

MASC Bulletin

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www.masc.org

MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES

Senate Ways & Means releases SBA proposal

On June 23 the Senate Ways & Means reported out its proposal for School Building Assistance reform. The proposed legislation, which largely reflects the House proposal, must still be voted on by the full Senate and forwarded to the joint conference committee before being sent to the Governor for his approval. Highlights of the legislation include:

- Creation of a School Modernization and Reconstruction Trust (SMART) Fund. Revenues received by the commonwealth (one penny of the sales tax) will be dedicated to this fund. The percentage of sales tax revenues dedicated to the fund will be ramped up over a number of years, and will reach a full penny in FY2011.
- Establishment of an independent School Building Authority, which is authorized to issue bonds and to make grants to cities, towns and regional school districts for the purposes of funding school construction and renovation projects.
- The State Treasurer will serve as chairperson of the Authority. Other members will include: the Secretary of Administration and Finance, the Commissioner of Education, the Director of Accounts of the Division of Local Services, and the Executive Director of the State College Building Authority. The Authority will also have two additional members appointed by the Treasurer who will be recommended by the Advisory Board from among its members.
- An Advisory Board will assist the Authority in developing policies regard-

ing school building construction, renovation, reconstruction, maintenance and facility space, preservation of open space and minimization of loss of open space, thoughtful community development, cost management, and will provide technical advice.

- The Executive Director of the Authority will serve as a nonvoting secretary to the Advisory Board. The Board membership will be comprised of the State Auditor or his designee, and 12 members representing the following organizations: MASC; MASS; MA Municipal Assn.; MA Mayors Assn.; MARS; MA Building Trades Council; Associated Subcontractors of MA; American Institute of Architects—MA; MA Smart Growth Alliance; MA Taxpayers Assn.; Associated General Contractors of MA; MTA and MFT acting jointly.
 - Maintenance of current reimbursement rates and other provisions for projects on the waiting list or already receiving payments.
 - Moratorium on acceptance of new applications for school projects which will remain in place until 7/1/07.
 - Directs School Building Authority to conduct a needs survey and to compose a long-term capital plan for purposes of planning and guiding its policies.
 - Authorization of the issuance of up to \$1 billion of general obligation bonds to finance a portion of the state's share of construction costs for projects currently on the waiting list.
 - Transfer \$150 million from the General Fund as of 6/30/04 to the new SMART Fund.
- MASC will keep members posted of any developments as they occur. ❖

Conference savings available

The early bird, so the saying goes, may get the worm, but MASC/MASS members who take advantage of this year's Joint Conference early bird registration will get a \$70 reduction off the regular conference price!

The 2004 Conference "Excellence in the Balance: Weighing the Stakes for Success," will be held October 27-29 at the Worcester Centrum Centre. The overall program will focus on high standards, achievement and accountability and some of the leading issues that are certain to drive the next stage of education reform, including the *Hancock* case, the impact of state and

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Charter School Alert

The FY05 state budget, currently under consideration by the Governor, includes a moratorium on any new charter school approval until July 31, 2005 or until such time as a new tuition formula has been enacted.

It is anticipated that the Governor will veto this moratorium amendment. **Please contact your legislator to ask that they take up the anticipated veto and vote to override the Governor.**

Details on the Conference Committee budget are available at www.masc.org.

NATIONALnews

Supreme Court preserves "God" in pledge

In a ruling handed down on Flag Day, 50 years to the day after Congress added "under God" to the pledge of allegiance, a five-justice majority of the Court preserved, at least temporarily, the phrase "one nation, under God."

The majority decision was based on the determination that Dr. Michael Newdow, the California physician who had challenged the constitutionality of the language and argued that reciting the pledge exposed his young daughter to religious dogma, lacked the legal authority to bring the case because of complications arising from a protracted custody dispute with the girl's mother.

The June 14 decision overturned a highly controversial ruling by a San Francisco-based federal appeals court that would have barred public schools in nine Western states from leading the pledge because of the words "under God." However, because the court decided the case on a procedural issue and did not address the merits of the church-state complaints, it left the door open for similar legal challenges in the future.

Ruling in the majority were Justices Stevens, Souter, Breyer, Ginsburg and Kennedy. Three opposing rulings were issued by Chief Justice Rehnquist, O'Connor and Thomas, with Justice Scalia recusing himself from the case.

MASCnews

MASC to debut online policy service

Beginning this September, the MASC Policy Services program will offer school districts an economical way to put their policies on-line, accessible at the click of a mouse. This new, web-based service is POLICY21[®]: Online Policy Services for 21st Century School Districts.

This innovative option can assist districts in creating a convenient, paperless policy collection that is accessible to administrators, teachers, parents and school committees members—

anytime, all the time.

The service is user-friendly, easy to navigate, searchable by word or phrase and expandable. Legal references to Massachusetts General Laws are hyper-linked for immediate and direct viewing of the actual laws.

According to Jim Hardy, MASC Field Director—Policy who has researched several on-line options over the past year, the benefits of this new program include: quicker access to information you need, when you need it; faster, unlimited updates which can be requested and responded to via email; reduced administrative costs; paperless efficiency; and easily searchable information. Materials have been formatted for easy reading on modern computer screens and a table of contents will direct you to your topic of interest. In addition to digital links to MGL citations contained in your committee policies, charts and tables can also be made available to administrators in their original format.

If you are interested in learning more

about what POLICY21 can do for your district, contact Jim Hardy at 617-523-8454 or email:jhardy@masc.org
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Arriving to your mailbox

Over the next two weeks, members will be receiving copies of the *Massachusetts General Laws 2004* edition as well as a cd version of the *Management Information for School Committees (M*I*S*C) 2003 Year End Report*. Please call the MASC office to order additional copies or order online at www.masc.org

Division IV Officers Appointed

At its June meeting the Board of Directors appointed new officers (interim) for Division IV. The new chair of Division IV is Kathleen Robey (Marlborough); Vice Chair: Kathleen Toomey (Worcester); and Secretary-Treasurer: Ellen Holmes (Ashburnham-Westminster). Divisions IV, VI and VIII will be holding elections in the early fall.

Conference 2004

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federal regulations, and the spiraling costs around implementing these mandates while under siege from collective bargaining agreements and sky-rocketing insurance premiums.

Featured speakers who have been confirmed to date include: Jack Levin, a national authority on student violence and bullying, who is also Director of the Brudnick Center on Conflict and Violence at Northeastern; Dr. Douglas Reeves, a highly respected education researcher and author who has done pioneering work on performance assessment; Michael Weisman, the lead attorney on the *Hancock* case who will offer a special double session on issues around the ruling; and an All-Star Panel on Health Insurance and Collective Bargaining that will be chaired by Blue Cross Vice President and former WBZ host Peter Meade.

MASC Immediate Past President Carol

LePrevost, who co-chaired this year's Conference Planning Committee acknowledges that one of the best ways to weather the fiscal and accountability challenges that school districts are confronting is by keeping abreast of issues and sharing ideas with other school leaders. More than 30 sessions will be offered over the three-day event, structured along nine panel tracks and many of these programs will satisfy the requirement for new school committee member orientation.

Featured again this year will be such popular programs as Share the Success and Technology of Tomorrow that showcase the skills and ingenuity of Massachusetts students and teachers; the Exhibitors and Joint Receptions; the Awards Dinner and Leadership Lunch; and of course, the Exhibitors Bingo Game! Prizes! Prizes!

Registration notices were mailed to all members and superintendents last week or register online at www.masc.org. We look forward to seeing you in Worcester. ❖

Since you asked...

Executive Session do's and don'ts

MASC has received a number of queries in recent weeks concerning what is/is not appropriate to discuss in executive session, particularly around issues involving exception 3 of the Open Meeting Law. MASC Field Director Michael Gilbert, with the assistance of General Counsel Stephen Finnegan prepared the following to assist members in addressing this important concern.

In Exception 3 of the Open Meeting Law (Chapter 39, Section 23b) school committees may go into executive session to: Discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body; to conduct strategy sessions in preparation for negotiations with nonunion personnel; to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

The first thing to remember is that exceptions to the Open Meeting Law allow committees to conduct business in closed session but do not require it. This

exception deals with two different areas of school committee responsibility—Bargaining and Litigation.

For each city or town a notice of every meeting of any governmental body is to be filed with the clerk of the city or town, and the notice or a copy of the notice must be publicly posted in the office of the clerk or on the principal bulletin board of the city or town at least forty-eight hours (including Saturdays but not Sundays or legal holidays) before the meeting.

For regional school district committees, the secretary of the regional school district is to file the notice of every meeting with the clerk of each city and town included within the district. Each such clerk must post the notice in his or her office on the principal official bulletin board of the city or town. In addition, the regional school district's secretary must post the notice in his or her office or on the principal official bulletin board of the district.

In order for the committee to discuss matters regarding litigation under this exception there must be litigation in process or a serious and imminent threat that litigation will be filed against the district or the committee, and then, only if an open meeting may have a detrimental effect on the litigating position

of the governmental body. A verbal exchange from a constituent saying they may sue is not likely to be considered a serious threat by the District Attorney's office. However, the Supreme Judicial Court approved an executive session in which the Boston School Committee discussed the legal validity of the contract job security clause with the expectation that their interpretation would spark responsive litigation. No suit concerning that clause was pending, however, the Union and the Committee were in extensive litigation which sought to compel additional appropriations, and therefore the Court held that the Committee could properly anticipate a challenge by the Union. Subsequently the Supreme Judicial Court held that a meeting in which the board's legal counsel gave legal advice and rendered legal opinions on certain aspects of a proposed contract for rubbish disposal violated the Open Meeting Law because there was no pending or threatened litigation. If a committee member believes that there is a threat of litigation they should contact the Chair who, in consultation with the Superintendent, should request the assistance of legal counsel to determine if the threat is serious enough to warrant an executive session discussion.

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Arlington scholar-athlete is presented MASC Presidents award

MASC 2004 President Paul Schlichtman, a member of the Arlington School Committee, stands with Steve Tahmouh, the recipient of this year's Roberta Doering/MASC Presidents Scholarship award.

Steve, who graduated this month from Arlington High School, has been a dedicated participant in school and community activities throughout his high school career. As a scholar-athlete, this life-long Arlington resident and National Honor Society member has played a key role in the district's winning seasons as an all-star standout on the baseball, basketball and soccer teams. Identified earlier this year as one of the nine top prospects in high school baseball in the state, Steve served as co-captain of the baseball

team and was voted this year's MVP. He also received the Touchdown Club's Obergren award which honors the most outstanding male and female scholar-athlete, as exemplars of loyalty, athletic ability, character on and off the team, and consistent scholastic ability.

In the fall, Steve will enroll at Babson College where he looks forward to pursuing his interests in business—and baseball.

The MASC award, established in 1997 in honor of former President Roberta Doering (Agawam), honors a student in the current President's district who exemplifies the high standards of character and academic achievement that Mrs. Doering has promoted during her many years of service to MA public school students. ♦



Since you asked...

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When dealing with collective bargaining there are a number of different scenarios that school committees are presented with on a regular basis. The most common area is direct negotiation with unions and other bargaining units. These are held in executive session if an open meeting may have a detrimental effect on the bargaining position of the committee, unless the parties agree otherwise. When an agreement is reached and ratified by both sides the need for secrecy which justified the executive session has ended, and therefore, the minutes should be made public.

Direct negotiations are usually conducted by legal counsel and/or a subcommittee of the school committee. In order to ensure that the bargaining team can address all of the concerns of the administration and the full committee, the law allows the committee to meet in executive session to discuss strategy with respect to bargaining if an open meeting may have a detrimental effect on the bargaining position of the committee. This means that the committee and administrators may discuss changes to the current contract, which may include additions that are subject to bargaining under the law, and may provide the bargaining team with a direction under which they will conduct direct negotiations. Often this results in going through the contract article by article and putting together a package of changes to be presented to the union. The collective bargaining exception extends to grievance hearings required by the collective bargaining agreements.

In addition, school committees may bargain with and conduct strategy sessions with individuals and groups who are under nonunion employment contracts in executive

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session. The committee's discussions with such individuals and strategies about individual contracts should be limited to the terms of the proposed Agreement. In some cases (e.g. Principals) only the compensation (salary and all compensation related benefits) is within the purview of the committee. School committees may not create job descriptions, or make final hiring decisions in executive session.

The meeting must first be convened as an open meeting and a recorded vote taken to enter into executive session. The presiding officer must cite in advance the purpose with sufficient specificity of the proposed executive session, and stated if the governmental body will reconvene after the executive session.

If you have questions about whether an action or an agenda item scheduled for executive session is appropriate or not, seek advice from your legal counsel or from the local District Attorney's office before you act. This ensures that when you are questioned by constituents, while you may not be able to talk about a confidential matter you can assure them that you have sought legal advice and the committee has acted within the law. ❖

MASC EVENTS

July 23 (Note: Friday)

Academy for School Leadership*
Assabet Valley, Marlborough

September 17-18 (F-Sa)

Academy for School Leadership*
Berkshires, TBA

October 27-29 (W-F)

MASC/MASS JOINT CONFERENCE
Worcester Centrum Centre

** Attendance satisfies requirements of the new member orientation law.*

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