

# LEGISLATIVE BULLETIN

## House to Vote on Attorney Fees Under RTK Law

Bulletin 06, 2017 Session  
February 3, 2017

The House will vote next **Thursday, February 9**, on [HB 365](#), the bill discussed in [last week's Bulletin](#) (page 4) that would require public bodies and agencies to pay the plaintiff's attorney fees if the plaintiff prevails in a claim under the Right-to-Know Law, even if the public body or agency had no reason to know that its conduct violated the law.

It is appalling that a small town, or even a large one, might be forced to pay attorney fees when its officials have made a good-faith effort to follow the law, but a judge just happens to disagree with the town lawyer's interpretation. That cost, of course, would be absorbed by local taxpayers. Please review last week's article, then contact your representatives and urge them to **vote down the Judiciary Committee's recommendation and kill HB 365**.

## State Retirement Contribution

As we explained in last week's [Legislative Bulletin](#), [HB 413](#), an **NHMA policy bill** that would restore a portion (15%) of the state contribution toward the retirement costs for teachers, police and firefighters, was voted Ought to Pass by a 10-9 vote of the House Executive Departments and Administration Committee. Unfortunately, the bill was not on the agenda for this week's House session, apparently because of concerns that the state cannot afford this contribution. **Well, local governments could not afford the repeal of the state contribution in 2012 and cannot afford the increasing retirement costs today!**

**Update: HB 413 is still not on the House calendar for floor action next week.** The deadline for the House to act on the bill is February 16, so we assume it will go to the House floor that day.

The state's practice of paying a portion of the pension costs for teachers, police and firefighters dated back to the 1940s when there were separate pension systems for different public sector workers. When the NH Retirement System (NHRS) was created in 1967, the state contribution for teachers, police, and firefighters was continued as compensation for the *requirement* (not an option) that local governments enroll those employees

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### 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  
[governmentaffairs@nhmunicipal.org](mailto:governmentaffairs@nhmunicipal.org)  
Website: [www.nhmunicipal.org](http://www.nhmunicipal.org)

in the system. The state paid 35% of the pension cost for those employees until 2009. The state contribution was decreased in 2010-2011 to assist the state in weathering the recession and was eventually repealed in 2012. However, the state's finances are in much better shape now, and it is time to renew that partnership with local governments.

Passage of **HB 413** would lower the retirement costs for cities, towns, school districts, and counties by approximately **\$41 million per year**. How can you determine what your city or town would save? In 2011 the state share of local retirement costs totaled approximately \$44 million. Two lists—[teachers](#) and [police/fire](#)—show the state retirement contributions attributed to each municipality from 2007 until 2012. The 2011 column is a rough estimate of what your municipality and school district could save if a 15% state contribution were reinstated. (For a more precise estimate of the cost savings from **HB 413**, take 15% of the contributions your municipality and school district paid to the NH Retirement System last year for teachers, police and firefighters.)

Governor Sununu has recognized this financial burden on local governments; he spoke of restoring a portion of the state retirement contribution when he attended NHMA's Gubernatorial Candidates Forum last October! **HB 413** will eventually need to go to the House Finance Committee to be considered in the state biennial budget deliberations—**but right now we need the House to support the restoration of the state retirement contribution as a matter of POLICY!**

**Please contact your state representative(s) ASAP, tell them the impact HB 413 will have on your municipality and their property taxpaying constituents, and ask for their support of the Ought to Pass committee recommendation on HB 413!**

(Contact information for every House member is available [here](#). If you are not sure who your representative(s) is, use the "Who's My Legislator?" tool available [here](#).)

### **Airbnb Bill Tramples Local Authority**

A disturbing bill with serious implications for local land use authority is quickly making its way through the House. Unfortunately, we missed the bill in last week's *Bulletin*, and it has already had a hearing.

**HB 654** states, among other things, that "[a] city, town, or unincorporated place may not prohibit vacation rentals or short-term rentals." The bill goes on to state that municipalities may *regulate* vacation rentals or short-term rentals, but subject to a number of limitations.

***This an almost unprecedented infringement of traditional local zoning authority.*** For almost a century, municipalities have had authority to decide what uses are permitted, and where. In only a few instances has the legislature mandated that a particular use must be allowed. The few that we can think of are manufactured housing, workforce housing, accessory dwelling units, and "the tilling of soil and the growing and harvesting of crops."

In short, the legislature has determined that people need low-cost housing and a means to feed themselves, and on a very few occasions has concluded that those needs must override local zoning authority. Even those exceptions to local control were enacted only after lengthy study and debate, and always for the sole benefit of New Hampshire's citizens.

*(Airbnb Bill — Continued from Page 2)*

This is far different. **HB 654** is being pushed by lobbyists for the multi-billion-dollar “travel technology” industry. At the bill’s hearing before the Commerce Committee this week, the featured speaker was a representative of the Travel Technology Association, whose members include companies like Airbnb, Expedia, and Priceline. He left immediately after testifying so he could “catch my plane back to Washington.”

Although the bill is being sold as merely ensuring the “property right” of homeowners to rent out their homes occasionally for a little extra cash, it goes much further than that. It defines “vacation rental or short-term rental” as “any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative, or timeshare, or owner occupied residential home, that is offered for a fee and for less than 30 consecutive days.” This could easily include a multi-unit condominium in which every unit is rented out on a nightly or weekly basis—in short, the equivalent of a hotel. Under the bill, a municipality would have *no ability* to control the location of such a business.

The Washington lobbyist told the committee that the bill was necessary because his clients currently have to contend with a “patchwork” of local zoning regulations. He further explained that the bill was based on a law passed in Arizona, which his organization is trying to have adopted in every state.

Well . . . restaurant franchises, grocery store chains, big-box stores, and any other organization that does business in multiple municipalities must deal with the same “patchwork.” They don’t necessarily like it, but they live with it. New Hampshire municipalities—and legislators—have always resisted “statewide zoning.” This is worse—this is *national* zoning.

Others supporting the bill claimed that they are just seeking to require that all residential uses be subject to the same rules. If a homeowner is allowed to rent his house to a long-term tenant, they asked, why can’t he rent it to a different “tenant” every night or every week?

Seriously. A hotel is not a residential use. A bed and breakfast is not a residential use. This bill guarantees the right to run a hotel business on the pretext that it is just an ordinary residential use.

One supporter of the bill pointed out that New Hampshire has a long history of allowing vacation rentals, with very little controversy. Exactly. So why is this bill needed? Apparently because there is now a lot of money to be made by out-of-state companies that don’t want to be bothered with our “patchwork” of local regulations.

**HB 654** is a big first step down the road toward subjugating New Hampshire towns and cities for the benefit of influential businesses. If “short-term rentals” are exempted from local zoning authority, what gazillion-dollar industry will be next?

The Commerce Committee will have a work session on this bill next **Tuesday, February 7**, and will vote on the bill the next day. Please contact members of the [committee](#), and your own legislators, and remind them that you didn’t send them to Concord to represent Airbnb or Expedia. Ask them to **kill HB 654**.

## Municipal Transportation Improvement Fee

On **Tuesday, February 7, at 11:20 a.m., in LOB Room 301**, the House Municipal and County Government Committee will hear testimony on [HB 121](#), an **NHMA policy bill** that would increase from \$5 to \$10 the maximum fee that a municipality may collect under RSA 261:153, VI. For those unfamiliar with that statute, it allows a municipality, by vote of the legislative body, to establish a transportation improvement fund “to fund, wholly or in part, improvements in the local or regional transportation system, including roads, bridges, bicycle and pedestrian facilities, parking and intermodal facilities and public transportation.” Money for the fund comes from an additional motor vehicle registration fee, established by the legislative body, not to exceed \$5 per vehicle. With local roads and bridges badly in need of repair, and with state funding coming nowhere close to keeping up with the need, allowing municipalities the *option* of increasing this local charge (in most cases by vote of the town meeting) is a sensible approach to providing a modest amount of additional funding for local transportation infrastructure maintenance, improvements, and services.

Last year a similar bill, [HB 1119](#), received overwhelming support from a variety of constituencies, including city and town officials, regional planning commissions, regional transportation associations, and the Department of Environmental Services. Unfortunately, the bill was defeated on a voice vote in the House despite the Municipal and County Government Committee’s recommendation of Ought to Pass.

As we explained last year, these are local dollars used for local projects approved by the local legislative body of each municipality that assesses this fee. Even assessment of the fee itself must first be approved by the legislative body, as would any increase in the fee proposed in this bill—a textbook example of local control! And with state and municipal budgets struggling to keep up with the maintenance and improvement costs of our aging infrastructure, passage of **HB 121** is the perfect opportunity to help supplement the financing of diverse modes of transportation.

For those municipalities that assess this local option fee, or others that are interested, please contact members of the [Municipal and County Government Committee](#) and plan to attend the hearing to explain the transportation improvements and services being funded by this fee, and why a modest increase in the maximum amount of the fee is so important!

## Hearing on Repeal of Pollution Control Exemption

Next **Tuesday, February 7, at 11:00 a.m., in LOB Room 202**, the House [Ways and Means Committee](#) is scheduled to hear [HB 567](#), an **NHMA Policy bill** that would repeal the property tax exemption for pollution control facilities. We have fought, and lost, this battle many times, but we don’t plan to give up. As long as it remains state policy to shift part of big business’s fair share of property taxes to local taxpayers, we will continue to advocate for repeal of that policy.

As indicated in the bill’s fiscal note, this exemption currently reduces the property tax bills for its beneficiaries, primarily utility companies, by about \$3.87 million statewide—and that amount is shifted to other local taxpayers. A huge percentage of that amount is concentrated in a handful of municipalities, making the effect there grossly disproportionate. As we have explained repeatedly, the exemption is granted to businesses simply for installing equipment that they are required to

install anyway under state and federal law; thus, local taxpayers are essentially being forced to pay these businesses just to follow the law.

We know this is an uphill battle, but we will still do the right thing for property taxpayers; we hope the committee will, too.

### **Semi-Trailer Registrations**

On Wednesday, the House Transportation Committee heard testimony on [HB 579](#), which would authorize non-governmental agents to register semi-trailers from out-of-state residents for multiple year periods at a significant discount from what in-state residents would pay. **HB 579** is very similar to [amendment 1783s](#) that was tacked onto HB 1271 last year and to [HB 586](#), which was retained in 2015. As with those proposals, **HB 579** is designed to encourage residents from all over the country to violate their own state laws by registering semi-trailers here in New Hampshire. This would put in place a two-tiered registration system that would be more economically advantageous for non-residents than for New Hampshire residents.

From a municipal perspective, this creates an incentive for New Hampshire residents to register their semi-trailers as non-residents through these non-governmental agents, which could be done very easily by merely providing an out-of-state address (real or fictitious). Since registration under this program requires payment only of discounted state fees and not municipal fees, and allows a multi-year registration of up to 12 years, this would result in a potential loss of revenue for those municipalities that register a significant number of semi-trailers. The economic advantage of using New Hampshire as a place of residence to register these types of vehicles would immediately evaporate if **HB 579** were enacted.

Along with NHMA, the NH City and Town Clerks Association, the NH Tax Collectors Association, and the NH Division of Motor Vehicles opposed the bill. A copy of the Clerks' testimony, which is identical to testimony submitted by the Tax Collectors, is available [here](#).

Please contact representatives on the [House Transportation Committee](#) and urge them to recommend Inexpedient to Legislate when **HB 579** comes up for a committee vote next week!

### **Utility Valuation Bill Retained**

The House Science, Technology & Energy Committee voted unanimously this week to retain [HB 324](#), the bill we have written about frequently that would require municipalities to use the Department of Revenue Administration's valuations when assessing utility property. This was a major victory, but hardly a complete one. The committee will keep the bill until next year, study it, and make a recommendation for action by the full House in January.

In the meantime, the Assessing Standards Board has voted to take up this issue. We would have preferred to see **HB 324** killed while the ASB studies the issue and makes a recommendation, since the ASB (at least as currently constituted) is the body with the expertise to undertake such a task. In any event, we will diligently follow both the retained bill and the ASB study over the next nine months or so.

Thank you again to all the municipal officials who contacted their legislators and committee members about this bill. One committee member said this week, “I’ve gotten more e-mail about this bill than I have about right-to-work.” That’s the kind of effort we love to hear about!

### Committee Recommends ITL on Lobbying Bill

The House Municipal and County Government Committee voted 13-1 this week to recommend Inexpedient to Legislate on [HB 223](#), the bill that would prohibit NHMA and other organizations that receive municipal funds from lobbying. In their discussion of the bill, committee members made many of the same points we had made—that municipal officials have a right to have their views heard; that it is not realistic to expect selectmen and town administrators to travel to Concord for every bill that affects local government; that no municipality is compelled to pay dues to NHMA or similar organizations; and that the information the legislature receives from such organizations is invaluable. The bill is on the consent calendar for next week. Just in case it is pulled off the consent calendar, *please remind your legislators to support the committee’s recommendation of Inexpedient to Legislate on HB 223.*

### House Kills Broadband Bill

The House voted 193-168 this week to kill [HB 191](#), the **NHMA policy bill** that would have authorized municipalities to issue bonds for broadband infrastructure. We’ve said enough about this for one year, so we will merely mention the good news—that the 25-vote margin was an improvement on last year’s 46-vote margin. At this rate, we will get this bill passed in two more years—when the telecommunications industry will still be promising that they can solve the problem on their own.

Oh, and one more bit of good news: an almost identical bill, [SB 170](#), has a hearing next **Wednesday, February 8, at 9:00 a.m., in LOB Room 102**, in front of the Senate Public and Municipal Affairs Committee. Since the House has already killed what is essentially the same bill, we’re not sure the House rules would allow it to consider **SB 170** if the Senate passes it. Still, we will be at the hearing to listen to the industry explain one more time why some individuals and businesses don’t need high-speed internet.

### Governor to Deliver Budget Address

Governor Sununu will present his biennial budget proposal for the period July 1, 2017, through June 30, 2019, to a joint session of the House and Senate on Thursday, February 9, at noon. By law, the Governor’s budget must be presented to the legislature on or before February 15. We understand that the House asked for an earlier delivery, which the Governor is doing, thereby extending the time for the House to review and adopt its version of the budget before sending it to the Senate by the crossover deadline of April 6. The Senate will then have until June 1 to act on its own version of the budget. Any differences between the House and Senate versions will get resolved during the committee of conference process, with a final budget anticipated to be adopted by both bodies by June 22. It sounds like a very straightforward process, but as we know all too well, there will be many twists and turns – so stay tuned!

*(Budget Address— Continued from Page 6)*

Live streaming of the Governor’s budget address next Thursday, as well as all House and Senate sessions, is available on the [General Court](#) website.

## HOUSE CALENDAR

**TUESDAY, FEBRUARY 7, 2017**

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

1:30 p.m.      **HB 634-FN-A**, repealing the penalty assessment on criminal offenses.

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

10:45 a.m.      **HB 552-FN**, relative to investigation of undeliverable voter verification letters.

11:00 a.m.      **HB 588-FN**, relative to voter identification requirements.

11:10 a.m.      **HB 348-FN**, relative to registering to vote.

### **ENVIRONMENT AND AGRICULTURE, Room 303, LOB**

10:00 a.m.      **HB 399**, relative to pesticide use and notification in places where children play.

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

10:00 a.m.      **HB 294-FN-A**, relative to the cost of fiscal analysis of legislation relating to the retirement system.

10:30 a.m.      **HB 625-FN-L**, establishing state holidays for elections

2:00 p.m.      **HB 204-FN**, relative to bonds for public employees.

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

10:00 a.m.      **HB 313**, allowing a town to appropriate funds to create a town scholarship fund.

10:20 a.m.      **HB 411-L**, relative to calculation of collection dates for local property taxes.

10:40 a.m.      **HB 419-FN-L**, relative to real estate leased for a public charter school.

11:00 a.m.      **HB 503-L**, relative to notice to property owners regarding changes in assessments of property values for tax purposes.

11:20 a.m.      **HB 121**, relative to the maximum optional fee for transportation improvements charged by municipalities when collecting motor vehicle registration fees. **NHMA Policy.**

11:40 a.m.      **HB 316**, relative to a statewide property tax exemption for commercial and industrial construction.

### **SCIENCE, TECHNOLOGY AND ENERGY, Representatives Hall**

10:00 a.m.      **HB 592-FN**, repealing the regional greenhouse gas initiative.

*(House Calendar — Continued from Page 7)*

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

- 11:00 a.m.      **HB 567-FN**, repealing the exemption for water and air pollution control facilities from local property taxation. **NHMA Policy.**
- 11:30 a.m.      **HB 573-FN**, relative to the exemption from property taxation for charitable nonprofit hospitals.

**WEDNESDAY, FEBRUARY 8, 2017**

**ELECTION LAW, Room 308, LOB**

- 9:00 a.m.      **HB 402**, relative to presumptive evidence of domicile for voters.
- 9:30 a.m.      **HB 403**, relative to domicile affidavits.
- 10:00 a.m.      **HB 404**, relative to eligibility to vote, voter registration forms, and absentee ballot requests.
- 10:30 a.m.      **HB 639**, relative to affidavits used to prove qualifications to vote.
- 11:00 a.m.      **HB 642-FN**, relative to eligibility to vote and relative to student identification cards.

**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Representatives Hall, SH**

- 10:00 a.m.      **SB 11-FN**, prohibiting collective bargaining agreements that require employees to join or contribute to a labor union.
- 10:05 a.m.      **HB 520**, relative to right to work.

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

- 10:00 a.m.      **HB 265**, relative to accessory dwelling units.

**TRANSPORTATION, Room 203, LOB**

- 1:30 p.m.      **HB 454**, repealing mandatory on-board diagnostic and emissions tests for motor vehicles.

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

- 10:30 a.m.      **HB 539-FN-A-L**, relative to the distribution of occupancy revenues under the meals and rooms tax to towns and cities.
- 11:00 a.m.      **HB 655-FN-A-L**, establishing a local option sales tax to reduce property taxes.

**WEDNESDAY, FEBRUARY 15, 2017**

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

- 1:30 p.m.      **HB 366-FN**, relative to the calculation of average final compensation under the retirement system for certain members.



## SENATE CALENDAR

### TUESDAY, FEBRUARY 7, 2017

#### **ELECTION LAW AND INTERNAL AFFAIRS, Room 102, LOB**

- 9:00 a.m.        **SB 106**, relative to eligibility to vote.  
9:20 a.m.        **SB 108**, relative to absentee ballot applications.

#### **ENERGY AND NATURAL RESOURCES, Room 103, SH**

- 9:45 a.m.        **SB 195-FN-L**, relative to fees for operation of a heating and agitation device in public waters.  
10:00 a.m.       **SB 121**, relative to the MS 4 list of the department of environmental services.

#### **FINANCE, Room 103, SH**

- 1:15 p.m.        **SB 197-FN-A**, making an appropriation to the department of justice to enforce election and lobbying laws.

### WEDNESDAY, FEBRUARY 8, 2017

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

- 9:40 a.m.        **SB 211-FN**, establishing a statewide law enforcement data network.

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

- 9:00 a.m.        **SB 170**, relative to the authority of towns to issue bonds for the expansion of broadband infrastructure. **NHMA Policy**.  
9:20 a.m.        **SB 201-FN**, relative to providing pamphlets containing the asbestos regulations to persons engaging in renovation or demolition of structures.  
9:40 a.m.        **SB 202-FN**, allowing community investment in a development finance institution.  
10:00 a.m.       **SB 172-FN**, relative to dams on residential property.  
10:30 a.m.       **SB 169**, relative to the definition of agritourism.

### **New 2017 Senate Bills**

SB 194-FN authorizes online voter registration by means of a website to be established by the secretary of state. Sen. Lasky of Nashua; **EL&IA**.

SB 195-FN-LOCAL raises the fee payable to a municipal clerk for the operation of a heating and agitation device in public waters. Sen. French of Franklin; **ENR**.

SB 197-FN-A appropriates \$500,000 to the department of justice to enforce election and lobbying laws. Sen. Feltes of Concord; **F-S**.

SB 201-FN provides that, prior to issuance of a building permit for the demolition or renovation of a building, the municipal building official shall provide the applicant with a pamphlet, developed

*(Senate Bills — Continued from Page 9)*

by the department of environmental services, containing applicable asbestos regulations. Sen. Fuller Clark of Portsmouth; **PMA**.

SB 202-FN permits municipalities to invest in a community development finance institution. Sen. Feltes of Concord; **PMA**.

SB 208-FN establishes a working families property tax refund program for a portion of state education property taxes, with refunds to be paid from the education trust fund. Sen. Feltes of Concord; **W&M-S**.

SB 211-FN establishes a statewide law enforcement data network. Sen. D'Allesandro of Manchester; **ED&A-S**.

SB 236-FN makes the Medicaid expansion law permanent. The program would currently expire December 31, 2018. Sen. Fuller Clark of Portsmouth; **HHS**.

SB 240-FN-LOCAL requires a municipality to connect owners of certain contaminated wells to a public water system. Sen. Innis of New Castle; **PMA**.

SB 243-FN-A requires the department of transportation to assist municipalities to implement complete streets projects and establishes a pilot program for facilitating matching grants to municipalities for complete streets projects. Sen. Feltes of Concord; **TRANS-S**.

## **HOUSE FLOOR ACTION**

Thursday, February 2, 2017

**HB 83**, prohibiting family members from serving on the same town, city, or school district board or committee. **Inexpedient to Legislate**.

**HB 89**, relative to municipal revolving funds. **Passed**.

**HB 119-FN-A-LOCAL**, making appropriations to the department of environmental services for the purpose of funding eligible drinking water and wastewater projects under the state aid grant program. **Inexpedient to Legislate**.

**HB 142-FN-A**, making a capital appropriation for construction of a new tenth circuit district court facility in Hampton. **Inexpedient to Legislate**.

**HB 163**, relative to the responsibility of a municipality to enforce its ordinances. **Passed**.

**HB 165**, relative to disqualification of election officers. **Inexpedient to Legislate**.

**HB 191-LOCAL**, relative to the authority of towns to issue bonds for the expansion of Internet service. **Inexpedient to Legislate**.

*(Floor Action — Continued from Page 10)*

**HB 209**, relative to the adoption of Atlantic standard time. **Passed.**

**HB 234**, relative to alteration of speed limits. **Inexpedient to Legislate.**

**HB 247**, relative to retention of voter registration forms. **Passed.**

**HB 253**, relative to campaign materials at the polling place. **Inexpedient to Legislate.**

**HB 301**, relative to the regulation of electric grills. **Passed.**

**HB 425-FN-LOCAL**, relative to the retirement system assumed rate of return for the biennium beginning July 1, 2017. **Inexpedient to Legislate.**

**HB 551-FN**, regulating the use of a cell site simulator device. **Inexpedient to Legislate.**

### Upcoming Events for NHMA Members

Please visit our [website](#) for upcoming NHMA events. See CALENDAR OF EVENTS on the left and click *View the Full Calendar*; scroll down to the event you are interested in to register.

February 8, 2017      NHMA Webinar: Right-to-Know Law: Open to the Public—  
A Primer on Public Meetings

February 11, 2017      Moderator's Workshop for Traditional Town Meeting

For more information, contact us by phone at 1-800-852-3358, Ext. 3350 or email us at [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)