

LEGISLATIVE BULLETIN

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2014 Session

May 16, 2014

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Whack-A-Bill Time

As we mentioned two weeks ago, this is the time of year when bills believed to be dead begin to pop up in new places without notice. That happened this week, for better and for worse. A couple of the more significant developments are described below.

Zoning Hearing Notice Is Back

Did we predict this? (See [Bulletin #18](#) if you're not sure.) **SB 228**, the bill dealing with notice of zoning hearings that the Senate passed but the House wisely sent to interim study, re-emerged in the Senate yesterday as a floor amendment to an unrelated House bill, **HB 1210**. The amendment revives the identical language of **SB 228** as passed by the Senate: it requires a municipality to send notice by first-class mail to all owners of "affected properties" whenever a hearing is scheduled on a proposed zoning amendment if the amendment would affect 500 or fewer properties.

This will be a disaster for municipalities. As we have explained previously, the problem with sending notice to individual property owners is not so much the cost (although that is certainly an issue) but the administrative nightmare of identifying and counting "affected properties."

Supporters of **SB 228** have confidently asserted that this is a simple matter of counting the properties in the affected zoning district and pressing a few buttons to compile a list of the property owners. We were actually told this could be done in "a few seconds." That could not be more wrong. For one thing, it is simply not true that every municipality can compile a list of property owners in a district by pressing a few buttons.

More significantly, the effect of a zoning amendment is frequently not limited to one district and frequently does not apply to all of the properties in a district, so identifying all of the properties in a district is useless. Imagine a zoning amendment that prohibits development within 100 feet of a wetland. What buttons do you press to determine how many properties are within 100 feet of a wetland? Or imagine an amendment

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Zoning Hearings - continued

that prohibits placement of a fence or other obstruction within 50 feet of an intersection. Who is going to go to every intersection in town and determine which properties are within 50 feet? Can that be done in a few seconds? The same issue arises for an amendment that prohibits certain uses within a specified distance of a school, a church, a cemetery, *ad infinitum*.

And what about an amendment that changes the triggering distance from 100 feet to 50 feet, or vice versa? Now someone will need to determine how many properties are more than 50 feet but less than 100 feet from the use in question. Further, there will be arguments about whether such an amendment affects only properties within the stated proximity of an *existing* school, church, cemetery, *etc.*, or all properties that are near a property on which a school, church, or cemetery could legally be placed. To protect itself, the municipality may need to send notice by first-class mail to every property owner in town--and that is ridiculous.

The notice requirement in this bill simply can not work. The House Municipal & County Government Committee recognized this and unanimously rejected it. (The committee vote was 14-5 to send the bill to interim study, but the minority report was Inexpedient to Legislate, so no one supported the bill as it came from the Senate.)

In a compromise effort, NHMA offered an amendment in the House that would allow any property owner in a municipality to sign up to receive notice of all hearings on zoning amendments. The NHMA amendment is modeled on legislation from Connecticut and Rhode Island; it would provide notice to anyone who can muster enough energy to make one phone call or send one letter or e-mail to the town office, and it would be easy to administer. The municipality would simply send notice to everyone who has asked to be placed on the notice list; no one would have to go tramping through the woods to measure distances from wetlands or cemeteries. It is unclear why **SB 228**'s supporters continue to insist on a system that cannot possibly work.

The underlying bill, **HB 1210**, is now headed back to the House, which will request a committee of conference. Unfortunately, the Senate also added another amendment to **HB 1210**, which ratifies a bond approval by the Hanover school district, and it appears the Senate intends to hold that ratification hostage for House acceptance of the **SB 228** language.

We do not yet know who will be on the committee of conference, but please make sure your representatives are aware of this looming disaster. Look for an update here next week.

Flood Control Reimbursement

The revival of dead bills is not always a bad thing. Also yesterday, the Senate added the language of **SB 370**, the flood control reimbursement bill, to **HB 1282**, a bill dealing with prepaid contracts for home heating fuel. **SB 370**, you will recall, is the

Flood Control - continued

bill that would make whole the municipalities in the Merrimack River Flood Control Compact that were shortchanged in their flood control reimbursements in fiscal years 2012 and 2013. The House killed the bill because, apparently, it concluded the towns didn't need the money. The language will now go back to the House, and there will be a committee of conference. The checks may yet be in the mail to those municipalities!

Veterans' Preference

As mentioned last week, the bill giving veterans a preference in hiring by public employers is also still alive, after the language of **SB 296** was grafted onto **HB 498**. The Senate passed the amended version of **SB 498** yesterday. We have received repeated assurances that the bill will be amended in a committee of conference to clarify that it applies only to the state, and not to political subdivisions. We have no reason to doubt that—but we won't stop watching.

Pay Attention to Bonding Procedures!

Almost every year the legislature is called upon to ratify an action taken at a town meeting somewhere because of a lapse in the town's procedures. These are usually minor errors and always (we assume) unintentional.

This year has been a particularly bad year for procedural irregularities, and for some reason it's been all about bonds. We know of at least three instances in which the legislature has been asked to ratify a bond approval because the proper procedures were not followed. In fairness, in one of those cases an inconsistency in the relevant statutes made it literally impossible for the town to comply with the statutory hearing schedule—that problem is being fixed by other legislation—but in the other cases the problem could have been avoided.

The legislature has been very good about ratifying these bond votes, but we cannot guarantee that it always will be. (As noted in the second article above, the most recent request has led to a hostage situation.) Given that these issues inevitably arise in mid-March, when the legislative session is already half over, the legislature has to scramble to find an appropriate bill to which the ratification language can be attached. This is no simple matter, because few bills are ever 100 percent certain of passage, and if the underlying bill goes down, the ratification amendment goes down with it.

We have heard concerns from some legislators about the number of legislative "fixes" being requested this year. What's done is done, but for next year, we strongly encourage municipalities (and school districts) to pay extremely careful attention to the statutory requirements for approving bonds. We are concerned that legislators may eventually run out of patience.

Bonding Procedure - continued

The requirements for issuing a bond are stated in RSA 33:8 through 33:9, and although they are rather detailed, they are also pretty clear. Please check the requirements carefully, count the number of days in your notice and hearing schedule at least three times, and have at least two people review every step in the process. Finally, if your municipality is a member of NHMA, call us with any questions—or call your municipality’s legal counsel.

In contrast to some municipal actions, “close enough” does not work for a bond issuance. If there is the smallest error, your bond counsel may not issue a clean opinion, and all your work to secure approval of the bond may be for naught. The legislature will be there as a last resort, but only until it decides not to be.

HOUSE AND SENATE CALENDARS

FRIDAY, MAY 30

ASSESSING STANDARDS BOARD (RSA 21-J:14-a), NH Department of Revenue Administration, 109 Pleasant Street, Concord, NH
9:30 a.m. Regular meeting.

HOUSE FLOOR ACTION

Wednesday, May 14, 2014

Thursday, May 15, 2014

SB 183-FN, (New Title) relative to identification of voters, processing absentee ballots, and voluntary political expenditure limitations. **Ought to Pass with Amendment. NHMA Policy.**

SB 207-FN, relative to paycheck equity. **Ought to Pass.**

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

SB 230, relative to the definition of utility terrain vehicles. **Ought to Pass.**

SB 232, relative to speed limits for off highway recreational vehicles and snowmobiles. **Ought to Pass with Amendment.**

SB 267, extending the effective date for integrated land development permits. **Ought to Pass.**

SB 271, (New Title) relative to retention of voter affidavits and identity verification. **Ought to Pass with Amendment.**

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

House Floor Action - continued

SB 388, establishing 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. **Ought to Pass.**

SB 390, (New Title) prohibiting discrimination against employees who are victims of domestic violence and establishing a committee to study the protection of employees from domestic violence. **Ought to Pass.**

SB 395-FN, relative to the retirement classification of the director of the division of forests and lands. **Inexpedient to Legislate.**

SB 409-FN-A-L, (New Title) making an appropriation to the department of safety for disaster assistance grants. **Ought to Pass.**

SB 416-FN-A, (New Title) relative to highway fund appropriations and establishing a committee to study the effectiveness and efficiency of the department of transportation. **Inexpedient to Legislate.**

SENATE FLOOR ACTION

Thursday, May 15, 2014

HB 286, relative to broadband infrastructure. **Interim Study.**

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

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

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

HB 569, relative to the placement of all new electric transmission lines in New Hampshire. **Laid on Table.**

HB 1129, requiring the development of an energy efficiency implementation plan. **Ought to Pass with Amendment.**

HB 1142-FN-A, relative to the road toll for alternative fuels. **Ought to Pass.**

HB 1151, establishing a committee to study the solid waste operator training program and financial assurance for corrective action at solid waste landfills. **Interim Study.**

HB 1237, prohibiting residency restrictions on registered sex offenders and offenders against children. **Interim Study.**

Senate Floor Action - continued

HB 1248, relative to the acceptance of risk in outdoor recreational activities. **Interim Study.**

HB 1368, relative to consideration of criminal records for occupational and professional licensing. **Ought to Pass with Amendment.**

HB 1383, relative to municipal monitoring of large groundwater withdrawals. **Ought to Pass with Amendment.**

HB 1407, relative to privacy in the workplace. **Ought to Pass with Amendment.**

HB 1409, expanding the law against discrimination to prohibit housing discrimination against recipients of rental assistance and victims of domestic violence, sexual assault, or stalking. **Ought to Pass with Amendment.**

HB 1590-L, relative to the valuation of the Granite Reliable Power project in Coos county. **Ought to Pass.**

NHMA Webinar

Legislative Wrap Up

Date: June 11, 2014

Time: 12:00 noon - 1:00 PM

Contact Phone: 603.224.7447

Join us on Wednesday, June 11 at noon!

Join Government Affairs Counsel Cordell Johnston and Government Finance Advisor Barbara Reid for a review of the highlights of the 2014 legislative session. This will be one week after the legislative session ends, so except for possible vetoes, all legislative action will be final.

This webinar will discuss the most significant bills of municipal interest that made it through the legislature this year, as well as a few that failed but may be back next year. The discussion will include, among others, legislation on highway funding, municipal charters, town meeting issues, the retirement system, planning and zoning issues, and tax rate setting.

This webinar is open to members of the NH Municipal Association.

Click here to Register Today!