

LEGISLATIVE BULLETIN

Bulletin #8

2014 Session

February 14, 2014

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Legislature to Take a Break

The legislature will be in session next week, but will take its almost-annual break the following week (February 24-28). Depending on how much there is to report, we may or not publish a *Legislative Bulletin* next Friday. If you don't receive one, it probably will be because there is none. Of course, you can always go to our website and re-read earlier issues.

Gas Tax Hearing

The hearing on **SB 367**, the bill that would increase the road toll by four cents on July 1 and tie future increases to the Consumer Price Index, has been scheduled for a hearing next **Tuesday, February 18, at 9:00 a.m., in State House Room 103**, before the Senate Ways & Means Committee. This bill carries out NHMA policy, and ***we need local officials to attend and speak about the need for better transportation funding.***

We have made the argument for increasing the road toll so many times that we're even getting tired of hearing it ourselves. We'll keep it simple: roads and bridges are deteriorating rapidly, state funding is decreasing, and the cost of materials has ballooned in the **23 years** since the toll was last increased. The road toll is a user fee — it puts the cost of improvement and maintenance on the people who use the roads most. The alternative is to keep raising local property taxes.

If you live in a city or town where some residents are connected to municipal water and sewer systems and some are not, you are familiar with the question: Should improvements to the infrastructure be funded by fees paid by the users, or through property taxes that are paid by everyone, including non-users? Almost everyone agrees that the answer should be the former. The issue is exactly the same with the road toll.

If you view the road toll as a tax (as opponents of the bill do), the current tax rate is about 5.6 percent of the price of gasoline. In 1991 it was about 16 percent — meaning this "tax" has declined by about two-thirds. Even after the four-cent increase under **SB 367**, the rate would still be less than half what it was in 1991.

Gas Tax Hearing - continued

There is a wealth of information on the issue on the ["Increased Highway Funding" page](#) on the NHMA website. Please check out that information and call the Government Affairs staff if you have questions. Most important, please contact your senator and members of the Senate [Ways and Means Committee](#) and urge them to ***support SB 367***.

\$81 Million Unfunded Mandate a “Compromise”?

On Wednesday the Senate Executive Departments and Administration Committee heard testimony on **SB 364**, which proposes to increase pension benefits for New Hampshire Retirement System (NHRS) members hired after January 1, 2012, the date the retirement reform measures enacted in 2011 took effect. This bill

- creates a new employer-funded (at 4 percent of pay) defined contribution plan for NHRS group I members (employees and teachers), in addition to the current defined benefit plan, and
- raises pension benefits for group II (police and fire) members by increasing the pension formula multiplier from 2 percent to 2.5 percent.

As we noted in last week’s *Bulletin*, the fiscal note based on the NHRS actuary’s analysis indicates that the bill’s cost to employers (state and local governments) would be **\$81 million** for fiscal years 2014 through 2018. This is a clear violation of the unfunded mandate provision of the New Hampshire Constitution (Part 1, Article 28-a), and local governments can’t afford it. Of course, supporters of the bill saw things differently.

The prime sponsor and several supporters testified that the bill is necessary to address “unintended consequences” of the retirement reforms enacted in 2011 – namely, lower pension benefits for new NHRS members. As a reminder, many of the pension reforms enacted in 2011 applied to new hires (*i.e.*, those not yet members of NHRS as of 1/1/12)—reforms such as increasing the retirement age and years of service from 60/30 to 65/30 for group I and from 45/25 to 52.5/25 for group II, and eliminating end-of-career payments (such as unused vacation, sick leave or longevity pay) from the pension computation. Additionally, the pension formula for newly hired group II members was reduced from 2.5 percent to 2 percent of the average final compensation multiplied by years of service.

These were not unintended consequences. The reduced benefits were the *whole point* of the 2011 reforms. These reforms, which basically required new hires to work a little longer and eliminated some of the provisions that resulted in excessive payouts, along with the increase in the employee contribution rates, were enacted to help curb the exorbitant and unsustainable increases in employer rates.

Supporters of **SB 364** claimed that the new employer-funded defined contribution plan is needed to provide a “dignified” pension for future retirees. They further stated that after working on this bill for 18 months, it is an extraordinary step and a

Unfunded Mandate - continued

significant “compromise” for group I employees to come to the table and offer to have *employers* contribute 4 percent of new employees’ pay into a supplemental defined contribution plan, in addition to the existing defined benefit plan!

Compromise? We were not aware there was a negotiation going on, but if this is a compromise, we’re afraid to ask what their starting position was.

Further testimony stated that this bill did not undo the changes enacted in 2011, but rather created a bridge, with a balanced approach, to support a “hybrid” pension model: the 2011 defined benefit changes being the floor and this supplemental defined contribution provision creating the next layer of the bridge. Again, there seemed to be a fundamental misunderstanding of the 2011 reforms. They were intended to reduce benefits, period--not create a “floor” onto which new benefits could be layered.

The bill’s supporters explained that having employers pay 4 percent into this defined contribution plan was a more cost-efficient method than a 4 percent wage increase, since employees would have to pay federal taxes on a wage increase but not on the employer’s 4 percent pension contribution. Another comment was made that this bill is good for employers since it is predictable and--at a mere \$81 million over five years--affordable. Many times the bill was referred to as a “hybrid” pension plan. This is not a hybrid pension plan--it is simply an unfunded mandate.

As for the proposed increase in the group II formula, there was testimony regarding the negative effect on morale due to the difference in pension benefits between pre-January 1, 2012 and post-January 1, 2012 group II members. One police officer actually compared the morale surrounding these pension changes to the morale when an officer is shot.

Coincidentally, this week the NHRS Board of Trustees accepted its actuary’s June 30, 2013 valuation report, which includes [preliminary estimates of the employer rates](#) for the two-year period beginning July 1, 2015. The increases in employer rates for employees, police and fire are in single digits, with a 10.7 percent increase in the teachers’ rate, rather than some of the outrageous increases (48 percent, 57 percent, 103 percent!) over the past decade. Additionally, the unfunded liabilities increased only 1 percent from June 30, 2012 to June 30, 2013, compared to increases of 5 to 35 percent over the past few years. This minimal increase is due, in significant part, to the 2011 reform measures kicking in, doing what they were intended to do – curbing the unsustainable increases in employer pension rates. Nevertheless, the rates are still increasing.

With the state and local governments still in recovery mode, with unemployed workers losing their benefits, with the mental health system in crisis, and with both the state and municipalities struggling to care for their neediest residents--not to mention the billions of dollars needed for water infrastructure and highways in the

Unfunded Mandate - continued

next decade--we wonder how many people believe the best use of \$81 million is to fund new retirement benefits for public employees.

Please contact your Senator and members of the Executive Departments and Administration Committee and let them know what you think of this "compromise."

Clerks Bill Delayed Again

HB 1266, the **NHMA policy bill** giving town voters the *choice* of whether to have an elected or appointed town clerk, remains in limbo because the House did not get through its full calendar this week; so it presumably will go to the floor **next Wednesday, February 19**.

This week's argument-of-the-moment against the bill, we're told, is that although all of the *city* clerks are appointed, the cities also have *ward* clerks who handle election duties, and they are required to be elected; therefore, town clerks must be elected, too.

That logic merits some head scratching. Not to minimize the importance of ward clerks, but their job is not remotely comparable to that of a town clerk. A ward clerk's job is strictly limited to election-related duties: posting notice of polling times and locations, checking off voters' names on the checklist after they vote, counting ballots (under the moderator's supervision), certifying the checklist, and preparing and certifying the election return. These duties are performed one or two days per year (three in a presidential election year).

Here is a short list of the town/city clerk duties that a ward clerk does not perform: registering vehicles, registering boats, issuing marriage licenses, maintaining vital records, issuing dog licenses, recording and preserving meeting minutes, processing voter registration applications, accepting candidate filings, processing absentee ballot applications, preparing local election ballots, preserving election records, responding to Right-to-Know Law requests, and even processing dredge and fill applications. Again, this is a short list — we don't even *know* how many things would be on the full list.

The rationale for requiring ward clerks to be elected is itself questionable, but even if it were unassailable, it is irrelevant to any discussion of whether *town* clerks should be elected. The town clerk has a complex, multi-faceted job that is directly comparable to that of the appointed city clerk. It is not unreasonable that if *some towns* want the same *option* that cities have, they should have it: the option of appointing the clerk, so that the selectmen can create a job description, interview candidates, and hire the most qualified candidate, regardless of where that person lives.

Again, *please encourage your representatives to vote down the committee report of Inexpedient to Legislate and support a subsequent motion of Ought to Pass.*

Apportionment of Damages Bill Is Back

In 2007 the legislature narrowly passed a bill to change the way damages are apportioned in personal injury cases involving more than one defendant. The change would have caused serious problems for “deep pocket” defendants like municipalities. Fortunately, Governor Lynch vetoed the bill.

Unfortunately, the concept is back in the form of **SB 297**, which is scheduled for a hearing before the Senate Judiciary Committee on **Tuesday, February 18, at 9:15 a.m., in LOB Room 102.**

The best way to explain the issue is with an example:

Smith and Jones work for Acme Furniture Store. Smith is driving a delivery truck, with Jones in the passenger’s seat, when Smith runs a red light and collides with a town police cruiser. Jones, the passenger, is injured in the accident.

Jones files a worker’s compensation claim against his employer, Acme, and also sues the town, alleging that the police officer was speeding without good cause. He receives a \$30,000 payment from Acme’s worker’s compensation carrier, and he proceeds to trial against the town. He cannot sue his fellow employee or Acme, because a civil action is barred by the worker’s compensation statute.

At the trial, the evidence indicates that the police officer was traveling 35 miles per hour in a 30 m.p.h. zone. The evidence also indicates that Smith sped through the red light at 70 miles per hour.

At the end of the trial, the jury finds that Jones is entitled to \$200,000 in damages.

Under current law, the jury is required to determine the proportionate fault of each party who contributed to the injuries and allocate damages accordingly. Following the judge’s instructions, the jury concludes that Smith, the driver of the truck, was 95 percent responsible for Jones’s injuries, and the police officer was 5 percent responsible. Thus, the town pays \$10,000 in damages. In theory, Smith (or Acme) is responsible for the remaining \$190,000, but any claim against them is barred by the worker’s compensation statute, so the plaintiff gets nothing more.

Under **SB 297**, the jury would allocate damages only among parties “who [are] not immune from liability.” Because Smith and Acme are immune from liability under the worker’s compensation law, the town is the only non-immune party in the case, and the jury would be required to allocate all of the \$200,000 in damages to the town — even though the police officer was only 5 percent at fault.

Thus, under current law, the plaintiff does not recover fully for his injuries, which admittedly is unfortunate. However, **SB 297** “solves” that problem by assigning full liability for damages to someone who was only nominally responsible. We do not believe the fact that one person has been injured justifies punishing someone else who had virtually nothing to do with the injury (especially when that someone else might be one of our members). Please contact your senator and members of the [Judiciary Committee](#) and urge them to ***kill SB 297.***

Hearing on Sales Chasing Bill

On **Tuesday, February 18, at 10:00 a.m., in LOB Room 301**, the Municipal and County Government Committee is scheduled to hear testimony on **HB 1110**, which makes intentional failure to comply with assessing laws a cause for disciplinary action by the Department of Revenue Administration. The bill also adds a statutory definition of “sales chasing.”

PILOTs for Renewable Energy Facilities

Also on Tuesday in Room 301, the same committee will hear four bills dealing with payments in lieu of taxes (PILOTs) for renewable energy facilities and how those payments are handled for equalization, cooperative school district assessment, and county tax apportionment purpose. The bills are scheduled as follows:

- **11:00 a.m. – HB 1471**, proration of payments for renewable generation facilities among school districts
- **11:30 a.m. – HB 1472**, equalized property valuation used to apportion expenses in cooperative school districts
- **1:15 p.m. – HB 1590**, PILOT facilities in unincorporated places
- **2:00 p.m. – HB 1549**, assessment of renewable energy generation facilities subject to a PILOT

Committee Working on Right-to-Know Law Bills

The House Judiciary Committee spent over two hours on Tuesday discussing six bills that would make various changes to the Right-to-Know Law. (See [Bulletin #4](#) for descriptions of all six bills.) It appears likely that the committee will recommend killing most — but not necessarily all — of the bills, some on the merits and others because they require more study. There is significant interest among committee members in establishing a Right-to-Know Law Oversight Commission, similar to the one that existed for about six years until its expiration in 2010, to study the issues raised in the various bills and other issues under the law.

NHMA submitted a proposed amendment to **HB 1156** that would make a number of minor changes to the non-public session provisions of the law. It appears that **HB 1156** may become a vehicle for any changes contained in the various bills and amendments that the committee finds favorable, and perhaps to establish an oversight commission. The committee is scheduled to meet again next Tuesday (and possibly Thursday) to work on the bills some more.

Get Involved in NHMA's Legislative Policy Process

As we mentioned a few weeks ago, NHMA's biennial legislative policy process is getting underway. Here are two items for your consideration:

1. Legislative Policy Proposals. It is not too early to submit legislative policy proposals. If you are a municipal official (or board) with an idea for legislation that could improve municipal government, please consider submitting a proposal.

You can download the NHMA Legislative Policy Proposal Form [here](#). A policy proposal form should accompany each proposed legislative policy. Please follow the instructions to submit the form, and note that all proposals must be submitted by April 25, 2014.

2. Policy Committees. We are currently recruiting volunteers to serve on our three legislative policy committees. These committees will review the 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.
- 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
Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, FEBRUARY 18

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **HB 1110**, relative to the penalty for sales chasing by certified assessors.
- 10:30 a.m. Continued public hearing **HB 1195**, establishing a commission to study the impacts of the property tax on New Hampshire's residents, businesses, municipalities, and the economy.
- 11:00 a.m. **HB 1471-L**, relative to the proration of payments in lieu of taxes for renewable generation facilities among school districts.
- 11:30 a.m. **HB 1472**, relative to equalized property valuation used to apportion expenses in cooperative and multi-town school districts.
- 1:15 p.m. **HB 1590-L**, relative to payments in lieu of taxes for renewable generation facilities in unincorporated places.
- 2:00 p.m. **HB 1549**, relative to assessment of renewable generation facility property subject to a voluntary payment in lieu of taxes agreement.
- 2:45 p.m. **SB 223**, authorizing municipalities to enter into contracts for the private funding and repayment of construction of sewer systems.

THURSDAY, FEBRUARY 20

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:30 a.m. **HB 1130-FN-L**, relative to the Northeastern Interstate Forest Fire Protection Compact

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **HB 1285**, relative to recommendations by the department of revenue administration regarding municipal fund balance retention.
- 10:30 a.m. **HB 1350**, relative to prior public hearings for acceptance of unanticipated funds.
- 11:00 a.m. **HB 1354**, relative to municipal appropriations for certain capital projects.
- 1:00 p.m. **HB 1466**, relative to modification of a tax increment financing plan.
- 1:30 p.m. **HB 1134**, permitting municipalities to reimburse persons who assist applicants in obtaining social security benefits.

FRIDAY, FEBRUARY 21

COASTAL RISK AND HAZARDS COMMISSION (RSA 483-E)

Seashell Pavilion at Hampton Beach

- 10:00 a.m. Regular meeting.

FRIDAY, FEBRUARY 28

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), New Hampshire Department of Revenue Administration, 101 Pleasant St., Concord

- 9:30 a.m. Regular board meeting.

SENATE CALENDAR

TUESDAY, FEBRUARY 18

JUDICIARY, Room 102, LOB

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

WAYS AND MEANS, Room 103, SH

9:00 a.m. **SB 367-FN-A**, requiring adjustment of the road toll according to changes in the Consumer Price Index.

WEDNESDAY, FEBRUARY 19

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 100, SH

10:30 a.m. **SB 218-FN-L**, relative to group I retirement system membership for all members hired on or after July 1, 2014.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:45 a.m. **SB 280**, relative to absentee voters.

10:00 a.m. **SB 387**, relative to exemptions from the land sales full disclosure act.

10:30 a.m. **SB 376**, requiring pooled risk management governing board members to comply with financial disclosure requirements.

New Senate Bill

SB 218-FN-L, provides that all employee, teacher, police, and fire members of the retirement system who commence service on or after July 1, 2014 shall be group I members of the retirement system. Sen. Reagan of Deerfield; ED&A-S.

HOUSE FLOOR ACTION

Wednesday, February 12, 2014

HB 1106, relative to disqualification of moderators. **Inexpedient to Legislate.**

HB 1114-FN, relative to limits on state expenditures for school building aid. **Ought to Pass. Referred to Finance.**

HB 1122-FN, establishing the crime of filing false lien statements against public officials and employees. **Ought to Pass with Amendment. Referred to Criminal Justice and Public Safety.**

HB 1142-FN-A, relative to the road toll for alternative fuels. **Ought to Pass with Amendment. Referred to Ways and Means.**

HB 1148-FN, relative to the reduction in the calculation of state retirement system annuities at age 65. **Interim Study.**

House Floor Action - continued

HB 1205-FN, relative to reconstruction or rehabilitation of the Vilas Bridge between Walpole, New Hampshire and Bellows Falls, Vermont. **Interim Study.**

HB 1287-FN, requiring a refundable deposit on beverage containers **Inexpedient to Legislate.**

HB 1357, relative to access to ballots. **Inexpedient to Legislate.**

HB 1494-FN, relative to administration of the New Hampshire retirement system and authority of the board of trustees. **Ought to Pass with Amendment. Referred to Finance.**

HB 1563-FN, granting group II retirement system status to certain positions in the department of corrections. **Interim Study.**

HB 1576-FN, relative to required payroll reporting for public works construction projects. **Inexpedient to Legislate.**

HB 1589-FN, requiring background checks for all firearm sales. **Inexpedient to Legislate.**

SENATE FLOOR ACTION

Thursday, February 13, 2014

SB 233, relative to property tax exemption for district fire mutual aid systems. **Ought to Pass.**

SB 275, relative to refusal to certify an absentee ballot application. **Ought to Pass with Amendment.**

SB 279, relative to challenges of voters. **Ought to Pass.**

SB 294, relative to the deadline for requesting a recount of an election. **Ought to Pass with Amendment.**

SB 304-L, relative to the valuation of property for purposes of agreements for payments in lieu of taxes. **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: Mar 1)

[Register online](#) today!