

LEGISLATIVE BULLETIN

Committee to Vote on Liability Bills

Bulletin #9, 2016 Session
February 26, 2016

The House Judiciary Committee is scheduled to vote next **Tuesday, March 1**, on [HB 1687](#) and [HB 1688](#), the two bills that would greatly expand municipal liability for personal injury claims. As we explained in [Legislative Bulletin #6](#), these bills would eliminate longstanding immunities, resulting in higher insurance costs and legal expenses, and would undoubtedly cause some municipalities to consider eliminating some programs and services.

A good crowd of opponents turned out for the hearings last week—representatives of school boards, school administrators, fire departments, recreation programs, and, of course, municipal governments. They described the programs that these changes would put at risk, from athletic programs to emergency services to police departments.

Meanwhile, the bill’s supporters all had one thing in common—every one of them was a personal injury lawyer. One of them explained that without these changes in the law, we are left with an unthinkable situation: a parent whose child is injured while playing a school sport, or is knocked down on the playground, is not able to sue the school! Seriously. Yes, there are people who truly believe that every single thing that goes wrong in the world should be answered with a lawsuit; and if it happens to have a handsome contingent fee attached, well, it’s all in the name of justice.

Fortunately, the committee did not seem enthusiastic about either bill. After the hearings, a number of committee members indicated that they would not support the bills, and they believed most committee members agreed. We also know that many of them have heard from their local officials about the bills.

We are optimistic, but not complacent. *If you have a representative on the [committee](#) and have not contacted him or her yet, please do so before Tuesday.* And even if your representatives are not on the committee, please be sure they know about these bills and are prepared to vote to **kill HB 1687 and HB 1688** when they go to the full House.

INSIDE THIS ISSUE

Pole Valuation	2
The Edge	2
Medicaid Expansion	3
Agritourism	4
Damage Cap Increase	4
RTK Bills	4
House/Senate Calendars	6
Senate Floor Action	6
NHMA Workshop/Webinar	7

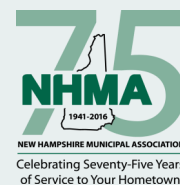
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Pole Valuation Bill Heads the Wrong Direction

As we reported in [Legislative Bulletin #8](#), the Assessing Standards Board has been studying the issue of valuation of telephone poles for property tax purposes, with the intent of making a recommendation to the legislature for a statutory appraisal formula. [HB 1198](#) was filed as a placeholder, but it was understood that the ASB was going to propose a formula that could serve as an appropriate amendment to [HB 1198](#).

The ASB did propose language for an amendment, and it was somewhat better than we had expected. Recall that we had expressed concern that the ASB's subcommittee was talking about assuming a 30-year useful life for telephone poles, despite the fact that the *median* age for poles in New Hampshire is reported to be over 35 years. This would result in an unjustifiably rapid depreciation in value for property tax purposes. Fortunately, ASB the subcommittee eventually recommended using a 40-year life, but the full ASB went a step further and voted to use a *50-year* life.

That is the good news. A 50-year life is still on the conservative side, but it is realistic.

The bad news is that at the hearing on [HB 1198](#) before the Ways and Means Committee last week, the amendment that was presented largely ignored the ASB's recommendation! Most notably, it proposed a formula based on a 30-year useful life. That is absolutely unacceptable. It bears no relation to reality, and will result in significantly reduced valuations for any poles that are older than one year and younger than 50. These reduced valuations will shift the property tax burden away from the telephone companies and onto the rest of the taxpayers. We have been told that in Manchester alone, it will result in a \$1.5 million loss of assessed value.

The cited justification for using a 30-year life has been, variously, that it is consistent with what the FCC, or the IRS, or the PUC, uses. That argument, however, confuses two entirely unrelated concepts. Depreciation for income tax or rate-setting purposes is a method of accounting for the *original cost* of an asset, not determining its *current market value*. It is intended to allocate the one-time cost of an asset over a period of years so that the expense is matched approximately against the revenue that it generates. Yes, it is based on an assumed useful life, but that assumption does not necessarily reflect the actual life; and, more importantly, *it has nothing to do with the current value of the property*. If you buy a business property and depreciate it for 30 years (or whatever the IRS allows), does that mean it's worthless after 30 years, and your property tax bill should be zero? Good luck making that argument to the BTLA!

Depreciation for appraisal purposes measures the reduction in an asset's *value* over time; it is not a cost allocation. Telephone poles do lose their value, but not in 30 years. [Industry studies](#) indicate average

THE EDGE

Recently heard in the hall at the Legislative Office Building: "We exected on the bill this morning and ITL'd it; I need to get the blurb done by noon."

What?!

The legislature has its own jargon that can sound a little like a foreign language sometimes. There is not enough space here for a full exploration, but we can discuss a few of the more peculiar and ungrammatical expressions and suggest some alternatives.

exec (verb). Committees meet in "executive session" to debate and vote on bills they have heard. Many people refer to this process as "exeking." The word sounds funny and looks even funnier. Perhaps a better way to say it is simply, "The committee voted," or "The committee discussed and voted on the bill."

By the way, some people would omit the "k" from "exeking." Assuming, however, that the word should ever be written at all, adding the "k" is necessary to preserve the "k" sound, as in "p i c n i c k i n g" or "bivouacking." Without the "k," it would be pronounced as "exessing," under the rule that a "c" that is followed directly by an "e," an "i," or a "y" ordinarily has an "s" sound.

Continued on next page

pole lives of 75 or 80 years, possibly longer, and those findings are consistent with information about pole ages in New Hampshire. There is no magic formula for determining depreciation, but a 50-year life is a lot closer to reality than a 30-year life.

The House Ways and Means Committee is likely to vote on **HB 1198** next **Wednesday, March 2**. It is apparent that many committee members have their minds made up—they plan to support the amendment that was introduced last week, because it is what Fair-Point wants. But that doesn't mean you shouldn't try. Please contact [committee members](#) and ask them to **support the ASB's recommendation** as an amendment to the bill, or, alternatively, to kill the bill.

Medicaid Expansion Reauthorization Up For Big Vote

Although the reauthorization of the New Hampshire Health Protection Program (NHHPP) has been approved by the House Health, Human Services and Elderly Affairs Committee (17-1) as well as the full House of Representatives (207-136), it must also find approval before the House Finance Committee—and again on the floor of the House. At the Finance Committee hearing on February 17, the testimony and questions centered on the savings recognized under the program, the costs of a failure to reauthorize, and where the money will come from to pay for the small reduction in federal funding. Most of the testimony was in favor of reauthorization, and the committee heard directly from both hospital and insurance industry speakers—the players who will voluntarily split the bulk of the cost of the program over the two-year reauthorization period.

The NHHPP has saved money for municipalities through reduced expenditures on their local welfare programs. While those dollars are always hard to determine due to the nature of local welfare requirements, a study of city prescription costs showed a reduction of 60-90 percent since the program began. Harder to determine is the level of savings from those who return to work and no longer need assistance after getting medical help through the NHHPP. Also hard to determine are the avoided local welfare costs when the NHHPP coverage enables someone to obtain the health care he or she needs to stay employed.

The Finance Committee will hold a full-committee work session on **HB 1696** on Tuesday and Wednesday, March 1 and 2, at 10:00 a.m., with a final vote scheduled for Thursday, March 3, at 9:00 a.m. **Please contact the members of the [House Finance Committee](#) and urge them to support HB 1696. Talk with your local delegation as well and urge them to support the reauthorization.**

THE EDGE (Continued)

ITL (*verb*). Most readers know that when a committee believes a bill should be killed, its formal recommendation is “inexpedient to legislate,” or ITL. There is nothing wrong with abbreviating it, but turning “ITL” into a verb—“I urge you to ITL this bill”—is enough to make an English teacher cry. One could simply say, “I urge you to kill this bill”; or, if that seems too violent, “I urge you to oppose this bill.”

blurb (*noun*). In a body that uses polite, formal expressions such as “inexpedient to legislate” and “the gentleman from Manchester,” it is a little jarring to hear someone talk about writing the “blurb.” This unfortunate expression refers to the committee report on a bill that goes in the House calendar. The practice of calling it “the blurb,” rather than “the report,” probably reflects its typically short length—often just a few sentences, and rarely separated into paragraphs, regardless of length.

“Blurb” may be an accurate description, but it still seems a little rough. (On a positive note, we have not yet heard it turned into a verb—“I need to blurb for the calendar.”) Except in this column on this date, do not expect to see the word “blurb” in these pages. We will call it the committee report.



Agritourism, Take 2

As we mentioned back in [Legislative Bulletin #3](#), there are two bills in the legislature this year dealing with “agritourism”—one in the House and one in the Senate. The goal of both bills is to enhance the economic viability of agriculture by enabling farmers to engage in commercial activities that attract visitors to their farms and that are closely related to their primary farming activities, without excessive local regulation. Our goal, of course, is to make sure that local regulation is not completely undermined.

The House Environment and Agriculture Committee has already recommended **HB 1141** as Ought to Pass with [Amendment](#), and that bill will go to the full House on March 9. Meanwhile, the Senate Public and Municipal Affairs Committee has scheduled a hearing on **SB 345** for next **Wednesday, March 2, at 11:00 a.m., in LOB Room 102**. We worked on **SB 345** and believe it is reasonable, as its definition of agritourism is not overly broad, and it still allows room for local regulation. We also could live with **HB 1141**.

The legislature cannot pass both bills, and we are not sure what is going to happen, but it could get a bit messy. As mentioned, the two bills have the same goal, but they take different approaches, and neither side seems inclined to yield. We suspect that one or both bills will end up in a committee of conference. In the meantime, if you are interested or have any concerns about **SB 345**, please attend the hearing or contact [committee members](#) or your own senator; and please let us know if you have questions or concerns.

Senate Bill Increases Damage Cap

While the House is dealing with the municipal liability bills discussed in the first article, the Senate Public and Municipal Affairs Committee has a hearing next week on **SB 421**, which would increase the cap on damages in a personal injury action against a municipality from \$275,000 to \$325,000 per person, and from \$925,000 to \$1,000,000 per occurrence. While this may sound alarming, we believe it is reasonable.

The New Hampshire Supreme Court has held that damage caps are permissible as long as they are not unreasonably low. The statutory limitations have been adjusted occasionally to account for inflation; otherwise, at some point they would be deemed unconstitutionally low. When the caps were last increased in 2007, there was a discussion about building an inflation calculation into the statute; but that was deemed too complicated, and it was agreed that the numbers would be revisited again in a few years. That is what **SB 421** does—it accounts for inflation over the last nine years.

The bill also makes some technical changes to the statute. Subject to review, we believe these are not a problem. If we conclude that the bill causes any problems, we will sound the alarm; until then, keep your powder dry.

Action on Right-to-Know Bills

The House Judiciary Committee last week voted on a number of bills that would make minor (or, in some cases, significant) changes to the Right-to-Know Law. We support all of the committee’s recommendations.

(RTK Bills — Continued from Page 4)

The committee voted *Ought to Pass*, unanimously, on the following bills:

- [HB 1418](#), which amends RSA 91-A:2, II, the section that describes what information must be included in a public body’s meeting minutes. The bill states that non-public minutes must contain the same information. We believe this merely clarifies existing law. (Although non-public minutes are required to include the same basic information as public minutes, they may, of course, be sealed under certain circumstances.)
- [HB 1419](#), which states that minutes of a non-public session “shall record all actions in such a manner that the vote of each member is ascertained and recorded.” Although this would require a tiny bit more work for public bodies, it seems like a reasonable requirement. When a public body takes a vote in public session, everyone is able to see how the members vote. In non-public session, of course, the public can see nothing, so it seems reasonable to require that the minutes reflect how each member voted. Again, the minutes may be sealed if appropriate—but if and when the minutes can be made public, presumably there is no reason not to disclose how each member voted.
- The committee voted *Inexpedient to Legislate* on the following bills:
 - [HB 1413](#), which would establish a commission to study processes for resolving Right-to-Know Law complaints. Although we think this is not a bad concept, the makeup of the commission as proposed in the bill is badly skewed. The committee apparently had additional problems with the bill as well. The ITL vote was 11-3.
 - [HB 1417](#), which would require a public body to keep a record (although not minutes *per se*) any time it has a consultation with legal counsel or a collective bargaining session. That would be a major change to the Right-to-Know Law, which currently exempts these “non-meetings” entirely. We had significant concerns about this bill, and are pleased with the ITL recommendation. However, the vote was disturbingly close at 11-7.
 - [HB 1510](#), which would have made several changes with respect to non-public sessions. One of the changes would have been harmless, but there were problems with the others. The ITL vote was 16-2.

Please encourage your representatives to ***support the Judiciary Committee’s recommendations on all of the Right-to-Know Law bills***, and please contact us if you have any questions.

To view the weekly Legislative Bulletin from the NH School Boards Association, please click [here](#).

HOUSE CALENDAR
Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, MARCH 1

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:00 a.m. **HB 1292**, relative to the use of abandoned agricultural property.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

10:00 a.m. **SB 380**, establishing the drinking water and groundwater trust fund and establishing the New Hampshire drinking water and groundwater advisory commission.

WAYS AND MEANS, Room 202, LOB

1:45 p.m. **HB 1647-FN**, repealing laws regulating hawkers and peddlers and itinerant vendors

SENATE CALENDAR

TUESDAY, MARCH 1

FINANCE, Room 103, SH

1:45 p.m. **SB 527-FN-A**, making an appropriation to the police standards and training council, repealing the police standards and training council training fund, making an appropriation to the department of safety for the purchase of state police cruisers.

WAYS AND MEANS, Room 103, SH

9:45 a.m. **HB 359**, allowing all municipalities to adopt the property tax exemption to foster commercial and industrial construction.

WEDNESDAY, MARCH 2

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

10:00 a.m. **SB 421**, relative to liability of governmental units.

11:00 a.m. **SB 345**, relative to the definition of agritourism.

SENATE FLOOR ACTION

Thursday, February 18, 2016

SB 306, enabling the sampling of beer or wine at farmers' markets. **Passed with Amendment.**

SB 334, establishing a commission to study the planning functions of the office of energy and planning. **Passed.**

SB 367-FN, including state water pollution control and public water system grants proposed by the department of environmental services in the capital budget. **Inexpedient to Legislate.**

SB 393, relative to data privacy in the workplace. **Referred to Interim Study.**

SB 461-FN, relative to expenditures of the Winnepesaukee River Basin control program funds. **Passed with Amendment.**

(Senate Floor Action — Continued from Page 6)

SB 418, relative to obtaining a ballot to vote and adding National Guard members to the absentee voting laws. **Passed.**

SB 442-L, relative to property taxation of public real estate used or occupied by a private person. **NHMA Policy. Passed with Amendment.**

SB 486-FN, relative to election assistance for cities and towns. **Inexpedient to Legislate.**

SB 492-FN, relative to expenditures from the energy efficiency fund. **Passed; referred to F-S.**

SB 497-FN-A-L, relative to disposition of meals and rooms tax revenues to towns and cities. **Referred to Interim Study.**

SB 546-FN, relative to petitions for verification of checklists. **Passed; referred to F-S.**

SB 551-FN-A-L, establishing video lottery and table gaming at one location. **Tabled.**

Upcoming Events for NHMA Members

NHMA Workshop

March 10, 2016 Right-to-Know Law: Current Issues—Hanover Town Hall
Time: 7:00—9:00 p.m.
Click [here](#) to register

For more information please access our website: www.nhmunicipal.org and scroll down on the left to CALENDAR OF EVENTS and Click *View the Full Calendar*.

Contact us by phone at 1-800-852-3358 x3350 or email us at NHMAregistrations@nhmunicipal.org

NHMA Webinar

March 30, 2016 Half-Time: A Mid-Session Legislative Update
Time: 12:00—1:00 p.m.
Click [here](#) to register by noon on March 29, 2016.

Join Government Affairs Counsel Cordell Johnston and Government Finance Advisor Barbara Reid for a look at the status of legislation affecting municipalities after "Crossover." Crossover is the date (March 24 this year) by which a bill must pass either the House or the Senate in order to "cross over" to the other chamber for consideration.

This webinar will discuss the prospects for bills still alive at the State House, and offer a postmortem on a few that have been killed. The discussion will include, among others, local option fees, the Right-to-Know law, the retirement system, highway funding, planning and zoning issues, assessing, municipal tort liability, and other legal matters.