

## **ISSUES**

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Liability**

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# Introduction

*by Chris Lockwood*

*As Maine citizens struggle with local property taxes, is there any connection to the federal government? As Maine businesses question whether suitable solid waste disposal options will be available in the future, is there any connection to the federal government? As communities seek to redevelop abandoned industrial sites, is there any connection to the federal government?*

The answer to each of these questions is YES. This paper identifies the connection these and numerous other critical issues have with the federal government – and more importantly, what the federal government might do to help address these issues in a positive manner.

It is somewhat difficult to describe the relationship between the federal government and state and local governments. A quarter century ago, the relationship might have been generally characterized as a partnership. The federal government established a range of programs and was a significant financial partner with state and local governments in addressing a wide range of domestic needs, such as creating pollution control and treatment facilities.

As our intergovernmental system enters a new century, the relationship is far less clear. In certain areas, such as transportation funding and community development, a fairly clear partnership continues. In other areas, however, the relationship has changed to consist of unfunded mandates (and significantly underfunded commitments, such as special education). In still other arenas, the federal government is undermining and preempting state and local authority and processes. At the same time, the global economy and technology revolution have potentially sweeping implications for the basic revenue structure supporting state and local services – education, public safety, and other vital services.

The Maine Municipal Association calls upon members of the Maine congressional delegation to work to restore balance in intergovernmental relationships, respecting the important roles of local and state governments. When officials at the federal level call for spending on new programs, ask first – Are we fully funding current commitments? When considering proposals that preempt state and local government authority, please recognize that state and local governments are closer to the citizens and have a solid record of establishing effective programs and processes. The issues and recommendations in this paper provide an outline of specific steps to restore this balance and address longstanding areas of concern.

# Special Education Costs

by Kate Dufour

The Town of Bradley has a budget cap that limits budget increases to a cost of living allowance. This causes more and more money not to be available to the municipality outside of education. With funding from state and federal governments being less, it's increasingly difficult for small communities to offset these costs.

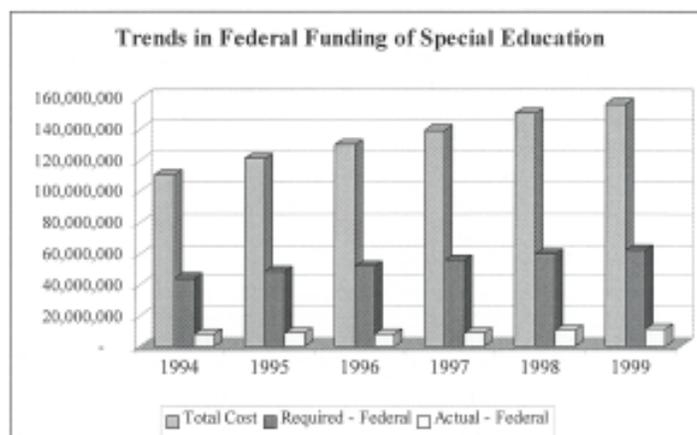
**Mike Crooker**  
Town Manager  
Bradley

It is always important for Maine's state and national leaders to honor past policies by adequately funding existing programs to which the state and federal government has committed. Failure to do so in times of extraordinary federal surplus is particularly hard to understand. One area that has been grossly under funded by the federal government has been financial assistance to meet the requirements of special education that Congress enacted and the federal bureaucracy continues to amend in more and more costly ways.

As the Maine Department of Education tries to recover from the lack of federal funding, it shifts more of the cost of special education onto the municipalities. The failure of the federal government to meet its obligations forces the state to dishonor its promises as well. Although Maine law requires that the state pay 55% of the cost of education, in 1998 the state share was 44%.

As enacted, the Individuals with Disabilities Education Act (IDEA) requires that the federal government pay 40% of the per-pupil cost for special education programs (20 USC § 1411). Although the promises made in 1998 to slightly increase funding for special education were fulfilled, there was only an increase of federal funding from 6.36% in 1997 to 7.2% in 1998, and that pattern of increases was not maintained. In 1999 federal funding for special education remained at 7.2%. Unfortunately, since 1994 the federal government has only funded an average of 7% of the per-pupil costs of special education (see figure 1).

Figure 1



## Special Education Costs — *Continued*

If there's going to be a service demanded by government, there should be funding for it.

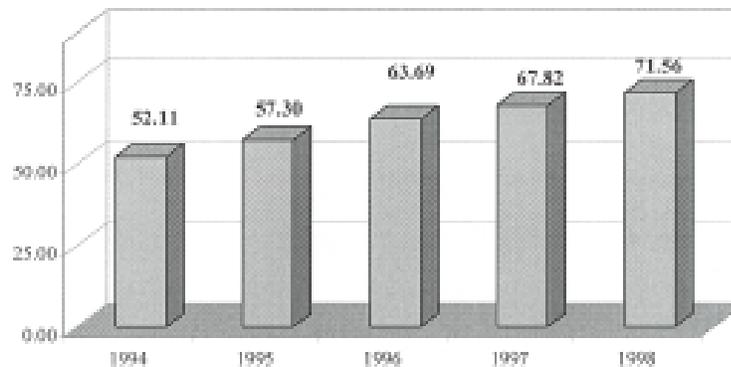
**Allan Bean**  
Town Manager  
Houlton

In 1998, the per-pupil cost for special education in Maine was \$4,532, over and above the base cost of educating students. The total number of students enrolled in special education programs was 33,055 for a total investment of \$149.8 million. Applying the 40% IDEA formula, the federal government should have reimbursed Maine \$59.9 million. The actual reimbursement, however, was a mere \$10.8 million, or 7.21% of the cost of special education.

The \$49.1 million federal shortfall was ultimately shifted to Maine's property taxpayers. In 1998 the deficiency of federal funding in the area of special education cost each property taxpayer in Maine approximately \$71.56. Since 1994 the shift to the property tax associated with the local share of special education has increased by 37% (see figure 2).

Figure 2

Increased Per-Capita Property Tax Payment Associated with Special Education Costs



It's a wonderful thing to have great ideas to improve our society -- but please send the funding along with the great idea.

**Don Willard**  
Town Manager  
Rockport

It is fundamentally important that Congress honor its prior commitments and fund special education at the level it committed to when it enacted the Individuals with Disabilities Education Act. Without support at the federal level for education, Congress is essentially shifting additional burden onto Maine's already over-burdened property taxpayers.

- ***Recommended Action:*** Support full federal funding for special education.

# Brownfield Development and Federal Environmental Liability

*by Geoff Herman*

The issue of potential and continuing liability was the single most difficult one we faced in this redevelopment project. Developers and their financiers and insurers are simply unable or unwilling to assume an open-ended liability which is not clearly defined. After overcoming issues associated with land acquisition, clearance, environmental remediation, and higher development costs, the liability issue nearly stopped this project. If the City had not assumed the liability and risk, this project would not have happened. We believe it is not reasonable to force a developer or a City to assume liabilities created by prior owners, often long-gone, when our actions not only remediate the environmental problem but transform an eyesore into an asset.

**Ed Barrett**  
City Manager  
Bangor

Maine is several strides ahead of the federal government when it comes to providing opportunities for the redevelopment of abandoned industrial sites in Maine's service center communities.

There is a considerable amount of important brownfield redevelopment work being done in Maine. Between 1991 and 1996, the City of Bangor worked with Maine's Department of Environmental Protection (MDEP) and private developers to convert an abandoned coal gasification plant into a thriving supermarket complex. The City of Old Town has recently worked in a similar partnership to convert the old Lily-Tulip manufacturing site into valuable recreational and open space. With the help of some Brownfield Cleanup Pilot money from EPA, the City of Portland is beginning a project to rejuvenate at least ten "brownfield" parcels in the East Bayside, West Bayside, and Parkside areas of the city. These are just a few of the many projects of this kind that developers could be seeking out if some pre-existing environmental liabilities could be definitely resolved.

Developers, and the financial institutions that back them, will generally follow the path of least resistance when it comes to choosing sites to develop. When the choice is between an in-town abandoned industrial or heavy commercial site with an uncertain environmental history or a cornfield in a neighboring suburb, it will be the "clean" suburban land that gets developed, pushing traffic, housing and water and sewer lines ever outward.

The importance of a regulatory system that encourages brownfield development as a tool to counter inefficient land use patterns is well understood by developers, land use planners, and federal, state and local government. The obstacle to brownfield redevelopment, unfortunately, exists at the federal level.

In Maine, a program has been in place for seven years that actively encourages the redevelopment of brownfields in an environmentally responsible manner.

Maine's Voluntary Response Action Program (VRAP) allows anyone interested in the redevelopment of a brownfield site to enter into a partnership process with the MDEP.

To begin this process, the party interested in the redevelopment of the abandoned site performs a site evaluation for residual pollutants in the on-site soils or any improved real estate on the property. Once those pollutants are identified, a remediation plan is developed to the satisfaction of the MDEP. After the remediation plan is implemented, the MDEP issues a release of liability that gives assurance that the state will not be prosecuting the brownfield redeveloper for environmental violations associated with the pre-existing contaminants identified in the site evaluation. In many cases, the entire process can be completed in a matter of weeks.

Unfortunately, there is no comparable release of liability provided by the Environmental Protection Agency (EPA). The best Maine's DEP has been able to negotiate with EPA is a so-called "comfort letter" that is designed to give the brownfield developer a sense that federal prosecution with respect to identified pre-existing conditions would be unlikely. From the developer's perspective, the "comfort letter" is written so circumspectly it is often referred to as a "discomfort letter." It offers next to nothing to alleviate the uncertainty that all-too-often moves the developer to an environmentally risk-free site.

EPA can work more closely with Maine's environmental agency to remove the federal obstacles to brownfield development. EPA is already delegating the authority in other states to release brownfield redevelopers from federal environmental liability. In some cases, the working partnership with the state comes in the form of a blanket delegation. In other states, the EPA issues a "memorandum of agreement" to the state's environmental agency that details any conditions or limitations on the federal release from liability that is being offered. It is our understanding that in Region I, only Rhode Island has been successful in obtaining such a memorandum of agreement from EPA.

When the City of Bangor participated in the private-public partnership that saw the successful redevelopment of the coal gassification plant, the City assumed the federal environmen-

tal liability and by so-doing took a risk that many private developers (and their financial backers) would not be willing to assume.

It is testimony to Maine's program of environmental protection that in the area of brownfield development we can focus on identifying the environmental problem and prescribing a remediation plan that the MDEP will stand by, rather than jeopardizing redevelopment opportunities by casting unpredictable liabilities over all past and present and future brownfield site ownership. Our request is that Maine's Congressional delegation help us persuade the EPA to become more of the solution by giving MDEP the memorandum of agreement, such as is used in Rhode Island, that will remove this unfortunate friction to urban redevelopment in Maine.

- **Recommended Action: Persuade EPA to grant Maine delegation for release from liability.**

# E-commerce and Internet Taxation

*by Geoff Herman*

When the sales-tax dodging Internet sales office or warehouse has a fire or needs a police officer, just E-mail me at [allan.bean@houlton.com](mailto:allan.bean@houlton.com) and we can promptly reply with a picture of a fire truck or police car, and if their computer has a good sound card they will hear the sirens wailing.

**Allan K. Bean**  
Town Manager  
Houlton

On March 20 and 21, the 19-member Advisory Commission on Electronic Commerce will be holding its fourth and final meeting prior to writing its report and recommendations, which will be given to Congress by April 21, 2000.

Maine's state and local governments are very concerned that the Commission might recommend, or Congress might subsequently consider, any federal legislation that would exempt from state or local sales and use taxation any retail transactions conducted over the Internet.

It is a simple question of fairness. There is no reason why a product that is purchased over the Internet or through a catalog should not be subject to the same tax treatment that is applied to the purchase of that identical product from a store on any Main Street in America. To enact a tax haven for Internet sales would create so uneven a playing field, the bricks-and-mortar retailers would be at a dangerous disadvantage. Congress should not forget that the stores we are trying to keep open and prosperous in our towns and cities are already subject to sales tax collection responsibilities, and property taxes as well, and it is upon those revenues that state and local governments rely.

And where the tax is imposed inequitably among the retailers, the tax burden can fall inequitably among the consumers. During the Advisory Committee's December, 1999 meeting, the chief executive officers of both MCI and Gateway rightly expressed their concerns with the "digital divide" that is separating the families in America that own computers and regularly use the related technology from those families that do not. It will be the have-nots that would suffer from an Internet tax exemption, as the burden of contributing to the public charge would shift to the technologically disenfranchised.

The municipalities in Maine have no authority to impose any sales taxes whatsoever, but local government is highly dependent on the fiscal capacity of the state to pay its fair share of the costs of K-12 education. In order to meet its obligations, the state needs a stable tax base. Many experts warn that it is not a far reach from an Internet sales tax exemption to the demise of the sales tax altogether.

There is a viable solution in the offing. The National Governors' Association and various state and local public interest groups have come up with a plan that would phase in a comprehensive, voluntary and uniform system of sales tax administration. It is the state government's challenge, after all, to address the weak mechanics inherent to the "use" tax, and the states have met that challenge with the Governors' initiative.

As one of the 14 proposals presented to the Advisory Commission at its December, 1999 meeting, the Streamlined Sales Tax System for the 21<sup>st</sup> Century would eliminate for all retailers the burden of collecting taxes.

"Trusted Third Party" administrators would be hired by the states to perform all collection administrative tasks. These third party administrators would be technologically-skilled entrepreneurs that are able to develop the software programs to accommodate the information exchange that must occur at the moment of credit card transaction with respect to the buyer's exposure to sales and use tax obligations.

The states would make concessions, as well, if they want to participate in this incentive-based system. Uniform laws governing the administration of the sales tax would be developed that would have the effect of homogenizing exemptions, auditing procedures, and other administrative functions. States that would like to participate in the streamlined tax system would have to adopt the uniform collection laws.

The incentives for the sellers abound, including the elimination of costs associated with collecting sales taxes, the elimination of record-keeping requirements, and the elimination of risks of liability for any seller exercising reasonable care. On top of all that, the streamlined system would be offered to the sellers on a voluntary basis, in the same voluntary way it would be available to the states.

Maine's Congressional delegation can best help with the development of the streamlined sales tax system for the 21<sup>st</sup> Century by rejecting any attempt to bequeath tax exempt status on Internet transactions, and lending its endorsement and support to the efforts of the states to modernize sales taxation into the information age.

• **Recommended Action: Support the Streamlined Sales Tax System for the 21<sup>st</sup> Century.**

# Transportation

Our Route One through Lincolnville is a disaster waiting to happen, as heavily loaded trucks zoom down through here at exorbitant rates of speed, simply because they are allowed to, and aren't permitted on the big roads. Imagine the ecological impact of dumping a fuel truck into the Ducktrap River, or at the Beach, where it might actually be more likely that a truck hits a pedestrian.

**Virginia Thorndike**  
Selectman  
Lincolnville

*by Kate Dufour*

Maine's highway system is the most important component of its transportation network. The system consists of 22,612 miles of highway including 336 federal, 8,303 state and 13,862 local miles. Maine's transportation infrastructure continues to carry an increasing volume of vehicles. Highway usage has increased from about 7.5 billion vehicle miles of travel in 1980 to over 13 billion miles in 1998. Unfortunately, 4,200 of the state's road miles are in dire need of repair.

Congress can assist the state of Maine to maintain and make improvements to the road infrastructure in three ways: through the federal highway-funding program (TEA-21), by providing on-going support for alternative methods of transportation and by increasing weight limits on federal highways.

## Federal Highway Funding Program

Over the next five years Maine will receive an average federal Highway Fund allocation of \$124 million/year. Nearly two-thirds (65.5%) of Maine's 1999 federal allocation was spent on surface transportation, the National Highway system and for on-going interstate maintenance.

The level of federal highway funding for Maine does not compare favorably to the levels of funding in other states. The provision of the federal highway funding program guaranteeing states 90.5% of that state's fuel tax receipts has benefited other states, but not Maine. The best avenue of securing additional transportation revenue for Maine is through dedicated special project funds. The FY 2001 budget should be carefully monitored to maximize every opportunity for earmarking revenues to the state, particularly in the areas of Border/Corridor programs (East-West Highway), historic covered bridges and transit programs for busses.

## Amtrak Funding

Maine's political leaders have done well to secure funding for Amtrak services, particularly with regard to the funds received for the Portland/Boston train service. Construction of the rail lines is currently underway and on schedule. The Maine delegation will have an opportunity to support Amtrak's FY 2001 budget, the full funding of which is essential in order to guar-

The cost of repairing US highways through town that the 100,000 lb. trucks pound on is just money; the bigger problem is safety. Try making sure you don't get hit by one in the winter in Aroostook County that's coming right through downtown and you will know why they should be allowed on I-95 from Houlton to Kittyay.

**Allan Bean**  
Town Manager  
Houlton

antee the success of Amtrak nationally and in Maine. We could use some help in finding any available federal revenue to match state funds. The Maine Department of Transportation is hoping to obtain an \$11 million appropriation in General Fund revenues to maintain the state-owned Calais Branch rail line and for the Lewiston/Auburn to Portland rail initiative. Funding for the Lewiston to Portland initiative would allow for passenger service to Lewiston- Auburn along the St. Lawrence and Atlantic rail line. This investment would create opportunities for a new passenger alternatives for travel from Montreal to Maine, Boston and other points south.

### Interstate Weight Limits

Federal law attempts to provide a uniform weight limit on the Interstate System. With all of its exemptions and grandfathering provisions, however, it is complicated and anything but uniform. While 100,000-pound trucks can not travel on I-95 north of Augusta, they are allowed on the Maine Turnpike, all of I-95 in New Hampshire, the entire interstate network of Massachusetts, including the Massachusetts Turnpike, and many interstate highways of New York.

Maine needs federal action to relieve local streets of these heavier trucks. The 80,000-pound weight limit protects federal highways at the expense of local streets and the citizens who must share roadways and rotaries with these heavy trucks. The Maine Turnpike exemption granted by Congress was apparently controversial and its success was due to the diligent efforts of Maine's delegation. Maine's municipalities ask you to continue that diligence in developing rational interstate truck weight laws that work for Maine.

- **Recommended Action:** Support funding for TEA-21, provide on-going support for alternative methods of transportation, and expand the 100,000-pound weight limit on I-95 from Augusta to Houlton.

# EPA Regulations for Landfill Siting

*by Linda Lockhart*

Federal EPA regulations are costing a fortune and I don't think that we're getting much bang for our buck.

**Dana Lee**  
Town Manager  
Mechanic Falls

Maine does not have a surplus of environmentally acceptable municipal solid waste landfill sites. Maine's Department of Environmental Protection has said that some of Maine's wetlands with clay base may be the best sites, but their use is prohibited by federal EPA regulations. This article will explore that problem and suggest ways that our delegation may help. Maine needs the assistance of its federal delegation to require EPA to modify its regulations to allow siting municipal solid waste landfills in the most environmentally prudent locations.

Maine's citizens and businesses generate 1.635 million tons of municipal solid waste (MSW) per year. Forty-two percent is recycled, 40% incinerated, and 18% is disposed of directly to landfills. Each year, Maine imports 138,000 tons of MSW and exports 138,000 tons of MSW.

MSW landfills are locally important solid waste management tools principally in Aroostook County, the Capital Area, the Norridgewock area, the South/Central Mid Coast, and certain towns bordering New Hampshire. Currently, and for the next 20 years, it appears that Maine's MSW landfills will continue to meet the demand to dispose of municipal solid waste assuming no increase in the rate of waste generation.

The future of Special Waste disposal in Maine is not as secure. Four landfills, two public and two commercial, currently meet the demand to dispose of approximately 163,000 tons of Ash and 95,000 tons of Front End Process Residue (FEPR) produced by Maine's four incinerators yearly. Those 260,000 tons of special waste require approximately 210,000-220,000 cubic yards of landfill space each year. A proposed expansion at one commercial facility is the subject of current litigation. Consequently, remaining capacity at that facility cannot be accurately predicted. A state-owned facility, Carpenter Ridge, located in the unorganized township of T2 R8 and permitted in the mid-1990s, has yet to be developed. Capacity at Carpenter Ridge is 1.8 million cubic yards. It is likely that Maine will be forced to deal with selection of a new landfill site within the next decade.

As Maine considers approaches to the special waste landfill capacity problem, the state is likely to revisit a longstanding conflict between the environmental goals of groundwater and wetland protection, in terms of the State's landfill siting criteria and the federal regulatory program for wetlands.

A strong state regulatory program amply demonstrates Maine's commitment to the protection of valuable wetlands from damaging development. Both the state program and the federal wetlands program administered by the EPA and the Army Corp of Engineers protect Maine's wetlands.

Additionally, Maine has enacted strict solid waste regulations to ensure that the development of landfills is accomplished in a manner protective of the public health, safety, and environment. Still, there are competing environmental concerns relating to groundwater protection and wetland impacts. The siting, performance, and design requirements in Maine's solid waste rules will frequently result in landfills that affect some small areas of wetlands.

EPA has taken the position that solid waste facilities may not infringe on wetland areas unless it is demonstrated that certain extremely restrictive conditions can be met. *Maine should not be required to meet EPA restrictions that were developed for entirely different soil and topographic conditions.* Instead, federal regulations should acknowledge that:

- Maine's solid waste rules protect valuable wetland areas located in major discharge zones;
- Low permeability soils beneath landfills are needed to protect groundwater resources;
- Of the limited soils in Maine, only two soils, the glacio-marine clay and some types of glacial till, are suitable for meeting these permeability requirements and these soils are inherently poorly drained;
- Because of these soil conditions and Maine's moist climate, suitable soil areas are also wetland areas, even in parts of the state that are upland;
- The development of landfills will encounter wetlands; and

- Maine's own environmental regulations, the social and economic constraints associated with landfill permitting and construction, and a statutory moratorium on development of new commercial landfills assure that the future development of landfill capacity will be limited to the demonstrated needs of the state.

Given these facts, EPA should not foreclose Maine's most environmentally sound approach to landfill siting by adhering to a regulatory scheme that fails to recognize Maine's unique physical characteristics.

- **Recommended Action: Require the EPA to recognize and respond to Maine's unique landfill siting concerns with regulatory flexibility that facilitates, rather than prevents, the most environmentally protective solutions.**

# Community Development Block Grant Program (CDBG)

*by Aaron Shapiro, Director, Community Development Block Grant Program*

For over 25 years, Maine communities have looked to the Community Development Block Grant (CDBG) program to help revitalize low and moderate income neighborhoods, improve downtown business districts, promote economic development, rehabilitate homes and finance critical public facilities and infrastructure. The CDBG program is the largest and most flexible of the federal programs providing grants to cities and towns. Municipal officials rely on the program to provide a much-needed financial boost to their community and economic development initiatives.

Funding for the state CDBG program has remained relatively stable for the past five years. After reaching a high water mark of \$17.181 million in 1995 the state's allocation has settled at or near the current level of \$16.356 million. While the overall inflation rate has been low through the period, construction costs have escalated dramatically in the past two years. Thus, despite ever-increasing needs, particularly in the extremely expensive and critical realm of water system improvements, we are accomplishing significantly less than we could five or six years ago. The state has been creative, using the precious CDBG grant funds as gap financing for other federal programs that provide only loans. Nonetheless, an increased allocation to the state would be wisely and judiciously used to meet critical housing, public facility and economic development needs in Maine's communities.

In October 1999 Maine received a special HUD Disaster Recovery Initiative award of \$21 million in response to the ice storm disaster of January 1998. These funds were funneled to Central Maine Power Co. and Bangor Hydro Electric Co. to offset the extraordinary costs associated with the disaster and provide ratepayer relief. The Congressional delegation was instrumental in Maine receiving these funds.

The four largest municipalities, Auburn, Bangor, Lewiston and Portland receive their CDBG allocation directly from HUD.

These communities have also come to rely on this stable stream of funds to fund their community and economic development efforts.

### **Public Facilities**

In 1999, ten communities received Public Facilities grants totalling \$1.7 million. The communities receiving the grants, Addison, Belfast, Bowdoinham, Cornish, Eagle Lake, Harrington, Liberty, Limerick, Machiasport, and Waterville, used the funds to build piers, boat landings, access for the disabled in municipal buildings, a park, a therapeutic swimming pool, a fire station, and a dental clinic.

A total of \$1.4 million in Public Facilities Grants was awarded to 11 municipalities in 2000. Andover, Frankfort, Houlton, Lakeville, Litchfield, Machias, Medway, Monmouth, New Portland, Pleasant Point, and Waldo won grants for fire fighting equipment, playground equipment, day care facilities, public works garages, fire stations, historic preservation, and community centers.

### **Public Infrastructure**

Thirteen communities received public infrastructure grants in 1999: Andover, Bath, Bingham, Brownville, Calais, Clinton, Cutler, Eastport, Houlton, Mars Hill, Monhegan Island, Monson, and Van Buren. The award of \$4.345 million will help finance water line replacements, extensions of sewer lines, reservoirs, water/sewer/storm drainage, electrical system infrastructure, and a water filtration system.

In 2000, 15 communities were awarded \$4.1 million for public infrastructure. Belfast, Farmington, Fort Fairfield, Fort Kent, Lubec, Mechanic Falls, Moscow, Orrington, Parsonfield, Phillips, Richmond, Saco, Stonington, Winter Harbor and West Paris will use the funds for sewer line extensions, water line replacements, dam reconstruction, water and sewer improvements, road construction, downtown parking, storm drainage improvements, and a water filtration system.

• **Recommended Action:** Continue to assist municipalities through the Community Development Block Grant Program and increase funding to at least keep pace with inflation.

# Combined Sewer Overflows

*by Linda Lockhart*

Combined sewer systems collect sanitary sewage during periods of dry weather for conveyance to wastewater treatment plants for treatment. However, during wet weather events, combined sewers also receive storm water, which typically causes a hydraulic overload of the system triggering the discharge to receiving waters of untreated or partially treated wastewater through combined sewer overflow (CSO) outfalls. Controlling or eliminating CSO discharges is an enormously expensive proposition that often requires communities to rebuild some or all of their sewer systems. CSO control programs generally pose the single largest public works projects in the history of almost every CSO community. In Maine, at least 53 CSO communities face this requirement.

Combined sewer overflows are discharges into lakes, streams or bays of a combination of untreated sanitary water and stormwater runoff from areas such as streets and rooftops that wash into sewers. Prior to EPA's directive to separate storm water systems from sanitary systems, CSOs existed in sixty Maine communities. They were principally located in the central areas of older downtowns, the areas among the first to provide secondary wastewater treatment. Today, more than forty municipalities continue to seek solutions for CSO problems.

Since 1990, virtually every edition of Maine Municipal Association's Federal Issues Paper has asked for our federal delegation's assistance with the CSO problem. In 1990, we quoted testimony to the Senate Environment and Public Works Committee to the effect that, "you can't build a sewage treatment plant or eliminate combined sewer overflows with a 'thousand points of light.'" In 1992 and 1993, we urged support for HR 3477, the Combined Sewer Overflow Control Act, which Senator Olympia Snowe cosponsored. In 1994, MMA supported adoption by the Office of Management and Budget of the EPA's National Combined Sewer Overflow Control Strategy. The inclusion of this policy into the reauthorization of the Clean Water Act increased federal funding for stormwater and sewerage overflow facilities; and implementation of long term control plans that take into

consideration the community's ability to fund mandated projects. In 1995, we described the participation of 60 Maine cities and towns as members of the CSO Partnership and requested a "realistic regulatory framework that considers the availability of financial resources and the unique nature of site specific combined sewer overflows." In 1996, MMA asked for support for H.R. 961 to allow local governments greater flexibility and innovation towards managing storm water. In 1999, and again in 2000, we urge you to support S. 914, the Combined Sewer Overflow Control Act.

MMA urges Congress to enact legislation to allow the CSO problem to be addressed in the most cost-effective and expedient manner possible. Legislation proposed for the 106<sup>th</sup> Congress' consideration, the Combined Sewer Overflow Control and Partnership Act of 1999, would provide CSO communities with the flexibility and financial resources required to deal most effectively with this issue. This legislation proposes to make grants to municipalities for planning, design, and construction of facilities to intercept, transport, control, or treat combined storm and sanitary sewer flows. The federal share grants of 55%, detailed in the bill, should not prohibit use of the State Revolving Loan fund money. The most effective means of achieving the important water quality goals of this bill is to allow the combined use of grant funds and loan funds for individual projects.

- **Recommended Action: Support S. 914, the Combined Sewer Overflow Control Act.**

# Conservation and Reinvestment Act (CARA)

*by Linda Lockhart*

When nonrenewable resources belonging to all Americans are used for private profit, a portion of the proceeds should be reinvested in assets of lasting value to the nation. That is the principle behind the collection of Outer Continental Shelf (OCS) mineral revenues that Congress traditionally shares with states and territories through appropriations. The OCS mineral revenues provided to the states should allow flexibility for targeted investments in state natural resource priorities, including coastal protection, restoration, and impact assistance; park, recreation, and cultural resources; and wildlife conservation and education.

This year, Congress will consider legislation that would provide Maine with \$35 million annually until the year 2015 to protect coastal habitat, promote coastal and ocean conservation, provide communities with parks and recreation, and increase funding for wildlife. The legislation, the revised Conservation and Reinvestment Act (CARA '99), would automatically set aside revenues from oil and gas leases on the Outer Continental Shelf for intended conservation purposes, instead of leaving it to Congress to appropriate annually. The set aside revenues would provide funding for the Land and Water Conservation Fund to provide matching funds to encourage and assist local and state governments in urban and rural areas to develop parks and ensure accessibility to local outdoor recreation resources.

The Land and Water Conservation fund, established in 1965, has funded \$32 million in projects, including Popham Beach State Park, the Randall Road softball fields in Lewiston, the Presque Isle swimming pool, the Greenville Junction boat facility, Lake St. George boat access, and nearly 700 other projects around Maine. The fund has also helped protect land around Acadia National Park and Lake Umbagog National Wildlife Refuge. Maine recently passed a \$50 million land bond to support the Land for Maine's Future Program, demonstrating a sincere local commitment to preservation of land, water, recreation, coastal and wildlife conservation. CARA '99 could provide an additional \$3.9 million for state-side matching funds to stretch our own state dollars and \$10.8 million for federal-side annually.

Under provisions for urban park and recreation recovery, the Conservation and Reinvestment Act could make matching grants, averaging almost \$300,000 annually for Maine, available to local governments to rehabilitate recreation areas and facilities and provide for the development of improved recreation programs, sites and facilities. An additional \$1.5 million annually could support the restoration and protection of historic properties, maintain the National Register of Historic Places, and administer numerous historic preservation programs.

- **Recommended Action:** Support passage of CARA'99.

# Takings

The practice of most communities is to exhaust opportunities to avoid a taking. The desire [of developers] to avoid local appeals is understandable but not wise. [Property rights are] what the local appeals process protects.

**Nat Tupper**  
Town Manager  
Yarmouth

*by Linda Lockhart*

The Private Property Rights Implementation Act of 1999 (Takings Bill), H.R. 2372, would constitute a massive preemption of local home rule authority. H.R. 2372's Senate counterpart, S. 1028, the Citizens' Access to Justice Act of 1999, has the same goals and potential effect. These bills would permit landowners and developers to bypass local planning and appeals boards and state courts and take their land use grievances directly to federal court.

Existing law requires that state courts review local land use decisions before a case is ripe for federal court. According to the Supreme Court's holding in *Williamson County Planning Commission v. Hamilton Bank of Johnson City* in 1985, in order to present a ripe taking claim in federal court, a taking claimant must: (1) present a "final decision regarding the application of the regulations to the property at issue" from "the governmental entity charged with implementing the regulations"; and (2) demonstrate that the claimant requested "compensation through the procedures the State has provided for doing so."

Local citizens or their elected and appointed officials adopt ordinances, approve building permits and grant zoning variances in order to protect the property rights of all members of the community, not for the purpose of infringing on the property rights of a few. Maine has implemented a very effective mediation process to address takings claims, and it would be an act of arrogance for the federal government to preempt the effective review and appellate procedures that already exist at the local and state level.

Additionally, passage of the bill would seriously undermine the ability of local elected officials to protect public health and safety, safeguard the environment, and support the property values of all residents of a community. Further, bypassing the local hearing and appeals process would foreclose on the ability of interested citizens to comment upon and influence land use decisions, which are important to the future of their communities.

• **Recommended Action: Oppose H.R 2372, the Private Property Rights Implementation Act and S. 1028, the Citizens' Access to Justice Act.**