

LEGISLATIVE BULLETIN

It's That Time of Year

Bulletin #10, 2016 Session
March 4, 2016

We hope we don't need to remind anyone that Tuesday is town meeting day in most New Hampshire towns. We thank the House of Representatives for not scheduling any hearings that day, as many of its members will be attending to duties as local officials. We wish everyone a successful, productive, and peaceful town meeting.

Committee Adopts Massachusetts Plan for Taxing Poles

Call to action: Please read the article that follows, then ask your representatives to vote down the House Ways & Means Committee's recommendation of Ought to Pass with Amendment on HB 1198 next week. Representatives should support a minority amendment that implements the Assessing Standards Board's recommendation; failing that, they should vote to kill the bill.

Relying largely on the rationale that Massachusetts does it that way, the House Ways & Means Committee voted 16-5 on Wednesday to recommend a proposal drafted by FairPoint Communications representatives for determining the value of telephone poles and conduits for property tax purposes. (Both the bill docket and the House calendar incorrectly report that the vote was 18-5.) Speaking in support of the FairPoint amendment to **HB 1198**, one committee member explained that several other states use similar methods, including Florida and Rhode Island; but the FairPoint proposal is most similar to the method used by Massachusetts—and New Hampshire should follow the Bay State's lead!

As a refresher, here is a brief summary of how we got here:

- At the urging of legislators, an Assessing Standards Board subcommittee spent several months reviewing the issue of pole and conduit values, and ultimately recommended a valuation formula to the full board. That formula would use the “replacement cost new of the telecommunications pole or conduit, less depreciation calculated on a straight-line basis for a period of 40 years with a residual value of 20 percent.” The determination of values would be made by the ASB after receiving public input.

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- The full ASB adopted the subcommittee’s recommendation, but changed the 40-year life to 50 years, based on evidence that poles in New Hampshire last much longer than that.
- **HB 1198** was filed as a “placeholder” for the ASB’s recommendation. However, when the ASB issued its recommendation, FairPoint didn’t like it, so instead of incorporating the ASB recommendation, an amendment was offered that changed the ASB’s 50-year life proposal to 30 years, and provided for the determination of values to be made by DRA, not the ASB, and with no public input.

At the committee’s executive session on Wednesday, several members waged a determined battle against the FairPoint amendment. Responding to the Massachusetts comparison, one member remarked, “I don’t think we should necessarily base our tax policy on what our neighboring state of Massachusetts does.” Certainly, it does seem unlikely that the committee would support enacting, say, an income tax or a sales tax because “Massachusetts does it.”

Another member explained correctly that the Massachusetts model, even if politically acceptable, is not relevant, because Massachusetts treats poles as personal property and does not purport to tax them based on market value. In contrast, New Hampshire law treats poles as real estate, which must be assessed at market value, yet the FairPoint amendment bears no relation to actual market value.

Those points fell on deaf ears. The minority proposed a different amendment that would have implemented the ASB recommendation, but that was defeated by a 15-6 vote. A member supporting the FairPoint amendment claimed that it was identical to what the ASB had proposed, except for the 30-year life and the exclusion of the ASB and the public from determining the values. Well, yes—and other than that, how did Mrs. Lincoln enjoy the play?

Thus, the work of the ASB appears to have been for nothing. After months of work by the ASB, the committee rejected its recommendation and adopted an arbitrary formula designed to satisfy the telephone companies.

The committee’s proposal will result in a gross under-valuation of telephone company assets, leading to larger property tax bills for all other taxpayers. There is no rational basis for assuming a 30-year life for telephone poles. Some legislators have said that the formula may not be perfect, but they want to pass this bill to put an end to the hundreds of lawsuits that the telephone companies have filed. Assuming that it is good policy to make lawsuits go away through legislation, the reality is that by passing a law that has no rational basis, the legislature is only setting itself up for more lawsuits.

THE EDGE

With town meeting week upon us, it seems like a good time to reflect on what town meeting is and to consider how it has evolved.

Many people think of the town election and the town meeting as separate events; but officially, the election of officers and the conduct of the “business session” are all part of a single town meeting, even if they take place on different days.

Historically, town officers were elected by voice vote on the floor of the open town meeting. In the mid-19th century, towns began to elect their officers by ballot, but the voting was still conducted during the open town meeting.

Those who have been attending town meeting for 50 years or more may recall that it was not until 1969 that the legislature authorized a bifurcated town meeting (see RSA 39:2-a), with the election of officers and certain other matters voted on by official ballot on the second Tuesday in March (or May in some towns), and the transaction of all other business at a second session held on some other day.

If a town has *not* adopted a bifurcated town meeting, it has a choice of electing officers by either official or unofficial ballot. In an official ballot system, candidates file a

Continued on next page

HB 1198 will go to the full House next Wednesday, March 9. Again, please contact your representatives before Wednesday and urge them to vote against the committee's recommendation. And if you have any questions, please contact our Government Affairs staff.

Cable Companies Afraid of Municipal Broadband

Also next week, the House will vote on [HB 1180](#), an important bill that would authorize municipalities to issue bonds for broadband infrastructure. This is an issue in a number of municipalities that have been waiting for years for high-speed internet access. With no indication that private companies are going to put up the infrastructure for the “last mile” of service anytime soon, municipalities would like the authority to do it themselves.

Current law authorizes the issuance of municipal bonds for “broadband infrastructure . . . *to be purchased or constructed in areas not served by an existing broadband carrier or provider.*” This has proven insufficient, because getting to the “areas not served” necessarily requires going through areas that *are* served, which is not authorized. **HB 1180** would delete that troublesome language.

Who could oppose providing broadband service to remote areas? Why, the telecommunications lobby, of course! At the hearing on this bill a few weeks ago, telecom representatives packed the room to describe a parade of horrors that the bill allegedly would unleash. They recited horror stories about cities—Burlington, Vermont; Groton, Connecticut; and Provo Utah—that had established publicly owned internet networks, which then experienced serious financial problems (not mentioning, of course, the scores, if not hundreds, of municipally owned networks that are operating successfully). Their concern, they said, was for the taxpayers who ultimately would have to pick up the tab if a municipality defaulted on its bond.

Please. The telecoms are worried about municipal finances and individual taxpayers? If you believe that, someone needs to take your keys away. As these companies have demonstrated repeatedly, the only taxpayers (or tax *non*-payers, see article above) they care about are themselves.

Aside: When was the last time a New Hampshire municipality defaulted on a bond? On the other hand, can you think of a telecommunications company in New Hampshire that has gone through bankruptcy in, say, the last decade? So who is the better risk?

THE EDGE (Continued)

declaration of candidacy with the town clerk several weeks before town meeting, and their names go on a printed ballot. The election is conducted in the same manner as a state election.

In an unofficial ballot system, there are no declarations of candidacy, and no names printed on the ballots; rather, nominations are made on the floor of the town meeting. Voting is by secret ballot, but the voting is conducted during open meeting.

We're not sure how many towns still use an unofficial ballot system, but the number is either zero or close to it; and electing officers by voice vote is no longer an option. Too bad — it might make town meetings a little more lively!



Eventually, some of the witnesses explained their real concern: they did not believe municipalities should be competing with private businesses.

Competing? Where is the competition? The private companies are not covering the areas municipalities want to cover! That's the whole point—if Comcast and Time Warner were providing service to these areas, this bill would be unnecessary. And by the way, don't municipalities "compete" with private industry in other areas, such as water supply, electric service, trash disposal, road construction, parking facilities, recreation facilities, public transportation, and ambulance service? When these services are available (and at competitive prices), there is no need for the municipality to step in; but when the service is not available at any price, which is the situation here, it is outrageous to prevent the municipality from providing the service.

The opponents' arguments are nonsense. In reality, the opposition is part of a [larger, national campaign](#) to prohibit the development of municipal internet service so the private companies can control access and prices. Again, this might be slightly less heinous if the companies were actually providing service to the areas in question. No municipality in New Hampshire has any interest in creating a large municipal internet network. They are merely trying to get service to remote areas that otherwise will wait years for the big companies to get to them.

Surprisingly, a slim majority (9-7) of the Municipal and County Government Committee bought the telecoms' arguments and voted to recommend killing **HB 1180**. The arguments are not persuasive, and we believe it may be possible to overturn the committee's recommendation.

Please call your representatives before Wednesday and urge them to vote down the committee's ITL recommendation and support a motion of Ought to Pass on HB 1180. This issue may not directly affect your municipality, but it is time to remind legislators that they were elected to represent their cities and towns, not their telephone and cable companies.

Committee Rejects Municipal Liability Bills

On a more positive note, the House Judiciary Committee voted overwhelmingly this week to recommend killing two bills that we have written about in recent weeks, **HB 1687** and **HB 1688**, which would have greatly expanded municipal liability in negligence cases. The votes were 19-1 and 18-2, respectively. Both bills will go to the full House for a vote next week. They are on the consent calendar, and all indications are that they will stay there; so they are not officially dead yet, but they are close. In the extremely unlikely event that something changes, you will read about it here.

Needless to say, those votes were very gratifying. Even more gratifying were the reasons given. Of the committee members who discussed their votes, almost every one talked about having heard from his or her selectmen, town administrator, police chief, recreation director, or other local officials about the bills. One member said he had received as many e-mails about these bills as he had about bobcat hunting—quite a statement!—and the committee chairman told us that it was definitely the calls and e-mails from local officials that made the difference.

(Municipal Liability — Continued from Page 4)

Thank you for getting involved! (And thank you to committee members for listening.) This is how municipal legislative advocacy ought to work. Doesn't it feel good to know you made a big difference? Give yourself a pat on the back—you deserve it!

Now, if you want to keep up the momentum, why not call your representatives and talk about the bills mentioned in the first two articles above?

Medicaid Expansion Advances

By a strong bipartisan 18-8 vote, the House Finance Committee has recommended **HB 1696**, the main Medicaid expansion reauthorization bill, as Ought to Pass with Amendment (OTPA). The bill will go before the full House next week, where it has already received favorable consideration. While you are talking with your legislators about the other bills we've asked for help on, please urge them to support **HB 1696** as well.

A recent survey by the New Hampshire Local Welfare Administrators of their members continues to support the conclusion that the New Hampshire Health Protection Program (NHHPP) is saving municipal dollars spent through local welfare programs. It was clear that cities had seen a drop in prescription expenses, and the survey information as well as anecdotal evidence confirms that experience among towns as well.

The program is extended for only two years, and the committee amendment provides that the administrative costs—which have been paid by the state—will now be covered by the hospitals and insurance carriers, which are also picking up the additional costs resulting from the reduction in federal funding. The amendment also clarifies the NHHPP repeal timeline and the process in the event of the failure of the funding scheme, which was put in place to avoid any state general fund costs.

NHMA supports the passage of **HB 1696** because of the positive results it has had on local welfare programs and because of the substance abuse treatment options that will be covered.

Water Trust Fund Moving Forward

On Tuesday the House Resources, Recreation and Development Committee voted unanimously to recommend Ought to Pass on **SB 380**, which establishes a drinking water and groundwater trust fund using the proceeds (expected to be in the \$300 million range) from the state's lawsuit against Exxon Mobil Corporation relating to MTBE contamination. The purpose of the trust fund is to address widespread and persistent contamination of the state's drinking water and groundwater through on-site treatment, expansion of drinking water infrastructure, and other alternatives, including cost-sharing grants to municipalities and water utilities. The bill will go to the full House on Wednesday. Please urge your representative(s) to support the committee recommendation of Ought to Pass on **SB 380**, which implements a long-standing **NHMA policy**.

Delayed and Deferred Projects Get Thumbs Up

On Wednesday an [amendment](#) to **HB 1428** received unanimous support from the House Finance Committee. The amendment provides funding for several projects on the Department of Environmental Services' delayed and deferred list for state aid. These eight projects (three in Littleton, two in Portsmouth and one each in Exeter, Hanover and Rochester) had all received local financing approvals before the moratorium cutoff date of December, 2008, but were not funded in the current state operating budget. **HB 1428** as amended proposes to begin grant payments for these projects from excess money in the clean water revolving loan administrative fee account. We thank committee members for their support of this funding proposal and urge House members to pass **HB 1428** as amended.

A Shift in the Action

You may notice that there is not a lot in the calendar section of this week's *Bulletin*. It's not that nothing is happening next week; it's that both chambers have finished most of their hearings for the first half of the session, so there is not much committee work right now. Instead, most of the action will be in the full House and Senate, where they will be acting on the committee reports.

The House will be in session next Wednesday and Thursday, and the Senate on Thursday. The House is expecting two very long days: we have not counted, but have been told that there are about 270 bills on the calendar for action! Fortunately, a lot of those are on the consent calendar.

Get Involved in NHMA's Legislative Policy Process

As we mentioned a few weeks ago, NHMA's biennial legislative policy process is getting underway. Here are two items for your consideration:

1. Legislative Policy Proposals. It is time to submit your legislative policy proposals. If you are a municipal official (or board) with an idea for legislation that could improve municipal government, please consider submitting a proposal.

You can download the NHMA Legislative Policy Proposal Form [here](#). A policy proposal form should accompany each proposed legislative policy. Please follow the instructions to submit the form, and note that all proposals must be submitted by April 22, 2016.

2. Policy Committees. We are still recruiting volunteers to serve on our three legislative policy committees. These committees will review the legislative policy proposals submitted by local officials and NHMA affiliate groups and make recommendations on those policies, which will go to the NHMA Legislative Policy Conference in September.

If you are a local official in an NHMA member municipality and are interested in serving on one of the policy committees, please contact the Government Affairs staff at 800-852-3358, ext. 3408, or governmentaffairs@nhmunicipal.org.

Each of the committees deals with a different set of municipal issues. The committees and their subject areas are as follows:

- Finance and Revenue – budgeting, revenue, tax exemptions, current use, assessing, tax collection, retirement issues, education funding.
- General Administration and Governance – elections, Right-to-Know Law, labor, town meeting, charters, welfare, public safety.
- Infrastructure, Development, and Land Use – solid/hazardous waste, transportation, land use, environmental regulation, housing, utilities, code enforcement, economic development.

When you contact us, please indicate your first and second choices for a committee assignment. We will do our best to accommodate everyone’s first choice, but we do need to achieve approximately equal membership among the committees. We hope to have 15-20 members on each committee.

There will be an organizational meeting for all committees on April 8. After that, each committee will meet separately as many times as necessary to review the policy proposals assigned to it—typically three to five meetings, all held on either a Monday or Friday, between early April and the end of May.

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

FRIDAY, MARCH 11

ASSESSING STANDARDS BOARD, Room 304, LOB

9:30 a.m. Regular meeting.

SENATE CALENDAR

TUESDAY, MARCH 8

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:00 a.m. **SB 347**, enabling the state and municipalities to adopt laws and ordinances regulating attire on state and municipal property.

SENATE FLOOR ACTION

Thursday, March 3, 2016

SB 353, relative to names on ballots. **Passed.**

SB 366, establishing a committee to study enforcement of the state right-of-way by the department of transportation. **Inexpedient to Legislate.**

SB 370, establishing a committee to study real time threat notification systems to link schools with law enforcement when schools are under direct threat. **Passed.**

SB 395, relative to minimum housing standards for tenants with health or respiratory issues. **Referred to Interim Study.**

SB 410, relative to an optional ban on plastic bags. **Inexpedient to Legislate.**

SB 443, relative to taxation of qualifying historic residential structures. **Referred to Interim Study.**

SB 445-FN-L, suspending the registration fee for the sale of municipal bonds in New Hampshire for 2 years. **Tabled.**

SB 452-FN, requiring certain state agencies to conduct an audit of laws governing coastal regions to enable authorities to take appropriate actions. **Passed with Amendment.**

SB 455-FN, relative to immunity for injuries from the possession or use of a firearm by an employee or official of a political subdivision. **NHMA Policy. Tabled.**

SB 471-FN, relative to parking for persons with disabilities. **Tabled.**

SB 472-FN, relative to the acquisition and use of certain equipment by state and local law enforcement agencies. **Referred to Interim Study.**

SB 475-FN, requiring law enforcement agencies to file crime reports with the department of safety. **Passed with Amendment. Referred to Finance.**

SB 487, relative to missing vulnerable adults. **Passed with Amendment.**

SB 493-FN-A, establishing a low-digit vanity number plate fee and dedicating the revenues collected to bridge aid for municipal bridges. **Inexpedient to Legislate.**

SB 524, relative to state procurement card rebates. **Passed.**

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

Beginning in April, 2016—Local Officials Workshops—Various Locations

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.