

LEGISLATIVE BULLETIN

A Tax Exemption for Phone and Cable Companies

On Tuesday, February 2 at 9:00 a.m., the House Ways and Means Committee will make a recommendation on [HB 1494](#). This bill would provide exemptions to phone and cable companies from paying property taxes on their use of public rights-of-way. A tax exemption for cable and telecommunications companies is a subsidy that is paid for by all taxpayers in the municipality.

Public rights-of-way must be maintained by the public, through tax revenue. They are maintained for all users of the right-of-way. The New Hampshire Supreme Court ruled in *Verizon New England v. City of Rochester*, 156 N.H. 624 (2007), that it is unconstitutional to subject certain entities (a telephone company in that case) to taxation under RSA 72:23, I(b) while not taxing other entities (gas, cable, and electric companies) that use the public property in the same manner. This legislation directly conflicts with that decision and is patently unconstitutional.

Please contact the [House Ways and Means Committee](#) and your representatives and urge them to kill this bill. Tax subsidies for private for-profit companies are unfair to New Hampshire towns and taxpayers.

Redefining “Ex Officio” & Budget Committee Meeting Attendance

On Thursday, February 3, at 11:00 a.m. LOB 301-303, the Municipal & County Government Committee will hear testimony on two similar bills. The first, [HB 1155](#), states that an elected board member who is also appointed to, serving on, or is a liaison to another local board in the same jurisdiction, shall be a nonvoting, ex officio member of any such local board to which the person was not elected. One of the confusing aspects of this bill is that, as written, anyone who is elected to a local board who also “serves on” another local body is automatically deemed as a “nonvoting, ex officio” member which may, of course, encompass other positions to which they may be elected. Someone who is elected to both the select board and library trustees, for example, would, under this law, somehow be a “nonvoting, ex officio” on one of those boards, but it is unclear which one. Further, since an ex officio member is a member of a

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body who is part of it by virtue of holding another office, presumably, a member of a board would only qualify as an ex officio – which, by its nature has all the privileges of a regular member, including voting – if appointed to that board by some other board on which he or she is serving.

The second bill, [HB 1223](#), requires, among other things, that all scheduled meetings shall be attended in person by all elected members. The law further provides that any member of an elected budget committee who fails to attend two or more scheduled and noticed meetings or 25 percent of such meetings annually shall be considered to have created a vacancy in the elected position, which shall be filled as provided by RSA 32:15, VII. (That statute provides that vacancies in elected budget committees shall be filled by appointment by the remainder of the budget committee.) There is no provision in the bill to allow for exceptions, such as might be needed if a board member is undergoing a lengthy medical procedure, such as cancer treatment.

While we sympathize with the concerns about elected officials not showing up, we are concerned about the practicality of requiring attendance at all meetings and automatically removing them if they do not. It is hard to imagine that individuals with good excuses – medical treatment, emergencies, etc. – are on the same footing as those who simply have no excuse for not showing up. Yet, this bill would treat both groups in the same manner. There may be very good reasons that members cannot attend meetings and, more poignantly, voters are given the opportunity to choose other individuals to serve in that capacity if they are displeased with the results being generated by the committee when it comes time to elect individuals to that committee. Complicating matters further, towns routinely struggle to find volunteers for both elected and appointed positions, so creating more vacancies to fill is unlikely to make local government more efficient. We encourage our members to contact the [Municipal & County Government Committee](#) to express their opposition to both [HB 1155](#) and [HB 1223](#).

Bills on Tax Cap Overrides

Over the next two weeks, the House Municipal and County Government Committee will hold public hearings on two bills dealing with overriding a tax cap. Officials in any city or town that has adopted a tax cap should review these bills carefully.

City Tax Caps. [HB 1342](#) is related to city charters. A public hearing will be held on **Monday, January 31, at 11:00 a.m.** in **LOB Room 301-303**, in the **House Municipal and County Government Committee**. This bill seeks to clarify the interpretation of override provisions for tax or spending caps in city charters. The bill proposes to add the following language: “If any such tax cap or spending cap does not contain an override provision it shall be interpreted to allow an override upon a 2/3 supermajority vote of the governing body.” Additionally, the last legislative session added some confusing language around exclusions that the city charter tax cap provision may provide for by way of a super-majority vote. This bill would strike the language around interest and principal payments on municipal bonded debt, or capital expenditures requiring a supermajority vote as determined by the charter. The bill also removes language added last year that states, “An ordinance or accounting practice that redistributes excludable budget items from within the limits of the capped budget to outside the limits of the capped budget shall be by a supermajority vote as determined in the charter.”

NHMA is not currently taking a position on [HB 1342](#). Officials in cities that have tax caps should take a close look at the bill and decide whether to weigh in; and please let us know of any concerns you may have.

Town Tax Caps. On the other hand, NHMA is *strongly opposed* to [HB 1194](#), which applies to towns, school districts, and village districts. The **House Municipal and County Government Committee** will hear testimony on **Monday, February 7 at 9:30 a.m. in LOB Room 301-303**. This bill would require a

3/5 majority vote, by written ballot, of a town meeting to approve any appropriation that would cause the amount of local taxes raised to exceed the town's tax cap.

This makes no sense. The purpose of a tax cap, whether in a city or a town, is to limit the budget authority of an *elected body*—because, presumably, the voters are not comfortable giving their elected representatives unlimited authority. Thus, in a city, the tax cap limits what the council or board of aldermen can adopt. In a town, a tax cap limits the budget amount that the selectmen or budget committee can present to the town meeting.

However, once the budget is presented to the town meeting, it is now in the hands of the voters themselves, and obviously they should be free to make their own decision. That is why current law allows the town meeting to override a tax cap “by the usual procedures applicable to annual meetings,” and states that the tax cap “shall not limit the legislative body’s authority to increase or decrease the amount of any appropriation or the total amount of all appropriations.”

Strangely, **HB 1194** would take this authority away from the town meeting. It essentially says that the voters *themselves* cannot be trusted; therefore, they may adopt a higher budget only if at least 60 percent of them vote to do so. It codifies minority rule, against all of this country’s democratic traditions.

To express your opposition, please contact members of the [House Municipal and County Government Committee](#), or sign in opposition to the bill before the hearing using the [online submission form](#) or consider testifying in person at the hearings.

Statewide Zoning Mandates

Beginning next week, the House Municipal & County Government Committee will have several hearings on bills that would create statewide zoning mandates, all of which NHMA opposes.

On **Thursday, February 3 at 11:30 a.m.** in **LOB 301-303**, the committee will hear testimony on [HB 1219](#), which would create a new section in RSA 674, devoted to “religious-use parking spaces” at a “religious institution-affiliated housing development project.” In short, the bill seeks to substantially limit the number of parking spaces required by a planning board for certain types of religious institutions. However, the bill contains no definition of “religious-use parking spaces” or “religious institution-affiliated housing development project.” While it can be surmised that the parking spaces must somehow relate to a housing development project developed by a religious institution, how exactly that relationship functions is left uncertain by the bill’s language.

On **Friday, February 4, beginning at 9:30 a.m.**, the committee will hear two additional bills targeting municipal zoning ordinances. The first, [HB 1087](#), would prohibit a municipal zoning ordinance from requiring a lot size of more than 10,000 square feet for single family housing lots that are serviced by public water and sewer, as long as the lot does not exceed the existing water or sewer capacity. We understand this bill is designed to promote density, but we are concerned that it would have the unintended consequence of discouraging municipalities thinking of expanding their water or sewer lines lest they be subjected to this statewide zoning requirement.

The second bill, [HB 1098](#), is another parking restriction bill, but a simpler one. It would merely prohibit a zoning ordinance from requiring more than one parking space per dwelling unit. We are concerned that such a limitation would encourage developers to build apartment and condo complexes with insufficient parking for the number of expected vehicles, forcing residents to find alternative, offsite parking. With winter weather parking bans and already difficult parking situations in many municipalities, this could lead to serious headaches, and discourage tourists who might otherwise flock to downtowns between ski runs and leaf peeping outings.

Finally, on **Monday, February 7 at 9:00 a.m.**, the committee will consider [HB 1177](#), requiring all zoning ordinances to allow, by right, any single-family home in a residential zoning district serviced by public water and sewer to be used for up to four dwelling units. Under the bill, the parking requirements for a four-unit building could be no more restrictive than those required for a single-family dwelling. Again, we are concerned about the unintended consequences of the bill, and not just with parking. The bill does not contemplate the additional burden on municipal water and sewer, or the building and life-safety code requirements to ensure that occupants can safely occupy converted units.

In addition to the above listed bills, there are several more zoning mandate bills pending in the legislature this year, including [HB 1068](#), requiring zoning ordinances to allow tiny houses in residential districts; [SB 244](#), mandating that municipalities allow existing non-confirming structures to be converted to an accessory dwelling unit (ADU); and, of course, [SB 249](#), prohibiting municipalities from prohibiting or regulating through zoning the use of residential homes as short-term rental businesses. [SB 249](#) had a lengthy hearing this past week in the Senate Commerce Committee, and we wrote about it extensively in [Bulletin #4](#).

Updates to State Building Code

On **Monday, January 31**, at **1:00 p.m.** in **LOB 302-304**, the **House Executive Departments and Administration Committee** will hear testimony on [HB 1681](#), adopting updates to the state building, electrical, mechanical, plumbing, and other associated codes. This adoption follows the review and amendment of these codes by the state building code review board, and the basis for most of these codes is the 2018 edition of the code promulgated by the International Code Council. (The exception is the electrical code, which is the 2020 edition promulgated by the Nation Fire Protection Association, Inc.) We encourage members interested in these code updates to contact the [Executive Departments and Administration Committee](#) to express their opinions.

NHRS Retiree COLA Goes to a Committee Vote

On **Monday, February 7**, at **10:30 a.m.** in **LOB Room 302-304**, the **House Executive Departments and Administration Committee** will vote on its recommendation for [HB 1535](#). That bill would provide a 1.5 percent cost-of-living adjustment (COLA) to all New Hampshire Retirement System (NHRS) retirees who have been retired at least 5 years by July 1, 2023, on the first \$30,000 of a retired member's annual allowance. The cost of this COLA is estimated at \$1.8 billion, which would be added to future employer contribution rates to address the increased unfunded liability. The passage of this bill would result in additional employer contribution rates in the estimated amounts of 4.35% for municipal employees, 5.48% for teachers, 8.19% for police and 7.72% for fire. In dollars, that is an estimated impact of \$135 million in fiscal year 2024, \$139 million in 2025, and \$142 million in 2026.

We continue to express concern that financing retiree COLAs through increased employer contribution rates violates the unfunded mandate provision in Part 1, Article 28-a of the New Hampshire Constitution. We have no objection to COLAs, but in the past COLAs have always been paid for by the state or from the "special account," not by additional assessments on municipal, school, and county employers. Unless the state is willing to fully fund the upfront cost of this proposal, this mandated increases in retirement costs will cripple local budgets and downshift the burden onto local taxpayers.

Please contact the [House Executive Departments and Administration Committee](#) to share this concern and ask the committee to support a motion of Inexpedient to Legislate.

HOUSE CALENDAR

MONDAY, JANUARY 31, 2022

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 302-304, LOB

- 10:45 a.m. **HB 1552-FN**, establishing a board for the certification of assessors.
1:00 p.m. **HB 1681-FN**, relative to the state building code.
2:15 p.m. **HB 1312**, relative to water pollution and waste disposal rulemaking.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

- 9:00 a.m. **HB 1374**, relative to the membership of local land use boards.
9:30 a.m. **HB 1375**, relative to the definition of veteran.
10:00 a.m. **HB 1056**, relative to veterans' tax credits.
10:30 a.m. **HB 1057**, relative to the tax exemption for the elderly.
11:00 a.m. **HB 1342**, relative to municipal charter provisions for tax caps.
11:30 a.m. **HB 1350**, relative to the procedure for valuation of property for property tax purposes.

TUESDAY, FEBRUARY 1, 2022

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 210-211, LOB

- 9:30 a.m. **HB 1224-FN**, prohibiting state and local governments from adopting certain mandates in response to COVID-19; and prohibiting employers and places of public accommodation from discriminating on the basis of vaccination status.

SCIENCE, TECHNOLOGY AND ENERGY, Room 306-308, LOB

- 9:00 a.m. **HB 1546-FN**, limiting air emissions of perfluorochemicals.
1:30 p.m. **HB 1148**, relative to prohibiting government entities subordinate to the state from restricting the types of fuel sources that may be used for energy.
2:30 p.m. **HB 1328-FN**, authorizing a utility to petition to be relieved of their carrier of last resort obligations.

WEDNESDAY, FEBRUARY 2, 2022

ELECTION LAW, Reps Hall, SH

- 9:30 a.m. **HB 1484-FN**, requiring a forensic audit of the 2020 election results.
10:30 a.m. **HB 1473-FN**, authorizing a forensic audit of the November 3, 2020 election results in Merrimack county for president, governor, and United States senate races.
11:00 a.m. **HB 1467-FN**, requiring partial audits of additional offices on ballots involved in recounts.
11:45 a.m. **HB 1008**, establishing a commission to study the structure and election calendar of New Hampshire municipal government.
12:15 p.m. **HB 1242**, relative to filing deadlines for candidates seeking election to charter commissions and relative to the dates of such elections.

LEGISLATIVE ADMINISTRATION, Room 301-303 LOB

- 9:00 a.m. Full Committee Work Session on **HB 1033-FN-L**, prohibiting recipients of state or local grants or appropriations from using such funds for lobbying.

THURSDAY, FEBRUARY 3, 2022

ELECTION LAW, Room 306-308, LOB

- 9:45 a.m. **HB 1166**, requiring certain voters to declare a party affiliation prior to a state primary election and requiring candidates to be members of political parties for a certain amount of time prior to an election in which such candidates seek office.
10:00 a.m. **HB 1174**, relative to election challengers.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 305-307, LOB

2:30 p.m. **HB 1472**, prohibiting anti-union activities by employers.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

9:00 a.m. **HB 1136**, requiring planning boards to list the type of studies required to render a decision.
9:30 a.m. **HB 1161-FN-L**, relative to ethics obligations of elected local and county officials.
10:00 a.m. **HB 1179**, relative to zoning protest petitions.
10:30 a.m. **HB 1183**, relative to the calculation of property taxes for residents 75 years of age and older.
11:00 a.m. **HB 1184**, authorizing the establishment of revolving funds.
11:30 a.m. **HB 1219**, relative to parking requirements for religious institution-affiliated housing development projects.
12:00 p.m. **HB 1223**, relative to meeting attendance requirements for elected members of budget committee and school board.

FRIDAY, FEBRUARY 4, 2022

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

9:00 a.m. **HB 1070**, relative to the default budget in official ballot jurisdictions.
9:30 a.m. **HB 1087**, relative to zoning for single family housing lots.
10:00 a.m. **HB 1098**, limiting the number of parking spaces required per occupied dwelling.
10:30 a.m. **HB 1122**, authorizing municipalities to collect and resell construction and demolition debris.
11:00 a.m. **HB 1155**, relative to persons elected to a local board serving on another board.
11:30 a.m. **HB 1172-FN**, requiring composting and waste recycling to be made available to residents of public housing.
12:00 p.m. **HB 1617**, relative to housing projects of the community development finance authority and establishing a committee to prevent state subsidies for housing development that is not income-sensitive. Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.

MONDAY, FEBRUARY 7, 2022

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

9:00 a.m. **HB 1177**, relative to permissible residential units in a residential zone.
9:30 a.m. **HB 1194**, relative to the procedure for overriding a local tax cap.
10:30 a.m. **HB 1238**, relative to zoning powers and the supply of workforce housing.
11:00 a.m. **HB 1259**, relative to the election and resignation of members of school boards and elected budget committees.
11:30 a.m. **HB 1307**, modifying the authority and duties of the housing appeals board.

TUESDAY, FEBRUARY 8, 2022

EDUCATION, Room 205-207, LOB

10:00 a.m. **HB 1090**, relative to teaching on discrimination in the public schools
11:00 a.m. **HB 1576-FN**, repealing the law relative to certain discrimination in public workplaces and education.

THURSDAY, FEBRUARY 10, 2022

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 305-307, LOB

10:00 a.m. **HB 1143**, relative to medical mandates adopted by employers.
11:00 a.m. **HB 1529-FN**, requiring prospective employees and volunteers of public libraries to obtain a background check prior to commencing employment or volunteer service.
11:30 a.m. **HB 1508-FN**, prohibiting discharge of volunteer firefighters or volunteer emergency medical technicians from other employment.
1:00 p.m. **HB 1514-FN**, relative to an employee's unused earned time.

SENATE CALENDAR

MONDAY, JANUARY 31, 2022

ELECTION LAW AND MUNICIPAL AFFAIRS, Representatives' Hall, SH

1:20 p.m. **SB 255**, establishing redistricting criteria.

TUESDAY, FEBRUARY 1, 2022

COMMERCE, Room 101, LOB

9:30 a.m. **SB 211**, relative to an injured employee's right to reinstatement to a former position for purposes of workers' compensation.

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:00 a.m. **SB 341-L**, relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

FINANCE, Room 103, SH

1:00 p.m. **SB 409**, relative to disaster relief loans.

1:10 p.m. **SB 445-FN**, appropriating funds to the broadband matching grant fund.

JUDICIARY, Room 100, SH

1:00 p.m. **SB 376-FN**, establishing a committee to study the creation of a board to study mental health incidents among law enforcement officers.

1:20 p.m. **SB 298**, repealing the law relative to certain discrimination in public workplaces and education.

WEDNESDAY, FEBRUARY 2, 2022

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 103, SH

9:00 a.m. **SB 398**, relative to building code and fire code enforcement.

FRIDAY, FEBRUARY 4, 2022

JOINT ECONOMIC BRIEFING WITH HOUSE FINANCE AND HOUSE AND SENATE WAYS AND MEANS, Representatives' Hall, SH

9:00 a.m. Joint Economic Briefing - Committees will hear from various experts on conditions impacting the state and national economies.

TUESDAY, FEBRUARY 8, 2022

COMMERCE, Room 100, SH

9:00 a.m. **SB 203**, relative to the state minimum hourly rate.

WEDNESDAY, FEBRUARY 9, 2022

HEALTH AND HUMAN SERVICES, Room 100, SH

10:00 a.m. **SB 374-FN**, relative to the SARS-CoV-2 vaccinations.

2022 NHMA UPCOMING MEMBER EVENTS

Feb. 12	Town & School Moderator Traditional Town Workshop (Virtual) - 9:00 – 1:30
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Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming virtual events. Click on the Events and Training tab to view the calendar.