

LEGISLATIVE BULLETIN

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Another Extension for Pole Tax Exemption?



On **Thursday, February 11, at 8:50 a.m. in LOB 103**, the Senate Public and Municipal Affairs Committee will hear testimony on **SB 492**, extending the local property tax exemption for wooden poles and conduits. If this sounds eerily familiar, it is because this would be the sixth time since 1998 that this “temporary” exemption has been extended. **NHMA opposes this bill.**

The tax exemption, contained in RSA 72:8-b, states that “any conduit that is not a part of a building and any whole or partial interest in wooden poles, employed in the transmission of communication services that are subject to the tax imposed under RSA 82-A, and owned by a retailer as that term is defined in RSA 82-A:2, X, shall be exempt from being taxed as real estate under RSA 72:8-a.” In short, telephone poles and conduits are exempt from property taxation.

Without this bill, the exemption will expire on July 1 of this year. That is exactly what should happen—or, rather, should have happened 10 years ago. There is no principled argument for the extension of this exemption. Telephone companies get the exemption, while electric companies are subject to property taxes on *the same poles*. The usual argument for the exemption is that telephone companies must pay a communications service tax to the state—as if they are the only businesses that pay taxes unique to their industry. Why the payment of a tax to the *state* justifies an exemption against *local* taxes has never been satisfactorily explained. The net effect is that *cities and towns are, indirectly, paying taxes to the state on behalf of the phone companies.*

Another argument for the exemption is that if the telephone companies have to pay the tax, the cost will be passed along to their customers. Correct. That is what *should* happen. That is how business works—the costs of doing business are passed through to customers, not subsidized by taxpayers. Yes, we do understand that to a large extent they are the same people—but the cost of phone service should appear on one’s phone bill, not on one’s property tax bill.

Please contact your Senators and urge them to oppose this bill.

GOVERNMENT AFFAIRS CONTACT INFORMATION

Judy A. Silva
Acting Director of Legal Services & Government Affairs

Cordell A. Johnston
Acting Government Affairs Counsel

Michael R. Williams
Government Affairs Attorney

Susan W. Olsen
Government Affairs Advocate

Barbara T. Reid
Government Finance Advisor



New Hampshire Municipal Association

25 Triangle Park Drive
PO Box 617
Concord, NH 03302-0617
Tel: 603.224.7447
NH Toll Free: 800.852.3358
Fax: 603.224.5406

E-mail: governmentaffairs@nhlgc.org
Website: www.nhlgc.org

Don't Count Your Chickens ...



In a surprise move Wednesday, the House overturned the Finance Committee recommendation of Inexpedient to Legislate and voted 189-169 to pass **HB 1128**. The effect of the bill is to increase the meals and rooms tax distribution to municipalities by up to \$5 million dollars for fiscal year 2011, the second year of the state budget. The bill repeals a budget provision which limited the distribution of meals and rooms tax revenues to cities and towns for fiscal year 2011 to no more than the fiscal year 2009 level of distribution.

The distribution of these revenues was supposed to be 40% to municipalities and 60% to the state

when the tax was first implemented 40 years ago, but the formula was frozen after only a year or two. Since 1995, a catch-up formula has been in place to return up to an additional \$5 million each year until the 40-60 split is attained. The 2010 distribution to municipalities was frozen at the 2009 level by the language of the budget provision, but that was not addressed in **HB 1128**.

The bill now moves to the Senate for hearing and debate. A positive vote by the Senate and the signature of the Governor are needed before any additional funds might be returned to municipalities. So, as the headline says...

The Municipal Information Highway Infrastructure

The House Committee on Science, Technology and Energy Work held another full committee work session Thursday on **HB 1242**, modifying the definition of broadband facilities for municipal revenue bond purposes. The Public Utilities Commission was invited to address committee members and was asked questions about the suitability, associated risks and private market impact of municipalities whose voters choose to issue revenue bonds to build broadband infrastructure.

Committee members had questions about the municipal financing options provided, which (understandably) the PUC representatives could not answer, but which could have been answered by the municipal managers and administrators present.

Committee members appear divided: some understand that **HB 1242** is simply enabling legislation with regard to infrastructure projects

for which municipal bonding can be sought. Others seem to believe the bill would allow municipalities to become telecommunications providers, or even that such bonding activities would serve to deplete capital markets for incumbent providers. The bill would not have those effects, and municipalities have supported an amendment to make it clear that municipalities will not provide services, only the infrastructure.



The committee has scheduled another work session for **Thursday, February 11, at 11:00 a.m. in LOB Room 304**. Regrettably, municipal managers and administrators will be in

Keene that day working on a 40-plus member municipal broadband project and unable to attend the work session. Therefore, NHMA again *urges* members who are concerned that their voters will be denied the opportunity to determine their broadband future to contact their legislators and ask that the local voter – and not the state – be authorized to make the final determination on local bonding decisions.

Exception to Pollution Control Exemption Progresses

That clamor you've been hearing at the LOB the last few weeks is the sound of lobbyists struggling to explain why their clients should continue to receive a "pollution control" exemption from local property taxes. The statutory exemption, RSA 72:12-a, originally enacted in 1955, was intended as an incentive for industrial facilities to make voluntary improvements to their plant and equipment to reduce air and water pollution. It has long since lost its usefulness, as federal and state laws have made pollution control mandatory. Now, illogically, the exemption is granted (by the state—the municipality has no control) merely for installing pollution control equipment that is required by law. Thus, under the statute, *cities and towns must pay companies to comply with state and federal law.*

The absurdity of the law was illustrated a few years ago when a college applied for, and was granted, an exemption for a wastewater treatment facility it was constructing—the argument being, apparently, that since the facility would prevent the dumping of raw sewage into the ground or surface water, it was a pollution control device. From there, it was not a stretch to claim that any residential septic system should qualify for the exemption.

As we reported previously, **HB 1439** was filed to prevent such an interpretation, and that's all the bill does. However, when a subcommittee began talking publicly about actually *doing the right thing* and repealing the exemption entirely, panic

ensued. The exemption, it was explained, was needed to maintain a business-friendly environment. Apparently, without the exemption, the Seabrook nuclear plant and the PSNH generating facilities would pack up and move to Georgia, taking thousands of jobs with them.

Curiously, none of the arguments for keeping the exemption mentioned anything about pollution control. It's all about economic development. If the state wants to encourage economic development, shouldn't it enact an economic development exemption that would apply to the thousands of businesses in the state, rather than to the dozen or so that get the "pollution control" exemption?

If legislation were passed based strictly on the merits, this law would be repealed in a second. Everyone knows that. However, despite the subcommittee members' best efforts, they ultimately ran into political reality and abandoned, for now, talk of repealing the statute. Instead, they recommended the bill as it stands—merely creating an exclusion for septic systems—but also stated, unofficially, that the statute should receive serious study in the immediate future. The subcommittee's recommendation of Ought to Pass will go to the Local and Regulated Revenues Committee in executive session next week.

The subcommittee expressed doubt that any of the players would take seriously its request for an in-depth review of the exemption. However, we have a suggestion that we are sure would get everyone's attention: amend the bill by adding a section that repeals RSA 72:12-a, effective January 1, 2012. No one would lose the exemption immediately, but with that deadline looming, it's a safe bet that the parties would be willing to talk.

Wouldn't it be great if someone offered that amendment?

Municipal Audit Bills Heard in Committee

The House Municipal and County Government Committee heard testimony last Tuesday on two bills dealing with municipal audits.

HB 1176, which would require an audit whenever a town manager or town clerk also serves as the tax collector, was filed primarily to help minimize the opportunity for fraud to occur.

HB 1448, filed on behalf of the Department of Revenue Administration (DRA), also is an effort to minimize the opportunity for fraud, as well as to improve the timeliness of audit reports being filed with DRA. For municipalities with a population of less than 750, the bill allows DRA to prescribe “agreed upon procedures” to be conducted in lieu of an audit.

DRA provided the committee with statistics on the number of timely audit reports filed with the



department. These showed that by the end of 2009, only 41 percent of municipalities had filed, for calendar year 2008 or the fiscal year ending

June 20, 2009, either a CPA audit or an MS-60 report from elected auditors.

NHMA testified on both bills, expressing concerns about the cost implications of both bills and about providing small municipalities flexibility in contracting for CPA services (other than an audit) that best suits their needs and their budgets. Concerns also were expressed about the audit time frame required for all municipalities under **HB 1448** (9 months after year end), and the requirement to report to DRA the reason for the audit delay along with a timetable for adoption of the audit, even when such a delay may be caused by the auditor, not the municipality. Regarding the “agreed upon procedures” for small municipalities, it is unclear in the bill’s language whom the agreement is

between – DRA and the CPA, the municipality and the CPA, DRA and the municipality, or all three. It is also unclear whether these procedures would be custom-designed, based on a small municipality’s particular circumstances, or be generic procedures included in administrative rules.

Both bills will need additional work before the committee takes further action on them.

ITL Recommended on Earnable Compensation Bill

On Tuesday, the House Executive Departments and Administration Committee voted 12-5 to kill **HB 1530**. This bill would have amended the definition of “earnable compensation” for members of the New Hampshire Retirement System by including only base pay in the pension computation.

Justification for the vote was the fact that the **SB 108** study committee, created last year to study the circumstances and effects of pension “spiking,” is also charged with reviewing the definition of earnable compensation. The study committee is continuing its work and will issue a final report by November 1, 2010. The ED&A Committee believes the study committee is a better avenue to address the definition of earnable compensation.



This bill would have amended the definition of “earnable compensation” for members of the New Hampshire Retirement System. . . .

HOUSE CALENDAR

Joint House /Senate Meetings Are Listed Under this Section

MONDAY, FEBRUARY 8

COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB

2:30 p.m. **HB 1180**, relative to the use of clotheslines.

COMMISSION TO STUDY FUTURE SUSTAINABLE REVENUE SOURCES FOR FUNDING IMPROVEMENTS TO STATE AND MUNICIPAL HIGHWAYS AND BRIDGES (HB 2, Chapter 144:291, Laws of 2009), Room 201, LOB

2:00 p.m. Regular meeting.

COMMISSION TO STUDY ISSUES RELATIVE TO GROUNDWATER WITHDRAWALS (SB 155, Chapter 305:1, Laws of 2003), Room 103, State House

9:00 a.m. Subcommittee meeting.

COMMISSION TO STUDY LAND DEVELOPMENT REGULATIONS AND THE EFFECTS OF LAND DEVELOPMENT WITHIN UPLAND AREAS THAT MAY AFFECT WETLANDS AND SURFACE WATER OF THE STATE (HB 1579, Chapter 294:1, Laws of 2008), Room 305, LOB

11:00 a.m. Definitions subcommittee.

1:00 p.m. Regular meeting.

TUESDAY, FEBRUARY 9

2:00 p.m. **HB 1409**, banning biometrics for state or privately issued identification cards and as a condition of doing business.

10:00 a.m. Executive session on **HB 1131**, relative to requirements for firefighter certification, **HB 1372**, establishing a commission to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties, **HB 1492**, requiring police officers receiving notice of a motor vehicle accident to respond to the scene of the accident, **HB 1515-FN**, relative to the crime of official oppression, **HB 1628**, establishing guidelines for neighborhood notification upon release of a sexual offender, **HB 1639-FN-L**, relative to the tethering of dogs.

ELECTION LAW, Room 308, LOB

10:00 a.m. Executive session on, **HB 1225-FN-L**, requiring a security escort for the delivery of ballots to the clerk, **HB 1341**, relative to election day procedures.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:30 a.m. Executive session on **HB 1337**, relative to rules adopted by the assessing standards board regarding certification of appraisers by the department of revenue administration.

1:45 p.m. **HB 1229-FN**, relative to state licensure of hawkers and peddlers.

JUDICIARY, Room 208, LOB

10:00 a.m. Executive session on **HB 1524**, relative to the liability of town and city health officers and overseers of public welfare.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 307, LOB

- 9:00 a.m. Subcommittee work session on **HB 1315-FN**, relative to the employer's lien on damages and benefits recovered from third persons by employees who have received workers' compensation
- 9:30 a.m. Executive session on **HB 1137**, relative to withholding of wages, **HB 1403**, relative to wrongful termination.

LOCAL AND REGULATED REVENUES, Room 303, LOB

- 1:00 p.m. Executive session on **HB 1138**, relative to the authority to expand municipal transportation improvement funds, **HB 1147**, excluding value attributed to unexercised approvals in determining the market value of land for property tax purposes, **HB 1276-FN-L**, relative to investment of capital reserve funds, **HB 1380-FN**, relative to assessing fees by zoning boards of adjustment, **HB 1439-L**, relative to tax exemptions for water and air pollution control installations, **HB 1489**, allowing municipalities to adopt a volunteer incentive property tax credit, **HB 1583**, relative to the property tax exemption for organizations with charitable activities.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 11:00 a.m. Subcommittee work session on **HB 1287**, relative to setback requirements on private rights-of-way.
- 1:00 p.m. Subcommittee work session on **HB 1267-L**, relative to applications for hawkers and peddlers licenses.

Room 104, LOB

- 1:00 p.m. Subcommittee work session on **HB 1461**, relative to the municipal regulation of the sale of martial arts weapons.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

- 9:20 a.m. **HB 1153**, relative to membership of the commission to study water infrastructure sustainability funding.
- 12:30 p.m. **HB 1266**, relative to notification requirements for lowering the water level of a lake or pond.

THURSDAY, FEBRUARY 11**COMMERCE AND CONSUMER AFFAIRS, Room 302, LOB**

- 10:00 a.m. Continued executive session from February 4, if needed and executive session on **HB 1180**, relative to the use of clotheslines, **HB 1409**, banning biometrics for state or privately issued identification cards and as a condition of doing business, **HB 1486**, prohibiting the mandating of fire sprinkler systems in certain dwellings, **HB 1502**, relative to costs associated with cashing payroll checks.

COMMISSION TO STUDY WATER INFRASTRUCTURE SUSTAINABILITY FUNDING (SB 60, Chapter 245:1, Laws of 2009), Room 103, State House

- 3:00 p.m. Regular meeting.

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

- 10:00 a.m. Continued executive session from February 9, if needed and executive session on **HB 1635-FN**, prohibiting the open carrying of a firearm in a public building.

ENVIRONMENT AND AGRICULTURE, Room 308, LOB

- 2:00 p.m. Executive session on, **HB 1250**, clarifying that a quorum of the current use board is not required to hold public forums, **HB 1609-FN**, relative to current use and the land use change tax.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

- 1:30 p.m. **HB 1570-FN**, requiring an affidavit of bills paid prior to the issuance of certain state and local permits.

LOCAL AND REGULATED REVENUES, Room 303, LOB

10:30 a.m. Continued executive session from February 9, if needed and executive session on **HB 1272**, relative to expanding the community revitalization tax relief program to provide incentives for rehabilitating historic structures, **HB 1335**, establishing a local option for lowering the interest rate on late and delinquent property tax payments and subsequent payments, **HB 1345**, relative to information for property tax assessments of commercial and industrial properties, **HB 1427**, relative to the conversion period for quarterly billing for property taxes, **HB 1440**, relative to property tax exemptions for the disabled.

RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB

9:30 a.m. Executive session on, **HB 1153**, relative to membership of the commission to study water infrastructure sustainability funding, **HB 1266**, relative to notification requirements for lowering the water level of a lake or pond.

TRANSPORTATION, Room 201, LOB

12:00 p.m. **HB 1432-L**, relative to the use of blue lights on firefighting apparatus.

WAYS AND MEANS, Room 202, LOB

9:30 a.m. Executive session **HB 425-FN-A-L**, relative to remedies under the state right-to-know law and continually appropriating a special fund,
1:30 p.m. Subcommittee work session on **HB 626-FN**, relative to voter identification.

FRIDAY, FEBRUARY 12**COMMITTEE TO STUDY THE IMPOSITION OF ASSESSMENTS TO RETIREMENT SYSTEM EMPLOYERS FOR EXCESS BENEFITS PAID TO RETIREES (SB 108, Chapter 304:1, Laws of 2009), Room 103, State House**

1:00 p.m. Regular meeting.

TUESDAY, FEBRUARY 16**ELECTION LAW, Room 308, LOB**

10:00 a.m. Executive session on **HB 1319**, relative to single-member representative districts, **HB 1360**, permitting persons 17 years of age to register to vote, **HB 1476**, relative to periodic verification of the checklist, **HB 1528**, relative to observing voter check-in, **HB 1529**, relative to absentee voting, **HB 1549-FN**, prohibiting copying, reproducing, or retaining personal documents of voters, **HB 1574-FN**, relative to retention of election records, **HB 1608**, relative to general election candidates for offices that elect more than one person.

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

10:00 a.m. Executive session on **HB 1242**, relative to broadband infrastructure, **HB 1353**, relative to group net energy metering.

THURSDAY, FEBRUARY 18**COMMISSION TO STUDY WATER INFRASTRUCTURE SUSTAINABILITY FUNDING (SB 60, Chapter 245:1, Laws of 2009), Room 103, State House.**

2:00 p.m. Regular meeting.

SENATE CALENDAR

TUESDAY, FEBRUARY 9, 2010

JUDICIARY, Room 103, SH

3:00 p.m. **CACR 34**, relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities.

WAYS AND MEANS, Room 100, SH

10:15 a.m. **SB 474-FN-A-L**, changing the rate of the meals and rooms tax, repealing the meals and rooms tax on campsites, and requiring a reduction in general fund appropriations for the biennium ending June 30, 2011.

THURSDAY, FEBRUARY 11, 2010

ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT, Room 102, LOB

9:10 a.m. **SB 409**, requiring buildings or structures constructed or renovated using state funding to adhere to certain energy efficiency and building standards. **EXECUTIVE SESSION MAY FOLLOW**

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

8:30 a.m. **SB 456-FN**, relative to energy conservation in new building construction.

8:50 a.m. **SB 492-FN-L**, extending the local property tax exemption for wooden poles and conduits. **NHMA policy to oppose.**

9:10 a.m. **SB 354-FN-L**, authorizing liens for unpaid building code violations and requiring landlord agents for restricted rental property. **EXECUTIVE SESSION MAY FOLLOW**

THURSDAY, FEBRUARY 18, 2010

ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT, Room 102, LOB

8:30 a.m. **SB 323**, relative to the energy efficiency and sustainable energy board, the greenhouse gas emissions reduction fund, and the renewable energy fund. **EXECUTIVE SESSION MAY FOLLOW**

US President's Day *is* Monday, February 15, 2010



HOUSE

Floor Action

Wednesday, February 3, 2010

CACR 23 provides that a 2/3 vote of the House of Representatives and the Senate shall be required to pass a new tax or license fee or to increase any existing tax or license fee, except when additional revenue is needed to pay current debt obligations. **Inexpedient to Legislate.**

CACR 25 allows voters to directly repeal state statutory provisions by referendum and further provides that "referendum powers may be exercised by the electors of each municipality as provided by law." **Inexpedient to Legislate.**

CACR 26 prohibits the legislature from adopting any "broad-based sales, income, or capital gains tax." **Inexpedient to Legislate.**

CACR 27 provides that it is the duty and exclusive right of cities, towns, and villages to decide the form of and pay for public schools, and allows the state to provide additional funds using a needs or rewards-based formula. **Inexpedient to Legislate.**

HB 1128 repeals the 2009 law that limits the distribution of meals and rooms tax revenues to cities and towns for fiscal year 2011 to the 2009 level. **Passed.**

HB 1149 allows a state agency to incorporate by reference in its final rulemaking proposal a manual of best management practices. **Passed/Adopted with Amendment.**

HB 1171 repeals the law prohibiting certain business activities on Sundays. **Passed/Adopted.**

HB 1203 allows nonresident registration of motor vehicles to vehicles garaged "exclusively" in this state, rather than garaged for at least 350 days per registration year. **Passed/Adopted.**

HB 1274 restores revenue sharing to cities and towns in the amount of \$25 million for each of fiscal years 2010 and 2011. **Inexpedient to Legislate.**

HB 1329 establishes a committee to study voter fraud. **Inexpedient to Legislate.**

HB 1406 requires municipalities that use state, county, city, or town law enforcement details on public ways to do so in accordance with department of transportation guidelines. **Inexpedient to Legislate.**

HB 1468-FN expands the crime of official oppression to include any public servant's ignoring, denying, or infringing upon any person's constitutional rights under color of law. **Inexpedient to Legislate.**

HB 1477 modifies requirements relating to voter address information. **Passed/Adopted.**

HB 1521 prohibits the New Hampshire rail transit authority from proceeding with any commitment for passenger rail service until the treasurer certifies that no state-funded subsidy will be needed, and prohibits the use of highway funds for any passenger rail project. **Inexpedient to Legislate.**

HB 1538 changes the date of the state primary election to the last Tuesday in August. **Inexpedient to Legislate.**

HB 1615 requires utility property to be appraised at market value for purposes of the utility property tax and changes the time for reporting a sale of utility assets. The bill also establishes that the utility property tax applies to all persons and entities that are defined as utilities under RSA 83-F. **Passed/Adopted with Amendment.**

HB 1622-FN-A-L reduces certain state taxes including the meals and rooms tax. **Inexpedient to Legislate.**

HB 1629-FN repeals the dedicated enhanced 911 system fund and redirects 911 system surcharges to be deposited in the general fund. **Inexpedient to Legislate.**

HB 1643-FN requires state agencies to submit budget appropriation requests that estimate both a maintenance level expenditure and an alternative that is five percent less than the previous year's budget. **Inexpedient to Legislate.**

HB 1683-FN directs the department of health and human services to institute a random drug testing program for public assistance recipients. **Inexpedient to Legislate.**



SENATE

Floor Action

Wednesday, February 3, 2010

SB 448, relative to alternate members of land use boards. **Passed/Adopted with Amendment.**

Legislative Winter Vacation Break:
Week of February 22 - 26, 2010