

# LEGISLATIVE BULLETIN

## Postponing Elections—Committee Adopts Worst of All Options

Bulletin 22—2018 Session  
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As we reported last week, a committee of conference was formed to resolve differences between the House and Senate versions of **SB 438**, the town election postponement bill. We'll get right to the point: yesterday the committee voted to recommend the [Senate version](#) of the bill.

This is a shocking, unacceptable result. After all, the House Election Law Committee wisely rejected virtually all of the Senate version several weeks ago, presenting a vastly different amendment to the House. *That* amendment was then rejected by the House in favor of a floor amendment that settled the authority to postpone a town election with town officials. The language passed by the House was straightforward and did no harm to the town meeting process. The Senate bill makes a mess of town meeting law—every year, not just for postponements. ***Please call your representatives now—and your senator, but especially your representatives—and urge them to vote against the committee of conference report when it goes to the floor next Wednesday, May 23.***

### The Substance.

Readers may recall that in addition to giving sole authority for the postponement of town elections to the Secretary of State, the Senate version of the bill contains new definitions of “meeting” and “election” that would turn the town meeting season into chaos. It states that “notwithstanding any other provision of law, for the purposes of all statutes pertaining to annual and special meetings of towns,” a “meeting” means “the discussion of business of the towns . . . and voting on warrant articles only by voice, division, or secret ‘yes-no’ ballot vote. Meeting shall include the deliberative session of an annual meeting in towns . . . that have adopted [SB 2] form of meeting . . . .”

The bill defines “election” separately as “the choosing of officers by official ballot and in towns . . . that have adopted the [SB 2] form of meeting . . . , voting on warrant articles by use of official ballot.”

Thus, regardless of what all the other statutes say, and regardless of what all town officials understand, “meeting” will now mean only the deliberative session in an SB 2 town and the business session of the meeting in other

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towns. Voting for officers and voting on other matters by official ballot will now constitute an “election,” and will not be considered part of a “meeting.”

As we have explained repeatedly, these definitions wreak havoc with dozens of existing statutes—we have identified over 50. Most obviously, current law requires that the selectmen (RSA 41:8), clerk (41:16), moderator (40:1), and treasurer (41:26) be elected “at the annual meeting.” Under **SB 438**, this will mean they must be elected at the business session of a traditional town meeting, or at the deliberative session of an SB 2 town meeting—not on the official ballot. Meanwhile, RSA 669:15 says these officers shall be elected “at a town election.” Until now, these statutes were perfectly compatible, because almost everyone understood that the election was part of the meeting. Under **SB 438**, there is no way to reconcile them.

A couple other obvious problems are:

- The municipal budget law, RSA 32 would no longer apply to any SB 2 town, because it applies only to towns “which adopt their budgets at an annual meeting of their voters.” SB 2 towns adopt their budgets on the official ballot voting day—which, under **SB 438**, would now be defined as an “election,” not part of the meeting.
- The entire statute governing SB 2 towns, RSA 40:13, is rendered nonsensical, because it refers repeatedly to the official ballot session as the “second session of the meeting.” Under **SB 438**, official ballot voting is an election, not part of the meeting.

[Here is a link](#) to the list of statutes that would no longer make sense, or that would be unworkable, under **SB 438**. Again, we explained this problem with the bill repeatedly when it was in the Senate, but those concerns went unheeded. Interestingly, the Secretary of State’s office, which drafted **SB 438**, apparently finally recognized the problem, because as soon as the bill got to the House, that office prepared an amendment that deleted the new definitions.

The legislators who supported the Senate version acknowledged yesterday that it is “not perfect,” but argued that they had to “do something.” “Not perfect” is certainly an accurate, if understated, description of a bill that would make so many statutes incomprehensible.

It is difficult to say which aspect of **SB 438** is worse—that it gives authority over town elections to a state official who has previously had absolutely no role in those elections, or that it makes a complete, irredeemable mess of town meetings and elections. In any event, ***please call your representatives and urge them to reject the committee of conference report next Wednesday.***

### **The Process.**

One more aspect warrants mentioning: the manner in which the committee of conference got to its result. It has long been universally understood that the job of the House and Senate conferees is to defend their respective chambers’ positions. This is not written in the rules, but everyone understands it. Of course, if each side sticks to its position and refuses to budge, no agreement can be reached, but each side is expected to argue for its chamber’s position. If one side makes a compelling case, the other side may concede; or, if both sides have good points, they may compromise.

(Election— Continued from Page 2)

It is not uncommon for a member to be removed from a committee of conference, typically because he is not defending his chamber's position vigorously enough, or because he won't agree to a reasonable compromise. On the **SB 438** committee of conference, the three senators never budged from their position and never offered any compromise. Meanwhile, two of the House conferees argued for the House position, while the other two abandoned it as soon as the discussions began.

So . . . who do you think was removed from the committee of conference? The two members who were *defending* the House position! After doing an outstanding job of explaining and supporting the House version during two hour-long meetings, they were removed and replaced with two representatives who could be counted on to concede immediately. In fact, one of those representatives—a member of the Professional Firefighters of New Hampshire, which had lobbied heavily for the Senate version—didn't even show up at the committee of conference, but it was understood that he would support the Senate version.

That the House's longstanding protocol was abandoned by instructing committee members *not* to support the position that House members had voted for, is one more reason for House members to kill this bill. ***Please remind your representatives that they are there to represent their municipalities and their voters, not state bureaucrats or a political party.***

### **Registration of Out-of-State Semi-Trailers: Urge State Representatives to Vote NO**

In another major capitulation, House conferees accepted the Senate version of **HB 1614**, creating a multi-year, discounted registration program for out-of-state semi-trailers, with only a change in the effective date. The bill won the praise and blessing of all but one committee member, who was subsequently replaced to secure the required unanimous approval of the bill. The committee changed the effective date from January 1 to July 1, 2019, in an effort to improve the chances of passage in the House, because the \$500,000 appropriation needed for the Department of Safety to implement and administer the program is not included in the bill. A July 1, 2019, effective date will allow funding to be addressed in the state budget process next year.

Regarding concerns about the potential loss of municipal registration fees, one conferee stated that he didn't think there will be such a loss, but that ***"we will have to pass the bill to find out!"*** Another conferee stated that he knows ***"dozens of New Hampshire companies that are not registering in New Hampshire"***—in other words, companies violating current law by registering vehicles in other states to avoid paying municipal fees! **HB 1614** does nothing to help correct that situation and more importantly legalizes what some residents and businesses are now doing illegally!

We have reported extensively on the problems with **HB 1614**, and its predecessor bill **HB 579**, which the House wisely chose to table. See [\*Bulletin #19\*](#) for details. The potential risk to municipal registrations fee revenues is too great to justify passage of this bill. There will be a floor fight in the House when this bill comes up for a vote next Wednesday. Along with the Department of Safety Division of Motor Vehicles, and the New Hampshire City and Town Clerks Association, ***we ask you to please contact each of your representative(s) and urge them to vote NO on the Committee of Conference report on HB 1614.***

## One More Week

All committees of conference finished their work this week. (See below for more results.) Their reports will go to the full House and Senate next week—both chambers are meeting on Wednesday, May 23. The report on each bill will get an up-or-down vote in each chamber—there is no possibility of amending a bill at this point, without suspending the rules. Senate bill reports go first to the House, then to the Senate; House bill reports are the reverse. Either both chambers approve the committee report as presented, or the bill dies. If both chambers approve the report, the bill goes to the Governor for his consideration.

The deadline for both houses to act on the reports is next Thursday, May 24. And after that, it will all be over except the singing.

## Other Committee of Conference Results

Here is what happened with other bills of municipal interest:

**Default budgets.** The Senate concurred with the House amendment to [SB 342](#), changing the definition of the default budget for official ballot referendum towns. The bill requires that in calculating the default budget, the selectmen or budget committee reduce the prior year's budget not only by one-time expenditures contained in the operating budget (as current law requires), but also by "salaries and benefits of positions that have been eliminated in the proposed budget." The bill also requires that, on the default budget form, the increases and reductions to the prior year's budget include "identification of specific items that constitute a change by account code, and the reasons for each change," and requires that the default budget be "presented for questions and discussion" at the first budget hearing.

We believe the new definition is going to create problems—the most predictable result is that the budget writers will not propose eliminating any positions—and we would prefer to see the bill defeated. ***We encourage legislators to vote against the committee of conference report.***

**Working after retirement.** The Committee of Conference on [HB 561](#), dealing with retirees working after retirement, agreed to the following changes to RSA 100-A governing the New Hampshire Retirement System (NHRS):

- NHRS retirees working part-time for an NHRS employer will be limited to 1,352 hours per calendar year (an average of 26 hours per week);
- Retirees working in a part-time position as of January 1, 2019, will be grandfathered with a limit of 1,664 hours per year (an average of 32 hours per week) while working in that specific position;
- Employers will report to NHRS annually by February 15 (rather than monthly) the hours worked by each retiree, and will report separately by February 15, 2019, and each year thereafter, the names and positions of those retirees falling under the grandfather provision;
- Retirees must wait at least 28 days between the effective date of retirement and part-time employment with any NHRS employer;

- Retirees will forfeit, for 12 months, the state annuity portion of their pension for exceeding the annual hourly limit of 1,352 (or 1,664 if grandfathered);
- The annual hourly limits exclude time worked 1) during an emergency declared by the Governor, or 2) under the direction of the director of the Division of Forest and Lands during woodland fire control.

**Additional funds for municipal bridges.** [HB 1817](#) became a *de facto* supplemental budget bill, funding a variety of programs from anticipated surplus of approximately \$100 million for the state fiscal year ending June 30, 2018. Reflecting a desire to use “one-time money for one-time expenditures,” section 25 of the bill appropriates \$20 million to the Department of Transportation for state red-list bridge projects and \$10.4 million for municipally owned high-traffic-volume bridge projects. It is anticipated that the additional funding for the municipal bridge aid program will have a ripple effect on other municipal bridge projects, freeing up funds to help move some projects sooner on the current waiting list.

As a side note – several times over the past few years, we have seen similar, unanticipated influx of state aid for municipal bridge projects. If your municipality has a bridge project on the waiting list, you are advised to do the following to help move that project up the list when additional funding becomes available: 1) have the 20% local match appropriated in a capital reserve fund with agents named to expend, and 2) keep the bridge design plans as up-to-date as possible.

**Cancer presumption for firefighters.** The House and Senate conferees agreed to the House version of [SB 541](#), relative to a presumption regarding cancer in firefighters for workers’ compensation purposes, with a few changes. Under the agreed version, the introductory paragraph of RSA 281-A:17, II, creating a presumption that cancer in a firefighter is occupationally related, remains virtually unchanged. In two places, the House version addressed the availability of the presumption in someone who had been a firefighter for 5 years, and the conference committee raised that to 10 years. A new paragraph (c) was added to the House version, stating, “No active or retired firefighter shall receive the presumption benefit unless the employer voluntarily has in effect a policy that follows the fire standards and training commission curriculum requirement for best practices for use and cleaning of equipment.” It remains unclear to us exactly what effect this language will have.

**Petitioned warrant articles.** The Senate concurred with the House amendment to [SB 506](#). As amended, the bill clarifies that when the selectmen make “minor textual changes” to a petitioned warrant article before placing it on the warrant, “such corrections shall not in any way change the intended effect of the article as presented in the original language of the petition.” As we’ve indicated before, we consider this merely a clarification of existing law.

**Amendments to building and fire codes.** The Senate had added a last-minute amendment to [HB 1254](#) that would have imposed a moratorium on amendments to the state building and fire codes until November 1, 2018. To accommodate amendments that are currently in the works, the committee of conference agreed to a further amendment that delays the beginning of the moratorium until July 1. Thus, no amendments can be made between July 1 and November 1, 2018.

**Additional funds for public school security.** The Committee of Conference on **HB 1415** agreed to combine the House- and Senate-passed versions of the bill. This results in both a death benefit for a school employee killed in the line of duty (House version) and a \$10 million appropriation to the Division of Homeland Security and Emergency Management for improvements to security in public schools (Senate version).

**Animal cruelty.** A committee of conference failed to reach agreement on **SB 569**, dealing with animal cruelty, so the bill will die. The Senate version of the bill allowed a municipality to require the posting of a bond for the cost of caring for animals that are seized in a cruelty case. The House deleted this provision and made other significant changes. The Senate conferees conceded on the cost-of-care issue, but there were other issues on which the conferees could not agree.



<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
Jun. 1	Workshop: A Guide to Effective Enforcement: Investigating and Enforcing Code and Land Use Violations
Jun. 2	2018 Local Officials Workshop—NHMA Offices, Concord
Jun. 6	NHMA Webinar—Legislative Wrap Up
Jun. 8	2018 Right-to-Know Workshop—Rochester Frisbee Memorial Center
Sep. 14	2019-2020 Legislative Policy Conference—NHMA Offices, Concord
Sep.	2018 Budget & Finance Workshops – Online registration opens in August
Sep.- Oct.	2018 Municipal Law Lectures – Online registration opens in August

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