

2011

FEDERAL ISSUES PAPER



**Massachusetts
Municipal
Association**

*A Collaborative Effort of The Leagues of Towns, Cities
and Villages Throughout The Northeast States*

2011 FEDERAL ISSUES PAPER

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INTRODUCTION

For the second consecutive year the municipal associations from the seven states in the Northeast region have worked together to provide this *Federal Issues Paper* to our congressional delegations. Thank you for taking the time to review the issues presented, which are central to the capacity of local governments to deliver services to your constituents and ours.

Reverberations from the Great Recession of 2008 will continue to be felt in state and local governments for years to come. We fully recognize that all levels of government are facing significant financial constraints, and those limitations demand a new approach that emphasizes core services that are delivered efficiently and designed for maximum results. Town and city leaders, their appointed officials and all local government employees live on the very front line of service delivery. On an ongoing basis, alternative and innovative approaches are being advanced, evaluated and implemented at the local level where an array of core services need to be provided according to budgets that must be balanced with resources and impose no additional burdens on the property tax.

Local governments have no hope of delivering basic services such as public education or police and emergency response -- or of maintaining key transportation, water and wastewater infrastructure upon which the health and safety of our residents rely -- without two kinds of assistance from the federal government.

There is, to be sure, a significant municipal reliance on federal financial resources to keep infrastructure in good repair and to provide for the education, housing assistance, health and public safety needs of residents.

In addition, we also need a legal and regulatory environment that is designed to incorporate innovation and flexibility, thereby allowing local government to work within the new financial realities and deliver services to the people who need them, when and where they need them, with a targeted efficiency. Municipalities are very willing to explore the limits of doing more with less. Some of those limits, however, are imposed by regulatory prescriptions or policy proscriptions that are handed down from the federal government and tap deeply into limited resources, thereby making federal initiatives take a disproportionate priority within local budgets.

Maintaining responsible levels of financial support from the federal government is a crucially important issue for the municipalities of the Northeast region. Having said that, in our advocacy for vitally necessary federal funding, we do not want to lose sight of all that can be done outside of a federal budget bill to achieve positive results for local government and the businesses and citizens served there. With that in mind, the focus of this *2011 Federal Issues Paper* is on policy issues, regulatory matters, and the types of changes that could be effected in Washington that would make it easier to do our work at the local level without demanding more of the federal budget.

This *Federal Issues Paper* is written collaboratively by the municipal associations of the northeastern states to convey the urgency regarding the needs of cities, towns and villages to implement new ways to deliver core services.

Although some of these articles may have been written from the particular perspective of one of the municipal leagues, with examples from just the State where that league is located, municipal leaders from throughout the region experience the same problems, notice the same trends, share common issues and wish to express the same aspirations for their communities as are discussed throughout these pages.

We welcome the opportunity to meet with you to discuss the subjects presented here and to work with you going forward. Thank you for your service to your states and to the Northeast region we all call home.

FEDERAL ENVIRONMENTAL REGULATION

Shortly after the 2008 election of Barak Obama, MSNBC conducted a survey of mayors, seeking their top suggestions for the President-Elect's "to do" list. Taxes, budgets, and unfunded mandates were at the top of the To Do list.

"The biggest problem facing all mayors is EPA's non-funded mandates," wrote Mayor Bob Armstrong of Defiance, Ohio, population 16,465. "Each city's citizens' water and sewer rates will be at a level where some will not be able to pay. People living outside the city limits will be paying two and one-half times the rate as the city rates. Their rates could reach \$350-\$400 per month for an average family. ... We are all for clean air and clean water, but we must make it affordable. I encourage the federal government to change or regulate EPA laws."

This could have been a letter written by a Massachusetts mayor.

On the one hand, cities and towns in our Commonwealth understand the need to protect water resources. Our members are committed environmentalists who take their role as stewards of this important natural resource very seriously. Communities throughout Massachusetts had been working toward the reduction and elimination of pollutants in municipal stormwater discharges well before the initiation of the NPDES Phase II permit program in 2003. Communities have long promoted the need to look holistically at how water resources are managed in the Commonwealth to provide for public health, safety and economic growth for our citizens.

On the other hand, municipal officials have deep and serious concerns regarding these costly new permit requirements and their potential to divert scarce resources away from core services such as the protection of public health and safety and the education of our school children. The costs of the operational, structural and staffing changes necessary to meet the requirements of these new regulations would have a severe financial impact on communities across the Commonwealth.

Last year, the Massachusetts state legislature established the Water Infrastructure Finance Commission to develop a comprehensive, long-range water infrastructure finance plan for the Commonwealth and municipalities. The 18-member commission is headed by Sen. Jamie Eldridge (Acton) and Rep. Carolyn Dykema (Holliston) and is currently soliciting testimony to learn about water, waste water and stormwater infrastructure needs; capacity to finance them; cost savings through innovations and consolidation; and potential government changes for water infrastructure financing.

In the 1970's and 1980's, several federal water and waste water funding programs partnered with communities to the benefit of our health and environment. At that time, federal funds paid for as much as 75 percent of the construction costs for water treatment and sewage facilities. Today the burden for financing water, waste water, and stormwater falls almost solely on municipal governments. Ultimately, local ratepayers and taxpayers bear the burden of rehabilitation, upgrading and operating costs, with federal contributions limited to low interest loans.

Last year, a group of Massachusetts local officials, including then-MMA President Bruce Tobey, traveled to Washington, D.C., to meet with top EPA officials and the Massachusetts Congressional Delegation. The officials expressed concern about a number of unfunded federal mandates, the level of assistance available to cities and towns, and communications between the EPA and communities.

Stormwater regulations:

One of the most significant unfunded mandates is the EPA's application of the Clean Water Act to stormwater regulations. The local officials told the EPA Regional New England Administrator that strict stormwater standards are placing a financial burden on cities and towns at a time when local budgets are already stretched to the limit. The Municipal Separate Storm Sewer System (MS4) program is certainly one of the most burdensome unfunded mandates imposed by the federal government on localities.

Under these regulations, municipalities are required to implement six minimum measures, using strategies for each measure developed by EPA and the states. The six minimum measures are:

- * Public education on impact of individual actions (pesticides, fertilizers, etc.);
- * Public involvement in development of local stormwater program;
- * Elimination of illicit discharges;
- * Controls on construction activities;
- * Post-construction management of run-off; and,
- * Implementation of good housekeeping measures for municipal operations.

Cities and towns are required to map their storm sewer systems and identify major outfalls, a requirement not without certain costs. Additionally, the EPA requires monitoring on both the level and types of pollutants in stormwater runoff and the impacts of controls on these discharges.

The EPA's estimate is that MS4 communities can expect to spend up to \$60 per capita each year to implement stormwater programs in their communities. Preliminary projections indicate that this NPDES Phase II permit will cost the impacted communities tens of millions of dollars per year to comply. Again, this cost of compliance falls almost entirely on the ratepayers.

Recommendations:

1. Federal Assistance. The Massachusetts Municipal Association believes that the federal government must provide funding opportunities to assist local governments as they struggle to implement the requirements associated with this program. Federal and state funding should be appropriated for studies, analysis and modeling identifying specific water quality problems. All such studies should be reviewed by qualified persons outside of the agencies, watershed groups and federal consultants. The regulated community and other stakeholders should be included to assure that local financial resources will not be squandered for limited environmental benefit.

2. Cost/benefit analysis. The analysis should include a clear demonstration of the cost/benefit of all significant stormwater management projects, since many believe this program will be very costly and may in some cases provide little or no environmental benefit.

It is relatively easy to set a numerical limit on a certain element or chemical constituent of stormwater discharge at any point of outfall. Getting to the source of the contamination, however, is not an easy task. Major problems need to be identified, scientifically verified and addressed before any real progress can be made. Fertilizers, road containments, wastewater, waterwithdrawl, dams, salt runoff, and agricultural runoff all affect water quality, yet they are never prioritized and communities are never given a cost benefit analysis to determine the most effective and efficient way to achieve water quality.

3. Regulatory Process. Municipal officials are frustrated time and time again when regulations are issued without the benefit of prior discussions with agency staff, especially when it seems the agency staff who write these regulations have no municipal experience. Many times the proposed regulations are either impossible

(testing wet weather discharges when the pipe is literally under water) or incredibly cost prohibitive.

The EPA should be required to hold outreach and educational meetings prior to issuing any draft permits and discuss with municipal officials the goals they are trying to achieve and the approaches they are contemplating. Only then can we begin to achieve these goals in an effective manner. This would limit lawsuits, save financial resources and achieve more results. It often seems that regulatory solutions are based on what is easiest for the regulator to regulate not on scientifically valid assessments of the causes of, and solutions to, the water quality problems.

Time Frames. Another concern is the aggressive schedule that the EPA proposes for implementation of the program. Giving permittees only 90 days to file their Notice of Intent (NOI) after their permit is finalized, and dictating that within 120 days from the NOI the formal Stormwater Management Program must be complete, is unrealistic. That schedule forces communities to hire expensive environmental consultants for assistance in completing numerous elements of the program because on-staff engineering personnel at the local level have been reduced or eliminated after years of both state and federal cutbacks in grant funding and local aid. In Massachusetts, at least, hiring these consultants would require compliance with extremely time consuming statutory procurement requirements. Although the initial five-year permit requirements may have been accomplished in-house, this is no longer possible. Communities will now be forced to cut other services or raise taxes to pay for these new requirements.

One of the easiest ways to begin a priority approach is within communities. The EPA should be directed to streamline the requirements by allowing communities to prioritize catchment samplings, for example, or substitute end-of-pipe sampling with strategic in-stream sampling, which is more effective and efficient. The cost to monitor and sample all outfalls is extraordinary and would place a severe financial burden on our cities and towns.

The submittal of the NOI is a commitment to implement all the requirements of the general permit, and there are no guarantees that there will be adequate funding in place now or over the five-year permit life. As noted above, the requirements under the proposed permit are well beyond the normal operating budgets of our cities and towns. Many may have to fund requirements through a bond or create a stormwater utility. Because of Massachusetts' Proposition 2 1/2, many communities may be forced to vote on a tax override, which requires voter approval. It may not be feasible to comply with these requirements, even if city and town governments are committed to implementing them, because taxpayers may simply refuse.

For the reasons listed above we are asking Congress to amend the Clean Water Act so the EPA may defer action on the submission of NOIs until municipalities have had an opportunity to engage the regulatory agencies in an open dialogue regarding permit requirements. We are asking Congress to direct the EPA to amend the agency's approach to incorporate goals that are more realistically attainable and within the financial constraints of the current economic climate. Either that, or wait until adequate federal funding is available to ensure that these requirements do not translate into a harmful unfunded mandate on cities, towns and taxpayers.

INTERNET TAXATION

On-line retailing and the Internet sales tax exemption

For all of us struggling to balance a budget, from the smallest town in Southern Rhode Island, to New York City, to the State of California, there is nothing more frustrating than the steady erosion of the sales tax revenue stream caused by the de-facto exemption applicable to Internet sales.

A 2009 University of Tennessee study estimated that the current Internet sales tax collection exemption will result in a loss of FY 2012 sales tax revenues to state and local government of \$11.4 to \$12.6 billion, representing 2% of all state general revenue budgets. Although it is true that in some cases our cities and towns are only indirectly affected by this exemption, it is nevertheless the case that the financial health of our states is the most significant driver in determining levels of state aid for such critical services as public education and transportation infrastructure.

There are also secondary effects. For one, the value of commercial retail property is impacted by the health of the retail sector. To the extent physically-present retail activity is put at a tax disadvantage by Internet sales, the value of the local tax base is made more fragile and decisions on future development become less secure.

The foundation for the exemption is a 1992 Supreme Court decision (*Quill vs. North Dakota*) in which the court ruled that retailers are not obligated to collect a sales tax unless they have “nexus” or a physical presence in the state. Federal legislation enacted since then has prohibited new taxation of Internet access fees – a separate but not unrelated issue – and essentially preserved by its silence the Supreme Court decision which prohibited requiring on-line retailers to collect the sales tax applicable to a jurisdiction.

The state of New York has taken the lead on challenging the conventional definition of “nexus”. In 2008, the legislature expanded the definition of nexus to include internet retailers that sponsor “affiliate” programs through which New York residents earn commissions when they refer purchasers to the retailers’ web sites. Amazon and Overstock.com have challenged this act and litigation is pending in state court. This past November, a state appellate court ruled in favor of the constitutionality of New York’s act. In the interim, Amazon is collecting sales tax in New York pending the final outcome of this litigation.

The Amazon argument for a continued exemption is two fold. The retail giant first makes the case that the varying state laws relating to taxability and exemptions for certain transactions result in a tax that is administratively unwieldy across multiple jurisdictions. Second, the argument is made that when a retailer has no physical presence, that company does not benefit from any services provided that may be financed by the revenue collected.

Amazon itself has proven that the first argument is bogus. For example, the Amazon website runs the Target Internet sales operation. Because Target has an undisputed retail nexus, Amazon collects sales tax where applicable by jurisdiction on all Target sales. If they do it for Target’s sales, they can do it for their own sales.

The second argument is bogus as well. All sales taxes have a “use tax” parallel. Collection of the tax at the retail location is for convenience and administrative purposes only. The ultimate applicability of the tax is based upon use of the product or service obtained at the retail level. In addition, there can be no argument that government is providing benefits to Amazon’s retail operations, for example through support of the distribution process by maintaining public roads, and public safety functions.

This past July, Representative Tom Delahunt of Massachusetts introduced the “Main Street Fairness Act” (HR 5660) which would require sales tax collection by on-line retailers regardless of “nexus” in all states which are signatories to the “Streamlined Sales and Use Tax Agreement” (see following article). Twenty four states have taken full action to adopt uniform sales tax rules under the agreement and another twenty are participating in the project which was initiated by the National Governors’ Association. An earlier initiative in Congress was sponsored by Senator Mike Enzi (R) of Wyoming. Senator Enzi’s bill would also have provided a collection exemption for small retailers.

Conclusion

Enhanced FMAP, which is costing the Federal government over \$50 billion annually, is set to expire at the end of the current fiscal year. Loss of this resource will be an enormous challenge for our states and our municipalities that rely on the stability of state resources to sustain an equitable financial partnership with regard to such core services as education and transportation. Approximately a quarter of this loss could be made up by elimination of the on-line sales tax loophole. There is some hope that action by states in tweaking the definition of “nexus” (the New York example) could bear some fruit, but those are baby steps. Action by Congress to eliminate the exemption is the fairest solution.

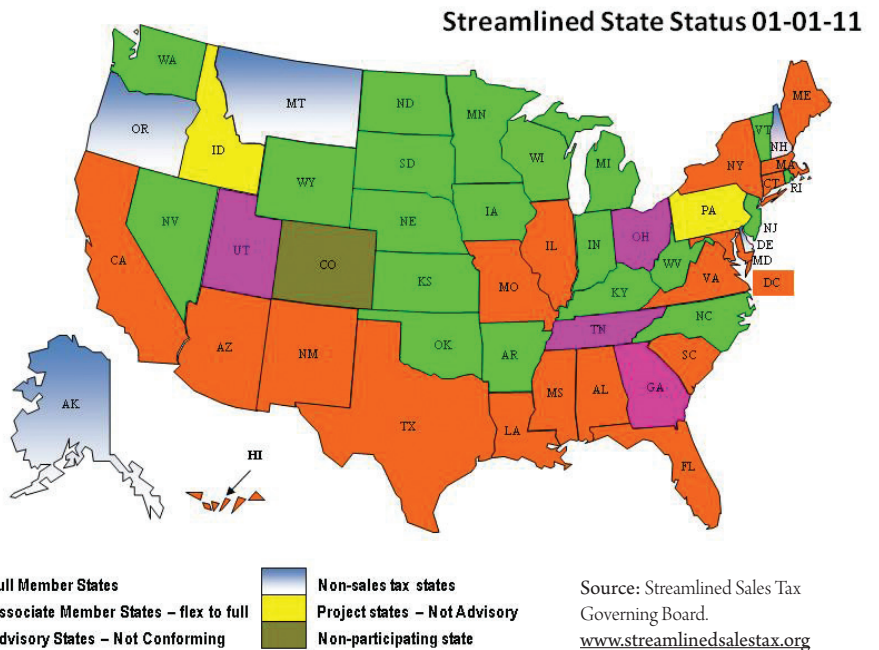
The Streamlined Sales Tax Agreement: Looking for a Signal

If the Streamlined Sales and Use Tax Agreement is not an example of sound, balanced and appropriate public policy that should be fully implemented by Congress, the town and city leaders in Maine would like to know why.

The Agreement was initiated a decade ago through the work of the National Governors’ Association and the National Conference of State Legislatures. A remarkable amount of effort has been invested in the Agreement over that 10-year period. Forty four states are participating in this Agreement. More than half of those states have taken on the task of amending their sales tax codes into conformity and become full members. The Maine Municipal Association’s 70-member Legislative Policy Committee, as part of its 2011 legislative agenda, is urging our state lawmakers to position Maine, as a participating state, to achieve full membership by 2012.

All of that effort is an imprudent investment if Congress is unwilling to provide this collaboration with the federal support it deserves. The bills to do just that, such as the Sales Tax Fairness and Simplification Act (in the 110th Congress) and the Maine Street Fairness Act (in the 111th Congress), seem to die on the vine.

The fundamental equity of all taxation systems deteriorates over time unless the tax code is periodically adjusted to account for the inevitable changes to the tax base that occur as the marketplace transforms its



economic underpinnings. Municipalities in Maine are constitutionally required to perform a “general valuation” at least once every 10 years to ensure that the tax base upon which property taxes are assessed is kept up-to-date. Despite the political difficulty inherent in any type of tax reform, states should similarly update and modernize their sales and income tax codes.

We are not asking Congress to assume any chore or obligation better belonging to each state. On that point, a very significant element of modernizing any state’s sales tax code – the “remote seller” exemption – cannot be accomplished without the help of Congress. When the Agreement was first initiated, the fundamental structure of retail sales was undergoing significant change. Ten years later, that change has now substantially occurred in many retail environments. Retail activity has migrated from physical stores to virtual stores. There is nothing inherently wrong with that transformation, as long as the application of the sales tax is equitable and doesn’t favor one system of retail over another. As it turns out, however, now that the Internet is the shopping mall of America and its franchisees are doing business in a tax exempt paradise, their bricks-and-mortar colleagues are paying the freight. Those physical stores are the municipalities’ downtown constituents.

That’s where the Agreement comes in.

It cannot be denied that if and when the Agreement is fully implemented, and the “remote seller” exemption currently tilting the playing field is effectively overcome, there is a financial benefit to the states. The sales transactions conducted within the electronic walls of the exempt Internet retailers will become subject to a sales tax levy, and the member states will see greater strength and improved stability in their sales tax collections. The affected businesses undoubtedly will protest. Having said that, there are many elements of the Agreement that are favorable to retail businesses. Within the Agreement there is a major recognition that businesses currently bear too much of the burden of administering a cacophony of sales taxes. The entire process of administration would be significantly simplified through the Agreement by implementing common definitions, common exemptions, grossly simplified rate structures and instantaneous programming technologies. Business liability associated with administrative errors will be greatly reduced, in some administrative applications down to zero. On top of that, the Agreement provides for state funding of the administrative costs borne by the businesses, whether remote or physically present.

Municipalities, at least in Maine, are not expert in the area of sales tax administration. There are no local-option sales taxes in Maine, and although Maine does have a municipal revenue sharing system that is capitalized in part by a percentage of state sales tax collections, the larger motive on the part of Maine’s towns and cities in moving forward with the Agreement is state revenue stability. Like any state, Maine’s K-12 public education system and the quality of its transportation system is dependent on a predictable and stable source of revenue being available to the state government. Without any doubt, the growth of Internet-based exempt sales transactions provides a chronic limiting factor in all state sales tax revenues. On top of that, the gross imbalance in the retail playing field translates into an incurable inequity in the tax code of every sales tax state.

If each state could squarely address this issue of equity by the actions of its own legislature, no actions of Congress would be requested. The nation’s Supreme Court has observed that overcoming the remote-seller exemption expressly requires an act of Congress. The participating states are clearly taking the preliminary steps required of them. A majority of the participants, representing one-third of the nation’s population, are waiting for action as full member states. In the Northeast region, Rhode Island and Vermont join these ranks. Other states, like Maine, are positioning themselves to become full members to the Agreement.

The simple question to the Congressional Delegation is whether congressional support is on the horizon.

TRANSPORTATION

The Northeast municipalities urge the northeast region Congressional Delegation to partner with local governments to meet future pressing needs for highway, bridge, transportation alternatives and smart transportation. The delegation is urged to support the authorization of a new federal surface transportation program that recognizes the central role of transportation in local economies, addresses job creation and deteriorated municipal transportation infrastructure, is implemented with flexibility and includes the local government perspective.

Throughout the country local governments rely on the federal transportation authorization to provide a framework for transportation priorities. Since September of 2010, Congress has passed six continuing resolutions to extend SAFETEA-LU, the federal transportation authorization. Now as hearings begin on passing a new federal transportation authorization, municipalities in the northeast region of the country are committed to providing information and assistance to their delegations so as to make the best possible use of scarce resources.

According to various commissions, the gap between current revenues available for surface transportation and capital needs each year is anywhere between \$59 and \$187 billion in 2008 dollars (*Center for Excellence in Project Finance, Conference Report 2010, p. iv*). Total need nationally ranges from \$134 - \$262 billion in 2008 dollars (*ibid. p. 2*). In early February of this year, the House Budget Committee Chairman announced budget caps for purposes of debate on the continuing resolution funding government until March 4. The announcement included cuts to transportation and housing programs of 17%, or \$11.5 billion. And at least one estimate of expected revenues for transportation from traditional sources is that \$250 billion will be collected over the course of the next six years, which is the period of time this authorization will be in effect. The estimate recognizes a decline in fuel tax revenue as people drive less and automobile gas mileage improves.

BRIDGES FUNCTIONALLY OBSOLETE OR STRUCTURALLY DEFICIENT

State	National Rank	% of Bridge Inventory Obsolete/Deficient
Rhode Island	2	53.3%
Massachusetts	3	51.1%
New York	7	38.2%
Maine	10	35.7%
Vermont	10	35.7%
Connecticut	15	53.3%

Source: US Department of Transportation, Federal Highway Administration, National Bridge Inventory. http://www.statemaster.com/graph/trn_bri_per_fun_obs_or_str_def-percent-functionally-obsolete-structurally-deficient

Transportation funding and the continued solvency of the Highway Trust Fund is clearly a vital issue, especially in light of our continuously deteriorating transportation infrastructure. For example, states in the Northeast have some of the most deplorable bridge inventories, with Rhode Island ranking 2nd in the nation for the percentage of bridge inventory considered obsolete or structurally deficient. Massachusetts' ranking is third and all other Northeast states make the top 15 list. At the same time it cannot be denied that construction costs and interest rates are low in today's economy, making investment in infrastructure an attractive option, assuming investment capital is available. Investment in transportation infrastructure would address the immediate need to create jobs, particularly in the construction sector, while also addressing our region's economic growth goals and competitiveness with transportation infrastructure investments in those countries that are our most significant economic rivals.

The numbers show that the vast majority of federal dollars are spent by state Departments of Transportation on state and federal transportation networks despite the fact that the vast majority of road miles in any northeastern state are owned, or at least managed and maintained, by local governments. Funding to implement smart growth projects, safe routes to schools and alternative transportation options, including rail, are scarce, particularly in rural areas. Administration, permitting, design and engineering regulations that attach to an entire project if one federal dollar is used tend to bloat the costs of local projects enormously, making the use of federal dollars on a local project a tenuous proposition at best. The same cost-spiral accrues to state projects using federal dollars. At the same time, restrictions on the use of federal dollars constrain creativity and innovation in project development and implementation to the point that some municipalities have turned back federal dollars, preferring to deliver their citizens a well designed, effective and thrifty project in a timely manner.

We cannot continue to do business as usual. Neither the recession nor the political times will allow that. The Chair of the U.S. House Transportation and Infrastructure Committee has said repeatedly he would consider

**ROAD MILES OWNED BY MUNICIPALITIES
COMPARED TO TOTAL ROAD MILES IN STATE**

State	Town, Township, Municipal Miles	Total Miles
Connecticut	19,931	21,363
Maine*	22,713	14,335
Massachusetts	33,206	36,105
New Hampshire	15,148	16,005
New York	107,575	114,471
Rhode Island	5,831	6,403
Vermont	13,658	14,421

Source AASHTO Center For Excellence In Project Finance www.transportation-finance.org/tools.state_by_state/

*Maine data provided by the Maine Department of Transportation.

measures such as consolidating and improving program performance, cutting red tape and increasing private sector investment in infrastructure. Not inclined to ignore opportunities that attach themselves to the current crisis, municipal associations stand ready to help with each of these areas.

STATE DISBURSEMENT OF HIGHWAY FUNDING: LOCAL SHARE

State	State DOT Disbursements	Local Governments Grants as Part of Disbursements	Local Government Grants/Dollars Local Road Mile
Connecticut	\$1,370,262,000	\$34,606,000	\$1736
Maine	673,345,000 ¹	25,828,000 ²	1200
Massachusetts	2,897,991,000	194,563,000	586
New Hampshire	681,311,000	29,584,000	1953
New York	7,537,405,000	429,303,000	399
Rhode Island	418,659,000	0	0
Vermont	395,224,000	25,111,000	1838

Source: AASHTO Center for Excellence I Project Finance State by State, www.transportation-finance.org/tools/state_by_state/disbursements.asp. (Calculation in Column 3 is by Municipal Government)

¹Total biennial Highway Fund Budget. Includes appropriations for all Highway Fund-funded or partially-funded state agencies, including transportation, and public safety.

²Annual municipal share of the Maine Department of Transportation highway/bridge maintenance budget. Includes no federal funding.

Congress could assure the most efficient implementation of federal resources if it directed the federal Highway Administration and state transportation agencies to reduce regulatory constraints on municipal use of scarce federal dollars. Congress could also consider reducing the local or state match required to undertake a project using federal dollars. In addition, assistance for highways not on the federal highway aid system, but nevertheless vitally important collector routes, would significantly improve the capacity of the overall transportation networks throughout the northeastern states. And if municipalities in the northeastern states are to expand transportation alternatives for residents, including smart growth transportation initiatives, they will need both flexibility in design and regulation as well as increased financial support from the federal and state governments.

HEALTH CARE REFORM AND THE “50 FTE” THRESHOLD

Passage of the Patient Protection and Affordable Care Act in 2010 has not yet had a major impact on municipalities as employers. Municipal employees are seeing benefits in the extended coverage of dependents to age 26 and the requirement of preventative care claims being paid at 100%, as two examples.

Almost all Maine municipalities providing health insurance benefits purchase insurance in the open market. All the changes in coverage or benefits that have already been implemented were done so by the insurance providers. Municipalities, for the most part, did not have to make the changes. Had the municipality been self-funding its own health insurance plan, the responsibility to make all the plan changes would have fallen on the municipality.

It might also be pointed out that small municipalities, unlike small private businesses and non-profits, are not eligible under the law to receive the employer tax credits to help pay for health insurance for a low income work force.

The major area of unknown – and potentially concern – for Maine’s municipalities remains the employer penalties that could be applied in 2014 for employers with more than 50 employees that do not offer health insurance as a benefit. What is not known is how to calculate whether or not the town has 50 or more full-time or full-time equivalent employees. The vast majority of Maine municipalities do not have 50 full time equivalent employees when the count is based on full time or regular part-time employees (i.e., an employee who works a set amount of hours each week and is employed 52 weeks a year). This would leave most Maine municipalities under the 50 employee level and therefore not subject to this requirement or penalty. What is potentially problematic is how they will be required to count the wide array of other types of “employee” that municipalities have working for them.

Volunteer or call firefighters, per diem paramedics, election clerks, elected town clerks, seasonal life guards, road commissioners, selectmen and city councilors are all positions given some form of remuneration (often at volunteer rates) yet are not comparable to employment positions found in the private sector. When the rulemaking is complete, how these types of positions are counted, or not counted, could have a significant impact on how many municipalities in Maine exceed the 50 employee threshold. Volunteer or call firefighters by themselves could push many small-to-mid-sized towns over the limit, thereby exposing them to the coverage requirement or the penalties.

The Maine Development Foundation is currently involved in an effort to coordinate an employer outreach program to help businesses understand and comply with the provisions of the Act. MMA is a participant in the design of this outreach effort, as are many representatives of the business community. Staffers from both Senator Snowe’s and Senator Collins’ offices met with the steering group late in 2010 and are aware of the group’s effort. It is hoped that the assistance this outreach provides will be broad enough to help municipalities understand and apply the Act given that its main audience is designed to be small businesses. Since the details of this special-employee calculation will determine future obligations that are fast approaching, the municipalities deserve to know how to accurately determine their status sooner rather than later.

We would like to encourage the delegation to be in contact with HHS as the rulemaking proceeds, particularly with respect to the question raised above. This one issue will be most important in determining the ultimate impact of health care reform on Maine’s smaller municipalities

LABOR MANDATES

The November elections brought about a dramatic power shift in legislative bodies throughout the nation, as well as Congress. In the New Hampshire legislature, the new majorities in both chambers have signaled their intent to roll back labor laws that are harmful and costly to public employers. It is important that Congress not enact similar legislation even as it is being repealed by state legislatures.

In the realm of municipal budgets, employees are the largest cost. Many municipal employees have elected to be organized in unions and bargain collectively. The key words are “elect” and “bargain.” Current New Hampshire state law has components that prevent both of those elements from occurring; one is “card-check” and the other is the “evergreen” law. Both statutory provisions serve to tip the balance of collective bargaining power heavily to the union side, to the point of handicapping local governments. While the prevailing attitude at the state level is to sweep these burdensome provisions from statute, we are concerned that Congress could nullify these actions and saddle local governments with the same shackles under federal law.

Card-check

In 2007, New Hampshire enacted a form of “card-check” that is very similar to the Employee Free Choice Act of 2009. The state statute requires the Public Employee Labor Relations Board to certify a bargaining unit once a majority of employees provide written authorization for a union to represent them in collective bargaining. A secret ballot election is no longer required.

With this method, employees are deprived not only of a scheduled election, but also any type of notice that an organizing campaign is being conducted. Employees who are not asked to sign the authorization—perhaps because they are perceived as unsympathetic to the union—may never know that a campaign exists. The employer is not notified of an organizing campaign either, and thus is deprived of the ability to offer any type of information that is counter to the union’s message. The entire process can be achieved without any knowledge or participation by those who may oppose unionization.

In hearings at the state legislature, union representatives stated that card-check authority was needed to avoid the intimidation that employers allegedly use to defeat union efforts. However, when the spokesman for the state labor relations board was asked about intimidation complaints, he stated that almost all such complaints received by the board involve competing unions, not management.

By stripping away the right to a secret ballot election, the card-check method publicizes each employee’s votes to the employer, the union organizers, and coworkers. Card-check increases the chances of deception, intimidation, harassment, and coercion by employees seeking to form a union. In contrast, secret ballot elections conducted by the appropriate agency ensure that a worker’s vote remains private, and that the decision is reached in an open, fair, and deliberate manner.

Evergreen

New Hampshire currently has a law requiring public employers to continue contract provisions for automatic step payments and annual raises after a collective bargaining agreement has expired. While some public employers and employees historically have negotiated these “evergreen” clauses and included them *voluntarily* in collective bargaining agreements, the law, enacted in 2008, *mandates* this provision.

An evergreen provision is different from the *status quo* doctrine. The *status quo* doctrine freezes all

contractual benefits and pay at the point at which the contract expires, while the evergreen provision treats the contract as though it is not expired, so that an employer's contractual costs will continue to grow through the years despite the contract's expiration. The evergreen law eliminates any incentive for a union to negotiate in good faith, because an impasse will allow employees to receive pay increases in perpetuity with no loss of benefits. Pay raises and benefits that should be bargained for and agreed to by the union and the public employer are instead imposed unilaterally on the employer.

Mandatory Bargaining

The 111th Congress took up, but ultimately defeated, legislation that would have mandated that municipalities bargain collectively with public safety employees. Such a move interferes with states' and local governments' right to manage their employment relationships, and it violates basic principles of federalism. Each state and every municipality within a state is a unique entity with different needs, resources, and circumstances. Those at the local level are in the best position to determine whether collective bargaining should take place. Sweeping, one-size-fits-all legislation imposed by Congress is not the answer.

New Hampshire law currently mandates collective bargaining for all public employees who elect it, so the federal legislation, if passed, may have minimal effect here. However, the point remains that states are quite capable of making these decisions on their own. It is undisputed that collective bargaining is a costly process. There is never a good time for Congress to impose unfunded mandates on municipalities, but now is a particularly inopportune time.

As the states move toward eradicating such back-door methods of unionizing and imposing greater costs on public employers and taxpayers, we encourage Congress to reject any attempt to impose these laws at the federal level and effectively override the will of your constituents and the states in which they live.

REAUTHORIZATION OF ACCESS TO CREDIT

Some television news pundits will have you believe that our economy is roaring back and that “happy days are here again.” Arguably, this may be true in some sectors of our economy. However, for many Northeastern states and their municipalities, the fiscal outlook is tenuous at best. The residual effects of the “Great Recession,” although beginning to subside, are clearly still being felt as state and local governments fight to revitalize their local economies and communities.

It is a fact that infrastructure projects create jobs and are a driving force behind many local economies. Having safe and reliable municipal infrastructure, such as roads and bridges, fosters sustainable communities, protects our citizens and helps to boost economic activity within our local governments. Unfortunately, the recent economic downturn and the accompanying credit crisis essentially brought capital investment among state and local governments to a screeching halt. These entities either had to pay a high price to borrow or could not access the markets at all.

Build America Bonds

The Build America Bonds (BABs) Program was enacted as part of the American Recovery and Reinvestment Act as a way to help local governments reduce the costs of borrowing and create new jobs in the process. Under the BABs Program, state and local governments are allowed to issue taxable bonds (in lieu of tax-exempt bonds) for capital projects and receive a direct federal subsidy payment equal to 35% of the interest costs. According to the United States Department of the Treasury, under the BABs Program, the savings for a 10-year bond are estimated to be 31 basis points and the savings for a 30-year bond are estimated to be 112 basis points, compared to traditional tax-exempt financing.¹

Despite some initial skepticism and uncertainty, in a short period of time the BABs Program became a valuable finance tool for many state and local governments across the country. According to the U.S. Department of the Treasury, in the first year of the program, Build America Bond issuances totaled \$97 billion and accounted for 21% of the municipal bond market.² (US Department of the Treasury, press release May 6, 2010) By the end of 2010, nearly \$180 billion in debt had been issued under the program and BABs accounted for more than one quarter of the municipal bond market. Public agencies in the State of New York issued \$19.6 billion in BABs – the second highest amount behind the state of California.³ (CNN Money, *Another Blow to State Budgets: Build America Bonds End*)

Not only did the BABs Program permit local governments to move forward with vital infrastructure projects, but with the ability to issue taxable bonds, municipal issuers were able to tap into a much larger pool of investors, ensuring that the access issue was addressed, and enhanced. In addition, the benefits of the program have extended beyond BABs issuers. In a presentation to the US Conference of Mayors, United States Treasurer Rosie Rios pointed out that “BABs have made municipal debt attractive to new investors and in so doing, they have relieved supply pressure and helped reduce borrowing costs on all classes of municipal debt. By reducing new issue supply in the tax-exempt market, BABs have had the effect of lowering yields there by 20 to 30 basis points or more.”⁴

The Northeast Municipal Leagues were encouraged by President Obama’s attempt to expand the BABs Program to include a wider range of municipal borrowing and to make BABs a permanent federal program. However, inaction by Congress has put the BABs Program in jeopardy along with many important infrastructure projects. Many state and local leaders are not sure what to expect now that the program has expired, but since

one likely outcome is more limited credit access, it is also likely that projects will once again be put on hold and jobs will be lost. The Northeast Municipal Leagues are urging Congress to reauthorize this important program as soon as possible to facilitate long-term economic growth in the Northeast and beyond.

Recovery Zone Bonds

In addition to Build America Bonds, ARRA established a new category of private activity bonds for use in “recovery zones.” Under the program, a recovery zone was defined as “an area having significant poverty, unemployment, home foreclosures, or general distress; or an area that has already been federally designated as an Empowerment Zone or Renewal Community.”⁵ Two types of Recovery Zone Bonds were created under the 2009 Recovery Act: Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds. Both types of bonds were designed to provide tax incentives for state and local governments through lower borrowing costs, thereby spurring job creation and economic recovery in distressed areas.⁶ Under the program, municipalities with populations greater than 100,000 and counties were authorized issuers of RZBs.

The Recovery Zone Economic Development Bonds (RZEDB) were taxable bonds created for “government purpose projects using capital and working capital expenditure to promote development and other economic activity in a recovery zone.”⁷ Under the RZEDB program, the issuer would get a direct federal subsidy equal to 45% of the interest paid. Recovery Zone Facility Bonds, on the other hand, were taxable bonds designed to support private business and trade activity in recovery zones. Generally, bonds would be issued by the county or municipality and proceeds loaned, or projects leased or sold, to a private, for-profit company as the true borrower.⁸

In New York, the projects that were financed with recovery zone bonds included supermarkets, hotels and office complexes creating hundreds of jobs, particularly in the New York City area. Although the Recovery Zone Bonds were not as popular as the Build America Bond Program, they played an important role in helping to foster private investment, development and job growth, providing state and local governments with a critical tool to fight the crippling effects of the recession.

Conclusion

The fiscal pressures facing the Northeast states are likely going to get worse before they get better. The rising costs associated with public pensions, health insurance and social services will continue to present state and local officials with not only large short-term operating deficits, but significant long-term structural gaps between revenue projections and future liabilities. As a result, the deferral of capital expenditures will continue, making it very difficult for state and local governments to keep their local infrastructure and economic development projects moving forward.

A strong federal-state-local fiscal partnership is essential to preserving economic vitality at all levels of government, especially in difficult financial times. Given that the construction season in many parts of the Northeast is often short and unpredictable, not only is the reauthorization of these programs essential, but the timeliness the reauthorization is crucial to avoid missing an entire construction cycle which will only exacerbate an already precarious situation. Congress should support and quickly reauthorize the recently expired access to credit provisions of the 2009 Recovery Act -- particularly the Build America Bonds and the Recovery Zone Bonds.

(Endnotes)

1. “The Recovery Act at Work: Build America Bonds”. Washington, DC: United States Department of the Treasury. p. 5. 2. United State Department of the Treasury, “Treasury Releases New Build America Bonds Data,” Press Release, May 6, 2010. 3. Luhby, Tami, “Another Blow to State Budget: Build America Bonds End.” CNNMoney.com, December 22, 2010 4. Many cities Benefiting from Build American Bonds program. See: www.usmayors.org/usmayornewspaper/documents/02_01_10/pg19_rios.asp 5. www.commerce.wa.gov/site/1077/default.aspx 6. See New York Empire State Development “Guidance and Timelines for Recovery Zone Facility Bond Issuance,” December 29, 2009. 7. Id. 8. Id.

SPECIAL EDUCATION AND COMMUNITY DEVELOPMENT BLOCK GRANTS

The federal budget deficit presents major challenges for the 112th Congress – and the country. It will require fiscal constraints and shared sacrifice. However, certain initiatives are important public investments and should be at least level-funded. Among such domestic discretionary programs are the Individuals with Disabilities Education Act (IDEA - special education) and the Community Development Block Grant (CDBG).

These investment programs help ensure that American students obtain specialized educational instruction to ensure completion of high school and realization of potential (special education), as well as create jobs, provide needed services and strengthen communities (CDBG).

CDBG

The Northeast municipalities urge Congress to support at least level-funding for the Community Development Block Grant (CDBG) program.

Since 1974, the Community Development Block Grant program has been a staple of community development. Its flexibility has made it especially useful to towns and cities for economic development purposes and assisting low- and moderate-income residents. It is viewed by municipal officials as one of the most valuable, useful and user-friendly federal grants to local government.

CDBG is one of the few remaining federal programs available to assist Northeast communities in their efforts to create jobs, stimulate the economy, provide affordable housing, eliminate blight and generate new economic development.

CDBG funds may be used for activities, which may include:

- Acquisition of real property;
- Relocation and demolition;
- Rehabilitation of residential and non-residential structures;
- Construction of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes;
- Public services, within certain limits;
- Activities relating to energy conservation and renewable energy resources; and
- Provision of assistance to profit-motivated businesses to carry out economic development and job creation/retention activities.

The Connecticut Office of Policy and Management (OPM) made this statement concerning attempts to cut CDBG: “The erosion of spending on CDBG will seriously affect the level of community development activities principally serving low and moderate income residents of Connecticut.”

Throughout the Northeast, communities are using CDBG – one of the most flexible and successful programs used by towns and cities – large and small – to improve their communities.

The City of *Albany, New York*, used CDBG funds to demolish 14 residences in 3 Neighborhood Strategic Areas (NSA), restore Morton Avenue and North Swan Street buildings, and to train and certify lead abatement contractors.

The City of *Burlington, Vermont* plans to use CDBG funds to renovate 129 rental units at Salmon Run and Archibald Street, train at-risk teenagers to weatherize homes for low-income households, assist homeless families, provide heating assistance to low-income families, train and mentor budding entrepreneurs, and provide child nutrition programs.

The City of *Providence, Rhode Island*, uses CDBG to, among other things, fund the Providence Economic Development Partnership (PEDP) loan to help local businesses grow and retain jobs.

The City of *Lowell, Massachusetts* is using CDBG funds for lead abatement, emergency housing, youth development and truancy prevention, neighborhood preservation, and the Lowell Community Health Center.

The City of *Portsmouth, New Hampshire* uses CDBG funds to help disabled individuals maintain housing, provide grants to nonprofits for services to the city's most needy residents, and repair streets and sidewalks.

The City of *South Portland, Maine* uses CDBG funds to support the South Portland Community Development Program, which provides housing services and economic opportunities to low- and moderate-income persons and families. Funds are also used for youth employment and training, adult employment training, senior outreach and childcare.

The City of *New Haven, Connecticut* is using CDBG for grants to several nonprofits to address the social service needs of low-income persons (important community services the City is unable to provide), reduce and eliminate blight, and implement homeless prevention initiatives.

CDBG – a sound economic engine for over 30 years – should at the very least be level-funded to create jobs and make communities stronger and more livable. This is very much in our nation's interest, especially during these difficult economic times.

IDEA

The Northeast municipalities urge Congress to support legislation that meets the federal obligation to fund the Individuals with Disabilities Education Act (IDEA – special education) at 40%.

The Individuals with Disabilities Education Act is a federal law that governs how states and local governments provide special education instruction to children in the public schools.

IDEA defines a student with a disability as a child with “mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance... orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities,” who needs special education services.

Although a very worthy initiative, the federal mandate is extremely costly to states and local government. In 1975, when IDEA's predecessor, the Education for All Handicapped Children Act, was enacted, Congress stated it would assume 40 percent of the costs associated with special education funding. However, the federal share has lingered at 9 to 10 percent in Connecticut. The difference is made up with 30 percent state and 60 percent local funding. This falls well short of the commitment that came with the federal mandate.

In Connecticut, the local share of special education costs is almost \$1 billion, out of \$1.5 billion. Special education spending accounts for almost 15 percent of all education spending and the costs keep growing faster than other school expenditures (5-6% vs. 3-4%).

Complicating matters, unforeseen demands for the most expensive special services too often result in local mid-year budget shuffling, supplementary appropriations, and other extraordinary measures. This is particularly problematic in smaller towns, where the arrival of a single new high-cost special education student during the school year can create a budget crisis.

The federal government must meet its funding obligations to the Northeast's schoolchildren and school districts, even in the face of budget challenges. To continue to transfer federal budget problems to municipalities (thus property taxpayers) is unfair and it shortchanges America's future.

THE IMPACTS OF THE FEDERAL NARROWBANDING MANDATE

Under Maine's Constitution, a state "mandate" is defined as a legislative or regulatory act that requires a local government to expand or modify a municipality's activities so as to necessitate additional expenditures. Under that definition, an action of the Federal Communications Commission (FCC) clearly comes down on the towns and cities as a mandate. Specifically, by January 1, 2013 all public safety agencies must use radio communication systems that operate on a narrowband rather than a broadband frequency. Because of the federal directive, municipalities, counties and the states across the country are in the process of determining how they will comply with this federal mandate and pay for its costs.

There are many types of mandates that can be imposed on local government by the state and federal governments. We recognize that this "narrowbanding" mandate is a consequence of restructuring access to the public's air waves and is not being carved out of whole cloth. Having said that, the negative ripple-out consequences of that decision tend to roll downhill, and those financial consequences are especially tough to take in these troubled economic times. Federal priorities end up supplanting local priorities.

According to Maine's Office of Information Technology (OIT), \$50 million in state funds are currently being invested to upgrade the state's antiquated radio communications system infrastructure. This investment would have been made notwithstanding the FCC mandate, but it fortuitously serves to provide the foundation upon which state agencies, municipalities and counties can construct a response to the narrowbanding mandate in the state. Based on surveys being conducted by Maine's Emergency Management Agency (MEMA), it is estimated that an additional \$10 million to \$20 million in state and local resources will be needed to ensure that state agencies, municipalities and counties have the equipment necessary to keep the lines of communications open on January 1, 2013. That new equipment includes radios, towers and repeaters.

Against that need of \$10 to \$20 million, MEMA is estimating that approximately \$2 million in grant revenue will be available to state agencies and local governments to help with the cost of purchasing the necessary equipment. That leaves a sizable funding gap for the state, municipalities and counties to resolve.

Although state and local policymakers remain concerned about fiscal and public safety impacts associated with narrow-banding mandate, they are working together to ensure that the necessary revenues are made available to implement the federal directive.

That being said, the affected state and local officials have two major requests of federal-level policymakers and regulators with respect to the narrowbanding mandate.

First, although federal agency officials are guaranteeing that they will be ready to implement the change as scheduled on January 1, 2013, municipal officials respectfully request that Congress hold the agency to its promise.

A delay in the implementation of the FCC narrowbanding mandate could be costly for Maine, at least if it is similar to the postponement of the analog-to-digital cable transition. Taking into account how quickly technology evolves, public safety officials are concerned that the most technically-advanced equipment that is being purchased today could be obsolete four years from now. If the FCC delays implementation, it is possible that the local-level investments currently being made could be useless in meeting a postponed federal mandate.

Second, local officials want to make sure the FCC has the capacity to administer all radio licensing applications in a timely manner. Although the mandated transition is still 22 months away, the FCC is

backlogged with licensing requests. The state, municipalities and counties need assurances that all resources necessary will be made available to ensure that licenses are provided in a timely manner. At a minimum, if there are any licensing delays, the fines associated with operating on the existing system should be waived until all licensing paperwork is processed and the administrative glitches are resolved.

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FEDERAL ISSUES PAPER

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and Villages Throughout The Northeast States*