

LEGISLATIVE BULLETIN

Bulletin #22

2013 Session

May 17, 2013

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Gas Tax May Be Re-Referred

On Tuesday, with no discussion and very little commentary, the Senate Ways & Means Committee voted 3-2 to recommend that **HB 617**, the gas tax bill, be re-referred to the committee. The bill will go to the full Senate for a vote next **Thursday, May 23**.

So what does re-referred mean? Officially, if the Senate adopts the committee's recommendation of re-referral, the bill will be sent back to the Ways & Means Committee for further consideration and a recommendation to the full Senate at the beginning of the 2014 legislative session. From a practical standpoint, it provides an opportunity to keep the bill alive without having senators vote to either support or oppose the bill.

We have reported extensively in [Legislative Bulletin #21](#), [Legislative Bulletin #20](#), and [Legislative Bulletin #18](#) on the need and justification for this increase in the road toll. We have a serious problem with insufficient funding for transportation infrastructure needs in this state, and there is no alternative plan on the legislative docket that will provide money in the next biennium to address these needs. The only alternative funding for maintaining and improving municipal roads and bridges is increased property taxes.

As we have mentioned before, the provisions of **HB 617** are also incorporated in **HB 2**, the budget trailer bill, which is currently in the Senate Finance Committee, so the vote on **HB 617** next week will not be the last word on the issue. Nevertheless, the debate on the bill is important—if there *is* a debate; we would not be surprised by an immediate, non-debatable motion to table. In any event, please make sure your senator understands the seriousness of the situation before the vote on **HB 617** occurs next Thursday.

House Committee Recommends ITL on Gambling Bill

While we made no prediction about which way this week's committee vote would go on **SB 152**, the expanded gambling bill, we will concede that the 23-22 vote of Inexpedient to Legislate (ITL) by the Joint House

Gambling Bill - continued

Finance and Ways & Means Committee was closer than we expected. The committee spent three hours Wednesday morning hearing explanations of 18 proposed amendments, with at least one being a bipartisan omnibus amendment that addressed many of the concerns raised by the three subcommittees that reviewed the bill. (See [Legislative Bulletin #21](#)).

However, the afternoon executive session began with an immediate ITL motion on the bill as passed by the Senate, without considering any of the proposed amendments presented earlier. The final tally had 12 Democrats and 11 Republicans voting to recommend killing the bill, while 13 Democrats and 9 Republicans wanted to keep the bill alive (at least long enough to consider the proposed amendments). We are now ready to make a prediction on **SB 152**: that the debate in the House next Wednesday will be both lively and long!

Senate Committee Adopts Revenue Estimates

On Tuesday the Senate Ways & Means Committee voted on the estimated revenues for the upcoming state fiscal biennium beginning July 1, 2013. The combined general fund and education trust fund revenues adopted by the committee are approximately \$180 million less than the revenues adopted by the House and upon which the House version of the biennial operating budget is based. Approximately \$107 million of this difference involves estimated revenue from the Medicaid Enhancement Tax, which serves as state match for federal Medicaid dollars. This means that an additional \$107 million of federal funds are now in question, bringing the total difference to approximately \$287 million. Besides the Medicaid Enhancement Tax, other significant differences between the House and Senate estimates are: (1) revenues generated from the tobacco tax, with the House proposing a 30-cent increase over the current rate and the Senate proposing a 10-cent increase, (2) revenues anticipated from increased audit staff at the Department of Revenue Administration, and (3) recognition of tobacco tax settlement funds.

The Senate Finance Committee now must propose a two-year operating budget within these revenue parameters, and will be looking to reduce by \$287 million the spending level proposed by the House in **HB 1** and **HB 2**, the state operating budget and trailer bill. The Senate Finance Committee is scheduled to meet four days (and likely four nights) next week in order to complete its work by the end of this month so that the full Senate can vote on the budget by the June 6 deadline. Once the Senate adopts its version of the budget, a committee of conference will be formed to work out the differences in both the revenues and the appropriations between the House and Senate budgets.

We highlighted in [Legislative Bulletin #20](#) the municipal funding included in the House version of the budget. Please make sure your senator knows how important all of these programs are to your municipality!

Water Bill Is Not a Conspiracy

SB 11 is an **NHMA policy bill** that would authorize a municipality to establish a “water and/or sewer utility district” for the purpose of providing “public drinking water and water for domestic uses; water for fire suppression; wastewater management; related construction, operation, and maintenance of capital facilities needed in the performance of these services; and other business development services and activities related to the maintenance of an attractive, useful, and economically viable business environment within the district.” It would also allow two or more municipalities to enter into an agreement for the operation of such a district.

The bill passed the Senate on the consent calendar, received an 18-0 Ought to Pass recommendation from the House Municipal & County Government Committee, and was placed on the consent calendar in the House. Along the way, all legislators who considered the bill seemed to agree that providing drinking water, controlling fires, managing wastewater, and attracting business development were worthy, uncontroversial goals.

Last week, however, the bill was forced to take a strange detour. It was pulled off the consent calendar after some representatives received a “Red Alert” from a political action committee claiming that

SB 11 is part of the Water Sustainability Initiative started by Governor Lynch. It is part of SCI (Sustainable Communities Initiative) and is structured to take away your water rights. If you own a well, you will soon not own it. If you collect rain water, you soon will not be allowed to and you will be fined or arrested if you do.

It appears that someone had a little too much coffee. **SB 11** has nothing to do with the Water Sustainability Initiative or the Sustainable Communities Initiative. It is a simple bill to allow a municipality to provide water and sewer services for a developing commercial district. It was hatched not in Washington or Brussels or Moscow, but at the Stratham town hall, and it is co-sponsored by a bi-partisan group of legislators (four Republicans, three Democrats) from Stratham and Exeter. You can scour [the bill's language](#) all day, and you will find nothing that, by the wildest stretch of (almost) anyone's imagination, would result in the confiscation of wells or the arrest of anyone for collecting rain water. The bill merely allows a town, *by vote of its legislative body*, to establish a water or sewer utility district, elect commissioners, and levy fees or assessments on benefited properties to pay for the water/sewer infrastructure.

We suspect there may be some concern about language in the “purpose” section of the bill stating, among other things, that “the waters of New Hampshire constitute a limited and precious public resource to be protected, conserved, and managed in the interest of present and future generations. This requires careful stewardship and management of water and wastewater within the state.” For what it's worth, this statement is borrowed almost verbatim from language that has been in [RSA 481:1](#) since 1985, and we know of no one who has been arrested for collecting rain

Water Bill - continued

water as a result. Nevertheless, we understand that, to forestall any claim that this language may somehow be construed as an effort to take away people's water rights, there may be a floor amendment to delete the language. Although such an amendment should be unnecessary, it certainly is not a problem. This language is not essential to the bill, and its omission would not compromise the bill.

Conspiracy theories aside, some representatives are now questioning why the bill is necessary, given that there are other laws that allow a municipality to construct and pay for water infrastructure. The answer is that those laws leave a hole. As indicated, this bill originated in the Town of Stratham, which is interested in providing water and sewer services for a potential commercial district. The town could construct a water distribution facility under RSA 38, but town officials believe it may be more cost-effective to enter into an agreement with the neighboring Town of Exeter for an extension of Exeter's infrastructure. Municipalities may enter into inter-municipal agreements under RSA 53-A, but it is unclear whether that statute would authorize the election of a governing body and the levying of assessments. A village district can be formed under RSA 52 to provide water and wastewater facilities, but that requires creation of a whole new political subdivision. Accomplishing the town's goals would require weaving together several statutes, and it is still unclear that the necessary authority would exist. **SB 11** solves that problem.

SB 11 is a clean, simple solution to a small but vexing problem. It does not threaten anyone's property rights, and it grants authority that can be exercised only by approval of the legislative body, meaning the town meeting in most municipalities.

The bill will return to the House floor next **Wednesday, May 22**. If you hear any concerns about the bill from your representatives, please explain that it is good for municipalities and urge them to support the bill.

Committee Opposes Change to Welfare Law

The House Municipal & County Government Committee this week took a surprising action on **SB 146**, which would modify the treatment of old age assistance (OAA) and aid to permanently and totally disabled (APTD) recipients under the local welfare statutes.

Current law (RSA 167:27) states:

No person receiving old age assistance or aid to the permanently and totally disabled under this chapter or RSA 161 shall at the same time receive any other relief from the state, or from any political subdivision thereof, except for medical and surgical assistance, and the acceptance of such relief shall operate as a revocation of old age assistance or aid to the permanently and totally disabled.

As introduced in the Senate, **SB 146** would have repealed this prohibition. NHMA opposed the bill as introduced, because eliminating the limitation would have expanded the group of people to whom municipalities could be required to provide

Welfare Law - continued

local assistance. This is because RSA 165:1 states, “Whenever a person in any town is poor and unable to support himself, he *shall* be relieved and maintained by the overseers of public welfare of such town . . .” (Emphasis added.) The existing language in RSA 167:27 is the only thing that prevents municipalities from being required to assist OAA and APTD recipients who might otherwise qualify; with that language repealed, municipalities would have an expanded obligation—and this would be an unconstitutional unfunded mandate.

The Senate amended the bill to address this concern. The Senate version would change the language in RSA 167:27 to *allow* a municipality to provide assistance to OAA and APTD recipients if it is permitted by its welfare guidelines.

Some people expressed a concern that leaving this decision to the municipality could encourage people to “shop around” to find municipalities that have the best benefits. Apparently in response to that objection, an amendment was introduced in the House committee that would essentially restore the bill to the as-introduced version. At an executive session of the committee this week, NHMA again cautioned that this would seem to create an unfunded mandate. The committee then voted down the amendment.

We assumed that after defeating the amendment, the committee would vote to recommend the bill as passed by the Senate—which no one, including NHMA, had opposed. Instead, the committee voted down an Ought to Pass motion and then voted the bill Inexpedient to Legislate. We expect the bill to go to the House floor the week after next, where a floor fight seems likely.

HOUSE CALENDAR

TUESDAY, MAY 21

WAYS AND MEANS, Room 202, LOB

10:00 a.m. SB 14, relative to the rulemaking authority of and administrative fine authority for the department of resources and economic development.
NHMA Policy.

SENATE CALENDAR

There are no hearings on bills of municipal interest.

HOUSE/SENATE FLOOR ACTION

There is no floor action to report.



Fundamentals of Local Welfare



New Hampshire Local Welfare Administrators Association

An informative session for municipal officials *new* to local welfare administration.

**Thursday,
June 13, 2013**

10 a.m. – 2:30 p.m.

Workshop presented by
NHMA & NHLWAA

at the Local Government Center
Concord, NH

Cost: \$40

Members of the New Hampshire Municipal Association and members of the New Hampshire Local Welfare Administrators Association are welcome to attend.

Attendees will receive a copy of NHMA's 2013 edition
The Art of Welfare Administration.

Agenda:

9:30 a.m. Registration & Coffee

10 a.m. The Art of Welfare

This session provides a basic overview of New Hampshire law governing local welfare administration, including why guide lines are important, how assistance is provided, and anticipated legislative changes. This session also will address fair hearings, suspension of assistance, and more.

Judy A. Silva, Interim Executive Director, NH Municipal Association

Noon Hot Lunch Buffet

1 p.m. The Art of Local Welfare Panel Discussion

Members of the New Hampshire Local Welfare Administrators Association Executive Committee will respond to questions, share practical tips, and provide guidance in the "art" of managing a sound welfare program.

*Robert Mack, Welfare Officer, City of Nashua
Todd Marsh, Welfare Director, City of Rochester
Charleen Michaud, Welfare Specialist, City of Manchester
Elizabeth Sayre, Human Services Manager, City of Keene
Jackie Whatmough, Human Services Director, City of Concord*

2:30 p.m. Adjourn

Register online today at www.nhmunicipal.org and click Training & Events under Related Links.

Online pre-registration required by June 6. Space is limited.

Questions? Call 800.852.3358, ext. 3350 or email NHMAregistrations@nhmunicipal.org.