

LEGISLATIVE BULLETIN

Bulletin #7

2014 Session

February 7, 2014

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Bill Proposes New Pension Mandate

On **Wednesday, February 12, at 9:00 in State House Room 100**, the Senate Executive Departments and Administration Committee is scheduled to hear **SB 364**, which

- 1) creates a **new employer-funded** defined contribution savings plan for group I New Hampshire Retirement System (NHRS) members (employees and teachers), on top of the existing defined benefit plan, and
- 2) increases pension benefits for group II members.

Both of these new benefits apply to NHRS members hired on or after January 1, 2012, effective April 1, 2014. The defined contribution supplemental savings plan requires employers to contribute 4 percent of base pay, with no contribution from employees. The expanded benefits for group II members come from a change in the pension formula by increasing the multiplier from 2 percent to 2.5 percent.

Under even the most narrow reading of the New Hampshire Constitution's unfunded mandates provision (Part 1, Article 28-a), the new group I plan is almost certainly unconstitutional. According to the NHRS actuaries, from fiscal year 2014 through fiscal year 2018 this bill will cost employers an additional **\$81 million**, with the cost for these expanded benefits increasing as more new members are hired in future years. **Please contact members of the [Senate ED&A Committee](#) and your own senator** and let them know that if municipalities had this kind of money available, we could fix the roads without increasing the gas tax!

Save the Date! Gas Tax Hearing Approaches

Although it does not yet appear on the docket, we understand that the hearing on **SB 367**, which would allow a modest increase in the road toll (commonly called the gas tax), will likely be held on **Tuesday morning, February 18**, before the Senate Ways & Means Committee.

Gas Tax Hearing - continued

The bill requires that the road toll be adjusted effective July 1, 2014, and again in 2018 and every four years thereafter, to reflect changes in the Consumer Price Index. It is estimated that this would result in a four-cent-per-gallon increase (from 18 cents to 22 cents) on July 1, 2014. It also requires that all additional revenue resulting from the adjustments be exclusively appropriated to, and expended by, the Department of Transportation. Although this still would not provide nearly enough revenue to meet the needs of DOT and municipalities for long-overdue road maintenance and improvement, it is certainly a step in the right direction.

NHMA has developed a member resource page on its website regarding the need for increased highway funding. You can find it here: <http://www.nhmunipical.org/advocacy/highway-funding>. Among these resources are:

- a. YouTube video of Commissioner Christopher Clement's presentation to members of NHMA and the Municipal Management Association of New Hampshire on January 17, 2014;
- b. *The Roads to New Hampshire's Future*, Commissioner Clement's PowerPoint presentation to NHMA and MMANH;
- c. 2010 Pavement Conditions and 2013 Red List Bridges; and,
- d. Highway Block Grant Aid to Towns and Cities (FY 12 & FY 13).

We will have more on the bill and more specific information about the hearing in next week's *Bulletin*. In the meantime, please mark your calendars!

Vote on Town Clerks Bill Postponed

HB 1266, the **NHMA policy bill** that would give towns the option to have an appointed town clerk, was scheduled for a vote by the full House this week, but was special ordered to next week's calendar because one of the representatives planning to speak on the bill was unavailable. The House is now scheduled to vote on it next **Wednesday, February 12**.

This will give local officials a few more days to explain to legislators what the bill does and why local voters should be given this choice. Unfortunately, it will also allow a few more days for the rampant spread of misinformation about the bill. At one town's deliberative session last week, a voter claimed that NHMA was trying to "pass legislation to remove our ability to elect our town clerk." As everyone should know by now, [HB 1266](#) plainly states that "any town *may* vote to authorize the appointment rather than the election of a town clerk."

Several legislators have also reported to us that one opponent of the bill continues to push the odd claim that the [New Hampshire Constitution](#) requires election of town clerks. It does not.

Town Clerks Bill - continued

We acknowledge that there are reasonable, fact-based arguments on both sides of this issue (which is why we think it should be left to the voters, as **HB 1266** provides). Legislative debate and decision making work best when the arguments are confined to the facts. We just hope that legislators will be able to see those facts through the fictions that have clouded the issue. ***Please encourage your representatives to vote down the committee report of *Inexpedient to Legislate and support a subsequent motion of Ought to Pass.****

Pollution Control Exemption Bills

Two bills that would limit the property tax exemption for pollution control equipment under RSA 72:12-a are scheduled for hearings next **Thursday, February 13, beginning at 1:00 p.m., in LOB Room 301**, before the Municipal and County Government Committee. It is **NHMA policy** to support the repeal or limitation of this obsolete, illogical, ineffective, unfair, and burdensome exemption, and we support both bills. As we have stated many times in recent years, this law requires municipalities to reward a small number of taxpayers for doing something they are already required by law to do--companies are given a tax exemption for installing equipment that is required by federal or state law.

The law has been justified in recent legislative sessions not as a pollution control measure--no one seriously claims that it makes a significant difference--but as an economic development incentive: businesses come to the state because of the tax exemption. As we have explained repeatedly, we have nothing against an economic development incentive, but if that is the state's policy, then (1) the state should subsidize the incentive, not downshift the cost onto municipalities, and (2) there is no apparent reason to tie that incentive to pollution control equipment.

HB 1310, scheduled for a hearing at **1:00 p.m.**, would essentially turn the pollution control exemption into a local option by allowing any municipality's legislative body to "terminate the application of the provisions of RSA 72:12-a within such town or city." This would answer the claims of the exemption's supporters that the exemption provides a net benefit for municipalities--if that is true, then municipalities will not make any changes, and there is no need to worry.

HB 1311, scheduled for **1:30 p.m.**, would limit the exemption to 25 years. Like the gas tax bill, that is an extremely small step, but still a step, in the right direction.

State Match for Disaster Assistance

On Tuesday the Senate Finance Committee heard testimony on **SB 409**, which proposes to reimburse municipalities, school districts and non-profit organizations 12.5 percent of the costs associated with eight disasters that occurred from February 2010 through July, 2013 as well as funding that same percentage for any future disasters that may occur through June 30, 2014. Historically, the state paid half of the 25 percent required match on funding from the Federal Emergency Manage-

Disaster Assistance - continued

ment Agency (FEMA), with the remaining half paid by cities, towns, school districts, or eligible non-profit organizations. While not required by law, this past practice reflected the state's commitment of providing financial assistance toward repairs associated with damages from declared disasters and emergencies. However, state funding has not been available to assist with these costs since February 2010, a period that saw damage from Hurricane Irene, "Superstorm" Sandy, and numerous floods.

SB 409 proposes to use approximately \$5 million from the state's fiscal year-end surplus at June 30, 2014 (projected to be \$26.7 million) to reimburse local governments and other organizations the traditional 12.5 percent state share contribution. [Click here](#) to see a list of the state matches that would be provided under this bill for storm damage incurred to date. While some amounts are very small, others are significant in terms of the tax impact for the municipality. For example, reimbursement of \$136,153 to the town of Gilsum represents over \$2.00 on its 2013 property tax rate. For the towns of Bradford and Unity, the reimbursement represents well over a dollar on the tax rate.

A comment was made that municipalities have not asked for this money, to which the Director of Homeland Security and Emergency Management replied that one of the first questions asked by local officials is whether state funding is available to assist with disaster-related costs. The response has been that such funding is "contingent upon appropriations" by the state, which unfortunately have not occurred over the past few years. **Please contact members of the [Senate Finance Committee](#) and urge their support on SB 409.**

Silencing the Voice of Local Government

On Tuesday the Municipal and County Government Committee sat through a morning of testimony on bills that sought to silence the voice of cities, towns, school districts, and counties in the legislative process. [HB 1259](#), [HB 1479](#), and [HB 1560](#) were all reported on in last week's *Bulletin* in greater detail, along with the reasons to oppose the bills.

It was an interesting gathering at the hearings, with an audience that included representatives of [Citizens for a Strong New Hampshire](#), the [New Hampshire Liberty Party](#), and the Secretary of State's office. Unfortunately, there was much misinformation presented during the hearings, but it was clear the committee received the testimony with a fair amount of skepticism.

Some in support of the bills said local officials could testify at legislative hearings, but should not speak with legislators outside of hearings. Others said local officials should have no contact with legislators unless they were acting on their own time. Those opposing one or all of the bills spoke of the importance of having the voice of local government—appointed and elected officials and employees—heard on legislative matters affecting local government and its responsibilities. As one opponent noted, these bills would "subvert the practice of democracy."

Tax Rate Setting

On Tuesday the Senate Ways and Means Committee heard testimony on **SB 300**, an **NHMA policy bill** that authorizes municipalities to set their own tax rates. As expected, the Department of Revenue Administration (DRA) testified in opposition to the bill, acknowledging that the timeliness of tax rate setting needs improvement, but that the accuracy and consistency that DRA provides in this process are important factors that must be considered. In DRA's opinion, **SB 300** will not improve the timeliness of tax rates and will increase the risk of inaccurate rates used to assess property taxes in some municipalities.

To address the timeliness issue, DRA offered language requiring that all tax rate information provided by other state agencies be submitted to DRA by October 1 each year. Several municipal officials appeared in support of the bill, indicating that this enabling legislation would not be appropriate for every municipality—only those with finance expertise—and that many municipalities already know their rates well before the formal review by DRA. One benefit of the bill would be to free up DRA's time to focus its attention on those municipalities that may need more assistance.

Aid for Adaptive Watershed Management and Restoration Plans

On Tuesday the Senate Finance Committee heard testimony on **SB 408**, which authorizes a 50 percent state grant for adaptive watershed management and restoration plans, contingent upon the municipalities located in the watershed raising the matching 50 percent. Under current law, municipalities are eligible for state aid grants (SAG) of 20 to 30 percent of the costs for completed water and wastewater projects, including planning and engineering costs associated with those projects. Acknowledging the moratorium that currently exists on SAG funding, the purpose of **SB 408** is to encourage a cost-effective approach to addressing federal mandates for water quality and water-related infrastructure investments by authorizing state funding for planning and engineering costs on a regional (*i.e.*, watershed) basis. The goal is to pass this bill now so that funding for such grants may be considered during the next state biennial budget process, which begins at the state agency level this fall.

While we support the concept of this bill, our one concern is wording that gives these grants priority consideration under the SAG program. The Department of Environmental Services also expressed concern about the "priority" language in the bill and suggested creating an account separate from the SAG account for these watershed planning grants. Testimony in support of the bill was provided by several members of the Southeast Watershed Alliance, which includes 42 New Hampshire cities and towns.

NHRS Employer Penalty

On Tuesday the House Executive Departments and Administration Committee voted 18 to 1 to recommend Ought to Pass on **HB 1494**, the New Hampshire Retirement System (NHRS) bill that includes a \$25 per day penalty to employers for data not timely remitted or data that cannot be processed regarding the monthly report of retired members working part-time. There is confusion about this report, specifically reporting compensation and “total hours worked” for NHRS retirees serving as public officials such as selectmen, city councilors, election officials, town treasurers and others who receive nominal compensation, often in the form of a stipend. For a selectman, should the report just include the hours spent at the regular selectmen’s meetings, or include the hours spent at budget hearings, planning board meetings, and time testifying on proposed legislation affecting the town? If a city councilor attends a chamber meeting or a ribbon cutting ceremony in the capacity of a city official, should this time be reported as part of the total hours worked? Do municipalities even track the hours that an elected treasurer spends balancing the bank accounts every month? It certainly seems unfair to pass legislation enacting a penalty on reporting errors when the reporting requirements for retirees working part-time are so unclear.

During the committee’s executive session, there was discussion on a proposed amendment that would eliminate employers’ obligation to report on NHRS retirees who serve as local elected officials, state representatives and senators, or retirees being compensated less than \$500 per month by NHRS employers. While this amendment was not adopted by the committee due to concerns over the wording, we are hopeful that a similar amendment will be presented when the bill is addressed by the full House. We were encouraged that the committee agreed to have **HB 1494** included on the regular House calendar, rather than the consent calendar, in order to make it easier for consideration of potential floor amendments.

Abatement of Prior Years’ Taxes

On Tuesday the Senate Ways and Means Committee heard testimony on **SB 286**, relative to abatement of prior years’ taxes. This bill was initially proposed to address a situation in a particular town where a relatively large amount of back taxes is owed on property the town has no interest in acquiring due to environmental liability issues. The primary concern was the impact this tax receivable (which is unlikely to be collected) has on the town’s fund balance, and the desire to write off the receivable via an abatement.

During testimony, it was explained that the bill has far broader implications, and is intended to clarify RSA 76:16, I, in which the first sentence states, “Selectmen or assessors, for good cause shown, may abate any tax assessed by them or by their predecessors, including any portion of interest accrued on such tax.” This sentence has historically been interpreted to provide broad abatement authority to selectmen and assessors. However, a 2013 decision by the Board of Tax and Land Appeals (BTLA) limited that abatement authority by stating that the first sentence cannot be

Abatement - continued

read in isolation, but must be read in conjunction with the rest of the paragraph and the statute as a whole. The subsequent sentences explain who can file for abatement (a person aggrieved by the assessment) and the process for applying for abatement (in writing by March 1 following the date of the tax notice). In other words, the BTLA ruled that selectmen or assessors do not have authority to abate taxes in the absence of a timely application from an aggrieved party, even in cases where good cause (*e.g.*, for equity purposes or to correct an error) has been shown. **SB 286** attempts to override that decision by codifying what had been generally understood before the BTLA decision.

HOUSE CALENDAR**Joint House/Senate Meetings Are Listed Under This Section****TUESDAY, FEBRUARY 11****ENVIRONMENT AND AGRICULTURE, Room 303, LOB**

11:30 a.m. **HB 1382**, defining “farm stand.”

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Rooms 305-307, LOB

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

TRANSPORTATION, Room 203, LOB

1:30 p.m. **HB 1356**, relative to fire department plates.

THURSDAY, FEBRUARY 13**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

10:00 a.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.

10:30 a.m. **HB 1171**, relative to eligibility for the veterans’ property tax credit.

11:00 a.m. **HB 1195**, establishing a commission to study the impacts of the property tax on New Hampshire’s residents, businesses, municipalities, and the economy.

11:30 a.m. **HB 1610-FN**, relative to the excavation tax.

1:00 p.m. **HB 1310**, allowing towns and cities to terminate the application of the property tax exemption for water and air pollution control facilities within the town or city. **NHMA Policy.**

1:30 p.m. **HB 1311**, relative to the exemption period for the property tax exemption for water and air pollution control facilities. **NHMA Policy.**

2:00 p.m. **HB 1333**, relative to the elderly property tax exemption.

2:30 p.m. **HB 1139**, repealing authority for granting of property tax abatements for watering troughs and shade trees.

FRIDAY, FEBRUARY 21**COASTAL RISK AND HAZARDS COMMISSION (RSA 483-E), Seashell Pavilion at Hampton Beach**

10:00 a.m. Regular meeting.

SENATE CALENDAR

TUESDAY, FEBRUARY 11

WAYS AND MEANS, Room 103, SH

- 9:30 a.m. **SB 410-FN-L**, relative to apportionment in cooperative school districts with a renewable generation facility.
- 9:45 a.m. **SB 386**, relative to the authority and duties of the department of revenue administration.
- 10:00 a.m. **SB 265**, making a technical correction to the disposition of meals and rooms tax revenues.

WEDNESDAY, FEBRUARY 12

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 100, SH

- 9:00 a.m. **SB 364**, relative to group II service retirement allowances and relative to establishing a supplemental savings plan in the retirement system.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

- 10:15 a.m. **SB 347**, relative to municipal enforcement of land use ordinances.
- 10:45 a.m. **SB 277**, relative to absentee voter registration.

TUESDAY, FEBRUARY 18

JUDICIARY, Room 100, SH

- 9:15 a.m. **SB 297**, relative to apportionment of damages.

WEDNESDAY, FEBRUARY 19

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 100, SH

- 9:30 a.m. **SB 399**, relative to competitive bidding and procurement by state agencies.

HOUSE FLOOR ACTION

Thursday, February 6, 2014

HB 1109, relative to providing notice to abutters of a petitioned warrant article to discontinue a class VI road. **Ought to Pass with Amendment.**

HB 1123-FN, repealing the prohibition on village districts receiving road funds. **Inexpedient to Legislate.**

HB 1124, relative to the adoption of zoning ordinances in towns that use official ballot voting. **Ought to Pass.**

HB 1130-FN-L, relative to the Northeastern Interstate Forest Fire Protection Compact. **Ought to Pass.**

HB 1168, relative to employer documentation of worker eligibility to work in the United States. **Ought to Pass with Amendment.**

House Floor Action - continued

HB 1201-FN, relative to the accountability of public officials. **Inexpedient to Legislate.**

HB 1202, establishing a commission to study revenue alternatives to the road toll for the funding of the state's highways and bridges. **Interim Study.**

HB 1229-FN, relative to the oil discharge and gasoline ether cleanup fund. **Ought to Pass with Amendment. Referred to W&M.**

HB 1234, relative to municipal contracts for police chief. **Inexpedient to Legislate.**

HB 1235-FN, establishing a procedure to recall selectmen and school board members. **Inexpedient to Legislate.**

HB 1237, prohibiting residency restrictions for registered sex offenders and offenders against children. **Ought to Pass.**

HB 1279, relative to compliance with 2012 National Defense Authorization Act. **Ought to Pass with Amendment.**

HB 1346, relative to allocations of funds from the highway fund. **Inexpedient to Legislate. NHMA Policy.**

HB 1371, relative to grading and improving subdivision streets. **Ought to Pass.**

HB 1375, permitting a municipal law enforcement agency to collect unwanted or illegal firearms. **Inexpedient to Legislate.**

HB 1406-FN, relative to red list bridges. **Ought to Pass with Amendment.**

HB 1441-FN-L, repealing the normal yield tax on timber. **Inexpedient to Legislate.**

HB 1455-L, relative to the authority of municipalities to enter into agreements for payments in lieu of taxes. **Inexpedient to Legislate.**

HB 1473, recodifying the laws relative to sheriffs, constables, and police officers. **Inexpedient to Legislate.**

HB 1561-FN-L, relative to the classification of temporary emergency workers under unemployment compensation laws. **Inexpedient to Legislate.**

HB 1562-FN, relative to the legal holiday status of the state biennial election day. **Inexpedient to Legislate.**

House Floor Action - continued

HB 1590-L, relative to payments in lieu of taxes for renewable generation facilities in unincorporated places. **Ought to Pass with Amendment. Referred to M&CG.**

SENATE FLOOR ACTION

Thursday, February 6, 2014

SB 211, relative to reporting requirements in fatal motor vehicle accident reports. **Ought to Pass.**

SB 220-FN, relative to the regulation of electricians by the electricians' board. **Ought to Pass with Amendment.**

SB 271, relative to retention of challenge affidavits. **Ought to Pass with Amendment.**

SB 284-FN, relative to eligibility to vote. **Interim Study.**

SB 301, relative to petitions to adopt or rescind the official ballot form of voting. **Inexpedient to Legislate.**

SB 302, relative to public or private criticism of employers by employees. **Inexpedient to Legislate.**



NHMA Webinar

Lot Mergers and Un-Mergers

Date: February 12, 2014

Time: 12:00 PM - 1:00 PM

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!