

LEGISLATIVE BULLETIN

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2014 Session

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Tax Rate-Setting Bill

On **Tuesday, February 4 at 9:45 a.m.**, in **State House Room 103**, the Senate Ways and Means Committee will hear testimony on **SB 300**, the intent of which is to authorize municipalities to calculate and set their own property tax rates. This is an **NHMA policy bill**. As written, the bill places several requirements on a municipality desiring to set its own tax rate, including:

- a financial audit conducted by a certified public accountant or a public accountant licensed under RSA 309-B;
- certification by the commissioner of the Department of Revenue Administration (DRA) of the person designated to oversee and complete the tax rate setting;
- use of a tax rate-setting template created by DRA in conjunction with the New Hampshire Government Finance Officers Association;
- submission to DRA of reports of total valuation and certified appropriations voted by the legislative body no later than August 1.

The bill requires that a municipality be provided information regarding education adequacy grants and municipal revenue sharing by August 1 and submit the calculated tax rate to DRA for its review and approval within 15 days of receipt. If DRA finds an error and contests the rate, or if upon audit it is determined that the tax rate was in error by more than 1/2 of one percent, the municipality will be precluded from setting its own tax rate for a period of two years.

It is anticipated that DRA will not support this bill, but will offer suggestions as to how the timing of the tax rate-setting process can be improved in light of the delay that occurred last fall. As we reported in last week's *Legislative Bulletin*, **SB 350** is another bill dealing with the timing of information necessary to set tax rates and also attempts to alleviate future tax rate-setting delays.

House to Vote on Clerks Bill

The House will vote next **Wednesday, February 5**, on **HB 1266**, the **NHMA policy bill** that would let town voters decide whether their clerk should be elected or appointed. ***Please contact your representatives before Wednesday and urge them to vote down the Inexpedient to Legislate motion and then support a motion of Ought to Pass.***

Rather than repeat our arguments for the bill, which can be found in Bulletins [3](#), [4](#), and [5](#), we reprint here (with permission) an excerpt from the testimony presented by the Hanover Town Clerk at the committee hearing:

As the elected Town Clerk and the Director of Administrative Services for the Town of Hanover, I strongly support House Bill (HB) 1266 because it finally affords towns more options to find, recruit, and retain qualified and willing candidates for the important position of town clerk. . . .

I was initially hired by the town to oversee its financial operations; however, due to some personnel changes and my Hanover residency, the town clerk's office is now under my direct supervision. Despite extensive local advertising and targeted outreach and networking efforts, we have simply not been able to interest Hanover residents in seeking election as our town clerk. Luckily, we have been able to hire competent, motivated and dedicated individuals to support the clerk's critical 'front office' functions. None of these individuals is a Hanover resident, although each is committed to providing our citizens the very best in service – their ZIP code should not dictate how far their careers can go in servicing the broader New Hampshire citizenry.

The town clerk position has become more complex and is rightfully being held to rigorous standards from state agencies, our residents, and others. . . . It's time the nature of who can effectively serve in these positions change as well. By allowing more flexibility for who can serve in the important municipal position of town clerk, we can introduce mobility to a pool of experienced professionals who can fill vacancies throughout the State. This mobility would continue to raise the level of professionalism of the town clerk position and would create opportunities for towns to hire and retain the most qualified individuals for their communities – a benefit cities already enjoy.

So . . . Hanover has a clerk who ran for and was elected to the position only because no other town resident was willing. The town has one or more qualified persons in the clerk's office who would be willing to serve, and whom the incumbent clerk would happily recommend, and whom the selectmen or manager would (we understand) happily appoint, but who are not permitted to serve because they live outside of town. Thus, the only people who are both qualified and interested in serving are prohibited from serving. Does this sound like a perfect system?

Clerks Bill - continued

HB 1266 would allow Hanover, and other towns that have had similar problems, to solve those problems by choosing to have an appointed clerk. It would not, as the majority report in the [House calendar](#) implies, make a change that affects every municipality for the benefit of a few. Any town that prefers to elect its clerk could continue to do so. This bill gives town voters a choice that they currently do not have. Again, please encourage your representatives to ***support HB 1266 by voting down the Inexpedient to Legislate motion and then supporting a motion of Ought to Pass.*** Please contact the Government Affairs staff, or encourage your representatives to do so, if you or they have any questions.

Committee to Hear “Municipal Association” Bills

The House Municipal and County Government Committee will hear testimony next week on three bills that appear to be intended to limit membership in, and the activities of, organizations of municipalities and of municipal officials. All of the hearings are scheduled for **Tuesday, February 4, in LOB Room 301.**

HB 1259, scheduled for **10:00 a.m.**, amends RSA 31:8-a, the statute that authorizes municipalities to pay dues to the New Hampshire Municipal Association. The bill requires that payment of dues to NHMA, “or any other organization . . . that deals with the administration of a municipality,” be specifically approved by a vote at the annual town meeting.

This is part of a disturbing trend of filing legislation whenever a municipality spends money on something that a few people oppose. This week the same committee heard testimony on a bill, **HB 1297**, that would require workforce housing grants to be approved by the town meeting. These proposals are unnecessary and inappropriate. No doubt every municipal expenditure is objectionable to someone. If town meeting participants object to a particular expenditure, they already have the ability to reject it. Requiring that every expenditure be approved separately would result in week-long town meetings (or hundred-page SB 2 ballots).

The bill contains several other provisions that are confusing at best. We hope the hearing will shed some light on the bill’s intent.

HB 1479, scheduled for **10:30 a.m.**, would make membership in the Association of Assessing Officials, the City and Town Clerks’ Association, and the Tax Collectors’ Association permissive rather than mandatory. We have no problem with that--we do not support requiring municipalities to pay dues to any organization--but the bill, like **HB 1259**, requires the payment of such dues to be expressly approved by a vote at the annual town meeting (although it only requires such approval “within the last two years”). Again, this is a bad idea.

HB 1560, scheduled for **11:00 a.m.**, provides that “no recipient of . . . a grant or appropriation of funds from a political subdivision of the state may use the . . . funds to lobby or attempt to influence legislation, participate in political activity, or

Municipal Association - continued

contribute funds to any entity engaged in these activities.” This is an amendment to a statute that already prohibits the use of funds from *state* appropriations for lobbying.

The existing statute makes some sense: there is something unseemly about the state government’s paying people to lobby the state government. Political subdivisions, however, should be free to spend their money as they see fit. As has been demonstrated repeatedly in recent decades, cities and towns--as well as school districts and counties--need representation in Concord.

This is hardly the first time we have seen an effort to restrict--or eliminate--the lobbying activities of organizations like NHMA (and the School Boards Association, the Police Chiefs’ Association, the Association of Counties, the Water Works Association . . .) that lobby on behalf of political subdivisions or their officials. Curiously, we have never heard anyone question the *state’s* membership in the National Conference of State Legislatures, an organization that exists largely to lobby the *federal* government on behalf of the states. Why is this good for the state but not for municipalities?

Assessing Bills on Thursday

The House Municipal and County Government Committee will hear two assessing-related bills on **Thursday, February 6, in LOB Room 301.**

HB 1110 is scheduled for a hearing at **1:15 p.m.** This bill authorizes the commissioner of the Department of Revenue Administration to decertify, suspend, or take other disciplinary action against any person for failure to comply with “assessing laws.” Currently, such action may be taken only for noncompliance with rules of the assessing standards board. The second part of the bill provides a statutory definition of “sales chasing” and prohibits the practice of intentional sales chasing by certified assessors.

HB 1196 is scheduled for a hearing at **2:15 p.m.** This bill adds a new section to RSA 76:13 allowing the governing body, upon request by a person liable for accrued interest on property taxes, to waive a portion of the interest in any proceeding under RSA 80 when special or extraordinary circumstances exist. The governing body may accept recommendations from the tax collector or other public officials familiar with the property or with the special/extraordinary circumstances.

Bill Seeks to Regulate Use of Drones

The House Criminal Justice & Public Safety Committee heard testimony this week on **HB 1620**, a bill seeking to regulate drone surveillance by government entities and private parties. The bill aims to protect privacy rights. Currently nine states have enacted laws to regulate and/or restrict the use of drones because of privacy concerns.

Use of Drones - continued

At the hearing, the bill sponsor introduced an amendment that replaces the bill in its entirety. The amendment prohibits government entities, and anyone else, from using drones to conduct surveillance on people or their property without a search warrant or prior written consent. The word “surveillance” is defined as “the intentional act of monitoring, observing, locating, following, photographing, taking images of, listening to, or making a recording of a recognizable individual or group of individuals or their movements, activities, and communications . . . or the interior of a building or structure.” The amendment also requires law enforcement officials to discard surveillance recordings collected by drones unrelated to a criminal investigation within 24 hours, imposes a civil penalty up to \$10,000 on any government that violates the law, authorizes damages of not less than \$5,000 for anyone who suffers injury caused by illegal use of a drone, and prohibits the use of any drone equipped with a weapon. The amendment does allow law enforcement officials to use drones, but only under certain conditions, including: when there is a credible risk of a terrorist attack; with a search warrant based on probable cause; if a government has reasonable suspicion that it must act quickly to prevent injury to life or property; and with the prior written consent of the person under surveillance.

The amendment does not prohibit outright the use of drones. It would not, for example, prohibit the University of New Hampshire from using a drone to monitor a moose herd in Pittsburg for environmental research purposes, because no individuals would be observed or photographed by the drone, at least not intentionally.

Several parties expressed concern that regulation of private drone use could raise First Amendment (freedom of expression) and Fourth Amendment (search and seizure) problems. Members of the committee also questioned whether the bill was necessary. The bill sponsor responded that people have a reasonable expectation of privacy against this form of surveillance.

Drones are expected to make critical advancements in public safety in the near future, including activities such as responding to weather-related disasters, fire-fighting, traffic monitoring, and search/rescue missions. Drone technology is also expected to assist property mapping and assessment activities. We believe legislation to restrict drone use amid privacy concerns should advance slowly, and the legislature should take its time to identify purposes for which drones can be legitimately used. A review of legislation from other states should help in that effort.

The bill is still in committee and will not go to the House floor for at least a week or two. If you speak to your representatives on the issue of drones, please encourage them to move slowly on **HB 1620**.

Presumption of Cancer Revisited

Last week, Division I of the House Finance Committee heard testimony on **HB 1489**, which, as introduced, proposed to establish a fund for firefighters with heart disease, lung disease, and cancer to reimburse costs associated with medical examinations and additional costs related to workers’ compensation coverage for such

Presumption of Cancer - continued

firefighters. Money for the fund was to come from annual assessments against carriers and self-insurers issuing homeowners' and business insurance policies. After hearing extensive testimony, Division I voted to recommend Interim Study to the full Finance Committee, meaning the bill would remain in the House for further study.

This week, Division I voted to reconsider its action on **HB 1489** and recommended an amendment to the bill to create a legislative study committee comprising three House members and three Senators. The committee is to "review the impact of the 1990 superior and supreme court cases relative to the constitutionality of enforcing RSA 281-A:17, II. The committee's study may include, but not be limited to, the cost effect to workers' compensation claims relative to firefighter occupational-related cancer disease in New Hampshire and potential funding methods to address the concerns raised by the 1990 court cases." The committee would report its findings and any recommendations for proposed legislation on or before November 1, 2014. On Tuesday afternoon, the House Finance Committee voted 14 to 8 to recommend Ought to Pass to the full House on this amended version of **HB 1489**.

The court case referenced in the amendment is the 1990 New Hampshire Supreme Court decision in *New Hampshire Municipal Trust Workers' Compensation Fund v. Richard M. Flynn*. In that case the court considered a statute that created a *prima facie* presumption that a firefighter suffering from cancer incurred the disease while employed, making it much easier to qualify for benefits. The Supreme Court agreed with the trial court's finding that this presumption would result in new and additional costs to local governments for pre-employment medical examinations designed to detect cancer, increased worker's compensation rates, and payment of benefits to firefighters who, because of this presumption, would qualify for benefits although their cancer was not work-related. The Supreme Court ruled that the statute imposed an unfunded mandate in violation of Part I, Article 28-a of the New Hampshire Constitution.

HOUSE CALENDAR

TUESDAY, FEBRUARY 4

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

1:15 p.m. **HB 1363-L**, relative to insurance pools.

COMMISSION ON HOUSING POLICY AND REGULATION, (RSA 19-N), Room 304, LOB

12:30 p.m. Regular meeting.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:00 a.m. **HB 1259**, relative to the functions of the municipal associations.

10:30 a.m. **HB 1479-L**, relative to membership in municipal organizations.

11:00 a.m. **HB 1560-FN-L**, prohibiting the use of funds received from a political subdivision of the state to lobby.

House Calendar - continued**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.

TRANSPORTATION, Room 203, LOB

- 1:45 p.m. **HB 1313**, relative to highway surveillance.

THURSDAY, FEBRUARY 6**EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB**

- 1:00 p.m. **HB 1155-FN**, relative to state retiree health coverage premium contributions.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:30 a.m. **HB 1261-FN-L**, increasing the fee charged for delivery of notice of civil forfeiture of an unlicensed dog.
- 10:45 a.m. **HB 1121**, repealing the duty of assessors to compile a list of dogs in the town.
- 11:15 a.m. **HB 1492-FN-L**, relative to the issuance of fines for unlicensed dogs.
- 1:15 p.m. **HB 1110**, relative to the penalty for sales chasing by certified assessors.
- 1:45 p.m. **HB 1139**, repealing authority for granting of property tax abatements for watering troughs and shade trees.
- 2:15 p.m. **HB 1196**, allowing town and cities to waive a portion of the interest due on late property tax payments in special or extraordinary circumstances.

TUESDAY, FEBRUARY 11**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES,
Rooms 305-307, LOB**

- 10:15 a.m. **HB 1403-FN**, establishing a state minimum hourly wage.

SENATE CALENDAR**TUESDAY, FEBRUARY 4****FINANCE, Room 103, SH**

- 1:15 p.m. **SB 408-FN-L**, relative to aid for regional agreements of watershed municipalities.
- 1:45 p.m. **SB 203**, relative to permissible uses of electronic benefit transfer (EBT) cards.

TRANSPORTATION, Room 103, LOB

- 1:15 p.m. **SB 401-FN-A**, establishing road toll fees for electric and hybrid electric vehicles.

WAYS AND MEANS, Room 103, SH

- 9:15 a.m. **SB 233**, relative to property tax exemption for district fire mutual aid systems.
- 9:30 a.m. **SB 286**, relative to abatements for prior years' property taxes.
- 9:45 a.m. **SB 300**, allowing municipalities to calculate and set annual property tax rates for the municipality.
- 10:15 a.m. **SB 304-L**, relative to the valuation of property for purposes of agreements for payments in lieu of taxes.

Senate Calendar - continued**WEDNESDAY, FEBRUARY 5****ENERGY AND NATURAL RESOURCES, Room 101, LOB**

9:00 a.m. **SB 363**, relative to insurance coverage for facilities for the Winnepesaukee River basin control.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

8:45 a.m. **SB 276**, relative to notifying a UOCAVA voter of an invalid absentee ballot application.

9:00 a.m. **SB 279**, relative to challenges of voters.

TUESDAY, FEBRUARY 11**JUDICIARY, Room 100, SH**

9:45 a.m. **SB 390**, relative to protection of employees who are victims of domestic abuse, sexual assault, stalking, or criminal harassment.

New Senate Bills

[SB 386](#) makes various changes to the authority and duties of the department of revenue administration, including the addition of authority to provide training in assessing to municipal employees. Sen. Odell of Lempster; **W&M-S**.

[SB 387](#) establishes a procedure for exemption from the requirements of the land sales full disclosure act for certain subdivided lands. Sen. Watters of Dover; **PMA**.

[SB 388](#) establishes a committee to study the current status of land conservation in New Hampshire and the state's role in encouraging voluntary protection of land in the future. Sen. Fuller Clark of Portsmouth; **ENR**.

[SB 390](#) prohibits employers from discriminating against employees who are victims of domestic violence, sexual assault, stalking, and harassment. The bill requires employers to provide reasonable safety accommodations. Sen. Hosmer of Laconia; **JUD-S**.

[SB 392](#) establishes a commission to study rural affairs. Sen. Woodburn of Dalton; **ENR**.

[SB 395-FN](#) provides for continued group II membership of the director of the division of forests and lands if he or she was a member of group II for at least 10 years prior to appointment and continues to meet the applicable qualifications of a permanent fireman under the retirement system. Sen. D'Allesandro of Manchester; **F-S**.

Senate Bills - continued

[SB 399](#) regulates competitive bidding and procurement by state agencies and establishes a procurement commission to identify best practices and any further legislative or regulatory changes necessary to implement the act. Sen. Carson of Londonderry; **ED&A-S**.

[SB 401-FN-A](#) imposes a road toll fee on electric vehicles and hybrid electric vehicles. Sen. Watters of Dover; **TRANS-S**.

[SB 408-FN-LOCAL](#) requires the state to pay certain municipalities in regional agreements for water pollution control a 50 percent grant for an adaptive watershed management and restoration plan. Sen. Fuller Clark of Portsmouth; **F-S**.

[SB 409-FN-A-LOCAL](#) makes a contingent appropriation to the department of safety for the purpose of providing the state match for federal disaster assistance grants received by municipalities as of October 2013. Sen. Sanborn of Bedford; **F-S**.

[SB 410-FN-LOCAL](#) amends the method of calculating the apportionment of operating and capital expenses in a cooperative school district to account for the valuation of a renewable generation facility. Sen. Odell of Lempster; **W&M-S**.

HOUSE FLOOR ACTION

Wednesday, January 29, 2014

HB 114, relative to abutter access over subdivided land. **Ought to Pass with Amendment.**

HB 151, relative to duties of inspectors of election. **Interim Study.**

HB 286, relative to broadband infrastructure. **Ought to Pass with Amendment.**

HB 341-FN, relative to the cost of fiscal analysis of legislation relating to the retirement system. **Inexpedient to Legislate.**

HB 532, relative to energy efficiency and clean energy districts. **Ought to Pass with Amendment.**

HB 600-FN, relative to voter registration. **Interim Study.**

HB 685, relative to state agency communications under the right-to-know law. **Ought to Pass with Amendment.**

SENATE FLOOR ACTION

Thursday, January 30, 2014

- SB 36-L**, relative to the property tax exemption for veterans who are totally and permanently disabled from service connection. **Inexpedient to Legislate.**
- SB 154-FN**, establishing an energy conservation loan program and an energy conservation project fund. **Inexpedient to Legislate.**
- SB 183-FN**, relative to proof of identity by voters. **Ought to Pass with Amendment.**
- SB 210**, relative to registration of vehicles by motor vehicle manufacturers. **Ought to Pass.**
- SB 216**, relative to designating an alternate trustee of the trust fund. **Ought to Pass with Amendment.**
- SB 217-FN**, prohibiting collective bargaining agreements that require employees to join or contribute to a labor union. **Inexpedient to Legislate.**
- SB 219**, relative to funds received from the sale of cemetery lots. **Ought to Pass with Amendment.**
- SB 223**, authorizing municipalities to enter into contracts for the private funding and repayment of construction of sewer systems. **Ought to Pass with Amendment.**
- SB 227**, relative to library funds. **Inexpedient to Legislate.**
- SB 230**, relative to the definition of utility terrain vehicles. **Ought to Pass with Amendment.**
- SB 232**, relative to speed limits for off highway recreational vehicles and snowmobiles. **Ought to Pass.**
- SB 236**, relative to delivery of the final budget and recommendation of the municipal budget committee to the governing body. **Ought to Pass with Amendment.**
- SB 272**, relative to notice of voter registration. **Ought to Pass with Amendment.**
- SB 296**, relative to preferences for veterans and disabled veterans in public employment. **Ought to Pass with Amendment.**
- SB 333**, relative to property taxation of manufactured housing. **Ought to Pass.**

Senate Floor Action - continued

SB 365, relative to appointments and nominations to boards, commissions, or other entities by the New Hampshire Municipal Association. **Inexpedient to Legislate.**

SB 372-FN-L, relative to a state infrastructure bank. **Ought to Pass.**

HB 200, relative to an employer's burden of proof in unemployment compensation hearings. **Interim Study.**

HB 591, relative to an abusive work environment and the health and safety of public employees. **Ought to Pass with Amendment.**

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!](#)**

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!](#)

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!