

LEGISLATIVE BULLETIN

Bulletin #10

2015 Session

March 6, 2015

INSIDE THIS ISSUE:

“Armchair Assessing” of Telephone Poles

Right-to-Know Costs	4
Consultation with Legal Counsel	5
State Budget	6
Business Tax Cuts	6
NHMA Policy Bills	7
Meals & Rooms Tax Formula	7
House & Senate Calendars, Floor Action	8
NHMA Webinar, Local Officials Workshops	12
Right-to-Know Law Workshop	13

Please call your legislators today! The House Ways and Means Committee this week rushed through a bad amendment to a bad bill that will shift millions of dollars in property tax obligations onto homeowners and small business owners. **HB 547** will go to the full House on **Wednesday, March 11**, and **it must be defeated**.

The bill as introduced would have reinstated the property tax exemption for telephone poles and conduits. The committee this week considered an amendment that would not reinstate the exemption but would require the poles and conduits to be appraised based on their original cost less depreciation on a 30-year straight-line basis. When it was explained that this would result in the majority of poles not being taxed, yet another amendment came forward.

The new amendment was discussed in private by a majority of the committee and then presented to the remaining members about ten minutes before a vote was taken, with no public input. (Try *that* at your next selectmen’s or city council meeting and see how it goes over.)

Under the new amendment, telephone company poles and conduits must be appraised using the following formula:

the direct replacement cost of the pole or conduit, defined as the actual cost of the pole or conduit including the labor cost of installation less depreciation calculated on a straight-line basis for a period of 30 years with a residual value of no less than 20 percent.

There are many problems with this requirement. First, and most fundamentally, legislators are not appraisal experts. Except for current use land and a few other special cases, property in New Hampshire is required to be appraised at its market value. Local assessors, who are certified by the Department of Revenue Administration, are responsible for determining market value, using nationally recognized and accepted appraisal methods and standards. The legislature should not substitute its armchair opinions for the expertise of local assessors. There is no

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Pole Exemption - continued

precedent for the legislature to adopt a specific appraisal method for one industry. For the legislature to wade into an area as complex as determining the market value of utility property, and to come up with a formula based on a ten-minute discussion with no expert input, is alarming, to put it mildly.

Second, the amendment redefines “replacement cost” as “the actual cost of the pole or conduit,” which appears to mean the original cost—in other words, not replacement cost at all. No one determines market value for property tax purposes by using original cost. If your house was built in 1800, the original cost was probably something like \$200. Would anyone seriously consider using that as a measure of current value?

And where is the assessor going to get the “actual cost” information? Presumably it will have to come from the telephone company. Under what circumstances does a taxing authority rely solely on information provided by the taxpayer to determine value?

Third, using straight-line depreciation for a 30-year period bears no relation to reality. As we explained last week, this is an accounting concept that has little to do with market value. If a 200-year-old home has been scrupulously maintained, its market value may be close to its undepreciated replacement cost. Similarly, poles that have been in service for 30 years or longer may be perfectly useful, and may have a market value close to replacement cost.

Based on an informal survey, it appears that about two-thirds of the poles in the state are more than 30 years old. Many are 80 or even 100 years old. This bill, then, would have most telephone poles in the state assessed at almost nothing.

Finally, as we have pointed out many times, the electric companies own identical utility poles, and, in fact, most poles in the state are jointly owned by the electric company and the phone company. This legislation would result in using two different valuation methods for identical poles—*or for a single pole!* This is not quite as flagrant as the original bill, which would have completely exempted the phone company’s interest while taxing the electric company’s interest, but it is still crazy and probably unconstitutional. The likely result, if the bill passes, is that the electric companies will demand equal treatment, either by challenging their appraisals in court or by seeking legislation next year.

But wait! Why should this treatment be limited to poles and conduits? Why wouldn’t gas companies demand that their pipelines be valued using the same method? For that matter, why should any property—residential, commercial, or industrial—not be subject to the same method? These are the logical questions that follow when legislation is drafted to give a special deal to one industry (or, let’s be honest, to one company).

Pole Exemption - continued

Arguments for the bill. The arguments in favor of the bill, discussed below, are easily dismissed.

“Stop us before we sue again!” Supporters of **HB 547**—that is, FairPoint and the other phone companies—claim the bill is needed to end the 480 pending lawsuits the companies have filed challenging their assessments. Of course, if the companies wanted to end the lawsuits, they could just drop them.

So, will the lawsuits go away if the bill passes? Absolutely not. The lawsuits challenge not only the appraisals, but the municipalities’ authority to tax the poles at all. If the bill passes, the phone companies will have won on one of the issues, and will continue their lawsuits on the other issues—unless they can get the legislature to “solve” those problems as well. Beyond that, we can expect *new* lawsuits from the electric companies and possibly the gas companies, demanding equal treatment.

Variations in pole values. The bill’s supporters claim municipalities have used wildly inconsistent pole values, and legislation is needed to establish some uniformity. Testimony at the hearings mentioned values ranging from \$143 to \$2,400 per pole—evidence, it was suggested, of assessors run amok. “A pole in Nashua should have the same value as a pole in Stewartstown,” the committee was told.

Well, yes, unless one of the poles is half the size and 100 years older than the other. The variations are easily understandable; it would be strange if there were *not* significant differences in value. Information from R.S. Means, a widely used source for construction industry cost data, indicated “cost installed” values in 2011 ranging from \$790 for a 20-foot pole to \$2,675 for a 50-foot pole. These, of course, are new costs; obviously the value will be lower after depreciation, so it is certainly conceivable that a given pole might be valued at only \$143 based on its age.

In short, yes, a pole in Nashua *might* have the same value as a pole in Stewartstown, but a big pole costs more than a little pole, and a new pole is worth more than an old pole. Does that surprise anyone?

Moreover, even if variations in pole values were a problem, the bill would do nothing at all to address it, because a new pole might still be valued at \$2,675, and after 30 years it would be valued at \$535.

So what problem is this bill going to fix? It won’t end the lawsuits, and in fact will probably create more of them; and it won’t eliminate the disparities in valuations, other than to push the great majority of the valuations to the low end—which, of course, is what the bill is all about.

A compromise? Supporters described the amendment to **HB 547** as “a compromise”—albeit a compromise drafted in private by FairPoint’s representatives.

Well, yes, it could be considered a compromise, in the same sense that if someone tries to walk out of a restaurant without paying and, when challenged, offers to pay half the bill, that’s a compromise. It is a compromise between the obligation to follow the rules that apply to everyone else and the desire to ignore the law entirely.

Pole Exemption - continued

This bill will cost municipalities and their taxpayers millions of dollars every year. It is another giveaway of taxpayer money to a few for-profit companies, and it is a huge and dangerous step toward a system of taxing different property owners differently depending on how good their lobbyists are, instead of using a single standard—market value—for all property.

Again, the House will vote on the bill on Wednesday, March 11. Please contact your representatives immediately and urge them to vote against the bill, with and without the amendment.

Right-to-Know Law Bill Gets a Boost

By a 14-4 vote, the House Judiciary Committee voted on Thursday to recommend passage of **HB 646, NHMA's policy bill** that would allow public bodies and agencies to recover a small part of the labor cost involved in responding to Right-to-Know Law requests.

The bill will go to the full House for a vote **next Wednesday, March 11**. Despite the strong committee vote, we expect a floor fight on the bill. ***Please ask your representatives to support HB 646.***

This very modest bill, similar to laws in the other New England states, does the following:

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

Based on concerns expressed at the first hearing on the bill, NHMA suggested an amendment, which the committee adopted. The amendment does the following:

- clarifies that no fee can be charged simply for allowing a person to look at an immediately available record;
- allows the public body or agency to require payment in advance only if the estimated cost exceeds \$50;
- requires that the time estimate be “reasonable”;
- clarifies that if the final cost differs from the estimate, the difference will be refunded or collected when the records are provided;
- requires that a detailed itemization of charges be provided upon request; and
- allows a court to reduce or waive the fees if it determines that the request was in the public interest.

Right-to-Know Law - continued

As we have stated before, the bill is not likely to affect the vast majority of record requests, because most can be handled in less than an hour. It *will* affect the fishing expeditions and the occasional over-the-top requests that are intended to harass or paralyze local government.

We know there are legitimate concerns about charging a fee to provide public records, but public officials also have a legitimate concern when someone requests 10,000 pages of documents that take many days to assemble, review, and redact, and the person making the request never shows up to get the records. Committee members indicated that they would like to be able to find a way to distinguish between legitimate and frivolous requests. We would, too, but alas, there is no way to do it. Most committee members agreed that the bill does a good job of balancing the public's interest in obtaining records at minimal cost against government's need to function.

Further, even when a request is legitimate, we don't feel too bad about charging someone a small fee to respond to a voluminous request—especially when these are often used for the personal or commercial benefit of the requester, whether it is a college student doing research, a business compiling information for marketing purposes, or a newspaper reporter working on a story. At minimum wage rates, a request that takes a full day of employee time will cost only about \$50.

Opponents of the bill have argued that it creates a disincentive for municipalities to maintain their records efficiently—that they won't bother to organize their records and make them readily available if they know they can charge a fee to provide them upon request. That is farfetched, to say the least. Given a choice between (1) maintaining an efficient record-keeping system and posting as many records as possible on the municipality's website, and (2) performing repeated multi-hour record searches at \$7.25 an hour (which goes to the municipal employer, not the public official), it seems unlikely that many people would choose the latter. If the person doing the record search were allowed to charge, and keep, \$40 or \$50 an hour, that might affect behavior, but that is not the case.

Again, please contact your representatives and urge them to support the Judiciary Committee's report of Ought to Pass With Amendment on HB 646.

Consultation With Legal Counsel Policy Bill Moves Forward With New Look

The House Judiciary Committee has strongly endorsed an alternative approach to one of NHMA's policy bills, relative to the ability of municipalities to review written legal correspondence without the attorney being present. By an 18-0 vote, the committee has recommended **HB 285** Ought to Pass with an amendment that allows for the consideration of correspondence from legal counsel to be done in a *nonpublic session* under RSA 91-A:3, II. This would require a properly noticed meeting and a motion to go into nonpublic session for the review of written legal advice, and of course the keeping of minutes, which would likely be sealed. While

Consultation with Counsel - continued

this doesn't provide quite the same level of flexibility as the original bill, which would have treated the review of correspondence as a consultation with counsel, it should ultimately achieve the desired purpose: correspondence from legal counsel can be reviewed by a board without the need to incur the additional expense of the attorney's presence. We thank the committee for its support on this bill and urge the House to adopt the committee recommendation.

State Budget

On Thursday, the House Finance Committee held the first of three public hearings on **HB 1** and **HB 2**, the biennial state operating budget and the trailer bill that enacts statutory changes necessary to implement the budget. These bills currently reflect the budget proposed by the Governor last month, but will no doubt undergo many revisions as the House prepares its own version of a two-year state spending plan. NHMA provided written testimony at the hearing, noting that the long tradition of local governments delivering essential public services through a close partnership with state government is in jeopardy as the state continues to downshift to municipalities the primary responsibility to maintain and pay for these public services. The full text of NHMA's testimony is available [here](#). (Or go to www.nhmunicipal.org and click on "NHMA Budget Testimony" in the Legislative Bulletin section.)

The additional public hearings will be held on **Monday, March 9**, in the following locations:

- ⇒ Kennet High School Auditorium, 400 Eagles Way, North Conway, 6:00 p.m.
(note the time change)
- ⇒ Derry Town Hall, 14 Manning Street, Derry, 5:00 p.m.

If you have specific budget issues you wish to raise with the [Finance Committee](#), either attend one of these hearings or provide written testimony to them soon.

Senate Votes to Reduce Business Taxes

On the revenue side of the budget, this week the Senate voted along party lines (14-10) to gradually reduce the rates of both the business profits tax and the business enterprise tax over the next four years via **SB 1** and **SB 2**, respectively. Proponents of these bills contend that lowering business taxes will make New Hampshire more competitive and will spur economic growth. Opponents insist that such measures will reduce revenues by an estimated \$80 million to \$100 million by 2019, and will necessitate drastic cuts to essential state programs and services.

NHMA Policy Bills: Win a Few, Lose a Few

The House voted on six **NHMA policy bills** this week, with mixed results: four wins and two losses.

The biggest win was **HB 192**, described in [last week's *Bulletin*](#), which prohibits utility companies from relying on DRA appraisal numbers when they appeal their local property tax bills. The bill passed the house on a voice vote with no debate. However, we are not assuming this will mean clear sailing in the Senate. A Senate hearing likely will not occur for several weeks, but ***now is the time to contact your senator and make sure he or she understands how much this bill means to your municipality.***

The biggest loss, but not a surprising one, was **HB 224**, which would have repealed the corporate welfare program known as the “pollution control exemption.” The principal argument against the bill was that the state made a promise to these multi-billion-dollar corporations *sixty years ago*, and, as we all know, the state *never* breaks its promises. (That is, unless it has to do with retirement funding, revenue sharing, meals and rooms tax revenue, state aid grants, flood control payments,) So, for at least another year, homeowners and small business owners will continue to subsidize, among other things, the largest beer company in the world and a nuclear plant that sells electricity to Massachusetts.

In other action, the House:

- passed **HB 233** and **HB 451**, which clarify that RSA 12-E, the state mining and reclamation statute, does not preempt a local ordinance unless it is less stringent than the statute, and does not preempt local regulation of activities that are exempt from state regulation;
- passed **HB 415**, which gives out-of-state emergency service entities the same liability protection that New Hampshire entities have when responding to an incident in New Hampshire; and
- killed **HB 250**, relative to perambulation, thus preserving New Hampshire’s coveted status as the only state in the country that requires local governing bodies to go for a walk around the town’s perimeter every seven years.

Senate Committee Recommends Study of M&R Distribution Formula

This week the Senate Ways and Means Committee heard testimony on **SB 213**, which would have distributed one percent of the meals and rooms tax revenues to municipalities based on where the tax was generated. Under current law, the municipal share of meals and rooms tax revenue is distributed to municipalities based solely on population. The bill was amended by a 3-2 vote to instead recommend creating a study committee comprising one member of the Senate and two members of the House to study the formula for distribution of meals and rooms tax revenues, and to report its finding and any recommendations for proposed legislation on or before November 1, 2015.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

MONDAY, MARCH 9

- FINANCE, Kennet High School Auditorium, 409 Eagles Way, North Conway**
6:00 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. *Please note time change.
- 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

TUESDAY, MARCH 10

- COMMERCE, Room 100, SH**
1:00 p.m. **SB 254**, establishing a committee to study the provision of services to the public through peer-to-peer or sharing economy businesses.
- TRANSPORTATION, Room 103, LOB**
1:00 p.m. **SB 234**, relative to police details on public ways.

WEDNESDAY, MARCH 11

- EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB**
9:20 a.m. **SB 164**, relative to the independent investment committee in the New Hampshire retirement system.
- PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB**
9:00 a.m. **SB 4**, relative to domicile for voting purposes.
10:15 a.m. **SB 253**, relative to the enactment of ordinances by municipalities permitting an assessment on hotel occupancy for the use of municipal services.
10:30 a.m. **SB 241**, relative to authorization for the town of Rindge to make capital expenditures from a trust fund.

HOUSE FLOOR ACTION

Wednesday, March 4, 2015

CACR 1, Relating to taxation. Providing that a 3/5 vote is required to pass legislation imposing new or increased taxes or license fees, or to authorize the issuance of state bonds and providing that the general court shall appropriate funds for payment of interest and installments of principal of all state bonds. **Inexpedient to Legislate.**

Floor Action - continued

CACR 12, Relating to qualifications for public office. Providing that no person shall be qualified for any elective office unless previously residing in and having as domicile a place within the limits of the district for which the candidate is seeking office for no less than the term of the office sought. **Inexpedient to Legislate.**

HB 127, relative to identification of voters. **Inexpedient to Legislate.**

HB 140, relative to appointment of inspectors of election. **Passed with Amendment.**

HB 185, authorizing straight ticket voting. **Inexpedient to Legislate.**

HB 191, relative to projects which are privately financed in energy efficiency and clean energy districts. **Tabled.**

HB 192, relative to the valuation of utility property. **NHMA Policy. Passed.**

HB 193, relative to utility assessments for the use of village district roads. **Passed with Amendment.**

HB 199, relative to tax relief information contained on a property tax bill. **Inexpedient to Legislate.**

HB 204, relative to incompatibility of town offices. **Inexpedient to Legislate.**

HB 222-FN, exempting certain homeowners over 80 years of age from the statewide education tax. **Inexpedient to Legislate.**

HB 224-FN, repealing the exemption for water and air pollution control facilities from local property taxation. **NHMA Policy. Inexpedient to Legislate.**

HB 227, relative to eminent domain on public lands. **Passed with Amendment.**

HB 233, relative to local approval of mining activity. **NHMA Policy. Passed.**

HB 250, relative to requirements for perambulation of town lines. **NHMA Policy. Inexpedient to Legislate.**

HB 257, relative to amending municipal charters. **Inexpedient to Legislate.**

HB 289, relative to the content of annual town reports. **Inexpedient to Legislate.**

HB 290, relative to the acceptance of risk in outdoor recreational activities. **Passed.**

Floor Action - continued

HB 306, relative to membership of the wetlands council and the water council. **Passed with Amendment.**

HB 313, relative to municipal elections. **Inexpedient to Legislate.**

HB 331, relative to absences among selectmen on election day. **Passed.**

HB 335, relative to the disposition of rangeways. **Inexpedient to Legislate.**

HB 339, relative to transfer station income. **Inexpedient to Legislate.**

HB 348, allowing municipalities to adopt a property tax credit for elderly homeowners for the extent their tax bill exceeds 10 percent of income. **Inexpedient to Legislate.**

HB 350, establishing a commission to study the impacts of the property tax on New Hampshire's residents, businesses, municipalities, and the economy. **Inexpedient to Legislate.**

HB 406, relative to the date of the state primary election. **Inexpedient to Legislate.**

HB 415, limiting liability of out-of-state emergency services entities responding to incidents in New Hampshire. **NHMA Policy. Passed with Amendment.**

HB 432, relative to counting votes. **Inexpedient to Legislate.**

HB 444-L, exempting certain long-term residents from local school taxes. **Inexpedient to Legislate.**

HB 451, relative to local approval of mining permits. **NHMA Policy. Passed with Amendment.**

HB 463, relative to state agency communications. **Passed.**

HB 486, authorizing towns and cities to establish special assessment districts. **Passed.**

HB 487, requiring that planning board and zoning board of adjustment members be elected. **Inexpedient to Legislate.**

HB 497, relative to interference with a cemetery burial plot. **Passed.**

HB 524-FN-L, relative to the calculation of default budgets. **Inexpedient to Legislate.**

HB 534, relative to the duties of the housing finance authority. **Passed.**

Floor Action - continued

HB 607, relative to fees for carrying a concealed firearm. **Passed.**

HB 627-FN, relative to registering to vote. **Inexpedient to Legislate.**

HB 652-FN, relative to undeclared voters. **Inexpedient to Legislate.**

HB 662-FN-L, relative to property taxes paid by chartered public schools leasing property. **Passed.**

HB 689, relative to adoption of a default budget. **Passed with Amendment.**

SENATE FLOOR ACTION

Thursday, March 5, 2015

SB 42, relative to employee notification of contraceptive coverage. **Tabled.**

SB 107-FN, prohibiting collective bargaining agreements that require employees to join or contribute to a labor union. **Tabled.**

SB 156-FN, prohibiting discrimination against employees who are victims of domestic violence, sexual assault, or stalking. **Tabled.**

SB 228-FN-L, relative to the maximum total education grant, adjustment of stabilization grants, and adequate education funding for full-day kindergarten pupils. **Tabled.**

SB 230-FN-L, relative to speed limits on state roads that are seasonally congested by pedestrian and bicycle traffic. **Passed with Amendment.**

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.

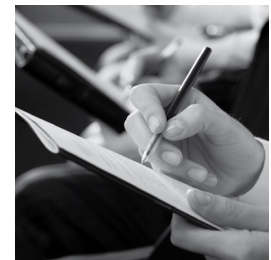
[Click here to register before March 10](#)

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.

