

## House/Senate Calendar March 5, 2018

### **TUESDAY, MARCH 6**

SENATE EDUCATION, Room 103, LOB Sen. Reagan (C), Sen. Giuda (VC), Sen. Ward, Sen. Watters, Sen. Kahn

9:00 a.m. HB 1370, relative to a school's emergency management plan.

### **HOUSE SESSION**

### **TUESDAY, MARCH 6**

CONSENT CALENDAR

#### COMMERCE AND CONSUMER AFFAIRS

HB 1214, prohibiting the sale of certain furniture with flame retardant chemicals. REFER FOR INTERIM STUDY. Rep. John Hunt for Commerce and Consumer Affairs. This bill seeks to ban all flame retardant chemicals in new residential upholstered furniture. The bill, however, includes an exemption from the ban for any flame retardants used in upholstered furniture in public facilities. Flame retardants have been used in upholstered furniture and other consumer products to decrease the ability of the material to ignite, however there have been concerns about long term health issues. The committee believes that while the issue of the health affects of certain chemicals on the public and our firefighters is important to address, there is a need for additional study to determine the practical effect on consumers, retailers, wholesalers and manufacturers in our state. The state of Maine is the only state in the country that has passed a similar law, but it has not yet gone into effect. There are also proceedings at the national level, by the US Environmental Protection Agency, the Consumer Product Safety Commission and the National Fire Protection Association related to both the federal regulation of chemical flame retardants and a national furniture flammability standard. We believe additional study at this time is appropriate to review the experience in Maine and monitor the proceedings at the federal level to determine any future New Hampshire action. Vote 20-0.

HB 1635, allowing a license for short-term rentals. REFER FOR INTERIM STUDY. Rep. Edward Butler for Commerce and Consumer Affairs. This is enabling legislation that would allow towns and municipalities to license short-term rental properties. Licensing is a solution that some states and municipalities have used to allow localities to control the character of their residential neighborhoods. The committee agreed that this concept should be considered further. Vote 17-3.

HB 1782-FN, relative to insurance payments for ambulance providers. OUGHT TO PASS WITH AMENDMENT. Rep. David Luneau for Commerce and Consumer Affairs. The committee heard testimony that municipal and private ambulance providers have difficulty in recovering payment from insurance carriers, and that patients receive bills from ambulance providers for costs that are not reimbursed by insurance. This bill, with the amendment, establishes a committee to study insurance payments to ambulance providers and balance billing to patients by ambulance providers. Vote 17-3.

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 1206, relative to bonds for civil officers. INEXPEDIENT TO LEGISLATE. Rep. Kristina Schultz for Executive Departments and Administration. This bill would replace the term "employee" with "civil

officer” in the statutes on government employee bonding. The committee was not convinced the change was either necessary or desirable. Vote 17-0.

HB 1207, relative to public filing of bonds for public employees. INEXPEDIENT TO LEGISLATE. Rep. Mark Proulx for Executive Departments and Administration. The committee did not endorse this bill because, as much as we want protection for our citizens, this bill does not meet that intent. We heard from a bonding company that a bond would not provide the services the sponsor is looking for, namely, indemnification for misdeeds or failure to perform duties of government officials. Vote 13-1.

HB 1208, relative to the wording for oath of office for public office. INEXPEDIENT TO LEGISLATE. Rep. Peter Schmidt for Executive Departments and Administration. This bill seeks to modernize the wording of the oath of office by replacing the words “make and subscribe” with the words “say and write”. The committee rejects the proposed change as faulty. Vote 13-1.

HB 1254, establishing a committee to study the procedures for adoption of national codes by the state of New Hampshire. OUGHT TO PASS. Rep. Steven Beaudoin for Executive Departments and Administration. This bill will create a study committee with the intent of determining a better process for adoption of our state building, residential, electrical, plumbing, mechanical, energy conservation, and life and fire safety fire codes. While considering the adoption of new codes last summer, it became apparent to a House ED&A subcommittee that there was a lack of information being presented to properly assess whether the new codes were needed and cost effective. It is the hope of ED&A that this study committee will be able to propose new guidelines for our agencies to follow when we are being asked to adopt new codes. Vote 14-0.

HB 1255, relative to the state fire code. INEXPEDIENT TO LEGISLATE. Rep. Mark Proulx for Executive Departments and Administration. This bill would revise the state fire code by reverting from the 2015 edition of the Life Safety Code to 2009 edition. The committee heard that the 2015 version is more flexible than the 2009, and for assisted living facilities in particular it is strongly preferred by the State Fire Marshal, nursing home administrators, and advocates for the elderly. The committee unanimously opposes this change. The non-germane amendment to this bill was a recommendation from the governor’s commission on regulatory reform, which attempted to fix a problem with the fire safety inspection for foster homes. The problem presented could more appropriately be fixed by staff from DHHS sitting down with staff from the State Fire Marshal’s Office and clarifying what they’re looking for specifically when new foster homes are inspected for safety. Without that guidance, different fire services interpret the codes differently. In particular, they need clarification on whether the existing buildings code or the new construction code should apply. The amendment also was intended to fix conflicts in fire codes and building codes when local communities try to change them, but did not achieve that goal. Perhaps a better solution is a bill to remove local options on all building and fire codes. The committee agreed that the amendment should not be adopted. Vote 17-1.

HB 1327, relative to apprentice electricians. OUGHT TO PASS WITH AMENDMENT. Rep. Peter Hansen for Executive Departments and Administration. This bill, as amended, increases the number of apprentice electricians allowed to work under supervision of journeymen and master electricians. The committee was satisfied that this change was prudent and fulfilled its expectations for continued professional and safe electrical services. Vote 17-1.

HB 1421-FN, relative to regulations for event tents. OUGHT TO PASS WITH AMENDMENT. Rep. Carol Roberts for Executive Departments and Administration. This bill, as amended, provides that event tents located on public property comply with the state building code and the state fire code. No permit is needed for event tents of any size erected as an accessory structure on property that is an owner-occupied, one or 2 family dwelling. The business community described the need for the latter provision as town to town regulations were confusing to the occasional consumer and urged the committee to address the issue. The original intent of the bill was to exempt private property completely from permit

requirements but the bill as introduced did not define any limits. With the committee amendment, this bill provides a reasonable solution within the parameters of the original intent of the bill. Vote 18-0.

HB 1603, relative to employee representation on the independent investment committee in the New Hampshire retirement system. OUGHT TO PASS WITH AMENDMENT. Rep. John Sytek for Executive Departments and Administration. The independent investment committee of the NH Retirement System (NHRS) oversees the investment activities of the NHRS. The Governor appoints 3 of the 5 members and the Chairman of the Board of Trustees appoints the other two. The Governor's appointments may not be trustees. This bill would require that one of the Governor's appointments be an active member of the NHRS. The committee heard testimony that several other states have employee representatives on their comparable boards. The bill also includes a list of public employee associations which would nominate members from whom the Governor may select his appointee. The amendment adds the AFL/CIO to this list which had been inadvertently omitted. Vote 19-0.

HB 1670-FN, relative to bonds for public employees. INEXPEDIENT TO LEGISLATE. Rep. Carol McGuire for Executive Departments and Administration. This bill would require that bonds for public employees be available to citizens aggrieved by their actions. It further provides that the bond company would investigate, pay the complainant, and then take the guilty party to court to recoup their costs. The bond industry testified that the bonds the state and municipalities purchase are not intended for this process, and a bond to do as the sponsor wanted, if available, would be extremely costly. Vote 18-0.

HB 1684, relative to criminal background checks for emergency medical services license applicants. OUGHT TO PASS. Rep. Mark Proulx for Executive Departments and Administration. This bill helps to streamline the background check process for the emergency medical services licenses by allowing law enforcement officers whose current position requires a criminal background check to avoid a second check. This is particularly important since we added a new license to administer Narcan, which is sought by police officers. Vote 17-0.

HB 1759-FN, regulating the use of drones. INEXPEDIENT TO LEGISLATE. Rep. J.R. Hoell for Executive Departments and Administration. The intent of this bill was to create a new chapter to regulate the use of drones by the government and private citizens. The committee supports this intent, but after reviewing the text, we found many details that needed to be cleaned up. There is no declaration that evidence obtained by surveillance without a warrant is not admissible in court. There is a requirement for reporting the use of a drone to the Attorney General within 5 days of the initiation of use that is too cumbersome and excessive. The restrictions regarding use of drones by nongovernmental entities restricted the use of drones to use as surveillance mechanisms for the protection of private property. The bill needs additional work and with the current workload of the committee and the lack of time before the reporting deadline, it was deemed too incomplete to correct in time. Vote 17-0.

HB 1767-FN, establishing a multiple employer public retirement plan. REFER FOR INTERIM STUDY. Rep. Dianne Schuett for Executive Departments and Administration. This bill proposes that the state develop and implement a retirement plan for employees who are not provided one by their employers. Recognizing the number of constituents who do not plan for their retirement, the committee found the idea intriguing but voted to await information about 4 other states who are currently exploring this issue. There were also concerns about how the funding should be amassed and how best to safeguard those funds. The vote to study this idea was unanimous. Vote 19-0.

HB 1805, establishing a committee to study level dollar amortization of retirement system unfunded accrued liability. OUGHT TO PASS WITH AMENDMENT. Rep. John Sytek for Executive Departments and Administration. This bill sets up a committee to study "level dollar amortization" of the NH Retirement System (NHRS) unfunded accrued actuarial liability. The present amortization system is based on payments which are a percentage of payroll, rather than a fixed dollar amount. The proposed committee would study the advantages and disadvantages of each method. This bill is a request of the

Decennial Retirement Commission. The non-germane amendment changes the term of the trustees of the NHRS Board from 2 years to 3 years. Vote 15-0.

#### MUNICIPAL AND COUNTY GOVERNMENT

HB 1318, relative to permits required for certain fires. INEXPEDIENT TO LEGISLATE. Rep. Jane Beaulieu for Municipal and County Government. This bill would have eliminated the requirement to obtain a burning permit for fires under specific sizes. This would have placed an undue burden on firefighters and fire tower watchers who spotted smoke. It would also have allowed fires in wooded areas without the knowledge of the local fire department. The committee believes the current statute is not unreasonable. Several NH Fire Safety officials who testified were very concerned with the intent of the bill. Applying for and receiving a permit to burn is merely a safety measure protecting the owners of the property and neighboring properties from uncontrolled fires. Vote 17-2.

#### TRANSPORTATION

HB 1339, relative to motorist duties when approaching highway emergencies. INEXPEDIENT TO LEGISLATE. Rep. Thomas Walsh for Transportation. This bill sets a mandatory 20 MPH speed reduction by motorists when approaching emergency vehicles. The Department of Safety testified that the Move Over Law that passed a few years ago is working well and this law was not needed and would be difficult to enforce. Vote 15-0.

#### REGULAR CALENDAR - PART TWO

##### CRIMINAL JUSTICE AND PUBLIC SAFETY

HB 1752-FN, requiring a search warrant to obtain blood samples. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS. Rep. Kate Murray for the Majority of Criminal Justice and Public Safety. This bill requires a search warrant to obtain blood samples. Currently, an individual can refuse to allow a blood sample to be given to law enforcement. In the event the individual is not conscious, the blood sample will be taken. During the court proceedings, a subpoena can be issued to obtain the blood sample. Therefore, there is no need for a search warrant. Vote 14-5. Rep. John Burt for the Minority of Criminal Justice and Public Safety. The minority of the committee recommends this bill be ought to pass. This bill would ensure patient confidentiality of their medical records unless the police obtain a warrant for blood or blood results after showing probable cause to a judge. Under present law, police can obtain hospital records just by telling the hospital they are investigating a DWI charge. They need not even have arrested the person or have probable cause. This bill is partly in response to the recent publicized case of a nurse in Utah who was falsely arrested and eventually awarded \$500,000 for refusing to give the police blood or hospital records of a patient. When patients are forced to turn over medical records, they are deprived of their right from unlawful search and seizure of sensitive private medical records. Being forced to give evidence to the police to prosecute also violates someone's right against self-incrimination. Finally, when someone knows the evidence will be turned over to the police, they might be less inclined to go to the hospital or even consent to medical treatment which could save their life out of fear that they will be charged with a crime. Under the implied consent statute in New Hampshire, drivers have a legal right to refuse to provide a blood draw to police after they are arrested for DWI. There should not be an exception when someone is not arrested and/or where the hospital happened to draw blood to treat someone. Under this bill the police would still have access to the blood and medical records as long as they obtain a search warrant showing probable cause. Because the hospital saves the blood and the results for a while, police will not be losing out on evidence as they can obtain a search warrant very quickly.

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 1754-FN-LOCAL, establishing a state defined contribution retirement plan for state and political subdivision members of the retirement system. INEXPEDIENT TO LEGISLATE. Rep. Jeffrey Goley for Executive Departments and Administration. Research shows that Defined Contribution (DC) retirement plans are more expensive to administer and may not deliver sound and reliable benefits as consistently or inexpensively as Defined Benefit (DB) retirement plans. Given that a recent report provided by Boston College's Center for Retirement Research, at the request of the 2017 Decennial Retirement Commission, shows New Hampshire's pension costs are well below the national average, switching to a DC plan will only exacerbate increases to employer costs. In fact, this bill's fiscal note says making this change will increase the unfunded actuarial accrued liability (UAAL) of the NH Retirement System (NHRS) by \$1.9 billion. The current UAAL, which makes up the bulk of employer payments, will be paid off in 2039. Employer costs after that time will be next to nothing and much less expensive than any DC plan, including the one proposed in this bill. A DC plan is the wrong policy fix for the NHRS. The correct course of action is to maintain the current DB plan, as independent actuaries have demonstrated that with sound contribution rates and smart investment decisions, the UAAL will be paid off during the remaining 21 years of the amortization period and the normal pension cost is an affordable way to provide public employees with retirement security. Vote 14-2.

#### FINANCE

HB 1756-FN-A, relative to an additional allowance and a cost of living adjustment for retirees from the state retirement system. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS. Rep. J. Tracy Emerick for the Majority of Finance. This bill grants a one-time additional allowance of \$500 to certain retirees in the state retirement system and makes a general fund appropriation to cover the cost. The bill also grants a cost of living adjustment to such retirees contingent on the funding for the total actuarial cost which is more than \$10 million in the current fiscal year and indeterminate in future years. None of this has been budgeted. Beyond the unbudgeted cost, the bill present other issues that the Committee could not resolve. Of the retirees, 28 percent are state employees, and 72 percent are county, city, town and school district employees. Because the current retiree database does not have information from which non-state entity the individual retiree retired, there is no way for subdivisions to provide a one-time \$500 grant to former employees of that subdivision. Even the Decennial Retirement Commission, which released its report in January of this year, was unable to provide a methodology for having county, city, town and school districts pay their share of this cost. With respect to COLAs, although the N.H. Retirement System (NHRS) does not provide for COLAs in its plan, the majority of Group I retirees (teachers, political subdivision employees, etc.) also draw Social Security, and for many years Social Security has provided a cost of living adjustment, although some of that benefit is reduced by a corresponding increase in Medicare premiums. Group II employees (first responders, corrections officers, etc.) earn higher pensions than those in Group I retirement, but do not get Social Security. In the past, COLAs were provided to retirees from a special account that was funded from NHRS earnings. This practice was discontinued some year ago, and the special account was terminated after it was found that the special account was partially responsible for the NHRS's \$5 billion unfunded liability. So today, no fund exists from which to pay COLAs. Indeed, the Decennial Retirement Commission did not recommend COLAs in its report. The majority of the Committee believes that a separate bill should be filed to thoroughly examine a plan for potential COLA increases, including how and when they would be handled, and that such plan should be appropriately budgeted by all governments which have members participating in the NHRS. The majority also believes that it would be inappropriate to cut any needed service such as addiction treatment, mental health services, services to elderly, waste water grant to towns, etc., in order to pay the \$10-plus million cost of this bill. Finally, the majority recommends that the Decennial Retirement Commission proposal to provide a one-time payment to retirees with lengthy service and low pensions should be part of the next budget. Vote 14-10. Rep. Peter Leishman for the

Minority of Finance. The minority of the Finance Committee strongly supports the passage of HB 1756-FN-A. This bill provides a one time payment of \$500.00 for those retirees making less than \$30,000 and a continuing Cost of Living Adjustment (COLA) of 1.5 % to state retirees effective on July 1, 2020. Since 2010, our state retirees have received no state COLAs. NH Retirement Systems pensions are the sole source of income for many. The average age of the 35,694 state retirees is 70.2 years with an average pension of \$19,788. Simply put, this COLA would provide a small increase in the retirees' pension. The minority is increasingly concerned that retirees' health care contributions, which are deducted from their pension, continue to increase without a corresponding increase to their state retirement pension. On the other hand, those individuals receiving the Social Security retirement benefit have received 10.8% in COLAs since 2010. For the reasons above, the minority of the committee believes a cost of living adjustment for our state retirees is long over due.

#### JUDICIARY

HB 1344, relative to collective bargaining under the right-to-know law. MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE. Rep. Kurt Wuelper for the Majority of Judiciary This bill seeks to make public bodies' negotiating meetings truly public by removing their exemption from the Right-to-Know law. The majority agreed that the taxpayers, those who pay all the participants, who will bear the costs of the final agreement, should be able to judge for themselves the values presented by both sides during the actual negotiations. We think this will give citizens better understanding of the issues and a real opportunity to evaluate the performance of their representatives, whatever side they are on. We also expect the tenor of negotiations may improve when everything said is a matter of public record. Note: public bodies retain the ability to develop strategies in non-public meetings. Vote 9-7. Rep. Linda Kenison for the Minority of Judiciary. Collective bargaining negotiations have always been exempt from the Right-to-Know Law. The ability to negotiate in private fosters compromise. This is essential to resolving and avoiding impasses. Public negotiating sessions would likely lead to grandstanding and hardening of positions on both sides, making it more difficult and delaying an agreement. Trying to draw a distinction between "strategy" which is exempt under the Right-to-Know law, and requiring "negotiation" to take place privately. Under this bill these sessions would seesaw constantly between a public meeting and a non-meeting and would make compliance difficult and record keeping almost impossible. This bill would have no impact on municipalities who appoint a non-member to negotiate with the union. However, this bill would be especially deleterious for those towns where select boards negotiate directly with the unions, which would require public negotiation.

#### REGULAR CALENDAR- PART THREE SPECIAL ORDER EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 1757-FN, relative to the reduction in the calculation of state retirement system annuities at age 65. MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE. Rep. John Sytek for the Majority of Executive Departments and Administration. Group I retirees (state and municipal employees, teachers) in the NH Retirement System (NHRS) see a 10% decrease in their benefit at age 65. The historical reason for the decrease is that the age 65 coincided with the age for which the retiree would be entitled to full Social Security benefits. It was felt that the Social Security payment would more than compensate for the decrease in state benefit. Even though the legislature dropped the reference to Social Security benefits in 1988, the understanding that the decrease in NHRS pension benefit was connected to full Social Security age remained. This connection is the impetus for this bill. This bill raises the age at which the NHRS benefit decreases 10% from 65 to 67, which is the retirement age for full Social Security for people working now. The cost of this benefit (approximately \$43 million) would be paid by an increase in the employer contribution to the NHRS. This was a recommendation of the 2017 Decennial Retirement Commission. The committee amendment does not change the retiree's

overall economic benefit but rather changes the manner of payment. The retiree would see the decreased monthly benefit immediately (which he/she would eventually be seeing anyway). To make the retiree whole, he/she would get two lump sum payments – one at retirement and one a year later to minimize tax consequences. These two payments would be calculated to give the retiree the same dollar amount as contemplated in the original bill. This method of payments will avoid the unpleasantness of a decrease in benefit and decouple the NHRS completely from the federal Social Security system. There is no inherent reason why the NHRS should interact with the federal system. After all, that is the situation for Group II employees (police, fire) who do not participate in Social Security and have always seen one benefit amount. Vote 15-4. Rep. Carol Roberts for the Minority of Executive Departments and Administration. The minority felt that while it is admirable to make the state retirees whole by revising the provision that reduces benefits by 10% at age 65, the fact remains that this expense will be passed down to the towns who will need to increase property taxes to meet this mandated obligation. Many of our retirees in NH have no source of income other than Social Security and this expense will be on their backs through no fault of their own. Needless to say, those voting in the minority felt this to be an unintended consequence which will have repercussions for years to come.