New Hampshire Municipal Association

THE SERVICE AND ACTION ARM OF NEW HAMPSHIRE MUNICIPALITIES

LEGISLATIVE BULLETIN

Bulletin #17, 2016 Session
April 22, 2016

Committee Recommends Pole Valuation Bill

The Senate Ways & Means Committee voted 4-1 this week to recommend passing **HB 1198,** the telephone pole valuation bill, with an amendment that makes several changes to the bill as passed by the House.

The good news is that the committee resisted pressure to reduce the bill's already short 40-year depreciation period to 30 years, as the bill's sponsors and the telecom industry had urged. The bad news is that it also rejected our request to increase the period to 50 years. Thus, the valuation formula remains the same as in the House version.

The principal change from the House version is that the amendment removes the Assessing Standards Board from the process of establishing a schedule of replacement costs for poles and conduits, leaving that responsibility with the Department of Revenue Administration. However, the amendment does require DRA to adopt rules for establishing the costs, including a process for public input prior to each annual determination of costs.

The one dissenting member of the committee suggested, as we have, that the Senate should request an advisory opinion from the supreme court on the constitutionality of the legislation, as it very conspicuously treats poles owned by telephone companies more favorably than those owned by electric companies. He said, and we agree, that obtaining an opinion from the court could avoid a whole round of new lawsuits.

The bill goes to the full Senate for a vote next week. From the committee discussions and our conversations with senators, there is little chance that any changes will be made there. We continue to believe that the bill's constitutionality is highly questionable, but that question apparently will have to wait for another day.

Pilot Project for Electronic Voter Check-In

Next Wednesday, the Senate Public and Municipal Affairs Committee will hear testimony on legislation that would authorize a pilot project for an electronic "poll books" system in a few municipalities at this fall's elections. A number of legislators, municipal clerks, and other interested parties, including staff members from NHMA, attended a demonstration of

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the system last week at Manchester's city hall. The system enables election officials, with the swipe of a voter's driver's license, to check the voter in and confirm that he or she has not already voted elsewhere. It dramatically reduces wait time and improves the efficiency of the process. It also can be used to process same-day registrants and add them immediately to the checklist.

The same or similar systems are already in use in many states. Local election officials in New Hampshire who have seen the demonstration have immediately fallen in love with it, and many of them would like to begin using the system as soon as possible.

Unfortunately, there are a few roadblocks. First, state election laws would require some modifications to allow use of the system. Second, it does cost money. Most interested parties agree that money should be made available from the state's Help America Vote Act (HAVA) fund, which is intended specifically to pay for improvements in the administration of elections.

Neither of those issues is going to be solved during this legislative session. However, key legislators have agreed to support the pilot project, under which the city of Manchester and the towns of Hooksett and Durham would use the system for this year's state primary in September and general election in November. The vendor has agreed to pay the costs associated with the pilot project.

The legislation is contained in an amendment to **HB 1534,** an election-related bill that is currently in the Public and Municipal Affairs Committee. The amendment authorizes the pilot project and the waiver of inconsistent election law provisions. It will be heard on **Wednesday, April 27, at 10:00 a.m., in LOB Room 102.** We believe the committee will support the amendment; the bill as amended would then require full Senate approval, and then go back to the House for concurrence or a committee of conference. We urge legislators in both bodies to approve this pilot program posthaste.

We will provide an update when we have one. In the meantime, the City and Town Clerks Association is also following this closely, so you may be able to learn more from your clerk.

House Tables RGGI Proceeds Bill

The House on Wednesday voted to table **SB 492**, the bill discussed in *Bulletins #14* and *#15* that would (among other things) increase from $2 million to $5 million the amount distributed to municipalities for energy efficiency projects out of proceeds from the sale of carbon allowances under the regional greenhouse gas initiative.

THE EDGE

It's that time of year—the last few weeks of the legislative session, when mispronunciation threatens the psychic well-being of any linguaphiles who might be paying attention.

Here's how it happens: The Senate passes a bill. The House amends the bill and sends it back to the Senate, which "non-concurs" with the House amendment and sends it back to the House with a request for a committee of conference. (The use of "non-concur" is a subject for another day.)

At this point, the responsible House committee chair moves to accede to the Senate request. On the floor of the House, the Speaker announces, "Representative Doe moves to accede to the Senate request."

This is where things could go horribly wrong. In the not-too-distant past, some House Speakers (and Senate Presidents, for bills that originated in the House) repeatedly botched the verb in the middle of that sentence, pronouncing it "ah-SEED," as if the first "c" were not present. Worse, few listeners seemed to notice, or to care.

Fortunately, a few years ago the then-House clerk decided she'd had enough, and began to insist that her boss pronounce the word

(continued on next page)

(RGGI — Continued from Page 2)

The tabling action was not, as is sometimes the case, a procedural move to delay consideration while issues with the bill are addressed. It was intended to kill the bill, and the bill will die if it remains on the table.

Despite the overwhelming support of all parties with any significant interest in the issue, and despite the hundreds of jobs the bill would create, the millions of megawatts and BTUs it would conserve, and the millions of dollars in property taxes it would save because of reduced energy demand, some people oppose the bill because of an apparently ideological opposition to a short-term increase of $1.70 a month in residential electric bills, even though that would be offset many times over by long-term reductions in both energy costs and property taxes.

It was also suggested that the claimed reductions in property taxes are illusory, because two people—yes, two!—had testified that their property tax bills did not decline immediately after their municipalities received energy efficiency grants. No one asked whether the anticipated property tax savings were perhaps offset by the state's shifting of retirement costs to municipalities, or its suspension of revenue sharing, or environmental aid grants, or school building aid.

Still, it should have been possible to get the bill passed. The Science, Technology & Energy Committee had recommended **SB 492** as Ought to Pass by a 12-5 vote, and it had support in the House from almost all Democrats and a significant minority of Republicans, including several members of the majority party's leadership. Unfortunately, the effort on the floor in support of the bill was surprisingly anemic, with only one Democrat and no Republicans speaking for the bill. Obviously, no bill can pass in this legislature without at least a little vocal Republican support.

With an organized effort, this bill could still be passed, and we hope legislators will make that effort. The vote to table was 189-155. It requires a simple majority vote to remove a bill from the table, and then a simple majority vote to take action on it. When you speak to your representatives, ***please ask them to support a motion to remove SB 492 from the table and then support the committee recommendation of Ought to Pass.***

Variance Bill Scheduled for Hearing

The Senate Public and Municipal Affairs Committee has a hearing next week on **HB 1203**, the bill we wrote about in *Bulletin #13* that requires a zoning board of adjustment to vote on each of the five variance criteria separately, and allows the variance to be granted "only if 3 members of those present vote in the affirmative on all 5 criteria." NHMA is not taking a position on the bill, but as we wrote before, the bill's language does not match the apparent intent of the House. We plan to suggest

THE EDGE *(Continued)*

correctly. Since then, things have improved in both chambers.

This is not difficult. The word is pronounced "ack-SEED." Note the "k" sound. If this doesn't sound right, try pronouncing these words: Accept. Accelerate. Accentuate.

Now: Accede. ack-SEED.

We haven't heard the word yet this spring, but to our recollection, last year was a good one for proper pronunciation in both the House and the Senate. We hope the trend will continue.

Please contact your legislators and tell them you expect proper pronunciation in all matters, and ask them to insist on the same from their leaders.

♦♦♦♦♦♦♦

(Variance Bill — Continued from Page 3)

that the language be clarified if the bill is going to go forward. We will propose a few different options, depending on exactly what the legislature wants to accomplish.

We know there are a number of municipal and land use lawyers who read the *Legislative Bulletin,* and we suspect that some of them have opinions on this issue. We suggest that anyone who is interested weigh in on the bill *before* the committee votes, rather than remaining studiously silent until the bill is signed into law and then complaining that it doesn't make sense. (We wouldn't bring this up if it hadn't happened before.) Please direct your comments to members of the committee.

The hearing is scheduled for next **Wednesday, April 27, at 10:30 a.m., in LOB Room 102.** The committee could vote on the bill the same day. At the very latest, it will vote the following Wednesday, May 4.

Governor's Race: Focus on Municipalities?

Let's be clear from the start. NHMA does not—not ever—endorse any political candidate or give money to any candidate. We are not about to change that policy. We couldn't if we wanted to—state law prohibits the organization from supporting any candidate or any party.

We can, however, comment on some statements—positive statements!—we have heard from candidates in the very early stages of the race for New Hampshire Governor. It appears that at least some of them are willing to commit to policies that will help municipalities, and to make municipal issues central to their campaigns. We would love to hear more of this.

One candidate had this to say a few weeks ago: "From retirement costs to adequacy aid, the state has slowly shifted their burden to the towns and cities . . . . It's time for Concord to bring forward consistency when it comes to municipalities and become our partner and stop being our adversary when it comes to budgeting."

Woot woot!

Another candidate has made "returning power to the communities" a campaign theme and promised to meet with boards of selectmen as governor, stating that "if we help local communities, it will help the state." The same candidate, in a television interview, referred casually, and correctly, to "234 cities and towns"—a number that not nearly enough politicians in Concord can recite without prompting.

As of now (the filing period is not until early June), there are four announced Republican candidates and three announced Democrats. Of the seven, one is a current mayor, one is a former mayor, and one is a former town administrator. We cannot remember the last time there were so many (any?) candidates with significant municipal experience.

None of which is to suggest that a mayor or town administrator is necessarily the best candidate, or that campaign talk always translates into action after the votes are counted. But the extent of local government experience in the race, and the comments we have heard so far, offer some reason for optimism. We hope the candidates who have been emphasizing municipal concerns will continue to do so, and that this may oblige the others to do the same.

(Governor's Race — Continued from Page 4)

As the candidates tromp through your municipalities over the next six months, please ask them whether they will meet with boards of selectmen and city and town councils after they're elected, and whether they plan to make the state a partner with municipalities, not an adversary. Perhaps we can even establish a new "pledge" for gubernatorial candidates: a pledge to support cities and towns, and a pledge never to "solve" the state's problems by pushing them onto municipalities.

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, APRIL 26

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

10:00 a.m. Public hearing on non-germane amendment to **SB 411,** relative to the merger of lots that are mortgaged. The amendment repeals the deadline for requesting restoration of involuntarily merged lots (RSA 674:39-aa, II(a)). Copies of the amendment (2016-1271h) are available in the Sergeant-at-Arms' office, State House Room 318.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

10:00 a.m. Public hearing on non-germane amendment (2016-1405h) to **SB 336,** relative to the qualifications for obtaining a license to carry a concealed pistol or revolver. Copies of the amendment are available in the Sergeant-at-Arms' office, State House Room 318.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

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

10:30 a.m. **SB 452-FN,** requiring certain state agencies to conduct an audit of laws governing coastal regions to enable authorities to take appropriate actions.

LEGISLATIVE ADMINISTRATION, Room 104, LOB

9:00 a.m. **SB 418,** (Second New Title) adding National Guard members to the absentee voting laws and relative to enrollment of laws.

SENATE CALENDAR

TUESDAY, APRIL 26

JUDICIARY, Room 100, SH

8:20 a.m. **HB 1298,** relative to damage to private property.

9:30 a.m. **HB 1353,** relative to the notice required of a law enforcement officer prior to making an audio recording of a routine stop.

9:45 a.m. **HB 1153,** prohibiting a political subdivision from adopting residency restrictions on sex offenders.

TRANSPORTATION, Room 103, LOB

1:30 p.m. **HB 2016,** relative to the state 10-year transportation improvement program.

(Senate Calendar — Continued from Page 5)

WEDNESDAY, APRIL 27

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:00 a.m. **HB 1382,** relative to the referendum procedure for public water systems.

10:00 a.m. Hearing on proposed amendment **#2016-1514s -** *An Act relative to reports of death of voters and authorizing an electronic poll book trial program* to **HB 1534,** relative to reports of death of voters.

10:30 a.m. **HB 1203,** relative to voting on variances.

HOUSE FLOOR ACTION

Wednesday, April 20, 2016

SB 121-FN-LOCAL, (New Title) relative to exceptions from the land use change tax for removal of certain materials. **Inexpedient to Legislate.**

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

SB 345, relative to the definition of agritourism. **Passed with Amendment.**

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

SB 359, relative to funding electric vehicle charging stations with municipal registration permits. **Passed.**

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

SB 374, (New Title) requiring the department of environmental services to update coastal flooding trends. **Passed.**

SB 375, establishing the coastal marine natural resources and environment commission. **Passed with Amendment.**

SB 377, relative to emission levels of municipal waste combustion units. **Passed.**

SB 418, relative to obtaining a ballot to vote and adding National Guard members to the absentee voting laws. **Passed with Amendment; referred to LEGIS. ADMIN.**

SB 433, relative to exclusions from seasonal highway weight limit regulation. **Passed.**

SB 442-LOCAL, (New Title) establishing a commission to study the taxability of lease interests in public property. **Passed with Amendment.**

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

(House Floor Action — Continued from Page 6)

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

SB 488-FN-LOCAL, (New Title) relative to breastfeeding. **Passed with Amendment.**

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

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

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

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

SENATE FLOOR ACTION

Thursday, April 21, 2016

HB 582-FN, repealing the license requirement for carrying a concealed pistol or revolver. **Passed; referred to F-S.**

HB 1114, relative to the number of inspectors of election. **Referred to Interim Study.**

HB 1154-FN, authorizing and regulating the use of license plate scanning devices. **Passed.**

HB 1161, relative to the traffic safety commission. **Passed with Amendment.**

HB 1202, relative to applications submitted to a planning board. **Passed.**

HB 1223, relative to changes of address on election day. **Passed.**

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

HB 1352-FN, relative to the penalty for retirement system employers' noncompliance with reporting requirements for retirees. **Passed.**

HB 1378, relative to disabled voters requiring assistance. **Passed.**

HB 1467, relative to notice of village district elections. **Passed.**

HB 1655-FN, relative to the municipal registration fee for an agricultural/industrial utility vehicle. **Passed.**

Upcoming Events for NHMA Members

NHMA Workshops

April—June, 2016 Local Officials Workshops—Various Locations

May 4, 2016 Right-to-Know Law , Meredith Community Center at 5:30 p.m.

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

May 11, 2016 Right-to-Know : Public Records

Time: 12:00—1:00 p.m.

Click **here** to register **by noon** on May 10, 2016

Spend an hour with Legal Services Counsel Stephen Buckley and Staff Attorney Margaret Byrnes, who will look at a variety of selected issues related to governmental records. To start, learn how to distinguish between non-public records and public records. Then, understand a municipality's actual legal obligations when responding to a records request. Next, take a closer look at three specific exemptions in RSA 91-A:5: "confidential, commercial, and financial information," "notes or materials made for personal use," and "preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body." Finally, this webinar will also cover some pointers regarding meeting minutes, particularly focusing on issues related to non-public session minutes. As always, bring your questions!