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# CAPITOL INSIGHT

GOVERNMENT AFFAIRS COMMITTEE REPORT



August 2012

Greater Manchester Chamber of Commerce

## WELCOME TO CAPITOL INSIGHT

The New Hampshire General Court took a fair amount of criticism in 2012, some of it deserved, for focusing on issues in no way related to jobs and the economy. From abortion to gay marriage to guns to the D.J. Bettencourt scandal, there was no shortage of distractions facing legislators.

But that's not to say business-related issues were ignored in Concord this year. Indeed, looking beyond the attention-grabbing headlines, the legislature did, in fact, pass a number of pro-business bills and kill a number of anti-business bills which the Chamber

lobbied for and against, respectively.

In 2012, the Chamber took a position on 24 bills, supporting 14 bills and opposing 10. Of the 14 bills we supported, six were passed. We had better luck with the 10 bills we opposed, eight of which were killed in one way or another.

Of course, the win/loss percentage mentioned above isn't exactly cut and dry. For example, some of the bills the Chamber opposed, like House Bill 1617, which sought to repeal the Certificate of Need (CON) process for

new medical facilities, while ultimately passed, was passed in an amended version that is more acceptable (repeal in three years' time) than the original version. Likewise, SB 295 which sought to increase and extend the state's R&D Tax Credit program was killed, though a provision extending the tax credit until 2015 passed via another bill. So these types of compromises must be taken into account as well.

This edition of Capitol Insight gives you a look at the major issues and bills the Chamber advocated for and against this year. Should you have any specific

questions with regard to the Chamber's legislative positions, or would like to learn more about the Government Affairs Committee and how you might get involved, please contact Will Stewart at the Chamber at (603) 792-4107 or email him at [wills@manchester-chamber.org](mailto:wills@manchester-chamber.org).

*John Weaver,  
McLane Law Firm  
Chairman,  
Government Affairs  
Committee*



## REGIONAL ECONOMIC DEVELOPMENT WINS

In a win for economic development efforts across the greater Manchester region and beyond, the legislature passed, and the governor signed, Senate Bill 291.

The bill allows municipalities to use any traffic impact fees they assess on development projects to make project-related capital improvements to state roads and highways that connect to said developments, something that was not previously allowed.

Previously, the fees paid by developers to help municipalities mitigate the

higher traffic counts caused new developments could only be used on municipal roads. The bill's prime sponsor was Sen. David Boutin, R-Hooksett. Co-sponsors include Sen. Tom De Blois, R-Manchester, and Sen. Lou D'Allesandro, D-Manchester.

The impetus for this bill came after the opening of Market Basket on Route 3A in Hooksett, where town officials wanted to make improvements to the highway to accommodate the increased numbers of vehicles attracted by the popular low-cost grocery chain, but were prevented from doing so

because it was a state highway.

Speaking of regional economic development, the Chamber was happy to also take part in an effort to defeat HB 1561, which sought to discontinue the state's regional planning commissions (RPCs).

RPCs, including the Southern New Hampshire Planning Commission (our region's planning entity) save communities money by providing low-cost planning services to towns with limited or no planning capacity, and by helping to obtain grants. For every \$1 in

dues received from member towns, for example, the Southern New Hampshire Planning Commission returns \$5 in planning grants and services to the communities in our region.

As the Chamber is a strong partner of the Southern New Hampshire Planning Commission on a number of initiatives, including the Metro Center regional economic development initiative, we were glad the House voted HB 1561 Inexpedient to Legislate.

## BUSINESS REGULATIONS COMMISSION MAKES HEADWAY

Created during the 2011 session via House Bill 248, the Commission to Study Business Regulations in New Hampshire formed last fall and continues to study and recommend potential reforms that will improve the state's overall business environment.

The Chamber along with the Business and Industry Association and the Nashua Chamber helped craft HB 248 as it's been years (if ever) since the state took a good, hard look at its regulatory environment and strategized on ways to streamline, simplify and improve the system.

Specifically, the commission is focused on labor/workforce and environmental regulations as areas ripe for streamlining and reform. Chamber Vice President of Economic Development and Advocacy Will Stewart was named to the Commission and serves as the chair of the Labor-Workforce Subcommittee.

After gathering input from businesses across the state, including members of the Greater Manchester Chamber of Commerce, the Commission issued a preliminary report last November and is set to issue a final report by October 31 of this year.

Included in the final report will be areas of concern and specific recommendations for legislation to be introduced during the 2013 session.

In addition to laws the legislature creates, removes or amends, there are also administrative rules used by the various state agencies to address a plethora of different issues that affect businesses. The Commission is looking at these as well.

Case in point is Emp. 304.04(b)(3)b, which addresses how unemployment compensation is charged to employers when an individual is concurrently employed by two or

more employers and is terminated by one of said employers. In some cases, this rule permits New Hampshire Employment Security (NHES) to charge unemployment checks to the accounts of part-time employers, even when the employer continues to employ the part-time employee. Confused?

Ron Weikers, who employs a number of part-time yoga instructors at YogaBalance and has found himself on the receiving end of this scenario, asked the Chamber what might be done to bring some common sense to this bizarre situation.

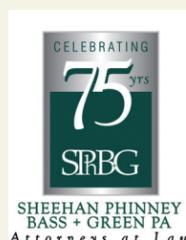
Having a seat on the Commission, the Chamber invited Weikers to share his experiences with the Commission's Labor-Workforce Subcommittee. After hearing from him, the Subcommittee invited NHES Commissioner Tara Reardon and her staff to discuss the concerns he raised.

As a result, NHES recently sent notice that the department is seeking to amend the above-mentioned rule to prevent a current employer for being on the hook for paying for unemployment compensation for employees who are still on their payroll. It should be noted that this in no way affects the issuance of unemployment checks, which will continue to be received by those who qualify for them. It does, however, reduce the amount of NHES charges and administrative paperwork encountered by employers of large numbers of part-time employees and encourages more part-time employment, which can only help the New Hampshire economy.

As the Commission will continue to work through the summer and fall, please contact Will Stewart at [wills@manchester-chamber.org](mailto:wills@manchester-chamber.org) or (603) 792-4107 if you, too, have any state business laws or regulations you'd like to see changed.

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## Executive Council derails rail study

After the legislature's unsuccessful efforts to repeal the New Hampshire Rail Transit Authority in 2011 via House Bill 218—an effort that was only stopped by a veto from Governor John Lynch—rail proponents, including the Chamber, were hopeful that rail efforts would not face any setbacks in 2012. This, however, was not to be the case.

In March, the Executive Council voted 3-2 not to authorize \$3.6 million in already appropriated funds—90 percent of which are federal—to conduct a study to

evaluate and analyze transit options, costs, benefits, and impacts of a range of transportation alternatives, including passenger rail, within the Boston-Nashua-Manchester-Concord corridor, otherwise known as the New Hampshire Capitol Corridor. The vote is unfortunate for a number of reasons, but especially because it disregards the responsible practice of data-driven decision making. Councilor Ray Wiczorek, R-Manchester, was one of two executive councilors to vote for the study, along with Councilor Ray Burton, R-Bath. To their credit,

both spoke to the need of having sound information before making any decision on the feasibility of bringing passenger rail back to Manchester and beyond.

As was noted by state Department of Transportation officials, conducting the study would not have committed the state to implement any of its findings, or to spend any money in the future. Indeed, the study could have even concluded that passenger rail is not feasible for southern New Hampshire. But now we won't know.

## Nonprofits under attack

Nonprofit businesses were targeted by two bills in 2012, bills the Chamber is happy to have played a role in defeating.

First, the Chamber was asked to oppose Senate Bill 177 by several of our nonprofit members. As amended, SB 177 sought to require at least one board member of each nonprofit that receives more than \$250,000 in government (state, local or federal) funds to attend a training session at least once every two years focusing mainly on fiscal management and ethics.

The Chamber had several concerns about this bill. First, we were concerned about message this sends to the state's nonprofit businesses (and they are businesses) and their volunteer directors. Why were nonprofits singled out to require a board member to attend a program on ethics and fiscal management, when for-profit businesses receiving government contracts have not?

Second, we had doubts as to the state's ability to adequately police nonprofit governance. With state cutbacks a regular occurrence in recent years, do we really want to add the burden of overseeing nonprofit governance to an already overworked, understaffed state government? And if the state is concerned about specific nonprofits, why not address the situation on an as-needed basis, perhaps via its contracts with specific nonprofits.

Having passed the Senate, the House effectively killed SB 177 by sending it to interim study.

Nonprofits were also targeted by HB 1308, which sought to subject certain nonprofit businesses to the state's Right to Know law.

The goal of the bill is to make fully transparent the operations of certain entities organized to perform taxpayer-funded services. The scope of the bill, however, was broader than intended or necessary and

could be interpreted to cover many more organizations than intended.

In short, the bill would include "primarily government-funded" nonprofits in the state's definition of a "public body." It is public bodies that are subjected to the Right to Know law.

Additional concerns include the fact that the deliberations of the boards of covered nonprofit businesses would be required to be held in public, which could lead to difficulty in obtaining board members and potential donors, whose donations might also be exposed to Right to Know.

After passing the House, HB 1308 was voted Inexpedient to Legislate (ITL) by the Senate.

## Taxes and tax credits

We're happy to report that the legislature made good progress on a couple of tax-related bills during 2012.

In a bill that will help small businesses and start-ups, House Bill 1418 increases the threshold (which had not been raised in more than 10 years) for businesses required to pay the Business Enterprise Tax (BET) to \$200,000. The legislature also passed HB 1221, which clarifies that a taxpayer may apply the credit for the Business Enterprise Tax against the Business Profits Tax on a quarterly basis when making estimated tax payments.

That's the good news on taxes. But when it comes to tax credits, the news isn't so good.

The House, which likes to pride itself on its pro-business leanings, gave many reason for doubt after the way they used and abused Senate Bill 295, which sought to extend and increase the state's Research and Development Tax Credit Program.

Enacted for five years starting in 2007, the Research and Development Tax Credit program allows New Hampshire businesses

to claim up to \$50,000 against their state business tax liabilities for "qualified manufacturing research and development" expenditures. SB 295 sought to repeal the program's sunset provision and increase program funds from \$1 million to \$2 million per year.

This very pro-business bill was passed by the Senate overwhelmingly. When it got to the House, however, it was amended to require a 24-hour waiting period before an abortion may be performed. This incredibly non-germane amendment was widely seen as a retaliatory measure against the Senate, which had, only hours before, killed a waiting period abortion bill passed by the House.

After a howl from business groups, including the Chamber, protesting the adding of an abortion-related amendment to the bill, the amendment was removed by the House Finance Committee, only to be reinserted on the House floor. The Senate, not willing to swallow the abortion language, voted to nonconcur, and thus let the bill die.

However, the R&D tax credit itself will live on, for another two years,

at least, thanks to House Bill 518, which has already been signed by the governor and postpones the program's sunset, but does not increase tax credit cap.

The Chamber was also disappointed that the Senate killed SB 405, which would have created a credit against the state Business Profits Tax and Business Enterprise Tax for donations to New Hampshire's community colleges for workforce development activities and student financial aid.

The continuing need for relevant and timely workforce development opportunities is a subject often voiced by Chamber members. Indeed, it was brought up by more than a few members during last summer's Policy Roundtable events, and last fall during our strategic planning process.

At the same time, it is imperative that the community colleges, in these challenging fiscal times, have the resources to develop strong programs, support student achievement and produce highly-skilled graduates.

# Advocating on your behalf..

Forget, for a moment, all of the other benefits of Chamber membership that can help you build your brand and expand your network—access to nearly 1,000 Chamber members, business referrals, a listing in the regional business directory, opportunities to attend business-enhancing workshops and programs, and more. Forget all of that. Chamber membership is a steal if for no other reason than having access to registered lobbyist who will advocate on your behalf on state and local business issues. This is certainly the case for most

Chamber members, 80 percent of whom are small businesses and as such don't often have the money available to hire a professional lobbyist to advocate on their behalf in Concord and at City Hall. Nor do most Chamber members have the time to keep track of the 1,000-plus bills filed annually in Concord, much less advocate for or against those bills that affect their businesses. But the fact remains that decisions that affect your business are made each and every day by state and local government officials, elected and otherwise. And if you don't have someone to keep you

informed of these decisions and speak up on your behalf, you are powerless.

But no matter what type of business you're in, the Chamber is looking out for and protecting your interests at the state and local levels. As you can see below, the Chamber's advocacy efforts during the past year have benefited all members of the business community. Are you incorporated as LLC or a corporation? Your business benefitted for our lobbying efforts in Concord this year. Ditto if you're a nonprofit or a municipality. Do you

employ part-time employees or operate a retail establishment? Are you located in downtown Manchester or anywhere in the city? If so, you benefited as well. Read below to see how else your business benefitted both directly and indirectly from the Chamber's advocacy efforts this year.

This work is done through the Chamber's Government Affairs Committee. If you would like to get involved please contact Will Stewart at (603) 792-4117.

## Utilities

- **HB 648**

Prohibiting eminent domain/Northern Pass

**Chamber opposed**

- **HB 1238**

Generation asset divestiture

**Chamber opposed**

- **SB 48**

Leveling the telephone provider playing field

**Chamber supported**

- **HB 1305**

Pole tax exemption

**Chamber supported**

## Retail

- **HB 1445**

Requiring cash refunds

**Chamber opposed**

## Non-profit

- **SB 177**

Requiring a board member from all nonprofits receiving gov't money to attend a mandatory fiscal/ethical training session)

**Chamber opposed**

- **HB 1308**

Subjecting certain nonprofits to the state's right to know law

**Chamber opposed**

## Healthcare

- **HB 1617**

Repealing the certificate of need law

**Chamber opposed**

## Municipalities

- **SB 291**

Provide municipalities with a way to address the impacts of new developments through the use of impact fees for project-related improvements to state highways located within a municipality

**Chamber supported**

- Touted **SB 405** and the Workforce Development Center (with links) in Capitol Insight

## Employers of Part-time Employees

- **SB 1323**

Requires employers who offer benefits to full-time employees to offer the same benefits on a pro-rated basis to part-time employees

**Chamber opposed**

- Initiated change to **Emp. 304.04** so that NH Employment Security no longer charges unemployment checks to the accounts of part-time employers, even when the employer continues to employ the part-time employee in question.

## Development Professionals

- **HB 1539**

Requires the state building code review board to consider economic impacts on the public in its review of amendments to the state building code

**Chamber supported**

## High Tech

- **SB 295**

Increases the research and development tax credit against the business profits tax and repeals the prospective repeal of the research and development tax credit

**Chamber supported**

## Limited Liability Companies

- **SB 203**

Modernizes laws governing limited liability companies

**Chamber supported**

## Corporations

- **SB 205**

Revises the New Hampshire business corporations act, RSA 293-A

**Chamber supported**

## All Businesses

- **HB 1418**

Increases the threshold amounts for taxation under the business enterprise tax

**Chamber supported**

- **SB 405**

Establishing a workforce investment tax credit against the business profits tax for contributions made to the community college system of NH

**Chamber supported**

- **HB 1221**

Clarifies that a taxpayer may apply the credit for the business enterprise tax against the business profits tax on a quarterly basis when making estimated tax payments

**Chamber supported**

- **SB 204**

Makes changes to Article 9 of the Uniform Commercial Code, relative to secured transactions, as proposed by the National Conference of Commissioners on Uniform State Laws

**Chamber supported**

- **SB 213**

Requires state agencies to issue a warning before imposing certain fines or penalties. The bill also requires agencies to waive first time paperwork violations

**Chamber supported**

- **HB 1641**

Adds requirements that the carry forward of certain net operating loss deductions be related to the creation of new jobs

**Chamber opposed**

- **HB 1282**

Essentially repeals the state's workforce housing laws

**Chamber opposed**

## Downtown Manchester Businesses

- Led advocacy efforts to keep \$380,000 in City budget to replace crumbling downtown sidewalks

## Manchester Businesses

- Initiated and drive ongoing efforts to improve the City's business/development permitting process

## Chamber defends workforce housing

With the introduction of House Bill 1282, one can't help but wonder if the memories of some legislators are wiped completely clean between legislative sessions.

HB 1282 sought to essentially repeal the state's workforce housing law, a law that the Chamber and other business advocacy organizations helped pass several years ago. The law requires municipalities to allow for a reasonable opportunity for workforce housing (housing that allows families making median incomes—young professionals, blue collar workers, municipal employees and the like—in a town to afford to live there too) to exist within their boundaries. While not a strict repeal, HB 1282 would have allowed municipalities the ability to opt into the state's workforce housing law, which would have had the same

effect as an outright repeal.

2011 saw a very similar bill killed at the committee level by an overwhelming vote. At that time, the full House, however, saw fit to ignore the committee's Inexpedient to Legislate (ITL) recommendation, opting to vote on and ultimately pass the bill. The bill died only after crossing over to the Senate. This year, the same scenario played out in almost the same fashion.

Realizing their sense of déjà vu was quite real, the Senate did not even vote on the bill and instead returned it to the House, citing a legislative rule aimed at preventing the same bills from being introduced twice in the same biennium.

Here's hoping legislators stop beating this dead horse in 2013.

The Chamber's **Government Affairs Committee** meets monthly from September to June on the first Friday of the month from 7:30-8:30 a.m. at 54 Hanover Street. To get involved or to learn more, contact Will Stewart at 603.792.4107 or at [advocacy@manchester-chamber.org](mailto:advocacy@manchester-chamber.org)

## Don't miss our business and government events

- Executive Council Primary Debate
- Executive Council Debate
- First Congressional District Debate
- Gubernatorial Debate
- Business & Government Reception
- Annual Legislative Dinner
- State of the State/State of the City Breakfast

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Business Laws Modernized

If there's one highlight from the 2012 session, it just might be Senate Bill 203, which modernizes the state's limited liability company (LLC) laws, which haven't been touched since the 1990s.

Passed by both houses of the legislature, SB 203 makes New Hampshire's laws concerning LLCs—by far the state's most popular business entity choice—easier to understand, while leaving in place most of the existing LLC provisions.

For starters, the bill makes better use of plain English. As most LLCs in the state are formed without the assistance of legal counsel, this is a good thing. The use of plain English in favor of

legal jargon will help make business formation and governance easier to understand for new and existing entrepreneurs.

SB 203 also defines a number of technical terms in the current LLC laws that aren't spelled out. These terms include "allocation," "distribution," "dissociation" and "dissolution." Left undefined in the current statute, these terms have been a source of confusion, particularly when business partnerships dissolve.

Results weren't nearly as good for corporations this session. As SB 203 modernized the state's LLC laws, SB 205 sought to do the same for corporations,

but it wasn't to be. Despite passing the Senate 22-2, SB 205 died in House after failing garner much interest there. Some House members complained about its 135-page length, though to be fair it was fully vetted by a number of pro-business organizations, including the BIA, which led the charge on both the LLC and Business Corporations Act bills. Look for this bill to make a return in 2013.

Continuing on the modernization of business laws theme, the legislature passed SB 204, which makes technical changes to Article 9 of the Uniform Commercial Code, relative to secured transactions, as proposed by the National Conference of Commissioners

on Uniform State Laws.

And yes, SB 204 is as exciting as it sounds. But what the bill lacked in excitement and political drama, it makes up for in good business sense.

The Uniform Commercial Code (UCC), first published in 1952, was created in an effort to harmonize the laws of sales and other commercial transactions in all 50 states. By adopting the Article 9 amendments as noted in SB 204, New Hampshire law will be in greater conformity with that of other states, a uniformity which can serve to lower transaction fees. And that's a good thing.

Healthcare

With health care issues consistently ranked as one of members' top business concerns, the Chamber lobbied on two important health care issues in 2012.

Senate Bill 163 sought to establish a state health insurance exchange as directed by the provisions of the Patient Protection and Affordable Care Act (the PPACA), sometimes called "Obamacare." Opponents of a state-based exchange, who ultimately won the day, argued that it is bad public policy because it signifies support for federal bill, but that simply isn't true. Indeed, many supporters of SB 163 strongly oppose the PPACA. For many, support for SB 163 results from pragmatism and a

desire for less federal control, rather than more, should the federal law stay in place.

With the defeat of SB 163, New Hampshire will now be forced to participate in a federal exchange in which it will have no hand in making and will not be tailored to the unique needs of state employers and residents.

Slightly more success was seen with regard to House Bill 1617, which sought to eliminate the state's Certificate of Need (CON) law, which requires proposed medical facilities and expansions to pass a needs assessment of sorts before being built.

As imperfect as it might be, CON is designed to ensure that institutional health care services provide the highest quality of care that is available to the citizens of our state, as well as to promote collaboration among health care providers to provide better care and to manage the increase in health care costs. The CON process maintains a level playing field for all medical facilities in the state and works to keep costs down by limiting the capacity of the state's health care system. Counter intuitive as that might sound, research has shown that more capacity in the health care system - more hospitals, imaging centers, and specialists - leads to higher utilization and increased

costs.

HB 1617 was one of two House bills aimed at allowing Cancer Treatment Centers of America to enter the state without having to go through the same CON process as every other hospital and medical facility in New Hampshire. The two bills were ultimately combined in the Senate.

While the combined bill did pass, it was passed in amended form that postpones repeal until 2015, giving future legislators more of an opportunity to study this complex issue.

Utilities under the spotlight

2012 was both good and bad for businesses that are customers of the region's major utilities.

Businesses dodged a bullet with the defeat of House Bill 1238, which sought to force PSNH to sell its power plants. Had it passed, this bill would have removed a needed hedge against volatile energy prices that is made possible by PSNH's ownership of its own power plants, by which the company can sell electricity directly to its customers when prices on the competitive energy market are high.

Specifically, HB 1238 would have granted the Public Utilities Commission—unelected regulators—the ability to force PSNH to sell its generation assets. The issue of whether PSNH should own generation assets has historically been a policy issue decided by the legislature. The legislature made the decision in 2003 for PSNH to keep its generation,

a decision which has saved PSNH customers \$700 million in the form of lower rates thanks to the company's power plants.

After the bill was passed by the House Science, Technology and Energy Committee, business groups, including the Chamber, lobbied hard to defeat the bill on the House floor. Seeing the writing on the wall, committee chair Rep. James Garrity made a motion to table the bill after concluding that he would lose a floor fight if it came to that. The bill was thus killed.

Energy consumers weren't as lucky with the passage of HB 648, which prohibits a public utility from using eminent domain when determining where to place an energy transmission project unless the project is necessary for "system reliability." Aimed directly at stopping the Northern Pass project, the Chamber opposed this bill as it sets a chilling precedent of the

legislature targeting a particular project already in motion. Unfortunately, the bill was passed by both houses and signed by the governor.

Good news, however, was seen with the passage of Senate Bill 48, which levels the playing field for all telecom providers by granting regulatory parity for all.

Currently, some telephone providers are still regulated as they were decades ago, when there was one monopoly provider of telecom services. Today, however, customers now have a vast array of options as local telephone companies, long distance providers, wireless, cable companies and others all vie for voice customers. With the bill's passage, the Chamber is glad to see telephone competition in the modern free market. As with the energy industry, the telecommunications industry and its customers also faced legislative setbacks in 2012. Case in point is HB 1305, which

sought to reestablish the exception from property taxes for telecommunications poles and conduits that existed prior to 2011.

Prior to last year, local governments did not have the right to assess a property tax on telephone poles and conduits. But now they do, and as a result of this new tax, rates for land line users—which include much of the business community—will increase. Indeed, the New Hampshire Public Utilities Commission has already granted approval for FairPoint to add the new tax to customers' bills. Other communications providers will likely follow suit.

While the House Science, Technology and Energy Committee voted to pass HB 1305 and remove the new tax, the full House voted 161-133 to keep it.