

**November 20, 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)
Jeff Austin (Maine Hospital Association, Representing Arthur Blank, CEO, Mount Desert Island Hospital)
Rep. Mike Carey (Lewiston)
Sen. Patrick Flood (Kennebec Cty.)
Joe Grube (Assessor, City of Lewiston)
Jim Libby (Academic Dean, Thomas College)
Sen. Rebecca Millett (Cumberland Cty.)
Brenda Peluso (Director of Policy, Maine Association of Nonprofits)

Absent:

Rep. Gary Knight (Livermore Falls)

The Task Force reviewed both the minutes of the meeting and the meeting summary prepared by the Maine Municipal Association.

With respect the meeting minutes, two amendments were approved by the Task Force. On page 2, the second sentence under “Section AA-4 Duties,” was amended to read “*Senator Flood reminded the members that the Nonprofit Tax Review Task Force was created as a result of the need to close the 2014-15 budget.*” Beginning on the bottom of page 2 and running to the top of page 3, the sentence was amended to read “*Could the members determine, 1A – does the committee want to recommend a temporary or long term assessment? And 1B – does the committee want to recommend a state or local level of assessment?*”

With respect to MMA’s summary of the meeting, Task Force member Brenda Peluso’s name was corrected for spelling. Also, the first sentence in the first paragraph of the last page is amended to read: “*Sen. Millett suggested consideration be given to situations where the authority that allows the imposition of a tax or fee on nonprofit entities should be restricted or disallowed in those municipalities that are authorizing Tax Increment Financing (TIF) agreements.*”

Sawin Millett reminded the Task Force that no formal Task Force actions have been made with respect to a number of its assigned evaluative tasks (the second through fifth bulleted items on the November 15th Task Force agenda) and suggested that after the other items on the printed agenda for this meeting were dealt with, the Task Force return to those assignments.

In response to requests for additional information that were made at the November 15th meeting, Geoff Herman presented:

- The statutes governing municipal tax base sharing agreements, along with the actual agreements that have been executed under that authority between Lewiston and Auburn for a hydroelectric generation facility and an industrial park associated with the airport in Auburn that supports the Lewiston-Auburn area. After review and discussion, the Task Force concluded that although the concept of sharing both revenues and costs across municipal boundaries can make sense in many applications, it was not an area of public policy that would be particularly on-point to address the assignment given the Task Force.
- The statutes governing “Interlocal agreements,” which could potentially allow groups of municipalities to share in the revenue generated by the application of service fees charged against nonprofit institutions. After review and discussion, the Task Force concluded that it was helpful to be aware of this interlocal agreement authority, but there did not seem to be any need to recommend amendments to that law in the context of the Task Force’s assignment.
- LD 936, *An Act To Authorize Municipalities To Impose Service Charges on Tax-exempt Property Owned by Certain Nonprofit Organizations*. Sponsored by Rep. Kathy Chase (Wells), LD 936 (attached) would expand the authority given to municipalities under current law to apply charges against certain tax exempt institutions that reflect the cost to the municipality of providing governmental services (excluding education and welfare). Under current law, an ordinance can be adopted to apply those “service charges” against residential property that is 100% exempt from taxation and used to provide rental income. Under LD 936, that same authority would be expanded to include “benevolent and charitable organizations” (with some exceptions), “literary and scientific institutions,” fraternal organizations, and the chambers of commerce and boards of trade.

The distribution of LD 936 prompted considerable Task Force discussion. Brenda Peluso pointed out that in addition to the expanded scope proposed by LD 936, the bill also eliminated the service charge cap in current law, where no charge can exceed 2% of the organization’s or institution’s gross annual revenue. Brenda said that applying charges to these exempt institutions would have the direct effect of reducing their capacity to provide their services. Brenda also thought that it is very difficult to calculate an accurate municipal service charge.

Further discussion among Task Force members focused on precisely how LD 936 amended current law and how the sponsor may have thought that her bill exempted hospitals from the application of any service charges. LD 936 excludes from service charges a certain section of the law governing the exempt status of nongovernmental institutions (36 MRSA, section 652(1)(K)) which many people believe pertains to hospital property, generally, but actually only applies to the personal property leased by the hospitals.

Sen. Flood thought that amendments to the service charge statute represented a simple approach to the overall Task Force assignment and should be kept on the table for discussion.

Geoff Herman pointed out that LD 936 was not the only bill submitted in 2013 regarding the service charge statute. He said (erroneously, see footnote) that Rep. Libby (Lewiston) submitted a similar bill, later identified as LD 562 ^[1].

After the presentation and review of the items on the printed agenda, Sawin Millett asked the Task Force for direction on next steps. Referring to the yet unaddressed bullet points on the 11/15/13 agenda, Sawin said that the Task Force has yet to determine how nonprofits should be valued for the purposes of assessment, which nonprofits should be identified for assessment, or how the assessments should be calculated or credited.

Sawin asked the Task Force if there was any interest in further exploring a focus on the expansion of nonprofit facilities, as that issue was brought up at the previous meeting. For example, the Task Force could consider a system that would authorize some system of assessment, or a reduced level of exemption, for new exemptions created by expanding nonprofit institutions within the community, provided the nonprofits were identified as types that typically demand municipal services.

Rep. Carey said that the expansion of nonprofits is one issue. Another is the different types of services provided by nonprofits, in many cases within the same nonprofit's service delivery system. Some services provided by a nonprofit would reasonably be considered as completely deserving of exemption because they are services not otherwise provided in the marketplace, while other services provided by the same nonprofit are being provided by other, non-exempt institutions.

Joe Grube distributed a map of Lewiston, in the draft stage, that shows the 18% of the city's geography that is exempt from taxation. Joe gave other examples of nonprofits in the community that were obviously eligible for tax exempt status (e.g., a homeless shelter taking people off the street with no charge). In contrast, his review of the 990 forms submitted by other nonprofits in Lewiston reveals how relatively little charitable care is being provided in the context of overall expenses. Joe said that the Lewiston school superintendent just informed the City Council that the City's schools are going to need a special appropriation of \$1 million this year to cover some special education costs, which will start off the budgeting process for next year in the red. The City's property tax rate, at 27 mills, is one of the highest in the state. In that context, he has to question why the chamber of commerce facility should be tax exempt. Also, under current Maine law, the companies that own very valuable personal property and lease it to hospitals enjoy a tax exemption. No other non-exempt company that leases personal property to exempt institutions, whether governmental or nongovernmental, enjoys such a tax exemption.

^[1] LD 562, *An Act Related to Service Charges in Lieu of Property Taxes on Tax-Exempt Property*, is sponsored by Rep. Wilson (Augusta). The concepts behind LD 562 and LD 936 were given some support by Rep. Libby, a member of the Taxation Committee.

Jim Libby asked if the map showing Lewiston's exempt properties could be presented to show the growth of those exempt footprints over time. Joe Grube said he could provide a list of the entities that have applied for and received exempt status over the last 20 years, if that would be helpful.

Jeff Austin said that he understood Rep. Carey's point about some tax exempt institutions providing services that are otherwise provided in the marketplace, but in the case of hospitals, the provision of those for-pay services creates the fiscal capacity of the hospitals to provide the free care and partially-subsidized care that is expected and required by the government. With respect to the example of the for-profit doctor's office being put under the hospital's exempt umbrella, Jeff pointed out that while it may look like nothing really changed except the organization's status, the converted doctor's office is required to accept Medicaid patients. Jeff also pointed out that evidence may suggest that the value of hospitals in the assessors' records may be highly inaccurate, citing the attempted sale of the former Augusta hospital, which was so lacking in value it had trouble finding any willing buyer.

Sen. Millett said that it seemed like the problem to be addressed, which was really the high tax burden on service center communities, should be more directly addressed by revitalizing the municipal revenue sharing program and somehow protecting it from the political winds. Sen. Millett said that she was not comfortable with the assignment given to the Task Force to choose which tax exempt institutions are more or less deserving of being subject to an assessment.

Sen. Flood said that he noticed under current law there was some attempt to contain or limit the scope of exemption in at least one category – the exemption for religious institutions – where the actual house of religious worship is made exempt (without the ancillary property) as well as the parsonage, with the parsonage exemption limited to \$20,000. Whether it is that type of containment, or limiting the increased footprint of an expanding exempt institution, Sen. Flood said he was interested in some sort of reasonable system of limitation.

Brenda Peluso said that current law already contains boundaries. For example, the property of the exempt institutions must be used solely for their charitable purpose.

Sawin Millett indicated that the Task Force was going to have to submit a report of some kind to the Appropriations Committee and he was looking for guidance from the Task Force.

A general discussion followed, including:

- A review of why Lewiston's school budget is going in the red with respect to special education and how a municipality that does particularly well at providing services for certain populations can be financially punished by providing those services,
- A suggestion that the Task Force recognize that the issue is too difficult to deal with in the manner suggested by the Part AA charge, and focus instead on how to relieve the financial pressure on local government,
- The observation that imposing a service charge on the state's colleges and universities would have impacts on their tuition charges, which would limit access.

Sen. Flood said that he felt the Task Force should not fail to provide a report for the Appropriations Committee responsive to its charge. Taking a look at exempt institutions that provide a large amount of their services to non-Mainers might be one area to look at. Sen. Flood thought another area to look at, given the amount of controversy it generates every year at the Legislature, is the compensation issue, and what level of compensation to CEOs of the large exempt institutions should be considered “reasonable,” as that standard is found in the law.

Rep. Carey put a “straw man” proposal on the table for the Task Force to consider. Underlying the proposal is Rep. Carey’s belief that many of the Task Force assignments that are supposed to be addressed within the Part AA charge are best addressed at the local level and not within the State House. The proposal includes the following elements:

- The service charge statute (36 MRSA, section 508) would be expanded along the lines of LD 936 to allow municipalities, by ordinances adopted by their legislative bodies, to apply service charges to a wider array of exempt institutions.
- As currently provided in that law, if a municipal ordinance identifies a category of exempt institutions subject to the service charges, the charge must be applied against all institutions in that category.
- Some level of fiscal capacity should be established. A starting point for that discussion is \$250,000 in annual revenue.
- A maximum service charge should be established. A starting point for that discussion is 2% of the institution’s annual gross revenue. Consider language, if necessary, to clarify how the percentage cap is applied for institutions with revenue-generating subsidiary or parent facilities located outside of the municipal boundaries.

Task Force members asked various questions about the proposal. Geoff Herman provided his understanding of how the current cap of 2% of revenue appears to be the common assessment method among the few municipalities that currently have service charge ordinances, and how he believes that the underlying method of calculating the service charge, which defaults to the 2%-of-revenue assessment, is the tax that would be paid on the subject property, excluding the mill rate for education and welfare. Geoff explained that such a methodology is subject to easy challenge because there is no necessary relationship between property value and the cost of municipal services that are provided (i.e., the fee is really a tax).

Sawin Millett asked the members of the Task Force if there was any interest in pulling together Rep. Carey’s proposal for further review. Three members were in favor (Grube, Flood and Carey) and four members were opposed (Austin, Peluso, Libby and Sen. Millett). Sawin Millett didn’t vote.

The Task Force discussed the proposal in additional detail. Sen. Millett was interested in obtaining more information about how many organizations would be potentially affected with a revenue threshold of \$250,000. Brenda Peluso referenced the aggregate data with respect to charitable organizations in the report she distributed at the first meeting.

Brenda also said she would be more enthusiastic about the proposal if it was structured so the nonprofits' obligation to pay the service charge would become merely voluntary, and if the calculation of the service charge also included a calculation of the value of the services the institutions provides to the greater good, which could be set-off against the service charge.

Sen. Flood said that he thought a positive addition to the service charge statute would be a reference to a set-off calculation of the value of the services provided by the tax exempt institution to the community. Rep. Carey said that the 2% cap deserves to be reviewed, and could be lowered.

Geoff Herman said that he didn't think it would be appropriate to go backward with respect to the municipal authority that presently exists in statute with respect to exempt rental housing.

Geoff Herman and David Ledew of Maine Revenue Services were asked if the impact of such a proposal could be estimated. The response was that aggregate impact data would be extremely hard to calculate given the fact that the newly-created municipal authority would be voluntary at the municipal level, and each participating municipality could decide to focus on some category of exemption and not others. The best way to evaluate impacts would probably be to review the impacts in a few municipalities after making a few assumptions about what the local ordinance would contain.

Rep. Carey and Sen. Flood are scheduled to put the various elements of the proposal on paper for further review at the next meeting. Geoff Herman is going to obtain the existing "service charge" ordinances from Saco and Waterville for the Task Force to review.

The next (fourth) meeting of the Task Force is scheduled for Monday, November 25th, from 1:00- 4:00 p.m. in Room 126 of the State House (Transportation Committee room). A fifth meeting has been scheduled for Monday, December 9th, from 1:00 – 4:00 p.m. in the Taxation Committee room (Room 127).

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