

Legislative BULLETIN

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Tax Reform/Tax Relief

Panel Formed, Governor's Plan

With about eight weeks to go in this legislative session, the Legislature's tax relief package has yet to come into focus.

In an apparent attempt to sharpen that focus, legislative leadership has created a working group of legislators from both chambers (Senate and House) and given the group the charge of developing a compromise tax relief/tax reform proposal. The idea is that the new group will be able to think and work independently of the several specific proposals that have been presented thus far, and forge a reasonable, politically-viable alternative that bridges the differences and gets the job done.

An initial organizational meeting of the working group was held on Thursday, February 12 and the second meeting a week later on February 19.

At the second meeting, the working group gave particular focus to the issue of education funding, and how

the establishment of a rational and predictable state commitment to school funding, based on the Essential Programs and Services school funding model, might lay the foundation for a property tax relief plan. In particular, the working group examined a proposed blending of some of the concepts of the Question 1A "School Funding and Tax Reform Act" with the mechanics of the Legislature's 1B competing measure. It is certainly encouraging to see the core issue of state support for public education get back into the mix of tax relief/tax reform ideas.

In a related development, published news reports suggest that Governor Baldacci will be presenting a package of three bills next week, which capture his tax relief vision. Although it is not clear which elements will be contained in which bills, the several elements in the Governor's proposal will reportedly include some commitment on the part of the state to provide 55% of the Essential Programs and Services (EPS) school funding model by 2010, the prospective repeal of personal property taxation, an incentive program to encourage the consolidation of school systems into larger school districts and a municipal property tax cap.

As soon as the Governor's proposals are released in printed form, MMA's advocacy staff will distribute a complete description and analysis to municipal officials.

One Size Doesn't Fit All

"One size does not fit all" is a rule that applies perfectly well when developing mechanisms to provide governmental and educational services more efficiently and effectively. A plan consolidating public works operations or school administrative services that generates cost savings in one area of Maine could potentially be costly, both in terms of the quality and cost of providing the service, in a different part of the state. Tradition, culture, geography, and socio-economic conditions are just a few conditions that play an important role in determining how successful a regionalization proposal will be in different parts of the state.

As reported in last week's edition of the *Bulletin*, the Legislature recently created an *ad hoc* 15-legislator

Regionalization and Community Cooperation Committee. As the panel continues to define its purpose and goals, it has heard more often than not that cookie-cutter, top-down approaches are not effective ways to promote regionalization. For the most part, the messages from the groups invited to speak about regionalization have been similar. The county government community and most members of the educational community believe that communication and local design of regionalization proposals are key elements of a successful initiative.

The education community, in this case represented by academics, Department of Education, State Board of Edu-

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Tax Relief / Tax Reform Working Group

Senators

Ken Gagnon (Kennebec Cty.), Chair
Mike Brennan (Cumberland Cty.)
Richard Nass (York Cty.)

Representatives

Deborah Simpson (Auburn), Chair
Harold Clough (Scarborough)
Jeremy Fisher (Presque Isle)
Stan Gerzofsky (Brunswick)
Earle McCormick (West Gardiner)
Chris O'Neil (Saco)
Dick Woodbury (Yarmouth)

ONE SIZE (cont'd)

cation and two school administrators, had the opportunity last Friday to speak about the regionalization of school services. The most dynamic presentations came from Maine Education Policy Research Institute's David Silvernail and SAD 4 superintendent, Paul Stearns. Both speakers discussed school administrative efficiencies, one from a theoretical approach, and the other from a practical approach.

Silvernail presented the findings of the Governor's task force charged with developing mechanisms for increasing efficiency and equity in the use of K-12 education resources. That seven-member task force developed ten recommendations and Silvernail's presentation focused on the two recommendations creating regional cooperatives and regional school districts.

Cooperatives. One recommendation would provide incentives to school units that enter into "regional cooperatives." Through the creation of a cooperative, five or more school administrative units with an aggregate student population of 2,500 would receive incentives for providing non-education based services more efficiently and "reinvesting" the resulting savings in instruction-based programs. However that "reinvestment" (which comes across as a platitude) might be measured or accomplished, the requirement would seem to preclude any tax savings. Examples of non-education based services include purchasing of supplies and equipment, transportation, fuel, professional development, and facili-

ties and maintenance systems.

After its formation, the cooperative would receive funding for the salary and benefits for one full-time regional staff member to be paid by the state on a declining scale over a five year period, similar to the federal programs that will pay for a certain type of police officer for a fixed period of time. The cooperative would also receive state assistance in providing regional services training programs, and preference in state grant programs. To continue to qualify for the incentives, the regional cooperative would be required to develop a plan outlining its mission and goals, savings targets, actual cost savings and a plan for reinvesting savings in school instruction programs.

Consolidated Districts. The second recommendation would provide incentives for the consolidation of school administrative units through the creation of Regional School Districts (RSDs). A RSD would require combining two or more existing, contiguous school administrative units into a single unit governed by a single board. The proposal is a parallel to the measure Governor Baldacci introduced last year to consolidate towns into "Municipal Service Districts" with populations of at least 20,000 inhabitants.

RSDs with enrollments exceeding 2,500 students would receive an annual GPA bonus equal to 10% of the total GPA provided in each of the existing school administrative units over a period of five years. In addition to the GPA bonus, the state would pay 50% of major capital construction debt incurred prior to July 1, 2004 for ele-

ments of school construction projects that the state, at least previously, would not participate in. The RSD would also receive seed money for its development and two year's worth of additional state funding for the creation of all-day kindergarten programs. RSDs with enrollments of 1,000 – 2,500 students would receive the same incentives, except that the GPA bonus payment would be 7.5% and the state would assume 25% of the non-state supported major capital construction debt incurred prior to July 1, 2004.

During his presentation, Silvernail stressed that the intent of the Governor's task force was to provide incentives rather than mandates for regionalizing and providing services more efficiently. Through its exploratory process, the members of the task force found that an over-determined, state mandated, specific solution would not work. The task force also concluded that bigger is not necessarily better. In some cases, the state's smallest schools produced higher achieving students at a lower per pupil cost. For these reasons, the task force designed recommendations which it takes pains to emphasize are voluntary.

While generally receptive to the presentation and the proposed incentive based mechanisms for regionalizing education services, some members of the Committee raised questions and concerns with the cost and alleged voluntary nature of the recommendations.

Some members are concerned that

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Coming to A Town Near You

Mark your calendars, because the Regionalization Committee wants to hear from you. Municipal officials are invited to join the Committee, in one of four locations, to discuss how the regionalization of services could impact municipalities. Through the use of ITV technology, government and business leaders will be convening to comment and share their opinions on regionalization with others gathering across the state.

The meeting will be held from 5 to 9 PM on Thursday, February 26th in the Caribou, Bangor, Lewiston/Auburn, and Farmington high schools. MMA will be notifying municipal officials as more information becomes available. If you have any questions, please contact Kate Dufour at 1-800-452-8786 (kdufour@memun.org).

Freedom of Access

As reported in the January 30th edition of the *Bulletin*, a Freedom of Information Study Committee developed a set of recommended amendments to Maine's Freedom of Information (or "Right to Know") laws.

The study committee's recommended changes were given their public hearing before the Judiciary Committee on Thursday last week.

Of the eleven specific recommendations of the study committee, MMA testified in support of four, in opposition to two, and offered recommended amendments to five in order to make them more effective, at least from the municipal perspective. On balance, MMA testified "neither for nor against" the entire block of recommended changes.

It would be impossible to learn about MMA's testimony by simply by reading at least some press accounts. For example, the *Lewiston Sun Journal's* Judy Meyers wrote in a "commentary" that with its testimony MMA "spit in the eye" of the study committee, testified "against nearly all its recommendations", and was implicitly advocating a repeal of the Right to Know law.

On all counts, Meyer's claims are completely untrue and thoroughly unjustified. Here are the facts:

Study Committee Recommendations Supported by MMA

1. The law would clarify that no charge may be assessed for allowing the inspection of documents.

2. The law would specify that public officials must provide public access to records "within a reasonable period of time of the request".

3. The language in current law regarding the timing of public notice of official meetings should be retained.

4. A related bill – LD 1727, *An Act To Amend the "Freedom of Access Laws" To Exclude Public Employees' Home Addresses*, should be amended and supported.

Study Committee Recommendations Opposed by MMA

The study committee recom-

mended establishing additional duties in the Attorney General's Office to provide information, mediation and training assistance regarding the Freedom of Information law. Purely on the basis of the availability and priority of state financial resources, MMA spoke in opposition to this proposal. The long-standing priority of state resources from the perspective of municipal government should be proper state funding for Kindergarten-Grade 12 public education. MMA testified that from the municipal perspective, the state is facing a property tax crisis that is being driven in large part by the school-funding decisions made the Legislature. It will be very difficult for the municipalities to support the expansion of state government in other areas until a rational minimum state share for public education is finally established.

Also, the study committee recommended that local, regional and state boards be required to cite the correct statutory provision authorizing an executive session before entering the executive session. MMA merely testified to its impression that the citation of cold statute ("I move we go into executive session pursuant to Title 1 MRSA, section 405, sub-section 6(A)(1).") seems ultimately less effective in explaining the reason for the executive session than simply stating the reason (e.g., "I move we go into executive session to discuss a sensitive personnel matter").

Suggested Changes to Five Study Committee Recommendations

The study committee recommended fixing in law a maximum photocopying fee that municipalities could charge of \$.20/page. The state's court system, the county's registry of deeds, and police accident reports would be exempt from that limit for reasons that are unclear. In any event, to avoid the problem that always arises when a specific dollar value is fixed in statute, MMA recommended setting the maximum rate at the "customarily charged commercial rate" to avoid having to amend the statute for inflationary ad-

justments over time.

The study committee recommended requiring all towns to give two free hours of town labor to research Freedom of Information requests, and to cap all additional hours of research at \$10/hour. Although the evidence to compel such a mandate was not provided in the study committee's report, MMA testified that one free hour made the point, and a cap of the employee's actual hourly rate would serve the same purpose without having to be amended over time.

Third, the study committee recommended prohibiting municipalities from asking for any payment in advance for photocopying or research to be paid advance unless the request would involve two or more full days of labor by a municipal employee and 500 or more photocopies. Towns have been burned by these expensive requests in the past because the town's research was never picked up by the person requesting the documents. MMA suggested a lower threshold would be warranted.

Fourth, the study committee recommended that the Legislature review all statutory provisions creating confidentiality for certain records (welfare, property abatements, income tax, proprietary information, etc.) on a rolling, never-ending, biennial basis, and unless the confidentiality of the record is expressly reauthorized by the Legislature at least once every 10 years, the confidentiality of the record would automatically sunset and those documents would become "public records". MMA recommended that the list of confidential records subject to this type of review should be winnowed down to the types of documents where controversy might exist.

Finally, the study committee recommended that its own existence be extended for another term to take up an additional list of "Right to Know" issues including use of e-mail, voice mail records, and other modern technology issues. In addition, the study committee is asking for permission to study and potentially report back new legislation establishing increased financial penalties to be assessed against the

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Reducing Liquidation Harvesting

Liquidation Harvesting is basically defined as: (1) buying timberland, (2) harvesting a significant portion of the timberland without regard to sustainable forestry practices, and, (3) selling remains of the harvested property within 5 years of the initial purchase. The Maine Forest Service (MFS) has been leading a broad-based effort to eliminate this practice in Maine. For the past year, MFS led a stakeholder group that has been refining the above definition, compiling exemptions, and stiffening the penalties for liquidation harvesting. The work of this group is being reviewed by the Agriculture, Conservation and Forestry (ACF) Committee this session.

In addition to this head-on approach to preventing liquidation harvesting, MFS has led another stakeholder group in devising “complementary” solutions to the problem. The MFS report was recently presented to the ACF committee. It contains 7 incentive-based and 2 disincentive-based proposals that are intended to address liquidation harvesting indirectly. MFS is only proposing that 1 disincentive-based solution be enacted this session.

LD 1617, *An Act to Improve Subdivision Standards*, is the legislation that would enact this complementary solution. The bill is actually before the Natural Resources Committee because it amends the subdivision statute; but ACF is also reviewing the proposal in the course of reviewing the Liquidation Harvesting definition and penalties.

It is widely believed that liquidation harvesting provides two revenue streams – the first is from the timber that is cut; the second is from the resale of the land. Since only lots of 100 acres or more are covered by the liquidation harvesting statute, oftentimes the most profitable resale of the property is for subdivisions. The direct, penalty-based approach that ACF is reviewing seeks to make the harvesting of the timber through liquidation practices

less profitable. LD 1617 seeks to dry-up the second revenue stream by prohibiting the subdivision of land on which liquidation harvesting has occurred, thereby making the residual land less valuable to a harvester.

The bill is rather simple in that it introduces a 20th review criterion to the existing 19 subdivision criteria that are in statute now. The new criterion is really less of a standard and more of a condition. The bill prohibits a planning board from issuing a permit for the subdivision of any land which has been harvested within the previous 5 years in violation of the liquidation harvesting rules.

While there is merit to this proposal, MMA identified to the Natural Resources Committee a few issues that it may want to consider. First is that adding a 20th criteria to the statute would apply statewide, and that liquidation harvesting is not a problem for every community with a planning board. A more targeted approach may be to devise a model amendment to local subdivision ordinances that could be enacted in those communities where liquidation harvesting does or may likely occur and allow the local adoption (or not) of this model ordinance.

Second, there appears to be a loophole to this solution that may make it somewhat ineffective. The bill only works to prohibit the subdivision of land after it has been harvested. However, if the land is subdivided first, and then cut, this complementary solution is essentially worthless. Some believe that if a subdivision application is filed before the timber is harvested, the planning board, in the course of its review, may be able to spot a potential liquidation harvesting event and prevent its occurrence.

This strikes some municipal officials as overly optimistic. In fact, once the liquidation harvesting rules are in place and the penalties for violation are stiffened, it wouldn't be surprising if planning boards rely on that action

to prohibit the practice. That is, planning boards do not routinely ask applicants which state laws they may be inclined to break in the future. Planners assume state laws and regulations will be followed. Except, perhaps, by placing conditions on the approval of certain large-parcel subdivisions, it is hard to imagine how planning boards could prevent a separately prohibited activity before it occurs.

Third, the bill as drafted could make the planning board the forum for determining when a harvest was in violation of the liquidation harvesting rules. This is a technical issue for which planners are ill equipped. Several proponents and supporters have said that this is not the intention of the bill. It appears that the bill will be amended so that planners are only obligated to ask applicants if they have in fact been cited for a violation of the liquidation harvesting rules. Otherwise, every opponent of a subdivision application could come before the planning board and make an allegation of liquidation harvesting that would require a great deal of time and money to sort out.

Finally, it does not appear that this proposal is yet ripe. The primary strategy for preventing liquidation harvesting is to define it, prohibit it and make the penalties such that the act is prevented. The complementary solutions report provides 9 ways that could supplement the primary approach. Since the primary approach has not yet been instituted, we do not know which, or what combination, of the 9 complementary solutions will be most productive. In the meantime, communities that would like to attack this secondary revenue stream could be encouraged to adopt this type of subdivision ban locally.

MMA fully supports MFS as it seeks to eradicate liquidation harvesting and we agree that making the resale of such harvested land more difficult is a potential ally in the fight. We would suggest that the Legislature consider further reviewing this proposal, as it is the other eight complementary solutions, and MMA will endeavor to keep municipal officials updated in the event the proposal takes root.

ONE SIZE (cont'd)

without proper funding of the incentives, the program will amount to disincentives for the school units unable to participate in the cooperatives or regional school districts; disincentives that are applied through reductions in existing levels of state aid for education. Other members of the Committee felt that recommendations overlooked more simple cost saving solutions. Rather than initiating costly and complicated systems of incentives, those panelists supported a more informal sharing of ideas between school officials which could go a long way in creating efficiencies.

Speaking exactly on point, SAD 4 superintendent, Paul Stearns provided insight and information about consolidation and regionalization to the Committee. SAD 4 includes the towns of Abbot, Cambridge, Guildford, Parkman, Sangerville and Wellington. The thrust of Stearns' presentation was that schools can and are providing services efficiently without consolidating.

According to Stearns, the cost of educating the 285 high school students in SAD 4 is the lowest in Maine, at \$5,082 per student. Furthermore, in Maine's most recent achievement test, the 11th graders in SAD 4 finished 22nd out of 133 Maine high schools. Stearns' point was that smaller schools are capable of producing well educated, high achieving students at a lower cost than some of Maine's largest schools. Superintendent Stearns believes that the state might do well to focus its attention and funding on solutions generating sustainable, long-term savings rather than on the immediate, cash infused, short-lived savings solutions. As an example, Stearns cited technology as an important tool in helping schools provide instructional services more efficiently. Through the use of interactive technology, an advanced chemistry class taught in Augusta could reach students across the state, thereby providing all students access to a broader curriculum without requiring all high schools to incur the costs of offering a variety of courses.

On Thursday of this week, the Committee resumed its regionalization work as it heard a presentation from Frank O'Hara, co-owner of the Planning Decisions consulting firm with offices in Hallowell, South Portland and York. O'Hara's approach is "go big or go home" and he criticized the use of merely voluntary and incremental approaches to regionalization as ineffective. O'Hara's mandated regionalization approach struck a chord with several members of the Committee.

O'Hara believes that in order for regionalization to work a basic framework needs to be provided. Without the framework, individual municipalities and organizations will seek out similarly based or situated organizations and create special districts without any beneficial effects. O'Hara pointed to the creation of councils of governments, regional planning commissions and other special districts as evidence that such an approach doesn't produce much savings, but does produce the creation of separate boards and administrations.

In his presentation, O'Hara mentioned two alternatives to the voluntary, incremental approach to regionalization. The first approach would abolish all towns in order "to start with a clean slate", creating regional districts. The other approach would require the reform of county government. Through proper structural reforms, O'Hara believes counties

could be in a position to provide services to municipalities. In his ideal model, each level of government — state, county or local — would be responsible for providing particular services. This approach would eliminate the overlap in service provision and allegedly allow for the most practical level of government to provide the service.

The Committee met again on Friday, February 20th at 9 AM. Invited guests were Ken Young of the Kennebec Valley Council of Governments and Neal Allen of the Greater Portland Council of Governments.

ACCESS (cont'd)

towns and cities and an "attorneys' fees" law whereby municipalities would have to pay for the attorneys fees for people and news agencies who sue towns under the Right to Know law. MMA supported the continuing study of the "high-tech" issues because modern communication systems present new issues of interpretation that need to be resolved. MMA suggested, however, that the increased penalty and attorney fee proposals could always be presented to the Legislature through the normal legislative process by the press lobby or other interests, and should not be part of "the charge" given to the study committee, if the study committee's life is continued.

IN THE HOPPER

Criminal Justice & Public Safety

LD 1847 – An Act To Implement the Recommendations of the Commission to Improve Community Safety and Sex Offender Accountability Regarding Public Notification by Law Enforcement. (Reported by Rep. Faircloth of Bangor for the Commission to Improve Community Safety and Sex Offender Accountability)

This bill would require the Maine Criminal Justice Academy (MCJA) to establish policies for community notification of registered sex offenders by January 1, 2005. The bill further directs the MCJA to design its model policy on the policy drafted by the Maine Chiefs of Police Association in conjunction with sexual assault response teams and sexual assault crisis centers. The bill would also require all local law enforcement agencies to certify the adoption of local policies regarding community notification of registered sex offenders by January 1, 2005 and provide certification for orientation and training with respect to those policies by January 1, 2006.