

# LEGISLATIVE BULLETIN

Bulletin #8

2015 Session

February 20, 2015

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### Hot Issues for a Cold Vacation Week

Although there is no legislative activity scheduled next week, a few things have come up that require attention. Please check the articles that follow, and look for more details on these and other matters in next week's *Bulletin*.

### Amendment on Pole Exemption Bill

We understand that an amendment is being drafted to **HB 547**, the bill that, as introduced, would exempt telephone poles and conduits from property taxation. Although we have not seen the amendment, we have been told that it would continue to allow taxation of the poles and conduits but require that they be assessed uniformly throughout the state. We are not sure how this would work, and we suspect that any uniform valuation would be artificially low, so we are not optimistic that the amendment will be much better than the original bill.

A hearing on the amendment has been scheduled for **Monday, March 2, at 11:30 a.m., in LOB Room 202**. We would like to have as good a turnout for that hearing as for the original hearing. Please check next week's *Bulletin* for more information about the amendment. We hope to be able to obtain the amendment by early next week, so feel free to contact us during the week if you are interested in seeing it.

### Newspapers Attack "Government Types" Over RTK Bill

**HB 646**, the **NHMA** policy bill that would allow public bodies and agencies to recover some of the cost of responding to voluminous Right-to-Know Law requests, has generated a fair amount of teeth gnashing in some quarters. This very simple bill:

- allows a public body or agency to charge minimum-wage rates after the first hour for retrieving records;
- allows the public body or agency to require payment of the estimated cost before performing the search;
- does not allow any charge to retrieve meeting minutes that are less than a year old; and

### NHMA Government Affairs Contact Information

**Judy A. Silva**  
Executive Director

**Cordell A. Johnston**  
Government Affairs Counsel

**Barbara T. Reid**  
Government Finance Advisor

**Timothy W. Fortier**  
Communications & Member Services Coordinator



25 Triangle Park Drive  
Concord, NH 03301  
Tel: 603.224.7447/Fax: 603.415.3090  
NH Toll Free: 800.852.3358

Email: [governmentaffairs@nhmunicipal.org](mailto:governmentaffairs@nhmunicipal.org)  
Website: [www.nhmunicipal.org](http://www.nhmunicipal.org)

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- allows for a waiver of charges if the individual requesting the records demonstrates an inability to pay.

The bill is not likely to affect the vast majority of record requests, including most requests made by news organizations, as most can be handled in less than an hour. It *will* affect the fishing expeditions and witch hunts that increasingly waste taxpayer money, as well as the occasional over-the-top request that is intended to harass or paralyze local government. If some legitimate record requests are also affected, that is unfortunate, but it is another example of how a few bad actors can ruin things for everyone.

***The bill is similar to, but significantly more modest than, laws in other New England states (see discussion below).***

At last week's hearing on the bill, the executive editor of the *New Hampshire Union Leader* said that requiring payment in advance would be like requiring a citizen to provide a credit card number and charging him for the estimated cost of responding to a fire at his house before sending the fire trucks. He acknowledged that people might consider this a "ridiculous" comparison, but explained that providing public records is an essential government service, just like responding to fires, which people shouldn't have to pay for.

We can agree with part of his statement—the comparison is ridiculous. User fees—which are what HB 646 allows for—are required for all kinds of essential government services. To cite just a few examples, drivers pay gas taxes and turnpike tolls to maintain the roads; residents pay transfer station fees, collection fees, and per-bag charges to fund solid waste disposal; users pay metered rates for water and sewer service; and litigants pay fees for access to the courts.

***“Far outnumbered”***

Sunday's *Union Leader* included an editorial masquerading as actual news about the committee hearing, beginning with the statement, “As a general rule, if the only people backing your position are paid lobbyists, you might be on the wrong side of an issue.” The article suggested that the only people supporting the bill were the sponsor, NHMA, and the School Boards Association, and said supporters “were far outnumbered by opponents of the bill.”

Oh? Five people testified at the hearing—three opposed and two in support—before the hearing was recessed with a number of people still waiting to testify. Does three “far” outnumber two?

We do not pretend to know what everyone in the hearing room was thinking, but we do know that representatives from Pelham, Keene, Portsmouth, and North Hampton were waiting to testify in support of the bill, along with a representative

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from NHMA. (The committee chair, looking at the witness cards, stated erroneously at one point that all of the remaining witnesses were opposed, but he subsequently corrected himself.) There were also at least two representatives from state agencies in the room, presumably in support of the bill. A reasonable estimate is that the crowd was approximately evenly split.

**“The cost of truth”**

Another *Union Leader* editorial cited the same credit-card-for-a-fire-truck analogy and suggested that crooked local officials would charge for 16 hours of work to perform a simple record search. Not to be outdone, the *Concord Monitor*, in an editorial titled “Bill would increase the cost of truth,” said it was “likely” that local officials would charge for 700 hours to perform a simple record retrieval—and they might charge “tens of thousands of hours” for a more complicated request.

We do not know why some newspaper editors assume that all local officials—or perhaps all people?—are dishonest. What we do know is that many municipalities, school districts, and counties have been burdened by excessive and sometimes frivolous Right-to-Know Law requests, and this bill will help in a small way.

**“The government should pay, not the citizens!”**

A recurring theme among the bill’s opponents is that *citizens* should not have to pay for access to government records; instead, the “government” should absorb all the costs. This calls to mind the voter at town meeting who asked, “Why do the taxpayers have to pay for this? Why can’t the town pay for it?”

An editorial in the *Nashua Telegraph* pitched the argument this way:

HB 646 reflects a mindset among some government types that public records belong to the government. They don’t. Government records belong to the public, which shells out the money to pay for government salaries, offices, supplies and the records produced therein. Asking people to pay for information they’ve already paid to create is wrong.

Is your head spinning yet? So . . . the public has paid to create the records and should not be required to pay again for the cost of producing them.

Who, then, pays for this cost? The “government types”? Guess again. Obviously, “the public” is already paying all costs associated with responding to record requests. HB 646 merely shifts a small part of that payment from all of the taxpayers to the few people who make the requests.

And, by the way, it is far from true that someone who makes a Right-to-Know Law request has necessarily paid *anything* toward the creation and maintenance of those records. A person making a request in a town where he doesn’t pay taxes (like, say, a newspaper covering a municipality other than its hometown) is not part of the

### **Right-to-Know** - continued

“public” that has paid for the records. Thus, the business that is compiling a mailing list for its brochures, the college student performing academic research, and the lawyer who is using a Right-to-Know Law request as a cheap way to get around trial discovery rules have no basis to complain that they’re “paying twice.”

### **What do other states do?**

One way to judge a law’s reasonableness is to see how other states have addressed the issue. Here’s a bit of truth, offered at no cost, that you won’t find in any newspaper: ***every other New England state*** allows a charge for labor in responding to record requests, all at rates higher than minimum wage, which is what HB 646 allows.

Maine and Rhode Island allow public bodies and agencies to charge \$15 per hour, more than twice what HB 646 allows. In Vermont there is a range from \$20 to \$32 per hour, up to four times what HB 646 allows. Connecticut (for electronic records only) and Massachusetts allow charges based on hourly staff salaries, obviously more than minimum wage.

All five states either allow or require public bodies and agencies to provide a cost estimate before proceeding, as HB 646 proposes. Maine and Connecticut explicitly allow this cost to be collected before any work is done, and the others implicitly allow it.

And yet, to our knowledge, democracy is still flourishing throughout New England.

Message to all local government types: ***Ask your legislators and members of the [House Judiciary Committee to support HB 646](#)***. The committee is scheduled to continue its hearing on **Tuesday, March 3, in LOB Room 208** (we don’t know yet what time), and its deadline to vote on the bill is Thursday, March 5.

## **NEW BILLS**

### **Senate Bills**

**[SB 235](#)** revises requirements for site plans submitted under the condominium act, defines the financial statements required if the declarant or subdivider is not a natural person, describes the type of financial information required to provide reasonable assurance that all uncompleted improvements and amenities will be completed, and permits a declarant or subdivider to request an amended certificate of registration. Sen. Soucy of Manchester; **PMA**.

**[SB 241](#)** changes the 2/3 vote requirement established in 1957 for expenditures from the principal of a trust fund of the Town of Rindge. Sen. Avard of Nashua; **PMA**.

**[SB 242-LOCAL](#)** requires that in an official ballot referendum (SB 2) town, amendments to the operating budget that were approved at the first session be voted on separately on the official ballot. Sen. Stiles of Hampton; **PMA**.

**New Senate Bills** - continued

**SB 243** clarifies that a public body may go into nonpublic session to discuss litigation filed by the public body, as well as litigation filed against the public body. Sen. Bradley of Wolfeboro; **PMA**.

**SB 249** divides the current Hampton-Exeter district division of the circuit court into two divisions. Sen. Carson of Londonderry; **JUD-S**.

**SB 253** permits municipalities to assess hotel occupancy fees for the use of municipal services. Sen. Fuller Clark of Portsmouth; **PMA**.

**SB 254** establishes a committee to study the provision of services to the public by peer-to-peer or sharing-economy businesses. Sen. Fuller Clark of Portsmouth; **COM-S**.

**SB 260-FN** permits the public utilities commission to regulate certain incumbent local exchange carriers. Sen. Woodburn of Dalton; **ENR**.

**SB 261-FN** establishes a state minimum hourly wage. Sen. Soucy of Manchester; **F-S**.

**HOUSE FLOOR ACTION**

Wednesday, February 18, 2015

**CACR 11**, Relating to voting at elections. Providing that the general court may authorize all voters to choose to vote by absentee ballot. **Inexpedient to Legislate**.

**HB 179**, relative to placement of political advertising. **Inexpedient to Legislate**.

**HB 205-L**, relative to lending practices of energy efficiency and clean energy districts. **Recommitted**.

**HB 208-FN**, repealing the New Hampshire regional greenhouse gas initiative program. **Passed with Amendment. Referred to F-H**.

**HB 258-FN-L**, relative to fees for preparing motor vehicle registration documents. **Passed**.

**HB 260**, relative to the definition of antique motor vehicle or motorcycle. **Passed**.

**HB 274**, relative to the sovereignty of the state. **Inexpedient to Legislate**.

**HB 320**, relative to removal of certain campaign materials at the polling place. **Inexpedient to Legislate**.

**HB 340**, relative to appointing undeclared voters as inspectors of election. **Inexpedient to Legislate**.

**HB 341**, relative to eligibility for the property tax exemption for the disabled. **Inexpedient to Legislate**.

**Floor Action-** continued

**HB 355**, relative to pre-election tests of ballot counting devices. **Inexpedient to Legislate.**

**HB 368**, relative to third party review required by the planning board. **Inexpedient to Legislate.**

**HB 397**, relative to the duties of public servants. **Inexpedient to Legislate.**

**HB 407**, prohibiting the state and political subdivisions from acquiring military-equipped vehicles or equipment which are not readily available in an open national commercial market. **Passed with Amendment.**

**HB 414-FN**, relative to idling by commuter rail locomotives. **Inexpedient to Legislate.**

**HB 464**, establishing the fishing family protection act, prohibiting political subdivisions from interfering with commercial and recreational operations of fishing families. **Passed with Amendment.**

**HB 468-FN**, requiring a warrant to obtain electronic device location information. **Passed with Amendment. Referred to CJ&PS.**

**HB 493**, relative to minimum voting booths for city or town elections. **Passed.**

**HB 502**, relative to petitions for verification of checklists. **Passed.**

**HB 530-FN-A**, authorizing a trial program for electronic voter check-in. **Inexpedient to Legislate.**

**HB 562-FN-L**, repealing the limitation on the total education grant distributed to a municipality in a fiscal year and reducing the stabilization grants to certain municipalities. **Passed. Referred to F-H.**

**HB 572-FN-L**, relative to taking land by eminent domain for high pressure gas pipelines and requiring payment of the land use change tax when land is taken by eminent domain to build energy infrastructure. **Passed with Amendment. Referred to W&M-H.**

**HB 576-FN-A**, repealing the provision allowing operators to retain 3 percent of meals and rooms taxes collected and continually appropriating 3 percent of meals and rooms tax revenues to school building aid. **Inexpedient to Legislate.**

**HB 585-FN-A**, relative to fines for violation of alcoholic beverage laws. **Passed with Amendment. Referred to W&M-H.**

**HB 591-FN-A-L**, relative to the road toll rate and eliminating a capital appropriation for highway projects. **Inexpedient to Legislate.**

**Floor Action** - continued

**HB 623-FN**, providing property tax relief for taxpayers for the property tax year beginning April 1, 2016. **Inexpedient to Legislate.**

**HB 639-FN-L**, repealing the resident tax, relative to tax collection under RSA 80, and establishing a legislative commissioner to revise RSA 80 governing the collection and enforcement of taxes. **Inexpedient to Legislate.**

**HB 682-FN**, granting group II retirement system status to certain positions in the department of corrections. **Inexpedient to Legislate.**

**HB 686-FN-A**, establishing a single payer health care system and making an appropriation therefor. **Inexpedient to Legislate.**

**SENATE FLOOR ACTION**

Thursday, February 19, 2015

**SB 54**, relative to property tax payments by therapeutic cannabis alternative treatment centers. **Passed.**

**SB 74**, establishing a committee to study reducing the cost of county government. **Passed with Amendment.**

**SB 175**, relative to the regulation of blighted property. **Re-referred.**

**NHMA Webinar****NHMA Webinar - Public Records: Conquer Them Before They Conquer You**

Event Date: March 11, 2015

Time: 12:00 PM - 1:00 PM

Spend an hour with Legal Services Counsel Stephen Buckley and Staff Attorney Margaret Byrnes, who will discuss and dissect issues related to records under the Right to Know Law. First, learn how to distinguish between non-public records and public records, including identifying when a non-public record evolves into a public record and must be disclosed. Second, gain insight into a very important and often misunderstood type of record: meeting minutes. Learn what the law requires and acquire tips and tactics regarding minute-taking, maintenance and retention, disclosure and availability, sealing and unsealing, and finalizing minutes. As always, bring your questions!

This webinar is open to members of the New Hampshire Municipal Association and is of interest to planning boards, zoning boards, select board members, budget committee members, town administrators and managers, and legal counsel.

**[Click here to register before March 10](#)**

# Right-to-Know Law:

## Current Issues

**Thursday, March 12, 2015**

*7:00 p.m.—9:00 p.m.*

**Plaistow Town Hall, The Great Hall**  
145 Main Street, Plaistow NH 03865

The Right-to-Know Law affects every aspect of local government in our state. Every board, committee, commission, and sub-committee in every town, city, and village district in New Hampshire must comply with this law. As a result, all local officials and employees should be aware of the law and what their responsibilities are regarding both public meetings and governmental records.

This **free** session is open to all local officials from NHMA member municipalities. NHMA Attorneys Stephen Buckley and Margaret Byrnes will provide an overview of the law and address some of the most difficult issues under the law, including confidential information, electronic records and communication, procedures for non-public session, and communications outside a meeting. There will be ample time for questions and answers on all aspects of the law.

Register online at [www.nhmunicipal.org](http://www.nhmunicipal.org) under CALENDAR OF

Questions? Please call 800.852.3358, ext. 3350 or  
email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org).

