

LEGISLATIVE BULLETIN

They're Back.

To no one's objection, things were kind of quiet in Concord this week. The Senate took a break from all activity, and only a few House committees held hearings or executive sessions. Both chambers return next week, the Senate with committee meetings on Tuesday and Wednesday and a session on Thursday, and the House with sessions all three days. We wrote [last week](#) about the bills that are currently causing the most concern, but several of them are troubling enough that more ink is warranted.

We have heard from many local officials who have been busy calling or e-mailing their legislators. Please keep it up! We know that it makes a big difference, and most legislators do appreciate hearing from local officials. It is unfortunate that a few do not, but we believe no one is hopeless.

Postponement Bill Up for a Vote Thursday

The town meeting postponement bill, the one that gives only the Secretary of State the authority to postpone the voting session of a town meeting in the event of hazardous weather, is back on the Senate floor next **Thursday, March 8**. Last we knew, there was both bipartisan support and bipartisan opposition to the bill—[SB 438](#)—but we have heard nothing over the past week. (See last week's [Bulletin](#) and links contained there for more detailed information.)

Some senators have been on vacation, no doubt, so perhaps there will be further discussion over the weekend and early next week. We look forward to participating. We have contacted the Secretary of State's office several times with our questions about the language in their [amendment](#), and have received only a perfunctory response (this morning) that "we do not believe it will result in confusion or unintended consequences."

What we do know is that the Senate vote on **SB 438** will take place on Thursday, so it is time to contact your senator with the following message: *Please adopt the NHMA-supported amendment (which we believe will be offered by Senator Martha Fuller Clark). If the amendment is not offered or if it fails, please kill the bill.*

Bulletin 11, 2018 Session
March 2, 2018

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Regardless of how anyone feels about giving the Secretary of State power over postponing town meeting voting sessions—for the first time ever—the bill makes a mess of town meeting statutes and cannot, in good conscience, be supported by anyone who has any regard for town government. **SB 438** will result in confusion among municipal officials about what the law requires; it will create questions about procedure that will no longer have answers; and it will leave voter decisions open to litigation by those who disagree with voted results and who can now take advantage of the statutory conflicts to file suit.

We understand that there are other issues of great significance to the citizens of the state pending before the Senate, and that the integrity of town meeting processes may not be at the top of the list; but the problems this bill creates cannot be ignored. **Please contact your senators now so they are clear that the responsibility rests with them on Thursday to make sure SB 438 does not create contradictions in municipal law and chaos in municipal government.**

Floor Amendment Would Fix Utility Valuation Bill

We reported last week on the amended version of HB 1381, dealing with valuation of utility property, which will go to the House floor sometime on March 6, 7, or 8 (probably on Thursday, March 8). Last week we urged the House to kill **HB 1381**. However, since then a floor amendment has been prepared that would implement the recommendation made by the Assessing Standards Board, before the Ways and Means committee altered it. ***We are now asking representatives to vote down the committee amendment and then pass the floor amendment.***

The majority report from the Ways and Means Committee contains this statement (emphasis ours):

Under current law, with the litigation on the municipal side, the tax payer bears the burden of local property tax increase to defend the lawsuits; and on the utility side, the rate payers (citizens) pay increased rates due to bringing the law suits seeking equality across towns. The amendment fixing this problem was a compromise solution. The State Assessing Board brought a recommendation and the utility companies brought a recommendation and the negotiated result protecting both the taxpayer and the rate payer is what came out.

Negotiated between whom? Noticeably absent from this “negotiation” was “the municipal side.” That is because both municipalities and utilities had already presented their arguments to the Assessing Standards Board, and it was that board that fashioned a true compromise. When the ASB then presented its proposal to the Ways and Means subcommittee, the subcommittee arbitrarily decided to split the difference again, this time between the already-negotiated compromise and the utilities’ best imaginable result. The full committee then adopted that “compromise.”

If this sounds familiar, it is exactly what the same committee did two years ago with valuation of telephone poles and conduits. After soliciting the ASB’s recommendation, the committee rejected it and substituted its own numbers that were far more beneficial to the telecommunications industry, simply because that was what the industry wanted. The full House wisely overturned the committee’s recommendation and adopted the ASB proposal.

The same thing should happen here. A floor amendment will be offered that simply implements the ASB proposal, exactly as that board recommended. ***We urge representatives to support the floor amendment.***

Apart from changing the ASB's formula, here are the major problems with the committee's amendment on **HB 1381**:

- By including land in the formula it adopts, the bill requires that land be assessed at a blend of original cost and net book value. Fixtures such as poles, wires, and conduits do depreciate, so an argument can be made for valuing them based on original cost and net book value; but there is no serious argument for treating land the same way. Everyone knows that land appreciates and must be assessed at current market value.
- The committee amendment also includes "interests in land" in the formula. This includes the utilities' right to use public rights-of-way, which is a valuable interest that is subject to taxation. (In fact, it is required by law to be taxed.) Because the utility did not pay anything to acquire that interest, the "value" would be zero; thus the utility is *de facto* exempted from taxation on that interest. The New Hampshire Supreme Court has expressly held that it is unconstitutional to exempt some users of the right-of-way (utilities) from taxation while others (telephone and cable companies) are taxed.
- The committee amendment's five-year phase-in formula is drafted poorly, with the unintended (we assume) result that any utility property added during the phase-in period would escape taxation altogether.

The NHMA-supported floor amendment fixes these problems and implements the ASB recommendation. Although we believe the ASB recommendation is far from perfect and has been rushed into the legislative process, we understand that legislators are tired of this issue (so are we!) and would like to get it settled. The ASB recommendation is, as stated above, a *true* compromise.

Please encourage your representatives to vote down the committee amendment on HB 1381 and then support the floor amendment. If the floor amendment fails, ask them to vote to kill the bill.

Right-to-Know Bills on House Floor

We wrote at length in [last week's Bulletin](#) (starting at page 3) about three bad bills amending the Right-to-Know Law that are scheduled for votes on the House floor next week. We won't repeat the discussion here, but if you haven't contacted your representatives yet, please read last week's summary and then urge your representatives to **kill HB 1323, HB 1344, and HB 1347.**

Medicaid Enhancement Reauthorization Before Senate This Week

The Senate Finance and Health and Human Services Committees have several joint sessions scheduled next week where we understand they will be addressing **SB 313**, the Medicaid enhancement reauthorization bill. The link will take you to an amendment that replaces the entire bill and was the focus of a multi-hour hearing last week.

NHMA has **supported** Medicaid enhancement because of the experience of local welfare officials, who have seen recipients who were unable to work receive the treatment they needed to allow them

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to return to the workforce. It is also one of the programs available to fight the state's debilitating opioid crisis. Please join with NHMA and the New Hampshire Local Welfare Administrators' Association in supporting the reauthorization of expanded Medicaid.

Big Things Still to Come in Senate

While the House will take final action next week on all House bills that are not in a second committee, a number of significant Senate bills remain in committee. Most of them will likely see committee action next week. Several of them have amendments coming, so their status is very much up in the air. Among them are:

Presumption in PTSD cases. [SB 553](#) provides that “[i]n the case of police officers, rescue or ambulance workers, or firefighters, post-traumatic stress disorder that is diagnosed by a mental health professional shall be presumed to have been incurred during service in the line of duty and shall be compensable [under workers’ compensation], unless it is shown by a preponderance of the evidence that the post-traumatic stress disorder was caused by nonservice-connected risk factors or nonservice-connected exposure.”

As we have explained previously, although NHMA recognizes the seriousness of PTSD, creating a *presumption* that it is employment-related is inappropriate, especially given that so many emergency responders previously served in the military. The New Hampshire Supreme Court has expressly held that such a presumption is unconstitutional. ***The bill is in the Senate Commerce Committee, which will meet on Tuesday. Please encourage members of the committee, and your own senator, to vote against SB 553.***

Right-to-Know ombudsman. [SB 555](#) provides for the appointment of a “right-to-know ombudsman.” Any “aggrieved person” claiming a violation of RSA 91-A could file a complaint with the ombudsman as an alternative to filing suit in superior court, which currently is the only process for resolving complaints. Filing suit in superior court would still be permitted; a party would have the choice, and by choosing one option would waive the right to pursue the other.

NHMA generally supports the goals of the bill, but we do have some concerns. The bill also provides for the appointment of a 17-person Citizens’ Right-to-Know Appeals Commission, which would establish rules of procedure, interview and hire the ombudsman, review the ombudsman’s performance, make recommendations to the legislature for changes to the law, and create and update educational materials about the law. We are not certain how useful that commission would be (we have suggested that the ombudsman be appointed by the supreme court), and are a bit concerned that, unlike the ombudsman, members of the commission would not be required to know anything about the Right-to-Know Law.

We also note that although the ombudsman presumably would be a full-time position, and the ombudsman is required to be an attorney with at least ten years of experience, the bill appropriates only \$48,000 to compensate the ombudsman. It seems unlikely that a competent attorney with ten years of experience would be interested in the job at that level of compensation. ***The bill is in the Senate Judiciary Committee, which will meet on Tuesday.***

Housing appeals board. [SB 557](#) would establish a “housing appeals board,” which would have concurrent jurisdiction with the superior court to hear and decide appeals from local land use boards on “questions of housing and housing development.” The board would be modeled closely on the Board of Tax and Land Appeals, comprising three members “learned and experienced in questions of land use law or housing development or both,” appointed by the supreme court.

An applicant (but not an abutter or other affected party) who is dissatisfied with a ruling by a local board could appeal the decision to the housing appeals board, or could appeal to the superior court, as is the current practice. Choosing one appeal route would act as a waiver of the right to the other. Decisions of the housing appeals board could be appealed to the supreme court.

We have heard from a few local officials who are very opposed to the bill, concerned that the housing appeals board would act as a “super zoning board” to oversee local zoning. We are less concerned, because the board would have no more authority than the superior court and would have to apply the same laws as the superior court. We do have some questions and concerns about the details of the bill, which we have expressed to the committee. ***The bill is also in the Judiciary Committee.***

Agritourism. As introduced, [SB 412](#) would have significantly expanded the definition of “agritourism.” Because state law requires that municipal zoning ordinances allow agritourism in any district where agriculture is permitted, this would have seriously limited local control over these businesses. NHMA opposed the bill as introduced.

Several amendments to the bill have been proposed. We understand that the most recent amendment does not expand the definition of agritourism, but we have not seen it yet. We will keep a close eye on this bill. ***The bill is in the Ways and Means Committee, which will meet on Wednesday.***

Electronic records under Right-to-Know Law. [SB 395](#) would make significant changes regarding a public body or agency’s obligation to provide electronic records under the Right-to-Know Law, including creating an obligation to send records by e-mail. NHMA opposed the bill as introduced, but we have tried to negotiate a compromise amendment. Getting all parties to agree seems not to have worked, but we believe a committee amendment will be coming forward next week. We are not certain exactly what it will say, so stay tuned. ***The bill is in the Public and Municipal Affairs Committee, which will meet on Wednesday.***

HOUSE CALENDAR

FRIDAY, MARCH 9, 2018

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Room 303, LOB

9:30 a.m. Regular meeting.

COMMITTEE TO STUDY BROADBAND (HB 238, Chapter 163:1, Laws of 2017), Room 304, LOB

10:00 a.m. Regular meeting.

SENATE CALENDAR

TUESDAY, MARCH 6, 2018

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:30 a.m. **HB 101-FN**, relative to certification for solid waste operators.

TRANSPORTATION, Room 103, LOB

1:00 p.m. **HB 193**, relative to traffic control measures.

WEDNESDAY, MARCH 14, 2018

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:10 a.m. **HB 1392**, relative to tallies of votes on budget items or warrant articles.

9:20 a.m. **HB 1332**, allowing warrant articles to be split by the deliberative session.

2018

Upcoming NHMA Workshops and Webinars

Mar. 14 NHMA Webinar—Municipal Social Media and Free Speech

Apr. 4 NHMA Webinar—Legislative Half-Time

Apr. 9 2018 Local Officials Workshop—Grantham Town Hall

Please register online through our website www.nhmunicipal.org. (Scroll down on left to Calendar of Events and click View the Full Calendar)