

LEGISLATIVE BULLETIN

Restoration of State Retirement Contribution

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February 24, 2017

Division I of the House Finance Committee will be holding a “work session” (not a public hearing) on [HB 413](#), the bill that restores a state retirement contribution of 15 percent for teachers, police, and firefighters. The work session is on the calendar for **Tuesday, February 28, at 11:15 a.m., in LOB Room 212**, and is scheduled for all of five minutes. While **HB 413** passed the House on February 15 by a very strong vote of 267-83, the Finance Committee must now work on the financing end of the *policy position* established by **HB 413**. Ultimately, funding to restore a state contribution—at 15 percent or at any level—will need to be included in the state budget.

House members, particularly those serving on the Finance Committee, need to hear before Tuesday how important **HB 413** is, what it means for your community in terms of the impact on services, and the effect on property taxes throughout the state.

The 15 percent state contribution provided by **HB 413** will save local governments (municipalities, counties, and school districts) **over \$40 million per year**. These two lists (one for [teachers](#) and one for [police and fire](#)) were prepared by the Legislative Budget Assistant’s Office, and show the state retirement contribution attributed to each municipality from 2007 until 2013, when the 35 percent state contribution was repealed. The percentage of state contribution varied in those years, but the figures for 2011 show roughly the retirement cost reduction for each local government entity if **HB 413** is funded in the state budget.

Last week’s strong House vote does not ensure that any state contribution will be included in the budget. We believe the House vote was as strong as it was because local officials were very engaged—and it will take continued engagement with your legislators to get the state contribution included in the budget!

Please contact [Finance committee members](#), as well as your own representatives, now and urge inclusion of **HB 413** in the state operating budget. Your efforts are what will make all the difference!

Please let us know of your contacts and feel free to call or [email](#) us if you have any questions.

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A Semi-Break

Traditionally, but with some exceptions, the House and Senate take a week off at the end of February, coinciding with New Hampshire school vacation week. This year the Senate is taking a full break, and the House is taking a partial break. There are no Senate hearings and no Senate session next week. The House will not be in session, but there are a few committee hearings, as well as a number of committee work sessions and executive sessions on bills that have had hearings.

Next Thursday, March 2, is the House deadline for committees to report bills that are not going to a second committee (which is why many of them have executive sessions next week), and the following Thursday, March 9, is the deadline for the House to act on those bills. March 16 is the deadline for committees to report all remaining House bills, other than budget bills, and March 23 is the deadline for House action on non-budget bills.

The next Senate session will be on Thursday, March 9. House members have been instructed to reserve Wednesday and Thursday, March 8 and 9, for possible session days. Given the number of bills remaining, it is likely that the House will be in session both days.

Committee Recommends Killing Broadband Bill

As we mentioned last week, the sponsor of [SB 170](#), the **NHMA policy bill** authorizing municipalities to issue bonds for broadband infrastructure, introduced an amendment stating that a bond may be issued only “when operation or maintenance is open to a competitive proposal process that allows commercial broadband providers to contract with the municipality for services.” That amendment addresses the telecommunications industry’s longstanding objection that municipalities do not know how to operate a broadband network and should not be allowed to compete with private industry. Under the amendment, the municipality would *not* be operating a network or competing with private industry—it would merely be providing the infrastructure to allow a private company to provide the service.

So, did the telephone and cable companies withdraw their objections? Of course not. They kept up the pressure on the Public and Municipal Affairs Committee, which voted 3-2 this week to report the bill as Inexpedient to Legislate. This merely demonstrates what has been clear but unstated all along: the industry simply does not want anyone else providing the facilities that it is unwilling or unable to provide, and it does not care whether New Hampshire residents have access to high-speed internet service.

We understand that since the major arguments against the bill have been neutralized, the leading arguments now are: (1) supporters of the bill haven’t provided sufficient evidence that they lack access to

THE EDGE

Dillon’s Rule

What’s good is bad,
what’s bad is good.
You’ll find out when
you reach the top
You’re on the bottom.

Wait. Really? You mean it’s Dylan, not Dillon?

No, I was just having some fun—although the artist formerly known as Robert Zimmerman probably did have some profound insights about municipal authority.

Most people who have spent much time around municipal government in New Hampshire have heard of Dillon’s Rule. It applies in New Hampshire, and it says municipalities have only the powers expressly granted by the legislature—the opposite of home rule.

But who was Dillon?

The person in question was not a popular singer/songwriter (to our knowledge), nor was he a heartthrob actor or the leading character in “Gunsmoke.”

John Forrest Dillon was a judge who served on the Iowa Supreme Court in the 1860s and on the U.S. Court of Appeals for the Eighth Circuit in the 1870s. He was also one of the nation’s leading authorities on municipal law.

Continued on next page

fast internet; and (2) in any event, there is no problem, because 97 percent of the state does have access. This is like telling a hungry person, “You haven’t proven to me that you’re hungry, and even if you are hungry, that’s okay, because most people aren’t.”

The telecommunications monolith doesn’t have to care about New Hampshire citizens who in 2017 are still without access to the internet, but legislators should. ***The Senate will vote on the bill on Thursday, March 9. Please urge your senator to reject the committee report on HB 170 and support the bill with the sponsor’s amendment.***

Retirement Costs and Penalties on Part Time Employees

In [last week’s Bulletin](#), we provided a detailed description of a proposed amendment to **HB 561**, dealing with New Hampshire Retirement System (NHRS) retirees working after retirement. On Thursday, the House Executive Departments and Administration Committee voted unanimously to support [amendment 2017- 0611h](#) (which includes the changes we described last week).

The consensus of the committee was that **HB 561** as amended will make employers “pay the pension bill” they owe, prevent employers from continually “escaping” their pension obligations, and stop employers from “defrauding” the pension system.

Here is a summary of the provisions included in the proposed amendment:

- suspends a retiree’s pension benefits if part-time work exceeds the statutory limit of 32 hours per week or 1,300 hours per calendar year;
- authorizes NHRS to assess a penalty on the employer of three times the suspended pension amount if the employer knew that the hours were exceeded;
- authorizes the executive director of NHRS to waive the penalty for good cause;
- requires employers to pay the unfunded liability portion of the employer rates on part-time employees (1) when an employer converts or replaces a full-time position with one or more part-time positions within 12 months of a position becoming vacant, or (2) when an employer fills a full-time position with an interim, temporary, or part-time employee within 12 months;
- requires employers to provide notice to NHRS within 30 days of a full-time position changed to part-time.

THE EDGE (Continued)

In *City of Clinton v. Cedar Rapids and Missouri River R.R.*, 24 Iowa 455 (1868), Judge Dillon wrote:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. . . . [Municipalities] are, so to phrase it, the mere tenants at will of the legislature.

Ain’t *that* the truth!

Judge Dillon wrote a treatise on municipal corporations, published in 1873, which included this rule, and it was adopted by many state courts; but he was hardly the first to express this view. Some 50 years earlier, the Massachusetts Supreme Judicial Court, in *Stetson v. Kemp*, 13 Mass. 272 (1816), had held that towns are “creatures of the legislature” and may exercise “only the powers expressly granted to them.”

Still, history gives Dillon the credit, and all these years later, we are left with his rule.

A final note: Proving once again that all the famous people in the world are related, Judge Dillon had a grandnephew named Charles Dillon Stengel, more popularly known as Casey—yes, he of the Yankees and Mets.



HB 561 as amended is on the consent calendar for the next House session, on March 8 or 9. We continue to believe that this bill will have negative consequences across the broad spectrum of New Hampshire public employers, and will impede the ability of local governments to deliver the services their citizens need and expect without increased costs.

Reconsideration on Right-to-Know Law Bill!

A notice in this week's House calendar states that a representative who voted in the majority on **HB 365** has filed a notice of reconsideration on the motion of Inexpedient to Legislate. [HB 365](#) is the bill we have written about several times that would award attorney fees to a prevailing plaintiff in a Right-to-Know lawsuit, even if the defendant (often a municipality) had no reason to know it was violating the law. As we [reported last week](#), the House on February 16 voted down a committee recommendation to pass the bill, and then voted the bill Inexpedient to Legislate.

By filing a notice of reconsideration, the representative has preserved her right to move for reconsideration of the ITL vote the next time the House is in session, either March 8 or March 9. Although the ITL motion passed by a comfortable 207-166 vote, the margin on the first vote—on the committee's recommendation of Ought to Pass—was dangerously close, at 184-187.

We believe it is too late to reconsider the 184-187 vote that defeated the committee's recommendation, but if the ITL vote is reconsidered, it seems that anything can happen. ***Municipal officials, please let your representatives know that this issue is not dead, and they should watch carefully for the motion to reconsider. Urge them to preserve the good decision they have already made and vote down any motion to reconsider on HB 365.***

There's Plenty More Going On

As happens every year, a small number of bills this year are getting most of the attention. This is true both with respect to legislation generally (right-to-work, concealed carry, transgender rights) and with respect to municipal bills (pension contribution, utility valuation, right-to-know). While our coverage of these bills leaves less space to report on the many other bills affecting municipalities, rest assured that we are covering them all.

Here are some of the "other" bills—good, bad, and neutral—that are still alive at this writing. This is still only a small sampling. We summarize them here with only minimal editorial comment. If you have opinions, whether positive or negative, please contact us and your legislators:

Repeal of "separate offense" provision for zoning violations. The House Judiciary Committee has recommended **HB 617** as Ought to Pass with Amendment. [As amended](#), the bill would eliminate the sentence in RSA 676:17, I, that says that each day that a zoning violation continues shall constitute a separate offense. The effect of this is probably obvious only to attorneys and those involved in zoning enforcement. By classifying each day of a violation as a separate offense, the existing law allows an enforcement action to be brought in the circuit court because the fine for a single violation will never exceed the jurisdictional limit of the court, even though the total fine for all of the individual offenses may exceed that limit. Removing this sentence would require that many more zoning enforcement actions be brought in the superior court, rather than the circuit court.

(Plenty More— Continued from Page 4)

This is a bad bill that will result in higher costs and longer court processes for both municipalities and those charged with zoning violations. ***Municipal attorneys, pay attention!*** The bill is scheduled to go to the House floor on March 8 or 9.

Objections recorded in minutes. The House Judiciary Committee has recommended **HB 460** as Ought to Pass with Amendment. [As amended](#), the bill states that if a member of a public body objects that a discussion by the body is in violation of the Right-to-Know Law, whether in public or non-public session, the objection must be recorded in the minutes. If the objection is overruled by a majority of the public body, the member may continue to participate in the meeting without being subject to personal liability for any violation of the Right-to-Know Law. The bill is scheduled to go to the full House on March 8 or 9. We believe the bill is unnecessary.

Voting on variances. **HB 86** has passed the House and is scheduled for a hearing in the Senate. It provides that when a zoning board of adjustment votes on a variance application, it must vote on each of the five criteria separately: public interest, spirit of the ordinance, substantial justice, value of surrounding properties, and unnecessary hardship. It further states that the board may grant the variance “only if any 3 members of those present vote in the affirmative on all 5 criteria.” It does not change any of the criteria, just the manner of voting. NHMA has not taken a position on the bill. For those interested, the Senate hearing is scheduled for **Wednesday, March 8, at 9:15 a.m., in LOB Room 102**, before the Public and Municipal Affairs Committee.

Exemption for generators for disabled persons. The House has passed **HB 117**, which expressly includes standby generators in the property tax exemption that is available for property improvements made to assist a person with a disability who resides on the property. Note that the bill as passed by the House differs significantly from the original bill, which would have expanded the exemption to include any person over 65, whether disabled or not. The bill is not scheduled for a hearing in the Senate yet.

Accessory dwelling units, again. The House Municipal and County Government Committee has recommended **HB 265** as Ought to Pass with Amendment. [As amended](#), the bill clarifies the accessory dwelling unit (ADU) law enacted last year by stating that a municipality may prohibit ADUs “associated with multiple single-family dwellings attached to each other such as townhouses, and with manufactured housing.” It also prohibits the subsequent condominium conveyance of an ADU separate from the principal dwelling unit, “unless allowed by the municipality.” We believe this is a helpful clarification of the law. The bill will be on the consent calendar for the next House session.

Taxation of lease interests. The House has passed and sent to a second committee **HB 568**, relative to the taxability of lease interests in public property. The bill does two things: (1) it allows a municipality to exempt land from the requirement of RSA 72:23, I(b) (private party using or occupying land owned by the state or a political subdivision must pay tax on the property) if the land is leased exclusively for agricultural purposes; (2) it clarifies the the failure of a lease to contain the precise statutory language in 72:23, I(b) does not affect the occupant’s obligation to pay property taxes. We have mild reservations about the agricultural exemption (because it is unclear how it would be adopted), but believe the second part of the bill is a useful clarification. The bill originally came through the Municipal and County Government Committee, but because it affects revenue, it must now go to the Ways and Means Committee for a second hearing. That hearing is scheduled for **Tuesday, March 7, at 11:00 a.m., in LOB Room 202.**

(Plenty More — Continued from Page 5)

Bonds for public works projects. The House Public Works and Highways Committee has recommended **HB 371, an NHMA policy bill**, as Ought to Pass with Amendment. [As amended](#), the bill removes political subdivisions from the existing requirement in RSA 447:16 that “the state or any political subdivision thereof” obtain a bond for any public works project involving an expenditure of at least \$35,000. It raises the bond threshold to \$75,000 for the state and allows, but does not require, municipalities and other political subdivisions to adopt the same bonding requirements. The bill will be on the consent calendar for the next House session.

Custom design for SB 2. Two weeks ago we mentioned that the Municipal and County Government Committee was considering an amendment to **HB 182** that would allow an SB 2 town to adopt changes to the SB 2 process by using the procedure that charter towns and cities currently use to amend their charters. The amendment would allow an SB 2 town to change things like the process of finalizing the budget, the conduct of the deliberative session, and the definition and calculation of the default budget. We heard from a number of municipal officials who expressed concern about the proposal, and so did the committee. As a result, the committee voted this week to retain the bill. The bill won’t go any further this year, but the committee will study it between now and November before making a recommendation to the full House.

Phase-in for all-veterans’ credit. The Senate has passed [SB 80](#), which allows a municipality to phase in over three years the all-veterans’ tax credit that was just enacted last year. That credit, if adopted by a municipality, is available to veterans who did not serve during a qualifying war or armed conflict, unlike the standard and optional credits, which are available only to wartime veterans. However, if a municipality does adopt the all-veterans’ credit, it must be in the same amount as the standard or optional credit that the municipality has adopted.

Some municipalities are interested in adopting the all-veterans’ credit, but have had concerns about the sudden impact to their tax bases. **SB 80** allows a municipality to mitigate the hit somewhat by “phas[ing] in the amount of the all veterans’ tax credit over a 3-year period to match the standard or optional veterans’ tax credit.” There is no requirement that the phase-in be in equal increments. Thus, if the municipality has a \$500 optional veterans’ credit, it could phase in the all-veterans’ credit at \$100 in the first year, \$200 in the second year, and \$500 in the third year—or any other schedule that gets to \$500 by the third year.

The bill goes next to the House. To be clear, even if it passes, the phase-in will *not* be available in time to be adopted at this year’s town meetings.

HOUSE CALENDAR

TUESDAY, FEBRUARY 28, 2017

WAYS AND MEANS, Room 202, LOB

10:00 a.m. **HB 654-FN**, establishing a committee to study the regulation and taxation of vacation rentals and short-term rentals.

WEDNESDAY, MARCH 1, 2017

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Rooms 305-307, LOB

10:00 a.m. **HB 438**, eliminating the automatic union dues payment for state employees.

TUESDAY, MARCH 7, 2017

WAYS AND MEANS, Room 202, LOB

- 11:00 a.m. **HB 568-FN**, relative to the taxability of lease interests in public property.
1:30 p.m. **HB 579-FN**, relative to registration of semi-trailers.

SENATE CALENDAR

WEDNESDAY, MARCH 8, 2017

PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

- 9:05 a.m. **HB 87**, relative to vacancies in the office of moderator.
9:15 a.m. **HB 86**, relative to voting on variances.
9:30 a.m. **HB 299**, relative to notice by mail for zoning and planning purposes.
9:45 a.m. **HB 123**, relative to continuation of a public hearing of the zoning board of adjustment.
10:00 a.m. **HB 108**, relative to municipal record retention and conversion.

New 2017 House Bills

HB 1-A adopts the state budget for fiscal years 2018 and 2019. Rep. Kurk of Weare; **F-H**.

HB 2-FN-A-LOCAL makes statutory changes to implement the state budget for fiscal years 2018 and 2019. Rep. Kurk of Weare; **F-H**.

HB 25-FN-A adopts the state's capital budget for fiscal years 2018 and 2019. Rep. Chandler of Bartlett; **PW**.

New 2017 Senate Bill

SB 7-FN-LOCAL provides that the state shall not accept a waiver of the federal work requirements for food stamp eligibility, requires the state to use the federal resource and income limits for food stamp eligibility, and requires individuals to cooperate with the division of child support services as a condition of eligibility for food stamps. Sen. Avard of Nashua; **HHS**.

SENATE FLOOR ACTION

Thursday, February 23, 2017

SB 19, relative to warrant articles that have been submitted to the department of revenue administration. **Inexpedient to Legislate**.

SB 73, relative to septic requirements in conversions to accessory dwellings. **Passed**.

SB 79, relative to taxation of historic residential structures. **Inexpedient to Legislate**.

SB 106, relative to eligibility to vote. **Re-referred**.

(Senate Floor Action— Continued from Page 7)

SB 109, authorizing a moderator to conduct a verification count of machine-counted ballots. **Inexpedient to Legislate.**

SB 135-FN, relative to the regulation of electricians. **Tabled.**

SB 168, relative to increasing the maximum amount of the optional veterans tax credit. **Tabled.**

SB 169, relative to the definition of agritourism. **Re-referred.**

SB 171-L, relative to the perambulation of towns. **Passed.**

SB 172-FN, relative to dams on residential property. **Re-referred.**

SB 173, relative to the use of accessory dwelling units. **Inexpedient to Legislate.**

SB 178-FN, relative to motor vehicle registration transfer credits. **Re-referred.**

SB 186, establishing a committee to study the tax characterization of stormwater utility fees. **Inexpedient to Legislate.**

SB 211-FN, establishing a statewide law enforcement data network. **Inexpedient to Legislate.**

SB 243-FN-A, relative to complete streets policies, establishing a complete streets pilot program, and making an appropriation therefor. **Passed with Amendment.**

Upcoming Events for NHMA Members

Please visit our [website](#) for upcoming NHMA events.
See CALENDAR OF EVENTS on the left and click *View the Full Calendar*;
scroll down to the event you are interested in to register.