

2010

FEDERAL ISSUES PAPER



Maine Municipal
Association



New Hampshire
Municipal Association



THE VOICE OF LOCAL GOVERNMENT



New York State Conference
of Mayors & Municipal Officials



Massachusetts
Municipal
Association

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

2010

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INTRODUCTION

The municipal leagues from the seven states in the nation's Northeast region are pleased to present this 2010 Federal Issues Paper to the region's congressional delegation.

The difficult economic times we are facing have made even more apparent to the Northeast's municipal leaders how similar their circumstances are at the local level and how universal their concerns.

The aftermath of the great recession of 2008 has challenged the ability of local governments to provide core governmental services to their citizens and businesses without imposing an unacceptable burden on the property tax. The infrastructure investments municipal officials believe are needed in order to create the foundation for future economic growth, and are generally required of local governments, are hopelessly beyond reach.

The federal government has valiantly tried to stabilize the financial circumstances of its 50 states. With some exceptions, that same protective policy is not being applied by the states to their municipal communities as a general rule. To the contrary, the reductions in state financial support for local government operations are unprecedented in their scope.

Local government provides the most basic of all services. K-12 public education, road and bridge repair, snowplowing, solid waste removal, drinking water, wastewater, and front-line fire, police and emergency medical services. In order to provide these services in a cost-effective way, we need to be working in complete coordination with the larger units of government. This Federal Issues Paper is written collaboratively by the several municipal leagues in an effort to convey a sense of urgency regarding the commonly-recognized needs and commonly-shared concerns of the towns, cities and villages throughout the Northeast.

We believe that the current economic circumstances demand that we work in concert and with an invigorated sense of regional allegiance for the benefit of our mutual constituents.

STABILIZATION

The Northeast municipalities urge Congress to continue federal “stabilization assistance” to state and local governments. At the very least, the federal government should phase-out the assistance over several years rather than discontinue it abruptly.

States across the country, but particularly in the Northeast, are facing huge deficits for the current and next fiscal years. The following fiscal year, FY 2012, could be calamitous. Part of the reason for that is the potential loss of “stabilization” assistance from the federal government.

Federal Stabilization grants have helped avoid layoffs and service reductions at the state and local levels. For example, for FY 2010 and FY 2011 the Education Cost Sharing program in Connecticut uses \$271 million from the federal government to keep funding level for local public education. It would be hard enough to maintain education quality if funding remains level, because education costs increase and the grant will have essentially been frozen for three years. But a loss of \$271 million would seriously harm students and property taxpayers across the state. As the chart indicates, Connecticut isn’t facing this “cliff” issue alone:

FEDERAL STABILIZATION FUNDING FOR EDUCATION

	FY 2009	FY 2010	FY 2011	FY 2012
Connecticut	\$0	\$271 million	\$271 million	\$0
Maine	\$27 million	\$42 million	\$58.7 million	\$0
Massachusetts	\$412 million	\$172 million	\$0	\$0
New Hampshire	\$0	\$80 million	\$80 million	\$0
New York	\$0	\$2.845 billion over the biennium	\$0	\$0
Rhode Island	\$38.3 million	\$39.1 million	\$43 million	\$0
Vermont	\$0	\$38.6 million	\$38.6 million	\$0

Simply put, as the Northeast attempts to climb out of the recession the last thing it needs is massive layoffs by state and local governments. Not only would that add to the unemployment rolls, it would hamstring governments’ ability to respond to a citizenry in need, and undoubtedly add to state and local tax burdens for businesses and residents.

Further, we urge the northeast states’ congressional delegations to fight for increased support for federally mandated special education expenditures.

TRANSPORTATION

The Northeast municipalities urge Congress to adopt a transportation funding reauthorization act that addresses deteriorated municipal transportation infrastructure and invests in transportation alternatives.

Municipalities throughout the Northeast have benefited from previous surface transportation authorizations, both customer-driven transportation dollars, which focus on highways, and dollars designated for encouraging alternatives to driving such as rail, other public transit and bicycle/pedestrian paths. Investing in municipal transportation infrastructure is an excellent “bang for the buck”. In every Northeast state, much of the transportation infrastructure is old and significantly deteriorated. Reinvestment is not only vital to the safe and vibrant economic future of our states; it also creates jobs as soon as a dollar is spent.

The House version of the 2009 (now 2010) Surface Transportation Reauthorization Act proposes a \$500 billion package that would, in one iteration, dedicate 20% to highways, 20% for transit and 10% for high speed rail. Taking into account administration, safety and research costs, almost all remaining funds would be dedicated to earmarks or flexible funds (flexible funds may be spent on highways or transit). Under SAFETEA-LU, 46% of the authorization went to highways; 18% was allocated for flexible funds and 8% constituted earmarks. Clearly, the “Surface Transportation Authorization Act of 2009: A Blueprint for Investment and Reform” will have a significantly different emphasis from transportation spending authorizations in past Congresses. We urge this Congress to adopt a reauthorization act that addresses deteriorated municipal transportation infrastructure as well as investing in transportation alternatives and innovations that poise us to succeed in the future.

Municipalities are responsible for the significant majority of roadway miles and bridges in each of the Northeast states. Our obligation is to maintain those transportation networks and we rely on funding from the federal transportation authorization acts to assist in that process. At the same time, local governments are actively seeking to provide alternative transportation options to their citizens. Municipal transportation projects received some boost in 2009 from ARRA funds not dedicated to state transportation networks. And recent legislation to allow heavier trucks to use the interstate highway system in Maine and Vermont will do much to help

ROAD MILES OWNED BY MUNICIPALITIES COMPARED TO TOTAL ROAD MILES

State	Town, Township, Municipality	Total
Connecticut	17,201	21,296
Maine	13,945	22,792
Massachusetts	32,292	36,008
New Hampshire	11,658	15,838
New York	76,944	113,741
Rhode Island	5,368	6,511
Vermont	11,369	14,400

Source: RITA Research and Innovative Technology Administration, US Bureau of Transportation Statistics,
http://www.bts.gov/publications/state_transportation_statistics/state_transportation_statistics_2008/index.html

municipalities maintain the quality of roads, bridges and life in downtown and village areas.

In a time of fiscal hardship when all levels of government are seeking ways to work more effectively, 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 federal dollars. Congress should 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 nonetheless vitally important collector routes, would significantly improve the capacity of the overall transportation networks throughout the northeastern states.

BRIDGES FUNCTIONALLY OBSOLETE OR STRUCTURALLY DEFICIENT

State	National Rank	Percent Deficient Bridges
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

STATE ROAD CONDITIONS 2007 (MILES)

State	Very Good	Good	Fair	Mediocre	Poor	Not Reported
Connecticut	1,845	759	2,628	640	269	0
Maine	269	2,381	2,339	743	582	0
Massachusetts	5,957	860	2,910	1,021	355	8
New Hampshire	419	1,085	1,257	316	355	0
New York	879	6,904	12,048	2,451	3,948	119
Rhode Island	150	302	780	330	192	0
Vermont	168	1,076	1,657	681	282	0

Source: RITA Research and Innovative Technology Administration, US Bureau of Transportation Statistics,
http://www.bts.gov/publications/state_transportation_statistics/state_transportation_statistics_2008/index.html

Truck Weight Limits

Sincerest Thanks From Maine.....

All members of Maine's congressional delegation have strongly supported amending the law governing truck weight limits to address a problem that has been gnawing at municipal officials for years. Finally, there has been a breakthrough.

The Maine Municipal Association thanks Senator Susan Collins for sponsoring – and the entire congressional delegation for supporting – a pilot program that provides a uniform weight limit on all of Interstate 95 in Maine. As the result of the enactment of the Department of Transportation Appropriations Act, 2010 (PL111-117), the weight limit for vehicles traveling on all of Interstate 95 is 100,000 pounds. The one-year trial period began on December 16, 2009.

Since 1999, the Association has urged Maine's congressional delegation to support a weight limit increase law similar to that adopted as part of the federal transportation budget. Prior to its enactment, the portion of Interstate 95 from Augusta to Houlton had a weight limit of 80,000 pounds, while southern sections of Interstate 95 benefited from a 100,000 pound weight limit. Municipal officials are strong proponents of the weight limit increase because it addresses two fundamental issues: the protection of road and bridge infrastructure, and improved public safety on Maine's smaller state and local roads. Because of the financial challenges this state is currently facing, the enactment of this legislation is especially welcome.

“This is a case where the Maine delegation neither gave up nor gave in. The result of their persistence and dedication will be lives saved, roads preserved and the State's economy strengthened.”

Bill Bridgeo, Augusta City Manager

The economy, fuel prices, and improvements in motor vehicle performance are all factors contributing to the stagnation of revenue available to fund state and local road projects. As a result, Maine is falling seriously behind on its highway and bridge maintenance and repair program. The enactment of this legislation will keep the heavier trucks on the federal interstate system where they belong, and thereby take some of the pressure off the smaller state and local roads. In addition, municipal officials believe public safety will be improved when larger vehicles stay on Interstate 95. These heavily loaded trucks have compromised public safety when unnecessarily traveling on the smaller collector roads and through municipal downtowns.

Due to your diligent efforts and continued commitment to this issue, Maine now has an opportunity to better protect its citizens and preserve both state and local transportation infrastructure.

For these efforts Maine's municipal leaders are truly grateful.

And From Vermont.....

Dear Senator Leahy,

I am writing on behalf of Vermont's local governments to sincerely thank you for your efforts in securing a one-year pilot to move overweight trucks off local roads and out of downtowns to the interstate.

Cities, towns and villages across the state are grateful to you for your work on this issue. For years we have despaired of any measure that would help to reduce heavy and damaging truck traffic through our historic downtowns and village centers. Our members will realize a significant improvement in the quality of life and in the condition of their roads as a result of your action.

We are also very interested in any evaluation of the success of the program to determine if the measure will be made permanent. Please let us know if we can assist in such a study.

Again, thank you!

Very truly yours, Karen B. Horn
Director, Public Policy and Advocacy

WATER/WASTEWATER INFRASTRUCTURE

The Northeast municipalities urge Congress to provide critically necessary funding for water and wastewater infrastructure upgrades.

From Carry Place Cove, Maine to Montauk, New York the northeastern United States is fortunate to possess a tremendous number of pristine bodies of water. Residents of the northeastern States and others from around the world use and enjoy these bodies of water in many ways, and they play a critical role in our economy. Our waters draw tourism dollars, are utilized for commercial and recreational purposes and are consumed by many as the source for their drinking water. It is for these reasons that our water infrastructure is being closely monitored. Northeast states and their municipalities are looking to be leaders in an effort to solve a looming water and wastewater infrastructure crisis that threatens these aquatic assets. Our water and wastewater facilities are aging out, and without swift action and federal resources, local governments throughout the Northeast will be faced with a monumental price tag for infrastructure upgrades that could cripple their finances. Meanwhile, federal and state regulatory requirements have tightened effluent limits and driven up costs.

Wastewater/Water Infrastructure

In the 1970s, there was a national movement to build sustainable water infrastructure. Facility upgrades would serve to protect our nation's fragile water bodies for the next several decades. During this time, a partnership between federal, state and local governments was initiated to build and upgrade an already existing water infrastructure. The federal government provided a tremendous amount of financial support and incentives to assist local governments. Unfortunately, over the past several decades, the federal government has neglected to adequately fund this initiative to the point where many of the systems that benefited are now failing and in need of serious attention.

Support a Jobs Bill That Includes Water and Wastewater Infrastructure Funding

With many water and wastewater systems in decline, it is critically important that the federal government renews its support for water and wastewater infrastructure. The Northeast State Municipal Leagues respectfully request that you support a significant investment for water and wastewater infrastructure through a Federal Jobs Bill that will modernize such infrastructure, create local jobs and protect our environment through the implementation of modern green technology in our infrastructure upgrades. In addition, we request that you include funding that is, at a minimum, on par with the overall funding levels included in the American Recovery and Reinvestment Act (ARRA) - \$3 billion for the Clean Water State Revolving Fund Program (CWSRF) and \$3 billion for the Drinking Water State Revolving Fund Program (DWSRF).

The dedication of resources for water and wastewater infrastructure is a prudent investment. Studies have shown that money invested in water and wastewater infrastructure creates good paying jobs and contributes to our economy. According to the New York State Department of Environmental Conservation, an estimated 47,000 jobs are created for every \$1 billion of federal infrastructure funding spent.

Currently, unemployment in the construction industry is over 19%. According to a recent survey by the Environmental Council of the States (ECOS), thirty three states have over \$56 billion in shovel-ready water and wastewater infrastructure projects awaiting financing through the state revolving fund program for wastewater and drinking water. These numbers support the argument that additional infrastructure money is necessary for

our future and, therefore we urge you to fund \$3 billion for the CWSRF and \$3 billion for the DWSRF.

As we continue through this “jobless” economic recovery, Congress must continue to fund programs that simultaneously create jobs, protect our environment, and put our nation on solid ground for the future. Investing in water and wastewater infrastructure will do just that.

Support Federal Funding for Local Governments to Comply With Stormwater Management Mandates

According to the U.S. Environmental Protection Agency (EPA), polluted stormwater runoff is a leading cause of impairment to nearly 40 percent of the surveyed U.S. water bodies which do not meet water quality standards. Stormwater runoff is an important public policy concern because, if left uncontrolled, it can lead to severe environmental degradation and human health-related illnesses. Few can argue with the fact that stormwater runoff, containing pollutants such as pesticides and fertilizers, poses a serious threat that must be addressed. However, it is a threat that local governments should not have to face alone.

The Municipal Separate Storm Sewer System, commonly referred to as the MS4 program, is a federal mandate whose burden falls disproportionately on local governments for compliance. The MS4 program is certainly one of the most burdensome unfunded mandates imposed by the federal government on localities.

Many local governments are struggling financially to comply with the latest round of MS4 requirements because there are few federal or state dollars available to help implement the program. The EPA has estimated that MS4 communities can expect to spend between \$3 and \$60 per capita each year to implement stormwater programs in their communities. Therefore, the Northeast Municipal Leagues respectfully request that you provide funding opportunities to assist local governments as they strive to implement the significant requirements associated with the MS4 program.

COMMUNITY DEVELOPMENT BLOCK GRANTS

The Northeast municipalities urge Congress to fund the CDBG program in FY 2011 at the level advocated by the US Conference of Mayors.

Started in 1974, the Community Development Block Grant (CDBG) program is one of the longest continuously run programs at the U.S. Department of Housing and Urban Development (HUD). According to HUD, the CDBG program provides annual grants on a formula basis to over 1,200 general units of local governments and states.

CDBG funds may be used to provide affordable housing, services, and jobs for the most vulnerable in our communities. Generally, appropriations are allocated to states and local jurisdictions. Entitlement communities are comprised of central cities of metropolitan statistical areas, metropolitan cities with populations of at least 50,000, and qualified urban counties with a population of 200,000 or more (excluding the populations of entitlement cities). States distribute CDBG funds to non-entitlement localities through a competitive grant program.

HUD determines the amount of each grant by using a formula comprised of several measures of community need, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag in relationship to other metropolitan areas.

Not less than 70 percent of CDBG funds must be used for activities that benefit low and moderate income persons. In addition, each activity must meet one of the following objectives:

- (a) benefit low and moderate income persons,
- (b) prevent or eliminate slums or blight, *or*
- (c) address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

According to the National Low Income Housing Coalition, total funding for CDBG has seen a recent increase to a level of just shy of \$4 billion¹ in FY 2010 from a low of \$3.6 billion in FY 2008. That level still falls short of \$4.3 billion authorized six years ago. The most recent setback came in 2005, when the Bush Administration's proposed FY 2006 budget consolidated the CDBG program with other community and economic development programs in the Department of Commerce, reducing overall funding. Congress did not act on this proposal, but the Bush Administration proposed additional program reforms and a 27 percent funding reduction in its fiscal 2007 budget.

According to a recent GAO study, HUD data indicate that in FY 2005 entitlement communities nationwide spent 27% of their funds on housing, 24% on public improvements, and 17% on administration and planning.

¹ It is worth noting Congress' recent support of CDBG evidenced by an additional one-time \$1 billion investment in the program pursuant to the American Recovery and Reinvestment Act (ARRA). This was added to the \$3.64 billion enacted for the FY 2009 CDBG program.

Other activities funded to a lesser extent included public services, acquisition of property, and economic development. During that same time period, HUD data show that non-entitlement communities spent 54% of their CDBG funds on public improvements, 17% on housing, and 15% on economic development.

The largest city in New England, the City of Boston, received nearly \$20 million in CDBG for fiscal 2009, of a total of \$108.8 million directed to Massachusetts statewide. According to the latest expenditure data compiled by HUD in fall of 2008, Boston spent 35.3%, or \$8.2 million, on housing including rehabilitation of residential units and direct homeownership assistance; 22.3%, or \$5.2 million, on public services including child care and youth services, and tenant/landlord and employment training; 20.4%, or \$4.7, on planning purposes; and the balance for public improvements, economic development and acquisition purposes. Because of these investments, Boston directly assisted 9,515 households and 160,923 persons.

HOME Investment Partnership Program (HOME)

The Northeast municipalities urge Congress to appropriate \$2 billion for the HOME program for FY 2011, the level of funding advocated by the US Conference of Mayors.

HOME was created under the National Affordable Housing Act of 1990 and became available in 1992.

The purpose of HOME funds is to expand the supply of affordable housing for low and very low-income families and individuals. HOME provides formula grants to states and localities that communities use—often in partnership with local nonprofit groups—to fund a wide range of activities that build, buy, and rehabilitate affordable housing for rent. This grant provides an additional amount for capital investments in low-income housing tax credit projects.

Like CDBG, total funding for this program has experienced a modest increase in monies—to \$1.8 billion. However, this level is short of that experienced six fiscal years ago; in FY 2004, the appropriation was over \$2 billion. The City of Boston received over \$8.6 million in HOME funds, of \$48.2 million made available statewide.

ENERGY EFFICIENCY AND RENEWABLE ENERGY

The Northeast municipalities urge Congress to support on-going funding for Energy Efficiency Block Grants.

As part of the federal stimulus legislation last year the Energy Efficiency Community Block Grant Program (EECBG) was funded for the first time, enabling towns, cities and villages to undertake energy efficiency infrastructure projects. This Program, authorized in Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA) and signed into Public Law (PL 110-140) on December 19, 2007, provides funds to units of local and state government, Indian tribes, and territories to develop and implement projects to improve energy efficiency and reduce energy use and fossil fuel emissions in their communities.

Local governments play a key role in providing information, education and innovative programs to help residents, their own governments and local businesses reduce energy usage and shift to renewable sources of energy, addressing climate change at home. The Property Assessed Clean Energy (PACE) programs that are springing up in towns, cities and villages around the nation demonstrate that local governments are not only innovative in addressing impediments to making energy conservation investments but also strategically placed to help reduce energy usage. Local jurisdictions around the northeast are considering community wind projects, district heating for downtowns, revitalizing small hydroelectric facilities and photovoltaics. Their commitment to providing weatherization in older housing stock is solid. However, very little can be accomplished by volunteer energy committees and overburdened local officials without access to the financial assistance necessary to implement these projects. To move forward, local governments need a financial commitment at the federal level.

By continuing to fund the EECBG program in the future, the federal government will demonstrate its commitment to partner with local governments in reducing energy consumption and reliance on fossil fuels. We urge the Congressional delegation to support on-going funding for Energy Efficiency Block Grants.

ENERGY EFFICIENCY BLOCK GRANT ALLOCATIONS THROUGH ARRA

State	Initial Funding Allocations
Connecticut	\$24,773,500
Maine	\$15,030,500
Massachusetts	\$43,086,900
New Hampshire	\$17,275,300
New York	\$175,122,000
Vermont	\$11,996,300

Source: www.eecbg.energy.gov/grantalloc.html

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

The Northeast municipalities urge Congress to explore distribution alternatives to the mandatory “trigger” distribution under the Low-Income Home Energy Assistance Program (LIHEAP).

Since 1984, federal funding for the Low-Income Home Energy Assistance Program (LIHEAP) has been distributed to states through two different funding programs. On average 85% of the total federal appropriation is used to fund the Block Grant program, while 15% is available for the Contingency Fund program.

In FY 2009, the total appropriation for LIHEAP was \$5.1 billion, \$4.5 billion of which was used to fund the Block Grant program. Under that program, federal funds are distributed to states to assist eligible households to meet residential heating and cooling needs, and states are authorized to give priority to households with the highest home energy costs or according to need as measured by income. The estimated FY 2010 appropriation for the LIHEAP Block Grant is flat-funded at \$4.5 billion.

The appropriation to the Contingency Fund for FY 2009 was \$590 million. Under this program, the Secretary of the U.S. Department of Health and Human Services is authorized to determine how much and when these funds will be distributed to the states. Generally, the funds are used to mitigate the effects of extreme heat or cold or other causes of energy related crises, such as the impacts of natural disasters. The \$590 million appropriated for the LIHEAP Contingency Fund in FY 2010 represents flat-funding relative to the FY 2009 appropriation.

Although in FY 2011, an estimated \$5.3 billion will be distributed to states under LIHEAP, it will be distributed under three programs. In FY 2011, \$2.5 billion will be available to fund the Block Grant program, \$790 million to fund the Contingency Fund and \$2.0 billion to fund the “Trigger” program.

The purpose of this new “Trigger” program is to enable the federal government to react immediately to an energy price spike or changes in household poverty. The “Trigger” appropriation would be distributed by formula when energy prices or participation in the federal food stamp program increase over certain threshold levels.

LIHEAP FUNDING – TOTAL FEDERAL ALLOCATION (ACTUAL AND ESTIMATES)

	FY 2009 Actual	FY 2010 Estimate	FY 2011 Estimate
Block Grant	\$4.5 Billion	\$4.5 Billion	\$2.5 Billion
Contingency Fund	\$590 Million	\$590 Million	\$790 Million
Trigger	\$ 0	\$ 0	\$2.0 Billion
Total	\$5.1 Billion	\$5.1 Billion	\$5.3 Billion

Source: <http://www.acf.hhs.gov/programs/ocs/liheap/>

In order to fund the “Trigger” mandate, distributions through the Block Grant program will be reduced from \$4.5 billion to \$2.5 billion for FY 2011 and that \$2.0 billion “savings” will be reinvested into the trigger program. While it is difficult to determine if any of the northeastern states will be eligible for trigger funding, we do know the reduction in Block Grant program funding will cause significant reductions to the funds currently available to provide heating assistance to low-income and elderly people. The impacts in the Northeast range in size from a loss of 44% of block grant heating assistance in Connecticut to a 49% loss of block grant LIHEAP in Maine.

LIHEAP BLOCK GRANT DISTRIBUTIONS

	FY 2009	FY 2010	FY 2011	FY 2010 - FY 2011	
				Loss (\$)	Loss (%)
Connecticut	\$95,782,640	\$96,941,803	\$54,678,854	\$(42,262,949)	-44%
Maine	47,649,042	52,324,193	26,910,726	(25,413,467)	-49%
Massachusetts	162,915,645	175,454,084	93,116,975	(82,337,109)	-47%
New Hampshire	34,112,375	34,112,375	18,416,494	(15,695,881)	-46%
New York	475,381,949	479,270,169	250,840,602	(228,429,567)	-48%
Rhode Island	30,123,062	29,581,537	15,970,398	(13,611,139)	-46%
Vermont	25,568,440	25,568,440	13,803,818	(11,764,622)	-46%

Source: <http://www.acf.hhs.gov/programs/ocs/liheap/>

Municipal leaders in the northeastern states understand that the federal government needs the flexibility necessary to immediately address unforeseen emergencies. However, they question why this new approach must be funded by gutting the existing Block Grant program, which is working to ensure that low-income people, particularly in the northern states, can afford to adequately heat their homes. For that reason, municipal officials from the northeastern states urge their congressional delegations to explore other funding alternatives for the trigger program.

LABOR

Northeast municipalities urge opposition to further federalization of labor issues.

The labor laws in the northeastern states are mature, expansive and vigorously enforced. Further federal intrusion into the employer-employee relationship should be rare and reserved for those issues that cannot effectively be handled at the state level and should only be enacted with broad bi-partisan support.

Below are examples of three pieces of legislation our associations oppose. We ask you to do the same.

Public Safety Employer-Employee Cooperation Act (S. 1611 / H.R. 413)

This is a slightly modified version of S. 2123/H.R. 980 which was introduced in the 110th Congress. Northeast municipalities and the National League of Cities opposed the bill in the last session and continue to oppose this slightly modified version.

This bill would federalize collective bargaining rights for public safety employees, specifically police officers, firefighters and EMS personnel. This bill would grant to the Federal Labor Relations Authority (FLRA) the power to create and enforce collective bargaining guidelines for all 50 states.

Since its enactment by the State Legislature in 1969, Maine has had in place a comprehensive set of laws and administrative guidelines governing collective bargaining and dispute resolution in the public sector. The Municipal Public Employees Labor Relations Law (26 M.R.S.A. 961 et. seq.) is enforced and administered by the Maine Labor Relations Board (MLRB), which is staffed by professional labor relations specialists and attorneys. For forty years employees and employers have looked to this agency to guide them through union organizational activities, collective bargaining disputes and grievance resolution. Maine's situation is not unique in the Northeast in this regard.

Enactment of this federal legislation poses three particularly serious problems for Northeast public employers. Both employee groups and employers have been effectively utilizing the services of the state-level labor relations boards such as the MLRB in Maine. The MLRB has overseen an average of 5-6 elections for representation in public safety units annually since 2002. The majority of elections resulted in the employees selecting union representation. There is no impediment in Maine for employees who wish to be represented from engaging in that process. The MLRB provides quick turn-around for meetings with parties in dispute and does so in a manner that strongly encourages the parties to work together to resolve their issues. Many times the parties are able to resolve their issues at this level without the use of outside counsel, which obviously helps keep the costs down for both parties. If they are in need of outside help, they can rely on local attorneys familiar with the MLRB and its procedures. In short, the process in place in Maine works well for both public employees and public employers.

Having to deal with a federal authority to resolve the same kinds of problems can only increase the time and costs required to accomplish what state-level labor relations boards do now. Both parties will have to become familiar with an entirely new set of laws, rules and guidelines as they interact with the FLRA.

A second issue will be the potential requirement for employers to defend claims in multiple jurisdictions. Public employers know today that if they are unable to resolve a grievance or other dispute at the local level,

they will be in front of a state board for resolution. Having a federal authority also overseeing state-level labor relations provides another forum for an aggrieved party to file their complaint, potentially requiring the employer to defend itself twice on the same issue. It is not clear whether the legislation in question will prevent this duplication.

Finally, this represents yet another federal intrusion into an area best left to the people of the states. There have been numerous attempts, some successful and some not, to change parts of the Maine Public Employees Labor Relations Act. Each time a change has been proposed, the State Legislature has considered the proposed changes and acted as it saw fit. The result is a broad statutory scheme governing public sector labor relations that the people of Maine, through their elected representatives, have selected. A federal agency overseeing public sector labor relations may certify Maine's existing statutory framework or it may not. If it does not, it will by design be imposing new requirements in the labor relations arena on the state of Maine that may not be compatible with the current wishes of Maine's citizens.

It may be understandable that employees in regions of the nation without our long history of state oversight of the public sector labor relations process desire a federal presence to establish their collective bargaining rights. Northeastern states have no such problem. We have comprehensive, detailed and successfully functioning labor relations environments and authorities. Subjecting both employee groups and public employers to an entirely new level of labor relations oversight represents both a new and unnecessary burden.

Some argue that the northeastern states shouldn't worry about this law because they have robust labor laws and therefore will easily pass all federally-imposed standards. This argument should be rejected. First, the proposed legislation introduces great uncertainty as to which state laws are robust enough to satisfy the federal standard, and the federal standards will likely change over time. Second, and more importantly, there is no federal issue here and the federal government needs to respect the bounds of state authority and jurisdiction. **Please oppose S. 1611 / H.R. 413.**

Healthy Families Act (S. 1152/H.R. 2460)

This bill mandates that all employers with 15 or more employees, for at least 20 weeks, including public sector employers such as municipalities, shall provide paid sick leave to its workers. Many, if not most municipalities in the Northeast provide some form of employee leave. The amount of leave, the uses of that leave and whether it is compensated or not have been the subject of bargaining and negotiations for years. The federal government should not impose itself on one side or the other at the bargaining table.

Municipalities are responsible for a myriad of services and need flexibility in scheduling leave. Municipalities need police and fire personnel in an ice storm, teachers to be around school children during flu season, and public works employees to plow roads in the winter. Ensuring the smooth operation of these vital public services – while attempting to simultaneously keep property taxes down and retain good, experienced workers – is a complex managerial assignment.

Employers and employees often mutually agree to different types of arrangements regarding leave. Some municipalities have general “personal time off” policies that merge the various holiday/vacation/sick day leave time into a single bank of time to be used. Others continue to segregate each type of leave by category and institute various kinds of notice and approval conditions for their use. Still others provide no paid time and simply permit unpaid leave. Finally, other agreements provide higher levels of compensation with the understanding that sick leave is not available.

There is no single right way to handle this issue. There are some in Congress, however, who not only believe

there is a single answer, they are seeking to dictate that answer to tens of thousands of municipalities and other employers across the country.

Furthermore, as is the case with collective bargaining, paid sick leave is a legislative issue that states are perfectly capable of managing locally. Maine's Senate President submitted a paid sick leave bill this year. Similar bills have been filed in Massachusetts, New Hampshire, Connecticut, Vermont and many other states. They have been filed in previous legislative sessions as well.

Whether it's swine flu, bird flu or mad cow disease, municipalities understand the public health threats that contagious illnesses can have on workers and those they serve. In fact, municipalities are entrusted with responding to public health emergencies. They and their employees should be trusted to make responsible decisions in the course of negotiating employment terms locally. This federal one-size-fits all approach to employee leave is too rigid for the needs of municipalities and should be rejected. **Please oppose S. 1152 / H.R. 2460.**

Employee Free Choice Act / "Card Check" (S. 560 / H.R. 1409)

This legislation upends decades of state and federal law regarding the process of determining a bargaining agent. As currently drafted, it does not include public sector employers such as municipalities. However, given the fluid nature of legislating and the fact that proponents of the national legislation have supported legislation at the state level that does include the public sector, the Northeast municipalities wanted to provide input on this matter.

From the period FY 2001-2008 there were approximately 73 local government elections (where 'local government' includes counties, schools and municipalities) in Maine. These elections included approximately 1,134 workers. On average, the Maine Labor Relations Board is processing less than 10 elections per year with each election including an average of less than 15 voters. Thus, the election process does not seem to be unduly burdensome or costly.

Further, the current law is certainly no barrier to unionization. The success rate for secret ballot elections seeking bargaining agent recognition is over 90%. During this period there were 69 elections resulting in the formation of a union and four elections rejecting such a formation. Seven scheduled elections were withdrawn. The data in Maine show that when there is an actual election the success rate is 95%; counting all proposals, the success rate is 86%.

Municipalities do not feel the current system is either broken or cumbersome. It provides benefits of fairness to both sides and privacy to workers that the proposed change does not. For these reasons, the Northeast municipalities urge Congress to oppose any efforts to alter the current system that applies to municipalities.

REGULATIONS WITH UNINTENDED CONSEQUENCES

The Northeast municipalities respectfully request that Congress clarify the scope of the FTC's "Red Flag" rules and the SAFE Mortgage Licensing Act.

Laws with unintended consequences are troublesome to local governments. While often well-meaning and directed toward constituencies remote from local governments, the imprecise use of language and the vagaries of the legislative process often produce products that require substantial effort to determine the exact effects on local governments. Such is the case with the implementation of the S.A.F.E. Mortgage Licensing Act, and the Red Flags rules implemented by the Federal Trade Commission (FTC).

The S.A.F.E. Mortgage Licensing Act was enacted in July, 2008 and it mandates that each state implement statutes for the regulation of mortgage loan originators. A state's failure to implement these new statutes will result in regulation by the Department of Housing and Urban Development (HUD).

The primary source of problems for local governments begins with the definition of "loan originator." Under the federal legislation, a loan originator is someone who "takes a residential loan application" AND "offers or negotiates terms of a residential mortgage loan for compensation or gain."¹ While that may not seem like language which would raise a problem for local governments, model legislation that was endorsed by HUD for use by state legislatures changed the above referenced "AND" to an "OR," which exponentially broadened the definition of a loan originator.² Compounding the problem is the definition of a "mortgage loan" which includes any loan secured by a consensual security interest on a dwelling.

Read in concert, these definitions have the effect of subjecting to regulation a municipality or government agency that files a lien against a debtor's real estate to secure repayment of a debt for need-based services, or tax collection. Such a scenario potentially subjects town welfare administrators, town tax collectors, town selectmen, and other municipal officials to the licensing requirements of state banking regulators.

Similarly problematic are the Federal Trade Commission's Red Flags rules that were adopted with the goal of preventing identity theft.³ These rules require certain businesses and organizations to: 1) develop policies and procedures to identify "red flags" of identity theft; 2) develop a program to detect the red flags; 3) prescribe the appropriate actions to be taken upon detection of a red flag; and 4) address how the program will be re-evaluated to ensure it evolves with the ever changing identity theft threat.

The Red Flags rules apply to businesses and creditors and specifically apply to utility companies, including municipally-operated utilities. The problem lies in that municipal utilities do not extend credit to their ratepayers beyond billing for services in arrears. The provision of service to municipal utility ratepayers is not contingent on one's credit worthiness. It is only contingent on one's residence within the municipality. As such, the information typically required by non-governmental utilities necessary to arrive at a credit decision, and the information ripe for identity theft, is neither requested nor considered by municipal utilities. Nevertheless, the municipal utility is required to abide by the Red Flags rules, even though the administrative burden far exceeds any identity theft prevention benefit.

¹ P.L. 110-289, Title V – S.A.F.E. Mortgage Licensing Act, sec. 1503 (3)(A)(i).

² Model legislation was created by Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). HUD's endorsement can be found at <http://www.hud.gov/offices/hsg/ramh/safe/cmsl.cfm>

³ Red Flags rules implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

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