

LEGISLATIVE BULLETIN

Bulletin #08

2010 Session

February 12, 2010

INSIDE THIS ISSUE:

| | |
|--|----|
| <i>NHMA Opposes Tax/Spending Cap Bill</i> | 2 |
| <i>Bill Would Subject Any Municipal Expenditure to State Investigation</i> | 3 |
| <i>Broadband for Me But Not for Thee</i> | 3 |
| <i>Anyone Else Like a Tax Exemption?</i> | 4 |
| <i>Assessor Revocation & Suspension Bill Amended</i> | 5 |
| <i>Fire Sprinkler Systems</i> | 5 |
| <i>Energy Conservation in New Building Construction</i> | 5 |
| <i>House Calendar</i> | 6 |
| <i>Senate Calendar</i> | 8 |
| <i>House Floor Action</i> | 9 |
| <i>Senate Floor Action</i> | 10 |

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Fairness in Assessing

The Local and Regulated Revenues Committee will vote on **HB 1345**, relative to information for property tax assessments of commercial and industrial properties, on **Tuesday, February 16th at 10:30 a.m.** The goal of **HB 1345**, which reflects long-standing NHMA Policy, is to provide for the accurate assessing of “income” property.

“Income” property is property that is owned because of the rental income it produces and property that is appraised by an analysis of the rental income it can produce; it includes properties such as strip malls, office buildings, and large apartment complexes. When owners of an income property look to sell, they typically do not look at comparable sales to determine a price, they look at the income producing capability of the property. When potential buyers look to purchase one of these properties, they typically do not look at comparable sales to see what a reasonable price is, they look at the income-producing capability of the property.

Real estate is required to be valued at market value for the purpose of property taxation. National and state appraisal standards, as well as New Hampshire courts, recognize three primary methods of valuation: 1) the comparable sales approach, where the sale of like properties are examined to determine market value; 2) the cost approach, which considers the cost to replace the structure minus depreciation to determine market value, and 3) the income approach, which considers the rental/lease income produced by a property and the expenses incurred to maintain the property.

All three methods can be considered when placing a market value on property, with the emphasis given to that method which provides the best indicator of market value. Those who value property—whether for taxation, sale, or lending purposes—look to how the participants in the market value property. The issue is that certified state-approved assessors do not have access to the information used to determine the value of income producing property. Without accurate information, there is no

Fairness in Assessing – continued

assurance of an accurate assessment. Without an accurate assessment, there is no assurance that everyone is paying their fair share of the property tax burden—no more and no less.

Opponents of **HB 1345** have said, inconsistently, 1) that rental/expense information is confidential and 2) that this information is available on line. Some opponents have said there is no need at all for this information, although everyone seems to recognize that the income and expense information is used by property owners to appeal assessments they believe to be too high. For the property tax system to be fair to all taxpayers, accurate valuations must be enabled and supported from the beginning, not just on appeal.

Please urge the members of the committee and your delegation to **support HB 1345** to provide fair and accurate assessing of *all* properties.

NHMA Opposes Tax/Spending Cap Bill

Next week the House will debate and vote on **HB 1522**, which would authorize cities and some towns (those with a town council) to adopt charter provisions limiting spending or tax increases. NHMA's Municipal Advocacy Committee voted at its January meeting to oppose this bill.

Some legislators have criticized this position, asking why NHMA would oppose a bill that merely gives voters the *option* to adopt a tax or spending cap. The vote by the Municipal Advocacy Committee (which consists entirely of city and town officials—primarily selectmen, councilors, and town managers and administrators) was not unanimous, but there was a clear majority to oppose the bill. Members did not agree with the suggestion of some legislators that a bad idea can be made better merely by making it a “local option.” The legislature does have to take some responsibility for the policies it allows voters to adopt. We suspect that supporters of this bill would not, for

example, support legislation creating a “local option” to adopt a municipal income or sales tax.

With the state eliminating revenue sharing and shifting additional costs onto municipalities, with revenue from automobile registrations declining, and with no other significant source of revenue, local legislative bodies may well be forced to raise property taxes just to maintain existing levels of service. Putting an artificial limit on that one revenue source means local governments are squeezed at both ends. Most local officials consider it bad budgeting practice to begin with a spending limit that may have no relation to a municipality's needs and that does not account for future cost-shifting by the state.

Further, the adoption of a spending or tax cap can have severe unintended consequences. Because municipalities have no control over county or (in most cases) school expenditures, a *tax* cap can limit only municipal expenditures, so that county and school expenditures will constitute an ever-increasing portion of the tax bill. A *spending* cap can limit a municipality's ability to spend even those funds that have no local tax effect, such as federal or state grants. True, the bill would allow any cap to be overridden by a two-thirds vote of the aldermen or council, but such a procedure should not be necessary.

NHMA fully supports the right of municipalities to choose their form of government. In cities and in towns with a town council, the voters have chosen to give legislative authority to an elected, representative body whose most important job is to adopt an annual budget. It makes no sense to give that authority with one hand and take it back with the other. If voters want to impose limits on taxes or spending, they have the right to choose a town meeting form of government, which provides them a direct vote to limit taxes and spending every year when they adopt the town budget. Even with a town council form of government, the voters can reserve budget authority to themselves. Imposing a tax or spending cap that inhibits the elected legislative body's ability to do its job is not the answer.

Bill Would Subject Any Municipal Expenditure to State Investigation

On Tuesday, February 16, at 9:45 a.m., in **LOB Room 102**, the Senate Commerce, Labor and Consumer Protection Committee will hear testimony on **SB 358**. This alarmingly broad bill would authorize the Secretary of State to “investigate complaints or information *from any source, including anonymous sources*, concerning the *possible* existence of any activity constituting fraud, *waste*, [or] abuse in the expenditure of *any public funds, whether state or local*, or relating to programs and operations involving the procurement of any supplies, services, or construction by governmental entities within the state.”

Wow! While we recognize the sponsors’ good intentions and acknowledge the need for systems to investigate fraud, this seems to be overkill. The Department of Revenue Administration already has authority to order an audit of a municipality when there is reason to suspect fraud, and the Attorney General’s office certainly can investigate any credible allegation of misconduct by public officials. Should the Secretary of State’s office—an agency with no current authority in this area—really be permitted to investigate every claim by a disgruntled citizen that a municipality is spending too much on office supplies or road salt?

Please take a look at [HB 358](#) and consider the extensive power it gives to one state agency to investigate municipal (and state) expenditures. Then, contact your Senator and express your concerns.

Broadband for Me But Not for Thee

The Committee on Science, Technology and Energy held another full committee work session on Thursday on **HB 1242**, modifying the definition of broadband facilities for municipal revenue bond purposes. Once again, the

effective prohibition of and constraints imposed by existing law on the issuance of such bonds remain misunderstood.

The effective prohibition lies in RSA 38:38-I(b), an amendment (0181h) that was added on the floor on January 18, 2006, restricting issuance to “*areas not served*” meaning “*any part of a municipality without a wireless or **facilities** based broadband service or a wireless or **facilities** based broadband service provider. Wireless shall not include subscription satellite service.*” There is no definition for “facilities” or “facilities based” but in the “Glossary of Telecom Terms” found at www22.verizon.com/wholesale/glossary one finds the following definitions:

Facilities

Cables, poles, conduit, microwave, or carrier equipment, central office distributing frames, central office switching equipment, computers (both hardware and software), business machines, etc., used by a service provider to provide telecommunications services.

Facilities-Based Carriers

CLECs that own their own facilities. These facilities may be collocated in a telecommunications service provider's office. NOTE: CLECs may also lease facilities from service providers.

All 234 New Hampshire cities and towns have telephone cables or poles used by a service provider to provide **telecommunication services**, defined by the Federal Communications Commission in 147 U.S.C. § 153(46) as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Assuming the FCC has correctly defined telecommunications service, there are no “areas not served” in the State of New Hampshire. That means that in 2006, when it appeared the legislature gave municipalities the authority to issue revenue bonds for the construction of broadband infrastructure, there was really no authority granted, as there are no “areas not served.” NHMA believes that the legislature did

not intend to give municipalities authority that was *empty* and *meaningless*.

Also misunderstood by many are the statutes relating to municipal revenue bonds. Several times during the work session, people raised concerns about what would happen should a municipal broadband project fail; they spoke of the risks to the state and the municipal taxpayers. The municipal revenue bond statute, RSA 33-B:2, specifically states that “bonds issued by a municipality . . . under this chapter shall not be deemed to be a pledge of the faith and credit of the state or of the municipality The principal of, premium, if any, and interest on all bonds shall be payable solely from the particular funds provided therefore under this chapter.” The state is not at risk nor is any taxpayer.

The biggest risk is that it will continue to be years before everyone in the state has access to the internet. Many municipalities will not ever exercise the authority to bond for broadband, but there are others that stand ready to build the infrastructure needed to ensure all their residents have access to this service.

The committee intends to consider **HB 1242** in executive session on **Tuesday, February 16, 2010, at 10:00 a.m. in LOB 304**. NHMA once more **urges** member who are concerned that their voters will be denied the opportunity to determine their broadband future to contact their legislators and ask that the local voter – and not the state – be authorized to make the final determination on local bonding decisions.

Would Anyone Else Like a Tax Exemption?

You may not have known this, but it turns out that many people view the property tax system in New Hampshire as a tool for private economic development, not for raising public revenue. In this legislative session we are learning that any business that needs an “economic development incentive” will simply seek a property tax exemption.

First it was the “pollution control” exemption, which, as we reported last week, is now understood to have nothing to do with controlling pollution. Its supporters defend it solely because it’s “good for business”—or at least for the dozen or so businesses that actually benefit from it.

This week, it’s the pole tax exemption, which provides that wooden poles and conduits owned by telecommunications companies are exempt from taxation, even though the identical poles and conduits are fully taxable when owned by an electric utility. At Thursday’s hearing on **SB 492**, which would extend this exemption for another four years, one witness after another testified about the need to maintain this single-industry exemption as an incentive for economic development. To their credit, no one tried to justify the exemption based on any kind of principled distinction—they simply claimed that they need the exemption, so they should continue to get it.



One cable company representative pointed out that his company has invested over \$200 million in its network in New Hampshire in the last several years, and said that losing the tax exemption would create a “disincentive.”

It would, he claimed, result in an “unfair tax environment.” Several other witnesses stated that the “current economic environment” is no time to impose “a new tax.”

A new tax? This is not a new tax—the rest of us have been paying the property tax forever. The rest of us also are suffering through the same economic environment as the telecommunications industry, with two significant distinctions—most of us don’t have \$200 million to invest, and most of us aren’t exempt from the property tax. Certainly all of us could use a little economic incentive right now. Exempting a single industry from the property

tax while homeowners are struggling to pay their bills is a curious definition of fairness.

Isn't it time to stop these shameless giveaways? If not, which industry will be the next to request a property tax exemption in the name of economic development? Please write or call your Senators and urge them to *kill SB 492*.

Assessor Revocation & Suspension Bill Amended

On Tuesday, the House Executive Departments and Administration Committee voted to amend **HB 1337** which, as introduced, provided the Assessing Standards Board (ASB) and the Department of Revenue Administration with rulemaking authority for the revocation and suspension of an Assessor's certification. As requested by the prime sponsor, the amendment removes the rulemaking provisions from the original bill and, instead, authorizes both the ASB and the Equalization Standards Board to hold a minimum of one public forum each year. The amended bill will now go to the full House for a vote along with a 15-1 committee recommendation of Ought to Pass.

Fire Sprinkler Systems

By a vote of 15-3, the House Committee on Commerce and Consumer Affairs on Thursday gave a recommendation of Ought to Pass with Amendment on **HB 1486**, prohibiting the mandating of fire sprinkler systems in "in any new or existing one-, 2-, or 3-family dwelling." As introduced, the bill would have prohibited the state and municipalities from adopting or enforcing any "ordinance, regulation, code or administrative practice" that would require the installation of such sprinkler systems. While NHMA took no position on the issue of whether to require sprinkler system installation in those dwellings, the bill does remove the decision-making authority from the control of voters.

Proponents of the bill feared that allowing individual cities and towns to enact and enforce

sprinkler requirements, after having put the question to their respective voters, would result in the ability to stop development of "workforce housing" as the cost of installing such systems could make housing unaffordable.

Choosing finally to "let the state figure out what's the best thing to do," the committee approved an amendment that changed the prohibition to a three-year moratorium. Any such ordinances that are already in place in any city or town would be grandfathered and, during the moratorium, a legislative committee would study the issues and make a final legislative recommendation.

Energy Conservation in New Building Construction

SB 456-FN, relative to energy conservation in new building construction, was introduced Thursday in the Senate Committee on Public and Municipal Affairs. The bill rewrites and replaces RSA 155-D and vests administration of the "New Hampshire adopted edition of the International Energy Conservation Code or any equivalent successor code" with the Public Utilities Commission.

In cities and towns without a building code official or one "designated by the administrative authority," general contractors or owner-builders of new construction would be required to submit an application with yet-to-be-determined information to the PUC for review and approval. In those same municipalities, the PUC, along with the Fire Marshal, "shall have the authority to conduct inspections and enforce the energy efficiency standards." The costs of such inspections and enforcement will be "assessed to the utility companies regulated by the [PUC] and reflected in customer utility bills." However, in its fiscal note, the PUC assured the committee that any such increase on the utility bill would be "*de minimis*."

Alternatively, a document "certifying compliance" with the energy efficiency standards of the New Hampshire building code could be

submitted by the building's architect or engineer to the local building official or the PUC, as appropriate. New Hampshire building officials opposed the concept on the ground that simple certification was not an acceptable alternative to actual compliance.

Opponents also pointed out that the New Hampshire Building Code Review Board, composed of sixteen members drawn from all building trades and disciplines, municipal fire and building officials, and the state energy conservation code office of the PUC, is statutorily charged with the review, revision, assessment and adoption of the "laws, rules, or regulations, and [promotion of] public safety and best practices." Such review and consideration

of updates or additions to the State Building Code, as opposed to automatic adoption, allows the Board to determine which updates or additions are best suited to the needs of the state of New Hampshire and the continued assurances of public safety and best practices.

Opponents questioned why such a "carve out" from the state Building Code was necessary or appropriate; however, mention was made that the state's continued receipt of American Recovery and Reinvestment Act monies distributed through the U.S. Department of Energy, which "urges" wholesale adoption of certain energy efficiency codes to achieve "90% energy efficiency compliance," might be jeopardized.

HOUSE CALENDAR

Joint House /Senate Meetings Are Listed Under this Section

TUESDAY, FEBRUARY 16

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 9:30 a.m. Subcommittee work session on **HB 1635-FN**, prohibiting the open carrying of a firearm in a public building.
- 10:00 a.m. Rescheduled executive session on **HB 1635-FN**, prohibiting the open carrying of a firearm in a public building.

EDUCATION, Room 207, LOB

- 10:00 a.m. Executive session on **HB 1400**, requiring all colleges and universities to report crimes to the local law enforcement agency.

ELECTION LAW, Room 308, LOB

- 10:00 a.m. Executive session on **HB 1319**, relative to single-member representative districts, **HB 1360**, permitting persons 17 years of age to register to vote, **HB 1476**, relative to periodic verification of the checklist, **HB 1528**, relative to observing voter check-in, **HB 1529**, relative to absentee voting, **HB 1549-FN**, prohibiting copying, reproducing, or retaining personal documents of voters, **HB 1574-FN**, relative to retention of election records, **HB 1608**, relative to general election candidates for offices that elect more than one person.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 9:00 a.m. Subcommittee work session on **HB 1570**, requiring an affidavit of bills paid prior to the issuance of certain state and local permits.
- 10:30 a.m. Continued executive session on **HB 1229-FN**, relative to state licensure of hawkers and peddlers and **HB 1570-FN**, requiring an affidavit of bills paid prior to the issuance of certain state and local permits.

JUDICIARY, Room 208, LOB

10:00 a.m. Executive session **HB 1255**, relative to requirements for apportionment of damages.

LOCAL AND REGULATED REVENUES, Room 303, LOB

10:30 a.m. Continued executive session on **HB 1345**, relative to information for property tax assessments of commercial and industrial properties.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

11:00 a.m. Executive session on **HB 1382**, relative to workforce housing, **HB 1395**, relative to workforce housing, **HB 1176-L**, relative to town auditors, **HB 1448**, relative to town audits, **HB 1511-L**, relative to municipal reimbursement for local assistance and establishing a committee to study local assistance under RSA 165, concerning aid to assisted persons, **HB 1554**, allowing municipalities to establish energy efficiency and clean energy districts, **HB 1267-L**, relative to applications for hawkers and peddlers licenses, **HB 1287**, relative to setback requirements on private rights-of-way, **HB 1375**, establishing a committee to study regional planning commissions, **HB 1461**, relative to the municipal regulation of the sale of martial arts weapons, **HB 1198-L**, relative to public hearings on municipal budget preparation, **HB 1212**, relative to municipal charter statutes, **HB 1303**, relative to maintenance, repair, and preservation of burial grounds, if needed.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

1:15 p.m. Continued public hearing on **HB 2010**, relative to the state 10-year transportation improvement program.

1:30 p.m. Full committee work session on **HB 2010**, relative to the state 10-year transportation improvement program.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

10:00 a.m. Executive session on **HB 1242**, relative to broadband infrastructure and **HB 1353**, relative to group net energy metering.

TRANSPORTATION, Room 203, LOB

10:15 a.m. Executive session on **HB 1405**, relative to reverse signal operation safety requirements for construction equipment and **HB 1432-L**, relative to the use of blue lights on firefighting apparatus.

WAYS AND MEANS, Room 202, LOB

10:30 a.m. Executive session on **HB 1445-FN-A-L**, eliminating the meals and rooms tax on campsites.

WEDNESDAY, FEBRUARY 17**MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB**

8:30 a.m. **SB 128**, relative to the community revitalization tax relief incentive, and clarifying the authority of towns to respond appropriately to the American Recovery and Reinvestment Act of 2009 and similar acts.

THURSDAY, FEBRUARY 18**JUDICIARY, Room 208, LOB**

10:00 a.m. Continued executive session from February 16, if needed.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

9:30 a.m. Executive session on **HB 1315-FN**, relative to the employer's lien on damages and benefits recovered from third persons by employees who have received workers' compensation.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

9:00 a.m. Continued executive session from February 16, if needed, and executive session on **SB 128**, relative to the community revitalization tax relief incentive, and clarifying the authority of towns to respond appropriately to the American Recovery and Reinvestment Act of 2009 and similar acts.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

10:30 a.m. Full committee work session on **HB 2010**, relative to the state 10-year transportation improvement program.

FRIDAY, FEBRUARY 26**ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Department of Revenue, 109 Pleasant Street, Concord**

9:30 a.m. Regular meeting.

SENATE CALENDAR**TUESDAY, FEBRUARY 16, 2010****COMMERCE, LABOR AND CONSUMER PROTECTION, Room 102, LOB**

9:45 a.m. **SB 358-FN**, relative to whistleblower protection and waste prevention in state government.
EXECUTIVE SESSION MAY FOLLOW

THURSDAY, FEBRUARY 18, 2010**ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT, Room 102, LOB**

8:30 a.m. **SB 323**, relative to the energy efficiency and sustainable energy board, the greenhouse gas emissions reduction fund, and the renewable energy fund.

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

8:30 a.m. **SB 354-FN-L**, authorizing liens for unpaid building code violations and requiring landlord agents for restricted rental property.

(THE PREVIOUS HEARING FOR SB 354-FN-L WAS RECESSED ON FEBRUARY 11TH)

8:40 a.m. **SB 447**, relative to the residence requirement for town moderators and town clerks.

TUESDAY, MARCH 2, 2010**EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB**

2:30 p.m. **SB 466**, relative to automatic fire warning devices and carbon monoxide detection devices in dwellings.



HOUSE

Floor Action

Wednesday, February 10, 2010

HB 558 establishes procedures for the lease of state parks or ski areas to private entities and establishes an enterprise fund for the benefit of municipalities which about the leased state park of ski area. **Ought to Pass with Amendment.**

HB 1277 allows a Group I teacher or political subdivision employee member of the retirement system who was eligible to retire with a vested deferred retirement allowance on July 1, 2008, an additional year to retire in order to be included in the payment of medical benefits by the retirement system. **Inexpedient to Legislate.**

HB 1428 removes the requirement in the retirement system for the termination of benefits for a surviving spouse when the surviving spouse remarries. **Ought to Pass with Amendment.**

HB 1462 establishes a shoreland advisory council. **Passed/Adopted with Amendment.**

HB 1530-FN-LOCAL changes the definition of earnable compensation for retirement system members by limiting compensation to the full base rate of compensation paid during a year. **Inexpedient to Legislate.**

HB 1571 increases the penalty assessed for a failure to file an annual inventory form and adds exemptions to the loss of the right to appeal for tax relief. **Passed/Adopted with Amendment.**

HB 1576-FN requires that the election by certain officials and employees to join the state retirement system be made at the time of initial hiring, election, or appointment. This bill also repeals a provision allowing certain retirement system members to receive an allowance while in active service. **Refer to Interim Study.**

HB 1579 expands the definition of "public employee" for purposes of the existing prohibition against electioneering by such employees. **Ought to Pass with Amendment.**

HB 1598 provides that all federal Temporary Assistance to Needy Families (TANF) block grant funds shall be used solely for the two components of the state TANF program, the employment program and the family assistance program, to administer those programs. **Ought to Pass.**

HB 1614-FN transfers authority for enforcement of the Whistleblowers' Protection Act from the Department of Labor to the Secretary of State and establishes an enforcement procedure. **Inexpedient to Legislate.**

HB 1646-FN grants group II status to certain positions in the department of corrections that were previously classified as group I positions. **Inexpedient to Legislate.**

HB 1668 requires state creditable service for group II retirees to receive state employee medical benefits. **Ought to Pass with Amendment.**

HB 1676-FN requires the certification of commercial road salt applicators. **Refer to Interim Study.**

HB 1678-FN permits regulated gambling provided the host municipality has adopted the provisions of the statute. **Inexpedient to Legislate.**

HB 1681-FN requires school districts that participate in the retirement system to include education support personnel as well as paraprofessionals and other support positions as employees for purposes of membership in the state retirement system. **Inexpedient to Legislate.**

HB 1682-FN requires the retirement system actuary to utilize a 50-year period for averaging retirement system earnings and assets in preparing the biennial valuation used to determine annual contribution rates. **Inexpedient to Legislate.**



SENATE

Floor Action

Wednesday, February 10, 2010

SB 335 requires the department of environmental services to consider the changes in the functions and values of wetlands and aquatic resources before approving fill and dredge permits. **Interim Study.**

SB 339 clarifies the procedures for appraisal of residential property subject to a housing covenant under the low-income housing tax credit program and establishes a procedure for enforcement of restrictions during the compliance period. **Passed/Adopted with Amendment.**

SB 411 clarifies that the issuance of a large groundwater withdrawal permit by DES does not affect the applicant's obligation to comply with local ordinances and regulations. **Passed/Adopted with Amendment.**

Legislative Winter Vacation Break:
Week of February 22 - 26, 2010