TESTIMONY OF
MICHAEL J. ALLEN, ASSOCIATE COMMISSIONER FOR TAX POLICY
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

Before the Joint Standing Committee on Taxation
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LD 559 – "*An Act to Provide Property Tax Stabilization for Older Maine Residents*"

Senator Grohoski, Representative Cloutier, and members of the Taxation Committee – good morning, 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 559, "*An Act to Provide Property Tax Stabilization for Older Maine Residents.*"

The State Property Tax Stabilization Program, enacted into law in 2022 and sunset in 2023, allowed certain senior taxpayers who received the Homestead Exemption and had lived in Maine for more than 10 years to "stabilize" – that is to "freeze" – the property taxes paid on their primary residence from year-to-year at the frozen year amount; and the State reimbursed municipalities for 100% of revenue lost as a result of the program. LD 559 covers similar ground. It would allow a municipality to adopt, by ordinance, a property tax stabilization program for permanent residents who are at least 62 years of age and have owned a homestead in the State for at least 10 years. The bill further provides that a municipality may adopt stricter program eligibility requirements.

The bill would also allow a municipality, by referendum, to adopt a local option sales tax of 1% on the value of prepared food and rental of living quarters in any hotel, rooming house or tourist or trailer camp. The revenue generated by the

local option sales tax could only be used to offset the loss of revenue from the municipally enacted property tax stabilization program.

In sum, LD 559 proposes for optional municipal adoption both a renewed property tax freeze program and a local option sales tax. The Administration opposes both parts of LD 559. First, the Legislature in the 131st Session fully reconsidered the property tax stabilization freeze program and replaced it with a sustainable and administrable State Property Tax Deferral Program and an expanded Property Tax Fairness Credit Program. The reasons for sunsetting the prior stabilization freeze program also apply to the stabilization freeze proposal in LD 559. Second, the Administration has consistently opposed local option sales tax bills in past Sessions on tax policy grounds and opposes LD 559 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.

There are also Maine and federal constitutional concerns raised by LD 559. The ten-year homestead ownership requirement raises potential constitutional concerns regarding durational residency requirements. Further, there is legal uncertainty under Article IX, Section 9 of the Maine Constitution as to whether the municipal option stabilization program might be viewed as a municipal option

partial property tax exemption and thus raise concerns whether the Legislature may delegate its taxing power to municipalities in this manner. *See Brewer Brick Co. v. Inhabitants of Brewer*, 62 Me. 62 (1873). In addition, 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." Similarly, it should 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.

If the Committee wishes to move forward with this bill, however, there are important aspects that should be clarified.

Beginning with the sales tax implications of the bill, the manner of sourcing collected sales tax revenue to sales within a participating municipality should be rephrased in a manner that references and is consistent with the general sales tax sourcing provision in 36 MRSA section 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 marketplace facilitators, transient rental platforms, room remarketers, and taxable casual renters – as they assign each sale to a specific municipality.

Marketplace facilitators that sell prepared food (e.g., food delivery services) or transient rental platforms and room remarketers that rent living quarters would be required to source each sale to a municipality and file a schedule breaking out

those sales by municipality, neither of which is currently required. Similarly, a casual renter of lodging may, under very limited circumstances, report the sales tax it collects on its Individual Income Tax Return, but since there currently is no requirement to report a rental property's location on the return, a taxpayer may instead report their casual rentals as sourced to, e.g., their primary residence.

The lodging tax base should also be clarified in the bill, because as drafted it could be read to authorize a municipality to impose a local option sales tax on subsets of types of living quarters. For instance, 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). The bill should be clarified to allow only a local sales tax imposed on *all* rentals of living quarters subject to Maine sales tax. Likewise, the bill arguably is ambiguous as to whether a town may impose a local option sales tax on either prepared food or rentals of living quarters individually, or if a town may only impose the tax on both.

While the transfer includes sales tax receipts from sales of prepared food, it does not include liquor sold in a licensed establishment, which is also taxable at the 8% sales tax rate. Based on existing reporting and returns, MRS cannot currently break out taxable sales of prepared food and liquor separately because they are reported on the same line of the Sales Tax Return; systems and forms changes would be required to do so. If the bill is intended to cover sales tax receipts from sales of prepared food *and* liquor, the imposition language should reference 36 MRSA section 1811, subsection 1, paragraph D, subparagraphs 1-3. The term "value of" prepared food or rental should also be changed to "sale price."

Further, proposed section 1822, subsection 3 – which is captioned "[l]ocal option sales tax limited to prepared food and lodging" – should be revised. As drafted, it is unclear whether the section is intended to ensure that exemptions

applicable to the general sales tax also apply to the local option sales tax; or to exclude from local option sales tax any casual rentals taxable under 36 MRSA section 1764; or to mirror the casual rental taxability line set forth in that section.

If the intent is the latter, where taxable 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 36 MRSA section 1951-A, subsection 3, the programming related to implementing the local option would impact the Individual Income Tax Return.

To minimize complexity and ease burdens on retailers, the bill should expressly limit municipalities' adoption of variations in sales tax reporting periods. Although MRS would interpret the current language to allow only a year-round local option sales tax, that should be clarified in the bill. It should also specify timing for reporting revenue to the Treasurer for transfer to municipalities; it is unclear whether revenue should be aggregated quarterly, or tabulated monthly but remitted to the Treasurer quarterly.

Likewise, a timeframe is needed for when each local option sales tax would take effect after passage, either as a certain number of days after the referendum passes or a specified date in 2026, whichever is later. It is unknown at this writing whether there would be adequate time that would allow MRS to update its tax processing systems in time for the default effective date of 90-days post adjournment. MRS has reached out to the vendor to determine how long it would take to have the programming effective.

Similar revenue sharing bills from this session propose establishing funds to hold revenue before distribution to the municipalities, which would improve administrability. Further, the bill does not currently provide a corresponding repeal of a municipality's local option sales tax in the event a municipality repeals its stabilization program or vice versa. It should limit how frequently a municipality may enact, commence, or repeal the local option sales tax.

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

Turning to technical comments on the property tax stabilization part of LD 559, the proposed program is likely to lead to taxpayer confusion and administrative difficulty. The bill references the "Maine Residents Property Tax Program," under 36 MRSA, chapter 907 (p.2, lines 39-40). This program was sunset in 2013, and later largely supplanted by the Property Tax Fairness Credit under 36 MRSA sections 5219-II and 5219-KK. The bill also duplicates the stabilization aspect of the existing optional municipal partial-deferral program under 36 MRSA section 6235. The existence of several similar municipal programs that are intended to accomplish the same goal may create both administrative complexity and confusion with taxpayers and municipal officials.

Further, the bill requires that applications for the municipal stabilization program be processed annually. This would add a significant administrative burden for municipalities that elect to enact the program. It would also allow municipalities to require an applicant to apply for relief under other property tax assistance programs in order to decrease the amount of property taxes to be stabilized (p.2, lines 31-40). Still, if a municipality requires an applicant to file for the Property Tax Fairness Credit, for example, the receipt of that credit does not

decrease the amount of property tax due by the applicant. In addition, the bill does not provide income thresholds in its eligibility requirements—if the intent is to provide the benefit to lower income households, thresholds should be established or required under the municipal ordinance.

There are interactions between the local option sales tax part of LD 559 and the property tax stabilization proposal in the bill that remain unclear. While the bill allows municipalities to use a local option sales tax to fund a stabilization program, this is only possible in municipalities with lodging establishments or restaurants. In smaller towns without or with few of these types of businesses, the program will either be unavailable or will result in an increase in local property taxes to fund the program, leading to a situation where the sales tax receipts do not line up with the costs of stabilization. The bill should clarify what a municipality would need to do in the event the local option revenue attributable to a town exceeds the cost of its program, or when the local option revenue is not enough to cover the cost of its stabilization program.

The exponential cost of the stabilization program will quickly exceed the more stable local option sales tax receipts.

For all the above reasons, the Administration opposes this bill.

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