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$4 Million Stripped From Revenue Sharing Efficiency Fund

Legislature Adopts Biennial Budget

School Consolidation Undergoes Further Amendments

The Legislature has given its strong "super majority" support for the two-year state budget, which includes several elements of great interest for municipal officials, including the comprehensive school regionalization/consolidation plan.

Beyond school consolidation, the budget contains: (1) a $2 million (per year) raid for the third (and fourth) year in a row of municipal revenue-sharing money that should be dedicated to the Local Government Efficiency Fund; (2) a revamped, re-ramped approach to General Purpose Aid to Education for the next two years; (3) a snapshot of the federal reductions in the CDBG program; and (4) an increase to the veterans' property tax exemption from $5,000 to $6,000 beginning next year. These four components of the new state budget are described in a sidebar to this article.

School Regionalization/Consolidation. Since first proposed by Governor Baldacci six months ago, the plan to reorganize or consolidate Maine's school systems has been a moving target, and it kept on moving right up to the point of final enactment. In the budget bill that was unanimously recommended by the Appropriations Committee there was a school regionalization/consolidation plan that did not sit well with a number of legislators who regularly convene as the so-called "Rural Caucus". As a result of those concerns, the proposed budget was amended as quickly as it was put before the House in an effort to address the issues raised by the Rural Caucus, which included:

• The mandatory January 2008 referendum vote and overly compressed

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Assorted State Budget Issues

Local Government Efficiency Funds. In June 2004 the voters of Maine adopted the initiated "Question 1A" which, among other changes of law, created two special funds for the purpose of providing financial resources to local governments on a competitive grant basis in order to initiate more efficient systems of delivering governmental services.

One of these funds created by the voters was the *Fund for the Efficient Delivery of Educational Services*. The other was the *Fund for the Efficient Delivery of Local and Regional Services.*

Both funds were designed in the same way in that neither fund was asking for additional state resources for the purpose of financing these locally-developed efficiency initiatives. The educational efficiency fund was to be capitalized annually with 2% of the revenue that would otherwise be distributed as General Purpose Aid to Education. The local government efficiency fund was to be capitalized annually with 2% of the revenue that would otherwise be distributed as municipal revenue sharing. Both funds were established as alternative ways to distribute existing subsidies.

Although the voters adopted Question 1A and the two funds were created as a matter of law, the Legislature has never allowed them to operate as they were intended. The Educational Efficiency Fund, which was designed to administer as much as $20 million a year, could have distributed school regionalization efficiency grants of Sinclair-Act proportions. Instead, the Legislature essentially ignored the system by providing just $300,000 a year for "incentive" grants ever since Question 1A was adopted.

In this budget, the Legislature has completely repealed the Fund for the Efficient Delivery of Educational Services.

Similarly, the Legislature has never allowed the Local Government Efficiency Fund to operate as authorized by the voters. 2% of municipal revenue sharing, if properly dedicated and administered, would provide over $2.5 million annually in competitive efficiency grants from what would otherwise be distributed as municipal revenue sharing. Instead, since its inception, the Legislature has capped the efficiency grant program at $500,000, and then moved the rest of the revenue sharing proceeds into the state's General Fund budget.

That tradition is continued with

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timeframe for decision-making;

• Vague consolidation compliance standards regarding the required minimum size of the new school systems, translating into too much Department of Education discretion with respect to the approval/disapproval criteria;

• Over-the-top financial penalties for non-compliance with consolidation requirements;

• Abolishment of the school union governance structure; and

• An interest in creating an exception for "high-performing" school systems and an exemption for school systems that are unable to consolidate because of the consolidation decisions of their neighbors.

The amendments enacted in response to the Rural Caucus moved the law in the right direction, but since it was done hastily and in the middle of the night, there is sloppiness in the legislation and significant ambiguities. At the time of enactment, different people were able to interpret the application of this new law differently, which may have been intended, and those ambiguities are bound to lead to misunderstandings as the law is implemented.

What follows is an explanation of what was enacted by the Legislature.

General Timeframe

By July 15, 2007. Under this legislation, the Commissioner is directed to convene at least 26 meetings, at least one within the geographic area of each "career and technical education center" throughout the state, between now and July 15. The purpose of the meetings is to explain the new law to whomever attends and provide maps outlining potential school consolidations that would conform to the standards of the new law.

By August 31, 2007. Every school administrative unit must file either:

• A notice of intent to engage in planning and negotiations with specific other school systems to meet the consolidation standards of the law; or

• A notice of intent to submit an "alternative plan". The alternative plan is to be submitted only by school systems that are either expressly exempt from the consolidation requirement or school systems that want to make the case that they should be exempt.

The school systems that are expressly exempt from consolidating are:

a) Off-shore island schools;

b) Tribal schools;

c) School systems with more than 2,500 students;

d) School systems defined as "efficient, high performing" schools. The new law includes a fixed definition of "efficient, high performing" schools that identifies six such school systems, four of which have less than 2,500 students and would therefore be exempt from consolidation requirements solely because of this exemption: Cape Elizabeth, Yarmouth, SAD 22 (centered in Hampden), and SAD 58 (centered in Kingfield).

With respect to the "high-performing" exemption, the new law directs the Department of Education to promulgate "major substantive" rules to create an ongoing definition of "efficient, high-performing" school systems so that eligibility into this club might be expanded.

The school systems that are not expressly exempt but may attempt to claim an exemption are those that serve less than 2,500 students but more than 1,200 students and believe they should be exempt from consolidation (or full consolidation) because of certain reasons. Unfortunately, those reasons are listed in the new law without any standards of measurement or quantification. Those reasons are:

• Geography;
• Demographics;
• Economics;
• Transportation;
• Population density; or
• Being a school system that after performing "due diligence" to develop a regional plan that meets the 2,500 student standard is stymied in that effort because of the decisions of its neighboring school systems. (This is the so-called "donut hole" exemption.)

The Commissioner may or may not approve those "alternative" plans. It is impossible to know how these standards will be applied in that decision-making process.

By September 2007. Reorganization Planning Committees. After the filing of any "notice of intent" that involves school reorganization, the municipalities that are included in the geographic area of the proposed reorganization must create a "Reorganization Planning Committee". There is nothing currently known about how those Committees are actually going to be formed because the guidelines governing that committee-formation process are to be developed and provided by the Commissioner. The only statutory requirements associated with these as-yet undeveloped guidelines are that the Reorganization Planning Committees must include some form of representation from the affected school systems, municipalities and general public. The Commissioner's guidelines must also explain the roles and responsibilities of the Committee, the timeline for the submission of its plan, the manner in which the Committee's recommendation must be formatted, and the criteria by which the Commissioner will evaluate the Committee's plan.

By December 1, 2007. The school systems are required by December 1 to submit either their completed consolidation plan or the "alternative" plan, but December 1 is apparently something other than a hard-and-fast deadline. The very same section of law also provides that plans may be submitted after December 15, 2007. Apparently (and according to the debate on the floor the House prior to enactment) the December 1 deadline is for those school systems that want to start-up the new system by July 1, 2008. The post-December 15 submissions apply to school systems that are not ready to start-up new school systems by July 1, 2008 and need more time to develop a plan to present to the voters.

This entire section of law is particu-

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Legislative Bulletin

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larly sloppy because it appears to require something that is doesn't. Cutting through the awkward language of the law, and matching it with the descriptions of the final amendments articulated on the floor of the House, this is what it says:

Timeline for local plans and local voting. The easiest way to understand the timeline issue is to work backwards. The school systems required under this law to consolidate in any way need to be up-and-running by July 1, 2009 or face financial consequences. The latest realistic date to vote on those consolidation proposals is November 2008. To hold a November 2008 election, the plan needs to be finalized and approved by the Commissioner by mid-September 2008. The new law doesn't say you can vote on a consolidation plan as late as November 2008, but at the same time, if that is the way the consolidation actually happens, the school will not get financially penalized. That scenario represents the reality-based, outside edge of the consolidation time frame.

The statutorily-based inside edge of the consolidation time frame envisions school systems submitting their proposed consolidation proposals to the Commissioner by December 1, 2007 in order to schedule a referendum vote by January 15, 2008, in order (in turn) to subsequently elect a new school board, hire a new superintendent, and establish a new consolidated school system by July 1, 2008.

As described on the floor of the House at enactment, the December 1, 2007 deadline in the new law (and, therefore, the July 1, 2008 start-up date) is effectively optional. School systems that are not ready to present a consolidation plan to their voters may take extra time to further develop and advance their consolidation proposal for a July 1, 2009 start-up date. There is no statutory deadline to submit this second-year plan to the Commissioner, although as discussed above the Commissioner will apparently be suggesting a plan-submission deadline as part of the guidelines governing each Reorganization Planning Committee.

Unhelpfully, the new legislation requires a referendum vote on the second-year proposal to be held on June 10, 2008, even though a number of other dates in 2008 might work better for the region and would still allow the formation of a new consolidated school district in time to avoid the financial penalties. To put it another way, there would not appear to be a legally enforceable penalty that prohibits the municipalities from scheduling a coordinated referendum vote to ratify a consolidation plan at some time other than the "mandatory" June 10, 2008 referendum date.

Plan contents. Whenever the deadline, there is a comprehensive list of issues that need to be addressed in any consolidation plan. In addition to meeting the district size standards described above, the plan must describe a kindergarten through grade 12 system that includes at least one "publicly-supported" secondary school. The plan must also describe the size and composition of the regional school board and the voting apportionment system; the composition, powers and duties of any local school committees that are created (or retained); the disposition of real property, financial assets and debt; the assignment of all contracts, including personnel contracts and collective bargaining agreements; the back-up plan if not all the members of the proposed consolidated system vote to support the consolidation plan, etc.

There are many pages of the new law devoted to such subjects as the retention, transition and integration of labor contracts, the transfer of debt obligations related to both state-approved and non-state approved school construction, the variety of ways school board membership and voting methodologies can be designed, and the circumstances where school district cost sharing arrangements are mandated by law, subject to private and special law, or open to negotiation. Any Reorganization Planning Committee engaged in this task will need to steep itself in all this statutory detail.

Local savings? In addition — and this goes for the plans that need to be submitted by all school systems, even those that are exempt from consolidating and therefore filing "alternative plans" – each plan must address how the school system will reorganize its administrative functions, duties and non-instructional personnel so that the projected expenditures for system administration, transportation and special education and facilities and maintenance will not adversely affect the instructional programs. What is odd about this nonsensical standard is that the legislation nowhere indicates what those expenditures are supposed to be or supposed to be guided by. Up until the final amendment, this section of the proposed law required every plan to demonstrate certain reductions in these four specific cost-centers, or at least some kind of compliance with the EPS model. As finally amended, however, the law simply suggests that all schools, both the consolidators and non-consolidators, reorganize their administrations. Then it simply requires the reorganized administrative services to not adversely impact instructional programs. It is, in short, an empty standard.

State savings. The state's savings, on the other hand, are expressly detailed in the new law. Starting in FY 09, four internal components of the EPS school funding model will be toggled downward. The "system administration" component, which allocates funding for the superintendent's office, will be cut in half, and the allocation models for special education, transportation, and facilities and maintenance will all be cut by 5%. The result of these four adjustments to the EPS model will save the state $36.5 million in FY 09.

Penalties for not consolidating. Like everything else associated with this legislation, the penalties for not consolidating have been a moving target for months. At the time of enactment they were fixed as described below. These penalties will apparently be applied to any school administrative unit existing on July 1, 2009 that is not expressly exempt from consolidation (as explained above), or whose consolidation plan (or "alternative" plan) has not been approved by the Commissioner and — when necessary — approved by the voters.

• Non-compliant school systems will receive 50% of the financial support they would otherwise receive from the EPS formula for "system administration" (the superintendent's office);

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this budget. The Local Government Efficiency Fund is capped at $500,000 for each of the next two years, and the remaining municipal revenue sharing money that should be capitalizing this program – over $2 million for each year of the biennium – will be diverted to the state's General Fund.

It is one thing for the Legislature to twist or push or reshape one of its former enactments. As an example, the Legislature increased the size of the revenue sharing program in 2000 by one-tenth of one percent (from 5.1% of sales and income taxes to 5.2%), but has delayed the actual implementation of that increase since it was enacted, and this budget further delays the implementation of that enactment until July 1, 2009. With all that has been going on with school financing over the last several years, that delaying action is understandable.

But it was not the Legislature that created the Local Government Efficiency Fund, it was the voters, and the voters most obviously did not create that Fund for the purposes of diverting property tax relief funds from their intended purpose in order to fund the state budget. There is a certain amount of cynicism associated with raiding the Local Government Efficiency Fund.

General Purpose Aid to Education. Another element of "Question 1A", as ultimately implemented by the Legislature in 2005 as "LD 1", was the creation of a school funding ramp that would have the state providing 55% of the cost of K-12 public education (as measured by the Essential Programs and Services school funding model) by FY 2009. In other words, the next two years represent the third and the fourth year of the 4-year funding "ramp" to 55%.

A number of decisions made in this budget directly affect the "55%" goal.

Nominal dollar decisions. In terms of pure dollars, the appropriation for General Purpose Aid for Education (GPA) for the next fiscal year (FY 08) is $978 million and for FY 09 the appropriation is $1.02 billion. For the current fiscal year, the appropriation was $914 million, suggesting a healthy $64 million increase in state support for next year (7%), and a more modest $42 million increase for FY 09 (4.3%).

Denominator decisions. That being said, not all increases to GPA are accurately measured in terms of change in nominal dollars. Since the adoption of Question 1A and the subsequent effort to "ramp up" to 55%, there has been increasing focus on the denominator of the 55% fraction. In other words, the state's 55% obligation begs the question: "55% of what?", and the denominator of the fraction, defined generally as the Essential Programs and Services school funding model (EPS), can be changed in many ways.

In the state budget just enacted, for example, the Legislature decided to add into EPS the funding for three educational programs that have up until now been funded outside the EPS model. Those three programs are: (1) the Maine School of Science and Mathematics; (2) the Governor Baxter School for the Deaf; and (3) the Jobs for Maine's Graduates program. The legitimate argument is that those three programs serve Maine's public school population. Because those three educational programs are funded by the state, by moving them into the EPS denominator, the state share of EPS is effortlessly increased.

It also seems that with each successive budget, a little more of the Department of Education staff gets moved inside the EPS model. In this budget, the EPS denominator is increased to include three more staff positions within the Department of Education associated with the "Learning Through Technology" program, along with the middle-school laptop financing agreement.

Ramp decisions. In addition to all of that, the "ramp" to 55% was modified in this budget, flatted out somewhat for the upcoming fiscal year, and then made a little steeper in its final year. Coincidentally, the denominator for the last year is going to be significantly changed as a result of the school consolidation plan, which expressly directs the EPS model to be reduced by $36.5 million in the areas of system administration, special education, transportation and facilities and maintenance on the theory that the school consolidation process will make these expenditure reductions immediately available. Specifically, in the march toward 55% the Legislature was supposed to provide 54.44% of the EPS model in FY 08, up from the 53.86% that was provided in FY 07. This state budget actually reduces the state's percentage, setting it down to 53.51%. Along with two other changes, this "ramp down" saved the state budget $17 million. The two other changes were: (1) further deferring the ramp-up to 100% special education funding for the state's "minimum receiver" school systems; and (2) capping all year-to-year GPA increases for any individual school system at 15%.

Mill rate expectation. When you put all the data into motion, including the total EPS allocation, the required state share and local share of that allocation according to the "ramp-up" formula, and the updated state valuation, the required mill rate expectation for the FY 08 school budget is calculated at 7.44 mills.

CDBG funding. The budget just enacted documents a projected decline over the next two years in the Community Development Block Grant program that is entirely related to reductions in federal, not state, appropriations. If the federal CDBG grants to Maine were held flat, the state could expect nearly $26 million in the program for the next fiscal year and nearly $27 million in FY 09. According to the budget document, those federal allocations are going to be reduced by $3 million in FY 08 and $4 million in FY 09, representing 12%-14% annual decreases.

Veterans' Property Tax exemption. Sometimes individual bills that have fiscal notes get swept into the budget bill to ensure their enactment. That happened in this budget with LD 172, *An Act to Increase the Property Tax Exemption for Veterans.* Sponsored by Sen. Richard Nass (York Cty.), LD 172 increased the standard $5,000 veterans' exemption to $6,000, starting with the tax year beginning April 1, 2008. That language was moved from LD 172 into the budget bill, and so it is now law. According to Maine's Constitution, the state must provide 50% reimbursement for the newly created property tax exemption. The fiscal note on LD 172 suggests that the total annual impact of LD 172 is somewhere in the $800,000 range, split down the middle between the state and the municipalities.

Planning For State's Transportation Needs

On Monday this week, the Transportation Committee voted by a margin of 10 to 2 to support an amended version of LD 1790, *An Act to Secure Maine's Transportation Future*. The bill, sponsored by Senator Dennis Damon (Hancock Cty.), proposes to find the "new" sources of revenue necessary to fund state road and bridge projects.

As amended by the Committee, the bill: 1) establishes capital improvement goals for the Department of Transportation (DOT); 2) establishes general obligation, GARVEE and revenue bond policies; and 3) identifies the additional revenue necessary to meet the stated capital improvement goals for Maine's transportation infrastructure.

Goals. The goal element of LD 1790 creates an opportunity for the state to benchmark its success at improving Maine's transportation network. By creating benchmarks, the state will be able to periodically review its achievements and make adjustments, as necessary, to ensure that the goals are met.

The bill creates several capital improvement and reporting goals for focusing legislative and DOT resources on rebuilding the state's transportation infrastructure over the next 15 to 20 years. Included in the goals are directives to: 1) improve and modernize the interstate system; 2) reconstruct the arterial system to nationally accepted standards by 2022; 3) reconstruct state major collectors to nationally accepted standards by 2027; 4) enter into financial partnerships with municipalities to reconstruct minor state-aid highways (which is current law); 5) extend the service life of the state's bridge inventory by 2027; and 6) annually report to the Legislature by January 15 of each odd-numbered year on the progress DOT has made in fulfilling each goal.

Bond Polices. The bill also creates the policies the Legislature must follow when borrowing the funds necessary to meet the state's capital improvement goals. This section of the proposal sets policies for three types of bonding systems: 1) general obligation bonds; 2) GARVEE bonds and 3) revenue bonds. The policies set maximum bond-to-revenue borrowing ratios as well as the bond terms.

As proposed, the Legislature would be authorized to issue general obligation bonds in an amount not to exceed a rolling three-year average debt-to-Highway Fund revenue ratio of 10%. (Currently, the Highway Fund's debt-to-revenue bonding ratio is 7%.) The policy also requires general obligation bonds to be repaid over a period of 10 years. In addition, the voters of the state must approve the issuance of general obligation bonds.

The Legislature would also be authorized to issue GARVEE bonds to address extraordinary and unanticipated capital improvement needs. GARVEE bonds allow states to borrow against future federal highway funding grants. As proposed in LD 1790, a GARVEE bond could not exceed a debt-to-federal highway fund revenue ratio of 15%. These bonds would have to be repaid over a period of 15 years and the funds could be used for capital projects with an anticipated useful life of at least 20 years. The Legislature could authorize the issuance of a GARVEE bond without voter ratification.

Finally, the Legislature would also be authorized to issue revenue bonds through agreements with the Maine Municipal Bond Bank. Revenue bonds allow entities to pledge future revenues as the source of payment on borrowed funds. As proposed in LD 1790, the state would be authorized to issue revenue bonds to be repaid over a period of 15 years to fund capital projects with a useful life of at least 20 years. As is the case with GARVEE bonds, the Legislature could authorize the issuance of a revenue bond without voter ratification.

Additional State Revenues. The funds necessary to repay the revenue bonds as well as to fund additional transportation-related expenditures (transit, ferry, rail, etc.) proposed in LD 1790 would come from four sources.

State Police Funding. Starting in FY 2010, Highway Fund supported funding for the State Police would decrease over a seven-year period until leveling off at 25% in FY 2016. Currently, the Highway fund share of State Police funding is 60%.

Increased Motor Vehicle Registration Fees. Starting on October 1, 2007 several Bureau of Motor Vehicles fees would be increased, including motor vehicle registration fee increases from $25 to $30.

Auto Rental Tax. Starting in FY 2010, all of the General Fund revenue generated by the tax on automobile rentals would be dedicated to the Highway Fund for the purpose of funding alternative modes of transportation.

Sales Tax Revenue. Starting in FY 2010, 4% of the sales tax revenue generated by transportation related sales would be dedicated to the Highway Fund. The percentage of Highway Fund's share of tax revenue on transportation related sales would increase by 4% annually until reaching 20% in FY 2014, where it would level off.

Excluded from the final version of the bill are proposals to take municipal excise tax revenues from municipalities and to amend the formulas used to distribute local road assistance funds to communities. As originally proposed, the bill would have required Maine's largest communities to contribute up to 20% of the motor vehicle excise tax revenues collected locally to help the state meet its goal to repair the state-aid (minor and major collector) road system.

Due to municipal concerns, the excise tax proposal was quickly replaced with an alternative to amend the local road assistance program formulas to provide more reimbursement to communities with a higher relative proportion of state-aid roads. As proposed in

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• Non-compliant "minimum receivers" will receive 50% of their minimum subsidy;

• Non-compliant school systems will be ineligible for "transition" funding;

• Non-compliant schools will pay a higher mill rate expectation than the compliant schools (calculated as though the state was not required to pay a full 55% of the statewide EPS allocation as far as the non-compliant schools are concerned); and

· Non-compliant schools will receive less favorable consideration for school construction funding.

School unions. Among the sloppiest elements of the law is its approach to the issue of the school union form of school governance. In general terms, a school union is two or more school systems that share a superintendent and the superintendent's office. The school union is the oldest form of administration consolidation, pre-dating school administrative districts (SADs) or Community School Districts (CSDs). Because of the loosely-worded nature of this new law, school unions are both simultaneously abolished and authorized to be re-created, depending on interpretation.

The new "regional school units" established by this new law are organized according to a general statutory policy including the stated purpose of maximizing "opportunities to deliver services that can more effectively be provided in larger districts than from within smaller units or individual schools".

This does not suggest any predilection in favor of the school union form of governance.

At the same time, in the process of negotiating the structure of any new school system under this legislation, the Reorganization Planning Committee may establish "the composition, powers and duties of any local school committee to be created". This language suggests that something resembling a school union structure within a single school administrative unit can be created by the Reorganization Planning Committee.

And in yet another amendment to the original plan, the legislation authorizes the voters in any municipality that believe the regional school unit's budget is not properly funding the local elementary school to raise the money and direct the spending of the funds to that elementary school. This provision is apparently provided as an additional response to the concern that the larger regional school boards may not properly recognize the interests of the voters in the smaller and potentially under-represented municipalities.

Budget validation process. Beyond consolidation and non-consolidation, the new law requires all school systems, beginning in 2008, to both format and adopt their budgets according to the so-called budget-validation process. The code term in the State House for the budget validation process is "transparency" in budget format, but the process also includes mandatory referendum voting for all school budgets regardless of any other budget adoption procedures established by tradition, existing law or charter.

The "transparency" element of the budget validation process is a prescribed budget presentation format that lays out every proposed school budget according to 11 separate cost centers (regular instruction, special education, system administration, transportation and buses, facilities maintenance, etc.). In addition, the dollars proposed to fund each cost center must be compared to the comparable dollars to support the same cost center in a "high performing" school, as determined by the Department of Education. That "transparent" budget must first be presented in an open district meeting, which operates like a town meeting, where the proposed budget is debated, perhaps amended, and ultimately adopted. For the municipalities with town or city councils that ultimately adopt the school budget, the town or city council is the equivalent of the open meeting.

The "validation" part of the budget validation process then requires a referendum vote to be held within 10 working days of the open meeting where the voters at secret ballot can either accept or reject the budget that was adopted at the open meeting 10 days before. It is a single question ballot referendum. If the voters reject that budget, the process starts over again.

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subsequent drafts of LD 1790, rather than distributing the $26 million in local road assistance revenue on a local road mile basis, the bill proposed to amend the funding formula to distribute a portion of the state revenue on a state-aid road mile basis. An initial impact study conducted by DOT illustrated that 218 communities would have lost some level of state funding under the amended distribution formula.

After much debate on the proposed change to what is known as the URIP formula, the Committee unanimously decided that more research was necessary before changes could be made to the local road assistance funding formulas. For that reason, the Transportation Committee drafted a Joint Order directing the Committee to study state and municipal financial roles over the state-aid system.

As proposed in the Joint Order, the Transportation Committee is tasked with: 1) describing the features of the collector and state aid highway network; 2) studying the evolution of state and federal laws governing state aid highways; 3) identifying inequities experienced by municipalities as a result of current law; 4) comparing Maine's responsibility over the state aid system with other states; 5) assessing the need to, among other issues, adjust state/municipality responsibilities for maintenance and capital improvements of state aid road system and amend the amount of local road assistance program funding provided; and 6) making recommendations addressing how the state aid system is currently maintained and funded and illustrating the anticipated positive or negative impacts to property tax valuations, local road conditions and state aid road conditions associated with any proposed change.

"Informed Growth Act" Still Undecided

The fate of LD 1810, *An Act to Enact the Informed Growth Act* remained undecided on Thursday this week, as the Senate adjourned until Monday morning (June 11th). As supported in the House, the bill prohibits municipalities from issuing a land-use permit for certain large-scale retail development projects if the projects cause "undue adverse impact." That term is defined in the bill as including both "economic" and "community" factors.

Also included in the version of the bill adopted by the House is a provision allowing communities to "opt-out" of the Informed Growth Act. In order to qualify for the "opt-out" a municipality must have adopted as part of its local land-use permitting process "economic and community impact review criteria" **and** must require "a study of the comprehensive economic and community impacts" of the proposed project.

While the "opt-out" amendment was offered in a good-faith effort to find a compromise, MMA's understanding of the "opt-out" provision is that a community will qualify *only* if it has adopted an economic *and* community impact ordinance.

LD 1810 describes "economic" impact in great detail. As provided for in LD 1810, the economic impact study must illustrate: 1) the economic effects of the large-scale retail development on existing retail operations; 2) supply and demand for retail space; 3) number and location of existing retail establishments where there is overlap of goods and services offered; 4) employment, including projected net job creation and loss; 5) retail wages and benefits; 6) captured share of existing retail sales; 7) sales revenue retained and reinvested in the comprehensive economic impact area; 8) municipal revenues generated; 9) municipal capital, service and maintenance costs caused by the development's construction and operation, including costs of roads and police, fire, rescue and sewer services; 10) the amount of public subsidies, including tax increment financing; and 11) public water utility, sewage disposal and solid waste disposal capacity.

From a staff perspective, we believe that in order to qualify for the "opt-out" exemption, the locally adopted economic impact criteria would have to mirror the requirements found in the proposed Informed Growth Act. Virtually all land use ordinances include some community impact review criteria (e.g., utility and traffic impacts, noise, signage, lighting, access to and impacts on public safety, etc.), and many include some of the "economic" criteria listed above (e.g., #9 – municipal capital costs), but most of those ordinances do not include the wide-ranging economic impact criteria as that term is used in LD 1810.

Although municipal officials oppose the "opt-out" approach, they do believe the process created in LD 1810 could be helpful for certain municipalities. Rather than mandating participation in the Informed Growth Act, municipal officials support amending the bill to make the Informed Growth Act easily available to all municipalities and allow them to decide whether or not to adopt it by reference into their land use codes as their exposure to large scale retail development may warrant.

Municipal officials believe that the goals of the Informed Growth Act can be addressed while simultaneously supporting community-based decision-making by simply amending the bill to allow the local legislative body (council or town meeting) to decide whether or not to adopt and implement the review process locally. That "opt-in" approach is being promoted in an amendment sponsored by Sen. Jonathan Courtney (York Cty). As proposed by Sen. Courtney, communities would be authorized to adopt the Informed Growth Act "by reference" if the local legislative body believes it to be necessary. Maine's municipal officials endorse the "opt-in" alternative because it provides the "tool" of the Informed Growth Act and makes it entirely available within state law, leaving the decision to use the development tool with the local communities that need it.

We encourage municipal officials to contact their Senators this weekend and urge them to support Sen. Courtney's amendment to LD 1810.