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Testimony of the Maine Municipal Association

In Opposition to Part E of the Attorney General's Amendment to LD 1389
An Act To Expedite the Foreclosure Process

March 5, 2014

Senator Valentino, Representative Priest, members of the Judiciary Committee, my name is Garrett Corbin and I am testifying in opposition to Part E of the Attorney General's amendment to LD 1389 on behalf of the Maine Municipal Association at the direction of its 70-member Legislative Policy Committee, which voted overwhelmingly to oppose this amendment.

Part E of the Attorney General's amendment to LD 1389 would dictate how municipalities handle the return of foreclosure proceeds, requiring half the proceeds to be returned to homeowners who did not pay their taxes, or to the state's Housing Counselor Program. This recommendation portends to be helpful to municipalities though it in fact runs directly against home rule authority and good public policy.

Specifically, Part E of the Attorney General's amendment authorizes municipalities to adopt ordinances providing for the return of proceeds from the sale of tax-acquired property to the property's former owner, on the condition that such ordinances require half of the sale's net proceeds to be returned to the former owner. If the former owner cannot be located by the municipality or does not otherwise request the return of the proceeds within 90 days of the foreclosure sale, the municipality is required to remit those proceeds to the State Treasurer, who is then required to distribute the funds to the state Bureau of Consumer Credit Protection's housing counselor program.

MMA opposed legislation last year that would have required proceeds to be returned to the former owners, but agreed to an amendment to reaffirm home rule authority in this area, allowing municipalities to themselves decide how to handle foreclosure proceeds. By mandating that foreclosure proceed ordinances always return half the proceeds to the former owner and enable the state to usurp those funds when former owners are unresponsive, Part E overrides home rule and supports state programs with local revenue, while simultaneously encouraging delinquent property tax payment.

All tax collection enforcement systems rely on a penalty system to enforce compliance. In the case of state and federal taxes, the penalties are fines and imprisonment. In the case of property taxes, the penalty is foreclosure. The property tax system in Maine allows a full two-and-one-half years for a tax obligation to be paid. If the taxes are not paid in full at the end of that period of time, the title of the property reverts to the municipality, meaning that the disposition of that property is controlled by the legislative body of that municipality, the town meeting or the town or city council.

The legislative body of each municipality is entrusted by law to make the appropriate decision on behalf of that community, and municipal officers take their role in dealing with the issue of tax exempt property very seriously. Almost every municipality has a policy on the subject which has been developed by the municipal officers and then presented to and approved by the municipality's legislative body. Those policies run from a simple article in the annual town meeting warrant describing the procedural framework that must be followed to policies of great length and detail describing every element of the decision making process. A common element in nearly all of these policies is an opportunity for the former owner of the acquired property to redeem the property long after the point of tax acquisition. Municipalities go to great lengths to avoid eviction, and Maine's municipal officers officials are capable, competent and compassionate overseers of this very sensitive element of the tax collection process.

As a general rule, municipalities dispose of acquired property at a loss. The type of property that is left for acquisition is typically low value property, properties with dilapidated or dangerous buildings, and property with environmental liabilities. Municipalities rarely recover what they are owed in back taxes and costs when they dispose of these types of property. Some municipalities even place any proceeds received over costs in a special fund to help cover the unanticipated costs associated with disposing the high-liability properties.

Rather than assisting with the issue of chronic non-payment of property taxes, Part E would provide a statewide incentive for delinquency. Instead of allowing municipalities to examine the justification for returned proceeds on a case-by-case basis, the state would require delinquent taxpayers to be enriched in all instances on the dime of those who complied with the law and paid their taxes.

There is a grey area in the law regarding whether the return of tax lien foreclosure proceeds is contrary to the Public Purpose Doctrine, which is a notion established by the Maine Supreme Court's interpretation of Article IV, part 3, section 1 of the Maine Constitution that taxation and spending at the state and local levels must serve a public purpose to be constitutionally valid. Last year the Legislature attempted to clarify that municipalities have the authority to determine how best to fulfill the public purpose with respect to tax lien foreclosure proceeds. It is questionable to say that always returning proceeds to citizens who did not pay their taxes or to a statewide program always serves a public purpose.

Part E also contains a few technical issues. Regarding the former owner, this section assumes there is only one when there may in fact be several. Furthermore, it appears that the intent of the Attorney General's proposal is to repeal the part of the bill diverting the 50% share of the proceeds to the state's Bureau of Consumer Credit Protection in five years (by January 1, 2019), but the wording of Part E actually repeals the entire proposal five years from now, including the municipal authority to adopt local ordinances to return the proceeds from the sales of tax acquired property to the former owners. Last, the Legislature's Joint Rule 217 prohibits re-introducing a bill that has been finally rejected during that legislative session without a 2/3 vote of both chambers, and Part E really presents an amended form of the first session's LD 851.

The vast majority of property taxpayers recognize their duty to contribute in a timely manner, and there are several interrelated programs for those who can't. In addition to stripping from the municipal voters a decision-making authority that is entrusted to them under current law with respect to tax acquired property, Part E provides no benefit or recognition to the hundreds of thousands of Maine households and small businesses that make it a priority to pay their property taxes in a timely manner.

State-level actions related to municipal foreclosures ought to better enable municipalities' ability to recoup the losses they normally incur when managing foreclosed properties. Municipalities typically expend far more on the maintenance and disposition of foreclosed properties than they recover from foreclosure sales. Part E flies in the face of the fiscal reality at the local level and presumes abundant municipal profits from foreclosure sales, while instances where a town receives a windfall from the sale are in fact extremely rare.

MMA appreciates that attention is being paid to the mortgage foreclosure process but submits that existing problems with that process are not related to municipal tax lien foreclosures. As such, Part E has no place in the amendment being considered today.