2 June 2017

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 832, “Act to Carry Out the Will of the People of the State of Maine by Ensuring the Issuance of Bonds To Support the Independence of Maine’s Seniors.”

What LD 832 proposes is not simply to force the Executive to issue a handful of currently authorized, but unissued bonds. Rather, this bill is a complete overhaul of Maine’s entire bonding process that would apply to “all general obligations bonds,” both past and future. This is a major departure from our current bonding process that must be carefully considered.

When the Legislature wishes to borrow through a general obligation bond, the Maine State Constitution proscribes how this must be done: voters must be asked via a state-wide ballot if they would authorize the proposed borrowing. This is a process that must be followed scrupulously. Furthermore, federal tax law is overlaid on this entire process so these bonds may be properly registered by the Internal Revenue Service in order to enjoy tax-exempt status. In addition to these legal considerations, there are the practical considerations of the market—those entities that actually purchase the state’s bonds.

Any departure from our current bonding process creates market uncertainties. Those who purchase our state’s debt will have their own financial questions regarding the soundness of this new process. Market uncertainties only mean one thing: financial risk. That risk will be cured by increasing the cost of borrowing for the people of Maine.

Currently, the state does not issue bonds until the funds are needed. There are a host of reasons why that is the case, included among them are the Internal Revenue Service’s arbitrage requirements. This bill, however, simply says that the Governor shall authorize the issuance of bonds. There is no consideration given to timing other than the very limited, enumerated exceptions set forth in this bill. Arbitrage requirements, however, do not appear in this list.
More concerning, however, are the constitutional infirmities this bill suffers. The first constitutional issue is the discreet problem caused by the retroactive application of this bill. LD 832 seeks to eliminate the Executive’s discretion, completely altering the process of issuing bonds. What supporters of this bill fail to recognize is that currently authorized bonds themselves set forth the Executive’s role in the issuance of those same bonds, a role that has received the approval of the voters. This bill seeks to alter that role retroactively via a simple legislative enactment—one that cannot withstand constitutional scrutiny.

It is a long-held principle that bonds cannot be amended without sending the amendment itself out to the voters. Simply put, already authorized bonds were approved by the voters and contain a process for issuance of those bonds that includes the Executive’s exercise of discretion. That issuance process cannot be amended by a simple legislative enactment. The only way to alter a bond that has received the approval of the voters is to send the amendment itself to the voters. This bill does not do that and cannot amend already authorized bonds retroactively.

Most concerning, constitutionally, is this bill’s impermissible exercise of Executive power by the Legislature. Under this proposal, the Executive would be stripped of all discretion related to the issuance of these bonds and, rather, the Governor would be commanded to issue bonds by the Legislature through the use of the word “shall.” Five enumerated exceptions follow this blanket command, with the Treasurer, an agent of the Legislature, determining if three of these exceptions apply. The two other exceptions would be fact-specific occurrences outside of the discretion of the Executive. This legislative enactment, however, would be an impermissible exercise of the executive power by the Legislature by commandeering the Executive and ordering the Governor to act without discretion.

Those buying our debt expect the full faith and credit of state to stand behind these general obligation bonds, and only the Executive stands in a position to speak for the entire state—not a bicameral body comprised of 186 separate members. The Governor occupies a full-time position with constant access to information and the ability to execute on a decision, unlike Maine’s part-time Legislature that is adjourned for months at a time. The Executive is the only logical place where the authority to issue bonds should reside.

This bill, however, would constitute the Legislature exercising the Executive’s discretion by dictating how and when the decision to issue bonds must take place. The doctrine of separation of powers, however, specifies that one branch of government cannot exercise the authority of another branch.

Clearly, this bill does not withstand constitutional scrutiny and cannot succeed in stripping the Executive of this authority. However, if allowed to go into law, this bill will certainly succeed in creating legal and market uncertainty for past and future bonds. This is nothing more than an
unconstitutional power grab by one branch of government to use as a political bludgeon against another branch. Questions of separation of powers between branches of government can only be finally determined by our state’s highest court. Until that determination, all general obligation bonds would proceed under a legal cloud.

For these reasons, I return LD 832 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor