

# LEGISLATIVE BULLETIN

## Committee to Vote on RTK Bill

Bulletin #6, 2016 Session  
January 29, 2016

The House Judiciary Committee is scheduled to take action next **Tuesday, February 2**, on [HB 1611](#), NHMA's **policy bill** that would allow public bodies and agencies to recover a small portion of their costs for staff time in responding to Right-to-Know Law requests. If you have not yet contacted [the committee](#) to express support for this bill, please do so as soon as possible, especially if you have a representative on the committee. Remind them that the same committee recommended a similar bill last year by a 14-4 vote, and this year's bill is significantly more modest. The bill is a small but important step in enabling municipalities to deal with excessive and occasionally frivolous Right-to-Know Law requests, while still allowing citizens to review records without charge in most cases.

## On the Water Front

Money for drinking water and wastewater projects continues to be a topic of legislative discussion.

This week the Senate Energy and Natural Resources Committee heard testimony on [SB 380](#), which establishes a drinking water and groundwater trust fund using proceeds (expected to be in the \$300 million range) from the state's lawsuit against Exxon Mobil Corporation relating to MTBE contamination. The purpose of the trust fund is to address widespread and persistent contamination of the state's drinking water and groundwater through on-site treatment, expansion of drinking water infrastructure, and other methods. The bill provides for cost-sharing grants to municipalities and water utilities regulated by the Public Utilities Commission, and sets up an 11-person advisory commission, which includes a municipal official, to consult with and advise the Department of Environmental Services in the administration and management of the trust fund. The bill (with a few minor amendments) goes to the full Senate next week with a unanimous Ought to Pass recommendation from the committee. This implements **NHMA policy**, and we encourage the Senate to pass it.

On **Tuesday, February 2, at 11:30 a.m., in LOB Room 212**, the House Finance Committee, Division I, will hold a work session on [HB 1428](#), an

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**NHMA policy bill** dealing with funding for twenty specific water and wastewater projects. These projects are the “tail” of the delayed and deferred list of projects that received local financing approval prior to December 2008, the effective date of the state aid grant moratorium, but were not funded in the current biennial state budget. Berlin, Conway, Durham, Exeter, Hanover, Lebanon, Littleton, Nashua, Portsmouth and Rochester all have a stake in this bill and need to ensure that both the [division members](#) and their own representatives know how important this funding is to their community.

## Municipal Liability Bills Present Serious Risk

They have not been scheduled for hearings yet, but there are two bills coming soon that could significantly increase municipal liability for tort actions. Because of the very serious implications of these bills, we are not waiting to sound the alarm. Municipal officials should begin contacting their legislators now and encouraging them to defeat this legislation.

**HB 1688** would reverse the general rule governing municipal liability for negligence actions. Current law (RSA 507-B:2) states that a municipality “may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or by fault attributable to it, arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises.” Another section of the same statute states, “No governmental unit shall be held liable in any action to recover for bodily injury, personal injury or property damage *except as provided by this chapter* or as is provided or may be provided by other statute.”

In several recent decisions, the New Hampshire Supreme Court has ruled that these sections mean exactly what they say: municipalities are not liable for damages unless the claim arises out of the ownership, occupation, maintenance, or operation of motor vehicles or premises, or unless another statute provides for liability.

**HB 1688** changes the language of RSA 507-B:2 to state that municipalities are liable for injuries “*whether or not* arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises.” In other words, they are liable for everything. This will result in an explosion of litigation against municipalities and a huge increase in insurance costs.

RSA 507-B was enacted in 1975, after the supreme court abolished the common-law doctrine of municipal immunity, which had insulated municipalities and school districts from liability for most tort claims. The intent of the statute was to allow liability in those situations where a government entity is acting similar to a typical business

## THE EDGE

### Town primaries?

A bill heard recently in the House would allow a town to “establish and use a system of approval voting in the town’s primary election.” The bill caught our attention not so much because of the idea of “approval voting”—although that is an interesting concept—but because it would apply only to town primary elections.

Towns, of course, do not have primary elections—so the bill, if passed, would have no effect. Towns have one election at which they elect all town officers. The election is held in March in most towns, but some hold it in May, and a few in April.

Could a town have a primary election if it wanted? Well, not exactly. There is no provision in state law for town primaries. However, if a town elects its officers by official ballot (they’re not required to, but all of them do—a subject for another day), it has a choice, under RSA 669:12 and :13, of using either a partisan or a non-partisan ballot system. To our knowledge, all of the state’s 221 towns (we’ll get to the 13 cities next time) use the non-partisan ballot system.

*Continued on next page*

corporation—*i.e.*, the ownership and use of real estate and motor vehicles—but to shield it from liability for its purely governmental actions, such as police and fire protection, public education, road maintenance, water supply, sewage disposal, solid waste disposal, and many others. While there are private organizations that perform some of these functions, there is none that performs all of them. The doctrine of limited municipal immunity acknowledges the vast array of services that local governments provide, and recognizes that if they were held liable for every action that could lead to some injury, they would be unable to function.

That is the potential result of **HB 1688**. One of the court decisions the bill would overrule involved a high school basketball player who was injured during practice and sued the school and the coach. Another involved a person who was injured in a two-car automobile accident and sued the local police department for having failed to arrest the other driver during a previous confrontation. In both cases the supreme court ruled that the claims were properly dismissed under RSA 507-B. If **HB 1688** is enacted, such claims would be allowed.

If school districts have to worry about liability for every injury that occurs on the field or the court, and if towns have to worry about liability every time the police *fail* to arrest someone, what option will there be other than to end school athletic programs and shut down local police departments?

A companion bill, **HB 1687**, amends RSA 507-B:11, which currently provides immunity to municipalities and school districts for injuries occurring at a skateboarding or rollerblading park. **HB 1687** repeals that immunity and, further, makes municipalities and school districts liable for injuries occurring on any playground structure they own. That, of course, could well mean the end for school and municipal playgrounds. In addition, it creates an odd inconsistency: under another statute, RSA 212:34, a landowner who allows the use of his land for “outdoor recreational activity” without charge is immune from liability for any injuries that result. If **HB 1687** passes, the only exception to that law will be municipal and school playgrounds. Does that make sense?

These bills will be heard by the [House Judiciary Committee](#) in the near future, and we will let you know as soon as they are scheduled. In the meantime, ***please contact committee members and your own legislators now and ask them to do everything possible to defeat these bills.***

## THE EDGE (Continued)

If a town did choose to use a partisan ballot system, each party would choose its nominees at a *caucus* under RSA 669:37, not a primary election. The caucus would be run by the party’s political committee, not by the town. The statute contains some provisions that govern the party caucuses, but many matters—where and when the caucus is held, hours of voting, form of ballot—are left to the political committee.

So, *should* towns consider adopting a partisan ballot system? You tell us. Which do you think works better—the non-partisan system that operates in all New Hampshire towns (and cities), or the partisan system that is responsible for the way the U.S. Congress “functions”?



## Default Budgets

On Tuesday the Municipal and County Government Committee recommended Inexpedient to Legislate by a vote of 12-4 on **HB 1221** dealing with one-time expenditure adjustments in default budgets. After lengthy discussion, even one of the co-sponsors admitted the bill was too confusing and voted against it. Our major concern, as expressed by several committee members, is that a one-size-fits-all approach is very difficult to legislate and that variations on matters such as the definition of one-time expenditures for default budgets purposes should be addressed locally. Hence, the committee voted 16-0 to recommend Ought to Pass on another bill, **HB 1375**, which will do just that—allow official ballot (SB 2) towns and school districts to convene a charter commission for the sole purpose of modifying their *own* budget procedures without imposing similar changes on every other SB 2 community.

Please urge your representatives to support the committee recommendations of **Inexpedient to Legislate on HB 1221** and **Ought to Pass on HB 1375**.

## Voting on Variances

A bill dealing with how local zoning boards of adjustment vote on variance applications has a hearing next week in the House Municipal and County Government Committee.

As those familiar with land use regulation know, an applicant for a variance must establish that (1) the variance would not be contrary to the public interest; (2) granting the variance would observe the spirit of the zoning ordinance; (3) granting the variance would do “substantial justice”; (4) the variance would not diminish surrounding property values; and (5) literal enforcement of the ordinance would result in unnecessary hardship. The applicant must satisfy all five criteria.

Different ZBAs follow different procedures in considering these criteria. Some simply take a single vote on whether the five criteria are satisfied. Others vote separately on each criterion, and grant the variance if each one receives a majority vote, regardless of the breakdown of those majority votes. Others vote separately on each criterion and require that the *same* majority vote affirmatively on all five criteria.

**HB 1203** would codify this last approach as the required procedure. It requires that the board vote on each criterion separately, and allows the granting of a variance “only if 3 members of those present vote in the affirmative on all 5 criteria.”

NHMA does not have a position on the bill. We understand the rationale: when the board votes separately on each criterion, it is possible that each criterion will receive a majority affirmative vote, even though no member votes affirmatively on all five criteria—and any member who has voted “no” on even one criterion should be registered as a vote against the variance. Thus, it is possible to grant a variance even though no member believes all of the criteria are satisfied. **HB 1203** avoids that possibility. The argument on the other side is that if a majority have voted “yes” on each criterion, then each one should be considered satisfied, and the variance should be granted.

*(Variances — Continued from Page 4)*

Again, NHMA has no position—both sides have some merit—but we know that many people have strong opinions, and this will be an interesting discussion. If you want your voice to be heard, contact [committee members](#) or attend the hearing, which is scheduled for **Tuesday, February 2, at 10:30 a.m., in LOB Room 301.**

## **Transportation Fee Increase Defeated**

On Wednesday the House voted to kill [HB 1119](#), which would have increased from \$5 to \$10 the maximum optional fee charged by municipalities for transportation improvements. As we reported in last week's [Legislative Bulletin](#), the bill came out of committee with a very close vote on an Ought to Pass recommendation, so we expected some debate on the House floor. Instead, the bill was voted on very quickly, with no commentary by any House member in either support or opposition. It went down to defeat first on a voice vote against the committee recommendation, and then by a division vote of 165-127 on a motion of Inexpedient to Legislate. We were surprised that a roll call vote was not requested instead of just a division vote—but that may have been due to confusion, since the House electronic voting system was not functioning at the time, and the votes were being called so fast. Unfortunately, this means we do not have a record of the representatives who voted for and against **HB 1119**, a quintessential piece of “local control” legislation.

To view the weekly Legislative Bulletin from the NH School Boards Association, please click [here](#).

## **HOUSE CALENDAR**

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

### **TUESDAY, FEBRUARY 2**

#### **CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB**

2:00 p.m. **HB 1657-FN**, prohibiting firearms in certain public places.

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

12:45 p.m. **HCACR 23**, relating to the warning of biennial meetings. Providing that the selectmen are not required to be present to receive the votes.

#### **EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB**

10:15 a.m. **HB 1282**, relative to the state building code.

#### **LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB**

10:00 a.m. **HB 1108**, relative to inquiries by employers into the criminal history of applicants for employment.

11:00 a.m. **HB 1535-FN**, relative to liability for payment of criminal record background checks and drug tests.

2:00 p.m. **HB 1633-FN**, relative to the use of the Family and Medical Leave Act time as it applies to workers' compensation.

**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

- 10:00 a.m. **HB 1112**, relative to subdivision of land.  
10:15 a.m. **HB 1202**, relative to applications submitted to a planning board.  
10:30 a.m. **HB 1203**, relative to voting on variances.  
10:45 a.m. **HB 1244-L**, relative to municipal cemeteries.  
11:00 a.m. **HB 1259**, relative to liability for third party review of site plans.  
11:15 a.m. **HB 1390**, relative to municipal authority to restrict where registered sex offenders live.

**SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB**

- 10:00 a.m. Continued public hearing on **HB 1502**, establishing a committee to study odor emissions from landfills.  
1:00 p.m. **HB 1374**, relative to rebates to ratepayers from the renewable energy fund.

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

- 1:00 p.m. **HB 586-FN-L**, relative to registration of automobile utility trailers.

**WEDNESDAY, FEBRUARY 3**

**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

- 9:30 a.m. **HB 1262**, relative to the application of zoning ordinances to home-based businesses.  
9:50 a.m. **HB 1263**, authorizing municipalities to use form-based codes as an alternative zoning regulation.  
10:30 a.m. **HB 1439-L**, requiring regional planning commissions to file an annual report.  
10:50 a.m. **HB 1533**, relative to noise level limitations for permanent machinery.  
11:10 a.m. **HB 1500**, relative to default budgets for the purpose of setting tax rates.

**THURSDAY, FEBRUARY 4**

**CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB**

- 9:30 a.m. **HB 1353**, relative to the notice required of a law enforcement officer prior to making an audio recording of a routine stop.  
10:30 a.m. **HB 1400**, defining suitable person for the purpose of obtaining a license to carry a firearm and extending the term of the license.

**SENATE CALENDAR**

**TUESDAY, FEBRUARY 2**

**COMMERCE, Room 100, SH**

- 1:00 p.m. **SB 488-FN-L**, requiring reasonable accommodations for pregnant workers.

**FINANCE, Room 103, SH**

- 1:30 p.m. **CACR 27**, relating to the operating budget. Providing that the state shall not spend more in any year than it receives in revenue.

**TRANSPORTATION, Room 103, LOB**

- 1:40 p.m. **SB 433**, relative to exclusions from seasonal highway weight limit regulation.

**WAYS AND MEANS, Room 103, SH**

9:30 a.m. **SB 445-FN-L**, suspending the registration fee for the sale of municipal bonds in New Hampshire for 2 years. **(the previous hearing for SB 445-FN -L was recessed on January 19th)**

**WEDNESDAY, FEBRUARY 3**

**ENERGY AND NATURAL RESOURCES, Room 100, SH**

9:00 a.m. **SB 374**, requiring the office of energy and planning to update coastal flooding trends.  
9:15 a.m. **SB 375**, establishing the coastal marine natural resources and environment commission.  
9:45 a.m. **SB 461-FN**, relative to expenditures of the Winnepesaukee River Basin control program funds.

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

9:45 a.m. **SB 446**, relative to requirements of the state building code.  
10:00 a.m. **SB 334**, establishing a commission to study the planning functions of the office of energy and planning.

**PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB**

9:30 a.m. **SB 509-FN**, relative to voter registration forms and relative to voter identity verification. **(the previous hearing for SB 509-FN was recessed on January 27th)**

**New House Bill**

HB 2016 adopts the state's 10-year transportation improvement plan for 2016-2026. Rep. Chandler of Bartlett; **PW**.

**House Floor Action**

Wednesday, January 27, 2016

**HB 1119-LOCAL**, relative to the maximum optional fee for transportation improvements charged by municipalities when collecting motor vehicle registration fees. **Inexpedient to Legislate.**

**HB 1427-FN-A-LOCAL**, suspending the water and air pollution control facility property tax exemption and appropriating certain revenues for water pollution control grants to municipalities. **Inexpedient to Legislate.**

**HB 1438-FN-LOCAL**, relative to the registration of antique trailers. **Passed.**

**HB 1505**, allowing municipalities to exempt water and sewer pollution control facilities owned by educational institutions from the local property tax. **Inexpedient to Legislate.**

**HB 1562-FN-LOCAL**, allowing counties to establish heroin use prevention and treatment programs. **Inexpedient to Legislate.**

## Upcoming Events for NHMA Members

### NHMA Workshop

February 20, 2016 Town & School Moderators (Traditional Meeting) [click [here](#) to register]

For more information please access our website: [www.nhmunicipal.org](http://www.nhmunicipal.org) and scroll down on the left to CALENDAR OF EVENTS, *View the Full Calendar*.

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### NHMA Webinar

#### **How to Ensure a “Clean” Vote in Your Municipality**

Event Date: Wednesday, February 3, 2016

Time: 12:00 PM - 1:00 PM

Contact Phone: 603.224.7447

As election day nears, electioneering and improper influences becomes a prominent issue that municipalities must understand and address. Spend an hour with Legal Services Counsel Stephen Buckley and experienced moderator Lynne Christensen to learn about voter guides, political advertising near polling stations, political signs, advocacy and conduct of public officials, electioneering by municipal employees, and local electioneering rules under RSA 31:41-c.

This webinar will benefit local election officials such as moderators, town and city clerks, supervisors of the check-lists and any other local officials working the polls on election day.

**[REGISTER HERE!](#)**

***Registration deadline is noontime, February 1, 2016.***