

Bill as Introduced

HB 1174 – AS INTRODUCED

2010 SESSION

10-2531
06/09

HOUSE BILL

1174

AN ACT

relative to terms for appointed town officials.

SPONSORS:

Rep. Osborne, Merr 12; Rep. Cooney, Graf 7; Rep. Hamm, Merr 4

COMMITTEE:

Municipal and County Government

ANALYSIS

This bill provides that the term of an appointed official continues until a successor is appointed and qualified.

.....

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to terms for appointed town officials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Term of Office. Amend RSA 41 by inserting after section 57 the following new
2 section:

3 41:57-a Term of Office. Except as otherwise provided, the term of office of any appointed town
4 officer shall begin upon his or her appointment and qualification for office and shall end upon the
5 appointment and qualification of his or her successor.

6 2 Appointive Officers. Amend RSA 49-C:20 to read as follows:

7 49-C:20 Appointive Officers. The charter shall provide for the appointment of a city clerk, a
8 treasurer, one or more assessors, a fire chief, a police chief, a health officer, a city solicitor, a general
9 assistance administrator, and such other officers as may be necessary to administer all departments
10 which the elected body and the charter shall establish. Assessors shall, prior to appointment, have
11 demonstrated knowledge of property appraisal or assessment and of the laws governing the
12 assessment and collection of property taxes. The powers and duties of appointed officers and heads
13 of departments shall be those prescribed by state law, by the charter or by ordinance. *Unless*
14 *otherwise provided in the charter or by law, the term of office of any appointed officer shall begin*
15 *upon his or her appointment and qualification for office and shall end upon the appointment and*
16 *qualification of his or her successor.*

17 3 New Paragraph; Terms of Local Land Use Board Members. Amend RSA 673:5 by inserting
18 after paragraph II the following new paragraph:

19 III. Except as otherwise provided, the term of office of any appointed local land use board
20 member shall begin upon his or her appointment and qualification for office and shall end upon the
21 appointment and qualification of his or her successor.

22 4 Effective Date. This act shall take effect 60 days after its passage.

HB 1174 – AS AMENDED BY THE HOUSE

27Jan2010... 0200h

2010 SESSION

10-2531

06/09

HOUSE BILL **1174**

AN ACT relative to terms for appointed town officials and relative to pay for members of park or recreation commissions.

SPONSORS: Rep. Osborne, Merr 12; Rep. Cooney, Graf 7; Rep. Hamm, Merr 4

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill:

I. Provides that the term of an appointed official continues until a successor is appointed and qualified.

II. Permits municipalities to pay members of a recreation or park commission.

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17 *the member shall be entitled to remain in office until a successor has been appointed and qualified.*

18 3 New Paragraph; Terms of Local Land Use Board Members. Amend RSA 673:5 by inserting
19 after paragraph II the following new paragraph:

20 III. The term of office for an appointed local land use board member shall begin on a date
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22 end 3 years after the date so established. If no successor has been appointed and qualified at the
23 expiration of an appointed member's term, the member shall be entitled to remain in office until a
24 successor has been appointed and qualified.

25 4 Local Land Use Board; Definition. Amend RSA 672:7 to read as follows:

26 672:7 Local Land Use Board. "Local land use board" means a planning board, historic district
27 commission, inspector of buildings, building code board of appeals, [e~~r~~] zoning board of adjustment,
28 *or other board or commission authorized under RSA 673* established by a local legislative body.

29 5 Recreation or Park Commission. Amend RSA 35-B:4 to read as follows:

HB 1174 – AS AMENDED BY THE HOUSE

- Page 2 -

1 35-B:4 Recreation or Park Commission. If any town, city, county, or village district decides that
2 the above powers shall be exercised by a recreation or park commission, it shall consist of citizens of
3 such town, city, county, or village district [~~who shall serve without pay~~]. In cities the citizens shall
4 be appointed by the mayor or city council, subject to provisions of the city charter; in towns by the
5 selectmen; and in other political subdivisions by the governing body of the subdivision. The persons
6 initially appointed to the commission shall serve staggered terms. Their successors shall be
7 appointed under the same appointing procedure for 3 years. Vacancies as they occur shall be filled
8 by the appointing authority for the unexpired term. Any city or town may by ordinance or resolution
9 provide that the mayor or a selectman, or councilman, shall be an ex officio member of the
10 commission.

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HB 1174 – FINAL VERSION

27Jan2010... 0200h
04/28/10 1551s

2010 SESSION

10-2531
06/09

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5 selectmen; and in other political subdivisions by the governing body of the subdivision. The persons
6 initially appointed to the commission shall serve staggered terms. Their successors shall be
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8 by the appointing authority for the unexpired term. Any city or town may by ordinance or resolution
9 provide that the mayor or a selectman, or councilman, shall be an ex officio member of the
10 commission.

11 6 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Sen. DeVries, Dist. 18
April 20, 2010
2010-1485s
06/09

Amendment to HB 1174

1 Amend RSA 49-C:20 as inserted by section 2 of the bill by replacing it with the following:

2

3 49-C:20 Appointive Officers. The charter shall provide for the appointment of a city clerk, a
4 treasurer, one or more assessors, a fire chief, a police chief, a health officer, a city solicitor, a general
5 assistance administrator, and such other officers as may be necessary to administer all departments
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Public and Municipal Affairs
April 22, 2010
2010-1551s
06/09



Amendment to HB 1174

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2

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Committee Minutes

ATTENDANCE

SENATE CALENDAR NOTICE
PUBLIC AND MUNICIPAL AFFAIRS

- ✓ Senator Betsi DeVries Chairman
- ✓ Senator Matthew Houde V Chairman
- Senator Kathleen Sgambati
- ✓ Senator Sheila Roberge
- ✓ Senator John Barnes, Jr.

START : 8:36 AM
END : 9:04 AM

For Use by Senate Clerk's Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: April 1, 2010

HEARINGS

Thursday

4/8/2010

PUBLIC AND MUNICIPAL AFFAIRS

LOB 103

8:30 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

- 8:30 AM HB1174 (New Title) relative to terms for appointed town officials and relative to pay for members of park or recreation commissions.
- 8:40 AM HB1337 (New Title) relative to requirement for public forums for the assessing standards board and the equalization standards board.
- 8:50 AM HB1310 (New Title) allowing towns to hire health care workers.
- 9:00 AM HB1524 relative to the liability of town and city health officers and overseers of public welfare.
- 9:10 AM HB1427 relative to the conversion period for quarterly billing for property taxes.

Sponsors:

HB1174

Rep. Jessie Osborne

Rep. Mary Cooney

Rep. Christine Hamm

HB1337

Rep. Betsy Patten

Rep. Eric Stohl

Rep. Peter Schmidt

HB1310

Rep. Priscilla Lockwood

Rep. David Bettencourt

HB1524

Rep. Thomas Howard

Rep. Beverly Rodeschin

Sen. Bob Odell

Rep. Carla Skinder

Rep. Joe Osgood

HB1427

Rep. Robert Foose

Sen. Matthew Houde

START : 8:36 AM
END : 9:04 AM

Public and Municipal Affairs Committee

Hearing Report

TO: Members of the Senate

FROM: Shannon Whitehead, *Legislative Aide*

RE: Hearing report on HB 1174—AN ACT relative to terms for appointed town officials and relative to pay for members of park or recreation commissions.

HEARING DATE: April 8, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senator DeVries, Senator Houde, Senator Roberge, and Senator Barnes

MEMBERS OF THE COMMITTEE ABSENT: Senator Sgambati

Sponsor(s): Rep. Osborne, Merr 12; Rep. Cooney, Graf 7; Rep. Hamm, Merr 4

What the bill does: This bill:

I. Provides that the term of an appointed official continues until a successor is appointed and qualified.

II. Permits municipalities to pay members of a recreation or park commission.

Who supports the bill: Cordell Johnston (NHMA) Rep. Mary Cooney (co-sponsor)

Who opposes the bill: Barbara Annis (Town of Warner Planning)

Summary of testimony received:

Rep. Cooney: Co sponsor

- Introduced the bill for Rep. Osborne who was not present at the time of the hearing and stated that the bill was a request by the NH Municipal Association to clear up some statutes.
- Cordell Johnston from the NHMA has amendment to give to the committee due to some drafting oversights.
- Chapter 673 deals with the Local Land Use Boards (Planning and Zoning) the statutes were handed in to the committee members to refer to the towns Planning and Zoning for the purpose of appointments and terms of the board members.

Cordell Johnston: NHMA

- The amendment is to replace section 2 of the bill as amended by the House. Appointive Officers. There is a statute dealing with elected officials this is to mirror that. It will read at the bottom of the section: 49-C:20 Unless otherwise provided in the charter law, the term of the office of any appointed officer shall begin upon his or her appointment and qualification for office and shall end upon the appointment and qualification of his or her successor
- Section 1 is the term of office for town officers. Section 4 was added to clarify existing statute, throughout the planning and zoning referencing to the land use boards.
- Section 5 was not originally in the bill; Rep. Cooney added this section in the House. Local officials can receive compensation but precluded by law was a recreation or park commission.
- Senator Devries asked about the ability to move an individual from office. Cordell Johnston responded that there are numerous provisions of removal. Any of those provisions if there is a finding of "just cause" for removal in case of embezzlement it would trump your term if the board finds that the elective duties were not met.
- Senator Barnes asked about page 2, section 5, line 4, crossing out who shall serve without pay. Should it say it's up to the governing body? The response was, it is up to the town meeting/budget. Warrant article or in the budget.
- Senator Devries asked about the situation of the amendment dealing with the member number of the police commissions in the town of Hooksett. Was this contentious or reason of the defeat? Could this be a vehicle? The response was that there are no police commissions that are more than 3 members. The City of Manchester has an advisor police commission. Hooksett is in the Chapter law, but if you're going to have 5 members then all should have 5. If you do one, then all should be the same number.
- Senator Devries stated that she did not want to jeopardize legislation when crossed over to the House involving that matter of the Hooksett and Manchester Police commissions-prevented from compensation

Barbara Annis

- Opposed to the bill. Ms. Annis stated she was the Chair of the Town of Warner Planning Board. Stated that this was her 19th term on the board
- Ms. Annis stated that she doesn't like the term expiration and attendance of the members. Ms. Annis had the board meet 24 times in a year and one of her members only made it to 6 of the meetings. Ms. Annis did not want to reappoint this individual but the members term would continue until someone was elected. That whole year Ms. Annis continued with the board meeting with no one, even though he was still a member but never showed up. Come to find out he was a resident of the Town of Warner even though he was not living there. There needs to be a limit on how open ended that section of the bill and work in the removal process. It is a neglected duty. Ms. Annis suggested a time limit.
- Cordell Johnston responded to Ms. Annis and mentioned that he was not sure how that would work, but told the committee he would work and talk with Ms. Annis about her issue.
- Senator Houde added that if someone is in position even though they are showing up quarterly, it is better than nothing.

Funding: *Not applicable*

Future Action: Pending

DM

Date: April 8, 2010
Time: 8:36 a.m.
Room: LOB Room 103

The Senate Committee on Public and Municipal Affairs held a hearing on the following:

HB 1174 (New Title) relative to terms for appointed town officials and relative to pay for members of park or recreation commissions.

Members of Committee present: Senator DeVries
Senator Houde
Senator Roberge
Senator Barnes

The Chair, Senator Betsi DeVries, opened the hearing on HB 1174 and invited Representative Mary Cooney to introduce the legislation for Representative Jessie Osborne, the prime sponsor.

Senator Betsi DeVries, D. 18: Good morning.

Representative Mary Cooney: Good morning. For the record, I'm Representative Mary Cooney, Grafton County District 7, representing the towns of Plymouth and Hebron. And I'm introducing HB 1174, which I was one of the sponsors. And this was put in at the request of the New Hampshire Municipal Association to clear up some statutes. And, Cordell Johnston does have an amendment because the drafters made an error in putting a certain phrase in twice, when they needed to do it only once. But he can explain that.

And basically, it was trying to mirror statutes from the elected ...elected officers for...to the appointed officers and for terms of office--to define three years as the time—as a defined time, not from the time of the appointment. And I do have copies of that statute that refers to the towns if anyone's interested in looking at it. The first part refers to the cities and the second part, Section 3, refers to the towns and then there was a change in the...the bottom of Page 1, into the definitions to make sure everything was included.

Senator Betsi DeVries, D. 18: All set? Thank you very much for the introduction. Would you prefer questions to be deferred or would you like to take questions?

Representative Cooney: Yeah, I think Mr. Johnston would probably be better able to answer your questions.

Senator Betsi DeVries, D. 18: And that would be fine. We can defer our questions to Cordell Johnston for you, who is also signed up to speak. And we thank you for introducing the bill.

Representative Cooney: Thank you.

Senator Betsi DeVries, D. 18: Calling on Cordell Johnston, then. Who has a pen in his mouth...for the record...

Attorney Cordell Johnston: I was trying...I was trying to turn my phone off and realized I was turning it on instead, so...thank you.

Senator Betsi DeVries, D. 18: Thank you for thinking of that.

Attorney Johnston: My name is Cordell Johnston. I represent the New Hampshire Municipal Association. And first of all, I do have an amendment, as Representative Cooney indicated. There was an error in the drafting...the bill was amended in the House and there was language that was...that was inserted and it was supposed to be inserted in one place, but it got inserted twice. So...

Senator Matthew Houde, D. 5: Can you hold on, just one second? Can I...can I...

Senator Betsi DeVries, D. 18: If you would.

Senator Matthew Houde, D. 5: Until...just until we can get them to come around...before you...

Attorney Johnston: Okay.

Senator Matthew Houde, D. 5: Speak to it...

Senator Betsi DeVries, D. 18: We'd like to have it in our hands to view.

Attorney Johnston: Yes.

DM

Senator Matthew Houde, D. 5: Thank you.

Senator Betsi DeVries, D. 18: They're coming from the other direction.
Thank you for waiting for us.

Attorney Johnston: Sure.

Senator Betsi DeVries, D. 18: We now have the amendment in hand.

Attorney Johnston: Okay. So briefly, the issue is...and this can happen in both towns and cities where someone is appointed to a particular office and the most common situation is a planning board or ZBA or another land use board. And they're appointed. They're supposed to be appointed for a certain term. And they come to the end of their term and a number of...a number of problems can occur.

One is that the selectmen forget that they need to...that these terms are expiring and they need to appoint someone to...either reappoint the person or find someone new to take that person's place. Or they can't find someone to take that person's place, and the person's willing to continue to serve until they find a replacement, but doesn't want to serve a full term, or whatever. But, in any event, the term has expired, and the person just continues to serve. And we've gotten calls with...from towns with concerns that, "We have a member on our Planning Board whose term has expired but no one's been appointed to replace him. If he continues to come to meetings and participate and...and participate in a...in a decision, is someone gonna be able to challenge that decision because his term had expired and he wasn't reappointed and no one was appointed to take his place?"

So, there is an existing statute dealing with elected officials that says that...that your term continues until a successor is elected and qualified. And this is intended to mirror that, to say that, for appointed officers, your term continues until your successor is appointed or qualified. Section 1 is an amendment to RSA 41. That deals with town officers. Section 2 is an amendment to RSA 49-C, and that deals with city officials. And then Section 3 deals specifically with land use board members, because there's a provision in that statute about the term of office. And that provision would apply to both...to land use board members in both cities and towns.

And then Section 4 is something that was just...it was added to clarify an existing statute. Doesn't have...doesn't relate directly to the purpose of this, but we thought we would clarify this as we were doing it, because throughout the planning and zoning statutes there are references to the term "local land use board". And when the statutes were first enacted, they defined a local



land use board as a planning board, a historic district commission or a zoning board. Since then, the Legislature has added a number of different things that most people think of as land use boards—Heritage Commission, agricultural commission, housing commission—but never amended the statute to include those within the definition of a local land use board. And if you read the statutes as a whole, it's clear that those are understood to be within that definition. But the definition doesn't say that. So that's what Section 4 does.

Section 5 is...was not part of our original bill. That was something that Representative Merry introduced. I don't think she's here.

Representative Cooney: I can speak to that.

Attorney Johnston: Well...I think I know the issue there is that the statutes say that any local official can...can receive compensation. And, as far as anyone could tell, the only local official who is precluded by law from receiving any compensation was a recreation or park commissioner. And in...I think it was the Town of Tilton, every...every appointed official received some kind of stipend like \$50 or \$100. But they couldn't ...they couldn't give a stipend to their Recreation Chairman or Commissioner or whatever that person was titled. So that's the purpose of Section 5. Is that...that's good?

Representative Cooney: Yeah, yeah. I handed out the email from the Tilton person and the statute.

Attorney Johnston: Okay. So that is...that's a summary of the bill.

Now the amendment that I handed out deals with Section 2. If you read Section 2 of the bill as amended by the House, if you look at the first sentence that's in bold, it doesn't really make sense. It says, "Unless otherwise provided in the charter or by law, the term of office of any appointed officer shall begin upon his or her appointment and qualification for office and end upon the date so established." That...that doesn't make sense and the reason is...

Senator Sheila Roberge, D. 9: (Inaudible.)

Attorney Johnston: There was...what's that?

Senator Matthew Houde, D. 5: The bill as introduced...

Senator Sheila Roberge, D. 9: Oh, okay.

Attorney Johnston: And the reason that doesn't make sense is, in the House there was language that was added to Section 3. It was only supposed to be added to Section 3, but was also added to Section 2. And that was just a technical error that I assume occurred in Legislative Services. So I've passed around that amendment that takes that language back out of Section 2.

Senator Betsi DeVries, D. 18: Cordell, are you...

Senator Matthew Houde, D. 5: I see, yeah.

Attorney Johnston: I'm finished.

Senator Betsi DeVries, D. 18: A question for you, 'cause when I took a look at the statutes, Cordell, and I see Section 41:48 deals with tenure of office for constables and police officers because they're included in the appointed officers. It seems to lay out a reason for removal...removing an individual from office for just cause.

Attorney Johnston: Right.

Senator Betsi DeVries, D. 18: And I wanted to ask you if you have any concerns since this seems to be, at least in my less than exhaustive search, the only just cause for removal from office that we have on the books. Are you familiar with...So if somebody breaks the law, I would say with the language in this bill, we would have no ability to remove them unless they are a permanent constable or police officer.

Attorney Johnston: Well...there...no...there are a number of provisions scattered, as these things tend to be, throughout the statutes about dealing with removal of certain officers. There are provisions for removal of the Tax Collector—even the Town Clerk who is...who is elected. There are specific provisions for removal of land use board members. And so, I think any of those provisions, if there's a finding of just cause that would trump. You know, you may have a three-year or five-year term of office or whatever, but if...the...if you're found...if there's just cause for your removal, or in the case of the Tax Collector, you've embezzled funds or whatever, that would certainly trump your...your one-year or three-year term of office. In the case of a local land use board member, you can be removed for malfeasance, neglect of duty or something else. So you could still be removed during that three year term. Does that answer the question?

Senator Betsi DeVries, D. 18: It certainly does and I thank you. I did...I could tell that the...it must be scattered...sprinkled throughout our statutes and I thank you for a more complete look. Were there questions from the Committee for Cordell? Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Thank you, Madam Chair. Cordell, I have no problem with the main part of this. I guess my question is on Page 2 on Section 5, crossing out, "who shall serve without pay". That doesn't say in here...or should it say in here that it's up to the governing body or is it up to...

Senator Betsi DeVries, D. 18: Might be in Line 2, "if any town, city, county or village district decides"...

Senator John S. Barnes, Jr., D. 17: Yeah. Who crossed out, "who shall serve without pay"?

Attorney Johnston: Your question is, "Who...is it up to the..."

Senator John S. Barnes, Jr., D. 17: Yeah, who's that up to if they get paid?

Attorney Johnston: Well that would be up to the...ultimately in a town it would be up to the Town Meeting because it would be part of the budget that's adopted.

Senator John S. Barnes, Jr., D. 17: That doesn't say that.

Attorney Johnston: Well, that's...

Senator John S. Barnes, Jr., D. 17: Does it have to, or doesn't have to?

Attorney Johnston: I don't think it has to because...I mean...every other local official...if you're on a planning board, you can be compensated. I think most of them are not, but there are towns where planning board members get a \$100 or \$200 a year stipend.

Senator John S. Barnes, Jr., D. 17: Before that happens it has to go before the voters.

Attorney Johnston: It would have to be in the budget, yeah, and...

Senator John S. Barnes, Jr., D. 17: Or in the budget...



Attorney Johnston: Yes.

Senator John S. Barnes, Jr., D. 17: It could go two ways: warrant article or in the budget.

Attorney Johnston: Yeah.

Senator John S. Barnes, Jr., D. 17: Thank you.

Attorney Johnston: Yup. I've given you a very general overview of what this does, but I hope it makes it clear.

Senator Betsi DeVries, D. 18: Further questions from the Committee? Thank you. Thank you, Cordell. And I would ask if maybe, Representative Cooney, if you might be willing to take one additional question.

Representative Cooney: Certainly.

Senator Betsi DeVries, D. 18: I don't know if you would be prepared to answer it for me or not, but I'm hoping you might have some recollection. I have been approached by a fellow Senator to possibly use this bill for an amendment dealing with legislation that I believe was defeated in the House. That I don't know a whole lot about, but it's dealing with the...the number of police commissioners in the Town of Hooksett. Do you have any recollection as to whether that bill is in any way...was contentious? Or had a reason for defeat?

Representative Cooney: It was...

Senator Betsi DeVries, D. 18: Are you at all concerned about this being the vehicle for that?

Representative Cooney: Well, Senator Boutin did call me last night...

Senator Betsi DeVries, D. 18: Okay.

Representative Cooney: And ask me about it. And it's good that Representative Patten is here because we...we talked about it on the floor. And the question was...there are no police commissions in the state that are more than three. Except for possibly you could consider Manchester, who has at least an advisory police commission, which is five. And...but none have a...a one that has legal powers. And they wanted...the Town of

Hooksett is in chapter law, and their police commission is in chapter law. And it actually was originally put in chapter law by Representative Hess, the wife of the current Representative Hess. And they wanted a police commission. And that was before...I think it was 19...yeah, yeah, the chapter law was before the...the...I think it was 1981 when we put in a law that allowed any town to have a police commission of three members. So they wanted to put on their ballot in May the possibility of raising it to five members. And considering all the testimony, it was contentious within the town. And it seemed a very political thing. Whether somebody was trying to get rid of the Police Chief or not, or some would say oh it's just, you know, let the voters decide, you know, in the town if they want five. And the majority of the Committee finally eventually decided that...it would...that there was no real need for five, that it seemed like more a political move. But...now...and we also had the idea that well if you're gonna make it five, then everyone should have the opportunity to make it five. So I suggested to the Senator that possibly if he wanted to put an amendment on, that it might be more receptive if you made it for...maybe even deleting the Hooksett statute and just making it possible for any town to have a commission of five. And so that's how we left it and I don't know...still don't know how the House would feel about it, in general. But ...but that's what I suggested to him without putting my feelings into it particularly. But if he wanted to do anything, I thought it would be more receptive to allow...'cause that was one of the arguments. "Well if you're gonna do it, everyone should be able to do it."

Senator Betsi DeVries, D. 18: And I thank you. And we certainly...there are many vehicles but I had been approached about this particular bill as a vehicle, and...

Representative Cooney: Yeah, I didn't know which bill he was thinking of...

Senator Betsi DeVries, D. 18: I had concerns about jeopardizing legislation, as it might need to crossover...

Representative Cooney: Yeah, this one might not be the best one, but...

Senator Betsi DeVries, D. 18: After being amended. So, thank you for that update. And we stand ready to hear any further thoughts that you may have coming from the House side on how that might be best treated to meet the needs of all. Thank you.



Representative Cooney: Okay, and just as aside, I did talk to Representative Merry about her Tilton amendment, and it was just they were...the town was...I think the email kind of says it...they were just prevented from compensating these volunteers at all because of the statute, whereas they did compensate members of the Conservation Commission and others for serving and they were prevented by this one phrase in the law from being able to do that.

Senator Betsi DeVries, D. 18: Thank you, Representative. I have one person...oh, I don't think that there's questions on that. I just wanted the ears of the Committee to hear what I might be hearing as well, so. One person left to speak and that would be Barbara, is it Annis?

Barbara Annis: Yes.

Senator Betsi DeVries, D. 18: Barbara, please come forward and introduce yourself for the record.

Barbara Annis: My name is Barbara Annis. I am Chair...re...again elected Chairman of the Warner Planning Board. I think this is my ninth term as Chairman; many more years having served on the Committee.

Originally, 673:5 III did not have a date so established as when a term would come to the end. I appreciate it being added in. I like it very much because now, when an individual is appointed to a board, it might be within a year, and you don't know whether it is. When it comes due and it's up to the Selectmen...and they've got enough on their plate without having staggered terms. So now everybody will be coming due at a particular time of year. And I appreciate that very much. So I support that.

I do not support having an individual continue on after his term has expired. I've had two recent cases and it's not been easy. In 2009, I had an individual whose term expired. We did not reappoint him to the Board because his attendance had been so sporadic. When he was first appointed to the Board...I can make all the meetings...now, we meet 24 times every single year and that does not include site plans or anything. That is strictly sessions...our monthly meeting plus our work sessions. He made 6 out of 24. So they did not reappoint him. But, with this law, his term would have continued until somebody else had been appointed. I do not know how active the Selectmen were in recruiting somebody. I know the Planning Board was active in recruiting and we didn't get anybody. So the whole year went by with no one. But he could have come in and sat in any time he wanted to if this law was in effect.

Now, another curve I've had this year...I've had another person whose term expired in 2010. Yes, he'd like to continue on the Board, but he's had to sell his house in the town. However, he plans to return to the town of Warner when things turn around in his life. So in the meantime, he's going to keep his residency in Warner. He's going to remain on the Checklist. He's going to register his car in Warner. But he's going to live somewhere else. Is that fair for somebody to live in another town, to be representing Warner? It's going to...it could happen. By luck he said, "No, I will not continue because it's not fair, even though I'm still going to be a resident of the town." The Selectmen just now went and appointed various individuals. By luck I was at the meeting. They were going to replace a new person who's finally coming on the Board, to the three year term. They forgot all about the one that has been vacant for a whole year. So that person in the middle would have still been on the Board for a second year. I think there's got to be a limit on how open ended this is. Whether it is appointed and qualified, until another person has been appointed for six months, maybe? For three months maybe? But not just an open ended appointment. And that is my concern because I've now had two of them, not just one. Thank you for listening.

Senator Betsi DeVries, D. 18: Thank you very much, Barbara, and I suspect that we are likely to hear a response to some of your concerns, which may be, could be addressed as allowed in the legislation by charter or ordinance at the local level. But, we would be happy if you would stand by to ask if there's an immediate response or rebuttal that you could hear. And then, after that, we will close the hearing.

Barbara Annis: Certainly.

Senator Betsi DeVries, D. 18: And anything that we...you're free to contact us as individual members.

Barbara Annis: Thank you.

Senator Betsi DeVries, D. 18: Thank you very much for your testimony. Cordell, would you mind coming forward to ask if...to answer...for the Committee whether or not a local ordinance or charter might be able to address some of the concerns that were just brought to our attention?

Attorney Johnston: Well...I don't think...I don't think an ordinance, a local ordinance could do that. I think, if you want to address those, you probably need to do it in the statute.

Senator Betsi DeVries, D. 18: Okay.

Attorney Johnston: Just a couple of comments on the...the person who's temporarily living out of town. I think that would be an issue whether, you know, whether the term is expired or not. And that's an issue that I know comes up. We had someone in our town who's chairing...who was Chairman of the Planning Board and was temporarily living out of town. And someone raised the issue, you know, "Can this person still be on the Planning Board?" So that's an issue regardless. It's a murky one, but I think the answer is, if you are no longer a resident, you can't be on the Planning Board. Again, I don't think this...I think that's an issue in any...in any case. With...

Senator Betsi DeVries, D. 18: For voting as well?

Attorney Johnston: Well, yeah, for voting. And I suppose, you know, you would look at all the issues: "Are you still a registered voter? Where's your car registered? Etc., but...But I really think that's a separate issue. With the guy who never comes to meetings, you know, he can be removed. Neglect of duty is one of the...one of the basis for removal of a land use board member. And the Selectmen ought to appoint someone to take his place. And I don't remember what the third scenario was.

Having said that, I think it might be worth considering the suggestion about putting a time limit on there, that the person may continue to serve for up to a year or something like that. And I guess I just want to think about how that would work. We haven't talked...I'll talk to Ms. Annis afterward and see whether we can get somewhere with that.

Senator Betsi DeVries, D. 18: Well, thank you for allowing us to put you on the spot. Senator Houde has a quick question.

Senator Matthew Houde, D. 5: Thank you, Madam Chair. Thank you, Cordell. Would the...one of the responses to that scenario being, well, having someone in that position, even if they're showing up a quarter of the time, is better than having no one in that position. Presumably, that's why they're having apparently difficulty finding someone for that spot.

Attorney Johnston: I would think so. I mean...yeah...I would think so. It certainly is not good having someone who doesn't show up. But 25% of the time is...is better than nothing. And if you...if...you know, either the Selectmen can find someone to take a person's place or they can't. And if they can't, as I said, yeah, I think a little bit's better than nothing at all.



Senator Matthew Houde, D. 5: Our previous testifier is vigorously disagreeing with that conclusion, I would just note, but...

Attorney Johnston:
Reasonable minds can differ.

Okay. Well, sometimes that happens.

Senator Matthew Houde, D. 5: Thank you.

Senator Betsi DeVries, D. 18: Thank you very much for your testimony. With that, seeing nobody else wishing to speak, we will close the hearing.

Hearing concluded at 9:44 a.m.

Respectfully submitted,



Debra A. Martone
Senate Committee Secretary
05/05/10

Speakers

Testimony

TITLE LXIV PLANNING AND ZONING

CHAPTER 673 LOCAL LAND USE BOARDS

Appointment and Terms of Local Land Use Board Members

Section 673:5

673:5 Terms of Local Land Use Board Members. –

I. (a) Except as provided in subparagraph (b), the term of any ex officio member serving on a local land use board shall coincide with the term for that other office; except that the term of the administrative official appointed by the mayor shall terminate with the term of office of the mayor appointing the official, and that the term of the administrative official appointed by the town council, board of selectmen, or village district commissioners shall be for one year.

(b) A city or town council, board of selectmen, or the village district commissioners may determine that the city or town council member, the selectman member or the village district commission member shall be subject to a 4 month or an annual appointment under such conditions as it determines.

II. The term of an elected or appointed local land use board member shall be 3 years. The initial terms of members first appointed or elected to any local land use board shall be staggered so that no more than 3 appointments or elections occur annually in the case of a 7 or 9 member board and no more than 2 appointments or elections occur annually in the case of a 5 member board, except when required to fill vacancies.

Source. 1983, 447:1. 1996, 42:6, eff. June 23, 1996; 181:2, eff. Aug. 2, 1996.

Words and Phrases Defined

Section 672:7

672:7 Local Land Use Board. – "Local land use board" means a planning board, historic district commission, inspector of buildings, building code board of appeals, or zoning board of adjustment established by a local legislative body.

Source. 1983, 447:1, eff. Jan. 1, 1984.

From: Joyce Fulweiler - Tilton Town Administrator [mailto:townadmin@tiltonnh.org]

Sent: Wed 12/9/2009 2:04 PM

To: Merry, Liz; Fields, Dennis

Cc: Board of Selectmen

Subject: FW: Parks Commission Budget

REP. COONEY SUBMISSION - b

Dear Honorable Liz Merry and Honorable Dennis Fields:

The Selectmen asked me to contact you and ask if you would be willing to submit legislation to amend RSA 35-B:4 (a copy is attached) by removing the words "shall serve without pay". The Town of Tilton pays "stipends" in the amount of \$300 to each volunteer serving on Town Boards/Committees/Commissions with the exception of the Parks Commissioners because of this law. It would be interesting to find out what the legislature's original intent was when it was enacted in 1979. The opinion we received from the Local Government Center (attached) advises that a "stipend" is considered to be "pay" and therefore payment of a "stipend" to the Parks Commissioners is prohibited. We would like to eliminate this restriction.

Thank you for your help.

Joyce

Joyce M. Fulweiler
Town Administrator
Tilton Town Hall
257 Main Street
Tilton, NH 03276
603-286-4521 x 101
www.tiltonnh.org

TITLE III
TOWNS, CITIES, VILLAGE DISTRICTS,
AND UNINCORPORATED PLACES

CHAPTER 35-B
PUBLIC RECREATION AND PARKS

Section 35-B:4

35-B:4 Recreation or Park Commission. – If any town, city, county, or village district decides that the above powers shall be exercised by a recreation or park commission, it shall consist of citizens of such town, city, county, or village district who shall serve without pay. In cities the citizens shall be appointed by the mayor or city council, subject to provisions of the city charter; in towns by the selectmen; and in other political subdivisions by the governing body of the subdivision. The persons initially appointed to the commission shall serve staggered terms. Their successors shall be appointed under the same appointing procedure for 3 years. Vacancies as they occur shall be filled by the appointing authority for the unexpired term. Any city or town may by ordinance or resolution provide that the mayor or a selectman, or councilman, shall be an ex officio member of the commission.

Source. 1979, 185:1. 1993, 29:1, eff. June 7, 1993. 1997, 53:3, eff. July 18, 1997.

Voting Sheets

Senate Public & Municipal Affairs Committee

EXECUTIVE SESSION

Bill # HB 1174

Hearing date: 04/08/10

Executive session date: 04/22/10

Motion of: OTP/A

VOTE: 4-0

Made by DeVries
Senator: Houde
 Sgambati
 Roberge
 Barnes

Seconded DeVries
by Senator: Houde
 Sgambati
 Roberge
 Barnes

Reported DeVries
by Senator: Houde
 Sgambati
 Roberge
 Barnes

Motion of: _____

VOTE: _____

Made by DeVries
Senator: Houde
 Sgambati
 Roberge
 Barnes

Seconded DeVries
by Senator: Houde
 Sgambati
 Roberge
 Barnes

Reported DeVries
by Senator: Houde
 Sgambati
 Roberge
 Barnes

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator DeVries, Chairman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Sgambati	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Barnes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: # 1485s - Sen. ~~DeVries~~ / Cordell Johnston

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 22, 2010

THE COMMITTEE ON Public and Municipal Affairs

to which was referred House Bill 1174

AN ACT (New Title) relative to terms for appointed town officials
and relative to pay for members of park or recreation
commissions.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 1551s

Senator Matthew Houde
For the Committee

Debra Martone 271-3092

New Hampshire General Court - Bill Status System

Docket of HB1174

Docket Abbreviations

Bill Title: (New Title) relative to terms for appointed town officials and relative to pay for members of park or recreation commissions.

Official Docket of HB1174:

Date	Body	Description
01/06/2010	H	Introduced and Referred to Municipal and County Government; HJ 6 , PG.231
01/06/2010	H	Public Hearing: 1/12/2010 10:00 AM LOB 301
01/06/2010	H	Executive Session: 1/20/2010 10:00 AM LOB 301
01/21/2010	H	Committee Report: Ought to Pass with AM #0200h (New Title) for Jan 27 CC (vote 18-0); HC 8 , PG.334
01/21/2010	H	Proposed Committee Amendment #0200h (New Title); HC 8 , PG.357-358
01/27/2010	H	Amendment #0200h (New Title) Adopted, VV; HJ 12 , PG.503-504
01/27/2010	H	Ought to Pass with Amendment #0200h (New Title): MA VV; HJ 12 , PG.503-504
03/24/2010	S	Introduced and Referred to Public and Municipal Affairs; SJ 11 , Pg.260
04/01/2010	S	Hearing: April 8, 2010, Room 103, LOB, 8:30 a.m.; SC14
04/22/2010	S	Committee Report: Ought to Pass with Amendment 1551s, 4/28/10; SC17
04/28/2010	S	Committee Amendment 1551s, AA, VV; SJ 16 , Pg.351
04/28/2010	S	Ought to Pass with Amendment 1551s, MA, VV; OT3rdg; SJ 16 , Pg.351
04/28/2010	S	Passed by Third Reading Resolution; SJ 16 , Pg.353
05/19/2010	H	House Concurs with Senate AM #1551s (Rep Cooney): MA VV; HJ 46 , PG.2227
06/02/2010	H	Enrolled
06/02/2010	S	Enrolled
06/29/2010	H	Signed by the Governor 06/28/2010; Effective 08/27/2010; Chapter 0226

NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301*

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 1174 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: -0-

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 2010-1485s - AMENDMENT # 2010-1551s
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED

AS AMENDED BY THE HOUSE

FINAL VERSION

_____ AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: a, b

EXECUTIVE SESSION REPORT

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 07/12/10

Debra A. Martone
COMMITTEE SECRETARY