

LEGISLATIVE BULLETIN

Good-Bye and Hello

In this unusual town meeting season, many local officials completed their terms of office last week, or this week—and some will next week. Whatever the timing, we thank all of you for the time and energy you have devoted to public service, including your work on behalf of NHMA. For those who have never served in local government, it is difficult to appreciate how much work and time are involved, and how thankless the task can be. We hope you will enjoy your time off.

Meanwhile, we enthusiastically welcome all of the new officials. We look forward to working with you in the coming years. Please be sure to let us know the e-mail addresses of the new officials in your town who should receive the *Legislative Bulletin*, so we can provide them with the latest legislative news. You can e-mail address changes to governmentaffairs@nhmunicipal.org. (Please also go into Member Directory Updates in the Member Toolbox section on [NHMA's website](http://www.nhmunicipal.org) to update all elected and appointed local officials and employees.)

Some who are new to local government may not fully appreciate the extent to which state legislation affects what happens at the local level—but you will learn quickly. We hope you will read the *Legislative Bulletin*, get to know your legislators, think about what you can do to influence state policy, and let us know when you have questions or ideas.

Blizzard Blues—Part II

While there remains disagreement in Concord about whether towns had authority to postpone their voting sessions due to the nor'easter on March 14, the focus has for the moment shifted to what to do next. Election and ballot question outcomes have been called into doubt as a result of the turmoil following the differing opinions issued the Monday before the storm.

SB 248, a bipartisan bill (described in last week's *Bulletin*) to ratify the postponed meetings, was heard before the Senate Election Law and Internal Affairs Committee Tuesday morning. There was standing room only in the hearing room, and interested people spilled into the hallway. Although the

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INSIDE THIS ISSUE

State Budget Update	3
Transportation Improvement Fee	4
Voter Domicile	5
MS4 Study	6
House/Senate Calendars	7
House Floor Action	7
Senate Floor Action	8
NHMA Upcoming Events	8

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hearing lasted much longer than the time allotted, senators very patiently stayed and heard testimony from numerous speakers for over one and one-half hours.

Of note, the Senate President, Speaker of the House, and Secretary of State all testified in opposition to the bill. They opposed a “blanket” ratification and wanted to kill the bill unless it became a study bill to be worked on later, including a case-by-case assessment of how each postponing town had handled the situation. Several state representatives testified, both for and against the bill. Municipal attorneys, moderators, clerks, and selectmen testified in favor of the need to ratify the meetings and described how difficult the postponement decision was, given the conflicting opinions they heard on March 13. One moderator stated that he agonized over the decision, opted to keep his town’s voting place open on March 14, and now regretted his decision. It was clear that no one took the question of moving the voting day lightly, and that moderators did so only after consultation with town attorneys, road crews, public safety officials, and other municipal officials. Nevertheless, they were chastised by some at the hearing for confusing voters by moving the voting sessions.

One of the most important speakers of the day was Attorney David Barnes—a familiar name to many in the municipal world, as he is bond counsel for most of the state’s cities, towns, and school districts. Every municipal official knows a bond cannot be issued unless bond counsel is satisfied with the legality of the process. Attorney Barnes’s testimony is excerpted here:

Acting under the authority of RSA 40:4(II), a number of New Hampshire towns and school districts that were scheduled to hold ballot voting on annual meeting day (March 14) postponed and rescheduled these “deliberative sessions or voting days” as a result of the “weather emergency” created by that day’s snow storm. While such action was consistent with advice that many of these communities received from their legal counsel, opinions to the contrary were voiced by the Secretary of State and Governor, who expressed the view that RSA 40:4(II) does not give New Hampshire towns and school districts the legal ability to postpone and reschedule “elections.”

Given these conflicting interpretations of RSA 40:4(II), in the event that bond issues are approved by any towns or school districts at postponed and rescheduled meetings, in our capacity as bond counsel we would not be in a position to issue “clean” approving bond counsel opinions with respect to such bonds in light of the “high degree of certainty” standard to which we are held. As such, as a practical matter, it is unlikely that the financing of these projects will be able to proceed without legislative action to legalize such proceedings.

Consistent with the foregoing analysis, the passage of SB 248 will enable us to issue clean bond counsel approving opinions for any communities that authorized the issuance of bonds at annual meetings that were postponed and rescheduled from the originally scheduled meeting date of March 14, 2017.

One of the final speakers was a representative from the Attorney General’s office, who stated that the official state position during the Governor’s conference call was that municipalities should hold their elections. She also said, however, that there was legitimate confusion regarding whether moderators have authority under RSA 40:4, II to postpone an election, and that moderators’ decisions to do so were “reasonable.” You can find the audio recording of the full hearing [here](#).

So where do we stand now? **SB 248**, [amended](#) by the committee to become a study bill, goes before the full Senate next week with the expectation that more substantive language regarding the postponed meetings will be added in the House. NHMA has met with the House Speaker and the

Secretary of State to talk about how to move forward. Instead of a blanket ratification, they are looking at passing a chapter law that authorizes each postponing municipality to conduct a ratification vote at a special town meeting. Obviously, nothing is close to final yet.

State Budget Update Additional Money for Cities and Towns!

This week the three divisions of the House Finance Committee completed work on their respective portions of the biennial state operating budget contained in [HB 1](#) and [HB 2](#), in preparation for a full Finance Committee vote next week on what will become the recommended House budget. While the amount of the fiscal year-end surplus at June 30, 2017, as well as revenue estimates through June 2019, is still up in the air (and probably will be until the very end of the budget process), there were several appropriation proposals presented this week that, if passed, will provide significant additional aid to cities and towns:

- **Property tax relief: \$25 million in fiscal year 2018 and \$25 million in fiscal year 2019** for aid to cities, towns, and unincorporated places to be distributed on a per capita basis by September 1 of each year. This is not a reinstatement of the old “revenue sharing” program (which also happened to be approximately \$25 million per year), but a one-time biennial appropriation in [HB 2](#) intended to provide property tax relief to municipalities, which we understand is a priority of House leadership. The amendment to [HB 2](#) indicates that this additional aid will not be considered unanticipated revenue under RSA 31:95-b.
- **Road and bridge aid: \$30 million** for municipal roads and bridge aid, to come from surplus funds (*i.e.*, fund balance) as of June 30, 2017. Of the \$30 million, **\$15 million** will be distributed in accordance with the current “Apportionment A” formula for highway block grants, which is based upon population and municipal road mileage. This would be in addition to the regular highway block grant funding, which is estimated to be approximately **\$35 million** each year of the biennium. This additional \$15 million, which would be distributed in fiscal year 2018, would represent approximately a 42 percent increase in highway block grant funding for that year.

The remaining **\$15 million** would be appropriated for municipal bridge aid, in addition to the **\$6.8 million** currently in the budget each year, and would be used to accelerate and advance municipal red-list bridge projects that are currently enrolled in the state bridge aid program. Projects funded by this additional \$15 million would be prioritized based on availability of municipal matching funds (typically 20 percent), design readiness, and bridge condition. This influx of additional bridge aid funding should result in an estimated 20 projects being advanced, which represents the approximate number of projects typically completed in a 2-year period. This should help advance most projects currently on the state aid bridge list (which goes until 2026) by at least 2 years.

This funding for roads and bridges is similar to the Governor’s proposal for an “Infrastructure Revitalization Trust Fund” for targeted aid, but provides direct appropriations to existing state aid programs rather than setting up a separate trust fund with a separate commission to decide new eligibility criteria for project selection. We agree that direct funding to existing state aid programs is a more efficient means of dispersing additional funds for infrastructure improvements.

This funding is also similar to action taken by the Senate Thursday on [SB 38](#), which appropriates \$36.8 million for municipal roads and bridges, also from the June 30, 2017 surplus. **SB 38** allocates the funding a bit differently than the House proposal, with \$30 million distributed under the current Apportionment A formula and \$6.8 million to the municipal bridge aid program. **SB 38** passed the Senate unanimously, and although it is currently a separate bill, we expect it to be rolled into the biennial budget eventually. It is very encouraging that the Governor, the House (at least at the Finance subcommittee level so far), and the Senate have each put forth proposals that address the need for state funding of local infrastructure.

- **State aid grants for water and wastewater projects: \$2.2 million** to fund the wastewater projects listed in [HB 119](#), an **NHMA policy bill**. This is in addition to the funding included in the Governor's budget for existing water and wastewater projects, which totals **\$11.58 million** over the biennium. Funding for all of these projects will come from the Drinking Water and Ground Water Trust Fund that was established last year in [SB 380](#).

Other state aid included in the Governor's proposed budget remains unchanged by the House Finance divisions, including meals and rooms tax distribution of **\$68.8 million** each year of the biennium and flood control reimbursements budgeted for **\$866,250** each year.

Each of the three divisions will present and explain its changes to **HB 1** and **HB 2** to the full House Finance Committee next **Monday, March 27, at 10:00 a.m., in LOB Room 210**, with a committee vote expected on **Tuesday, March 28**. A presentation to all House members will then be held the following week, with a final vote on the House budget expected on or before April 6.

We truly appreciate the recognition that House leadership and the Senate have shown so far in the budget process in helping to restore state aid to municipalities in the upcoming biennial budget! ***However, please understand that the House budget proposals still have a long way to go***—approval by the full Finance Committee, then approval by the full House, and then the whole process begins anew in the Senate. We encourage you to contact members of the [House Finance Committee](#), and urge them to support the funding for cities and towns included in the divisions' recommendations.

Senate Hearing on Municipal Transportation Improvement Fee

On Wednesday, the Senate Public and Municipal Affairs Committee heard 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, in addition to the annual municipal motor vehicle registration fee. There was overwhelming support for the bill, which, by vote of the local legislative body, helps raise money for a transportation improvement fund to pay for local or regional transportation systems, including roads, bridges, bicycle and pedestrian facilities, parking and intermodal facilities, and public transportation.

Municipal and transportation officials testified about the variety of uses for these funds, highlighting the fact that expenditures from the fund are appropriated by the local legislative body to address specific transportation needs of the community from which the money is raised. Just like

(Transportation Improvement Fee— Continued from Page 4)

the initial establishment of the fee, any increase in the fee due to passage of **HB 121** will need to be presented to, and voted upon by, the local legislative body (*i.e.*, town meeting, town or city council or board of mayor and aldermen). One municipal official stated that when the purpose of the fee is explained, particularly to newcomers registering vehicles, there is general support since the money raised never leaves town, and residents have a say on the specific projects funded by the fee.

As we have stated in past *Bulletins*, the transportation improvement fund is a textbook example of local control. **HB 121** merely raises the cap on the fee in recognition of the inflationary impact since 1997, when the \$5 fee was first authorized.

Unfortunately, we sensed a rather lukewarm response to the bill from some committee members. Whether your municipality currently assesses this local option fee or not (but you may want to do so sometime in the future), please contact members of the [Senate Public and Municipal Affairs Committee](#) and urge support of **HB 121**.

Domicile Bill Improved, Still Has Problems

We reported in [Legislative Bulletin 11](#) about **SB 3**, a bill that narrows the definition of “domicile” for voter registration purposes and establishes stricter requirements to prove domicile for those who register at the polls or within 30 days before an election. We explained at the time that the bill would create significant headaches for local election officials, and cited a number of specific problems with the bill.

The Senate Election Law and Internal Affairs Committee has addressed several of those problems in an [amendment](#) that will go to the full Senate next week. Among other changes, it eliminates the requirement that someone registering at the polls produce a letter from his or her spouse/parent/landlord/roommate if the registrant’s name is not on the deed or lease to his or her property. Under the amendment, such a letter is required only if the person has no other proof of domicile, and it may be delivered after election day.

The amendment also clarifies that a person registering at the polls without proof of domicile needs to provide evidence, after the election, of only one of the many attributes of domicile listed on the voter registration form. It shortens the election-day registration form itself by moving the long list of recognized “verifiable acts” to an addendum that would be provided only to those who do not provide proof of domicile when registering.

The amendment eliminates the possibility that supervisors of the checklist will ask local police officers to visit a voter after an election to verify that he or she has established domicile. However, it still provides for the possibility of visits by other local officials, which seems inappropriate, and it removes the option to have the secretary of state send a letter of domicile verification, thus leaving the supervisors on their own. It also adds an option—admittedly not a requirement—that supervisors of the checklist verify domicile after the fact by “[e]xamining public records held by the town or city clerk, municipal assessing and planning offices, tax collector, or other municipal office that may house public records containing domicile confirmation.” Again, this does not seem like an appropriate task for the supervisors.

In spite of the improvements, we remain concerned about the complexity of the registration form and the domicile verification process. It still appears likely to create long lines at polling places and significant complications for election officials.

Further, there remain some internal inconsistencies in the bill. For example, the amendment states that if a person registers at the polls and does not provide evidence of domicile either at that time or within a specified time thereafter, the supervisors shall take steps to verify the person's domicile. But it also states that the supervisors shall report that person's name to the secretary of state and shall initiate removal of his or her name from the checklist. This leaves it unclear what is to be done if the supervisors confirm that the person actually has established domicile, and whether there is even any point to doing so. In addition, the election-day registration form contains the statement, "Failing to report and provide evidence of a verifiable action will prompt official mail to be sent to your domicile address by the secretary of state to verify the validity of your claim to a voting domicile at this address." But, as noted above, the option to have the secretary send a verification letter has been removed from the bill. Finally, there are inconsistent statements throughout the bill about whether a person is required to provide evidence of a verifiable action, or even required to have taken a verifiable action, to establish domicile in order to register.

These inconsistencies indicate that the bill still needs significant work. As we stated previously, the next state election is about 20 months away, and there should be no hurry to implement such complicated changes in the law. If senators believe there is truly a problem with voter domicile that needs to be addressed, we encourage them to re-refer the bill to the committee for further work.

Senate Passes MS4 Study Commission Bill

The Senate this week passed [SB 121](#), which would create a commission to determine whether "the Department of Environmental Services should take over the MS-4 permit system from the Environmental Protection Agency, and if so, to recommend a fee structure that would pay for the department to hire the required number of employees to manage the issuance of permits."

"MS4" stands for "municipal separate storm sewer system," and there are [61 municipalities](#) in New Hampshire that are subject to the EPA's [MS4 general permit](#). Local officials in the affected municipalities probably are familiar with the program; for those who are not, there is not sufficient space here to get into it. If yours is one of the affected municipalities, talk to your public works director—he or she is probably on top of it.

We understand that New Hampshire is one of only three states in the nation in which administration of the program remains with the EPA, rather than having been delegated to the state. The **SB 121** study commission would consider whether New Hampshire ought to seek delegation to the state DES. We have no position on the ultimate question, but it is an important and extremely complicated subject that warrants study. The bill still needs to go through the House.

HOUSE CALENDAR

WEDNESDAY, MARCH 29, 2017

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

1:00 p.m. **SB 201-FN**, relative to providing pamphlets containing the asbestos regulations to persons engaging in renovation or demolition of structures.

TUESDAY, APRIL 4, 2017

ELECTION LAW, Room 308, LOB

10:20 a.m. **SB 108**, relative to absentee ballot applications.

10:40 a.m. **SB 113**, relative to an electronic poll book trial program. **NHMA Policy.**

SENATE CALENDAR

TUESDAY, MARCH 28, 2017

ELECTION LAW AND INTERNAL AFFAIRS, Room 102, LOB

9:00 a.m. **HB 389**, relative to voters with physical disabilities.

9:15 a.m. **HB 390**, relative to parties on certain election forms and ballots and relative to the voter registration form used on the day of the general election.

9:30 a.m. **HB 430**, relative to recording voters' out-of-state drivers' licenses.

9:45 a.m. **HB 453**, relative to vacancies in the office of supervisor of the checklist.

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:30 a.m. **HB 507**, establishing a committee to study the responsibility of a person who through their pollution makes drinking water non-potable.

10:15 a.m. **HB 258**, relative to the submission and approval of subsurface sewage disposal system plans.

JUDICIARY, Room 100, SH

9:30 a.m. **HB 178**, establishing a commission to study processes to resolve right-to-know complaints.

HOUSE FLOOR ACTION

Thursday, March 23, 2017

HB 173, relative to regulations restricting the use of water for outdoor usage. **Passed with Amendment.**

HB 354-FN-A-LOCAL, making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities. **Passed with Amendment.**

HB 380-FN, relative to the oil discharge and disposal cleanup fund. **Passed.**

HB 568-FN, relative to the taxability of lease interests in public property. **Passed.**

HB 654-FN, (New Title) establishing a committee to study the regulation and taxation of vacation rentals and short-term rentals. **Passed.**

