compact communities would remain as such. The state would retain responsibility for funding capital improvements on the state roads within the compact area.

Posted on MMA’s website is a detailed description the PWG’s work to date. That update includes town-by-town impact data, the criteria used to bring minor collector roads to the “10-year standard”, and other important information.

Municipal officials are urged to read the update as well as to explore the information posted on the Maine Department of Transportation’s website.

MMA’s update is posted at: <http://www.memun.org/public/MMA/svc/SFR/LPC/lpc.htm>.

MaineDOT’s information is posted at: <http://www.maine.gov/mdot/hss/index.htm>.

If you have any questions please contact Kate Dufour.

State Adopts Uniform Building Code

On September 2nd the Building Codes and Technical Standards Board (“Board”) adopted Maine’s first statewide building code. The code, known as the Maine Uniform Building and Energy Code or “MUBEC” will go into effect on December 1, 2010. On that date, local building codes will be void.

Enforcement of the code is both tiered and staggered. It is tiered in that enforcement of the MUBEC only has to occur in municipalities over 2,000 in population. It is staggered in that for municipalities over 2,000 in population that currently have an adopted building code, enforcement begins on December 1, 2010; for those municipalities over 2,000 in population that don’t currently have an adopted building code, enforcement begins in 2012. The State Planning Office intends on distributing one free copy of MUBEC to each municipality over 2,000 in population.

Enforcement of the MUBEC was built into the 100+ year old certificate of occupancy law. So, municipalities over

2,000 may need to make some changes to their certificate of occupancy permitting systems.

The heart of enforcement is the inspection process. Municipalities are not required to conduct the inspections with municipal code enforcement officers/building inspectors. If the municipality chooses not to directly enforce, the law requires the homeowner/developer to hire a third party inspector. This is the immediate decision that municipalities over 2,000 in population will need to make. If a municipality chooses to be an “active” enforcer by having a municipal building inspector conduct inspections, that inspector must be certified by the State Planning Office.

MMA has established a webpage with information and links that discuss this issue in-depth. Please visit that webpage: <http://www.memun.org/public/MMA/svc/SFR/BuildingCode/default.htm> for more information. This will also be a topic at the MMA Convention in October. Contact Jeffrey Austin with questions or suggestions.

State's Vital Records Service

Charge Effective as of July 12, 2010

Earlier this year, the Legislature enacted LD 1592 (PL 2009, c. 589), *An Act to Update the Laws Affecting the Maine Center for Disease Control and Prevention*. As enacted, the law impacts municipalities in two ways.

Increases in Municipal Vital Records Fees. First, as of July 12th of this year, the fees municipalities assess for vital records were increased as follows: 1) birth, marriage or death certificates from \$10 to \$15 (for the first copy) and from \$5 to \$6 (for subsequent copies sold at the same time); 2) burial permits, which is renamed "permits for the disposition of human remains," from \$5 to \$20; and 3) marriage licenses from \$30 to \$40.

State Service Fee Assessment Authority. The law also authorizes

the Maine Center for Disease Control's (CDC) Vital Statistics Office to develop, through rulemaking, a process for assessing municipalities a "service fee" for the state-level assistance provided to communities. The municipal service fee assessment proposal was determined necessary to help address a \$420,000 shortfall in the state's vital records program.

Service Fee Assessment Proposal. As a result of the information gathered from a municipal vital records activity survey, the state has determined that it will require municipalities on a monthly basis to remit 40% of the revenue generated by the increase in local fees. Under this proposal, the state service fee will be assessed as follows: 1) \$2 for each certified copy of a birth, marriage or death

certificate sold by the municipality; 2) \$0.40 for each additional certified copy of a birth, marriage or death certificate of the same record, sold at the same time; 3) \$4 for each marriage license issued; and 4) \$6 for each disposition of human remains permit recorded.

State Service Fee Retroactively Applied to July 12, 2010. Although as of the printing of this edition of the *Legislative Bulletin*, the state's fee had not been "officially" adopted through the rulemaking process, the state assessment will be retroactively applied to July 12th. In other words, municipalities will have to determine how many vital records have been sold since July 12th and remit to the state its share using the state service fee rates outlined above.

For more information on this issue, please feel free to contact Kate Dufour at kdufour@memun.org or 1-800-452-8786.

State Aid to Municipalities – The Baldacci Years

It is fair to say that the rapidly declining state of the economy posed many challenges for the Baldacci Administration and the Maine Legislature in the last few years. What is unfair, however, is how the members of the legislative and executive branches decided to disproportionately dismantle the municipal revenue sharing program to help balance the state budget.

During the last eight years (2004-2011), K-12 funding has experienced increases in state aid by 34%. Part of that increase was undoubtedly due to the municipal effort to move the state towards its legal obligation to pay 55% of the cost of education, and when that

effort flagged, there has been temporary help in the form of \$128 million in federal "stimulus" or ARRA funds. In contrast, the commitment of the Administration and Legislature to honor the municipal revenue sharing program has waned over time.

Over the last eight years the Legislature enacted and Governor Baldacci signed budgets implementing nearly \$76 million in revenue sharing raids; that is, cuts to the revenue sharing distribution over and above the "natural reduction" in revenue sharing that automatically occurs when state revenues decline. As a result, funding for the municipal revenue sharing program has decreased by 19%.

An obviously overlooked or ignored section of the law was adopted by Maine's voters in 2004. That law, which directed the Legislature to provide 55% of the cost of K-12 education, was designed to prohibit the Legislature from cutting other local government subsidy in order to meet its educational funding obligation. That law reads as follows:

"The (Legislature's actions to provide 55% state funding) may not defeat the intent of this Act by reducing, freezing, eliminating or otherwise restricting the state revenues, appropriations or reimbursements that historically have been provided to or shared with municipalities, including without limitation: state-municipal revenue sharing...property tax homestead exemption reimbursement... the County Jail Prisoner Support and Community Corrections Fund...the tree growth tax reimbursement program...the general assistance reimbursement program...and the Rural Road Initiative and Urban Compact Initiative (URIP)."

Since this law was adopted by the voters, only the URIP Program and General Assistance reimbursement have not been cut by the Legislature.

FY	General Fund	GPA	Rev Share
1997	1,815,498,708	544,460,070	77,696,000
2004	2,642,999,485	699,041,403	110,663,051
2011	2,704,570,823	937,134,134	89,209,367
% Change 1997-2004	46%	28%	42%
% Change 2004-2011	2%	34%	-19%
% Change 1997-2011	49%	72%	15%

¹ Source for General Fund Appropriations. Office of Fiscal and Program Review - http://www.maine.gov/legis/ofpr/general_fund/approps_expnd/index.htm

Telecommunications Personal Property Tax

MMA is involved in a legislatively-created working group charged with developing recommendations for updating the tax code as it applies to telecommunications personal property, which is the personal property of cable television, telephone, and Internet companies. Some of that type of property is assessed at the municipal level and the tax is established at each town's or city's property tax rate. Some of that property is assessed at the state level, and the tax is assessed at a fixed rate of 22 mills. The charge to the working group is to make the tax more uniform across the various types of telecommunication service providers.

The two different ways this type of personal property is being taxed has been an issue of legislative attention for at least 10 years, without ever being squarely addressed. The participants in this particular working group include all the various types of telecommunications providers, most of whom have both "landline" and wireless representatives. Maine Revenue Services and MMA are also on the panel. The working group is being facilitated by Representative Kathy Chase (Wells) and Betsy DiCapua.

Curiously, most of the various owners of telecommunications property subject to the State assessment are unable to identify the value of their property that may be located in any specific municipality. Their claim is that they never had to know exactly where their property was located for taxation purposes, and they organize their networks on a regional rather than municipal basis. They also claim they are unable to quickly identify that property's exact location. Unfortunately, that lack of information creates an obstacle to the effort of understanding the precise municipal impact of any proposed change to this tax structure.

Another piece of information that the working group does not have is the assessed value of the municipally-assessed telecommunications personal property that is located in and taxed by each municipality. Generally, that is the personal property of cable television companies, but it can also include some of the personal property of telephone

or Internet providers that for a technical reason is not subject to the state-assessed telecommunications personal property tax. Maine Revenue Services does not have this targeted information because the municipal valuation return does not require the value of this type of personal property to be separately reported.

In order to get this information to the working group, MMA is conducting a survey of all municipalities with the hope

PACE Energy Efficiency Program Getting Started

In April, the State of Maine received approximately \$30 million dollars to create an energy efficiency loan fund. The Legislature in turn enacted a law to structure this loan fund. The Efficiency Maine Trust is administering the program and municipal participation in this fund is important to its success.

For any building owner to be eligible for a loan under the program a municipality must agree to participate by enacting an ordinance. The program has two tracks, an "active" municipal track and a "passive" track.

Pursuant to the "passive" track, the municipality will enact an ordinance agreeing to participate in the program. The municipality will then execute a contract with the Efficiency Maine Trust (the Trust) giving over to the Trust the responsibility to administer the program. As you can imagine, a loan program has several administrative components such as reviewing applications for loans, underwriting the loans, executing a loan agreement, issuing loan funds, billing and collecting loan repayments, and in some cases, filing liens for recovery. The Trust and the Legislature recognized that many municipalities in Maine will not be well situated to handle these administrative functions and agreed to offer themselves as the administrator instead.

An "active" municipal track is where the municipality agrees to take on one or more of these administrative functions. Most likely, the municipality would agree to handle billing and collection and the

of obtaining quality information about the value of all municipally-assessed telecommunications property on a town-by-town basis. That survey was recently sent to each municipality's "key official" as well as to our list of municipal assessors.

The inability to get quality town-by-town information from the various telecommunications providers is frustrating. It will be greatly appreciated if the municipal community can fill at least some of the information void by responding to our survey. We are hoping to get the responses to this survey by September 30th.

Trust would review applications and issues the loans.

The program is unfortunately known by the acronym PACE which stands for Property Assessed Clean Energy. Originally, the concept was that municipalities would issue the loans and then recover the loan repayments with a surcharge on property tax bills. These loans would have had "seniority" status and any liens would have been superior to liens for mortgages and other creditors, but they would not have been superior to property tax liens.

However, as enacted in Maine, the loans and liens will not be accorded seniority status; these loans will essentially take their place in line. While municipalities who choose to participate in the program are allowed to utilize their property tax billing and collection system to recover PACE loan payments, they do not have to do so.

The Trust has drafted implementing rules which were discussed at a public hearing on August 31. The rules primarily deal with any third-party administrator that the Trust may hire to administer the program on the Trust's behalf.

The Trust has a webpage devoted to PACE where a model "passive" track ordinance and other materials may be found: <http://www.energymaine.com/PACE>. The Trust has also hired staff to be available to assist municipalities seeking to participate.

Contact Jeffrey Austin with questions or suggestions.

Revised Culvert Rule for Fish Passage In Flux

Over the past two years, the Legislature and the Department of Environmental Protection (DEP) have been working toward the goal of requiring municipalities to alter the manner by which they install, repair and maintain culverts. DEP and others allege that municipal cross-culverts (which carry streams and brooks under roads as opposed to drainage culverts which simply carry runoff) are too small and poorly installed so that fish are unable to pass through the culvert.

Currently, the installation of culverts is governed by the Natural Resource Protection Act (NRPA) and a permit-by-rule system where the installer notifies the DEP that a culvert will be put in place and the installer commits to satisfy the various standards of the rule.

Municipal activities have mostly been exempted from this requirement.

However, in addition to removing the municipal exemption, the DEP has proposed significant changes to the standards. That revision would have made the costs associated with compliance quite high. And in some respects, the proposed rule would have provided no benefit to fish passage.

Last session the Legislature chose to not adopt the DEP's proposed rule with respect to municipalities and directed DEP and other resource agencies to work with municipal public works department personnel, MMA and the Department of Transportation (which is also significantly impacted and concerned) to revise the rule.

DEP staff visited seven municipi-

palities in June and July (Kennebunk, Yarmouth, Topsham, Cape Elizabeth, Auburn, Augusta and Brewer) to look at actual municipal and DOT culverts in the field and to hear the concerns of municipal public works personnel. DOT contracted with the Muskie School to generate cost estimates for compliance with "bankful width" requirement and MMA hosted two very well attended stakeholder meetings. Those meetings were attended by over 50 different interested parties including 20 municipal public works representatives.

A meeting scheduled for August 26th to review the revised rule was cancelled. MMA has not seen the revised rule. The next meeting has not been scheduled.

Contact Jeffrey Austin with questions or suggestions.