

# 2001 Federal Issues Paper

## Introduction

The Congressional Budget Office has projected a federal budget surplus of \$5.6 trillion over the next ten years. This projection stands in stark contrast with the budget shortfalls and financial constraints confronting the state and local governments in Maine. As the new Administration and Congress consider a major tax cut and other spending proposals, the Maine Municipal Association strongly urges top priority be first afforded to funding current commitments and mandates, such as special education. MMA also urges redirection of federal programs to recognize and respect the integrity of local government processes and decision-making.

All too often, what happens in Washington might seem remote from the standpoint of the citizens back home; in point of fact, however, there is a direct relationship between the actions of Congress and the local property tax bill, the water and sewer bill, the cost of health care, and even a community's efforts to deal with sprawl or other land use issues. To demonstrate this connection, the *Federal Issues Paper* cites specific case examples to assist members of our Congressional delegation in understanding the impact of federal government activities.

Over the years, members of Maine's Congressional delegation have demonstrated an understanding and respect for the important role of municipal government in Maine. During the past 15-20 years, dramatic changes have taken place in terms of the role of the federal government in the intergovernmental system. As we have done on previous occasions, we offer the following guiding points and urge members of Maine's Congressional delegation to take a leadership role in addressing the issues identified in this paper:

- *Fund existing commitments & mandates* – before establishing new programs, or granting tax cuts, ensure that current programs and requirements are fully funded. This is one of the most effective ways to provide meaningful tax relief to Maine local property taxpayers.

- *Determine the appropriate federal government role* – as legislation is considered, ask what role is appropriate for the federal government, if any. Is the issue more appropriately handled at the state or local level? Often the most important contribution from the federal government would be financial assistance, without cumbersome requirements.

- *Allow for flexibility* – clearly one size does not fit all.

- *Respect state and local government authority and processes* – The state legislature and local elected officials are close to their citizens. We have a solid record of establishing effective programs and processes. In recent years, the federal government has increasingly intruded upon, and in some significant cases, preempted state and local authority.

- *Don't shift costs and responsibilities* – unfunded mandates corrode intergovernmental relationships and camouflage the parties responsible for tax increases and shifting priorities. Again, fully funding federal mandates and providing financial support translates into direct local property tax relief and eases the burden on local user fees (e.g., water and sewer rates, etc.).

## Special Education: Honor Your Commitment

There is no excuse.

It's called breeching a contract, dishonoring a promise. If by some technicality Congress isn't breaking its own law in its decision to short-change special education, it is at the very least breaking the spirit of a law. And it's not merely an academic violation of some arcane, long-

forgotten statute. We're talking about Congress violating the intent of an important federal law in a way that hurts the people of Maine. It is a decision that burdens the regressive property tax in Maine to the relief of the infinitely more progressive federal income tax. It is a decision made in Washington that causes great distress to local property taxpayers while Congress and the Administration debate using the "surplus" to develop even more programs and tax cuts, rather than providing direct tax relief by fully funding federal obligations.

The federal surplus is not a *real* surplus!

Until Congress appropriates its full obligation to special education, the federal budget "surplus" has been overstated. Just as there is no "extra money" in our personal checking accounts if we haven't paid the mortgage or the electric bill or met our other financial obligations, the federal government must fund its obligations before declaring a surplus.

We are flabbergasted when we hear of plans to address the federal multi-trillion dollar, 10-year "surplus" by cutting taxes or creating new programs for the public schools. More promises and more programs, when the existing promises lay dishonored and our local taxpayers are saddled with the enormous costs of Congress' existing special education mandates. And, a big chunk of those costs have been passed on to municipalities, who were never expected to bear them, as a matter of law.

Let's look at the numbers.

Public schools in Maine paid out \$225 million in FY 2000 to meet the cost of federal special education mandates. The federal government participates in that effort to the tune of \$22 million, just 9.7% of the total cost. Federal law, at 20 USC, Section 1411 leads the public to believe that Congress will pay 40% of the special education mandates it imposes.

More specifically, the IDEA formula calls for Congress to pay 40% of the result of multiplying the number of special education students in Maine (35,139 in FY 00) by the national average per-pupil cost (\$6,406), which sets Congress' statutory obligation to Maine at \$90 million.

The \$70 million annual gap between what Congress owes and what Congress pays would provide meaningful property tax relief to the average Mainer. \$70 million a year represents almost two-times the relief provided by the (state-funded) property tax Homestead Exemption, enacted in 1998. \$70 million represents two-thirds of the property tax relief provided under Maine's (state funded) municipal revenue sharing program. \$70 million a year, if fully used by the school districts to reduce their demand on the property tax, would translate into a 5% reduction in the statewide property tax commitment.

To look at it the other way, this single decision by the federal government to ignore its financial obligations to the communities raises all Mainers' property tax bills by 5% on average.

Examples abound. The small town of Charlotte in Washington County, with a population of less than 1300, has a total school budget of \$462,000. The property taxpayers of Charlotte pay \$180,000 of that school bill. The special education budget for that small school was \$83,600 in FY 2000, or 46.5% of the total local appropriation.

SAD 3 is an 11-town school district in Knox County, and not one of those 11 towns would be called wealthy. That school district's total budget is \$11 million with over \$3.5 million being raised from the property tax. The special education budget for that rambling school district is \$1.43 million, a sum that represents over 40% of the total local appropriation.

Up in Van Buren, the school district has a \$3.5 million total budget, with a local share of \$841,000. In size, the special education budget, at \$483,000, is over 57% of the local

appropriation. In Eastport, the special education budget of \$427,000 is over 54% of the total local appropriation. In Hodgdon it's over 46%.

The numbers jump out at you no matter what school budget is scrutinized.

The special education mandates enacted by Congress are not well understood on the local level; indeed, they appear to be impenetrable. All questions about local programs are met with the same answer by the school personnel... "We can't provide any specifics. It's all mandated by federal law. There is nothing we can do."

With respect to special education, the municipalities are caught between what the schools are unable to do and what Congress is unwilling to do.

For Congress' part, the answer is simple. It's called honoring a commitment.

## **Case Study: Mechanic Falls**

To provide some real focus to the impacts of special education, it might be helpful to look at the statistics in Mechanic Falls. The total population of Mechanic Falls is about 3,000. Six hundred students attend grades K-12. Eighty-four of those students (14%) receive special education services.

The taxable value of Mechanic Falls is \$80 million. 1 mill of property taxation raises \$80,000 in local tax revenues. Mechanic Falls has a property tax rate of 22.5 mills, which means that every owner of taxable property in the town pays over 2.25% of the total value of their property in taxes each and every year to fund the town government and the schools. It's like an estate tax, except it applies every year that you're living.

Between 1998 and 1999, the special education budget for the town's school system jumped 19.4%, from \$407,000 to \$486,000. The special education budget jumped 17.4% during the next year, to \$571,000. The town's mill rate increased by 1 full mill in 1999 just to cover the special education increase. In 2000, another full mill was added to the property tax rate, again just to cover the special education demand. The average annual increase in the special education budget since 1996 in Mechanic Falls is 8.8%, which is twice the annual increase of the education budget for all the students who are not in special education programs.

There is something very wrong with this picture.

## **Combined Sewer Overflows (CSOs)**

Combined sewer systems have one pipe that carries both sewage and stormwater to the wastewater treatment plant. During normal weather, these systems work perfectly well; however, the onset of wet weather sometimes results in Combined Sewer Overflows (CSOs) which allow untreated wastewater to flow into our rivers, streams and ocean.

CSOs are an environmental and financial problem for Maine communities.

During precipitation events, combined sewer systems receive sewage and stormwater runoff. Stormwater may contain pollutants such as oil, grease, fertilizer, heavy metals, bacteria, viruses, and chemicals. A CSO system releases a mixture of raw sewage, industrial wastewater, and stormwater into the receiving waters of our state. According to the U. S. Environmental Protection Agency, CSOs are one of the leading causes of water quality impairment in the country. Across the nation, CSOs have led to bans on fishing and swimming, beach closings, shellfish bed closures, and threats to public drinking water supplies.

There has been very little federal assistance to help Maine communities deal with their CSO problem. The CSO Control Policy implements a multi-phased process necessary to achieve control of CSOs and compliance with the mandated technology-based and water quality-based

requirements under the Clean Water Act. To date, there has been very little assistance provided to the State of Maine.

In December of 2000, Congress passed the Wet Weather Combined Sewer/Sanitary Sewer/Watershed Pilot Project Grant Program. This legislation appropriates federal funds for both the Pilot Program and the Sewer Overflow Controls. The Pilot Program has \$45 million of funding available over the next two years. This appropriation must be divided among all 50 states. The Sewer Overflow Control program provides grants to states for the establishment of Revolving Loan Funds, which are made available to the treatment facilities. The federal government appropriated \$750 million for FY 2002 and \$750 million for FY 2003 under this program. These funds are to be shared by all states.

Controlling or eliminating CSO discharges is an enormously expensive proposition that often requires communities to upgrade miles of sewer pipe. For example, the Town of Skowhegan is currently improving or installing 6300 feet of sewer lines. This will be accomplished at a cost of \$186 per foot of line, totaling \$1,172,000.

### **Case Study: Augusta Sanitary District**

The Augusta Sanitary District is in the early stages of a 4-phase, \$30 million upgrade, projected to take 15 years. In 1993, the District designed its Long-Term Control Plan (LTCP) to address its CSO problem. The plan divides the sewer upgrades into a 4-phase project. The first phase, which was completed in 1999, eliminated 44% of the overflow pollution problem. The second phase, when completed, is projected to eliminate an additional 20% of the pollution problem.

Phase I was budgeted as a \$12.2 million project that required the Augusta Sanitary District to borrow \$9.2 million. The remaining \$3 million was funded through a reserve fund. This \$9.2 million was borrowed over a span of 20 years and costs the Augusta Sanitary District an average of \$600,000 per year. For 2001 the principal on the borrowed \$9.2 million is \$420,000, and the interest is \$270,000.

Design and construction of Phase II of the LTCP is scheduled to begin in 2001. It is estimated to be a two-year construction project, requiring the District to borrow an additional \$10 million. The average annual repayment on the \$10 million over 20 years is \$738,000. The first year repayment on the loan will be approximately \$513,000 in principal and \$400,000 in interest.

Since 1993, the Augusta Sanitary District has been forced to drastically increase its rates. In 1993, the average homeowner paid \$200 a year for sewage disposal; today, the typical homeowner pays \$400. This increase is the result of the mandated compliance with the technology-based and water quality-based requirements of the Clean Water Act.

In 1999, Augusta introduced the Stormwater Fee. The Augusta Sanitary District is unique, in that it is the only municipal district in Maine that uses this type of fee. Its implementation was necessary to fund federally mandated system upgrades.

The Stormwater Fee system is based on the amount of impervious surface area owned by the customer. Impervious surface areas include driveways, parking areas, etc. Customers in residential areas or business districts that use the city sewer system or own property adjoining city streets with an improved Stormwater collection system are charged quarterly fees. Both federal and state-owned properties are subject to the Stormwater Fee. Buildings or structures with more impervious area will contribute more in the form of larger fees.

In 1999, the Stormwater Fee was \$5.33 per unit of impervious surface, per quarter. Today, the fee has jumped to \$10.31 per unit, per quarter. The doubling of the fee in just two years is the result of the debt incurred in Phase I and Phase II upgrades. The District's overall rate schedule is projected to increase an average of 20-25% every two years.

The District is in the process of complying with the federal mandates. City residents are the ones who have been impacted the most. Not only are they paying the Augusta Sanitary District an average \$400 a year in fees, as taxpayers they are also funding the \$1 million fee the City of Augusta is charged.

The Augusta Sanitary District would like to use a federal grant to offset the interest incurred in borrowing money for the mandated upgrades. For the first two phases of the LTCP alone this amount totals over \$600,000.

### ***Recommended Action:***

MMA is asking the Congressional Delegation to support any legislation that provides the funding needed to implement the required upgrades and meet this federal mandate. MMA also requests that the Delegation oppose legislation or regulations that seek to require the separate treatment of stormwater for small cities — those under 100,000 population.

## **Federal Authority Over Wetlands**

A recent U.S. Supreme Court decision, *Solid Waste Agency of Northern Cook County v United States Army Corps of Engineers*, shows a shift in judicial philosophy toward States' rights. This case essentially reined in the authority of a federal agency to regulate intrastate waterways. The full impact of this decision has yet to be determined, but a cursory review of the Court's decision tells us that federal agencies' role in wetland regulation has been curtailed.

### **Case Study: Orono**

In January 1998, the Town of Orono adopted a Comprehensive Plan based on a smart growth philosophy. The plan was developed in an attempt to maintain the rural and small town character of the downtown and residential areas. This plan designated areas prime for development, as well as those areas to be preserved as open space.

In accordance with its comprehensive plan, the Town of Orono hoped to further develop its Research and Development Park. The Town was issued permits for the Research and Development Park in 1984. Orono owned 8 parcels in the R&D Park, while 14 parcels were held in private ownership. To date, 6 of the 8 parcels belonging to the Town have been developed. The two remaining parcels have been designated as wetlands, one of which is a high value wetland.

In an effort to mitigate damage to the wetlands, Orono was prepared to remediate Ayers Island and dedicate it as Open Space. This particular site is a Brownfield, contaminated with coal ash and clinker, demo debris and textile waste. There is also a reported release of petroleum, however, no PCBs have been detected.

The State Department of Environmental Protection (DEP) approved the fill of the wetlands, as well as the mitigation parcel. Orono voluntarily hosted an informational session with EPA, Army Corps of Engineers, DEP, and Inland Fish & Wildlife. EPA and the Army Corps of Engineers objected to the fill of the two wetland parcels and struck down the proposed development.

The Town of Orono had invested significant amounts of time and financial resources in the development of its Comprehensive Plan. EPA suggested Orono leave the wetlands and build the Park expansion in an area Orono designated as “no growth.” EPA’s proposed development site is not only inconsistent with Orono’s smart growth plan, but it questions the very underpinnings of the plan.

### ***Recommended Action:***

In the wake of the recent Supreme Court decision, *Solid Waste Agency of Northern Cook County v. U. S. Army Corps of Engineers*, the Town of Orono is seeking clarification and review of EPA’s authority to deny its wetland mitigation plan. Orono would like to develop the remaining two parcels in the Research and Development Park and believes this decision takes the issue out of federal agencies’ jurisdiction.

MMA would encourage the Congressional Delegation to communicate with EPA and ACOE officials making sure they understand and respect traditional state powers over land and waterways management. This will enable states to use their expertise in deciding matters of local importance and significance without interruption from federal agencies. Restoring control over state lands and waterways will ensure municipalities the flexibility necessary to formulate and implement their comprehensive plans.

## **Medicare Shortfall and Rising Health**

### **Insurance Costs**

One of the fastest growing line items in Maine local government budgets is employee health insurance. Maine municipalities that provide health insurance coverage to their employees have experienced double-digit rate increases in premiums over the past few years and there is no relief in sight. One contributing factor to rising health insurance premiums in our state is cost shifting from health care providers to private payers because of Medicare shortfalls.

### **Case Study: Presque Isle**

The City of Presque Isle, with about 100 employees, has experienced a 79% increase in its health insurance expenditure line between 1998 and 2001. In comparison, during that period, the city’s valuation increased by only 6%. Between 2000 and this year alone, the city is paying \$122,000 more for health insurance for its employees. The city’s health insurance cost for 2001, which totals \$706,000, represents 2.0 mills of taxation. Presque Isle’s tax rate is one of the highest in the state at 24.72 mills.

The city’s share of health insurance costs is the fastest single rising municipal expense and city employees are contributing more and more. The contribution of a newly hired police officer with a weekly wage of \$455.00 is \$52.00 a week, 12% of their gross weekly wage. Recently hired truck drivers for the city earn about \$384.00 a week. An astronomical 14% of their wages is required for their contributions to health insurance.

### **Case Study: Saco**

The City of Saco’s FY 2001 budget for health insurance for its employees is approximately \$873,000. Saco’s health insurance rates are increasing 18% for FY 2002. After factoring out the savings the city realizes from employees choosing payments in lieu of health insurance, the city estimates that its FY 2002 budget for health insurance will increase to

\$939,987. Based upon the city's municipal valuation, the health insurance budget item equates to \$1.10 or 5.24% of the city's \$21.00 mill rate. It costs the City of Saco approximately \$9,000 annually for health insurance for each new employee who selects city coverage.

## **Case Study: Maine Municipal Employees Health Trust**

The majority of Maine's cities and towns participate in a group, self-insured program, the Maine Municipal Employees Health Trust (MMEHT). The Health Trust provides health insurance to over 9,000 local government employees and retirees from Kittery to Fort Kent. Including dependents, the Trust covers nearly 22,000 Maine individuals. Since its inception in 1983, the Trust has remained committed to improving the quality of and reducing the cost of health care delivered in Maine. The Trust also invests in efforts to improve the health of local government employees and their families.

While the Health Trust offers Maine's local governments the administrative and group purchasing advantages of a pooled health plan, it cannot shelter its members from the many factors driving health care costs and premiums nationally and in Maine. In 1999, Health Trust members experienced an average 11% increase in health premiums. In 2000, the average premium increase was 12% and for 2001 that average increase has jumped to 24.5%. Double-digit rate adjustments are expected for the foreseeable future. For 2001, the Trust projects that its per participant (employee) per month health claim costs will be nearly \$460, ten percent higher than last year. Between 1999 and 2000, the Trust's total prescription drug costs increased by nearly \$2 million. Prescription drug claims now account for 19% of the Trust's total health claim costs.

According to the Governor's Blue Ribbon Commission on Health Care report, variables that drive the cost of health care in Maine include: a sizable uninsured population, unhealthy behaviors and lifestyles, prescription drug costs and cost shifting. MMEHT is concentrating its efforts on stabilizing the cost drivers. It is Medicare cost shifting that the MMA wishes to address with the Congressional delegation.

Because the federal government does not reimburse health care providers Medicare rates that cover their actual cost for services, costs gets shifted to insurance programs, like the MMEHT, and then on to its members via higher insurance premiums. Maine's Medicare shortfall is significant; the Blue Ribbon Commission reports the gap to be \$100 million annually.

### ***Recommended Action:***

According to the Maine Hospital Association (MHA), Maine continues to rank at the bottom of the list of 50 states in terms of reimbursement as a percentage of what it actually costs our hospitals to provide care to older and disabled citizens covered by Medicare. Municipal officials understand that the federal Medicare reimbursement policies favor states with a larger percentage of urban hospitals. The MHA classifies 58% of our hospitals as rural and reports that Maine's percentage of rural hospitals is 25% higher than the national average.

As the delegation members know, the Balanced Budget Act of 1997 included \$340 million in reduced Medicare payments to Maine hospitals. Over the past two years Congress has restored some of these cuts and recent action will reduce the BBA '97 cuts by more than \$80 million. Municipal officials appreciate these efforts. Because the Medicare portion of revenues for Maine hospitals is so significant, any shortfalls in the program require hospitals to increase their charges to other payers, like local government employers.

Municipal officials, as employers and public policy makers, are very concerned about rising health care insurance costs. These costs threaten economic growth and personal incomes in our state. While municipal officials recognize that the Medicare reimbursement shortfall is but one of many contributing factors to our health care cost crisis, it is a factor that can be mitigated, especially in light of the enormous federal surplus. We urge the members of the Congressional delegation to continue their efforts to increase the level of Medicare reimbursement to Maine's hospitals and other health care providers.

## **Opposition to New Federal Park**

The State of Maine has earned the title of Vacationland by providing residents and nonresidents alike with miles of scenic shoreline, beautiful mountains, and winter recreational activities. Maine follows only Alaska, California, and Texas in states with the most land dedicated to recreational purposes.

Alaska has 3,289,000 acres dedicated for recreation. California follows with 1,356,000 and Texas has 629,000 acres. Currently, Maine has 587,000 recreational acres. This acreage is comprised of shorelands, mountains, and the Allagash Wilderness Waterway. Maine has one federal park, Acadia National Park, and 32 state parks. According to the Maine Forest Service, 89% of Maine's land area is forested.

## **Case Study: The North Maine Woods**

In Maine, a recent proposal to create a new federal park, called the Maine North Woods, has stirred up much debate. The proposed park would encompass 3.2 million acres of forest land. The east-west boundaries of the park would run from Millinocket to the Quebec border. The north-south border of the park would run from Greenville to Clayton Lake. Park boundaries would subsume Moosehead Lake and the Allagash Wilderness Waterway. Though the park would surround Baxter State Park, it would remain a separate entity. If the park were created, it would be the second largest park in the lower 48 states, second only to Death Valley National Park totaling 3.4 million acres.

The group spearheading the crusade for the 3.2 million acre park is called RESTORE. The group's composition is largely out-of-staters and it is headquartered in Concord, Massachusetts. Group members believe that the Maine North Woods hold a unique ecological and aesthetic value that should be preserved. RESTORE asserts that the logging industry, private ownership, and recreational uses such as snowmobiling are the leading causes of the destruction and degradation of the forest.

The targeted geographical region of Maine has been home to logging industries, fishermen, hunters, tourists, and local residents for centuries. The area currently has many practices in place to ensure the continued beauty and ecological protections that RESTORE is seeking to secure. Parcels of the North Woods are currently protected through conservation easements and private ownership by conservation organizations.

Creation of the proposed park would be a considerable financial burden on municipalities in this geographic region. Land removed from the municipal tax rolls and placed under federal control causes a strain on municipal revenues. Under the Payment In Lieu of Taxes (PILT) program, the federal government is required to pay the incredibly low fee of 75 cents per acre of federal land per year. This 75-cent fee is a set figure that does not correspond to the increased valuation of the land. Under PILT, the federal government is also required to pay 1% of the Fair

Market Value of the land, but this payment is limited to a 12-year term subsequent to the date of acquisition of the land.

This federal obligation, like many other federal mandates, often falls short of the required 1% of Fair Market Value. For example, Bar Harbor is the home of Maine's only federal park, Acadia National Park. The Park occupies approximately 40% of the town's land. Bar Harbor received reimbursement in the amount of \$15,692 in 2000. For the last several years, reimbursement checks have come with the disclaimer that the government realizes that the municipalities are entitled to larger shares, but due to the lack of financial resources, they are unable to meet their obligation.

### ***Recommended Action:***

MMA would encourage the Maine Congressional delegation to oppose the creation of the Maine North Woods and to let your congressional colleagues know that you oppose it. MMA is aware that all the members of the delegation have reservations about this proposal. Municipal officials from that region of the state have asked MMA to join them in opposition to this proposed federal park and the MMA Executive Committee has agreed to that request. Creation of this federal park would be detrimental to the municipalities of that region and overall to Maine's economy.

MMA would also ask that Congress to fully fund all PILT obligations. Again, honor your commitment.

## **Waiver Needed On Truck Weight Limit**

The existing federal weight limits on the national highway system are anything but uniform. In New England, trucks weighing 100,000 pounds are prohibited from traveling on I-95 north of Augusta, while these same trucks can travel on the Maine Turnpike, I-95 from Portland to Gardiner, all of I-95 in New Hampshire and the entire interstate network of Massachusetts. The municipal concern regarding weight limits on the national highway system is two-fold: (1) public safety and (2) the cost of maintaining the state and local transportation infrastructure.

### **Public Safety**

National highway safety interest groups insist there exist inherent dangers when trucks over 80,000 pounds are forced to share the national highway system with 2,500 pound passenger vehicles. Unfortunately, the solutions recommended by these interest groups are to reduce the weight limits on the trucks traveling on the national highway system and thereby require the heavier trucks to travel on state and local roads. From a municipal perspective the public safety concerns are intensified when trucks carrying heavy loads are forced to travel through Maine communities on the narrower state roads and much narrower and less substantially built local roads.

Annually, the town of Freeport is inundated with over four million tourists. On any summer day, the heart of the downtown is mobbed with pedestrians moving from one outlet store to another, all the while crossing back-and-forth across the main street, which is Route 1. Since there is limited access from Augusta to the eastern coastline, truck drivers are electing to use Route 1 rather than traveling to Augusta via I-95 and then winding their way to the coast. This creates a significant public safety problem for municipalities, such as Freeport, that are located along the Route 1 corridor.

Municipal officials need to protect the public safety of the community's residents and visitors. Increasing the weight limit on the I-95 north of Augusta section of the national highway system is one way to achieve that public safety goal.

## **Cost**

Maine's highway system is the most important component of its transportation network. The system consists of 22,612 miles of highway, including 8,303 miles that are the responsibility of the Maine Department of Transportation, 13,862 miles of local roads and 447 of "other" road miles which includes the 111 miles on the Maine Turnpike and 336 miles of roads in state and national parks.

According to the Maine Department of Transportation, of the 1,347 national highway miles in Maine, only 116 (8.6%) are in deficient condition. The cost of repairing those deficient miles is estimated to be \$129 million. Of the state's 7,283 other arterial and collector road miles, 3,876 (53%) are deficient. The cost to repair those deficient miles is estimated at \$1.3 billion. In addition to the state's infrastructure improvement investment, it is estimated that annually municipalities in Maine spend over \$140 million on local roads. Although the Federal Highway Administration admits that the national highway system is designed to carry loads of nearly 100,000 pounds, current federal regulations are forcing heavier trucks on state and local roads at a significant cost to the taxpayers of Maine.

## ***Recommended Action:***

MMA urges Maine's Congressional delegation to listen to the officials of Maine who understand the realities associated with the 80,000 pound weight limit on the section of I-95 north of Augusta. The economic well being of the state is dependent on the ability of goods and services to be delivered to the northern and eastern part of our state as well as the western and southern parts. Because of this reliance on highway transportation, a waiver of the 80,000 pound limit on *all* of I-95 makes economic sense.

In 2003 Congress will be asked to reauthorize the TEA-21 program, which will determine the transportation related goals of the federal government in 2003 and beyond. Over the next two years intense conversations about what policies are to be included in the reauthorization process will be occurring. MMA urges our Congressional delegation to insist on a 100,000-pound weight limit waiver on I-95 from Augusta to Houlton to be included as part of the 2003 TEA-21 reauthorization process.

# **Emerging Issues**

## **Dredging**

While the state has programs to meet the maintenance needs of its highways, rail systems and airports it does not have a funded program for addressing its coastal waterways and harbors. However, funding is not the only issue of concern for state and coastal municipalities. One of the most significant and controversial issues is the placement of the contaminated dredged material.

The Environmental Protection Agency and the Army Corps of Engineers share the responsibility of managing ocean disposal of dredged materials in Federal waterways under the auspices of the Marine Protection, Research and Sanctuaries Act (MPRSA). Essentially, management of all dredged activities includes the designation of sites for ocean disposal and the

issuance of permits necessary for the disposal. The ACOE is responsible for determining sites that will minimize adverse environmental effects as well as minimize the interference with commercial and marine activity in the waterway.

One of the controversies surrounding harbor dredging is the EPA/ACOE battle over disposal. EPA often refuses to allow the dredged material to be disposed of in sanitary landfills or at off-site facilities. The concern with these forms of disposal is community disapproval of hosting a facility for contaminated dredge spoils. Landfill disposal is also costly; spoils contaminated with PCBs must be dewatered and then treated to remove the PCBs. This process will also require lengthy monitoring and treatment of leachate.

One of the underlying reasons that the ACOE frequently opposes ocean disposal is the nature and level of the contaminated spoils. For example, the ACOE has refused to accept the dredged spoils that are highly contaminated with PCBs. One of the concerns is the amount of sediment lost into the open ocean environment during the dumping of the dredge spoils. This contaminated fill is then released into the open waters and has an adverse impact on marine wildlife, thus potentially harming the commercial fisheries.

Commercial lobstermen and fisheries would like to see the harbors dredged. However, dredging can be detrimental to marine organisms and habitat. This fear of fish or lobster kills stems from the massive lobster die-off in Long Island Sound, N.Y. in 1999. Kills of this nature could easily ruin Maine's multi-million dollar lobster industry.

### ***Recommended Action:***

At the federal level, there is disagreement between agencies as to whether contaminated material from dredging should be landfilled or returned to the water. MMA would encourage the Congressional delegation to help work out these differences and to initiate a dialogue with state and local officials in the affected coastal states to come up with an environmentally favorable disposal plan for the dredge spoils. Our state's waterways must be cleaned up to ensure a healthy ecosystem and seafood that is safe to eat. The citizens of Maine are not opposed to dredging which keeps our waterways safe for navigation; however, we must use environmentally sound alternatives that treat and process dredged material for beneficial reuse.

## **E-Commerce**

The State of Maine collects approximately \$800 million each year from the Sales and Use Tax. This tax source represents approximately 35% of all General Fund revenue. It is the second largest revenue source for Maine state government, following the Individual Income Tax.

Through the State Municipal Revenue Sharing Program, Maine communities receive 5.1% of General Fund revenue, including the Sales and Use Tax. This program is very important to Maine municipalities because it provides direct property tax relief.

The current Congressional moratorium prohibiting state and local governments from instituting new taxes on e-commerce (Internet sales) threatens the long-term stability of this major revenue source for Maine's state and local governments. The State Tax Assessor of Maine estimates 20-30% of the sales tax base (those items that are taxable and have some likelihood of being purchased via the Internet) is at risk. To date, the impact of Internet sales on State revenues has been modest, but the long-term effects of not taxing electronic commerce could be significant.

Maine Municipal Association recognizes that the taxation of e-commerce is a politically sensitive issue. MMA believes, however, that the final resolution of the matter should boil down

to what is fair. Should one form of commerce (electronic) have a tax advantage over other forms of commerce? Should Internet retailers have a tax advantage over Main Street retailers? Should out-of-state companies have a tax advantage over in-state companies? Should those who have Internet access have a tax advantage over those who are unable to afford a computer?

### ***Recommended Action:***

For the long-term, MMA would urge the Congressional Delegation to consider tax equity and fairness as paramount in their decision-making on this issue. For the short-term, MMA is asking the Delegation to support a proposal coming from the National Governors Association that allows states to join together providing a reciprocal, uniform Sales and Use Tax system.

## **Ergonomics Rule**

One costly piece of recently enacted legislation is the State and Federal Ergonomics Rule. OSHA's final ergonomics standard was issued on November 14, 2000. This rule has the potential of costing municipal governments and other employers large amounts of money and being very time-consuming.

OSHA's promulgated Ergonomic Rule regulates all employers that are covered by the Occupational Safety and Health Act. This Act governs businesses that affect interstate commerce. To date, the Maine Bureau of Labor Standards has not promulgated rules governing MSD related injuries. Therefore, the State must adhere to the OSHA Rule. Private employers with ergonomic programs in place prior to the adoption of the OSHA Rule will be able to maintain those programs so long as they are as effective as would be required under the OSHA Rule. The Ergonomics Rule applies to all employers with the exception of such positions as office management and support services directly related to employment in the following areas:

- Construction
- Maritime standards
- Agriculture standards
- Railroad operations

The Ergonomics Rule, in its application, is triggered with the reporting of one case of musculoskeletal disorder (MSD) to the employer. Musculoskeletal disorder is defined as stress and repetitive motion injuries, like carpal tunnel syndrome, tendonitis, lower back injuries, and other ailments caused by repetitive motion. Upon the first reporting of the MSD, the employer is then asked to determine whether the injury is a "MSD incident." OSHA defines this phrase as an MSD that is both work related and would require time away from the job, restricted work schedules or medical treatment. According to OSHA, the MSD is deemed work related if the employee experiences symptoms for more than seven days.

The Ergonomics Rule is all encompassing. It requires those employers with a documented case of MSD to implement a formal ergonomics program. One of the hardest hitting elements of the rule requires state and local government employers to implement a 90-day work restriction protection (WRP) program. The rule instructs the employer to assign the employee to an alternate position requiring less productive work. If the employee is unable to perform any of these duties and is unable to work, the employer is required to pay them 90% of their pay as well as full benefits.

The WRP provision has been a bone of contention with the American Insurance Association and the National Association of Insurance Commissioners. The AIA asserts that the

requirements of the WRP result in unfettered federal regulation of state worker's compensation law. The WRP imposes severe restrictions on state programs.

According to OSHA, the cost of implementing formal ergonomic programs is projected to be \$5 billion per year. OSHA has argued that this exorbitant cost is justified because dollars currently paid out in workers compensation claims would easily exceed this \$5 billion per year. However, the Employment Policy Foundation and the National Manufacturer's Association has estimated that the rules will cost industry as much as \$90 billion per year.

The standard took effect on January 16, 2001. Covered employers must fulfill the communication obligation by supplying employees with basic information concerning MSD disorders. Employers must also respond to employee reports of MSD signs and symptoms.

***Recommended Action:***

The Maine Municipal Association would like to see the Ergonomics Rule revisited. Municipal officials believe that the promulgated rule intrudes on the state's right to regulate workers compensation. The municipalities' largest concern is the sheer cost of implementing and complying with the standards set forth in the OSHA Rule. Our recommendation to the Congressional Delegation is to provide municipal officials with a clear analysis of what effect this rule will have on municipalities. Municipal officials are requesting guidance on the steps necessary to have the rule repealed or overturned and re-written with less stringent standards.