

2006

FEDERAL ISSUES PAPER

**Maine Congressional Delegation
Meetings
Tuesday, March 14, 2006**

**MAINE MUNICIPAL ASSOCIATION
60 Community Drive
Augusta, Maine 04330-9486
(207) 623-8428
Website: www.memun.org**

Maine Municipal Association Executive Committee

- President:** Ryan Pelletier, Town Manager, St. Agatha
- Vice President:** Nicholas Mavodones, Councilor, Portland
- Past President:** Dana Lee, Town Manager, Mechanic Falls
- Directors:** Clinton Deschene, Town Manager, Hermon
Andrew Hart, Town Manager, Union
Ruth Marden, Town Manager, Jay
John Sylvester, Chair of Selectmen, Alfred
Janet White, Chair of Selectmen, New Portland
Jeffrey Robinson, Sr., Mayor, Bucksport
Genie Beaulieu, Councilor, Freeport
Steven Eldridge, Town Manager, Rumford
Galen Larrabee, Chair of Selectmen, Knox

MMA Staff Contributing to the MMA Federal Issues Paper:

Geoff Herman, Director, State & Federal Relations
Kate Dufour, Legislative Advocate, State & Federal Relations
Jeffrey Austin, Legislative Advocate, State & Federal Relations
Laura Veilleux, Advocacy Associate, State & Federal Relations

* * * *

The 2006 Federal Issues Paper is a publication of the Maine Municipal Association. Publishing of this paper coincides with the National League of Cities Congressional City Conference held each March in Washington, D.C. The purpose of the paper is to highlight federal issues that are of most concern to Maine municipal officials, and to reflect the policy positions adopted by the MMA Executive Committee.

MMA 2006 FEDERAL ISSUES PAPER

TABLE OF CONTENTS

MUNICIPALITIES WEIGH-IN ON FEDERAL ISSUES.....	3
Figure 1 – Survey Response Rate	3
Service Impact	3
Figure 2 – Federal Government Impact	4
Current Issues.....	4
Figure 3 – Most Important Federal Issues Facing Municipalities Today	4
Figure 4 – Most Important Federal Issues Facing Largest Municipalities	5
Emerging Issues	5
Figure 5 – Most Important Emerging Federal Issues Facing Municipalities.....	5
Figure 6 – Other Future Issues.....	6
Contact with Congressional Delegations	6
Working Relationship with Federal Agencies	6
Figure 7 – Quality of Interaction	7
Conclusion	7
EDUCATION	8
Special Education.....	8
New “Child Find” Obligations.....	9
No Child Left Behind.....	9
TRANSPORTATION INFRASTRUCTURE FUNDING	10
COMMUNITY DEVELOPMENT BLOCK GRANTS	12
TELECOMMUNICATIONS.....	13
LOW INCOME HEATING ASSISTANCE PROGRAM.....	16
EMINENT DOMAIN	17
COMBINED SEWER OVERFLOW	19
FEDERAL TAX REFORM.....	20

MAINE MUNICIPAL ASSOCIATION

2006 FEDERAL ISSUES PAPER

MUNICIPALITIES WEIGH-IN ON FEDERAL ISSUES

In preparation for drafting the annual *Federal Issues Paper*, municipal officials from Maine’s 491 communities were polled in November 2005 on several topics regarding Maine’s federal issues from a municipal perspective and the municipality’s relationship with Congress. In a survey completed by 149 communities ranging in population from 8 to 35,962, municipal officials were asked to share their opinions on how the decisions made at the federal level impacted the ability of municipalities to deliver local services (see Fig. 1). Municipal officials were also asked to provide information about the relationships they have with the members of Maine’s congressional delegation and federal agencies. Finally, respondents were asked to rate the relative importance of both the current (and in some cases chronic) federal issues facing municipalities today and the emergent federal issues that appear on the horizon.

Figure 1 – Survey Response Rate

Population Group	# of Municipalities in Group	# of Municipalities Participating in Survey	Response Rate
Over 10,000	18	6	33
5,000 - 9,999	39	13	33
3,500 - 4,999	41	11	27
2,000 - 3,499	66	28	42
1,000 - 1,999	113	39	35
Under 1,000	214	52	24
Total	491	149	30

Service Impact

“More thought of the consequences to state and municipal government should be given before acquiescing to actions that cause state and municipal funding hardships to make the federal programs work.” – Vera Parent, Peru Town Clerk

Forty-seven percent of the participants stated that the actions of the federal government have a significant impact on the ability of municipalities to deliver services (see Fig. 2). Over two-thirds of the participating municipalities with populations greater than 5,000 stated that the federal government had an impact on local government services, indicating that the actions of the federal government are perceived to have a more significant impact on Maine’s largest communities.

Unfunded federal mandates were identified as having the most significant impact on municipalities, particularly education mandates. As the federal government demands that more services be provided and funded with state and municipal revenues, less funds are available for the state and local programs that are needed and supported by the residents of Maine. Some of the respondents questioned whether the federal officials really know that municipal governments exist.

Figure 2 – Federal Government Impact

Population Group	Federal Government Impact		
	Significant	Somewhat	Little
Over 10,000	67	33	0
5,000 - 9,999	64	27	9
3,500 - 4,999	40	40	20
2,000 - 3,499	26	47	26
1,000 - 1,999	58	26	16
Under 1,000	44	28	28
Statewide	47	32	21

Current Issues

“Federal regulations impose enormous costs in staff time and money, which in turn is not available to provide other services. This will become even more important if our property taxes are subject to a cap.” - David Cole, Gorham Town Manager

Municipalities were asked to rank on a scale of 1 (least important) to 5 (most important) a dozen federal issues currently facing municipalities. The list of issues ranked included affordable housing, education mandates, environmental regulations, taxation and transportation funding. When reviewing the statewide results, we found that the most important federal issues facing municipalities today were education mandates, including special education and the No Child Left Behind program, and federal transportation funding (see figure 3).

Figure 3 – Most Important Federal Issues Facing Municipalities Today

Population Group	Special Education Funding			Transportation Funding			No Child Left Behind		
	High	Neutral	Low	High	Neutral	Low	High	Neutral	Low
Over 10,000	100	0	0	100	0	0	60	40	0
5,000 - 9,999	92	8	0	92	8	0	92	0	8
3,500 - 4,999	100	0	0	91	9	0	90	10	0
2,000 - 3,499	93	4	4	89	4	7	79	14	7
1,000 - 1,999	90	8	3	92	5	3	77	13	10
Under 1,000	82	12	6	75	18	8	72	14	14
Statewide	89	8	3	86	10	5	77	13	10

In general, the polling responses were relatively uniform statewide regardless of the size of the municipality by population. The one exception was the responses from the municipalities with population over 10,000. While education mandates and federal highway funding received high ranking in Maine’s largest communities, other issues also rated as important, including Community Development Block Grant funding, clean air and safe water requirements, combined sewer overflow, regulatory takings and the streamlined sales tax system (see Fig. 4). These differences in emphasis are to be expected considering that Maine’s largest communities have a different relationship with the federal government. There are more federal demands placed directly on the state’s urban areas, and the state’s larger municipalities tend to have greater access to some federal programs.

Figure 4 – Most Important Federal Issues Facing Largest Municipalities

	Population Over 10,000		
	%	%	%
	High	Neutral	Low
Special Education Funding	100	0	0
Transportation Funding	100	0	0
Taxation (streamlined sales)	100	0	0
CBDG Funding	83	17	0
Stormwater	83	0	17
Combined Sewer Overflow	80	20	0
Takings	80	20	0

Emerging Issues

Municipalities were also asked to rank on a scale of 1 (least important) to 5 (most important) a list of federal issues that will be facing municipalities in the immediate future, including base closures, eminent domain, LI-HEAP funding and telecommunications. When reviewing the statewide results, we found that the most important emerging federal issues facing municipalities include LI-HEAP funding, federal tax reform and the need to add flexibility to the assessment and training elements of the No Child Left Behind Act (see Fig. 5).

Figure 5 – Most Important Emerging Federal Issues Facing Municipalities

Population Group	LI-HEAP Funding			Federal Tax Reform			Education		
	%	%	%	%	%	%	%	%	%
	High	Neutral	Low	High	Neutral	Low	High	Neutral	Low
Over 10,000	67	33	0	80	20	0	40	60	0
5,000 - 9,999	92	8	0	85	15	0	77	23	0
3,500 - 4,999	100	0	0	73	18	9	60	40	0
2,000 - 3,499	82	11	7	75	14	11	79	11	11
1,000 - 1,999	97	0	3	76	21	3	76	14	11
Under 1,000	80	12	8	56	32	12	61	18	20
Statewide	87	8	5	70	23	8	69	19	12

When reviewing the rankings on the basis of population, we found that the statewide results paralleled the results in communities with populations under 3,500. In communities with populations greater than 3,500, eminent domain and telecommunications also emerged as important federal issues (Fig. 6). Loss of local control over cable television franchise agreements (telecommunications) seemed to be prominent on the minds of municipal officials in communities with populations greater than 5,000. The authority of state and local governments (rather than the federal government) to determine the statutory limits of state and local eminent domain authority was of interest to municipal officials in towns and cities with populations over 10,000 and in communities with populations between 3,500 and 4,999.

Figure 6 – Other Emerging Issues

Population Group	Eminent Domain			Telecommunications		
	High	Neutral	Low	High	Neutral	Low
Over 10,000	67	33	0	80	20	0
5,000 - 9,999	31	38	31	77	15	8
3,500 - 4,999	64	27	9	64	18	18
Statewide	58	27	15	56	21	23

Contact with Congressional Delegations

“We are seen by Washington staffers as an “interest group” rather than a governmental colleague.” Jeff Jordan, South Portland City Manager

A remarkably high 61% of the respondents stated that they had never contacted any member of Maine’s congressional delegation, while 14% regularly contact and 25% infrequently contact the delegation. Of those municipal officials that have frequent contact with the delegation, 85% indicated that their relationship with the delegation was excellent or good. Fifteen percent of the respondents classified the relationship as fair or poor. Of those municipal officials that have infrequent contact with the delegation, 81% indicated that their relationship with the delegation was excellent or good. Nineteen percent of those respondents characterized the interaction as fair or poor.

Working Relationship with Federal Agencies

“Does the federal government know we are out here?” – Jimmie Upham, Grand Lake Stream Selectman

Municipal officials responded that they have interacted with over 25 federal agencies. The most frequently mentioned is the Federal Emergency Management Agency (FEMA), and the agency that was identified by the least number of respondents was the Bureau of Alcohol, Tobacco and Firearms (ATF). Municipal officials have contacted federal agencies to get assistance on a variety of different issues including community development programs, homeland security, weather related emergency assistance and to apply for various federal funds and grants.

As would be expected, FEMA, the Environmental Protection Agency (EPA) and Army Corps of Engineers were the federal agencies with which municipal officials have had most interaction (Fig. 7). When asked to rank the quality of assistance provide, FEMA received the highest quality ranking. The only federal agency to get a poor quality ranking was the Federal Energy Regulatory Commission (FERC).

**Figure 7 – Quality of Interaction
(most frequently mentioned agencies)**

Federal Agency	Quality of Interaction		
	High	Neutral	Low
FEMA (48 responses)	83	6	10
Environmental Protection Agency (12 responses)	58	25	17
Army Corps of Engineers (10 responses)	60	20	20
Department of Agriculture (6 responses)	83	0	17
Department of Homeland Security (5 responses)	60	40	0

Conclusion

The articles that follow provide more information on the issues identified as the most significant. It should be noted that the issues covered in this edition of the *Federal Issues Paper* are nearly identical to the issues presented in past editions. This is a matter of some frustration for municipal officials. There is a sense that the problems of unfunded federal mandates, preemption of local government authority, and slipping levels of federal support for extremely important development programs (such as CDBG) and public welfare programs (such as LI-HEAP) are chronic and perhaps intractable. We hope that Maine’s congressional delegation will read this report and keep both the perennial and the emerging municipal concerns in mind when the votes are taken on federal initiatives that directly or indirectly limit the ability of state and local governments to provide services to Maine residents.

EDUCATION

Maine’s municipal leaders urge Congress to honor its long-neglected financial commitment to special education, repeal recent changes to the special education laws that further concentrate administrative responsibilities on Maine’s service center communities, and create a functional “interoperability” between the disruptive and invasive No Child Left Behind Act and Maine’s Learning Results system.

There is some irony associated with the fact that of all the federal issues that concern municipal leaders, the issue of greatest concern by far is the role the federal government has assumed in the field of public education. The irony is that public education at the elementary and secondary school levels is a service that is provided at the local level, overseen at the state level, and paid for almost entirely with state and local tax dollars. According to information provided by Maine’s Department of Education, the total cost of providing K-12 public education in Maine in FY 05 was over \$1.9 billion. Fifty-seven percent (57%) of that total was covered by local taxpayers and 38% was covered by state taxpayers. Although there is a long list of federal education programs that receive some funding from Washington, when you add them all up, no more than 5% of the total cost of K-12 education in Maine was provided by the federal government.

It took the municipalities two decades’ worth of concentrated effort to finally establish in an enforceable way the state’s level of financial obligation to support Kindergarten through Grade 12 education. That effort culminated in a citizen initiative that was adopted by the voters of Maine on June 8, 2004 (*The School Finance and Tax Reform Act of 2003*). The twenty-year effort was characterized by a growing sense of frustration as the Maine Legislature annually enacted new school mandates, both large and small, but did not respond to the financial consequences that were being annually picked up by the local property taxpayers.

The same phenomenon is now occurring on the federal level. A long-standing dispute the municipalities have with the federal government centers around the level of financial support Congress provides to help fund the costs of the special education requirements. A more recent complaint is the federal imposition of the No Child Left Behind Act.

Special Education

Special education programs in Maine cost the taxpayers of our towns and cities, state and nation over \$300 million a year. The federal government contributes \$43 million, which represents 14% of the total special education program and approximately just one-third of the financial support for the mandated special education programs as originally promised (see 20 USA §1411). The

good news is that the federal percentage rate of financial participation has nearly doubled over the last decade, from under 7% in the mid 1990s to just over 14% today. The bad news is that the so-called “40%” law that requires the federal government to cover a certain percentage of the cost of each state’s special education program is presently being ignored to the tune of \$80 million a year.

Each year, the shortfall in special education funding is a major topic of discussion in the *Federal Issues Paper*. Municipal officials are fully aware of the need to provide special education services, but there continue to be two primary municipal complaints with the program. The rules of eligibility are powerfully controlled by the federal entitlement law in a way that often gives school administrators limited choices between providing very expensive services or facing litigation. In short supply are the regulations that could provide clear guidance and balance all the divergent interests of parents, teachers, administrators, taxpayers and the emerging special education industry. In light of the structure of this particular federal mandate, the municipalities believe a 33-year-old federal promise of financial support should finally be honored.

New “Child Find” Obligations

Maine’s service center communities and other towns that host certain private schools were surprised to learn at the start of the FY 05-06 school year that they had been handed new assessment responsibilities for students in private schools who need certain special education services. Apparently, in amendments to the Individuals with Disabilities Education Act (IDEA), Congress shifted some administrative obligations to help out the private schools at the expense of their host municipalities.

The focus in Maine is to relieve the service center municipalities of their disproportionately high property tax rates. It is unfortunate that Congress so quietly and easily shifted certain administrative responsibilities off the tax-exempt private schools onto the communities that host them. That type of federal change is counterproductive to our efforts on the local level, and when Congress is contemplating making such a change it would be helpful if our delegation could contact us on the local level so that we might have an opportunity to provide some information about the administrative and financial impacts.

No Child Left Behind

The No Child Left Behind Act (NCLB) creates an unnecessary top-layer of educational bureaucracy that interfaces poorly with Maine’s superior, previously enacted Learning Results system. The state and federal performance measurement systems, in combination, have created a nearly obsessive testing environment in Maine’s schools where education now takes a back seat to the competing attempts to measure education. According to the state’s schoolteachers, NCLB is actually damaging the learning environment of Maine’s public schools. Unlike the special education mandate under IDEA, NCLB has no discernable redeeming features.

The real costs of NCLB are not financial and so cannot be covered by increased federal subsidies. Generally, NCLB simply repackaged a long menu of previously existing educational

subsidies, and as a bulk appropriation it would appear now to be locked into the same flat funding dynamic that applies to other local government programs. Short of repealing it, the best approach to NCLB is to infuse it with flexibility and create “interoperability” between NCLB and the state-level performance programs that it otherwise tends to steamroll over.

To that end, Maine’s municipalities are supportive of S. 1690, sponsored by Senator Collins and co-sponsored by Senator Snowe. The primary benefits of S. 1690 are that it would allow for modifications in the “annual yearly progress” timelines and permit use of local assessments in those measurements in order to better integrate the federal and state-level school performance standards.

TRANSPORTATION INFRASTRUCTURE FUNDING

Maine’s municipal leaders urge Congress to reconsider “back-loading” the five-year federal transportation funding schedule and refrain from “earmarking” federal highway subsidies so that Maine’s already conservative highway program does not have to be sharply curtailed.

Maine’s highway system is the most important component of its transportation network. The system consists of nearly 22,700 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. As the number of vehicles owned by Maine residents increases, so do the number miles traveled over Maine roads. Over 95% of all passenger movement and 87% of Maine’s freight is shipped over the state’s aging federal, state and local road and bridge infrastructure. According to a report published by Maine Better Transportation Association, there were 14.3 billion vehicle miles of travel in Maine during the 1990 - 2000 decade.

As Maine residents become increasingly dependent on federal, state and local roads for travel and commerce, it is important that Maine’s Department of Transportation (DOT) and municipalities are able to keep the existing infrastructure in good repair. Unfortunately, recent state and federal funding shortfalls have hampered the Department’s ability to maintain its maintenance and repair schedule.

Over the next biennium (FY 06 and FY 07), the Department is facing a \$90 million funding deficit. The funding shortfall is the culmination of decreasing fuel tax revenue, increasing cost of construction materials, and changes in federal highway funding priorities. According to the Maine Department of Transportation, \$40 million of the \$90 million shortfall is a direct result of the changes in the administration of the federal transportation program. Although Maine’s federal fund allocation will increase under the recently adopted federal transportation funding act (SAFETEA-LU), the increases in the funding will be “back-loaded”; that is, disproportionately provided to Maine toward the end of the five year program. Also, an unprecedented portion of the federal revenue has been earmarked for specific congressionally- identified projects.

In response to the shortfall, the Department has immediately deferred over 130 vital construction projects in over 100 municipalities. Since mid-December, interested parties, including state and local government officials, private sector engineers and contractors, and members of the trucking industry have been meeting to discuss ways to resolve the funding problem. Although the working group has identified possible state level solutions to address the shortfall, including exhausting all available cash resources and potentially utilizing general obligation and revenue bonds, Maine's congressional delegation has a role to play as well.

Under SAFETEA-LU, over the next five years (FY 2006 to FY 2009) Maine will apparently receive \$950 million. However, of that total, nearly 20% (\$179 million) has been earmarked for certain projects. The process of earmarking limits the ability of Maine DOT officials to make determinations on how best to spend Maine's appropriation. By dictating how 20% of Maine's allocation is to be spent, Congress has direct influence over what projects are most important for the state. More state control of the revenues allocated to Maine would be appreciated, as the state could use the earmarked funds to address more immediate and equally important needs.

In addition to the earmarking problem, the funding formula used to distribute revenues across the nation does Maine no favors. The disproportionate way in which Maine is treated has been a concern for state and municipal officials for a number of years. Regardless of the numerous letters and reports sent to our congressional delegation regarding the apportionment issue, Maine still seems to get the short end of the funding stick. While municipal officials certainly understand that this nation's largest states rightfully get the lion's share of available resources, what they cannot understand is why Maine is treated differently than the other New England states.

As shown in the chart below, over the next five years, the SAFETEA-LU formula will provide Maine \$41,882 per mile of road -- less than any other New England state. Although there are more miles of road in Maine than any other New England state except for Massachusetts, all the other states receive more federal funds per mile than Maine. The per road mile reimbursement rate in Rhode Island, which has 28% of Maine's road miles, is over three times Maine's per-mile reimbursement rate.

When the SAFETEA-LU funds are analyzed on a per capita basis, Maine fares a little better. However, Maine's \$721 per capita reimbursement rate is one-half of Vermont's \$1,407 per capita rate. Vermont has 47% of this state's population.

	Total SAFETEA-LU	Road Miles	\$/Mile	Population	\$/Pop
Connecticut	2,477,508,032	21,089	117,479	3,503,604	707
Maine	950,383,459	22,692	41,882	1,317,253	721
Massachusetts	3,078,428,083	35,590	86,497	6,416,505	480
New Hampshire	844,279,498	15,627	54,027	1,299,500	650
Rhode Island	1,011,320,099	6,416	157,625	1,080,632	936
Vermont	874,305,703	14,360	60,885	621,394	1,407

For the reasons cited above, municipal officials urge the members of Maine's delegation to continue to fight for additional, un-earmarked transportation appropriations that can be provided in the next two years for much-needed Maine highway projects.

COMMUNITY DEVELOPMENT BLOCK GRANTS

Maine's municipal leaders urge Congress to fight cuts to this vital local development tool.

Maine's Community Development Block Grant (CDBG) program provides funding and technical support for projects that achieve local community and economic development objectives, while principally benefiting Maine's residents with low-to-moderate income. These programs are only available to Maine towns, cities and counties for the benefit of Maine residents.

Maine receives CDBG funds through two avenues. The first is the direct funding for Maine's "entitlement" communities of Portland, Bangor, Lewiston and Auburn, South Portland and Biddeford. The second avenue is through statewide block grants. Maine's statewide CDBG funds are administered through the Maine Office of Community Development ("MOCD"). Its website (www.meocd.org) provides detailed information about the program and the projects assisted.

MOCD recently announced the recipients of both the Public Facility and Public Infrastructure grants for 2006. The average public facility grant is approximately \$110,000 and the average public infrastructure grant is approximately \$410,000. Some infrastructure projects awarded grants include: water system upgrades in Eastport and Madawaska; sewer system upgrades in Bucksport and Norridgewock, and an emergency communications tower in Marshfield. Public facility projects that will be aided by CDBG in 2006 include: Historic Preservation work in Calais, Corinna, Grand Isle, and community centers in Danforth, Dexter, and Orono.

Maine CDBG Cut 9% in 2006; Faces a 25% Cut in 2007.

Last year's *Federal Issues Paper* explained that Maine's CDBG funding had been flat for five years and how that flat funding was undermining community development initiatives. Unfortunately, things have gotten worse. Maine's CDBG allocation was cut from \$31.7 million in 2005 to \$28.9 million in 2006. Funding was cut to Maine's six entitlement communities by 8.6% and the statewide program was cut 9.3%.

As has been widely reported, the President's FY 2007 budget proposes to cut CDBG by 25% (from \$4.2 billion to \$3.0 billion) nationwide. Maine's proportional hit would be a reduction from \$28.9 million this year to \$21.7 million. This would equate to a loss in Maine of \$10 million in funding from 2005 to 2007.

The Maine Municipal Association believes the CDBG program has been successful and should be maintained as a separate and distinct program and that it should receive continued federal support. CDBG is one of the few remaining federal programs available to assist Maine communities in their efforts to create jobs, provide affordable housing, eliminate blight, and generate new economic development. Additional cuts to Maine's programs should be opposed.

TELECOMMUNICATIONS

Maine's municipal leaders urge Congress to preserve local cable television franchising and the expansion of access to broadband Internet services.

Under current Federal and State of Maine law, in order for an entity to provide cable television services by means of the public rights of way, that entity must receive a "franchise" from the municipal government. For decades, Maine's municipalities have negotiated and enforced franchise agreements for the provision of cable television services. Telephone industry lobbyists are aggressively attacking this local franchising process on behalf of national powerhouse corporations so that they can "cherry pick" the wealthiest communities and neighborhoods in which to do business. Maine's politicians need to look past the rhetoric of the industry lobbyists and affirm the benefits of local authority in this area.

At least four different pieces of legislation have been filed at the national level that attack local franchising, in addition to the many identical bills being filed in various states, including Maine. Furthermore, the FCC has begun an investigation into the franchising process. Regardless of which piece of legislation is being discussed, the municipal concerns are the same.

It is believed that the leading piece of legislation is the so-called Communications Act of 2005 which is before the House Committee on Energy and Commerce and its Subcommittee on Telecommunications and the Internet. The proposed Act, known by the acronym BITS (Broadband Internet Transmission Services), is likely the legislation that will be used to change federal telecommunications law.

Municipalities support the use of the first version of BITS (known as BITS I) and oppose the use of the second versions of BITS (known as BITS II) as the vehicle for federal telecommunications reform.

Regardless of the acronym, the following elements are of paramount importance to Maine municipalities.

- Preservation of local governments as the franchising authority.
 - Industry efforts to strip franchising authority from state and local governments and either transfer that authority to the federal government or eliminate the franchising process altogether should be opposed.

- Preservation of local authority to manage public rights of way.
 - Industry efforts to curtail the long-recognized right of municipalities to manage their own public rights of way should be opposed.

- Preservation of franchise fee revenues.
 - Local governments currently receive franchise fees in exchange for the industry's use of public property. Industry efforts to abolish or further limit these fees should be opposed.

- Preservation of so-called "build-out" requirements.
 - Industry efforts to strip local governments of their ability to require cable providers to expand access to underserved markets should be opposed.

- Preservation of Public, Educational and Governmental (PEG) Channels and services.
 - Industry efforts to either eliminate or scale back their obligation to provide and support PEG channels should be opposed.

Industry lobbyists will try to argue that local franchising presents an obstacle to competition in cable television. With 493 potential franchising authorities in Maine, this argument might sound reasonable, but it is seriously flawed.

Local officials welcome cable competition. Ever since cable rates were deregulated, consumers have seen their bills climb higher and higher. Since the only means left for bringing those rates down is competition, local officials would welcome more providers of cable services, including telephone companies.

In addition, there is no evidence that local franchising is an "obstacle" to providing the service. The simple fact is that the number of households receiving cable services has increased over the past decade. If franchising were such a problem, fewer communities and neighborhoods would be served by cable, not more. In fact, it would appear that the local pressure applied through franchising is one reason for this expansion, not an obstacle.

The existing federal telecommunications act prohibits local governments from placing barriers to competition. Most Maine communities already have a cable franchise agreement. If a competitive provider ever approached a municipality to seek a franchise, the municipality would undoubtedly offer the competitive provider the same deal as the incumbent provider. This is essentially mandated by current federal law. Thus, competitive providers can piggyback on the franchising agreements that have already been executed between the municipalities and the incumbent service provider. Executing a parallel franchise agreement to the existing agreement should not be too burdensome.

The truth is that the telephone industry lobbyists attacking local franchising don't want to provide the same level of services that local governments have demanded of cable companies. It's not the franchising *process* that is the problem; it is the franchising *requirements* that the competing video providers would like to avoid.

For example, current law and current franchise agreements require cable providers to expand access (described above as "build-out" requirements). Local governments have been steadfast in their efforts to require cable companies to invest in infrastructure and expand access to neighborhoods that do not receive cable services.

There is evidence that when the franchising process is removed from local authority and given to the state authority, only the wealthiest communities benefit from competition. Everyone else is ignored.

Maintaining the local government as the franchising authority and preserving the local ability to require build-out is the only way to insure that Maine communities that don't meet the industry's profitability definition will receive service. Since many cable companies now offer Internet services, this build out requirement has had the added benefit of expanding access to broadband in Maine. Eliminating either local franchising or the build-out requirement would hurt the underserved portions of Maine, both in terms of cable and Internet services.

On February 2, 2006, Senators Burns and Inouye of the Senate's Commerce, Science and Transportation Committee recently issued a series of "principles" that should guide the federal review of the franchising issue. The Senators recognize the primary role of local governments in the franchising process: *"Because each community may be unique, this framework recognizes that the local franchising authority is uniquely positioned to ensure that video providers meet each community's needs and interests in a fair and equitable manner, and are most effective in seeing that provider obligations are enforced. The Federal government has neither the resources nor the expertise to address such issues."* **MMA urges Maine's Congressional delegation to support the basic framework and principles articulated by Senators Burns and Inouye.**

One of the final issues addressed by the Civil Rights Pioneer, C. Delores Tucker, co-founder of the National Congress of Black Women, was this legislation. As Ms. Tucker noted last October:

"The telephone companies' proposal is made precisely for the purpose of allowing them to invest less, and in fewer communities – rather than more, as the current rules require. And as for their perennial promises of more investment in exchange for legislative favors: Legislators around the country have derided SBC and Verizon for never fulfilling such pledges. Don't get me wrong. I support Verizon and SBC's entrance into the video services market, and I believe that consumers will benefit from it. But, these potential benefits should not transform our elected officials into marionettes for two monopolies that want to trample our civil rights tradition." [[Washington Post](#), October 15, 2005.]

The continued local pressure on "build-out" is but one example of the benefits of local franchising. Others exist with respect to: (1) ensuring ongoing support for and investment in PEG channels; (2) preserving and enforcing service quality standards; and (3) overall responsiveness to community needs and consumer protection.

LOW INCOME HEATING ASSISTANCE PROGRAM

Maine's municipal leaders urge Congress to provide funding for the 2006-2007 LI-HEAP budget in recognition of the sharp reductions in heating fuel buying-power among Maine's low-income households.

A very sharp jump in heating fuel prices in the fall of 2005, caused primarily by production disruptions associated with two major Gulf Coast hurricanes, has put the federal government's annual LI-HEAP appropriation under a special scrutiny with regard to its adequacy.

Congress appropriated \$20 million less for LI-HEAP for the current fiscal year as it appropriated for FY 05, \$2.182 billion. Just in terms of dollars, the LI-HEAP program is barely trading water from year to year.

Twenty-four years ago, when the LI-HEAP program was getting off the ground, Congress appropriated almost the same amount (\$1.978 billion). Over the last quarter of a century, the average annual increase in LI-HEAP appropriations has been just four tenths of 1 percent, the equivalent of flat funding.

As a point of reference, on November 1, 1982 the price of a gallon of heating fuel was \$1.20 per gallon. On November 1, 2006, the price of a gallon of heating fuel was \$2.38. According to a 2005 industry analysis, LI-HEAP's inflation-adjusted buying power has shrunk by nearly 60% since the program's inception.

There is no other way to spin it. With respect to its LI-HEAP appropriations, Congress has paid no intention to simple inflation over the last several decades. Congress has also paid no attention to the aggravated energy cost increases in 2005.

Those decisions leave the state and local governments in Maine with increased financial obligations today just in order to maintain parity with respect to this fuel assistance program.

To translate all of this into this state's reality, the Maine State Housing Authority reports that in FY 05, the \$24 million LI-HEAP allocation to Maine was distributed to 45,000 households, for an average benefit of \$575. Last winter, that benefit purchased approximately 300 gallons of heating fuel at \$1.90 per gallon.

In contrast, the flat-funded FY 06 allocation will likely provide each eligible household with just 170 gallons of heating oil, representing a 43% reduction in LI-HEAP buying power during this winter. Two major factors are driving that much-reduced buying power. First, the number of eligible applicants has increased in Maine by 3,000 households, which obviously reduces the value of the benefit for each household. Second, and more significantly, the average price of fuel – whether oil, gas or wood – was dramatically higher this winter.

For the present fiscal year, \$10 million in supplemental appropriations for the LI-HEAP program in Maine would be needed just to achieve year-to-year benefit parity in Maine. The state has responded with a \$5 million supplemental appropriation. If simple parity is to be achieved, the remainder will be drawn down from the municipalities' General Assistance accounts, and provided with property tax dollars.

Maine's state and local government were under-the-gun as we entered the 2005-2006 heating season, and a traditional New England winter would have brutalized Maine's low-income households who are dependent on LI-HEAP. Despite efforts by members of Maine's congressional delegation, Congress as a whole did not take meaningful action to address these concerns. That we lucked-out with a remarkably warm winter shouldn't take the pressure off Congress to approach the next LI-HEAP budget with a greater sense of responsibility to fund its heating assistance program with some semblance of buying-power parity over time.

EMINENT DOMAIN

Maine's municipal leaders urge Maine's congressional delegation to leave the regulation of eminent domain to the states.

The U.S. Supreme Court decision *Kelo vs. City of New London, Connecticut*, (2005) recognized the right of state and local governments to take property by eminent domain for purposes of economic development, even if the property taken is not blighted. This decision has caused a firestorm of legislative activity at both the state and federal levels. Local officials in Maine believe that the State of Maine is fully capable of discussing, debating and deciding the delicate policy issues raised by Kelo.

The Federal reaction to Kelo was fairly swift.

When Congress passed the Transportation and Housing and Urban Development Appropriations bill in November 2005, it included an amendment related to eminent domain. That amendment (section 321 of the Act) prohibits the use of eminent domain for economic development where economic development is defined as projects primarily benefiting private parties.

This federal legislation does not strike municipal government as particularly unwise or onerous. However, as is the nature of federal law, when Congress acts (or reacts) it does so on a nationwide basis. That is, Maine pays the price for perceived abuses and misuses of eminent domain in other parts of the country.

In response to the backlash against the Kelo decision, MMA conducted a survey of its membership to determine the extent of the use of eminent domain by Maine's municipalities. The survey asked whether the municipality had used eminent domain within the last five years, and if so, why. The results of the survey indicated that Maine does not have a "Kelo" problem.

A total of 334 municipalities responded to the survey. Overall, 311 municipalities (93%) indicated that they neither used nor attempted to use eminent domain in the past five years. At least three communities (Lewiston, Hermon, Machias) began eminent domain proceedings and then settled. Six communities presented eminent domain proposals, which were rejected by town meeting (Bethel, Camden, Phippsburg, Topsham, Wayne) or withdrawn (Winterport).

Fourteen municipalities indicated that they had had some eminent domain activity since 2000 (Bangor, Brewer, Brunswick, Gorham, Harpswell, Lisbon, Mechanic Falls, Old Orchard Beach, Portland, Saco, St. Albans, South Portland, Yarmouth, York). The most common reason for the takings was road projects. Eight of the fifteen who responded that they had used eminent domain indicated that their sole use was for a road project. Often the taking was minor. For example, both Gorham and Harpswell took existing ways but the takings were so insignificant that the town needed to pay just \$1 in compensation.

The second most common reason for a taking was to “quiet title.” Property that is taken by eminent domain clarifies ownership for purposes of a title search at a registry of deeds. Bangor, St. Albans and Yarmouth used eminent domain to clarify municipal ownership and resolve any potential title disputes.

Probably the most interesting response was from Yarmouth. Yarmouth negotiated an arms-length purchase of four acres of open space. Eminent domain was not needed and the transaction occurred without problem. However, a neighbor to the space later claimed to be the true owner of the four acres; he asserted he had acquired title by adverse possession. Yarmouth settled that case. Then in an attempt to make sure no more “owners” came knocking on Town Hall’s door, Yarmouth filed a taking to clear the title.

No examples were given where occupied residential property was taken. Further, no takings were described which were clearly on behalf of a private developer. Thus, Maine appears not to have had anything like the Kelo situation, at least in the past five years.

Nevertheless, Maine state legislators wanted to participate in the backlash and filed no less than nine bills restricting the use of eminent domain in Maine. After the winnowing process, two have emerged as viable pieces of legislation. The most relevant bill would be more restrictive than the amendment to the Transportation/HUD bill passed by Congress. In addition, Maine had a pre-Kelo bill that would increase the just compensation award to businesses which are taken.

Given that Maine has had no Kelo-type events in the past five years and that the Maine Legislature appears poised to enact further restrictions on the use of eminent domain which are stricter than federal legislation, it would appear that Maine does not need any further federal attention to this issue.

Accordingly, MMA urges Maine’s Congressional delegation to recognize Maine’s history of responsible use of eminent domain, its ability to address Kelo policies with state law and oppose further federal attempts at restricting the use of eminent domain from the federal level.

COMBINED SEWER OVERFLOW

Maine's municipal leaders urge Congress to increase funding for infrastructure investments for CSO abatement projects, including the Water Infrastructure Financing Act of 2005 (S. 1400).

The 2006 *Federal Issues Paper* once again identifies the issue of abating the problems associated with Combined Sewer Overflows (CSOs). Combined Sewer systems have one pipe that transports both sewage and stormwater to a wastewater treatment plant. During periods of heavy precipitation, the stormwater entering the treatment plant overwhelms the system and causes overflows. These overflows contain not only stormwater, but sewage as well. CSO events are serious environmental concerns.

Maine's communities have made great strides on the issue of reducing CSO events. Maine's Department of Environmental Protection reports that the number of annual CSO events has dropped considerably since the state program began in 1989. At that time, there were 60 so-called "CSO communities" in Maine. Annually, these communities had over 1,600 "discharge events" resulting in overflows totaling 5.1 billion gallons.

In 2004, the most recent year of available data, the number of communities has been cut by a third to 40, the number of discharges has been cut by more than half to 650 and the volume of discharges is down to 1.5 billion gallons, a reduction of 70%. However, achieving these results has cost approximately \$240 million.

Although discharge volumes are down considerably, 1.5 billion gallons of CSO discharge still presents a considerable environmental problem. According to the Maine DEP, Maine's CSO communities have approximately \$107 million in needed investments that should be implemented over the next five years in order to address the CSO problem.

In November 2005, Maine voters approved a bond issuance of approximately \$7 million dollars that would help leverage an additional \$31 million dollars of federal assistance. This amount is available for all water needs, not just CSO. Obviously, this amount will barely address the most pressing CSO needs in Maine. Federal assistance is clearly needed.

The Water Infrastructure Financing Act of 2005 (S. 1400) provides \$20 billion to the Clean Water State Revolving Fund over five years. This legislation, and similar bills from previous sessions has been stymied by pro-labor Davis-Bacon requirements. These requirements would obligate that federal prevailing wages be paid on construction projects funded with Revolving Funds. Maine already has a prevailing wage law and this Bacon-Davis requirement is unnecessary for the protection of Maine workers. It is very disappointing to see this important environmental legislation continually sidetracked for this reason.

FEDERAL TAX REFORM

Maine’s municipal leaders urge Congress to reject the finding within the *President’s Advisory Panel on Federal Tax Reform* that property taxes are completely local in nature and entirely unaffected by federal actions, and therefore should not be subject to a federal income tax exemption.

The state’s municipal leaders have been strong advocates for comprehensively reforming Maine’s tax code for many years. They are extremely well versed in the public policy rationale that supports comprehensive reform and they are intimately familiar with the deep political resistance that constantly frustrates the reform effort in this state. Maine’s municipal officials naively believed that comprehensive tax reform on the state level was imminent when the voters adopted *The School Finance and Tax Reform Act of 2003* on June 8, 2004. A lesson in politics was delivered shortly thereafter when the Maine Legislature, despite a simply stated directive by the voters, decided to “phase in” the state’s educational funding obligations over a four-year period. The phase-in response created by the Maine Legislature allowed the state to avoid tackling tax reform and addressing the imbalances and inequities associated with a tax code in Maine that was written a half-century ago.

Local leaders are not themselves immune from the politics of tax reform. They must engage in the municipal version of tax reform on a regular basis when they conduct comprehensive property revaluations. They know how tough the politics can be, but they also recognize their stewardship obligations to periodically modernize the base-and-rate components of the tax code over which they have jurisdiction in order to maintain equity, progressivity and balance. It all boils down to fairness.

For those reasons, the municipal leaders would like very much to work constructively with the federal tax reform effort rather than simply reacting negatively to the narrow elements of a federal reform proposal that most directly affects local government. As a municipal association, we are much less familiar with the structure and design of the federal tax code compared with Maine’s antiquated tax system, but we accept many of the findings of the President’s Advisory Panel on Federal Tax Reform (“*Simple, Fair, and Pro-Growth – Proposals to Fix America’s Tax System*”, November 2005), particularly the current IRS code’s hyper-complexity, within which there can be a tendency to provide uneven advantage. If the federal government could actually accomplish true tax reform, our state Legislature might be encouraged by example.

Even in the spirit of constructive participation, however, Maine’s municipalities are unable to accept the public policy rationale offered by the President’s Advisory Panel for eliminating the deduction in current IRS code for state and local taxes, and strongly oppose that recommendation.

On page 83 of the Panel’s report the rationale for eliminating the property tax deduction is laid out. In summary, the Panel’s position is that the state and local tax deduction is an unfair federal subsidy of purely elective services that are provided at the discretion of state and local governments. The degree to which the Panel believes that state and local services are entirely disconnected from the federal government is both alarming and disturbing. On every page of this 2006 *Federal Issues Paper* – from the discussion of the federal involvement in public education to clean water and waste water controls to transportation funding and providing for our neediest citizens in the face of sharp energy price increases – the direct and irrefutable connection between federal decisions and local impacts are demonstrated. In all of these areas – education, the environment, transportation, fuel assistance, medical care – major demands on both state and local taxpayers are being made by the federal government both directly (through local funding of federally required programs) and indirectly (by supplementing federal programs insufficiently supported by Congress).

Municipal leaders in Maine strongly disagree with the position of the President’s Advisory Panel on Federal Tax Reform, which asserts that services provided by state and local governments are purely local in benefit, elective by nature, and totally divorced from the policies and interests of our federal government. Nothing could be further from the truth.

(From “*Simple, Fair, and Pro-Growth – Proposals to Fix America’s Tax System*” (November 2005), President’s Advisory Panel on Federal Tax Reform)

“The Panel recommends eliminating the itemized deduction for state and local taxes. This deduction provides a federal tax subsidy for public services provided by state and local governments. Taxpayers who claim the state and local tax deduction pay for these services with tax-free dollars. These services, which are determined through the political process, represent a substantial personal benefit to the state or local residents who receive them – either by delivering the service directly or by supporting a better quality of life in their community. The Panel concluded that these expenditures should be treated like any other nondeductible personal expense, such as food or clothing, and that the cost of those services should be borne by those who want them – not by every taxpayer in the country.”

