

LEGISLATIVE BULLETIN

Bulletin #9

2015 Session

February 27, 2015

INSIDE THIS ISSUE:

Pole Exemption	2
Pollution Control Exemption	5
Right-to-Know Changes	5
Budget Hearings Begin	6
House Calendar	6
Senate Calendar, New House Bills	7
NHMA Webinar, Local Officials Workshops	8
Right-to-Know Workshop	9

House to Vote on Utility Valuation

The House will vote next **Wednesday, March 4**, on **HB 192**, **NHMA's policy bill** relative to valuation of utility property. As far as fiscal impact on municipalities is concerned, this is probably the most important vote so far this year in the legislature. *Please make sure your representatives are aware of this bill and are prepared to support it.*

Although the pole exemption bill (see next article) has received more attention in recent weeks, **HB 192** probably has a greater impact—a positive impact in this case—on the municipalities it affects. The bill was discussed in detail in [Bulletin #4](#). As we explained there, it will prohibit utilities from relying on DRA's extremely low appraisal numbers when they appeal their local property tax bills. DRA's appraisals are, by statute, designed to be used solely for purposes of the utility property tax under RSA 83-F. They were never intended to be used for local property tax assessment, and because they value a business on a statewide basis, they do not accurately reflect the value of properties within individual municipalities.

In recent Board of Tax and Land Appeals cases, utility companies have essentially been able to use the state's utility appraiser as their own expert witness. We thus have an anomalous situation in which the state is lending its expert witness to the utilities—at taxpayer expense and no cost to the utilities—to testify against the state's own political subdivisions. The state should not be funding litigation against cities and towns for the benefit of private parties. The inability of municipalities to extract information from DRA about its appraisals only adds to the outrage.

HB 192 would not give any advantage to municipalities, nor would it (as the minority report in the House calendar suggests) prevent a utility from offering its own expert testimony in an appeal. It would merely prohibit the utility from relying on the *state's* expert. Thus, like any other taxpayer, the utility would need to find its own expert to do battle with the municipality's assessor. It is a matter of simple fairness.

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
Website: www.nhmunicipal.org

Utility Valuation - continued

It is also a matter of enormous financial interest to municipalities and their taxpayers. Many towns are facing tax abatements of hundreds of thousands of dollars—as always, to be made up by homeowners and other taxpayers—if the utilities are able to use the state’s appraisal numbers.

The Municipal and County Government Committee recommended **HB 192** as Ought to Pass by a strong, bipartisan 11-4 vote (which would have been 12-4 if the bill’s prime sponsor hadn’t been ill that day). However, we cannot assume it will be an easy vote in the full House. The utilities are not going to give up on this bill easily, and they have a history of getting what they want. ***Please contact your representatives before Wednesday and urge them to support the committee’s recommendation of Ought to Pass on HB 192.***

Pole Exemption Bill No Better with Amendment

Last week we said an amendment was coming on **HB 547**, the bill that, as introduced, would exempt telephone poles and conduits from property taxation. We had not seen the amendment, but were not optimistic. We have now seen it, and our doubts have proven justified.

[The amendment](#), submitted by two members of the Ways and Means Committee, states that the value of utility poles and conduits owned by telephone utilities “shall be determined by the following formula: the actual cost of the pole or conduit less depreciation calculated on a straight-line basis for a period of 30 years.” There are numerous problems that make this unworkable and inappropriate; but before we get to those, let’s discuss the purported reasons for the bill and for the amendment.

At the bill’s hearing on February 13, the bill’s supporters explained that since telephone poles and conduits became subject to property taxes a few years ago, “a real mess” has developed. The phone companies have filed hundreds of lawsuits over their assessments, attacking them on a number of grounds. The bill, supporters said, was an effort to clean up the mess.

As we pointed out at the hearing, the “mess” is not something that just happened, like a natural disaster. The phone companies *chose* to file hundreds of lawsuits—in which they have contested not only the valuations, but the municipalities’ right to tax the poles at all—and are now saying the best way to solve the problem is to exempt them from taxation. No doubt any property owner would like to see his tax dispute solved by a legislatively granted exemption, but most of us have little chance of achieving that treatment. These lawsuits will not continue forever; in due course the courts will resolve the legal issues, and the mess will evaporate.

The amendment will no doubt be touted as a compromise, on the premise that it will still allow taxation of the poles and conduits but will end the lawsuits by establishing a uniform valuation method. While we appreciate legislators’ efforts to find a solution, this isn’t it. The proposed valuation method does not make sense, and the result will be just shy of a complete exemption.

Pole Exemption - continued

The amendment mixes apples and oranges. Thirty-year straight-line depreciation is a federal income tax concept that has nothing to do with a property's market value. It is an arbitrary rule that allows a business to deduct its cost for a business asset over a period of years so that it can offset the expense against annual income. It is not used as a measure of market value for any purpose, and New Hampshire law (RSA 75:1) requires that property be appraised at market value.

The goal of all assessing for property taxes is market value. Most assessors determine the market value of utility poles and conduits using the replacement cost-less-depreciation method, which is one of the methods typically used for valuing a home or a commercial building. The depreciation used, however, is not the artifice of straight-line depreciation. It is the actual diminution in value resulting from age and other conditions. A home built in the 1700s might have a replacement cost, depending on size and other factors, of \$200,000. If that home has not been maintained at all, it may have depreciated in value to almost nothing; but if it has been well maintained and regularly upgraded, there may be little deduction for depreciation. Its assessment may be close to the replacement cost of \$200,000 because it is still in excellent condition.

Under the amendment to **HB 547**, a pole that is over 30 years old would have a value of zero, regardless of its condition. This is like treating any home, or any commercial building, that was constructed before 1985 as having an assessed value of zero. We know plenty of property owners who would love to sign up for that deal!

Utility poles often have a useful life in excess of 100 years, and to pretend that they have no value after 30 years makes no sense. A recent informal survey of fifteen municipalities statewide indicated that anywhere from 44 to 94 percent of the poles in a given municipality were over 30 years old, with an average of 68 percent. In Nashua, 73 percent of the poles are over 30 years old, and most of the rest are between 15 and 30 years old. Applying the amendment's formula would discount approximately 90 percent of the total value of the poles. This is just about one step short of a full exemption.

There are more problems. It is unclear what is intended by the phrase "actual cost," but we suspect it refers to the purchase price paid by the utility company for the pole or conduit, not including any installation costs. That is like saying the value of a house is equal to the cost of the building materials—it ignores reality. The building materials for the \$200,000 house may have cost \$80,000, but what is being appraised is a fully constructed house, not a pile of lumber. Similarly, the utility company may pay \$700 for a pole, but its value is as an installed component in a transmission system, not a lonely post lying on the ground. The value of a pole—again, based on replacement cost—includes the cost of licensing, engineering, and installation. The amendment would use an artificially low value and then exacerbate the problem by depreciating that value to nothing.

Further, this method will require the municipality to know the "actual cost"—presumably, the original cost—of every telephone pole in town. Even assuming it

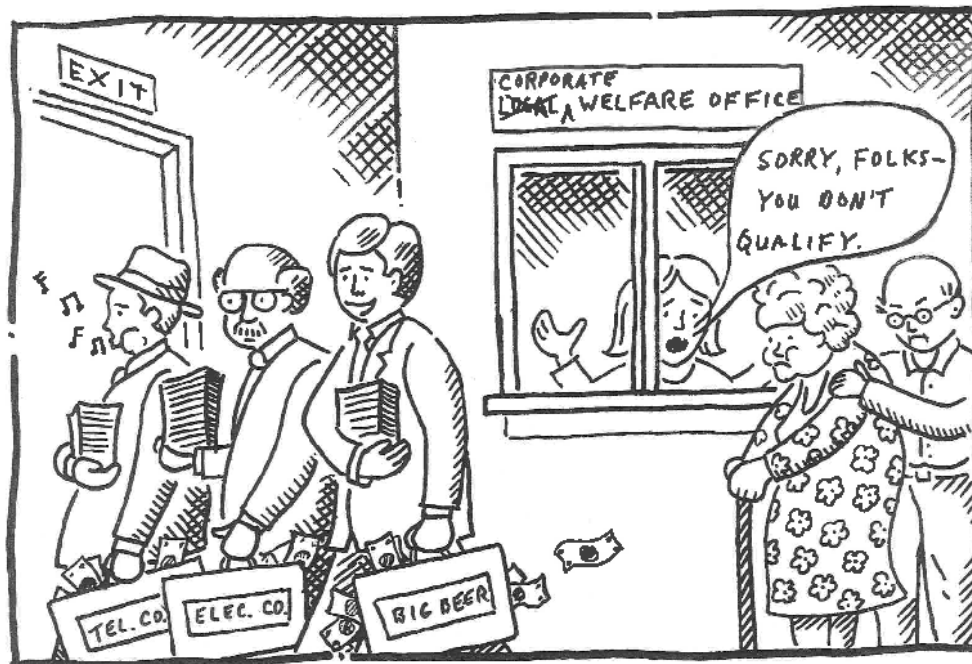
Pole Exemption - continued

can get that information for poles that were purchased 20 to 30 years ago, is it realistic to expect a local assessing office to maintain original cost information and a depreciation schedule for each of several thousand poles? (Manchester has approximately 15,000 poles, Nashua has over 12,000, and Concord has almost 9,000.)

And this does not even account for the fact that poles owned by the electric company—and the one-half interest the electric company has in the poles it owns jointly with the telephone company—will still be appraised at market value, based on replacement cost less depreciation. If the goal of this amendment is to clean up a “mess,” its effect will be the opposite.

The problem with the amendment to **HB 547** is the same as the problem with the original bill: it is a giveaway of taxpayer money to a few influential businesses. It effectively gives certain for-profit businesses a property tax exemption simply because they want it. It is patently unfair and unconstitutional.

The House Ways and Means Committee has scheduled a hearing on the amendment on **Monday, March 2, at 11:30 a.m., in LOB Room 202**, and *it plans to vote on the bill the following day, Tuesday, March 3, at 10:00 a.m.*, in the same room. ***Please contact members of [the committee](#)—especially if you have a representative on the committee—not later than Monday*** to let them know how bad the bill is, both with and without the amendment.



Pollution Control Exemption Bill Goes to Floor

The House will vote next **Wednesday, March 4**, on **HB 224**, NHMA's policy bill that would repeal the so-called "pollution control" exemption from local property taxes. The bill, which would end the state's most brazen and generous corporate welfare program (at least since the end of the pole exemption), found little support on the Municipal and County Government Committee and suffered a 15-1 vote of Inexpedient to Legislate.

The bill, discussed in some detail in [Bulletin #5](#), is on the consent calendar for Wednesday, but it won't stay there long. It will be removed for a spirited debate. Nevertheless, given the committee vote and the legislature's history on this issue, this will be a major uphill battle. The multi-billion-dollar corporations that benefit from this charity program—such as NextEra Energy, owner of the Seabrook nuclear plant, and Belgium-based Anheuser-Busch InBev—seem to have worked a spell that causes otherwise sensible legislators to tune out rational argument on this issue.

The committee report on **HB 224** states, "[T]estimony from industry indicated the additional tax would either be passed on to consumers or might actually cause their companies to relocate to another state." So this is how it works—if you threaten to leave the state, the legislature will give you money to stay? No, wait—the legislature will force your *town* to give you money.

We wonder how many individual taxpayers have left the state because they could no longer afford the property taxes, and why no one seems to be concerned about those losses. Perhaps what needs to happen is for a few *towns* to threaten to leave the state unless the state stops treating them as ATMs.

We are told that Democrats oppose giving taxpayer money to big business, and that Republicans oppose government handouts generally. We hope to see some evidence of that next Wednesday. ***Please call your representatives and tell them to stop giving local tax dollars to multi-national conglomerates. You might also mention that the exemption costs the state \$3.5 million a year. Tell them to vote down the committee report of Inexpedient to Legislate on HB 224, and then support a motion of Ought to Pass.***

Continued Hearing on Right-to-Know Law Bill

The House Judiciary Committee will continue its recessed hearing on **HB 646** next Tuesday. This is NHMA's policy bill that would allow public bodies and agencies to impose a minimal charge for the labor involved in responding to Right-to-Know Law requests. The bill was described in some detail in [last week's Bulletin](#). As explained there, every other New England state has a similar law, and **HB 646** would not allow public bodies or agencies to charge nearly as much as other states allow.

The hearing is scheduled for **Tuesday, March 3, at 10:00 a.m., in LOB Room 208**. The committee is scheduled to vote on the bill later that morning, so ***please contact [committee members](#) before Tuesday to express support for the bill.***

Budget Hearings Begin

The House Finance Committee begins its budget review next week with presentations from state agencies. It also has scheduled a hearing on **HB 1** (the state operating budget) and **HB 2** (the “trailer bill,” which makes statutory changes necessary to implement the budget) for **Thursday, March 5, at 4:00 p.m., in Representatives Hall**. In addition, the committee will hold two regional hearings on **HB 1** and **HB 2** on **Monday, March 9, at 5:00 p.m.**, in the following locations:

- Kennet High School Auditorium, 400 Eagles Way, North Conway
- Derry Town Hall, 14 Manning Street, Derry

This, of course, is the beginning of a very long budget process. Look for weekly updates here as the process continues.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

MONDAY, MARCH 2

WAYS AND MEANS, Room 202, LOB

- 11:00 a.m. **HB 588-FN-A-L**, extending the Coos county job creation tax credit to Carroll county.
- 11:30 a.m. Public hearing on a non germane amendment to **HB 547**, reestablishing the exemption from property taxation for telecommunications poles and conduits.
The amendment places a definitive valuation on telephone polls. Copies of the amendment are available in the Sergeant At Arms office, State House Room 318.

TUESDAY, MARCH 3

JUDICIARY, Room 208, LOB

- 10:00 a.m. Continued public hearing **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.

TRANSPORTATION, Room 203, LOB

- 11:00 a.m. **HB 553-FN**, relative to dealer registration privileges by a dealership management company and proof of ownership of a vehicle at the time of sale.

THURSDAY, MARCH 5

FINANCE

In Representatives Hall:

- 4:00 p.m. **HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2016 and June 30, 2017, and **HB 2-FN-A-L**, relative to state fees, funds, revenues, and expenditures.

House Calendar - continued**MONDAY, MARCH 9****FINANCE, Kennet High School Auditorium, 409 Eagles Way, North Conway**

5:00 p.m. **HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2016 and June 30, 2017, and **HB 2-FN-LOCAL**, relative to state fees, funds, revenues, and expenditures.

FINANCE, Derry Town Hall, 14 Manning Street, Derry

5:00 p.m. **HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2016 and June 30, 2017, and **HB 2-FN-LOCAL**, relative to state fees, funds, revenues, and expenditures.

SENATE CALENDAR**MONDAY, MARCH 2****WAYS AND MEANS, Room 103, SH**

9:45 a.m. SB 121, relative to definitions used for purposes of current use taxation
 10:15 a.m. SB 213, relative to the disposition of meals and rooms tax revenues to towns and cities

TUESDAY, MARCH 3**FINANCE, Room 100, SH**

2:05 p.m. SB 261, establishing a state minimum wage

NEW BILLS**House Bills**

HB 1-A, makes appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2016 and June 30, 2017. Rep. Kurk of Weare; **F-H**.

HB 2-FN-A-LOCAL, relative to state fees, funds, revenues, and expenditures. Rep. Kurk of Weare; **F-H**.

HB 25-FN-A, makes appropriations for capital improvements. Rep. Chandler of Bartlett; **PW**.

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.

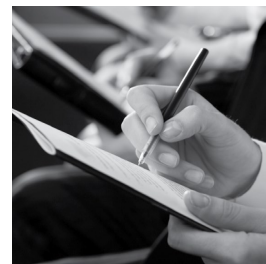
[Click here to register before March 10](#)

2015 Local Officials Workshops

Presented by NHMA's Legal Services attorneys, the 2015 *Local Officials Workshops* provide elected and appointed municipal officials with the tools and information needed to effectively serve their communities.

This workshop is **for NHMA members only**. Although there is no registration fee, online pre-registration is required one week prior to the event date. Attendees will receive a copy of NHMA's 2015 edition of *Knowing the Territory*. Continental breakfast and lunch will also be provided.

Wednesday, April 22:	Durham Public Library, Durham
Saturday, April 25:	Antioch University New England, Keene
Friday, May 15:	Conway Professional Development Center, Conway
Saturday, May 16:	Bethlehem Town Hall, Bethlehem
Saturday, May 30:	NHMA Offices, 25 Triangle Park Drive, Concord



Each workshop runs from 9:00 am – 3:00 pm. For more information, or to register online, please visit www.nhmunicipal.org and click on Calendar of Events. If you have other questions, please contact us at 800.852.3358, ext. 3350, or email nhmaregistrations@nhmunicipal.org.

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 under CALENDAR OF EVENTS

Questions? Please call 800.852.3358, ext. 3350 or
email NHMAregistrations@nhmunicipal.org.

