

LEGISLATIVE BULLETIN

Bill on Right-to-Know Costs Returns

Last year the House considered **HB 646**, an **NHMA policy bill** allowing public bodies and agencies to recover a small part of the cost of responding to Right-to-Know Law requests. The House Judiciary Committee recommended passage of the bill by a vote of 14-4, but the bill was tabled after House leadership expressed concerns that it needed more work. It died on the table when the session ended.

The bill has been revised and reintroduced as **HB 1611**, and it is scheduled for a hearing before the Judiciary Committee next **Tuesday, January 19, at 1:00 p.m., in LOB Room 208**. The bill still allows a public body or agency to charge for labor at minimum wage rates after the first hour, and to require payment before retrieving the records. However, to address the House leadership’s concerns, the new bill prohibits charging for meeting minutes that are less than ten years old; for copies of currently effective statutes, ordinances, regulations, rules, or procedures; or for any records relating to an ongoing administrative or quasi-judicial proceeding.

(Note to anyone reading the bill in detail: There is a serious drafting error in the bill. The proposed new paragraph IV-a(c)(4) is out of place and does not make sense. An amendment will be presented at the hearing.)

This is an important bill for all municipalities. Please consider sending someone to the hearing, submitting a letter, or contacting [committee members](#) to urge their support of the bill—***and please keep us informed about your efforts.*** Last year, a newspaper report misrepresented that only “paid lobbyists” were at the hearing to support the bill, and that opponents “far outnumbered” supporters. That was nowhere close to the truth; this year, let’s have a turnout that no one can misinterpret.

Taxation of Right-of-Way Use

The Senate Ways & Means Committee will hear an important bill next week dealing with the taxation of entities that use public rights-of-way. Under RSA 72:23, anyone who uses or occupies real estate owned by a municipality or by

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the state is required to pay property taxes on the use of the real estate, and the applicable lease or other agreement is supposed to provide for the payment of taxes. The issue comes up most often with telephone and utility companies that have poles, wires, and other property in municipal rights-of-way, which are permitted under licenses issued by the municipality.

Because the law is relatively new and many pole licenses are ancient, many municipalities have had to amend their licenses to include the required language on payment of property taxes. Some companies, however, have refused to sign the amended licenses and then claimed they were not required to pay the taxes because there's nothing about it in their licenses. We're not making this up. One company has avoided the problem by simply installing poles without getting a license, knowing that the municipality would not remove the poles and that it had no other remedy.

[SB 442](#) is an **NHMA policy bill** that would end this abuse. It states that for any use or occupancy after July 1, 2016, the failure to have a lease or other written agreement will not affect the occupant's obligation to pay taxes.

There is no end to the ways that some companies manage to avoid paying taxes, whether by flouting the law or by manipulating it. This bill would put a stop to one of the most egregious tax-avoidance schemes in the state. Please encourage [committee members](#) and your own senator to **support SB 442**. The hearing is scheduled for **Tuesday, January 19, at 9:30 a.m., in State House Room 103**.

Limiting Liability for Injuries from Firearms

The Senate Public and Municipal Affairs Committee will hear testimony next week on **SB 455**, which would limit the liability of a municipality for injuries caused by an employee's use of a firearm. This is an **NHMA policy bill**, and we urge the committee to support it. The hearing is scheduled for **Wednesday, January 20, at 10:15 a.m., in LOB Room 102**.

Under current law (RSA 159:26), a municipality is prohibited from "regulat[ing] the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state." This means a city or town may not stop an employee (or anyone) from carrying a weapon, whether on municipal property or elsewhere. Although we have issues with that law, it is not likely to change anytime soon.

THE EDGE

Parliamentary inquiries

In legislative debate, a parliamentary inquiry is a question to the presiding officer about the rules or about the procedural status of the matter at hand. A simple example is "Mr. Speaker, are we voting on the amendment or the main motion?"

In the New Hampshire House, however, a parliamentary inquiry (or "P.I.") is often used to make a substantive point in the form of a question. (This is rarely done in the Senate, although there is no rule against it.) When done properly, it is a useful and perfectly legitimate tactic. Unfortunately, it is often done poorly.

Imagine, for example, that the House is about to vote on a motion of Ought to Pass on a bill to ban the sale of India pale ale. Here is an example of a well stated P.I.:

- Mr. Speaker, if I believe that the IPA fad is out of control;
- And if I know that the glut of IPAs is crowding lots of good porters, stouts, and Belgian whites off the shelves;
- And if I know that the defining characteristic of IPA is that it tastes like rotten grapefruit juice;
- Would I now press the green button to support this motion and make New Hampshire safe for serious beer drinkers?

(continued on next page)

But if municipalities are powerless to prevent their employees from carrying guns on the job, they certainly should not be liable in the event that someone is injured as a result. **SB 455** addresses this issue by shielding the municipality from liability in such an event. It contains an exception for an injury caused by an employee who is required to possess or use a firearm, and who is acting in the course of official duties when the injury occurs.

Although we do not know of a situation in which a municipality has been sued for an injury resulting from an employee's use or possession of a firearm (other than a police officer), it certainly could happen, and there is no reason to wait to act. We have heard from many local officials who are concerned about the municipality's liability if an injury were to occur, particularly since municipalities have no ability to ensure that an employee is properly trained to use a firearm and that the weapon is in working order. **SB 455** is a common-sense response to this potential problem, and it should not be controversial. Notably, it has a solidly bipartisan group of sponsors. Please let your senator know that you **support SB 455**.

Road Usage Fee

On **Tuesday, January 19, at 9:30 a.m. in LOB Room 201**, the House Public Works and Highway Committee will hear testimony on **HB 1602**, which establishes a road usage fee. The bill was filed at the request of the commission to study alternatives to the road toll (gas tax). The bill proposes an additional fee to be collected in conjunction with the annual motor vehicle registration. The amount of the fee for each vehicle is based upon the US Environmental Protection Agency's miles per gallon (MPG) rating, which will be linked with the NH Department of Safety's vehicle identification number (VIN) data system. According to the fiscal note, the fee will range from approximately \$30 for vehicles with a 21-25 MPG rating to approximately \$150 for vehicles with over 51 MPG rating or vehicles that do not operate on gasoline.

The bill provides that \$1 of the fee will be retained by the registration agent, with the balance remitted to the state. Twelve percent of the total road usage fee collected will then be distributed the following year to municipalities under the existing highway block grant formula (which is based on road miles).

State Aid Grant Funding

On Wednesday the House Finance Committee heard testimony on **HB 1428**, dealing with funding for twenty specific water and wastewater projects. These projects are the "tail" of the delayed and deferred list of projects that received local financing approval prior to December 2008, the effective date of the state aid grant

THE EDGE (Continued)

(In the House, representatives press a green button to vote "yes," and a red button to vote "no.")

Note that although the question is filled with commentary, it is still a procedural question to the Speaker. And because it is a question, the Speaker will answer it. He would answer the above P.I. approximately as follows: "The question is on the committee's recommendation of Ought to Pass. If you are in favor of the motion, you will press the green button; if you are opposed, you will press the red button."

The following is a poor P.I., in a form that is heard all too often:

- If you know, as I know, that IPA is no more harmful than any other alcoholic beverage;
- And if you believe, as I believe, that although IPA does indeed taste like rotten grapefruit juice, adults have a right to drink the swill of their choice;
- Please press the red button.

Here, the representative has not addressed a question to the Speaker. In fact, it is not a question at all—it is a *statement* to other legislators about how *they* should vote. A correct P.I. asks the question, "How should *I* vote under these circumstances?"

The current Speaker has been patient but persistent in correcting representatives when they offer badly worded P.I.s. Perhaps he will get everyone to do it right—just in time for the arrival of next year's legislators!

moratorium. While it seemed like Groundhog Day to many of us in the room (since we have advocated funding for these projects for years), we sensed that some committee members were surprised to learn that this issue had not yet been resolved and that there is no money in the fiscal year 2016-2017 state budget for these projects. While there was apprehension about “re-opening” the budget (a term of art as explained by the committee chair), there seemed to be genuine concern on the part of most committee members about this issue.

HB 1428 will now go to the House Finance Division I subcommittee for further review and recommendation to the full committee. We ask that municipal officials from Berlin, Conway, Durham, Exeter, Hanover, Lebanon, Littleton, Nashua, Portsmouth and Rochester be vigilant in keeping **HB 1428** in the forefront of their respective legislators’ agendas and contact members of the [House Finance Committee](#) urging their support of the bill if you haven’t already done so.

Municipal Transportation Improvement Fee

On Tuesday the House Municipal and County Government Committee heard testimony in overwhelming support of **HB 1119, an NHMA policy bill** that would raise from \$5 to \$10 the maximum optional fee charged by municipalities for transportation improvements. In addition to municipal officials, support came from transportation service organizations, a regional planning commission, the Department of Environmental Services Air Resources Division, and several organizations dedicated to promoting healthy lifestyles for New Hampshire citizens. The committee was presented with a recent [report and survey](#) on uses of the revenue generated from this fee, indicating this local option motor vehicle registration fee differs significantly from road-toll revenue (which funds municipal highway block grants) in that it can be used for non-capital projects such as transit operating costs. The report found that while most municipalities use the revenue for traditional road and bridge projects (such as paving and engineering studies), some have supported local transit, bicycle infrastructure and sidewalks, and concluded that raising the cap on this local option fee could “make an already important funding mechanism even more effective in generating local dollars and control over transportation projects.”

That last part is very important—these are local dollars used for local projects approved by the local legislative body of each municipality that assesses this 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! And with state and municipal budgets struggling to keep up with the maintenance and improvement costs of our aging infrastructure, passage of **HB 1119** is the perfect opportunity to help supplement the financing of diverse modes of transportation.

Despite significant support (no one spoke in opposition), questions posed by some committee members indicated some skepticism about this bill. As we pointed out in response to concerns, motor vehicle registration fees decrease as vehicles get older, so this additional annual fee is, and would continue to be, minimal.

Please contact members of the [House Municipal and County Government Committee](#) and urge an “ought to pass” recommendation on **HB 1119**!

Interest on Delinquent Taxes

[HB 1683](#) proposes to lower the interest rate from 18 percent to 5 percent on redemption and repurchase of property subject to a tax lien or tax deed, and also repeals the 15 percent penalty on the assessed value as of the date of the tax deed when the property is repurchased by the former owner. This change would significantly reduce, or perhaps completely eliminate, the incentive to pay property taxes on time. The Department of Revenue Administration states in the fiscal note that the bill could actually increase the incidence of non-payments.

HB 1683 is scheduled for a hearing before the House Municipal and County Government Committee on **Thursday, January 21 at 2:00 p.m. in LOB Room 301**. Please let [committee members](#) know the actions your municipality takes to help taxpayers **avoid** tax lien and tax deed situations, and why it is so important to maintain the incentive provided by current law.

HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

TUESDAY, JANUARY 19

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

11:00 a.m. **HB 1647-FN**, repealing laws regulating hawkers and peddlers and itinerant vendors.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

10:00 a.m. **HB 1675-FN-A**, relative to the legalization and taxation of marijuana.

10:15 a.m. **HB 1694-FN-A-L**, relative to the legalization and regulation of marijuana.

1:00 p.m. **HB 1626-FN**, relative to drug take-back programs.

EDUCATION, Room 207, LOB

1:30 p.m. **HB 1630-FN-L**, relative to calculating the base cost of an adequate education.

ELECTION LAW, Room 308, LOB

10:10 a.m. **HB 1220**, relative to disqualification of election officers.

10:30 a.m. **HB 1313-FN**, relative to eligibility to vote and relative to availability of voter information.

10:40 a.m. **HB 1356**, relative to construction of the terms “resident” and “inhabitant.”

10:50 a.m. **HB 1539-FN**, relative to procedures for resolving ties in legislative races.

11:00 a.m. **HB 1114**, relative to the number of inspectors of election.

1:00 p.m. **HB 1265**, permitting municipalities to adopt a system of approval voting.

1:15 p.m. **HB 1521**, allowing voters to vote for multiple candidates for an office.

1:30 p.m. **HB 1530-FN-L**, relative to mail-in voting.

2:00 p.m. **HB 1624-FN**, relative to electioneering by public employees.

2:15 p.m. **HB 1679-FN**, relative to electioneering by a public official.

2:30 p.m. **HB 1682-FN**, relative to electioneering by public servants and relative to warrant articles.

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

2:00 p.m. **HB 1440-FN**, relative to certification for solid waste operators.

3:00 p.m. **HB 1398**, establishing a commission to study septic sludge spreading.

JUDICIARY, Room 208, LOB

- 1:00 p.m. **HB 1611-FN-L**, allowing a public body or agency to charge a fee for costs of retrieving public records under the right-to-know law.
2:00 p.m. **HB 1115**, relative to the laws governing the citizens of New Hampshire.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Representatives Hall

- 10:00 a.m. **HB 1641-FN-L**, relative to requiring prevailing wages on state-funded public works projects.
2:00 p.m. **HB 1480-FN**, establishing a state minimum wage.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **HB 1221**, relative to excluding certain one-time expenditures from the default budget in official ballot municipalities.
10:45 a.m. **HB 1389**, prohibiting a town meeting from materially changing a petitioned warrant article in a town that has adopted the official ballot referendum form of meeting.
11:15 a.m. **HB 1375**, relative to charter commissions for budgets in official ballot jurisdictions.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 9:30 a.m. **HB 1602-FN-A-L**, establishing a road usage fee and making an appropriation therefor.
11:00 a.m. **HB 1568-FN-A**, relative to prepaid road tolls for certain alternative energy vehicles.
1:30 p.m. **HB 1251-FN-A**, requiring the department of transportation to upgrade a portion of road in the town of Pittsfield.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 1:30 p.m. **HB 1299**, relative to the frequency of background checks for camp employees.

TRANSPORTATION, Room 203, LOB

- 10:40 a.m. **HB 1666-FN**, relative to certain definitions in the motor vehicles law.
2:20 p.m. **HB 1583-FN**, allowing for voluntary donations to veterans' organizations through a check-off box on driver's license applications and automobile registration forms.

WAYS AND MEANS, Room 202, LOB

- 1:30 p.m. **HB 1544-FN-A-L**, establishing a tax on revenues from natural gas transmission.

THURSDAY, JANUARY 21

JUDICIARY, Room 208, LOB

- 11:00 a.m. **HB 1596-FN-L**, changing the marriage license requirement to a requirement that couples obtain a certificate of notice of intent to marry and a certificate of marriage.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 1:20 p.m. **HB 1518**, relative to village district members of budget committees.
1:40 p.m. **HB 1678-FN**, relative to the information statement contained on a property tax bill.
2:00 p.m. **HB 1683-FN-L**, relative to lowering the interest rate and costs for the redemption and repurchase of property subject to a tax lien or tax deed.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 10:00 a.m. **HB 1578**, relative to the maintenance of private roads.

FRIDAY, JANUARY 22

SPECIAL COMMITTEE ON PUBLIC EMPLOYEE PENSION PLANS, Room 202, LOB

- 10:00 a.m. **HB 1489**, establishing a committee to study the rates of employer contributions in the retirement system.
- 10:30 a.m. **HB 1449-FN**, relative to additional temporary supplemental allowances for retired members of the retirement system.
- 11:30 a.m. **HB 1352-FN**, relative to the penalty for retirement system employers' noncompliance with reporting requirements for retirees.

TUESDAY, JANUARY 26

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 10:00 a.m. **HB 1187-FN-L**, repealing licensure of showmen.
- 10:15 a.m. **HB 1433-FN**, establishing the office of ombudsman in the department of state.
- 10:45 a.m. **HB 1424-FN**, establishing an office of program evaluation and government accountability.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

- 10:00 a.m. **HB 1376**, relative to temporary workers.
- 11:00 a.m. **HB 1252**, permitting employers to pay wages to employees weekly or biweekly.
- 2:30 p.m. **HB 1463**, relative to mandatory vaccines.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 10:00 a.m. **HB 1242**, relative to rules of the department of transportation on driveway permits.

WEDNESDAY, JANUARY 27

EDUCATION, Room 207, LOB

- 12:45 p.m. **HB 1205**, including libraries that provide children's programming in the definition of drug-free school zone.

SENATE CALENDAR

TUESDAY, JANUARY 19

COMMERCE, Room 100, SH

- 1:30 p.m. **SB 413**, relative to employment rights of persons with criminal records.
- 1:45 p.m. **SB 416**, relative to flexible working arrangements in employment.

TRANSPORTATION, Room 103, LOB

- 1:15 p.m. **SB 362**, requiring notice to planning boards of placement of signs on scenic byways.

WAYS AND MEANS, Room 103, SH

- 9:30 a.m. **SB 442-FN-L**, relative to property taxation of public real estate used or occupied by a private person. **NHMA Policy.**
- 9:45 a.m. **SB 443**, relative to taxation of qualifying historic residential structures.
- 10:00 a.m. **SB 445-FN-L**, suspending the registration fee for the sale of municipal bonds in New Hampshire for 2 years.

WEDNESDAY, JANUARY 20

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

9:20 a.m. **SB 472-FN**, relative to the acquisition and use of certain equipment by state and local law enforcement agencies.

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:30 a.m. **SB 486-FN**, relative to election assistance for cities and towns.

10:15 a.m. **SB 455-FN**, relative to immunity for injuries from the possession or use of a firearm by an employee or official of a political subdivision. **NHMA Policy**.

THURSDAY, JANUARY 28

JUDICIARY, Room 100, SH

1:00 p.m. **SB 475-FN**, requiring law enforcement agencies to file crime reports with the department of safety.

House Bills

HB 1696 requires the department of health and human services to submit waivers or state plan amendments to modify the New Hampshire health protection program and includes funding for the program by charging premiums for the services, using moneys from the insurance premium tax, and changing the priorities of the uncompensated care and Medicaid fund. Rep. Lachance of Manchester; **HHS&EA**.

HB 1699 Establishes the position of licensed alcohol and drug counselor in bureau of emergency medical services to develop a training program for fire and emergency medical services personnel and a pilot program through which communities hire licensed alcohol and drug counselors. Rep. Hinch of Merrimack; **ED&A-H**.

Senate Bills

SB 452 requires certain state agencies to conduct an audit of laws governing coastal regions to enable authorities to take appropriate actions to prepare for flood risks. Sen. Watters of Dover; **ENR**.

SB 455 provides immunity to a political subdivision for personal injury or property damage resulting from the ownership, possession, use, or transportation of a firearm or a knife by an employee or official of a political subdivision. **NHMA Policy**. Sen. Boutin of Hooksett; **PMA**.

SB 459 establishes requirements for operation of drones. Sen. Cataldo of Farmington; **TRANS-S**.

SB 461 expands the purposes for which funds may be expended from the Winnepesaukee River Basin program funds. Sen. Hosmer of Laconia; **ENR**.

SB 471 modifies requirements for walking disability placards and for parking for persons with disabilities, and establishes an additional fine payable to the city or town for violations of parking restrictions. Sen. Stiles of Hampton; **TRANS-S**.

SB 472 requires law enforcement agencies to report to the department of safety when they acquire certain equipment through a military equipment surplus program operated by the federal government. Sen. Cataldo of Farmington; **ED&A-S**.

SB 473 repeals the restriction on total education grant payments to municipalities and makes an appropriation for the purpose of distributing an additional payment to those municipalities in which the total education grant program was reduced. Sen. Watters of Dover; **EDUC-S**.

SB 475 requires law enforcement agencies to file crime reports with the division of state police, department of safety, based on the Federal Bureau of Investigation's Uniform Crime Reporting Program. Sen. D'Allesandro of Manchester; **JUD-S**.

SB 482 permits municipalities to regulate short-term rental businesses. Sen. Fuller Clark of Portsmouth; **PMA**.

SB 485 requires the commissioner of safety to establish a state grant program to assist state and local law enforcement agencies in addressing opioid abuse. Sen. Forrester of Meredith; **F-S**.

SB 486 requires the secretary of state to assist cities and towns in conducting local elections and establishes a municipal grant program to fund innovative election procedures and voter registration expansion. Sen. Pierce of Hanover; **PMA**.

SB 487 replaces the missing persons with a developmental disability and missing senior citizen alert program with the missing vulnerable adult alert program. Sen. Stiles of Hampton; **HHS&EA**.

SB 488 requires employers to provide reasonable accommodations for pregnant employees. Sen. Fuller Clark of Portsmouth; **COM-S**.

SB 492 modifies the allocation of rebates under the regional greenhouse gas initiative (RGGI), and increases by \$3 million the funds allocated to municipal and school district energy efficiency projects. Sen. Feltes of Concord; **ENR**.

SB 493 establishes a low-digit vanity number plate fee and dedicates the revenues collected to bridge aid for municipal bridges. Sen. Feltes of Concord; **TRANS-S**.

SB 494 repeals the exemption from the road toll for federal government fuel purchases. Sen. Feltes of Concord; **W&M-S**.

SB 497 requires the state to distribute up to \$5 million in additional meals and rooms tax revenue to towns and cities in proportion to the amounts collected in those municipalities if the total amount collected in a year exceeds the previous year's distribution by more than \$5 million. Sen. Stiles of Hampton; **W&M-S**.

Upcoming NHMA Workshop

February 20, 2016 Town & School Moderators (Traditional Meeting) [click [here](#) to register]

For more information please access our website: www.nhmunicipal.org and scroll down on the left to CALENDAR OF EVENTS, *View the Full Calendar*.

NHMA WEBINAR

How to Ensure a “Clean” Vote in Your Municipality

Event Date: Wednesday, February 3, 2016

Time: 12:00 PM - 1:00 PM

Contact Phone: 603.224.7447

As election day nears, electioneering and improper influences becomes a prominent issue that municipalities must understand and address. Spend an hour with Legal Services Counsel Stephen Buckley and experienced moderator Lynne Christensen to learn about voter guides, political advertising near polling stations, political signs, advocacy and conduct of public officials, electioneering by municipal employees, and local electioneering rules under RSA 31:41-c.

This webinar will benefit local election officials such as moderators, town and city clerks, supervisors of the checklists and any other local officials working the polls on election day.

[REGISTER HERE!](#)

Registration deadline is noontime, February 1, 2016.