

# MeASBO

The official publication of the Maine Association of School Business Officials  
Fall 2016

## Contract Pitfalls

The 10 Greatest Bombs

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White-collar OT Fright



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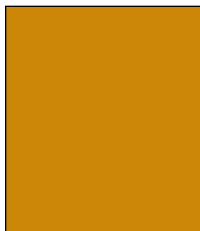


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# INSIDE MeASBO

## FEATURES

5



### Member Profile

Colin Walsh is 'all in,' proving his passion for education at RSU #57 in Waterboro.

### 10 Blue Ribbon Panel

Commission, minus school business officials, is addressing Maine's financial, scholastic issues.



### 12 Overtime Fright Allayed



When the Department of Labor released new regulations for overtime for white-collar salaried employees, school districts were anxious, to say the least.

## COVER STORY

### Top 10 Contract Pitfalls

What should school business managers avoid in dealing with contracts? Plenty! Drummond Woodsum's Elek Miller and Greg Im reveal the hidden traps.

12



## NEWS

### Q&A with the President

3

MeASBO's Cathy Messmer of Cape Elizabeth has a full plate of educational sessions for members this school year.

### Leadership Events

4

ASBO International announces plans for its annual Eagle Institute and Executive Leadership Forum.

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## PRESIDENT'S MESSAGE

# The year ahead is well-stocked with education

Welcome to another school year with the Maine Association of School Business Officials (MeASBO). I hope you all had a great summer and enjoyed the marvelous dry weather.

The MeASBO Executive Committee has been working hard this year to bring to you topics that are useful and pertinent to your position and school district. My goal as president is to bring in speakers that are knowledgeable but also entertaining. I realize that I won't always be able to get both in a speaker, but I will try.

A sampling of what topics we are working on this year:

- MainePERS
- Certification for Dummies
- Transportation Funding
- OMB Guidance
- Legislative Updates
- Local Entitlement Maintenance of Effort

Our next meeting is scheduled for Nov. 18 at Keeley's Ban-



Cathy Messmer

quet Center, our February meeting is on Feb. 10 in Augusta, and our final meeting for the year will be April 28 at Jeff's Catering in Brewer.

We would love to hear from you! If there are any topics you would like more information on, please go on to the MeASBO Forum on the Internet and go to the Suggestion Box or email myself or other members of the Executive Committee with your ideas, suggestions, and/or questions.

I would like to thank all of the members of the Executive Committee for all of the support they have given me. Our first meeting wouldn't have gone off as smoothly as it did if it wasn't for their advice and suggestions.

We are always looking for members to join our Executive Committee and work their way up the ranks to president. It is a great group of people with an amazing amount of knowledge. We meet once during the summer and after most MeASBO meetings and our primary goal is to educate and support our members. If you would like to be a part of the Executive Committee don't hesitate to contact me or other committee members.

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## Plenty of legislative action on the slate

By Jude Cyr

The First Regular Session of the 128th Maine Legislature will commence on January 4, 2017.

When the sessions are in full swing, and you are interested in a particular Bill, simply follow the Status of the bill by searching the website at: <http://legislature.maine.gov/house/homepage.htm>

From there you can navigate the website, follow the status, hearing and workshop sessions of the hosted by Education and Cultural Affairs Committee. You will have access to the proposed Bill language and monitor it's status from public session on the Bill to its pass or fail in the House and Senate.

You are also able to received weekly updates through the MeASBO web page. You'll need to log in and peruse the MeASBO Discussions Forum entitled "Legislative Updates". As a registered MeASBO member, you'll have access to these forums.

If you want to be alerted for any new post and any particu-



lar discussion topics, click on the "Forum Options" icon, located on upper right corner of your page, and in the pull down menu, click the 'Watch This Forum"; where you will receive all newly posted Topics and Responses via an email announcement. It is pretty cool way of remaining current on topics without the responsibility of getting into the MeASBO website on daily basis.

There are other methods to follow the Legislative session. The Maine School Management Association has a web portal within the MSSA website, that provides minutes of their Legislative Committee meetings and status of Bills. You are also able to click on the

"Legislative Advocacy" where you can educating legislators and lobbying on behalf of school board and superintendents on issues affecting public education.

So enjoy the 128th Maine Legislature First Regular Session and be cognizant of their work, which may very well impact your school district. ...

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## Insights from great leaders of history

GETTYSBURG, Pa. — The Association of School Business Officials International (ASBO) is planning its annual Eagle Institute — focused on Insights from History's Greatest Leaders — to be held appropriately at this historic city, July 18-21, 2017.

"It takes a dedicated leader to invoke lasting change," ASBO International says. "By drawing on leadership insights from historical events, the Eagle Institute is

business managers' opportunity to learn the valuable leadership lessons they need to effectively lead their district."

A 360-degree view of leadership concepts from both an academic and philosophical perspectives will be presented at this leadership development event.

Since it is limited to 40 participants, attendees have the unique opportunity to closely examine their personal leadership approach.

Questions may be directed to Patrick O'Connor, ASBO's leadership development manager, at 866-682-2729 x7077.

## Response-ready Leadership



MIAMI — ASBO International's 2017 Executive Leadership Forum declares that "great leaders never stop learning" and this message will go forth Feb. 16-18 for school business officials who want to strengthen their leadership skills.

The forum will present first-hand experience and behind-the-scenes insights from companies like Carnival Cruise Lines and the Adrienne Arsht Center, to redefine how attendees lead — and the way they learn to lead.

"Fortify your school system with fearless leadership, clear communication, and decisive decision-making that helps you thwart potential threats and manage crisis with composure," ASBO International encourages."

They added: "Learn directly from renowned leadership experts and top leaders in school business. Leave with the knowledge and expertise you need to confidently lead your district."

Developed specifically for school business professionals, the Executive Leadership Forum explores leadership techniques and strategies through the lens of fiscal leadership.

Interested school business managers should contact ASBO International at 866-682-2729 x7080.

## Correction

Instead of referring to MeASBO leadership, she was talking about school business officials as a whole when she said, "We work quietly behind the scenes and contribute to the success of our organizations and most of the time we don't get any credit for it — which is fine with us — but it is nice every now and again to be recognized."

The editor apologizes for the mistake.

## MeASBO Meetings

Upcoming Maine ASBO meetings:

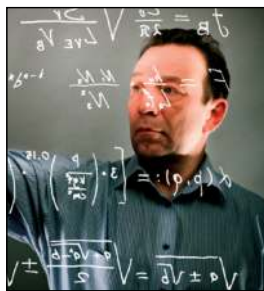
**November 18** — Keeley's Banquet Center, South Portland

**February 10** — Augusta

**April 28** — Jeff's Catering in Brewer

25th Annual Tri-State Conference  
**May 2017** — Vermont. Location to be announced.

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# Passion for the job rules RSU #57's Colin Walsh workday

By Mark Leslie

MeASBO's new Second Vice President Colin Walsh, the Five Ps rule. That's planning, policy, processes, procedures and passion for the job — most of all, passion.

That is, a passion, a fervor for schools “and helping them run fiscally and operationally the best and bringing our individual and collective expertise to the table to accomplish that. That’s the overarching thing for me,” said the xx-year-old Walsh, director of finance and operations at sprawling RSU #57 in Waterboro. “That’s why I came to work for a school district. That’s why I’m part of Maine ASBO, and that’s why I’m involved in things to help make schools better and more efficient.”

“Colin’s a planner and very detail-oriented person, so there are never any ‘oh-by-the-way’ surprises,” said Larry Malone, who took the reins as RSU #57 superintendent on July 1, following a transition year as assistant superintendent while long-time Superintendent Dr. John Davis worked part-time.

“There is a lot of respect here for Colin by the board members and the communities,” Malone said, noting that over the past five years, voters have approved the school budgets by nearly a two-thirds vote. “There is a level of trust and appreciation for what he does and making sure that the numbers work for them... But there is a level of assurance people must have. Colin’s a straight shooter. He brings a very clear message and is very transparent with it.”

Born in Falmouth, Mass., in a U.S. Coast Guard family that traveled much before settling in Portland, Maine, Walsh graduated in 1883 from Deering High School and in 1987 with a bachelor’s degree in accounting from the University of Southern Maine.

When he joined RSU #57 on Aug. 1, 2013, he brought a quarter-century of business and accounting experience, the last 14 years of which were with Joel Pat-

erson Associates Inc. of Sanford, consulting a number of Maine school districts, including RSU #57.

And that is when he discovered what would change his career.

“The thing that drew me the most is, I got to know business managers,” he said. “I saw that as time went on, school finance became more critically important, but the local people didn’t give it its due service.

“Yes, half of running a school is all about curriculum and education and teachers and training and all that,” he added. “But the piece that is just as important is a well-run financial operation and a well-run business operation — meaning the buildings, the grounds, the roofs not leaking, the maintenance plans, all of those things. There is a ton to that side of education that never gets seen, but you know it’s operating poorly when you see

**Colin’s a planner and very detail-oriented person, so there are never any ‘oh-by-the-way’ surprises... He’s a straight shooter. He brings a very clear message and is very transparent with it.’**

**— Larry Malone, superintendent RSU #57**

“There are a bunch of talented folks in this state, but the importance for me is that school boards and superintendents realize the need for topnotch, well-qualified financial people and operational people running our school districts because that’s the ‘other’ piece.

a district not doing it well and they have struggles.”

At RSU #57, which includes Alfred, Limerick, Lyman, Newfield, Shapleigh and Waterboro, Walsh oversees a \$40-million budget and more than 600 employees.

“We’re not 400 students with a 60-

## MeASBO: Bringing talents to the table

Citing the “great job” done by the Maine Association of School Business Officials, new Second Vice President Colin Walsh added, “I’m proud to be part of them. They’ve done a lot to bring school districts and the operational piece together.”

Walsh said it’s important that “we all bring those talents to the table and work together collaboratively to figure out how we can make Maine schools better and what we can bring individually and collectively to make them better

“It’s my passion for bringing that expertise that I have,” he added. “Other people have other expertise in other areas. There are a lot of talented business managers out there and they have more expertise in other areas than I have.”

Like many other things, people get out what they put in to organizations, he said.

“If you attend meetings you get more. If you attend trainings you get even more. If you start to get entrenched in some of the efforts at a committee level, you get even more. Look at [Auburn School Department Finance Director] Jude Cyr in Auburn. He’s a keyholder and a key player in legislative affairs, not just in Auburn but throughout the state in understanding what is happening at the Legislature because we can’t all do everything. He’s got expertise I’ll probably never have. The state has a whole bunch of talented business managers and financial and operational leaders.”

person staff. There’s a big difference between managing that type of district where you have to do 20 different jobs and role up your sleeves on everything,” Walsh said. “The operational piece is huge and when you’re director of both finance and operations and you oversee that number of people, you can’t role up your sleeves in every single department. My job is to make sure those departments are managing the way and in the direction that I and the school board and superintendent want the district to go.”

The expertise Walsh brings to RSU #57, he said,

“is at a much higher level. It’s about planning, policy, direction... Am I hands-on in some things? Sure. We all are. The part for me on the finance side is that we have processes and people who provide a good structure.

While his background wasn’t heavy on the operational side — grounds, maintenance and custodial, food service, transportation — Walsh said, “The largest part of my day is indeed spent on operations, not finance.

“Like any good organization, if you have good controls, good systems and good people, then you’re truly managing at that point.”

### Southern but Rural

RSU #57 may be in Southern Maine, but Walsh pointed out it’s a very rural district. Some 45-54 percent of its students are free-and-reduced, and being so spread out “becomes more of a challenge” in creating efficiencies, he said, like logging some of the highest mileage in the state in transportation — not only for Massabesic High School and Middle School in Waterboro, but also for Lyman and Alfred elementary schools and Shapleigh Memorial School.



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“Look at Wells, which built a new elementary school 10 or 12 years ago and it handles most of the town of Wells,” Walsh said. “You can create a lot of efficiencies by doing that.”

The help along the way comes from the five P’s: Planning, Policy, Processes, Procedures — and his personal passion.

“Whether it’s operating any type of department, or business or school district, you must make sure you have good controls in place. Experts will tell you time and time again that if you don’t have good financial controls, the likelihood that you’re going to operate well financially is much more difficult.”

### Being a Good Steward

The bottom line, he said, is being a good steward of the taxpayers’ dollars.

“That’s my purpose. It’s their money,” Walsh said. “I tell my board and my community members, when I come to work I realize every day that they’re paying my salary. Don’t forget that.”

The latest cost savings of this stewardship came when it was determined to use heat-pump technology in the renovation of Shapleigh Memorial School because oil-burning technology would have been prohibitively expensive.

Referring to his recently retired superintendent, Dr. John Davis, Walsh said, “We had a philosophy: Don’t tell me the things I know, but tell me the things I don’t know that I need to know.”

Superintendent Malone subscribes to that viewpoint as well, adding, “Colin and I meet daily, even if only for 10 to 15 minutes. In the middle of the week we might block out 45 minutes or so to plan around projects, or discuss concerns that have come up around funding or other areas. With his background of doing school audits and so forth, he has a big advantage. He’s looked at it from the outside.”

Walsh said, “Business managers come with a skill set, superintendents come with a different skill set and they have to work together as a team.

“I’m not perfect. Our district isn’t perfect. We’ve got a lot of things to work on. But as you do more and more and have that mentality from the school board to the superintendent and business manager and the people in the trenches, the more likely you are to have a strong, well-structured efficiently run organization.”

What talented business managers bring

**“Yes, half of running a school is all about curriculum and education and teachers and training and all that. But the piece that is just as important is a well-run financial operation and a well-run business operation.”**

**— Colin Walsh**

to that district is finding financial efficiencies — like the long-range planning that Walsh’s predecessor brought to RSU #57.

“We have a five-year roof plan. We know which roofs we’re doing every five years. We have a leach-field plan to replace aging leach fields.

“It’s a real hard to do because most school districts don’t have the time nor the ability to take the time to create those types of operational plans. But when you do and you work with them, they create a whole bunch of opportunities for schools to save money. It also creates a bunch of people sitting around a table and thinking, How can we do things differently, more creatively and effectively and efficiently?”

“[Building repairs] are part for our budget, part of our culture, it’s what the school board has accepted as their responsibility. That takes money and dedication, but in return you don’t have a roof caving in, or leaks or mold. It only comes from good planning and having someone with

the background to do it.

“It’s that type of thing that talented business managers bring to districts.”

### State Versus Local

Walsh called it “frustrating” that the Department of Education and state Legislature appear to not recognize that trait.

When Maine Gov. John Baldacci and then-Education Commissioner Susan Gendron began the push for consolidation, Walsh said he told the DOE ‘You really need to have a cohesive group of business managers, superintendents, stakeholders, including CPAs, consultants and others to give you feedback.’

Business managers were not included at the table.

When Gov. Paul LePage set up the current Blue Ribbon Committee on school finances, Walsh called the DOE and suggested they include business managers.

The state’s response?

*Continued on page 9*



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# Stadium project confirms town-school kinship

Since the residents of RSU #57's six towns approved a \$3.15 million to fund a stadium and field renovation project at the high school, the affiliation between the towns and school district has been cemented. And that affinity is crucial for the health of both, according to Director of Finance and Operations Colin Walsh.

The complete rehabilitation, nearly complete, involves a new synthetic turf field, bleachers, lighting, a complete track with long jump, triple jump, shot put, discus and pole vault.

"There was a huge, huge need for this field renovation project," Walsh said, but it had been on and off the table for a decade and the vote was very close, so it was an intense topic in the community.

The capital reserve fund and grants, donations and other sources totaled another \$800,000 that may or may not be used for tennis courts, a storage area, and training, locker-room and bathroom facilities.

However those decisions are made, "this isn't just about the students and student/athletes," Walsh said. "That's a major component of it, but it's about the community, about a place for the townspeople to enjoy, to get together for events."

For instance, one reporter mentioned to Walsh that she was

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**Kinship:** the web of social relationships that forms an important part of the lives of most humans in most societies.

---

anxiously awaiting completion so she could walk the track.

"I'm a business guy," he said. "I came from the business world. I 'get' business. So, yes, you want to attract business. It's like playing the old SIM City game. You want parks, recreational places, businesses, manufacturing, a tax base, but you also need schools and fire and police departments. We're a major component of that."

RSU #57's towns have no major business or industrial employers, and so the school district serves as its major employer, with more than 600 teachers, staff and administrators.


So where better to invest taxpayer dollars?

"You talk about the focal point of a community," Walsh said. "This project is for the community as well and a lot of people see schools as just for kids."



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**I tell my board and my community members, when I come to work I realize every day that they're paying my salary. Don't forget that.'**

**— Colin Walsh**

*Continued from page 7*

"They said, 'Thank you very much. We'll get back to you if we need you.' It was a polite way of saying, 'Just hang up,'" Walsh recalled. "Business managers have not been included in a lot of things. There is also a committee on the formula for the state subsidy calculation, that works on the underpinnings behind the scenes of that calculation. And again, we're not included."

Beyond those obstacles, Walsh said, "There's a constant battle between locals and the state about how funding should come to schools and what the state is responsible for versus the locals."

"The other thing that's bothersome is that it's the same with Maine PERS [Public Employees Retirement System]," he added. "We're coming into the second year, the second phase of Maine PERS. Schools are paying 3.36 percent right now. Two years ago, they were paying 2.65 percent. Two years before that, they were paying zero. That's more cost-shifting from the state, saying the schools will pick up more of Maine PERS."

To overcome the challenge, Walsh has told his selectmen and school board that they're on the same page and should join

forces in taking their case to the state.

"Local towns and school districts should be working together because we're trying to reach the same goals," he said. "Local towns want people to come together. They want vibrant communities. They want a strong local tax base to support their community. In a lot of places, the school is the primary source of that culture and that community and what draws people to live in that community. They want a school system that's not struggling, that can educate their children."

The struggle is not only with the state government, but the federal as well.

"It puts more demands on what we do and on our resources. It always seems there are more rules, more regulations and whether those come from the Affordable Care Act, OSHA, the Department of Labor, the IRS, it always seems as though there are more and more and more — and nothing ever gets taken off the table."

"It just means there is more work to do that schools must comply with and that puts more strain on human and financial resources that are available to accomplish them."

Walsh seems to thrive on those challenges and finding solutions to them. When asked who he'd most like to have to dinner, he didn't hesitate and kept his focus:

"Warren Buffet. I'd like to understand more of his philosophy on business, on finance, on how to run a company successfully, things that successful people (meaning not rich but who manage well) do and things he's noticed over the years that they don't do well."

"I'd just like to know his philosophy: How do I become a better manager and a better financial person in overseeing the school district? •••

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# Blue Ribbon Commission

## Panel addressing Maine's financial, scholastic issues

By Mark Leslie

**F**rom the funding formula to student performance, from a review of federal funds to integrating technology into the classroom, Maine's Blue Ribbon Commission on Education will have its desktop piled high until it offers up its final report in January 2018.

Officially called the Commission To Reform Public Education Funding and Improve Student Performance in Maine, the group of 15 has held public meetings Aug. 29 in Wells, Sept. 26 in South Paris and Oct. 17 in Lewiston. Upcoming meetings are scheduled for Oct. 31, Nov. 28 and Dec. 12 at locations yet to be determined.

Public Law, Chapter 389, LD 1641, which added an \$15 million in funding for local schools, tasks the commission with recommending action to reform public education funding and to improve student performance in the state.

The commission is chaired by Dr. Robert Hasson, a retired superintendent at SAD #51 in Cumberland and formerly with the Maine School Management Association, who has been working with the Maine Department of Education heading up the section of teacher certification and educator support.

Also around the table are:

- Deputy Commissioner of Education Dr. William Beardsley;
- State Sen. Garrett P. Mason (R) of Senate District 17, the Senate Majority Leader;
- State Sen. Justin L. Alfond (D) of Senate District 8, the Senate Minority Leader;
- State Rep. Sara Gideon (D) of House District 106, the Assistant Majority Leader;
- State Rep. Kenneth W. Fredette (R) of House District 25, the House Minority Leader who sponsored the legislation creating the commission;
- Jana F. LaPoint, a member of the State Board of Education;
- Tayla Edlund, the 2016 Maine Teacher of the Year;
- J. Michael Wilhelm, a former superintendent and member of the Maine Charter School;
- Robert T. Callahan, director of the Lewiston Regional Technical Center;
- Douglas Larlee, an educator of 40 years;

- Joshua Reny, the assistant city manager of South Portland;
- Richard P. Colpitts, superintendent at SAD #17 in Oxford;
- James H. Page, chancellor of the University of Maine System; and
- Derek P. Langhauser, president of the Maine Community College System.

Susan Beaudoin, special assistant to the deputy commissioner, noted that the positions of the Blue Ribbon commissioners was specified in the legislation, explaining the absence of any school business officials.

"Some superintendents [on the commission] served as business managers and have a good financial background," Beaudoin said, "and this is not totally focused on finance. It's about other things as well. It's about achievement, teachers' salaries, all sorts of things.

"You know very well they're talking to their business managers," she added.

Beaudoin, who is assisting Hasson on the commission, said

**"Some superintendents [on the commission] served as business managers and have a good financial background... You know very well they're talking to their business managers."**  
— Suzan Beaudoin



quite a few "public" people are attending the meetings and are being given time to address the group.

Noting the "alarming rate" of increased costs of education, the legislation is designated as an "emergency" measure.

The commission faces two deadlines. An interim report to the Governor and the legislature's Joint Committee on Education and Cultural Affairs is due by Jan. 10, 2017, and the final report on Jan. 10, 2018.

"My personal feeling is that it's frustrating but it's not the first time it's happened, it probably won't be the last but we'll have to deal with it as we always do.

I'd like to be at the table. I think it works better for everybody if we are. But there's only so much we can do." ...

# Warren: Will new study come to the same end?

## The Bill: LD 1641



A partial reading for the "Blue Ribbon" bill:  
An Act To Establish a Commission To Reform Public Education Funding and Improve Student Performance in Maine and Make Supplemental Appropriations and Allocations for the Expenditures of the Department of Education and To Change Certain Provisions of the Law Necessary to the Proper Operations of Government for the Fiscal Year Ending June 30, 2017

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; and Whereas, costs for providing public education have increased at an alarming rate despite declining student populations and without significant improvement in student outcomes, requiring immediate attention to address the underlying condition and its consequences; and Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

### PART A

Sec. A-1. Commissioner of Education to convene commission. The Commissioner of Education or the commissioner's designee, referred to in this Part as "the commissioner," shall convene, no later than May 1, 2016, a commission to reform public education funding and improve student performance in the State.

1. Members. The commissioner shall invite to serve as members of the commission:

- A. The Governor or the Governor's designee;
- B. A representative of the Department of Education, appointed by the Governor, who shall serve as chair of the commission;
- C. Notwithstanding Joint Rule 353, the following 4 members of the Legislature:

(1) The member of the Legislature who is serving as the Senate Majority Leader or that leader's designee, who must be a member on the Legislative Council;

(2) The member of the Legislature who is serving as the Senate Minority Leader or that leader's designee, who must be a member on the Legislative Council;

(3) The member of the Legislature who is serving as the House Majority Leader or that leader's designee, who must be a member on the Legislative Council; and

(4) The member of the Legislature who is serving as the House Minority Leader or that leader's designee, who must be a member on

*Continued on page 23*

The state of Maine having launched the Blue Ribbon Commission, Kathy Warren, who spent much time over two years on the Picus Report, asks the question: "To what purpose?"

"Will the Picus Report be informing the Blue Ribbon Commission's work since the state of Maine paid a goodly amount of money for it?" asked Warren, business manager for the Vinalhaven School Department.

(The Picus Report, presented in January 2015 to the state Legislature's Joint Standing Committee on Education and Cultural Affairs, was officially called the Report of the Commission To Study the Adequacy and Equity of Certain Cost Components of the School Funding Formula. Researched by Lawrence O. Picus and Associates, a California research organization, it was published by the Maine Education Policy Research Institute in the Center for Education Policy, Applied Research, and Evaluation (CEPARE) in the University of Southern Maine's School of Education and Human Development.)



Kathy Warren

"During my tenure as MeASBO president, Picus was a two-year process," she said. "We had meetings all over the state one summer. A lot of energy was spent by superintendents and business managers into providing good information to improve our school systems."

The Picus Report, she said, was loaded with recommendations for Maine — both financial and educational. It addressed financial issues like the disparity between northern and southern Maine, between rural and urban districts and included specific recommendations about minimum receivers.

"But the far more important thin," Warren said, "was that it talked about proportions of teachers and instructional support in classrooms and especially how to implement different initiatives and get curriculum developed and the amount of time the teachers need in order to do all they're asked to do."

All these recommendations, and yet today, "Where is it?" Warren asks. "It's a doorstop somewhere."

Asked if the Blue Ribbon Commission is considering the Picus recommendations, Suzan Beaudoin of the Maine Department of Education said the panel was given a copy of the report for its Aug. 29 meeting.

"Whether or not they use the findings from this report will be up to them," she said.

Picas is available at <http://maine.gov/doe/blue-ribbon/documents/report-of-the-commission-to-study-082916.pdf> ••

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# Ten Pitfalls in Vendor Contracts

*Follow Competitive Bidding*

*Is the Signee Authorized?*

*Indemnification Clauses*

*Confidentiality Is King*

*Skimp Not on Scope*

*Attention to Price & Payment Terms*

*Giveth Thou an 'Out'*


*Overlook Not the Dispute Resolution*

*Beware Automatic Renewal*

*Preparest To Deal with a Giant*

# Beware the Fall!

By Elek Miller and Greg Im, Drummond Woodsum

 In any given year, most school units are a party to hundreds of contracts with a variety of vendors. These vendors can include online and offline software service providers (from small, free-apps to Google and Munis), architects, construction contractors, food suppliers, sporting-goods retailers, school bus service providers, and many others.

Sometimes school districts are entering into a contract with a vendor for the first time, and sometimes they are renewing or renegotiating an existing contract or are simply in the middle of a multi-year contract.

Sometimes these contracts are related to one-time events, such as construction projects, and other times they represent ongoing relationships that are renewed on a regular basis.

Whatever the nature of the contract, a number of key issues should be kept in mind before any agreement is signed. Ten of those issues, in no particular order, are:

## 1. Follow Competitive Bidding Requirements and Policies

Maine law requires that certain contracts be put out for competitive bid, including insurance, bus and transportation, and certain contracts for construction, major alterations and repairs of school buildings in excess of \$250,000.

In addition to these statutory requirements, many school units also have policies and/or procedures requiring competitive bidding and/or requests for proposals (RFPs). These policies typically establish that purchases over a certain dollar amount be put out to bid, and they may set forth procedures for accomplishing bidding. They may also provide exceptions to bidding requirements, such as sole-source procurement. When contracting with vendors, these laws and policies/procedures must be followed. If they are not, the enforceability of the contract may be questioned.

## 2. Make Sure the Person Signing the Contract on Behalf of the School Unit Is Authorized

More often than one might imagine, attorneys are asked to advise school units on the validity of a contract that has been signed by an employee of the unit. Only certain individuals have authority to enter into contracts on behalf of a school unit. This authority is conferred by statute (e.g., for superintendents), by school board policy, or by school board action. Proper authorization of the contract signer is critical to the enforceability of a contract.

Because it is impractical for a superintendent to sign every contract for a school unit, it is helpful to authorize key central office staff to enter into certain contracts. However, it is important that these personnel recognize the need to scrutinize a contract before signing it. This article may help those staff members spot potential problems in contracts before they sign them.

An issue closely related to the question of authorization is school board member conflicts of interest. Board votes and certain district contracts may be “voidable and actionable” in situations where a board member having a “direct or indirect pecuniary interest” has participated in the matter.

An official involved in “a question or in the negotiation or award of a contract” is deemed to have a direct or indirect pecuniary interest in that question or contract where:

the official is an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity to which the question relates or with which the . . . quasi-municipal corporation contracts only where the official is directly or indirectly the owner of at least 10 percent of the stock of the private corporation, or owns at least a 10-percent interest in the business or other economic entity.

When an official is deemed to have a direct or indirect pecuniary interest,

the vote on the question or the contract is not voidable and actionable if the official makes full disclosure of interest before any action is taken and if the official abstains from voting, from the negotiation or award of the contract and from otherwise attempting to influence a decision in which that official has an interest. The official’s disclosure and a notice of abstention from taking part in a decision in which the official has an interest shall be recorded with the clerk or secretary of the . . . quasi-municipal corporation.

Finally, in addition to specific restrictions in situations where an official has a “direct or indirect pecuniary interest,” section 2605 of Title 30-A also provides more generally that “every municipal and county official shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention.”

Consequently, in situations where a school board is taking action with respect to a contract, care must be taken to identify any actual or apparent conflicts of interest and to ensure that any board members having such a conflict recuses him or herself from the discussion and abstains from voting.

## 3. Understand the Risks in a Contract; Indemnification Clauses

Before signing a contract, ask the question: “What could go wrong?”

A good contract will address this question by allocating risk fairly between the parties through a variety of means, including provisions for insurance, indemnification, warranties, limitations of liability, and disclaimers of liability.

In negotiating a contract, it is important to understand the risks involved and how and to what extent each of the parties will be responsible for potential losses, damages or injuries.

Many vendor contracts contain indemnification clauses. An

indemnification clause is essentially a promise by one party to cover the losses of the other party if the first party does something related to the contract that harms the second party and/or causes it to be sued.

These clauses sometimes run only one way (e.g., the school unit must indemnify the vendor in certain circumstances) but may also run both ways (e.g., each party will indemnify the other in certain circumstances).

It is important to identify these clauses when reviewing vendor contracts and to understand their scope and potential impact. In general, the obligation to indemnify should be borne by the party that has control over the risk.

For example, a snow-plow contractor's duties under a contract (plowing snow) can result in damage to property or vehicles and injury to people, while the school unit's duties (paying invoices) involve virtually no risk of loss. In such a contract, the contractor should indemnify the school unit for losses and third-party claims arising from its performance on the contract, and the school unit should have no obligation to indemnify the contractor.

As a general matter, school units should be wary of agreeing to indemnify others. School units should check whether their insurance policy excludes coverage of contractually assumed liabilities. It is also important to avoid indemnification clauses that might operate to waive tort claim immunity and statutory limits of liability that are available to school units.

#### 4. Confidentiality Is (Or May Be) King

If a school official will be providing confidential information to a vendor they need to make sure that such provision is legally permissible and, if so, that the vendor is obligated to maintain the confidentiality of that information and, in some circumstances, to comply with other requirements regarding the use and protection of that information.

Several different laws govern the confidentiality of different kinds of information maintained by, or otherwise passing through, school units.

As a general matter, these laws contain differing requirements regarding measures school units must take before disclosing the information and, in some cases, what must be done (and by whom) after such disclosure. Or, in some cases the laws may apply to the vendor, and the vendor is, through the contract, seeking to have the school unit take on the vendor's compliance obligations (which is generally not something a school unit should agree to).

For example, if a school unit is sharing information contained in student educational records with a third party, such as a cloud-based storage provider like Google, it needs to make sure such sharing and subsequent use, re-disclosure, and security on the vendor's part, comply with the provisions of the Family Educational Rights and Privacy Act (FERPA). FERPA only allows sharing of such information with third-party service providers (absent parental consent) under certain limited circumstances.

School units will also need to make sure such information is properly maintained and made available to them in the event there is a request for such information that requires disclosure.

Additionally, if a business official is receiving information from a vendor that the vendor expects them to keep confidential, and/or if the vendor suggests a provision in the contract that requires the terms of the contract to be kept confidential, the business official needs to determine whether they can agree to keep such information and/or the contract confidential, as many documents that are maintained by a school unit used in the transaction of public business are public records that are likely subject to disclosure under Maine's Freedom of Access Act.

Agreeing to such a provision and then disclosing applicable information could result in a breach of contract.

#### 5. Do Not Skimp on the Scope of Work/Description of Goods

Make sure the scope of work/description of goods for any contract is clear, accurate and complete. The key is to ensure the district is getting what it bargained for. In order for that to happen, the con-

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tract (often in a scope of work or description of goods attached to the contract) needs to accurately describe the goods or services to be delivered and, if applicable, any standards for acceptable work.

In a contract for cloud-based digital storage, for instance, there is a big difference between a 95-percent and 99-percent uptime guarantee. If paying for a higher percentage of uptime (and any cloud-storage vendor worth their salt should be able to guarantee 99-percent uptime), make sure the contract is clear about what the district will receive.

The same point applies regarding customer service. If a software company promises the district will have a dedicated project manager if it uses its product, make sure that promise is included in the contract.

## 6. Pay Attention to Price and Payment Terms

Depending on the circumstances, pricing in a contract can run the gamut from very straightforward to extremely complicated. Some contracts state that goods or services will be provided at a fixed price for the length of the contract; others provide for a fixed schedule of different prices to be charged over the course of the contract; and still others leave the price to the discretion of the vendor or tie it to a benchmark, such as the cost of the vendor's inputs.

And these are just some of the myriad ways pricing may be addressed in a contract. Whatever arrangement the district decides on, it will need to make sure it is crystal clear and unambiguous.

Vendor contracts also typically address when payment will be due for the goods or services provided, so it is essential to focus on the payment provisions and to negotiate for the best terms possible. In certain industries, deferred payment terms and discounts for early payment may be standard, so get educated about what is customary in the industry and plan accordingly.

## 7. Give Yourself an Adequate 'Out'

A contract or relationship that seems great one day may not seem so great a month or a year down the road. The goods or services may not be what the school district expected, the price may become expensive relative to the market, or the relationship

with the vendor could turn sour.

If any of these things occur, the school business official will likely very quickly become interested in what the contract has to say about termination (i.e. their ability to get out of the relationship). Needless to say, they should not wait to think about getting out of the relationship until after the contract is signed and it is too late.

From the outset, those negotiating vendor contracts should focus on ensuring the contract contains an adequate termination provision that is legally compliant, consistent with the remainder of the contract, and serves the school unit's needs. Care must also be taken to identify any provisions of the contract that survive its termination and to determine if they are agreeable or if an attempt should be made to remove and/or negotiate them.

Termination clauses typically come in two forms: "for cause" (based on breach of contract) and "for convenience" (no reason is needed). Termination for cause makes sense, and these clauses typically include an opportunity for a party to cure its breach and avoid termination.

Termination for convenience should be considered carefully because this allows one party to unilaterally end the contract without having to give a reason. If the vendor is providing an essential product or service, a contractor's termination for convenience may put a school unit in a position where it suddenly needs to find a new vendor.

Therefore, any termination-for-convenience clause should require advance

notice of termination to afford the non-terminating party time to prepare for the end of the contract.


## 8. Don't Overlook Dispute Resolution and Governing Law

All contracts, especially those with out-of-state companies, should address what law will govern the interpretation of the contract and any disputes that arise from the contract. With few exceptions, Maine school units should insist that Maine law controls all aspects of the contract and that disputes must be resolved in the state of Maine.

Contracts also often include provisions dealing with how disputes about the contract will be resolved, including any combination of informal negotiations, non-binding mediation, arbitration and litigation. Although they are often overlooked, school units should review these provisions and consider the cost and time involved in different methods of dispute resolution.

Another important contract provision involves whether either or both parties are entitled to recover attorney's fees incurred in a contract dispute. Legal fees are a significant consideration when evaluating whether to pursue a contract claim through dispute resolution.

Accepting a contract that entitles the other party to attorney's fees if it prevails in a dispute has two effects when there is a disagreement over a contract. First, it increases the chance that the school unit will be sued. Second, it increases the cost



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to the school unit if the other party prevails.

## 9. Beware of Automatic Renewal Provisions

Contracts often allow the parties to renew the contract by mutual agreement. Beware of automatic renewal provisions that can lock you into a new term of the contract unless you provide notice of nonrenewal in writing no later than a certain date.

A common trap for the unwary is when the notice of nonrenewal is required a long time (like 180 days) in advance of the contract end date— at a time when no one is thinking about renewing or not renewing the contract.

These contracts often elsewhere contain provisions for early termination fees that also apply to the renewed term. It is best to identify these provisions and delete them from the contract. If the other party will not strike the provision, another option is to provide the written notice of nonrenewal when the contract is first executed.

## 10. What To Do When Dealing with a Giant

At this point, business officials may be thinking this information may all be helpful when dealing with a small(er) company in a situation where the district has leverage to get them to agree to certain terms, but that it does not help when contracting with a large national or multinational company for goods or services, such as Google for cloud-computing services or Verizon for internet services.

This is a fair point. Although there will be some situations in which vendor contracts are non-negotiable, school officials will never know until they try, and some contract terms will largely

be dictated by law and should not be agreed to by the school unit unless they comply with such laws.

And whether the school has enough leverage to win concessions, understanding the key terms of the vendor contracts will allow the district to shop around to find the contract that best fits its needs. •••



Gred Im



Elek Miller

*This article is reprinted with permission from Drummond and Woodsum from an issue of Maine School Law Advisory.*

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# Traps for the Unwary in Software Agreements

By Christopher Dana

Like many organizations, school districts are increasingly engaging service providers that provide web-based solutions for many tasks that previously required substantial time and effort of district staff, including management and processing of student information, financial management, and processing Medicaid claims. Many of these services are offered pursuant to complex license or services agreements that allow for negotiation and, if not understood or revised, could cause more problems than they solve. This article highlights some of the common provisions of these agreements that differentiate them from other vendor contracts, and that often should be negotiated.

## The License and the Intellectual Property (“IP”) Indemnity

The fundamental aspect of a software agreement is that it grants the user (the district) a license to use the software for a specific task. Given the frequency of intellectual property litigation, it is crucial that any software agreement contains very explicit language granting the district a license that gives the district the legal right to use the software. Somewhat surprisingly, some software vendors will send school units agreements that do not contain this. Similarly, the software vendor should agree to indemnify the district in the event that a third party claims that it owns the right to the software and drags the district into the dispute. The district should not have to worry that the software vendor may have stolen someone else’s idea.

## Specifications

The most common dispute that arises from software agreements is that the purchaser (the school district) claims that the software does not perform a specific task that it thought it would, either at all or in a certain manner. The way to help avoid this is to ensure that any software agreement contains a detailed and specific list (usually as an attachment to the agreement) of the principal functionalities and capabilities of the software that the purchaser expects the software to have. These are frequently referred to in the agreement as the “Specifications.” It is

important that a member of the district’s information technology team review the Specifications in the agreement before signing to confirm that the district is getting what it is expecting.

## Training/Support

This may seem trivial, but much like the Specifications, it is vitally important to make sure the agreement spells out clearly how much training on the software will be provided for district staff, including where, for how many people, and for what cost, as well as what ongoing support services the software vendor will provide, including helpdesk hours and response times. Frequently initial drafts of software agreements provided by the vendor will be vague on these points, and afterwards the district will be surprised to learn that training is more expensive than originally thought, or that helpdesk support is not available or is unresponsive. For more complex agreements with a higher dollar value, the concept of “service level agreements” (or “SLAs”) may be introduced, which provide for categorization of service failures and targets for overall availability of the software (e.g., 99.5% of the minutes in any given

month). If certain service failures occur or availability targets are not met, the agreement may provide for a fixed rebate amount to the customer (i.e. the school district).

## Data Security

Normally software will allow for information and data belonging to the district to be stored on the software vendor’s servers, and frequently this information will be sensitive and confidential, such as student information or even private health information. Most agreements will contain language to the effect that the vendor will use reasonable security measures and will back-up the information on a separate, secure server. What is often a sore point in negotiations, however, is who has primary responsibility in the event of a hack or data breach of the vendor’s servers that results in loss or unauthorized disclosure of the district’s data. This is a topic of much discussion in the world of software agreements, as many software vendors are now seeking to severely limit their exposure for data breaches, including attempting to eliminate it entirely. There is no one-size-fits-all remedy for

*Continued on page 20*

# O'Connor

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# Widespread Overtime Fears Allayed

By Mark Leslie

7 ear and anxiety turned into calm, a hurricane into a tropical depression.

When the U.S. Department of Labor released its new overtime regulations for salaried white-collar employees “every school district in America became very concerned,” said Bangor School Department Director of Business Services Alan Kochis.

But school officials were breathing more easily after presentations by Drummond Woodsum attorneys and a meeting in mid-October to the Penquis Regional Superintendents by a representative from DOL’s Northern New England headquarters.

“Everything couldn’t be better — at least from Bangor’s perspective,” Kochis said of the revised Fair Labor Standards Act (FLSA) regulation, which will take effect Dec. 1.

First and foremost, teachers are exempt from the overtime regulations. That was never in question.

The concern was with occupational and physical therapists, nurses, guidance counselors, librarians, social workers, psychologists, food-service and facility managers, and the business managers themselves.

According to the DOL official, the Executive, Administrative and Learned Professional exemptions cover most of these positions if they meet the new salary threshold of \$913 per week.

“Basically,” Kochis said, “to be exempt, an employee must

According to the Department of Labor’s new Fair Standards Labor Act (FLSA) regulations, covered non-exempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay.

There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

“Hours worked” ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.

meet three things: be paid salary not hourly; earn more than \$913 a week, and meet the duties criteria of the exemption.”

“Like most changes, it sounds ominous, but in reality, will impact very few,” said Dan O’Shea, business manager for Yarmouth Public Schools. “For those that may be borderline, the regulations allow us to pay a salary, but individuals do need to track hours in case they do work overtime, then they would

be paid time-and-a-half. Most of these positions have regularly defined schedules that do not exceed 40 hours, and would not be expected to work beyond. We would make clear that no overtime hours will be allowed without prior approval.”

Asked on a scale of 1 to 10, how bad the new overtime rules are, Vinalhaven School Department Business Manager Kathy Warren said, “Compared to something like the Affordable Care Act, I’d say it’s almost like I barely need to pay attention. It’s a 3 or 4. You do need to know so that you don’t get caught by it.”

What about business managers?

“Some business managers will be exempt and some won’t be,” Kochis said. “It all depends on what their job description is.”

“When I was first hired I wouldn’t have been exempt. But I’m now over that salary threshold,” Warren said.

By and large business managers fall under the Learned Professional exemption, but may overlap as well.

### The Exemptions

Employees are exempt from the overtime rules if they qualify under one of these three exemptions:

✓ Learned Professional — the employee’s primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

This primary duty test includes three elements: the employee must perform work requiring advanced knowledge; the advanced knowledge must be in a field of science or learning and must be customarily acquired by a prolonged course of specialized intellectual instruction.

✓ Executive — Their primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. They must customarily and regularly direct the work of at least two other full-time employees or their equivalent; and they must have the authority to hire or fire other employees, or the their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

✓ Administrative — The employee’s primary duty must be the

performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and include the exercise of discretion and independent judgment with respect to matters of significance.

The key points of the new regulations are:

- The new minimum salary threshold for the white-collar exemptions has more than doubled — from \$455 to \$913 per week, or from \$23,660 to \$47,476 a year.
  - Since Dec. 1 is a Thursday, business managers will need to make changes for the payroll period in which Dec. 1 falls.
  - The minimum salary for employees exempt under the “highly compensated” employee exemption will increase from \$100,000 to \$134,004.
  - The minimum salary levels will not update automatically every year as originally proposed, but will be adjusted every three years, beginning Jan. 1, 2020. The salary level will be pegged to the 40th percentile of full-time salaried workers in the lowest-wage Census region.
- For 2020, the DOL estimates that the minimum will increase to \$51,168. The minimum for highly compensated employees will be tied to the 90th percentile of full-time salaried workers in the lowest-wage Census region, which the DOL estimates will be \$147,524 in 2020.
- There are no changes to the existing duties tests. A job title alone is insufficient to establish the exempt status of an employee.

### Maine Was ‘Out’ then ‘In’

Initial signals from the Department of Labor were mixed. When first contacted, Maine DOL Inspector Stephanie Harfoush said, “For public schools the state will not enforce any overtime be paid for anybody that is supported by taxpayers dollars. So, for a county or state or city employee we will not enforce overtime be paid.”

However, Daniel Cronin, district director of the Northern New England Department, declared that school districts’ central office personnel “will all fall under the new regulations.”

*Continued on page 21*



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# Maine joins 20 states in lawsuit vs regs

With new white-collar overtime regulations for salaried employees bearing down on American schools and businesses, Maine has joined 20 other states filing a lawsuit against the U.S. Department of Labor to prevent those changes from taking place.

The DOL estimates that approximately 35 percent of all full-time, salaried workers will be eligible for overtime based on their salary level alone. Of the estimated 4.2 million salaried employees the law is expected to affect, the DOL projects that 4.1 million will be re-classified as non-exempt and eligible for overtime, while approximately 100,000 will receive a raise so their salary meets the new threshold.

Labor experts recommend that schools prepare in earnest to comply with the new regulations regardless of the lawsuit.

The final decision regarding overtime pay of taxpayer-paid positions may end up tied to the court battle, on which Daniel Cronin, district director of the Northern New England Department, declined comment. Twenty-one state attorneys-general are declaring the 10th Amendment protects states' rights and, therefore, this type of the federal-government mandate.

The suit was filed on Sept. 19 in the U.S. District Court for the Eastern District of Texas. Led by Texas and Nevada, the group includes Maine, Alabama, Arizona, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, South Carolina, Utah and Wisconsin.

The lawsuit names as defendants the DOL and its Wage and Hour Division, Secretary of Labor Thomas Perez, Wage and Hour Administrator David Weil, and Assistant Administrator for Policy Mary Ziegler.

The crux of the states' claim is that the new rule will force unfair and substantial increases in employment costs for state and local governments and many businesses.

This is where the 10th Amendment argument is focused. The states allege that by implementing this new directive, the

federal Executive Branch will "wreck State budgets" and "commandeer, coerce, and subvert the States" by mandating the wages state employees are paid, what hours these employees will work, what compensation will be provided to employees working overtime, and the overall structure of payment at the State level.

The lawsuit also challenges the mechanism for automatic increases in the salary threshold every three years. It insists that it fails to acknowledge Congress's intention that the "activities" in which employees engage (not salary levels) be the distinguishing factor between exempt and non-exempt employees.

The states further allege that the regulation is arbitrary and capricious in violation of the Administrative Procedure Act (APA) and failed to follow the required procedure of the APA. For this reason alone, the rule must be declared invalid and set aside, they say.

The DOL reports that in 2014, President Barack Obama signed a Presidential Memorandum directing the department to update the regulations defining which white-collar workers are protected by the FLSA's minimum wage and overtime standards.

"Consistent with the President's goal of ensuring workers are paid a fair day's pay for a hard day's work," the DOL said in a press release, "the memorandum instructed the department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented."

When those changes to the overtime rule were first proposed in June 2015, the DOL received nearly 300,000 comments from businesses, employees and other interested parties concerned that the proposed changes did not consider the varying costs of living across states. Many business owners expressed concern that they would not be able

*LAWSUIT continued on next page*

## BANGOR SAVINGS BANK AD

## Lawsuit

*Continued from previous page*

to comply with the rule if implemented, or that it would cause businesses to close or lay-offs.

But only minor changes to the proposed regulations followed, causing Texas Attorney General Ken Paxton to declare that the implementation of the DOL's final overtime rule is just another example of "President Obama ... trying to unilaterally rewrite the law," indicating that this time the consequences may be "disastrous" for the economy. •••

## Software Traps

*Continued from page 17*

this issue, as the most advisable course of action for any district will depend on the type of information being stored, the potential liability in the event of a data breach, and whether either or both of the vendor and the district have insurance that would cover a data breach. But districts should pay close attention to these provisions in order to understand their level of risk. Schools must also make sure that, in situations where confidential student information is shared with the vendor, such sharing and any subsequent use and/or disclosure by the vendor complies with the school unit's obligations under FERPA.

### Conclusion

Schools are increasingly becoming consumers of technology that ten years ago would have seemed unimaginable, and with that comes great opportunities for increased efficiencies and cost savings, but also new and unfamiliar risks. When presented with an agreement providing for web-based software services, school districts should resist the urge to quickly sign it and should take the time to understand its terms, and should not be hesitant to request changes that better protect the district's interests. We are available to review software agreements and advise schools on their terms and their negotiation. •••

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# Schools' overtime fears allayed

*Continued from page 19*

Informed of this change Harfoush said, "We have to enforce whatever law is the most strict, whether it's about family medical leave or child labor. Right now, public employees are exempt. But, if the feds say school employees will now be included, they will."

### Position by Position

Kochis ran down Bangor's staff positions

that might be affected by the regulations:

- Food service managers. "Ours is hourly," he said.
- Information technology technicians. "Other than the director, they're all hourly."
- Director of Physical plant. "Our manager hires and fires, so we're counting him as qualifying for an Executive exemption. Everyone else is hourly."
- Business office. "Everyone is hourly except me."
- Occupational and physical therapists, librarians, social workers, nurses, guidance counselors. "We're including them

under the Learned Professional Exemption."

- Athletic trainers. "All are hourly."

As for business managers like him?

"I'm under the Professional Exemption," Kochis said, reading the regulation: 'Primary duty of management of district or department.' That's where I fit in.

'Authority to hire and fire.' That's where I fit in. 'Regularly directs two-plus employees.' I have nine. 'Paid a salary of at least \$913 a week.' I'm over that."

The entire regulation rewrite, Kochis said, "is retail-driven. Retailers and restaurants hire assistant managers, pay them \$28,000 a year and work them 12 hours a day, six days a week." •••

## Information meetings

The Department of Labor has scheduled three workshops explaining the federal overtime rule changes for salaried white-collar employees as they apply to Maine employers. The first workshop has been held. The last two will be conducted Oct. 26 and Nov. 10, from 9:30 a.m. to noon at the SafetyWorks! Training Institute, 45 Commerce Dr., Augusta.



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## Partial transcript of LD 1641

*Continued from page 11*

the Legislative Council;

D. A person who is serving on the State Board of Education, designated by the chair of the State Board of Education;

E. A person who was named Maine Teacher of the Year on or after January 1, 2006, designated by the Maine Education Association;

F. A person who is serving on the Maine Charter School Commission established in the Maine Revised Statutes, Title 5, section 12004-G, subsection 10-D, designated by the chair of the Maine Charter School Commission;

G. A person who is a teacher or administrator at one of the State's career and technical education centers, designated by Maine Administrators of Career and Technical Education;

H. A person designated by the Maine School Management Association;

I. The Chancellor of the University of Maine System or the chancellor's designee;

J. The President of the Maine Community College System or the president's designee; and

K. Two members of the public, appointed by the Governor, at least one of whom has prior work experience in a municipal management role.

2. Vacancies; quorum. In the event of a vacancy on the commission, the commissioner shall select a replacement member in the same manner as the original selection set forth in subsection 1. A quorum consists of a majority of the non-vacant seats on the commission.

3. Meetings; duties. The commission shall meet at least 6 times each year in 2016 and in 2017. In order to identify solutions to lower the cost of public education and improve student performance, the commission shall collect and analyze data from all public secondary and postsecondary education units in the State that receive state funding.

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## Advertisers Index

### Architectural Services

Harriman..... 16

### Attorney Services

Drummond Woodsum..... 1

### Banking Services

Androscoggin Bank ..... 15

Bangor Savings ..... 20

People's United Bank ..... 3

### Building Technologies

Siemens..... 2

### Bus Sales & Service

O'Connor ..... 17

W.C. Cressey ..... 14

### Communications

Canfield ..... 11

### Custodial Services

Benchmark ..... 8

### Energy Procurement

Maine Power Options ..... 7

### Engineering

Carpenter Associates ..... 19

### Fencing

Maine Line Fence ..... 16

### Insurance

Clark Insurance..... 4

### Investment Services

Gorham Savings Bank..... 9

### Leasing/All-Purpose

Maine Municipal Bond Bank..... 21

### Modular Buildings

Vanguard/Schiavi.....back cover

### Security Services

Norris Inc. ....inside back cover

### Student Routing & Transport

Transfinder .....inside front cover

### School Management

MSMA..... 6

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