

Dispelling the Myth of Home Rule

Local Power in Greater Boston

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2. Home Rule in Action: Revenue and Expenditures

“The most important use [of home rule power] is finance authority, which is the area where we are most restricted.”

—Public official from Medfield

Before a locality can take any action at all, it has to consider whether it has the financial resources to do so. A municipality’s fiscal capacity is the cornerstone of its power: it establishes the extent of its ability to provide or expand services for its residents and its ability to react to regional economic changes. It is no surprise, then, that almost all of the municipal officials that we interviewed said that the budget was not only their primary responsibility but also their biggest problem. Several of these officials treated their municipality’s lack of resources as a problem independent of the limitations on their home rule power. They argued that the problem with home rule in Massachusetts was one of a lack of resources rather than a lack of power. But, as other municipal officials recognized, much of a locality’s ability to raise and allocate financial resources is governed by the limitations imposed by the Home Rule Amendment, along with a number of important state statutes.

Few respondents believed they had home rule in the sense of local fiscal control. Section 7 of the Home Rule Amendment and state laws regulating local taxation—including Proposition 2½—severely limit municipal revenue raising. At the same time, state statutes imposing unfunded mandates—as well as state statutes that authorize expenditures for some but not other purposes—undermine a city or town’s ability to allocate whatever revenue it has. Working together, these aspects of the legal structure do more than simply restrict a municipality’s control over its revenue and expenditures. As many of the officials we spoke with noted, they prevent there being any connection between a locality’s ability to raise revenue and its ability to control expenditures.

REVENUE

As a legal matter, there is virtually no local home rule authority in Massachusetts over the raising of revenue. Section 7 of the Home Rule Amendment makes this point explicitly: “Nothing in . . . [the Home Rule Amendment] shall be deemed to grant any city or town the power . . . (2) to levy, assess and collect taxes; [or] (3) to borrow money or pledge the credit of the city or town.” The powers to tax and borrow that municipalities do have are wholly a function of specific grants

of authority from the state. In granting this authority, the state has not conferred broad local discretion. The state's control extends from the general to the particular—from the ability to establish general tax policy to day-to-day administrative supervision and review. It approves almost every revenue-related action a municipality takes. The state determines the limit on local property tax increases and the extent to which a municipality can borrow money. Although state law does confer some home rule power to charge fees, this local power is also limited in numerous ways, not the least of which is the possibility that a state court will characterize a local fee as an impermissible local tax. With access to locally generated revenue constrained, state aid comprises an increasingly significant portion of the revenue side of the local budget. State grants are a significant source of revenue, but they often come with strings attached. The infusion of state aid, therefore, does not suffice to secure fiscal home rule in the eyes of many of those officials we interviewed.

Against this background, a spokesman from Ashland said that, with respect to revenues, “generally speaking, the state is like Big Brother, overshadowing the towns, making sure they do everything the way they’re supposed to, right or wrong.” Given this understanding, a town official from Medfield spoke for many we interviewed when he argued that the most important thing that could be done to strengthen home rule in the state would be to provide some flexibility over taxation, “which is completely off limits.” Or, as a city official from Salem explained: unless the legislature gives authority to raise revenue in a different way, “home rule becomes something that allows you to take care of a specific or minor problem, but not major issues.”

Taxation and Proposition 2½

Because the Massachusetts Constitution, unlike that of some other home rule states, expressly denies cities and towns the ability to decide how to tax their own residents, local tax authority must come from the state. In Massachusetts, state law requires localities to rely on property taxes—rather than on income or sales taxes—for almost all of their locally generated tax revenue.¹ Because the majority of the cities and towns in the Boston area do not have a substantial amount of commercial or industrial development, this means they must obtain most of their tax revenue from property taxes on residential property. This unbalanced reliance on residential property taxes has led many local officials to institute programs—and to use their control over land use policy—to attract commercial and industrial development to diversify their tax base. Even if municipalities succeed in attracting new development, however, their ability to tax it is subject to the same state-imposed restrictions as are imposed on their ability to tax current residential property owners. The state strictly limits the amount of revenue cities and towns can derive from local property taxes—whether commercial, industrial, or residential. Their ability to tax property is

subject, most importantly, to Proposition 2½, which took effect in 1980 having been adopted by referendum.²

Proposition 2½ establishes two different restrictions on property tax collection: a “levy ceiling” and a “levy limit.” The levy ceiling provides that a locality can never levy property taxes in excess of 2.5 percent of the total and fair cash value of all of its taxable property. The second restriction, called the levy limit, determines the maximum amount that a municipality can raise its property tax in any given year.³ The levy limit can be overridden. But, except in special and limited circumstances,⁴ Proposition 2½ requires that the override be adopted through a local referendum. Voters can approve three types of overrides: a general operating override (which cannot exceed the levy ceiling); a debt exclusion (which can exceed the levy ceiling but only during the life of the obligation); and a capital expenditure exclusion (which also can exceed the levy ceiling but can last only one year).⁵

A few officials we interviewed praised the limits on local taxing power imposed by Proposition 2½. A town official from Pembroke argued that the measure “prevents a community like ours from really going crazy and really putting a burden on taxpayers. It has forced the towns to work within their means.” An official from Westwood concurred, saying that the measure forced municipalities to be “more efficient.” These comments were in the distinct minority. More municipal officials complained about the limitations of Proposition 2½ than about any other state regulation.

The concerns that so many local officials expressed were no doubt related to the fact that our interviews occurred at a time when the state was discussing plans to cut state aid to cities and towns. Because Proposition 2½ limits localities’ ability to react to economic changes by increasing their own revenue, it has made the amount of state aid they receive of critical importance. Municipalities attempt to anticipate the state funding they will receive when they formulate their budget, but the actual amount is determined by the state on a year-to-year basis. As a result, the state might provide less than the locality has already planned to spend. When this happens, towns and cities have trouble reacting in part because their powers to raise revenue are strictly limited by Proposition 2½. The town official we interviewed from Millis described the situation this way: “It’s becoming more difficult to meet budget needs because of the lack of flexibility with raising revenue. We really feel the real estate downturn, and we have no way to respond to economic shocks.” An official from Melrose, facing a severe revenue shortfall because of potential cuts in state funding, said that “when the economy goes south, as it has recently . . . we can’t react quickly enough except for job cuts.” A spokesman from Medway also pointed to job cuts as the only way to balance the budget if the state reduces local funding.

Other officials noted that, while Proposition 2½ limits a municipality’s power to increase property taxes, it does nothing to reduce local reliance on

property taxes. In combination with other state laws, the measure serves only to constrain local fiscal control. “The most important use [of home rule power] is finance authority,” an official from Medfield argued, “which is the area where we are most restricted. In spite of [Proposition] 2½, we’re two-thirds dependent on property taxes. [We have n]o ability to use anything other than a very regressive tax to support our functions” Some municipal officials also complained that the formula used in calculating the yearly levy limit does not adequately take into account changing economic conditions outside of a municipality’s control. A town administrator from Nahant pointed out that “the cost of living rises faster than their ability to raise revenue.” Nahant has had to apply for two overrides in order to maintain operations, both of which passed by a slim margin.

Although Proposition 2½ affects all municipalities in Massachusetts, they are not equally impaired by its limitations. A few municipalities have a property tax base large enough that they do not need to tax up to their levy limit. This greatly enhances their ability to react to economic downturns. The difference between the current tax base and the levy limit provides a reserve fund that they can tap into at will. Some localities have gone further and created a “rainy-day” fund to compensate for sudden drop-offs in revenue. It is important to recognize that this ability to prepare for unexpected losses in revenue derives largely from the tax base that already exists, rather than from anything a city or town can proactively accomplish through its home rule powers. For example, Everett can tax under its levy limit—and also put away a substantial stabilization fund that it can tap into—because, unlike most communities in the Boston area, it possesses a strong industrial and commercial tax base that includes District Gas, which by itself brings in \$3 million yearly in property taxes. By contrast, in residential communities, local officials are forced to tax up to or beyond the levy limit to cover expenditures and often lack the excess revenue to create a “rainy-day” fund that commercial or industrial properties might generate. Even affluent residential towns like Weston have sought Proposition 2½ overrides in the last few years in order to maintain their operating budget.⁶

Local officials had very different reactions to the fact that, under Proposition 2½, the levy limit can be overridden by referendum. For many, the override is a critical and integral part of their yearly budgetary procedure. It provides a means of retaining local fiscal control. Many localities have requested several overrides in recent years and plan to ask for more in the future. The town of Acton, for example, used the “debt exclusion” override to pay back \$100 million worth of loans used for school and library renovations. A town official from Lincoln, which hasn’t hesitated to use the Proposition 2½ override, called the override the most significant way for the town to overcome the limitations on its power.

But the Proposition 2½ override is not without its complications and problems. The fact that the override can only be achieved by winning a majority of

the electorate in a referendum shifts decision making power away from elected city and town officials. In the end, overrides are frequently voted down by the electorate.⁷ As a town administrator from Boxborough noted, lack of public knowledge regarding the fiscal capacity of a town makes an override a hard sell in some communities. Often, officials told us, residents are concerned with only one aspect of local governance. They will vote to preserve the budget on one service, such as education, and then vote down overrides because they expect the local officials to make budget cuts on other services even though they are already operating on a minimum budget. As a result, many municipal administrators we interviewed no longer see the override as a viable option. Since the initiation of an override vote costs a significant amount of money, officials in localities where there is little chance of an override being passed sometimes decide not to waste the money necessary to put an override vote on the ballot. Even some of those who have successfully used the override said that asking voters, year after year, to override the legal limit for the property tax levy to balance their budget is a very inefficient way to run a government.

Other State Controls Over Revenue

Proposition 2½ is only one example, albeit an important one, of state control over local revenue raising. From assessment to collection to receipt, the administration of the property tax is strictly regulated by the state. As an official from Bedford put it, there is “micromanagement oversight over the town’s finances to make sure [we] don’t screw anything up fiscally.” Although the state delegates the act of assessing property values for property tax purposes to local boards of assessment, all reassessments must be submitted to the state Department of Revenue for approval before they go into effect.⁸ The tax rate of a municipality also cannot be officially fixed until it has been approved by the state.⁹ This means that localities cannot send out property tax bills to their residents until they have been signed off by the Department of Revenue.¹⁰ The state’s review process occasioned strong criticism. An official from Middleton stated: “It’s absurd how lengthy the state approval process is when the town wants to change its property tax rate. Somehow in Massachusetts cities and town can’t be trusted through the home rule process to do that so the state struck their finger in every part of it.”

The Department of Revenue also requires local boards of assessment to submit their evaluations according to a given schedule. But the amount of time the Department of Revenue needs to give the locality its approval varies. Because some municipalities are very dependent on the property tax, this extra level of state authorization restricts their ability to manage their resources. Like many others, the town of Concord relies on the property tax for more than 80 percent of its revenues, and, a town official stated, the Department of Revenue “really

drags its feet on giving approval; and this means that [the town is] set back by months.” This official argued that “the state should set up a new system under which towns that have demonstrated their competence should be allowed to act with more freedom.”

Finally, the state in exercising strict control over local taxing power does more than limit the ability of municipalities to raise revenues. It also limits local control over tax policy. For example, state law limits the ability of cities and towns to create exemptions from tax liability that might promote local interests. One town official argued that, as a way of responding to downshifts in the regional economy, localities should be able to adjust commercial tax rates downwards to promote economic development—a power that they now lack. Other municipal officials emphasized their desire to give tax abatements to elderly residents who were being driven out of town by ever increasing property tax rates. “One thing that I would love to be able to do is to give elders tax breaks from local property taxes—but taxation is one of these things that is particularly hard to get local control over,” an official from Hamilton said.¹¹ From this perspective, the state’s control over local taxation deprives municipalities not only of revenue but also of critical policy tools they need to shape and protect the character of their community.

Fees

The dramatic limits that state law imposes on local taxing power do not extend to all forms of raising local revenue. Local governments have the power under the Home Rule Amendment to impose fees as long as they pertain to a local service, are administrative in nature, and are not preempted by state law. Several municipalities have used this power to add or increase local fees to supplement their income in response to revenue shortages. To be sure, the local power to use fees as revenues sources is far from unlimited. Many fees—such as those for motor vehicle and boat registration—are imposed directly by the state. The proceeds of these fees go to the localities from which they are collected, but the state controls their assessment and collection. Other fees are directly tied to the administration of specific services and for that reason they are not as useful a source of revenue as are taxes. Nahant’s official reported that the municipality has moved several public services, such as trash, water, and sewer, to a fee-based system, but the amount of revenue these fees can generate is limited because the market value of these services is limited.

The state also sets some of the fees that can be charged by a locality. If they do, municipalities must petition the state for changes. The City of Boston has petitioned the state to increase the towing fee for vehicles parked in violation of local ordinances. The authorization for the fee originally passed as special legislation, and the authorizing legislation allowed Boston to charge only \$12 for towing fees while the actual cost of towing has increased to \$128. Boston has

thus been losing money on every vehicle it towed. But it cannot remedy this problem by itself. Somerville has also petitioned for an increase to parking fines assessed in the city. A city administrator from Somerville explained that the structure of its parking authority and authorizing legislation compelled the city to petition the state for this increase instead of changing it on its own. A July 8, 2003 story in the Boston Globe describing proposed state legislation illustrates the level of detail involved in state control over local fees:

Under the [proposed] bill, the statewide cap for a variety of parking violations would be raised from \$15 to \$25, with the amount for violations not paid within 21 days rising from \$20 to \$35. Boston would be freed from a state law that caps towing fees in the city at \$12 and would instead be allowed to charge the statewide rate of \$75. The city would also benefit from the repeal of a 1946 law exempting many parking lots from property taxes, which would generate \$2 million for Boston. In addition, the statewide auto lease and rental surcharge would be doubled from 30 cents a day to 60 cents a day, increasing by \$109.50 the annual fees leasers must pay to the cities and towns they live in.¹²

Even if state law does not dictate the fee that a locality may charge, municipalities must be careful that the fees they impose are not later characterized by the courts as taxes. If they are, they will be invalidated for exceeding the limits on the general grant of home rule authority set forth in Section 7 of the Home Rule Amendment. The current judicial definition of fees and taxes therefore has important consequences for local power. Municipalities can seek “fees” from an individual for benefits provided to that individual, but they cannot, without state authorization, seek “taxes” from such an individual for the harm that his or her actions causes the municipality. Using this test, courts have struck down a town’s attempt to charge developers a “fee” designed to compensate it for the impact that the development had on the town’s school system.¹³ The court found that the fee was actually a tax that the town did not have power to levy.

Several municipal officials we interviewed were aware that the state limited impact fees, and they singled out this aspect of state law as one of the areas where greater local revenue raising power could be conferred upon local governments. In arguing for this enhanced power, these officials noted that municipalities in other states have greater authority to impose these kinds of fees than the cities and towns of Massachusetts. Until such authority is granted, localities must rely on the home rule petition process. With the permission of the state, Medford has established a linkage program that requires new businesses to pay money to the town to offset the costs that the business has on town residents.

Confusion over the line between permissible administrative fees and impermissible municipal taxation has led some municipalities to alter their intended course of conduct. The town of Topsfield wanted to raise the admissions fee for

the local town fair by \$1 so it could cover added costs. But fears that the increase in the ticket price would be construed as an impermissible “tax” compelled the town to keep the ticket price the way it was.

State Aid

State-imposed limits on municipalities’ ability to generate their own revenue have made them increasingly dependent on state aid. Most municipalities rely on state aid to balance their operating budgets and, in our interviews, many municipal administrators (from Hull, Bedford, and Malden, for example) applauded the state for sharing state resources with them. These officials stressed that state aid is a primary way in which the state has been helpful to cities and towns.

Given the fact that state aid is such a critical element of a municipality’s budget, however, it is not clear whether state aid should be understood as a charitable donation from the state to localities or as a state mechanism that undermines local home rule authority. In fiscal year 2001, state aid made up an average of 28 percent of local revenue across the state.¹⁴ In the Boston area, this figure varied from 57 percent (Chelsea) to 5 percent (Hamilton).¹⁵ Over the past two decades, state aid has made up an increasingly significant part of municipalities’ budgets. This has not been an accident. Figures reveal that this increased dependence resulted directly from the passage of Proposition 2½. State aid was increased by over 20 percent in 1982 to compensate for a 13 percent decrease in property tax receipts caused by Proposition 2½. Since then, the state increased financial assistance to municipalities in order to lessen reliance on the property tax.¹⁶ By limiting a municipality’s control over its own revenue, Proposition 2½ thus increased financial dependence on the state and, thereby, replaced local fiscal independence with local dependence on the power of the state.

Unlike many inter-local “revenue sharing” programs, state aid in Massachusetts invariably comes with strict requirements. As a respondent from Peabody put it, “anytime state . . . money is involved, there are strings attached.” And, he added, certain problems are never addressed because local governments concentrate their efforts on doing those things necessary to make them eligible to receive state aid. Because the amount of money that a locality receives is based on the state programs they qualify for, some municipalities “may not be doing what [they] really need to, but what will bring the money in.” The only way municipalities can tap into this source of funds is to jump through the hoops laid down by the state or lobby from the sidelines for direct aid for their own purposes. Most localities do both. Even though the grants do not directly mandate municipal action or usurp municipal authority, their indirect economic influence leads municipalities to adopt the priorities of the eligibility requirements at the expense of unique local concerns. Structuring programs to maximize state aid, the Peabody official warns, “usually costs [a town] more in the long run.”

Reliance on state aid comes with the additional risk that the state may back out of arrangements previously made, leaving the municipalities to pick up the tab for programs initiated in part out of a desire to qualify for state support. The risk is particularly severe because it is difficult for a municipality to change programs fast enough to account for shifts in state funding priorities. Municipalities are often left to work out on their own how to make up for the deficit that the state causes by withdrawing state aid that they counted on. A town official from Cohasset mentioned a state promise to reimburse the town for school renovations. He said the state has since backed out of this program to the tune of \$41 million dollars. Now Cohasset is seeking to get a debt exclusion override to Proposition 2½ to cover the bill. A town official from Norfolk talked about a program mandated by the state in the 1970s that awarded increased pay to police officers if they took liberal arts classes. The Norfolk official reported that the state promised to fund 50 percent of this program when it started. At the time of our interview, the official said that Norfolk had not received any funding for this program.

EXPENDITURES

Home rule is generally understood to give municipalities control over issues of local concern. It is difficult to determine exactly what constitute issues of local concern. But municipal expenditures would seem to be an example. Nothing in the Massachusetts Constitution limits municipal control over expenditures in the way that Section 7 of the Home Rule Amendment and Proposition 2½ limit the ability to raise revenue. Quite the contrary: Massachusetts has a state law that limits the state's ability to impose financial obligations upon localities. Yet almost all the municipal officials we interviewed were critical of the state's substantial control over their expenditures—control that ranges from state-imposed unfunded mandates to limits contained in state enabling legislation to rules that govern local public works projects. By establishing a legal structure that compels municipalities to channel resources to fund state priorities, state policy concerning local expenditures often resembles a form of local administration of state programs rather than a program for promoting local control. Many officials thought that local fiscal decision making on the spending side was as controlled by state priorities as municipal decision making on the revenue side.

The state's control over how localities may spend their own funds is not always obvious. State legislation authorizing local expenditures can itself limit a locality's ability to allocate funds. Consider, from this perspective, Chapter 40 of the Massachusetts General Laws, which contains a section entitled "purpose for which towns may appropriate money." Although this statute authorizes towns to spend money, the specificity of its provisions can be read not simply as empowering towns but as limiting their ability to appropriate and allocate

resources for other purposes. Sections 5A and section 6, for example, enable a locality to appropriate money into a “reserve fund for extraordinary expenditures,” and section 5B allows for the creation of a “stabilization fund.” (No more than 3 percent of the preceding year’s fiscal budget can go into a municipality’s extraordinary expenditures fund, and no more than 10 percent can go to the stabilization fund.) The fact that these funds are defined narrowly for specific purposes would support an interpretation that the state intended this list of funds to be exhaustive. If so, any type of fund that does not fit one of the enumerated categories would require a petition to the state. A fund could not be established simply through the exercise of a municipality’s home rule authority. It’s not surprising, therefore, that when Franklin wanted to create a special fund to save the proceeds from a lawsuit it won, it filed a home rule petition to the state to secure the necessary authority.¹⁷

The most dramatic way in which the state regulates local expenditures is through unfunded mandates. Municipal officials affected by programs mandated by the state usually understand them to be worthy endeavors. But their implementation takes away a municipal government’s power to decide where to allocate its limited resources. Localities seeking to balance their budgets are required to cut services that have local importance in order to adapt to the preferences of the state. Because so many state laws have this effect, many municipal officials identified unfunded mandates as a primary impediment to home rule. “State mandates significantly limit your discretion,” according to a respondent from Saugus. “They widen the gap on how much is left over for other services.” An official from Hamilton was even more critical: “If we have had problems with state officials it is because they are just enforcing the laws, and they forget the costs they impose locally. The unfunded mandate is our biggest complaint. We are left holding the bag.”

In theory, unfunded state mandates should no longer be an issue for Massachusetts cities and towns. One of the elements of Proposition 2½ was a provision that no unfunded mandates could be imposed upon unwilling localities after 1981. More specifically, this part of Proposition 2½, often referred to as the “local mandate” provision, prevents the state from “imposing any direct service or cost obligation upon any city or town” without either local approval or full appropriation of state funds for the purpose of the mandate.¹⁸ With this provision barring unfunded mandates in mind, one can understand Proposition 2½ as an attempt to embrace an intermediate position concerning local autonomy. While it restricted municipal collection of property taxes, it simultaneously promised to enhance local autonomy by restricting state intervention in, and control over, local affairs. Proposition 2½ may thus have initially been perceived, in part, as an effort to expand home rule power.

Yet Proposition 2½ is now remembered only as limiting municipal power, and unfunded state mandates are still a major concern for cities and towns in the Boston metropolitan area. There are two reasons for this. First of all, most of the

unfunded mandates that adversely affect municipal budgets were imposed prior to 1981, and they were not affected by Proposition 2½'s prohibition of unfunded mandates. While Proposition 2½'s restrictions on municipal revenue were effective immediately, municipalities were not exempted from state mandates then in effect. Secondly, the state legislature has been able to find ways around the local mandate prohibition that do not violate it on its face. For example, Lexington and Newton prevailed in an unfunded-mandate lawsuit against the state, successfully defeating a statutory amendment that expanded the local obligation to provide private school transportation.¹⁹ The state responded, however, by passing a second statute conditioning all state reimbursements for pre-1981 mandates on local acceptance of the challenged amendment. When the new statute was challenged by the same municipalities, the Supreme Judicial Court found that there was no violation of the prohibition. The court explained that "there is . . . nothing to prevent the Legislature from forcing the acceptance of [the private school transportation amendment] upon reluctant cities and towns by providing benefits it has no obligation to provide."²⁰

Unfunded mandates come in many guises. State laws may attempt to ensure minimum levels of quality for some of the services that municipalities provide their residents. These quality standards are designed to maintain uniformity within the state for these services. Most of the required standards are imposed with little or no state funding, making it hard for a locality to adjust its current budget to come up to these standards. Alternatively, the state sometimes seeks to promote quality by directly mandating certain levels of local expenditures, as is the case with education. Numerous officials complained about the costs imposed by the Educational Reform Act, a state law that mandates a minimum educational spending level for every city and town in the state.²¹ While recognizing the importance of education, many municipal administrators, like one from Salem, thought that the state should set guidelines and expectations but let localities decide how to meet them without requiring specific levels of spending. For many municipalities (such as Melrose and Hamilton), expenditures on education make up more than 50 percent of their total budget.²² As a result, state mandates on educational spending limit their ability to control a significant percentage of their expenditures while increasing the pressure to raise revenues. According to an official from Nahant, the minimum mandated educational spending level is higher than the amount that Nahant is able to raise under Proposition 2½.

State law can also impose an unfunded mandate by compelling the provision of a service that otherwise might not be provided at all, let alone at the same level. The mandated service most often mentioned in our interviews was the state requirement that localities offer special education programs.²³ Local officials agreed that special education was important, but they pointed out that the program did not take into account the size, fiscal capacity, and needs of specific towns. A respondent from Swampscott noted that such a state mandate is par-

ticularly burdensome for small towns. The special education budget that the state sought to mandate, she pointed out, is larger than the entire operating budget for their high school. An official from Malden said that almost 30 percent of the city's \$42 million school budget goes to special education programs. He recognized that there were many special education students in Malden and agreed that special education was a laudable goal, but he complained about the lack of state funding for the mandate. An official from Salem, facing similar financial problems, expressed a sentiment other municipal administrators echoed: "If these mandates or programs are worthy, the state should fund them." Possibly in response to this kind of criticism, the state legislature recently established a special education reimbursement program that offers additional state aid for "eligible instructional costs associated with implementing individual education plans, so-called, of students receiving special education services."²⁴ This program has been placed on indefinite hold, however, due to the state's current economic constraints.

Another example of a mandated service that municipal officials identified as restricting their budgetary control in significant ways was the state requirement to provide municipal employee health insurance. The state requires cities and towns to provide health insurance to their employees through a system approved by the state. As noted by municipal officials from Medford and Melrose, health insurance providers have increased premium costs by as much as 20 percent. For Medford, the official reported, the shortfall in state aid combined with the increases in health insurance expenses will cost an extra \$6 million. Some municipalities (such as Holliston) have established regional health insurance programs to take advantage of group rates to offset this additional burden. Others (such as Wakefield) have not been able to establish such cooperative efforts. There is not much a municipality can do, other than these inter-local efforts, to protect itself from the cost increases charged by health insurance providers. An official from Everett explained that the state's rules concerning health insurance for municipal employees require every municipal union to agree to an increase in premiums. "There are roughly twenty-one unions in this city that I have to go to and say, 'I need some increases in these premiums.' We have unions for the clericals, laborers, school teachers. Any one retains veto power under state law. This really stifles communities that are faced with incredibly rising costs of health insurance." Yet, he added, it would be virtually impossible to get a home rule petition passed that would exempt the city from the provision.

Even when the state offers grants to pay for the mandates it imposes, the offer of funds can restrict and confine municipalities as well as assist them. A town official from Norfolk commented on the "professional development mandate" passed by the state. This mandate requires all schools to establish a training program for education-related employees within the public school system. Its purpose is to educate teachers about new developments in their field of study and

to foster techniques in diverse teachings styles and collaboration among teachers.²⁵ The budget for this program is to come out of the educational budget for the individual schools, but it can be supplemented by state grants provided by the state Board of Education. Eligibility for this state assistance is conditioned on the amount of funding a municipality is willing to allocate to its schools. Any municipality that reduces the funding for public education from the previous fiscal year loses eligibility for state funding for professional development.²⁶ State assistance is also withdrawn if the municipality's absolute level of financial support for education declined in any year since 1986, adjusted for inflation. The professional assistance mandate thus does more than require expenditures to achieve state professional training objectives. The grants that support this mandate indirectly restrict municipalities' control over their overall educational budget. If the municipality decides to cut educational spending because of financial shortages or other priorities, state assistance for professional development is also reduced.

Finally, several officials criticized state regulations that control local public works projects as being, in effect, unfunded state mandates. Several officials pointed to the requirement that the police officer positioned at street construction projects be paid at a set wage, one that applies uniformly to all construction projects regardless of size or location.²⁷ As a result, the mandate disproportionately impacts small towns and minor construction projects. An official from Norfolk reported that the town recently buried utility wires on a seldom-used street. Although the total project budget was only \$120,000, the mandated overtime salary for the police officer to direct traffic cost the city \$33,000, more than 25 percent of the total project budget. The town official said that Norfolk decided to go ahead with the project anyway. But officials from other towns noted that mandates such as this discourage them from undertaking minor repairs or renovations because of the added overhead costs that would be required.

Other officials expressed concern about the costs imposed by the Massachusetts prevailing wage law, which establishes the minimum hourly wage that can be paid to employees working on government sponsored projects.²⁸ The wage law applies to specified individuals, such as contractors moving office furniture or working on the construction of public works. Whenever a municipality hires contractors for these purposes, it must pay the wage established by the state. An official from Walpole noted that the required wage is often 30–40 percent higher than the market rate in the private sector for the same type of work. As a result, this requirement significantly increased the cost of its municipal projects.

THE REVENUE–EXPENDITURES RELATIONSHIP

The conventional understanding of fiscal capacity for any organization imagines a close interdependence between revenue and expenditures. For most organiza-

tions, the level of expenditures is determined by assessing the needs of the organization, the costs of satisfying those needs, and the potential revenue available to pay for them. Unlike organizations that follow this conventional model, municipalities in the Boston area manage a much more complicated relationship between revenue and expenditures. As we have seen, numerous state statutes and regulations limit their ability to raise revenue. At the same time, a variety of state provisions make localities responsible for expenditures that they cannot avoid. Many municipal officials therefore do not see the budgeting process as enabling them independently to assess local needs, the costs of meeting them, and the means of paying for them. State limits on revenue raising and state commands to spend money combine to make the local assessment of needs a luxury that municipalities cannot afford. Even though it is generally understood that municipalities have control over their own budgets, that control in fact often requires them to cut programs and services not mandated by the state and to lobby the state for more aid, notwithstanding the strings that will be attached to it if it is obtained.

To get a feel for the disconnect between revenues and expenditures in the current structure, and thus the limits of local fiscal control, consider how actual budgeting practice compares to the description of the budgeting process set forth in a standard text on state and local taxation in Massachusetts. The text describes a process in which the municipality sets its tax rate after the municipal legislature approves an appropriation based on estimated local expenditures. Once the appropriation is established, anticipated state aid, fees, and other income from state funds are subtracted. The resulting figure is the amount that needs to be raised by taxation. This amount is then divided by the total property valuation, and the result determines the property tax rate. This procedure suggests that revenue is calculated from the level of expenditures that a locality needs to make. Fees and state aid are treated as supplements to the budget, not as critical component of it; they are subtracted out before the local tax rate is determined. For the most part, this model imagines a traditional interconnection between revenue and expenditures. One is calculated in terms of the other.²⁹

This conventional model is not followed because of Proposition 2½, unfunded state mandates, and state limits on a locality's ability to find alternative sources of income to the property tax. Most municipalities do not decide how much they want to spend on services and then use that figure to calculate tax rates. Rather, they describe a situation in which revenues are predetermined due to state limits, a large portion of their expenditures are set by state mandates, and state aid—beyond their capacity to guarantee—is critical. For many municipalities, if local expenditures were calculated independent of revenue, the resulting tax rate would exceed the levy limit set by Proposition 2½. At the same time, unfunded state mandates establish an initial expenditure budget not locally

chosen. State control over revenue and expenditures thus turns municipal budget calculations into an algebra equation that squeezes out local discretion. The only variables in the equation that municipal authorities can use to adjust revenue and expenditures are the local services and programs that are not controlled by state regulations. In the end, much of a municipality's actual power over its finances involves cutting these locally initiated programs. An official from Acton described the current budgetary situation this way: "[T]he strength of Acton is in its school system. The preponderance of new residents come here for the good schools. And the town spends over 70 percent of its revenues on the schools. Most similar towns are only around 50 percent, if that. As a consequence, we have relatively less money for services like roads, etc. Under Prop. 2½, we just can't make this money materialize."

This finance structure has not just left localities with less control over their budgets than is often imagined. This structure directly affects municipalities' capacity to control the character of their community. A town administrator from Reading discussed how the town's inability to control its revenue collection is part of a causal chain that exacerbates the town's problems because it increases expenditures without raising revenue. Without the ability to levy taxes or to find ways other ways to raise income, Reading instituted a property tax up to its levy limit. Attempts to override that limit failed the last two times they were tried. Yet because the property tax rate is now higher than in areas around it, and because Reading feels it is unable to make adjustments to that rate, Reading's elderly residents, impacted by the property tax, have moved out only to be replaced by families with kids. This increase in school-age children has led to an increase in educational services and in policing costs, which in turn has required more revenue to pay for these increased costs. Yet because the property tax is already levied at its maximum, and because the town lacks the tools to make its tax policy more accommodating to long-term elderly residents, the municipality can only react to these changes by cutting more services, trimming back on personnel, or, potentially, relying on its land use powers to limit new residents. In this way, the lack of local fiscal control makes it difficult for Reading to maintain the character of its community. Instead, fiscal concerns largely beyond its control shape the kind of community that the municipality becomes.