



New Hampshire Democratic House Notes



Volume 18, Issue 9

February 24, 2017

The New Hampshire House Democratic Caucus Legislative Newsletter

Public Hearing Alert

Wednesday, March 1

Labor – LOB Rooms 305-307

10:00 a.m. [HB 438](#), eliminating the automatic union dues payment for state employees.

*Please see detailed information regarding HB 438 on [pages 8-9](#) of this newsletter

REMINDER - Absences in Committee

If you are going to be absent from your committee, please notify your committee's Ranking Democrat and the House Democratic Office (271-2136). A temporary replacement (if eligible and needed) can only be obtained through this notification process.

PROFESSIONAL CONDUCT

All elected members shall maintain professional conduct while serving as state legislators. Members should at all times conduct themselves in a way that exhibits the utmost respect for their elected office, their constituents and the people of the State of New Hampshire. Members must recognize that they are under public scrutiny at all times. State law, and House and Senate policies, prohibit sexual harassment and other discriminatory behavior. Members should respect these guidelines and at all times display appropriate behavior toward the public, each other, and staff.

SOURCE: *New Hampshire General Court Legislative Handbook*

Fighting for Families

Week of Action Press Conference

Tuesday, February 28

9:30 a.m.

LOB Lobby

Democratic House members are encouraged to join House Democratic Leader Steve Shurtleff for the "Fighting for Families" Week of Action press conference

NOTICES OF RECONSIDERATION

NOTE: Notices of reconsideration served after the conclusion of session may be taken up at any point the following session day.

On February 16, 2017 at 4:05 p.m., Representative John Sytek, having voted with the prevailing side, served notice of reconsideration on the motion of *Inexpedient to Legislate* on *HCR 4, urging Congress to propose the Regulation Freedom amendment to the United States Constitution*, which the House passed on a voice vote.

On February 16, 2017 at 10:28 p.m., Representative Jody McNally, having voted with the prevailing side, served notice of reconsideration on the motion of *Inexpedient to Legislate* on *HB 365-FN, relative to awarding attorney's fees under the right-to-know law*, which the House passed on a roll call vote of 207-166.

LIKELY HOUSE SESSION DAYS

Wednesday, March 8 and Thursday, March 9

Plan on a Democratic Caucus before session both days

Using Bookmarks

Just like using bookmarks in a book, setting bookmarks on your computer or tablet will save you a lot of time finding the information you use the most. Here is the list of bookmarks I use:

House Home Page—my starting point for everything: <http://www.gencourt.state.nh.us/house/default.aspx> If you prefer, you can use the General Court home page—in any case, if you have one, the other is only one click away. <http://www.gencourt.state.nh.us>

Committee page for the two committees on which I serve—yours will vary: <http://www.gencourt.state.nh.us/house/committees/committeedetails.aspx?code=H37> Or use the page listing of all the Standing Committees as your bookmark: <http://www.gencourt.state.nh.us/house/committees/standingcommittees.aspx>

House Calendar and Journal page:

<http://www.gencourt.state.nh.us/house/caljournals/default.htm>

House Rules: <http://www.gencourt.state.nh.us/house/abouthouse/houserules.htm>

NH Constitution: <https://www.nh.gov/constitution/constitution.html>

NH Revised Statutes Annotated (RSAs) When you read a bill, use the Browse function on this page to find the statute as it is now written. This will help a lot with what is being changed in the bill, and what is staying the same.

<http://www.gencourt.state.nh.us/rsa/html/indexes/>

NH Secretary of State (access to election results, lists of lobbyists, more)

<http://sos.nh.gov>

Legislative Budget Assistant (only because I sit on a joint committee that deals with performance audits. The audit reports make interesting reading.)

<http://www.gencourt.state.nh.us/LBA/>

If you have not yet explored these sites, follow the links and take a look. Then pick out the sites that work the best for you. If you don't know how to set a bookmark, ask me or ask Dan Mason, and we may be able to help. If not, any 12 year old will be able to get you started.

Lucy Weber

Submissions to House Notes are encouraged! Please send to:

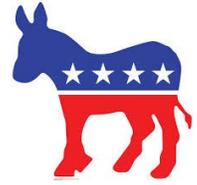
Eileen Kelly - Eileen.kelly@leg.state.nh.us

or

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Decisions In Concord Can Impact Your Property Taxes

By Rep. Peter Bixby

This op-ed was published in Fosters Daily Democrat on Tuesday, February 21.

Compared to that of many states, the overall tax burden in New Hampshire is fairly low, but it sure doesn't feel that way when our property tax bills arrive, or when our landlords raise the rent to cover their property taxes. New Hampshire is unusual in that we use property tax to fund a huge portion of state and local expenses. Almost two thirds of the revenue for these expenses is raised through property tax. This is the trade-off for not having sales and earned-income taxes. Unfortunately, the property tax burden hits lower income families harder, with the bottom quartile paying about 8% of income for it, while top quartile families pay about 2% of income.

While business taxes, rooms-and-meals tax, liquor sales, and a host of other small, obscure taxes and fees generate some revenue for the state, a lot of our expenses, especially for education and health-and-human services, are paid by pass-throughs from the Federal government. In previous decades, the state helped ease the burden on towns by providing school building aid, municipal infrastructure aid, and paying part of the retirement contributions for town and city workers. With the Great Recession, much of this aid disappeared, shifting these cost onto local property tax bills. The state also used to pay a substantial portion of the Medicaid costs for county elder care. Much of this was shifted to the counties, which are funded by the towns and cities with, you guessed it, property taxes. The choices to shift these costs were made by the legislature over the last several years, often by Republicans who claimed they were saving the state money.

Several bills we voted on last week are connected to this issue. On the bright side, HB 413, if it makes it through the full legislative process, will cover 15% of town's and city's retirement contributions. The policy aspect of it passed the House with strong bipartisan support; now it needs to go to the Finance Committee, which needs to figure out where the money will come from. HB 644 could have provided a source by closing the capital gains loophole in the unearned income tax. This loophole benefits only those in the top income bracket. When the Republicans voted this down, they rejected one approach to real property tax relief.

One bill supported by Republican leadership could have created significant new costs for municipalities, even though it didn't look like a money bill. HB 365 would have made a change in Right-to-Know law. Currently, a judge can award attorney's fees to the plaintiff if she or he finds that the town or city knowingly failed to follow Right-to-Know laws. This bill would have made the award of attorney's fees for a successful suit automatic, even if the cause was an unwitting error on the part of a city or town employee or volunteer who was not fully versed in the eighty-some pages of law that govern these requests. This change would have encouraged lawsuits instead of simple negotiations to the correct the error, and could have created costly liabilities for our communities. Fortunately, the Democratic minority and a few pragmatic Republicans defeated this bill.

I hope this column has helped provide some understanding of how state and local tax policy and finances work, but I would guess that much of how the state raises money probably seems anything but transparent. You are not alone. Even most legislators struggle with the complexities of our revenue structure. In fact, one reason our finances have developed this way is to make it seem like our state has almost no taxes. When you start poking into the details, questions arise, like "Does relying so heavily on business taxes decrease wages?" "Does our dependence on property taxes discourage small business start-ups, or keep much-needed young workers from settling here?" These, and many other questions will be addressed by a commission to study the state tax structure, as long as the Senate and Governor concur with the House, which, on a voice vote, passed HB 489 to set up that commission. Its findings could provide us with the tools to create a clearer, fairer tax structure for the New Hampshire.

Campaign Finance Disclosure is Consistent with NH Values

By Rep. Marjorie Smith

New Hampshire has consistently allowed for flexibility in campaign financing, depending upon disclosure to keep the electorate informed of who was investing in our elections.

HB 533 modifies the definition "political advocacy organization" for purposes of the political expenditures and contributions laws. This bill closes a loophole in disclosure requirements but in no way interferes with otherwise permitted expenditures. In the same week that the house Election Law Committee chose to retain this bill, the senate passed SB33, the identical twin of HB 533.

These bills in no way limit spending. What they aim to accomplish, consistent with New Hampshire law and practice, is to require disclosure.

The leading opponent of this bill tried to assert that a court decision, issued three years before the Citizens United decision that changed many of the ground rules about campaign financing made was relevant to HB 533 and SB 33.

The Wisconsin Right to Life (WRTL) case was interesting but irrelevant to HB 533 because it did not address in any way the disclosure law. It did narrow the ban on corporate spending, but that narrowing is now meaningless since the ban was completely eliminated by Citizens United. Attempts have been made in the last ten years to conflate spending and disclosure and those attempts have been dismissed by the courts.

But don't take my word for it. Following are excerpts of the Brennan Center for Justice analysis.

In WRTL, the Court addressed only Section 203 of the Bipartisan Campaign Reform Act, which "ma[de] it a federal crime for any corporation to broadcast, shortly before an election, any communication that names a federal candidate for elected office and is targeted to the electorate." It held that because the ban infringed on the freedom of speech, it could only be applied to ads that contained "express advocacy or its functional equivalent."

WRTL narrowed only the corporate spending ban; it did not address the separate law requiring disclosure of the funding behind ads aired shortly before the election. The word "disclosure" does not appear in either of the two opinions that formed the Court's majority.

Three years after WRTL was decided, Citizens United upheld the federal disclosure and disclaimer laws that require transparency of funding sources for ads that mention a candidate shortly before elections, and specifically rejected the plaintiff's attempts to use WRTL to support its disclosure argument.

The Court of Appeals for the First Circuit, other courts, and scholars have recognized that it is improper to use WRTL as the basis for arguing that disclosure requirements are unconstitutional, and that Citizens United upheld disclosure requirements:

WRTL was completely superseded by Citizens United that made clear the difference between spending bans and disclosure.

These bills before the New Hampshire legislature do not limit spending, but do require disclosure so that New Hampshire voters can know who is financing the campaigns of our elected officials.

Could it be that the reason for retaining HB 533 is that the house committee would rather support a senate bill where the prime sponsor is a Republican, than the identical house bill where the prime sponsor is a Democrat? I hope I am wrong.

Messmer's Water Protection Bills Gain Support

By Jeff McMenemy, Seacoastonline.com
Wednesday, February 22, 2017

CONCORD — The New Hampshire House's Resources, Recreation and Development Committee voted overwhelmingly Wednesday to support two key water protection bills drafted by state Rep. Mindi Messmer, D-Rye. The committee voted 18-1 to support House Bill 485 and 19-0 to pass HB431, Messmer said.

The House Health and Human Services Committee was scheduled to take a key vote on a bill aimed at establishing a commission to study the Seacoast Pediatric Cancer Cluster, but that vote got pushed back to next Tuesday, Feb. 28 at 9 a.m., Messmer said.

Messmer has often described HB485 as her "most important bill" because it gives state health officials a way to set more protective health advisories on emerging contaminants than the Environmental Protection Agency does. The bill, which has strong bipartisan support, seeks to require the state "Department of Environmental Services to use exposure scenarios in children and other vulnerable populations to determine criteria for emerging contaminants in drinking water," according to the bill's text.

"This is huge, it gives the state a method to come up with more stringent standards to protect our children," Messmer said.

Messmer, who co-chairs a subcommittee of the state task force studying the Seacoast Pediatric Cancer Cluster, has been calling on state officials to lower their advisory for PFCs.

The city of Portsmouth closed Haven well in May 2014 after the Air Force found levels of perfluorooctane sulfonic acid, or PFOS, 12.5 times higher than what was then the EPA's provisional health advisory. The EPA has since dramatically lowered its lifetime health advisory to 70 parts per trillion, but many area activists say it is still too high.

The EPA classified PFOS and perfluorooctanoic acid, or PFOA, as "contaminants of emerging concern" because of their potential harm to humans. HB431 calls for "establishing a commission to study long-term goals and requirements for drinking water in the Seacoast area," according to the text of the bill.

"It's a way to look at mutual aid between towns on water needs and planning to protect our drinking water," Messmer said. She expects the entire House to vote on the bills during the first week of March.

The Health and Human Services Committee delayed its vote on HB484, which calls for "establishing a commission on the Seacoast (pediatric) cancer cluster investigation." Messmer said she is optimistic about the bill's chance because a subcommittee of HHS voted unanimously Wednesday morning to pass the bill.

Then-Gov. Maggie Hassan formed the task force on the Seacoast Pediatric Cancer Cluster in 2016 after state officials determined there was a small cancer cluster of rhabdomyosarcoma or RMS, which several area children have died from. While looking at the RMS cases, the state also identified "a small excess of pediatric lung cancer cases," all of which "were of a single rare type called pleuropulmonary blastoma (PPB)."

Several area parents believe the cancers could have been triggered by environmental factors. Residents and task-force officials have worried that the task force might not continue, but HB484 would create a commission to continue studying the pediatric cancer cluster.

Messmer said Gov. Chris Sununu has committed to continuing the work of the task force that was started by Hassan, but he could decide to end it if he wanted.

"If the bill doesn't pass and the task force ended they'd be no definitive pathway to addressing the issues in the cancer cluster," Messmer said. "One thing that keeps things going is the media attention on the regulators." Messmer credited "last-minute phone calls" made by area activists to committee members in helping to solidify support for the bills.

'Green' Cars Must Pay for Roads, Too

Rep. Susan Almy

This op-ed was printed in the Valley News on Tuesday, February 21, 2017

The road usage fee proposed in HB621 is not to “target” fuel-efficient cars in New Hampshire. It is to ensure that, as we transition to an energy-efficient driving future, all cars on our roads pay something near their share of the cost of maintaining them. Without this, we will have to develop hover cars, or retreat to horse and buggy. The current situation is unsustainable, and the New Hampshire Public Works and Ways and Means committees have been struggling with what to do for 15 years. Fuel-efficiency is one thing. Maintaining the roads we drive on is another.

We have done temporary fixes for a decade: \$35 registration surcharge, federal stimulus money, and sale of an orphaned part of the freeway to the turnpike system. We are out of one-time fixes, and for many years have been failing to meet repaving schedules, condemning lesser state roads to having potholes filled. The state money we raise is multiplied nine times for interstates by the feds, and there’s a lesser match for regional corridors, so they get priority.

When we transfer any money from the general fund for roads it comes out of alternatives such as Meals on Wheels, opioid treatment and prevention, undermanned prisons and other underfunded essentials.

A major problem caused by poorly maintained roads is the increasing impact on our working poor — the Wal-Mart clerk, the housecleaner, perhaps your snowplower, and many other people without whom you cannot maintain your lifestyle. Many low-wage workers have to live 15-40 miles away from their jobs to find affordable housing. They cannot afford the cost of new vehicles, so they buy the old gas-guzzlers. They struggle to find cash to pay high car repair bills, especially when they live on roads that have dropped from the maintenance list. And they pay a lot more gas tax than the rest of us.

In 1923, the New Hampshire road toll was enacted to pay for building and maintaining the public highways of the state. A 1938 constitutional amendment created the highway fund, protecting all revenues derived from highways from use for any other purpose — and specifically including “the supervision of traffic thereon,” clearly meant in the debates of the time as enforcement of motor vehicle laws. The protected revenues are primarily gas tax (now 52 percent) and vehicle registrations (32 percent). The cost of registration is based on weight, with surcharges for semi-trailers. A Tesla weighs 4,650 pounds, a Prius 3,040, a Hummer 6,600.

This year, to make the budgeted \$124 million in

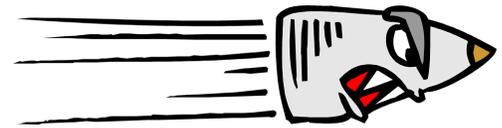
gas tax, New Hampshire businesses would have to sell 560 million gallons of gas. From 1991 to 2014, the average fuel economy of cars and light trucks grew from 19.5 mpg to 21.4, but for new cars it grew from 28.4 mpg to 36.4. There are a lot of older cars on the road, and except for antiques, they are mostly owned by people who can’t afford something better. Because we depend on a gas-based tax, we are making them pay more to maintain our roads and bridges than wealthier drivers do.

Alternatives to the gas tax are 1.) an income or sales tax; 2.) a carbon tax; 3.) increasing vehicle registration fees based on weight, 4.) a yearly fee at registration time based on odometer readings, and 5.) the proposed road usage fee. The first is politically impossible (and would be needed for other state services). The second must include a rebate to consumers to alleviate catastrophic effects on businesses and the poor, and would net little for the highways. The third loses to the trucking lobby, whose argument is based on the resulting price increases on almost all our food and other purchases that are trucked in. The fourth has encountered major opposition nationwide from drivers who regularly travel outside their state to shop, work and visit; they insist on paying only for travel within their home state. Large trucks have a cumbersome system that divvies up fuel tax miles from travel across the country: the only way to extend it to all drivers is to install a GPS reporting system in every vehicle, a major privacy issue.

So here’s the road usage fee proposal: The average New Hampshire car travels 12,500 miles per year. The average New Hampshire passenger car gets 22.5 mpg, and thus pays \$123.33 in gas tax. Using EPA standards for every model year and model, any car rated at 22.5 mpg or less (adjusted for age) would pay no usage fee. At annual registration, any car rated over that would pay a sliding fee from \$7.70-\$123.33, to match the baseline car’s contribution. An all-electric Tesla pays \$123.33. The new 43 mpg-rated car pays \$58.80, a fee that declines with age. The 33 mpg-rated car pays \$39.24, and the 23 mpg car \$7.70. Each of these cars is presumed to pay the rest of its share of the common burden of road maintenance through the gas tax. Trying to evaluate the particular circumstances of every driver and car would be exorbitantly expensive and invasive.

The bill was tabled to allow it to come back in final shape next year. The bottom line is that we need a system to get us to the new world of efficient cars without destroying the roads they have to drive on.

Faster than a Speeding Bullet



To The Editor:

Faster than a speeding bullet was the rite of passage for SB 12 that ends licensing requirements for carrying a concealed pistol or revolver. The gun bill is now on the final glide path for Governor Sununu signature.

Children and violent criminals will now be allowed to carry concealed weapons and get permits that would allow them to carry concealed in other states. Unlike every other constitutional carry state, New Hampshire has no law stating the minimum age to "Possess" a firearm, prohibits verifying the person by fingerprints, and allows carrying on school property. Convictions for violent misdemeanor level crimes like sexual assault will not be a reason to deny a license or concealed carry according to Chief Andrew Shagoury, First Vice President of the NH Association of Chiefs of Police.

The vote in Criminal Justice and Public Safety Committee was 12 for and 8 against. The Democrats asked for a continuance to study exhibit submissions and revisit their notes of testimony as has been the practice during all my years of previous experience assigned to this committee before a bill is voted on and sent to the House floor.

What cause all of this haste and I'm including the Senate? I am thinking the Governor's personal burr to make it happen, the NRA, ALEC moneyed recipients, the fear of being targeted like Representative Susan Emerson of Rindge and or a preexisting condition of lead poisoning.

A poll by Survey USA recently confirmed 80% of Granite Stators strongly support our 94-year requirement which allows concealed weapons to be kept from individuals that should not have them, including those with dementia or alcoholism.

Traditionally, Senate bills have only been taken up prior to House bills in the most urgent situations. The fact the Republicans would rush legislation which is opposed by the majority of NH voters' shows their priorities are with their party and not the people they represent.

Typically mid-term presidential elections result in voters selecting those in an affiliated party not in the White House. I don't believe the Governor has an abundance of political capitol to continue on this Governor Benson path who served one term. Sununu could support my revised reintroduction of prohibiting open carry in all public buildings, fully fund kindergarten and fund Medicaid at current levels while vetoing SB 12. Even doing this and more may not be enough given the dance on shaky ground unfolding every day in Washington DC.

Rep. Delmar D. Burrige

Town Meeting Day

Tuesday, March 14

No Legislative Activity

Paycheck Deduction and Union Dues: What you should know before voting on HB 438

HB 438 is government intrusion, pure and simple. It's an attack on employees' democratic freedoms and constitutional rights that every New Hampshire legislator should oppose.

- **Paycheck deduction is a longstanding tradition allowed by New Hampshire law.** Currently, New Hampshire law allows an employee to give written authorization to his or her employer to voluntarily deduct union dues from his or her paycheck—along with other recurring expenses such as health, welfare, pension, and apprenticeship fund contributions, housing and utilities, and contributions to charities.
- **Paycheck deduction isn't forced on employers—it's always been negotiated between the employer and the employees.** Public employee unions bargain payroll deduction into their contracts. In the negotiation process, unions balance gaining the ability to collect membership dues and agency fee via payroll deduction against other wages, hours, and working conditions issues that the union's members believe are important.
- **Paycheck deduction isn't forced on employees either.** The fact is, no paycheck deductions take place until unionized workers take at least two affirmative steps: First, collectively negotiating the right to use deductions, and second, individually authorizing them. Moreover, public employers must agree in order for unions to be able to collect dues via payroll deduction.
- **HB 438 does not create any new rights for employees to control their paychecks.** Union members already have numerous rights regarding how their money is spent. Union members already choose whether to join the union. They already set their own dues. They already elect their own leaders and vote on how and where their money will be spent. Nonmembers pay a fee to cover the union's representation (since they benefit from the union contract and union wages and benefits), but they are not required to pay for non-chargeable expenses such as external organizing, member-only activities, and legislative work not related to collective bargaining.
- **HB 438 won't save the employer any significant money.** Instead, this bill bans a process that puts minimal administrative burdens on the employer. The time and resources that the employer requires to process payroll deductions is minimal—so much so that other states that have proposed this legislation have found that no money is saved by getting rid of the process. With so many other corporations and organizations utilizing paycheck deductions in New Hampshire, we could expect the same failure to realize any significant savings here. The supporters of bills such as HB 438 conveniently do not discuss these facts, leaving their true agenda in question. Current law and procedure already protects employees and does not place a significant burden on the employer. This bill does nothing but create unnecessary barriers to the ability of organized workers to have a voice in the workplace.
- **This unnecessary and costly ban unfairly singles out public sector unions.** Payroll deductions are something that insurance companies, charities, and credit unions all do and will be allowed to keep doing. For example, the United Way often partners with employers to solicit donations at the workplace and use payroll deduction to collect donations. Workplace solicitation for United Way is often performed by an employee's supervisor, a situation with far more potential for coercion than an individual's co-worker asking them to join the union. While the United Way is a good cause (and one that our national union, the AFT, has always supported), it does not make sense that employees can be solicited in the workplace to give to a charity with payroll deduction, but cannot make the conscious and convenient choice to assign funds to a union.

- **HB 438 potentially infringes on union members' free speech and associational rights—basic democratic rights protected by the Constitution.** This bill not only limits the freedom of unions and employers as institutions to freely agree to allow employees to participate in voluntary payroll deductions; it also raises serious concerns about the infringement of the individual right of assembly (the democratic right as Americans to decide what organizations to belong to and support) and freedom of speech (the First Amendment right to express our viewpoint, in this case through our paycheck contributions).
- **This bill amounts to a regulation of speech that raises serious issues of whether the New Hampshire legislature is prepared to violate Granite Staters' constitutional rights:**
 - **HB 438 regulates speech based on the speech's subject matter and the viewpoint of the speaker:** Under HB 438, an employee cannot freely voice his or her choice to participate in his or her union, whereas voicing support for other groups through paycheck deduction will continue to be allowed. For example, employees expressing support for their union is disallowed under HB 438, but employees expressing support for United Way is allowed.
 - **HB 438 infringes on free speech based on who the speaker is:** In other words, a public worker is not allowed to show support for belonging to a union under this bill, while a private worker can.
 - ***Americans' right to be free from this sort of regulation of speech is afforded the highest degree of protection under the First Amendment, and that consideration should be carefully looked at by legislators seeking to enact restrictions on free speech targeting public sector unions.***
- **HB 438 is a partisan, one-sided attack on the ability of workers to stand together to obtain middle-class dignity and benefits in the workplace.** It would deny unions, and only unions, the right to speak out on issues vital to working families without first jumping through contrived hoops aimed at weakening their voice. It would deny New Hampshire workers the power to decide how to spend their own paychecks—and what groups or causes to support with their paychecks.

HB 438 uses government intrusion to fix a non-problem. The existing payroll-deduction system is working just fine. It's a highly efficient system that works well. While there is no "up side" to HB 438, there is a troubling "down side."

This bill denies Granite Staters the freedom to use payroll deductions to pay voluntary membership dues to organizations they have chosen to join. It is discriminatory, and a barefaced attempt to weaken the voice of working people: on the job, in our hometowns—and in Concord.

This bill is about basic democratic freedoms and the fight against intrusive government control—two values that New Hampshire has always held dear. It violates the democratic principles and constitutional protections every legislator is sworn to uphold. We urge you to vote AGAINST HB 438. It's unnecessary, it's un-American, and it's not the New Hampshire way.



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