

LEGISLATIVE BULLETIN

Senate Finance Concerned with PFAS Funding

On **Friday, March 6, at 1:00 p.m. in State House Room 103**, the Senate Finance Committee will hold an executive session to hear from the sponsors of **SB 496** and the Department of Environmental Services regarding the PFAS funding provisions in that bill. **SB 496** is an **NHMA policy** bill that would provide state financial assistance toward the costs of meeting water and wastewater quality standards associated with PFAS. The bill authorizes the state treasurer to issue up to \$50 million in bonds against the credit of the state for the sole purpose of providing low-interest loans to water and wastewater systems for PFAS remediation projects; the Senate unanimously passed it two weeks ago. However, the bill was sent to the Senate Finance Committee for review of the financial implications, and questions are now being raised about the impact this bonding may have on the state's debt ratio and future capital budget borrowing capacity.

As you may recall, we were very concerned about passing the PFAS standards in **SB 287** in the absence of state financial support toward compliance with those standards, and we supported efforts to place both the standards and the funding into one comprehensive bill. Unfortunately, the marriage of those two bills, **SB 287** and **SB 496**, did not occur. Now **SB 287**, which also passed the Senate unanimously two weeks ago, is heading to the House, while the funding bill remains in the Senate. We understand that there are several bills this session seeking bonding authority for other state projects, but we believe state assistance for compliance with clean drinking water standards should be a priority.

Please contact members of the **Senate Finance Committee** to let them know that compliance with the PFAS standards passed in **SB 287** is contingent upon state financial assistance toward the costs for water and wastewater systems to meet those standards as provided in **SB 496**.

Important Votes on Short-Term Rentals, Tiny Houses

The Senate Election Law & Municipal Affairs Committee is likely to vote next Wednesday on two bills that would impose sweeping statewide zoning mandates on municipalities. We have written about both bills before—and we're doing it again, because it is critical that senators hear from local officials in opposition to these bills.

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Short-term rentals. **SB 458** would prohibit any municipality from restricting short-term rentals of single- and two-family dwellings in *any zoning district*. As we previously reported, the only support for this bill at its committee hearing, other than from its legislative sponsors, came from the Realtors Association and from a trade association representing companies like Airbnb and Expedia.

The Realtors Association has been pushing a false narrative about this issue, claiming in a recent “call to action” that “communities are banning short-term rentals and imposing regulations which are not authorized under state statute.” In fact, short-term rentals have long been restricted in many municipalities, and the current trend is that cities and towns are working on zoning amendments to *allow* short-term rentals in some districts, subject to reasonable regulations.

Until recently, there were few problems with local restrictions on short-term rentals. Issues have started to arise *not* because municipalities are suddenly banning short-term rentals, but because property owners, often encouraged by real estate agents, are marketing their properties as short-term rentals in violation of existing ordinances and are claiming that those ordinances are invalid. Last summer an attorney for the Realtors Association sent a letter to several municipalities asserting, incorrectly, that municipalities do not have authority to prohibit short-term rentals—a claim that the New Hampshire Supreme Court subsequently laid to rest.

This is a **local** issue that should be addressed, and *is* being addressed, at the local level. Towns such as Hanover, Conway, and Jackson are working on ordinances that *allow* short-term rentals, but balance the interests of short-term rental hosts against those of neighbors and the general public. A state law that wipes away municipal zoning authority is exactly the wrong approach.

Tiny houses. A similar issue is presented by **SB 482**, which would require every municipality to allow “tiny houses” as a matter of right in every zoning district where single-family dwellings are permitted. The bill has been promoted as a solution to the state’s affordable housing crisis—but no affordable housing organization has testified in support of the bill. The number of people who would be willing to live in a house under 400 square feet is close to zero; it makes no sense to require every municipality in the state to amend its zoning ordinance to accommodate a population that is almost non-existent.

As we noted previously, of the people who testified in support of this bill at the committee hearing, not one mentioned having made any effort to amend their municipality’s zoning ordinance to allow tiny houses. Both **SB 458** and **SB 482** demonstrate a predilection for pursuing a state-mandated solution before even considering a local solution.

This week’s to-do list

- ✓ Remind members of the Senate Finance Committee that passage of **SB 496**, which provides funding for PFAS remediation, was part of the bargain to put strict PFAS limits into statute.
- ✓ Call or e-mail your senator and members of the Election Law & Municipal Affairs Committee and urge them to **oppose** the statewide zoning mandates in **SB 458** (short-term rentals) and **SB 482** (tiny houses).
- ✓ Urge your senator to **support SB 667**, allowing for an increase in the local option municipal transportation improvement fee.
- ✓ Take a look at the several labor bills described in this Bulletin and let your legislators know if you have concerns.

If **SB 458** and **SB 482** are passed, what local zoning matter will be safe from state preemption? Is it really appropriate for the state legislature to act as a 424-person planning board for every municipality? ***Before Wednesday***, please contact members of the [Election Law & Municipal Affairs Committee](#) and your own senator and urge them to respect local planning authorities ***and local voters*** by voting ***Inexpedient to Legislate on SB 458 and SB 482***.

Transportation Improvement Fee Up for Senate Vote

As we reported in last week's Bulletin, the Senate Election Law and Municipal Affairs Committee voted 3-2 to recommend Inexpedient to Legislate on **SB 667**, the **NHMA policy bill** that increases the cap on the local option transportation improvement fee from \$5 to \$10. This local option fee, which has had a statutory cap of \$5 since first enacted nearly 25 years ago, provides municipalities with non-property tax revenue to fund a diverse variety of public transportation needs, such as road improvements, bridge repairs, sidewalks, and senior transportation services. **SB 667** does not increase the fee, but merely allows the legislative body of a municipality to decide whether to charge up to \$10 annually to help pay for specific transportation projects in their community.

Please urge your senator to support local control by voting NO on the committee recommendation of Inexpedient to Legislate and voting YES on a subsequent motion of Ought to Pass on SB 667.

“Active Spreadsheet Format” for Municipal Budgets

HB 1460, which had a hearing this week before the Municipal & County Government Committee, would require that all municipal budgets “use a full line item detail in active spreadsheet format which shall include all the budget lines used to comprise the complete budget.” We have some concerns about the bill.

First, neither “full line item detail” nor “active spreadsheet format” is defined, although we have a general sense of what is intended. The requirement that the budget use “a full line item detail” and “include all the budget lines used to comprise the complete budget” seems to be a tautology, merely requiring that the budget include every line that's in the budget. That seems harmless.

The bill amends RSA 32:5, I, which governs the budget hearing. If the point is that a budget showing every line must be available at the budget hearing, that should not be a problem. At the committee hearing, however, it appeared that the concern was more about citizens having a general right to get access to all the budget lines. Again, that should not be a problem. Once the budget is prepared and presented to the selectmen or budget committee, anyone has a right to see it and get a copy of it, in full detail, subject to redaction of any confidential information. (Until it is presented to the selectmen or budget committee, it is exempt from disclosure under RSA 91-A:5, IX.)

Of more concern is the requirement that all budgets be “in active spreadsheet format.” Testimony at the hearing indicated the intent was to require the use of Microsoft Excel or a similar format that allows the user to manipulate the document. It was explained that some citizens are interested in having access to a spreadsheet so they can plug in suggested changes to individual lines and produce a revised budget showing the effects of the changes.

We're not sure why that should be necessary, and we don't think facilitating the preparation of multiple unauthorized budget drafts simultaneously is a good idea. Preparing the budget is the job of the selectmen and the budget committee, if there is one. Citizens are more than welcome to propose as many changes as

they want, which they already can do, either electronically or on paper; but the format used for the budget should be for the convenience of the body preparing the budget.

The bill's supporters argued that every municipal budget, no matter how it is constructed, can easily be exported to an Excel spreadsheet with the push of a button. We question that, but even if it is true, we do not believe the state should be micro-managing municipal budgeting practices when all the information that anyone could possibly want is already available.

The [Municipal & County Government Committee](#) will be voting on **HB 1460** this coming **Tuesday, March 3**. If you have concerns about the bill, please let us know, and contact members of the committee.

Troubling Labor Bills

We have some concerns about several labor bills that are making their way through the legislature.

Payment for unused vacation time. [HB 532](#) requires an employer to inform employees of any policy regarding accrual or use of vacation time, provide a means through which vacation time requests and approvals are processed, and provide employees with an accounting of vacation time used and remaining. More significantly, it also requires an employer to pay an employee for unused vacation time upon termination of employment.

Many municipalities already do pay employees for unused vacation time upon termination, but it is not required. An employer that does not pay for unused vacation time may have adopted a generous accrual and carryover policy. If so, some employees could have significant accrued vacation time that would, under this bill, represent a large unfunded liability for the employer.

For municipalities with union employees, vacation accrual policy is typically covered in the collective bargaining agreement. If the agreement does not require payment for unused vacation time, it is usually because the union has bargained for something else in its place, such as a larger wage increase or better health benefits. This bill would rewrite a bargain that has already been made—and thus is probably an unconstitutional impairment of the obligation of contracts (not to mention an unfunded mandate).

The bill has already passed the House, but it still needs to go through the Senate. We will let you know when it is scheduled for a Senate hearing; in the meantime, if you have concerns, please contact your senator.

OSHA compliance. The federal Occupational Safety and Health Act (OSHA) applies only to private employers and employees. About half the states have OSHA-approved plans that cover public employees. New Hampshire does not, but the state Department of Labor has adopted rules that provide comparable protection to public employees.

[HB 1171](#) would require public employers to provide employees with “at least the level of protection provided under the federal Occupational Safety and Health Act of 1970.” We are not experts, but it is our understanding that the state rules are not significantly different from OSHA in terms of the substantive protections they provide, so **HB 1171** may not require significant changes. The one concern we have is that recordkeeping and reporting requirements under OSHA may be significantly more burdensome than under the existing state rules.

The bill is in the [House Labor Committee](#), which will vote on it next Wednesday. If you have concerns, please contact members of the committee and your own representatives.

Reporting on wage differences. [HB 1144](#) requires that every employer with more than 100 employees in the state disclose, biennially, to the Department of Labor: (1) the difference between the *mean* wages of male exempt employees and female exempt employees for each job classification; and (2) the difference between the *median* wages of male exempt employees and female exempt employees for each job classification. “Exempt” employees are defined as those who are not subject to overtime requirements as an administrative, executive, or professional employee.

The only apparent purpose for this exercise is to provide the Department of Labor with information to publish on its website. We believe municipal administrators have enough to do, and should not be forced to compile statistics for the state. If people want to do an analysis of pay by gender, they can request a copy of each municipality’s payroll and do the calculations themselves.

This bill is also in the Labor committee and scheduled for a vote next Wednesday—so you know what to do.

Union elections. Two bills that we reported on before are on the House calendar for a vote next week.

- **HB 1290**, with a proposed [committee amendment](#), would allow a union to elect to have all votes cast by mail ballot in an election to certify a union as the representative of a bargaining unit. This would remove the protections of the existing election process, which is controlled carefully to ensure fairness and avoid intimidation.
- **HB 1399**, also with a [committee amendment](#), would allow for a “card check” process, under which the PELRB would certify a union as the exclusive representative of a bargaining unit upon receipt of “a written majority authorization for the purpose of collective bargaining of all the employees in the bargaining unit.” This goes even further than **HB 1290**, essentially creating a secret election with no opportunity for any views to be presented other than those of the individuals circulating the petition. A similar law was enacted in 2007 and repealed in 2011.

Both bills came out of the House Labor Committee with fairly close votes of Ought to Pass with Amendment, and both are on the House calendar for action next Thursday, March 5. Please ask your representatives to **oppose HB 1290 and HB 1399**.

Meanwhile, another “card check” bill, [SB 448](#), is scheduled for a hearing in the Senate Commerce Committee on **Tuesday, March 3, at 2:00 p.m. in State House Room 103**. We will, of course, oppose that bill as well.

Hotel Occupancy Fee

On **Tuesday, March 3, at 9:00 a.m. in LOB Room 301**, there will be a subcommittee work session, followed at **10:00 a.m.** by a full committee vote on [HB 1160](#), an **NHMA policy bill** that authorizes municipalities to assess up to a \$2 fee per night on room rentals. This is an important bill for municipalities seeking an alternative means of raising revenue to address increased costs associated with tourism and transient populations. Municipalities interested in assessing this local option fee should contact members of the [House Municipal and County Government Committee](#) and urge support of an Ought to Pass recommendation on **HB 1160**.

Dogs on Restaurant Patios?

Two bills, one in the House and one in the Senate, address the issue of allowing dogs on open-air restaurant patios, an issue we would not ordinarily consider our concern, were it not for the possibility of preempting local regulations.

HB 1483 states that a restaurant owner may allow dogs onto a patio if the dog and its owner access the patio from the exterior of the restaurant, so long as a notice is posted advising customers that dogs are allowed. **SB 450** says the same thing, but only for patios at brew pubs.

These bills would preempt state food service regulations; of more concern to us, they would preempt local regulations, too. In most of New Hampshire, food service establishments are licensed and inspected by the state Department of Health and Human Services; but there are fifteen municipalities (presumably you know who you are) where the local health officer, having obtained approval from DHHS, performs those functions. In so-called “self-inspecting” municipalities, a food service establishment is subject only to local regulation and is exempt from state licensure.

Some and perhaps all of the self-inspecting municipalities have adopted some version of the FDA Food Code, which the state also follows. At least a few of those municipalities have adopted processes for restaurants to obtain a variance to allow dogs, as allowed by the Food Code. Those processes have very clear and specific conditions intended to safeguard the health and safety of restaurant customers.

HB 1483 and **SB 450** would preempt the local codes and their variance processes, requiring a municipality to let restaurant owners allow dogs on patios with no health or safety precautions, and with no opportunity for review by the health officer.

We have nothing against dogs, but they can present issues. They may get into fights; they can interfere with service animals; they make messes; they can stink and generally be disruptive. Some people are deathly afraid of dogs or are allergic to them. These are the kinds of factors that local officials take into consideration when reviewing an application for a variance. This is one more area where decisions are best left to local officials who understand local conditions.

HB 1483 is still in the [House Commerce Committee](#), which will vote on the bill this coming **Tuesday, March 3**. Express your concerns to members of the committee and your own representatives.

SB 450 is on the Senate calendar for action by the full Senate on **Thursday, March 5**. Express your concerns to your senator.

HOUSE CALENDAR

WEDNESDAY, MARCH 4, 2020

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **HB 1218-FN**, relative to net energy metering limits for customer generators and the purchase of output of limited electrical energy producers.
- 1:00 p.m. **SB 79**, relative to required reporting on waste reduction.

WAYS AND MEANS, Room 202, LOB

- 10:00 a.m. **HB 1632-FN-A-L**, relative to financial investments and incentives for affordable housing development.

11:00 a.m. **HB 1248-L**, relative to community revitalization tax relief incentives.
1:45 p.m. **HB 1603-FN**, establishing the per and polyfluoroalkyl substances contamination remediation and mitigation revolving loan and grant program and fund.

FRIDAY, MARCH 6, 2020

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

1:00 p.m. Regular meeting.

COMMISSION TO STUDY BARRIERS TO INCREASED DENSITY OF LAND DEVELOPMENT IN NEW HAMPSHIRE (RSA 4-C:8-a), Room 201, LOB

9:00 a.m. Regular meeting.

FRIDAY, MARCH 13, 2020

COMMISSION TO STUDY THE INCIDENCE OF POST-TRAUMATIC STRESS DISORDER IN FIRST RESPONDERS (RSA 281-A:17-b), Room 304, LOB

10:00 a.m. Regular meeting.

SENATE CALENDAR

TUESDAY, MARCH 3, 2020

COMMERCE, Room 103, SH

2:00 p.m. **SB 448**, relative to certification of an employee bargaining unit.

WEDNESDAY, MARCH 4, 2020

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB

9:00 a.m. **SB 483**, relative to the property tax exemption for educational organizations.

9:15 a.m. **SB 484**, establishing a commission to study payments in lieu of taxes.

9:30 a.m. **SB 516**, relative to a property tax credit for active duty military personnel.

10:00 a.m. **SB 530**, relative to property tax exemptions for renewable energy systems.

WEDNESDAY, MARCH 11, 2020

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB

9:00 a.m. **SB 457-L**, establishing communications districts.

9:30 a.m. **SB 459**, relative to determining access to broadband.

9:45 a.m. **SB 424-L**, relative to the property tax exemption for solar energy systems.

10:00 a.m. **SB 559**, relative to municipal broadband infrastructure bonds.

New Bills

SB 756-FN-LOCAL requires a municipality to ensure that volunteers have insurance coverage and to maintain certain records relating to volunteers. Sen. Fuller Clark of Portsmouth; **COM-S**.

SB 757 allows a vote for accepting operation of sports book retail locations by a city at the state primary election. Sen. Rosenwald of Nashua; **EL&MA**.

SB 759-FN requires an employer to provide reasonable accommodations to an employee related to the employee’s pregnancy or childbirth and makes the failure to provide such accommodations an unlawful discriminatory practice. Sen. Bradley of Wolfeboro; **COM-S**.

2020 NHMA UPCOMING MEMBER EVENTS	
Mar. 18	Webinar: The Art of Welfare
Mar. 25	Webinar: Learn More About NHDES’s Safetank Program
Mar. 31	Right-to-Know Law & Governmental Meetings Workshop (6:00-8:00 p.m., Derry)
To register for an upcoming event, go to our website 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.	