

# LEGISLATIVE BULLETIN

Bulletin #16

2015 Session

April 17, 2015

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## Phony Telco Numbers Explained

“Everyone is entitled to his own opinion, but not his own facts.”  
— Daniel Patrick Moynihan (attributed)

The Senate Ways & Means Committee is likely to take up **HB 547**, which establishes a valuation formula for taxing telephone poles, when it meets next Tuesday, April 21. ***Please urge [committee members](#) and your own senator to oppose HB 547.***

Two weeks ago, we called attention to the numbers that FairPoint was citing for its claim that municipalities were assessing its poles erratically. The company claimed that its poles had been assessed at an average of \$6,865 in Groton, \$5,365 in Derry, and \$2,400 (or sometimes \$2,489) in Lempster, while they were assessed at just a few hundred dollars in other municipalities. We had checked with the assessors for those three municipalities and discovered that the poles had actually been assessed at \$623 in Groton, \$713 in Derry, and \$962 in Derry.

Subsequently, in our continuing search for an explanation, we asked a representative of FairPoint where the company came up with its numbers. We never did get an answer for Groton or Derry, but we did for Lempster.

First, the factual background. The town’s tax warrants—public records available to anyone—for the years 2011 through 2014 show the following total assessments for FairPoint’s property:

Year	Assessment
2011	\$1,401,500
2012	1,321,500*
2013	283,000
2014	283,000

\* Subsequently abated to \$786,000

### Telco Numbers - continued

In 2011, the assessors were unable to obtain information about the poles from FairPoint, so they had to estimate the number of poles based on miles of road. They initially did the same for 2012, resulting in a comparable assessment. The 2011 and 2012 assessments included poles (based on the estimate), conduits, and use of the right-of-way. When the assessors eventually obtained accurate pole information from FairPoint, they corrected the number of poles and adjusted the 2012 assessment downward to \$786,000 (again, including poles, conduits, and right-of-way), and the town refunded the company's overpayment. This is also a matter of public record.

In 2013 and 2014, because FairPoint was suing over the taxation of the use of the right-of-way, the town removed the right-of-way value, dropping the assessment by \$503,000. Thus, the 2013 and 2014 assessments include only poles and conduits. The appraisal cards and the tax warrants for those year clearly show that the poles were appraised at \$253,162 and the conduits at \$29,853, for a total (rounded) of \$283,000. Based on 355 poles, this equates to \$713 per pole.

Rather than look at the tax records—or, say, its own tax bills—to see how the poles were actually assessed, FairPoint did its own calculation for the purpose of making its argument to the legislature. Because the town in 2011 and 2012 did not break down the assessment as among poles, conduits, and right-of-way, the company assumed a statewide average “pole and conduit to ROW ratio” of 66.2 percent for poles and conduits and 33.8 percent for right-of-way. It then applied 66.2 percent to an assessment of over \$1.3 million to arrive at a total pole value of approximately \$883,000 (conveniently allocating nothing to conduits), and divided that number by the total number of poles (355) to conclude that the town was appraising the poles at an average of \$2,489.

There are a few problems with that. First, FairPoint knew that its assessment had been reduced to \$786,000 once the town obtained the correct pole information, so the \$1.3 million assessment was irrelevant. Second, FairPoint knew that the poles and conduits were nowhere close to 66 percent of the total value, because when the town decided to tax only the poles and conduits, the assessment dropped from \$786,000 to \$283,000. And, of course, there is the little matter of the 2013 and 2014 appraisal cards, which clearly show a total pole value of \$253,162, for a per-pole value of \$713.

Perhaps FairPoint could claim a basis for using this calculation in 2011, when the total assessment did exceed \$1.3 million and there was no breakdown of poles, conduits, and right-of-way. But the company had to know by 2013, at the very latest, that its poles had never been assessed at anything close to \$2,400. Nevertheless, two years later the company's New Hampshire president repeatedly told the legislature that Lempster was assessing its poles at \$2,400 or more.

When we pointed out FairPoint's grossly inaccurate claims two weeks ago, we said that “we assume they indicate mistake, not deceit.” It is becoming harder to maintain that belief. In any event, somebody's got some splainin' to do.

## Telco Numbers - continued

At the Senate hearing on **HB 547**, several people suggested that if the Senate believes there is a problem with pole valuation, it should refer the matter to the Assessing Standards Board (which, as we mentioned before, has voted unanimously to oppose **HB 547**). FairPoint said there is no need for the ASB to get involved—because FairPoint has it all figured out! If the company can't even understand its own tax bill, we submit that it should not be put in charge of establishing assessing methodologies for local assessors.

The entire premise for this bill was FairPoint's claim that assessors were assigning random, arbitrary, and sometimes outrageous values to telephone poles. It is now clear that the outrageous numbers were not the products of local assessments at all, but were concocted by FairPoint. When the foundation for a bill evaporates, the bill should go with it. *Again, please contact your senators to make sure they understand that FairPoint has misled the legislature, and urge them to kill HB 547.*

## Contact Senators About Utility Valuation

The [Senate Ways and Means Committee](#) is also likely to vote on **HB 192**, **NHMA's policy bill** relative to valuation of utility property, on Tuesday. We wrote about this bill in *Bulletins #12* and *#13*. *Please contact members of the committee and your own senator and urge them to support HB 192!*

## SB 2 Voting Bill Creates Problems

The House Municipal and County Government Committee will hear testimony next week on **SB 242**, which would make a significant change in how budgets are approved in official ballot referendum (SB 2) towns. Under the bill, if the town's proposed operating budget is amended at the deliberative session, the (pre-amendment) operating budget will be placed on the ballot, followed by a separate article for each amendment. Thus, the voters at the second session would vote first on the original budget and then on any amendments that were adopted at the deliberative session. If the original budget does not pass, the amendment questions become moot and the town is left with the default budget. If the budget does pass, then the votes on each amendment would be counted, and any amendments that pass will be applied.

The stated rationale for the bill is that extremely few voters attend the deliberative session, so most voters never get to consider the amendments that are approved at that session. We understand the concern, but unfortunately, this is not the way to address it.

Most legislators will quickly appreciate the conundrum that would be created by voting on a principal motion before voting on amendments to the motion. No one can know how to vote on the principal motion without knowing how the motion may ultimately be amended. That is why, in any session at the legislature or anywhere else (including town meeting), all amendments to a motion are voted on before the main motion is put to a final vote.

**SB 2** - continued

In the context of an SB 2 town meeting, assume the following:

- The default budget is \$10 million.
- The proposed operating budget is \$11 million.
- At the deliberative session, the proposed budget is amended down to \$9 million.

Under **SB 242**, the voters at the second session will vote first on the proposed budget of \$11 million, then they will vote on whether to cut that budget to \$9 million. If the first vote fails, the votes on the amendment won't be counted, and the default budget of \$10 million will take effect.

So, if you want the \$11 million, how should you vote? You would vote yes on the budget, and vote no on the amendment, right? Except that if the budget passes, there is a possibility that the amendment will also pass, and you'll be stuck with a \$9 million budget—so perhaps it would be better to vote no on the budget and settle for the default budget.

Or, if you want the \$9 million budget, you might want to vote yes on the budget and then vote yes on the amendment. Except that the budget may pass and the amendment may fail, leaving you stuck with an \$11 million budget—so, again, perhaps it would be better to vote no on the budget and settle for the default budget.

And that is a simple hypothetical. There are any number of variations that could make the situation more complicated. What if the deliberative session first adopted an amendment to increase the budget by \$100,000, then adopted an amendment to decrease the new total by \$50,000, and a third to increase it by \$200,000? Under the bill, all of the amendments would go on the ballot.

In short, this is a formula for mass confusion. Despite good intentions, the bill simply will not work. We believe members of the [committee](#) will understand this, but it would not hurt for local officials to contact them.

## NHMA Policy Bills in Senate

Two **NHMA policy bills** will have hearings in the Senate next week:

- On **Tuesday, April 21, at 9:15 a.m., in State House Room 100**, the [Senate Judiciary Committee](#) is scheduled to hear testimony on **HB 285**, which, as amended by the House, allows public bodies to enter non-public session to consider correspondence from legal counsel. As originally drafted, the bill would have added the consideration of such correspondence to the definition of “consultation with legal counsel,” so it could be accomplished in a “non-meeting.” We still believe that is a better approach, but the bill as amended by the House is still an improvement over existing law.

### **NHMA Policy Bills-** continued

- Also on **Tuesday, at 1:00 p.m., in LOB Room 103**, the [Senate Transportation Committee](#) is scheduled to hear testimony on **HB 130**, which allows the use of one rear-facing blue light on municipally owned emergency vehicles such as fire trucks and ambulances.

Please contact committee members or attend the hearings to support these bills if you are interested.

### **Accessory Dwelling Units**

As we mentioned last week, the hearing on **SB 146**, relative to accessory dwelling units, has been scheduled for a hearing before the House Municipal and County Government Committee on **Tuesday, April 21, at 10:30 a.m., in LOB Room 301**. We wrote about this bill in [Bulletin #12](#). If you have an opinion about the bill, either positive or negative, consider contacting the [committee](#) or attending the hearing.

### **Coalition of Legislators Against Downshifting**

On Wednesday, NHMA staff were invited to give a presentation to the newly formed Coalition of Legislators Against Downshifting (CLAD). Despite competition from another presentation (that one offering a free lunch!) we were most impressed that over 40 legislators crowded into the room to hear our report and discuss the issue of downshifting. It was a bipartisan group, although a bit light on one side, which was the only thing that we found disappointing, as downshifting affects the local property tax payers in every municipality.

We shared much of the same information with legislators that we have presented in the *Legislative Bulletin*, including the overview of budget cuts provided in [Legislative Bulletin 13](#), the budget numbers chart provided in [Legislative Bulletin 14](#), and the [list of estimated reductions](#) in state aid by municipality.

The budget is a complicated document, and it isn't always what it appears to be without a thorough review and an understanding of context. The state aid numbers can also be less than straightforward, and we appreciate the opportunity to speak with legislators who are concerned about the property tax burden downshifting imposes on constituents.

## HOUSE CALENDAR

### Joint House/Senate Meetings Are Listed Under This Section

#### TUESDAY, APRIL 21

##### **ELECTION LAW, Room 308, LOB**

11:00 a.m. Public hearing on a non-germane amendment to **SB 39**, relative to recounts on questions. The proposed amendment requires notice to voters requesting a recount on certain local questions and public posting of notice of the time and place of the recount. This bill also eliminates the requirement that photographs be taken by the moderator of voters who do not present identification be in color. Copies of the amendment are available in the Sergeant-at-Arms' office and online.

##### **FINANCE, Representatives Hall, State House**

1:00 p.m. **SB 30-FN-L**, permitting counties with unincorporated areas to establish tax increment financing districts. The public hearing will include consideration of a non-germane amendment which relates to the Business Finance Authority's ability to guarantee bonds. Copies of the amendment are available in the Sergeant-at-Arms' office and online.

##### **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.  
The public hearing will include consideration of a non-germane amendment which ratifies the result of a warrant article in the town of Franconia. Copies of the amendment are available in the Sergeant-at-Arms' office and online.

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

##### **TRANSPORTATION, Room 203, LOB**

11:00 a.m. **SB 234**, establishing a committee to study the use of law enforcement details and flaggers for traffic control on municipally maintained roads.

#### TUESDAY, APRIL 28

##### **WAYS AND MEANS, Room 202, LOB**

10:00 a.m. Continued public hearing on **SB 213-FN-A-L**, establishing a committee to study the formula for distribution of meals and rooms tax revenues.

## SENATE CALENDAR

#### TUESDAY, APRIL 21

##### **JUDICIARY, Room 100, SH**

9:00 a.m. **HB 108-FN**, relative to sealing nonpublic session minutes.

9:15 a.m. **HB 285**, relative to discussion with legal counsel under the right-to-know law. **NHMA Policy**.

##### **TRANSPORTATION, Room 103, LOB**

1:00 p.m. **HB 130**, relative to the use of blue lights on emergency vehicles. **NHMA Policy**.

**Senate Calendar**- continued

**WEDNESDAY, APRIL 22**

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB**

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

**HOUSE FLOOR ACTION**

Wednesday, April 15, 2015

**SB 20-FN-L**, (New Title) establishing a commission on historic burial grounds and cemeteries. **Passed with Amendment.**

**SB 38**, establishing a commission to develop a land conservation plan. **Passed with Amendment.**

**SB 44**, relative to nonpublic sessions of public bodies under the right-to-know law. **Passed.**

**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. **Inexpedient to Legislate.**

**SB 97**, authorizing municipalities to adopt ordinances to regulate stormwater to comply with federal permit requirements. **Passed with Amendment.**

**SB 98**, relative to third party review required by the planning board. **Passed with Amendment.**

**SB 143**, relative to defining phased development. **Passed.**

**SB 191-FN**, relative to the use of the state's procurement card services. **Passed. Referred to F-H.**

**SENATE FLOOR ACTION**

There is no Senate floor action to report this week.

## NHMA Webinar

### NHMA Webinar - It's All About the People

Event Date: Wednesday, May 20, 2015

Time: 12:00 PM - 1:00 PM

Contact: NHMA (603) 224-7447 Ext. 3408

The success of local government rests on the shoulders of local officials, employees, and volunteers, from select boards and department heads to planning board members and seasonal employees. This means that each city and town must strive to build a strong and effective team, which is not always easy to do. So take a break with Legal Services Attorneys Stephen Buckley and Margaret Byrnes to talk about the variety of issues that arise when you are trying to recruit, hire and retain that team, including New Hampshire employment law, volunteerism, best practices, and more.

This webinar is open to members of the New Hampshire Municipal Association.

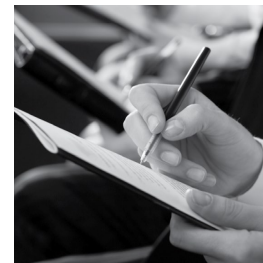
[Click here to register before May 19](#)

## 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](http://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](mailto:nhmaregistrations@nhmunicipal.org).