

# LEGISLATIVE BULLETIN

Bulletin 10, 2018 Session  
February 23, 2018

## Postponement Bill Postponed

Although it had nothing to do with hazardous weather, on Thursday the Senate “special ordered” **SB 438** to the next Senate session, which will be held on March 8<sup>th</sup>. We are not sure why the vote was delayed, but it appeared to be because of still-evolving positions among senators in both parties. We knew there was bipartisan opposition and bipartisan support for the bill—a good thing, we suppose, as municipal legislation should never be partisan.

We hope this delay will provide an opportunity for collaboration focused on making sure that the bill does no harm to the governance of town meetings—an almost sacred event that has been held for over 300 years and which happens just once a year in towns across the state. We hope that if there are further discussions during this period, NHMA representatives will finally have a seat at the table. We hope that senators will recognize that their town moderators and other local officials, whom they have elected to positions of responsibility in their towns, have made and will continue to make sound decisions in the best interests of the local voters.

Over the last few days of intense lobbying and discussion, there has been much misinformation floating around—intentionally or unintentionally. It is critical that all senators understand the details involved, so please continue to talk with your senators about this bill. Even if you’ve already connected, check with your senator again to reinforce your position.

February 26 to March 2 is vacation week for the Senate, so if your senator is around, it would be a good time to chat. This [link](#) will take you to their Senate Office contact information.

If you have questions, please do not hesitate to contact the [Government Affairs Staff](#) at 800-852-3358. For additional information, see the articles in these recent *Bulletins*: [January 19](#), [January 26](#), [February 16](#).

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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)

## Committee “Solves” Utility Valuation in One Day Giveaway to Utilities Will “End the Lawsuits!”

The House Ways and Means Committee this week recommended passing a bill that would completely overhaul the valuation of utility property in New Hampshire, likely driving up municipal property tax rates and shifting millions of dollars in tax obligations from utility companies to all other taxpayers. It did this after a few minutes of discussion of an amendment that committee members had received less than an hour earlier.

As we have mentioned a few times, when the House Science, Technology & Energy Committee was charged last year with reviewing a bill to establish a methodology for valuation of utility property, it held eleven sessions over many months, some of them lasting several hours, and heard from many interested parties. That committee finally concluded that it did not have the expertise, or enough objective information, to come up with a valuation methodology, so it unanimously recommended the creation of a study commission in [HB 324](#).

The Ways and Means Committee this week suffered no such pangs of self-doubt. Using **HB 1381** as a vehicle, a subcommittee drafted a new law from scratch late on Tuesday and delivered it to committee members on Wednesday morning; after a brief discussion, the full committee voted 13-8 to report it as Ought to Pass. **The bill is likely to go to the House floor on Tuesday or Wednesday, March 6 or 7.**

Let’s back up. While both **HB 324** and **HB 1381** were in the Ways and Means Committee, the Assessing Standards Board (ASB) was studying the issue of utility valuation (as it is qualified to do). Last Friday the ASB voted to recommend a formula for utility valuation that would use a weighted average of two values:

- Net book value (weighted at 25 percent)
- Original cost (weighted at 75 percent)

The formula would exclude land and land rights (which would be appraised the same as any other land), and would be phased in over five years. Notably, the recommendation did not propose statutory language and left many details to be resolved. At the same meeting, the ASB unanimously voted to support the study commission created under **HB 324**.

Clearly, then, the ASB proposal recognized the need for further consideration and working out the details. It was not intended to create a whole new property valuation scheme overnight. Nevertheless, after a four-hour meeting on Tuesday, the Ways and Means subcommittee did exactly that—literally. By Wednesday morning the subcommittee had put the ASB recommendation (or the subcommittee’s interpretation of it) into an [amendment](#), ready for adoption.

Except that the subcommittee did not follow the ASB’s recommendation. Most significantly, it changed the weighting from 25-75 to 50-50. This was explained as a “compromise” between the ASB’s recommendation and the utilities’ position—ignoring the fact that the ASB’s recommendation was itself a huge compromise that would already significantly reduce utility property values in most municipalities.

The subcommittee’s amendment also ignored the ASB recommendation to exclude land and land rights from the formula. Under the amendment, all land would be valued using the net book

value/original cost formula. So . . . that piece of land that the electric company bought in 1920 for a dollar an acre, and that is now surrounded by land selling for \$50,000 an acre? It would be valued at a dollar an acre. Seriously. And a public utility's use of a municipal right-of-way, a valuable interest that is subject to taxation, would be valued at zero, because the utility did not pay anything for the property interest, so the original cost and the net book value are both zero.

Valuing one taxpayer's land at original cost while all others are paying based on market value is patently unconstitutional. Exempting utility companies from paying taxes on use of the right-of-way while others (telephone and cable companies) are paying taxes for using the same right-of-way is also unconstitutional; the New Hampshire Supreme Court has ruled on precisely that issue.

The mantra that was recited for this giveaway was that it would "end the lawsuits." It was explained that when the utilities sue the towns, taxpayers and ratepayers end up paying for both sides. No one suggested that another way to end the lawsuits would be for the utilities to simply stop suing, since they almost always lose. Instead, the committee believes it makes sense to shift millions of dollars in property taxes to individual taxpayers so they can save a fraction of that amount in attorney fees.

There are too many problems with this bill to be discussed in a few pages. It is a mess, the predictable result of trying to rush through a last-minute amendment without a hearing or any serious discussion and with no understanding of the subject matter, following the strategy of "pass the bill to find out what's in it." We continue to believe the Science, Technology & Energy Committee demonstrated admirable humility and restraint when it urged that this issue be committed to a study commission.

Again, **HB 1381** will likely go to the House floor on **March 6 or 7**. ***Please contact your representatives and urge them to vote down the committee recommendation and kill HB 1381.***

## **Horrendous Right-to-Know Bills Coming to House**

The House Judiciary Committee, in a series of close votes, has recommended passage of three Right-to-Know Law bills, each one worse than the last. All of the bills are likely to go to the full House the week of March 5. ***It is important that all of these bills be killed.***

***Personnel discussions regarding "chief executive officers."*** We'll begin with the worst of the trio. Under **HB 1323**, a public body could no longer discuss the hiring, dismissal, promotion, or compensation of a "chief executive officer" in non-public session. The bill defines a chief executive officer as "any public employee who is directly supervised by a public body including, but not limited to, a police chief, fire chief, or an administrator." (This language is in a committee-approved amendment to the bill, which is not yet available on the legislature's website; it does not change the gist of the original bill.)

Where to begin? As we have noted before, this will put an immediate chill on the market for top-level local officials—as if the market isn't tight enough already. What police chief or town administrator will consider applying for a job in a neighboring town if he knows the public, including his current employer, will be reading about it in the meeting minutes or, quite possibly, in the local newspaper? And does the committee seriously believe that discussing the dismissal of an employee in a public meeting is a good idea?

Further, the majority of the committee seems to have ignored the problems with the definition of “chief executive officer.” In a small town where every employee is “directly supervised” by the board of selectmen, *every* employee will be a “chief executive officer.” In contrast, a town that has a town manager, or in a city, almost *no one* other than the town or city manager is directly supervised by the selectmen or council. For example, a police chief in such a municipality is directly supervised by the town or city manager or the mayor (in a mayor-alderman city), unless there is a police commission—so the police chief would not be a “chief executive officer.”

In short, if you are, or want to be, the police chief or public works director in a city or a large town, you won’t need to worry that your job application, or your promotion, or your dismissal, will be discussed in public; but if you apply to be the selectmen’s recording secretary in a small town, all of your information will be discussed in public. Who thinks this makes any sense? Again, this is the worst of three bad bills.

**Collective bargaining sessions in public meetings.** Next is [HB 1344](#), which would remove the “meeting” exception under the Right-to-Know Law that allows collective bargaining negotiations to be conducted outside a public meeting. *Strategy* sessions with respect to collective bargaining would still be excepted so long as only one negotiating party is present (*e.g.*, strategy discussions among the selectmen, with no union representative present), but any inter-party negotiating would have to be done in public.

This may sound like a good idea—how can anyone oppose openness in negotiating public employee contracts that are funded by taxpayers?—but it is not. The ability to negotiate in private fosters compromise, which is essential to resolving or avoiding impasses. If public bodies and union representatives are required to negotiate in public, it is entirely predictable that each side will play to its supporters in the audience, leading to a hardening of positions that will delay agreement.

The bill’s supporters clearly believe that requiring public negotiations will serve as a check on the demands of unions and thus lead to lower costs for taxpayers. That is hardly likely. Who do they think is going to be in the crowd when negotiations are opened to the public? Anyone who has been to a few town or school district meetings or a few state legislative hearings knows that when public employee compensation and benefits are being debated, it is the employees who fill the room. Emboldened by the audience, union negotiators will have little incentive to temper their demands; and management negotiators, feeling severely outnumbered, will have more difficulty maintaining their resolve. This will not end well.

**Contents of meeting minutes.** The final bill, [HB 1347](#), is more of an annoyance than anything else—but it definitely is that. Again, there is an amendment that is not yet on the website, but which does not materially change the bill. The bill would amend the provisions of RSA 91-A:2, II, that address the content of meeting minutes by adding the following:

The names of the members who made or seconded each motion and the substance, in brief, of comments made during deliberations shall be recorded in the minutes. All pertinent details necessary to enact or implement a motion shall be recorded in the minutes.

*(RTK Bills— Continued from Page 4)*

As to the first sentence, why does it matter who made or seconded a motion? What matters is the decision made. (As an aside, there is no requirement anywhere in the Right-to-Know Law that decisions generally be made by motion, although of course that is how almost all public bodies do it. The only action that requires a formal motion and second is a vote to enter non-public session.) Granted, most public body minutes do indicate who made and seconded motions, but adding this as one more persnickety requirement is unhelpful. Minute takers have enough trouble keeping up with what actually matters.

As to the second sentence, we have no idea what is meant by “all pertinent details necessary to enact or implement a motion.” The original bill said “all *relevant* details”; apparently someone thought that changing “relevant” to “pertinent” makes a difference, but we still don’t know what the sentence means.

***All of these bills will likely go to the House floor on March 6 or 7. Please contact your representatives and ask them to kill HB 1323, HB 1344, and HB 1347.***

## **Changes Proposed to Default Budgets**

Almost every year since the official ballot referendum (SB 2) form of town meeting was enacted 23 years ago, there have been legislative attempts to change the process by which the default budget is determined and/or presented. This year is no exception, with bills in both the House and the Senate addressing the default budget.

Municipalities operating under SB 2 know that the default budget is defined as “the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law.” On Wednesday, the House Municipal and County Government Committee, by a vote of 14 to 4, recommended Ought to Pass With Amendment on a bill that would define “contracts” as used in this definition. **HB 1307** as amended adds a subparagraph defining contracts under this provision as “contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for the previous year.”

The intent of this new definition is to clarify that increases in multi-year contracts not approved by the legislative body should not be included in the following year’s default budget. An example is a multi-year fuel contract that has increased costs in the second year but was not voted on by the legislative body. The increased amount of the fuel costs would not be included in the default budget, but it could still be paid under the governing body’s transfer authority in RSA 32:10, so long as it does not exceed the bottom line budget appropriation. The amendment also requires that when the default budget is disclosed at the first budget hearing (current law), it shall be “presented for questions and discussion using the same individual line items in the detailed operating budget or chart of accounts that is regularly used by the local political subdivision to present the operating budget.”

By a vote of 10 to 8, the committee also recommended **HB 1652** as Ought to Pass With Amendment. The bill as amended authorizes an official ballot town or school district to adopt bylaws defining or establishing requirements for the determination of the default budget by the governing body or budget committee (if so approved under RSA 40:14-b). Committee discussion indicated this provision is intended to complement the changes proposed in **HB 1307**, but it will not allow a different definition of “contracts.”

Both **HB 1307** and **HB 1652** as amended will go to the full House on March 6 or 7. Additionally, the Senate Public and Municipal Affairs Committee is working on an amendment to **SB 342** that will require detailed information about the default budget be available at the deliberative session. We will have more information on that bill in a future issue.

### House Votes to Reduce Interest Rates on Delinquent Taxes

On Thursday the House overturned the unanimous Ways and Means Committee recommendation of Inexpedient to Legislate on **HB 1673**, which lowers the interest rates municipalities may charge on delinquent taxes. The ITL recommendation failed by a [roll call vote](#) of 126 to 163, and a subsequent motion of Ought to Pass was approved on a voice vote.

**HB 1673** lowers interest rates from 12% (pre-lien) and 18% (post-lien) to the rate set annually by the Department of Revenue Administration (DRA) under RSA 21-J:28, II, currently 6%. What supporters of the bill continually neglect to acknowledge is that DRA also assesses a 5% penalty for the failure to file on time and a 10% penalty for failure to pay on time. Let’s do the math to better illustrate the real difference between what the state charges and what local governments charge on delinquent tax payments:

	DRA	Municipal Pre-Lien	Municipal Post-Lien
Interest Rate	6%	12%	18%
Failure to File	5%	0%	0%
Failure to Pay	<u>10%</u>	<u>0%</u>	<u>0%</u>
<b>TOTAL</b>	<b>21%</b>	<b>12%</b>	<b>18%</b>

As explained to the Ways and Means Committee on this bill and similar bills in past sessions, the municipal interest rates are not about the cost of borrowing money, but about the incentive for taxpayers to prioritize payment of delinquent taxes over other payments. Supporters of the bill insisted that this incentive argument is fictitious. However, one municipal official testified to the committee that upon issuance of the notice of lien (which is required before the increase to 18 percent interest), two-thirds of the delinquent taxes were paid – a clear indication that the higher interest rate does in fact provide a real incentive to stay current on property tax payments!

Similar bills have passed the House before but have never been enacted into law, for very good reasons. We’ll continue to explain those reasons as this bill proceeds.

## A Welcome Break, and Some Assignments

The Senate is officially taking a break next week—there will be no committee meetings and no Senate session. The House is taking an informal break—there are only a few hearings, some executive sessions on bills previously heard, and no House session. The following week, the House will meet in session for three days—Tuesday, Wednesday, and Thursday, March 6, 7, and 8—and the Senate will be in session on Thursday, March 8.

The break couldn't come at a better time, because if you have read all of the articles above, you know this was a pretty bad week for municipalities and taxpayers. The break affords an opportunity to regroup, and for local officials to connect with their legislators and talk about the bills they'll be voting on when they return. So, here are your assignments for the week:

- 1) Continue to urge your senator to oppose the committee amendment on **SB 438** (postponement of town meeting), support the NHMA amendment, and, if that fails, vote to kill the bill.
- 2) Ask your representatives to oppose the arbitrary, poorly conceived, and unconstitutional tax shift from utilities to other taxpayers in **HB 1381**. Ask them to vote down the committee report and then vote to kill the bill.
- 3) Ask your representatives to oppose all of the Right-to-Know Law bills recommended by the House Judiciary Committee—**HB 1323**, **HB 1344**, and **HB 1347**.

Thank you, and please contact the Government Affairs staff at NHMA if you have any questions.

## HOUSE CALENDAR

### TUESDAY, FEBRUARY 27, 2018

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

- 10:30 a.m. Public hearing on non-germane amendment #2018-0616h to **HB 1255**, relative to the state fire code. The amendment replaces the bill with a requirement for the State Fire Marshal to review foster family homes for compliance with fire safety laws. It also prohibits conflicts between the state building code and state fire code, and between local building codes and fire codes. Copies of the amendment are available in the Sergeant-at-Arms office, Room 318, State House.
- 11:00 a.m. Public hearing on non-germane amendment #2018-0613h to **HB 1732**, establishing a nursing professionals' health program. The amendment replaces the bill, it establishes reciprocity for out-of-state occupational licenses and certifications. Copies of the amendment are available in the Sergeant-at-Arms office, Room 318, State House.

## SENATE CALENDAR

### TUESDAY, MARCH 6, 2018

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

- 9:30 a.m. **HB 101-FN**, relative to certification for solid waste operators.

#### **TRANSPORTATION, Room 103, LOB**

- 1:00 p.m. **HB 193**, relative to traffic control measures.

## HOUSE FLOOR ACTION

Thursday, February 22, 2018

**CACR 16**, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **Passed with Amendment.**

**HB 1227**, relative to an unattended idling vehicle on private property. **Passed.**

**HB 1265**, relative to the release of criminal conviction records. **Passed.**

**HB 1283**, prohibiting sobriety checkpoints. **Passed.**

**HB 1298**, relative to unalienable rights of inhabitants. **Inexpedient to Legislate.**

**HB 1303**, relative to the purposes of revolving funds in towns. **Passed with Amendment.**

**HB 1366**, authorizing the town meeting to fund capital reserve funds through the operating budget. **Inexpedient to Legislate.**

**HB 1329**, relative to eyewitness identification procedures. **Passed with Amendment.**

**HB 1441-FN**, establishing the office of the ombudsman in the department of state. **Passed with Amendment.**

**HB 1457-FN**, relative to drug take-back programs. **Inexpedient to Legislate.**

**HB 1472**, relative to the state building code provisions for energy conservation in new building construction. **Passed with Amendment.**

**HB 1616**, requiring legislative approval for regional planning commissions to accept money from governmental sources other than the state of New Hampshire or its political subdivisions. **Inexpedient to Legislate**

**HB 1673**, relative to the interest charged on delinquent property tax payments. **Passed.**

**HB 1676-FN**, repealing the licensing requirement for open-air shows and repealing the laws related to the keeping of billiard tables. **Passed.**

**HB 1726-FN**, relative to reimbursement to municipalities for certain search and rescue operations. **Inexpedient to Legislate.**

## SENATE FLOOR ACTION

Thursday, February 22, 2018

**SB 341**, allowing municipalities to adopt a property tax exemption for certain disabled veterans. **Passed with Amendment.**



*(Senate Floor Action— Continued from Page 8)*

**SB 430**, relative to priority of liens for liability for support of assisted persons. **Inexpedient to Legislate.**

**SB 503**, relative to increasing the maximum amount of the optional veterans' tax credit. **Passed with Amendment.**

**SB 512**, relative to compact sections of towns. **Passed with Amendment.**

**SB 515**, relative to commemorative license plates. **Passed.**

**SB 516**, prohibiting the use of motorcycle-only roadside checkpoints. **Passed with Amendment.**



**SB 547**, relative to unused prescription drugs. **Interim Study.**

**SB 561-FN**, relative to the installation of a traffic light or beacon. **Passed with Amendment.**

**SB 565-FN**, relative to aircraft registration fees and airways tolls. **Passed; referred to F-S.**

**SB 575-FN**, relative to electric vehicle charging stations. **Passed with Amendment.**

**SB 586-FN-A-L**, relative to casino gambling. **Tabled.**

<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
Mar. 14	NHMA Webinar—Municipal Social Media and Free Speech
Apr. 9	2018 Local Officials Workshop—Grantham Town Hall

Please register online through our website [www.nhmunicipal.org](http://www.nhmunicipal.org). (Scroll down on left to Calendar of Events and click View the Full Calendar)