

2007

FEDERAL ISSUES PAPER

**Maine Congressional Delegation
Meetings
Wednesday, March 14, 2007**

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The 2007 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 concern to Maine municipal officials and to reflect the policy positions adopted by the MMA Executive Committee.

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MAINE MUNICIPAL ASSOCIATION

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INTRODUCTION

The Maine Municipal Association has been publishing its *Federal Issues Paper* for 22 years. Although the style of presentation has changed over that period of time and the issues may be prioritized somewhat differently from one year to the next, the differences between the 1985 Federal Issues Paper and the 2007 Federal Issues Paper are largely superficial. What doesn't seem to change are the core issues that Maine's town and city leaders are concerned about when it comes to the federal-municipal relationship.

The two most important issues, of course, are the nature of the relationship and the quality of communication between local governments and Congress. Unfunded federal mandates have been a major concern of municipal government in Maine since the costs of complying with federal environmental and educational mandates have been landing so hard on our property taxpayers. Preempting traditional municipal authority, which is the direction the Federal Communications Commission is now headed, is also a matter of significant concern to municipal leaders. If the municipalities had their way, the essential nature of the federal-municipal relationship would be grounded in respect and mutually recognized roles and responsibilities. Unfunded federal mandates and federal preemption in the areas of legitimate municipal authority have the effect of defining that relationship differently.

Good communication nurtures a positive relationship. Right now, we are somewhat in the dark about the federal appropriations that help provide important services in Maine. Should we be looking at the 2006 budget to calculate 2007 distributions? Even when the federal budget is not being governed by continuing resolutions, it is becoming increasingly difficult to follow the federal budget's on-the-ground implications. Last year, for example, one of our concerns was the funding level for the LIHEAP program, which was inappropriately flat at a time of spiking fuel costs. Our efforts did not lead to any change with respect to the base budget line of LIHEAP, which has remained unchanged and is now slated to be further reduced. During the course of the year, however, there was apparently an "emergency" release of LIHEAP funds that substantially increased the Maine allotment, but did not come in time to squarely address the peaking oil prices in time for last winter's season. It would be much better for planning purposes if the federal budget could be presented clearly, adopted on time, and its fiscal implications for local government clearly communicated.

With respect to specific programs, the four core issues in 1985 were transportation funding, cuts to the Community Development Block Grant program, reduced federal funding for water and wastewater infrastructure and the need for more affordable housing.

The federal budget for home heating assistance (LIHEAP) came into the discussion in 1989 and has stayed in focus ever since.

A host of telecommunication issues were added to the list throughout the 1990s, including the need for cable television regulation in 1992, the subsequent problems in 1995 with implementing

the 1992 Cable Television Act, the emergence of telephone companies in television media distribution, and the federal sale of important bandwidth frequencies. This complex knot of telecommunication issues is still a central issue today.

The funding for special education through the Individuals with Disabilities Education Act (IDEA) was presented as a major issue in the late 1990's and remains an annual concern, along with an entirely new set of education-related concerns stemming from the bureaucratic assessment environment created by the No Child Left Behind Act and its lack of coordination with Maine's "Learning Results".

Other issues have certainly come up from time to time. There was the federal solid waste regulation of the early 1990s and the court-imposed limitations on flow control. There were the challenges and opportunities of both welfare reform and electricity deregulation in the mid-1990's. Some "brownfield" redevelopment issues surfaced in the late 1990s. After 2001, of course, there was homeland security.

But the core and enduring federal issues that Maine's municipal leaders want to discuss with the Congressional Delegation this year and every year are: Transportation, Housing and Community Development, Water and Wastewater Infrastructure, Energy and Home Heating Assistance, Telecommunications, and Education. This year, in addition to that list of core issues, we are including some input from our communities located on the Canadian border.

TRANSPORTATION

Interstate Truck Weight Exemption. Currently, all of Maine's Interstate highways, except the Maine Turnpike and I-95 in Kittery, are subject to federal truck weight limits that are lower than those allowed on Maine's non-Interstate roadways. As a result, heavier trucks must divert from Interstate highways to primary and secondary roads that pass through a number of Maine communities. This diversion has negative impacts on safety, the economy, the environment, and the transportation system. A fatal accident in Bangor directly related to this diversion was a prominent news story in 2006. A federal truck weight exemption for the remainder of Maine's Interstate system would significantly improve overall roadway safety and the economic competitiveness of Maine's businesses, while reducing fuel and infrastructure costs and environmental impacts. It is a no-cost opportunity that benefits not only the state of Maine, but also the northeastern U.S. and eastern Canada.

Federal Transportation Funding. The information we've received suggests that the federal allocation of transportation resources to Maine in 2007 is projected to be significantly less than the allocations in recent history. The flexible-funding component of the 2007 federal allocation is projected to be 20% below historical funding levels, where it is projected to remain at least through 2009. Municipal leaders wish to stress the importance and need for increased federal funding to maintain and support Maine's aging transportation infrastructure in these times of very high construction costs. The transportation system is vital for every person who lives, visits or works in Maine. In order to help ensure the sustainability of our transportation system in an era of rapidly increasing costs and aging infrastructure, it is imperative that Congress adequately fund Maine's and the nation's transportation system.

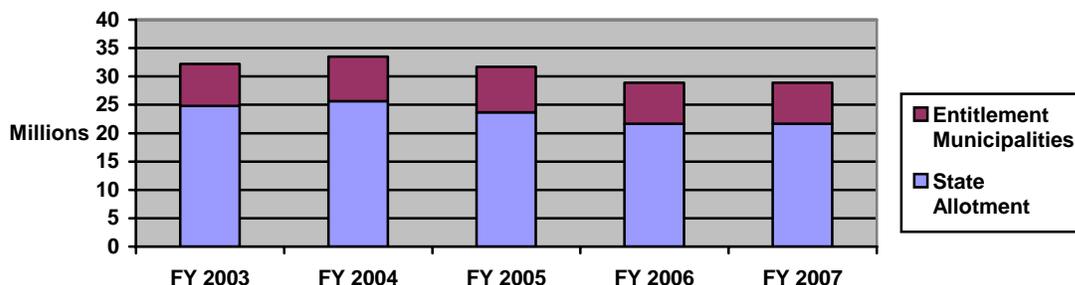
HOUSING AND COMMUNITY DEVELOPMENT

Community Development Block Grants. 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 of low-to-moderate income.

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. Its website (www.meocd.org) provides detailed information about the program and the projects assisted.

For 2007, Maine is making the most of its anticipated allotment. A full \$12,000,000 is going to fund basic needs infrastructure for water systems in Calais, Madawaska, Millinocket and Saco.

For each of the past few years, this publication has noted Maine's decreasing allotment of CDBG funds. Below is a graph showing the attrition that has been allowed to occur.



The FY 2007 federal budget flat funds the CDBG program. Ironically, this is good news....flat-funding serves to slow down the trend of annual reductions.

The FY 2008 budget released by the White House includes a \$737 Million cut. The Portland Press Herald notes that Maine's "state-allotment" of CDBG funds is proposed to be cut by over 25%.

The recent pattern is very easy to discern: The White House proposes significant cuts and Congress passes modest cuts. Who is winning that battle? It appears that those who would like to see CDBG eliminated are achieving their goal.

WATER AND WASTEWATER INFRASTRUCTURE

A similar pattern of eroding programmatic support by attrition also appears to be working for the White House with respect to the various revolving loan funds for clean water. Of most importance is the Clean Water State Revolving Loan Fund. In FY 2005 the federal allotment was cut to \$1.1 billion, in FY 2006 it was cut to just under \$900 million. For FY 2007, it appears that good news would be a \$1 billion dollar appropriation (in light of a White House proposal of just under \$700 million.)

The FY 2008 White House proposal is for \$687.5 million. It has been reported that the entire Clean Water State Revolving Fund is slated for elimination by the end of FY 2009. The Drinking Water State Revolving Loan Fund is proposed to be basically flat-funded for the third straight year.

Maine's Department of Environmental Protection recently released its wastewater facilities needs. Over the next five years, approximately \$130 million is needed for Combined Sewer Overflow abatement including \$15 million in Biddeford and \$11 million in Lewiston. Another \$170 million more is needed for other wastewater facility needs including \$15 million in Ellsworth and \$25 million in Limestone.

Again, the administration is positioning Congress such that it is a "victory" to partially restore proposed cuts. It appears that there is only a political basis, rather than a rational basis, for the federal spending decisions that are made. This pattern is troubling.

ENERGY AND HOME HEATING ASSISTANCE

Regional Electricity Options. The Maine Public Utility Commission (MPUC) is exploring the options that Maine might have in leaving the New England Power Grid. Included in the MPUC investigation is the option of linking into a Canadian grid. MMA encourages the Maine congressional delegation to remain open to offering assistance in any cross-border proposals that may emerge.

The entity that oversees the New England power grid is the Independent Service Operator (ISO). It both operates the power grid and establishes wholesale electric rates. It is accountable only to the Federal Energy Regulatory Commission (FERC).

In June 2006, FERC approved an electric rate structure that grossly disadvantages Maine's electric consumers, including municipal governments. While the technical issues at play are complex, the basic issue is not. Southern New England needs more power and everyone on the power grid, including Maine consumers, must pay more to meet that need.

The MPUC has issued its preliminary report on the issue. It concluded: "*The current transmission cost allocation and pricing mechanisms under current ISO-NE structure are inequitable and need to be remedied...The structures that appear to have promise, or at least warrant significant further inquiry, include:...Developing a market with one or more of the [Canadian] Maritime provinces (New Brunswick, Nova Scotia, and Prince Edward Island) as an alternative to the current association with the New England market.*"

The MPUC Interim Report is available online.

http://www.maine.gov/mpuc/staying_informed/legislative/2006legislation/ISO-NEInterimReport.doc

Maine municipalities appreciate the work the Congressional delegation has done thus far on the issue. However, nothing has stopped this unfair rate hike that will cause significant fiscal stress on Maine businesses, residents and municipalities.

Maine is a long way away from taking any action on this issue. But the research has begun and linking to the Canadian system is one of the leading options for relief for the rate payers of Maine.

LIHEAP. As discussed in the introduction, a \$1 billion emergency or “supplemental” distribution last year provided a one-time boost to the base funding for the Low Income Home Energy Assistance Program (LIHEAP). Setting aside the supplemental distribution and its unpredictability, the base funding for LIHEAP seems to be undergoing the same political battle of attrition that characterizes the appropriations for Community Development Block Grants and wastewater infrastructure assistance. The President’s proposed budget includes serious cuts, the delegation responds with calls for restoration, but there never seems to be any rhyme or reason in the debate. Maine’s municipal leaders sincerely appreciate the emergency release of LIHEAP funds in 2006 but they remain very concerned about the proposed funding levels for next winter and the overall viability of the program. We still strongly maintain that the program should be funded in a much more predictable and rational manner.

TELECOMMUNICATIONS

Last year’s *Federal Issues Paper* discussed the national legislative threats to local cable franchising process. This franchising process ensures that both private and public interests are served as a result of the use of public rights of way.

Fortunately, and thanks in particular to Senator Snowe and her staff, those legislative efforts did not succeed.

As you are aware, the Federal Communications Commission narrowly decided just before Christmas that local franchising is unreasonably burdensome and is poised to end-run the will of Congress on this issue.

Municipal officials are aware of the arguments in favor of greater competition in the cable industry. 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.

Nevertheless, 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 would be served by cable, not more. In fact, we believe that franchising is the reason for this expansion, not an obstacle.

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 is not the franchising *process* that is a problem, it’s that critics of local franchising don’t want to meet the obligations required by local franchises.

In particular, 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. Referred to as “build-out,” this is the aspect of franchising that is directly under attack.

Maintaining local governments as the franchising authority and preserving their ability to require build-out is the only way to insure that Maine communities will receive service even if they don't meet the industry's profitability definition. 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.

Indeed, if the local franchising process is curtailed, it is not only the telephone companies that would benefit. The existing cable companies would certainly take advantage of the lesser standards as well. The FCC ruling is likely to result in Maine receiving no increase in competition from the telephone companies and less public interest agreements from the existing cable companies.

MMA urges the Maine congressional delegation to recognize that local franchising should be protected and that industry efforts to weaken local franchising, including end-runs by the FCC, should be opposed.

MMA is particularly thankful for the efforts of Kristin Smith in Senator Snowe's Office.

Ms. Smith regularly updated MMA staff on rapidly developing events and she sought out the municipal perspective on the different pieces of legislation.

This kind of outreach is greatly appreciated.

EDUCATION

Special Education (IDEA). There is no way to rephrase the municipal concerns with the financing and design of the special education mandate. It has been articulated in eight different ways over the last eight years. In summary, the federal government is overreaching in the area of public education, laying down unfunded mandates and waves of bureaucratic demands without providing the concomitant financial resources. The issue remains before us today just as it did in 1999.

For the very best reasons, an educational entitlement program was created by Congress that is being largely financed with state and local tax dollars. The level of federal funding is much less than the implementing legislation said it would be. The structure of the entitlement makes local special education programs very difficult to manage in a cost-effective manner.

Now another educational mandate enacted by Congress – The No Child Left Behind Act (NCLB) – is being implemented. NCLB is presenting a different set of issues. Under NCLB, our school teachers and officials are frustrated to the point of exasperation with the layered and conflicting student assessment requirements that are now being required, in different ways, by both state and federal bureaucracies.

INTERNATIONAL RELATIONS IN BORDER COMMUNITIES

For many Maine municipalities, the towns and cities located on the Canadian side of the U.S. border are merely an extension of their own communities. For the residents in Maine's border towns, the boundaries published in maps marking U.S. and Canadian territories do not prevent residents from using the services available across the border. For the thousands of residents that share the U.S.-Canadian boundary, crossing the border for services, employment and to visit with family and friends is not a foreign concept, it's a daily routine.

In the last few months, much media attention has focused on the changes being implemented by the Department of Homeland Security to ensure that all ports of entry into the U.S. are secure. According to the news accounts, enhanced security efforts have led to long lines at border crossings. In January of this year, the new passport requirement for air travel between the U.S., Canada and Mexico took effect, while a passport requirement for land and sea travel is waiting in the wings for a January 1, 2008 implementation date.

Based on the recent media dust-up on these border-related issues, MMA contacted municipal officials that share borders with Canada to see how the federal regulations are impacting U.S.-Canadian relations within the communities. As would be expected from the people of Aroostook and Washington Counties, rather than complaining about long lines and declining merchant sales, municipal officials praised the services being provided by the U.S. Customs agencies. Instead of complaints, the municipal officials offered constructive suggestions for change. These municipal officials understand and appreciate the efforts of U.S. Customs to protect all ports of entry and only want to ensure that passage between the two countries continues to be as normal and uncomplicated as possible.

To that end, municipal officials urge the Congressional Delegation to keep the following issues in mind as they continue to implement policies impacting existing U.S.-Canadian border communities' relationships.

- **Border Crossing Process.** One of the Department of Homeland Security's main objectives is to ensure the safety of U.S. residents, particularly along the international border. In order to meet its charge to secure the ports of entry and to enforce immigration laws, the U.S. Customs offices have instituted a 100% identification check of each person entering the United States. The process requires that each person in a motor vehicle crossing the border into the United States show a Custom's agent photographic identification. While municipal officials understand that requiring identification and inquiring about the travel plans and purposes of those crossing the border is important to public safety, they question whether a different standard could be applied to Maine and Canadian residents who cross the border daily for work, services and to visit with family.
- **Passport Affordability.** Once fully implemented in January of 2008, any person traveling between the U.S., Canada and Mexico by land, air or water, will be required to present a passport before reentering the U.S. While municipal officials understand the importance of this effort, they are concerned about the financial burden the passport requirement will have on families. At cost of \$97 for a person over 16 years of age and \$82 for a person under 16 years of age, a family of five would be required to invest nearly \$500 to obtain the passports necessary to travel between the U.S. and Canada.

Adding to that burden is the fact that while an adult passport is valid for 10 years, for a child under the age of 16, the passport is valid for only 5 years.

In addition to the financial burden placed on families, municipal officials are concerned that the passport requirement will discourage casual users from crossing the border for an occasional shopping spree or an evening out. Municipal officials are concerned that the passport requirement will prevent honest people from traveling between the two countries.

- **Duty Free Shopping Parity.** Municipal officials in Washington County want to thank Maine's congressional delegation, especially Senator Collins, for efforts to address parity in duty free shopping opportunities provided to U.S. and Canadian citizens. While a U.S. citizen is exempt from paying duty on \$200 worth of Canadian merchandise purchased during trip of less than 48 hours, a Canadian citizen is provided a duty exemption on \$50 worth of purchased merchandise on a trip to the U.S. that is between 24 and 48 hours. This lopsided exemption gives Canadian merchants an advantage over U.S. merchants. Municipal officials along the borders encourage Maine's delegation to continue its efforts to gain "exemption parity".