

# LEGISLATIVE BULLETIN

## Still Waiting on Town Meeting Postponement Bill

As we mentioned last week, [SB 438](#), which would give the Secretary of State unprecedented control over town meetings by requiring moderators to obtain his permission before postponing ballot voting sessions for severe weather, is still awaiting action in the Senate Election Law and Internal Affairs Committee. We understand an amendment is in the works, and we have offered to participate in any discussions, but have heard nothing more. We also offered our own amendment at the hearing several weeks ago, which would clarify the postponement process.

Please see [Bulletin #6](#) for a discussion of the serious problems with this bill. If you have not already done so, please contact members of the [committee](#) and your own senator and urge them to either adopt the NHMA amendment or simply let the bill die.

## Senate to Vote on Working After Retirement

In last week's [Bulletin](#) we explained that the Senate Finance Committee had recommended ITL by a vote of 4-2 on [HB 561](#), dealing with retirees returning to work. We also noted that there is a strong desire to pass "something" to address the perception of a "double-dipping" problem. The bill is on the Senate agenda for Thursday, February 15. If you haven't already done so, please let [senators](#) know of your concerns with **HB 561** before Thursday and urge them to support the Finance Committee recommendation.

## Utility Valuation Bills Scheduled

[HB 324](#), the bill that would create a commission to study the valuation of utility property, is scheduled for a hearing before the House Ways & Means Committee next **Tuesday, February 13, at 11:00 a.m., in LOB Room 202.** Meanwhile, [HB 1381](#), the bill that would preempt **HB 324** by requiring that utility property be assessed no higher than its net book value, has a subcommittee work session the same day at **1:30 p.m. in LOB Room 104.**

Please see the article on these bills in [Bulletin #6](#) (page 2) for more information.

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### GOVERNMENT AFFAIRS CONTACT INFORMATION

- Judy A. Silva**, Executive Director
- Cordell A. Johnston**, Government Affairs Counsel
- Barbara T. Reid**, Government Finance Advisor
- Timothy W. Fortier**, Communications & Member Services Coordinator



25 Triangle Park Drive  
Concord NH 03301  
Tel: 603.224.7447  
[governmentaffairs@nhmunicipal.org](mailto:governmentaffairs@nhmunicipal.org)

## Reconsideration of State Retirement Contribution Fails By One Vote

On Thursday, the motion to reconsider [HB 413](#), an **NHMA policy bill** that would have restored a portion (15%) of the state contribution toward the retirement costs for teachers, police, and firefighters, failed in the House by a single vote of 170 to 171. As we explained in previous *Bulletins*, had the motion to reconsider passed, an amendment would have been offered to change the effective date of the bill to ensure it did not impact the current state budget. Unfortunately, those in opposition to reconsideration claimed that the bill would “open the state budget”—a statement that probably was the kiss of death.

Debate on the house floor indicated that many representatives heard loudly and clearly from their municipal constituents the impact that elimination of the state retirement contribution has had on their budgets, and how significant a modest restoration of that contribution would be in reducing property taxes statewide. Thank you to all the municipal officials who contacted or met with their representatives to urge support for reconsideration of **HB 413**. The roll call on the motion to reconsider is available [here](#). Please thank your representatives who voted “yea.”

## Workers’ Comp Bill Creates Unfunded Mandate

Somehow we missed a hearing a couple of weeks ago on a bill that would increase workers’ compensation costs for municipal employers. The bill, [SB 553](#), addresses mental health conditions resulting from work-related events and work-related stress, and specifically states:

In the case of police officers, rescue or ambulance workers, or firefighters, posttraumatic stress disorder that is diagnosed by a mental health professional shall be presumed to have been incurred during service in the line of duty and shall be compensable, unless it is shown by a preponderance of the evidence that the post-traumatic stress disorder was caused by nonservice-connected risk factors or nonservice-connected exposure.

There is no question that PTSD is a serious problem that affects some emergency responders, but this bill goes too far.

Workers’ compensation is for injuries and conditions “arising out of and in the course of employment.” When there is a dispute as to whether a condition “arises out of” employment, the employee has the burden of establishing that it does. **SB 553** would shift that burden and require the employer/insurer to prove that PTSD did not arise out of the employment. That task—proving a negative—will be extremely difficult if not impossible.

Further, the New Hampshire Supreme Court has previously held that this kind of presumption is unconstitutional, because it will inevitably require municipal employers or their workers’ compensation carriers to pay claims that otherwise would not be compensable. In other words, it is an unfunded mandate.

In *New Hampshire Municipal Trust Workers’ Compensation Fund v. Flynn*, 133 N.H. 17 (1990), the court considered a section of the workers’ compensation statute, 281-A:17, that created a presumption that certain types of cancer in a firefighter are occupationally related. The court concluded that this presumption would necessarily result in the payment of claims in some cases where the disease was not, in fact, occupationally related. This was a mandate that would require municipalities to spend additional funds without their consent, and was therefore unconstitutional.

**SB 553** works exactly the same way. Creating a PTSD presumption is especially troubling given that so many police and firefighters have seen active duty in the military, where PTSD is a well documented problem. When someone who has served in the military and as a police officer is diagnosed with PTSD, it makes no sense to start from a presumption that the condition resulted from his or her police work.

As noted, the bill has already had a hearing. It is in the Senate Commerce Committee, and the committee may act on the bill next week. If your senator is a member of the [Commerce Committee](#), please contact him or her and explain that this bill will drive up municipal costs for workers' compensation costs—and besides that, it's unconstitutional.

### **Limitation on Fire Marshal's Power Shifts Costs to Municipalities**

An under-the-radar, non-germane amendment to a re-referred Senate bill is causing alarm among local police, fire, and code enforcement departments. [SB 55](#), filed last year, was originally a snoozer dealing with backflow devices in drinking water systems. It was re-referred, and when the Senate Executive Departments and Administration Committee reported the bill in December, it had a surprising amendment. The amendment, adopted without public notice or a hearing, eliminates the authority of the state fire marshal and deputy fire marshals to “detain and make arrests as a peace officer.”

No, it's not you. There really is no connection between backflow devices and the arrest authority of the state fire marshal—except that they are now joined in **SB 55**. We have heard from a number of people who are concerned that eliminating the fire marshal's authority will shift a heavy burden onto local agencies that do not have the resources or expertise to investigate and prosecute arson and related crimes. We do not know where the amendment came from, what motivated it, or who supports it, but we will follow the bill closely. It passed the Senate on January 3, but still has not been referred to a committee in the House.

Please make sure your representatives know about **SB 55**, and share your concerns with them.

### **Not With a Bang, But a Whimper**

[HB 1749](#), the bill that would have eliminated selectmen's authority to restrict the firing of guns on town property—and would have subjected them to fines and removal from office for attempting to do so—was put on hold for further study yesterday. By a [roll call vote of 239-71](#), the House voted to send the bill to interim study. This means the House Municipal and County Government Committee will consider the issue over the summer and fall, but the bill itself ultimately will die, and any legislation for next year will have to start with the filing of a new bill.

### **Municipal Bills in Senate**

The Senate Public & Municipal Affairs Committee took action this week on a number of bills affecting municipalities. Here are the more notable ones:

**Term Limits.** The committee voted to recommend Inexpedient to Legislate on [SB 394](#), which would authorize cities and charter towns to establish term limits for elected officials.

**Increased Veterans' Credit.** The committee also voted to recommend Inexpedient to Legislate on [SB 503](#), which would increase the maximum amount of the optional veterans' property tax credit to \$1,000 (from the current \$500). The sponsor had indicated a willingness to drop the increase to \$750, but the committee felt that was still too much.

**Notice of Lease on Tax-Exempt Property.** The committee voted Ought to Pass with Amendment on [SB 510](#), which requires the state or a political subdivision to notify the host municipality when it leases property to another person or entity. The amendment changes the effective date and removes the requirement that the lessor provide a copy of the lease to the municipality.

**Income and Expense Information for Income-Producing Property.** Without discussion, the committee voted Inexpedient to Legislate on [SB 509](#), which would allow assessing officials to require an owner of business property to provide the income and expense information necessary to determine the market value of the property in question.

**Sale of Tax-Deeded Property.** The committee voted Ought to Pass with Amendment on [SB 504](#), which allows selectmen to sell tax-deeded property through a real estate agent or broker, rather than by public auction or sealed bid, subject to making an affirmative finding that it is in the public interest. The [amendment](#) changes the words "selectmen or mayor" to "governing body" throughout the statute.

All of these bills will go to the full Senate for action next Thursday, February 15.

## Water Quality Standards Bills Head to Second Committees

On Thursday, the House passed two bills dealing with water quality standards. As we explained in last week's *Bulletin*, [HB 1101](#) authorizes the New Hampshire Department of Environmental Services (DES) to adopt, through administrative rules, water quality standards for both drinking water and ambient groundwater. The bill also addresses water contamination from air emissions. [HB 1101](#) now heads to the House Science, Technology and Energy Committee for further review. [HB 1592](#), which requires DES to review the ambient groundwater standard for arsenic by January 1, 2019, is headed to the House Executive Departments and Administration Committee for further review.

## Interest on Delinquent Taxes

The House Ways and Means Committee voted unanimously two weeks ago to recommend Inexpedient to Legislate on [HB 1673](#), which proposed to lower the interest rates on delinquent property taxes and other local taxes. The committee report apparently was delayed, and the bill still is not on the House calendar for floor action, but presumably it will be in the near future. Thank you to those municipal officials who testified or otherwise contacted committee members expressing opposition to this bill.

## **Governor's State of the State Address**

On **Thursday, February 15 at 10:00 a.m.** Governor Sununu will present his state of the state address to a joint session of the House and Senate. The address will be live streamed from the general court website at [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us).

### **HOUSE CALENDAR**

#### **TUESDAY, FEBRUARY 13, 2018**

##### **COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB**

11:15 a.m.      **HB 1662-L**, requiring radon air testing on all new residential construction.

##### **EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 202, LOB**

###### **\*\*Please Note Room**

10:00 a.m.      **HB 1823-FN**, relative to layered amortization of retirement system liabilities.

10:30 a.m.      **HB 1805**, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability.

11:00 a.m.      **HB 1803-FN**, relative to payroll deductions for government employees.

##### **JUDICIARY, Representatives Hall, SH**

10:00 a.m.      Continued public hearing on **HB 1319**, prohibiting discrimination based on gender identity.

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

###### **\*\*Please Note Time Change**

1:00 p.m.      **HB 1634**, regulating disorderly houses.

2:30 p.m.      **HB 1463**, relative to requirements for noise ordinances in towns.

##### **PUBLIC WORKS AND HIGHWAYS, Room 201, LOB**

10:00 a.m.      Continued public hearing on **HB 2018**, relative to the state 10-year transportation Improvement program.

##### **WAYS AND MEANS, Rooms 210-211, LOB**

###### **\*\*Please Note Room**

11:00 a.m.      **HB 324**, relative to the valuation of utility property.

#### **WEDNESDAY, FEBRUARY 14, 2018**

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

1:00 p.m.      **HB 1215**, relative to voting on variances.

1:30 p.m.      **HB 1216**, relative to liability for deferred property taxes.

#### **FRIDAY, FEBRUARY 16, 2018**

##### **ASSESSING STANDARDS BOARD (RSA 21-J:14-a), Room 303, LOB**

9:00 a.m.      Subcommittee meeting on equalization.

9:30 a.m.      Regular meeting.

##### **NEW HAMPSHIRE DRINKING WATER AND GROUNDWATER ADVISORY COMMISSION (RSA 485-F:4), Room 100, SH**

8:15 a.m.      Regular meeting.

8:30 a.m.      Subcommittee meeting.

## SENATE CALENDAR

### TUESDAY, FEBRUARY 13, 2018

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

9:15 a.m. **SB 569-FN**, relative to animal cruelty.

**NOTE:** Hearing on **SB 569-FN** was recessed on Tuesday, February 6th.

9:45 a.m. **SB 530-FN**, relative to high voltage electric transmission lines in highway rights-of-ways.

#### TRANSPORTATION, Room 103, LOB

1:40 p.m. **SB 401**, relative to repair of roads not maintained by a municipality.

2:00 p.m. **SB 464**, relative to the procedure for driveway permits.

### WEDNESDAY, FEBRUARY 14, 2018

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

10:20 a.m. **SB 458**, authorizing the purchase of retirement system creditable service by a certain surviving spouse.

### TUESDAY, FEBRUARY 20, 2018

#### COMMERCE, Room 100, SH

1:00 p.m. **SB 420**, relative to collective bargaining under the right-to-know law.

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

9:15 a.m. **SB 443**, relative to the jurisdiction of counties concerning retail electric supply.

## HOUSE FLOOR ACTION

Thursday, February 8, 2018

**HB 1101-FN**, regulating groundwater pollution caused by polluting emissions in the air. **Passed with Amendment; referred to ST&E.**

**HB 1104-FN**, relative to certain regulatory permits and forms and relative to time limits under RSA 541-A. **Passed with Amendment; referred to ED&A-H.**

**HB 1202-LOCAL**, relative to town revolving funds for group net metering. **Passed.**

**HB 1212**, establishing a local option for commercial buildings with environmental liability that are delinquent on property taxes. **Inexpedient to Legislate.**

**HB 1221**, relative to petitioned warrant articles. **Inexpedient to Legislate.**

**HB 1231-FN-LOCAL**, relative to dog licenses. **Inexpedient to Legislate.**

**HB 1244**, relative to applicability of local zoning ordinances. **Inexpedient to Legislate.**

**HB 1248**, establishing a committee to study the construction of a parking facility at Hampton Beach. **Inexpedient to Legislate.**

*(House Floor Action— Continued from Page 6)*

**HB 1266**, relative to apportionment of property taxes in municipalities that are part of cooperative school districts. **Inexpedient to Legislate.**

**HB 1276**, adding an exemption for certain raffles conducted by charitable organizations. **Passed.**

**HB 1282**, repealing the provisions for tax exemptions for certain chartered public school facilities. **Inexpedient to Legislate.**

**HB 1299-FN-LOCAL**, relative to the recall of selectmen. **Inexpedient to Legislate.**

**HB 1330**, relative to the wrongful discharge of an employee. **Inexpedient to Legislate.**

**HB 1332**, allowing warrant articles to be split by the deliberative session. **Passed.**

**HB 1380**, relative to unauthorized use of firearms. **Inexpedient to Legislate.**

**HB 1392**, relative to publishing the tallies of votes of municipal budget committee members on warrant articles. **Passed with Amendment.**

**HB 1399**, relative to statutes of limitations in civil actions against public servants. **Inexpedient to Legislate.**

**HB 1402**, relative to ordinances regarding forestry activities. **Passed.**

**HB 1406**, relative to concealed carry licenses and evidence of domicile for voting purposes. **Inexpedient to Legislate.**

**HB 1423-FN**, relative to election assistance for cities and towns. **Inexpedient to Legislate.**

**HB 1431**, prohibiting the state and political subdivisions from acquiring military-equipped vehicles or equipment which are not readily available in an open national commercial market. **Inexpedient to Legislate.**

**HB 1444**, requiring the legislative body to approve the appointment of town managers and prohibiting town managers from hiring contractors to perform the duties of town managers. **Inexpedient to Legislate.**

**HB 1452**, relative to equalized property valuation used to apportion expenses in cooperative school districts. **Inexpedient to Legislate.**

**HB 1461**, relative to penalties for unconstitutional actions by municipal officials **Inexpedient to Legislate.**

**HB 1470-FN**, repealing the timber tax. **Inexpedient to Legislate.**

**HB 1491-FN-A-LOCAL**, relative to the disposition of meals and rooms tax revenues to town and cities. **Inexpedient to Legislate.**

*(House Floor Action— Continued from Page 7)*

**HB 1631-LOCAL**, relative to the assessment of property in municipalities that are part of a multi-town school district. **Inexpedient to Legislate.**

**HB 1640-LOCAL**, relative to the definition of “occasion” relating to the laying out of roads. **Inexpedient to Legislate.**

**HB 1655-LOCAL**, relative to fines for violations of town or city code violations. **Inexpedient to Legislate.**

**HB 1657**, relative to the removal of an elected treasurer. **Inexpedient to Legislate.**

**HB 1669-FN**, relative to commerce in food in New Hampshire. **Inexpedient to Legislate.**

**HB 1693**, relative to appropriations for bridge construction or reconstruction. **Inexpedient to Legislate.**

**HB 1696-FN**, relative to the Hampton Beach capital improvement fund. **Inexpedient to Legislate.**


**HB 1730-FN-A**, establishing a public safety enhancement revolving fund, establishing a grant program for body cameras worn by police, and creating prestige number vanity plates. **Inexpedient to Legislate.**

**HB 1749-FN**, relative to the state’s authority to prohibit or regulate firearms and relative to the selectmen’s authority to manage town property. **Refer for Interim Study.**

**HB 1793-FN-A**, establishing a New Hampshire single payer health care system. **Inexpedient to Legislate.**

**HB 1811-FN-A**, relative to the New Hampshire health protection program. **Refer for Interim Study.**

**HB 1820-FN**, relative to requiring the use of body cameras by law enforcement officers. **Inexpedient to Legislate.**

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**2018**      **Upcoming NHMA Workshops and Webinars**

Feb. 21      NHMA Webinar—Election Law Changes in 2018

Mar. 14      NHMA Webinar—Municipal Social Media Policies and Free Speech

Please register online through our website [www.nhmunicipal.org](http://www.nhmunicipal.org). (Scroll down on left to Calendar of Events and click View the Full Calendar)

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