

LEGISLATIVE BULLETIN

House Supports Moderator Postponement Authority

The House on Wednesday defeated the Election Law Committee’s amendment to **SB 438** that would have required a town moderator to ask permission from the Secretary of State to postpone a town election for a weather emergency or other event. It then passed the floor amendment that preserves the moderator’s existing authority subject to certain conditions, and passed the bill with the amendment. This was a *huge* victory for municipalities.

Supporters of the committee amendment did mount an aggressive defense of it that probably gained them some votes. Their effort was helped by a few bits of inaccurate information—such as a remarkable statement that “there is no disagreement . . . that the sole responsibility for elections/town meetings rests solely with the office of the New Hampshire Secretary of State.” (RSA 669:25 expressly states that all duties of the Secretary of State with respect to state elections are to be exercised by the town clerk with respect to town elections. The claim that the Secretary of State has responsibility for any other aspect of town meeting is one we had never heard before.) Those statements, fortunately, did not confuse quite enough legislators. And their cause was not helped by one representative, speaking in support of the committee amendment, who said that “if you cannot deal with snow, you really shouldn’t live in New Hampshire.”

The committee amendment was defeated 155-176; the margin would have been much larger had the majority party’s leadership not exerted unusually intense pressure on its members to support the amendment. This was a division vote, not a roll call, so there is no record of how anyone voted. However, the subsequent vote on the floor amendment was a roll call, and the vote was almost an exact reversal of the first vote, 178-158, so it is fair to assume that, for the most part, the same representatives supported local control on both votes. The roll call vote can be found [here](#). A “yea” vote was to support the floor amendment that preserves the moderator’s authority.

Please thank your representatives who voted for the floor amendment, especially the very few Republicans who supported it in defiance of their party leadership. Just as important, talk to those who did *not* vote for it, and explain to them, again, that it is inappropriate to put a state official in charge

Bulletin 20—2018 Session
May 4, 2018

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of something that has nothing to do with the state. Remind them that they were elected by the voters in your cities and towns, not by a few state officials or party leaders.

This matter is far from settled. The bill now goes to the Senate, which can either concur with the House amendment (that won't happen), request a committee of conference, or let the bill die. Most likely, there will be a committee of conference that tries to negotiate a compromise between the Senate and House positions. We understand that some people may not believe existing law clearly gives the moderator authority to postpone a town election. The point of this legislation should be to clarify that authority—not to give it to a state official who otherwise has nothing to do with town elections. ***Please insist that your representatives and senators oppose any version that puts a state official in charge of postponing town elections.***

Registration of Out-of-State Vehicles

The Senate on Thursday passed [HB 1614](#), including the language from [HB 579](#) (which was tabled in the House) that creates a multi-year discounted registration program for out-of-state semi-trailers. This followed a 4-2 recommendation of the Finance Committee after an executive session earlier in the week. Because that was an executive session, not a hearing, none of the handful of municipal officials in attendance were allowed to speak on the bill; but they were nevertheless criticized for not quantifying the amount of municipal revenue loss if the bill passed. That absence of hard data seemed to be why some senators supported the bill. Ironically, no one criticized the bill's sponsors for not being able to quantify the estimated revenue to be raised!

We explained in detail our concerns with [HB 1614](#) in [Bulletin #19](#) and [Bulletin #18](#). Again, in very simple terms, [HB 1614](#) makes it “legal” to do what some New Hampshire residents and businesses are now doing illegally. Currently, some New Hampshire residents and businesses are violating New Hampshire law by registering in Maine and obtaining Maine plates on vehicles that should be registered in New Hampshire. [HB 1614](#) will allow New Hampshire residents and businesses to register in New Hampshire using an “out-of-state address” and legally obtain New Hampshire plates ***without paying the municipal permit fees!*** It will be nearly impossible to enforce RSA 261:40 (the law imposing violations for not properly registering vehicles) once New Hampshire residents and businesses are able to obtain New Hampshire plates using out-of-state addresses. Unfortunately, there was no opportunity to explain these concerns adequately in the Senate, since neither the policy committee nor the Finance Committee held a single hearing on this registration program.

The bill will likely go to a committee of conference, where we will try once again to get legislators to recognize the serious problems and remove the semi-trailer registration language.

Water Quality Standards Bills

Several water quality bills saw action this week.

After review by the Finance Committee on Monday, the Senate once again passed [HB 1101](#), dealing with air emissions, drinking water, ambient groundwater, and surface water quality standards. As we reported last week, [HB 1101](#) is similar to [SB 309](#), which has passed both houses and is on its way to the Governor. A committee of conference will likely be requested on [HB 1101](#).

Following a 3-2 vote recommending Inexpedient to Legislate from the Finance Committee, the Senate first tabled **HB 1592**, requiring the Department of Environmental Services (DES) to review standards relative to arsenic in drinking water, then removed it from the table and passed it with an amendment. Under the [amendment](#), any standards adopted by DES must go to the legislature for approval. Because the Senate amended the bill, it will go back to the House to concur, non-concur, or request a committee of conference.

The House agreed with the recommendation from the Resources, Recreation and Development Committee to refer [SB 240](#) to Interim Study. **SB 240** deals with the monitoring and testing of private well and identifying a “responsible party” in the event of increasing levels of contamination. A majority of the committee, and the House, recognized that DES already has the authority to do, and has recently done, exactly what the bill requires, but felt that further study of the bill is warranted.

Interest on Delinquent Taxes

On Monday the Senate Finance Committee recommended an amendment to [HB 1673](#), dealing with interest on delinquent taxes, that adds a section changing the deadline from 60 days to March 1 to apply for a prorated assessment on a damaged building under RSA 76:21, III. Testimony at the public hearing was allowed only on the amendment, not on the underlying bill, which had been amended by the Senate the previous week to lower interest rates from 12% pre-lien and 18% post-lien to 8% and 14%, respectively. The committee’s 5-1 recommendation of Ought to Pass with Amendment went to the full Senate Thursday, where it passed on a voice vote. As with many other bills, **HB 1673** will return to the House (where the original bill passed with even lower interest rates as explained in [Bulletin #10](#)) for concurrence, non-concurrence, or a request for a committee of conference.

Retirement Bill

This week the Senate took up [HB 1427](#) (formerly [HB 1757](#)), dealing with increased pension benefits for New Hampshire Retirement System Group I members. The Finance Committee had reported the bill as Inexpedient to Legislate, but that motion failed in the full Senate on a 12-12 vote. That was followed by a motion to lay the bill on the table, which passed, 13-11. The Senate ended its session last night with **HB 1427** still on the table. Because yesterday was the deadline for the Senate to act on all House bills, the bill will die on the table. The bill would have cost employers an additional \$45 million. Thank you to those municipal officials who urged your senators to kill **HB 1427**.

Exemption for Recreational Vehicles Returns

A few weeks ago the House killed [SB 403](#), which would have exempted from property taxation any recreational vehicle with a maximum width of 8 feet 6 inches located at a “recreational campground or camping park.” Unfortunately, it came back yesterday in an [amendment](#) to **HB 1356**, an unrelated bill. This exemption creates a serious problem for those municipalities that have a significant number of high-end recreational vehicles—as well as being simply unfair by allowing some people to avoid taxation on property that is, for all practical purposes, real estate and should be taxed as such. The bill presumably will go to a committee of conference, where we will work to have the **SB 403** language removed.

Agritourism—It Could Have Been Worse

Last week the House passed [SB 412](#), relative to agritourism. This is one of the stranger bills passed this year, and part of a recent, unfortunate trend to usurp local land use regulatory authority. The good news is that the bill, as passed, actually does very little.

SB 412 does two things. First, it states, “No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a.” Although this seems like a new restriction on municipal authority, it really is not. Municipalities already are required to allow “agritourism, as defined in RSA 21:34-a,” on any property where the primary use is for agriculture. Although a municipality may, in theory, adopt a different definition of agritourism for some other purpose, it still must allow agritourism *as defined in state law* on any agricultural property.

On that point, **SB 412** merely reinforces the existing requirement. If anything, it prohibits a municipality from adopting a *broader* definition of agritourism, although that presumably was not the intent. If a municipality wants to permit uses beyond the state definition of agritourism, it would merely need to find a different term for it. As long as it permits agritourism as defined in the statute, it is fine—and again, that is no different from the existing law.

Second, **SB 412** allows the Commissioner of Agriculture to “adjudicate disputes concerning activities that constitute agritourism pursuant to RSA 21:34-a.” You read that right—the Commissioner of Agriculture is authorized to adjudicate land use cases. The Commissioner, obviously, is not a judge, and it is unclear why he should be given judicial authority. As we pointed out during the process, the state Director of Forests and Lands does not get to review local decisions regarding forestry activities, nor would the Bank Commissioner have authority to review a zoning board decision regarding construction of a bank.

The good news is that the Commissioner’s authority is expressly “limited to the question of whether or not a municipality’s ordinance, bylaw, definition, or policy on agritourism conflicts with RSA 21:34-a.” That is a pretty narrow question.

Some of the bill’s supporters seemed to believe it would enable the Commissioner to overturn a local land use board’s determination about whether a proposed use constitutes agritourism and is therefore permitted. Concerns were expressed that some local boards were interpreting “agritourism” too narrowly, or making unreasonable findings in specific cases, and it was suggested that **SB 412** would give the Commissioner authority to change those results.

But the plain language of the bill refutes that. As the House committee report explained, “The bill does not authorize the Commissioner to reverse a local land use board’s decision about whether a particular use is permitted, it merely authorizes the commissioner to determine whether the municipality’s ordinance, bylaw, definition, or policy on agritourism is inconsistent with the state’s definition.” The Commissioner’s authority extends only to the *definition* of agritourism. So long as a municipality employs a definition that is consistent with the state’s, the Commissioner has no authority to question a local land use board’s decision that a *specific use* does or does not satisfy that definition.

The bill’s next stop will be the Governor’s desk, and he has indicated support for it. Municipalities may want to start planning now for the bill’s enactment. (It will take effect 60 days after passage,

although the bill requires the Commissioner to make rules to govern the process, which presumably will take longer than that.) We suggest that planning boards review the definition (if there is one) of “agritourism” in their zoning ordinances; the best way to avoid problems under the new law is to ensure that the ordinance’s definition is consistent with the definition in RSA 21:34-a.

HOUSE FLOOR ACTION

Wednesday, May 2, 2018

Thursday, May 3, 2018

SB 240-FN-LOCAL, (New Title) relative to the monitoring and treatment of contaminated wells. **Interim Study.**

SB 370-FN, adopting the emergency medical services personnel licensure interstate compact. **Passed with Amendment.**

SB 386, relative to access to criminal records. **Passed.**

SB 420, relative to collective bargaining under the right-to-know law. **Inexpedient to Legislate.**

SB 438, relative to the postponement of local elections. **Passed with Amendment.**

SB 446, relative to net energy metering limits for customer-generators. **Passed with Amendment.**

SB 450-FN-A, establishing an advisory commission for the department of environmental services relative to the delegation of authority of the National Pollutant Discharge Elimination System Program. **Passed with Amendment.**

SB 453, relative to requirements and criteria for a competitive grant program for drinking water protection. **Passed with Amendment.**

SB 487, relative to license requirements for certain alcohol and other drug use professionals and establishing a state substance use disorder treatment services program. **Passed with Amendment.**

SB 508, (New Title) establishing a committee to study the prevalence of post-traumatic stress disorder (PTSD) and other related disorders among first responders. **Inexpedient to Legislate.**

SB 512, relative to compact sections of towns. **Passed with Amendment.**

SB 527-FN-LOCAL, relative to absentee voting. **Passed with Amendment.**

SB 541-FN-A, (New Title) establishing a fund to reimburse costs associated with firefighters who have cancer and establishing a commission to study the funding and operations of the presumption under workers’ compensation requiring the reimbursement of costs associated with firefighters who have cancer. **Passed with Amendment.**

SB 565-FN, relative to aircraft registration fees and airways tolls. **Passed with Amendment.**

(House Floor Action— Continued from Page 5)

SB 569-FN, (New Title) relative to animal cruelty and establishing a commission to study certain language applicable to the transfer of animals. **Passed with Amendment.**

SB 575-FN, relative to electric vehicle charging stations. **Passed.**

SB 592-FN-A, relative to the child welfare system. **Passed with Amendment.**

SENATE FLOOR ACTION

Wednesday, May 2, 2018

Thursday, May 3, 2018

CACR 15, relating to legal actions. Providing that taxpayers have standing to bring actions against the government. **Passed.**

CACR 16, Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent. **Passed.**

HB 324, establishing a commission to study utility property valuation and recommend legislation to reform the current system of taxing utility property in New Hampshire. **Passed with Amendment.**

HB 1101-FN, regulating groundwater pollution caused by polluting emissions in the air and relative to standards for perfluorochemicals in drinking water, ambient groundwater and surface water. **Passed.**

HB 1104-FN, relative to dredge and fill permit time limits; relative to time limits under the administrative procedure act; and relative to online filing with the secretary of state's office. **Passed.**

HB 1233, preempting local regulation of seeds and fertilizer. **Passed.**

HB 1238, relative to animal cruelty involving an equine colt. **Passed.**

HB 1254, establishing a committee to study the procedures for adoption of national codes by the state of New Hampshire. **Passed with Amendments.**

HB 1264, relative to construction of the terms "resident," "inhabitant," "residence," and "residency." **Passed with Amendment.**

HB 1276, adding an exemption for certain raffles conducted by charitable organizations. **Passed with Amendment.**

HB 1307, relative to the presentation of a default budget. **Passed with Amendment.**

HB 1319, prohibiting discrimination based on gender identity. **Passed.**

HB 1347, relative to information to be included in the minutes under the right-to-know law. **Passed with Amendment.**

(Senate Floor Action— Continued from Page 6)

HB 1392, relative to tallies of votes on budget items or warrant articles. **Passed with Amendment.**

HB 1402, relative to ordinances regarding forestry activities. **Passed.**

HB 1427-FN, relative to the reduction in the calculation of state retirement system annuities at age 65. **Tabled.**

HB 1472, relative to the state building code provisions for energy conservation in new building construction. **Passed.**

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

HB 1549, relative to the availability of vehicle accident reports. **Tabled.**

HB 1592-FN, requiring the commissioner of the department of environmental services to review standards relative to arsenic contamination in drinking water. **Passed with Amendment.**

HB 1603, relative to employee representation on the independent investment committee in the New Hampshire retirement system. **Inexpedient to Legislate.**

HB 1627-FN, prohibiting the transmission of images or sounds of another person who is on private property or to conduct surveillance activity. **Interim Study.**

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

HB 1805, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability and relative to the retirement system board of trustees. **Passed.**

HB 2018, relative to the state 10-year transportation improvement program. **Passed with Amendment.**



<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

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