

LEGISLATIVE BULLETIN

Bulletin #09

2010 Session

February 19, 2010

INSIDE THIS ISSUE:

<i>Broadband Bill Sidelined</i>	2
<i>Assessing Equity Delayed</i>	2
<i>Municipal Audits</i>	3
<i>Retiree Healthcare Trust</i>	3
<i>Damage Apportionment Bill</i>	4
<i>ARRA Special Meetings</i>	4
<i>House Calendar</i>	4
<i>Senate Calendar</i>	5
<i>House Floor Action</i>	6
<i>New Bills</i>	9
<i>Legislative Policy Process</i>	9

The Legislature Takes a Break

One subject on which there may be unanimous consent in the legislature is that it's a good time for a break. Conveniently, that is exactly what is going to happen. Both the House and the Senate will take their scheduled break next week, February 22 through February 26. A few hearings have already been scheduled for the week of March 1, but check next week's *Legislative Bulletin* for a complete listing.



GOVERNMENT AFFAIRS CONTACT INFORMATION

Judy A. Silva
Acting Director of Legal Services
& Government Affairs

Cordell A. Johnston
Acting Government Affairs Counsel

Michael R. Williams
Government Affairs Attorney

Susan W. Olsen
Government Affairs Advocate

Barbara T. Reid
Government Finance Advisor



**New Hampshire
Municipal Association**
25 Triangle Park Drive
PO Box 617
Concord, NH 03302-0617
Tel: 603.224.7447
NH Toll Free: 800.852.3358
Fax: 603.224.5406

Policy Bills Advance

Two **NHMA policy bills** took a step forward this week. First, the House passed **HB 1211**, which eliminates the deliberative session for a special meeting in an SB 2 town when the sole purpose of the special meeting is to consider a zoning change. The bill will now go to the Senate.

Second, the House Municipal and County Government Committee unanimously voted *Ought to Pass with Amendment* on **HB 1198**, which clarifies that a town may hold a supplemental budget hearing less than 25 days before town meeting, so long as at least one hearing was held at least 25 days before the meeting. The amendment includes provisions for supplemental hearings in SB 2 towns, which were inadvertently omitted in the bill as introduced. **HB 1198** is on the House consent calendar for March 3.

Committee Needs “More Information” on Broadband

In a highly unusual sequence of events, the House Committee on Science, Technology and Energy voted this week to send **HB 1242**, modifying the definition of broadband facilities for municipal revenue bond purposes, to interim study.

On Tuesday, immediately after an initial motion to send the bill to interim study failed on a 7 to 7 vote, a committee member moved the bill Ought to Pass and received a second. However, instead of calling for a vote, the chair recessed the executive session until Wednesday. Prior to opening the reconvened executive session on Wednesday, the chair acknowledged having “twisted arms” over the course of the evening and spoke about the “need for more information.” She also advised that the incumbent telephone company and cable television representatives had been contacted to help find that information; unfortunately, the input of municipalities was—once again—not solicited.

At the chair’s request, the previous day’s motion of Ought to Pass and its second were withdrawn. A motion of Interim Study was then made and seconded, and passed on a 14 to 1 vote. The state’s director of broadband technology was then charged with organizing a meeting of “stakeholders” with a view toward trying to understand all the “complex” issues posed by a bill that would simply have enabled municipalities to choose their telecommunications destiny.

The State of New Hampshire Broadband Plan, issued in June of 2008 and often mentioned during the series of hearings, work sessions and executive sessions on this bill, lists 25 “broadband action items” necessary to achieve broadband success in the state. Item 15 states that “the State will not be successful without participation and leadership from local governments.” We hope that recommendation will someday be heeded.

Assessing Equity Delayed for (At Least) Another Year

After a valiant effort by assessors and several legislators to address the concerns raised about **HB 1345**, the Local and Regulated Revenues Committee voted 12-3 Tuesday to send the bill to interim study. While it might appear from that vote that many on the committee were interested in further work on the bill, that is not necessarily the case. A vote for interim study means the bill is dead for this year; to further the issue, regardless of the results of any study work, a new bill would have to be filed next year. That would be after the state elections. The three “no” votes supported passage of the bill, and there were others who reluctantly voted for interim study. We hope to work with these members to continue our support of this bill.

HB 1345 sought assessing equity between residential property owners and the owners of leased/rented industrial and commercial property—real estate often referred to as “income property” because it is owned for the income it produces. The analysis of the lease/rental rates and the operating expenses of income property is a nationally-approved method of determining the market value of such properties. This assessing methodology is used now—but there is simply not enough information to give assessors valid models and values. It is information the owners of income property use on appeal when they challenge a local assessment! If income-producing properties are under-assessed due to lack of information, residential property owners pay more than their fair share of taxes. Is that fair? We think not.

It remains clear that many people—legislators and others—do not understand what the bill does or what it is intended to do. It has been reported to us that a host or guest on a Concord radio station has more than once stated that the Local Government Center or NHMA “supports an income tax” based on our support of this bill. Such a statement means either that the speaker doesn’t understand assessing or that he has been

fed a line of misinformation and propaganda, as the bill has nothing to do with an income tax.

The property tax is burdensome to many, but whether it is a burden or an inconvenience, no property taxpayers should be paying *more* than their fair share. That means no taxpayers can be allowed to pay *less* than their fair share, either.

Either Or, But Never Neither

Current law states that a municipality must *either* hire an independent CPA (or licensed public accountant) to audit all of the municipality's accounts *or* have an elected auditor(s) perform that function, but having *neither* is *never* an option. **HB 1448**, requested by the Department of Revenue Administration, attempts to clarify the intent of the existing statute.

There is no statutory requirement for a municipality to have an annual independent CPA audit; however, if a municipality does not have one, then there is a requirement to have an elected auditor(s) under RSA 41:31. Apparently, there has been some confusion about this, and DRA wants to revise the existing statute to make it clear. Some municipalities may be contracting with a CPA firm to perform services that are less than a complete financial statement audit, services such as a compilation (*i.e.*, the CPA prepares the financial statements), or an examination of only a portion of the financial records (*e.g.*, property tax collections only), but they do not have an elected auditor(s) reviewing all accounts as required by current law. The amended bill is intended to remove any doubt about when a municipality is required to have an elected auditor(s).

In addition to clarifying this point in statute, the Department is working with a group of CPAs to provide guidance, which will eventually be adopted through administrative rules, regarding the procedures and reconciliations to be performed each year by the elected auditor(s). **HB 1448** would also authorize very small municipalities (those with a population of less than 750) to petition the Commissioner of DRA

for a waiver from having the elected auditor(s) perform the procedures outlined in the administrative rules, and instead propose an alternative plan for review of the municipality's accounts. If approved by the Commissioner, the alternative procedures may be performed by either the elected auditor(s) or an independent CPA.

The bill, now amended with new wording suggested by the department, has been unanimously recommended for passage by the House Municipal and County Government Committee and will go to the full House in March.

Senate Joint Resolution Endorses Establishment of a Retiree Healthcare Trust

Senate Joint Resolution (SJR) 2 endorses the establishment of a statewide retiree medical trust as recommended by the Commission to Propose a Retiree Healthcare Benefits Funding Model. The Commission, established in 2008 under **HB 1645**, was charged with studying and recommending to the General Court the detailed design for a preferential tax vehicle for state and local public employees to make contributions that would provide funding for post-employment medical expenses. The Commission issued a [final report](#) on December 1, 2009, recommending the implementation of a trust administered by public employee associations and/or unions, with such trust being a legally separate entity from the State of New Hampshire, from any participating employers, and from the participating employee associations.

The resolution endorses the creation of a trust that meets several specific criteria, including that the trust function as a defined contribution plan, not a defined benefit plan, and that participation be elective by option of an employee group, such as an employee bargaining unit. The resolution further outlines that funding for the trust is negotiated and may include the following:

- employee contributions,
- transfer of any accumulated sick and/or vacation leave payable upon retirement,
- employer contributions, but only to the extent that such contributions are negotiated by the employer.

Since no legislation is needed to implement the trust, a joint resolution, rather than a bill, was filed to convey the Legislature's endorsement of the trust. As indicated in the Commission's final report, the trust could be operational as early as July 1, 2010, and bargaining units can begin to negotiate their contribution into the trust immediately. It is expected that teacher, police and fire unions currently in negotiations may bring forth proposals for employee and/or employer contributions to the trust in anticipation of the July start-up date.

Even though it does not enact law, **SJR 2** still needs to pass both the Senate and House, and be signed by the Governor, in order for the trust to receive the endorsement of the General Court. **SJR 2** has not yet been scheduled for a hearing in the Senate.

Committee Rejects Damage Apportionment Bill

This week the House Judiciary Committee unanimously approved a recommendation of *Inexpedient to Legislate* on **HB 1255**, relative to apportionment of damages. This is the third in a series of bills in recent years that would require all damages in a personal injury case to be apportioned only among those defendants remaining in the case at the time of the verdict.

NHMA has vigorously opposed these bills because they create the possibility of holding a nominally responsible defendant—typically a “deep pocket” entity, such as a municipality—liable for a disproportionate share of the injured party's damages. The bill's sponsor made the motion to kill the bill, which the committee approved unanimously. The ITL recommendation is on the House consent calendar for March 3.

Bill Would Extend Time for ARRA Special Meetings

Also this week, the House Municipal and County Government Committee approved a bill that, among other things, would continue to allow towns to hold special meetings to appropriate funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA). **SB 128** re-enacts the law that was passed last year, which sunsetted on January 1, 2010, and adds a reference to “any similar act adopted by Congress in 2010 or 2011.” Thus, if additional stimulus funds become available this year or next under “ARRA round 2,” a town could call a special town meeting, without superior court approval, to consider appropriating the funds.

SB 128, which already has passed the Senate, also amends RSA 79-E, the community revitalization tax relief incentive statute, to give municipalities that have adopted the program greater flexibility in defining the projects that are eligible for it. If the full House approves it after the break, it will need to go back to the Senate because of some technical changes made by the committee.

HOUSE CALENDAR

FRIDAY, FEBRUARY 26

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

9:30 a.m. Regular meeting.

MONDAY, MARCH 1**COMMISSION TO STUDY ISSUES RELATIVE TO GROUNDWATER WITHDRAWALS (SB 155, Chapter 305:1, Laws of 2003), Room 305, LOB**

10:00 a.m. Regular meeting.

THURSDAY, MARCH 4**FINANCE, Rooms 210-211, LOB**

10:00 a.m. Full committee work session on *HB 1428-FN*, relative to death benefits for surviving spouses of a New Hampshire retirement system member, *HB 1598-FN*, relative to the use of Temporary Assistance to Needy Families (TANF) funds, *HB 1668-FN*, requiring state creditable service for group II retirees to receive state employee medical benefits, *HB 1664-FN*, making appropriations reductions in the operating budget for fiscal year 2011 and relative to state revenues and expenditures, *HB 1672-FN*, making appropriation additions and revenue reductions for fiscal year 2011.

SENATE CALENDAR**MONDAY, FEBRUARY 22****COMMISSION TO STUDY ISSUES RELATIVE TO GROUNDWATER WITHDRAWALS (SB 155, Chapter 305:1, Laws of 2003), Department of Environmental Services, 29 Hazen Drive, Concord, NH, Room 213**

1:00 p.m. Subcommittee Work Session

MONDAY, MARCH 1**COMMISSION TO STUDY ISSUES RELATING TO STORMWATER (HB 1295, Chapter 71:1, Laws of 2008), Room 305, LOB**

1:00 p.m. Regular Meeting

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

2:15 p.m. **SB 504-FN**, relative to the effective date for the implementation of the retirement system employer assessments for excess benefits.

2:30 p.m. **HB 1131**, relative to requirements for firefighter certification.

2:45 p.m. **SB 466**, relative to automatic fire warning devices and carbon monoxide detection devices in dwellings. **(NOTE TIME CHANGE FOR SB 466)**

WEDNESDAY, MARCH 3**PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB**

1:00 p.m. (or immediately following session)

EXECUTIVE SESSION ON PENDING LEGISLATION

THURSDAY, MARCH 4

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

- 8:50 a.m. **SB 317**, relative to the standard for zoning variances.
 9:00 a.m. **SB 430**, relative to grading and improving subdivision streets.
 9:30 a.m. **SB 487-L**, relative to charter limitations on the growth of budgets and taxes and to the validity of certain city and town charter provisions.
 9:45 a.m. **SB 488**, relative to the adoption of local spending caps.

EXECUTIVE SESSION MAY FOLLOW



HOUSE

Floor Action

Wednesday, February 17, 2010

CACR 22 allows the state to impose graduated taxes. **Inexpedient to Legislate.**

HB 213 requires the Bureau of Emergency Communications to develop and maintain a statewide emergency notification system. **Passed/Adopted with Amendment.**

HB 1131 requires full-time firefighters to complete an accredited certification program that meets the objectives of a nationally accepted standard for firefighter qualification. **Passed/Adopted.**

HB 1135 requires the fire standards and training commission to perform self-reviews of its membership. **Inexpedient to Legislate.**

HB 1137 eliminates the various purposes for which employers may withhold wages, and instead allows wages to be withheld for any purpose for which the employer and employee agree. **Passed/Adopted with Amendment.**

HB 1142 eliminates the provision allowing a petitioned warrant article to be signed by 25

voters and requires signature by two percent of the voters in all cases. **Inexpedient to Legislate.**

HB 1155 repeals the authority of water districts to enter into contracts with the department of environmental services for the construction, operation, or maintenance of dams. **Passed/Adopted with Amendment.**

HB 1161 repeals the requirement that a person obtain a license from the selectmen or chief of police to sell pistols or revolvers at retail. **Passed/Adopted with Amendment.**

HB 1191 prohibits the state fire marshal from adopting rules requiring the installation of fire sprinkler systems in single or multi-family dwellings. **Refer to Interim Study.**

HB 1211 eliminates the deliberative session when the sole purpose of a special town meeting in an official ballot town is to consider a zoning change. **Passed/Adopted. NHMA Policy.**

HB 1221 changes certain notice and investigation procedures with respect to excavating and dredging permits. **Inexpedient to Legislate.**

HB 1225 FN-L requires a security escort for the delivery of ballots after an election to the town or city clerk. **Inexpedient to Legislate.**

HB 1227 permits a municipality to lay pipes for the transmission of pressurized hot water. **Passed/Adopted.**

HB 1246 allows the towns of Salem and Windham to adopt a property tax exemption against assessed value for persons who have maintained a primary residence in the town for at least 40 years and who do not have school-age children. **Inexpedient to Legislate.**

HB 1262 establishes a height requirement for disabled parking signs and provides for a \$100 fine for failing to comply. **Passed/Adopted with Amendment.**

HB 1263 requires state and local law enforcement agencies to establish eyewitness identification procedures. **Inexpedient to Legislate.**

HB 1276 permits the assets of capital reserve funds of counties, towns, and districts, to be combined for investment purposes. **Ought to Pass.**

HB 1284 requires draft minutes of meetings under the right-to-know law to be posted within 5 business days in 2 public locations, one of which is always available for public viewing, and one of which may be the public body's website. **Inexpedient to Legislate.**

HB 1300 purports to allow warrant articles for town meetings to be placed on official ballots "if fewer than 2 percent of registered voters attend the deliberative session." **Inexpedient to Legislate.**

HB 1305 clarifies the definition of surface waters, designates beneficial uses of surface

waters, and establishes requirements for antidegradation. **Refer to Interim Study.**

HB 1310 allows the governing body of a city, town, or village district to adopt provisions for hiring a registered nurse or APRN to provide basic health care services. **Passed/Adopted with Amendment.**

HB 1311 provides that all legislative study committees, commissions, and task forces shall terminate not later than the end of the biennial legislative term. **Inexpedient to Legislate.**

HB 1316 requires new construction and renovations of commercial buildings over 4,000 square feet to follow LEED guidelines relative to volatile organic compounds, and incorporates those guidelines into the state building code. **Inexpedient to Legislate.**

HB 1327 establishes a commission to establish a framework for the franchising of cable access by cities and towns, to include two Reps of NHMA. **Inexpedient to Legislate.**

HB 1328 prohibits the operation of wheeled motorized vehicles on the frozen surface of Stone Pond in the town of Marlow. **Inexpedient to Legislate.**

HB 1334 relative to penalties for unpaid fines concerning hazardous materials accidents. **Passed/Adopted with Amendment.**

HB 1337 requires the assessing standards board to adopt rules regarding the revocation and suspension of certifications of persons making appraisals. **Passed/Adopted with Amendment.**

HB 1341 clarifies certain voter check-in procedures relating to changes to the checklist and placement of challengers. **Inexpedient to Legislate.**

HB 1357 requires funds for the purchase of modular or manufactured housing to be held in escrow until certificate of occupancy is issued by

the local enforcement authority. **Inexpedient to Legislate.**

HB 1369-L requires municipalities to require a 4-foot fence as a prerequisite for a private swimming pool permit. **Inexpedient to Legislate.**

HB 1372 establishes a commission to study permitting a person to record a law enforcement officer in the course of the officer's official duties. **Passed/Adopted with Amendment.**

HB 1403 prohibits any employer from subjecting an employee to an abusive work environment. **Inexpedient to Legislate.**

HB 1457 establishes a commission to study urban compacts. **Inexpedient to Legislate.**

HB 1484 prohibits any political subdivision of the state from adopting an ordinance or bylaw that restricts the residence of a sexual offender or an offender against children. **Passed/Adopted.**

HB 1489 enables towns and cities to grant a volunteer incentive property tax credit to persons who provide volunteer services to the municipality. **Inexpedient to Legislate.**

HB 1492 requires police officers receiving notice of a motor vehicle accident to respond to the scene of the accident. **Inexpedient to Legislate.**

HB 1501 provides an exception from the wiretapping and eavesdropping statute for audio recordings made in a public building, provided notice of such recording is posted at the public building. **Inexpedient to Legislate.**

HB 1515-FN expands the definition of official oppression to include unauthorized acts without intent to benefit or harm anyone. **Passed/Adopted with Amendment.**

HB 1516-FN-A makes appropriations to fund the Claremont, Colebrook, Milford, and Keene District Courts in fiscal year 2011. **Passed/Adopted with Amendment.**

HB 1535-FN requires the secretary of state to establish additional procedures to deliver and collect ballots for armed services voters. **Passed/Adopted with Amendment.**

HB 1596-FN-L changes the time period during which dog owners who have failed to license their dogs shall be notified of the civil forfeiture of each unlicensed dog and increases maximum amount that may be recovered for service of the warrant. **Inexpedient to Legislate.**

HB 1600-FN allows any person to request conviction information regarding public officials from the division of state police. **Inexpedient to Legislate.**

HB 1606-FN requires DES to transfer additional funds to state aid grant programs for water and wastewater improvement projects. **Passed/Adopted with Amendment.**

HB 1617 adds an exception from the timber tax requirements for persons who salvage or harvest blowdown timber on storm-damaged land of 10 or more acres. **Inexpedient to Legislate.**

HB 1631-FN makes the state fire code an addition to the state building code and states that rules adopted by the fire marshal which make changes to an existing state fire code shall be subject to approval by the state building code review board and shall be submitted for legislative approval within 2 years of their adoption. This bill also provides existing structures under renovation are required to comply with current fire codes and building codes only if the renovations equal 50 percent or more of the structure. **Refer to Interim Study.**

HB 1645-FN prohibits collective bargaining agreements that require employees to join a labor union. **Inexpedient to Legislate.**

HB 1674 makes permanent the requirement that municipalities remit to the Department of Revenue Administration any education tax revenue that exceeds what is required for an adequate education determined under RSA 198:41, II. **Inexpedient to Legislate.**

HB 1684-FN requires the adoption of the state operating budget on an annual basis rather than biennially. **Inexpedient to Legislate.**

SB 157 establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots and requires the rotation of candidate names and party columns on the ballots. **Passed/Adopted.**

2010 New Bills (*Senate*)

SJR 2 endorses the establishment of a statewide retiree medical trust to provide a funding source for reimbursement of post-retirement medical expenses of state, county, and municipal employees. Senator Janeway of Webster; **ED&A-S.**

SB 504 extends to July 1, 2011, the effective date for the implementation of the retirement system employer assessments for excess benefits. Senator Cilley of Barrington; **ED&A-S**

Looking for a Few Good Ideas

NHMA's 2011 - 2012 Legislative Policy Process



In April 2010 the New Hampshire Municipal Association (NHMA) will begin its Legislative Policy Process for the 2011-2012 biennium. While it is difficult to focus on dates seemingly so far away, now is the time to think of things about your municipal responsibilities that might work better with a legislative change. Consider questions such as these: Could you do your job better if a statute were changed? Have you received citizen complaints that you couldn't address because you needed legislative authorization? Are there out-dated provisions in the laws that need to be modernized or streamlined? Please let us know!

The members of the Committee on Government Affairs (CGA), including the Municipal Advocacy Committee (MAC), guide NHMA's legislative policy development and advocacy efforts. The CGA will hold its Legislative Policy Process organizational meeting on Friday, April 16, 2010. The CGA will divide into three policy committees dealing with: (a) municipal administration issues; (b) general government and revenue issues; and (c) environment and planning issues. Within those committees, CGA members will review policy proposals they have suggested, as well as those submitted by other municipal officials, and formulate policy recommendations for consideration at the NHMA Legislative Policy Conference to be held on September 17, 2010.

If you have policy suggestions, it is not too early to send them in. Policy proposals may be submitted by a board or a local official from a member municipality. A policy proposal form should accompany each proposed legislative policy. It should include a brief (one or two sentence) policy statement, a statement about the municipal interest served by the proposal, and an explanation that describes the nature of the problem or concern from a municipal perspective and discusses the proposed action that is being advocated to address the problem.

To submit a legislative policy proposal, download the [NHMA legislative policy proposal form](#) (pdf) and submit it to governmentaffairs@nhlgc.org. Alternatively, contact the Government Affairs department to request a printed policy proposal form by calling 800.852.3358 ext. 384. Paper forms may be mailed or faxed to:

NHMA, Government Affairs Department
PO Box 617, Concord, NH 03302-0617
Fax #: 603.224.5406

Due Date: May 3, 2010