

LEGISLATIVE BULLETIN

Bulletin #3

2014 Session

January 10, 2014

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Start Your Engines

Legislative hearings begin next week, and in addition to the bills mentioned in the articles below, there are hearings on dozens of bills of municipal interest in the first week — with over 30 on Tuesday alone. The next several weeks will be intense. Please check the calendar in this *Bulletin* for a list of all hearings on municipal bills.

The House and Senate convened this week to officially begin the 2014 session. Both chambers have a number of “retained” (House) and “re-referred” (Senate) bills left from last session, all of which have been reported out of committee and are awaiting action by the full House or Senate. The House made a small dent in its retained bills, and will be meeting every Wednesday until it disposes of all of them. The Senate presumably will deal with re-referred bills over the next few weeks.

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Appointment of Town Clerks

One of the first bills scheduled for a hearing this year is **HB 1266**, an **NHMA policy bill** that would allow towns to vote to authorize the appointment of the town clerk by the selectmen or town manager. Current law, of course, requires the town clerk to be elected. The hearing is scheduled for next **Tuesday, January 14, at 11:00 a.m., in LOB Room 301**, before the Municipal and County Government Committee.

Although NHMA did not initiate this bill, allowing the option to appoint town clerks has been one of our policies for many years. It is important to understand that this bill does not require a town to have an appointed clerk; it merely lets the voters choose to exercise that option. If the voters can be trusted to elect a town clerk, it seems that they should be trusted to decide to give appointment authority to the selectmen or town manager.

There are numerous problems with the requirement that a town clerk be elected. Because an elected official must reside in the town, this requirement immediately restricts the field of candidates. In a small town, there

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Appointment of Town Clerks - continued

may not be a qualified candidate, or even an interested candidate. Further, as with any elected position, there is the danger that popularity or name recognition may trump competence. And the daunting prospect of running for re-election every three years, or even every year, may discourage an otherwise qualified candidate from considering the position in the first place.

We know there are a number of clerks who oppose the appointment option. While we work closely with the Clerks' Association on many bills (see article on **HB 183** below) and certainly respect their opinions, we believe it is time for towns to have the same option with respect to clerks that they have with respect to almost all other officials.

If your town has experienced problems because of the election requirement, please contact the Government Affairs staff to let us know your concerns; and please consider coming to the hearing on Tuesday.

Retirement Tweaking

Although there is no comprehensive retirement reform bill in the legislature this year, there are a number of bills that make minor changes. On **Tuesday, January 14, in LOB Room 306**, the House Executive Departments and Administration Committee will hear the first of these bills. **HB 1148**, scheduled for a hearing at **10:00 a.m.**, would delay the reduction in pension benefits that currently occurs when a New Hampshire Retirement System (NHRS) retiree reaches age 65. The bill changes the point of reduction from age 65 to the time when the retiree reaches full retirement age for Social Security purposes, which may be greater than age 65. The NHRS states in the fiscal note that this will result in increased pension benefits for some retirees, which will in turn result in *increased employer contribution rates*, estimating the increased cost to the state and local government (municipal, school district and county) employers at over \$12 million for fiscal years 2016 through 2018. **NHMA policy** is to *oppose* any expansion of pension benefits that increases municipal employer costs.

The second bill, **HB 1494**, scheduled for a hearing at **11:00 a.m.**, deals with a variety of NHRS administrative issues, several of which appear to be clarifications of existing law or practice. However, the bill also expands interest charges and imposes a new penalty on employers for non-compliance with NHRS data reporting requirements or for incorrect data reporting.

Current law allows the NHRS to assess interest at one percent per month for retirement contributions (employer and/or employee) not remitted on time. **HB 1494** expands the assessment of interest to situations when the contribution payment cannot be processed by NHRS "due to data reporting errors." Additionally, a new penalty of \$25 per day would be imposed for non-compliance with data reporting requirements, including data not remitted on time or data that cannot be processed

Retirement Tweaking - continued

due to reporting errors. This daily penalty appears to be driven in part by the new reporting requirement enacted last year that requires employers to report monthly information about NHRS retirees working in part-time positions. Since there is no payment associated with this new report, the one percent interest charge could not be used as an enforcement mechanism, hence the creation of a daily penalty instead. The daily penalty includes a provision authorizing the Board of Trustees to abate all or part of the charge if it is shown that the employer “did not willfully, intentionally, through gross negligence, or through a pattern of negligence fail to file that data as required.”

\$\$\$ Timber Tax Repeal \$\$\$

HB 1441 would repeal RSA 79 in its entirety, thereby eliminating all income from the timber yield tax, reducing municipal revenue by approximately \$2.6 million per year. The bill also inserts a new exemption in RSA 72 so that all growing wood and timber (other than fruit trees, sugar orchards, Christmas trees and a few other specific varieties) would not then be subject to general property taxation either. **HB 1441** is scheduled for a hearing in the House Resources, Recreation and Development Committee on **Tuesday, January 14 at 1:45 p.m. in LOB Room 305**. Please let [committee members](#) know the impact of eliminating this important local revenue source in your municipality!

Veto Override Fails on Absentee Ballot Bill

An effort to override Governor Hassan’s veto of **HB 183**, relative to processing absentee ballots, failed on Wednesday. The override motion garnered a 176-163 majority, but that was well short of the two-thirds margin required.

HB 183, which was strongly supported by NHMA, the City and Town Clerks’ Association, and seemingly every moderator in the state, would have allowed moderators at state and local elections to begin processing absentee ballots two hours after the polls open, rather than waiting until 1:00 p.m., as current law requires.

Fortunately, the Senate Public and Municipal Affairs Committee has recommended an amendment to a re-referred Senate bill from last year — coincidentally, **Senate Bill 183** — that would accomplish what **HB 183** set out to do, and that apparently satisfies the last-minute objections that were raised by its opponents. It is unclear when **SB 183** will go to the full Senate, but presumably it will be within the next few weeks. If it passes the Senate, it will then need to go to the House. We will keep you posted.

Paint Stewardship Program

HB 1570 would establish a “paint stewardship program,” under which a nonprofit organization approved by the state would dispose of unused paint collected at specified locations throughout the state, which may include municipal transfer stations and retail stores. The program would be funded by a mandatory fee on all paint sold within the state, and all manufacturers of paint sold in the state would be required to participate in the program.

It appears that the program would significantly reduce the amount of paint disposed of as trash at municipal solid waste facilities and “hazardous waste days,” thus saving money for municipalities. We have heard from a few local officials who favor the bill, but it would be helpful to get more opinions. Please take a look at the bill and let us know what you think. A hearing on the bill is scheduled before the Environment and Agriculture Committee on **Tuesday, January 14, at 1:00 p.m., in LOB Room 303**, so it would be helpful to receive comments before then — and, of course, you can attend the hearing.

NHMA Files Brief in Case Challenging Retirement System Changes

NHMA, together with the New Hampshire Association of Counties and the New Hampshire School Boards Association, filed an *amicus* brief in the New Hampshire Supreme Court this week in the case of *Professional Fire Fighters of New Hampshire v. State*. The plaintiffs in that case are challenging the 2011 legislative changes that require increased contribution levels by state and local employees who are members of the New Hampshire Retirement System. They claim that the Retirement System statute is in fact a contract with employees, and as such cannot be modified to increase employee obligations or reduce their benefits.

NHMA, in support of the state’s position, argued that (1) the Retirement System statute is not a contract, but a statute that can be amended at the will of the legislature, like any other statute; and (2) if the statute can somehow be construed as a contract, it has been breached many times in recent years to the detriment of political subdivisions — so the state should get ready for a torrent of lawsuits by political subdivisions. The full brief can be found in the Court Updates section of the NHMA website.

HOUSE CALENDAR
Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, JANUARY 14

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 10:00 a.m. **HB 1565-FN**, establishing the crime of filing false lien or encumbrance against public servant.
- 10:30 a.m. **HB 1204-FN**, relative to perjury by a law enforcement officer.
- 2:30 p.m. **HB 1473**, recodifying the laws relative to sheriffs, constables, and police officers.

ELECTION LAW, Room 308, LOB

- 10:00 a.m. **HB 1357**, relative to access to ballots.
- 10:30 a.m. **HB 1347**, establishing a house committee to study apportionment of state representative districts.
- 11:30 a.m. **HB 1337**, relative to authority for removal of political advertising.
- 1:00 p.m. **HB 1461**, relative to prohibited coercion of political contributions.

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

- 10:00 a.m. **HB 1151**, establishing a committee to study the solid waste operator training program and financial assurance for corrective action at solid waste landfills.
- 10:30 a.m. **HB 1304**, relative to the storage of fluorescent lamps at transfer stations.
- 1:00 p.m. **HB 1570-FN**, establishing a paint stewardship program.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:00 a.m. **HB 1148-FN**, relative to the reduction in the calculation of state retirement system annuities at age 65.
- 11:00 a.m. **HB 1494-FN**, relative to administration of the New Hampshire retirement system and authority of the board of trustees.
- 1:00 p.m. **HB 1563-FN**, granting group II retirement system status to certain positions in the department of corrections.

FINANCE, Rooms 210-211, LOB

- 10:45 a.m. **HB 1489-FN-A-L**, establishing a fund to reimburse costs associated with firefighters who have heart, lung, and cancer disease and continually appropriating a special fund.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB

- 2:00 p.m. **HB 1213-FN**, prohibiting the purchase of alcohol or tobacco products with electronic benefit transfer (EBT) cards.

JUDICIARY, Room 208, LOB

- 1:30 p.m. **HB 1201-FN**, relative to the accountability of public officials.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

- 10:15 a.m. **HB 1168**, relative to employer documentation of worker eligibility to work in the United States.
- 11:00 a.m. **HB 1368-FN**, relative to inquiries into criminal records on employment applications.

House Calendar - continued**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

- 10:00 a.m. **HB 1234**, relative to municipal contracts for police chief.
 10:30 a.m. **HB 1235-FN**, establishing a procedure to recall selectmen and school board members.
 11:00 a.m. **HB 1266**, relative to the appointment of the town clerk. **NHMA Policy**.
 1:00 p.m. **HB 1375**, permitting a municipal law enforcement agency to collect unwanted or illegal firearms.
 1:30 p.m. **HB 1458**, authorizing towns and cities to establish special assessment districts.

PUBLIC WORKS AND HIGHWAYS, Room 210, LOB

- 10:00 a.m. **HB 1202**, establishing a commission to study revenue alternatives to the road toll for the funding of the state's highways and bridges.
 11:30 a.m. **HB 1406-FN**, relative to red list bridges.
 1:00 p.m. **HB 1123-FN**, repealing the prohibition on village districts receiving road funds.
 1:30 p.m. **HB 1302**, relative to certain driveway permits.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 1:45 p.m. **HB 1441-FN-L**, repealing the normal yield tax on timber.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

- 10:00 a.m. **HB 1455-L**, relative to the authority of municipalities to enter into agreements for payments in lieu of taxes.
 11:00 a.m. **HB 1590-L**, relative to payments in lieu of taxes for renewable generation facilities in unincorporated places.

THURSDAY, JANUARY 16**CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB**

- 10:45 a.m. **HB 1237**, prohibiting residency restrictions for registered sex offenders and offenders against children.

ELECTION LAW, Room 308, LOB

- 10:00 a.m. **HB 1225**, adding the choice of "none of the above" to state election ballot lots.
 11:00 a.m. **HB 1338**, relative to appointment of inspectors of election by selectmen.
 11:30 a.m. **HB 1460**, relative to the date of appointment of inspectors of election.
 1:00 p.m. **HB 1462-FN**, relative to electioneering by public employees.
 1:30 p.m. **HB 1323**, relative to candidates for state representative.
 2:00 p.m. **HB 1545**, relative to voting booths.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 1:30 p.m. **HB 1562-FN**, relative to the legal holiday status of the state biennial election day.

House Calendar - continued**MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB**

- 10:00 a.m. **HB 1124**, relative to the adoption of zoning ordinances in towns that use official ballot voting.
- 10:30 a.m. **HB 1109**, relative to providing notice to abutters of a petitioned warrant article to discontinue a class VI road.
- 11:00 a.m. **HB 1371**, relative to grading and improving subdivision streets.
- 1:00 p.m. **HB 1573-FN**, discontinuing regional planning commissions and requiring the election of municipal planning board members.

WAYS AND MEANS, Room 202, LOB

- 11:00 a.m. **HB 1597-FN-A**, reducing the rate of tax on meals under the meals and rooms tax.

FRIDAY, JANUARY 17**COASTAL RISK AND HAZARDS COMMISSION (RSA 483-E), Urban Forestry Center, 45 Elwyn Rd., Portsmouth**

- 10:00 a.m. Regular meeting.

SENATE CALENDAR**TUESDAY, JANUARY 14****TRANSPORTATION, Room 103, LOB**

- 1:30 p.m. **SB 232**, relative to speed limits for off highway recreational vehicles and snowmobiles.

WAYS AND MEANS, Room 103, SH

- 9:30 a.m. **SB 327-FN**, relative to economic revitalization zone tax credits.
- 9:45 a.m. **SB 333**, relative to property taxation of manufactured housing.

WEDNESDAY, JANUARY 15**ENERGY AND NATURAL RESOURCES, Room 101, LOB**

- 9:00 a.m. **SB 252**, relative to the management of hazardous waste.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 100, SH

- 10:30 a.m. **SB 296**, relative to preferences for veterans and disabled veterans in public employment.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

- 9:30 a.m. **SB 223**, authorizing municipalities to enter into contracts for the private funding and repayment of construction of sewer systems.
- 10:30 a.m. **SB 219**, relative to funds received from the sale of cemetery lots.
- 10:45 a.m. **SB 365**, relative to appointments and nominations to boards, commissions, or other entities by the New Hampshire Municipal Association.

Senate Calendar - continued**THURSDAY, JANUARY 16****PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB**9:30 a.m. **SB 271**, relative to retention of challenge affidavits.9:45 a.m. **SB 272**, relative to notice of voter registration.**TUESDAY, JANUARY 21****FINANCE, Room 103, SH**1:00 p.m. **SB 339-FN**, authorizing the department of administrative services to contract for a credit card affinity program in which fees received are directed to offset the retirement system's unfunded liability.**WEDNESDAY, JANUARY 22****PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB**9:30 a.m. **SB 216**, relative to designating an alternate trustee of the trust fund.9:45 a.m. **SB 236**, relative to delivery of the final budget and recommendation of the municipal budget committee to the governing body.10:00 a.m. **SB 301**, relative to petitions to adopt or rescind the official ballot form of voting.10:30 a.m. **SB 294**, relative to the deadline for requesting a recount of an election.10:45 a.m. **SB 227**, relative to library funds.**NEW BILLS****House Bills**

[HB 1605-FN](#) requires the secretary of state to perform random audit recounts of towns and wards that use optical scan equipment to count votes representing 5 percent of the votes cast after each general election. Rep. Till of Derry; **EL**.

[HB 1609-FN](#) recodifies RSA 617, relative to the forfeiture of personal property. Rep. Warden of Manchester; **JUD-H**.

[HB 1610-FN](#) defines the term "natural repose" to determine liability for the excavation tax. Rep. Daniels of Milford; **M&CG**.

[HB 1620-FN](#) regulates the use of drones by government agencies and individuals. Rep. Kurk of Weare; **CJ&PS**.

[HB 1626-FN-A-LOCAL](#) provides for the licensing of up to six facilities for video lottery in the state. Rep. Vaillancourt of Manchester; **W&M-H**.

[HB 1627-FN-A-LOCAL](#) allows video lottery machines and table games at one gaming location in the state pursuant to a competitive application process, with proceeds to be distributed to, among others, the municipality where the facility is located and abutting communities, and to the department of transportation for highway block grants. Rep. Long of Manchester; **W&M-H**.

New Bills - continued

[HB 1628-FN-A-LOCAL](#) provides for the licensing of up to six facilities for video lottery in the state. Rep. D. Sullivan of Manchester; **W&M-H**.

Senate Bills

[SB 300](#) allows municipalities to calculate and set their own property tax rates, subject to certain requirements. Sen. Sanborn of Bedford; **W&M-S**.

[SB 301](#) permits a town to prohibit for 2 years a petitioned warrant article for the purpose of adopting or rescinding an official ballot referendum form of government after such a question has failed to receive a 3/5 majority vote in 2 successive town meetings. Sen. Gilmour of Hollis; **PMA**.

[SB 302](#) provides that criticism of an employer cannot be grounds for termination of employment. Sen. Pierce of Hanover; **COM-S**.

[SB 304-LOCAL](#) requires county commissioners to value property subject to agreements in lieu of taxes every 2 years, requires county commissioners in Coos County to use the department of revenue's valuation of certain property subject to payments in lieu of taxes, and requires towns seeking to enter into agreements with utilities for payments in lieu of taxes to obtain an expert evaluation of the agreement before it is signed. Sen. Woodburn of Dalton; **W&M-S**.

[SB 315-FN](#) establishes the board of building officials for the certification and regulation of persons enforcing the state building code and conducting building inspections, and prohibits any person from acting as a building official without being certified by the board. Sen. Carson of Londonderry; **ED&A-S**.

[SB 333](#) clarifies the term manufactured housing for purposes of the assessment of property taxes and exempts property meeting the definition of recreational vehicle. Sen. Forrester of Meredith; **W&M-S**.

[SB 339-FN](#) allows the department of administrative services to contract with a credit card issuer to establish a credit card affinity program in which the fees received by the state are dedicated to reducing the retirement system's unfunded liability. Sen. Stiles of Hampton; **F-S**.

[SB 344](#) removes limitations on a municipality's authority to enter into franchise agreements for cable service within the municipality. Sen. Odell of Lempster; **PMA. NHMA Policy**.

[SB 347](#) allows pleas by mail for violations of municipal land use ordinances and establishes a fine for a landlord's failure to designate an agent for service of process. Sen. Watters of Dover; **PMA**.

New Bills - continued

[SB 350](#) requires the commissioner of the department of education to provide final average daily membership data to the commissioner of the department of revenue administration no later than October 1 of each year. Sen. Stiles of Hampton; **HEHS**.

[SB 354](#) expands the definition of “agritourism” and includes it within the definition of “agriculture.” Sen. Odell of Lempster; **ENR**.

[SB 365](#) provides that certain appointment or nomination authority granted to the New Hampshire Municipal Association shall apply to persons from a municipality which is eligible for membership in the New Hampshire Municipal Association. Sen. Soucy of Manchester; **PMA**.

NHMA Webinar

Free Speech and Municipal Government

Date: January 15, 2014

Time: 12:00 PM - 1:00 PM

Contact Email: NHMAregistrations@nhmunicipal.org

Contact Phone: 603.224.7447

Join us on Wednesday, January 15 at noon!

Join NHMA's Legal Services Attorneys for a webinar exploring the effect of the First Amendment and freedom of speech on the way local governments operate. The presentation will include information regarding public comment at public meetings, free speech rights of government employees, and electioneering by governmental officials and employees. This discussion involves subjects affecting all municipalities across all departments and positions.

This webinar is open to members of the NH Municipal Association.

[Register Today!](#)

Please see our website: www.nhmunicipal.org for more information on the:

2014 Moderators Workshops

SB 2 Meeting — Saturday, January 18 [Snow date: January 25]

Traditional Town Meeting — Saturday, February 22 [Snow date: March 1]

[Register online](#) today!

Current Issues Under the Right-to-Know Law Workshop

Date: February 10, 2014

Time: 9:00 AM - 12:00 PM

Location: Londonderry Town Hall, Londonderry, NH

Contact Email: NHMAregistrations@nhmunicipal.org

Contact Phone: 800.852.3358, ext. 3350

NHMA is hosting a *free* workshop addressing *Current Issues Under the Right-to-Know Law*, presented by NHMA Legal Services staff attorneys, at the Londonderry Town Hall in Londonderry, New Hampshire.

This free program will provide a detailed review of recurring questions under RSA 91-A, New Hampshire's Right-to-Know Law. Issues addressed will include dealing with confidential information, procedures for non-public sessions, electronic records and communications, and charging for costs of providing records.

A general review of the Right-to-Know Law will be included, and there will be ample time for questions and answers on all aspects of the law.

This program is open to *NHMA members only*. [Register Today!](#)