

# LEGISLATIVE BULLETIN

## Committee to Vote on Pole Valuation

The Senate hearing this week on [HB 1198](#), the bill establishing a valuation formula for telephone poles and conduits, was extremely long (over three hours) and rather strange. Curiously, no one introduced the bill as passed by the House. Instead, two of the bill’s sponsors spent almost an hour urging the committee to approve a version of the bill that the House had expressly *rejected*. Specifically, they asked the committee to replace the bill’s 40-year depreciation schedule for poles and conduits with a 30-year schedule, and to eliminate the Assessing Standards Board from the process of determining the schedule of pole values. It was left to other House members to explain why the House had already rejected both of those proposals.

In asking the Senate to use a 30-year depreciation, the sponsors once again cited principles of book depreciation, used for accounting, income tax, and rate-making purposes, that have absolutely nothing to do with appraisal of real property. As we and others have explained repeatedly, book depreciation is an *accounting* method for *allocating the original cost* of an asset. In contrast, the replacement-cost-less-depreciation method of *appraisal* seeks to *determine market value* of real property by starting with replacement cost of the property (whether it is a house or a telephone pole), and adjusting for its age. The two concepts have nothing to do with each other, except that they both use math. Accounting is not appraising.

Officials from a number of municipalities requested either that the bill be killed outright or that it be amended to increase the depreciation schedule to a more realistic 50 years—*as recommended by the Assessing Standards Board*. Several also noted the questionable constitutionality of treating the telephone company’s interest in the poles differently from the electric company’s interest in identical poles, which in most cases are owned jointly by the telephone and electric companies.

Responding to the constitutional argument, telephone company representatives said electric poles and telephone poles are different because electric poles are not actually appraised separately; rather, electric companies are valued as an entire enterprise, without separate valuation of the

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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  
Fax: 603.415.3090  
governmentaffairs@nhmunicipal.org  
Website: [www.nhmunicipal.org](http://www.nhmunicipal.org)

individual poles. That is not true. Although the Department of Revenue Administration does use this “unit method” to determine an electric company’s value *solely* for purposes of the statewide utility property tax (which telephone companies do not pay), local appraisers most certainly do value the poles separately for local property tax purposes. There is, therefore, a legitimate question about the constitutionality of valuing telephone poles differently.

We are optimistic that the committee will decline the sponsors’ invitation to amend the bill in a manner that the House has already rejected. *IF* the committee is inclined to do anything other than kill the bill, we encourage it to adopt the version that was originally proposed by the Assessing Standards Board, with a 50-year depreciation period that comes close to reflecting the actual value of the property in question.

The committee has a deadline to act on the bill by next week, so it will be voting on **Tuesday morning, April 19**. If you have concerns, please contact [committee members](#) before then.

### **Bad Labor Bill**

The Senate Executive Departments and Administration Committee has a hearing next week on a bill that would create impossible reporting requirements for public employers. [HB 1322](#) would require “each public employer of each bargaining unit” to report semiannually “the total number of public employees within the bargaining unit paying union dues, the total number of public employees within the bargaining unit paying agency fees, and the ratio, expressed as a percentage, of the number of those public employees paying union dues to the total number of public employees in the bargaining unit.” The information must be reported to the PELRB and to the board of the employer, and must be e-mailed to every employee in the bargaining unit!

It’s hard to know where to begin, but the most basic problem with this bill is that it requires employers to report information they don’t have. The employer ordinarily will not know whether an employee is paying union dues unless those dues are deducted from the employee’s paycheck. As the House committee’s minority report on the bill explained, many employees pay their union dues or agency fees directly by check or by debit from their bank accounts, rather than by payroll deduction. The employer has no way of knowing this, and it cannot require employees to provide the information.

Further, even if the employer could obtain this information, why should it? For a city with many bargaining units, this will be an extreme burden. And not that it’s our issue, but how could the state ever comply? It is clear that this was intended to be an anti-union bill,

## **THE EDGE**

### **City-towns**

In recent weeks *The Edge* has examined some of the interesting and occasionally esoteric aspects of the two basic forms of government in New Hampshire: the town meeting and the city council or board of aldermen. There are, however, some hybrid entities: towns that have adopted a town council form of government.

Under RSA 49-D, a town, by adopting a charter, may establish a town council as both its legislative body (replacing the town meeting) and its governing body (replacing the board of selectmen). The statute allows several options, including some that retain a limited role for a town meeting—typically, to vote on the operating budget as proposed by the council. Five towns—Bedford, Hooksett, Londonderry, Merrimack, and Newmarket—have a town council, but still have a town meeting to approve the budget.

Two towns—Derry and Durham—have gone a step further and adopted a “pure town council” form, in which there is no town meeting at all. In this form, the town council serves as the legislative body for all purposes, including adoption of the annual budget.

How, then, is a pure town council town different from a city? Not much. In most respects, it functions exactly the same as a city with the council-manager

*Continued on next page*

yet it punishes the *employer* for having union employees.

The bill is so bad that we never imagined the House would pass it. We anticipate that the Senate will see things a little more clearly, but at this point we will take nothing for granted. The hearing is scheduled for **Wednesday, April 20, at 9:15 a.m., in LOB Room 101**. Please register your astonishment about this bill with members of the [committee](#), or consider attending the hearing.

## Retention of Electronic Records

The Senate Public and Municipal Affairs Committee has a hearing next week on [HB 1395](#), the **NHMA policy bill** that would allow municipalities to store records for more than ten years in portable document format (PDF).

Current law (RSA 33-A:5-a) states that municipal records that are required to be retained for longer than ten years must be kept on paper, microfilm, or both. Given the number of records that must be retained permanently (all minutes of all public body meetings, for example), storing them on paper is unwieldy; and microfilm is all but obsolete. **HB 1395** would address this problem by allowing PDF as a third option. Records stored in PDF take up no physical space, can be accessed from more than one device, and are less susceptible to damage.

The hearing is scheduled for **Wednesday, April 20, at 9:15 a.m., in LOB Room 102** (directly across the hall from the hearing on **HB 1322**—two birds, one stone).

*Correction: A previous article on this subject used the term “PDF format,” which is like referring to a “PIN number” or an “ATM machine.” We are not sure how this got past the editors; an investigation is ongoing. Please accept our apologies.*

## Regulating Beach Attire

The Senate has passed a bill, [SB 347](#), that authorizes towns to regulate “the times and places of bathing, sunbathing, and swimming in municipal parks, beaches, pools, or other municipal properties, and the clothing to be worn by users.” This is in response to a certain “freedom” movement that made the news last summer.

We’re not taking a position on the bill, but it does illustrate a point made in a recent “The Edge” column about the difference in ordinance authority between cities and towns. As it happens, RSA 47:17, XIII already authorizes *cities* to “regulate the times and places

## THE EDGE (Continued)

form. All legislative and executive decisions are made by the council, and there is a chief administrative officer “called a town manager or similar title,” who has all of the responsibilities and authority of a town manager under RSA chapter 37.

A pure town council town does differ from a city in a few respects:

- It does not have wards (and therefore does not have ward officers), although it may be divided into council districts.
- It does not have a mayor. Every city has a mayor, even if it is a “weak” one.
- Like all towns, it must have an elected clerk; a city clerk is appointed by the council, board of aldermen, mayor, or city manager.
- Certain other officers (e.g., treasurer) must be elected unless the town has voted to appoint them.
- It must have annual elections in March or May. Cities may have regular elections (annually or biennially) at any time, other than on the biennial state election day.
- The town council’s powers under RSA 31 and 41 are somewhat narrower than those of a city council under RSA 47.

And there are probably a few others that we have not listed. Let us know if you can think of any!



*(Bathing Suits — Continued from Page 3)*

of bathing and swimming in the canals, rivers and other waters of the city and the clothing to be worn by bathers and swimmers” (as well as to “restrain and punish vagrants, mendicants, street beggars, strolling musicians, and common prostitutes, and all kinds of immoral and obscene conduct”). *Towns*, however, are not granted the same authority.

Thus, Laconia might currently be able to regulate beach attire, while next-door neighbor Gilford might not. Similarly with Portsmouth and Rye, or Lebanon and Hanover. (We will not opine here whether RSA 41:11-a, which authorizes the selectmen to “manage all real property owned by the town and to regulate its use” could be interpreted to provide the same authority to towns.)

To even the playing field, **SB 347** adds a new provision to give *towns* authority to regulate the times and places of sunbathing and the clothing to be worn (or not worn!) by users, while making only minor tweaks to the existing statute that already gives *cities* that authority. Again, we are not weighing in on the bill, but in case you are interested, it has a hearing before the House Municipal and County Government Committee on **Tuesday, April 19, at 10:15 a.m., in LOB Room 301**. Dress is casual.

To view the weekly Legislative Bulletin from the NH School Boards Association, please click [here](#).

## HOUSE CALENDAR

Joint House/Senate Meetings Are Listed Under This Section

### TUESDAY, APRIL 19

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

- 10:15 a.m. **SB 347**, enabling the state and municipalities to adopt laws and ordinances regulating attire on state and municipal property.
- 10:45 a.m. **SB 482-FN-L**, (New Title) establishing a committee to study the effect of short-term rentals on municipalities.
- 11:00 a.m. **SB 348**, (New Title) allowing municipalities to adopt a property tax credit for certain disabled veterans.

### THURSDAY, APRIL 21

#### **SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB**

- 10:00 a.m. **SB 333**, relative to net energy metering. Additional public hearing on non-germane amendment 2016-1280h which exempts certain installations and attachments used in the installation of photovoltaic systems from the statutory requirements pertaining to electricians. Copies of the amendment are available in the Sergeant-at-Arms’ office, State House Room 318.

### TUESDAY, APRIL 26

#### **EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB**

- 10:00 a.m. **SB 421**, relative to liability of governmental units.

## SENATE CALENDAR

### WEDNESDAY, APRIL 20

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

9:15 a.m.        **HB 1322**, relative to reports to the public employee labor relations board.

#### PUBLIC AND MUNICIPAL AFFAIRS, Room 102, LOB

9:00 a.m.        **HB 1455**, relative to the application of the municipal budget law to village districts wholly within a town.

9:15 a.m.        **HB 1395**, relative to municipal electronic records. **NHMA Policy.**

9:45 a.m.        **HB 1293**, relative to the procedure for charter amendments.

10:00 a.m.       **HB 1141**, defining “agritourism.”

### THURSDAY, APRIL 21

#### JUDICIARY, Room 100, SH

2:00 p.m.        **HB 1287**, repealing a provision of the harassment statute.

## SENATE FLOOR ACTION

Thursday, April 14, 2016

**HB 1156**, relative to interference with traffic devices. **Tabled.**

**HB 1164**, (New Title) relative to contributions by a city or town to the county or state. **Passed with Amendment.**

**HB 1181**, relative to designating an alternate cemetery trustee. **Passed.**

**HB 1220**, relative to disqualification of election officers. **Passed.**

**HB 1244-L**, relative to municipal cemeteries. **Passed.**

**HB 1313-FN**, relative to eligibility to vote and relative to availability of voter information. **Inexpedient to Legislate.**

**HB 1430-FN**, relative to registration of compact utility tractors. **Passed with Amendment.**

**HB 1529-FN**, relative to reporting of felony convictions for voter checklist updates. **Inexpedient to Legislate.**

**HB 1624-FN**, relative to electioneering by public employees. **Passed.**

## Upcoming Events for NHMA Members

### NHMA Workshops

April—May, 2016 Local Officials Workshops—Various Locations

May 4, 2016 [Right-to-Know Law](#), Meredith Community Center at 5:30 p.m.

For more information please access our website: [www.nhmunicipal.org](http://www.nhmunicipal.org) and scroll down on the left to CALENDAR OF EVENTS and Click *View the Full Calendar*.

Contact us by phone at 1-800-852-3358 x3350 or email us at [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)

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### NHMA Webinar

April 20, 2016 Right-to-Know or Right to Privacy?

Time: 12:00—1:00 p.m.

Click [here](#) to register by noon on April 19, 2016

Under the Right-to-Know Law, when the release of a file would constitute an invasion of privacy, it is exempt from disclosure. The meaning and application of this exemption often causes confusion and raises questions.

Join Legal Services Staff Attorney Margaret Byrnes and Attorney Matthew Serge of Drummond Woodsum for a look at the case law interpreting this exemption and some real life examples to help you better understand when the right to privacy sufficiently outweighs the public's interest in disclosure.