

LEGISLATIVE BULLETIN

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2014 Session

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Let's Be Clear

We continue to hear some confusion about who NHMA is, what it does, and who's who, so we include this article in hopes of providing a greater understanding for those who wish to know.

NHMA provides "traditional municipal league services" to New Hampshire's cities and towns. These include legislative advocacy, legal advisory services, government finance advice, training programs, and publications. More information can be found on our website: www.nhmunicipal.org.

NHMA has a Board of Directors who are elected by NHMA member municipalities and who direct its operations. The NHMA Executive Director is Judy Silva; she answers to the NHMA Board of Directors (not to Peter Bragdon, Executive Director of HealthTrust!).

NHMA staff advocate on behalf of municipal interests before the General Court, following legislative policies and principles established through a formal, member-driven legislative policy process by which members set policy for each legislative biennium. Direction to staff can be provided by the Board on issues not covered by the policies and principles. NHMA does not represent HealthTrust on legislative matters. NHMA is an entirely separate and independent nonprofit corporation.

NHMA staff provide legal advisory services to officials from member municipalities to help them to carry out their responsibilities accurately and efficiently. NHMA provides a number of training programs for local officials, from moderators to local welfare administrators to planning and zoning board members. Monthly webinars, a bimonthly magazine, and weekly *Legislative Bulletins* help keep members up to date on the ever-changing landscape of municipal operations.

If you have any questions about NHMA, or if you have heard something that troubles you, please feel free to ask us. You can reach us at the phone number and email address in this bulletin or at NHMAinfo@nhmunicipal.org. We also welcome you to address questions or

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Let's Be Clear - continued

concerns to the NHMA board, which you can do by contacting Board Chair Steve Fournier, Newmarket Town Administrator, at sfournier@newmarketnh.gov. All board members are listed on the NHMA web site.

SB 350 Attempts to Alleviate Tax Rate Setting Delays

On Tuesday the Senate Health, Education and Human Services Committee heard testimony on **SB 350**, which changes the date on which the Department of Education (DOE) reports certain information to the Department of Revenue Administrations (DRA). This bill is in response to the situation last fall that caused a delay in DRA's setting property tax rates – specifically a delay in the calculation of statewide adequate education aid as a result of a statutory change enacted in 2012. That change eliminated the three-year “lag” in the use of school attendance figures in the adequacy calculation, using figures from the most recently ended school year instead.

While the wording in **SB 350** needs to be amended to reflect the correct information that DRA needs (*i.e.*, an estimate of adequate education aid rather than average daily membership data), the intent of the bill is for DRA to have the information from DOE needed to set tax rates by October 1 of each year. Commissioners from both departments expressed their commitment to improving the process, but there was extensive testimony regarding the difficulties DOE has in obtaining, verifying, and reconciling the attendance figures used in the adequacy formula within the shortened timeframe enacted in 2012.

NHMA testified in support of the concept of the bill regarding the October 1 date. Additionally, NHMA explained that the lag in the use of school attendance numbers in the adequacy formula was well-reasoned and deliberate when that formula was first enacted in 1999. The reason for using three-year-old attendance numbers was to assure sufficient time for DOE to obtain, verify and audit the numbers in order to provide accurate and timely adequacy aid figures for school budget purposes and tax rate setting purposes. In other words, the lag was there to avoid exactly the situation that occurred last fall!

Close Committee Vote on Town Clerks Bill

The Municipal & County Government Committee this week voted narrowly to recommend killing **HB 1266**, the **NHMA policy bill** that would give towns the option of appointing, rather than electing, their town clerks. After lengthy debate, an Ought to Pass motion failed by a vote of 9-10. A motion of Inexpedient to Legislate then passed, 11-8. There was no partisan or ideological pattern: on the first vote, six Democrats and three Republicans supported the bill, while four Democrats and six Republicans opposed it. One Democrat changed sides on the second vote.

Town Clerks Bill - continued

The theme of those voting against the bill was that the clerk needs to be independent of the selectmen. We agree, but do not believe that leads to the conclusion that clerks must be elected.

As we mentioned last time, *city* clerks are already appointed, and we have never heard a city clerk complain that his or her independence was threatened by a mayor, city manager, or city council. When there was a bill last year to require that city clerks be elected, as town clerks are, not one city clerk supported the proposal. The appointed city clerks all seem to agree that they enjoy a sufficient level of independence; and yet we are told that arrangement can't possibly work for town clerks.

We still have not heard an answer to our question about what a town should do when it cannot find anyone to run for the clerk position. This has been a real problem for some towns. We believe the towns that have faced that situation should have the opportunity to consider an alternative that already exists for cities.

The bill will not go to the House floor until (at least) the week after next. We will have more information in next week's Bulletin. In the meantime, please encourage your representatives to ***support HB 1266***.

Bill Requires Certification of Building Inspectors

The Senate Executive Departments and Administration heard testimony this week on **SB 315**, which would establish a state board of building officials and require that any person practicing as a building official in the state be certified by the board. "Building official" is defined as any person "charged with administration and enforcement of the state building code under RSA 674:51"—*i.e.*, any local building inspector or code enforcement officer. NHMA has concerns about the cost this would impose on some municipalities.

Some background: In 2002, the state adopted the International Building Code (IBC)—a 700-page tome that rivals the Internal Revenue Code in its complexity and demanding exactitude—as the state building code. All buildings constructed in the state must comply with it. Cities and towns were given a choice: they can vote to enforce the code, or not. If they choose to enforce a building code, it must be the IBC, although they can also adopt additional regulations that are *more* stringent. They cannot follow a code that is *less* stringent than the IBC. If a municipality does not vote to enforce the state building code, it may request that the state fire marshal's office enforce the code within the municipality. Builders must comply with the code even if there is no enforcement authority.

We do not know how many municipalities are actually enforcing the state code. **SB 315** addresses a concern that in some municipalities the state code may be enforced by officials who are less than fully qualified. Although this is a legitimate concern, it is a problem that can be traced to the state's original mandate. Finding someone who can understand the IBC (see, for example, the [section](#) establishing the required

Certification - continued

dimensions of a handrail's "graspable finger recess") is no small task. Because a municipality may not apply a less stringent code, its options are limited.

Under the bill, to achieve certification a building official would have to complete at least 80 hours of board-approved education and pass a board-approved examination. An amendment offered by the sponsor would waive these requirements for any person who was actively engaged as a building official for at least 12 months preceding the effective date of the bill. That is certainly an important improvement, but the bill still would result in additional costs to municipalities, because there would be continuing education requirements and application and renewal fees.

Again, this bill deals with a legitimate concern, but we do not believe municipalities should bear the costs associated with enforcing a state mandate. At the very least, we would love to see an amendment providing that the state will fund the required training under the bill and eliminating application and renewal fees. We are also concerned about the precedent. Which municipal officials will next be subject to state certification requirements? Road agents? Health officers? Clerks?

We do not know when the committee will vote on the bill, but if you have concerns, please contact your senator or members of the [committee](#).

Land Use Hearing Notice to All Condo Unit Owners?

The Senate Commerce Committee heard testimony this week on **SB 237**, which as introduced would require the officers of a condominium association to provide notice to all unit owners when they receive notice of a land use board hearing relative to an abutting property. We thought this was a good solution to a problem that arises occasionally—that individual unit owners do not get such notices, because RSA 672:3 defines "abutter" for purposes of notice as the officers of the unit owners' association, not the individual unit owners. In the past there has been legislation to require the *municipality* to provide notice to every unit owner. The legislature has recognized this as an incredible burden and has rejected it.

Unfortunately, the sponsor introduced an amendment that does exactly what the prior legislation had proposed—define "abutter" to include the unit owners, so that, for example, notice of a planning board hearing under RSA 676:4 would have to be sent by certified mail to every unit owner when the subject property abuts a condominium. This requirement would overwhelm planning departments (or planning board clerks or chairmen, for the many municipalities that do not have planning departments). We do not know whether the committee is inclined to consider the amendment favorably, but please make sure your senators know how much of a burden this would create for your land use boards.

Bill Makes Flood Control Municipalities Whole

SB 370, regarding reimbursements to municipalities involved in flood control compacts, is scheduled for a hearing in the **Senate Finance Committee on Tuesday, January 28, at 1:00 p.m. in State House Room 103**. This bill provides that if other states make any payment on the arrearage owed to the State of New Hampshire under an interstate flood control compact, then municipalities involved in that compact will be reimbursed for the shortfall that occurred in their flood control funding in fiscal years 2012 and 2013. These were the years that municipalities received only 30 percent (the New Hampshire share) of the payment-in-lieu-of-taxes owed to them under the compact. Municipalities involved in flood control compacts should contact members of the [Senate Finance Committee](#) before Tuesday and urge support of **SB 370!**

Right-to-Know Marathon

The House Judiciary Committee heard testimony yesterday on five bills proposing amendments to the state's Right-to-Know Law. See [last week's Bulletin](#) for a description of those bills. None of those bills will be moving quickly: the committee will have a work session on all five bills on **Tuesday, February 11, at 1:00 p.m.**, presumably in LOB Room 208. It appears the committee will consider all of the bills together and see whether agreement can be reached on amendments that can be incorporated into a single bill.

It was mentioned during the hearings that the committee's proposed amendment to retained **HB 685**, currently awaiting action by the full House, would create a commission to study the issue of recovering costs for right-to-know requests. There was some discussion of expanding that commission to study all issues under the Right-to-Know Law. We will keep you posted.

Get Involved in NHMA's Legislative Policy Process

NHMA's biennial legislative policy process is getting underway. As a first step, we are recruiting volunteers to serve on our three legislative policy committees. These committees will review legislative policy proposals submitted by local officials and NHMA affiliate groups and make recommendations on those policies, which will go to the NHMA Legislative Policy Conference in September.

If you are a local official in an NHMA member municipality and are interested in serving on one of the policy committees, please contact the Government Affairs staff at 800-852-3358, ext. 3408, or governmentaffairs@nhmunicipal.org.

Each of the committees deals with a different set of municipal issues. The committees and their subject areas are as follows:

- Finance and Revenue – budgeting, revenue, tax exemptions, current use, assessing, tax collection, retirement issues, education funding.

Policy Process - continued

- General Administration and Governance – elections, Right-to-Know Law, labor, town meeting, charters, welfare, public safety.
- Infrastructure, Development, and Land Use – solid/hazardous waste, transportation, land use, environmental regulation, housing, utilities, code enforcement, economic development.

When you contact us, please indicate your first and second choices for a committee assignment. We will do our best to accommodate everyone's first choice, but we do need to achieve approximately equal membership among the committees. We hope to have 15-20 members on each committee.

There will be an organizational meeting for all committees on April 7. After that, each committee will meet separately as many times as necessary to review the policy proposals assigned to it—typically three to five meetings, all held on either a Monday or Friday, between early April and the end of May.

HOUSE CALENDAR**TUESDAY, JANUARY 28****JUDICIARY, Room 208, LOB**

- 1:00 p.m. **HB 1345-FN**, relative to forfeiture of items used in connection with a drug offense.
- 1:30 p.m. **HB 1609-FN**, relative to forfeiture of personal property.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

- 1:45 p.m. **HB 1407**, relative to privacy in the workplace.
- 2:30 p.m. **HB 1592-FN**, relative to requiring prevailing wages on state-funded public works projects.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 2:30 p.m. **HB 1245**, relative to municipal lease agreements for certain equipment.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 10:45 a.m. **HB 1100**, establishing a committee to study the ownership by public entities of land for conservation purposes.
- 11:30 a.m. **HB 1271**, establishing a committee to study the powers and duties of conservation commissions.

TRANSPORTATION, Room 203, LOB

- 1:00 p.m. **HB 1365**, permitting certain vehicles to proceed through an intersection after stopping for a red light.
- 1:45 p.m. **HB 1366**, relative to exemptions from seasonal weight restrictions on roads.
- 2:00 p.m. **HB 1483-FN**, relative to transfers of motor vehicle registration.

House Calendar - continued**THURSDAY, JANUARY 30****CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 304, LOB**

- 10:00 a.m. **HB 1361**, prohibiting law enforcement agencies from using a drone to collect evidence.
- 10:45 a.m. **HB 1620-FN**, relative to the use of drones.
- 11:30 a.m. **HB 1619-FN**, prohibiting the acquisition, collection, or retention of certain information.
- 2:00 p.m. **HB 1566-FN**, relative to warrant requirements.
- 2:45 p.m. **HB 1533-FN**, requiring a warrant to search information in a portable electronic device.
- 3:30 p.m. **HB 1567-FN**, requiring a warrant to obtain electronic device location information.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 2:00 p.m. **HB 1307**, prohibiting the state and political subdivisions from acquiring military-equipped vehicles or equipment which are not readily available in an open national commercial market.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **HB 1320**, relative to incompatibility of town offices.
- 10:30 a.m. **HB 1131**, relative to the appointment of an immediate family member of a selectman to fill a vacant town office.
- 11:00 a.m. **HB 1106**, relative to disqualification of moderators.
- 1:00 p.m. **HB 1246**, relative to the composition of public agency boards concerning housing standards.
- 1:30 p.m. **HB 1268**, relative to the purposes of town by-laws.
- 2:00 p.m. **HB 1297**, relative to workforce housing grants.

FRIDAY, JANUARY 31**ASSESSING STANDARDS BOARD (RSA 21-J:14-a), New Hampshire Department of Revenue Administration, 109 Pleasant St., Concord**

- 9:00 a.m. Public Forum followed by a Regular Board Meeting.

TUESDAY, FEBRUARY 4**RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB**

- 10:45 a.m. **HB 1248**, relative to the acceptance of risk in outdoor recreational activities.
- 11:30 a.m. **HB 1258**, relative to fill and dredge permitting applications.

SENATE CALENDAR

TUESDAY, JANUARY 28

COMMERCE, Room 101, LOB

2:00 p.m. **SB 295**, prohibiting an employer from using credit history in employment decisions.

FINANCE, Room 103, SH

1:00 p.m. **SB 370-FN-L**, relative to state reimbursement of cities and towns for funds received under river management compacts.

TRANSPORTATION, Room 103, LOB

1:00 p.m. **SB 211**, relative to reporting requirements in fatal motor vehicle accident reports.

WEDNESDAY, JANUARY 29

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:30 a.m. **SB 206-FN**, relative to proof of identity by voters.

9:50 a.m. **SB 284-FN**, relative to eligibility to vote.

11:15 a.m. **SB 275**, relative to refusal to certify an absentee ballot application.

HOUSE FLOOR ACTION

Wednesday, January 22, 2014

HB 249-FN, requiring employers to verify an employee's eligibility to work in the United States. **Inexpedient to Legislate.**

HB 473-FN, relative to retirement system status for members of the university system police force. **Interim Study.**

HB 569, relative to the placement of all new electric transmission lines in New Hampshire. **Ought to Pass with Amendment.**

HB 627-FN, requiring unused vacation and sick leave to be converted to service time for purposes of calculating retirement system benefits. **Inexpedient to Legislate.**

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

2014 Moderators Workshop

Traditional Town Meeting — Saturday, February 22

[Snow date: March 1]

[Register online](#) today!

NHMA Webinar

Lot Mergers and Un-Mergers

Date: February 12, 2014

Time: 12:00 PM - 1:00 PM

Contact Email: NHMAregistrations@nhmunicipal.org

Contact Phone: 603.224.7447

Join us on Wednesday, February 12 at noon!

Join NHMA's Staff Attorneys Paul Sanderson and Christine Fillmore to learn everything you wanted to know about merging and un-merging parcels of land. We will discuss ways mergers happen (both in the past and in the present), what owners may do with merged lots, how to reverse a lot merger, the latest changes to the law restricting involuntary mergers by municipal governments, and how all of this plays into current zoning ordinances and practices.

This webinar is open to members of the NH Municipal Association and is of interest to land use boards, officials, and employees, assessors, tax collectors, and any other official or employee dealing with land use.

[Click to Register 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!](#)**