

Legislative **BULLETIN**

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Legislative Session in Final Week

The legislative session is drawing to a close. It is scheduled to be over within the week. This edition of the *Legislative Bulletin* will likely be the last for this year. The four most significant municipal issues that are still before the Legislature are the school consolidation fix-up bills (LDs 1932, 2280, 2281 and 2314), the jail consolidation proposal (LD 2080), the mandatory enforcement of the statewide building code (LD 2257) and the bill to more efficiently manage newspaper notice requirements (LD 1878).

Over the last few days of the legislative session, we will be communicating to our municipal membership through our “action alert” system about these four issues. A complete wrap-up of the 2008 legislative session, including complete descriptions of all the municipally-related legislation that is enacted, will be provided in the May 2008 issue of the *Maine Townsman*.

Many thanks to all municipal officials for keeping so up-to-date and staying so involved with respect to legislative matters throughout this winter and spring.

And special thanks go to the Association’s 70-member Legislative Policy Committee (LPC) which guided and informed all of our activities during the entire legislative biennium. LPC members serve the Association without compensation and for no personal advantage. Similar to the contributions of elected municipal officials across the state, LPC members provide their time and service for no particular reason except out of some sense of civic duty and to improve their communities and to improve local government, generally.

Thank you.

Building Code Update

The official “majority” and “minority” reports on LD 2257, *An Act to Establish a Uniform Building and Energy Code*, were released this week. As expected, the two primary differences between the reports deal with the issues of mandatory enforcement by municipalities and the inclusion of the energy and radon codes.

The majority report does include a mandate on municipalities over 2,000 in population to enforce the code and it forces all new construction and renovations to conform to the energy code and radon code requirements, as well as the core building code standards.

The minority report does not in-

clude a mandate regarding enforcement and it only establishes a statewide building code – the current model energy and radon codes would remain in statute as they are today.

Regarding the mandate, at the final legislative committee work session the Business Research and Economic Development (BRED) Committee chairs opted not to put a “mandate preamble” on the majority report on the theory that their version of the bill was not a mandate. The Legislature’s nonpartisan Office of Fiscal and Program Review (OFPR) released its fiscal note indicating that the majority report does in fact represent a municipal mandate. (See Sidebar Man-

date Article.)

However, the OFPR fiscal note without explanation asserts the following:

“Requiring municipalities that have more than 2000 residents to enforce the Maine Uniform Building and Energy Code is a state mandate pursuant to the Maine Constitution. Costs: Insignificant.”

Based upon our understanding of the majority report and the current state of affairs for municipalities, the majority report’s mandate is not insignificant, notwithstanding the claim of the Legislature’s fiscal office.

For example, the Town of Mount Desert currently has a full-time code enforcement officer. She serves as the state-mandated local plumbing inspector. She is tasked with enforcing the state-mandated shoreland-zoning ordinance. In order to comply with the state mandate regarding the “catching and spreading of fire” she is tasked with enforcing the state’s “life-safety” code. She attends planning board meetings and undertakes numerous other duties. In addition she must satisfy all the state’s mandatory training and certification requirements.

According to the Mount Desert Town Manager, that town currently processes around 150 building permits per year for new construction, additions and renovations. There is no way the Town of Mount Desert could undertake inspections for the building code, energy code and radon code required by the majority report on LD 2257 for this volume of construction without at least one additional staff person.

This is one example of what 80-100 municipalities in the 2,000–5,000 population range across the state would be facing under the majority report.

In Mount Desert’s case, and perhaps in many others, the town would be forced

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CODE (cont'd)

to require the person doing the construction or renovation to pay for a third-party to do the inspection. However, the code enforcement officer would still have work to do. She would have to receive 10 or so inspection reports per month, read them to determine that all the necessary code issues have been addressed, inform a builder or citizens when the inspection report is incomplete, deal with citizens who don't want to face the expense of redoing construction to meet the code requirements, and then issue certificates of occupancy once the officer is satisfied that the code requirements have been met. Finally, the code enforcement officer would be responsible for maintaining these inspection reports under Maine's records retention and freedom of access law. A part-time code enforcement officer would be needed to assist with these new mandated duties. This would not appear to be an insignificant expense. Furthermore, Mount Desert's town office is completely full and there is simply no space for a part-time code officer.

According to MMA's most recent fiscal survey, municipalities above 5,000 in population, most of which currently enforce building codes, have an average code enforcement office cost of \$101,000 (based upon 32 responses). Municipalities below 5,000, most of which do not enforce building codes, have an average cost of \$16,000 (based upon 139 responses).

The reality of municipal operations today is that code enforcement officers are busy. The State Planning Office publishes a guide to the state-required training for code enforcement officers. This *informational guide* identifying all the

mandated training and exams is 60-pages long. The actual training materials comprise hundreds of pages.

To create a real-life mandate on as many as 100 municipalities to either directly or in an oversight fashion enforce the complex standards of a comprehensive building code should not be viewed as "insignificant". The Office of Fiscal and Program Review is flat-out wrong about that characterization. In any event, it is certainly not regarded as "insignificant" by the municipalities that will have to comply.

However, even if one accepts the

notion that the majority report is shifting much of the inspection work regarding the building/energy/radon code off the backs of municipalities it is important to remember on whom they are shifting these costs. The costs of the multiple inspections that will be required and the costs of preparing an inspection report don't disappear. The majority report simply shifts these costs on to the backs of the citizens. In a down-economy it just doesn't seem like very sound policy to impose these costs and fees directly onto the shoulders of the homeowners and prospective home buyers.

Mandate Procedure

As noted in the Building Code article, the Office of Fiscal and Program Review indicated in the fiscal note it prepared on the majority report for LD 2257, *An Act to Establish a Uniform Building and Energy Code*, that the majority report was an unfunded state mandate to municipalities.

However, the Business Research and Economic Development Committee (BRED) did not include the required mandate preamble on the majority report. This preamble reads:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.'

The question becomes: what happens to a bill that has a fiscal note indicating a mandate but does not include a mandate preamble?

The first and most obvious answer is that the Legislature could amend the majority report and add the mandate preamble. We would expect that this is what will happen.

However, once the preamble is attached, the majority report must receive a 2/3 vote in both chambers of the Legislature.

If the Legislature does not amend the majority report and passes the mandate by a simple majority vote, the consequences are much less clear.

It appears that if the majority report is enacted without a mandate preamble, the bill would go to the Appropriations Committee before all-but-final enactment and land on the "Appropriations Table" because it has a fiscal note. The Appropriations Table is a holding place for any bill that requires the state to spend more funds but that does not by the bill's terms provide the revenue needed. The task is thus left to the Appropriations Committee to decide whether it wants to find the revenues to fund the bill or not.

The Appropriations Committee could respond in one of three ways with the majority report if it lands on the Appropriations Table.

First, the fiscal note does not provide an estimate of the revenue needed to satisfy the unfunded mandate, so the Appropriations Committee could "fund" the mandate by inventing an estimate of costs.

Second, the Appropriations Committee could kill the bill for lack of funds.

Third, the Appropriations Committee could clear the bill for final enactment without setting aside any revenues to fund the mandate. Existing law is clear that if the Legislature passes a mandate without either achieving a 2/3 vote or by funding the mandate then municipalities are not bound by the mandate.

Legislative Bulletin

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Read All About It

House Enacts Public Notice Bill, Senate Tables Action

On Wednesday this week, the House enacted an amended version of LD 1878, *An Act to Generate Savings by Changing Public Notice Requirements*. The bill, which is described in detail in the January 11th and February 29th editions of the *Legislation Bulletin*, allows for the effective and efficient publication of public notices, both at the state and local levels.

As supported in the 12-1 “ought to pass” report from the State and Local Government Committee, LD 1878 reduces the volume of information posted in state rulemaking notices to include a summary of the proposed rule, agency of jurisdiction, public hearing date, time and location, agency contact information, deadline for submitting comments and a telephone number for further information. The Committee-supported bill also enables municipalities to advertise public notices in alternative newspapers.

Since the public hearings and work sessions on LD 1878, the Maine Daily Newspaper Network (MDNN) has been negotiating with state level officials to provide reduced rates for the publication of public notices placed by state agencies. See the side bar article for a description of those negotiations.

As crafted, LD 1878 enables communities to maximize their publication budgets by allowing municipalities to exclusively publish notices in mailers that are provided to each household, free of charge. The inflexibility found in existing law leads to duplicative advertising. To meet the letter of the law municipalities advertise in newspapers that are mailed second class (i.e., the state’s largest daily and weekly newspapers) and then to ensure that notice is actually provided to the residents of the community, municipalities also adver-

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Newspaper Rate Negotiations with the State

The Maine Daily Newspaper Network (MDNN) has been negotiating with state officials to provide reduced rates for the publication of public notices placed by state agencies. According to a document prepared by MDNN, over the next five years (2008 to 2012), the negotiated rates will yield \$1 million in savings for the state. According to the MDNN, the reduced rates (reproduced in Table 1) will yield \$141,854 in saving to the state in 2008.

According to the specifics of the deal reached with the Bangor Daily News (BDN), the state will be offered a 10% reduction of the 2008 publication rates. Specifically, the state’s rate will be reduced from \$36.99 per column inch to \$33.63, a 10% savings. In 2009, the BDN has promised a 15% discount on the publication rate that is charged to all other users. In subsequent years, the state’s discounted rate (calculated from the 2008 rate base) will be 25% in 2010, 30% in 2011 and 35% in 2012 of the publication rate.

In attempt to compare the discounts being provided to the state with the rates currently paid by municipalities, we contacted a few communities in the Bangor area. Through that research we found that the BDN has negotiated volume-based discounts with two of the five communities contacted. In Bangor, for example, the City is provided a volume-based discount. In exchange for committing to buy \$150,000 worth of advertising, Bangor is provided a 20% discount over the regular publication rate. This volume-based discount is also used in Hampden. In exchange for committing to purchase \$10,000 in BDN advertising, the town is provided a 10% discount over the regular rate. While both Old Town and Orono occasionally advertise in the Bangor Daily News, those communities more often rely on the Penobscot Times, a weekly publication, for the publication of their legal notices.

As you will note, the municipal discounted rate is provided in exchange for a guaranteed amount of advertising. This seems to differ from the deal provided to the state, in that as far as we know, the state is not required to commit to a certain volume of advertising. Perhaps such a guarantee on the state level is unnecessary. In any event, the municipal budget-watchers in communities that do not have any rate-setting agreements would be well advised to keep a very close eye on the “regular” publication rates they pay to ensure that the savings being offered to the

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Table 1 – 2008 Public Notice Rate & Projected Savings

Newspaper	Measure	Daily Rate	Weekend Rate	Savings Year 1 (2008)
Portland Press Herald/Telegram	Lines	\$2.14	\$2.92	\$34,415
Bangor Daily News/Weekend	Col Inch	\$33.63	\$ 33.63	\$33,000
Kennebec Journal / Morning Sentinel Public Notice Rulemaking & Display	Lines/Col Inch	\$1.25 / \$13.76	\$1.25 / \$13.76	\$54,439
	Col Inch	\$27.60	\$27.60	
Lewiston Sun Journal/Sunday Public Notice State Classified Ads	Col Inch	\$25.96	\$27.25	\$20,000
	Col Inch	\$19.31	\$20.28	
Total Savings - Year 1 (2008)				\$141,854

Source: *Maine Daily Newspaper Network*

Legislature's Direction on School Reorganization Entirely Unclear

Voting on symbols rather than on substance has served to obscure the Legislature's true intention with regard to the school consolidation fix-up legislation.

Maybe "obscure" is the wrong word. It is perhaps the case that the Legislature is not yet sure itself of its true intention with respect to fixing this controversial law.

The life and death of LD 1932. The primary fix-up bill has been known for the last four months as LD 1932. We have written at length about the contents of LD 1932 as that bill was developed over the last four months, first by the Education Committee and then additionally by the Legislature.

Suffice to say, if enacted into law, LD 1932 would have infused new energy and recharged the school consolidation process around the state by creating necessary flexibilities in the reorganization planning.

Within just the last 10 days, LD 1932 was given a very strong 97-46 vote in the House and 21-14 vote in the Senate. In other words, there was very nearly enough legislative support to enact LD 1932 as emergency law that would be immediately effective and jump-start local school reorganization activity.

On Monday this week, however, Governor Baldacci vetoed the bill, and the same Senate that had just supported LD 1932 by a vote of 21-14 turned around and voted to sustain the Governor's veto – a vote on its face that is against the bill – by the same approximate margin. Go figure.

The reincarnation of LD 1932. On Tuesday this week, as a follow up to the veto, the Governor introduced a repackaged piece of fix-up legislation – LD 2314, *An Act to Amend School Funding Laws*. There is nothing new in LD 2314, it is only a reprint of the original version of LD 1932 as advanced by the Governor last December, before LD 1932 was substantially expanded and enhanced by the Education Committee and the full Legislature.

LD 2314 only makes three changes of substance to the 2007 school consolidation law. The bill: (1) allows the local development of school district cost sharing arrangements; (2) repeals the requirement that every municipality in a new school district must contribute at least 2 mills of tax effort to support the school system; and (3) ensures that municipal school systems that are currently minimum subsidy receivers will continue to receive at least the minimum subsidy when they reorganize into larger school districts.

Compared to LD 1932, this is what LD 2314 does not do:

LD 2314 does not identify core functions of a newly organized school district.

LD 2314 does not give clear guidance about the creation, rights and responsibilities of any local school board working within a larger school district.

LD 2314 does not provide local school committees with any clearly-established oversight functions with respect to what were formerly municipal school systems.

LD 2314 does not allow for the continued municipal ownership of the local school property.

LD 2314 does not extend the deadline for voting to adopt a reorganization plan, even though the school consolidation law has been in legislative limbo for the last four months.

LD 2314 does not re-institute procedures repealed in 2007 that allow a municipality to withdraw from one school district in order to join another.

LD 2314 does not quantify the standards by which remote rural areas can qualify for some relaxation from the minimum students standard.

And finally, LD 2314 does not allow for any type of school union form of governance, which apparently represents the Governor's core problem with LD 1932.

LD 2280 and the validation referendum fix-up bill. A second fix-up bill appears to be avoiding the political mine

fields that LD 1932 (and its successor) cannot seem to escape. LD 2280, *An Act to Clarify and Improve the Laws Governing the Formation of Regional School Units*, is primarily focused on fixing the several technical problems associated with the school budget validation referendum process mandated by the Legislature to go into effect this year. LD 2280 is proceeding on course by getting preliminary approval in the House on Wednesday this week, and the Senate on Thursday. We are hopeful that this bill will be enacted as immediately effective legislation within the next few days.

And then there's repeal. Using an entirely different bill as a "vehicle" (LD 2281), on Wednesday night this week the House voted to repeal the entire school consolidation law enacted in 2007 by a vote of 73-59 after an impassioned hour-long debate. Because a two-third "supermajority" vote would be needed to effect a repeal of the consolidation law, the repeal vote is characterized as more symbolic than substantive.

As of this writing, that is where the Legislature's school consolidation law fix-up plan rather chaotically stands.

READ IT (cont'd)

tise in local mailers.

The bill is currently tabled in the Senate but will be debated in the very near future. Senator Barry Hobbins (York Cty.) has submitted an amendment to the bill that would strip out all the elements of LD 1878 that would benefit municipal government.

If that amendment is not successful, and LD 1878 is enacted according to the 12-to-1 recommendation from the State and Local Government Committee, LD 1878 will provide for responsible ways to save taxpayers dollars, both at the municipal and state levels.

Please contact members of the Senate today and ask them to support the House's decision to enact the bill without any further amendments. Members of the Senate can be reached at 1-800-423-6900.

Education & Cultural Affairs

LD 2314 – An Act To Amend School Funding Laws. (Emergency) (Governor’s Bill) (Sponsored by Rep. Norton of Bangor; additional cosponsors.)

This bill is almost identical to the first bill introduced in the legislative session (see LD 1932), and it represents the Governor’s proposal to address problems with the school consolidation law enacted in 2007 after a comprehensive approach to address those problems developed by both the Education Committee and the Legislature was successfully vetoed by the Governor. Like the printed version of LD 1932, this bill amends the school reorganization law enacted in 2007 to: (1) allow the cost sharing formulas for multi-municipal school districts to be developed locally rather than be necessarily fixed by statute; (2) repeal the requirement that every municipality entering into a new school district organization levy a mill rate effort for education of at least 2 mills; and (3) provide the minimum subsidy benefit that so-called “minimum subsidy receiver” municipalities receive under current law even when those municipal school systems become part of larger school districts and therefore lose their minimum subsidy receiver status. In addition, this bill establishes for SADs and CSDs the same school budget validation referendum procedures as the 2007 law established for newly organized Regional School Units (RSUs) and municipal school systems.

Health & Human Services

LD 2294 – An Act To Modernize the Local Health Officer Statutes. (Reported by Sen. Brannigan of Cumberland Cty. for the Joint Standing Committee on Health and Human Services.)

This bill amends existing statutes to focus local health officer (LHO) responsibilities and duties on the prevention and suppression of communicable diseases. With respect to communicable diseases, this bill defines the general role of the LHO to act as a conduit of information between residents and the state. In a declared emergency situation, this bill allows the role of the LHO to be expanded, through rulemaking, to make LHOs available to assist the Maine Center for Disease Control (CDC) in its response to the declared emergency. Under the terms of this bill, LHOs continue to be responsible for their traditional roles regarding complaints of nuisance filth and dead animals, as well as for keeping a record of all proceedings, transactions, ordinances, orders and rules. In addition, the bill repeals several LHO duties that are either outdated or provided by other entities, including free vaccination clinics, destroying undomesticated animals suspected of having rabies, and managing and removing from the general population jail inmates with communicable diseases.

LD 2296 – An Act Regarding the Statewide Homeless Council. (Reported by Sen. Brannigan of Cumberland County for the Joint Standing Committee on Health & Human Services)

This bill directs the Department of Health and Human Services to collect from each municipality the General Assistance emergency contact information and periodically forward that information to the statewide 211 telephone system that provides information to callers about social service programs that may be available to them.

Labor

LD 2285 – An Act To Implement the Recommendations of a Task Force Convened to Evaluate and Recommend Revisions Regarding the Statutory Definition of “Service Dog”. (Reported by Rep. Smith of Monmouth for the Joint Standing Committee on Business, Research and Economic Development.)

This bill implements the recommendations of the Commissioner of Labor’s task force to evaluate and recommend, among other things, revisions to the definition of a “service animal”. Of municipal interest, is the section of the bill that prevents municipal clerks from registering dogs or issuing licenses and tags identifying a dog as a service dog, unless the applicant presents “written evidence” that meets the proposed definition of a service animal. To meet the “written evidence” standard, an applicant must provide a service dog certification form approved by the Department in consultation with the Maine Human Rights Commission. Certified service dogs owned or kept by a person with a physical or mental disability are exempted from the licensing fees. As proposed, the bill defines a “service animal” as: 1) an animal determined necessary by a physician, psychologist, physician’s assistant, nurse practitioner or licensed social worker for a person with a physical or mental disability; or 2) any animal individually trained to work or perform tasks for the benefit of a person with a physical or mental disability, including, but not limited to, guiding persons with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or fetching dropped items.

Legal & Veterans Affairs

LD 2293 – Resolve, To Prohibit In-person Absentee Voting on November 3, 2008. (After deadline) (Sponsored by Sen. Diamond of Cumberland Cty; additional cosponsors.)

This resolve provides that a person may not vote by absentee ballot in the presence of the municipal election clerk on November 3, 2008, but a person may still obtain a ballot by written request to vote outside of the clerk’s office.

LD 2315 – Resolution, Proposing an Amendment to the Constitution of Maine Regarding Early Voting. (Sponsored by Sen. Marraché of Kennebec County.)

This resolution would send out to the voters a proposed amendment to Maine’s Constitution that would authorize the Legislature to enact changes to the election system to allow qualified voters to vote at polling places in or outside their election districts during the 15-day period immediately preceding an election or to vote by mail.

Taxation

LD 2305 – An Act To Restore Benefits under the Circuitbreaker Program. (Sponsored by Sen. Strimling of Cumberland Cty; additional cosponsors.)

This bill would change the limitations on the Circuit Breaker property tax and rent rebate program just enacted as part of the supplemental budget (LD 2289) so that instead of repealing the indexing of the value of the property taxes that are recognized in the determination of eligibility, a hard maximum income limit would be enacted of \$60,000 for a single-person household and \$80,000 for a multi-person household, with those income-eligibility limits annually indexed for inflation.

LD 2310 – An Act To Permit Persons 65 Years of Age or Older to Defer Payment of Property Taxes. (Reported by Rep. Piotti of Unity for the Joint Standing Committee on Taxation)

This bill would re-establish the property tax deferral program for the elderly that was in effect during the late 1980s and early 1990s. Under the terms of the bill, any Maine resident with a property tax obligation for his or her homestead who is 65 years of age or older would be eligible for the deferral. The application for the deferral is taken at the municipal level and forwarded to the state for processing. There is no income eligibility limit to obtain the deferral. For all eligible applicants, the state would provide the municipality with the

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applicant's property tax obligation and have a lien on the applicant's property to cover all the property tax payments made by the state on behalf of the applicant and 6% interest. The bill establishes a revolving account in the State Treasury to pay the claims and accept the proceeds when the liens are discharged. The bill appropriates \$100,000 to initially capitalize the revolving account.

Transportation

LD 2313 – An Act To Keep Bridges Safe. (Governor's Bill) (Sponsored by Rep. Marley of Portland; additional cosponsors.)

This bill authorizes the Department of Transportation to initiate the issuance of \$160 million in bonds over the next four years for the exclusive purpose making improvements to bridges and minor spans. The debt service on the bonds would be paid out of the TransCap Trust Fund. The TransCap Trust Fund would be capitalized by dedicating a certain amount of revenue generated by three motor vehicle fees: (1) a \$10 increase in the registration fee for passenger cars, pick up trucks, sport utility vehicles, and commercial vehicles under 6,000 lbs. in gross vehicle weight (from \$25 per registration to \$35); (2) a \$10 increase in the additional fee for obtaining a vanity license plate (from \$15 to \$25); and (3) a \$10 increase in the fee for filing an application for certificate of motor vehicle title (from \$23 to \$33).

Utilities & Energy

LD 2283 – An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development. (Emergency) (Governor's Bill) (Sponsored by Sen. Bartlett of Cumberland Cty; additional cosponsors.)

This bill implements the Governor's Task Force on Wind Power Development in Maine. The primary focus of the bill is on streamlining the state-level regulatory review process for "grid scale" wind energy development projects by identifying the "expedited permitting areas" within the state, and providing more specificity

with respect to the areas of the state that represent "scenic resources of state or national significance". The primary focus appears to be the administration of the "undue adverse impact on scenic resources" standard in the state's Site Location of Development law.

Although the bill does not appear to preempt municipal regulatory enforcement authority with respect to "grid scale" wind energy development, the elements of the bill affecting municipal government are: (1) a declared legislative policy that municipal regulators should "take every reasonable action to encourage the attraction of appropriately sited development related to wind energy consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of win energy research and manufacturing facilities"; (2) the definition of the "expedited permitting area" for "grid scale" wind energy projects to include all the organized portion of the state and specifically-identified areas of the unorganized and deorganized areas of the state; (3) an express delegation of enforcement responsibilities to the municipal level regarding certain construction and operation requirements for wind energy projects that are smaller than "grid scale"; and (4) a declared legislative intention that residents of a community that hosts wind energy facilities should be provided "significant tangible benefits"

NEWSPAPER RATE (cont'd)

state are not shifted to the local levels of government that must also use newspaper services.

With respect to the agreements reached with the remaining newspapers (Kennebec Journal, Morning Sentinel, Portland Press Herald and Sun Journal), the state has signed five-year reduced publication rates agreements that end in 2012. The provisions provide reduced publication rates that range from 8-10% in the first year to 28-35% reduced rates in the fifth year.