

LEGISLATIVE BULLETIN

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Update on Pole and Utility Valuation Bills

We reported last week that we thought the Senate Ways and Means Committee might vote this week on both **HB 192**, the bill that prohibits use of DRA utility appraisals in appeals of local property tax assessments, and **HB 547**, the bill that establishes a statutory appraisal formula for telephone company poles and conduits. The committee did not vote this week, and we understand that it will not vote on either bill for two more weeks or even longer.

Please do not forget about these bills! Please continue to talk to your own senators, and to members of the [Ways and Means Committee](#), about both bills. Urge them to **support HB 192 and oppose HB 547**. For more information about both bills, see [Legislative Bulletins 10 through 14](#) or contact us.

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

A Modest Revenue Proposal

As the budget moves to the Senate, we understand that senators may be looking at more optimistic revenue estimates than were available to the House. To improve the revenue situation a bit more, we have one suggestion that would help both the state and municipalities, without requiring any tax or fee increases. It certainly will not solve all of the state's budget issues, but every bit helps, right?

As we have mentioned on several occasions, the property tax exemption for pollution control equipment under RSA 72:2-a affects not only local property taxes, but the statewide utility property tax as well. Under RSA 83-F, pollution control equipment that is exempt under RSA 72:12-a is excluded from the definition of "utility property" and therefore is not subject to the utility property tax.

In the fiscal note to **HB 224**, the bill the House killed that would have repealed the pollution control exemption, the Department of Revenue Administration stated that the repeal would increase state revenues by \$7.2 million over the 2016-17 biennium. This would not be merely a tax shift—it would be a direct increase in tax revenue, because the utility property tax is imposed at a uniform rate of \$6.60 per thousand.

Revenue Proposal- continued

The argument for repealing RSA 72:12-a was laid out in [Legislative Bulletin #5](#). For reasons that remain perplexing, the House was not persuaded. Apart from making local property taxpayers continue to subsidize huge corporations, the rejection of **HB 224** meant giving up \$7.2 million in potential state revenue. Although that money technically would go into the education trust fund, the ultimate impact would be on the general fund, because money from the general fund is currently being used to subsidize the education trust fund, which otherwise would be running a deficit; thus, any additional revenue to the latter fund will free up an identical amount for the general fund.

We can't help noting that \$7.2 million is, coincidentally, almost exactly the amount needed to fund the state's obligation for municipal water and wastewater projects that have been completed since the moratorium on state aid grants went into effect. If the Senate is interested in *real* pollution control, we suggest it consider an amendment to **HB 2** to repeal RSA 72:12-a, which does nothing to control pollution, and use the found money to help fund the municipal water and wastewater facilities that are critical to providing and preserving clean water.

Is “Felonies First” a Cost Saver or Cost Driver for Police Departments?

As our long-time readers will know, NHMA rarely follows legislation dealing with the court system, particularly criminal cases. However, one of our members has brought [SB 124](#) to our attention, raising questions about the bill's impact on local police departments.

SB 124 would transfer the early processing of felony cases from the circuit court system to the superior court system. Under current law, felony cases are initially filed in one of the 32 district divisions of the circuit courts around the state. Defendants who have been arrested and charged with a felony are arraigned in the circuit court and bail is set, which may require the presence of a police officer. Probable cause hearings are scheduled to determine whether there is sufficient evidence to proceed with charges against the accused, particularly if the person is in pre-trial jail confinement.

One of the potential effects of **SB 124** is that police personnel would have to travel to one of the eleven superior court locations for these early stages of felony cases, increasing their travel time and costs and removing those officers from their areas of patrol for longer periods. On the other hand, the provisions of **SB 124** might reduce police time in court by its requirement for the earlier sharing of “discovery” information (*i.e.*, the police reports on the case investigation and arrest), which could reduce the frequency of probable cause hearings. Getting cases to the county attorney faster may also reduce the amount of time local police prosecutors need to spend on the cases.

Felonies First - continued

We have more investigation to do ourselves on this proposal, which comes up for a hearing on **Thursday, April 16, at 10:00 a.m.** in the House Judiciary Committee, **LOB Room 206-208**. Please raise this bill with your police chief and ask what effect these changes will have on your city or town. If you have thoughts about this bill, positive or negative, please let us know at gouvernementaffairs@nhmunicipal.org, or attend the hearing and provide your comments to the committee

Senate Bill Would Change ZBA Procedure

The House Municipal and County Government Committee will hear testimony next week on **SB 141**, which would change an often nettlesome provision relating to procedures of zoning boards of adjustment. Under RSA 674:33, III, “[t]he concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” Since every zoning board consists of five members, and since a majority constitutes a quorum to transact business (*see* RSA 673:10, III), a board may act on an application even if only three members are present, in which case the applicant needs a unanimous ruling to succeed.

When presented with this situation, many zoning boards will give the applicant the opportunity to delay action until a meeting where the entire board is present, although there is no law that requires the board to offer this choice. This gives the applicant a better chance of success, as it may be easier to persuade three of five board members, rather than three of three. However, it does mean a delay for the applicant, the board, and any other interested parties—and of course there is no guarantee of perfect attendance at the next meeting, either.

There is a bigger problem if the issue is not absenteeism but vacancies on the board. If a board is short of members and does not have alternates—or if several people need to recuse themselves because of conflicts—there may *never* be five people available for a hearing.

SB 141 would solve these problems by repealing the three-vote requirement, so that as long as a quorum of three members is present, a simple majority vote is all that is needed. However, that does not mean **SB 141** is a perfect solution. The argument *against* **SB 141** is that zoning board cases should not be decided lightly, especially when the relief requested is a variance—in essence a ruling that allows the applicant to ignore the municipality’s zoning ordinance. We have heard, and can appreciate, the argument that it is bad policy to allow a zoning provision to be negated by a 2-1 vote. When we presented the question to a group of municipal lawyers—admittedly a far-from-scientific survey—a majority (but not a unanimous majority!) said the law should be left as it is.

Because there are compelling arguments both ways, and NHMA does not have a legislative policy or clearly applicable legislative principle that is implicated, we do not have a position on the bill. (We do think the language of the bill is a bit awkward, and we may suggest a clarifying amendment.) If any zoning board members

ZBA Procedure - continued

or other local officials have an opinion, you are encouraged to attend the hearing or contact members of the [committee](#). The hearing is scheduled for **Tuesday, April 21, at 10:30 a.m., in LOB Room 301.**

Hearing on Accessory Dwelling Unit Bill Scheduled

SB 146, relative to accessory dwelling units, has been scheduled for a hearing before the Municipal and County Government Committee on **Tuesday, April 21, at 10:30 a.m., in LOB Room 301.** We wrote about this bill in [Legislative Bulletin #12](#) (pages 5-6). We anticipate that an amendment will be introduced at the hearing to address some of the concerns that municipalities have expressed. If you have an opinion about the bill, either positive or negative, please contact the [committee](#) or consider attending the hearing.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, APRIL 14

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

10:00 a.m. **SB 72**, relative to confidentiality of police personnel files and establishing a commission to study the use of police personnel files as they relate to the Laue List.

ELECTION LAW, Room 308, LOB

10:00 a.m. Continued public hearing on **SB 39**, relative to recounts on questions.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:15 a.m. **SB 241**, relative to authorization for the town of Rindge to make capital expenditures from a trust fund.

10:30 a.m. **SB 141**, relative to powers of the zoning board of adjustment.

10:45 a.m. **SB 77-L**, authorizing the creation of a special purpose village district within the town of Danbury.

WAYS AND MEANS, Room 202, LOB

9:30 a.m. Continued public hearing **SB 213-FN-A-L**, establishing a committee to study the formula for distribution of meals and rooms tax revenues.

THURSDAY, APRIL 16

JUDICIARY, Room 206-208, LOB

10:00 a.m. **SB 124-FN**, relative to filing felonies first in the superior court.

TUESDAY, APRIL 21

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:15 a.m. **SB 242-L**, relative to amending the budget in towns that have adopted official ballot voting.

10:30 a.m. **SB 146**, relative to accessory dwelling units.

SENATE CALENDAR

TUESDAY, APRIL 14

JUDICIARY, Room 100, SH

- 9:00 a.m. **HB 468-FN**, requiring a warrant to obtain electronic device location information.
- 9:45 a.m. **HB 492**, relative to military and historic re-enactments and commemorations.

TRANSPORTATION, Room 103, LOB

- 1:15 p.m. **HB 178**, relative to exclusions from seasonal highway weight limit regulations.

WEDNESDAY, APRIL 16

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

- 9:15 a.m. **HB 427**, relative to the definition of the New Hampshire fire code.

WEDNESDAY, APRIL 22

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

- 9:30 a.m. **HB 463**, relative to state agency communications.

HOUSE FLOOR ACTION

There is no House floor action to report this week.

SENATE FLOOR ACTION

Thursday, April 9, 2015

HB 107, relative to the retention of municipal trust fund bank statements. **Passed.**

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

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

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

HB 166-L, relative to records storage by municipalities. **Passed.**

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

HB 275, relative to the encroachment of a town cemetery on state-owned land. **Passed.**

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

Senate Floor Action - continued

HB 510, establishing a commission to study the regulation of pawnbrokers, secondhand dealers, and junk or scrap metal dealers. **Passed with Amendment.**

HB 511, establishing a committee to study the funding of certain state aid grants. **Passed.**

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

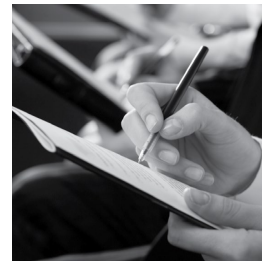
HB 606-FN-L, relative to costs for public records filed electronically. **Rereferred to Committee.**

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.