Reducing the impact when a large property taxpayer is at risk

Maine's 'Sudden and Severe Statute' addresses significant events, such as mill closures, but the law has not been widely tested in its current form.

By N. Joel Moser

It's no news that our state is in a massive economic transition. Marked by the early textile mill closures years ago in Lewiston and Biddeford, and continuing today in Millinocket, Bucksport and beyond, the dramatic decline in the papermaking industry has left thousands of people looking for new jobs in the shadows of the mills that once promised lifelong work. Local businesses that relied on thriving mills and mill families have been shuttered, and the municipalities that these great paper giants once called home now face collective losses of an estimated $1 billion in assessed value. Millions of dollars of annual property tax revenues are gone.

Adding insult to injury, a municipality's loss is magnified by state subsidy formulas' inability to acknowledge the loss until years after it occurs, causing lower subsidies and higher taxes than the municipality otherwise would qualify for if the lost value were recognized immediately. The failure to quickly recognize the lost value in intergovernmental funding formulas is not widely understood, but its impact is significant.

There is a limited relief valve allowing a municipality to seek a more timely reflection of an acute loss in value within state subsidy formulas. Although deeply imperfect, Maine's "Sudden and Severe Statute" provides some municipalities a measure of reprieve by reducing their state valuations and triggering corresponding adjustments to their eligibility for state subsidies and county tax obligations. This article charts how that process works and what the statute can and cannot do to help a municipality in such dire circumstances.

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***The now-closed, iconic paper mill in Bucksport.** (iStock photo)*

April 1: The snapshot

To understand the challenges in leveraging this statute, we start at the beginning – April 1, the day on which Maine law requires assessors to take a snapshot of the value of all real and personal property to determine annual property taxation. When a mill shuts down, the reduction in the property's assessed value will be recognized within a year or less, as specified by Maine law, on the following April 1. At that time, the assessed value will be reduced and the municipality will need to respond to plummeting tax revenues, usually by dramatically cutting spending, shifting an enormous burden on to the remaining property taxpayers, or some combination. Tough choices need to be made, and everyone in the community feels the loss.

Beyond the severe challenges the lost value creates for municipal budgets and taxpayers, the shock waves of a major closure reach all the way to Augusta. This wave is slower moving, and the delay leaves a municipality without access to state subsidies that could help ameliorate the local financial impact. The reason for the delay is the time it takes for the reconciliation between the municipality's revised local assessed value, and the recognition of that value in state formulas that determine subsidies and county tax obligations.

Getting to 100%: The state valuation process

A municipality's state valuation is a key component in intergovernmental funding formulas. The pie of available subsidy is 100 percent, and each municipality's share is determined by its value relative to others; municipalities with lower state valuations, generally, receive a higher proportionate subsidy, and those with higher state valuations receive lower amounts of subsidy.

The state valuation calculation process is complicated and starts with local assessed values. Each year, the local assessor(s) will make changes in local assessments to reflect the just value of property as of April 1. Over time, a municipality must conduct a full review – called a revaluation – to realign assessed values closely to fair market value. While April 1 is the magic date for assessors, municipalities have flexibility when to conduct a valuation update; therefore, these happen at different times. The differences between the overall level of assessed value in a municipality and its current Fair Market Value (FMV), called the certified ratio, vary across the state and taken at face values, can distort how a municipality stacks up to others. Thus, the assessed value of one municipality cannot immediately be compared to that of another; it's not apples-to-apples unless all municipalities have been assessed *and* revalued at the same time, which never happens in sync.

Equalization, the process of offsetting these variations, levels the playing field by creating an apples-to-apples comparison called the state valuation. Maine Revenue Services is charged with determining annual state valuations for the 489 incorporated municipalities and the Unorganized Territory. MRS' calculations understandably take time and rely on current and historical data.

Maine law requires MRS to "equalize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its just value as of April 1." Therefore, determining a municipality's state valuation cannot begin until the local assessor has compiled the local list of assessments. MRS also formally must notice municipalities of the proposed state valuation and allow 45 days to appeal the results to the State Board of Property Tax Review. Given this timeline, MRS will finalize a municipality's state valuation between 10 and 20 months after a municipality determines its local lists. Because the 2015 State Valuation is based on the April 1, 2013 local lists, the current state valuation lags behind the local assessment by two years. State general purpose aid for education formulas also are historical, using an average of three most recent State Valuations *prior* to the most recently certified historical state valuations.

Accordingly, for years after the lost value of a closed mill is recognized locally, the municipality is treated in intergovernmental funding formulas as if that mill were still fully operational and paying millions of dollars in property taxes.

Sudden and Severe Statute

For municipalities in dire straits due to a sudden loss of a major taxpayer, there is a limited statutory option that enables a recalculation of the state valuation more quickly than the standard process allows. Pursuant to 36 M.R.S. § 208-A, a municipality that has experienced a "sudden and severe disruption in its municipal valuation may request an adjustment to its equalized valuation." To do so, it must file a petition with MRS by "March 31st of the year *following* the tax year in which the sudden and severe disruption occurred."

Qualifying under the statute requires significant hoop-jumping. The municipality must submit an appraisal report from a "qualified professional appraiser" and meet high eligibility criteria designed to ensure relief is granted for only the most critical, "legitimate" economic crises.

First, the net reduction in equalized municipal valuation must be at least two percent from the equalization municipal valuation. Second, the not-so-easily interpreted 2013 amendments require that the lost value must be from "the cessation of business operations, removal, functional or economic obsolescence not due to shortterm market volatility or destruction of or damage to property resulting from disaster attributable to a single taxpayer that occurred in or was not reasonably determinable until the prior tax year." Third, the municipality's equalized tax rate of residential property must exceed the state average. Finally, the statute does not recognize property acquired by the municipality, such as that acquired through the tax foreclosure process.

MRS reviews the petition and determines if the municipality qualifies for an adjustment and, if it does, the state must recognize the lost value when calculating education funding obligations and distributions of revenue sharing for the *following* fiscal year and until the state valuation process recognizes the loss. A municipality may challenge a denial directly to Superior Court.

Not a cure-all

Unfortunately, the Sudden and Severe Statue offers far less relief than its name might suggest. "Sudden" and "severe" are narrowly defined conditions, and the 2013 amendments make relief available only in limited circumstances. Although the two percent threshold for loss in equalized municipal valuation can be met with some closures, the municipality must incur substantial costs to obtain an appraisal and demonstrate the lost value was not due to short-term market volatility, such as a declining demand for a product. In practice, the statute therefore denies relief to responsible municipalities that have gradually lowered a large taxpayer's assessed value to reflect changing economics – even though that sudden loss in value could be more than two percent of the equalized municipal valuation.

There are other concerns. The 2013 revisions prevent relief for lost value that was "reasonably determinable," placing assessors in the awkward position of trying to anticipate changes in the market. Furthermore, even if a municipality does qualify, the law now limits relief to the *following* tax year rather than the current year. And perhaps most significant, the state general purpose education aid subsidy formulas now require a three-year average of state valuations, excluding the current year, when calculating "property fiscal capacity." *See* 20-A M.R.S. § 15672(23). These formulas mean it will take even longer before the lost value is fully recognized, even with an adjustment.

The Sudden and Severe Statute still may offer assistance to municipalities facing the loss of a significant taxpayer, but the statute has not been widely tested in its current form. Nevertheless, it is clear state formulas and the statute could be plied to do more to reflect the painful realities many municipalities know all too well. These municipalities made great financial contributions to our state and its tax base when the mills were booming, contributing generously to the overall pie and upping other municipalities' eligibility for subsidy. During these times of economic transition, state subsidy formulas should do more to recognize these municipalities in their time of need, and to respond with all due haste. ■