

LEGISLATIVE BULLETIN

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Corporate Welfare, Part 2

Next **Friday, February 13, at 9:00 a.m., in LOB Room 202**, the House Ways and Means Committee is scheduled to hear testimony on what is probably the most heinous anti-taxpayer, anti-local government bill of the year: **HB 547**, which would reinstate the property tax exemption for telephone poles that expired five years ago. This is serious. ***Local officials need to get to the hearing, and get on the phone to their representatives and urge them to kill HB 547.***

For the two-thirds of the members of the House of Representatives who were not around in 2012, the last time this issue came up, here is some background:

Telephone poles and conduits are subject to property taxes in (at last count) 49 states (all except Pennsylvania). In some states they are taxed as personal property, with the taxes going to the state. In others, they are taxed as real estate--as they should be, since they are fixtures, just like a fence or a shed--and the taxes go to the municipality.

For many years, New Hampshire treated poles and conduits as personal property, and taxes that should have gone to municipalities went instead to the state. That changed in 1990, when the state stopped taxing the poles, leaving a question about whether they were now subject to local property taxes. In 1998, the legislature enacted RSA 72:8-a, providing that "all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable, or commercial mobile radio services *shall be taxed as real estate* in the town in which such property . . . is situated." Thus, telephone poles and conduits, which, except for an eight-year period, *had always been taxed*, would now be taxed at the local level, rather than at the state level.

However, at the same time that it authorized taxation by the municipalities, the legislature enacted a **one-year** exemption for telephone poles and conduits. From April 1, 1998, to July 1, 1999, telephone poles and conduits would not be taxed at all.

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Corporate Welfare - continued

Due to the influence of the telecommunications lobbyists, one year became three years, which became five years, then six, then seven, then twelve. In 2010, however, the “one-year” exemption finally expired. Legislative efforts to extend or reinstate the exemption failed in 2010, 2011, and 2012.

Now, there is yet another effort to reinstate the pole exemption. Why? Because the phone companies don't like to pay property taxes. Well, here's some news--no one else does, either! For most of us, the remedy is to yell at the selectmen or school board members, then grudgingly write out a check; but if you're a big business, the remedy is to hire a lobbyist and get the legislature to give you an exemption.

More background: utility poles owned by PSNH and other electric companies have always been subject to the property tax, even while poles owned by the phone companies were exempt. Why, you might ask, were those poles treated differently? Is there something different about them?

No, the poles are identical. In fact, most of the poles in the state are owned jointly by the electric company and the phone company. When the telephone pole exemption was in effect, the electric company paid property taxes on its one-half interest, while the phone company's one-half interest was exempt. We are not making this up.

Why would identical property be taxable when owned by the electric company, but tax-exempt when owned by the telephone company? One former legislature explained it quite elegantly: “Because the telephone company had a better lobbyist.”

And that's all there is to it. We believe, however, that property tax bills should be determined by the value of the property, not by the skill of one's lobbyist. Property is property, and if some of us have to pay, all of us should.

Oh, by the way—the phone companies are still getting a huge break, because even though their poles and conduits are now subject to taxation, their wires and cables—representing a significant portion of their value—are still exempt, while the electric company's wires are taxable. That remaining exemption needs to be repealed, but that is for another time.

There is much more to be said on this subject--far too much for one issue of the *Legislative Bulletin*. Look for more next week. In the meantime, click [here](#) for more information. (If you're reading a hard copy of the *Bulletin*, go to our website, www.nhmunicipal.org, click on “Legislative Bulletin #6,” and click on the link in this article.)

Again, legislators need to hear from you. ***Please contact members of the [Ways and Means Committee](#), but especially contact your own representatives and tell them to stop using municipal money for corporate welfare. Tell them to oppose HB 547.***

Recovering Right-to-Know Costs

Hypothetical: You're the town administrator. You're in your office one day when the local good-government watchdog comes in with a Right-to-Know Law request. He wants to see every piece of correspondence, including every e-mail and all enclosures and attachments, to or from the town administrator for the last ten years.

Trying to be helpful and make your own job easier, you ask whether there's something specific he's looking for. He says, "Yes. I'm looking for every piece of correspondence, including every e-mail and all enclosures and attachments, to or from the town administrator for the last ten years." He refuses to narrow the request further, and he threatens a lawsuit if you provide anything less. You tell him it will take a couple of weeks to assemble and review all of the correspondence, and he says he can wait.

It takes you two full days to retrieve and assemble all of the records and separate the personal from the work-related correspondence. It then takes the town attorney twenty hours, at \$200 an hour, to review the records and redact all confidential or privileged information. Finally, you call Mr. Watchdog and tell him the records are ready. There are 400 pages, and at 25 cents a page, it will cost him \$100.

Of course, Mr. Watchdog never shows up to get the records. He does come in a few weeks later with another request, but when you ask him about his earlier request, he says he's no longer interested. What can you do? Nothing, of course.

For too many local officials, this is not a hypothetical at all. In many municipalities, school districts, and counties, filing frivolous Right-to-Know Law requests has become a sport, played at taxpayer expense.

Next week, you can do something about it. On **Thursday, February 12, at 10:00 a.m.**, in **LOB Room 208**, the House Judiciary Committee is scheduled to hear testimony on **HB 646, an NHMA policy bill** that would allow public bodies and agencies to charge a minimal fee, and to require payment in advance, for retrieving records in response to a Right-to-Know Law request. This is an extremely modest bill—probably too modest—but it is a step in the right direction. It allows officials to impose a charge when the estimated time to respond exceeds one hour, but it limits the charge to the applicable minimum wage (currently \$7.25 per hour—probably a bit less than your town attorney charges). Further, no charge may be imposed for any public body meeting minutes that are less than a year old. Again, it's not much, but it's a start.

We've heard the horror stories about these frivolous requests. Please share your stories with the [Judiciary Committee](#). Come to the hearing, or contact committee members and your representatives and ask them to *support HB 646*.

Big Businesses Oppose Repeal of “Good Citizen” Loophole

The Municipal and County Government Committee heard about 90 minutes of testimony on Tuesday about **HB 224**, the **NHMA policy bill** that would end the taxpayer subsidy of utilities and a few other businesses by repealing the so-called “pollution control exemption.” Local officials from Hampton, Concord, Portsmouth, and Berlin spoke or signed in support of the bill, along with state legislators from both parties, representing a number of other affected municipalities. However, an equal number of representatives from big businesses spoke against the bill.

The need for this repeal was discussed in the article “Corporate Welfare, Part 1,” in [Legislative Bulletin #5](#), and the merits are too plain to require further elaboration. As the bill’s lead sponsor pointed out at the hearing, one of the bizarre consequences of the existing law is that an individual homeowner is compelled to pay higher taxes on his or her septic system to subsidize the exemption that a large corporation gets for *its* septic system.

Amazingly, but understandably, not one of the bill’s many opponents suggested that the existing exemption actually does what it was intended to do—namely, control pollution. No one from the Department of Environmental Services showed up to oppose repeal of the exemption. In fact, only one environmental organization, the Sierra Club, weighed in on the issue—and its representative *supported* the repeal, stating that the exemption is just a giveaway that has nothing to do with pollution. The pretext of pollution control, then, has finally been completely abandoned.

Instead, one company after another urged the committee to keep the exemption because, well, they pay enough taxes already. (Is this starting to sound familiar?) Like a mantra, they repeated the identical argument: “We’re the largest taxpayer in our town. We give to local charities and support local businesses and employ local workers. We’re good corporate citizens.”

And therefore, what? If you pay a lot of taxes, you hit a ceiling, beyond which you’re exempt? If you pay taxes on ten properties, should you get the next one free? Is there a “good citizenship” tax exemption? Many of us give to local charities and support local businesses and are good citizens. Are we rewarded with a tax exemption? Hardly. No, we get to pay *more* so that a nuclear power plant and the largest brewing company in the world can pay *less*.

As we mentioned previously, apart from the burden on municipalities and the issue of fundamental tax fairness, this loophole is costing the state over \$3.5 million per year—which may be part of the reason the House Finance Committee chairman testified in support of the repeal. An additional \$7 million for the biennium would go a long way toward funding *real* pollution control in the form of state aid grants for municipal wastewater facilities.

We want to believe legislators are smart enough to see the opposition for what it is: the protest of influential businesses that just don’t want their privileges taken away.

Loophole - continued

Legislators are receiving intense pressure to oppose this bill, but we believe they know what is right. Please help shore up their resolve--***contact [committee members](#) and your own representatives and urge them to support [HB 224](#).***

Saving Money on Legal Advice

On Tuesday, the House Judiciary Committee heard testimony from a variety of sectors in support of **HB 285**, relative to discussion with legal counsel under the Right-to-Know law. This bill would make a small, but important, modification to the existing law by allowing a board to discuss written legal advice from counsel without counsel present at the meeting. This **NHMA policy bill** was supported by an attorney from the Department of Safety as well as the New Hampshire School Boards Association.

The law has long excluded “consultation with legal counsel” from the definition of a “meeting” under the Right-to-Know law. See RSA 91-A:2(I), which contains several other exclusions as well. This provision allows boards to meet with their attorneys to review any number of legal issues—how to deal with lawsuits, how to address serious personnel issues, or how to handle a zoning or planning application, for example. When the attorney provides written legal advice, boards are not permitted to meet to review and discuss that written advice unless the attorney is present and part of the conversation, according to the 2011 NH Supreme Court case of *Ettinger v. Madison*. This requires the presence of the attorney—or at the very least a telephone presence—any time a board needs to review written legal information provided by the attorney. This comes at an expense to the municipality for the attorney’s time for the meeting and for travel—an expense which may well be unnecessary if the written legal advice can be discussed and understood by board members.

Committee members wrestled with the concept of a “non-meeting” under the Right-to-Know law, such as the consultation with legal counsel, as contrasted with a “nonpublic session.” A nonpublic session must start out as a properly noticed public meeting, with a motion to go into the nonpublic session, and minutes kept and potentially sealed. A nonpublic session can be held only for one of the reasons set forth in RSA 91-A:3, only six of which are relevant to municipalities—and none of which allows for a municipality to receive general legal advice.

This leaves the municipality with only the “non-meeting” consultation with legal counsel avenue, which currently requires the active participation of legal counsel, incurring avoidable expense and often rendering municipal operations less efficient. Many more municipal issues require legal advice in today’s world, and municipal officials should be encouraged to consult with counsel when they feel it necessary. They should not have to incur the expense of counsel’s participation to review that advice when it is not warranted. **We urge you to contact [members of the committee](#) and explain how [HB 285](#) will help your municipality to get the guidance it needs in a timely manner without unnecessary expense.**

Update on Environmental State Aid Grant Funding

By a 23-0 vote, the House Finance Committee recommended this week to retain [HB 376](#), an **NHMA policy bill** that seeks to restore funding for the environmental state aid grant (SAG) program. Earlier in the week, Division 1 of the House Finance Committee had unanimously voted to recommend that the bill be retained for further study. The division asked the bill sponsor to present some revenue options, and/or budget cuts, for further consideration by the division.

On a related bill, the House Resources, Recreation and Development Committee heard testimony this week on [HB 511](#), an **NHMA policy bill** that seeks to unwind two provisions adopted by the legislature in HB 2, the trailer bill, of the 2014/2015 biennial state budget. In 2013, the legislature adopted moratorium language so that municipal and taxpayer expectations could be managed better and to allow the state to catch up on its financial obligations to cities and towns that had local financing authorization in place by December 31, 2008. HB 2 also restricted the Department of Environmental Services from maintaining an infrastructure project list as it relates to state aid grants.

As mentioned in last weeks' *Bulletin*, investment by the state in water and wastewater infrastructure is as important to New Hampshire's future as investments in areas such as transportation infrastructure. The SAG program has proven to be an effective means to fund the construction or rehabilitation of water infrastructure that protects drinking water and treats wastewater. Recognizing the significant public benefits to a strong economy and healthy environment, lifting the moratorium on the local-state funding partnership for New Hampshire's municipal water infrastructure is essential. The bill was received positively, and the committee will act on it in the next several weeks.

The issue of SAG funding will likely not be further deliberated until the Governor presents her fiscal year 2016-2017 operating and capital budget proposals to a joint session of the House and Senate set for next Thursday, February 12. Appropriating the funds to maintain this infrastructure is critical if the state is to protect public health and provide clean water for its residents and visitors. We hope municipalities that have completed and eligible infrastructure projects snagged in the environmental SAG program will continue to express their concern that the state fund these important public works projects. We urge you to contact Governor Hassan and members of your local legislative delegation with this important message.

Flood Control Funding

On Tuesday, Division I of the House Finance Committee held a work session on **HB 176**, dealing with the shortfall in the 2013 funding to municipalities in the Merrimack and Connecticut Rivers flood control compacts. The Attorney General's Office and the Department of Revenue Administration (DRA) provided information about these compacts (created by an Act of Congress in 1957 and codified in RSA 484), as well as the DRA's role in the process under RSA 122. In 2013,

Flood Control Bill - continued

municipalities received only the 30% New Hampshire share of these statutory payments-in-lieu-of-taxes (PILOTs) since Massachusetts had not paid its share (70%). As explained by the Attorney General's Office, the State of New Hampshire and the Commonwealth of Massachusetts reached a settlement agreement last month on the amount Massachusetts will pay for both 2013 and 2014 (\$329,000 for each year). This is significantly less than the Commonwealth's 70% share of the PILOT, but was agreed to in order to avoid costly arbitration that might have resulted in any settlement money going toward legal fees rather than to municipalities.

Division members expressed concern that while municipalities may still be owed money for 2013, it appears they have now been "overpaid" for 2014 since DRA paid the full amount of the PILOT in 2014, but will receive from Massachusetts, per the settlement agreement, less than the required share of 70%. As a result, the committee recommended inexpedient to legislate (ITL) on **HB 176**, with the intent of addressing this issue through the budget process. On Thursday, a majority of the Finance Committee concurred with the Division's recommendation and voted 13-9 to recommend ITL. We will watch for these discussions as part of **HB 1** and **HB 2**.

A bit unsettling were discussions that perhaps it is time to negotiate a one-time, final payment from Massachusetts to end these annual PILOTs, that this process is too antiquated, and that 50+ years is long enough to make payments to the 18 municipalities that gave up taxable property in their communities – in some cases having to relocate their entire "downtown" - for the long-term benefit of cities and towns downstream (in both New Hampshire and Massachusetts). Of additional concern is a statement in the majority report that "New Hampshire can no longer subsidize the Commonwealth's portion of these two compacts." Unfortunately, it is the towns, not the Commonwealth, that will suffer if full funding is terminated.

Full funding of flood control PILOTs is an **NHMA policy position** that is supported by our membership, not merely the 18 municipalities involved in these compacts! Stay tuned.

Little Support for Road Toll Repeal

On Tuesday the House Public Works and Highways Committee heard testimony on **HB 591**, which would repeal the 4.2-cent road toll (gas tax) increase that was enacted last year in **SB 367**. It is estimated that this increase will raise an additional \$33 million per year for sorely needed state and local highway infrastructure improvements. Fifteen people, including a representative from NHMA, testified in opposition to the bill, while another 32 signed in opposition. No one spoke in favor of the bill. (Due to inclement weather, none of the sponsors made it to the hearing on Tuesday, but they were given the opportunity to testify at a recessed hearing held on Thursday.) Based on the facts that 1) gas prices have dropped so dramatically since the road toll increase went into effect, and 2) no alternative funding source was suggested to deal with the aging infrastructure, we anticipate the committee will recommend Inexpedient to Legislate on this bill.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

MONDAY, FEBRUARY 9

WAYS AND MEANS, Room 202, LOB

- 9:30 a.m. Continued public hearing on **HB 258-FN-L**, relative to fees for preparing motor vehicle registration documents.
- 10:00 a.m. **CACR 2**, Relating to dedicated funds. Providing that funds shall be used solely for the purpose of the fund.
- 2:00 p.m. **HB 222-FN**, exempting certain homeowners over 80 years of age from the statewide education tax.

TUESDAY, FEBRUARY 10

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:00 a.m. **HB 468-FN**, requiring a warrant to obtain electronic device location information.
- 10:30 a.m. **HB 602-FN**, relative to the use of drones.
- 11:30 a.m. **HB 682-FN**, granting group II retirement system status to certain positions in the department of corrections.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

- 11:00 a.m. **HB 496-FN-L**, prohibiting public employers from using criminal history in employment decisions.

In Representatives Hall

- 1:00 p.m. **HB 392-FN**, relative to the minimum hourly wage, **HB 163**, establishing a state minimum hourly rate, and **HB 370-L**, enabling counties and municipalities to establish minimum wage rates, and **HB 684-FN**, establishing a state minimum hourly rate.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 11:15 a.m. **HB 331**, relative to absences among selectmen on election day.
- 11:30 a.m. **HB 487**, requiring that planning board and zoning board of adjustment members be elected.
- 11:45 a.m. **HB 289**, relative to the content of annual town reports.

RESOURCES, RECREATION AND DEVELOPMENT, Rooms 305, LOB

- 1:00 p.m. **HB 349**, relative to state buffers for projects requiring wetland permits.

THURSDAY, FEBRUARY 12

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 10:00 a.m. **HB 436**, relative to the penalty for making a false statement in a criminal complaint.
- 11:00 a.m. **HB 590-FN**, relative to the accountability of public officials.
- 11:30 a.m. **HB 640-FN**, relative to the crime of criminal coercion.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 11:00 a.m. **HB 427**, relative to the definition of the New Hampshire fire code.

House Calendar - continuedTHURSDAY, FEBRUARY 12 {Continued}**JUDICIARY, Room 208, LOB**

- 10:00 a.m. **HB 646-FN-L**, allowing public bodies or agencies to charge for the costs of retrieval of public records under the right-to-know law. **NHMA Policy.**
- 10:45 a.m. **HB 656-FN-L**, relative to inspection of governmental records under the right-to-know law.
- 11:30 a.m. **HB 606-FN-L**, relative to costs for public records filed electronically.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 8:30 a.m. **HB 486**, authorizing towns and cities to establish special assessment districts.
- 8:45 a.m. **HB 607**, relative to fees for carrying a concealed firearm.
- 9:00 a.m. **HB 497**, relative to interference with a cemetery burial plot.
- 9:15 a.m. **HB 227**, relative to eminent domain on public lands.
- 9:45 a.m. **HB 295**, removing a reference in the housing law to municipal agreements regarding the construction of parking facilities.
- 10:00 a.m. **HB 226**, allowing municipalities to borrow from any fund controlled by such municipality under certain conditions.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 11:00 a.m. **HB 460**, establishing a commission to study revenue alternatives to the road toll for funding the state's highways and bridges.

FRIDAY, FEBRUARY 13**WAYS AND MEANS, Room 202, LOB**

- 9:00 a.m. **HB 547**, reestablishing the exemption from property taxation for telecommunications poles and conduits. **NHMA Policy to Oppose.**

TUESDAY, FEBRUARY 17**ENVIRONMENT AND AGRICULTURE, Room 303, LOB**

- 10:00 a.m. **HB 660-FN**, relative to small farms and farmstands.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:30 a.m. **HB 475**, prohibiting the state from engaging in acts of civil forfeiture.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES**In Representatives Hall**

- 1:00 p.m. **HB 402-FN**, establishing the Franklin Partin right-to-work act.

SENATE CALENDARTUESDAY, FEBRUARY 10**TRANSPORTATION, Room 103, LOB**

- 1:45 p.m. **SB 230-FN-L**, relative to speed limits on state roads that are seasonally congested by pedestrian and bicycle traffic.

Senate Calendar - continuedWEDNESDAY, FEBRUARY 11**PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB**

- 9:00 a.m. **SB 30-FN-L**, relative to municipal economic development and revitalization districts. **(the previous hearing for SB 30-FN -L was recessed on January 21st)**
- 9:45 a.m. **SB 207-FN**, eliminating the requirement that moderators photograph voters without identification.
- 10:45 a.m. **SB 126-FN**, prohibiting the placement of political signs in public rights-of-way.

TUESDAY, FEBRUARY 17**COMMERCE, Room 100, SH**

- 1:40 p.m. **SB 219-FN**, relative to breastfeeding.
- 2:20 p.m. **SB 107-FN**, prohibiting collective bargaining agreements that require employees to join or contribute to a labor union.

JUDICIARY, Room 100, SH

- 9:40 a.m. **SB 205-FN**, relative to the governor's office and the legislature under the electioneering law.

NEW BILLSHouse Bill

HB 689 permits official ballot referendum (SB 2) towns to require the default budget to be placed on the ballot as a separate contingent warrant article if the operating budget is defeated, with a special meeting to be called if both budgets are defeated. Rep. Ammon of New Boston; **M&CG**.

Senate Bills

SB 121-FN-LOCAL inserts new definitions for purposes of current use taxation. Sen. Daniels of Milford; **W&M-S**.

SB 135-FN makes various changes in the law relative to lead poisoning and prohibits building inspectors from issuing building permits for renovation of pre-1978 buildings absent a certificate from the contractor relative to lead paint. Sen. Feltes of Concord; **HHS**.

SB 198-FN-LOCAL allows all voters to vote by absentee ballot regardless of whether they will be absent on election day. Sen. Pierce of Hooksett; **PMA**.

SB 205-FN adds the governor's office to the definition of "public body" under the right-to-know law and prohibits electioneering by any employee of a public employer while in the performance of official duties. Sen. Forrester of Meredith; **JUD-S**.

New Bills - continued

[SB 219-FN](#) requires employers to provide reasonable accommodations to women who are breastfeeding. Sen. Fuller Clark of Portsmouth; **COM-S**.

[SB 234](#) requires municipalities that use law enforcement details on public ways to do so in accordance with department of transportation guidelines. Sen. Bradley of Wolfeboro; **TRANS-S**.

House Floor Action
Wednesday, February 4, 2015

HB 102, relative to consideration of warrant articles. **Ought to Pass**.

HB 115, repealing the allocation of gross appropriations from the highway fund in the state budget. **Ought to Pass with Amendment**.

HB 132-L, relative to time-based rates for electric service. **Inexpedient to Legislate**.

HB 134, establishing a committee to study the use of motorized scooter chairs on roadways and sidewalks. **Ought to Pass**.

HB 135, relative to qualifications of assistant election officials. **Ought to Pass**.

HB 173, relative to instruction on ballots. **Inexpedient to Legislate**.

HB 181, relative to the definition of “meeting” under the right-to-know law. **Inexpedient to Legislate**.

NHMA Webinar

NHMA Webinar: Local Regulation of Agriculture

Event Date: February 11, 2015

Time: 12:00 PM - 1:00 PM

Join Staff Attorneys Stephen Buckley and Margaret Byrnes to explore and discuss local regulation of agriculture. We will discuss statutory protections afforded agricultural uses, creation and powers of Agricultural Commissions, master plans and planning for agricultural uses, regulation of roadside farms stands as commercial vs. agricultural uses, and the importance of off-premise signs for local farms. We will also discuss whether agricultural uses require greater flexibility through site plan review by the planning board, and the manner of regulating and taxing agricultural structures, such as greenhouses.

This webinar is open to members of the NH Municipal Association and is of interest to planning boards, zoning boards, building inspectors, health officers, land use coordinators, and zoning administrators.

REGISTER TODAY!

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

2015 Moderators Workshops

Traditional Town Meeting

Saturday, February 21 [Snow date: February 28]

[Register online](#) today!