

LEGISLATIVE BULLETIN

Winding Up?

Bulletin #19, 2016 Session
May 6, 2016

We noted last week that things might be winding down, as the session is nearing the end. There are now four weeks left in the legislative session—and it definitely feels like things (and people) are getting wound up instead!

Yesterday was the deadline in both the House and the Senate for committees to report out their bills, and boy, did the amendments fly on both sides of the wall! Unhappy with the action of the House on many Senate bills, the Senate added its preferred language to House bills in the Senate’s possession. And *vice versa*—the House added its language to Senate bills in possession of the House.

Both will vote next Wednesday, May 11, and Thursday, May 12, on the remaining bills in their possession. In each case the amended version goes back to the body that originated the bill—House bills amended by the Senate return to the House for review and Senate bills amended by the House return to the Senate for review. Each body will either approve an amendment (in which case the bill moves on to the Governor), reject an amendment outright (in which case the bill dies), or reject the amendment and request a committee of conference—a small group of House and Senate members who try to work out their differences.

Committees of conference will meet until the May 26 deadline to sign off on committee of conference reports, and then both chambers must approve those reports (or not) by June 2. Bills approved by both House and Senate move on to the Governor to be signed, vetoed, or become law without her signature.

As we said last week, the heavy lifting may be over, but there is still plenty of action ahead. Issues we are following as part of the traditional end-of-session turbulence include election poll books, lot mergers, PSTC funding, semi-trailer registrations, assessing appeals, pole valuations, RGGI funds, reporting on union membership, Right to Know issues, and more. Stay tuned—we may need to contact you for help.

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Committee Recommends Electronic Check-In Pilot

The Senate Public and Municipal Affairs Committee voted 4-1 on Thursday to recommend approval of the pilot project for an electronic voter check-in system that we described in Bulletins [#17](#) and [#18](#). The language authorizing the project is contained in an [amendment](#) to **HB 1534**. While concerns have been raised about the “last minute” nature of this measure, it has been under discussion in some quarters since early February; it emerged from the after-effects on local election officials of the huge voter turnout at the presidential primary. The bill goes to the full Senate next **Thursday, May 12**. We are optimistic, but far from certain, that it will be approved. City and town clerks, moderators, and other local officials are encouraged to contact their senators and urge them to *support the committee’s recommendation of Ought to Pass with Amendment on HB 1534*. Please talk to your House delegation, too, as the proposal will come to them next if the Senate approves it.

RGGI Distribution Issue Lives Again

We reported two weeks ago that the House had tabled [SB 492](#), the bill that would distribute an additional \$3 million a year to municipalities for energy efficiency projects out of proceeds from the sale of carbon allowances under the regional greenhouse gas initiative (RGGI). We mentioned last week, however, that this is the time of year when each chamber finds ways to revive bills that the other chamber has killed.

Last week the Senate did exactly that, attaching the language of [SB 492](#) to another bill, [HB 1660](#). That bill will now go back to the House for a decision on whether to concur or request a committee of conference.

This is likely to be a close vote. It is important that the House vote to concur with the Senate amendment. The alternative—sending the bill to a committee of conference—would put the RGGI provision in serious jeopardy. *Please urge your representatives to support a motion to concur with the Senate amendment on HB 1660 and oppose any effort to send the bill to a committee of conference.*

Registration of Out-of-State Semi-Trailers

On Tuesday the Senate Transportation Committee voted 3-2 to amend [HB 1271](#) (establishing certain length and width exemptions for commercial vehicles) by adding a provision dealing with the registration of out-of-state semi-trailers. [The amendment](#) was presented at the hearing on **HB 1271** last week, but with no opportunity for public input. While we have no issue with the provisions of the underlying bill, we definitely have concerns with the amendment, which we understand sets up a process for “non-governmental registration agents” to register semi-trailers from out-of-state residents (businesses and individuals) at a significant discount from what an in-state resident would pay. This proposal is similar to **HB 586** (which had the registration process performed by municipal clerks), which the House sent to interim study.

THE EDGE

Last time we discussed the differences between chapter laws and the Revised Statutes Annotated (RSA). Briefly, the chapter laws are all of the laws enacted in any legislative session, while the RSA is a codification of all the chapter laws enacted over the years (except, of course, for the ones that are not codified—discussion below).

As an example, RSA chapter 91-A is the Right-to-Know Law. At the end of section 1 of that chapter (91-A:1), the following notation appears: “Source. 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.”

This indicates that RSA 91-A:1 was enacted as chapter 251, section 1, of the laws of 1967. It was amended by chapter 327, section 1, of the 1971 laws and by chapter 540, section 1, of the 1977 laws. The 1977 amendment took effect on September 13, 1977. If you looked up the 1967 chapter laws, you would find, in chapter 251, the original version of what became RSA 91-A:1. (Chapter laws from 1989 to the present can be found on the General Court website by doing an “advanced bill search.” Before 1989, the chapter laws exist only in hard copy, in bound volumes by year.)

There are, however, many chapter laws that never make it into the RSA. Why? Typically these are legislative enactments that address a very limited issue, rather than creating a law of general application. A few examples include laws that create study committees, name bridges or buildings, or authorize specific appropriations or contracts.

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As the Director of the New Hampshire Division of Motor Vehicles testified, the amendment is designed to encourage residents from all over the country to violate their own state laws in order to register these trailers in New Hampshire. From a municipal perspective, this would put in place a registration system that would favor non-residents over New Hampshire residents, thereby enticing residents to register their semi-trailers as non-residents through these non-governmental registration agents. This would result in a potential loss of municipal revenue for those municipalities that register a significant number of semi-trailers.

The amendment is so bad that the Department of Safety almost immediately sent out an “urgent” e-mail to town clerks and tax collectors asking them to contact their senators to kill the amendment. It is rare for a state agency to take such a strong position against a bill, but it is definitely warranted here.

Please ask your senator to **oppose the committee amendment on HB 1271** and either pass the bill without the amendment or simply kill the bill.

Police, Liquor and Wastewater

Question: What do police training, liquor sales, and audit oversight have to do with wastewater treatment facilities?

Answer: They are all included in a non-germane [amendment](#) that the Senate Finance Committee has attached to [HB 1428](#), which deals with state aid grant funding for certain wastewater projects. **HB 1428**, as amended by the House, authorizes grant funding for eight wastewater projects that received local financing approval before the current moratorium went into effect, with the funding coming from excess state revolving loan fund management fees. The bill was unanimously supported by the House Finance Committee and easily passed the House, which made it an ideal target for attaching other proposals once it got to the Senate.

Of the three matters addressed in the amendment, the one dealing with the shortfall in the Police Standards and Training Council fund is likely the most controversial between the Senate and the House. As explained in [Bulletin #15](#), there is a shortfall in funding for the police academy that needs to be addressed in the current biennium, but the House and the Senate have different ideas on how to respond to that need.

The Senate version, contained in [SB 527](#), provides a long-term solution by moving all funding for the PSTC to the general fund and

THE EDGE (Continued)

Common examples that are of more interest to municipalities are those that amend specific local legislation or ratify procedurally deficient town meeting actions. For example, chapter 1 of the 1989 laws ratified all actions taken at a special meeting of the town of Littleton in December 1988. More recently, chapter 217 of the 2015 laws amended a 1957 chapter law that had created a trust fund in the town of Rindge. Neither of those laws (nor the 1957 law) was codified in the RSA, because there was no need for it.

Finding a chapter law that was never codified can be a challenge. If you know it exists but don't know when it was enacted, be prepared to spend a few hours looking through some dusty volumes at the state library.



redirecting the current funding source—the penalty assessment—to the general fund. The House version, as recommended by the House Finance Committee, preserves the dedicated penalty assessment fees as the primary funding source and simply fills the current funding hole of \$500,000 for FY2017. The House leaves any future shortfall or change in the funding plan to be addressed in the budget process next year.

Back to **HB 1428**: The Senate Finance Committee is proposing to add its version of the PSTC fix onto this wastewater funding bill. **HB 1428** will go to the full Senate, with the proposed amendment, next Thursday, May 12. **SB 527** will go to the full House, with its proposed amendment, next Wednesday or Thursday, May 11 or 12. We expect a committee of conference on both of these bills, which will ultimately determine the fate of **HB 1428** and funding for the PSTC.

Merger Bill Takes a Wrong Turn

The House is on the verge of passing a bad amendment to a good bill.

This discussion requires a little background on a rather esoteric subject. Under existing law (RSA 674:39-a), any owner of two or more contiguous parcels of land may have them merged for municipal regulation and taxation purposes simply by applying to the local planning board. Unless the merger would create a violation of existing ordinances or regulations, the planning board must approve it.

A problem has arisen in a few cases where one of the parcels is subject to a mortgage and the other is not—or, worse, where the parcels are separately mortgaged to different mortgagees. If the lots are merged, a mess can ensue—for the property owner, the mortgagee(s), and the planning board; yet the board has no discretion to deny the merger.

[SB 411](#), as passed by the Senate, limits the right of voluntary merger in those situations. That would be a significant improvement in the law. Unfortunately, the House Commerce Committee has attached an amendment addressing *in*voluntary mergers.

More background: Many (not all) local zoning ordinances contain a “grandfather clause” allowing for the development of substandard lots that were legally created prior to the adoption of the ordinance. Such clauses, however, are not legally or constitutionally required. Many of those same ordinances also contain an automatic merger clause as an *exception* to the grandfather clause. An automatic merger clause typically provides that contiguous non-conforming lots in common ownership can *not* be developed separately, and instead will be considered to constitute a single lot for development purposes.

Until recently, the involuntary merger of lots was never considered a particularly controversial practice, and it was undisputed that the practice was legal. However, in 2010, the legislature amended 674:39-a, the *voluntary* merger statute, to prohibit any future *in*voluntary mergers.

In 2011, the legislature went a step further and enacted a new section, RSA 674:39-aa, which allows anyone whose lots were previously merged involuntarily to have the lots restored to their pre-merger status, simply by applying to the municipality’s governing body. We opposed

(Lot Mergers — Continued from Page 4)

that legislation at the time. As a compromise, a sunset provision was inserted, under which a landowner would have until the end of 2016 to request an “un-merger.”

Last week a non-germane amendment was proposed to **SB 411** that eliminates the sunset provision, thus allowing the restoration of involuntarily merged lots indefinitely. This would leave municipalities forever in the position of defending perfectly legal actions that were taken 70 or 80 years ago.

The committee was provided with a significant amount of misinformation in support of the amendment. According to the amendment’s sponsor, involuntary mergers were “illegal,” “unconstitutional,” “unjust,” and “arbitrary,” often done for “nefarious” reasons, and frequently by “lazy assessors,” who found it easier to assess one lot than two. He also said there should be no statute of limitations on property rights.

None of that is true. Again, involuntary mergers have always been legal (until 2010), and have been expressly upheld by the New Hampshire Supreme Court. They were not executed arbitrarily or surreptitiously by cold-hearted bureaucrats; they were the necessary and intended consequence of zoning provisions *adopted by the very voters whose properties they affect*. The reference to “lazy assessors” is ridiculous. For what it’s worth, these mergers usually *benefited the property owner*, because the tax bill for a single lot will almost always be less than for two or more lots. In fact, the 2011 law potentially allows a property owner who has enjoyed the benefit of taxation on a single lot for many years to then reap a windfall by “un-merging” the lots and selling them separately. Finally, there *is* a statute of limitations for asserting property rights. (Twenty years—see RSA 508:2.)

These facts made no impact on the committee. Unfortunately, the argument against involuntary mergers, from property owners who claim to have been harmed, can sound appealing, even if it is legally and logically flawed. The legislature also can find it easy to usurp the authority of local voters and preempt their duly adopted ordinances, which is what it does in mandating the unwinding of involuntary mergers. Our final point—that the sunset provision was a deal that we (naively) expected the legislature to keep—predictably went nowhere. The Commerce Committee voted 18-2 to recommend the bill with the amendment.

SB 411 will go to the House floor next week. Although we continue to support the underlying bill, we urge representatives to *defeat* the committee amendment. If the amendment is adopted, we urge the House to kill the bill.

Eliminating Deliberative Sessions?

The Senate Public and Municipal Affairs Committee voted 3-2 this week to recommend passage of **HB 1375** with an [amendment](#). The bill deals with town meeting and budget procedures in official ballot referendum (SB 2) towns and school districts. The bill as passed by the House would have allowed an SB 2 town or district to adopt a charter for the sole purpose of modifying its budget adoption and amendment procedures. However, both the Department of Revenue Administration and the Secretary of State’s office expressed concerns about that approach.

In light of those concerns, the committee abandoned the charter idea. Instead, the amended version allows the voters to adopt one of several options:

- The voters may choose to prohibit any amendments to the operating budget at the deliberative session.
- Alternatively, they may choose to eliminate the deliberative session altogether.
- Whether they adopt one of the first two options or not, they may adopt a requirement that both the operating budget and the default budget be placed on the ballot. Under this option, voters would vote on both the operating budget and the default budget. If the operating budget passes, it takes effect. If the operating budget fails and the default budget passes, the default budget takes effect. If neither passes, the governing body would call a special open meeting for the sole purpose of adopting an operating budget.

To adopt any of these options would require a 60 percent vote at the annual municipal election; and, of course, there is no requirement to adopt any of them at all.

We have not taken a position on the bill. We are not sure that a town's adoption of any of these options would be a good idea, but as it leaves these options entirely to the voters, we have not opposed it. If you have an opinion either way, please let your senator know. The Senate will vote on the bill next Thursday, May 12.

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

MONDAY, MAY 16

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), NH Department of Revenue,

109 Pleasant Street, Concord

9:30 a.m. Regular meeting.

SENATE FLOOR ACTION

Thursday, May 5, 2016

HB 582-FN, repealing the license requirement for carrying a concealed pistol or revolver. **Passed.**

HB 1252, permitting employers to pay wages to employees weekly or biweekly. **Tabled.**

HB 1287, repealing a provision of the harassment statute. **Passed.**

HB 1430-FN, (New Title) relative to operation of compact utility tractors. **Passed with Amendment.**

Upcoming Events for NHMA Members

NHMA Workshops

May and June, 2016—Local Officials Workshops—Various Locations

June 10, 2016 [2016 Avoiding the Road to Liability](#), Concord, NH at 9:00 a.m.

June 16, 2016 [Fundamentals of Local Welfare](#), Concord, NH at 9:30 a.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!