

November 25, 2013 Meeting of the Nonprofit Tax Review Task Force

Summary

(Prepared by the Maine Municipal Association)

Members present:

Sawin Millett (Chair, Commissioner of the Department of Administrative and Financial Services)
Rep. Mike Carey (Lewiston)
Sen. Patrick Flood (Kennebec Cty.)
Rep. Gary Knight (Livermore Falls)
Joe Grube (Assessor, City of Lewiston)
Sen. Rebecca Millett (Cumberland Cty.)
Brenda Peluso (Director of Policy, Maine Association of Nonprofits)
Jeff Austin (Maine Hospital Association, Representing Arthur Blank, CEO, Mount Desert Island Hospital)

Absent:

Jim Libby (Academic Dean, Thomas College)

The Task Force reviewed both the minutes of the 11/20/13 meeting and the meeting summary prepared by the Maine Municipal Association. A line on page 4 of the MMA summary, second paragraph, last sentence, was amended to read *“Jeff also pointed out that evidence may suggest that the value of hospitals in the Form 990 records may not be reflective of market value, citing the attempted sale of the former Augusta hospital, which was so lacking in value it had trouble finding any willing buyer.”*

The Task Force began its review of a proposal advanced (attached) for the purpose of discussion by Sen. Flood and Rep. Carey. Sen. Flood described the manner in which the proposal was developed over the weekend as well as the substance of the proposal itself.

As presented, the existing service charge statute (36 MRSA, section 508) would be amended to authorize municipalities to adopt ordinances that would assesses service charges, potentially, to all the nongovernmental tax exempt categories listed in 36 MRSA, section 652. Through its ordinance, the municipal legislative body could pick which categories would be subject to the service charge system (charitable organizations, private education facilities, etc.). If a certain category was established, a municipality could not pick-and-choose which organizations within that category would be subject to the service charge. All would have to be treated equally.

The service charge system would essentially remain as established under current law, with two significant differences.

First, a threshold is established of \$250,000 in gross revenue. A nonprofit with less annual gross revenue than \$250,000 could not be made subject to the service charge.

The municipal ordinance would contain the methodology for calculating the value of the municipal services that would be used to form the basis of the service charge.

Unlike current “service charge” law, the municipal ordinance would also contain a methodology for calculating the value of the contributions made by the nonprofit entity to the municipality.

The actual service charge would be the remainder, if any, after subtracting the value of the contributions made to the municipality by the nonprofit from the value of the services provided to the nonprofit by the municipality.

Finally, as is the case in current law, the total service charge could not exceed 2% of the nonprofit facility’s annual gross revenue. The gross revenue figure would be the revenue accruing to the nonprofit’s facility in the municipality, not including revenue received by subsidiaries or branches of the organization not located within the municipality.

Comment [BP1]: I do not think this is completely accurate. Section 508 reads “. . . may not exceed 2% of the gross annual revenues of the institution or organization.”

Rep. Carey said that his intention with the proposal is to allow for the conversation about balancing the cost of municipal services with the contributions made by the tax exempt entities to occur on the local level. The local level, according to Rep. Carey, is the more appropriate venue than the State House. The legislative role in this proposal is to establish some size and fiscal capacity parameters, but otherwise work within the service charge law that is already in place.

Rep. Knight expressed appreciation for the work but had questions about how the cost and contribution values would be calculated. It was explained that the methodologies would be left up to the ordinance development process at the local level. Rep. Knight asked if there were constitutional “equal protection” issues associated with a system that would allow one community to impose service charges on a certain facility while no charges would be imposed on a similar facility in the next municipality. Geoff Herman pointed out that the existing service charge law governing tax exempt rental housing has been allowing the local option approach for 30 years without any equal protection challenges.

The Task Force discussed the storm water fee (a.k.a., “rain tax”) established in Lewiston and how the challenge as to the constitutionality of that fee went to the state’s Law Court and the fee was upheld. Brenda Peluso said that she distinguished the storm water fee in Lewiston from the service charge statute because all similarly situated property owners in Lewiston were subject to the storm water fee, not just the nonprofit entities. Joe Grube was asked about the implementation of the storm water tax. He explained that one flat rate was applied to single family homes, another to multiple family homes, and the larger commercial, industrial and tax exempt properties were assessed the fee on the square footage of impervious area, with credits for on-site storm water retention systems. Joe was asked if the city, state and federal governments had to pay the fee. Joe said he thought the city did pay the fee, but the state and federal governments were exempt.

Sen. Millett expressed concern about how the ordinances would be implemented at the local level and who performed the various calculations. Sen. Millett also wondered if the calculation of the

nonprofit's contribution to the community should include the impact on the local economy, as tax increment financing benefits are provided to reward for-profit contributions to the local economy. Another question was whether the organization's gross annual revenue includes revenue collected for capital campaigns.

Geoff Herman distributed the ordinances from Waterville and Saco that currently govern the service charge system in those communities with respect to tax exempt rental housing. Geoff walked the Task Force through the Waterville methodology, which determines the ratio of the square footage of the exempt facilities to the built square footage of the entire municipality, and applies that percentage to the city's budgeted costs for fire and police protection, road maintenance and construction, traffic control, snow and ice removal and sanitation services if those services are actually provided to the property. With respect to the service charge limitation, Waterville's ordinance follows the authorizing statute by applying a cap of 2% of gross annual revenue received by the nonprofit, as identified by a certified public accountant.

As to the definition of "gross annual revenue," Brenda Peluso was asked if all nonprofits undertake annual audits. Brenda indicated that the threshold for the annual post-audit requirement is for nonprofits with revenue exceeding \$500,000.

Rep. Carey said he thought it was important to establish the threshold and the service charge capping system on the basis of revenue rather than asset value because the asset/income ratio for some nonprofits is disproportionate.

Brenda Peluso said that the Task Force should be cautious about putting too much weight on the gross annual revenue proxy for fiscal capacity. Beyond the issue of revenue for capital campaigns, a service charge associated with revenue could provide a disincentive for private contributions to exempt entities. Also, there are issues with establishing an effective tax based on Medicaid/Medicare revenue. Brenda said she was not sure if a good definition of revenue could be crafted for the purpose of establishing a service charge cap.

In response to some of the questions being asked to help shape the proposal, Jeff Austin asked a process question. Since the hospital association would not likely support this proposal, does the Task Force want to take his input? If so, Jeff pointed out that the Augusta hospital has a branch in Waterville. The income information for the Augusta hospital includes the income from the Waterville facility. Jeff asked if the intention of the revenue component of this proposal, either for threshold purposes or for service charge cap purposes, is to restrict the revenue to just what is generated by the facility within the municipality? Jeff also pointed out that current statute excludes the education costs and welfare costs from being included in the service charge calculation, but the current proposal does not seem to include that language. Jeff also expressed a concern about how the 2% cap would be actually applied and whether it delivers the protection or limitation it appears to provide.

Sawin Millett said he sensed that the intention of the proposal is to focus only on revenue produced where the facility is located and not revenue generated by branch facilities.

Comment [BP2]: Brenda was not sure at the time, but this threshold only applies to nonprofits who expend more than \$500,000 annually in federal grants or contracts. A single audit is required by the Office of Management & Budget (OMB) but there is no other legal standard requiring an independent audit. The Maine Association of Nonprofits recommends that all organizations with annual gross revenues in excess of \$1 million/year undergo an annual independent financial audit; between \$250K & \$1 million, a nonprofit should undergo an independent review by a cpa.

Comment [BP3]: At some point Brenda mentioned that annual revenues should not include private or foundation contributions, state or federal funds because their use is strictly controlled and overhead costs are often not allowed.

Joe Grube distributed an updated map of Lewiston’s exempt property in response to Jim Libby’s request from the previous meeting to see how the nonprofits have expanded over time. In 5-year increments, the map shows the added nonprofit facilities from the base of exempt facilities in 1980 to the present.

Discussion followed about how to define annual gross revenue and whether the nonprofit contribution calculation should include benefits to the local economy.

Sen. Millett pointed out that the broad and relatively unguided authority in the current service charge statute might work because there is a very limited applicability of that statute (to tax exempt rental property). If the authority is going to be opened up to all classes of exempt property, the broad authority might not work as well and may be difficult to implement, especially for those municipalities without resources to perform all the necessary analysis. A discussion from various perspectives followed about the relative capacities of small and larger municipalities, how each of the various nonprofit categories include different models of organization and mission that needs to be understood, how the result of broad authority could be very disparate methods of implementation from town to town, and how municipalities quickly learn from each other the best ways to implement programs.

The conversation drifted toward whether the Task Force should continue its efforts or give up trying. Sen. Flood and Rep. Carey said that they wanted to produce a recommendation for the Appropriations Committee to consider and were committed to finding a reasonable, balance and logical system that could work. If something reasonable could be developed and implemented, less rational and more severe approaches could be avoided. Rep. Knight said that the goal was a worthy one, but he has seen politics get in the way and frustrate very good ideas.

The Task Force was asked if there are any categories of exempt property in section 652 that the proposed law should exempt from service charges.

Joe Grube suggested that church property should be exempted from service charges as should the veterans’ organizations. Rep. Knight, Rep. Carey, and Sen. Flood agreed. The reason for the church exemption was a general sense among many that it was a “separation of church and state” issue. In addition, the church exemption is already limited relative to other exempt categories. The reason for excluding the veterans’ halls was that none of them would be able to meet the revenue threshold. The various veterans’ organizations appear to be having deep financial problems as it is, with many folding up and merely sharing space or meeting in members’ residential homes.

Jeff Austin didn’t think it would be appropriate to help design a system he could not ultimately support. Brenda Peluso and Sen. Millett did not see the fairness of exempting some tax exempt organizations and not others.

The question was asked if the threshold figure (\$250,000 in revenue) or the cap (2% of gross revenue) should be adjusted either up or down. Brenda Peluso said she had no recommendation on either issue. Based on the earlier observation that nonprofits with a revenue of \$500,000 or more are

Comment [BP4]: See notes above that refer to this number not being certain at the time.

likely to have annual audits, the proponents of the proposal suggested raising the threshold level to that figure.

Sen. Millett said that she could not ultimately vote on the proposal until she had a sense of its impacts. Geoff Herman said statewide impact data would be impossible to generate, but he could outreach to a number of communities to obtain a sampling of potential impact. The element of the proposal that the municipal officials could not generate without collaboration from the nonprofits would be the calculation of the value of the nonprofit's contribution to the municipality. Geoff is going to survey a handful of communities with some concentration of tax exempt property for the purpose of providing to the Task Force at the next meeting information about the number of exempt institutions that could be subject to the service charge and the approximate value of the service charge, capped and uncapped.

The next and last meeting of the Task Force is scheduled for Monday, December 9th.