

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

(Prepared by Kathleen Hamel, DAFS/MRS)

Members Present:

H. Sawin Millett, Jr., Chair
Senator Rebecca Millett
Senator Patrick Flood
Representative L. Gary Knight
Representative Michael Carey
Joseph Grube
Jeff Austin for Arthur Blank
Brenda Peluso

Members Absent:

James Libby

Overview

Commissioner Millett asked for a review and comments of the November 20, 2013 meeting summaries prepared by Jennifer Merrow (DAFS) and by Geoff Herman (MMA). Jeff Austin asked that the last sentence of the comment attributed to him on page 4 of the MMA summary be changed to read: "Jeff also pointed out that evidence may suggest that the value of hospitals in the ~~assessors' records may be highly inaccurate~~ 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." Both summaries were accepted and approved with the correction.

Information requested at Prior Meeting

- Draft language from Senator Flood and Representative Carey
- Service Charge Ordinances in Saco and Waterville
- LD 562 – An Act Related to Service Charges in Lieu of Property Taxes on Tax-exempt Property

Senator Flood did a quick review of the draft of proposed changes to Title 36 §508. Service Charges. He said the draft was meant to be a point of beginning for discussion and that he included other Task Force options (italicized) to the proposals. Both he and Representative Carey agreed the intent was to allow as much local control as possible as long as all nonprofit property owners within a category are treated in the same manner.

Representative Knight applauded their work on the draft and asked for clarification of the proposed Calculation of Basis for allocating the Service Charge. He also wondered if there could be constitutional challenge if, for example, Brunswick assessed a service charge on Bowdoin College but Lewiston decided not to assess a service charge on Bates

College. Geoff Herman answered that §508 already allows municipalities the option to assess a service charge. Representative Carey pointed out that the storm water assessment fees (“rain tax”) imposed by municipalities could be used as a model. Brenda Peluso noted that the so-called “rain tax” was imposed on all properties in a municipality and service charges should also apply to all. Joe Grube explained the different levels of the storm water assessment fees in Lewiston: residential, multi-family residential and commercial. This assessment is included in the property owners’ water/sewer bill.

Senator Millett expressed concern with implementation issues. Who will do the calculations – the municipalities or the nonprofits? Will the economic benefit associated with the nonprofits be considered? Will there be overlap of TIFs? Will capital campaigns be counted in gross revenues for nonprofits for the cap limitation? Senator Flood said that there is already a process in place for nonprofits to report revenue to the municipalities. This is an attempt to do the reverse and calculate the nonprofits’ value in services to the municipalities. Geoff Herman provided a handout of the service charge ordinances in Saco and Waterville and pointed out that the calculation methodology in their ordinances closely mirrors the wording in §508 and §652. However, §652 currently only applies to nonprofit low income housing and doesn’t provide a lot of guidance for calculating the service charge. Commissioner Millett noted that §508 requires a nonprofit to file an annual audit of revenues with the municipality; he asked Brenda Peluso if all nonprofits have an annual audit prepared by a CPA. Brenda replied that most do not but all file the form 990. The IRS has a requirement for an annual audit for organizations with revenues over \$500,000 (?), but she cautioned against just looking at gross revenues and feels even using net revenues could be difficult. Certain revenue streams should be excluded.

Comment [BP1]: Federal Office of Management & Budget (OMB) requires entities with \$500,000 or more in federal funding to complete a single audit.

Jeff Austin said it could be very difficult for a hospital or college to determine what portion of their value of services goes to residents of the host municipality. Also, a cap based on gross revenue may be difficult to obtain. For example, MaineGeneral, based in Augusta, would list its gross revenue, but an entire department, the Thayer Unit, is located in Waterville. Perhaps this should be map-based on square footage of property located in a municipality? Joe Grube had created a map of Lewiston showing the footprint of the nonprofit property owners; houses of worship, cemeteries and government-owned properties were not included. The largest property shown is a bird sanctuary.

Comment [BP2]: I don’t think this was Jeff’s point.

Commissioner Millett asked if the Task Force should focus more on economic impact and TIFs. Senator Millett said if TIFs are offered to businesses then they should also be offered to nonprofits. Organizations such as colleges, hospitals, the Portland Symphony, etc. all have a positive impact on the local economy. Commissioner Millett asked how the Task Force could quantify a nonprofit’s contribution; is there a methodology? Senator Flood said there may be a method used by others but he hadn’t looked. Representative Knight said that the Lewiston map visually complicates things for him. The bird sanctuary probably doesn’t have a big revenue stream for paying a service charge and also probably does not have much economic impact for Lewiston.

Commissioner Millett asked if the Task Force should look at the exemption provisions A-J in §652; are there any that the committee feels should not be included in being assessed for service charges?

Senator Millett noted that Senator Flood had said that the language of the draft was broad to allow municipalities to reflect their own unique relationship with the nonprofits. Would all municipalities have the ability to understand the intricacies of the different nonprofits involved; would they have the staff and budget to develop such expertise and knowledge? Representative Carey said he was not too worried about that as municipalities tend to copy what is already working in another area and narrow the provisions of an ordinance to their own requirements. However, the Task Force should offer guidelines so that it is not so open-ended. Commissioner Millett said that even the smallest towns have tax assessors with knowledge of the tax laws and they know that they must apply the same methodology for all real property in the town. Joe Grube confirmed that this is reported by all municipalities for the annual State Valuation. Commissioner Millett also stated that all the different task forces currently meeting are trying to minimize the impact on the municipalities. Senator Millett said she would like to see more definition for the implementation process.

Commissioner Millett asked the members if they wanted to spend more time trying to craft something that will work. Representative Carey said he believed they should and that the assessment of service charges is bound to happen eventually. He said he cared too much about many of the nonprofits to just let this issue go to a Referendum or perhaps have an ill-conceived law come out of the Legislature. The members should look at the issue from how we pay as individuals – not as corporations. Brenda Peluso agreed that the task force should keep trying as did Senator Flood and Representative Knight. Senator Millett said she was willing to continue but that the Task Force needs to understand what they are doing and that there could be unintended consequences.

Comment [BP3]: My comment must have been misunderstood. I feel that going down this vein is not a good use of our energy as 6 task forces in the past 50 years have tried and failed to craft a proposal to tax nonprofit property owners.

Senator Flood said the members should look at the 3 variables (options) in the draft and should start with the first which is to decide if any of the properties listed in A-J of §652 should be exempt from service charges. Joe Grube suggested striking the properties listed in E (Veterans' organizations) and G (Houses of religious worship and parsonages). A show of hands had 5 members in agreement with this; 3 members abstained (Jeff Austin, Brenda Peluso and Senator Millett). Brenda Peluso expressed the opinion that if service charges are assessed, they should be assessed on all. Representative Carey said a different legal standard already applies to houses of religious worship and parsonages and only a portion of their value is exempt from taxation. Also, he didn't know of any Veterans' organizations that would meet the \$250,000 threshold in gross revenues. Joe Grube said there are no longer any properties owned by Veterans' organizations in Lewiston; activities take place in buildings owned by others.

Commissioner Millett asked the members if they wanted to adjust the threshold of \$250,000 in annual gross revenues up or down. Brenda Peluso felt that \$250,000 was low and any cap would be problematic as the burden would be on the nonprofits to

“prove” their value. Many nonprofits do not own real property. She didn’t know what an appropriate threshold might be.

Comment [BP4]: Re-write: Brenda Peluso felt that \$250,000 was too low and could not recommend a reasonable threshold given the innate problem with using gross revenues as a proxy for ability to pay. Additionally, most nonprofits at this low threshold would not be property owners.

Senator Millett said she would like to see an analysis for the next meeting that would show how much money a \$250,000 threshold would bring into a municipality (or thresholds of \$500,000 or \$1,000,000) and just how would the municipality calculate the value of the nonprofits’ services. Since it would be impossible to get this information from every municipality prior to the December 9th meeting, she agreed that a sampling of about a half-dozen municipalities would help. Geoff Herman said he could do some outreach to municipalities with a large concentration of nonprofits to get these figures but the valuation of the nonprofits’ contributions would probably be a guesstimate. Brenda Peluso said that some nonprofits do a very good job of calculating their contributions; Jeff Austin again said that it is difficult to break down by municipality the contributions of colleges and hospitals since they serve large regions. Representative Carey noted that it will be in the best interests of the nonprofit organizations to state their full contributions. Hospitals could be asked if they had a reasonable way, perhaps through patient management records, to determine the contribution of charity care to the host community. Geoff Herman felt he would be able to have information from a sampling of municipalities to present at the December 9th meeting.

Commissioner Millett asked if the Task Force members wanted to plan additional meetings; no one suggested more meetings would be needed.

The meeting was adjourned at approximately 4:20 p.m.