

# LEGISLATIVE BULLETIN

## Reconsideration Vote Wednesday on Retirement Contribution Bill

Bulletin 07, 2018 Session  
February 2, 2018

As explained in last week’s *Bulletin*, [HB 413](#), which restores a portion (15%) of the state retirement contribution for teachers, police and fire-fighters, failed in the House on January 3 by a vote of 172-166, but is up for reconsideration next Wednesday (February 7). We are hearing from legislators that pressure is being applied under the gold dome for them to vote against the motion to reconsider this bill. We need pressure applied from Main Street in support of **HB 413** so that every representative knows a vote against **HB 413** is a vote against lowering property taxes! With the floor amendment that we understand will be presented, there will be **no fiscal impact on the current state budget**, but rather a directive to include an appropriation in the FY 2020-2021 budget, which the state will begin preparing this fall.

Contact your representatives now and let them know exactly what 15% of the retirement costs for teachers, police, and firefights means to your taxpayers!

## Town Meeting Postponement Still Under Discussion

The [Senate Election Law and Internal Affairs Committee](#) met in executive session this week, but did not take up [SB 438](#), the bill that would require moderators to ask the Secretary of State for permission to postpone town meeting voting sessions in the event of hazardous weather. We know senators and others are discussing possible amendments to the bill. NHMA staff have offered to participate in those discussions in an effort to come to a reasonable resolution.

If you have not already contacted your senator or the committee to urge them to let local officials make local decisions about local elections, now is a good time to do that. Please see last week’s *Legislative Bulletin* [article](#) for more information.

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## Working-After-Retirement Bill Up for Senate Vote Again

On Tuesday, the Senate Finance Committee recommended Inexpedient to Legislate by a vote of 4 to 2 on [HB 561](#). This bill lowers the number of hours a New Hampshire Retirement System (NHRS) retiree can work part-time for an NHRS employer and imposes a surcharge on the total compensation paid to a retiree (3% charged to the retiree and 5% charged to the employer) if the hours worked in a calendar year exceed 1,300. The bill also requires a 28-day waiting period from the date of retirement before a retiree can be employed again by any NHRS employer, institutes a significant penalty if the yearly hours worked by the retiree exceed 1,300 (or exceed 1,600 if the employer provided prior notification to NHRS that annual hours will be more than 1,300), and grandfathers current retirees, but only in their current part-time positions.

Senators in opposition described the bill as a “retiree tax” and complained that the bill will force trained, competent retirees to seek part-time employment outside the state, will cost taxpayers more to fill public safety needs statewide, and will do nothing to help the financial status of the retirement system. We concur with all these criticisms. Additionally, the bill creates burdensome administrative procedures at NHRS—the efficient operation of which is a concern to us since the costs to operate the system are included in employer contribution rates.

Almost everyone agrees that deliberately changing full-time NHRS-contributing positions into part-time positions solely to avoid paying retirement contributions is a problem that needs to be addressed. Unfortunately, **HB 561** goes far beyond correcting this problem, and creates more problems, especially in municipalities that have always had part-time positions and have difficulty recruiting and retaining qualified part-time workers—all for naught in terms of improving the financial status of the retirement system.

While the majority of the Senate Finance Committee recommended IITL, remember that the Senate passed this exact same bill on January 18 by a [17-7 vote](#). At least a handful of senators will need to change their minds for **HB 561** to die. We suspect a floor amendment or two may be offered that will change the maximum hours or soften the penalty, but also know there is a strong desire to “do something” to address what is basically a public perception problem. Please let senators know of your concerns with **HB 561**.

## Right to Shoot on Municipal Property?

Despite several weeks of intense lobbying pressure from the bill’s supporters, the House Municipal and County Government Committee voted 18-2 on Thursday to send [HB 1749](#) to Interim Study. The bill as drafted seeks to preempt municipal authority over the use of municipally owned property when it comes to shooting guns. The bill now goes to the House floor, likely at the February 7 session, where there has been talk of an effort to overturn the committee recommendation and pass the bill.

Discussion about the bill has swirled around many issues: possession of firearms versus use of firearms, federal versus state law, and who has authority to enforce what. The proponents are very clear, however, that they want severe penalties for local officials who pass ordinances to restrict **shooting** firearms on town or city-owned property. Please ask your representative to **support** the committee’s Interim Study recommendation.

## Utility Valuation Bills Inching Along

The House Ways & Means Committee created a subcommittee this week to work on [HB 1381](#), the bill that would limit the assessed value of utility property to its net book value as shown in the financial records of the utility. The subcommittee members are:

- [Timothy Lang](#), R-Sanbornton
- [Patrick Abrami](#), R-Stratham
- [Bill Ohm](#), R-Nashua
- [Susan Almy](#), D-Lebanon
- [Mary Beth Walz](#), D-Bow

We are not sure yet when the subcommittee will meet, but please contact members of the subcommittee—and the [full Ways & Means Committee](#)—to let them know they should *kill HB 1381*. See [last week's Bulletin](#) (page 2) for a longer article on the subject.

Meanwhile, [HB 324](#), the study commission bill that [HB 1381](#) would preempt—again, see last week's *Bulletin* article—is still waiting to be scheduled for a hearing in the same committee.

## Water Quality Standards Bills

On Tuesday the House Resources, Recreation and Development Committee unanimously recommended Ought to Pass on [HB 1101](#), relative to groundwater pollution, with [amendment #2018-0334h](#). Sections 1 and 2 of the amended version of the bill deal with air emissions, while sections 3 through 6 address drinking water and ambient groundwater quality standards. For drinking water, the amendment requires the Department of Environmental Services (DES) to establish by administrative rules maximum contaminant levels after considering the ability to detect the contaminant in public water systems, the ability to remove the contaminant, and the cost to government entities that will result from establishing the standard.

For ambient groundwater, the bill requires standards no less stringent than federal maximum contaminant levels or health advisories, and authorizes adoption of more stringent standards if DES determines that federal standards are insufficient for protection of human health. Where health advisories are adopted as the standards, DES is required to review the ambient groundwater standards at least every five years by considering new research that may warrant revising the standards. The department is required to initiate rulemaking on ambient groundwater quality standards for perfluorochemicals by January 1, 2019, which is after new toxicological profiles from the Centers for Disease Control will be issued. Section 7 of the bill provides DES with additional technical staff necessary to comply with these new statutory requirements.

The committee also recommended an amendment to [HB 1592](#), dealing with standards for arsenic in drinking water. As introduced, the bill would have reduced the maximum contaminant level from 10 parts per billion (ppb) to 0.004 ppb. [Amendment #2018-0324h](#) does not enact a specific standard in statute, but rather requires DES to review the ambient groundwater standard for arsenic and initiate rulemaking, like the requirements above, to establish the standard. This amendment initially failed in the committee by a tie vote of 10 to 10 but was reconsidered and recommended 15 to 2.

Both [HB 1101](#) and [HB 1592](#) are on the agenda for the House session on February 7. Please let us know, as well as your representatives, if you have concerns with either bill.

## Delegation of NPDES Authority Gets Strong Municipal Support

On Tuesday the [Senate Energy and Natural Resources Committee](#) heard testimony on **SB 450**, a bill seeking to create an advisory commission that would develop legislation to delegate permit authority for the National Pollutant Discharge Elimination Systems (NPDES) program from the U.S. Environmental Protection Agency (EPA) to the New Hampshire Department of Environmental Services (NHDES). This bill was a request of the SB 121 Study Commission, which issued its [final report](#) in November 2017. Currently 47 of 50 states have delegated permit authority.

Municipal representatives from Manchester, Rochester, Somersworth, Merrimack, and Dover all testified in strong support of this initiative. Letters of support also came from the Town of Stratham and the New Hampshire Water Pollution Control Association, among others. There was no opposition to the bill, although NHDES officials proposed changes to the membership of the advisory commission and a smaller appropriation to hire a consultant to assist in this multi-year effort.

Immediately after the public hearing concluded, the committee voted to approve an amendment to **SB 450**, based in part on some of the suggestions offered by NHDES, and then voted 5-0 to recommend the bill as Ought to Pass With Amendment. **SB 450** now moves to the full Senate for a vote; if it passes, it will be referred to the Senate Finance Committee for consideration of its financial impact.

Should **SB 450** ultimately be approved by the legislature, the biggest challenge facing cities and towns will be developing a consistently funded fee structure supported by a clear majority of all stakeholders and permit holders to sustain state administration of this permit program.

## Possible Amendment on RGGI Funding

Those following the issue will recall that the House recently passed **HB 559**, which NHMA supports, increasing to \$5 million (from \$2 million) the amount of proceeds from the sale of carbon allowances under the regional greenhouse gas initiative (RGGI) that is allocated annually for municipal and school district energy efficiency projects. The bill was then referred to the House Finance Committee for further review.

The committee's Division I held a work session this week and unanimously approved an amendment to the bill. The amendment does not change the amount of proceeds allocated to municipalities and school districts—it would still be \$5 million, as the original bill provided. However, it eliminates the rebate that commercial and industrial customers receive from the allowance sale proceeds.

This may require a little more explanation. Under the existing law, both residential and commercial/industrial customers receive a small rebate on their bills from the sale proceeds. All proceeds remaining after payment of those rebates go to the municipal and low-income energy efficiency programs. **HB 559** as passed by the House maintained the commercial/industrial rebate but eliminated the rebate for residential customers as a means of funding the increased allocations to the energy efficiency programs. The Division I amendment would eliminate the commercial/industrial rebate as well, allowing more funds to go to the low-income program.

Because the amendment does not affect the amount going to the municipal program, we have no problem with it. Whether anyone else will (such as the business interests that have supported **HB 559**) is another question. The bill, with the proposed amendment, will go next to the full Finance Committee for review and vote, and then back to the full House.

## Legislative Potpourri

While our lead articles continue to focus on the most important (and most dangerous) pieces of legislation, there are plenty of “below the fold” stories, which we will report as time and space permit. Here are a few for this week:

***Municipal Liability.*** The Senate this week passed [SB 387](#), which makes mostly “housekeeping” changes to RSA 507-B, the statute governing personal injury actions against municipalities and other political subdivisions. The bill also increases the limit on a municipality’s liability from \$275,000 to \$325,000 per person, and from \$925,000 to \$1,000,000 per incident. The increases are simply an adjustment for inflation since the last time the limits were changed, in 2007.

Attorneys who regularly represent municipalities and their insurers had significant input into **SB 387** and have assured us that the language changes merely clarify the existing law and will have no adverse effect. Although we are not enthusiastic about increasing the liability limits, we believe the increases are reasonable and probably necessary. The New Hampshire Supreme Court has taken a dim view of liability limits generally, and there is a concern that if the statutory limits do not at least keep up with inflation, they may be ruled unconstitutional. The bill will now go to the House.

***Voting by Zoning Boards.*** The Senate also passed [SB 339](#), relative to voting by zoning boards of adjustment. Currently, RSA 674:33, III, states, “The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” **SB 339** changes it to require the concurring vote of three members “to ***take any action*** on any matter on which it is required to pass.”

The argument for the bill is that if a ZBA hears, say, a variance application with only three members present and the application fails because the vote is, say, only 2-1 in favor, the board then needs to take an affirmative vote to deny the application, and the *denial* should require three votes to pass. We’re not sure there actually needs to be a separate vote to deny the application—does not the failure to approve act as a denial? Either way, we don’t believe this is a significant change in the law. But these are the kinds of question municipal lawyers love to argue about, and we would be interested in any comments. The bill is on its way to the House, where it will have a hearing sometime in the next month or two.

***Apportionment in Cooperative Districts.*** There was a flurry of concern this week about [HB 1452](#), which would require that all costs in a cooperative school district be apportioned among the component districts strictly in proportion to their equalized valuation. Current law allows apportionment based on equalized valuation or a combination of equalized valuation and student population, or “some other formula” adopted by the cooperative school district and approved by the state board of education.

There is no need to panic. The bill had little support, and the House Education Committee this week voted 19-0 to report the bill as Inexpedient to Legislate.

***Presite Built Housing.*** [HB 1211](#) would require municipalities to afford reasonable opportunities for the siting of “presite built housing”—often referred to as prefabricated or modular housing—similar to the requirement that already exists under RSA 674:32 with respect to manufactured housing. More specifically, it would require municipalities to “allow presite built housing having 500 square feet of floor space or less to be located in presite built housing parks having at least 4 units created for the placement of presite built housing on individually owned lots in most, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality.”

The bill had a hearing this week in the House Municipal & County Government Committee, where NHMA expressed concern that it represents another in a growing list of zoning mandates. Given that municipalities already must allow affordable housing and manufactured housing, it seems unnecessary to add a new requirement. We do believe municipalities should, on their own, continue to pursue various options for affordable housing, including the increasingly popular “tiny homes”—but a new mandate from the state is unwarranted.

No one showed up to support the bill, and the committee seemed extremely skeptical about it, so we believe it is unlikely to go very far.

***Protection for Forestry Activities.*** [HB 1402](#) requires a municipality, before enacting any ordinance or regulation that is likely to affect forestry activities, to “consider the possible adverse effects on forestry activities and take any steps that are reasonably available to minimize such effects.” This is a relatively soft requirement that, we believe, merely reinforces the existing requirements in state law that municipalities recognize the importance of forestry and not pass ordinances that unreasonably restrict forestry activities.

The bill also prohibits any ordinance or regulation that “applies only to forestry activities [and] which adversely affects such activities.” This is a response to some towns that apparently have adopted, for example, weight limits on town roads that apply only to logging trucks. As a supporter of the bill pointed out, a ton of logs doesn’t weigh any more than a ton of gravel. The bill would not prevent a town from applying weight limits or other local restrictions to forestry activities, so long as they do not apply *only* to forestry activities.

The bill had a hearing in the Municipal & County Government Committee last week, and the committee voted this week to recommend it as Ought to Pass. It will go to the full House for a vote next week.

## **HOUSE CALENDAR**

**TUESDAY, FEBRUARY 6, 2018**

### **COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB**

10:45 a.m. **HB 1597**, relative to grounds for receivership involving a manufactured housing park.  
1:15 p.m. **HB 1607**, relative to the appointment of a receiver for properties which are a threat to health and safety.

*(House Calendar— Continued from Page 6)*

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB**

1:30 p.m. **HB 1759-FN**, regulating the use of drones.

**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

1:00 p.m. **HB 1269**, relative to the requirement for campground owners to provide certain information to local assessing officials.

2:00 p.m. **CACR 19**, relating to right to govern. Providing that the people of the state may enact local laws that protect health, safety and welfare.

**WAYS AND MEANS, Room 202, LOB**

10:00 a.m. Public hearing on non-germane amendment 2018-0360h to HB 1609, establishing a local option for an additional surcharge on occupancy under the meals and rooms tax. The amendment enables municipalities to vote to collect a municipal occupancy fee from all hotels, public lodging houses, tourist cabins, and tourist trailer parks, for the purpose of establishing a municipal capital improvement or tourism support fund. Copies of the amendment are available in the Sergeant-at-Arms' Office, Room 318, State House.

**FRIDAY, FEBRUARY 9, 2018**

**ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Department of Revenue Administration, Training Room, 109 Pleasant Street, Concord**

9:30 a.m. Regular meeting.

**COMMITTEE TO STUDY CERTAIN INVESTMENTS BY MUNICIPALITIES (SB 72, Chapter 37:1, Laws of 2017), Room 102, LOB**

2:30 p.m. Regular meeting.

**TUESDAY, FEBRUARY 13, 2018**

**COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB**

11:15 a.m. **HB 1662-L**, requiring radon air testing on all new residential construction.

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB**

10:00 a.m. **HB 1823-FN**, relative to layered amortization of retirement system liabilities.

10:30 a.m. **HB 1805**, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability.

**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

1:00 p.m. **HB 1634**, regulating disorderly houses.

2:30 p.m. **HB 1463**, relative to requirements for noise ordinances in towns.

**WEDNESDAY, FEBRUARY 14, 2018**

**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

1:00 p.m. **HB 1215**, relative to voting on variances.

1:30 p.m. **HB 1216**, relative to liability for deferred property taxes.

## SENATE CALENDAR

### TUESDAY, FEBRUARY 6, 2018

#### COMMERCE, Room 100, SH

1:15 p.m. SB 417, relative to days of rest for employees of recreation camps and youth skill camps.  
1:30 p.m. SB 422, relative to advance notice of work schedules.

#### ENERGY AND NATURAL RESOURCES, Room 103, SH

9:15 a.m. SB 569-FN, relative to animal cruelty.

#### TRANSPORTATION, Room 103, LOB

2:00 p.m. SB 516, prohibiting the use of motorcycle-only roadside checkpoints.

### WEDNESDAY, FEBRUARY 7, 2018

#### PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

10:00 a.m. Hearing on proposed amendment 2018-0059s, relative to municipal assessment reports completed by the department of revenue administration, to SB340, relative to the department of revenue administration guidelines for municipal audits.

#### WAYS AND MEANS, Room 100, SH

9:00 a.m. SB 587-L, relative to the collection of fees for public parking facilities.  
9:20 a.m. SB 586-FN-A-L, relative to casino gambling.

### TUESDAY, FEBRUARY 13, 2018

#### ENERGY AND NATURAL RESOURCES, Room 103, SH

9:15 a.m. SB 530-FN, relative to high voltage electric transmission lines in highway rights-of-ways.

## SENATE FLOOR ACTION

Thursday, February 1, 2018

SB 240-FN-L, relative to the monitoring and treatment of contaminated wells. **Passed with Amendment.**

SB 339, relative to voting by zoning boards of adjustment. **Passed.**

SB 347, relative to seasonal highway weight limits. **Inexpedient to Legislate.**

SB 386, relative to access to criminal records. **Passed.**

SB 387-FN, relative to liability of governmental units. **Passed.**

SB 393, relative to county audits and performance audits. **Passed with Amendment.**

SB 428, relative to the payment of weekly and biweekly wages. **Passed.**




*(Senate Floor Action— Continued from Page 11)*

SB 444, relative to cutting timber near certain waters and public highways. **Passed.**

SB 471, relative to the authority of municipalities to address potential natural threats. **Passed with Amendment.**

SB 528-FN-L, relative to dam registration fees and relative to permit fees for constructing or re-constructing a dam. **Passed with Amendment; referred to F-S.**



**2018**      **Upcoming NHMA Workshops and Webinars**

Feb. 17	2018 Moderators Workshop for Traditional Town Meeting
Feb. 21	NHMA Webinar—Election Law Changes in 2018
Mar. 14	NHMA Webinar—Municipal Social Media Policies and Free Speech

Please register online through our website [www.nhmunicipal.org](http://www.nhmunicipal.org). (Scroll down on left to Calendar of Events and click View the Full Calendar)

