

LEGISLATIVE BULLETIN

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INSIDE THIS ISSUE:

<i>Retirement Benefits & Penalty</i>	2
<i>NHMA Bill</i>	3
<i>Right-to-Know Law Bills</i>	4
<i>NHRS Credit Card Program</i>	5
<i>Diversion of Highway Funds</i>	5
<i>Timber Tax Repeal</i>	5
<i>House Calendar</i>	6
<i>Senate Calendar</i>	7
<i>New Bills</i>	8
<i>Floor Action</i>	9
<i>Workshops</i>	10

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Committee to Decide Town Clerk Bill

The House Municipal and County Government Committee heard testimony this week on **HB 1266**, an **NHMA policy bill** that would allow towns to decide whether their clerks should be elected or appointed. *The committee is scheduled to vote on the bill next Tuesday, January 21. Please contact members of the [committee](#) before then and urge them to support HB 1266.*

At the hearing this week, a number of current and former municipal officials testified in support of the bill. The Hanover Town Clerk discussed the problems her town had when it could not find anyone to run for the position; it ended up recruiting someone to run, on the understanding that he would serve as the titular town clerk while an appointed deputy did the day-to-day work.

The bill was opposed only by one state official and a representative from the City and Town Clerks' Association. The state official implied that a passing reference to town clerks in the New Hampshire Constitution (part II, article 32, requiring that votes at state elections be counted in the presence of the clerk, and that the clerk make a report of the same) somehow amounts to a constitutional requirement that clerks be elected. The committee was reminded, however, that the same official made the same claim in connection with a different bill last year, and the House legal counsel opined that there was absolutely no merit to it.

The representative from the Clerks' Association expressed concern about the independence of the town clerk and the ability of the clerk to resist interference by selectmen and town managers. This is a legitimate concern--but it is just as legitimate for any other official. Police chiefs and tax collectors and road agents all have a right to do their jobs without interference; yet all of these officials may be either appointed or elected--and in fact most of them are appointed. Interference with a town clerk's duties is illegal whether the clerk is elected or appointed.

Clerks in all of New Hampshire's thirteen *cities* are appointed, and have been for decades. This means that approximately one-third of the population of the state already lives in municipalities with an appointed clerk,

Town Clerk Bill - continued

and there have been no adverse consequences. Clerks have not been fired for standing up to their mayors or city managers; indeed, the track record of city clerks is that most have served many years without interruption, because their governing bodies and managers recognize their importance and their expertise. The specter of municipal governing bodies or managers intimidating their clerks is a bogeyman.

Again, this bill does not require that town clerks be appointed. It merely allows the voters to decide whether the clerk should be elected or appointed. In a commuter town of 30,000, where only a tiny percentage of the voters pay attention to town government, the voters may decide that choosing the town clerk should be entrusted to the selectmen, who can make a decision based on resumes and interviews, rather than on how many campaign signs they see along the road. In a town of 300, where it is difficult to find enough people to run for office, it may make sense to open the position to applicants from other towns. In any town where an outstanding clerk has already served for 25 years, it may be time to let him or her keep the job without having to wage a political campaign every year. Or maybe not. **HB 1266** lets each town's voters make this decision.

Although the Clerks' Association opposes **HB 1266**, there are more than a few clerks who support it. Your clerk may be one of them. In any event, please contact committee members and/or your own representatives and urge them to support **HB 1266**.

Retirement Benefits and Penalty

On Tuesday the House Executive Departments and Administration Committee heard testimony on several retirement-related bills. **HB 1148** would eliminate the reduction in pension benefits that currently occurs when a retiree reaches age 65, instead delaying that reduction until full retirement age under Social Security. According to the New Hampshire Retirement System (NHRS), this increase in pension benefits will cost employers approximately \$12 million from 2016 through 2018. Many testified in support of the bill from an equity standpoint (*i.e.*, Social Security does not generally kick in now until age 67 while the NHRS reduction occurs at age 65); however, **NHMA policy** is to *oppose* any legislation that expands pension benefits if the result is an increase in employer costs. Further, employee groups have argued in court that the NHRS statute is a "contract" with employees, and that the 2011 changes that reduced retiree benefits were an unconstitutional impairment of that contract. Apparently the argument now is that although benefits can never be reduced, employers' obligations can be increased without limitation. That is an unusual contract.

NHMA also opposed section 8 of **HB 1494**, which establishes a \$25 per day penalty for late remittance or incorrect data on the new reporting requirement regarding compensation paid to part-time workers who are also NHRS retirees. NHMA urged the committee to reject this penalty because there is significant confusion about the reporting requirements regarding certain public officials, such as selectmen, election officials, coaches, and others who receive nominal compensation, often in the form of a stipend. With many questions on this new reporting require-

Retirement Benefits - continued

ment and the likelihood that an amendment will be submitted on another bill to address these issues, it is premature to enact a penalty provision.

The committee is scheduled to hold an executive session on both of these bills next **Tuesday, January 21, at 1:30 p.m., in LOB Room 306**. Please contact committee members and urge them to recommend Inexpedient to Legislate on **HB 1148** due to the increased cost to employers, and to remove section 8 from **HB 1494**.

A “Clarification” of NHMA’s Appointment Authority

On Wednesday, the Senate Public and Municipal Affairs Committee heard testimony from two speakers on [SB 365](#), relative to appointments and nominations to boards and commissions by NHMA. Introduced as simply a “clarification,” according to the sponsor’s testimony, the bill adds language to 16 statutes providing that when NHMA makes appointments, or nominates candidates for appointment, to statutory boards and commissions such as the Wetlands Council, the Fire Standards and Training Council, or the New Hampshire Retirement System Board, NHMA’s nominee or representative must be “from a town or city *eligible* for membership in the New Hampshire Municipal Association.”

On its face, that seems pretty harmless, if unnecessary. The curious thing about the bill, however, is that NHMA is the **only** organization for which such a clarification is proposed, despite the dozens of organizations that have appointments and nominations to the many boards and commissions established by the legislature. No instance of an “improper appointment” was identified, nor was any instance of confusion on the part of any person about whom NHMA could appoint from where. No one spoke to NHMA about the bill before it was filed.

The committee recommended the bill as Inexpedient to Legislate by a 3-2 vote, unfortunately along party lines, after suggestions that without this language, NHMA *could* adopt a policy to exclude from appointments and nominations local officials from non-member municipalities if it wanted to. (Only two out of 234 are not presently members.) To our knowledge, in the 73 year history of NHMA, there has never been such an exclusionary policy or any interest in one. All cities and towns are eligible to be members of NHMA and we have always welcomed back those that have, from time to time, drifted away and then returned!

As to NHMA appointments and nominations—there are a number of committees on which the legislature has wisely placed a municipal representative in order to make sure the municipal perspective is considered. NHMA’s practice is to seek volunteers to serve on these committees in the belief that someone with time, interest, and knowledge will best represent the general municipal viewpoint. We are presently seeking volunteers for two positions: one on the [Emergency Medical and Trauma Services Coordinating Board](#) and one for the [Building Code Review Board](#). Please contact NHMA’s [government affairs](#) staff if you are interested or would like more information.

Significant Changes Proposed to Right-to-Know Law

The House Judiciary Committee will hear testimony next week on **HB 1156**, which would make major changes to New Hampshire's Right-to-Know Law, several of which raise significant concerns. Among other things, the bill would require that notice of public meetings be posted at least 72 hours in advance (rather than 24 hours); require the posting of an agenda along with the meeting notice; require public notice of any public body's consultation with legal counsel or collective bargaining sessions; allow any person, *during a public meeting*, to inspect and request copies of all governmental records used during the meeting; and amend the law to say that a superior court shall (rather than may) invalidate any action taken at a public meeting held in violation of the law, no matter how insignificant the violation.

Although the bill would make some changes that are worth considering, they are heavily outweighed by the problems it would create. If you have concerns about these proposed changes, please contact members of the [Judiciary Committee](#), or consider attending the hearing. The hearing is scheduled for **Thursday, January 23, at 10:00 a.m., in LOB Room 208.**

And More Right-to-Know Law Bills

The Judiciary Committee will hear several other bills dealing with the Right to Know Law on **Thursday in LOB Room 208.** These include:

- **HB 1153**, scheduled for **10:45 a.m.**, would allow public bodies or agencies to require a deposit to cover the estimated cost of responding to a request for copies of records;
- **HB 1591**, scheduled for **11:15 a.m.**, would establish a Right-to-Know Law grievance commission consisting of "10 citizens who shall not be members of the New Hampshire general court, associated with the Local Government Center or the New Hampshire Municipal Association, or attorneys";
- **HB 1379**, scheduled for **1:00 p.m.**, would exempt records relating to firearms licenses, permits, and applications from disclosure;
- **HB 1470**, scheduled for **1:45 p.m.**, would allow a public body to meet by telephone even though a quorum is not physically present at the public location of the meeting if a member or members needed to make a quorum would have to travel more than 60 miles to attend the meeting; and
- **HB 1450**, scheduled for **2:15 p.m.**, would extend the law to apply to any 501(c)(3) corporation that enters into a contract with a municipality to manage or operate a business improvement district.

Right to Know Law Bills - continued

NHMA does not currently have a position on any of these bills, although a few observations are in order:

HB 1153 seems like a good idea, at least in some circumstances, as it may discourage Right-to-Know requests that are intended merely to harass government officials.

The role of the grievance commission created under **HB 1591** is far from clear. It is given authority to make “decisions,” but no guidance as to what it may decide. It is given no staff and no budget, but is expected to conduct hearings in accordance with the Administrative Procedure Act. Curiously, appeals from its decisions would be governed by the statute for appeals from zoning board of adjustment decisions.

HB 1450 seems unobjectionable (at least to municipalities), but we cannot find any other reference in New Hampshire law to “business improvement districts,” so it is unclear what entities it would apply to. This should be clarified.

Credit Card Affinity Program to Fund Pension Benefits

On **Tuesday, January 21, at 1:00 p.m., in State House Room 103**, the Senate Finance Committee is scheduled to hear **SB 339**. This bill authorizes the New Hampshire Department of Administrative Services to contract for a credit card affinity program under which all fees and other revenue received by the state from the credit card issuer, after deducting the department’s administrative costs, would be paid to the New Hampshire Retirement System to reduce the system’s unfunded liability. This bill has bipartisan support from eleven senators and reflects a “thinking-outside-the-box” approach to addressing pension liabilities.

Limiting the Diversion of Highway Funds

HB 1346, an **NHMA policy bill** which limits the amount of highway funds that may be used for purposes other than the construction, reconstruction and maintenance of public highways within the state, is scheduled for a hearing before the House Public Works and Highways Committee on **Tuesday, January 21, at 10:30 a.m. in LOB Room 201**. For the 2014-2015 biennium over \$158 million of highway fund revenue was appropriated to state agencies other than the Department of Transportation. NHMA has long supported legislation to limit or eliminate the diversion of highway funds for non-highway purposes.

Little Support for Timber Tax Repeal

On Tuesday the House Resources, Recreation and Development Committee heard testimony on **HB 1441**, which would repeal the timber tax. Only the prime sponsor spoke in support of the bill. Even those representing timberland owners urged the committee to recommend Inexpedient to Legislate on this bill. That appears to be the likely result.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, JANUARY 21

COMMERCE AND CONSUMER AFFAIRS Room 302, LOB

1:15 p.m. **HB 1589-FN**, requiring background checks for all firearm sales. Please note Representatives Hall, State House.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

10:30 a.m. **HB 1306-FN**, prohibiting a law enforcement officer from soliciting another person to participate in criminal activity.

11:00 a.m. **HB 1435**, requiring law enforcement officials to disclose specific information relating to a police checkpoint.

1:00 p.m. **HB 1550**, permitting the audio and video recording of a public official while in the course of his or her official duties.

ELECTION LAW, Room 308, LOB

10:00 a.m. **HB 1605-FN**, relative to audit recounts.

11:00 a.m. **HB 1547**, authorizing voters to remove their names from the checklist.

2:00 p.m. **HB 1544**, relative to special election ballots.

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

11:00 a.m. **HB 1344**, relative to the disposal of sharps waste by retail establishments.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

11:15 a.m. **HB 1405**, prohibiting an employer from using credit history in employment decisions.

1:15 p.m. **HB 1228**, establishing a commission to investigate the procedure for public employee collective bargaining.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

10:00 a.m. Continued public hearing on **HB 1455-L**, relative to the authority of municipalities to enter into agreements for payments in lieu of taxes.

11:00 a.m. Continued public hearing on **HB 1590-L**, relative to payments in lieu of taxes for renewable generation facilities in unincorporated places.

THURSDAY, JANUARY 23

ELECTION LAW, Room 308, LOB

11:00 a.m. **HB 1543**, relative to filing for state representative special elections.

1:00 p.m. **HB 1506**, relative to student identification cards used to satisfy voter identification requirements.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:00 a.m. **HB 1101-FN**, relative to the recovery of overpayments by the retirement system and establishing a committee to study the policies and procedures of the retirement system for benefits wrongfully paid.

House Calendar - continued

- 10:30 a.m. **HB 1126**, establishing a committee to study alternative public employee retirement plans.
- 11:00 a.m. **HB 1152-FN**, terminating the benefit program for call, substitute or volunteer firemen administered by the New Hampshire retirement system.
- 2:00 p.m. **HB 1493-FN-L**, relative to members of the retirement system working after retirement, and relative to membership of political subdivision officials appointed for fixed terms.

JUDICIARY, Room 208, LOB

- 10:00 a.m. **HB 1156-FN-L**, making certain changes to the right-to-know law.
- 10:45 a.m. **HB 1153-FN**, allowing public bodies or agencies to require a deposit for right-to-know requests.
- 11:15 a.m. **HB 1591-FN**, establishing the right-to-know grievance commission.
- 1:00 p.m. **HB 1379**, excluding firearms records from public records subject to disclosure under the right-to-know law.
- 1:45 p.m. **HB 1470**, relative to quorums for meetings under the right-to-know law.
- 2:15 p.m. **HB 1450**, extending the right-to-know law to certain corporations entering into contracts with municipalities for the purpose of operating a business improvement district.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 10:00 a.m. **HB 1142-FN-A**, relative to the road toll for alternative fuels.
- 10:30 a.m. **HB 1249**, relative to refunds of the road toll paid by a governmental entity using a credit card.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 10:15 a.m. **HB 1383**, relative to municipal monitoring of large groundwater withdrawals.
- 11:00 a.m. **HB 1467**, relative to large groundwater withdrawal permits.
- 1:00 p.m. **HB 1340**, exempting septic systems from certain requirements where there are grouted wells.

SENATE CALENDAR**TUESDAY, JANUARY 21****COMMERCE, Room 101, LOB**

- 2:00 p.m. **SB 302**, relative to public or private criticism of employers by employees.

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.

HEALTH, EDUCATION AND HUMAN SERVICES, Room 103, LOB

- 9:50 a.m. **SB 350**, relative to the transfer of average daily membership information from the department of education to the department of revenue administration.

Senate Calendar - continued**TRANSPORTATION**, Room 103, LOB

2:00 p.m. **SB 372-FN-L**, relative to a state infrastructure bank.

WAYS AND MEANS, Room 103, SH

9:00 a.m. **SB 333**, relative to property taxation of manufactured housing.

WEDNESDAY, JANUARY 22**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**, Room 100, SH

10:00 a.m. **SB 315-FN**, establishing the board of building officials.

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.

THURSDAY, JANUARY 23**COMMERCE**, Room 101, LOB

2:00 p.m. **SB 237**, relative to local land use board hearing notice to condominium owners.

FINANCE, Room 100, SH

1:00 p.m. **SB 217-FN**, prohibiting collective bargaining agreements that require employees to join or contribute to a labor union.

NEW BILLS

Senate Bills

[SB 363](#) changes the time of waiver applicability, the requirement to purchase insurance, and the practice of insurance procurement with regard to facilities for the Winnepesaukee River basin control. Sen. Hosmer of Laconia; **ENR**.

[SB 364-FN](#) increases group II service retirement allowances for members who commenced service on or after January 1, 2012 and establishes a supplemental savings plan within the retirement system, administered by the board of trustees. Sen. Larsen of Concord; **ED&A-S. NHMA Policy to Oppose**.

[SB 367-FN-A](#) requires the adjustment of the road toll imposed on sales of motor fuels in 2014 and 2018, and then every 4 years thereafter, according to changes in the Consumer Price Index. Sen. Rausch of Derry; **W&M-S**.

New Bills - continued

[SB 370-FN-LOCAL](#) provides that the state shall distribute to the affected towns any payments made by another state on an arrearage due under a river management compact. Sen. Sanborn of Bedford; **F-S**.

[SB 372-FN-LOCAL](#) establishes a state infrastructure bank. Sen. Carson of Londonderry; **TRANS-S**.

[SB 376](#) requires pooled risk management governing board members to comply with financial disclosure requirements. Sen. Soucy of Manchester; **PMA**.

HOUSE FLOOR ACTION**Wednesday, January 8, 2014****Wednesday, January 15, 2014**

HB 150, relative to inspectors of election at town and school district meetings. **Inexpedient to Legislate.**

HB 166, requiring the public utilities commission to make specific findings as to the public need for proposed transmission lines. **Inexpedient to Legislate.**

HB 297, (New Title) relative to the management of trust funds and capital reserve funds and pertaining to library trustees. **Ought to Pass with Amendment.**

HB 312, restricting the collection of biometric data by state agencies, municipalities, and political subdivisions. **Ought to Pass with Amendment.**

HB 338-FN-L, relative to the state contribution for water pollution control. **Inexpedient to Legislate.**

HB 350, prohibiting discrimination against the unemployed. **Ought to Pass with Amendment.**

HB 351, relative to appointment of inspectors of election. **Inexpedient to Legislate.**

HB 397, relative to state aid for wastewater and public water supply projects. **Inexpedient to Legislate.**

Floor Action - continued

HB 422, relative to the adoption, revision, and amendment of municipal charters. **Ought to Pass with Amendment.**

HB 437-FN-A, relative to the road toll. **Inexpedient to Legislate.**

HB 449, relative to the application process for a certificate for an energy facility. **Inexpedient to Legislate.**

Floor Action - continued

HB 466-FN, relative to determining qualifications of voters. **Ought to Pass with Amendment.**

HB 484-FN-L, requiring public approval prior to issuance of certain site evaluation certificates. **Inexpedient to Legislate.**

HB 498, permitting the use of firearms by military or veterans groups in the compact part of a town for military or veterans events, or national holidays. **Ought to Pass with Amendment.**

HB 568, requiring new electric transmission lines in New Hampshire to be buried. **Inexpedient to Legislate.**

HB 672-FN, relative to the property tax exemption for water and air pollution control facilities. **Inexpedient to Legislate.**

HB 674-FN-L, relative to state highway aid. **Inexpedient to Legislate.**

HB 682-FN, relative to credit card fees. **Interim Study.**

HB 684, (New Title) relative to bridge replacement and rehabilitation and bridge aid funds. **Ought to Pass with Amendment.**

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!](#)**