

FROM THE: New Hampshire Municipal Association

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Second and Third Shots Fired in Assessing Battle

Last week we reported on **HB 254**, the utility-backed effort to strip the Assessing Standards Board of its assessing expertise by removing two members and ensuring that most of the others know nothing about assessing. We knew there were two more bills coming, and they have arrived. The three bills together, all filed by the same representative, constitute a concerted attack on municipal assessing for the benefit of public utility companies.

Just in case decimating the ASB isn't enough, the second bill, **HB 323**, eviscerates it by transferring all of the board's authority to the Department of Revenue Administration. We will write more on that in a later issue.

The third bill, **HB 324**, is by far the most outrageous. It completely strips municipalities of their authority to assess utility properties and gives that authority to the Department of Revenue Administration. The intent and effect of the bill are to reduce assessed property values statewide by **billions** (not a typo) of dollars, raising tax rates and shifting tens of millions of dollars in property taxes onto residential and commercial property owners. Some background is needed here. Public utility companies are subject to a statewide tax on their properties under RSA 83-F. This is in lieu of their paying the statewide education property tax that other property taxpayers pay. Under RSA 83-F, the Department of Revenue Administration is responsible for appraising utility property, *solely for the purpose of the utility property tax*. It is very clear that it is not DRA's duty, but that of the local governing body, under RSA 75:1, to "appraise . . . all . . . taxable property at its market value," with certain exceptions. In its appraisals of utility property, DRA uses the "unit method" to determine a single value for the entire statewide business of a utility, rather than valuing separately the components or the properties in individual municipalities. The New Hampshire Supreme Court has held that the unit method is an acceptable approach, but has also held that it is not the *only* acceptable approach and is not required to be used by municipalities.

Once DRA appraises a utility company's property using the unit method, it allocates the total appraised value among the municipalities *solely for the purpose of equalization*. (We will discuss equalization another time.) That allocation is not intended to be used for local property tax purposes. However, in recent years, some utility companies have begun using the DRA allocated values in support of their local property tax appeals. As it happens, the DRA allocated values are frequently dramatically lower than the local assessed values, so it is not surprising that the utilities want to use those values to support their claims.

In a string of recent decisions, the Superior Court and the Board of Tax and Land Appeals emphatically rejected challenges by PSNH (now Eversource) and the New Hampshire Electric Cooperative to their assessments in approximately 70 municipalities. In each case, after a trial lasting several days, the tribunal issued a lengthy, carefully considered opinion in which it found the local assessments to be more credible than the utilities' or DRA's appraisals. The BTLA's criticism of the DRA appraisals noted that DRA did no appraisal of the property in any given town and did not even know what property was in each town.

Rather, it merely allocated its statewide value (which itself was found to be suspect) based on cost data *provided by the utility*. Eversource and NHEC have appealed the BTLA decisions to the New Hampshire Supreme Court, but they are likely to lose there as well.

And that is why we have **HB 324**, which would require that the allocated values determined by DRA, despite being discredited by the courts and the BTLA, be the only values that may be used for local property tax purposes. Quite simply, this is the utilities' last hope.

NHMA members have adopted a policy for many years that opposes mandating the exclusive use of the unit method of valuation in the appraisal of utility property and supports the continuing right of municipalities to use any method of appraisal that has been upheld by the courts.

We intend to let every municipality, and its voters, know how much of the tax burden this scheme would shift to residential and commercial property taxpayers. We encourage all local officials to share this information with their representatives and demand that they carry out their obligation to represent the residents of their districts, not the utility companies.