

January, 2009

# maine townsman

The Magazine of the Maine Municipal Association



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Risk Manager • Municipal Borrowing • Why We Recycle**

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recycled paper

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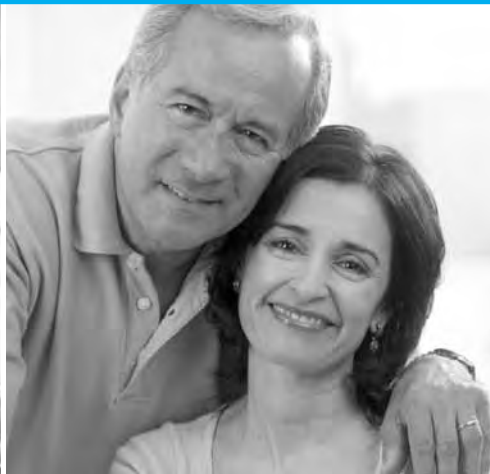


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# MMA Priorities for 2009

By Galen Larrabee, MMA President, Chair of Selectmen, Town of Knox



I look forward to serving as MMA President this year. We face many challenges given the tough state of the economy, but as municipal officials we know how to be resourceful and work together to get the job done. MMA is committed to assist you in meeting these challenges by maintaining the quality of our on-going services and focusing on particular areas deserving attention. Here's a brief recap:

## ADVOCACY

MMA will be actively engaged with the newly elected Legislature and the Governor on a broad range of issues affecting Maine and our citizens. MMA's 70 member Legislative Policy Committee has adopted a nine plank legislative platform including bills on taxation, education and municipal administration issues. In addition, MMA will assist municipal officials in understanding and communicating the potential impacts of proposed citizen initiatives including a revised version of the Taxpayer Bill of Rights (TABOR II) and a proposal to reduce Motor Vehicle Excise Tax revenues by over 40%.

At the federal level, MMA advanced the timetable for preparation of our annual Federal Issues Paper to provide some ideas to the members of the Maine Congressional Delegation as they considered the major federal stimulus package. We will follow-up with the Delegation on these and other federal issues during our meetings in March being held in conjunction with the annual National League of Cities Congressional City Conference.

## MMA BUILDING PROJECT

The MMA Executive Committee voted unanimously on December 18 to move forward with the proposed building project in 2009, subject to final ratification at the January 29, 2009 Executive Committee meeting. In making this decision, the Executive Committee thought carefully about the financial constraints facing MMA's members and tried very hard to get input from municipal officials regarding the timing and need for the proposed project. Most of the municipal officials who provided their thoughts on the project indicated support for MMA to move forward.

As noted in the November Townsman, MMA has been preparing for a potential building project for a number of years by creating a reserve fund to help absorb the project's costs. In the funding plan presented to the Executive Committee, this reserve fund will be drawn upon during the 2010-2019 period to limit the impact on dues every year the project is being paid for. In accepting this plan, which will be reviewed annually, the Executive Committee indicated its intent that the building project will not add more than 1% per year to the annual dues adjustment over the next ten years.

Given this funding plan, and recognizing the need for the project, the Executive Committee determined this would be a good time to proceed. The Maine based Design/Build team of Hebert Construction and Foreside Architects will be working

with subcontractors from Maine who have sharpened their cost estimates as the design process has progressed. The geothermal mechanical system for the addition will have an estimated five-six year payback, providing long term energy cost savings. MMA is also going through a competitive bid process for banking services and project financing. The results of that process will be presented to the Executive Committee on January 29.


We anticipate construction will begin in April, with completion by early 2010. We appreciate your support and look forward to restoring the meeting room capacity of the MMA building and regaining the regular and valuable interaction between municipal officials and MMA staff members. One of my personal hopes is that this building addition will also provide a convenient location for municipal officials to occasionally meet with their legislators when the Legislature is in session. I have seen the value of having the Governor visit the MMA office to meet with the Executive Committee. It's not something that you can say for certain makes a difference, but I honestly believe that the dynamics of a meeting can be influenced for the good by having state officials meet in a municipal setting.

## TRAINING

MMA will provide additional training programs, particularly related to municipal financial management. Recognizing that time and budget constraints make it increasingly difficult for municipal officials to attend training programs, MMA will also explore "distance learning" and other options to make training programs easier to take in. As an example, MMA's Risk Management Services department began offering online safety training programs four years ago. During that time period employees from 429 of our member organizations have completed over 37,000 courses - fulfilling required training with the convenience of completing the training on their own schedules without the need to travel.

## CITIZEN EDUCATION

As municipal officials, we know how difficult it can be for the citizens in our communities to understand the workings of municipal government and how local government fits in with county, state and federal government. During the past year, MMA has been working on a fresh approach to citizen education using new communication strategies. MMA will work with a group of 5-10 communities on a pilot basis in 2009 to further refine and develop a "toolkit" for use by individual municipalities to improve citizens' understanding of, participation in and appreciation for local government.

As you might expect, there are many other areas in which MMA will be working during 2009, but I hope you find this brief recap helpful. Thank you for your support and participation in the Maine Municipal Association. MMA is your organization and we are dedicated to providing trusted programs and services. As I said at the MMA annual banquet in October, the phone lines do still reach the Town of Knox, so please contact me, members of the Executive Committee, or MMA Executive Director Chris Lockwood if you have any questions or would like additional information on any of these items. 

# Infrastructure Spending

By Douglas Rooks

As Mainers survey a bleak economic landscape at the start of a new year, the view has rarely had so many peaks and valleys.

As David Littell, commissioner of the Maine Department of Environmental Protection (DEP) put it, it's already clear that "this will be a huge recession, perhaps the biggest since the Great Depression," and that, all over Maine, "people are afraid of losing their jobs, and what will happen to their families."

On the other hand, "there's hope with the arrival of a new administration" in Washington, he said, citing the stimulus bill that will engage Congress during the first months of the Obama administration.

Spending on infrastructure is a longstanding, if recently neglected, tool to combat economic downturns, and if Congress approves, state officials like Littell and David Cole, commissioner of the Maine Department of Transportation (DOT), may be important people for municipal officials to keep an eye on.

That's because DEP and DOT have jurisdiction over many of the infrastructure programs most likely to receive added federal funding, and the most likely to translate down to job-creating endeavors at the municipal levels.

But first there are important questions about how much the federal government should try to do, and how federal dollars should be distributed to states and local governments.

Charles Colgan, former state economist and current chair of the state's Consensus Economic Forecasting

Committee, said that we do need to go back to the Great Depression and New Deal era to find a comparable effort to rescue the national economy.

While there was a modest boost to transportation infrastructure during the Reagan administration – mostly at the insistence of Congress – and a small anti-recession program known as CETA (Comprehensive Education and Training Act) during the Carter administration, the scale of the current effort is much larger.

But much has changed since the 1930s, Colgan said, particularly in the capacity of state and local governments to participate.

Where President Franklin Roosevelt had to create new bureaucracies like the WPA (Works Progress Administration) and CCC (Civilian Conservation Corps) to distribute the federal money, Colgan said the Obama administration is likely to use existing channels.

"To the extent that we can use the programs we have now, money is more likely to be spent quickly and effectively," Colgan said.

And there are a lot of them: the state and local road programs administered by the Maine DOT, the wastewater treatment, hazardous waste cleanup, brownfields and estuaries program overseen by DOT, the safe drinking water programs at the Department of Health and Human Services, and weatherization and energy-efficiency grants at the Maine State Housing Authority, among others.

Some observers would like a broadening of the focus beyond the "shovel ready" projects that have absorbed the most attention so far. Richard Barringer, the former State Planning Office director who recently chaired the Quality of Place Commission for

the Baldacci administration, said that Maine should use the opportunity to rebuild communities and refocus attention on downtowns. "We have to look at where we'd like to be in five or 10 years," he said. "It important not just to spend money, but to get the results we want to see over time."

Barringer said that some projects – such as road repaving – are capital-intensive and may not put that many Mainers back to work. "We need better roads, but it's just as important to get our community infrastructure back into shape," he said.

Barringer said Maine's cultural agencies have put together extensive lists of repairs and renovations needed for downtowns to return to an economically competitive position. In 2005, a survey showed \$337 million in unmet capital needs, while a recent revision showed \$140 million in projects that would meet the "shovel ready" criteria, including being labor intensive and capable of starting within six months.

The reason for all the apparent haste is that, in previous downturns, it's taken a long time to get dollars flowing. "During the Great Depression, you could build the Hoover Dam, for instance, and just get it done," David Littell said. "Now it takes years of planning before projects like that can start."

Nevertheless, the DEP chief does not agree with suggestions that environmental rules simply be waived, as California Governor Arnold Schwarzenegger recently suggested. "We would be in favor of expedited review, but not suspending the rules entirely," Littell said.

As it happens, Maine has a long list of projects that have either been delayed or cancelled in recent years,

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*Douglas Rooks is a freelance writer from West Gardiner and regular contributor to the Townsman.*

starting with the Maine DOT, which removed almost a quarter of the projects from its mostly recent two-year Transportation Improvement Plan.

Of the Baldacci's administration's \$3.6 billion request to the new administration for infrastructure assistance over the next two years, transportation projects account for nearly \$700 million of the total, while another \$130 million would go for Clean Water Act projects.

The water and sewer programs administered by the federal government, often with state or local matches, have been falling far short of needs, Littell observed. So the promise of new funding is timely, and "could help us catch up on much of the ground we've lost in recent years," he said.

There are plenty of ideas about how to spend money, and municipal officials are among those who've been thinking and planning. The announced goals of both the federal government and the state response seem broadly in sync with the views of municipal officials, according to a recent survey of the MMA membership.

MMA's 2009 Federal Issues Paper (FIP) estimates that local officials would like to see 51% of funding used for transportation, the bulk for road and bridges; 18% for housing; 16% on wastewater and drinking water improvements, 8% on communications and energy, and 6% on public buildings.

The FIP notes that road conditions have deteriorated markedly since 2006, and that Maine's road network received a grade of D, while bridges got a D+ from the American Society of Civil Engineers. MMA will advocate that a portion of federal grants go to minor collector roads, which now require a one-third municipal match for any major improvements.

For housing, weatherization provides the best "bang for the buck," and should be required as part of housing grants, the FIP states.

On wastewater and drinking water programs, MMA will advocate using grants rather than loans, an approach supported by DEP as well. David Littell said that in 75 percent of Maine communities with wastewater treatment plants, using the loan program would exceed the applicable income threshold, which provides that the median household not be required

to pay more than two percent (of income) in user fees.

At the Kennebec Valley Council of Governments, Director Ken Young said that creating an economic boost should be the central goal, and that some projects will create a much bigger payoff than others. Those that can be jump-started with an infusion of federal cash are leading candidates, in his view. He gave several examples from communities in his part of the state.

In Hartland, Prime Tanning has carried out a successful consolidation that has increased employment from 112 employees to 226 in just over a year. The leather products company could expand even further in the coming year, but there's a problem.

Some discharges from the plant are classified as special waste, which needs to be disposed of in a secure landfill. At the moment, sludge needs to be hauled to Norridgewock at triple the cost a local landfill would charge. Hartland would like to upgrade its treatment plant to handle the waste, and is eligible for a grant that ordinarily requires a 50 percent municipal match.

"If we would increase the federal commitment to, say, 90 percent, the town could probably handle the rest," Young said, for a project that could provide a substantial employment boost in one of the state's rural areas.

A similar situation exists in Pittsfield, where an existing industrial park is full and the town would like to expand. An Economic Development Administration (EDA) grant would cover half the cost of \$400,000 in required infrastructure. Boosting the federal share to 90 percent would make it far more likely that the project could happen this year, he said.

At DEP, Littell is carefully tracking legislation that will originate in the U.S. House Transportation and Infrastructure Committee, chaired by Rep. James Oberstar of Minnesota. While Oberstar is best known for his advocacy of transportation programs, his committee also has jurisdiction over the water and sewer programs DEP would like to see expanded. "In this Congress, he's the leading advocate of Clean Water programs," Littell said of Oberstar.

Among current programs likely to receive increased funding are waste-

water treatment plants and non-point source pollution projects, the latter of which pleases Littell. "We have major needs not only for agricultural uses, but also the thousands of miles of dirt roads, public and private, that contribute to the sedimentation of our lakes and streams," he said. Non-point projects provide the need for plenty of labor, which in the past has included Americorps volunteers and other seasonal employees, he said.

The Brownfields program, where sites are cleaned up and immediately redeveloped, is also high on the priority lists, and there could be new funding for the estuaries program, which currently includes Casco Bay.

Littell would also like to see funding for hazardous waste sites that used to be covered by the Superfund program, as well as new challenges such as several hundred former dry cleaning establishments that may have unsafe levels of chemicals.

While the actual levels of federal funding are unknown, the incoming administration has repeatedly referred to a \$100 billion infrastructure program that would work through state governments. According to the Maine Better Transportation Association, for transportation projects this would amount to \$160-\$180 million for Maine over two years, if historic distribution formulas are followed.

Whatever the actual amounts, it's clear that a lot of infrastructure spending will be occurring soon, so we should also think clearly about the long-term consequences, Charles Colgan said.

"We'll be borrowing from the future to take care of the present," he said. "These are projects that would take place over the next 10 years, and instead we're advancing them to the next two." It makes sense to do that to revive the economy, he said, but everyone should remember that "the same money's not going to be there for awhile, as we begin to pay down the debt."

So while we should be thinking long-term, that doesn't mean we should only be thinking big.

Colgan thinks the idea of pushing ahead with a planned expansion of the Portland International Jetport, owned by the city, is a good one. "That one will happen anyway, but it's important if we can make it hap-

pen sooner.” Federal funds would be added to the revenue the airport already plans to raise from ticket taxes and assessments on airlines. From the point of view of Portland officials, the sooner the \$66 million project can start, the better.


But not all valuable projects are on the scale of the airport expansion. Colgan called attention to the condition of culverts in southern Maine, where seasonal flooding has been worsening, causing damage and economic disruption in many coastal communities.

“The problem is that most culverts are undersized in terms of current needs, which is a reflection of the global warming problem,” Colgan said. “In the usual course of things, they won’t be replaced until they wear out, but by that time flooding could become a major problem.” By pushing such projects ahead now, towns and cities could boost current employment and also reduce the damage from predictable future events, he said.

Colgan also advocates a new attitude toward Maine’s public buildings.

Traditionally, the public has tolerated deficiencies in schools, municipal buildings and other facilities on the idea that “If it isn’t falling down, it’s good enough,” he said.

But when buildings have problems like toxic mold – which afflicted dozens of school buildings in recent years – that attitude may be faulty. “When our kids are getting sick from poor indoor air quality, you have to wonder,” he said.

So a broad focus on public needs should drive the debate over the next two years, and beyond, the experts seem to agree. A focus on energy and environmental improvements makes sense, Colgan said, because he expects them “to be the driving force of the Maine economy over the next decade.” Federal aid, he said, gives Maine “an opportunity to use this capital to get a head start” on the needs of the next generation. 



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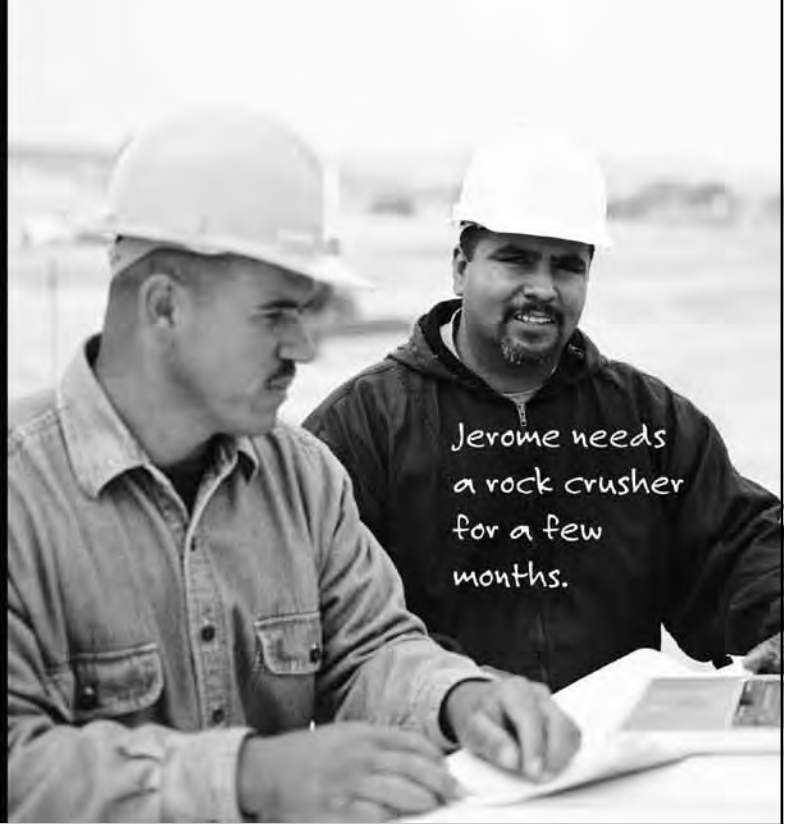
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# Grant Funding

By Lee Burnett

Whose eyes don't light up when they hear of unspent money in a grant program? "Aha," you probably think. "Let's apply for that grant next year because we'll surely get it."

Grant money is often thought of as a Holy Grail. And in tax-hike-averse communities, it's sometimes the only way to make new things happen. But there is a reason to be selective in grant money. I know of some expensive exercise equipment that was acquired through a popular grant program that today gets very little use. "What a waste," I think every time I see it. The point is: landing a grant is not an end in itself. If you get grant funding you don't truly need, chances are whatever you've acquired will probably get little use. What's the point?

There's also a word to be said against chasing the latest grant opportunity. While a quick-response capability is valuable, it should not drive decision-making, warns George "Bud" Finch, city manager of Eastport.

"Far too often, grants become spur-of-the-moment decisions in terms of who has an idea, what is out there for money," Finch wrote in an email. "While this can be successful, it is not really a winning formula. These spur-of-the-moment decisions are most often due to the lack of a long term plan to meet the variety of needs of a community."

## WHERE TO START?

Far more productive than starting with an obvious grant source is to start with an obvious community need. So what's a worthy project? Look in your Comprehensive Plan. If you don't

have a Comprehensive Plan, look at past budgets. Are there projects that are perennially included in draft budgets, but eliminated before the budget is finalized? Does the board of selectmen or town council have formal goals? What do people around town complain about? Is it the eyesore building in the middle of town, or that kids have nothing to do after school? Those are places to start. With a worthy project in hand, writing the grant becomes an exercise in telling it like it is, rather than an exercise in linguistic acrobatics.

To maximize your opportunities, it helps to be prepared.

The City of Eastport (population 1,640), for example, maintains a priority list of projects, constantly updated, so it can easily take advantage of grant opportunities as they arise, Finch said. The list incorporates the needs of the Eastport Port Authority, the Eastport Municipal Airport, the Eastport Art Association, the Passamaquoddy Water District and the Maine Marine Trades School.

"I believe part of the reason we have been successful in our grant approach is due to our basic policy of what we are looking to accomplish and when. This is driven by our overall plan that is all encompassing in terms of boilerplate information readily available and updated regularly. This allows us to respond quickly to the grant process, while greatly reducing the frustration that comes with putting a grant together," says Finch.

Sometimes the degree of preparedness is daunting, as was recently discovered by the town of Lebanon, (population 5,083). The town badly needs a new fire station and would be eligible for the CDBG program,

except that it has never adopted a comprehensive plan, a lengthy and often controversial process. "We are losing out on a lot of money by not having a comprehensive plan," Selectman Jason Cole told the *Observer* newspaper recently, "but we need more volunteers and more support to make it happen." So, while Lebanon selectmen initiate the comprehensive planning process, the town will cope a little longer with the Blaisdell Corner Fire Station, where the plumbing leaks raw sewage, the second floor is off-limits for public functions because of substandard floor joists, and there is insufficient clearance in the overhead garage-bay doors. Even without a Comp Plan, Lebanon has managed in recent years to land \$125,000 in grants – firefighting turnout gear, medical testing equipment, a utility ATV and money for teaching CPR classes. Cole's wife Samantha "spends a lot of time researching grants, attending different conferences, grant writing workshops." The Coles willingly share what they know with neighboring towns: "In these small towns, a lot of times there's not a lot of money. It's difficult. Grants are the only way to get anything extra," said Cole.

## WHERE TO LOOK

If your community has never applied for grants, chances are your community is probably pretty needy. Needy communities should not feel intimidated at having to compete with communities far more experienced and successful because there are grant programs that are particularly oriented to needy communities. If you have a substantial bricks-and-mortar project, two places to consider are the state's Community Development Block

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*Lee Burnett is a freelance writer (and also a grant writer) from Sanford.*

Grant (CDBG) program and USDA Rural Development program of the federal Department of Agriculture. Both programs serve Maine's neediest communities, but have different eligibility criteria. The Rural Development program is for communities of no more than 20,000 residents and where median incomes are less than 80 percent of the state median. The agency has offices in Scarborough, Bangor, Lewiston and Presque Isle. The CDBG program, administered in Augusta by the Department of Economic and Community Development is open to any community as long as the project either benefits low and moderate income people or if it eliminates slum and blight conditions. Just determining CDBG eligibility can be quite involved. (*see sidebar on page 13.*)

It also takes time to learn the ropes. The Maine Department of Economic and Community Development requires CDBG applicants to have completed a one-day training session. Some small communities rely on a regional planning commission or economic development council to access these programs.

Jim Batey of the Somerset County Economic Development Corporation conducts yearly outreach efforts to spread the word, but says many communities are still unaware or reluctant to take advantage of the programs, even though his services are free.

"I think communities that have worked with programs in the past are less apprehensive, they know the program can work for them," he said. "I've had communities that were reluctant to apply because it seemed like welfare -- that old Yankee reliance, but then I've had communities (who) felt entitled and (that they) should get more."

Rural Development funding helped Bingham and neighboring communities buy a \$120,000 ambulance and helped Bingham renovate an old meeting house. Rural Development and CDBG funding helped finance Maine Wood Pellet Co.'s \$7 million plant in Athens, he said.

## **COLLABORATE, LEVERAGE**

Many people instinctively believe the right mindset for attracting grant funding is to poor-mouth yourself. There is a logic to it. Benefactors like to think their money is needed

so tugging at their heart strings is a prerequisite for getting them to open their wallet. But the woe-is-me strategy is not sufficient in itself. Put yourself in the grant maker's shoes. Which projects would you rather fund:

(A) sidewalk repairs in a low-income neighborhood where absentee landlords hold sway, or (B) park improvements in that same neighborhood, in which neighborhood teens contribute labor and where improvements will lead to greater use of the park?

(A) demolition of a derelict building and construction of a parking lot?, or (B) dismantling that derelict building as a training exercise for building-trades students, and construction of a parking lot that makes possible a new housing project?

The answers should be obvious. Everyone likes to think they're getting a bang for their buck. Appeal to their preference for projects that trigger bigger improvements. Show them how you "collaborate" with other partners, and how you "leverage" your money. Wow them with how you can to make things happen, that you can turn a small advantage into a big gain. One of the shifts going on in the grant-making world is a change away from a "needs-based" approach to community development and toward an "asset-based" approach to community development. Think of the former as big government doling out benefits to passive recipients. Think of the latter as a more entrepreneurial, grassroots model.

## **BUILD ON WHAT YOU HAVE**

In putting projects together, it's always easier to build off existing momentum. Volunteers in Pittsfield (population 4,214) have mobilized to rejuvenate The Pinnacle, a rope-tow ski hill and fond relic of a bygone era. The Town of Pittsfield capitalized on this enthusiasm with a larger initiative to transform The Pinnacle into a four-season park. This dovetailed with the town council's recent focus on economic development and with stewardship initiatives of the Sebasticook River Watershed Association. The result was Pinnacle Park Recreation Plan, which calls for a covered skating rink, a boat launch on the Sebasticook River, trails connecting to other trails

and parks, bird-watching leantos, a parking area and education programs. Pittsfield was recently awarded \$32,200 of the Phase I capital cost of \$96,600 under the Riverfront Community Development Bond.

"It is so exciting," said Town Manager Kathryn Ruth. She attributed the town's recent success to a renewed emphasis on economic development by the town council, a prioritization process with significant community involvement and continual feedback to the town council and the community. She said she finds residents reluctant to serve on committees with continual involvement, but very interested in getting involved in specific projects. Grant funding is really the only avenue for developing new initiatives, "if you don't want to raise taxes," she said.

Another example of piggybacking is how Eastport has turned airport improvements into park improvements. The federal government has funded a perimeter fence and access road about the Eastport Municipal Airport. Eastport also wanted to extend hiking trails around town and so is using the perimeter road as a bike and walking path connection between Shackford Head State Park and Eastport Picnic Area on Route 190, explained Town Manager Finch. The trail will extend the four miles of hiking trails at the state park with another three miles of paved path. "Instead of taking the approach most often used which looks at a project as if it was a postage stamp, we look at projects as a piece of a puzzle thus determining not only how it fits in its place but how it complements the rest of the puzzle," Finch wrote.

Another way to piggyback is to find partners to share the load and to magnify your effort. Sometimes these partners are right at hand. The Town of Winthrop (population 6,232) runs a regional dispatch center for surrounding Kennebec County communities. Winthrop has won back-to-back Public Safety Interoperability Grants of \$124,000 and \$60,000 from the Maine Emergency Management Agency by showing improvements to the dispatch center also benefit Wayne, Readfield, Manchester, Mount Vernon, Fayette and Vienna. Police Captain Brian Frost said he had limited experience in grant writing, but

found the regional approach works. "We already cooperate on mutual aid," he said. His advice: "Talk, ask questions, Don't be scared of it, just do it."

### EASY PROGRAMS

Okay, so what are some easy grant programs? Surprising as it may sound, one of the easiest grant programs to access is the state's Brownfields program, which funds the assessment and clean up of contaminated industrial sites. This is distinct from the federal Brownfields program, which is highly competitive and notoriously difficult to navigate without expensive consultants. The state has established its own Brownfields program, with pass through money from the federal Environmental Protection Agency, and it's geared to small towns that don't have the expertise to access the federal program. The state contracts directly with environmental consultants on behalf of towns, so towns don't have to go through the hiring process themselves, explained Nick Hodgkins of the DEP.

"Just contact us and get in the cue," he said. "It's an easy process. Someone at the town office could do one of these [applications] in 20 minutes and if they have any questions call us. They can even send us an incomplete application. We'll work with them."

The small towns of Perry, Washburn, Roxbury Bradley, Vinalhaven, Milo and China have all taken advantage of the program, he said. The caveat is that not every contaminated site is eligible. The state wants to avoid cleaning up sites owned by "multi-million dollar companies" and petroleum sites tend not to be eligible, Hodgkins said. "We're trying to tweak it, to make it easier," he said.

The town of China used the state Brownfields program to verify the cleanliness of a site under consideration for purchase by a machine shop that was leasing the site, explained Town Manager Don L'Heureux. "It was very, very helpful," he said. "Probably some of their decision [to buy] was based on there was no leaching."

If your community is interested in sprucing up the gateway into town or in taking advantage of the forestry potential of town-owned woodlands, consider Project Canopy. This Maine

## Routes to CDBG Eligibility: Automatic, Labor-intensive, Politically Charged

There are three ways for a project to be eligible for funding under the Community Development Block Grant program. The bottom line is that a project must meet a "national objective," which generally means it must benefit low and moderate income people.


- The easiest way to qualify is for the project to be located in a community where more than half the residents in town have incomes of less than 80 percent of the median income. (This can be determined by consulting the latest U.S. Census data, available through the U.S. Census Website or a regional planning commission or economic development agency.)

- Projects can also qualify if they directly benefit a particular low or moderate income neighborhood. This determination requires real legwork. Establishing income levels in a particular neighborhood means interviewing residents either by telephone, mail or in person and using valid sampling techniques for assembling the data. It can be done by trained volunteers, but is more usually done by paid staff. A further complication: not all projects are eligible. CDBG money, for example, could fund sewer improvements in an LMI neighborhood because the benefit of that project would be limited to LMI residents. On the other hand, CDBG money couldn't fund park improvements because, since the park is open to all members of the public, the benefit is not limited to LMI residents.

- A third way to qualify is for a project to be located in a specifically delineated area that the legislative body of a community has declared to be suffering from "slum and blight." This determination is politically charged. Not only do conditions in the delineated area have to meet a threshold of shabbiness, but the stigma associated with the declaration usually creates a backlash in the community that must be addressed.

Forest Service program funds up to half the cost of new tree plantings, inventories of streetscape trees and the hiring of foresters to prepare forest management plans. It's a relatively straightforward grant application.

Even easier to apply for is the current park improvement program

advertised by KaBoom!, a non-profit dedicated to building playgrounds, and Stonyfield Farm Yogurt. They're giving away two \$50,000 grants for park improvements and the winner will be determined solely by whichever community group turns in the most Stonyfield Farm Yogurt lids. 



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# Municipal Borrowing

By Lee Bragg

## 1. What are the State statutes that govern borrowing by local governmental entities?

There are five statutes of interest in this regard. All five statutes are located in Title 30-A of the Maine Revised Statutes.

Section 5702 contains a limitation on the amount of debt that municipalities may incur. A municipality cannot issue debt (for purposes other than school purposes, storm or sanitary sewer purposes, energy facility purposes or for municipal airport purposes) that would exceed 7.5% of the municipality's last full state valuation. The statute contains additional limits for school purposes, storm or sanitary sewer purposes, energy facility purposes and for municipal airport purposes. Finally, there is an overall debt limit for all types of debt of 15% of the municipality's last full state valuation. Municipal and district charters sometimes contain specific debt limit provisions, and there are also other State statutes that deal with borrowing by districts. Section 5703 states that certain types of debt do not count toward the debt limit outlined in Section 5702. For example, Section 5703 states that tax anticipation notes and revenue anticipation notes do not count toward the debt limit outlined

in Section 5702.

Section 5771 deals with revenue anticipation borrowing and provides that a municipality by vote of its municipal officers may, in any municipal year, borrow money temporarily and issue notes in anticipation of taxes, and State and federal revenue-sharing money. The amount borrowed in anticipation of taxes may not exceed the total tax levy of the preceding municipal year (with an exception for transition budgets), and must be repaid within one month after the end of the municipal year in which the loan was made. (with an exception for transitional budgets).

Section 5772 governs the issuance of general obligation securities and states that a municipality may issue general obligation securities for funding or refunding all or part of its debt and for any purpose for which it may raise money. Charters and other statutory provisions speak to the issuance of general obligation securities by special-purpose districts. The legislative body must authorize the issuance of the bonds. Once this is done, the municipal officers have the authority to issue bond anticipation notes prior to the issuance of the permanent financing.

This section also contains the requirement that a financial statement must be prepared by the treasurer to accompany any questions submitted to the electors for ratification of a general obligation bond issue. The required elements of a financial statement are included in the statute. Municipal general obligation securities have a term limitation of 30 years, although this provision is generally not applicable to special purpose districts.

Section 5773 deals with borrowing

in anticipation of federal or State aid and authorizes the municipal officers to contract for and accept a grant of federal or State aid for any purpose for which a municipality may raise or expend money. This section also authorizes the municipal officers to borrow money on a temporary basis pending receipt of the grant funds.

## 2. Are there federal laws that govern borrowing by local governmental entities?

The Internal Revenue Code (the "Code") contains extensive regulations governing the issuance of tax-exempt debt by governmental entities. The relationship between State law and federal law is essentially as follows:

State law establishes the types and amount of debt that can be issued, along with requirements that control the manner in which debt is issued. Federal law dictates when debt can be issued with an exemption for federal income tax purposes.

Maine law does provide that the interest and dividends paid on general obligation securities issued under §5772, mentioned above, are exempt from taxation by the State of Maine, whether or not such income is subject to taxation under the Code. Only the federal government, however, can bestow tax-exempt status on government bonds for federal tax purposes. It is, therefore, sometimes necessary for governmental entities to issue bonds on a taxable basis even though the State of Maine has authorized the purpose, due to the fact that certain features of the bond issue do not meet the requirements of the Code for tax-exempt borrowing.

A provision of the Jail Consolida-

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*Lee Bragg is a partner with the law firm of Bernstein, Shur, Sawyer & Nelson. His practice is limited to the representation of municipalities, school units and special purpose districts. He devotes a significant portion of his practice to public finance, and is currently acting as bond counsel for numerous municipal, school and district projects throughout the State. He can be reached by phone at (207) 623-1596 or by email at [lbragg@bernsteinshur.com](mailto:lbragg@bernsteinshur.com).*

tion Act passed in the last legislative session provides an example of this circumstance. Counties that are using a 6-month budget to change the start of their fiscal year from January 1 to July 1 are authorized to borrow the amount of the 6-month budget for a term of 5 years. The Code does not provide tax-exempt status for revenue anticipation bonds that have a 5-year term. County bonds issued for this purpose must be issued on a taxable basis, which can increase the interest rate by several percentage points.

In short, bonds can only be issued by local governments with an exemption from federal taxation on the interest if the issuance is for a purpose authorized by the Code and meets all of the requirements of the Code that apply to the particular type of bond. Bonds that are initially deemed to have tax-exempt status can lose this status, or become subject to rebate requirements and penalties, if they do not meet certain post-issuance conditions such as spend-down deadlines and arbitrage and yield limitations.

**3. What is the difference between a note and a bond?**

These terms are often used interchangeably, although the word “note” is commonly used to refer to a security that has a term of one year or less, and the word “bond” is commonly used to refer to securities that have a term of more than one year.

**4. What is the difference between a general obligation bond and a revenue bond?**

A general obligation bond is issued on the strength of the full faith and credit of the issuing entity with a pledge of the entity’s power of taxation to guarantee repayment of the bond. A revenue obligation bond pledges the revenue from a particular source such as water or sewer rates to the repayment of the bond. Revenue obligation bonds are usually issued by districts because they do not have ad valorem taxing authority.

**5. Why do tax-exempt bonds command a lower interest rate than taxable bonds?**

The buyers of tax-exempt bonds are not required to pay income taxes on the interest that is earned on the bonds, and they can, therefore, gain

the same level of profit by charging a lower interest rate. One of the primary functions of bond counsel is reviewing all of the details of the bond issue in order to insure that the issue is eligible for tax-exempt status. This status is then guaranteed in an opinion letter, and bond buyers require and rely on this opinion letter when buying tax-exempt bonds.

**6. What is an allonge, and when can it be used?**

An allonge is simply an amendment to an existing note or bond that is used when the governmental entity and the owner of the note or bond mutually agree to extend the term, adjust the interest rate or modify some other provision of the original issue. An allonge is most commonly used to extend the term of temporary financing when permanent financing has not been obtained as quickly as initially planned.

**7. What are Private Activity Bonds?**

Private Activity Bonds are securities issued by governmental entities that provide a certain percentage of



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the benefit to a private entity. Securities of this type were previously known as Industrial Revenue Bonds. The Code contains guidelines for determining when a security must be treated as a Private Activity Bond, at which point an analysis must be made as to whether the bond is still eligible for tax-exempt status. If 5% or more of the benefit, use or capacity of a capital improvement project is dedicated to, or designed to benefit, a private entity, the security becomes a Private Activity Bond. A project of this nature might still be eligible for tax-exempt status if it meets all of the requirements of one of the approved tax-exempt categories of private activity financing. Some time ago, the Code was amended to reduce the number of categories of private activity projects that are eligible for funding on a tax-exempt basis.

**8. What is arbitrage, and when is it permissible in the context of a tax-exempt bond issue?**

Arbitrage is the practice of earning interest on borrowed money. Earning arbitrage on the proceeds of a tax-exempt bond is lawful and appropriate, provided that it complies with the limitations contained in the Code. The proceeds of notes and bonds that are issued on a lump sum basis (as opposed to a draw-down, or as-needed, basis) should be invested until the money is needed for the project or purpose for which it was borrowed. Different rules apply in different situations so it is advisable to consult with bond counsel regarding the requirements for a particular bond issue. Depending on the amount and type of the bond, interest earned on the

bond proceeds might have to be rebated to the Internal Revenue Service, although interest earned on the proceeds of bond issues that have a value under \$5,000,000 is generally exempt from rebate requirements for 3 years, after which the yield on any remaining proceeds needs to be restricted to the interest rate being paid on the bond.

**9. What is the borrowing limit for tax anticipation notes?**

State Statute sets a borrowing limit for tax anticipation notes at the total tax levy of the preceding municipal year.

Federal law sets a separate limit for tax anticipation notes. The federal borrowing limit for municipal tax anticipation notes being issued on a tax-exempt basis was changed a number of years ago. The limit is determined by calculating the maximum “cash flow deficit” plus an amount not to exceed five percent of the town’s expenditures for the prior fiscal year.

**10. Is it permissible to use general funds, or undesignated surplus, to finance a project temporarily, pending the receipt of bond proceeds?**


Yes, if the governmental entity intends to reimburse general funds with bond proceeds within 60 days of the use of the general funds for this purpose or the governmental entity has adopted a statement to that effect, called a declaration of official intent or a reimbursement resolution. Some expenses, such as engineering and design fees, are exempt from the 60 day requirement. The logic behind this requirement is that, in the absence of the statement of intent, bond

funds that are paid into the entity’s undesignated surplus account appear to have been borrowed for a purpose other than a qualified tax-exempt project. A declaration of the issuer’s official intent to reimburse itself must address a number of points. Bond counsel should be consulted whenever undesignated surplus is being used temporarily to finance a project, in order to insure that all of the Code requirements have been met.

**11. When is it possible to pre-pay or refinance existing debt?**

Outstanding notes and bonds can be refinanced as long as the original documentation does not contain restrictions on pre-payment. Most debt obligations issued to commercial banks can be pre-paid at any time, and can therefore be refinanced. This rule also applies to loans obtained through the United States Department of Agriculture Rural Utilities and Rural Housing Programs and to loans obtained through the Revolving Loan Fund Programs at the Maine Municipal Bond Bank. Bonds issued through the regular Maine Municipal Bond Bank spring and fall bond sales have restrictions on pre-payment, although the Bond Bank refinances the aggregate issue when it is advantageous to do so, and passes the savings on to the participants in the aggregate issue.

Bonds that are marketed directly and sold publicly by governmental entities can be structured in any fashion that is deemed advantageous to the issuer. These bonds often contain a pre-payment restriction for a set period of time, such as 10 years, after which the bonds can be pre-paid or refinanced. Bonds are sometimes structured in a way that allows pre-payment at a premium on the interest rate, and the amount of the premium might decline as the bond approaches maturity.

The retirement of existing debt with new bond proceeds is referred to as a current refunding. It is also possible to restructure debt through an advance refunding, whereby the proceeds of a new bond issue are invested and then used to make the debt service payments on the original bond. Under some market conditions, an advance refunding can reduce the overall interest cost on an original bond that contains pre-payment restrictions. 

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C O U N S E L O R S   A T   L A W

# Why We Recycle

By Victor Horton and John Albertini

The recent panic in the financial markets and the lack of consumer confidence that has led to a significant downturn in the overall national and global economies has also taken a toll on recycling. Markets for traditional recyclables (paper, plastics and metals) nose-dived this fall, mostly over a six-week time span. Newspaper went from \$130 in October '08 to \$30 in December '08. Milk jugs were paying close to \$900/ton in September '08 and appear to have recently leveled off at \$260 per ton (a 346% drop). Cardboard has gone from a high of \$140/ton in March '08 to \$25 in December '08.

Recent articles have appeared in the press about the poor market conditions and freefalling prices being paid for recyclables. Some of these articles have highlighted people who question the cost of recycling and suggest that municipalities and others should abandon their recycling programs. Our advice...don't panic and don't abandon your recycling programs!

As a few articles have pointed out, recyclable markets have been down before and have always returned to new highs. The past decade or so has seen continually increasing prices paid for recyclables as well as many new people and businesses entering the field of recycling. These new "players" have not witnessed the cyclical nature of recycling markets that those of us who have been in the business for several decades have observed. Before the growth in the value of recyclables seen during the last decade, there were frequent times when prices were low

and municipalities and businesses had difficulty getting anyone to take their products, let alone pay for them.

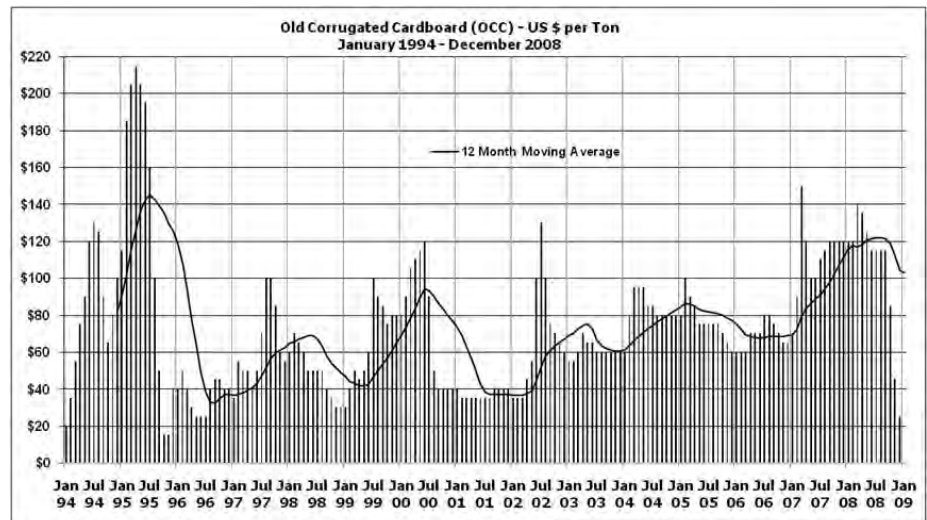
As the graph accompanying this article shows, the amount paid for cardboard has fluctuated dramatically over the past 15 years. The average price paid for baled cardboard between 1994 and 2009 was \$74/ton.

Recycling makes sense, even in these tenuous market conditions. It decreases consumption of natural resources and energy, creates less pollution, and provides a cost savings over disposal even in poor markets. For all of these reasons, Maine public and private sector organizations have been investing in recycling infrastructure for more than three decades. Keeping recycling programs active makes the best use of this infrastructure and supports the educational effort that has gone into encouraging the public to recycle. That way, when prices rebound, municipalities will be prepared to not only recycle for these reasons,

but also "profit" from the improved prices.

A review of a few key points in recycling may be helpful.

- Recyclables - newsprint, corrugated cardboard, office paper, mixed paper, plastics, scrap iron and various metals, to name a few - are essentially raw materials that are used in various manufacturing processes. They are used to make new products similar to their original form. For example, used cardboard is made into new boxes at various mills in Eastern Canada and the United States. Linerboard (the outside of the box) and medium (the inside of the box) are both made from paper generated in Maine. Huhtamaki Food Service makes drink trays in Waterville. Katahdin Paper produces paper in East Millinocket used in telephone directories. Plastic milk jugs and detergent bottles are used in Pennsylvania to manufacture such items as Tyvek envelopes and motor oil containers, and scrap metal is used for



*Victor Horton and John Albertini work for the Maine Resource Recovery Association.*

new appliances, car parts, and rebar for concrete.

• When the economy is good, manufacturing increases. All raw materials, including recyclables that are a direct substitute for raw materials obtained from nature (remember that fact), are in high demand when the economy is good and manufacturing plants are humming along, whether those plants are here or overseas. Prices are high. But when consumer demand slows down and manufacturers have to cut back or close their factories, demand (and price paid) for the raw materials obviously decreases. Take the price paid for milk jugs and other plastic containers; these prices are directly affected by the manufacturing cost of making virgin plastics, a process that mostly uses natural gas. Natural gas prices have fallen and so have recycled plastic prices. Hence, the price of recyclables mirrors the prices of other commodities. If readers have been following the economic trends, they know that over the past year, commodity prices reached all time highs (a bubble in economic lingo). Commodity prices fell rapidly this fall as a result of the worldwide economic downturn. The value of recyclables was not exempt from this downturn in commodity prices.

• Recycling has many advantages over throwing all of these "raw materials" into the solid waste stream for incineration or landfilling. It saves valuable natural resources – the raw materials that recyclables replace. Recycling generally saves energy, thereby further conserving resources and reducing greenhouse gases. Recycling conserves valuable landfill space. Re-

cycling reduces solid waste quantities and therefore tipping fees for trash to be burned or buried.

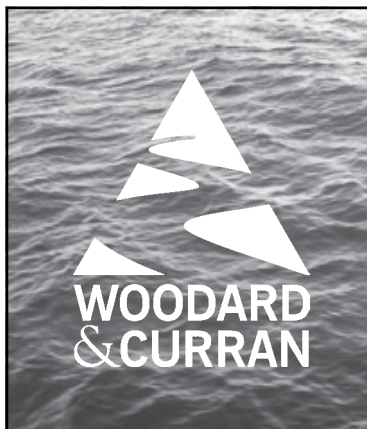
• Manufacturers use various natural resources whether they are petroleum (for plastics), iron ore (for steel), or trees (for paper) to make the products that we buy every day and the packaging that they come in. Some of the things we buy, cereal boxes for instance, are made from paper that we recycled last month. We buy a newspaper today, read it and recycle it and next month part of it may appear in a drink tray that we get at McDonald's. These products and packaging eventually end up as unwanted items but they have value. Recycling those items provides a substitute for the raw materials. Conservation of the earth's resources is becoming a higher priority as concern grows over the availability of these resources for future generations.

• Research has shown that recycling products saves both energy and in most cases water consumption. Reducing energy consumption is an increasingly important goal in order to reduce our dependence on petroleum fuels and to reduce greenhouse gas emissions and help control global warming. Reducing water consumption for manufacturing means that water will be available for drinking, wildlife habitat and agricultural production. It also means less water pollution.

• In response to the public outcry at the development of new solid waste landfills in the late 1980s, Maine adopted a solid waste hierarchy encouraging reduction, reuse and recycling over incineration and landfilling. Recycling reduces our dependence on costly

disposal processes, reduces the need for new landfills and incinerators, and reduces the potential for environmental harm from these facilities.

• Over the years, people in the solid waste field have considered recycling as a positive investment, not because of high prices paid for the recyclables but because recycling is a viable economic alternative to landfill disposal and incineration. **[mf]**



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[mrta.john@verizon.net](mailto:mrta.john@verizon.net)

Website [WWW.MRRA.NET](http://WWW.MRRA.NET)

**Compost Bin sale** It is estimated that 25% of an average household's waste is kitchen scraps and yard trimmings. The Maine Resource Recovery Association (MRRA) in cooperation with Norseman Plastics, is pleased to offer **The Earth Machine™** backyard compost bins at reduced costs to Maine communities and their residents.

Through local sales opportunities by municipalities, community groups, or service organizations (one lead group per community). Earth Machine™ backyard compost bins, Kitchen Pails, compost turners and new this year rain Barrels can be provided to homeowners at "Co-op buying power" low prices: bins will sell for around **\$37.50**...a retail value of \$85, kitchen pails for around **\$8.00**, a wingdigger compost turner for around **\$16.50** and a rain barrel for **\$55.00**.

Once you register with MRRA to participate, a sample of everything except the rain barrel can be sent to you, to assist with sales!



Residents will also receive a "how to" guide for FREE with each compost bin!

## How the Program Works

**1 CONTACT** the Maine Resource Recovery Association (MRRA) at (207-942-6772) or email [mrta.victor@verizon.net](mailto:mrta.victor@verizon.net) for a Participation Packet.

**2 REGISTER** with the MRRA to participate in the sale.

**3 PROMOTE** the sale of bins and/or pails (master posters and order forms are provided for easy copying) and accept orders until **April 17, 2009**, keeping track of who orders.

**4 RETURN** the Final Order Form and checks to the MRRA by **April 20, 2009** with the individual checks made out to the Maine Resource Recovery Association. Bin and pail orders must be made in exact multiples of 20 ONLY!!! (i.e., 20, 40, 60, etc.)

**5 ACCEPT** delivery of compost bins/pails sometime during the week of **May 11, 2009**.

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\* **This program is also available as a fundraiser for your group.**

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# People

Orrington Town Clerk **Susan Carson** was named interim town manager in late December until selectmen find a replacement for **Carl Young**, who recently accepted the job of tax assessor and code enforcement officer for the town of Tremont.

Ogunquit Town Manager **Philip Clark**, who retired at the end of 2008, received a standing ovation during a late December municipal luncheon attended by about 100 people. Clark retired after serving the town four years.

Portland councilors elected **Jill Duson** mayor in December, her second term in the past four years. She replaces Councilor **Edward Suslovic**. The board elects a new mayor of the state's largest city annually.

South Portland City Councilor **Thomas Blake** was sworn in as mayor on December 1, calling for more cooperation and unity. The vote was unanimous for Blake, who is starting his second year on the board.

**Mathew Eddy**, who ran the city of Brunswick's economic and community development efforts for five years, resigned last month to take a job in the private sector. Eddy was hired as executive director of the Eaton Peabody Consulting Group in Augusta.

Belfast police Chaplain Lt. **Kenneth Fitzjurls**, who has served in the police department longer than anyone else, has retired after 31 years due to health issues. A Navy veteran, Fitzjurls was promoted to chaplain in 2004 after completing training at the Maine police academy.

**Lisa Goodwin** has been promoted from Lincoln town clerk to manager to replace now-Auburn City Manager **Glenn Aho**. Goodwin was among 30 candidates for the job and will continue her clerk work until May to give councilors time to find her replacement. Goodwin has been acting town manager for six months.

Wales special town meeting voters in late December elected **Gregory Johnson** to fill out more than two years of the term of Selectman **Randall Greenwood**, who resigned after winning election to the Androscoggin County Commission. Johnson resigned his school board seat to take the Greenwood's seat.

**Rosemary Kulow** has been named Rockland city manager, effective in late January. Most recently, Kulow has worked as a planner for the Greater Portland Council of Governments and as New Gloucester town manager. A Wisconsin native, Kulow also has managed the communities of Gardiner, Eastport and Sebago in Maine, as well as starting her municipal career 20 years ago in Virginia.

Interim Rangeley Police Chief **Denis Leahy** was named permanent chief by selectmen in December. Leahy, who retired to Rangeley after a career with the Philadelphia Police Department, has worked part-time for the town since late 2006.

**Ellen Planer** has been named permanent clerk for the town of Falmouth after working on an interim basis since former Town Clerk **Kathleen Babeu** resigned last fall. Planer was hired as deputy tax collector in 2005 and was moved up to executive assistant after one year. Meanwhile, **Carol Kloth** has been named deputy clerk, effective January 12. Kloth has worked for the town for 20 years, most recently as a communications supervisor for the Falmouth Police Department.

Wilton Town Manager **Peter Nielsen**

has been hired as the top administrator for the town of Oakland, effective in late December. Nielsen, who lives in Winthrop, served as Wilton manager for seven years. He also has managed Clinton and Wayne and also served as a town councilor in Winthrop before moving from making policy to implementing it.

**Gerald "Gerry" Robertson**, who served as a Brewer city councilor for more than four decades, died December 29 at his home at the age of 90. Robertson was first elected at the age of 23 in 1941 and served for the next 46 years. A former state legislator, Robertson served 19 years as mayor and continued his volunteer work until his death, serving most recently on the planning board. The Brewer City Council had created a scholarship in Robertson's name just weeks before his death.

**John Schempf** has been hired as the new manager of South Berwick, effective in mid-February. Schempf has two decades of experience as a top administrator and presently works as manager of a community services district in Los Osos, California. Schempf was chosen by a committee of town councilors and residents. His experience also includes 10 years as a senior officer for the U.S. Coast Guard. [me](#)

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**Anson:** Firefighters from eight municipalities saved a number of buildings in the small town's village district last month after a fast blaze destroyed an historic building that housed a food cupboard and thrift store. The cause of the fire could not be determined because of the extent of the destruction, fire officials said.

**Augusta:** The city could face a municipal budget deficit of \$1 million in its new fiscal year budget because of current-year department shortfalls and plummeting revenue. The city's school department also is confronting a \$1 million projected budget shortfall for the new year.

**Carrabassett Valley:** The town is asking the Legislature to pass a special law allowing it to annex about 10,000 acres of Redington Township in order to garner tax revenue from an industrial wind farm proposed for the township. The proposed bill is similar to a request rejected in 2007 by the Land Use Regulation Commission, which governs Maine's unorganized territories such as Redington.

**Enfield:** A New Year's dance to raise money for the town's volunteer fire department attracted 150 people this year. The department sponsors numerous fund-raising efforts to buy equipment or share their donations with the town's food pantry. The department covers not only Enfield, but also Edinburg, Howland and Maxfield. Firefighters are hoping to expand the fire station, so some of the New Year's money will be set aside toward that project.

**Howland:** Selectmen decided last month the town will not reimburse residents for damage to their mailboxes by snow plows if the boxes are within a dozen feet of the center of the road.

**Jackson:** Special town meeting voters on January 6 passed a moratorium on wind turbine construction in the Waldo County town of about 500 residents. The issue was brought to a vote by petition after several companies showed an interest in building wind farms in the town. Two firms already have signed lease agreements with private landowners. The 6-month moratorium passed by a vote of 84-36 and allows officials to create standards for any future projects.


**Kennebunk:** Two part-time jobs have been eliminated and a patrolman position will remain unfilled as the town faces a \$250,000 budget gap for fiscal year 2009, which ends June 30. The cuts were made because of declining revenue, including excise taxes, according to town officials. The jobs cuts were effective December 31.

**Mexico:** While the town's advisory budget committee is lobbying for earlier involvement in reviewing the municipal budget, Town Manager John Madigan last month cautioned that the western Maine town is running so tight already that no job could be eliminated without also cutting services. He said he plans to continue taking a long-range view of the town's municipal operation and urged officials not to make short-term cuts that would negatively affect the solvency of local government.

**Newport:** Citing a growing population, town officials are projecting increases in spending for police and fire department budgets for the coming year. Fire will get the biggest increase at \$137,000, or 28 percent more than

2008. Newport is located about 30 miles south of Bangor.

**Topsham:** Selectmen have named a 7-member advisory committee to study ways to improve municipal government and increase residents' participation in town meetings and other forums. Last November, voters rejected a proposal to eliminate the annual town meeting.

**Statewide:** The state last month awarded \$4.9 million in riverfront grants to 13 communities and five more that applied jointly. The money was included in a bond package OK'd by voters in November 2007 and will help finance projects ranging from helping Milo rebuild a charred area of its downtown to building riverfront parks and walks in many of the winning communities. State officials said they received almost twice the amount available in grant requests. The 14 towns are Bangor, Biddeford, East Machias, Gardiner, Houlton, Milo, Orono, Pittsfield, Richmond, Saco, Sanford, Skowhegan, Thomaston, and a northern Maine conglomerate that includes Madawaska, Fort Kent, Grand Isle, Frenchville and Van Buren. 

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# Municipal Bulletin Board

## TECHNOLOGY CONFERENCE

The 2009 MMA Technology Conference is scheduled for March 27 at the Augusta Civic Center. This conference is again cosponsored by the Maine GIS User Group.

Richard McKinney, Government Technology Advisor for Microsoft, will open this year's conference with a talk on "Cost Efficiencies Through IT Optimization".

As program planning information becomes available regarding the conference, it will be posted on the MMA website, [www.memun.org](http://www.memun.org). Registration information will be put on the website by the first of February.

## LOOKING FOR BEST PRACTICES

The Maine Association of Conservation Commissions recently received a grant through the Maine Outdoor Heritage Fund and The Horizon Foundation to develop a set of "best practice" case studies that focus on ordinances


and policies that municipalities across Maine have adopted to support the protection of wildlife habitat and "quality places" in their communities. Our partner in this work is IF&W's *Beginning with Habitat* program.

A set of six to eight detailed case studies will describe effective local approaches used to:

- 1) Guide development in a manner which minimizes habitat fragmentation and inefficient land use practices;
- 2) Protect wetlands, including riparian corridors and vernal pools;

3) Protect high value habitat, particularly areas identified by the *Beginning with Habitat* program.

4) Generate support for municipal acquisition of open space and high value wildlife habitat.

MEACC wants to hear about your community's "best practices" in these areas. Please send information to [meacc@meacc.net](mailto:meacc@meacc.net) with a brief description of the "best practice" along with the town's name and a contact person. 

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# Legal

## 'GOING OUT OF BUSINESS' SALES REQUIRE LICENSE

If the economists are right, it's going to be a rough year for retailers, with a sharp rise in the number of store closures. Here's a reminder that all "going out of business" sales (by this or any similar description) require a license from the municipal officers (selectmen or councilors).

The application must be under oath and contain a complete inventory of all items to be included in the sale. All inventory must be at the place of sale when the sale begins. "Unusual purchases" within 60 days of the application are prima facie evidence that the purchases were made in contemplation of the sale. If the business has been in operation for less than two years, the applicant must also swear that no merchandise was purchased for the purpose of the sale.

Upon payment of a fee established by the municipal officers, they must issue the license. It is valid for 60 days but may be extended for an additional 60 days if the licensee furnishes an affidavit stating that all inventory has not been disposed of within the original 60-day period. All applications, licenses and related records must be kept as a public record for five years.

A license must be revoked if the licensee is convicted of violating the licensing law. The municipal officers also may refuse to issue another license to any applicant previously convicted of violating the law.

For further details, see 30-A M.R.S.A. § 3781. (By R.P.F.)

## INSTALLMENT CONTRACTS FOR SALE OF REAL ESTATE

In a troubled economy, and with tax lien foreclosures on the rise, municipalities may be tempted to resell tax-acquired property on the installment plan. But before agreeing to do so, be advised that there are at least two important legal considerations.

First, installment contracts with five or more payments must meet the requirements of 33 M.R.S.A. § 482. Specifically, contracts must (1)

include the provisions itemized in the law, (2) be executed in duplicate, with a copy provided to each party, and (3) be recorded in the registry of deeds within 20 days. (For a sample, see our "Information Packet" on tax-acquired property, available at [www.memun.org](http://www.memun.org).)

Second, installment contracts, regardless of the number of payments, may be terminated only by a foreclosure by the same means as for the foreclosure of mortgages. This means that in order to terminate an installment contract with a defaulting purchaser, *a municipality must retain an attorney and go to court*, just like a mortgage holder must in order to foreclose on a mortgage. In addition, the purchaser is entitled to a 30-day notice of right to cure and a 60-day redemption period that can be extended to a maximum of one year. Thus, terminating an installment contract where the purchaser has defaulted is neither quick and easy nor inexpensive.

There are also "business" reasons for avoiding installment contracts in most cases. The simple fact is that selling tax-acquired property back to the former owner on the installment plan is often a poor risk because the odds of default are high. For more, see "Tax-Acquired Property & Installment Contracts," *Maine Townsman*, "Legal Notes," June 2004. (By R.P.F.)

## MAXIMUM INTEREST RATE FOR '09 DELINQUENT TAXES: 9%

The State Treasurer has established 9% as the maximum interest rate that may be set for delinquent taxes committed during calendar year 2009.

Interest does not actually accrue on unpaid taxes, however, unless a municipality, at the meeting at which it votes to raise a tax or at any subsequent meeting prior to commitment of that tax, by vote sets the rate of interest and the date or dates from and after which interest will accrue (see 36 M.R.S.A. § 505(4)). This rate

# Municipal Calendar

**ON OR BEFORE FEBRUARY 15** — Written statements, as prescribed by State Tax Assessor, of wages withheld in the previous calendar year is to be furnished each employee (36 MRSA § 5251).

— Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, DHS #11, Augusta, ME 04333-0011 [22 MRSA §4311].

**FEBRUARY 16** — Presidents' Day, the third Monday in February, is a legal holiday (4 MRSA § 1051); and shall be observed as a school holiday in the absence of any vote of the superintending school committee designating how the day shall be observed (20-A MRSA § 4802).

**BEFORE TOWN MEETING** — Selectmen must have a warrant posted at least 7 days before town meeting and have a constable or designated resident make return (30-A MRSA §2523). If adoption of an ordinance is proposed, make sure of com-

pliance with 30-A MRSA §3002. Send copy of town report to the following: MAINE MUNICIPAL ASSOCIATION, State Tax Assessor, State Auditor, State Department of Transportation, and State Librarian.

— Town Meeting voter registration and voting list requirements. The registrar shall accept the registration and enrollment of voters prior to the municipal election according to the time schedule prescribed by 21-A MRSA § 122 unless changed by municipal officers.

— Copies of annual report are to be deposited in the municipal office or a convenient place of business for distribution to voters at least 3 days prior to the annual meeting (30-A MRSA § 2801)

— Check 30-A MRSA § 5823 for audits, and § 2801 for town reports.

**BY MARCH 1** — Solid Waste Municipal Reporting forms are due back to the State Planning Office, 38 State House Station, Augusta Me 04333 [38 MRSA §2125(1)].

then applies to all delinquent taxes committed during that year until they are paid in full, even if a different rate is set for taxes committed in a subsequent year.

Setting a rate of interest for delinquent taxes has another, sometimes overlooked effect: Unless a municipality also sets the rate of interest for overpayment of taxes, the default rate is the same as for unpaid taxes (see 36 M.R.S.A. § 506-A). In other words, the municipality will repay taxpayers who have overpaid (usually due to a subsequent tax abatement) at the same rate of interest as delinquent taxpayers pay the municipality. This can be avoided by establishing a *separate* rate of interest for overpayments; this rate cannot be more than the rate for delinquent taxes but may be as much as 4 % less. Such a vote can be taken at any meeting prior to the tax commitment.

For a detailed description of how to calculate interest on delinquent taxes, see pages 12-16 of MMA's *Municipal Liens Manual*, available free of charge to members on MMA's website at [www.memun.org](http://www.memun.org). (By R.P.F.)

### MUNICIPAL UTILITIES BOUND BY NEW 'RED FLAGS RULES'

Municipally-owned utilities such as sewer, water or electricity are subject to new Federal Trade Commission "Red Flags Rules" that require adoption of identity theft protection programs by May 1, 2009. Municipalities that do not provide utility services are not subject to these rules.

For a detailed description of the new Red Flags Rules, with links to samples policies and other resources, go to <http://www.memun.org/members/pubwks-ww/pwd.htm>. (By R.P.F.)

### PAWNBROKERS LICENSES

The current economic downturn has been tough on almost everybody, but according to recent press reports, for one sector – pawnbrokers – business is booming. Pawnbrokers either lend money and take tangible personal property as collateral or purchase property on condition that it can be repurchased at a fixed price within a fixed time. Engaging in pawn transactions requires a license from the municipal officers (selectmen or councilors).


Pawnbrokers licenses are issuable to persons of "good moral character" and are valid for one year. Additional licensing standards and a license fee may be established by ordinance.

Pawnbrokers must keep detailed records of all pawn transactions, which must be filed with the law enforcement agency of jurisdiction before the 15<sup>th</sup> of every month. These records are also open to inspection by the municipal officers at all reasonable times.

Pawn transactions are subject to statutory restrictions on finance charges, redemption or repurchase periods and so forth. Pawnbrokers

must also comply with certain truth-in-lending requirements under the Maine Consumer Credit Code. Municipally licensed pawnbrokers are exempt, however, from having to obtain a lender's license under the Consumer Credit Code.

Failure to obtain a municipal license is a civil violation punishable by a \$100 penalty, but failure to comply with recordkeeping and disclosure requirements or restrictions on lending is a more serious violation of the Consumer Credit Code and the Maine Unfair Trade Practices Act.

For more information, see 30-A M.R.S.A. §§ 3960-3965. (By R.P.F.) 

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