

2002 Federal Issues Paper

“Improving the Intergovernmental Partnership”

Prepared by:

Maine Municipal Association
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Committee, January 24, 2002)

Thank You . . .

Maine's municipalities are very concerned about unfunded federal mandates and federal intrusion into historical areas of local control, but MMA's Executive Committee would like to set those concerns aside for a moment and express its gratitude to Maine's Congressional delegation for its continued support of several federal programs that have significantly benefited the people of Maine, and its unified opposition to the annexation of large tracts of northern Maine to create a federal park.

Community Oriented Policing Services (COPS) Program

One federal initiative that is very popular on the local level is the COPS Program. Since its enactment in 1994, the municipalities have noticed an unwavering financial commitment to fund COPS. This federal legislation has provided Maine's police departments with the financial capacity to hire more than 280 additional law enforcement officers. Police departments that elect to participate in the program make application directly to the Department of Justice (DOJ). The DOJ provides federal grants in an amount up to 75% of the total salary and benefits of the law enforcement officers for a three-year period. Police departments are obligated to retain the officer for one budget cycle beyond the three-year term. To be eligible for funding, the police department must utilize the additional law enforcement officer in a community

policing capacity, though this need not be the only responsibility of the officer.

Low Income Home Energy Assistance Program (LIHEAP)

The Federal LIHEAP program is a successful program providing heating assistance to over 45,000 Maine households. Over the past decade, the State has received \$180 million in federal heating assistance grants. LIHEAP supplemental funds are dependent upon the severity of the winter as well as fluctuations in the price of oil. Within the last ten years Maine has received an additional \$41 million in supplemental awards. This federal financial support has provided an average \$300 heating assistance benefit to Maine citizens in need.

Creation of a New Federal Park

Recently MMA's Executive Committee read with great interest a letter from the Director of the U.S. Department of the Interior to the Maine Legislature. The letter provided a reassurance that the Department of Interior did not have any intentions of undertaking an analysis of the need for a federal park located in Maine's north woods. MMA addressed this issue with the delegation in the *2001 Federal Issues Paper* and received assurance at that time that delegation members opposed the creation of a federal park. MMA wants to thank all members of the delegation for their continued advocacy against the creation of a federal park.

MMA Executive Committee

President: Gary Brown, Town Manager, Vassalboro

Vice President: Susan Lessard Bruno, Town Manager, Hampden

Directors: William Bridgeo, City Manager, Augusta
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Introduction

The municipal leaders in Maine engage in a constant challenge to balance the costs of the local government services that their citizens need and the financial capacity of the community to pay for those services. This is, of course, a challenge that is faced by the leaders at all levels of government. There is an important difference, however, with respect to the strategies that municipal officials can employ to meet that challenge and the strategies of the larger units of government at the state and federal level. The difference is that the buck stops at the municipal level. The task of raising the revenue to pay for the governmental services in Maine's towns and cities cannot be passed to any other level of government or administrative entity. In Maine, the financial burden falls dead center on the property tax, and the property tax is at the breaking point.

Maine's Congressional delegation should easily recognize the core federal issues that are identified in the 2002 edition of our *Federal Issues Paper*: special education funding, compliance with the Clean Water Act, support for Maine's transportation infrastructure, and the serious erosion of the State's sales tax base to e-commerce. Each one of these issues underscores the importance of Congress focusing on the impacts of its decisions on community-level government. It all trickles down to the municipalities, and what has been trickling down lately are unfunded federal mandates, federal preemptions, and handcuffs on the ability of the state to properly collect its sales tax.

This is the list of questions the municipalities would like each member of Maine's Congressional delegation to answer before voting on any bill. If the answer to any one of the following questions is 'yes', Maine's representatives should oppose the legislation.

- Will the proposed federal legislation require local governments to expand their level of services at the expense of the local property taxpayers?
- Will the proposed federal legislation empower federal or state regulatory agencies to require local governments to expand their level of services at the expense of the local property taxpayers?
- Will the proposed federal legislation be interpreted by local school administrative units, county government, water or sewer districts, other quasi-municipal or regional entities or the advocates of variously entitled classes of individuals to expand the level of municipal services at the expense of the local

property taxpayers?

- Will the proposed federal legislation preempt or intrude on local home rule authority? What are the real-life examples in Maine where a local authority has been used in such a way to deserve federal intrusion?
- Will the proposed federal legislation create new or expanded federal programs, the funding of which will diminish the capacity of the federal government to honor the existing financial commitments it has yet to fulfill?

Special Education: Federal Role in K-12 Education

Individuals with Disabilities Education Act (IDEA). Maine's municipal leaders truly appreciate the effort of Maine's Congressional delegation to move the federal government toward compliance with its "intention" to pay 40% of the cost of the federal special education mandate.

Unfortunately, the delegation's effort did not prevail. Instead of ramping up to a full funding of the federal special education financial commitment in six years, it is our understanding that a less aggressive FY 03 appropriation for IDEA was enacted that should boost the Maine allotment from \$31.5 million to \$36 million, compared with a state-local special education cost for FY 03 projected at \$247 million. An increase of this magnitude should adjust the federal share of total special education costs in this state from 12% in FY 02 to 12.7% in FY 03, fully \$77 million short of the federal commitment.

It is time to recognize that Congress' "intention" with regard to special education is an empty federal promise and that IDEA is now and probably forever shall remain the mother of all unfunded federal mandates. That being the case, it is time to consider addressing the problem differently. Since meeting the promised federal share of special education is such a manifestly low priority, Congress should amend the special education laws so that the services can be delivered at a reduced expense to the property taxpayers.

The actual administration of special education is shrouded in a veil of secrecy, but municipal officials have formed the following impressions:

- The law is designed to provide special education programs that are developed with no meaningful input from the taxpayers who pay the bill.
- An industry has grown in response to IDEA that

thrives on the mandate and lack of taxpayer accountability.

- Although the individual school administrative units embrace different special education strategies, the path of least resistance for many schools is to approve whatever plan the students' advocates demand rather than the most responsible *and* cost effective alternative.

- The scope of student disorders and conditions that trigger special education treatment are so broad and generalized in diagnosis that significant percentages of our schools' student populations are being treated as special education cases.

The municipalities of Maine call on Congress to restructure the special education laws if it is not going to honor its commitment to fund the federal share of this enormously expensive mandate.

Reauthorization of the Elementary and Secondary Education Act (ESEA 2002). The President's signature on the bill that has been dubbed the "No Child Shall Be Left Behind" legislation generated a good deal of fanfare. The municipalities in Maine are far more skeptical than the proponents of this legislation that the unprecedented intrusion into Maine's local schools by the federal government is warranted in Maine or remotely proportionate to the actual funding Congress provides to K-12 education.

The federal government currently pays for approximately 6% of K-12 education in Maine, and the state and local governments split the rest of the tab. When Maine's municipal officials ask their school counterparts why the school budgets are increasing year-to-year at double-digit percentage rates, the most common responses are special education (federal mandate) and Maine's system of school accountability known as Learning Results (state mandate). The municipalities now expect the federal testing and accountability mandates enacted by the ESEA reauthorization of 2002 to be added to that list.

With respect to the mandatory testing elements of ESEA 2002, the municipal concerns are somewhat mitigated by the fact that Maine is substantially ahead of the pack when it comes to student assessment and school accountability. We are aware, for example, that Senator Collins made a special effort to ensure that Maine's comprehensive student testing programs that occur in grades 4, 8 and 11, combined with the off-year, locally administered portfolio-type assessments, will be found substantially in compliance with the federal testing requirements. It should be noted that those state and local assessment programs and Maine's Learning Results have not been accomplished because of federal mandates. No mandate was needed because the people of this state

demand and achieve an appropriate level of accountability from their schools.

The elements of ESEA 2002 that are harder to accept are the sanctions the new federal law would impose on a school that was not meeting Congress' definition of "adequate yearly progress", including (within 3 or more years of "inadequate" yearly progress) required tutoring and other supplemental programs, extended school days and school years, curriculum replacement, teacher replacement, management replacement, state takeover of schools and school privatization. It is hard to know if any of this would come to pass in Maine, but just because it's unwarranted doesn't make this remarkably intrusive law any more welcome.

The local governments in Maine are beyond asking Congress; they are now compelled to beg for relief. Please fund your existing mandates, such as special education, before even considering the passage of another complement of requirements that the property tax will ultimately be forced to bear.

E-Commerce Taxation

The State of Maine is struggling with its budget. The recession of 2001, combined with the economic impacts of the terrorist attacks of last September, has forced the State to scale back its spending plans and reduce the governmental services it provides to our citizens. Maine, not unlike most other states, relies on two major taxes, the sales tax and the income tax, to generate the revenues it needs to meet the educational, medical, social, environmental, and planning and development services that the people of Maine both need and deserve. Municipalities, in turn, rely on the State to provide for its fair share of those governmental services. To the extent the State is unable to provide those services, the municipalities are compelled to pick up the slack. There is no governmental service where this hydraulic relationship between state and municipal financial obligations is more evident than public school education. Right now the State provides just 44% of the direct costs of K-12 education, and the pressure on the property tax to make up the difference is enormous.

One of the reasons Maine is having trouble meeting its financial obligations is the fast erosion of the sales tax base to electronic commerce. According to a recent University of Tennessee study, "State and Local Sales Tax Revenue from E-Commerce; Updated Estimate", Maine is estimated to have lost approximately \$43 million dollars to Internet sales in 2001, over 5% of its base. By 2006, that

loss is projected to climb to \$146 million, which is estimated to be 15% of Maine's sales tax base at that time.

The reasons for this loss are obvious. The way in which people purchase products is fast changing from over-the-counter retail purchases to electronic sales ordered over the Internet or through television shopping centers. The vast majority of these e-commerce purchases escape the application of Maine's sales and use tax because the physical presence of the retailer is not in Maine and the use tax, which otherwise applies, is unenforceable.

This remarkable, conspicuous and very fast-growing tax loophole has resulted in manifestly unfair tax policy that needs to be corrected, and Congress needs to help. Many states with Maine included are cooperating in the development of the Streamlined Sales Tax Simplification project. In summary, the Sales Tax Simplification project would see the participating states harmonize their sales tax codes so that the immediate, at-point-of-sale identification of the applicable sales or use tax rate could be assigned to a third party administrator, and a system could be created for the collection of those sales tax obligations, with the remote retailers being compensated for their administrative costs.

Important legislation was introduced to Congress in 2001 by Senator Enzi (S. 1567) which would have given the states guidance from Congress as to the development of the streamlined sales tax system and provided some assurance that after at least 20 states had conformed their sales tax codes to the simplified system, the Interstate Commerce Clause obstacles to the uniform collection of sales and use taxes among the participating states would cease to exist.

Unfortunately, Congress failed to give adequate support to Senator Enzi's thoughtful legislation, and the states are left to continue operating in the dark.

MMA urges the Congressional delegation to actively support and in a unified voice advocate for an equitable streamlined sales tax system. Although the issue is described as being embedded in complexity, it can be boiled down to a simple request for equity and fairness. As Senator Enzi's legislation stated, "As a matter of economic policy and basic fairness, similar sales transactions should be treated equally, without regard to the manner in which sales are transacted, whether in person, through the mails, over the telephone, on the Internet, or by other means."

The current tax structure is a disadvantage to those unable to afford or navigate a computer and benefits

those with Internet access. Internet sales thrive, shops on Main Street struggle, and the State of Maine resorts to the property tax to shore-up its lost sales tax revenue.

Wastewater Treatment Facilities

MMA has been sending the same message to our Congressional delegation since 1990; the municipalities in Maine need meaningful financial assistance in order to implement the Combined Sewer Overflow (CSO) requirements of the Clean Water Act. MMA has repeatedly asked the delegation to support legislation that provides the requisite funding necessary to achieve the upgrades required by the federal mandates.

Over the past fifteen years federal assistance for CSO abatement has been provided to Maine in very small relative sums as Direct Grants for CSO projects or Special Projects Grants. Congress' philosophy appears to be to address the demand by capitalizing a loan program, which doesn't in any serious way attack the underlying need.

Direct Grants for CSO Projects

In recent memory, the only federal grant funds that Maine has received specifically earmarked for CSO abatement has been through Marine CSO grants. Federal Marine CSO grants were distributed to the communities listed below.

	Marine	
FFY	CSO Grants	Community
85-86	\$350,000	Thomaston
87-88	\$ 76,643	Saco
89-90	\$1,875,065	Calais

Special Projects Grants (CSOs)

The Appropriations Act of 1995 awarded a total of \$12 million in Special Projects Grant money to the communities of Bangor and Biddeford. Bangor's \$6 million grant was initially given for a composting facility, but was later amended to be used for CSO abatement projects. Of the \$6 million received by Biddeford, approximately \$2 million was used for CSO abatement while the remainder of the funding was used for upgrades at the treatment plant.

Special Projects Grants (New facilities and upgrades)

It is only recently that Maine has been receiving Special Project Grants for new facility construction or treatment plant upgrades. In 2000, \$1 million in federal money went to the Vinalhaven treatment plant project. In 2001, \$1 million went to the upgrade in Corinna. And in 2002, it is our understanding that an additional \$2 million will go to the Vinalhaven project. This represents the type of direct and meaningful assistance that many more Maine municipalities could use.

Capitalization Grants

In the early 1990's the Federal Construction Grants program ceased to exist and was replaced by the State Revolving Loan Fund (SRF) program. This program provides loans, with interest calculated at two points under the going rate, and is currently being utilized by the municipalities to the tune of \$25 to \$35 million a year. The low interest loans, while helpful, do not fund a mandate.

FFY Year	Total SFR Loan Amount	SRF Loan Amount for CSO Abatement
1989	\$7,275,200	\$0
1990	\$7,528,700	\$0
1991	\$15,886,629	\$1,996,735
1992	\$15,040,674	\$230,000
1993	\$14,878,611	\$681,000
1994	\$9,225,300	\$1,986,000
1995	\$9,531,000	\$9,208,014
1996	\$15,618,191	\$1,830,700
1997	\$4,773,200	\$16,853,500
1998	\$10,423,809	\$2,773,621
1999	\$10,424,601	\$3,049,500
2000	\$10,389,258	\$3,997,000
2001	\$10,296,891	\$14,673,438
Total	\$141,292,064	\$57,279,508

The municipalities are facing an aggregate CSO infrastructure mandate of a quarter of a billion dollars. In federal financial scope, that may not seem like a lot of money, but in Maine that is an enormous sum. The loan program capitalization appropriations that have been averaging \$11 million a year fall far short of the need.

Storm Water Phase II Permitting

Starting in a year or so, many Maine municipalities will be financially impacted by a "phase II" federal mandate, the Storm Water Phase II Permitting Program. The U.S.

Environmental Protection Agency has made it abundantly clear that there is no new federal money to assist communities with the implementation of Phase II technology.

This legislation is an expansion of the Storm Water Phase I regulations that impacted municipalities with a population of more than 100,000. Municipalities in Maine were spared the requirements under Phase I because of the lack of population base, however Phase II will impact construction sites that disturb more than one acre of land and industrial activities operated by municipalities, including those operated by public works facilities.

The Phase II Municipal Separate Storm Sewer Systems (MS4s) regulations will encompass those urban areas with a population greater than 50,000 and a population density of at least 1,000 people per square mile as determined by the U.S. Census Bureau. Based on the 1990 Census, 21 of Maine's municipalities will fall under this regulation as a result of their population density. The rule also covers operators of small construction activities that disturb one to five acres of land. In addition to the municipalities designated by the EPA, the Maine Department of Environmental Protection (MDEP) has been delegated the authority to designate other towns that have the potential to significantly impact receiving waters due to storm water runoff.

Phase II permitting will be administered by MDEP and will take effect in March, 2003. MS4s will be required to create a six-tiered Water Management Program. This program must include a plan to detect and eliminate illicit discharges to the storm water system and must also undertake public education to inform citizens about the impact polluted storm water runoff discharges have on water quality. This education component must also allow an opportunity for citizens to participate in the development and implementation of a new system. MS4s must also design construction site runoff controls, as well as post-construction controls. The final component is the development of pollution prevention measures for municipal operations. In addition to this Water Management Program, the MS4 must identify the "Best Management Practices" and measurable goals.

MMA asks the delegation to advocate for federal financial assistance for achieving the requirements associated with Phase II permitting. Federal mandates such as CSOs and Phase II permitting place more burden on the property taxpayer and from the municipal perspective it seems entirely unfair for Congress to so directly utilize the property tax to finance laws that Congress chooses to pass.

Transportation

For over a decade and especially in the last four years, municipal officials have directed, encouraged and pleaded with the Congressional delegation to accomplish two vital transportation goals. First, municipal officials have asked the delegation to assist in enhancing the economic vitality of all areas of the state by providing more federal dollars for the construction of north-south and east-west corridors. Second, municipal officials have requested that the federal government grant a waiver of the 80,000 pound weight limit on Interstate 95 north of Augusta. Our successes in these areas have been modest, to say the least, but with the reauthorization of the federal highway programs in view, the window of opportunity is wide open.

The current six-year transportation improvement program, TEA 21, will end in 2003 and Congress will be tasked with implementing a new six-year plan. The existing formula, which is based on the amount of fuel tax revenues generated by each state, does Maine no favors. Of the six New England states, Maine is second in total road miles, but fourth in total 2001 TEA-21 allocations. In 2001, Maine received fewer federal dollars than Rhode Island, which has 27% of the Maine's road miles and 85% of this state's population. The following chart provides some stark information with respect to the 2001 TEA-21 allocations on a per road mile and per capita basis.

Total 2001 TEA-21 Allocations

	Total Pop.	Total Road Miles	2001 TEA-21 Allocation	TEA-21 Per Mile	TEA-21 Per Capita
Connecticut	3,405,565	20,845	\$449,902,827	\$21,583	\$132
Maine	1,274,923	22,669	159,596,873	7,040	125
Massachusetts	6,349,097	35,312	555,337,488	15,727	87
New Hampshire	1,235,786	15,210	155,698,642	10,237	126
Rhode Island	1,048,319	6,053	178,271,067	29,452	170
Vermont	608,827	14,275	134,709,782	9,437	221

Source: US Department of Transportation – Federal Highway Administration

One avenue for the delegation to take regarding the 2003 reauthorization is to change the formula so that states like Maine, which have low populations, high road miles and generate average or below average federal fuel tax revenue can gain access to more federal funds. Another equally important and perhaps more politically feasible avenue for the delegation to pursue is to secure additional transportation resources through dedicated special project funds. The delegation should carefully monitor the next six-year federal transportation funding program to maximize every opportunity to earmark revenue for Maine,

particularly in the areas of corridor construction and improvement programs (north-south and east-west infrastructure systems) and bridges. The delegation should strive to get Maine back to the funding level it received in the first six-year program (ISTEA – 1992-97). Between the last year of ISTEA (1997) and the first year of TEA-21 (1998) Maine's "special revenue" allocation for projects such as the Portland/South Portland bridge and the Donald Carter bridge in Waterville was reduced from \$182 million to \$47 million, a decrease of 74%. Now is the time for action.

Weight Limits. For too many years the municipalities have been seeking an increase in the weight limit on the Interstate 95 north of Augusta. The facts are plain. Federal highway policy is pushing the heavier trucks onto state and local roads which threatens public safety and creates an unfair burden of road maintenance. Given the realities of truck transit in this nation, the 80,000 lb. weight limit is archaic. Although each member of Maine's delegation has either sponsored or co-sponsored a weight limit bill this session, the bills have been idled. H.R. 2151, sponsored by Rep. John Baldacci and co-sponsored by Rep. Thomas Allen, was last acted upon on June 14, 2001 when it was referred to the subcommittee on Highways and Transit. Similarly, a bill sponsored and co-sponsored by Senators Olympia Snowe and Susan Collins (S. 1345) was referred on August 12, 2001 to the Committee on Commerce, Science and Transportation without further action. We don't understand enough about the federal legislative process to know whether this means these bills are dead, but they shouldn't be killed by inaction. Why is it that the public debate about this significant road management and public safety issue in Maine cannot go forward?

Homeland Security

The horrifying events of September 11, 2001, and the intensified security measures that followed, cannot go unmentioned. As a result of the terrorist attacks, all levels of government have been drawn into the protection of the nation, the state and our communities. According to a *Bangor Daily News* editorial, homeland security in Maine is expected to come with a price tag of approximately \$20 million.

Municipalities play a prominent role with respect to community security, and many towns and cities are feeling the financial stress of federally mandated and federally suggested increases in security measures at our airports,

seaports and state borders.

For example, increased security at the Bangor airport has reached a total of \$228,600 annually with an additional one-time expenditure of \$92,900. Increased law enforcement presence at the Augusta airport has cost the Capital City over \$25,000. Augusta has also spent an estimated \$15,000 in overtime for both police and fire services as a result of responding to anthrax scares and has absorbed substantial costs in training and purchasing personal protective equipment for fire, police and emergency personnel. Even a smaller community, such as Freeport,

is not exempt from the unexpected costs. Freeport firefighting personnel responded to over 50 anthrax scares last fall, creating an early hole in the town's public safety budget. Our largest city, Portland, has spent about \$250,000 on its post-attack seaport defense and \$1.5 million in additional funds at the airport.

The federal, state and local public safety officials are already working in a coordinated way to address the security of our citizens. The municipalities are only asking for some intergovernmental coordination in the funding of their activities as well.

Maine's Congressional Delegation

The Honorable Olympia J. Snowe

United States Senator
154 Russell Senate Office Building
Washington, DC 20515-1902
Tel: 202-224-5344
Fax: 202-224-1946

e-mail: Olympia@snowe.senate.gov

Staff: Marilyn Abel, Washington Scheduler
Jane Calderwood, Chief of Staff
Tom Gier, Legislative Director

Maine Office: 3 Canal Plaza, PO Box 188 DTS,
Portland ME 04112

Tel: 207-874-0883

The Honorable Susan M. Collins

United States Senator
172 Russell Senate Office Building
Washington, DC 20510
Tel: 202-224-2523
Fax: 202-224-2693

e-mail: senator@collins.senate.gov

Staff: Cynthia Bailey, Washington Scheduler
Steve Abbott, Chief of Staff
Mike Bopp, Legislative Director

Maine Office: 168 Capital Street, Augusta ME 04330

Tel: 207-622-8414

The Honorable Thomas H. Allen

Representative to Congress
1717 Longworth House Office Building
Washington, DC 20515
Tel: 202-225-6116
Fax: 202-225-5590

e-mail: rep.tomallen@mail.house.gov

Staff: Jolene Chonko, Washington Scheduler
Jackie Potter, Chief of Staff
Todd Stein, Legislative Director

Maine Office: 234 Oxford St, Portland ME 04101

Tel: 207-774-5019

The Honorable John E. Baldacci

Representative to Congress
1740 Longworth House Office Building
Washington, DC 20515
Tel: 202-225-6306
Fax: 202-225-3427

e-mail: Baldacci@me02.house.gov

Staff: Ed Gilman, Washington Scheduler
Larry Benoit, Chief of Staff
Ashley Martinage, Legislative Director

Maine Office: 202 Harlow Street, Bangor ME 04401

Tel: 207-942-6935

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