

# MANS&C

Massachusetts Association of Nonprofit Schools and Colleges

QUARTERLY

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SUMMER 2008

## PRESIDENTS' LETTER



While many of us have been enjoying the slower pace of summer, MANS&C Legislative Counsel John J. Spillane has been keeping a watchful eye on legislation of concern to our members on Beacon Hill. John recently alerted us to one very troubling bill that is an example of the challenges our institutions repeatedly face at the State House. Like many pro-

posed bills, Senate Bill 1412 is well-intentioned but would have terrible consequences for nonprofit schools and colleges in Massachusetts.

It would require us to paint the interiors of all student housing with fire-resistant paint within one year of the law's passage. The bill would even strip away our ability to choose what paint we purchase because it stipulates the paint must be made in Massachusetts.

The measure, which also applies to nursing homes, assisted living facilities and shelters, does have its merits. It intends to delay the sudden spread of flames, reduce smoke and lower the amount of toxic materials produced in a fire.

Student safety is foremost in our minds and all of our members would applaud this goal. But meeting the one-year deadline would require a massive diversion of limited resources by our schools and colleges. Imagine the number of dormitory rooms some of our larger institutions would have to paint in one year, keeping in mind that they are occupied by students for much of that time.

To make matters worse, dictating what manufacturers we make purchases from is a direct assault on the independence of our institutions, which are not supported by taxpayer money. If paint meets the stipulated safety requirements, we should have the freedom to buy it from the manufacturer who can provide the best product at the best price.

MANS&C is making every effort to oppose this bill or, at the very least, to extend the deadline for compliance. As always, we will keep you informed about this and other troubling legislation and may even ask for your help in contacting your state legislators when warranted. Measures such as this underscore the importance for all of us to develop a working relationship with our senators and representatives.

As you will read in the Legislative Report in this newsletter, MANS&C has had considerable success this session in opposing bills that would be either be costly to our institutions or erode our independence.

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## New Stormwater Regulations Pose Problems for Construction Projects

Nonprofit schools and colleges that are planning construction projects should be aware of new local stormwater regulations that could require costly changes in building plans and schedule delays.

Walnut Hill School in Natick received a town building permit on Sept. 29, 2006 for a new 40-bed dormitory with attached townhouses for four faculty members. Several days later, the school broke ground and began construction.

Within a week, however, school officials were contacted by the town engineer and told they had to obtain a permit under the town's new stormwater management and erosion control bylaw, according to Walnut Hill's Chief Financial Officer, Julaine McInnis. Unless the school complied, the Conservation Commission threatened to withdraw the building permit the town had issued.

Natick's stormwater bylaw had been approved on Sept. 21, just eight days before the town issued the school's building permit, and it was filed with the town clerk on Oct. 23. Throughout the school's building-permit application process, McInnis said, the school had never been informed of the new stormwater requirement.

"We've been very good and very responsible in many ways," McInnis said. "We do not want to be adversarial."

School officials pointed out that a building permit had been issued and work had already started. More importantly, they said, the school is protected under the Dover Amendment from being required to comply with the town's demand. The town argued that the new stormwater bylaw, created to meet a federal mandate, empowers them to conduct a site plan review.

The Dover Amendment gives local planning boards only limited power to derail a building permit application from a nonprofit school, college or university. The law stipulates that buildings may be subject to only

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The new dormitory at Walnut Hill School

## Ending Income Tax Would Increase Pressure on Nonprofits

A ballot item to repeal the state personal income tax could have serious effects on the state, local communities and nonprofit schools and colleges if approved by voters this fall.

If Question 1 passes, the state will lose more than \$12 billion in tax revenue – about 40 percent of the state budget – and potentially significant amounts of federal aid, according to a statement by the Massachusetts Nonprofit Network. MANS&C is a network member.

The impact would be felt in every aspect of state and municipal financing.

“The state income tax has been the basic source of funding for all state programs and services for decades and eliminating it would create fiscal and political implications that would possibly do great damage to the Massachusetts economy, national reputation, and programs and services that citizens across the Commonwealth depend on,” said David P. Magnani, executive director of the network.

Major cuts to the state budget would be required, with one of the first targets most likely to be state aid to cities and towns and aid to education. State aid makes up a large percentage of local budgets.

Faced with the loss of these crucial funds and unable to cut locked-in budget items such as negotiated salaries and benefits and debt service, local officials are more likely than ever to look at nonprofit schools and colleges as revenue sources.

There is growing concern that the high unemployment rate and skyrocketing costs of food and fuel will prompt voters to approve Question 1, formally known as the Small Government Act to End the Income Tax. The measure, sponsored by Carla Howell of the Libertarian Party, is similar to a ballot item that came within 5 percentage points of passing in 2002.

If it is approved, however, local property taxes are likely to increase significantly. Magnani cautioned that the major burden will fall on lower- and moderate-income residents because the income tax being targeted for repeal is paid proportionately by people with higher incomes.

He cautioned that millions of Massachusetts residents who are currently served by nonprofits would be severely affected by what he termed “this reckless ballot initiative.”

The Massachusetts Nonprofit Network is urging Massachusetts residents to join the fight against Question 1 by going to the organization’s Web site, <http://massnonprofitnet.org>, and clicking on the VoteNoQuestion 1.com box.



### Legislative Report

MANS&C, represented by Legislative Counsel John J. Spillane, was instrumental recently in opposing several additional pieces of legislation that would have had a detrimental effect on nonprofit schools and colleges.

Senate Bill 151, which would have eliminated the legal protections of the Dover Amendment for our institutions, was set aside for further study by the Committee

on Community Development and Small Business. The measure would have strengthened the site plan review powers of local planning boards, allowing them to stop projects. Proponents also had a right to appeal.

The following measures also were set aside for further study:

- **Senate Bill 1781**, which gave communities the right of first refusal when schools and colleges want to sell any tax-exempt property or convert it to residential, industrial or commercial use.
- **House Bill 590**, which required public and private schools to provide asthma screening for students.
- **Senate Bill 1705**, which would provide for taxation of college textbooks.

John also is closely watching **House Bill 2300**, requiring seat belts on school buses. After action on the floor of the House, this bill was recommitted to the Joint Committee on Transportation.

Another bill that is currently under study by the Attorney General’s office remains a major concern to MANS&C. **House Bill 3168**, offered as a budget amendment by State Rep. Paul Kujawski, proposes taxing nonprofit schools and colleges with large endowments. The Attorney General’s office is reviewing how schools are utilizing their endowments to support their nonprofit mission.

## Endowments Face Challenges on National, State Levels

The issue of taxing educational institutions with large endowments came to a head recently in the Massachusetts legislature and is gaining momentum nationwide.

The topic drew national attention after the Minnesota Supreme Court ruled last December that unless nonprofit organizations provide services for free or a substantially reduced rate as a “substantial part of their operations,” they are not exempt from paying state property taxes.

Since then, debate over the definition of “nonprofit” has grown louder. In Massachusetts recently, a troubling last-minute budget amendment proposed taxing private colleges and universities with endowments of more than \$1 billion, including Boston University, Harvard and Wellesley College.

After discussion, the amendment was sent to the state Department of Revenue for study. Although shelved for the moment, the debate indicated that taxation of institutions with large endowments will remain on legislators’ minds.

Nationally, experts report a dramatic increase in the number of financial challenges to nonprofits. A May 12 article on the Web site *InsideHigherEd.com* reports that:

- In Congress, senators are questioning whether colleges are spending enough of their endowments.
- The Federal Trade Commission is seeking to expand its power to regulate nonprofits, including educational institutions.
- The Internal Revenue Service is surveying public and private four-year colleges, including their endowments and executive compensation, to see whether they are fulfilling their public purposes.

In addition, conservative talk show host and CNN commentator Glenn Beck recently wrote a scathing rebuke of colleges and universities with substantial endowments, saying most of them lack “consistency and accountability.”

Others, however, are cautioning against rushing into requiring payouts from endowments. On *InsideHigherEd.com*, law professor Adam Parachin of the University of Western Ontario describes Canada’s disbursement quota, which requires charitable organizations to spend certain percentages of their gifts and their long-term assets.

Parachin said the experience “has not been positive.”

## Good Neighbors Belmont Hill Students Learn What It Means to Give Back

When Belmont Hill students heard about a devastating fire this spring in Lawrence that left many families homeless, they immediately stepped forward to help.

Under the guidance of school nurse and community service advisor Donna David, four student leaders took on the job of collecting much-needed food and clothing for Lazarus House, a community outreach organization in Lawrence that was helping the families.

The school gathered nearly 30 boxes and bags of groceries and brought them to Lazarus House. Because the organization had already received a great many clothing donations, clothing collected at Belmont Hill was directed to two other shelters.

Closer to home, the school has a long tradition of service to Belmont and its neighboring communities. "We're always looking for local needs," David said.

Student-members of the Work Crew volunteer to help people with chores, such as raking leaves or removing air conditioners from windows. The clients are referred by local churches, the Council on Aging and other agencies in Belmont, Arlington and Waltham.

If additional help is needed, the same team of two boys goes back, when possible, so they can develop a relationship with the people they're helping, David said.



The school also has a long-term partnership with Sandra's Lodge, a shelter for single women and children near the campus. Every fall, the football team tackles projects the maintenance staff can't get to, and at Easter time they bring "bunny baskets" for the children.

At a nearby nursing home, students started a Men's Poker Group several years ago that now includes women members and a wider variety of games. They also conduct an annual blood drive, run a haunted house to benefit the Cystic Fibrosis Foundation, work with the New England Shelter for Homeless Veterans and have an annual work day to help out a number of local agencies.

One of the students' favorite activities is "Elmo Day" at the Franciscan Children's Hospital. It's so popular that David runs a lottery to decide who will be able to wear the Elmo costume.

Belmont Hill also joined forces with the Winsor School and Newton Country Day School in February to raise more than \$1,200 for the Jimmy Fund at Dana-Farber Cancer Institute by selling flowers and collecting donations.

Cookies and Milk money contributions went to the Arthritis Foundation and Cystic Fibrosis Foundation in May, and the lacrosse team and several faculty members took part in the Arthritis Walk. A dress-down day brought in \$2,000 for the American Foundation for Suicide Prevention's Out of Darkness walk.

"All this exposes the kids to what it means to give back to the community," David said. "The kids come back a little bit changed because of that."

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"reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

Under the Dover Amendment, churches and schools do not need the approval of local review boards for their construction plans.

Meanwhile, Natick officials began dragging their heels on the project and coming up with new issues for Walnut Hill to address.

The school was required to construct a large catch-basin garden in front of the new building. Once it was installed, the town Board of Health warned that it would fill with stagnant water and be a health problem.

The school was forced to redesign the garden and install additional stormpipe drainage that hadn't been in the original plans.

Finally, to move the project along and avoid thousands of dollars in delays, school officials agreed to an informal review and one-on-one meetings with the town engineer to discuss the town's concerns, McInnis said.

Despite the school's good faith effort, town officials added demands that the school produce a stormwater operations and management plan for the entire campus, which would require additional staff people and expense.

School officials maintained that the plan should cover only the disturbed site but in the interest of good community relations, they agreed to move forward with a campus wide-plan while negotiating less-stringent requirements for compliance.

The town agreed to the less-stringent requirements, and the Land Disturbance permit is slated to be issued August 2008. The new dormitory was opened last September.

"Hopefully this has been a learning process – not just for Walnut Hill, but for the town of Natick regarding our protections under the Dover Amendment," McInnis said.

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Check the MAN&C Web site, [www.mansac.org](http://www.mansac.org), for meeting dates, news and important announcements.

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