

**Preliminary Report  
of the  
Mandate Working Group  
(P.L. 2013, C. 368, p. WW)  
December 12, 2013**

Public Law 2013, Chapter 368, Part WW directed the Commissioner of Administrative and Financial Services to convene a working group (“Mandate Working Group”) to review mandates imposed by the State on municipalities. It charged the Mandate Working Group with identifying the financial impact of those mandates on municipal budgets, those mandates that can be mitigated or eliminated and the cost to the State of mitigating or eliminating the identified mandates.

The Mandate Working Group met on four occasions: November 4, November 14, November 22 and December 2. A summary of recommendations follows below with two attachments at the end: a copy of the Part WW statute and a listing of the members. Special recognition goes to Geoff Herman of the Maine Municipal Association for his exemplary assistance in organizing, staffing and summarizing the recommendations of the Working Group.

To facilitate its review of state mandates imposed on Maine’s towns and cities, the Working Group used a mandate inventory prepared by the Maine Municipal Association (MMA). The inventory identified the mandates according to eight categories.

The Working Group’s recommendations, which will now be organized into a final report, include detailed proposals to repeal or amend specific state mandates as well as broader narratives suggesting how the state and local governments could work together to address or ameliorate the negative impacts of state mandates. All recommendations are organized according to the eight categories in the MMA inventory except for two broad recommendations that cross categorical boundaries.

- Periodic and formal intergovernmental conversations. The Working Group identified a variety of mandate-related concerns that could be resolved or partially resolved if there was a formal opportunity to have conversations between a group of municipal officials, the appropriate policy-level state agency personnel, and the Commissioner of the Department of Administrative and Financial Services. Specific examples of those conversations include:
  - Department of Administrative and Financial Services
    - Assessing mandates, “appraisal report” standards, assessor training
  - Department of Agriculture, Conservation and Forestry
    - Comprehensive plan “consistency” standards
  - Department of Environmental Protection
    - Perceived subjective application of environmental standards by DEP personnel in the field
    - Recycling report requirements

- Circumstances of state-imposed Site Law standards inhibiting proposed development
  - Professional Regulation
    - The discriminatory application of boiler inspection fees
  - Department of Transportation
    - The changing cost-share obligations to repair state aid roads
  - Public Utilities Commission
    - “Dig Safe” program
- Regionalized delivery of local services. This discussion in the final report will review the intersection between state mandates and efforts to regionalize the delivery of local government services. The recommendation is to establish a targeted pilot program, modeled after the now-repealed local government efficiency fund, that provides financial and administrative incentives to implement one or more regional service delivery proposals submitted by municipalities and awarded according to a competitive process.

## **Administration**

- Assessing requirements for “sudden and severe” and BETE reimbursement eligibility. The “Part O” section of the state budget adopted in 2013 establishes requirements on municipalities to prepare appraisal reports for any single properties that are valued at 2% or more of the overall municipal valuation. The preparation of those appraisal reports, which should be in place by the summer of 2014, requires considerable expense for which the municipalities have not even had an opportunity to budget. The Working Group recommendation is to request the municipal concerns to be reviewed and addressed by an ad hoc BETE working group that has been established to review the concerns of the business community with the way Part O impacts large industrial taxpayers. Until the BETE working group’s efforts are finalized and the municipal concerns have been addressed, the Working Group recommends the implementation of the Part O requirements be put on hold.
- Tree Growth notification. The requirement for municipalities to notify landowners of their failure to file certification of compliance with a forest management plan every 10 years includes a highly redundant notification process, which should be redesigned as a single notification process.
- Right to Know public records requests. 1 MRSA, section 408-A, subsection 8, governs the charges municipalities can apply for records requests under the Freedom of Access Act. The statute should be amended to allow governmental entities to recover their actual and direct costs of assembling the requested records for large-scale records requests that require many hours of staff time to administer.

- Annual reports. 30-A MRSA, section 2801, which governs the publication of the annual municipal report, should be amended to allow the municipality’s legislative body to authorize the annual report to be “published” electronically on the municipality’s publicly accessible website rather than in hard copy.
- Local sealer of weights and measures. The law requiring each municipality to appoint a local sealer of weights and measures (10 MRSA, chapter 501, subchapter 4) should be repealed, allowing the State Sealer to appoint local or regional sealers as the State Sealer believes necessary.
- Inspector of boats. The law governing the “inspector of boats and lighters” should be repealed as archaic.
- Board of Appeals and Board of Assessment Review. The laws governing the appointment of a local Board of Appeals (BOA) and Board of Assessment Review (BAR) should be amended to provide that state statute on the subject should require only that these two boards consist of at least 3 members and leave other details regarding appointment up to local ordinance.
- Motor vehicle fine revenue. Municipal law enforcement is responsible for generating a significant amount of revenue for the state through the fines people pay for motor vehicle infractions. Very little of that revenue is used to support the local government enforcement effort. The Working Group recommendation is to amend the statute governing the fees paid to compensate for the time police officers spend in court, increasing the fees from \$50 per day to actual costs, not to exceed a reasonable maximum hourly rate.

## **Education**

- Education costs. The Legislature established a separate working group process focused on educational-related mandates, and this Working Group deferred to that effort with respect to education mandates. The Working Group’s final report, however, will review the municipal concern about how school-related costs, driven to some degree by unfunded state mandates, have an overall “crowd-out” effect with respect to the municipal side of the overall “municipal budget”, leading to shortchanging the maintenance of public infrastructure and incurring negative, long-term financial consequences.

## **Elections**

- The Working Group made no specific recommendations in this category except to observe that the municipal financing and administration of all state, regional and local elections represents a type of service municipalities provide to the State of Maine, generally, that warrants legislative support for the municipal revenue sharing system.

## Environment

- Environmental mandates. Environmental mandates are many in number, complicated in their implementation, and often rooted somehow in federal law. The Working Group made three broad recommendations to cover the entire category of environmental mandates.
  - Formal conversations with DEP. The process of implementing or imposing environmental mandates were most often discussed at the Working Group level as benefitting from formal conversations with policy level state agency personnel from both DEP and DAFS.
  - Fees. The permitting/licensing fees imposed by the DEP should be waived for municipal governments on the principle that they are effectively acting as agents of the state, particularly for all programs and activities that are mandated by federal or state law or directly associated with economic development.
  - Federal standards. All state law and regulation adopted to comply with federal environmental mandates should be written to meet but not exceed federal minimum requirements.

## Health, Welfare and Public Safety

- Firefighter cancer presumption. Although indisputably a mandate from the municipal perspective, the law amending the workers' compensation law to require municipalities to prove that firefighters who contract cancer did not contract the disease because of their firefighting experience was enacted without the required mandate preamble and is therefore not recognized as a mandate by the State. The Working Group recommendation is that the Legislature review the cancer presumption statute, recognize the significant financial impacts the municipalities are incurring and will be incurring in the future, recognize the law as a state mandate, clarify the law's prospective application and review more carefully the scientific record regarding the relationship between firefighting and some of the cancers identified in 39-A MRSA, section 329-B (1) (A).
- Quality assurance protocols in PSAPs. Without identifying the law as a state mandate, the Legislature requires certain protocols to be followed by Public Safety Answering Points with respect to emergency medical communications. The protocols require additional staff and training hours and the law establishing the requirement is another unrecognized state mandate. The Working Group recommendation is that the costs associated with these training requirements be covered by the revenue generated by the surcharge established on all landline and cell phone telephone accounts.
- Animal welfare. Although there were a number of issues raised about the animal welfare statutes, the recommendation is to clarify 7 MRSA, section 3950 to expressly allow municipalities to charge dog licensing fees that are higher than established in statute to help cover the costs of animal control.

- Boiler inspection certification. State law requires municipalities and schools to provide fees to the State with respect to normal building heating boilers that boiler owners for no other places of public accommodation are required to provide. The Working Group recommendation is to either strike the discriminatory application of the law completely, or strike the requirement when the local government has caused the hot water boilers to be annually inspected through their insurance programs.

### **Licensing and Permitting**

The Working Group recommendation is to repeal all current statutes requiring municipalities to license an array of recreational business activities and replace with a single statute that identifies the various activities and allows municipalities to adopt ordinances to license under their home rule authority, including the establishment of appropriate licensing fees.

- Bowling alleys, shooting galleries, pool, and bagatelle and billiard rooms (8 MRSA §§ 1-2)
- Pinball machine operator licensing (8 MRSA § 441)
- Public exhibitions licensing (8 MRSA §§ 501-502)
- Roller skating rink licensing (8 MRSA § 601, et. Seq.)
- Closing-out sale licensing (30-A MRSA § 3781, et. Seq.)
- Pawnbroker licensing (30-A MRSA §3961)

### **Planning and Zoning**

- Comprehensive plan “consistency”. Municipalities are experiencing frustration with the process of getting their comprehensive plans certified as “consistent” with the state’s Growth Management Act. The Working Group recommendation is that the process of obtaining a finding of “consistency” for a municipal comprehensive plan should be placed high on the list of issues to be taken up by the State-Local Intergovernmental Working Group.

### **Public Works and Transportation**

- Veterans’ graves. A very significant unfunded state mandate requiring expanded management and repair of veterans’ gravesites and gravestones was enacted in 2013. The recommendation is to rewrite the mandate to require the municipalities, in collaboration with veterans’ organizations, cemetery associations, civic groups and other interested parties, to achieve certain standards with respect to cemetery maintenance, gravestone management and repair. It is the Working Group’s understanding that a bill to address the issue of this unfunded state mandate is being advanced in 2014 (LR 2580, sponsored by Senator Johnson of Lincoln County.)
- Excavation notice. The “Dig Safe” excavation notice system is not working efficiently for a number of reasons. The Working Group recommendation is to identify in the final report the various issues that were raised regarding the implementation of the Dig Safe system, and include Dig Safe on the list of issues to be addressed through the State-Local Intergovernmental Working Group process.

- Highway defect. State law requires municipalities to respond to notifications of highway defects within 24 hours or else lose their liability protections under the Tort Claims Act. There is no similar requirement with respect to state roadways. The Working Group recommendation is to repeal the highway defect notification law, provided doing so would not have any adverse consequence regarding municipal liabilities.

**Attachments:**

- 1) Part WW Statute
- 2) Mandate Working Group Members

## **PART WW**

**Sec. WW-1. Working group.** The Commissioner of Administrative and Financial Services or the commissioner's designee shall convene a working group to review mandates imposed by the State on municipalities and invite interested parties including a statewide association representing municipalities to participate in the review. The working group shall identify the financial impact of state mandates on municipal budgets, those mandates that can be mitigated or eliminated and the cost to the State of mitigating or eliminating the identified mandates.

**Sec. WW-2. Report recommendations.** No later than December 1, 2013, the working group shall report to the Joint Standing Committee on Appropriations and Financial Affairs the working group's findings and recommendations pursuant to section 1, including priorities for mandates that can be mitigated or eliminated, and any necessary implementing legislation. The joint standing committee is authorized to report out a bill related to the subject matter of the report to the Second Regular Session of the 126th Legislature following receipt of the report.

## Mandate Working Group Membership

H. Sawin Millett, Jr.	Commissioner/Chair	Dept. of Administrative & Financial Services
Geoff Herman	Director	Maine Municipal Association
Michael Brennan, Ph.D.	Manager	Town of Bucksport
John Bubier	Manager	City of Biddeford
Paul Castonguay	Assessor	City of Waterville
Clint Deschene	Manager	City of Auburn
John Madigan	Manager	Town of Mexico
Roger Raymond	Manager	Town of Hermon