

LEGISLATIVE BULLETIN

House to Vote on Baffling Town Election Postponement Bill

Bulletin 19—2018 Session
April 27, 2018

The House will vote next **Wednesday or Thursday, May 2 or 3**, on **SB 438**, the bill that transfers the moderator’s authority to postpone the ballot voting session of town meeting to the Secretary of State. *Please contact your representatives before then and urge them to oppose the recommendation of Ought to Pass with Amendment.* (See further instructions at the end of this article.)

The House Election Law Committee did not improve the bill that the Senate passed. Instead, by an 11-9 vote, it recommended an [amendment](#) that not only transfers the moderator’s authority to the Secretary of State, but also creates enormous confusion about the process for postponing or relocating an election.

We encourage moderators—and anyone else—to read the committee amendment and try understand it. The amendment establishes *five* separate processes for relocating or postponing a town election, depending on the type of event—weather emergency, fire, “imminent serious threat to public health or safety”—and when the event occurs. Paragraph III in the [amendment](#) (see page 2, line 9) establishes one process for postponing an election if there is a fire or other disaster affecting a polling place “*on or immediately before* election day,” while paragraph VI (page 4, line 5) establishes a different process if there is a fire or other disaster “*on* election day.” So, if there is a fire on election day, officials apparently get to choose between the two processes.

Adding to the confusion, paragraph III allows for postponement in the event of (1) a fire or other disaster “that will prevent voters from reaching the polls,” (2) the destruction of the ballots, or (3) an imminent serious threat to public health or safety. Meanwhile, paragraph VI refers only to a fire or other disaster “that creates an imminent serious threat to public health or safety.” While paragraph III clearly provides for postponement, paragraph VI only allows the Secretary of State to approve a “plan of relocation,” not a postponement—but then it goes on to say that the ballots must be secured “until the attorney general or a court approves a plan for reconvening and continuing the election or *postponing* and conducting a new

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election.” That provision is confusing even by itself, because there is nothing anywhere else in the bill, or in current law, that gives “the attorney general or a court” authority to approve such a plan or establishes a process for doing so. Finally, there is this circular equation: paragraph VI states, “Any postponement shall be pursuant to paragraph III.” When you check paragraph III, you see that it states, “[C]ontinuation of the election . . . shall occur as set forth in paragraph VI.”

Another paragraph (page 1, line 6) states that “before the warning of the election, the location of a polling place may be changed by local officials” if the polling place has been closed by public safety officials because an imminent threat to public health or safety “makes conducting the election where it is scheduled impracticable.” The moderator must notify the Secretary of State and the Attorney General of the change.

This, too, is perplexing. If the election has not been warned yet, there is no “location of a polling place” to be changed. It doesn’t matter that the selectmen may have been *planning* to hold the election at a particular place, or that they have held it at the same place for several years. Until they post a warrant for the annual meeting (including the election), there *is* no location for the polling place, and therefore no occasion to change it. Any reference to changing the location “before the warning of the election” just does not make sense.

Under the committee amendment, only the Secretary of State could postpone an election because of a weather emergency (paragraph IV(a), starting on page 2, line 35), and only if (1) the Governor has declared a statewide state of emergency, or (2) the Secretary of State determines that “postponement is necessary on a statewide or regional basis.” (However, there is no indication of how that determination is communicated to anyone.) Strangely, once the Secretary of State has determined that “postponement is necessary,” a moderator would still be required to contact the Secretary to request a postponement and wait two hours for a response. Thus, apparently the Secretary of State could determine that a statewide or region-wide postponement is necessary, but still deny a moderator’s request for postponement.

There are many more oddities, inconsistencies, and conundrums in the committee amendment—far more than can be described here, and undoubtedly more than we have been able to identify after two days of review. In addition, the amendment requires the moderator and emergency management director of “each political subdivision” to prepare a “continuity of operations plan” (COOP) for postponing an election.” (It is unclear whether this is limited to the 234 cities and towns, or whether it includes, as the plain language suggests, all of the approximately 500 political subdivisions in the state.) The COOP must include:

provisions relating to the polling facility, security of election materials and equipment, and contact information for all necessary personnel. The COOP shall also include the procedure for building safety alarm activation, transport and storage of voting machines and ballots, identification of alternative polling locations, contact procedure for poll workers, contact information by position and phone number for local police, fire, and emergency management director, suppliers for utility and power supplies to all polling locations, facility manager for all polling locations, the supply of emergency provision for each polling location, and evacuation procedures.

Each political subdivision must submit its COOP to the Secretary of State and the Attorney General for review and approval.

The complexity and perplexity of the committee amendment, and the bureaucratic obstacles it imposes on local officials, are daunting. As one committee member stated during the debate, “local officials asked us to fix a problem, and we have done exactly the opposite of what they asked.”

So how *can* the problem be fixed? There is a floor amendment that:

- affirms the moderator’s authority to postpone a town election for severe weather or other emergencies,
- requires that moderators promptly notify the Secretary of State of a postponement,
- establishes a standard procedure that all postponing towns must follow,
- ensures that absentee ballots will be available to anyone who is unable to appear at the rescheduled election, and
- addresses the issue of postponing elections in multi-town school districts.

The floor amendment establishes a single process that is simple and easy to understand: the moderator consults with the clerk and safety officials, gets agreement from the emergency management director and approval of the selectmen, and postpones the election. The provision requiring board of selectmen approval was added to address the bogeyman of the “rogue” moderator who would postpone an election “willy nilly” to try to manipulate the results. The floor amendment also allows the Governor to postpone all town elections as part of his emergency powers in a statewide state of emergency.

Under the floor amendment, there is no need to determine which of several different processes applies, no need to guess about whether the Secretary of State has determined that “postponement is necessary on a statewide or regional basis,” and no need to make a formal request for permission to postpone. There also is no requirement to develop a “continuity of operations plan.”

That floor amendment is number 2018-1762h, and appears on page 62 of the [House calendar](#). It has strong bipartisan support: although the named sponsors are all Democrats, several Republicans were willing to co-sponsor the amendment, but could not do so because of intra-party rules that prohibit anyone in House leadership from sponsoring an amendment in opposition to a committee recommendation.

Here is what you need to do, as soon as possible:

Contact all of your representatives and urge them to:

- **Vote NO on the committee amendment on SB 438;**
- **Vote YES on the floor amendment; and**
- **If the floor amendment passes, vote YES to pass SB 438 as amended; otherwise, vote to *kill* the bill.**

Thank you all for your efforts, and please contact the NHMA government affairs staff if you have any questions.

Registration of Out-of-State Vehicles

As we reported in last week's [Bulletin](#), the provisions of [HB 579](#), creating a multi-year discounted registration program for out-of-state semi-trailers and tabled last month in the House, were added to [HB 1614](#) by the Senate Transportation Committee. On Thursday, the Senate passed [HB 1614](#) with the semi-trailer registration program and sent the bill to Senate Finance for consideration of the \$500,000 appropriation necessary for the Department of Safety - Division of Motor Vehicles to implement and administer this new program. The Senate Finance Committee is scheduled to address pending legislation, which includes [HB 1614](#), in an executive session after hearings on other bills at **2:30 p.m. on Monday, April 30 in State House Room 103.**

The semi-trailer registration program has not had, nor will it have, a public hearing in the Senate allowing opponents of this program to explain their serious concerns. As we have noted in previous Bulletins:

- 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.
- 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](#).
- This program 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. (Why would anyone choose to register only semi-trailers in New Hampshire when they can register all types of vehicles in Maine?)
- The anticipated revenue is indeterminable and highly questionable, causing us to fear 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.
- Motor vehicle registration fees are the second largest source of municipal revenue after property taxes, causing this proposal to be of significant concern for all municipalities.

Please let your [senator](#) know that [HB 1614](#) should be killed, or at a minimum sent to interim study, when it comes up for a vote again at next week's Senate session.

Retirement Bills

On Wednesday the Senate Finance Committee recommended Inexpedient to Legislate by a vote of 4-2 on [HB 1427](#) (previously [HB 1757](#)), dealing with increased pension benefits for New Hampshire Retirement System (NHRS) Group I members. As we reported in [Bulletins #18](#) and [#17](#), [HB 1427](#) carries a \$45 million price tag that will be paid through future employer contribution rate increases. *We urge the Senate to concur with the majority recommendation of the Finance Committee and vote ITL on HB 1427.*

On Thursday, the Senate rejected the Finance Committee recommendation of ITL on [HB 1756](#), providing a \$500 temporary supplemental allowance to certain NHRS retirees in fiscal year 2019 and a 1.5% cost of living adjustment to all retirees in fiscal year 2020. The bill carried a cost of \$7.8 million for the temporary supplemental allowance and \$51.3 million for the COLA. A [floor amendment](#) was offered and adopted which eliminated the costly COLA provision but retained the \$500 temporary supplemental allowance for retirees who had 20-plus years of creditable service, have been retired at least five years, and have annual pensions less than \$30,000—with funding coming from the state’s general fund. [HB 1756](#) will go back to the House for concurrence, non-concurrence, or a request for a committee of conference.

Workers’ Comp Bill Advances, But What Does It Do?

On Thursday the House Finance Committee voted 26-0 to recommend Ought to Pass with Amendment on [SB 541](#), the bill dealing with the presumption of cancer in firefighters under the workers’ compensation statute. We described the legislative history of the bill in [last week's Bulletin](#) (page 4), explaining that it originally contained a funding source to pay for workers’ compensation cases arising under the firefighter cancer presumption. The funding source was a critical part of the bill, given the Supreme Court ruling that the presumption statute was an unconstitutional unfunded mandate. The Senate, being unable to support the proffered funding source, passed the bill with a commission to come up with a funding solution.

The [amendment](#) adopted by the Finance Committee replaces the entire bill, and notably includes neither a funding source nor a commission to find one. The amendment newly requires that a call or volunteer firefighter must have been a firefighter for five years to have the benefit of the presumption, further requiring that “if a fire department follows the medical examination as outlined by the National Fire Protection Association standard 1582, the firefighter shall provide this report as evidence that the firefighter was free of such disease at the beginning of his or her employment and shall guarantee that he or she has lived a tobacco free life.” The NFPA exam standard and tobacco free life guarantee are new; the current statute simply states that the presumption is available “only if there is on record reasonable medical evidence that such firefighter was free of such disease at the beginning of his or her employment.”

The next section provides that if the fire department does not follow the medical examination standard, the firefighter shall not have the benefit of the presumption. The firefighter must still guarantee that he or she has lived a tobacco-free life (the exact definition of which raised some questions in the Division I discussion), show that he/she has been a firefighter for five years, and “present after action reports filed after fire incidents which demonstrate exposure to the known carcinogens as part of the claim.”

It is not clear to us where this new amendment leaves things. The presumption still exists, although in somewhat altered form; the bill provides no funding source; and the Supreme Court decision ruling the statute to be an unfunded mandate is still good law. One observer shared an interpretation that if a fire department follows the medical examination provisions of NFPA standard 1582, then it has “consented” to be bound by the presumption language, so in that municipality, firefighters will not have to prove the usual causal connection of an injury or disease to their occupation. The basis for that opinion was a belief that if a municipality agrees to pay for an otherwise unfunded mandate, then it is no longer unconstitutional. However, the language of the constitution, Part I Article 28-a, states that for municipalities to take on additional costs, those costs must be “approved for funding by a vote of the **local legislative body** of the political subdivision.” That means the town meeting or city/town council or aldermen.

If passed by the House, the bill must go back to the Senate for its concurrence or to set up a committee of conference. Perhaps there will be further clarification.

Changes on Interest Rates for Delinquent Taxes

On Thursday, the Senate rejected the Ways and Means Committee’s recommended amendment to **HB 1673**, regarding interest rates on delinquent taxes, and instead adopted a floor amendment that is far more acceptable to municipal tax collecting officials. As we reported in last week’s *Legislative Bulletin*, the Ways and Means Committee amendment would have enacted 6%, 9%, and 12% interest rates during the first year, second year, and third year, respectively, on delinquent taxes, with uncertainty about how those rates apply to the statutory lien process. The floor amendment would lower the current rates from 12% pre-lien and 18% post-lien to 8% and 14%, respectively, effective for taxes assessed on or after April 1, 2019. Recognizing the desire of a bipartisan majority of senators to lower these municipal interest rates, the bill as passed by the Senate is far better than previous versions, including the version passed by the House. However, we still note that the State of New Hampshire assesses interest and penalties on delinquent taxes much higher than the 8% and 14% rates municipalities will be allowed to charge under **HB 1673**.

HB 1673 has been referred to the Senate Finance Committee for a further hearing, which is scheduled on **Monday, April 30, at 2:30 p.m. in State House Room 103**. An amendment to **HB 1673**, extending the deadline from 60 days to March 1 for applications under RSA 76:21, III for a prorated assessment on a damaged building, will also be addressed at that hearing.

Thank you to the many municipal officials who contacted their senators regarding the importance that these interest rates have in ensuring that municipal property taxes are a priority payment over other financial obligations.

Water Quality Standards Bills

On Thursday the Senate passed **HB 1101** and the House passed **SB 309**, both bills containing similar language dealing with air emissions, drinking water, ambient groundwater, and surface water quality standards. At this point each body may concur, non-concur, or request a committee of conference in the final legislative process of getting one of these bills to the Governor’s desk for

(Water Quality— Continued from Page 6)

signature as he has requested. The Senate also passed [HB 485](#), also dealing with drinking water, ambient ground water, and surface water quality standards. However, that bill was immediately tabled since [HB 1101](#) and [SB 309](#) are the preferred bills to address water quality standards.

On Wednesday the Senate Finance Committee recommended Inexpedient to Legislate by a vote of 3-2 on [HB 1592](#), dealing with drinking water and ambient groundwater quality standards for arsenic. The bill had passed the Senate last week on a voice vote, so it now goes back to the Senate next week for another vote with the Finance Committee's ITL recommendation.

On Tuesday the House Resources, Recreation and Development Committee voted 16-3 to recommend interim study on [SB 240](#), dealing with monitoring and testing private wells. We encourage the House to concur with the committee recommendation to further study the provisions of [SB 240](#).

The Big Picture

Readers may notice that the calendar section of this week's Bulletin is pretty skimpy. That is because most House and Senate committees have finished their work for the year. There are a couple of hearings in the Senate Finance Committee on Monday, and that is it. Next Thursday, May 3, is the deadline for each chamber to act on all remaining bills. Both chambers are scheduled to meet in session on both Wednesday and Thursday.

In addition to voting on their remaining bills, each chamber will also decide in the next two weeks whether to concur with the amendments to its bills made by the other chamber. When the originating chamber concurs, the bill goes next to the Governor. If it does not concur, it can either let the bill die or request a committee of conference. A few committees of conference have already been formed—you can follow their progress on the [legislature's website](#). (On the "General Court News and Hot Links" dashboard, click on "2018 Committees of Conference.") The deadline to form committees of conference is May 10. The deadline for the committees of conference to finish their work is May 17, and the deadline for both houses to act on those reports is May 24.

This is the time of year when bills thought to be dead can experience miraculous revivals. This occurs when, for example, the House attaches language from a bill that it previously passed, and the Senate subsequently killed, to a Senate bill that is in the House—or *vice versa*. The bill then goes back to the other chamber with the language that that chamber previously rejected, and that chamber gets to decide whether to accept the amendment, request a committee of conference, or let the bill die. It can resemble a game of chicken, and it is not always pleasant. We will report on any intriguing developments over the next few weeks.

SENATE CALENDAR

MONDAY, APRIL 30, 2018

FINANCE, Room 103, SH

2:30 p.m. Hearing on proposed Amendment #2018-1517s, relative to the interest charged on late and delinquent property tax payments and relative to prorated assessments for damaged buildings, to HB 1673-FN-LOCAL, relative to the interest charged on late and delinquent property tax payments.

HOUSE FLOOR ACTION

Thursday, April 26, 2018

SB 172-FN, (New Title) relative to non-menace dams. **Passed.**

SB 309-FN, (New Title) relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water. **Passed with Amendment.**

SB 366, relative to members of the site evaluation committee. **Passed with Amendment.**

SB 369-FN, relative to the publication of the rulemaking register. **Passed.**

SB 387-FN, relative to liability of governmental units. **Passed.**

SB 410-FN, (New Title) establishing a commission to study creating a boat safe card. **Passed.**

SB 444, relative to cutting timber near certain waters and public highways. **Passed.**

SB 522, relative to alteration of speed limits. **Inexpedient to Legislate.**

SB 555-FN-A, establishing a citizens' right-to-know appeals commission and a right-to-know law ombudsman and making an appropriation therefor. **Inexpedient to Legislate.**

SB 557-FN, establishing a board of housing development appeals. **Interim Study.**

SENATE FLOOR ACTION

Thursday, April 27, 2018

HB 101-FN, relative to certification for solid waste operators. **Interim Study.**

HB 124-FN, relative to certain aircraft registration fees and airways tolls. **Passed with Amendment.**

HB 559-FN, relative to expenditures from the energy efficiency fund. **Inexpedient to Legislate.**

HB 1101-FN, regulating groundwater pollution caused by polluting emissions in the air. **Passed with Amendment.**

HB 1201, relative to an employee's earned but unused vacation time. **Inexpedient to Legislate.**

HB 1329, relative to eyewitness identification procedures. **Passed.**

HB 1332, allowing warrant articles to be split by the deliberative session. **Inexpedient to Legislate.**

HB 1428-FN, relative to removal of roadside memorials. **Passed with Amendment.**

(Senate Floor Action— Continued from Page 8)

HB 1450, relative to retention of job applications and personnel files. **Passed with Amendment.**

HB 1502, adding the utility property tax exclusion for exempt water and air pollution control facilities to tax expenditure review. **Inexpedient to Legislate.**

HB 1673-FN-L, relative to the interest charged on late and delinquent property tax payments. **Passed with Amendment; referred to F-S**

HB 1756-FN-A, relative to an additional allowance and a cost of living adjustment for retirees from the state retirement system. **Passed with Amendment.**

HB 1763-FN-A, establishing a road usage fee and making an appropriation therefor. **Interim Study.**

HB 1766-FN, relative to remediating the Coakley Landfill in Greenland. **Passed with Amendment.**

HB 1786-L, prohibiting costs for inspection of governmental records under the right-to-know law. **Tabled.**



<u>2018</u>	<u>Upcoming NHMA Workshops and Webinars</u>
May 8	2018 Local Officials Workshop—Newington Town Hall
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)	

