

# LEGISLATIVE BULLETIN

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## The Last Bulletin. Maybe

The legislature approved committee of conference reports on all remaining bills this week, so, with one major exception discussed below, it has finished its major activity for the year. Bills are now making their way to the Governor’s desk for her signature or, in some cases, her veto. She also can allow a bill to become law without her signature. As of this writing, 156 bills have been signed into law, but there are still plenty to come. In a typical year, anywhere from about 280 to 350 bills become law; the average over the last ten years is 328.

This will be our last weekly *Legislative Bulletin* until December. Depending on what happens with the budget (see next article), we may need to issue a legislative alert or one or more special editions of the *Bulletin*. We will publish our *Final Legislative Bulletin*, containing summaries of all new laws affecting municipalities, as soon as possible after the Governor has taken action on all bills—by late July or early August, we hope.

In the meantime, we wish you all an enjoyable and relaxing summer—but don’t forget those study committees and retained bill subcommittees! (See “The Summer Session Begins!” below.)

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## Legislature Adopts Budget...and Contingency Plan

On Wednesday both the House and the Senate adopted the committee of conference recommendations on **HB 1** and **HB 2**, the two-year state operating budget that begins July 1 and the trailer bill containing law changes necessary to implement the budget. In terms of state aid to cities and towns, the committee of conference recommended the same level of municipal funding as had been adopted by the Senate (see [Bulletin #22](#) for details), and increased education adequacy funding in fiscal year 2017 by \$1.4 million over what the Senate had adopted for those communities subject to the current funding cap.

However, as has been widely reported in the media, Governor Hassan vetoed this budget primarily due to concerns over the failure to fund the contract negotiated with state employees, the fiscal impact of business tax cuts included in the budget, and the legislature’s refusal to re-enact the Medicaid expansion program scheduled to expire at the end of 2016.

**Budget** - continued

In anticipation of this veto, and desiring to avoid a shutdown of state government, both the House and Senate adopted (and the Governor signed) a contingency plan, called a continuing resolution, which temporarily funds state agencies at fifty percent of fiscal year 2015 levels for the period July 1, 2015 through January 1, 2016, and continues provisions of law currently in effect. This House Joint Resolution 2 (**HJR 2**) also provides state agencies with the ability to seek approval from the Governor and Executive Council and the Legislative Fiscal Committee to exceed the spending levels authorized in **HJR 2** as circumstances may require.

It is our understanding that the Governor wants to resolve the budget issues sooner rather than later, hoping to reach a compromise in early September, while the legislature prefers waiting until better numbers are available regarding the state's year-end surplus as well as revenues during the first several months of the new fiscal year. Regarding this timeline, our main concern is the impact the continuing resolution may (or may not) have on the tax rate-setting process scheduled to begin in early October. We are addressing our concerns with the appropriate state officials, and will certainly alert you if warranted.

### **Pole/Utility Valuation Bill Dies, But ASB Will Study Issues**

The committee of conference on **HB 547**, the bill dealing with valuation of telephone poles, failed last week to come to an agreement, so the bill is dead. That may seem like a major development, but it really is not. Read on.

For those who have lost track of the bill's adventures, **HB 547** is the bill that, as introduced in January, would have reinstated the property tax exemption for telephone poles and conduits. The House amended it to maintain the taxable status of poles and conduits, but to impose a statutory assessment formula for poles. The Senate didn't like that (fortunately), and amended the bill to require the Assessing Standards Board to study the issue.

The Senate also added a provision requiring the ASB to study the use of the Department of Revenue Administration's valuations of utility property in appeals of local assessments. That is the issue that one of our **policy bills, HB 192** addressed. At the same time, the Senate re-referred (essentially, killed) **HB 192** itself.

The ASB started on those projects without waiting for **HB 547** to get through the legislature. The board formed a subcommittee to study both issues, which held its first meeting two weeks ago. One of the subcommittee's first acts was to compile an information request about pole valuations in all of the state's municipalities. Each municipality should have received the request, sent from the Department of Revenue Administration, this week. We encourage municipalities to provide the information requested, but also encourage them to check with their legal counsel if they have any concerns.

### **Pole/Utility Valuation**- continued

Meanwhile, **HB 547** went to a committee of conference last week. To make a long story short, the two sides could not negotiate a compromise, so they agreed to let the bill die. The result is that the poles remain fully taxable and the ASB is not officially required to study either issue. However, it was made clear that the Senate will send a letter to the ASB asking it to study both issues and issue a report; and a representative of the ASB was present and said the ASB would comply with that request, as it has already begun its work. So the practical effect is that very little has changed—the ASB will continue with its study.

The ASB subcommittee has tentatively scheduled meetings for the following Thursdays during the summer and fall: **July 9 and 23, August 13 and 27, and September 10 and 24**. All meetings are at **9:30 a.m.** The July 9 and 23 meetings are scheduled to be held in **State House Room 103**, and we assume later meetings will be at the same location, but please check the House or Senate calendar or contact NHMA's Government Affairs staff to confirm the date, time, and place before making the trip to Concord.

### **Another Twist in Election Photograph Saga**

One of the casualties of the budget veto is the \$100,000 appropriation for the Secretary of State to buy photography equipment for polling places. This was required to comply with the amended version of RSA 659:13 that takes effect September 1, under which the moderator must take a photograph of any voter who votes by executing a challenged voter affidavit, rather than by showing a photo identification. The law requires the Secretary of State to provide the necessary photography equipment, along with instructions for its use.

Without that money in the budget, there is no authority for the Secretary of State to buy the equipment. Where, then, does that leave moderators after September 1?

We believe that if the state does not supply the equipment, the moderator is not required to take photographs. First of all, the municipality cannot be required to provide the equipment, because this would constitute an unfunded mandate that violates the New Hampshire Constitution. However, even apart from the constitutional issue, there appears to be no obligation. The statute states that the Secretary of State "shall provide to each town or city the photography equipment, supplies, and printing device that are necessary to enable it to comply with the photograph provisions." If the equipment is not provided to the municipality, then the state has not "enable[d] it to comply with the photograph provisions." In fact, it appears that the municipality is probably prohibited from using its own equipment, because the statute says the Secretary of State must provide the equipment.

The first municipalities to confront this issue will be Manchester and Nashua, which have mayoral primaries in September. After that, most or all of the 13 cities will have elections in November, then will come the presidential primary in January

## Election Photographs - continued

or February, then town elections. Unless and until the state provides photography equipment, we do not believe any local election officials must or should photograph any voters at the polls. Of course, if you have any concerns about this issue, we encourage you to consult your local legal counsel or the NHMA Legal Services staff.

## RGGI Bill Dies

**HB 208**, the bill that would have changed the method of distributing proceeds from the sale of carbon allowances under the regional greenhouse gas initiative (RGGI), died when a committee of conference could not bridge the very large gap between the House and Senate versions.

As we previously reported, the Senate version would have provided up to \$5 million for local government energy efficiency projects. This was dramatically different from the House version, which would have *eliminated* all money for those projects and instead rebated all of the proceeds to ratepayers.

Despite a compelling (in our opinion) presentation from the Senate conferees about the energy savings, the property tax savings, and the job creation that would result from the Senate plan, and despite two compromise proposals suggested by the Senate, the House members refused to budge. Thus, the bill died, leaving in place the existing law, under which municipal projects are eligible for up to \$2 million per year for energy efficiency projects.

## The Summer Session Begins!

What?! There's a *summer* session?! Yes, indeed. Although the major legislative activity for the year is over, there are a number of bills that have been retained, and other issues that have been sent to study committees. These committees will meet over the summer and fall, mostly in September and October.

Bills that have been retained (in House committees) or re-referred (in Senate committees) will stay in the committee for further review (usually by a subcommittee), and the committee must report on the bill by November. The full House or Senate will then take action on the committee's recommendation in January. Legislative study committees, generally consisting of a few senators and representatives, will not be considering a specific piece of legislation, but will work on an issue and determine whether there is a need for legislation.

Although we will not be publishing the *Legislative Bulletin* during the summer and fall, you can follow the activities of these committees in the House and Senate calendars (House calendar for bills retained in the House, Senate calendar for bills re-referred in the Senate, and both calendars for legislative study committees). All

## Summer Session - continued

meetings are open to the public. The meetings tend to be rather informal, so you may be permitted to speak, especially if you contact the committee chair in advance. If you have any questions, please do not hesitate to contact NHMA's Government Affairs staff.

Here are the issues of most interest to municipalities that are going to be studied:

### **Retained/Re-Referred Bills**

Accessory dwelling units. We have written several times about **SB 146**, which would require municipalities to allow accessory dwelling units (ADUs) in every residential district and would limit the restrictions that can be imposed on ADUs. The House Municipal and County Government Committee retained the bill.

Taxpayer standing. **CACR 5** would amend the New Hampshire Constitution to provide taxpayer standing to sue the state or a local government when there is a claim that the government has violated the law. This issue has bounced back and forth between the courts and the legislature over the last several years. The New Hampshire Supreme Court issued a ruling several years ago that effectively eliminated taxpayer standing, and in 2012 the legislature responded by amending the applicable statute to reinstate it. Last year, the court ruled that the amendment was inconsistent with the standing requirements contained in the New Hampshire Constitution and therefore was invalid. **CACR 5** would amend the constitution to eliminate that conflict. The Senate passed **CACR 5**, but the House Judiciary Committee retained it.

Non-public consideration of legal counsel correspondence. **HB 285, an NHMA policy bill**, would allow a public body to meet in non-public session to consider correspondence from legal counsel. The House passed the bill, but the Senate Judiciary Committee re-referred it. As we mentioned before, bills that are re-referred in the Senate almost never receive any serious study; we hope it will be different with **HB 285**.

### **Study Committees**

Funding of state aid environmental grants. **HB 511** creates a legislative committee to study state aid programs under RSA 486 (wastewater treatment facilities), 486-A (public water systems), and 149-M (landfill closure), "with emphasis on funding of these programs." Obviously, this is a huge issue for municipalities.

Use of flaggers or police officers for traffic control. This legislative committee, established in **SB 234**, will study "the use of law enforcement details and flaggers for traffic control as required by municipal authorities on municipally maintained roads" for utility-related projects. See [Legislative Bulletin #19](#) (page 3) for more information about the issue.

Adopting budgets in SB 2 towns. **SB 242** creates a legislative committee to study "methods of adopting a final and default budget in official ballot towns" and "methods of voting on the budget and budget amendments on the official ballot."

### Summer Session - continued

This arises out of concerns about budgets being amended at SB 2 deliberative sessions with only a small number of voters present, and that voters are presented with a single take-it-or-leave-it choice on the official ballot. As of this writing, the bill has not yet been signed by the Governor, but we expect that it will be.

Uber and taxi services. **SB 254**, if signed by the Governor, will create a legislative committee to study the adequacy of service provided by Uber and existing taxi services, the regulation of taxi services by municipalities, and whether additional regulations and oversight should be established by the state.

## Get Ready for Next Year!

It never ends, does it? Sorry, but we're just the messenger. You may take a short break if you like, but *the period for state representatives to file legislation for 2016 begins on September 2 and ends on September 18.* For *senators*, the period is *October 13 to November 3.* If you have an issue that you want to see addressed next year, we suggest talking to your legislators as soon as possible.

## HOUSE CALENDAR

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

#### THURSDAY, JULY 9

#### **ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Room 103, SH**

9:30 a.m. ASB Subcommittee meeting on HB 547.

Please be sure to check NHMA's [Calendar of Events](#) for upcoming Fall 2015 events and workshops.

- NHMA Webinars [Monthly Noon—1:00 p.m.]
- Budget & Finance Workshops [September 15 and 24, 2015]
- Municipal Law Lectures [Wednesday evenings, Sep 16—Oct 28]
- Regional Right-to-Know Workshops [Berlin/Somersworth, TBD]
- NHMA's Annual Conference [November 19-20, 2015]

Please do not hesitate to contact us 1-800-852-3358, x3340 for more information.