

October 1, 2001

Finance Committee: 9-17-2001

RESOLUTION NO. 282-2001

**ADOPTING LOCAL LAW B (NO. 2) FOR THE YEAR 2001, REAPPORTIONING
ST. LAWRENCE COUNTY INTO 15 LEGISLATIVE DISTRICTS**

By Mr. FitzRandolph, Chair, Finance Committee

WHEREAS, it is a requirement of the law that Legislative bodies reapportion themselves after each decennial Federal Census, and

WHEREAS, a draft plan has been prepared that meets all of the requirements of Article 2, § 10 of Municipal Home Rule Law and the guidance provided through court decisions on redistricting through the years, and

WHEREAS, adoption of the plan is done in the form of a local law, and thus is subject to a formal public hearing prior to adoption, and

WHEREAS, the St. Lawrence County Board of Legislators held a public hearing on this issue on Monday, October 1, 2001,

NOW, THEREFORE, BE IT RESOLVED that the St. Lawrence County Board of Legislators hereby adopts Local Law B (No. 2) for the Year 2001.

* * *

Mr. FitzRandolph moved to adopt Resolution No. 282-2001, seconded by Mr. Wilson.

Mr. MacKinnon said the redistricting issue strikes a nerve with him. He said he would love to get into the business of trying to pick and choose who will count and who will not be counted in the census of St. Lawrence County. Perhaps we could consider individuals who have a legal address other than St. Lawrence County but who are residing in St. Lawrence County. Or maybe individuals who are living in a relatively self-contained establishment of the county but who are not legal residents of St. Lawrence County. He said he is talking about college students. The law that allows us to count or not count prisoners also allows us to count or not count college students. The logistics are the same. There are prisoners living in St. Lawrence County who came from someplace else but cannot vote; quite often college students cannot vote. He said when you look at the sales tax distribution issue one year ago there was no discussion about counting prisoners in the sales tax distribution formula. The high gainers in that issue were Canton, Potsdam, Norwood, and Norfolk. It is amazing there was no discussion saying that we must not count prisoners or colleges students. Everyone got counted. He asked what would happen in St. Lawrence County if we decided to not count prisoners. One issue would be in the Town of Gouverneur where one of the neighboring towns would have to be brought in to make the Legislative district. If you look at the towns surrounding Gouverneur, you would see that of the listed towns that border Gouverneur, Fowler is one that if it were added it has been eluded that he and Mr. Lacy would have to run against each other. The other possibility is the Town of Rossie, which is a small town. On the surface you say "so what?" The things that are important to Rossie are roads and bridges and they have a hard time finding and keeping assessors because

October 1, 2001

they don't have enough cash to pay them. When you bring Rossie into a Legislative district with Gouverneur where Gouverneur has a population of 6,000 and Rossie has a population of 800, what chances would a qualified person in Rossie have running against someone in Gouverneur? He said he worries about them because he represents them. Under this proposal the district he represents would continue to be comprised of rural towns and no town dominates any of the others population wise. No individual could ever get elected unless they had support in all those towns. If you take Rossie out and throw them in with Gouverneur, those folks are not going to have much influence on the Board. By not counting those prisoners you would do a disservice for one small segment of St. Lawrence County and to him that is important because they elected him to come and represent them. Therefore, he cannot in good conscious support a plan that does not count prisoners because that could do something that would represent them less.

Mr. Moore said this is similar to what he heard when they changed from a Board of Supervisors to a Board of Legislators. Small towns are left out. He is from Clare, which is small, and that was 33 years ago and he is still here. He said he will not vote for this resolution because he does not think prisoners and nonresident students should be counted.

Mr. Greenwood said he has listened to the comments on this and he wants to go back to the early committee meetings when we started discussing the issue. At that time the issue of counting prisoners was brought up and he did not like it. Three other people supported that and any allegations that this is political is nonsense. There seems to be a misunderstanding in counting voters and prisoners. Prisoners cannot vote. Colleges students can vote, but by and large cannot vote in St. Lawrence County. He explained that he and Mr. FitzRandolph represent the same number of people, but the numbers of signatures that he has to get is different than Mr. FitzRandolph. We are not talking about votes when we do redistricting. He said he would rather have had this Board look at other options, but we may have come to this conclusion. He agrees with Mr. MacKinnon and wonders if it is worth going through hoops in the other districts and he does not think it is. He said he thinks if we had maps laid out we would have come to this conclusion.

Mr. FitzRandolph said he urges his fellow Legislators to have the patience to have a full and complete discussion of this issue tonight and not do something rash, like call the question early. He said the notion that this is an issue of counting or not counting prisoners is wrong and the point Mr. MacKinnon made is critical. If anything, he thinks the Board was in some sense snake bitten as result of the experience last time. Some of us were on the Board last time and some weren't. He thinks the court challenge and the one-year term and the turmoil that resulted made the Board feel we have to come to resolution quickly so when the next election came around we had a solid plan that could not be challenged. He thought the Board needed to deal with this quickly and develop a plan that met the precepts of Election Law and so went forward. It turns out it is more complex than he thought. Before the vote on this, he would hope that we understand exactly as a Board what it would mean to go down this road of having a referendum and the law thrown out. We need to know the details of that and the lead time we would need to run an election and get an election ready under the new election districts. He said there are a lot of issues. He believes with his heart and soul that the plan before us, whether correct or not, is not political. He sees no advantage to the Democrats or the Republicans and feels it cuts across all kinds of party lines. For people to suggest it favors a political party is not true. We say that because we have people on both sides supporting it. This is about our own constituents. He said he has heard from no one in the Village or Town of Canton who is against the plan currently before us. He said he has heard strongly from the Chair of the League of Women voters who

October 1, 2001

believe it is best from a constitutional point and state law point. He has received a letter from Dr. Robert Wells from St. Lawrence University who many Legislators know because he is the person who fought the challenge the last time and brought the lawsuit to make things as they are today. He said Dr. Wells has urged him to vote in favor of the plan today and he believes this has the least possibility of a constitutional challenge and is, therefore, the best plan. He said he knows people did not understand that you could not break up certain towns and you had to have a range in the districts that has to be met. His point is we need to deliberate this carefully. He believes this is the best plan, but he is a realist and there are a lot of people here tonight that he would argue are misinformed, and that does not matter because they can sign petitions and vote this down. At some point before we actually vote this up or down, he would like to have Mr. Maginn, Ms. St. Andrews, and Ms. White lead us through the process of what would happen if any law that we were to pass here would be challenged. Another discussion is what if you don't do anything for a while and debate the issue? He said he thinks we are in a hurry to get this done, and we need answers before we can vote it up or down.

Mr. Gray said he is voting against this because he is against the process. The reason is because from the beginning he said we have not looked at all the alternatives. He does not see the harm in looking at them all if they did not measure up. He had calls at the end of last week from people wanting to know if he is for or against this plan. He tried to explain that he is not for or against this plan, he is against the process. Personally he is opposed to counting prisoners. He also thinks if it were wrong to count or not count certain segments of the population, there would not be a mechanism to include or exclude. If there was some set way, we would not be given the option. That is the reason he is voting against this plan. He thinks the reason people have a problem is because of the process. Mr. FitzRandolph may be right and we may need to take a couple steps back and find out what the time frame is. If we scrutinize other plans we may find some don't measure up, but at least we will have had a hearing.

Mr. Wilson said he was going to make the point that Mr. MacKinnon had made about the consequence of the Gouverneur prison. The point was well taken. He said there was also the issue between he and Mr. Teele. He said for those who believe Ogdensburg profits by counting prisoners, they need to know that the 1,500 prisoners who do not vote are in Mr. Teele's district thereby giving the Town of Lisbon the upper hand in Ogdensburg. Whether they are counted or not means nothing to him. The other problem is that if Ogdensburg were divided and you take away Oswegatchie, you would submerge Oswegatchie. If you did the same with Lisbon you would submerge Lisbon. The towns do well in this plan with the exception of one village. They are pretty protected and they should be. He is not advocating or eviscerating Mr. Teele's district. As far as being deliberative, he said this is a little late to go back to square one. We have not talked about this lightly in the past. We directed the Planning Office and they followed it. As a group, we first decided on whether or not prisoners and students would be counted and the minority who have consistently lost votes continue to rule the issue. We have not come to this lightly. As far as prisoners are concerned, it would be to the benefit of the City of Ogdensburg if you did not count the prisoners. There is no advantage to the city nor to Mr. Lacy as Mr. MacKinnon has properly pointed out. It would eviscerate the Town of Rossie, and that would not be good because within Mr. MacKinnon and Mr. Moore's districts the small town is represented and that is what it should be. We saw what happened with the small towns and big towns with the sales tax issue.

Mr. Greenwood asked to have Mr. FitzRandolph's questions addressed first by Mr. Maginn, Ms. St. Andrews, and Ms. White.

October 1, 2001

Mr. FitzRandolph asked what happens if we are very deliberative and it takes a long time to iron this out and by the next election we don't have a plan. Mr. Maginn said he is not sure if we can get through these questions if we are here until tomorrow because the issue is so complex. He said he has researched Municipal Home Rule Law and there is a case of Longway who challenged the Jefferson County Board of Supervisors. That case was brought in a Federal district court. Initially, the judge threw it out and it went back to the Federal District Court of Appeals. Because they thought it was a local issue, it was certified and sent to the New York State Court of Appeals. In answer to the question of should we be excluding transients in the form of military people, incarcerated people, and residents in nursing homes, the answer was no, we should not exclude them as a matter of right. He said this plan we have now passes every court test he can find. That does not mean he can say pass it or don't pass it because that is not his job. He is saying when you start to exclude people, you have problems because you have to justify it. He said he told Mr. McFaddin that in reading the case by excluding incarcerated felons it would meet the text, but he does not know because it has not been challenged. If we don't come up with a plan, we will go ahead with the appropriations as we have now. We are subject to a legal challenge because we are not meeting the 10% difference between districts. He does not know if someone will take that on. If they do, the power to apportion will be taken away and will be in the hands of a federal court judge. He said he would encourage this group to take it upon themselves. He said he is only telling you what you can do and can't do according to the law. If you decide to vote it up tonight, within 45 days a petition for a referendum would have to be given to you and it would have to include signatures of five percent of the registered voters in the last gubernatorial election, which have been figured to be 1,549. Anyone who signed the petition would have to be a registered voter in that election. Anyone who registered after that cannot be included. The Clerk of the Board of Legislators would have to authenticate those signatures. Assuming everything is done on time, the Clerk would have until December 15 to certify the petition. If the petition says they request that the ballot be taken prior to the next general election, then this Board would have to pass a local law setting the election prior to the next general election. When he talked to the elections commissioners, they feel if we go much past April 1 we will have trouble setting up petitions. If this is voted down, we go back to square one.

Mr. FitzRandolph asked Mr. Maginn if the petition asks for a special election if this Board must vote to have a special election or if the Board has the option of having a special election. Mr. Maginn said if the petition does not request that a special election be held, then there is no option. This plan would be voted up or down at the next general election, which would be at the same time these 15 districts are decided. If this petition requested a special election, this Board would get to vote on whether or not it would be held or not. Mr. FitzRandolph confirmed that the petition itself can only request a special election, but the decision still rests with this Board whether it is done with a special election. Mr. Maginn said that is the way he reads the law.

Mr. Greenwood asked Mr. Zimmerman to explain the criteria used in establishing these districts and how there are only certain towns that can be split and the towns that can be split have to meet different criteria. Mr. Zimmerman explained that towns can only be split if they have at least 110% of the population of the average sized district. Mr. Greenwood asked which towns can be split. Mr. Zimmerman said Potsdam, Massena, Canton and the City of Ogdensburg under the current 15 district plan. Mr. Zimmerman went on to say that, within the municipalities that can be split, the difference between adjacent districts must be below 5%. Also, Judge Soden ruled that the maximum difference between the largest district and the smallest district cannot be

October 1, 2001

greater than 16%. Mr. Greenwood said there are legal issues in who you can count and there are also legal barriers as to which towns can be split. He said this goes back to what he said earlier that if we had options out there, we would probably end up where we are. Because of the misinformation that is out there, he would hate to see this pass and have it challenged and then have this plan go down. He said he thinks we need to take a step back and have other plans out there and delay this for a month or two. He may consider tabling and he wants everyone to discuss it further.

Mr. Smith asked for the floor for Mr. Charlie Romigh. Mr. Romigh said he is pleased to hear Mr. FitzRandolph and Mr. Gray talk about doing more checking. He said he knows Mr. Lacy and Mr. MacKinnon, and he is sure if either one were representing Rossie that town would get full representation.

Mr. McFaddin said he is not leading the petition, but he will participate and assist those who are. He said he also attended the last two committee meetings of the Democratic party and this was discussed briefly. He said he does not know of any effort of any party to defeat this local law. He said he agrees there are both parties on both sides of the issue, and the main stumbling block is including prisoners for the first time. He said he is really opposed to including inmates. On July 10 Mr. Montan came before the Operations Committee and had two plans; one including inmates and one that excludes inmates. The one excluding would be within the 16% range which is what Judge Soden ruled. Shortly after, only one was selected and that was to include the inmates. He said he would have thought at that meeting we would have instructed Planning to bring a plan forward without inmates. At that meeting the instruction was that we are going to keep 15 districts and include inmates in the population. He said he thinks that is a mistake and that is why he is opposed. At the second meeting some tried to keep students out and at that meeting it was voted down 11-4. It showed the mindset of the majority of the Board was to go forward at any cost with inmates. The real issue is there has been a population shift in the County. People have moved. This meant that some boundaries would change. It was supposed that some Legislators would end up in the same districts. Reapportioning is not about Legislators. It is about where the boundaries of the district are. Every ten years by law we are required to change. This year we didn't show that, and this year we have 3,100 inmates that we can add and we won't have to change the boundaries. We need to reflect a plan that shows the shift. He said he thinks we would want to create jobs that would increase the population. He said he has talked to several Legislators in other counties that have had this experience. There were six or seven and they were talking about going through the process. He said we are adding inmates for first time. He said there is no question that redistricting does include politics in one sense. We have to rise above that and go to the job of drawing boundaries where they belong and present a plan. He is encouraged by the discussion tonight and did not expect what has taken place to happen. He is hoping tonight that if this is laid aside or delayed it is being done for the right reasons. He is not leading the petition drive, but be pretty well assured that the challenge will be lead. The issue is adding inmates and not drawing boundaries. If the method to table is for the right reason to bring other plans, he encourages tabling the resolution. Also his understanding is that this body could vote under suspension of the rules to allow the people to vote on this. Mr. Maginn said he does not see how the public can be given the right to vote on this issue when the law does not allow them. They can vote if it goes to referendum. That would be making it a mandatory referendum because the petition would be taken away. Mr. McFaddin said that is what he is saying. Rather than send them out on the street, put it in the local law.

October 1, 2001

Mr. Wilson asked for a point of order. He said he thought that when you bring a local law forward and hold a public hearing that you then could not subsequently amend the local law. He said he thought we went through this once before on another issue and does not think we can amend the local law this at this point. Mr. Maginn said the Board cannot amend the local law and vote on it tonight. Mr. McFaddin said he thinks we would want to amend it tonight and then go with another public hearing. Mr. Maginn said the Board can require that this issue go before the voters. There is no question that the Board can have a mandatory referendum. Whether or not the Board can set the local law tonight, he does not know. He said he thinks what Mr. FitzRandolph, Mr. Greenwood and Mr. Gray are saying is let's table this tonight and get more plans and look at other alternatives. Ms. White said if the Board is thinking of putting this on the ballot for this year, today is the deadline to submit ballot proposals for this year's general election. Mr. Maginn said he thinks Mr. McFaddin is saying that we would designate a special election for early next year. Mr. McFaddin said if he thinks this is tabled for the right reason, he would support that. Otherwise, he will vote no. He said he really thinks the public rules this issue and not the Board of Legislators. He said this is not about Legislators, it is about districts. In ten years most of the Legislators won't be here. He said he wants to see plans without inmates and where those district lines would be.

Mr. Nichols said when we started the process we gave clear direction to the Planning Office. We debated the timelines and in good faith said we wanted to get this process underway. We wanted to discuss whatever we were going to discuss so that whatever plan comes up we can avoid what happened ten years ago with one term for the Board. That was the intent of the discussion. There was no talk about how to gerrymander lines. He heard allegations that the process has somehow gerrymandered lines. He said he would like to know how that is possible up until tonight. We asked Planning to make the districts equal. We all live in various parts of the districts and none live in the center of the district. When Planning came through, no one knew where they would end up. Anyone could have been in a primary with another member, and when the plan was presented it was based on the premise that the districts were as close to 10% as possible. The number one goal was so it could not be challenged based on unfair representation. The old plan was in the upper 15% range when it was set up. Two plans were offered and he voted that he would not support them unless we tried to get as close to 10% as possible. None of us had the opportunity to put any political fingers into that plan. He is concerned that the political fingers will come out if we start going backwards and coming out with new plans. He would like to see who is going to resist that temptation. Then it becomes an issue of who benefits, the Republicans or Democrats. His whole goal is to make sure that the plan that came forward did not play favorites. He hopes we can get this behind us and move on to other County business. This fulfills all the needs of the constitution and holds to the spirit of one Legislator, one vote.

Ms. Baxter said she heard Mr. McFaddin say that there were two meetings of the Democratic party where this issue was discussed. She said she was not there and is a member, so it must have been an executive committee meeting. She said she believes Chair Morrill gave direction to the Planning Office because one member of their party gave him direction to move ahead and he did. She said there were great discussions that were not recorded as all discussions that are held do not come out in minutes. We did discuss how inmates and college students would be included. Some people happened to miss those meetings. Planning did formulate a plan meeting all the requirements. The inmates do not vote, but they do have an identity. Someone said cows produce. Inmates also produce. You were glad to get prisons in the county because of employment. Along with prisons come prisoners. They do not vote, but there are those who register who never vote. There are also people under 18 who never vote. Never once has she

October 1, 2001

asked someone if they have voted. She does ask them if they register because she does not represent the people who live across the street from her house. We have said we are using total population. The inmates are in our population and the census says they are in our population. No matter how they are registered, there is no guarantee how they will vote. Too bad we refer to districts by the name of the Legislator. We should refer to them by number. They do not belong to us. She said she thinks this has been done fairly and we have taken our time. She knows people disagree. She believes this is a good plan that meets the requirements of the law and she will be voting yes.

Mr. FitzRandolph said in Mr. McFaddin's remarks he mentioned that there was some suggestion that if prisoners were not included that the dispersion would be around 16%. His memory is that is about right. He said he wanted to ask Mr. Maginn about this because his memory is that the Board is making every attempt not to be political and that is why this was brought forward from committee. We asked what plan would meet the legal requirements of this law. Mr. Maginn said he is confident this meets the requirement of Municipal Home Rule Law. He thinks the 16% difference might be challenged because it does not meet the one person, one vote requirement.

Mr. McFaddin said the two meetings he referenced were executive committee meetings of the Democratic Party. He said he also got information from the minutes of the July 10 Operations Committee meeting.

Mr. Gray asked Mr. McFaddin if he has any other plan that has been proposed or was brought to any other group before. Mr. McFaddin said no, he does not have any other plan and that he has only seen the one. Mr. Gray said he finds the comments from the public hearing insulting that people would suggest that this would be an attempt to gerrymander. He said Ms. Baxter mentioned how people vote. He said he lives in a district that is registered 2/3 against him.

Mr. Grow said he represents areas in the Town of Massena, the Town of Brasher, and the Town of Lawrence. He is a Republican, but the town boards in those three towns have a combined total of fifteen members and only one is Republican. As far as trying to move around and gerrymander, it does not happen here.

Mr. McFaddin said he did contact the NYSAC attorney and his response is the counties should never use the State or Federal census that includes inmates in redistricting.

Mr. MacKinnon said as matter of clarifying, 10% difference was reached in Plan 15-b because two or three towns were swapped between his and Mr. Morrill's districts.

Mr. Greenwood moved to table Resolution No. 282-2001, seconded by Mr. Gray, and failed by a roll call vote with nine (9) no votes and six (6) yes votes (FitzRandolph, Gray, Greenwood, MacKinnon, McFaddin, and Smith).

Resolution No. 282-2001 was adopted by a roll call vote with eleven (11) yes votes and four (4) no votes (Gray, McFaddin, Moore, and Smith).