

LEGISLATIVE BULLETIN

Committee of Conference Results

Bulletin #22, 2016 Session
May 27, 2016

Legislative committees of conference completed their work yesterday. Here are the results on the bills of most interest to municipalities:

- Wastewater projects, police training.** Both the House and Senate had passed identical language in **HB 1428** regarding funding for eight specific wastewater projects, so there was no debate on that issue during the committee of conference. However, as reported in last week's *Bulletin*, the Senate had added several amendments to **HB 1428**, including its solution to the current funding shortfall at the police academy, which was to place all the penalty assessment fees into the general fund and provide a general fund appropriation of \$3.5 million to cover anticipated expenses through June 30, 2017. The House solution – to fund just the current \$500,000 shortfall at the academy and address a permanent funding solution as part of next year's budget process – was contained in **SB 527**. During the committee of conference on **HB 1428**, the House agreed to go with the Senate version for funding the police academy. The committee of conference on **SB 527** took no action (since the issue had been addressed in **HB 1428**) so **SB 527** was killed.
- No change in distribution of RGGI proceeds.** As we reported before, when the Senate passed **HB 1660** (dealing with eminent domain by gas pipeline companies), it had attached an amendment that tracked the language of **SB 492**, increasing the amount of funds distributed to municipalities (and others, including commercial ratepayers) from the sale of carbon allowances under the regional greenhouse gas initiative. Because of this amendment, as well as changes the Senate made to the underlying bill, the House requested a committee of conference. At the committee meeting this week, two of the four House conferees initially supported the Senate amendment. One of them was quickly removed from the committee, and the other reluctantly changed positions and agreed with his remaining House colleagues, leaving the House and Senate at odds.

One of the Senate conferees argued cogently for keeping the **SB 492** language, pointing out that **SB 492** had the support of the business

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community, municipalities, the Department of Environmental Services, the Office of the Consumer Advocate, and many others—and, most notably, that the House policy committee that heard the bill had voted 12-5 to support it, before it was tabled on the House floor. He explained that at a time when high electric rates are seen as one of the biggest obstacles to economic development in the state, the bill would, for example, save the state's largest employer, BAE Systems, \$100,000 a year.

The response of the House conferees was “No.” Period. In the absence of any explanation, we're not sure what the basis for the House position was, or why it was the exact opposite of the House policy committee's position. Not willing to let the underlying bill die, the Senate eventually acceded (ack-SEED-ed), and the RGGI funding provision was stripped from the bill.

- **Consultation with counsel under Right-to-Know Law.** The committee on **HB 285** agreed on a compromise that was closer to the House's version than to the Senate's. It provides that a public body may enter non-public session for “consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.” We preferred the Senate version, which included the same language but would have allowed the consideration to occur during a “non-meeting”; but the version recommended by the committee is still a significant improvement in the law.
- **Lot mergers.** As we reported in [Bulletin #19](#), **SB 411** was originally intended to fix a problem with voluntary lot mergers, and it was supported by planners, banks, and municipal officials. The House attached an amendment that would have extended indefinitely the right of property owners to undo *involuntary* mergers, a right that currently has a statutory sunset date of December 31, 2016. We encouraged Senate conferees to let the bill die if they could not get the House to remove the amendment. They did not go that far, but they did negotiate a compromise that extends the sunset date for five years, instead of forever.

The House and Senate will vote on all committee of conference reports next Wednesday, June 1; their deadline to act is the following day. Each report will get a yes/no vote by each chamber; there is no opportunity for further amendment. A report must be approved by both bodies for the bill to pass. Although a report is occasionally rejected by one body or the other, it is a rare occurrence.

THE EDGE

What happens next?

As noted in the lead article, the House and Senate have until next Thursday to approve committee of conference reports. Once that happens, legislative activity is over for this year and this legislature, except for study committees and a session, typically in September, to consider veto overrides.

Which brings us to the 2017-2018 legislature, formally known as the 165th General Court. Every House and Senate seat is up for election, and we already know there will be significant turnover. Eight of the 24 senators have announced that they are not running for re-election, so at least one-third of the Senate will turn over. In the House, a one-third turnover is not uncommon, and it can be larger than that when there is a significant shift in party balance, as there was in 2006 and in 2010.

The filing period to run in a party primary opens June 1 and closes June 10—so if any municipal officials out there are thinking of running, you do not have a lot of time to make up your minds.

For 2017 legislation, there is a two-week period after the state primary in September when incumbent

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In Other News . . .

In all the excitement over committees of conference and other pitched battles, we have not had time to write about a number of other bills that either passed or died more quietly. As this is the penultimate weekly *Legislative Bulletin* of the year, it is a good time to catch up on some of those bills.

Since we last wrote about them, two bills amending the Right-to-Know Law not only have passed the Senate, but have been signed into law by the Governor. Both will take effect January 1, 2017:

- ***Non-public session minutes. HB 1418*** amends RSA 91-A:2, II, the section that describes what information must be included in a public body's meeting minutes. The bill states that non-public minutes must contain the same information as public minutes (although, of course, they may be sealed under appropriate circumstances). We believe this merely clarifies existing law.
- ***Non-public session minutes, part 2. HB 1419*** states that minutes of a non-public session "shall record all actions in such a manner that the vote of each member is ascertained and recorded." This does not require that the minutes show a roll call vote on all actions (although that would satisfy the requirement). If the minutes indicate that a motion was approved unanimously, that is sufficient to ascertain each member's vote. If a vote was 4-1, the minutes should record that tally and, at the least, identify the one person who voted in the negative (which enables the reader to determine who voted in the affirmative).

The following bills have passed both the House and the Senate, and will soon be on their way to the Governor:

- ***Charter amendments. HB 1293*** makes changes to the procedure for amending (not adopting or revising) a municipal charter. The bill makes a clearer separation between the procedures for an amendment initiated by the municipal officers and an amendment initiated by citizen petition. It also reduces the number of signatures required to get a petitioned amendment on the ballot, and removes the requirement that a proposed amendment be approved by an attorney licensed in the state.
- ***Short-term rentals. SB 482*** establishes a legislative committee to study the effects of short-term rentals (think Airbnb) on municipalities. The committee is directed to solicit input from municipal officials, real estate professionals, and others, and to issue a report by November 1 of this year.

THE EDGE *(Continued)*

representatives who survived their primaries may file LSRs (legislative service requests). That period closes on September 23, but there is another period after the general election (November 14 to December 2) when all returning and newly elected representatives may file LSRs. The Senate has not yet published its schedule, but it is typically similar to that of the House.

The newly elected House and Senate will convene on the first Wednesday in December, when they will elect their new leaders and take care of other organizational matters. They will convene again on the first Wednesday in January, and then we get to start the process all over!



The following bills have been killed:

- ***Voting on variances.*** **HB 1203** would have required zoning boards of adjustment to vote separately on all five criteria for granting an ordinance. The bill's defeat leaves in place the existing law (RSA 674:33, I(b)), which requires that all five criteria be established, but does not mandate a specific voting procedure. The Senate killed the bill a few weeks ago on a voice vote.
- ***SB 2 procedures.*** **HB 1375** would have given voters in official ballot referendum (SB 2) towns and school districts several new options, including the option to eliminate the deliberative session or to prohibit amendment of the operating budget at the deliberative session. The House and Senate passed different versions of the bill, and the House refused to concur with the Senate amendment and let the bill die without a committee of conference.
- ***Beach attire.*** **SB 347** would have authorized towns to regulate “the times and places of bathing, sunbathing, and swimming in state waters or in state parks, forests, or other state recreational areas, and the clothing to be worn by users.” The Senate had passed the bill, but the House killed it on a voice vote.
- ***Land use change tax exemption.*** **SB 121** would have excepted from application of the land use change tax any removal of topsoil, gravel or minerals “which does not change the underlying, qualifying use of the land.” The bill passed the Senate but died in the House.
- ***Municipal liability limits.*** **SB 421** would have increased the limitations on damages in tort actions against municipalities, and made some other clarifying changes to the statute (RSA 507-B). NHMA had not opposed the legislation, because the increases were merely intended to reflect inflation. Attorneys who represent municipalities had worked with plaintiffs' attorneys to come up with a bill that everyone agreed with. The Senate passed the bill, but members of the House committee that considered it seemed to think the bill needed more work. We're not sure why, since everyone who had a stake in it was fine with it. In any event, the House voted to send the bill to interim study, which is the same as killing it.

One More Bulletin

We will publish our last weekly *Legislative Bulletin* next week. Barring any surprises, it will be short and sweet. Or short, anyway. As always, we will also publish our *Final Legislative Bulletin*, summarizing all new laws affecting municipalities, in late July or early August.

Upcoming Events for NHMA Members

NHMA Workshops

- June 4, 2016 Local Officials Workshop — Concord, NH at 9:00 a.m.
- June 10, 2016 [2016 Avoiding the Road to Liability](#), Concord, NH at 9:00 a.m.
- June 16, 2016 [Fundamentals of Local Welfare](#), Concord, NH at 9:30 a.m.

For more information please access our website: 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

NHMA Webinar

- June 8, 2016 2016 Legislative Wrap-up
Time: 12:00—1:00 p.m.
Click [here](#) to register by noon on June 7, 2016

Join Government Affairs Counsel Cordell Johnston and Government Finance Advisor Barbara Reid for a review of the highlights of the 2016 legislative session. This will be several weeks after the legislative session ends, so except for possible vetoes, all legislative action will be final.

This webinar will discuss the most significant bills of municipal interest that made it through the legislature this year, as well as a few that failed but may be back in the future. The discussion will include, among others, state aid grants for water and wastewater facilities, assessing issues, planning and zoning, the Right-to-Know law, municipal liability, election laws, and various other changes affecting municipal governance and administration.