

LEGISLATIVE BULLETIN

Legislature to Take a Break

The legislature will be in session next week, but will take its annual break the following week (February 22-26). Depending on how much there is to report, we may or may not publish a *Legislative Bulletin* next Friday. If you don't receive a *Bulletin*, it probably means we decided not to publish one. If you are looking for something to read, you can always go to our [web-site](#) and re-read earlier issues.

Hearings on Municipal Liability Bills Next Week

Two bills that would dramatically change the law relative to municipal tort liability have been scheduled for hearings next **Wednesday, February 17, at 9:00 a.m. and 10:00 a.m. in LOB Room 208** before the House Judiciary Committee. These are two of the most ominous bills the legislature will hear all year, and it is essential that municipal officials register their concerns with legislators.

We wrote about these bills two weeks ago, in [Legislative Bulletin #6](#) (page 3, "Municipal Liability Bills Present Serious Risk"). As we indicated then, **HB 1688** would eliminate the partial immunity that municipalities enjoy for tort claims, and make them liable for all negligence claims, regardless of how they arise. It would also eliminate immunity for municipal **employees and officials**.

Examples of claims that are barred under current law, but would be permitted under **HB 1688**, include the following:

- A high school athlete is injured during practice and sues the coach and the school (or a participant in a town sports program is injured and sues the coach and the town);
- A local police officer stops a driver because of what seems like erratic driving. After interviewing the driver, the officer concludes he is fit to drive and lets him go. The driver is subsequently involved in an accident that injures another person, and that person sues the police officer and the town.

Bulletin #8, 2016 Session
February 12, 2016

INSIDE THIS ISSUE

Pole Valuation	2
The Edge	2
Medicaid Expansion	3
Costly Retirement Bill	4
Flaggers and Police Details	4
Perambulation	5
Cash Balance Plan	5
Road Usage Fee	5
House/Senate Calendars	6
House/Senate Floor Action	8
NHMA Workshops	9

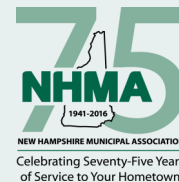
GOVERNMENT AFFAIRS CONTACT INFORMATION

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
governmentaffairs@nhmunicipal.org
Website: www.nhmunicipal.org

- A police officer is attempting to arrest a suspect, and the suspect becomes violent. To subdue the suspect, the officer shoots him twice with his Taser. The suspect sues the officer and the town, claiming that a single shot was all that was necessary.

In short, any perceived mistake by a municipal employee or official could lead to a lawsuit. As we wrote before, this would make it extremely difficult for municipalities to function—not to mention significantly increasing costs for insurance and legal expense.

The argument for expanding municipal liability is that cities and towns should be treated the same as business corporations. But they are nothing like business corporations. What corporation is expected to provide police and fire protection, maintain roads, dispose of trash, provide water and sewer service, operate a library, provide recreation programs, register cars, provide assistance to the poor, and bury the dead? And which of these services will municipalities decide to terminate if they face potential liability for every mistake they make?

[HB 1687](#) is arguably the lesser of the two bills, but is certainly of concern to schools and any municipality with a playground. It would repeal municipal immunity for injuries resulting from use of a skateboard or rollerblade park, and impose liability for injuries occurring on a playground structure maintained by a municipality or school district.

Please review our article in [Bulletin #6](#) for more details about these bills. The hearing on **HB 1687** is scheduled for **9:00 a.m. on Wednesday**, and the hearing on **HB 1688** is scheduled for **10:00 a.m.** We are not looking to pack the hearing room, although anyone who is interested is certainly encouraged to attend. What we *are* asking members to do is to contact [committee members](#), especially if one of them is your representative, and urge them to vote against both bills. Please let us know if you have questions, and let us know about any conversations with committee members or your own representatives.

Hearing on Pole Valuation Bill

The House Ways & Means Committee will hear testimony next Tuesday on **HB 1198**, which would establish a formula for valuing telecommunications poles and conduits for property tax purposes. As we explained [last week](#), the Assessing Standards Board has been working on a proposed formula, which is supposed to be incorporated in **HB 1198**. As of this writing, however, it is unclear whether the board will agree on final language, and, if it does, whether the sponsor of the bill will agree to the board's language. The board is meeting, with this item on its agenda, as this *Bulletin* goes to press.

THE EDGE

Of towns and other things

On Tuesday of this week, presidential primary day, an article in the *New York Times* began as follows:

The results are in.

Or, at least, the first results from the tiny New Hampshire towns—Dixville Notch, Millsfield and Hart's Location— that practice the time-honored tradition of voting at midnight

Cringe. Of the three "towns" named, only one—Hart's Location—is actually a town. The others are merely places with names attached to them. Towns are created only when they are incorporated by the legislature.

We probably should forgive the big-city folks for not knowing that. But things soon went from bad to worse:

The minuscule township of Dixville Notch was the first in New Hampshire to turn midnight voting into a spectacle

The minuscule *what*?

Closer to home, the *Union Leader* scored a little better, stating that "Dixville was one of three Granite State locations voting at midnight."

Continued on next page

The subcommittee studying the issue did take a positive step this week, recommending that the formula use a 40-year life for depreciation purposes, with a 20 percent floor. That is still significantly lower than it should be based on actual experience—poles typically last 60 to 100 years—but better than the 30-year life the subcommittee was considering a week ago.

There are still too many uncertainties for us to know whether the amended version of **HB 1198** will be acceptable. All we can say at this point is that the bill will be heard on **Tuesday, February 16, at 10:00 a.m., in LOB Room 202**. We encourage interested local officials, especially assessors, to attend the hearing and to follow this bill carefully.

Medicaid Expansion Hearing Wednesday

The reauthorization of New Hampshire’s Medicaid expansion program, the NH Health Protection Program (NHHPP) took a step forward this week with the passage of **HB 1696** by the full House. The bill has been quickly scheduled for a hearing before its second committee, the House Finance Committee, on **Wednesday, February 17 at 10:00 a.m. in LOB Room 210-211**. While much of the discussion at the first hearing before the Health, Human Services and Elderly Affairs Committee was about the costs and funding of the NHHPP, the Finance Committee will no doubt examine those issues anew with elevated scrutiny.

Municipal officials know that the NHHPP is saving money through reduced local welfare expenditures for prescription drugs. They can also point to examples where participants in the NHHPP have been able to return to work after treating their health issues—treatment they were able to access due to the NHHPP. Once back to work, those NHHPP participants no longer needed local welfare assistance. It only makes sound fiscal sense—local welfare is funded 100% with property tax dollars; the NHHPP has been funded 100% with federal dollars, which will drop to no less than 90% in the future. The reauthorization is for a two-year period only, so the finances will get another look in the near future. In the meantime, over 48,000 people have benefited from the expanded health care coverage, and more are expected to enroll with the reauthorization.

For municipal officials, another important part of the program is the addition of treatment for substance abuse. The present lack of treatment options in New Hampshire has been widely discussed, and first responders have supported programs to divert addiction-related cases to treatment, rather than the court system and jail. The NHHPP will help to fill that considerable void.

Please contact members of the [House Finance Committee](#) and urge them to support the reauthorization of the NHHPP. Please contact NHMA’s government affairs staff if you have any questions.

THE EDGE (Continued)

“Locations.” Fine. That’s a little ambiguous—perhaps intentionally so—but perfectly accurate. The article continued by correctly identifying Hart’s Location as “a town with a population of 43.” But that was followed by an unfortunate reference to “Millsfield, a small township just south of Dixville.”

Et tu, UL?

Let’s be clear about this. New Hampshire has 234 incorporated municipalities—221 towns and 13 cities. Any area that is outside one of these municipalities is an *unincorporated place*. There is nothing else. In particular, *there is nothing called a township*.

Hart’s Location is a town (and the smallest one, by population, in New Hampshire). Dixville and Millsfield are unincorporated places. So are Bean’s Purchase, Success, Wentworth’s Location, Second College Grant, and about 20 other places.

All of the unincorporated places in New Hampshire are in the White Mountains or farther north. South of the mountains, every square inch of land is located in a city or town.

Pennsylvania and New Jersey have townships, but the word is meaningless in New Hampshire. If “township” is in your vocabulary, we suggest deleting it, or at least using it only when traveling west of the Hudson River.



Retirement Bill Proposes Costly Benefits

The House Special Committee on Public Employee Pension Plans held a hearing on January 22, and will hold a work session on **Friday, February 19, at 10:00 a.m. in LOB Room 202**, on [HB 1449](#), which proposes to provide Temporary Supplemental Allowances (TSA) to retirees of the New Hampshire Retirement System (NHRS). The bill proposes to fund these additional benefits from a one-time transfer of investment earnings of 2.5 percent in the first fiscal year in which NHRS investment returns exceed 12.5 percent. According to the fiscal note, this transfer will increase the unfunded actuarial accrued liability (UAAL) by an estimated \$144 million, which must then be paid by NHRS employers—and in the case of municipalities, schools and counties, ultimately by property taxpayers.

According to the June 30, 2015, draft report from the NHRS actuaries, the UAAL is over \$4.2 billion, and the funding status is only 63.4%. Under a statutory 30-year amortization provision, employers will continue to pay off this liability for the next 23 years, with the goal of reaching 100% funding by June 30, 2039. In a [joint letter to the committee](#), NHMA and the New Hampshire School Boards Association stated that we simply cannot support any legislation providing additional benefits that increases the UAAL, lowers the funding status, and raises employer contribution rates.

The mechanism of funding additional benefits, such as TSA or cost-of-living adjustments (COLA), from investment earnings is commonly referred to as “gainsharing.” This was a statutorily authorized practice of the NHRS from 1983 to 2007, and unfortunately does not provide “free money.” The 2007 [HB 876 Report of the Commission to Study the Long Term Viability of the NH Retirement System](#) provided an extensive review of the political history and impact of gainsharing on the NHRS, stating that “the deal for free COLAs ultimately cost the taxpayers billions of dollars.” (Commission Report, page 64.) As a result of the findings and recommendations of that commission, the gainsharing provision was significantly modified in 2007, and ultimately repealed in 2012. While **HB 1449** contemplates re-instating just a “one-time” gainsharing provision, we believe that diverting *any* investment earnings to fund additional benefits is fiscally irresponsible when there is an unfunded liability of over \$4.2 billion and a funding status under 64%.

Finally, proposals to fund **additional** retirement benefits beyond the promised pension benefit through any means that increases costs to local government employers raise serious concerns regarding an unfunded mandate under Part I, Article 28-a of the New Hampshire Constitution.

Please let [committee members](#) know that funding additional retirement benefits through increased employer retirement contribution costs is unacceptable, and urge a recommendation of Inexpedient to Legislate on **HB 1449**.

Flaggers and Police Details

The Senate Energy and Natural Resources Committee has scheduled a hearing next week on [SB 365](#), which deals with municipal use of police officers or civilian flaggers for traffic control related to utility projects. The bill came from a study committee last fall, in which NHMA participated, responding to concerns from utility companies about being required to pay for police details on projects where they believed flaggers could be used.

(Flaggers — Continued from Page 4)

Under the bill, municipalities would be able to adopt their own ordinances or regulations for traffic control, but when a utility or other private entity is required to pay, the use of police officers would have to be based on reasonable safety concerns. Requiring that police officers be used in all circumstances, or requiring them for private projects but not for comparable municipal projects, would not be allowed. In the absence of a policy that complies with these rules, the state Department of Transportation's guidelines for the use of flaggers and police officers would apply.

The bill diminishes local control slightly, and police groups have expressed concerns about the bill, but we believe it strikes a reasonable balance between local control and the legitimate concerns of companies that are required to pay for these details. We have spoken to a number of local officials about the issue, and all have supported this approach. However, if you have concerns, please let us know, or attend the hearing or contact [committee members](#). The hearing is scheduled for **Wednesday, February 17, at 9:45 a.m., in State House Room 100.**

Perambulation of Town Boundaries

The issue of mandatory perambulation (not “pre-ambulation”) of town boundaries is back! The House Municipal and County Government Committee will hear testimony next Tuesday on [HB 1460](#), an **NHMA policy bill** that would make perambulation permissive rather than mandatory. The existing requirement—that the selectmen perambulate each town boundary at least every seven years—is quaint but pointless. How many states do you think have a perambulation requirement?

Any selectmen who would like to avoid this unnecessary septennial exercise with a clear conscience are encouraged to attend the hearing, scheduled for **Tuesday, February 16, at 10:10 a.m., in LOB Room 301.**

Cash Balance Pension Plan Tabled

On Thursday the House voted 188-127 to table [HB 1673](#), which proposes to establish a cash balance pension plan (as opposed to the current defined benefit pension plan) effective July 1, 2016 for all newly hired state employees. Switching to the new plan for local government employees would be optional by vote of the local governing body. We had expected to see a floor amendment changing the effective date to a later date, and we suspect that the absence of that amendment may have something to do with the tabling action.

Road Usage Fee Sent to Interim Study

By a voice vote on Wednesday, the House concurred with the Public Works and Highway Committee's unanimous recommendation to send [HB 1602](#), dealing with a road usage fee, to interim study. While many committee members agreed that alternative fuel vehicle owners should pay their fair share for using New Hampshire roads and bridges, some were concerned that the bill evolved into a means of raising extra revenue for the NH Department of Transportation by charging an additional fee on fuel-efficient gas-powered vehicles.

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 16

JUDICIARY, Room 208, LOB

- 10:30 a.m. **HB 1494**, relative to the expectation of privacy in personal information.
11:15 a.m. **HB 1496**, relative to the expectation of privacy in personal materials.
1:00 p.m. **CACR 22**, relating to the right to privacy. Providing that an individual's right to live free from governmental interference is fundamental and shall not be restricted unless the government demonstrates a compelling state interest.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 9:30 a.m. **HB 1407**, establishing a property tax credit for persons providing certain home health care services for a family member.
9:50 a.m. **HB 1455**, relative to membership of a municipal budget committee.
10:10 a.m. **HB 1460**, relative to perambulation of town boundaries. **NHMA Policy**.
10:30 a.m. **HB 1504-FN-L**, relative to the execution of a real estate tax lien on a primary residence.
10:50 a.m. **HB 1508**, allowing public libraries to run certain privacy software.
11:10 a.m. **HB 1559-FN**, relative to property taxes paid by education facilities leasing property.

WAYS AND MEANS, Room 202, LOB

- 10:00 a.m. **HB 1198-FN-L**, relative to the valuation of poles and conduits owned by telephone utilities.
11:00 a.m. **HB 1655-FN**, (New Title) relative to the municipal registration fee for an agricultural/industrial utility vehicle used exclusively for farming or agriculture.

WEDNESDAY, FEBRUARY 17

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

- 10:00 a.m. **HB 1697-FN**, relative to the operation and insurance of transportation network companies.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 9:00 a.m. **HB 1153**, prohibiting a political subdivision from adopting residency restrictions on sex offenders.

FINANCE, Rooms 210-211, LOB

- 10:00 a.m. **HB 1696-FN**, requesting a modification of the New Hampshire health protection program.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 205, LOB

- 11:00 a.m. **HB 1690-FN**, extending the New Hampshire health protection program.

JUDICIARY, Room 208, LOB

- 9:00 a.m. **HB 1687-L**, relative to governmental liability for personal injury on playground structures.
10:00 a.m. **HB 1688-FN-L**, relative to governmental liability for negligence claims.
11:00 a.m. **HB 1109**, relative to notice of offer for property in eminent domain cases and making the condemning entity liable for reasonable attorney's fees in certain cases.
1:00 p.m. **HB 1555-FN**, relative to the manner in which New Hampshire takes possession of land.

THURSDAY, FEBRUARY 18

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 10:00 a.m. **HB 1549-FN**, requiring the department of safety to establish a database cataloging certain law enforcement activities.
- 2:00 p.m. **HB 1603-FN**, requiring the registration of drug dealers.

JUDICIARY, Room 208, LOB

- 9:00 a.m. **HB 1660-FN-L**, relative to eminent domain for gas pipelines and relative to assessment of the land use change tax for eminent domain takings for energy infrastructure.

LEGISLATIVE ADMINISTRATION, Room 303, LOB

- 9:00 a.m. **CACR 14**, relating to government of right. Providing that the people of New Hampshire have the right of local community self government.

FRIDAY, FEBRUARY 19

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 11:00 a.m. **HB 1287**, repealing a provision of the harassment statute.

SPECIAL COMMITTEE ON PUBLIC EMPLOYEE PENSION PLANS, Room 202, LOB

- 10:00 a.m. Work session on **HB 1449-FN**, relative to additional temporary supplemental allowances for retired members of the retirement system; **HB 1489**, establishing a committee to study the rates of employer contributions in the retirement system.

SENATE CALENDAR

TUESDAY, FEBRUARY 16

TRANSPORTATION, Room 103, LOB

- 1:25 p.m. **SB 550-FN**, relative to the maximum gross weight for dump trailers.
- 1:40 p.m. **SB 493-FN-A**, establishing a low-digit vanity number plate fee and dedicating the revenues collected to bridge aid for municipal bridges.

WEDNESDAY, FEBRUARY 17

ENERGY AND NATURAL RESOURCES, Room 100, SH

- 9:15 a.m. **SB 452-FN**, requiring certain state agencies to conduct an audit of laws governing coastal regions to enable authorities to take appropriate actions.
- 9:45 a.m. **SB 365**, relative to traffic control measures.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

- 9:00 a.m. **SB 353**, relative to names on ballots.
- 9:15 a.m. **SB 348**, allowing municipalities to adopt a property tax exemption for certain disabled veterans.
- 10:00 a.m. **SB 410**, relative to an optional ban on plastic bags.

THURSDAY, FEBRUARY 18

HEALTH AND HUMAN SERVICES, Room 100, SH

- 2:40 p.m. **SB 487**, relative to missing vulnerable adults.
- 3:40 p.m. **SB 531-FN**, extending the New Hampshire health protection act.

HOUSE FLOOR ACTION

Wednesday, February 10, 2016

Thursday, February 11, 2016

HB 1292, relative to the use of abandoned agricultural property. **Passed; referred to M&CG.**

HB 1298, relative to damage to private property. **Passed with Amendment; referred to JUD-H.**

HB 1352-FN, relative to the penalty for retirement system employers' noncompliance with reporting requirements for retirees. **Passed with Amendment.**

HB 1568-FN-A, relative to prepaid road tolls for certain alternative energy vehicles. **Passed with Amendment; referred to W&M-H.**

HB 1593-FN-LOCAL, restricting fees for obtaining copies of public records and requiring certain information on public official and legislative financial disclosure forms. **Inexpedient to Legislate.**

HB 1602-FN-A-LOCAL, establishing a road usage fee and making an appropriation therefor. **Referred to Interim Study.**

HB 1611-FN-LOCAL, allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law. **NHMA Policy. Inexpedient to Legislate.**

HB 1630-FN-LOCAL, relative to calculating the base cost of an adequate education. **Passed with Amendment; referred to F-H.**

HB 1641-FN-LOCAL, relative to requiring prevailing wages on state-funded public works projects. **Inexpedient to Legislate.**

HB 1647-FN, repealing laws regulating hawkers and peddlers and itinerant vendors. **Passed.**

HB 1668-FN, establishing a registry for persons convicted of heroin-related offenses and requiring registration of heroin offenders. **Inexpedient to Legislate.**

HB 1673-FN-LOCAL, establishing a cash balance plan within the state retirement system. **Tabled.**

HB 1675-FN-A, relative to the legalization and taxation of marijuana. **Inexpedient to Legislate.**

HB 1693-FN-LOCAL, abolishing fluoridation in water. **Inexpedient to Legislate.**

HB 1694-FN-A-LOCAL, relative to the legalization and regulation of marijuana. **Inexpedient to Legislate.**

HB 1696-FN, requesting a modification of the New Hampshire health protection program. **Passed with Amendment**

HB 1699-FN-A-LOCAL, establishing a licensed alcohol and drug counselor in the bureau of emergency medical services to develop a training program for fire and emergency medical services personnel and making an appropriation therefor. **Passed with Amendment; referred to F-H.**

SENATE FLOOR ACTION

Thursday, February 11, 2016

SB 328-L, (New Title) relative to school districts and school administrative units exercising joint powers with other public agencies. relative to school districts exercising joint powers with other public agencies. **Passed with Amendment.**

SB 374, (New Title) requiring the department of environmental services to update coastal flooding trends. **Passed with Amendment; referred to F-S.**

SB 375, establishing the coastal marine natural resources and environment commission. **Passed with Amendment.**

SB 494-FN-A, (New Title) limiting an exemption from the road toll. **Passed with Amendment; referred to F-S.**

SB 511-FN-A, establishing a refund of a portion of state education property taxes for child and dependent care expenses. **Referred to Interim Study.**



NHMA office will be closed Monday, February 15, 2016 in observation of President's Day.

Upcoming Workshops for NHMA Members

March 10, 2016 Right-to-Know Law: Current Issues—Hanover, NH [click [here](#) to register]

Beginning in April, 2016 Local Officials Workshops — Various Locations

For more information please access our website: www.nhmunicipal.org and