

# LEGISLATIVE BULLETIN

## Solid Waste Surcharge and Fund

On **Tuesday, February 4**, the Senate Energy and Natural Resources Committee will hear testimony on **SB 629**, which would establish a solid waste reduction fund in the Department of Environmental Services. The fund would be used for, among other things, administration of the department’s solid waste reduction management program and to provide matching grant funding to municipalities or private entities for “projects, including a regional or municipal materials recycling facility operated by a public or private entity, and other regional recycling efforts, that will provide a demonstrated, significant improvement in waste diversion methods and contribute to reduction of wastes requiring disposal.”

Money for the fund would come from a \$1.50 per ton surcharge paid to the department by every holder of a permit for a landfill, incinerator, or waste-to-energy facility in New Hampshire. That cost, naturally, would get passed through to those who send their waste to those facilities, including municipalities; and NHMA has always opposed a state-mandated surcharge on solid waste disposal.

*However* . . . under **SB 629**, the fund would also be used to “provide annual payments to municipalities to offset costs associated with the solid waste disposal surcharge . . . at the rate of \$1.50 per ton of solid waste for which the municipality was financially responsible for disposal at a New Hampshire landfill, incinerator, or waste-to-energy facility.” In other words, municipalities would pay the surcharge but would then get the entire amount back.

That may seem odd, but there is a rationale. Because of municipal opposition to surcharges, there has been discussion in the past about applying a surcharge only to waste coming from outside New Hampshire—of which there is a lot. This, however, would violate the Interstate Commerce Clause of the United States Constitution, which prohibits states from discriminating against interstate commerce. By applying the surcharge to all waste, the bill avoids that problem. It then rebates the charges to municipalities to make them whole. We understand the New Hampshire Attorney General’s office has advised that this should survive a constitutional challenge.

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Assuming the state does in fact rebate the full \$1.50 per ton (and we understand why some municipal officials may be skeptical), we see this bill as a good step. Recycling costs are rising dramatically, New Hampshire landfills are nearing capacity, and getting approval for a new landfill is extremely difficult. Trash has to go somewhere. Other states in the region have closed landfills or imposed disposal bans on certain items, such as food waste and construction and demolition debris. Most other states also have disposal surcharges. These factors make New Hampshire a more attractive target for waste disposal—approximately half of the solid waste disposed of at New Hampshire landfills and incinerators comes from outside the state—thus exacerbating the capacity problem.

A legislative committee last fall spent many hours studying solid waste and recycling issues and hearing testimony from interested parties, including many municipal officials. One of the clear themes that emerged from that study was the need for the state to provide assistance to, and coordination among, municipalities in addressing their solid waste issues. Until about 15 years ago, DES’s Waste Management Bureau had a Planning and Community Assistance Office that assisted municipalities with solid waste management issues. That office was closed due to budget cuts. The fund established under **SB 629** would be used, in part, to re-establish that function.

Again, we believe this is a good step if it works as proposed. Municipal officials who have questions or comments, whether positive or negative, are encouraged to attend the hearing, scheduled for **Tuesday, February 4, at 9:45 a.m., in State House Room 103.**

### **Misuse of Sick Leave Justifies Increased Pension Benefits?**

In last week’s *Bulletin* we wrote about **HB 1341**, relative to increasing pension benefits for group II members of the New Hampshire Retirement System (NHRS). As we explained, both the original version of the bill and a proposed amendment would increase benefits for those group II members who commenced service prior to July 1, 2011, but were not vested at that date. That is the date when many retirement reform measures were enacted by the legislature in response to significant NHRS deficits. Following last week’s hearing, we inquired further about the reasons supporters feel this bill is justified.

One reason is that group II members hired before July 1, 2011, but not yet vested at that time (vesting occurs after 10 years of service) feel that pension benefits “promised” to them at the time of hire were taken away. But employee benefits change all the time – whether by federal law, state law, collective bargaining, or local practice – and those changes can go in both directions, increasing or decreasing employee benefits. The Family Medical Leave Act (FMLA) and workers compensation provisions are examples of benefit changes that have been favorable to employees. Additionally, while the legislature in 2011 could legally have adjusted pension benefits for ALL active NHRS members, it chose to exempt members at least 10 years into their public service careers, recognizing that while not explicitly stated in law, “vesting” in the NHRS meant something.

A more interesting justification for **HB 1341** involves the use of sick leave by certain group II members. As stated in public testimony by one supporter, **HB 1341** restores the sick leave retention incentive that existed before 2011, when payouts of accrued sick leave were included in “earnable compensation” for determining a retiree’s pension amount. (This incentive was eliminated in 2011 to help curtail pension spiking that occurred in part when end-of-career termination payouts of annual leave, sick leave, and other accrued benefits increased pensions without sufficient employee and employer contributions to the system over time to pay for them.)

As explained in testimony and in subsequent communications, certain group II employees are now burning through all their sick leave—that is, taking sick days when they are not actually sick—because there is no incentive to accumulate it. These workers have an arrangement in which the “sick” employee gets a fellow employee to fill in for him. The replacement employee gets overtime pay at time-and-a-half, which boosts his compensation used to calculate his pension, while the “sick” employee gets straight pay for pretending to be sick.

We had heard about this kind of arrangement between employees—“I cover for you when you call in sick, then you cover for me when I call in sick”—but thought it was anecdotal and isolated. However, based on public testimony, this practice is evidently so rampant that it is one of the main reasons for supporting **HB 1341**. When we asked if this is misuse of sick leave, the answer was that people will be “greedy” if given the opportunity.

We are a bit stunned at this public and unabashed admission of what is evidently a widespread practice among certain group II members, and the implication that employers will need to spend much more money for overtime coverage unless the sick leave retention incentive is restored by adding end-of-career payouts back into NHRS pension calculations. Perhaps what is really needed is legislation to investigate abuse of sick leave policies.

As we noted in last week’s *Bulletin*, the fiscal impact of the original bill is **\$143 million**, while the impact of the proposed amendment is unknown. The Executive Departments and Administration Committee will be voting on **HB 1341** at an executive session next Wednesday afternoon. We will report next week on the committee’s recommendation. ***Please contact members of the committee before Wednesday and urge them to oppose HB 1341.***

### **Bill Would Prohibit Regulation of Short-Term Rentals**

On Wednesday the Senate Election Law and Municipal Affairs Committee will hear testimony on **SB 458**, which provides that a municipality “shall not prohibit the use of a building or structure as a vacation rental or short-term rental and shall not regulate the use of such structure or building as a vacation or short-term rental based on the structure or building’s classification, use or occupancy.” ***NHMA will oppose the bill.***

If enacted, the bill would represent a stark departure from fundamental zoning principles. In New Hampshire and elsewhere, zoning is a local matter, with almost no exceptions. Other than “the tilling of soil and the growing and harvesting of crops,” we know of no property use that state law requires municipalities to allow everywhere.

Short-term rentals have a long tradition in New Hampshire—the cottage on the lake, the ski condo in the mountains, the home in Laconia that is rented out during Motorcycle Week. For many decades, they were not a problem; but the advent of on-line platforms like Airbnb and VRBO has changed everything. We have heard from more than a few municipalities where short-term rentals are out of control, with many vacationers crowding into houses in residential areas, creating excessive noise and generally disrupting previously quiet neighborhoods.

Just as bad, residential properties are now being marketed and sold as investment properties based on their income potential as short-term rentals. They are no longer used as homes; they are mini-hotels. This is (1) driving up housing costs and (2) reducing the inventory of housing available for residents. New Hampshire

is in the middle of an affordable housing crisis—which is often blamed on local zoning ordinances and land use boards. As towns make good-faith efforts to comply with existing mandates about affordable housing, removing their ability to regulate this situation will not help.

The hearing is scheduled for **Wednesday February 5, at 10:15 a.m., in LOB Room 102**. Please consider attending the hearing. If that is not possible, please contact members of the [Election Law and Municipal Affairs Committee](#) and your own senator and urge them to support local control by voting against this bill.

## Local Option Transportation Improvement Fee

On **Wednesday, February 5, at 11:00 a.m. in LOB Room 102**, the Senate Election Law and Municipal Affairs Committee will hear testimony on **SB 667**, 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, which is the cap that was set 25 years ago when this optional fee was first enacted.

These are *local* dollars raised for *local* projects approved by the *local* legislative body of each municipality that assesses the 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 text-book example of local control! **SB 667** is the perfect opportunity to help supplement the financing of diverse modes of transportation without raising property taxes.

Last year a similar bill, **HB 409**, passed the House and Senate but was vetoed by the Governor, despite overwhelming support from a variety of constituencies, including city and town officials, regional planning commissions, regional transportation associations, and the New Hampshire Department of Environmental Services.

Officials from municipalities that assess this local option fee, or others who are interested in doing so in the future, should contact members of the [Senate Election Law and Municipal Affairs Committee](#) and plan to attend the hearing on **SB 667** 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!

## Can New Hampshire Survive Without Perambulation?

The House Municipal & County Government Committee heard testimony this week on **HB 1441**, which would abolish the long-obsolete requirement that selectmen perambulate their town boundaries every seven years. NHMA supports the bill, but the hearing brought out a small crowd of opponents. Their common theme was that there are many reasons for needing to know where a town boundary is: zoning, taxation, and voting domicile, among others.

That is not disputed. That is why the bill would still require selectmen to perambulate the boundaries “as often as . . . is necessary.” If, and when, there is a question about where the boundary is, you go and figure it out. If there is no question, you don’t need to bother.

The opponents (most of whom were licensed surveyors . . . hmmm) had varying, and not necessarily consistent, explanations for why the law must remain as it is. One stated that most towns are currently in compliance, indicating that the law is working. Another said the opposite: most towns are *not* in compliance, indicating that better enforcement is needed. We submit that the two arguments cannot coexist peacefully.

The discussion devolved, as it always does, into a conversation about GIS, GPS, satellite imagery, and true north versus magnetic north—all of which is irrelevant. Regardless of how boundaries are established, it is not necessary to do it every seven years.

As we have pointed out repeatedly, 48 other states manage just fine without such a requirement. (Massachusetts has a sort of “perambulation lite.”) Most of the opponents ignored that point; only one tried a response, stating that in many other states, especially those west of the Appalachians, towns were laid out on the Jeffersonian grid system, with straight lines that don’t need periodic examination. A cursory examination proves that to be untrue, as there are thousands of towns in western states with shapes as irregular as those in New Hampshire. And then there are the 18 or so states that are not west of the Appalachians.

We recognize that New Hampshire is a special place, but perambulation is not responsible for the “New Hampshire advantage.” Please encourage members of the [Municipal & County Government Committee](#) to vote Ought to Pass on **HB 1441**.

### **Can the World Survive Without a Pollution Control Exemption?**

A small crowd also turned out to oppose **HB 1661**, the bill that would partially repeal the so-called pollution control exemption in [RSA 72:12-a](#). NHMA supports the bill, which would deny the exemption to fossil fuel and nuclear power plants (although we would prefer to see the exemption repealed entirely). Support also came from several environmental groups, while opposition came from the energy industry.

As NHMA explained, however, from our perspective the issue is not about fossil fuels, nuclear energy, or environmental policy. The issue is that RSA 72:12-a is the only state-mandated property exemption that is given to for-profit businesses merely for *doing what the law already requires them to do*. As we explained in [last week's Bulletin](#), companies get the exemption for installing pollution control equipment, which they would be required to do anyway under state and federal law. Thus, the exemption does not affect anyone’s behavior; it is merely a giveaway at the expense of other property taxpayers.

As usual, opponents made little effort to justify the exemption on pollution control grounds. Instead, they argued that energy companies rely on the exemption as a business matter. Taking it away would force them to charge higher rates and make them less competitive. The discussion at one point took an apocalyptic turn, with a committee member suggesting that “the modern world would be unsustainable” if **HB 1661** is passed.

Coincidentally, exactly a week earlier, the same committee had heard bills providing for expansion of net metering, which some legislators believe would amount to an intolerable “subsidy” for solar and hydro power companies. Presumably, a subsidy for coal and nuclear power—which is indisputably what RSA 72:12-a provides—is equally offensive, right? We’ll see.

On the theory that the exemption is necessary for these businesses, why shouldn’t *every* business get a property tax exemption? Supermarkets, restaurants, and movie theaters could lower their prices and improve

their financial statements if they got tax breaks just for following the law. Representatives from NextEra, which owns the Seabrook nuclear power plant and is the largest beneficiary of the exemption, explained that NextEra is a good corporate citizen that pays \$17 million in property taxes and employs many workers—the suggestion being that if a business does enough good things for the community, it should be exempt from taxation beyond a certain point.

If you believe the state should stop forcing local taxpayers to subsidize multi-billion-dollar companies, please encourage members of the [Science, Technology & Energy Committee](#) to vote Ought to Pass on **HB 1661**.

## Out-of-State Banking Option

On **Tuesday, February 4, at 10:00 a.m. in LOB Room 301**, the Municipal and County Government Committee will hear testimony on **HB 1119**, which would allow town, city, county, and school district treasurers to deposit and invest public funds in out-of-state banks that meet certain criteria. Under current law, treasurers may deposit or invest in federally insured banks chartered in New Hampshire, federally chartered banks with a branch in New Hampshire, or the New Hampshire Public Deposit Investment Pool. Money may currently be deposited in an out-of-state bank (*i.e.*, not a New Hampshire-chartered bank or federally chartered bank with a branch in New Hampshire) only if the bank pledges and delivers collateral security for the deposits to a third-party custodial bank or the federal reserve bank; this can be costly to the depositor. **HB 1119** would authorize deposits in banks not chartered in New Hampshire, but with a physical branch and presence in this state, contingent upon other criteria being met.

We know this bill is of particular interest to Coos County due to limited banking options for county financial operations, as some previously “New Hampshire chartered banks” in the north country have recently been acquired by out-of-state banks. Municipalities interested in this issue should plan to attend Tuesday’s hearing on **HB 1119**.

## HOUSE CALENDAR

### TUESDAY, FEBRUARY 4, 2020

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

1:00 p.m. **HB 1709**, relative to building code and zoning requirements applicable to home-based child day care providers.

#### **JUDICIARY, Room 208, LOB**

1:45 p.m. **HB 1176**, establishing a committee to study the attorney general’s authority over certain municipal and county employees.

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

10:00 a.m. **HB 1119**, relative to banking by municipal and county treasurers.

10:30 a.m. **HB 1104**, relative to the acquisition, sale, or demolition of municipal land or buildings.

11:00 a.m. **HB 1147**, prohibiting municipalities from requiring a license for a lemonade stand operated by a person under the age of 18.

1:00 p.m. **HB 1111**, relative to the removal and replacement of telephone and electric poles.

1:30 p.m. **HB 1129**, relative to notice requirements for certain municipal public hearings. **NHMA Policy.**

#### **RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB**

11:00 a.m. **HB 1414**, relative to notification to abutters of an intent to cut timber.

1:45 p.m. **HB 1537**, relative to standards for perfluorochemicals in drinking water and ambient groundwater.

**WEDNESDAY, FEBRUARY 5, 2020**

**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB**

- 10:30 a.m.      **HB 1554-FN**, relative to elections in collective bargaining.  
11:00 a.m.      **HB 1144**, requiring certain employers to submit data on wage differences between male and female employees to the department of labor.  
1:00 p.m.        **HB 1171-FN-L**, relative to the application of federal Occupational Safety and Health Act standards to public employers.

**SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB**

- 3:15 p.m.        **HB 1310**, relative to authorizing the state to set higher environmental standards than those established in federal law.

**WEDNESDAY, FEBRUARY 12, 2020**

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

- 10:30 a.m.        **HB 1514**, relative to the presence of a fire department at a class B fireworks display.

**JUDICIARY, Room 208, LOB**

- 10:00 a.m.        **HB 1226**, prohibiting surveillance by the state on public ways or sidewalks.  
10:30 a.m.        **HB 1236**, relative to the expectation of privacy.

**SENATE CALENDAR**

**TUESDAY, FEBRUARY 4, 2020**

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

- 9:30 a.m.        **SB 591**, establishing a statewide solid waste disposal reduction goal.  
9:45 a.m.        **SB 629-FN**, establishing the solid waste reduction management fund and establishing a solid waste disposal surcharge.

**HEALTH AND HUMAN SERVICES, Room 100, SH**

- 2:20 p.m.        **SB 717-FN-L**, relative to reimbursement to cities and towns from the state of New Hampshire.

**TRANSPORTATION, Room 103, LOB**

- 1:30 p.m.        **SB 614**, exempting the department of transportation from the notice requirement for lessors of real or personal property owned by the state or its political subdivisions.

**WEDNESDAY, FEBRUARY 5, 2020**

**ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB**

- 10:00 a.m.        **SB 456**, relative to the use of capital reserve funds.  
10:15 a.m.        **SB 458**, relative to municipal regulation of vacation or short-term rentals.  
10:45 a.m.        **SB 460**, relative to enforcement of zoning violations.  
11:00 a.m.        **SB 667-L**, relative to the maximum optional fee for transportation improvements charged by municipalities when collecting motor vehicle registration fees.

## SENATE FLOOR ACTION

Thursday, January 30, 2020

SB 410-FN, relative to the state minimum hourly rate. **Passed.**

SB 451-FN, establishing an administrative hearing procedure and penalty for an employer who fails to make payment of wages or who fails to secure workers' compensation coverage. **Passed.**

SB 511, relative to the formula used to determine current use tax rates. **Passed.**

SB 538, establishing a commission to study property tax exemptions for charitable organizations. **Inexpedient to Legislate.**

SB 543-FN, relative to group II retirement system status for certain department of corrections officials. **Passed; referred to F-S.**

SB 573, relative to criminal threats to school safety. **Passed.**

SB 624-FN-L, establishing a school marshals program. **Inexpedient to Legislate.**

SB 635-FN-A, establishing the lakes region development authority. **Passed; referred to F-S.**

SB 638-FN, establishing the New Hampshire housing and conservation planning program. **Passed; referred to F-S.**

<b>2020 NHMA UPCOMING MEMBER EVENTS</b>	
Feb. 12	<b>Webinar:</b> The Role of Municipalities in Asbestos Regulation Today!
Feb. 17	Presidents' Day (NHMA Offices Closed)
Feb 26	<b>Webinar:</b> Retooling Your Zoning to Improve Housing Affordability and Supply
To register for an upcoming event, go to our <a href="#">website</a> and click on the Events & Training tab at the top to access the Full Calendar.	
For more information, please call NHMA's Workshop registration line: (603) 230-3350.	