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Central and Eastern Europe Local Government and Housing Privatization

Prepared for the Office of Housing and Urban Programs
Agency for International Development



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**TRIP REPORT:
TECHNICAL ASSISTANCE ON
LOCAL GOVERNMENT FINANCE LAWS**

**ROMANIA LOCAL GOVERNMENT ASSISTANCE PROGRAM
PHASE II**

JANUARY 1994

Prepared for the Office of Housing and Urban Programs
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Prepared by
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T R I P R E P O R T:

Technical Assistance on Local Government Finance Laws

Romania 11/6/93 - 11/24/93

The purpose of this trip to Romania was to provide technical assistance to Romanian officials on draft local government finance laws pending in the Romanian Parliament. This effort involved reviewing existing Romanian laws and draft legislation. It was part of a larger USAID technical assistance effort both to improve the service delivery and management of local governments and to support efforts to decentralize fiscal authority and resources from the national to the local level of government.

The first week was spent determining the substantive context, procedural posture, and political dimensions of the proposed draft law. The second week was essentially follow-up in nature.

Initially, I participated in discussions about the legal and policy framework in Romania with USAID and ICMA. Several orientation meetings were held with U.S. Treasury advisors to the Ministry of Finance, Tom Briggs and Larry Seale. I also met with Mark Detrich, the CEELI liaison in Romania for the American Bar Association. Mr. Detrich described the involvement of the ABA in bankruptcy and legal reform legislation pending in the Romanian Parliament. He described their impact and success as very limited.

Meetings with Ministry of Finance

The U.S. Treasury advisors were able to arrange meetings with Ms. Georghita Oprea, Budget Director of the Ministry of Finance, and other prominent Ministry officials. Ms. Oprea supported a rather limited view of local government autonomy. She questioned the reasonableness of the amount of State revenues that would be diverted to local governments under the pending Federation of Municipalities draft (35%) and expressed the view that such an amount was unreasonable. She, and others in the Ministry of Finance, questioned whether the local governments really needed amounts of that magnitude to perform their responsibilities. At the same time, their view seemed to be that there would be no real shift in programmatic responsibilities between the State and local governments. Aside from the core local public administration, the local governments would basically handle public building

maintenance and operations while the State would continue to be programmatically responsible for what occurred within the building. For example, salaries of teachers in schools and nurses within clinics would be controlled and paid by the national government.

With regard to budgeting processes generally, the Ministry of Finance officials seem to approve of the initiation of budgets at the local level, but clearly recognized that the need for State transfers maintained effective State control of the approved budget. They saw no need for separate capital budgets or long-term capital improvement programs (fairly common in the U.S.). Some officials were skeptical of the use of long-term to finance capital projects. Questions were also raised concerning the competency of local government to engage in comprehensive fiscal planning and the operational requirements of fiscal management. Ms. Oprea provided us with a draft of the Government's proposal for local government finance. A translated copy is provided as Attachment A.

I drafted comments for Mrs. Oprea of the Ministry of Finance on the Government's proposed law. A copy of those comments appears as Attachment B. Suffice it to say that the Government draft maintains substantial central control of both the budget and capital project approval processes. I got translated copies of the draft law to Tom Briggs and Larry Seale. With Tom's permission, I incorporated some of his comments in what was submitted to Mrs. Oprea.

Meetings with Parliament

USAID arranged a meeting with Dr. Mircea Ciumara, Chairman of the Committee for Public Administration, Territorial Arrangement, and Environmental Equilibrium in the Romanian Chamber of Deputies. He is a member of the Peasant's Party which is in opposition to the Government. Mr. Ciumara related the procedural posture of the pending draft local finance laws and invited me to attend a subcommittee work session later that week. Subsequently, I was also briefed by Mr. Alexandru Budisteanu, the Committee's chief staff person and another person who serves as legal counsel to the Committee.

The subcommittee work session was attended by four deputies and the chairman. In addition to myself and Alina Popescu of USAID, five representatives of the Association of Judets Council Presidents and three representatives of the Ministry of Finance were in attendance. The work session lasted most of the morning and basically consisted of a presentation by the representatives of the judets. They supported the draft of the Federation of Municipalities which was characterized as a joint work product. A few minor changes were proposed including raising the percentage of certain revenues that the judet would receive from the State from 3% to 5%, and providing for an inflation indicator. Even though municipalities are not adversely affected by those proposed

changes, Dr. Ciumara expressed the view that the judets and the municipalities must be in strict agreement on this bill.

The representatives of the judets, as well as several members of the subcommittee, expressed a strong view that the new local government law should be separate from the existing public administration law. Questions raised by the subcommittee members included the practicality of the 2/3 council member referendum/budget approval provisions in the draft bill; the threshold amount required for capital projects before Romanian government approval needs to be obtained; and the extent to which revenues collected within a jurisdiction must remain in that jurisdiction for expenditure. The deputies indicated to the judet representatives that the provision in the draft providing for interest-free loans from the State in short-term deficiency situations was unacceptable.

The representatives from the Ministry of Finance were not given much of an opportunity to speak. The subcommittee chairman made it clear that they were attending for information gathering purposes only. He indicated that the subcommittee was tired of the delays of the Ministry and that he expected their comments on the Federation draft the following day. He indicated that the subcommittee was going to use the Federation draft as the starting point for the new legislation. I was given the opportunity to speak to the subcommittee and briefly described what fiscal autonomy means to local governments in the United States. I expressed its benefits in terms of the efficient delivery of public services, responsiveness to the electorate, and accountability to the public. I also commented on some aspects of the legislation, including the 2/3 voting and referenda provisions and the need to ensure some level of equalization of State assistance to the less wealthy counties and municipalities so that a basic level of service is provided throughout the regions in Romania.

Subsequently that day, Dr. Ciumara visited the USAID mission and met with you and USAID officials. Among other things, he confirmed that the Federation draft would be the starting point for consideration of the new legislation. He also stated that he believed that passage of the legislation would be obtained within two weeks. He indicated that the bill would face an uphill battle in the Senate where many senators are more conservative and "in line" with the government. Dr. Ciumara asked me to prepare written comments on the Federation draft. Accordingly, comments were drafted, translated, and delivered to Dr. Ciumara, Subcommittee Chairman Mr. Bott, and Mr. Budisteanu. A copy appears as Attachment C.

Meeting with Mayor Moruzi of Brasov

David Olinger, Debbie Zubow-Pringle of USAID, and I travelled to Brasov to meet with Mayor Adrian Moruzi. Mr. Moruzi is President

of the Federation of Municipalities. I was able to brief the Mayor on the developments in the Parliament. He was very interested and was appreciative of the written comments that I had previously drafted and which he had received through your Office. Mayor Moruzi indicated that the municipalities had done some lobbying in the Senate but doubted that the Senate would pass the bill soon. He believes that passage of the local finance law by the Chamber of Deputies is of major symbolic importance. He expressed his strong view that the local government finance law is a necessary tool to break the tradition of centralization in Romania.

Follow-Up Meetings with Parliament

Early in the second week, State Secretary Constanescu held a press conference/press event and stated, among other things, that a local government finance law was important and needed. The press event made the nightly television news.

A second Chamber of Deputies subcommittee work session was held on Wednesday morning. Nine deputies from the Public Administration and Finance Committees attended. All were from opposition parties. In addition, Mr. Budisteanu, legislative counsel, myself, and two representatives from the Ministry of Finance attended. The meeting started with a discussion of general principles. One deputy cited the Council of Europe's principles of local government autonomy as being a starting point, but noted that Romania is not a signatory of that pact. I was asked to discuss local government autonomy in the United States. I described the budgetary processes and revenue sources of local government and also discussed equalized state assistance to localities. Of particular interest to the deputies was how American local governments prioritize their needs.

Considerable discussion concerned whether the subcommittee should first focus on revenues or expenditures. Concern was expressed that a local taxing authority bill was not yet before them. They generally favored more local government autonomy (taxation, budget, collection powers) than less. The subcommittee took up a draft that appeared to be that presented by the judet councils and which was very similar to the Federation draft. They made relatively minor changes to the "General Directives" chapter and adjourned until the following week. I was invited to that meeting by the subcommittee chairman, and later by Mr. Ciumara.

Subsequently, I had the opportunity to talk with Mr. Budisteanu who is the primary legislative staffer. Mr. Budisteanu is of the opinion that a local government finance law will pass both the Chamber of Deputies and the Senate. He observed that the government is criticizing the localities for not doing enough to improve the people's situation and that the opposition Mayors have replied that they don't have the necessary tools. He believes that the political dynamics of the situation will eventually lead to

enactment of a local government finance law.

I provided supplemental comments on the draft legislation to the subcommittee. It appears as Attachment D.

As you know, I extended my stay to attend the third work session of the joint subcommittee. Because of pending legislation on the floor of the Chamber of Deputies, only five deputies attended the worksession. Again, no members of the Government coalition attended. Two representatives of the Ministry of Finance arrived late.

Because of the lack of attendance, the subcommittee chairman decided not to continue the line-by-line review of the bill but rather to discuss more general issues. The legislative counsel to the subcommittee (Mr. J. Vida) briefed the subcommittee in very general terms about Western European State-Local government relationships that involved transfers from the State budget. Spain, Finland, Hungary, and Italy were mentioned. The subcommittee members wanted more detail and specific citations.

Most of the discussion at the meeting centered on the institutional competency of many local governments to handle significant service delivery and financial management responsibilities. Particular concern was expressed by deputies with respect to the staff capabilities of communes, villages, and small towns. The Ministry of Finance representatives stated that in some instances local governments did not have the technical competence to spend money that was allotted to them and that money went unspent. In a very general way, the deputies also expressed concern over disparities of wealth in various localities and the ability of local governments to raise adequate revenues from their own resources. At least two deputies stated that generally the judets are better staffed and that they were in the best position to both assist and provide for equalization of revenues to poorer communities. One deputy stated that judets need to get more involved. Another deputy seriously questioned whether the State shared revenues provided under the legislation was adequate. There was general agreement that more analysis needed to be done on that issue. It was also stated by one deputy that the legislation needed to be viewed as a transition approach.

On the issue of the institutional competence of local governments, I noted that some States in the U.S. (i.e., Pennsylvania) have set up a statutory classification system for municipalities based on population or other relevant factors whereby some jurisdictions are granted broader autonomy than others. I also explained that in Maryland, local government "home rule" autonomy is determined by the voters of the particular jurisdiction. One deputy from Transylvania stated that he was asked by his local government officials to consider some sort of classification system and that he appreciated learning about the

existence of similar approaches in the United States. He indicated that he may submit amendments to the bill to establish a classification system.

I also commented on other aspects of the legislation, including the desirability of amendments to provide for clear delineation of responsibilities among governmental levels, simple majority voting on budgets, public hearings, additional capital debt provisions, additional provisions on the investment and safety of public funds, and independent audits. I again expressed my view that the current "negotiated" approach to equalization and local aid would prove unsatisfactory in the long-term and that in the future the Parliament might want to consider a more formulaic approach toward local aid along functional lines. The subcommittee seemed to agree with my comments.

Another work session was scheduled for the following day on my date of departure. Mr. Budisteanu indicated a willingness to keep ICMA/USAID informed on the progress of the bill through Alina Popescu. This would include faxing current drafts of the legislation.

Conclusions and Next Steps

I strongly believe that the trip was useful. In addition to the goodwill that was established (I believe it was significant), I had the opportunity to present, in a meaningful way, certain key elements of American state/local fiscal relationships to legislators and Ministry of Finance officials. Without intending to overstate my impact, the legislators, in particular, seemed receptive to many of the points raised. Whether or not those points are reflected in enacted legislation or are forgotten remains to be seen. The legislative process in Romania is even more informal than is generally the case in the United States. Legislative staff in Romania plays less of a role in focusing issues and shaping the final form of legislation.

I would recommend that ICMA/USAID continue to closely monitor legislative developments on local government finance. Resolution of the issues in favor of increased autonomy are key in the continued democratization of the country. Because of the good relationships I developed with the deputies, it is possible that my continued presence might have been useful in focusing the subcommittee on the issues. On the other hand, subcommittee members present seemed to understand the most important policy concerns. As in any legislative process, ultimate decisions are often taken based on pragmatic "on the ground" assessments and political and fiscal realities. In all probability, any enacted bill will be revisited and improved over the years. Nonetheless, if possible, it may be useful to provide similar technical assistance to the Senate committee handling the bill should it be approved by the Chamber of Deputies.

CHAPTER III

Development, Approval, Execution and Close of Local
Budgetary Exercise

Article 52 - By local budgets are designated the budgets of an administrative-territorial unit with corporate status.

Local budgets are developed, approved and executed under this law.

Every commune, town, city, Bucharest city sector, judet, or Bucharest city, develops autonomously its own budget.

The Government will take the necessary measures so that through the fiscal autonomy of administrative-territorial units and through the budget of each unit, local initiatives be stimulated in order to meet local social requirements, to grant exercise of the local governments' right to plan the budgetary expenditures according to their own needs in relation to potential budgetary resources, and to strengthen social control over the effective use of allocated funds.

Article 53 - Local taxes and duties are set by local or, if the case, judet councils, in accordance with the law.

The revenues to local budgets include taxes, duties and other revenues listed in the Annex to this law.

The Ministry of Finance, through its subordinate territorial fiscal agencies, will manage the process of collection of revenues to local budgets.

Article 54 - From local budgets, under the law, there are funded: social-cultural activities, economic enterprises and activities of local interest, operational expenses and upkeep of local public administrations, as well as other objectives as stipulated by legal provisions. Local budgetary expenditures and revenues are based on the budgetary classification established by the Ministry of Finance.

Article 55 - The quotas or disjoint amounts of certain revenues to the state budget and the transfers from the state budget to local budgets established and approved under article 24 of this law, will be separated by categories of local budgets by the territorial agents of the Ministry of Finance based on propositions made by local and judet councils in direct collaboration with local authorities, taking into consideration their attributions and the needs for budgetary balance.

Local and, if the case, judet councils will establish and approve additional quotas on direct taxes for the state budget and/or local budgets under article 24, paragraph 5 of this law, as

required for an adequate operation of public services and for the fulfillment of duties incumbent upon local public authorities, as provided by the law.

Upon the request of the local and, if the case, judet councils the annual budget law can authorize certain administrative-territorial units to contract for loans to cover expenditures for thoroughly documented projects through the issuance of bonds, under the provision that these units are able to guarantee cover of the interest and recovery of the bonds. The assessment and authorization of the guarantee are given by the territorial agents of the Ministry of Finance.

In case during the local budget exercise there are temporary cash shortages, they can be covered, until collection of approved budgetary revenues, by resources from the accounts of the state treasury.

Article 56 - In the local budgets of judets and of Bucharest city, of cities and sectors of Bucharest, of towns and communes, there can be entered a budgetary reserve fund, at the disposal of the local or judet council, of each administrative territorial unit, amounting to up to 5% of the total expenditures. This fund can be used to supplement certain budgetary credits approved through the local budget, in view of financing new activities or tasks added during the fiscal year.

The budgetary reserve fund stipulated in the above paragraph can be increased, during the year, by up to 50% of its initial amount approved in the budget, from available budgetary credits which are no longer needed before the end of the year.

Available budgetary credits generated from personnel and capital expenditures cannot be used for this purpose.

Article 57 - In case in the budgets of administrative-territorial units the approved revenues exceed the approved expenditures, including the budgetary reserve established under the law, the balance will form the planned surplus of each local budget.

Article 58 - The primary credit orderers of the local budget are the presidents of judet councils for judets, the Mayor General of Bucharest, and the mayors of the other administrative-territorial units.

The leaders of public institutions with corporate status, subordinated to the local of judet council of each administrative-territorial unit, are secondary or tertiary credit orderer.

The primary credit orderers of local budgets can delegate the authority to approve the use and distribution of budgetary credits to their lawful deputies.

Article 59 - Financing from local budgets is ensured by opening credits by the primary orderers thereof, within the limits of budgetary credits approved in the local budget and according to the established designation in relation with the degree of utilization of the amounts previously made available and in accordance with the legal provisions regulating the respective expenditures.

Article 60 - The quarterly distribution of revenues and expenditures established in the local budget is approved by:

a) the Ministry of Finance for quotas or disjoint amounts from certain revenues to the state budget and transfers from this budget submitted by territorial agents of the Ministry of Finance based on propositions made by judet and Bucharest city councils and local councils;

b) judet or, if the case, local councils of administrative-territorial units for their own budgets and the budgets of subordinate public institutions.

Article 61 - The drafts of administrative-territorial budgets are development based on the administration's own draft budgets and those of subordinate public institutions and following the stages stipulated for the state budget.

The method of development and execution of local budgets is established by the Ministry of Finance.

The administrative-territorial units' draft budgets are submitted for approval to the local or judet councils within 10 days from the passing of the annual budget law. Within the same time limits, the local budgets modified during the budgetary exercise will be approved by rectifying laws.

Each budget will be approved in its entirety, by chapters, articles and credit orderers.

Article 62 - In order to cover contingent temporary cash shortages appearing during the year disparities between expenditures from and revenues to the budget of communes, towns, cities and Bucharest city sectors, temporary loans can be given from the treasury funds constituted under the law. The judet and Bucharest city councils are entitled to approve such loans.

From the same funds and under the same provisions loans can be given in case such temporary shortages appear in the budget of judets and Bucharest city.

The general departments of public finance and state fiscal control will analyze and approve the obligation and utilization of the treasury fund.

The loans given under paragraph 1 and 2 of this article are to be reimbursed before December 31st of each fiscal year.

In exceptional cases, when the loans have not been reimbursed before the end of the year, due to the lack of budgetary resources, they are to be reimbursed during the following fiscal years, within 18 months, with an interest whose maximum rate will be established by the Ministry of Finance and which is cashed by the treasury fund of the judet, or respectively, Bucharest city.

Article 63 - For certain social-cultural activities and to cover economic expenditures of local interest, local or judet councils can approve and use the whole amounts cashed from the revenues to the respective local budgets exceeding the approved ones, under the following provisions:

a) the surplus collected should relate to the total revenues established in the local budget and to last through the end of the year;

b) the extra revenues should be generated from the same year's activities and should not result from changes in the legislation or from underestimations assessed by control agents as stipulated by law;

c) the budget should not be balanced by transfers, quotas or disjoint amounts from some revenues to the state revenues or have non-reimbursed loans.

The modifications approved and made in the local budget, under this article, are submitted for modification to the local or judet council at its first session.

Article 64 - The annual surplus of the local budget, left at the end of the budgetary exercise, after regulating with the state budget within the limits of quotas or amounts established from certain revenues thereof and of transfers from the state budget, will be used in this order to:

a) reimburse unpaid loans of previous or current years and pay the interest;

b) constitute the running fund, up to 5% of the revenues to the budget for that year. The running fund will be kept in a separate account open to each administrative-territorial unit at the territorial units of the public finance treasury or at banks, and can be used, temporarily, for covering potential cash shortages, disparities between revenues and expenditures in the current year. At the end of the year, the running fund must be found whole in the separate account open at the treasury units or banks.

c) the balance will be transferred into the treasury fund of the judet or of Bucharest city.

Article 65 - The expenditures for capital projects of judets, cities, towns and communes, of local subordinate public institutions, as well as other investment expenditures which are financed under the law from local budgets, are entered in the budget of each administrative-territorial unit, at each chapter of the operation, based on the list of investments.

The development, analysis and approval of technical-economic documentation and of the lists of investments will be made in compliance with the provisions of article 23 of this law.

Article 66 - The presidents of judet councils and the mayors of the other administrative-territorial units draw and submit the annual execution accounts of their budgets for approval to the judet and local councils before July 1st of the following year.

Article 67 - The Bucharest city and judet treasury funds constituted under the law are kept in special accounts at territorial units of the public finance treasury or at banks, and will be used to finance capital projects on the territory of the judet, of Bucharest city respectively, in the public services and transport sectors, under the provisions of the annual budget law.

For these funds, annual execution accounts will be drawn and submitted for approval together with the execution account of the judet or Bucharest city.

Article 68 - The territorial agents of the Ministry of Finance will draw, based on local budgets approved by local authorities, and will forward to the Ministry of Finance the budgets for the ensemble of each judet, and Bucharest city, with quarterly distribution of revenues and expenditures grouped, within each judet and Bucharest city, by communes, towns, cities, sectors of Bucharest and own budget, following the structures of the budgetary classification set by the Ministry of Finance.

Article 69 - Quarterly, the presidents of judet councils and the mayors of the other administrative-territorial units will make accounting reports regarding public finance, which will be submitted to the Ministry of Finance, at deadlines and by norms set by the Ministry of Finance.

The Ministry of Finance submits to the Government before May 31st of each year, the annual synthesis of local public revenues and expenditures, with conclusions and suggestions concerning the fulfillment of their attributions by the local public administration and the way the fiscal discipline has been respected.

Article 70 - The cash account of local budgets will be managed by territorial units of the public finance treasury or by banks, ensuring:

- collection of budgetary revenues based on strict records for each payer showing payment obligations, collected amounts and debts to be collected;
- financing of expenditures within the limits of approved budgetary credits and of established designations;
- limitation within the approved balance.

L I S T
TAXES, IMPOSTS AND OTHER REVENUES TO LOCAL BUDGETS

CHAPTER I - Revenues to the Budgets of Judets, of Agri-sector Ilfov and of Bucharest City

1. Tax on profit of regii autonome subordinated to judets, agri-sector Ilfov and Bucharest city;
2. Stamp fees from corporations;
3. Penalties and increments for late payments of revenues from taxes, imposts and revenues under Chapter I;
4. Quotas of the net profit of regii autonome subordinated to judets, agri-sector Ilfov and Bucharest city;
5. Restitutions of funds from previous years local budgetary financing;
6. Revenues from commercialization of goods belonging to public institutions subordinated to judets, agri-sector Ilfov and Bucharest city.

CHAPTER II - Revenues and expenditures planned in the budgets of communes, towns, cities and Bucharest city sectors

1. Tax on profit of regii autonome subordinated to towns, cities and Bucharest sectors
2. Fees on usage of state owned land for other purposes than agriculture or forestry
3. Tax on agricultural income
4. Tax on buildings owned by corporations
5. Tax on transportation means owned by corporations
6. Tax on income of self-employed professionals, craftsmen and other independent individual persons and family associations
7. Tax on buildings and land owned by individual persons
8. Tax on transportation means owned by individual persons
9. Stamp fees for succession deeds and other stamp fees from individual persons
10. Other taxes and imposts from individual persons
11. Tax on shows
12. Other revenues from direct taxation
13. Penalties and increments for late payments of revenues from taxes, imposts and revenues under Chapter II
14. Quotas of the net profit of regii autonome subordinated to towns cities and Bucharest city sectors
15. Other revenues from indirect taxation
16. Fees for driving tests, issuance of driving licenses and other revenues related to traffic on public roads
17. Other revenues from public institutions
18. Revenues from recouping of legal fees and damages
19. Revenues from fines applied in accordance with the law
20. Restitutions of funds from previous years' local budgetary financing
21. Revenues from licenses

22. Revenues from other sources
23. Revenues from the commercialization of goods belonging to public institutions subordinated to communes, towns, cities and Bucharest city sectors
24. Revenues from sales of state owned apartments

NOTE: The list of taxes, imposts and other revenues to local budgets can be updated by the annual budget law, according to the program of strengthening the fiscal autonomy of administrative-territorial units and decentralization of public services.

November 23, 1993

MEMORANDUM

TO: Gheorghita Oprea
Directeur Generale
Ministere des Finances

FROM: Ben Bialek for ICMA/USAID

SUBJECT: Local Government Finance Law

It was a pleasure meeting you last week. I appreciate the opportunity to review and comment on the draft law that you provided at the meeting.

At the outset, I must state that local fiscal autonomy means different things to different people. I recognize that the development of local government institutions in Romania is new and that, with some exceptions, local budgetary needs have been essentially determined at the national level. As a result, there is some question at the Ministry concerning the capacity of some local governments to provide appropriate and fiscal planning and management.

Local government institutions have developed in the United States over many years. Yet, many of the principles of local fiscal autonomy have been in place in some localities since the nation was founded. Today, in the United States, fiscal autonomy presumes a budgetary process that involves an initial local estimation of available revenues, projection of expenditure requirements, prioritization of needs, public hearing and decision-making process, final estimation of revenues, and the setting of local tax rates to fund the local budget to the extent expenses will not be covered by other available revenue sources. Reasonable fiscal certainty allows the budget exercise to be meaningful in achieving autonomy and effective short and long-term fiscal planning for community needs.

There is generally some State assistance to local governments in the United States. In Maryland, such assistance is generally made in functional areas, such as health or education. State assistance in those areas is generally provided on an equalized basis inverse to the wealth of a locality. The assistance is generally provided in statutory formulae that provide fiscal certainty to the local governments. It ensures that there will be some basic level of service in all areas of the State.

In my view, any law on local government finance should reflect the following elements:

- (1) local government control of sufficient local revenue sources and/or a percentage of revenues shared with the State to perform its responsibilities under law;
- (2) clear division of program responsibility between the State and local government;
- (3) simplicity of administration;
- (4) reasonably uniform financial principles; and
- (5) accountability to the public.

This memorandum focuses on the more major issues raised by the Ministry of Finance draft. Specific comments are as follows:

Article 52 - This section provides autonomy in the budget preparation phase to local governments and indicates that the State will attempt to facilitate the objectives of the local budgetary process.

The draft does not describe a local budgetary process that should be followed - estimation of revenues, service requirements, prioritization of needs, time of submission and adoption, publication of a budget document, notice and public hearing, and voting requirements. These are standard items in most local finance laws. I am aware that the 1991 law on Public Administration provides for a 2/3 approval vote. In practice, that level of required approval may make it very difficult for the local councils to adopt a responsible budget.

While the local budgets must follow the same general time sequence as the State budget (actually, local budget preparation should precede the State budget), related Article 61 seems inconsistent with the concept of local fiscal autonomy since the budget process is determined by the Ministry of Finance.

Also, in the United States, a separate but concurrent capital project budget process is often required by statute. This separate process results in annual appropriations or authorizations for capital projects and also incorporates a multi-year capital improvement program. This required multi-year (5-6 years) program has assisted local governments in prioritizing their capital needs and has helped them develop the "creditworthiness" necessary to access the capital markets for financing. For the most part, local capital projects in the United States are financed over the useful life of the project (e.g. 30 years) by use of debt instruments. Debt financing moderates the impact of large expenditure projects on budgets and associated tax rates.

Article 53 - This section generally provides that local taxes and

duties (as described in the Appendix) are revenues to the local budgets. It provides for collection of revenues by the Ministry of Finance.

The draft law generally addresses the expenditure side of the budgetary equation. You indicated that another law on taxation is being drafted. It is unclear if the proposed revenues will be adequate for local needs. Most of the revenue sources appear to be of a low yield and low growth nature. You may want to consider authorizing specific local taxes in this law and provide for other local revenue sources such as a surtax on income. Local surtaxes on State taxes with growth potential (and which are progressive in nature) within specified limitations can be very useful since they are very simple to administer and collect. You may also want to consider local hotel taxes, and telephone taxes on a per line basis. Broad user fee authority should be granted and earmarked as a local revenue.

There may be some taxes that should be collected by the local government rather than the national government for administrative simplicity reasons.

Article 54 - This section provides that local budgets should be used to fund "social-cultural activities, economic enterprises and activities of local interest, operational expenses and upkeep of local administration, as well as other objectives as stipulated by legal provisions".

This section appears to be either very limited or very ambiguous. It appears more limited than the 1991 Public Administration law in terms of local government functions. Based on my discussions with local officials and with Members of Parliament, some envision local assumption of many services currently provided by the national government. Quite frankly, the experience in the United States is that direct government services are often provided more efficiently when there is accountability at the local level of government.

Article 55 - The provisions of this section are somewhat unclear to me but seem to involve a negotiating process between State and local officials for certain State revenues. Such an approach does not lend itself to achieve the fiscal certainty necessary for effective local fiscal management. It does not expressly authorize or require equalization of State assistance to less wealthy areas.

In addition, this section authorizes loans for certain projects through the issuance of bonds if the local governments are able to guarantee repayment. The Ministry of Finance determines the adequacy of the guarantee and authorizes the local government debt. This provision is inconsistent with the concept of local fiscal autonomy. State authorization should not be required unless the State is also required to make a guarantee. Indeed, as drafted, the law might be construed to imply a guarantee by the State.

Alternative protection that could be incorporated in the law would be specified credit criteria (i.e. amount of debt outstanding to assessed valuation), and referenda provisions. Generally, the capital markets will determine the adequacy of any local government guarantee.

You may want to consider incorporating more complete and comprehensive provisions relating to capital debt. Specifically, provisions concerning the types of debt instruments that may be issued, interest provisions, sources of repayment, debt maturity, establishment and maintenance of special escrow and reserve funds, remedies for default, and the nature and extent of guarantees, should be provided in the law. Provision should be made for capital projects that are financed with debt that is secured by revenues only.

Articles 56-60 - These sections pertain to surplus and reserve funds as well as the disbursement of funds.

In Article 56, it is unclear to me why budgetary credits generated by personnel savings cannot be used to increase the budget reserve.

In Article 60, I note that in the United States, local governments maintain their own bank accounts subject to certain restrictions. Each local government generally has a finance officer or treasurer who is responsible for disbursement in accordance with the budget. State aid is transferred from the State Treasury to local depositories on a quarterly or more frequent basis. In most cases, the State transfer is not discretionary. This approach simplifies administration and is consistent with the concept of local fiscal autonomy.

Article 61 - As indicated in the discussion of Article 52, this Section on the development of the local budgets is not consistent with the concept of local control since it maintains control with the Ministry of Finance. The budget process should be established in the statute.

Article 62 - This section pertains to covering temporary cash flow shortages. You may wish to consider expanding this provision. Temporary cash shortage financing should not be allowed to continue over a fiscal year-end. If revenues fall short in Year 1, taxes and fees should be required to be increased, if necessary, in Year 2 to cover the deficiency. In emergency cases, such as a natural disaster, provision might be made to extend the repayment of debt beyond the 18 months provided for in this section. Under such circumstances, the debt could be made interest-free.

Article 63 - This section pertains to extra revenues. Subsection (b), concerning revenue generated by changes in legislation or underestimations by control agents appears to be unnecessarily limiting. Subsection (c) is not clear as translated.

Article 64 - The transfer of municipal annual surpluses to the judet is a strong disincentive to economy in the management of municipal operations. It would be preferable if municipalities could be rewarded for economical operations rather than punished. Elimination of subsection (c) would accomplish that purpose.

Article 67 - This section pertains to the treasury funds of the judets and the Bucharest city council. No mention is made of municipal or other treasury funds. This section raises issues concerning the investment of public funds. Public funds should never be at a risk of loss. The deposit of public money in banks is often limited by statute to banks that meet a certain level of capitalization or other criteria of stability. A list of types of approved "safe" investments should be created that limits investments to those of the highest quality (i.e., central government debt instruments backed by full faith and credit). Return on investments should be subordinated to safety of principal and liquidity. Provision for professional management of these investments should be authorized in the law.

Article 69 - This section establishes certain quarterly local financial reports. The quarterly reporting may be unnecessarily burdensome. An alternate approach would be to require an annual certified independent audit. The Ministry of Finance report to the Government that is also required under this section could likewise be based on those independent audits.

Traducere din Engleza

18 noiembrie 1993

MEMORANDUM

CATRE: Gheorghita Oprea
Director general
Ministerul Finantelor

DE LA: Ben Bialek pentru ICMA/USAID

SUBIECT: Legea Finantelor Locale

Mi-a facut placere sa va intilnesc saptamina trecuta. Apreciez ocazia de a studia si de a face comentarii asupra proiectului de lege pe care mi l-ati pus la dispozitie.

De la inceput, trebuie sa spun ca autonomia financiara locala are semnificatii diferite pentru persoane diferite. Stiu ca dezvoltarea institutiilor administratiei publice locale in Romania este la inceputuri si ca, cu unele exceptii, nevoile bugetare locale au fost stabilite in principal la nivel national. Din aceasta cauza, Ministerul are unele indoieli cu privire la capacitatea unor administratii publice locale de a face planificare si coordonare financiara corespunzatoare.

Institutiile administratiei publice locale din Statele Unite s-au dezvoltat de-a lungul multor ani. Totusi, multe din principiile autonomiei locale fiscale au fost aplicate in unele localitati inca de la crearea natiunii. Azi, in Statele Unite, autonomia financiara presupune un proces bugetar care implica o estimare initiala locala a veniturilor disponibile, proiectia cerintelor de cheltuieli, ierarhizarea pe prioritati a nevoilor, un proces public de consultari si luare a deciziilor, estimarea finala a veniturilor, si stabilirea impozitelor locale pentru finantarea bugetului local in masura in care cheltuielile nu vor fi acoperite de alte surse de venit disponibile. Un grad rezonabil de certitudine financiara permite exercitiului bugetar sa aiba un rol in realizarea autonomiei si a unei planificari financiare eficiente pe termen scurt si lung pentru nevoile unitatii administrativ-teritoriale.

In Statele Unite, Statul acorda o oarecare asistenta administratiei

publice locale. In Maryland, asistenta se indreapta in general spre domenii functionale, cum ar fi sanatatea si invatamintul. Asistenta din partea Statului in aceste domenii se acorda in general pe o baza egalizatoare invers proportionala cu bogatia localitatii. Asistenta se acorda in general in baza unor formule legiferae care ofera o certitudine financiara administratiei locale. Astfel se asigura un nivel elementar de servicii in toate regiunile tarii.

Dupa parerea mea, orice lege a finantelor publice locale ar trebui sa reflecte urmatoarele elemente:

- (1) controlul administratiei locale asupra unor surse suficiente de venituri locale si/sau un procent din venituri impartite cu Statul pentru a-si indeplini sarcinile conform legii;
- (2) separarea clara a responsabilitatilor programate intre Stat si administratia locala;
- (3) simplitatea in administratie;
- (4) principii financiare relativ uniforme; si
- (5) raspunderea in fata populatiei.

Acest memorandum pune accentul pe problemele mai importante ridicate de proiectul de lege al Ministerului Finantelor. Comentariile la obiect sint urmatoarele:

Articolul 52 - Aceasta sectiune stipuleaza autonomia administratiei publice locale in faza elaborarii bugetului si arata ca Statul va incerca sa faciliteze obiectivele procesului bugetar local.

Proiectul nu descrie procesul bugetar local ce ar trebui urmat: estimarea veniturilor, cerintele de servicii, ierarhizarea nevoilor, momentul prezentarii si aprobarii, publicarea unui document de buget, anuntarea si consultarea publica, si conditiile de votare. Acestea sint articole standard in majoritatea legilor finantelor locale. Cunosc faptul ca legea Administratiei Publice Locale din 1991 stipuleaza aprobarea cu doua treimi din voturi. In practica, conditia aprobarii cu acest numar de voturi poate face foarte dificila pentru consiliile locale adoptarea unui buget corespunzator.

In timp ce bugetele locale trebuie sa urmeze aceleasi etape generale ca si bugetul de Stat (de fapt, elaborarea bugetelor locale ar trebui sa preceada bugetul de Stat), Articolul 61 inrudit pare a fi contrar conceptului de autonomie financiara locala din moment ce procesul bugetar este stabilit de Ministerul Finantelor.

In Statele Unite, adesea se pretinde prin lege un proces bugetar de

investitii separat dar conjugat. Acest proces separat are ca rezultat alocari anuale sau autorizari pentru investitii si de asemenea incorporeaza un program multi-anual de imbunatatiri capitale. Acest program multi-anual (5-6 ani) ajuta administratia publica locala sa-si ierarhizeze pe prioritati nevoile de capital si le ajuta sa-si dezvolte credibilitatea necesara pentru a avea acces la pietele de capital pentru finantare. In cea mai mare parte, investitiile locale in Statele Unite sint finantate pe durata obiectivului (de ex. 30 ani) folosind instrumente de debit. Finantarea datoriei micsoreaza impactul proiectelor care impun cheltuieli mari asupra bugetelor si impozitelor asociate.

Articolul 53 - In general, aceasta sectiune prevede ca impozitele si taxele locale (descrise in Anexa) sint venituri la bugetul local. Stipuleaza incasarea veniturilor de catre Ministerul Finantelor.

Proiectul de lege se adreseaza in general partii de cheltuieli a ecuatiei bugetare. Ati mentionat ca se pregateste alt proiect de lege a impozitarii. Nu este clar daca veniturile propuse vor fi adecvate nevoilor locale. Majoritatea surselor de venituri par a fi de tipul cu randament si crestere scazute. Ati putea lua in considerare autorizarea de impozite locale specifice in aceasta lege si prevederea altor surse de venituri locale cum ar fi un supra-impozit pe venit. Supra-impozitele pe impozitele statului cu potential de crestere (si care prin natura lor sint progresive) intre anumite limite precizate pot fi foarte folositoare deoarece sint foarte usor de gestionat si incasat. Ati putea de asemenea sa luati in considerare taxe locale de hotel, si taxe de telefon per linie. Ar trebui acordata o larga autoritate asupra taxelor de beneficiar si acestea sa fie marcate ca venituri locale.

Poate ca unele impozite ar trebui sa fie incasate de administratia locala nu de stat din motive de simplificare administrativa.

Articolul 54 - Aceasta sectiune stipuleaza ca bugetele locale ar trebui folosite pentru finantarea de "actiuni social-culturale, obiective si actiuni economice de interes local, cheltuieli de intretinere si functionare ale administratiei publice locale precum si alte obiective prevazute prin dispozitii legale".

Aceasta sectiune pare ori foarte limitata ori foarte ambigua. Pare mai limitata, in privinta functiunilor administratiei publice locale, decit legea Administratiei Publice Locale din 1991. In discutiile pe care le-am avut cu autoritati locale si cu parlamentari, unii ar dori asumarea locala a multor servicii prestate in prezent de Stat. Sincer vorbind, din experienta Statelor Unite se vede ca serviciile administrative directe sint adesea mai eficient prestate atunci cind ele sint prestate de administratia locala si exista o raspundere corespunzatoare.

Articolul 55 - Prevederile acestei sectiuni sint oarecum neclare pentru mine dar par sa implice un proces de negociere intre Stat si

autoritatile locale in legatura cu anumite venituri ale statului. O astfel de abordare nu duce la realizarea certitudinii financiare necesara pentru o gestiune financiara locala eficienta. Nu autorizeaza expres si nu impune egalizarea ajutorului din partea Statului pentru regiunile mai putin bogate.

In plus, aceasta sectiune autorizeaza imprumuturi pentru anumite obiective prin emisiune de titluri de valoare daca administratiile locale sint capabile sa garanteze rascumpararea. Ministerul Finantelor stabileste daca garantia este corespunzatoare si autorizeaza datoria administratiei locale. Aceasta prevedere este in discordanta cu conceptul autonomiei financiare locale. Aprobarea din partea Statului n-ar trebui sa fie necesara in afara daca si Statului i s-ar impune sa garanteze. Intr-adevar, asa cum apare in proiect, legea ar putea fi inteleasa ca presupunind o garantie din partea statului. S-ar putea introduce in lege o protectie alternativa care ar fi criteriile de credit specificate (de exemplu suma datoriei restante la valoarea apreciata), si prevederi de referendum. In general, pietele de capital vor stabili daca garantiile administratiei locale sint adecvate.

Ati putea lua in considerare introducerea unor prevederi mai complete si mai cuprinzatoare in legatura cu datoriile de capital. Mai precis, ar trebui stipulate de lege prevederi privind tipurile de instrumente de debit care pot fi folosite, prevederi pentru dobinzi, surse de achitare, scadenta datoriei, stabilirea si mentinerea unor fonduri speciale de garantie si de rezerva, remedii pentru neplata, si natura si marimea garantiilor. Ar trebui sa existe prevederi pentru investitiile finantate din datorii acoperite doar din venituri.

Articolele 56 - 60 - Aceste sectiuni se refera la excedent si fonduri de rezerva ca si la folosirea fondurilor.

In Articolul 56, nu imi este clar de ce creditele bugetare provenite din economisiri la capitolul cheltuieli de personal nu pot fi folosite pentru majorarea fondului de rezerva bugetara.

La Articolul 60, precizez ca in Statele Unite, administratiile publice locale isi au propriile lor conturi bancare supuse anumitor restrictii. In general fiecare administratie locala are un functionar financiar sau trezorer responsabil cu folosirea fondurilor conform bugetului. Ajutorul din partea Statului este transferat de la Trezoreria Statului catre unitatile locale trimestrial sau mai frecvent. In majoritatea cazurilor, transferurile de la bugetul de Stat nu sint discretione. Aceasta abordare simplifica administratia si este compatibila cu conceptul de autonomie locala financiara.

Articolul 61 - Dupa cum am indicat in comentariul la Articolul 52, aceasta sectiune referitoare la elaborarea bugetelor locale nu concorda cu conceptul controlului local deoarece mentine controlul de catre Ministerul Finantelor. Procesul bugetar trebuie stabilit

prin lege.

Articolul 62 - Aceasta sectiune se refera la acoperirea golurilor temporare de casa. Poate ati putea extinde aceasta prevedere. N-ar trebui permisa finantarea golurilor temporare de casa dupa sfirsitul anului. Daca veniturile nu sint suficiente in anul 1, se impune majorarea impozitelor si taxelor, daca este necesar, in anul 2 pentru a acoperi deficitul. In cazuri de urgenta, cum ar fi o calamitate naturala, s-ar putea introduce prevederea pentru extinderea duratei achitarii datoriei peste cele 18 luni prevazute in aceasta sectiune. In asemenea conditii, datoria ar putea fi scutita de dobinda.

Articolul 63 - Aceasta sectiune se refera la plusurile de venituri. Punctul (b), privind veniturile rezultate din modificari de legislatie sau subevaluari constatate de organele de control pare a fi inutil de limitativa.

Articolul 64 - Varsarea excedentului anual local la judet este un factor foarte descurajator pentru economiile facute in gestionarea operatiunilor administratiei locale. Ar fi preferabil ca municipalitatile sa fie recompensate pentru economii decit sa fie pedepsite. Eliminarea punctului (c) ar avea acest efect.

Articolul 67 - Acest articol se refera la fondurile de tezaur judetene si al municipiului Bucuresti. Nu se face nici o mentiune despre fondurile de tezaur ale altor municipalitati. Aceasta sectiune ridica probleme in legatura cu investirea fondurilor publice. Fondurile publice nu trebuie sa fie niciodata in pericol de a fi pierdute. Depunerea banului public in banci este adesea limitata prin lege la acele banci care indeplinesc conditia unui anumit nivel de capitalizare sau alte criterii de stabilitate. Ar trebui constituita o lista de tipuri de investitii aprobate "sigure" care sa limiteze investitiile la cele de cea mai buna calitate (de exemplu, instrumente de debit ale guvernului central sustinute de intreaga putere de impozitare a guvernului si credit). Beneficiile din investitii trebuie suordonate asigurarii de capital si lichiditati. Legea trebuie prevada autorizarea gestionarii profesionale a acestor investitii.

Articolul 69 - Aceasta sectiune stabileste intocmirea trimestriala de rapoarte contabile asupra finantelor locale. Raportarea trimestriala poate fi inutil de greoaie. O abordare alternativa ar fi sa se solicite o expertiza contabila independenta anuala. Raportul anual facut de Ministerul Finantelor catre Guvern, care este de asemenea prevazut in acest articol, ar putea de asemenea sa se bazeze pe aceste expertize contabile independente.

November 15, 1993

MEMORANDUM

TO: Dr. Mircea Ciumara, Chairman
Chamber of Deputies, Romanian Parliament
Committee for Public Administration, Territorial Arrangement
and Environmental Equilibre

FROM: Ben Bialek, for ICMA/USAID

SUBJECT: Federation Draft Law on Local Government Finance

By this memorandum, I am pleased to submit the comments that you requested on the draft local government finance law. As you requested, I also am forwarding copies of these comments to subcommittee chairman Mr. Bot and Mr. Budisteanu. This memorandum focuses on the more major issues raised by the legislation. Please don't hesitate to contact me if I can be of any assistance to you or the subcommittee on the local government finance law.

General Comments

Local fiscal autonomy means different things to different people.

In the American local government context, fiscal autonomy presumes a budgetary process that involves an initial local estimation of available revenues, projection of expenditure requirements, prioritization of needs, public hearing and decision-making process, final estimation of revenues, and the setting of local tax rates to fund the local budget to the extent expenses will not be covered by other available revenue sources. Reasonable fiscal certainty allows the budget exercise to be meaningful in achieving autonomy and effective short and long-term fiscal planning for community needs.

In my view, any law on local government finance should reflect the following elements:

- (1) local government control of sufficient local revenue sources and/or a percentage of revenues shared with the State to perform its responsibilities under law;
- (2) clear division of program responsibility between the State and local government;
- (3) simplicity of administration;
- (4) uniform financial principles; and

(5) accountability to the public.

Specific Comments

Chapter I. General Directives

Article 6 - This section states legislative purposes. You may want to consider incorporating some of the elements discussed in the general comments, above, into this section.

Article 7(a) - Budgetary approval should be made by a majority of council members rather than 2/3 of the council members as provided in the draft. The 2/3 requirement may be very difficult to obtain in practice. A majority vote approval may be inconsistent with the 1991 law on public administration. However, Article 35 of this draft would override the 1991 law.

To increase public awareness and input, you may want to add an express provision to this Section that requires each local council to hold a public hearing on its budget after specified public notice.

Chapter II. Development, Approval, and Close of Local Budgetary Exercise.

To promote a realistic budgetary process, a provision should be incorporated that requires revenue estimation and expenditure projections at the outset of the budgetary process. Revenue estimates should reflect realistic assumptions about the community's growth and change. Expenditure projections should be based on reasonable assumptions about the desired level of service, productivity of workers, and the cost of labor and materials.

In addition, it may be desirable to at least authorize a separate (but concurrent) budgetary process for reviewing capital improvements, including the development of a multi-year capital program. The types of provisions have been very helpful in promoting effective local fiscal management and in developing the "creditworthiness" of local governments in the capital markets.

It is my understanding that a separate law either exists or will be drafted to expressly authorize local governments to impose the necessary taxes or fees to fund the budget. If not, a general authorization incorporating the items mentioned in Articles 10 and 11 could be amended into Article 12 or 14.

Article 10(g) - This section pertains to revenues allocated to the local budgets. To promote flexibility, it should be broadened to include grants or loans from entities other than banks.

Article 11 - This section also pertains to revenues allocated to the local, commune, town, and city council budgets. Item 7, concerning income taxes upon professionals, craftsmen, and other

independent individuals and family associations, may need more definition. Item 12 should be broadened to include revenues from the commercialization of services or other interests (not just goods) owned by public institutions of local interest. Item 14(f) could be broadened to include a hotel tax. Broadening the scope of Items 12-14 may provide desired flexibility in the future as commercialization and tourism increase. Item 20 should be similarly amended to cover unspecified user fees.

Many of the local revenue sources are of a low yield nature. Other possible local revenue sources include a telephone tax on a per line basis, an energy tax on consumption (assuming meters are installed) and a surtax on State imposed salary or wage taxes within specified limitations.

Article 12 - This section states that the local councils decide on the amount, method, and ways of payment of local taxes. To promote uniformity, I would suggest that the indicia of taxation (i.e., under what circumstances a person is taxed) be established by national legislation with the local councils essentially setting the tax rates and establishing collection mechanisms. In specific cases, however, it may be appropriate for the local councils to establish the indices of taxation.

Article 14 - This section provides broad authority to cancel local taxes and impose other taxes not mentioned in this draft "in compliance with law". I assume that the concept of cancellation or exemptions from taxation would apply to similarly situated categories of taxpayers rather than specific individuals or corporations. You may wish to clarify the nature of tax exemptions.

Article 19 (c) - This provision authorizes the various negotiations among governmental entities that will be required to fill the budget gaps caused by the assumed shortage of locally generated revenues. This approach may be the only practical one at this time. However, to gain greater fiscal certainty for the local governments in the future and to ensure that adequate funds are provided for to the "least wealthy" local governments, it may be desirable at a later date to incorporate additional specific revenue sharing formulae in functional areas such as health and education. Such equalized distribution formulae will promote a basic or minimum level of service in all regions of Romania.

Article 27 - This section pertains to capital improvements. The 2/3 council voting requirement for loans in excess of 10 years appears unnecessarily restrictive. It is not uncommon in the United States to finance capital improvements over a 30 year period. Such financings allow large expenditures to be made over time and minimize the strain on local budgets and tax rates.

Similarly, the 2/3 of the electorate approval required in

referenda for certain projects may be very difficult to obtain in practice and could cause serious project delays. I would suggest providing for an approval based on a majority vote or, alternatively, establishing a process that allows the electorate to veto a project only after its petition to referendum by a specified number of citizens. Another approach might include invoking referenda procedures only for projects estimated to exceed a specified monetary threshold.

Provision should also be made to expressly authorize revenue bond financing supported solely from project revenues such as charges and fees. Such express authority might attract private sector interest in these types of projects. Unlike direct "general obligation" debt of the local government, these types of financing are ordinarily not subject to referenda.

Provision could also be made for special assessment bonds. These bonds finance modest capital improvements that enhance abutting property rather than the entire community (i.e., extension of sewer lines or sidewalks). The abutting property owners are required to contribute to the repayment of the bonds. This is a fairly common financing mechanism in the United States.

Article 33-36 - These sections pertain to cash management practices. If not covered by another law, municipalities should be authorized to maintain separate bank accounts and invest their revenues in interest bearing accounts or other specified "safe" investments. This is important to ensure the safety of public funds. For the same reason, it is often required in the United States that such banks have a certain level of capitalization and that the local treasurer or finance director obtain a commercial surety bond to ensure against malfeasance. In addition, local government monies should be subject to an annual independent audit. An independent audit promotes public accountability. In the United States, an independent audit is universally required. It is usually done in addition to any required audits by the State.

Memoriu

Către: Mircea Ciurara, *Președinte*
Camera Deputaților, Parlamentul României
Comisia pentru Administrație Publică, Planificare Teritorială și Protecția Mediului
Înconjurător

De la: Ben Bialek, *ICMA/USAID*

Data: 14 November 15, 1993

Subiectul: Proiectul Federației Municipalităților de Lege a Finanțelor Publice Locale

Am plăcerea să vă prezint comentariile pe care mi le-ați solicitat asupra proiectului de lege a finanțelor publice locale. După cum mi-ați cerut, copii ale acestui memoriu vor fi oferite D-ilor Bot și Budișteanu. Menționez că acest memoriu se referă la problemele majore de legislație. Nu ezitați să mă contactați pentru orice alt fel de asistență privind legea finanțelor publice, atât în bebeficiul Dumneavoastră, cât și al Subcomisiei.

Comentarii generale

Autonomia fiscală locală e înțeleasă diferit de oameni diferiți.

În America, autonomia fiscală a administrațiilor publice locale presupune un proces complex de evaluare bugetară care include: calculul venitului disponibil, prognozarea necesarului de cheltuieli, alcătuirea unei liste a priorităților pe plan local, audieri publice și decizii, calculul final al veniturilor și apoi stabilirea nivelului de impozitare astfel încât bugetul local să fie finanțabil fără a se recurge la alte surse de venituri. Un grad rezonabil de siguranță fiscală asigură un exercițiu bugetar viabil în realizarea autonomiei locale și în satisfacerea necesităților comunității pe termen scurt și lung printr-o planificare fiscală eficientă.

În opinia mea, orice lege a finanțelor publice locale trebuie să reflecte următoarele aspecte:

- (1) exercitarea controlului din partea administrației publice locale asupra unor resurse bugetare locale suficiente și/sau a unui procentaj din venitul statului astfel încât administrațiile locale să își poată îndeplini satisfăcător responsabilitățile în cadrul legii;
- (2) o separare clară între stat și administrațiile publice locale în ce privește răspunderile în cadrul diverselor programe ;
- (3) simplificarea structurii administrative;
- (4) principii financiare unitare; și
- (5) răspunderea publică.

Comentarii specifice

Capitolul I. Directive generale

Articolul 6 - Această secțiune prezintă intențiile legislative. S-ar putea include aici (unele din) elementele discutate în **comentariile generale**.

Articolul 7(a) - Aprobarea bugetului ar trebui să se facă de către majoritatea membrilor consiliului local, iar nu de către 2/3 așa cum propune proiectul. Condiția de 2/3 s-ar putea dovedi extrem de dificil de atins în practică. E posibil ca aprobarea prin votul unei majorități să intre în contradicție cu Legea administrației publice din 1991, însă Articolul 35 al acestui proiect ar trebui să primeze în fața Legii din 1991.

Pentru a mări răspunderea și aportul public se poate adăuga o prevedere în această secțiune care să ceară consiliului local să organizeze o *audiere publică* privind problemele de buget după anunțarea ei în mod public.

Capitolul II. Dezvoltarea, aprobarea și încheierea execuției bugetului local.

Pentru stabilirea unui proces bugetar realist, ar trebui inclusă o prevedere care să impună estimarea venitului și proiectarea cheltuielilor de către oficialitățile locale la începutul procesului. Estimarea veniturilor trebuie să reflecte în mod realist așteptările privind creșterile și schimbările din cadrul comunității. Proiectarea cheltuielilor trebuie să se bazeze pe o prognoză realistă a nivelului dorit al serviciilor, a productivității muncitorilor, a costurilor muncii, materiilor și materialelor.

În plus, s-ar putea cel puțin autoriza o procesare bugetară separată (dar concomitentă) referitoare la investiții capitale, incluzându-se chiar un program de dezvoltări capitale pe mai mulți ani. Astfel de clauze s-au dovedit foarte folositoare pentru promovarea unei administrări fiscale locale eficiente și pentru asigurarea "credibilității" administrațiilor locale pe diverse piețe.

Înțeleg că există, ori urmează să fie proiectată o lege separată care să impună autorizarea administrațiilor locale de a își stabili propriile taxe și impozite pentru asigurarea bugetului. În caz contrar, poate fi amendată în Articolele 12 și 14 o autorizare generală care să cuprindă punctele menționate în Articolele 10 și 11.

Articolul 10(g) - Această secțiune se referă la veniturile alocate bugetelor locale. Pentru asigurarea unei mai mari flexibilități, ea ar trebui completată pentru a include și alocații (nerambursabile) și împrumuturi de la entități altă decât bănci.

Articolul 11 - Această secțiune se referă și ea la veniturile alocate bugetelor consiliilor locale, comunale și orașenești. Ar trebui definit mai în detaliu punctul 7 referitor la taxele pe venit suportabile de către diverse categorii profesionale, meșteșugari, precum și de către liberi profesioniști și asociații familiale. Punctul 12 ar trebui lărgit pentru a include veniturile provenite din comercializarea serviciilor și a altor interese (nu doar a bunurilor) aflate în posesia instituțiilor publice de interes local. Punctul 14(f) poate fi lărgit spre a

include și taxe de hotel. Amplificarea punctelor 12-14 ar putea oferi o mai mare flexibilitate în viitor, de măsură ce se va dezvolta comerțul și turismul. Punctul 20 poate fi amendat în mod similar pentru a acoperi și orice alte taxe de folosire.

Multe dintre sursele de venituri locale sînt de mici dimensiuni. Alte posibile surse pentru veniturile locale pot fi taxe de (numărul de) linii de telefon, taxe de consumul de energie (în cazul în care există posibilități de contorizare), precum și suorataxe de salarii în cadrul unor limite definite.

Articolul 12 - Această secțiune stabilește că mărimea, metodologia și metodele de impozitare locală se stabilesc de către consiliile locale. Pentru asigurarea unității sistemului, sugerez ca o regulă generală să se stabilească de către legislația națională indicarea taxării (adică care sînt circumstanțele în care o persoană este impozitată), consiliile locale urmînd să stabilească mărimea impozitelor și modalitățile de colectare a lor. S-ar putea însă ca în anumite cazuri să fie preferabil ca indicarea să fie făcută de către consiliile locale.

Articolul 14 - Această secțiune prevede o competență mărită în abolirea unor impozite locale și stabilirea altora, nementionate în prezentul proiect "în conformitate cu prevederile legii". Presupun că noțiunea de suspendare ori exceptare a impozitării se aplica unor categorii de impozitați cu statut similar, mai degrabă decît unor indivizi ori corporații anume. Ar fi poate de dorit o clarificare a naturii exceptărilor de la impozite.

Articolul 19(c) - Această prevedere autorizează diverse negocieri între entități administrative menite să acopere deficitele bugetare cauzate de presupuse insuficiențe la nivelul veniturilor dezvoltate de plan local. Se poate ca aceasta să fie singura soluție practică în această etapă. Totuși, pentru întărirea administrațiilor locale din punct de vedere fiscal și pentru asigurarea unor fonduri adecvate administrațiilor "mai sărace", s-ar putea dovedi folositor ca, ulterior, să se adauge formule specifice de finanțare de la stat în domenii funcționale cum ar fi sănătatea și învățămîntul. Echilibrarea formulelor de distribuire ar asigura un nivel minim al serviciilor pe tot teritoriul României

Articolul 27 - Această secțiune se referă la îmbunătățiri capitale. Restricția privind votarea de către 2/3 din consiliul local a împrumuturilor pe mai mult de 10 ani îmi pare lipsită de necesitate. În Statele Unite este o practică obișnuită să finanțezi îmbunătățiri capitale pe o perioadă de 30 de ani. Astfel de finanțări permit realizarea unor cheltuieli mari pe o perioada mai întinsă de timp, diminuînd presiunile asupra bugetelor locale și valoarea impozitelor și taxelor.

În mod asemănător, acordul a 2/3 din electorat necesar în cazul referendumelor asupra anumitor proiecte se poate dovedi o condiție greu de îndeplinit în practică și poate duce la întâzieri grave ale proiectelor. Sugerez introducerea unei condiții de majoritate, sau, ca o variantă alternativă, posibilitatea exprimării veto-ului asupra unui proiect doar în cazul înregistrării unui anumit număr de cereri de referendum din partea cetățenilor.

O altă soluție ar putea să o constituie invocarea procedurii de referendum doar în cazul proiectelor ce depășesc o anumită cotă de investiții.

S-ar putea prevedea de asemenea autorizări exprese de finanțare a debitelor exclusiv din venituri provenite din proiecte, cum ar fi tarife și plăți. O astfel de autorizare expresă ar atrage interesul sectorului privat în astfel de proiecte. Spre deosebire de "obligativitatea generală" privind debitele administrațiilor locale, astfel de finanțări nu sînt susceptibile de referendum în mod obișnuit.

S-ar putea introduce și o prevedere privitoare la certificate debitoare speciale (**special assessment bonds**). Acestea ar finanța proiecte capitale mai reduse, de interes regional, cum ar fi dezvoltarea canalizării ori a trotoarelor. În acest caz, proprietarii direct interesați ar fi aceia care ar fi solicitați să contribuie la acoperirea debitului. Aceasta este o practică financiară curentă în Statele Unite.

Articolul 33-35 - Aceste secțiuni se referă la practicile de administrare a veniturilor lichide. În cazul în care aceasta nu cade sub incidența unei alte legi, primăriile ar trebuie să aibă autorizația de a deține conturi separate și să își investească veniturile în conturi cu dobînzii, ori alte feluri de investiții "sigure". Aceasta este o măsură importantă pentru siguranța fondurilor publice. În Statele Unite este necesar ca aceste bănci să aibă un anumit nivel de capital și să se prezinte garanții din partea trezorerilor ori directorilor financiari locali. În plus, fondurile administrațiilor locale ar trebui supuse unor audieri independente anuale. Această practică ar spori răspunderea în fața publicului și ea reprezintă o condiție necesară și universală în Statele Unite, realizîndu-se suplimentar față de posibilele audieri din partea statului.

CC: DI. Bot, DI. Budisteanu

November 19, 1993

MEMORANDUM

TO: Mircea Ciumara, Presedinte
Camera Deputatilor, Parlamentul Romaniei
Comisia pentr Administratie Publica, Planificare Territoriala
si Protectia Mediului Inconjurator

FROM: Ben Bialek, ICMA/USAID

SUBJECT: Supplemental Comments on Local Government Finance Law

I would like to again thank you and Mr. Bot for the opportunity to attend and participate in the subcommittee meeting on the draft local government finance law. I look forward to attending the meeting scheduled for Tuesday.

One additional written comment that I want to make concerns capital financing described in Article 27 of the Federation of Municipalities draft. You may want to consider incorporating more complete and comprehensive provisions relating to the issuance and sale of bonds by local governments. Specifically, provisions concerning the types of debt instruments that may be issued, interest on debt, sources of repayment, debt maturity, establishment and maintenance of special escrow and reserve funds, remedies for default, and the nature and extent of guarantees, should be included in the law. These types of provisions are common in local government finance laws in the United States.

If it is not feasible at this time to conduct a review of these issues, this topic may be something that can be handled by amendment, after additional study, at a future time.

CC Mr. Bot
Mr. Budisteanu