

LEGISLATIVE BULLETIN

Bill Makes a Mess of Town Meeting

The long-awaited [amendment](#) to [SB 438](#), the town meeting postponement bill, was unveiled this week, and it was very disappointing. The language of the amendment differed little from the original bill, and neither the Senate Election Law and Internal Affairs Committee nor the bill’s proponents (the Secretary of State’s office) seemed concerned about the conflicts it will create with other municipal governance and election statutes.

Perhaps they did not fully understand the problems, since we never did get to meet with the parties drafting the amendment. The bill’s effort to break the singular town meeting process into two separate parts—one an “election” and another a “meeting”—flies in the face of town meeting laws, developed over centuries, supporting one meeting with several stages, and creates conflicts with scores of existing statutes. We have testified and written about examples of the conflicts—there are simply too many to list them all, and no way to fix the conflicts without a very lengthy amendment. We have again contacted the Secretary of State’s staff involved in drafting the amendment to try to learn more information. If they believe the language doesn’t create conflicts, perhaps they could explain why that is so, and if they recognize the conflicts, why do they persist with this language?

We have to ask why this is happening. It appears to be a quintessential power struggle. It began last year when a blizzard hit on Town Meeting Day, and dozens of municipal attorneys (not just those at NHMA) unanimously agreed that the moderator had the authority to postpone—an opinion, as we now know, that the Attorney General’s office shared. (We also know that the Secretary of State’s office advised at least a half-dozen municipalities that the moderator had authority to postpone, before that office reversed itself.)

What happened last year has led to the critical philosophical policy issue at stake—are local officials in the best position to determine whether the voting day of a town meeting should be postponed due to severe weather, or should that call lie with the Secretary of State in Concord—an official who has no authority and no role in town meetings?

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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
Website: www.nhmunicipal.org

This question of municipal authority to postpone either session of town meeting is one that will hardly ever arise, as there has rarely been a debilitating snow storm on Town Meeting Day. Nevertheless, the troublesome amendment that is to be sent to the Senate floor on February 22nd is drafted in such a manner that it will create scores of statutory conflicts and uncertainty for town meetings *every single year* if passed. Local officials should not be put in the position of trying to make flawed laws work smoothly so their town meetings can function. See the article below for more examples of the conflicts created by **SB 438**.

Some supporters of the bill have attempted to justify it by questioning the integrity of local officials, suggesting that moderators and selectmen will toy with the scheduling of voting day to manipulate the outcome. How a moderator could know what effect, if any, a postponement might have on voter turnout or voting results, is a question with no answer. Voters would not tolerate such an action at the local level, and local officials know that.

NHMA offered an amendment to the committee that would address the few legitimate concerns that arose last year; it would provide a uniform process for all towns to follow should the moderator postpone the voting day of the meeting due to hazardous weather. We have an improved amendment ready to offer, clarifying that the voting day in a cooperative school district may not be postponed unless all towns in the district agree. It leaves the authority to postpone with local officials—in the unlikely event that the need should arise—and unlike the bill as approved by the committee, it does not create massive confusion and chaos for the town meeting process.

SB 438 will go to the Senate floor next **Thursday, February 22**. Please contact your senator and urge him or her to support the NHMA amendment to **SB 438**, and, if it fails, to vote the bill Inexpedient to Legislate because of the harm it will do to their towns and to local government.

Statutory Conflicts Under SB 438

As mentioned above, **SB 438** would create scores of irreconcilable conflicts with existing statutes. These arise because the bill seeks to define a town “meeting” and a town “election” as two completely discrete, disconnected events—something that any experienced local official knows is not true.

The bill states:

Notwithstanding any other provision of law, for the purposes of all statutes pertaining to annual and special meetings of towns, school districts, and village districts:

“Election” means the choosing of officers by official ballot and in towns, school districts, and village districts that have adopted the official ballot referendum form of meeting as authorized by RSA 40:13, voting on warrant articles by use of official ballot.

“Meeting” means the discussion of business of the towns, school districts, or village districts and voting on warrant articles only by voice, division, or secret “yes-no” ballot

vote. Meeting shall include the deliberative session of an annual meeting in towns, school districts, and village districts that have adopted the official ballot referendum form of meeting as authorized by RSA 40:13.

Thus, regardless of what any other statute says, the town “meeting” will now mean only the deliberative session in an SB 2 town and the business session in traditional town meeting towns. Voting for officers and voting on other matters by official ballot will now constitute an “election,” not a “meeting.”

Here are just a few of the problems this creates:

- The municipal budget law applies to all towns “which adopt their budgets at an annual meeting of their voters.” Under **SB 438**, the annual “meeting” in an SB 2 town is the deliberative session. But the budget in those towns is adopted on the official ballot voting day (which **SB 438** defines as an “election”). Therefore, SB 2 towns will no longer be adopting their budgets “at an annual meeting of their voters,” so the municipal budget law will no longer apply to any SB 2 town. What law will they follow for their budget process?
- State law requires the selectmen to file a copy of the town’s adopted budget with the Department of Revenue Administration within 20 days after “the close of the meeting.” Because **SB 438** says that the “meeting” in an SB 2 town is the deliberative session, the budget will now have to be filed within 20 days after the deliberative session—which will always be before the official ballot vote. Therefore, the budget must be filed with DRA before it is adopted. How will that work?
- Under existing law, town officers are to be elected “at the annual meeting.” In almost all towns, they are elected by official ballot at the ballot voting session of the meeting. Because **SB 438** defines that session as an “election,” not a meeting, all officers will now need to be elected at the deliberative session in an SB 2 town, and at the business session in other towns. How will that work, given that the official ballot is not used at those sessions, and no final votes are to be taken at an SB 2 deliberative session?
- Zoning ordinances and amendments are to be adopted at a “meeting” of the legislative body, and in almost all towns this is done using the official ballot. Again, under **SB 438** these actions will now need to be taken at the deliberative session in an SB 2 town and the business session in other towns, where the official ballot is not used. How will that work?

The list goes on and on. And on. So far we have identified 54 separate statutes that would be rendered meaningless or unworkable by **SB 438**—and we stopped counting only because of fatigue. The bill would create confusion in the adoption of budgets, election of officers, establishment of land use boards, adoption of ordinances, approval of collective bargaining agreements, and who knows what else.

Utility Valuation Discussion Continues

The House Ways & Means Committee heard testimony this week on [HB 324](#), which would create a study commission to consider methods for valuing public utility property for local property tax purposes and make recommendations for legislation. NHMA and several other parties testified in support of the bill, except for recommending elimination of the provision that would place a three-year moratorium on any municipality's changing its utility property valuation method. No one opposed the bill. There was an eerie silence from the utility companies.

Meanwhile, a subcommittee of the same committee held a work session on [HB 1381](#), the competing bill that would render the study commission irrelevant by legislating a valuation method based on the net book value of the property. That subcommittee heard from representatives from municipalities, public utilities, the Department of Revenue Administration, and the Assessing Standards Board.

Finally, a subcommittee of the Assessing Standards Board has been working on the same issue, and is likely to make a recommendation to the full board today, with a goal of having the board make a recommendation to the legislature. Whether the board will accept the subcommittee recommendation, or will do so today, is uncertain as of this writing.

In other words, stay tuned; everything is up in the air. The [HB 1381](#) subcommittee has scheduled another work session for next **Tuesday, February 20, at 11:00 a.m. in LOB Room 202**. HB 324 has not been scheduled for further action yet. We will keep you posted.

Senate Passes Working-After-Retirement Bill

On Thursday, by a vote of 11 to 13, the Senate failed to adopt the Finance Committee's 4 to 2 recommendation of Inexpedient to Legislate on [HB 561](#), dealing with retirees working after retirement. After the committee report was rejected, an amendment was offered to extend the effective date of the bill from "upon passage" to January 1, 2019, to allow employers and retirees additional time to adjust to the changes in the bill. With this amendment, the bill passed on a voice vote. As we previously reported, [HB 561](#):

- lowers the number of hours a New Hampshire Retirement System (NHRS) retiree can work part-time for an NHRS employer to 1,300 hours per year (an average of 25 hours per week);
- imposes a surcharge on the total compensation paid to a retiree (3% charged to the retiree and 5% charged to the employer) if the hours worked in a calendar year exceed 1,300;
- institutes a significant penalty if the yearly hours worked by the retiree exceed 1,300 (or exceed 1,600 if the employer provided prior notification to NHRS that annual hours will be more than 1,300);
- requires a 28-day waiting period from the date of retirement before a retiree can be employed again by any NHRS employer; and
- grandfathered current retirees, but only in their current part-time positions.

[HB 561](#) heads back to the House to either concur with the Senate changes, non-concur and let the bill die, or request a committee of conference. We don't expect that action to occur until later in the session. We will notify you as that time approaches.

Governor Presents State of the State Address

On Thursday Governor Sununu presented his State of the State address to a joint session of the House and Senate. The full text of the Governor's address is available [here](#).

Submit Your Policy Proposals!

NHMA's legislative policy process is getting underway. A number of people have signed up for our legislative policy committees, although there is still room for a few more. Those committees will hold their first meeting on April 6, and we will send more information to the members next month.

In the meantime, it is time to submit your legislative policy proposals. If you are a municipal official (or board) with an idea for legislation that could improve municipal government, please consider submitting a proposal.

You can download the NHMA Legislative Policy Proposal Form [here](#). A policy proposal form should accompany each proposed legislative policy. Please follow the instructions to submit the form, and note that all proposals must be submitted by April 20, 2018.

HOUSE CALENDAR

TUESDAY, FEBRUARY 20, 2018

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

10:00 a.m. **HB 1766-FN**, relative to remediating the Coakley Landfill in Greenland.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:30 a.m. Public Hearing on non-germane amendment #2018-0539h to HB 1805, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability. The amendment extends the term of NH Retirement System trustees from 2 to 3 years. Copies of the amendment are available in the Sergeant-at-Arms office, Room 318, State House

TRANSPORTATION, Room 203, LOB

10:30 a.m. **HB 1400**, relative to red light equipment on vehicles owned by dispatchers.
1:00 p.m. **HB 1459**, prohibiting autonomous vehicles on New Hampshire highways.

WEDNESDAY, FEBRUARY 21, 2018

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:00 a.m. **HB 1592-FN**, requiring the commissioner of the department of environmental services to review standards relative to arsenic contamination in drinking water.

SENATE CALENDAR

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

9:30 a.m. **SB 443**, relative to the jurisdiction of counties concerning retail electric supply.

JUDICIARY, Room 100, SH

9:30 a.m. **HB 252**, relative to pro se litigants under the right-to-know law.

HOUSE FLOOR ACTION

Thursday, February 15, 2018

HB 124-FN, repealing certain aircraft registration fees. **Passed with Amendment.**

HB 193, relative to traffic control measures. **Passed.**

HB 438, eliminating the automatic union dues payment for state employees. **Inexpedient to Legislate.**

HB 1548-FN, relative to meals and rooms taxes applicable to room remarketers. **Inexpedient to Legislate.**

HB 1566, prohibiting open carry of a firearm in certain public places. **Inexpedient to Legislate.**

HB 1630, relative to unfunded property tax exemptions or credits. **Inexpedient to Legislate.**

HB 1710-FN-A, relative to the provision allowing operators to retain a portion of meals and rooms taxes collected and the appropriation of meals and rooms tax revenues to school building aid. **Inexpedient to Legislate.**

HB 1821-FN, repealing Keno. **Inexpedient to Legislate.**

SENATE FLOOR ACTION

Thursday, February 15, 2018

SB 320, relative to checklists used at elections. **Passed.**

SB 352-FN, relative to examinations of injured employees under workers' compensation law. **Interim Study.**

SB 364, establishing a commission to study the establishment of a searchable database to verify that each vote was properly recorded. **Inexpedient to Legislate.**

SB 366, relative to members of the site evaluation committee. **Passed with Amendment.**

(Senate Floor Action— Continued from Page 6)

SB 394, enabling municipalities to establish term limits for elected officials. **Inexpedient to Legislate.**

SB 417, relative to days of rest for employees of recreation camps and youth skill camps. **Passed.**

SB 450-FN-A, establishing an advisory commission for the department of environmental services relative to the delegation of authority of the National Pollutant Discharge Elimination System Program. **Passed with Amendment; referred to F-S.**

SB 504-FN, relative to sales of tax-deeded property. **Passed with Amendment.**

SB 505, requiring abutter notice of the construction of a crematory. **Passed.**

SB 508, establishing a committee to study the prevalence of post-traumatic stress disorder (PTSD) among first responders. **Passed with Amendment.**

SB 509, allowing municipalities to require income and expense information of business properties for tax appraisals. **Inexpedient to Legislate.**

SB 510, relative to municipal notice of leases on tax-exempt property. **Passed with Amendment.**


SB 529-FN, authorizing river maintenance in the town of Warren. **Passed with Amendment; referred to F-S.**

SB 552-FN, relative to transportation of trauma victims by first responders. **Interim Study.**

SB 554-FN, relative to the minimum hourly rate and employer-sponsored health benefits. **Inexpedient to Legislate.**

SB 579-FN, relative to penalties for welfare fraud. **Passed.**

HB 561-FN, relative to part-time employment of a retirement system retiree by a participating employer. **Passed with Amendment.**



<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
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. (Scroll down on left to Calendar of Events and click View the Full Calendar)

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