

# LEGISLATIVE BULLETIN

## Bill Expands Eligibility for Veteran’s Credit

Bulletin #13, 2016 Session  
March 25, 2016

On Wednesday the Senate Public and Municipal Affairs Committee heard testimony on [HB 430](#), which proposes to expand the eligibility criteria for the veteran’s property tax credit. Current criteria require service in a qualifying war or armed conflict listed in RSA 72:28, V. The bill would repeal that list and instead provide the credit to any person who served not less than 90 days in the armed forces of the United States and was honorably discharged. **HB 430** was initially introduced in the 2015 legislative session, was retained last year by the House Municipal and County Government Committee along with two other veteran’s credit bills, and was the only one of the three to pass the House early in the 2016 session.

Our concern with the bill, both last year and this year, deals with two issues: First, is this expansion of the eligibility criteria a local option, or is it mandated? Second, how many additional veterans could qualify for the credit under this bill? The answers to both questions remain unclear.

The analysis on the face of the bill states that the “changes apply only after adoption by municipalities pursuant to RSA 72:27-a.” However, nowhere in the actual language of the bill does it say that. Additionally, the current “local option” component of the veteran’s credit deals only with the dollar amount of the credit (the standard credit is \$50 and the optional credit is \$51 to \$500). There is no local option regarding eligibility criteria, as there is with the elderly exemption, for example, which has local option eligibility criteria regarding asset and income levels. So it is unclear whether RSA 72:27-a, which provides that a statutory change in property tax exemptions and credits takes effect only upon adoption by the municipality, would apply in this case.

The additional number of veterans who could potentially qualify under the new eligibility criteria is also unclear. Estimates range from 1,000 statewide (per one of the bill sponsors) to over 50,000 (per information from the Veterans Data Center and from the NH Department of Employment Security). With more than two-thirds of municipalities providing an optional veteran’s credit at the maximum amount of \$500, there

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could be a significant property tax shift and increase in the property tax rate in many municipalities if hundreds or thousands of additional veterans qualify for the credit. One municipality estimated that the potential impact could be nine cents on its tax rate. It appears the tax shift could be over half a million dollars in each of the state's two largest cities, unless they vote to reduce the amount of the credit for all veterans, which is an option.

The committee was clearly sympathetic to the underlying goal of the bill—to treat all veterans equally, regardless of when they served—but was also concerned about the confusion surrounding the local option issue, and requested that NHMA work with the bill sponsor and others to draft an amendment addressing that concern. We are in the process of doing that and will keep you posted as to the outcome of our efforts.

### **Pole Valuation Hearing May Be Soon**

Those who are interested in [HB 1198](#), the bill establishing a valuation formula for telephone poles and conduits, should anticipate a hearing in the near future—not next week, but possibly the next. We have no inside information about this, but we do know the bill has been referred to the Senate Ways and Means Committee, and of the bills that are currently in that committee, all but three will have had their hearings by the end of next week. Of course, there will be more bills coming from the House, but as of right now, the committee won't have much else its agenda after next week.

The committee meets on Tuesday mornings, so a hearing on Tuesday, April 5, seems like a good possibility. We will, of course, provide notice when a hearing is actually scheduled.

Although we were pleased that the House rejected the committee recommendation two weeks ago and adopted a floor amendment that made the bill more palatable (see [Legislative Bulletin #11](#)), the bill still is not as good as it could be, and it will likely result in a significant decrease in property valuation in many municipalities. We know some municipalities continue to be concerned about this, because it will cause a significant tax shift to other taxpayers. If you are able to determine how **HB 1198** will affect telephone company property valuation in your municipality, please consider sharing that information with the [Ways and Means Committee](#) and your own senator. This may be your last chance to weigh in on this issue!

## **THE EDGE**

### ***Fiscal notes***

Anyone who has spent much time looking at House and Senate bills has noticed that some bills have “fiscal notes” at the end. RSA 14:44 requires that any bill having a “total fiscal impact” of \$10,000 or more on the state or any county or municipality must be accompanied by a fiscal note stating the estimated fiscal impact. A “bill with a fiscal impact” is defined as one that would require the state or political subdivision to appropriate or expend funds, that would change the taxable valuation of a political subdivision, or that would otherwise change the revenues of the state or a subdivision.

Fiscal notes are written by the state's office of the Legislative Budget Assistant (LBA), but are based on information gathered from state agencies and others. For bills that have a potential fiscal impact on municipalities, the LBA generally requests information from NHMA.

A request from the LBA is submitted early in the legislative process, usually in the late fall before the legislative session begins, when a legislative service request (LSR) has been submitted and a bill has been drafted, but before it has been finalized and introduced.

*Continued on next page*

## Governor Signs Accessory Dwelling Unit Bill

The Governor last week signed [SB 146](#), which requires any municipality with a zoning ordinance to allow accessory dwelling units (ADUs) in all districts where single-family dwellings are permitted. This bill has caused significant consternation in some municipalities, but there are a number of provisions in the bill that make it less troubling than people may assume.

First, the bill gives municipalities the option of allowing ADUs only by special exception or conditional use permit. (If a municipality does not build this requirement into its ordinance, ADUs will be allowed as a matter of right.) This gives the planning or zoning board significant control, and will allow the board to reject an ADU if conditions warrant.

Other protections include:

- the municipality is only required to allow one ADU per single-family dwelling;
- the municipality may require that either the principal unit or the ADU be owner-occupied;
- minimum and maximum size limits may be imposed, but the maximum size may not be less than 750 square feet;
- the property must still comply with setback, lot coverage, and similar requirements;
- an interior door between the units may be required (but there can be no requirement that it remain unlocked);
- adequate off-street parking may be required;
- the municipality may establish design standards “for the purpose of maintaining the aesthetic continuity with the principal dwelling unit as a single-family dwelling”; and
- the municipality is not required to allow detached ADUs.

Finally, one of the most important provisions of the bill is that it does not take effect until June 1, 2017. This will give every municipality a full year to review and amend its zoning ordinance as necessary to accommodate the new requirements. ***Cities and towns should start thinking about zoning amendments now or in the near future. If your ordinance does not address ADUs, the state law will govern, leaving the municipality with little control.***

This new law will be the subject of significant discussion over the next year. Look for an article in *Town & City* magazine and inclusion of the topic in NHMA’s Municipal Law Lecture Series in the fall. We also expect there will be discussion at the Office of Energy and Planning’s conference on June 4, and your regional planning commission may also have something to say about it. And, as always, NHMA members are encouraged to call us with questions.

### THE EDGE *(Continued)*

Unfortunately, NHMA’s responses tend to be rather vague. This is not due to evasiveness; it is that we usually do not have sufficient information to estimate the dollar impact. Although we certainly can predict that a new tax exemption will reduce property valuations or that a new labor mandate will increase municipal costs, we rarely have the information from which we can quantify the impact on a specific municipality, let alone on all of the state’s 234 municipalities. There are some exceptions (changes in revenue sharing or highway aid), but more often than not, the best we can say is that a bill will increase or decrease local revenues or expenditures by “an indeterminable amount.”

Providing specific information is made more challenging by two other factors. First, the sheer volume of requests—we responded to about 100 requests in a two-month period last fall—leaves little time for each request. Second, each request comes with a reminder that the contents of the bill are confidential until it is formally introduced. Thus, even if detailed information is available, we may not be able to obtain that information without violating the confidentiality of the legislation.

The fiscal note process is far from perfect, but we do our best to describe the impacts as thoroughly as possible. If you ever have questions about a fiscal note, please contact the Government Affairs staff.

## Net Metering

There are two bills in the legislature this year, [HB 1116](#) and [SB 333](#), dealing with net energy metering—the program under which an electricity customer who generates his or her own electricity, usually with solar power, is able to sell excess energy back to the electric utility. (A third bill, **HB 1275**, was killed in favor of **HB 1116**.) Net metering is one of the factors that make conversion to solar power economically viable, but there is currently a limit of 50 megawatts on the total capacity that may be generated by “eligible customer-generators,” and that limit has been reached, or will be soon.

We are by no means experts on this issue, but we do know that a number of municipalities are interested in net energy metering—particularly because of the availability, since 2013, of “group net metering”—and the current limit is getting in the way. Both **HB 1116** and **SB 333** would increase the net metering limit—**HB 1116** to 100 megawatts, and **SB 333** to 75 megawatts. On its face, **HB 1116** sounds better, but those who know more than we do have supported both bills. The bills have some common sponsors, and we understand the interested parties are working to reach a deal on one of the bills, at which time the other presumably will become superfluous.

For now, **HB 1116** is the next one to have a hearing, before the Senate Energy & Natural Resources Committee next **Wednesday, March 30, at 9:30 a.m., in State House Room 100**. If your municipality is interested in this issue, please let your senator and your representatives know that you support these bills.

## Legislative Potpourri

As we wait for more hearings to be scheduled, this is a good time to catch up on some bills we have not reported on recently, or not reported on at all. Here is an update on some of the bills working their way through the legislature:

### *Voting on Zoning Variances*

We reported several weeks ago on **HB 1203**, relative to voting on zoning variances. As we explained then, an applicant must establish five specific criteria to have a variance granted by a zoning board of adjustment (ZBA); if the board finds that any one of the criteria is not satisfied, the variance is not granted.

Different ZBAs follow different procedures in considering these criteria. Some simply take a single vote on whether the five criteria are satisfied. Others vote separately on each criterion, and grant the variance if each one receives a majority vote, regardless of the breakdown of those majority votes. Others vote separately on each criterion and grant the variance only if the *same* majority votes affirmatively on all five criteria.

As introduced, [HB 1203](#) was intended to codify this last approach as the required procedure. It requires that the board vote on each criterion separately, and allows the granting of a variance “only if 3 members of those present vote in the affirmative on all 5 criteria.”

*(Potpourri — Continued from Page 4)*

The sponsor’s intent, and our reading of the bill, was to allow a variance only if the *same* three members vote affirmatively on all five criteria. However, members of the House committee that heard the bill thought this intent was unclear, so the sponsor introduced an amendment to clarify it. Curiously, committee members voted down that amendment as being too restrictive, and then approved the bill as introduced—which in our opinion was substantively no different from the proposed amendment! The House subsequently passed the bill on a voice vote.

Our concern, then, is that the House has passed a bill that we interpret, and believe courts will interpret, as requiring the same three ZBA members to vote affirmatively on all five criteria, but that is not what the committee intended. We believe the intent of the bill needs to be clarified, and will suggest as much when it gets to the Senate. We do not have a position on the bill, but if the legislature is going to pass something, it is important that its intent be clear.

**HB 1203** has been referred to the Senate Public and Municipal Affairs Committee, but has not yet been scheduled for a hearing. If you are interested in the bill, please keep an eye on the Senate calendars.

### ***RGGI Funds***

The Senate this week passed [SB 492](#), which, among other things, increases to \$5 million per year (from \$2 million) the amount of money available for municipal and school district energy efficiency projects from the sale of carbon allowances under the regional greenhouse gas initiative (RGGI). NHMA has supported the bill, which now goes to the House, presumably to the [Science, Technology and Energy Committee](#). Please contact members of the committee and ask them to support the bill.

### ***Retention of Electronic Records***

The House has passed [HB 1395](#), an **NHMA policy bill** that could help municipalities deal with a nagging problem related to long-term retention of records. Current law (RSA 33-A:5-a) states that municipal records that are required to be retained for longer than ten years must be kept on paper, microfilm, or both. Given the number of records that must be retained permanently (all minutes of all public body meetings, for example), storing them on paper is unwieldy; and microfilm is all but obsolete.

**HB 1395** would allow a third option: a portable document file (PDF). Records stored in PDF format take up no physical space, can be accessed from more than one device, and are less susceptible to damage. The bill changes the law to state that any record required to be retained for more than 10 years “shall be transferred to paper *or microfilm, or stored in portable document format on a medium from which it is readily accessible.*” *We think this is a reasonable approach, and hope the Senate will agree. The bill has been referred to the Public and Municipal Affairs Committee, but a hearing has not been scheduled yet.*

### ***Distributing Clothing at Polling Places?***

The House has passed an odd bill that would make it unlawful to “distribute or post at a polling place any . . . articles of clothing” that are intended to influence voters at the election.

You may be wondering whether the distribution or posting of clothing at polling places has been a problem. To our knowledge, it has not been. Apparently, however, that is not the problem the bill is intended to address. Testimony at the House hearing centered on concerns about people *wearing* clothing—typically T-shirts or hats—bearing a candidate’s name. The bill is intended to prohibit that conduct.

That is fine, but it is not what the bill does. It amends RSA 659:43, I, which currently states, “No person . . . shall distribute or post at a polling place any campaign material in the form of a poster, card, handbill, placard, picture, or circular which is intended to influence the action of the voter [s] . . .” Instead of adding a separate clause prohibiting the *wearing* of clothing that is intended to influence voters, **HB 1503** merely adds the words “or articles of clothing” to the list of items that may not be “distributed or posted.”

This is a formula for confusion. If this becomes law, presumably the Secretary of State’s office, which proposed the bill, will instruct moderators to prohibit people from wearing candidate-specific clothing at polling places. When a moderator tries to enforce that rule, a well informed “violation” will point out that the statute merely prohibits *distributing or posting* clothing. Then what?

We did not follow the bill very closely in the House, because we assumed someone would correct the obvious flaw, but that did not happen. We will pay more attention in the Senate.

### ***Right-to-Know Law Changes***

The Senate Executive Departments and Administration Committee this week made quick work of two bills to amend the Right-to-Know Law. The committee voted unanimously to recommend passage of both bills:

- **HB 1418** 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 as public minutes. 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** 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.
- This would not require the public body to record a roll call of every vote in non-public session, although that would be an acceptable approach. Because the minutes must already indicate which members were present, a notation that a vote was unanimous would clearly indicate how all members voted. If a vote was less than unanimous, the minutes could identify the members who voted in the minority, and thus identify implicitly which members present voted in the majority.

Both bills will go to the full Senate next week.

## Legislators Want to Hear from You

We constantly preach the importance of letting your legislators know your views on the bills they are considering, and in recent *Bulletins* we've pointed to evidence that it does work. In case you are looking for more proof, [here is an opinion](#) from one legislator. We assure you, she is not alone. Call your legislators—they love to hear from you!

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 29

##### **FINANCE, Rooms 210-211, LOB**

11:00 a.m. **SB 485-FN-A**, establishing a state grant program to assist state and local law enforcement agencies in addressing the opioid crisis and making an appropriation therefor.

##### **HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB**

2:15 p.m. **SB 487**, relative to missing vulnerable adults.

##### **TRANSPORTATION, Room 203, LOB**

1:00 p.m. **SB 359**, relative to funding electric vehicle charging stations with municipal registration permits.

1:30 p.m. **SB 433**, relative to exclusions from seasonal highway weight limit regulation.

#### WEDNESDAY, MARCH 30

##### **PUBLIC WORKS AND HIGHWAYS, Room 201, LOB**

11:00 a.m. **SB 364**, establishing a committee to study the feasibility of incorporating complete streets into the 10-year transportation improvement plan. **NHMA Policy**.

### SENATE CALENDAR

#### TUESDAY, MARCH 29

##### **COMMERCE, Room 100, SH**

1:00 p.m. **HB 1633-FN**, relative to the use of the Family and Medical Leave Act time as it applies to workers' compensation.

1:30 p.m. **HB 1252**, permitting employers to pay wages to employees weekly or biweekly.

##### **HEALTH AND HUMAN SERVICES, Room 101, LOB**

1:30 p.m. **HB 1626-FN**, relative to drug take-back programs.

##### **TRANSPORTATION, Room 103, LOB**

1:15 p.m. **HB 1430-FN**, relative to registration of compact utility tractors.

##### **WAYS AND MEANS, Room 103, SH**

10:00 a.m. **HB 1219-FN-L**, relative to the repurchase of tax-deeded property by the former owner and the costs therefor.

**WEDNESDAY, MARCH 30**

**ENERGY AND NATURAL RESOURCES, Room 100, SH**

9:30 a.m. **HB 1116**, relative to net metering.

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

9:45 a.m. **HB 1244-L**, relative to municipal cemeteries.

10:00 a.m. **HB 1624-FN**, relative to electioneering by public employees.

10:20 a.m. **HB 1313-FN**, relative to eligibility to vote and relative to availability of voter information.

**HOUSE FLOOR ACTION**

Wednesday, March 23, 2016

**HB 586-FN-LOCAL**, relative to registration of automobile utility trailers. **Referred to Interim Study.**

**HB 602-FN**, relative to the use of drones. **Passed with Amendment.**

**HB 636-FN**, relative to forfeiture of property. **Passed with Amendment.**

**HB 1134**, relative to open access to broadband infrastructure. **Tabled.**

**HB 1144-LOCAL**, relative to notice for sessions of correction of the check list. **Passed with Amendment.**

**HB 1153**, prohibiting a political subdivision from adopting residency restrictions on sex offenders. **Passed.**

**HB 1243-FN-LOCAL**, relative to storm water or sewage penalties. **Tabled.**

**HB 1263**, authorizing municipalities to use form-based codes as an alternative zoning regulation. **Tabled.**

**HB 1292**, relative to the use of abandoned agricultural property. **Passed.**

**HB 1298**, relative to damage to private property. **Passed with Amendment.**

**HB 1359**, relative to the tax credit for service-connected disability. **Tabled.**

**HB 1568-FN-A**, (New Title) relative to prepaid road tolls for electric vehicles. **Referred to Interim Study.**

**HB 1630-FN-LOCAL**, relative to calculating the base cost of an adequate education. **Inexpedient to Legislate.**

**HB 1647-FN**, repealing laws regulating hawkers and peddlers and itinerant vendors. **Inexpedient to Legislate.**

*(House Floor Action — Continued from Page 8)*

**HB 1655-FN**, (New Title) relative to the municipal registration fee for an agricultural/industrial utility vehicle used exclusively for farming or agriculture. **Passed with Amendment.**

**HB 1699-FN-A-LOCAL**, establishing a licensed alcohol and drug counselor in the bureau of emergency medical services to develop a training program for fire and emergency medical services personnel and making an appropriation therefor. **Tabled.**

### **SENATE FLOOR ACTION**

Thursday, March 24, 2016

**CACR 27**, (New Title) relating to the operating budget. Providing that the state shall not spend more from any fund than such fund receives in revenue, nor use the proceeds of any bond to fund its annual operating expenditures. **Passed with Amendment.**

**HB 377**, establishing a state geographic information system committee. **Passed with Amendment.**

**HB 1438-FN-L**, relative to the registration of antique trailers. **Passed.**

**SB 347**, enabling the state and municipalities to adopt laws and ordinances regulating attire on state and municipal property. **Passed with Amendment.**

**SB 362**, requiring notice to planning boards of placement of signs on scenic byways. **Passed with Amendment.**

**SB 365**, relative to traffic control measures. **Tabled.**

**SB 421**, relative to liability of governmental units. **Passed with Amendment.**

**SB 488-FN-L**, requiring reasonable accommodations for pregnant workers. **Passed with Amendment.**

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

**SB 507-FN**, authorizing online voter registration. **Inexpedient to Legislate.**

**SB 509-FN**, relative to voter registration forms and relative to voter identity verification. **Passed.**

**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. **Passed with Amendment.**

**SB 546-FN**, relative to petitions for verification of checklists. **Passed.**

## Upcoming Events for NHMA Members

### NHMA Workshops

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

For more information please access our website: [www.nhmunicipal.org](http://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](mailto:NHMAregistrations@nhmunicipal.org)

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### 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.