

LEGISLATIVE BULLETIN

A Brief Slowdown

The Senate is taking a break from activity next week—there will be no committee meetings and no Senate session. The House is not officially taking a break this year, although committee activity was a bit lighter this week. There is only one day (Tuesday) of committee meetings next week, because full House sessions are scheduled for Wednesday and Thursday (if necessary).

The respite won't last, as committees will be racing to get all of their bills out by their deadlines. House committees have until March 14 to report their bills (except bills in a second committee and the budget bills), and Senate committees have until March 21. This means there will be plenty of hearings and executive sessions over the next few weeks.

Hotel Occupancy Fee Moves Forward

Last Friday the Municipal and County Government Committee recommended Ought to Pass by a vote of 12-6 on an amended version of [HB 641](#), an NHMA policy bill authorizing municipalities to collect a local option occupancy fee of up to \$2 per night for room rentals. The [amendment](#) clarifies the language regarding the use of this fee, stating that the money collected will be used to fund “costs of municipal services associated with the increase in tourism and transient traffic.”

We explained the purpose of [HB 641](#) in [Bulletin #7](#), noting that although this bill may not be of interest to many municipalities, we hope that *all* NHMA members would support the principle of local control to address the needs and circumstances unique to each municipality. This bill does that by providing a local option fee to help a number of municipalities. [HB 641](#) will go to the full House for a vote next **Wednesday, February 27**. *Please urge your representatives to support local control by voting YES on the committee recommendation of Ought to Pass with Amendment.*

Bulletin 09, 2019 Session
February 22, 2019

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Committee to Act on Many Municipal Bills

The [House Municipal and County Government Committee](#) has an executive session scheduled next **Tuesday, February 26**, at which it will take action on 15 bills. Some of the more notable ones are as follows:

Adopting SB 2. [HB 415](#) is an NHMA policy bill that would change the process for a town to adopt the official ballot referendum (SB 2) form of government. Under current law, a one-sentence question is placed on the ballot: “Shall we adopt the provisions of RSA 40:13 (known as SB 2) to allow official ballot voting on all issues before the town on the second Tuesday of March [or April or May]?” That’s all. The question is not discussed or debated at town meeting; it is voted on in the voting booth, where there is no opportunity for questions or explanation. Only the most diligent and informed voters have any idea what it means.

A huge, and likely permanent, change in how town meeting operates should be based on thorough discussion and debate, not on the whims or guesses of voters who have a few seconds to make up their minds about a question they are seeing for the first time. **HB 415** would change the process so the question would be voted on at the business session—where voters could get a full explanation and have all their questions answered—rather than on the official ballot. ***We strongly urge the committee to recommend the bill as Ought to Pass.***

Notice of Changes in Assessed Value. [HB 144](#) would require municipalities to provide all property owners with written notice of any change in the assessed value of their property, along with the basis for the change and an explanation of appeal procedures. NHMA and several municipal officials opposed the bill for a number of reasons, most notably that

- every change, regardless of how minimal (*e.g.*, a change in current use assessment due to application of a new equalization ratio) would require a written notice;
- notice of appeal procedures are already required to be included on tax bills;
- any municipality can already provide such notice if it chooses to do so, and some do.

This bill seemed to stem from a local problem, one that ought to be addressed locally, rather than through a state mandate. ***We encourage the committee to recommend Inexpedient to Legislate on HB 144.***

Planning Board Members Serving on Other Boards. [HB 370](#) would correct a problem in the statute governing city planning board members’ ability to hold other positions in city government. Historically, RSA 673:7 prohibited both city and town planning board members from holding any other municipal office, with a few exceptions. Several decades ago, the statute was amended to eliminate the prohibition for planning board members in *towns*, but not in cities—apparently on the assumption that cities would always be able to find plenty of volunteers. While the statute now allows both city and town planning board members to serve on certain other boards or commissions, subject to restrictions, it still prohibits a *city* planning board member from holding “any other municipal office.” Thus, a city planning board member could never serve as, say, a cemetery trustee, or ward moderator, or supervisor of the checklist. That just doesn’t make sense, and **HB 370** would fix it. ***We ask the committee to support HB 370.***

(Many Bills— Continued from Page 2)

We understand an amendment may be offered that would prohibit anyone (in a city or town) from serving simultaneously on a planning board and a zoning board of adjustment. Although we agree that it is a bad idea for someone to serve on those two boards at the same time, we do not agree that the state needs to legislate a solution. A planning board member can recuse himself if the board's decision is appealed to the ZBA on which he also serves. We hope the committee will ***vote down the amendment*** and then vote to ***support HB 370***.

Amendments to Petitioned Warrant Articles. [HB 469](#) and [HB 553](#) both would limit the ability of the town meeting to amend a petitioned warrant article in a town with the official ballot referendum (SB 2) form of town meeting. We have seen this effort repeatedly, and it is as bad an idea as it ever was. Just as a bill in the state legislature is subject to amendment once it is filed, a warrant article is, and should be, subject to amendment by the town meeting. In both cases the one appropriate limitation is that the amendment may not change the subject matter, and that prohibition is already in the law.

The argument routinely made in support of these bills is that when 25 voters have gone to the trouble to circulate a petition and get an article on the warrant, the town meeting should not be able to counteract their efforts. Why not? If five legislators have gone to the trouble of drafting and filing a bill, should the entire House or Senate be prohibited from amending it? And why should the prohibition apply only to petitioned articles? And why should it apply only in SB 2 towns? **HB 469** would prohibit any amendment that “change[s] the intended effect of the article.” Who is going to determine whether an amendment changes the intended effect? And what if the petitioners *themselves* decide they want to change it?

The problems with both bills are numerous and serious. ***We urge the committee to recommend killing both HB 469 and HB 553.***

Troubling Announcement from NHDES on PFAS Standards

The following information was posted by the Department of Environmental Services yesterday. We will follow this process and keep you informed of any developments.

New Information May Change NHDES Proposed PFAS Drinking Water Standards

On December 31, 2018, the New Hampshire Department of Environmental Services (NHDES) initiated rulemaking to establish Maximum Contaminant Levels (MCLs) and Ambient Groundwater Quality Standards (AGQS) for four per- and polyfluoroalkyl substances (PFAS) – perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA) and perfluorohexanesulfonic acid (PFHxS).

After the initial proposal, new scientific information was evaluated by NHDES that may change the proposed drinking water standards. Specifically, a new assessment tool developed by the Minnesota Department of Health allows for a quantitative estimate of infant and child exposure to PFAS through breastmilk and/or formula. This peer-reviewed model was published at the beginning of January after NHDES filed its Initial Proposal. NHDES's assessment of the exposure

(PFAS Standards— Continued from Page 3)

model for the interaction of drinking water levels of PFAS and breastfeeding (Goeden et al, 2019) indicates that health-based drinking water or groundwater standards for PFOA and PFOS would potentially be lowered significantly below the initial proposal figures of 38 parts per trillion (ppt) and 70 ppt, respectively.

NHDES is continuing to review the suitability of this assessment tool for PFHxS and PFNA based on this and other studies released in 2019. NHDES will need to complete a review of the technical and cost implications of these health-based calculations, and any public comment received, prior to issuance of the Final Proposal.

NHDES feels that it is important to release this information prior to the upcoming PFAS public hearings, so that there is plenty of time for people and organizations to examine this model and its use while developing their comments.

The Rule Making Notice/Initial Proposal packages for the amendments to Env-Dw 700-800, Env-Or 603.03, and Env-Wq 402 are available on-line at:

<https://www.des.nh.gov/organization/commissioner/legal/rulemaking/index.htm#pdrinking>
<https://www.des.nh.gov/organization/commissioner/legal/rulemaking/index.htm#poil>
<https://www.des.nh.gov/organization/commissioner/legal/rulemaking/index.htm#pwaterq>

Public Hearing Dates:

- Monday, March 4, 2019, 5:30 p.m.; All Purpose Room, James Mastricola Upper Elementary School, Merrimack, NH
- Tuesday, March 5, 2019, 1:00 p.m.; Auditorium, DES Offices, 29 Hazen Drive, Concord NH
- Tuesday, March 12, 2019, 5:30 p.m.; NHDES Pease Field Office, Room A, 222 International Drive, Suite 175, Portsmouth, NH

You may submit written comments even if you do not attend a public hearing.

LAST DAY TO FILE WRITTEN COMMENTS: Friday, April 12, 2019 (4:00 PM)

- For Drinking Water Standards (MCLs) (Env-Dw 700-800) – Submit comments to: Chip Mackey (Harrison.Mackey@des.nh.gov), DWGB Drinking Water Quality Manager
- For Ambient Groundwater Quality Standards (AGQS) (Env-Or 603.03) – Submit comments to: Lea Anne Atwell (LeaAnne.Atwell@des.nh.gov), Haz. Waste Remediation Bureau, Emerging Contaminants Coordinator
- For Discharges to Groundwater of Wastewater Containing Certain Perfluorochemicals (Env-Wq 402) – Submit comments to: Stephen Roy (Stephen.Roy@des.nh.gov), DWGB Technical Section Manager, Groundwater Permitting

Retained?

Readers will begin seeing references in the next few weeks to bills that have been “retained.” (See, for example, the next article.) Local officials (and legislators) who are new to the process—and some who are not so new—may not fully understand what it means to retain a bill, so here is a primer/refresher.

(Retained?— Continued from Page 4)

A House committee may retain a bill in the first year (which is where we are now) of the legislature's two-year term. This is an alternative to an "Ought to Pass" (OTP) or "Inexpedient to Legislate" (ITL) recommendation. Unlike OTP or ITL, "retain" is not a recommendation that needs to be acted on by the full House. Rather, the committee simply votes to retain the bill, and the full House has no say. A bill is typically retained when it is particularly complicated, it needs further study, or committee members have concerns about it but can't quite muster the will to kill it. Occasionally, if a committee wants to kill a bill but has concerns that the full House won't follow its recommendation, it might retain the bill so as not to give the entire body a chance. That only serves to delay action for a year, but sometimes that is enough.

As the word suggests, a retained bill stays in the committee, which must eventually take further action on it. Sometimes a committee will take up a retained bill again in the late spring, but more often action is delayed until the fall. A subcommittee may be appointed to work on the bill and make a recommendation, or the full committee may work on it. In any event, the full committee must take final action, usually by a specific date in November, and make a recommendation to the full House. The committee may recommend OTP, ITL, or interim study, and that recommendation then goes to the full House at the beginning of January in the second year of the term.

The Senate version of "retain" is "re-refer." It is essentially the same, except that a Senate committee cannot re-refer a bill on its own—the full Senate has to vote to re-refer a bill to the committee. After that, the process is similar to that for a retained bill.

Retain and re-refer are often confused with interim study, but they are quite different. A bill may be retained or re-referred only in the first year, while a bill may be sent to interim study only in the second year. So as not to introduce confusion, we won't get into interim study here. If you are interested, come back next year!

Retain – Retain – Retain

This week a number of **NHMA policy bills** ended up being retained in committee, partly to wait and see how the biennial budget plays out in terms of revenues, appropriations, and money for the many separate bills seeking state funding. The retained bills include the following:

- **[HB 497](#)**, relative to restoring a portion (15%) of the state contribution towards the retirement costs for teachers, police and firefighters. Division I of the House Finance Committee voted 5-0 to recommend that the committee retain it. While the bill passed the House by more than a 2/3 vote last week, Division I members expressed concern about where funding (approximately \$40 million per year) would come from – which is similar to the concern municipalities expressed when the 35% state retirement contribution was eliminated in 2013!
- **[HB 538](#)**, relative to a 6-cent increase in the road toll (gas tax), was retained in the House Public Works and Highways Committee by a vote of 18-3. This bill would raise additional money for the highway fund to address operation and maintenance needs of state and municipal roads and bridges.

(Retain, Retain — Continued from Page 5)

- **HB 478**, relative to a road usage fee on fuel-efficient vehicles, was also retained by the Public Works and Highways Committee. This bill would also raise additional revenue needed for the highway fund.

Even though the bills have been retained, the subject matter, revenues, and appropriations relative to the bills could still be included as part of the House's recommended budget. We will keep you posted as the biennial budget deliberations proceed over the next few weeks.

Committee Recommends Redistricting Commission

In a surprisingly strong bipartisan action, the House Election Law Committee voted 20-0 this week to recommend passage of **HB 706**, which would establish an independent commission of 15 citizens to draw New Hampshire House, Senate, Executive Council, and congressional district boundaries. This would implement an **NHMA policy** first adopted at our legislative policy conference in 2016 and re-adopted last year.

This is excellent news. Many municipalities develop working relationships with their legislators, and it is disruptive when they are moved from one legislative district to another for no legitimate reason. Legislative districts should be predictable and based on legitimate geographic considerations, subject to change only as necessary to reflect population shifts. District lines should not be drawn, as they historically have been, to give an advantage to whichever party happens to hold power when the census results are released.

The process in **HB 706** for selecting commission members is not exactly ideal, but at least it will result in a balanced and reasonably non-political membership: five Republicans, five Democrats, and five members who are neither. No one who has, during the preceding six years, been a candidate for, or elected to, federal, state, or county elective office would be eligible to serve on the commission. Neither would anyone who has worked for a major political party during that time, has been a member of a state political party committee, has been a registered lobbyist, or has made significant contributions to any one federal candidate. Persons with close connections to the governor, secretary of state, or any legislator, executive councilor, county commissioner, or member of Congress also would be disqualified.

All meetings of the commission would be open to the public, with opportunities for public participation. The commission would be required to hold at least one meeting in each county before drawing any maps and at least one meeting in each county after releasing proposed maps. The commission would approve final plans for electoral districts not later than "January 15 of any year ending in a 2," and submit the plans to each chamber of the legislature for an up-or-down vote, with no amendments "except those of a purely corrective nature."

There is also a Senate bill, **SB 8**, to establish an independent redistricting commission, which had a hearing this week. NHMA also supports that bill. Of course, only one of them can become law, and we don't have a preference, so long as the final legislation establishes a credible, non-partisan commission that is able to produce a sensible redistricting plan. **HB 706** is on the consent calendar for next week's House session, and that is a good start.

Keep Registering Those Cars!

We have received several calls and e-mails from local officials alarmed about [HB 517](#), which would have repealed the law requiring municipal permits for vehicle registration. Given that registration fees are the second largest revenue source for municipalities, the concern was understandable.

Fret not. We were confident the legislature would not pass the bill—which is why we did not feel a need to write about it. The House Transportation Committee recommended it as Inexpedient to Legislate by a 20-0 vote, and the House killed it on a voice vote last week. At least for another year, your vehicle registration fees are safe.

Check Your NHMA Contact Information

If you have recently sent an e-mail to someone at NHMA and have not received a reply, it is not (necessarily) that we're being rude or lazy. It could be that you are using an old address. Those of us who have been here a while originally had an address ending in "nhlgc.org." That changed about five years ago, and all of our addresses now end in "nhmunicipal.org." Mail sent to the old nhlgc addresses still got to us for a few years, but it no longer does. If you still have an nhlgc address in your contact information, we encourage you to delete it, and try to remove it from your "auto-fill" options, too.

HOUSE CALENDAR

TUESDAY, FEBRUARY 26, 2019

ELECTION LAW, Room 308, LOB

9:00 a.m. Subcommittee work session on **HB 408-L**, relative to postponement of town meetings and local elections. **NHMA Policy**.

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

10:00 a.m. **HB 494**, relative to removal or containment of contaminants from the Coakley Landfill.

JUDICIARY, Room 208, LOB

10:00 a.m. Full committee work session on **HB 661**, relative to a private right of action for toxin exposure.

1:30 p.m. **HB 155**, relative to procedures for determining and disclosing exculpatory evidence in a police officer's personnel file.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:45 a.m. **HB 635-L**, enabling a payment in lieu of taxes for a combined heat and power agricultural facility.

11:15 a.m. **HB 311**, regulating sober living facilities.

RESOURCES, RECREATION AND DEVELOPMENT, Rooms 305-307, LOB

10:00 a.m. **HB 683-FN**, relative to the rights of property owners abutting certain highways and railtrails.

1:00 p.m. **HB 495**, establishing a commission on drinking water.

1:30 p.m. **HB 707**, relative to settlement money from actions pertaining to the contamination of groundwater or drinking water.

(House Calendar— Continued from Page 7)

TRANSPORTATION, Room 203, LOB

- 10:00 a.m. **HB 507-FN-A-L**, relative to registration of commercial motor vehicles and operator's/ drivers' licenses.
- 10:30 a.m. **HB 537**, relative to the release of motor vehicle records.
- 11:00 a.m. **HB 498-FN**, prohibiting OHRV operation on class V ways.
- 11:30 a.m. **HB 592**, relative to OHRV operation and license.

TUESDAY, MARCH 5, 2019

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

- 10:15 a.m. **HB 685-FN**, relative to ambulance billing, payment for reasonable value of services, and prohibition on balance billing.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 10:00 a.m. **HB 475**, establishing a shoreland septic system study commission.
- 11:15 a.m. **HB 737**, establishing a commission to investigate and analyze the environmental and public health impacts relating to releases of perfluorinated chemicals in the air, soil, and groundwater in Merrimack, Bedford and Litchfield.

WEDNESDAY, MARCH 6, 2019

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

- 11:30 a.m. **HB 560-FN**, relative to single-use carryout bags.

SENATE CALENDAR

MONDAY, MARCH 4, 2019

JUDICIARY, Room 103, SH

- 2:00 p.m. **SB 317-FN**, prohibiting sanctuary jurisdictions in New Hampshire.

TUESDAY, MARCH 5, 2019

COMMERCE, Room 100, SH

- 1:00 p.m. **SB 10**, establishing the state minimum hourly rate based on whether an employer offers paid sick days to an employee.
- 1:45 p.m. **SB 100**, relative to discrimination in employment based on criminal background checks.

ENERGY AND NATURAL RESOURCES, Room 103, SH

- 9:00 a.m. **SB 74-FN-A**, relative to register of deeds fees used to support the land and community heritage investment program (LCHIP).
- 10:00 a.m. **SB 204**, relative to distributed energy resources and consumer energy storage.

WEDNESDAY, MARCH 6, 2019

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB

- 10:00 a.m. **SB 157**, making undeclared voters eligible to be inspectors.
10:30 a.m. **SB 154**, allowing municipalities to adopt a credit against property taxes for certain work-force housing.
11:00 a.m. **SB 158**, relative to town and city membership in a nonprofit, nonpartisan organization and prohibiting recipients of municipal or county funds from using such funds for lobbying.
11:30 a.m. **SB 104-L**, relative to the postponement of city, town, village, and school district elections.

SENATE FLOOR ACTION

Thursday, February 21, 2019

SB 56, establishing a committee to study motor vehicle registrations of active duty military personnel. **Passed.**

SB 149, relative to voluntary application of the uniform prudent management of institutional funds act to certain charitable trusts. **Passed.**

SB 272-FN, relative to mental health parity under the insurance laws. **Passed with Amendment.**

| 2019 NHMA UPCOMING EVENTS FOR MEMBERS | |
|---|--|
| Mar. 13 | Webinar: The Right-to-Know Law and Governmental Meetings |
| Mar. 20 | Webinar: Rethinking Recycling |
| Mar. 26 | Regional Workshop: Right-to-Know Law and Governmental Meetings |
| Apr. 10 | 2019 Local Officials Workshop (All day), Rochester |
| To register for an upcoming event, go to our website: www.nhmunicipal.org and scroll down on the left under CALENDAR OF EVENTS. Click on the green bar <i>View the Full Calendar</i> and go to the workshop or webinar you are interested in. For more information, please call NHMA's Workshop registration line: (603) 230-3350. | |