

LEGISLATIVE BULLETIN

\$45 Million Retirement Bill Surfaces Again

On Wednesday, the Senate Executive Departments and Administration Committee recommended amending [HB 1427](#) by replacing the entire bill with the original language of [HB 1757](#). **HB 1757**, which was tabled in the House last month, deals with the computation of New Hampshire Retirement System (NHRS) pension benefits at age 65. According to the NHRS Bill Brief, **HB 1757** as introduced, and now **HB 1427** as recommended by the committee, carries a price tag of **\$45 million that will be paid by NHRS employers through increased contribution rates.**

As we explained in [Bulletin #12](#) (page 4), under current law, pension benefits for Group I retirees are reduced by 10% at age 65. This reduction dates back to the creation of the NHRS in 1967 when Group I pension benefits were coordinated with federal Social Security benefits. Back then a Group I retiree could see a reduction in NHRS benefits of anywhere from 10% to as much as 50% at age 65. In 1988 the legislature eliminated the coordination with Social Security benefits, but due to the overall cost of that change, it left in law a pension recalculation provision that reduces Group I benefits by approximately 10% at age 65. Efforts to repeal the 10% reduction or increase the age from 65 to the age of full Social Security benefits (age 65 to 67 based on the year of birth) failed in 2005 and 2006, with one committee report noting concern that the cost of this change would violate the unfunded mandate provision of Part 1, Article 28-a of the New Hampshire Constitution, which states:

[Art.] 28-a. [Mandated Programs.] The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

Clearly **HB 1427** modifies pension benefits in a way that necessitates additional local expenditures to cities, towns, school districts, and counties in violation of Part 1, Article 28-a. **HB 1427** is on the agenda for the Senate session next Thursday. Please urge your [senator](#) to **vote no** on the committee recommendation of Ought to Pass with Amendment on **HB 1427** and support a subsequent motion of **Inexpedient to Legislate**.

Bulletin 17—2018 Session
April 13, 2018

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Little Movement on Town Meeting Bill

The House Election Law Committee held a full-committee work session this week on [SB 438](#), the bill that transfers the moderator's existing authority to postpone town elections to the Secretary of State. Based on testimony from the Deputy Secretary of State at the committee hearing two weeks ago, we thought there was the possibility of a compromise that would, as he suggested, allow the decision to be made by state officials in the case of a "statewide event," but leave authority with local officials for a "more local event." Unfortunately, that does not appear to be the direction some members are moving. We remain hopeful and eager to engage in the discussions about compromise.

Prior to the work session, NHMA submitted a proposed amendment that (1) allows the Governor, in consultation with the Secretary of State and the Director of Homeland Security, to postpone all town elections in the event of a declared statewide emergency, and (2) preserves the moderator's authority to postpone in the event of a weather emergency or other event that does not rise to the level of a statewide emergency. To address concerns that rogue moderators would postpone elections "willy-nilly," the NHMA amendment requires the moderator to obtain the approval of the selectmen and consult with other local officials before postponing.

Meanwhile, an amendment supported by the Secretary of State's office was presented for the first time at the work session. That amendment would allow the moderator to postpone a town election if (1) "[a] public safety official with legal authority to do so has *closed the polling place or an area including the polling place* due to an imminent serious threat to public health or safety" or (2) "a fire or other disaster . . . prevents voters from reaching the polls, or an imminent serious threat to public health or safety . . . makes conducting or continuing to conduct the election when and where it is scheduled *impossible*." (Emphasis added.)

In other words, the moderator may postpone the election if, and only if, it is absolutely impossible to hold the election. We do not see this as a step forward. The moderator would have no authority to postpone, as he does under current law, due to a weather emergency that "cause[s] the roads to be hazardous or unsafe."

While it is important to include *real* authority for a moderator to postpone in a non-weather emergency, what towns have faced in the last two years are severe weather events. So is there any language about the authority to postpone for severe weather events?

Only the Secretary of State, and no one else, would be authorized to postpone a town election if (1) the Governor has declared a state of emergency, or (2) he "believes that an emergency exists," including a weather emergency, "that will prevent voters from reaching the polls or where an imminent serious threat to public health or safety makes conducting the election when and where it is scheduled impracticable." He could do this on a regional or statewide basis without consulting with the moderator or any local public safety officials. This actually is a step *backward* from the original bill, which allowed the Secretary to postpone town elections because of a weather emergency at the request of the moderator; the amendment takes the moderator, and all local officials, out of the process altogether.

This proposed amendment also allows an election to be postponed in some, but not all, towns in a cooperative school district, and mandates that the votes be counted and publicly announced in those towns not postponing, thus likely influencing the voters in the postponing towns. Further,

the amendment requires municipalities to adopt postponement procedures as part of the municipal “Continuity of Operations Plan” (COOP) which must be submitted to the Secretary of State and the Attorney General for review and approval. The amendment throws up many hurdles for towns trying to ensure the safety of voters and the integrity of their official ballot voting.

Unfortunately, it appears that a number of committee members favor the Secretary of State’s proposal, despite the overwhelming opposition of local officials. There seems to be an inexplicable belief that local officials cannot be trusted to manage their own elections, and further that the Secretary of State has some responsibility for town elections.

The committee has another work session scheduled for next **Thursday, April 19, at 1:00 p.m., in LOB Room 308**, and there is a good chance it will vote on the bill at that session. If so, the bill would likely go to the full House on April 26. ***Please continue to contact members of [the committee](#) and your own representatives and tell them you will not accept any bill that transfers the authority of local officials to the Secretary of State.***

Default Budgets Get More Confusing

On Tuesday, the House Municipal and County Government Committee held a work session on [SB 342](#), dealing with default budgets in SB 2 (official ballot referendum) towns and school districts. As we reported in [Bulletin #15](#), we have concerns with sections of **SB 342** requiring additional reductions in the calculation of the default budget to account for salaries eliminated from the proposed operating budget. The committee discussed two amendments: one would remove the salary reduction from the default budget computation and make a few other changes; the other would require that both salaries *and* benefits of positions eliminated from the proposed operating budget be removed from the default budget, and add an explanation of what is *not* considered an “eliminated position” (vacant positions under recruitment or positions redefined in the proposed operating budget).

The committee announced at the end of the work session that it would meet next week to vote on the proposed amendments, but instead it met yesterday and recommended, by a vote of 14-5, Ought to Pass on the latter amendment, [2018-1452h](#). This amendment will create problems. One example would be when a town proposes elimination of a position in the operating budget to instead contract for the same services; the default budget now will be reduced by the amount of the salary and benefits of the eliminated position, leaving no money in the default budget for the contracted services.

Supporters of this proposal argue that eliminated positions should not be included in the default budget. However, that argument totally misses the fundamental concept of the default budget: it is not a line item budget but rather a “default dollar amount” deemed appropriated in the event the operating budget fails. And if the costs for eliminated positions are going to be subtracted from the default budget, it only makes sense that the costs for newly created positions should be added to it—at which point the default budget becomes simply a carbon copy of the proposed operating budget.

We understand that the minority [amendment 2018-1446h](#) will be offered when the House votes on **SB 342** next Thursday. We are fine with the changes included in that amendment. Please contact your [representatives](#) and urge them to ***vote no on the committee amendment 2018-1452h***, and support a subsequent motion of Ought to Pass on the **minority amendment 2018-1446h**.

Right-to-Know Law Bills

Several bills seeking to amend the Right-to-Know Law saw action this week. A few of them are headed in a bad direction, and input from local officials would be helpful.

Limit on copying charges. By a 3-2 vote, the Senate Judiciary Committee recommended passage of **HB 1788** with an amendment. [The bill as passed by the House](#) eliminates language in the Right-to-Know Law allowing a public body or agency to charge “the actual cost” of providing a copy of a governmental record and instead allows only a charge of “10 cents per page.” NHMA objected to that change for several reasons: (1) it sets too low a limit for paper copies; (2) it does not acknowledge the additional cost of very large documents, such as surveys and architectural drawings; and (3) by allowing only a “per page” charge, it seems to eliminate completely the ability to charge the cost of providing a copy in another form, such as a video or audio tape or a thumb drive.

The Senate Judiciary Committee [amendment](#) is an attempt to solve the second of these problems, but it fails to do so, and it does not address the other two problems. We understand that the intent is to allow a charge of 10 cents per page for a standard 8½” x 11” piece of paper, but allow a higher charge as appropriate for larger documents. As written, however, the amendment does not do that—it allows the public entity to charge only “the actual cost of providing the copy of a standard page, not to exceed 10 cents per page.” Thus, you can charge only the cost of a standard page—10 cents—regardless of whether the pages are in fact “standard.” We do not believe that was the intent, but that is how it reads.

Further, the amendment does not address the third problem identified above. Existing law allows charging for the “actual cost of providing the copy,” without referring to pages. By limiting the public entity to charging “the actual cost of providing the copy of a standard *page*,” the amendment precludes charging anything if the public body or agency provides the record on a thumb drive or other non-paper medium. We believe this was an oversight, not an intentional change in policy, but it creates a serious problem. And of course, there is still the very low 10 cents per page limit. The argument for this is that anyone can get copies made for 10 cents a page at Staples. But a town hall is not Staples—it does not buy paper, ink, and photocopiers by the boatload, and to expect it to produce photocopies as cheaply as a company that has huge economies of scale is not realistic.

The bill is scheduled to go to the Senate floor next week. We will try to have a floor amendment introduced to correct the bill’s technical problems—but this will still leave the low per-page limit of 10 cents. Ideally, the Senate will simply kill the bill, but at the least, we encourage it to adopt a floor amendment that fixes the problems described above. ***Please encourage your senator to vote down the committee amendment and vote to kill the bill or, alternatively, support an amendment to fix these problems.***

Contents of minutes. The Senate Judiciary Committee heard testimony on [HB 1347](#), which would require all public body meeting minutes to record the names of members who made and seconded every motion and “a brief summary of comments made during deliberations.” NHMA and others explained that while these may seem like simple requirements to someone who has never had to take minutes, it is not that easy.

These requirements would apply to every one of the several dozen public bodies that exist in every municipality, from the city council or board of selectmen to the recreation commission's two-person softball uniform subcommittee. Cities and towns cannot afford to maintain a staff of recording secretaries, so the task of taking minutes often falls to a part-time employee, a volunteer, or a member of the board itself. For a part-time clerk who knows nothing about land use planning, writing "a brief summary of comments" about a complicated subdivision or site plan is a daunting prospect. And for a board member who is trying to participate in a meeting and keep minutes at the same time, it can be a challenge just to keep track of who made and seconded motions—let alone trying to summarize the discussion.

And, as we noted, once again the legislature would be imposing requirements on municipal boards that it is unlikely to follow itself. Minutes of House and Senate session, and minutes of committee executive sessions, do not ordinarily include any summary of comments during deliberations, and there is rarely a record of anyone seconding a motion on the House or Senate floor. If your senator is a member of the [Judiciary Committee](#), please encourage him or her to **recommend killing HB 1347**.

Collective bargaining negotiations. We wrote [last week](#) (page 3, bottom) about **SB 420**, which would repeal the exemption from the Right-to-Know Law's public meeting requirements for collective bargaining negotiations. The bill was heard this week in the House Judiciary Committee. Groups representing both public employers (including NHMA) and public employees opposed the bill. At the hearing the sponsor offered an amendment that would keep the exemption in place "unless the public body votes that such negotiations be open." This would allow the municipality's or school district's governing body—but not the union representatives—to elect to have negotiations in public.

We had to acknowledge that this was better than the original bill, but from a fairness perspective, it is unbalanced. Municipal governing bodies have not been clamoring for the right to force union representatives to negotiate in public. It was then suggested that the bill be amended to require the sessions to be public if *either* party so chooses. That certainly is more balanced—but having either party force public negotiations over the objection of the other would hardly set the stage for the kind of cooperation that is needed to reach agreement.

The exception for collective bargaining sessions has been in the statute for over 30 years, and there is no evidence that it has created any serious problems. Although the bill's supporters have good intentions in seeking more openness in government, we believe this measure will create more problems than it solves. The House already killed an identical bill, **HB 1344**, by a 64-vote margin. Please encourage members of the [Judiciary Committee](#) and your own representatives to do the same with **SB 420**.

Right-to-Know Law ombudsman. The House passed [SB 555](#), establishing the office of an ombudsman to hear and decide complaints under the Right-to-Know Law. We have written about this bill several times, most recently in [Bulletin #14](#) (page 3). Because the bill requires an appropriation to pay for the new position, the bill has been referred to the House Finance Committee for further review. Division I of the Finance Committee will hold a work session on the bill on **Tuesday, April 17, at 1:30 p.m. in LOB Room 212**, and the full committee will take up the bill in executive session on **Wednesday, April 18, at 1:00 p.m., in LOB Rooms 210-11**.

Records of “non-meetings.” The Senate Public and Municipal Affairs Committee unanimously voted to recommend killing [HB 1579](#), which would require 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. The full Senate is scheduled to vote on the bill next Thursday, and we encourage senators to ***support the recommendation of Inexpedient to Legislate.***

Housing Appeals Board Bill Finally Gets Hearing

[SB 557](#), the bill that would create a “housing appeals board” to hear appeals from local land use boards on “questions of housing and housing development,” has been scheduled for a hearing in the House Finance Committee on **Tuesday, April 17, at 10:00 a.m., in LOB Rooms 210-11.** The bill was originally assigned to the House Judiciary Committee, but was vacated and referred to the Finance Committee because the Judiciary Committee was not going to be able to hear and report the bill before its deadline.

We wrote about this bill in [Bulletin #5](#). As we stated at the time, NHMA did not—and still does not—have a formal position on the bill, but we did—and still do—have some concerns about its details. We have heard that some people have interpreted our *non-opposition* to the bill as *support* for the bill. That is not accurate—we neither support nor oppose it, but we do believe the concerns we have raised, both in the Senate hearing and with the bill’s supporters, need to be addressed. Our principal concern is that the bill does not define “questions of housing and housing development,” leaving too much room for disagreement, and litigation, about the board’s jurisdiction.

We are also concerned now that the bill has not received a review by the House policy committee and has gone straight to the Finance Committee, which ordinarily deals only with cost issues, not with the policy of a bill. The bill is scheduled for a hearing and work session on the same day, followed by an executive session the next day; that is an ambitious schedule for a bill that still has some issues that need attention. We hope the committee will take the time to address our concerns.

Water Quality Standards Bills

On Tuesday the Senate Energy and Natural Resources Committee recommended Ought to Pass by a vote of 5–0 on [HB 1592](#). This bill requires the Department of Environmental Services (DES) to review by January 1, 2019, the ambient groundwater standard for arsenic to determine whether it should be lowered, and if so, to initiate rulemaking to establish a new standard. The Committee made a minor change to the bill from the House version by requiring DES to report to both the House and Senate Executive Departments and Administration Committees and the Joint Committee on Administration Rule prior to initiating rulemaking. The bill goes to the full Senate for a vote next week.

On Thursday, the House passed [SB 309](#), dealing with standards for perfluorochemicals in drinking water and ambient ground water, and requiring DES, in consultation with stakeholders, to develop and present a plan by January 1, 2020, that includes schedules and cost estimates for establishing

surface water quality standards. **SB 309** goes to the House Finance Committee for further review and consideration. There will be a Division I work session on **Tuesday, April 17, at 1:20 p.m. in LOB Room 212**, and an executive session on **Wednesday at 1:00 p.m. in Rooms 210-211**.

Within the next two weeks, we expect the House Resources, Recreation and Development Committee to make a recommendation on **SB 240**, dealing with water quality monitoring and treatment for private wells. As we explained in last week's *Bulletin*, there are two proposed amendments, both of which cause us concerns regarding the definition of "man-made contaminants" and the "responsible party" provisions. Additionally, we understand that DES believes it has adequate authority under current law to deal with such public health risks on a case-by-case basis. Therefore, we believe the bill is unnecessary and should be killed. Also awaiting action, by the Senate Energy and Natural Resources Committee, are **HB 485** and **HB 1101**, both dealing with water quality standards.

As we have urged in the past, please let [House](#) and [Senate](#) committee members know of your concerns with any of these bills.

HOUSE CALENDAR

TUESDAY, APRIL 17, 2018

FINANCE, Rooms 210-211, LOB

10:00 a.m. **SB 557-FN**, establishing a board of housing development appeals.

SENATE CALENDAR

TUESDAY, APRIL 17, 2018

COMMERCE, Room 100, SH

2:15 p.m. **HB 1201**, relative to an employee's earned but unused vacation time.

2:30 p.m. **HB 407-FN**, requiring workers' compensation to cover prophylactic treatment for exposure.

TRANSPORTATION, Room 103, LOB

1:30 p.m. **HB 1549**, relative to the availability of vehicle accident reports.

WEDNESDAY, APRIL 18, 2018

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

9:00 a.m. **HB 1254**, establishing a committee to study the procedures for adoption of national codes by the state of New Hampshire.

9:30 a.m. **HB 1472**, relative to the state building code provisions for energy conservation in new building construction.

9:40 a.m. Hearing on proposed Amendment #2018-1416s, An Act relative to the state building code provisions for energy conservation in new building construction and authorizing the town of Derry to incorporate the school district as a department of the town, to **HB 1472**, relative to the state building code provisions for energy conservation in new building construction.

HOUSE FLOOR ACTION

Thursday, April 12, 2018

SB 309-FN, relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water. **Passed with Amendment; referred to F-H.**

SB 516, (New Title) prohibiting motorcycle-only checkpoints. **Passed.**

SB 555-FN-A, establishing a citizens' right-to-know appeals commission and a right-to-know law ombudsman and making an appropriation therefor. **Passed with Amendment; referred to F-H.**

SB 575-FN, relative to electric vehicle charging stations. **Passed with Amendment; referred to F-H.**

SENATE FLOOR ACTION

Thursday, April 12, 2018

HB 252, relative to pro se litigants under the right-to-know law. **Passed with Amendment.**

HB 1215, relative to voting on variances. **Passed with Amendment.**

HB 1533, relative to termination of variances and special exceptions. **Passed.**



<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
Apr. 16	2018 Local Officials Workshop—Peterborough Community Center
Apr. 27	Stranger Streets: A New Hard Road to Travel Workshop
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.
(Scroll down on left to Calendar of Events and click View the Full Calendar)

