

LEGISLATIVE BULLETIN

Zoning Mandates Still Looming

The Senate Election Law & Municipal Affairs Committee did not vote this week on **SB 458**, the bill that would require municipalities to allow short-term rentals everywhere, or **SB 482**, which would require that “tiny houses” be allowed in all residential zoning districts. The committee will almost certainly take up both bills next Wednesday.

We did hear that the committee will recommend an amendment to **SB 482**, the tiny house bill, to make it permissive rather than mandatory. If true, that is certainly a welcome step—although that seemingly would make the bill unnecessary, since municipalities already may allow tiny houses.

Regarding short-term rentals, we have had conversations with several senators, and we have gotten mixed reports. Some say they have heard from their municipalities and they will definitely oppose the bill. Others, however, say they have heard nothing, and it’s “not an issue” in their towns.

If any local officials, or any legislators, think this zoning mandate is “not an issue” in your town, we urge you to reconsider. The concern here is not the specific use that is mandated; it is the mere fact of the mandate. Your town may not be concerned about short-term rentals, but if the state can require municipalities to allow short-term rentals everywhere, what’s to stop it from saying you must allow shopping malls or industrial parks everywhere? Once the legislature decides that it is going to serve as the planning board for the entire state, there is no logical stopping point.

SB 458, which is being pushed not by property owners but by lobbyists for the Realtors’ Association and Airbnb, puts every home owner in the state at risk of living next door to a mini-hotel. Any single- or two-family dwelling in any town or city could be set up to host a different group of vacationers 365 days a year. Whether it’s a farmhouse in the country, a suburban mansion, a duplex in a compact city neighborhood, or a manufactured home on a 2,000-square-foot lot, the municipality would have no authority to restrict its use as a vacation rental property.

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We also must emphasize that the widespread conversion of residential properties into short-term rentals is contributing to the shortage of housing available for full-time residents. Comprehensive studies have consistently shown that increased use of properties for short-term rentals results in higher home prices and decreased housing supply. At a time when the legislature consistently calls on municipalities to make more accommodations for affordable housing, **SB 458** would require them to do exactly the opposite. How are municipalities supposed to comply with two contradictory mandates?

PLEASE . . . contact your senator today and ask him or her to respect municipalities' right to control their own zoning by opposing SB 458.

Local Option Fees

Hotel occupancy fee. On Tuesday the House Municipal and County Government Committee voted 10-7 to recommend Ought to Pass on **HB 1160**, an **NHMA policy bill** that authorizes municipalities to assess up to a \$2 local option fee per night on room rentals within the municipality to help offset increased costs associated with tourism and transient populations. **HB 1160** supports local control by authorizing municipalities to raise non-property tax revenue, but only if the legislative body of the municipality votes to do so. While this bill may not be of interest to every municipality, please urge your representative(s) to support local control by supporting the committee recommendation of Ought to Pass on **HB 1160**.

Transportation improvement fee. On Thursday the Senate voted to table **SB 667**, an **NHMA policy bill** that would increase the cap on the local option transportation improvement fee from \$5 to \$10. As we have noted many times this session and in previous sessions on similar bills, this bill does not increase the transportation improvement fee by a single penny in any municipality, but merely allows the local legislative body to decide whether and when this local option fee should be increased—up to a statutory cap of \$10. We understand the concerns of some senators about being accused of “increasing fees”—certainly not a popular tag in an election year. However, **SB 667** does not raise any more revenue; it merely allows that decision to be made locally by any municipality interested in funding transportation-related improvements and services with non-property tax revenue. **Please** urge your senator to **support** a motion to remove **SB 667** from the table, **oppose** the committee recommendation of Inexpedient to Legislate, and **support** a subsequent motion of Ought to Pass.

This week's to-do list

- ✓ Call your senator and urge him or her to respect your municipality's zoning authority by **opposing** the short-term rental mandate in **SB 458**.
- ✓ Ask your representatives to **support** the committee recommendation of Ought to Pass on **HB 1160**, providing for an optional local occupancy fee.
- ✓ Ask your senator to vote to take **SB 667** (transportation improvement fee) off the table and **pass the bill**.
- ✓ Ask your representatives to **support** the committee recommendation of Inexpedient to Legislate on two confusing bills dealing with town meeting warrant articles, **HB 1309** and **HB 1105**.

Bad Town Meeting Bills

The House Municipal & County Government Committee this week recommended killing two troubling bills dealing with town meeting warrant articles. We hope the House will follow the committee's recommendations; but we have concerns, because both votes were closer than they should have been.

Effect of petitioned warrant articles. [HB 1309](#) amends RSA 39:3 by adding this sentence: "Unless restricted by any other provision of law, the vote on a petitioned warrant article shall be binding upon the town." At best this bill is unnecessary; at worst it will create serious confusion.

First, there is no reason that petitioned warrant articles should be treated differently than other articles. This is like saying that some laws enacted by the legislature carry more weight than others. In any event, it is already true that any warrant article passed by the town meeting—whether petitioned or otherwise—is binding *if* it is within the authority of the town meeting.

The bill's sponsor had explained at the committee hearing that the bill was motivated by a school board's refusal to put a properly petitioned article on the annual meeting warrant. If the school board did that, its action was already illegal, and passing a new law will not make it more illegal.

The bill's supporters also, apparently, want the selectmen/school board to be bound by any article passed by the town meeting—or rather, by any petitioned article. Again, if an action of the town meeting is within its authority, the action already is binding. But the town meeting does not have absolute authority. If the town meeting adopts a petitioned article to impose an income tax, should the selectmen be bound to implement it? There is no specific "provision of law" that prevents this, but everyone knows a town has no authority to impose an income tax.

The town meeting also does not control the selectmen. Separation of powers is a pillar of our government. The town meeting is the legislative authority; the board of selectmen is the executive authority. They cannot usurp each other's powers. The town meeting cannot, for example, require the selectmen to hire or fire an employee, or enter into a contract, any more than the state legislature can require the governor to do the same things. The town meeting cannot tell the selectmen whom to appoint to the ZBA, just as the legislature cannot tell the governor whom to appoint to the superior or supreme court. Of course, it works the other way, too. The selectmen cannot usurp the town meeting's authority by appropriating money or passing a zoning ordinance.

These restrictions are not expressly stated in any "provision of law"; they are inherent in the nature of the legislative and governing bodies. [HB 1309](#) would create serious confusion about the effect of town meeting actions that have always been understood to be non-binding and advisory only.

Amended warrant articles. [HB 1105](#) provides that if a warrant article is amended at the deliberative session in an SB 2 town, both the original article and the amended article must be placed on the official ballot. If both articles are approved, the amended article would supersede the original article.

This is a curious idea. First, we know of no legislative body anywhere in which an original, un-amended motion is voted on after it has been amended. Would anyone suggest a similar process for bills in the New Hampshire Senate or House?

Second, the opportunity for voter confusion is obvious, and the list of potential problems is endless. If everyone—literally every voter—at a deliberative session agrees on an amendment to an article, why would the un-amended article still go on the ballot? It is not uncommon for mistakes to be made in drafting warrant

articles. If, for example, the selectmen are proposing a one-year lease, but the article is inadvertently drafted to provide for a ten-year lease, this is easily corrected by an amendment at the deliberative session. But under **HB 1105**, both the one-year lease and the ten-year lease would have to go on the official ballot. Similarly, if a zero is inadvertently added in drafting a warrant article, changing a \$25,000 appropriation to \$250,000, that can be fixed at the deliberative session, but under **HB 1105**, both appropriation amounts would go on the official ballot. Why do that?

As mentioned, the votes on both **HB 1309** and **HB 1105** were surprisingly close, 10-7, with all Democrats voting for an Inexpedient to Legislate motion and all Republicans voting to support the bills. Please make sure your representatives understand that these bills would have seriously bad consequences and *ask them to support the committee's report of Inexpedient to Legislate on both bills.*

Landfill Legislation Update

The House Environment & Agriculture Committee acted this week on two bills that would severely limit landfill capacity in New Hampshire. **HB 1319** as introduced would prohibit the issuance of a permit for the siting of a new solid waste facility or expansion of a facility within one mile of the boundary of any state or national park and within five miles of the White Mountain National Forest. The committee approved an amendment that changes the restriction to *two* miles from a state or national park and defines “national park” to mean the Appalachian National Scenic Trail as described in RSA 216-D:2 and the Saint-Gaudens National Historical Park. The amendment also removes the restriction on siting in proximity to the White Mountain National Forest, removes the ban on expansion of existing landfills, and clarifies that it applies only to actual waste disposal sites, not municipal transfer stations. The committee then recommended the bill as Ought to Pass with Amendment by an 11-9 vote. Although the amendment eliminates the ban on expansions of existing landfills and fixes the issue with transfer stations that existed in the original bill, we are still concerned about limiting landfill capacity.

HB 1422, which would establish a two-year moratorium, beginning July 1, 2020, on the issuance by the Department of Environmental Services of any permit to construct, operate, or expand a private landfill in New Hampshire, was recommended for Interim Study by a 15-5 vote. The discussion on this bill became contentious at times, but we believe the committee ultimately made the correct recommendation. As we stated in [Bulletin #9](#), existing landfills have finite capacity, and recycling options are drying up, at least temporarily. When the existing facilities are full, the principal option remaining for municipalities will be to send their waste to out-of-state facilities at dramatically increased cost.

Both bills will be on the agenda for the next House session.

PFAS Funding Bills Update

As this edition of the Bulletin went to print, we were preparing for a 1:00 p.m. Senate Finance executive session on **SB 496**, the **NHMA policy** bill that would provide state financial assistance toward the costs of meeting water and wastewater quality standards associated with PFAS. As we said in last week's [Bulletin](#), we believe state assistance for compliance with clean drinking water standards should be a priority, and are hopeful that this bill will soon make it to the House.

On Wednesday, the House Ways and Means committee heard testimony on **HB 1603**, which would allocate any funds from the state's lawsuits against PFAS manufacturers into a dedicated PFAS contamination remediation and mitigation revolving loan and grant program and fund. Like the Resources, Recreation and

Development committee, which already approved this bill, members of Ways and Means seemed in general agreement that the state should provide assistance for compliance with clean drinking water standards.

Housing Appeals Board Survives

After lengthy debate, but to no one's surprise, the Senate yesterday voted down three separate bills that would have repealed the housing appeals board—the three-person board created by last year's legislature to hear appeals from local planning and zoning board decisions dealing with housing issues. The Senate voted Inexpedient to Legislate on [SB 487](#), [SB 721](#), and [SB 735](#), each of which would have eliminated the housing appeals board.

The one bill relating to the housing appeals board that did pass was **SB 536**, which, [as amended](#), merely requires the board to submit an annual report (1) describing all appeals in which the board overturned a local board decision; (2) describing all rulings made by the board that were appealed to the supreme court and the final disposition of those appeals; and (3) providing an estimate of the impact of the board on the number of housing units approved for construction.

With the failure of the repeal efforts, the housing appeals board is scheduled to come into existence on July 1 of this year.

Retirement Bill Recommended for Interim Study

On Tuesday the House Finance Committee Division I voted unanimously to recommend to the full committee that [HB 1205](#) be referred to Interim Study. **HB 1205** is the bill that delays the 10 percent reduction in group I (employees and teachers) New Hampshire Retirement System (NHRS) pensions at age 65 until full Social Security eligibility age, which may be up to age 67. The fiscal note states that the bill will increase the NHRS unfunded liability by approximately **\$37 million** and would be paid by employers through increased contribution rates over the next 20 years. Acknowledging that **HB 1205** will have a fiscal impact not only on local budgets but on the state budget as well, division members felt this issue should be addressed as part of the state budget and therefore recommended the bill be sent to interim study and considered in the biennial state budget process next year.

Local Control of Dogs on Restaurant Patios

[Last week](#) we wrote about two bills that would allow dogs on open-air patios at restaurants, [HB 1483](#) and [SB 450](#). Our concern was that the bills would preempt local regulations in the fifteen municipalities that do their own licensing and inspection of restaurants.

We were pleased that the Senate yesterday passed **SB 450** (which is limited to brew pubs, not all restaurants) with a floor amendment that preserves local authority. Under the amended bill, a municipality may adopt an ordinance allowing dogs on patios at brew pubs, subject to certain conditions. In the absence of such an action, the state's food code (or the municipality's, if it is self-inspecting) will control. We thank the Senate for respecting local authority with this amendment. The bill is now on its way to the House.

Municipal Mishmash

A lot of other stuff happened this week—far more than we can report in this space. Here are some of the highlights—some good, some bad, and some on which the jury's still out:

Capital reserve funds for lease/purchase agreements. The Senate passed [SB 456](#), which allows capital reserve funds to be used to make payments on a lease/purchase agreement, regardless of whether the agreement contains a non-appropriation clause.

Appointment of town clerks. The Senate killed [SB 561](#), an **NHMA policy bill** that would have allowed a town to vote to have its clerk appointed, rather than elected. Unfortunately, the legislature continues to receive misinformation about this issue. According to the committee report on the bill, “the New Hampshire Constitution . . . states that the role of the town clerk is an elected position.” The constitution does not say that. There is one reference to clerks in the constitution. Part 2, article 32, says that the moderator “shall . . . receive the votes [for governor, council, and senators] and shall, in presence of the . . . selectmen, and of the town or city clerk, sort and count the said vote . . .” It says nothing about how the clerk is selected.

Right-to-Know Ombudsman. The Senate passed [SB 696](#), establishing the office of the Right-to-Know Ombudsman. The bill allows citizens who believe the Right-to-Know Law has been violated to file a claim with the ombudsman, who will issue a decision that is subject to *de novo* review by the superior court. The hope is that this will enable more efficient and less costly resolution of Right-to-Know Law disputes.

Notice of leases on DOT property. The Senate also passed [SB 614](#), which temporarily exempts the Department of Transportation from the requirement that public entities leasing property to private parties provide written notice and a copy of the lease to the municipality in which the property is located. The department will be required to provide copies of such leases beginning April 15, 2021, and annually thereafter.

Perambulation, now and forever. The House killed [HB 1441](#), which would have repealed the requirement that selectmen perambulate the town boundaries every seven years. No one has been able to explain why this requirement must persist; but persist it will.

Workforce housing. The House passed [HB 1629](#), the affordable housing bill we have written about several times before. See [Legislative Bulletin #9](#) for a description of the bill as amended.

All bills that passed in one chamber will now go to the other chamber, except for **SB 696**, which remains in the Senate and will go to the Senate Finance Committee for further review.

HOUSE CALENDAR

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.

TUESDAY, MARCH 17, 2020

ELECTION LAW, Room 308, LOB

11:30 a.m. **SB 422**, relative to changes of registration of voters at primary elections.

1:00 p.m. **SB 485**, relative to the disqualification of certain persons from performing duties as an election official.

SENATE CALENDAR

TUESDAY, MARCH 10, 2020

COMMERCE, Room 100, SH

2:00 p.m. **SB 417**, relative to negotiations by individual public employee bargaining units.
2:15 p.m. **SB 419**, relative to membership in risk pools.

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:40 a.m. **SB 463**, relative to aggregation of electric utility customers.
10:00 a.m. **SB 518**, relative to group host net energy metering for low-income community solar projects, limited electrical energy producers storage systems and private sector sales, outdoor lighting policies, and aggregation of electric utility customers.

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.

HOUSE FLOOR ACTION

Thursday, March 5, 2020

CACR 14, relating to reproductive medical decisions. Providing that the state shall not infringe or unduly inconvenience the right of reproductive medical decisions. **Tabled.**

HB 1125, enabling municipalities to adopt an exemption from property taxes for volunteer firefighters and volunteer emergency medical personnel. **Inexpedient to Legislate.**

HB 1155-FN-LOCAL, relative to exemptions from timber taxes for certain residential cutting. **Inexpedient to Legislate.**

HB 1158, relative to the adoption of bylaws and ordinances by municipalities. **Inexpedient to Legislate.**
HB 1181-FN, allowing the New Hampshire public employer labor relations board to award pain and suffering damages. **Inexpedient to Legislate.**

HB 1197, exempting disabled veterans from the payment of property taxes. **Inexpedient to Legislate.**

HB 1210, establishing a property tax exemption for energy storage systems. **Inexpedient to Legislate.**

HB 1221, relative to privacy for an employee's personal financial and credit information. **Passed with Amendment.**

HB 1276, relative to ex-officio members of budget committees and planning boards. **Inexpedient to Legislate.**

HB 1277-FN-LOCAL, requiring notice to owners of dogs that have failed to license their dog or renew their dog license. **Inexpedient to Legislate.**

HB 1290-FN, relative to public employee labor relations and collective bargaining. **Passed with Amendment.**

HB 1292-FN, revising certain benefit provisions in the city of Manchester employees contributory retirement system. **Passed with Amendment.**

HB 1399, relative to the establishment of public employee bargaining units. **Passed with Amendment.**

HB 1427, removing the authorization for OHRV use on certain sections of state highway. **Inexpedient to Legislate.**

HB 1441, relative to the perambulation of town lines. **Inexpedient to Legislate.**

HB 1447-FN, relative to penalties for retired members of the retirement system exceeding part-time hourly limit. **Inexpedient to Legislate.**

HB 1554-FN, relative to elections in collective bargaining. **Inexpedient to Legislate.**

HB 1629-FN, relative to training and procedures for zoning and planning boards. **Passed with Amendment.**

HB 1652-FN-A, including ski area ticket sales under the meals and rooms tax and dedicating the revenue to the governor's scholarship program for New Hampshire resident students. **Inexpedient to Legislate.**

SENATE FLOOR ACTION

Thursday, March 5, 2020

SB 414, changing the formula for the distribution of highway funds in the Woodsville fire district. **Passed with Amendment.**

SB 450, relative to brew pubs allowing customers to bring dogs to outdoor areas. **Passed with Amendment.**

SB 456, relative to the use of capital reserve funds. **Passed with Amendment.**

SB 460, relative to enforcement of zoning violations. **Passed.**

SB 464, establishing a committee to study the release of state land for the northern section of the Conway bypass. **Inexpedient to Legislate.**

SB 469, relative to shooting ranges. **Inexpedient to Legislate.**

SB 479, establishing a committee to study the regulation of food trucks. **Passed with Amendment.**

SB 487, repealing the housing appeals board and establishing a commission to advance affordable housing in New Hampshire. **Inexpedient to Legislate.**

SB 491, relative to shoreland water quality. **Tabled.**

SB 493-FN-A, relative to register of deeds fees used to support the land and community heritage investment

program (LCHIP), and establishing a committee to study the economic impact of land conservation and to review the LCHIP surcharge. **Passed.**

SB 536, establishing a committee to study the housing appeals board. **Passed with Amendment.**

SB 561, relative to the appointment of town clerks. **Inexpedient to Legislate.**

SB 562, relative to a property tax relief program for repairs and updates of affordable older homes. **Passed with Amendment.**

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. **Passed with Amendment.**

SB 618-FN, requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time. **Passed with Amendment.**

SB 630-FN, relative to removing names from the voter checklist. **Passed with Amendment.**

SB 632, relative to enforcement of the state building code by municipalities and the state fire marshal. **Passed with Amendment.**

SB 667-L, relative to the maximum optional fee for transportation improvements charged by municipalities when collecting motor vehicle registration fees. **Tabled. NHMA Policy.**

SB 696-FN-A, establishing the office of the right-to-know ombudsman and making an appropriation therefor. **Passed with Amendment.**

SB 713-FN, relative to the municipal winter maintenance certification program. **Passed.**

SB 717-FN-L, relative to reimbursement to cities and towns from the state of New Hampshire. **Passed.**

SB 721-FN-A, relative to court review of planning board decisions and making an appropriation therefor. **Inexpedient to Legislate.**

SB 723-FN-L, relative to winter highway maintenance exemptions. **Inexpedient to Legislate.**

SB 728-FN, establishing the coastal program administered by the department of environmental services. **Passed.**

SB 735-FN, repealing the housing appeals board. **Inexpedient to Legislate.**

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.	