

**TESTIMONY OF
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Taxation
Hearing Date: *March 12, 2025, Wednesday at 1:00 PM*

LD 632 – “*An Act to Allow a Local Option Sales Tax on Short-term Lodging to Fund Affordable Housing*”

LD 746 – “*An Act to Authorize a Local Option Sales Tax on Short-term Lodging to Fund Municipalities and Affordable Housing*”

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD 632, “*An Act to Allow a Local Option Sales Tax on Short-term Lodging to Fund Affordable Housing*,” and Against LD 746, “*An Act to Authorize a Local Option Sales Tax on Short-term Lodging to Fund Municipalities and Affordable Housing*.”

Both bills would allow a municipality, by referendum, to impose a local option sales tax of 2% on the rental of living quarters subject to Maine sales tax. Both bills provide that a portion of the sales tax revenue – 10% or 15% depending on the bill – shall be transferred to the Maine State Housing Authority (MSHA), and the balance distributed to the participating municipality. LD 632 limits the municipal use of the revenue to programs for affordable housing or for costs incurred in providing general assistance, while LD 746 does not restrict the municipal use of the revenue.

The Administration has consistently opposed local option sales tax bills in past Sessions on tax policy grounds and opposes LDs 632 and 746 now before this

Committee. Over the course of this Administration, and working together, the Legislature and the Governor have changed the revenue resource landscape for the State's municipalities. The enacted state budget laws have returned the State to 5% revenue sharing, and since FY22 achieved 55% K-through-12 education funding. The full range of State funding assistance to municipalities is set forth in the November 2024 report of the Legislature's Office of Fiscal and Program Review, titled "Summary of Major State Funding Disbursed to Municipalities and Counties." The report is linked here ([11249](#)) and is available on the OFPR webpage. These fiscal achievements directly address the basic policy impetus for local option taxes. In addition, the legal validity of local option sales taxes remains uncertain under the Maine Constitution.

If the Committee wishes to move forward with this bill, however, there are important aspects of the bills that should be clarified. The manner of sourcing collected sales tax revenue to sales within a participating municipality should be rephrased in the bills in a manner that references and is consistent with the general sales tax sourcing provision in 36 M.R.S. § 1819. Even with such revisions in legislative text, it should be noted that MRS would be required to update its computer systems, forms, and taxpayer reporting requirements. There is likely to be at least initial reporting confusion and error by taxpayers – such as transient rental platforms, room remarketers, and taxable casual renters – as they assign each sale to a specific municipality.

In addition, the lodging tax base should be clarified in the bill, because as drafted the bill could be read to authorize a municipality to impose a local option sales tax on subsets of types of living quarters: the bill states that a municipality may impose the local tax on "the value of rental of living quarters in any hotel, rooming house, *or* tourist *or* trailer camp" (emphasis added). Both bills should be

clarified to allow only a local sales tax imposed on *all* rentals of living quarters subject to Maine sales tax.

Similarly, the bills should expressly limit municipalities adoption of variations in sales tax reporting periods or limitations on the frequency of changes to the local sales tax that may be made. Although MRS would interpret the current language to allow only a year-round local option sales tax, that should be clarified in the bill. Similarly, the bills should limit how frequently a municipality may enact, commence, and repeal the local option sales tax. These changes are important in order to minimize complexity and ease burdens on retailers.

Further, proposed section 1822(3) – which is captioned “local option sales tax limited to lodging” – should be revised. As drafted, it is unclear whether the section is intended to ensure that options applicable to the general sales tax also apply to the local option sales tax or intended to exclude from the local option sales tax casual rentals taxable under 36 MRSA section 1764 or intended to mirror the casual rental taxability line set forth in that section.

If the intent is the latter, where casual rentals of living quarters are also to be subject to the local option sales tax, MRS strongly recommends repealing 36 MRSA section 1951-A, subsection 3, which allows, under very limited circumstances, individuals to report the sales tax collected on casual rentals of living quarters on their Maine Individual Income Tax Return in lieu of filing a sales tax return. Without the repeal of this 36 MRSA section 1951-A, subsection 3, the programming related to implementing the local option would impact the Individual Income Tax Return.

It should also be noted there remains some uncertainty about the legal validity of the proposed local option sales taxes under Article IX, Section 9 of the

Maine Constitution, which provides: “The Legislature shall never, in any manner, suspend or surrender the power of taxation.” Likewise, it should also be noted as a relevant consideration that in the context of the U.S. Constitution, the simplicity of a state sales tax framework – such as maintaining a centralized sales tax regime – was recognized by the U.S. Supreme Court in its 2018 decision in *Wayfair* as a factor in concluding that physical presence is not required for nexus, meaning sufficient contacts to allow a state to exercise its taxing power over the business or transactions at issue.

It should also be noted that reporting and redistributing revenues in smaller communities may result in transparency of information that otherwise would be considered confidential taxpayer information.

Finally, it is unknown at this time whether there would be adequate time under both bills that would allow MRS to update its tax processing systems in time for a January 1, 2026, effective date. MRS has reached out to the vendor to determine how long it would take to have the programming effective.

The Administration looks forward to working with the Committee on the bills; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee’s questions.