

LEGISLATIVE BULLETIN

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INSIDE THIS ISSUE:

<i>More Spending Cap Bills</i>	3
<i>Proposed Stream Crossing Rules</i>	4
<i>House Calendar</i>	5
<i>Senate Calendar</i>	6
<i>2011-12 Legislative Policy Process</i>	8

End the Telecommunications Industry Bailout

Perhaps as early as next week, the Senate Public and Municipal Affairs Committee will vote on **SB 492**, which proposes to extend for four years the property tax exemption on wooden poles and conduits owned by telecommunications companies. ***NHMA strongly opposes this bill***, which would continue to shift the property tax burden away from one industry and onto other businesses and home owners.

For decades, telephone poles and conduits were taxed as personal property at the *state* level. During that same period, and continuing to the present, poles and conduits owned by electric utilities have been treated as real estate and subject to the local property tax.

In 1990 the personal property tax on telephone poles and conduits was repealed, leaving them free of any tax at the state or local level. The same year, the communications service tax (CST)—a tax on the gross charges to retail phone customers—was enacted. When the personal property tax was repealed, some municipalities began trying to tax the poles and conduits as real estate. The telephone companies challenged that action in court, and the New Hampshire Supreme Court ultimately sided with the phone companies.

In 1998 the legislature enacted RSA 72:8-a, providing that telecommunication poles and conduits are subject to the local property tax in the same manner as electric poles and conduits. However, at the same time, the legislature enacted RSA 72:8-b, granting telephone companies a “temporary” exemption from the tax. That exemption has been extended five times since then, most recently in 2005. The current exemption is scheduled to expire this year.

The overwhelming majority of utility poles in New Hampshire are co-owned by electric companies and phone companies. On those poles, the electric company pays property tax on its share, while the phone company pays nothing on its share.

If the legislature does not act, the pole tax exemption will expire on July 1. That is what should happen. The Senate should ***kill SB 492*** and end the state-mandated municipal subsidy to the telecommunications industry.

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Here are some of the common arguments in favor of extending the exemption, with NHMA's responses:

Ending the exemption would result in a double tax, because phone companies already pay the CST.

Response: That is simply false. Phone companies do not pay the CST—customers do. The phone company merely collects the tax and remits it to the state, just as restaurants and hotels collect and remit the meals and rooms tax, and just as gas stations collect and remit the gas tax.

In fact, the best analogy is, again, to the electric companies. Every transmitter or distributor of electricity in New Hampshire must collect an electricity consumption tax and remit it to the state. This tax, enacted in 1997, is paid and collected in exactly the same manner as the CST; yet, to our knowledge, no one has ever claimed that electric companies should therefore be exempt from property tax on their poles and conduits.

Requiring wireline phone companies to pay property taxes on their poles and conduits would give a competitive advantage to wireless companies, which are not subject to the tax. The exemption maintains an even playing field.

Response: Wireless companies pay property taxes on towers and other property they own. If they are able to provide service without using poles and wires, that is a business issue. It is not the role of the local property tax to manage competition among businesses.

There are any number of traditional, property-intensive businesses that may have trouble competing with high-tech businesses in part because the latter have a lower property tax burden. Is every such situation a candidate for a property tax exemption? Newspapers everywhere are struggling for survival in the face of competition from on-line news sources.

Should newspaper companies get a tax exemption to “even the playing field”?

If telephone companies have to pay the property tax, they will pass the increased cost along to their customers in the form of higher telephone bills.

Response: Perhaps they will. There is nothing wrong with that. That is how businesses work: the costs of doing business are included in the cost to customers. Why should the telecommunications business be different? Under the current law, property taxpayers are subsidizing the telephone companies. Does that make more sense than passing the costs on to customers?

But the burden of higher phone bills will fall disproportionately on customers in remote and rural areas, where cell phone service is not available and wireline service is the only option.

Response: Again, that is how business works. Expenses are included in the pricing to customers, whoever and wherever they may be. There is no other provision in New Hampshire law that gives a property tax exemption to businesses because of where their customers are located.

The exemption is good for business.

Response: The exemption is good for one business—the telecommunications industry. All other businesses in the state are subsidizing that industry through the property tax shift that this exemption creates. Further, even if the exemption were “good for business,” that would be irrelevant. There is no state policy (except this one) that favors the granting of property tax exemptions simply because they are good for business.

*Please call your Senator today and urge him or her to vote to **kill SB 492**. Please call the NHMA Government Affairs staff if you have any questions.*

More Spending Cap Bills

Two more bills authorizing municipalities to adopt spending and/or tax caps are scheduled for hearings next week. The Senate Public and Municipal Affairs Committee will hear testimony on **SB 487** and **SB 488** on **Thursday, March 4**, beginning at **9:30 a.m., in LOB Room 103**.

SB 487 is scheduled for **9:30**. This bill is almost identical to **HB 1522**, which has already been heard in the House and will be the subject of floor action on Wednesday. (The House committee has recommended Inexpedient to Legislate on **HB 1522**.) **SB 487** would authorize cities and some towns (those with town councils)

to adopt charter provisions limiting tax or spending increases. NHMA opposes **SB 487** for the same reasons it opposes **HB 1522**, as explained in [Legislative Bulletin #8](#).

SB 488 is scheduled for **9:45**. It would amend the Municipal Budget Law, RSA chapter 32, to allow the legislative body of any town (or school district or village district) to vote at an annual meeting to limit increases in appropriations for subsequent fiscal years. The permitted annual increase would be a fixed dollar amount, a fixed percentage, or a percentage derived from the inflation rate.

For a spending cap to be adopted, a question would be placed on the official ballot at an annual town meeting, asking whether the legislative body should adopt the “local spending cap act,” limiting annual spending increases to the dollar amount or percentage stated in the question. The question would also include a provision for overriding the spending cap by a stated majority vote not in excess of two-thirds. If at least 60 percent of those voting on the question vote in the affirmative, the spending cap would be adopted and would apply “for the fiscal year next following.”

If a cap is adopted, it could be overridden in a subsequent year only if the necessary majority (as specified in the question when the cap was adopted) at the annual town meeting (not a special meeting) votes to override it. This would require placing an article on the warrant for the meeting reading, “Shall we exceed the local spending cap?” If, and only if, the required majority votes in the affirmative on that question, the town meeting could then authorize appropriations that exceed the spending cap. If the town meeting approves total appropriations that exceed the spending cap without properly approving an article allowing it to do so, the governing body would be required to “make adjustments necessary to reduce the total appropriations to a level allowed by this section.”

In addition to the policy reasons for opposing the other two bills, **SB 488** seems to be a recipe for chaos. Once a cap is in place, it could be overridden only by a vote at the *annual* town meeting—not at a special meeting—so it would be impossible to appropriate additional amounts if an emergency arises mid-year. Overriding the cap could be done only pursuant to an article placed on the warrant; thus, if two of the three selectmen are opposed to exceeding the cap, the article will not be placed on the warrant, and the cap therefore cannot be overridden even if everyone else in town favors an override. Although an article to exceed the cap could be placed on the warrant by citizen petition, no group of citizens would have any basis to submit a petition until the proposed budget is posted—which will always be after the deadline for submitting petitioned warrant articles.

Further, the process for voting on an override at the town meeting would be confusing at best. If the override vote takes place at the beginning of the meeting, many voters will have no basis for deciding how to vote—they might favor increasing some budget amounts but decreasing others, and they will not know the net effect on appropriations until those items are voted on.



On the other hand, if the vote is delayed until later in the meeting, budget items taken up late in the meeting will be jeopardized, so the order of items on the warrant will assume undue importance.

Finally, if the town meeting approves appropriations that exceed the cap without properly voting to do so, it is up to the selectmen to make the necessary reductions—but there apparently are no limits on their authority to do so. Would they cut every appropriation by the same amount, or



simply eliminate the last items approved?

The bill seems certain to make an already complex and difficult town meeting process even more so. Anyone who has suffered through the confusion and parliamentary maneuvers associated with SB 2 town meetings surely can appreciate the potential for mischief if this is adopted. All of this is on top of the question of why a legislative body should vote to restrict its own budget authority a year in advance. If you have concerns about the bill, please contact your senator, and if you have questions about it, please call the NHMA Government Affairs staff.

Proposed Stream Crossing Rules to be Heard on Friday

For three years, the Department of Environmental Services has been working to “consolidate, clarify, strengthen and make more specific the criteria for the design and approval of stream crossings.” Next **Friday, March 5, 2010, at 9:00 a.m. in LOB Rooms 306/308**, the Joint Legislative Committee on Administrative Rules (JLCAR) will hold a public hearing on the proposed final rules.

DES states that its efforts have been driven by concerns over issues such as “public safety, environmental protection, and the wise stewardship of the state’s natural resources.” Of primary concern to municipal officials is the DES statement that “New Hampshire can expect more storms of greater intensity, thus putting culverts and bridges at greater risk if they are not properly designed and installed and adequately sized.” In short, the proposed rules require crossings of perennial and intermittent streams to withstand either a 50-year frequency or a 100-year frequency flood.

The new rules will also require a stamp of approval by a professional engineer for projects

dealing with stream crossings wider than 8 feet, a cost local officials believe to be burdensome. Although DES admits that there will likely be “higher up-front” costs for compliance, it says those costs will be “offset by decreased costs to life and property due to flood events.”

Municipalities manage and maintain more than 14,000 miles of roads. That translates into a lot of culverts and bridges. The **good news** is that the last section of the proposed rules includes a process whereby an applicant may propose an “alternate” design if the structure required by the new rules is not “practicable”; that is, “available and capable of being done after taking into consideration cost, existing technology, and logistics.”

Local officials who still have concerns about the proposed rules should contact JLCAR members in writing and/or be present at next week’s hearing to express their concerns on the record in front of the committee.

HOUSE CALENDAR

JOINT HOUSE /SENATE MEETINGS
ARE LISTED UNDER THIS SECTION

MONDAY, MARCH 1

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

10:00 a.m. Regular meeting.

COMMISSION TO STUDY THE ISSUE OF STORMWATER MANAGEMENT (HB 1295, Chapter 71:1, Laws of 2008), Room 305, LOB

1:00 p.m. Regular meeting.

TUESDAY, MARCH 2

FINANCE, Rooms 210-211, LOB

10:30 a.m. **HB 1428-FN**, relative to death benefits for surviving spouses of a New Hampshire retirement system member, **HB 1598-FN**, relative to the use of Temporary Assistance to Needy Families (TANF) funds, **HB 1668-FN**, requiring state creditable service for group II retirees to receive state employee medical benefits, **HB 1672-FN**, making appropriation additions and revenue reductions for fiscal year 2011.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

10:30 a.m. Full committee work session on **HB 1554**, allowing municipalities to establish energy efficiency and clean energy districts.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

10:30 a.m. Full committee work session on **HB 2010**, relative to the state 10-year transportation improvement program.

WAYS AND MEANS, Room 202, LOB

2:30 p.m. Subcommittee work session on **HB 626-FN**, relative to voter identification.

WEDNESDAY, MARCH 3

TRANSPORTATION, Room 203, LOB

8:45 a.m. **SB 150**, relative to low-speed utility vehicles and relative to registration fees for certain special number plates for veterans.

10:00 a.m. House Session.

THURSDAY, MARCH 4

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

11:30 a.m. **HB 1579-FN**, relative to electioneering by public employees.

1:00 p.m. **HB 1579-FN**, relative to electioneering by public employees.

FINANCE, Rooms 210-211, LOB

10:00 a.m. **HB 1428-FN**, relative to death benefits for surviving spouses of a New Hampshire retirement system member, **HB 1598-FN**, relative to the use of Temporary Assistance to Needy Families (TANF) funds, **HB 1668-FN**, requiring state creditable service for group II retirees to receive state employee medical benefits, **HB 1672-FN**, making appropriation additions and revenue reductions for fiscal year 2011.

2:00 p.m. **HB 1428-FN**, relative to death benefits for surviving spouses of a New Hampshire retirement system member, **HB 1598-FN**, relative to the use of Temporary Assistance to Needy Families

(TANF) funds, **HB 1668-FN**, requiring state creditable service for group II retirees to receive state employee medical benefits, **HB 1672-FN**, making appropriation additions and revenue reductions for fiscal year 2011.

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

1:00 p.m. Executive session on **HB 1554**, allowing municipalities to establish energy efficiency and clean energy districts.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

10:00 a.m. Rescheduled full committee work session on **HB 2010**, relative to the state 10-year transportation improvement program.

WAYS AND MEANS, Room 202, LOB

9:00 a.m. Subcommittee work session on **HB 1292**, relative to underground storage tank facility permits, compliance, and cleanup fund eligibility, **HB 1293-FN**, relative to the oil discharge cleanup fund.

10:30 a.m. Full committee work session on revenue estimates.

FRIDAY, MARCH 5

COMMISSION TO STUDY REQUIREMENTS FOR SAFE AND SECURE LANDFILLS (HB 672, Chapter 252:1, Laws of 2007), Room 304, LOB

1:00 p.m. Regular meeting.

MONDAY, MARCH 8

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 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

1:30 p.m. Regular meeting.
administrative fine authority for the department of resources and economic development.

THURSDAY, MARCH 11

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.

FRIDAY, MARCH 12

ENERGY EFFICIENCY AND SUSTAINABLE ENERGY BOARD (RSA 125-O:5-a), Public Utilities Commission, Room A, 21 South Fruit Street, Concord

9:00 a.m. Regular meeting.

SENATE CALENDAR

TUESDAY, MARCH 2, 2010

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

2:15 p.m. **SB 504-FN**, relative to the effective date for the implementation of the retirement system employer assessments for excess benefits.

2:30 p.m. **HB 1131**, relative to requirements for firefighter certification.

2:45 p.m. **SB 466**, relative to automatic fire warning devices and carbon monoxide detection devices in dwellings. **(NOTE TIME CHANGE)**

WEDNESDAY, MARCH 3, 2010

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

1:00 p.m. or Immediately Following Session. **EXECUTIVE SESSION ON PENDING LEGISLATION**

THURSDAY, MARCH 4, 2010

COMMERCE, LABOR AND CONSUMER PROTECTION, Room 102, LOB

1:30 p.m. **SB 314**, relative to the investment of public funds.

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

8:50 a.m. **SB 317**, relative to the standard for zoning variances.

9:00 a.m. **SB 430**, relative to grading and improving subdivision streets.

9:30 a.m. **SB 487-L**, relative to charter limitations on the growth of budgets and taxes and to the validity of certain city and town charter provisions.

9:45 a.m. **SB 488**, relative to the adoption of local spending caps. **EXECUTIVE SESSION MAY FOLLOW**

THURSDAY, MARCH 11, 2010

ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT, Room 102, LOB

9:00 a.m. **SB 301**, relative to combustion of untreated wood at municipal transfer stations.

9:30 a.m. **SB 370**, relative to sewage disposal systems. **EXECUTIVE SESSION MAY FOLLOW**

PUBLIC AND MUNICIPAL AFFAIRS, Room 103, LOB

8:30 a.m. **SB 328**, relative to approval procedures on plats.

*There are no new **House** or **Senate Bills** to report this week.*

Correction

HB 1515 has not been passed by the House, as previously reported in the February 19 issue of the *Bulletin*. It has a committee recommendation of Ought to Pass and is on the House calendar for Floor Action on March 3.

Looking for a Few Good Ideas

NHMA's 2011 - 2012 Legislative Policy Process



In April 2010 the New Hampshire Municipal Association (NHMA) will begin its Legislative Policy Process for the 2011-2012 biennium. While it is difficult to focus on dates seemingly so far away, now is the time to think of things about your municipal responsibilities that might work better with a legislative change. Consider questions such as these: Could you do your job better if a statute were changed? Have you received citizen complaints that you couldn't address because you needed legislative authorization? Are there out-dated provisions in the laws that need to be modernized or streamlined? Please let us know!

The members of the Committee on Government Affairs (CGA), including the Municipal Advocacy Committee (MAC), guide NHMA's legislative policy development and advocacy efforts. The CGA will hold its Legislative Policy Process organizational meeting on Friday, April 16, 2010. The CGA will divide into three policy committees dealing with: (a) municipal administration issues; (b) general government and revenue issues; and (c) environment and planning issues. Within those committees, CGA members will review policy proposals they have suggested, as well as those submitted by other municipal officials, and formulate policy recommendations for consideration at the NHMA Legislative Policy Conference to be held on September 17, 2010.

If you have policy suggestions, it is not too early to send them in. Policy proposals may be submitted by a board or a local official from a member municipality. A policy proposal form should accompany each proposed legislative policy. It should include a brief (one or two sentence) policy statement, a statement about the municipal interest served by the proposal, and an explanation that describes the nature of the problem or concern from a municipal perspective and discusses the proposed action that is being advocated to address the problem.

To submit a legislative policy proposal, download the [NHMA legislative policy proposal form](#) (PDF) and submit it to governmentaffairs@nhlgc.org. Alternatively, contact the Government Affairs department to request a printed policy proposal form by calling 800.852.3358 ext. 384. Paper forms may be mailed or faxed to:

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Due Date: May 3, 2010