

LEGISLATIVE BULLETIN

Interest on Delinquent Taxes – From Bad to Worse

Bulletin 18—2018 Session
April 20, 2018

We have reported extensively on [HB 1673](#), which, as passed by the House, lowers the interest rates municipalities may charge on delinquent taxes from 12% pre-lien and 18% post-lien to the rate set annually by the Department of Revenue Administration (DRA) under RSA 21-J:28, II, currently 6%. On Wednesday the Senate Ways and Means Committee voted 4-1 Ought to Pass on an [amendment](#) that retains the annual interest rate setting by DRA, but then adds confusing language regarding the interest rates upon redemption and subsequent payments, stating that the rates will be:

- 6% per annum for the first year;
- 9% per annum for the second year; and
- 12% per annum for the third year and any subsequent year.

Long-standing law, dating back well over 75 years, establishes a two-tiered property tax collection process with an automatic priority lien effective until 18 months after the assessment date of April 1 – in other words, until October 1 of the following year. To protect this priority status during the remainder of the redemption period, the municipal tax collector must execute a lien (also known as “perfecting” the lien) any time after the property tax is delinquent, but prior to October 1 of the following year. This is when the interest rate changes from 12% to 18%.

The Senate amendment *significantly disrupts* this tax collection process by creating a three-tiered process unrelated to perfecting the lien, and unclear as to when the “first year,” “second year,” and “third year” interest rates become effective. Additionally, since the bill retains the provision tying the initial interest rate to the annual rate set by DRA, it is unclear which rate prevails the “first year” in the event the DRA rate is something other than 6%, as it often is. It could also result in the initial interest rate set by DRA being higher than the subsequent interest rates, clearly not the intent of this change!

Understanding the desire of some Senate Ways and Means Committee members to lower the current interest rates, NHMA, in consultation with the NH Tax Collectors Association, suggested interest rates of 10% pre-lien and 16% post-lien. The suggestion was based upon consideration of the

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rates charged by DRA over the past 13 years on delinquent state taxes. DRA rates have ranged from 5% interest to 10% interest – plus 5% for the failure to pay on time – for total rates ranging from 10% to 15%. DRA also assesses an additional 10% failure-to-file penalty for a total assessment of 20% to 25%. Suggesting municipal interest rates of 10% pre-lien and 16% post-lien seemed more than reasonable in comparison.

HB 1673 and the amendment go to the full Senate for a vote next week. Please let you [Senator](#) know that the committee amendment as written is confusing and unworkable, will jeopardize the priority lien status currently effective and necessary in the municipal tax collection process, and will eliminate the incentive that higher interest rates create to make property tax payments a priority. Please urge them to reject the committee amendment and vote to ***kill HB 1673***.

Registration of Out-of-State Vehicles Surfaces Again

As you may recall, [HB 579](#), which would have create a discounted multi-year registration program for out-of-state semi-trailers (and very likely expanding to other vehicles in the future), was **tabled** in the House due to concerns about the \$500,000 appropriation needed to implement the program and the potential negative impact on municipal registration fees. As predicted, the bill surfaced again this past Tuesday in the Senate Transportation Committee as an unnoticed [amendment](#) to **HB 1614**, which deals with administrative rules regarding the international registration plan administered by the Department of Safety. Following very brief testimony in opposition to the amendment from NHMA and the Director of the Division of Motor Vehicles, the committee voted 5-0 Ought to Pass on the amendment, noting that the deadline for the bill to come out of committee was that very day, because it will need to go to the Senate Finance Committee to address the cost issues.

As we reported in [Bulletin #13](#), versions of this bill have been introduced in every legislative session since 2015, failing each year for good reasons—it encourages out-of-state residents to violate their own state motor vehicle laws by registering semi-trailers in New Hampshire and disadvantages in-state residents who will pay much higher registration fees. Therefore, the bill sets up an incentive for in-state residents to claim out-of-state residency to take advantage of the multi-year discounted registrations, and more importantly to avoid paying the municipal portion of the registration fee.

A similar out-of-state vehicle registration program, not just for semi-trailers but for a wide variety of vehicles, has been active in Maine for years, which will require New Hampshire to be competitive with that program. With an indeterminable and highly questionable revenue stream, the fear is that New Hampshire will have to expand beyond the mere registration of semi-trailers to other types of vehicles for this program to compete with Maine and to produce enough revenue to justify the appropriations needed to implement and administer this program. With motor vehicle registration fees being the second largest revenue source for municipalities next to property taxes, this proposal is of significant concern for all municipalities. NHMA, the Department of Safety's Division of Motor Vehicles, and the NH City and Town Clerks Association have consistently opposed this bill for the reasons summarized in the association's [position paper](#).

HB 1614 with the semi-trailer amendment is on the consent calendar for the Senate session next Thursday, April 26. Assuming it passes, as previously noted we expect it will go to the Senate Finance Committee for consideration of the \$500,000 appropriation. Please let your [Senator](#) know

(Semi-Trailers— Continued from Page 2)

that the semi-trailer amendment to **HB 1614** will have a negative impact on municipal motor vehicle revenues and to vote against that amendment on the Senate floor and in the [Senate Finance Committee](#) if and when it arrives there.

Amendment Threatens Net Metering Bill

Last week the House Science, Technology and Energy Committee unanimously recommended Ought to Pass with Amendment on **SB 446**, an **NHMA policy bill** that, with the [committee amendment](#), would increase the maximum allowable capacity for net-metered renewable energy projects to five megawatts (from one megawatt). This was an important step forward—with the increased cap, larger projects that a number of municipalities are pursuing would become economically viable, leading to reduced energy costs, reduced taxpayer costs, and reduced consumption of carbon fuels. The bill was on the consent calendar for yesterday's House session.

Unfortunately, the bill was pulled from the consent calendar at the eleventh hour and recommitted to the committee for a hearing on an amendment that would effectively neuter the bill. The [amendment](#) provides that for projects between one and five megawatts, the excess energy generated would be sold to the distribution utility at a rate equal to the “monthly average locational marginal price” as determined by the Public Utilities Commission. This is in contrast to projects under one megawatt, which currently can (and still would under the amendment) sell excess generation at the “default service” rate.

In layman's terms, the amendment would allow the owner of a one-to-five-megawatt renewable energy facility to receive only the wholesale rate for the excess generation, rather than the default energy service rate that smaller (100 kilowatt to 1 megawatt) facilities are paid. This would render the larger facilities economically infeasible and essentially make the bill pointless.

The economics of this bill have been well understood by the committees that heard them in both the House and the Senate, and both committees recommended the bill unanimously. It is unclear why an amendment that is entirely counter to the bill's purpose would be entertained at this late date. The committee hearing on the amendment is scheduled for **Tuesday, April 24, at 11:00 a.m., in LOB Room 304**. If your municipality has an interest in this issue, please consider attending and testifying against the amendment, and in any event, please contact members of the [committee](#) and urge them to *oppose the amendment*.

Water Quality Monitoring and Treatment

On Tuesday the House Resources, Recreation and Development Committee delayed a vote on **SB 240** until after a work session on the bill next week, since there are two proposed amendments in the works. **SB 240** deals with water quality monitoring and treatment and, as explained on page 4 of [Bulletin #16](#), raises a number of significant concerns that we do not believe are addressed by either proposed amendment. Last Monday a [joint letter in opposition to SB 240](#) was submitted to the committee from the NH Water Works Association, the NH Water Pollution Control Association, the Northeast Biosolids & Residuals Association, the Granite State Rural Water Association, the NH Farm Bureau Federation, and NHMA. Please let members of the [Resources, Recreation and Development Committee](#) know of your agreement with the concerns expressed in that letter, as well as other issues you have with **SB 240**.

[\\$45 Million Retirement Bill Passes the Senate](#)

With no discussion, the Senate passed [HB 1427](#), which, as we reported in last week's *Bulletin*, had been amended in its entirety to include the language from [HB 1757](#) – a bill tabled in the House last month. **HB 1757**, and now **HB 1427**, increases pension benefits for Group I members and carries a \$45 million price tag that will be paid through future employer contribution rates set by the NH Retirement System (NHRS). (Please note that the fiscal note attached to **HB 1427** is no longer applicable since it applies to the previous version of the bill. The \$45 million fiscal impact was provided by the NHRS in its Bill Brief on **HB 1757**.) **HB 1427** now heads to the Senate Finance Committee, where the \$45 million price tag will be the primary topic of discussion. Along with your other calls to [Senate Finance Committee members](#), please urge them to recommend Inexpedient to Legislate on **HB 1427**.

[Presumption of Cancer in Fire Fighters](#)

SB 541 has a long title: “establishing a fund to reimburse costs associated with firefighters who have cancer and establishing a commission to study the funding and operations of the presumption under workers' compensation requiring the reimbursement of costs associated with firefighters who have cancer.” It may be about to change again, so a short review of the history of this bill is in order.

As [first introduced](#), **SB 541** was simply an act establishing a fund to reimburse costs associated with firefighters who have cancer, and it amended the workers' compensation statute, RSA 281-A:17, II, which sets forth a presumption that certain cancer in firefighters is work-related. This section of the statute was found to violate Par 1, Article 28-a, the unfunded mandate section of the New Hampshire Constitution, in the 1990 Supreme Court case *NH Municipal Trust Workers' Compensation Fund v. Flynn*, 133 NH 17. The original version of **SB 541** provided a funding source other than the municipal property tax, which would have eliminated the unfunded mandate problem. It authorized an annual assessment of no more than ½ of one percent on all commercial and residential insurance policies paid during the previous calendar year, as established by the insurance commissioner. These funds would be deposited into a special account to pay workers' compensation claims granted under the presumption language.

The insurance assessment was unpopular, however, and the Senate [amended the bill](#) to remove the assessment and to “establish a commission to study the funding and operations of the presumption under workers' compensation requiring the reimbursement of costs associated with firefighters who have cancer.” The commission would have 13 members, including legislators, the insurance, labor, and safety commissioners, and representatives from NHMA, the Association of Counties, the Association of Fire Chiefs, the Professional Fire Fighters of New Hampshire, PRIMEX, and an attorney practicing in the field of workers' compensation law. The commission was charged with completing its work by November 1, 2018.

In the House, **SB 541** was sent to the Finance Committee. The full committee held a hearing on April 3rd, and Division I has held two work sessions on the bill. At its last meeting on **SB 541**, Division I discussed drafting a further amendment, which was not available, but which sounded fairly comprehensive. As this *Bulletin* went to press, the amendment was still not available, so how extensive it is and what it might provide for a study commission or funding source is not clear.

(Presumption of Cancer— Continued from Page 4)

Division I will meet in a final work session on **Tuesday, April 24 at 10:30 a.m. in LOB Room 212**. The full [Finance Committee](#) will take action on the bill on **Wednesday, April 25 at 10:00 a.m. in LOB Room 210-211**. If you have questions or concerns, please come to the work and executive session or contact the NHMA [government affairs](#) staff.

Default Budget Confusion

On Thursday the House passed [SB 342](#), the bill discussed in [last week's Bulletin](#) that requires the default budget in an official ballot referendum (SB 2) town to be reduced by the amount of salaries and benefits for positions that are eliminated in the proposed operating budget. The problems with that are significant, as we discussed last week. Meanwhile, the Senate Public and Municipal Affairs Committee reported [HB 1307](#), which also deals with default budgets, as Inexpedient to Legislate. That bill will go to the Senate floor next week, where we expect it to be killed.

The Public and Municipal Affairs Committee's intent is to request a committee of conference on **SB 342** to resolve all issues in a single bill—so look for a committee of conference on **SB 342** in the next few weeks. We hope the bill's problems can be fixed in the committee.

Water Quality Standards Bills

On Tuesday the Senate Energy and Natural Resources Committee voted 5-0 to amend [HB 1101](#), dealing with air emissions, drinking water, ambient groundwater and surface water quality standards. On Wednesday the House Finance Committee voted to amend [SB 309](#) to include language nearly identical to what the Senate Committee had recommended in **HB 1101** the day before. Both bills have strong support, including from the Governor. One will likely become the final bill this session dealing with contaminant standards for perfluorochemicals, otherwise known as PFAS. Both bills require the Department of environmental Services (DES) to start the process of setting a drinking water maximum contaminant level (MCL) and an ambient groundwater quality standard (AGQS) for four PFAS by January 2019, taking into account the ability to detect/remove the contaminants and the costs and benefits to affected parties that will result from establishing the standard. DES is also required to develop a plan for setting surface water standards by January 2020 and to regulate PFAS air emissions that may lead to groundwater contamination. We expect both bills to pass their respective bodies next week and end up in committees of conference for final disposition.

The Senate Energy and Natural Resources Committee also recommended Ought to Pass by a vote of 5-0 on [HB 485](#), with the understanding that the bill will be tabled at the next Senate session. While dealing with similar contaminant issues, **HB 485** has not been adequately amended as the previous two bills have been to reflect concerns voiced by DES and others. However, the Senate plans to hold onto **HB 485** in the event there are problems with final adoption of either **HB 1101** or **SB 309**.

Committee Rejects Public Meetings for Collective Bargaining

The House Judiciary Committee this week voted 13-4 to recommend killing [SB 420](#), which would have subjected collective bargaining sessions involving a quorum of a public body to the public meeting requirements of the Right-to-Know Law. As we mentioned previously, the bill was identical to a bill previously killed in the House.

An attempt was made to save the bill by amending it to allow the legislative body to vote to require that collective bargaining sessions be held in public, rather than having public sessions be mandated by statute. However, there was insufficient support for that amendment, and the committee voted the bill Inexpedient to Legislate. We encourage the full House to support the ITL recommendation when the bill goes to the floor next week.

Finance Committee Sidetracks Housing Appeals Board . . .

[SB 557](#), the bill discussed in *last week's Bulletin* (page 4) that would establish a three-person board to hear appeals from local land use board decisions involving questions of housing and housing development, got a rough reception in the House Finance Committee this week. Although most of those speaking at the committee hearing supported the bill, the committee's Division I identified numerous concerns, including several that NHMA had mentioned. The division voted 8-0 to recommend that the bill be referred for Interim Study, and the full committee adopted that recommendation by a vote of 16-10.

The bill will go to the full House next week. With a relatively close vote from the committee, it certainly is not dead yet. And even if the House kills it, we anticipate an effort to revive it in the Senate. This is likely to get interesting.

. . . And Right-to-Know Law Ombudsman

The Finance Committee also had problems with [SB 555](#), which would establish the position of a Right-to-Know Law Ombudsman and a citizens' right-to-know commission. Division I voted 8-0 to recommend Inexpedient to Legislate, and the full committee adopted that recommendation by a vote of 22-4. [HB 555](#) also will go to the full House next week.

Other Action on Municipal Bills

The House and Senate disposed of a number of other bills this week. Here are a few:

Bonding for broadband infrastructure. The House passed [SB 170](#), an NHMA policy bill that grants municipalities greater authority to issue bonds for broadband infrastructure, subject to certain restrictions, including a requirement that the municipality make an effort to develop a public-private partnership with a service provider. The House did not amend the bill, so it will go next to the Governor for his consideration.

Taxation of recreational vehicles. The House killed [SB 403](#), which would have exempted from property taxation all recreational vehicles with a maximum width of 8 feet 6 inches if located at a recreational campground or camping park.

Agritourism. The House passed [SB 412](#), which prohibits a municipality from “adopt[ing] an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a.” The bill also allows an applicant for land use approval for an agritourism use to appeal to the Commissioner of Agriculture for a ruling as to whether a municipality’s definition of agritourism conflicts with the state’s definition. The bill passed without amendment, so it will now go to the Governor for signature, and he has indicated his support for the bill.

The idea of giving a state department head authority to rule on local land use issues is novel, if not alarming. However, the bill’s impact is not as great as it may seem at first. We will write more about this in a later issue.

Amendments to warrant articles. The House passed [SB 506](#), which clarifies the authority of selectmen to make changes to a petitioned warrant article before placing it on the warrant. As originally written, the bill would have prohibited the deliberative session of a town meeting in an official ballot referendum (SB 2) town from amending any petitioned warrant article. Fortunately, the bill was amended in the Senate and further amended in the House.

As passed by the House, the bill clarifies that the “minor textual changes” to a petitioned article that selectmen are currently allowed to make under RSA 39:3 “shall not in any way change the intended effect of the article as presented in the original language of the petition.” It makes a similar change to RSA 197:6, dealing with school district warrant articles. There is no limitation on the town or school district meeting’s authority to amend petitioned articles.

Because the House amended the bill, it needs to go back to the Senate for concurrence or to request a committee of conference.

Providing records under Right-to-Know Law. The House killed [SB 395](#), which would have required public bodies and agencies to make reasonable efforts to provide access to governmental records at an alternative place or time if the person requesting access could not appear during the public entity’s regular business hours. The bill as introduced in the Senate would have imposed more extensive requirements regarding the provision of electronic records, but the Senate changed it significantly, to the point that the bill’s prime sponsor testified against it in the House.

Optional veterans’ credit. The House overturned a committee report and passed [SB 503](#), increasing the maximum amount of the optional veterans’ tax credit to \$750 (from \$500). The Municipal and County Government Committee had reported the bill as Inexpedient to Legislate. The House rejected that recommendation by a 147-185 vote, then passed the bill on a voice vote. The bill will go next to the Governor for his consideration.

Optional veterans’ credit for service-connected disability. The House also passed [SB 341](#), increasing the maximum optional tax credit for military service-connected disability to \$4,000 (from \$2,000). This bill also is now on its way to the Governor.

Records of “non-meetings.” The Senate killed [HB 1579](#), which would have required a public body to keep records of any consultation with legal counsel and any strategy or negotiating sessions with respect to collective bargaining—sessions that are otherwise excluded from the definition of a “meeting” under the Right-to-Know Law.

Timber yield tax. The Senate passed [HB 1473](#), which makes a number of changes to the timber yield tax statute. Because the Senate amended the bill slightly, it will go back to the House to concur or request a committee of conference.

HOUSE CALENDAR

TUESDAY, APRIL 24, 2018

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

10:00 a.m. Public hearing on non-germane amendment 2018-1554h to **SB 453**, relative to requirements and criteria for a competitive grant program for drinking water protection. The amendment allows a public water district to receive fluoridated water from another supplier, so long as the district fulfills notification requirements. Copies of the amendment are available in the Sergeant-at-Arms' Office, Room 318, State House.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

11:00 a.m. Public hearing on germane amendment 2018-1645h to **SB 446**, relative to net energy metering limits for customer-generators. The amendment pertains to allowed payments or credits to those who net meter for excess generation. Copies of the amendment are available in the Sergeant-at-Arms' Office, Room 318, State House.

SENATE CALENDAR

TUESDAY, APRIL 24, 2018

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:30 a.m. **HB 1233**, preempting local regulation of seeds and fertilizer.

WEDNESDAY, APRIL 25, 2018

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

9:00 a.m. **HB 1603**, relative to employee representation on the independent investment committee in the New Hampshire retirement system.

9:15 a.m. **HB 1805**, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability and relative to the retirement system board of trustees.

HOUSE FLOOR ACTION

Thursday, April 19, 2018

SB 170, relative to the authority of towns to issue bonds for the expansion of broadband infrastructure. **Passed.**

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

SB 321, relative to group host net energy metering. **Passed.**

(House Floor Action— Continued from Page 8)

SB 339, relative to voting by zoning boards of adjustment. **Passed with Amendment.**

SB 341, (New Title) relative to the veterans' property tax credit for service-connected disability. **Passed.**

SB 342, (Second New Title) requiring identification of specific items in the default budget. **Passed with Amendment.**

SB 395, (New Title) relative to access to records under the right-to-know law. **Inexpedient to Legislate.**

SB 403-LOCAL, relative to the exemption for recreational vehicles from property taxation. **Inexpedient to Legislate.**

SB 412, relative to agritourism. **Passed.**

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

SB 428, relative to the payment of weekly and biweekly wages. **Passed.**

SB 458, authorizing the purchase of retirement system creditable service by a certain surviving spouse. **Passed.**

SB 464, relative to the procedure for driveway permits. **Interim Study.**

SB 503, relative to increasing the maximum amount of the optional veterans' tax credit. **Passed.**

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

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

SB 506, limiting amendments to warrant articles. **Passed with Amendment.**

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

SB 511, (New Title) establishing an optional tax credit for combat service. **Passed.**

SB 515, relative to commemorative license plates. **Passed.**

SB 553-FN, (New Title) establishing a commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation. **Passed with Amendment.**

SENATE FLOOR ACTION

Thursday, April 19, 2018

HB 1104-FN, relative to dredge and fill permit time limits; relative to time limits under the administrative procedure act; and relative to online filing with the secretary of state's office. **Passed with Amendment; referred to F-S.**

HB 1265, relative to the release of criminal conviction records. **Ought to Pass with Amendment.**

HB 1283, prohibiting sobriety checkpoints. **Inexpedient to Legislate.**

HB 1427-FN, relative to membership in the retirement system for certain officials. **Passed with Amendment; referred to F-S.**

HB 1473-FN, relative to the timber yield tax. **Passed with Amendment.**

HB 1579-FN, requiring records to be kept for certain exempt convenings under the right-to-know law. **Inexpedient to Legislate.**

HB 1592-FN, requiring the commissioner of the department of environmental services to review standards relative to arsenic contamination in drinking water. **Passed with Amendment; referred to F-S.**

HB 1684, relative to criminal background checks for emergency medical services license applicants. **Passed.**

HB 1782-FN, establishing a committee to study insurance payments to ambulance providers and balance billing by ambulance providers. **Passed.**

HB 1788-FN-L, relative to costs charged under the right-to-know law. **Tabled.**

HB 1810, establishing a commission to study the effectiveness of the current statutes related to management of non-tidal public water ways and the construction or placement of structures within



<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
May 15	2018 Local Officials Workshop—Moultonborough Safety Complex
May 22	2018 Local Officials Workshop—Sugar Hill Meeting House
May 23	NHMA Webinar—Controlling Junk: Junkyard Enforcement 101
Jun. 1	Workshop: A Guide to Effective Enforcement: Investigating and Enforcing Code and Land Use Violations
Jun. 2	2018 Local Officials Workshop—NHMA Offices, Concord

Please register online through our website: www.nhmunicipal.org.
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