

LEGISLATIVE BULLETIN

Senate to Vote on Meals & Rooms Tax

The Senate Ways & Means Committee voted Ought to Pass, 5-0, on **SB 99**, an **NHMA policy bill**, on Monday. The full Senate will act on the bill on **Thursday, March 11**. As we reported in **Bulletin #7**, this bill removes the annual increase limit (*i.e.*, repeals the “catch-up formula”) on the meals and rooms tax distribution to municipalities so that 40 percent of net revenue would be immediately distributed annually.

During the committee’s executive session on Monday, members discussed the many years the meals and rooms tax catch-up formula has been suspended. Meals and rooms tax is the largest source of state revenue sharing for towns and cities. Although the total state revenue from the tax has increased 67% in the past 10 years (\$204 million to \$340 million), the amount distributed to municipalities has increased only 17% (\$58.8 million to \$68.8 million). The loss of this state revenue, along with the loss and suspension of other statutory state revenue sharing and state aid over the past ten years, has had a major impact on local property taxes and municipal services.

In discussing the state’s past promises to towns and cities, committee members pointed out that the municipal revenue sharing required by RSA 31-A has also been suspended in the state’s budget process for over 10 years, noting it is once again suspended by section 42 of **HB 2**, the current budget trailer bill (see **HB 2** article below). Committee members said the public is looking to the legislature to honor the promises it made years ago, and **SB 99** is a good start.

To calculate the impact of **SB 99** on your municipality, you can download this **NHMA calculation tool** (Excel spreadsheet) located on NHMA’s website. (Scroll to the bottom of the page.) A further discussion of **SB 99** and the state’s promises to towns and cities can also be found in a **NH Journal** news article published this week which focused on property tax relief.

We are encouraged by the commitment of the bill sponsor and other senators to address the many years of failure to fund the state’s commitments. **Please contact your senator before Thursday**, and ask him or her to support **SB 99**, explaining their support will in turn help all property taxpayers.

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Inside this issue:

Bill Limits City Authority	2
Eliminating Immunity	2
Non-Disparagement Clauses	3
SB 2 Adoption	3
Finding Towns for Gun Regulations	4
Budget Trailer Bill	4
Municipal Aid Bill	5
Prosecuting Election Violations	6
House and Senate Sessions	6
COVID Survey Results	6
House Calendar	6
Senate Calendar	7
New House Bills	7
Senate Floor Action	8
NHMA Events	8

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Committee Votes to Eliminate Longstanding Local Authority

On Monday, the House Municipal & County Government Committee heard testimony and voted 10-9 in executive session to recommend passage of **HB 439**, one of the most serious attacks on local control this year. We are urging all municipalities to contact [their representatives](#) to ask them to oppose this bill.

On its face, **HB 439** removes the “catch-all” provision of RSA 47:17, XV that codifies cities’ (and town council towns’) power to enact ordinances related to such varied interests as public health, safety, morals, comfort, the protection of prosperity, and the general welfare.

Although the statute applies only to cities and town council towns, the testimony in support of the bill largely focused on ordinances adopted by traditional (town meeting/select board) towns. Therefore, it is likely that **HB 439** serves as a first step in removing local authority from *all* municipalities, and it is important for *all* municipalities to oppose it.

If **HB 439** passes, local officials throughout New Hampshire will be unable to help their citizens solve a variety of local problems. Instead, they will have to seek legislative authority to address issues they currently can resolve themselves. The legislature already sees too many bills dealing with single-municipality problems. It is hard to imagine how many more will need to be filed each legislative session if all 13 cities—never mind all 234 cities and towns—need to rely on the legislature to solve local issues.

Simply put, **HB 439** will create far more work for the legislature, inhibit the ability of cities and town council towns to be responsive to their citizens, and invalidate the solutions carefully crafted over the years to deal with local issues.

Please contact your representatives and ask them to ***oppose the committee recommendation of Ought-to-Pass on HB 439.***

Committee Votes to Eliminate Municipal Immunities

With no discussion or debate, the House Judiciary Committee voted 19-2 this week to eliminate the various immunities from lawsuits that, for decades (and centuries in some cases), have protected local officials and employees from tort liability for good-faith decisions made in the performance of their duties.

HB 111 is, with minimal changes, a model bill drafted by an out-of-state libertarian organization. The bill purports to eliminate “qualified immunity,” which applies in a very narrow class of lawsuits—those filed under federal law for violations of a person’s rights under the United States Constitution.

However, the bill does so much more than that. It eliminates any “defense or immunity” in any lawsuit against a municipal (or state) official or employee, whether brought under federal or state law. It expressly states that it will be no defense in such cases that the official or employee acted in good faith, or that the official or employee reasonably believed that his or her conduct was lawful. In essence, it imposes strict liability on local officials and employees for any injury that results from their conduct, no matter how reasonable the conduct was. That liability is, in turn, imputed to the municipality. In any case in which the plaintiff prevails, the municipality would be liable for all attorney fees and litigation costs.

Thus, a municipality will be liable for damages, attorney fees, and costs if (1) a police officer, relying on solid information from a usually reliable source, arrests the wrong person; or (2) a police officer arrests someone for violating a state statute, and the supreme court subsequently rules that the statute is unconstitutional; or (3) a building inspector, relying on a good-faith interpretation of the building code, denies a building permit, and his decision is reversed by a court; or (4) a town manager in good faith denies an assembly permit, believing it will be unduly disruptive, and a court rules that the denial violated the applicants' First Amendment rights. The list could go on forever.

The bill implicitly repeals RSA 31:104, which protects local board members and other officials from liability for damages for decisions made in good faith and within the scope of their authority. It expressly supersedes RSA 507-B, which shields municipalities from tort liability in some circumstances and provides damage limitations in cases where immunity does not apply. It states that the individual official will not be financially liable (the municipality will be instead), but oddly allows the municipality to fire the individual. It raises the question of why anyone would ever be willing to work for a municipality.

Providing most municipal services—from public safety to community movie nights and hiking trails—is voluntary. This legislation would leave some municipalities wondering whether it is worth the liability risk—and cost to its citizens—to provide services such as police and fire protection at all.

HB 111 is one of the most alarming bills we have ever seen. Local officials and employees need to be extremely concerned about this. ***Please contact your representatives and insist that they vote to kill HB 111.***

Committee Supports Ban on Non-Disparagement Clauses

In another near-unanimous vote that will make local government more difficult, the House Judiciary Committee this week recommended Ought to Pass on **HB 83**, which prohibits the inclusion of a non-disparagement clause in any settlement agreement in a lawsuit involving a government entity. See [last week's Bulletin](#) (page 2 in the PDF version) for a discussion of this bill and the problems with it. We do not know the committee's rationale for passing the bill, because, as with **HB 111**, there was no public discussion at all—just a motion and a vote (Ought to Pass, 20-1).

Bill Would Damage SB 2 Adoption Process

Two years ago, the legislature repaired a fundamental flaw in the process for adopting the official ballot referendum (SB 2) form of town meeting. From its inception, the process had inexplicably required that the question be placed on the official ballot, leaving voters to make their choice without the benefit of any discussion or debate, and often with no idea of what the question even means. In 2019 the legislature fixed the statute to require that the question be voted on during the town meeting's business session, just as almost everything else is.

Unfortunately, there is an effort this year to undo that improvement. This coming **Monday, March 8, at 10:00 a.m.**, the [Municipal and County Government Committee](#) will hear testimony on **HB 374**, which would reinstate the law's original defect.

Other major changes to town government—such as establishing a budget committee or imposing a tax cap—are required to be voted on in open town meeting, where there is ample opportunity for explanation

of what the change will mean for the town. That is, after all, how a legislative body works: questions are submitted, explained, and debated, and are voted on only after members are satisfied that they understand the question.

Adoption of SB 2 is a fundamental change in how the legislative body operates; it is a far more significant change than adoption of a budget committee or a tax cap, and it needs to be treated that way. A huge, and likely permanent, change in how town meeting operates should be based on thorough discussion and debate, not on the whims or guesses of voters who have a few seconds to make up their minds about a question they are seeing for the first time.

Please consider signing or testifying in opposition to HB 374, or contact committee members to express your opposition.

Committee Supports Fining Towns for Gun Regulations

In yet another disturbing development, the House Criminal Justice and Public Safety Committee voted 11-9 this week to recommend passage of [HB 307](#), the bill that would subject municipalities to fines for trying to regulate firearms. The committee did recommend an [amendment](#) that tempers some of the most extreme provisions of the bill. For example, the amendment eliminates the provision that tried to allow “any citizen of the state” to sue any municipality to challenge its regulations, even when the citizen had no connection to the municipality; and it reduces the “liquidated damages” a municipality would have to pay to \$10,000 (from \$100,000).

However, the bill would still prohibit a town from regulating the firing of guns on a town-owned athletic field, or in a town forest or cemetery, or on any other town-owned property. And it would still impose a fine of at least \$500, plus \$10,000 in damages, plus attorney fees, for any violation of that prohibition.

Fining local governments for the erroneous adoption of invalid ordinances is a serious departure from the relationship that has traditionally existed between the state and its political subdivisions. That relationship has always been, and should continue to be, defined by cooperation, not animosity. We hope the full House will understand this. ***Please contact your representatives and ask them to kill HB 307 when it comes to the House floor for a vote.***

Budget Trailer Bill Affects Municipal Budgets

The House introduced [HB 2](#), relative to state fees, funds, revenues, and expenditures on Tuesday. Also known as the “budget trailer bill,” **HB 2** contains 156 pages of legislative changes proposed by the governor to support [HB 1](#), the governor’s proposed operating budget. **HB 2** can also include separate topics and appropriations.

The following sections in **HB 2** affect municipal budgets:

Section 42, Revenue Sharing. RSA 31-A is (again) suspended for fiscal years 2022 and 2023. Until 2009, \$25.2 million in general fund revenue was distributed annually to municipalities; but due to the financial impacts of the Great Recession, the legislature suspended the revenue sharing statute in the 2009 budget process and has continued to suspend it each budget session since then. The cumulative loss to towns and cities through the current fiscal year amounts to \$300 million. Revenue sharing, formally titled “Return of Revenue to Cities and Towns,” was established in 1969 when the state reformed how businesses were taxed,

replacing the old stock in trade tax that had been collected by municipalities when business inventory was an integral part of towns' and cities' property tax base. Here is a link for the [2009 distribution amounts](#) to each municipality.

Section 100, Distribution of Meals and Rooms Tax. This section amends RSA 78-A:26, II, to clarify that if there is no increase in the income received from the meals and rooms tax compared to the previous fiscal year, the distribution to municipalities shall equal the prior year's distribution. Contrary to the governor's operating budget, based on current revenue projections, municipalities would not receive an increase in meals and rooms tax distributions in fiscal year 2022, budgeted at \$5 million. Revenue projections do support a \$5 million increase in the fiscal year 2023 distribution—but not the projected \$10 million increase in the governor's budget. In prior budget processes, the legislature suspended RSA 78-A:26, II, and capped the municipal distribution at the 2017 level: \$68.8 million through fiscal year 2021.

Section 60, State Aid Grants. This section prohibits the disbursing of state aid grants for eligible infrastructure projects that did not achieve “substantial completion” by December 31, 2019, including wastewater treatment, public water systems, and landfill closure projects. This moratorium would prevent the funding of 110 wastewater projects which the Department of Environmental Services has identified as expected to be “substantially complete” and eligible for final funding approval in fiscal years 2022 and 2023. Further, the governor's operating budget does not include funds for the 11 projects that were substantially complete prior to December 31, 2019, and were appropriated to receive funding in the current biennium.

Section 60 represents another suspension of state statute requiring payment of state funding obligations—another promise that is not fulfilled. RSAs 486, 486-A, and 149-M, all include language stating “the State SHALL (emphasis added) pay” the 20-25 percent amortization costs of eligible costs for these essential environmental projects (state aid grants). Under these statutes, towns and cities are encouraged to move forward with very substantial capital infrastructure projects with the full expectation that the state is a partner in providing for critical clean drinking water and a safe environment. Towns and cities must finance the full cost upfront, and they are required to work with DES through the entire project process of grant pre-application, planning, design and engineering, construction, and one-year warranty before the projects are deemed “substantially complete.” Only then are municipalities able to receive final approval by the governor and executive council for payment by the state of the promised statutory 20-to-25 percent share of the annual amortization costs.

The House Finance Committee Divisions I, II, and III have scheduled numerous budget work sessions over the next two weeks and will be holding budget hearings later in March on both **HB 1** and **HB 2**.

Municipal Aid Tabled for Budget Consideration

After the Senate voted Ought to Pass, 13-11, on **SB 118**, an **NHMA policy bill**, yesterday, it voted 24-0 to table the bill. As we reported previously in **Bulletin #7**, this bill, known as the Property Tax Relief Act, would distribute \$20 million in municipal aid in each of fiscal years 2022 and 2023, requiring that 60 percent be used for property tax rate reduction. Following the Senate vote to table, the Senate president explained that it has always been the practice in the Senate that bills like this get placed on the table; senators are then invited to come back to the Finance Committee, when the Senate receives the budget from the House, to talk about how those bills can be worked into the budget. The House is scheduled to act on the budget by April 8. We will update you when **SB 118** is scheduled to receive budget consideration by the Senate Finance Committee.

A Small Expansion of Local Authority?

In a legislative session that has featured many bills focused on restricting local authority, [HB 372](#) stands out as one bill that would *increase* local authority—although not, to our knowledge, in a way that any local officials have requested. On Thursday the House Election Law Committee heard brief testimony on [HB 372](#), which would expand the authority of both county attorneys and municipal prosecutors to include the investigation and enforcement of the state election laws, as well as require periodic reporting to the General Court on such investigations and enforcement actions in some circumstances.

Interestingly, [HB 372](#) would clearly segregate the authority of municipal prosecutors appointed by the governing body pursuant to RSA 41:10-a from those police officers who may prosecute the same or similar cases on behalf of the municipality. The bill would grant those attorneys appointed as municipal prosecutors the authority to “enlist the aid of the state police, and other public officers” in the investigation and prosecution of the state election laws, give them a limited authority to seek subpoenas from grand juries outside of the purview of the county attorney or attorney general's offices, and expand their prosecutorial authority to the superior court in the context of felony-level violations of the election laws. Presently, municipal prosecutors are restricted to appearing in the circuit courts.

NHMA is not taking a position on [HB 372](#), but we are suggesting that those with opinions on this bill contact their representatives to express them.

House and Senate Sessions

The Senate has been meeting in session every week to take action on committee reports, while the House is holding more sporadic, and much longer, sessions. Today's House calendar indicates that House deadlines will be extended to accommodate the less frequent sessions. (Under the current schedule, the deadline to act on all non-budget bills not in a second committee is March 18.) There is no House session next week, and possibly none the following week. Therefore, it will be at least two weeks before the bills reported here make it to the House floor. Local officials are encouraged to use that time to talk to their representatives and encourage them to kill the many bad bills that they will be dealing with at the next session.

Second Follow-up COVID-19 Financial Impact Survey Results

NHMA's second follow-up COVID financial impact survey is complete. Here is a link to [the results](#).

HOUSE CALENDAR

All hearings will be held remotely. See the [House calendar](#) for links to join each hearing.

MONDAY, MARCH 8, 2021

ELECTION LAW

- 9:30 a.m. [HB 429](#), relative to college or university student voting.
- 9:45 a.m. [HB 362](#), relative to domicile of students for voting purposes.
- 10:15 a.m. [HB 554](#), relative to temporary absence from domicile for voting purposes.
- 10:30 a.m. [HB 531-FN-L](#), relative to determining the qualifications of voters and establishing provisional voter registration and provisional ballots.
- 11:30 a.m. [HB 538](#), relative to domicile residency, voter registration, and investigation of voter verification letters, and relative to the terms “resident,” “inhabitant,” “residence,” and “residency.”

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

1:00 p.m. **HB 141-FN**, requiring the department of environmental services to maintain a public registry of where certain fire suppressants have been used.

MUNICIPAL AND COUNTY GOVERNMENT

8:30 a.m. **HB 484**, relative to budget committee recommendations on warrant articles.

9:00 a.m. **HB 411**, establishing a commission to study the equalization rate used for the calculation of a property tax abatement by the New Hampshire board of tax and land appeals, the superior court, and all cities, towns, and counties.

9:30 a.m. **HB 392**, relative to the membership of local land use boards.

10:00 a.m. **HB 374**, relative to the official ballot referendum form of town meetings.

10:30 a.m. **HB 341**, relative to permissible residential units in a residential zone.

11:00 a.m. **HB 266-FN-L**, relative to enforcement of immigration laws and the prohibition of sanctuary policies.

WEDNESDAY, MARCH 10, 2021

WAYS AND MEANS

10:00 a.m. **HB 614-FN**, exempting the state and political subdivisions from payment of the costs of compliance with the renewable portfolio standard.

SENATE CALENDAR

All hearings will be held remotely. See the [Senate calendar](#) for links to join each hearing.

MONDAY, MARCH 8, 2021

ELECTION LAW AND MUNICIPAL AFFAIRS

9:00 a.m. **SB 89**, adopting omnibus legislation relative to election procedures and registers of probate.

WAYS AND MEANS

9:40 a.m. **SB 102**, adopting omnibus legislation on property taxation.

TUESDAY, MARCH 9, 2021

COMMERCE

8:45 a.m. **SB 136-FN**, relative to the state minimum hourly rate.

New House Bills

HB 1 makes appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2022 and June 30, 2023. Rep. Weyler of Kingston; **F-H**.

HB 2 relative to state fees, funds, revenues, and expenditures. Rep. Weyler of Kingston; **F-H**.

HB 25 makes appropriations for capital improvements for the biennium and extends certain lapse dates for previous appropriations. Rep. Graham of Bedford; **PW**.

SENATE FLOOR ACTION

Thursday, March 4, 2021

SB 46, relative to the use of electronic poll books by cities and towns. **Passed with Amendment.**

SB 54, relative to the procedure used to complete and submit applications for absentee ballots and absentee ballots. **Passed with Amendment.**

SB 63, relative to business liability protection for exposure to coronavirus and COVID-19. **Re-referred.**

SB 85-FN, establishing a broadband matching grant initiative and fund. **Passed with Amendment; referred to Finance.**

SB 86-FN, adopting omnibus legislation relative to planning and zoning. **Passed with Amendment.**

SB 118-FN-A-L, relative to the property tax relief act of 2021. **Passed; Laid on Table.**

SB 132-FN, adopting omnibus legislation relative to COVID-19. **Passed with Amendment; referred to Finance.**

SB 152-FN-A, relative to affordable housing program funding. **Passed with Amendment.**

2021 NHMA UPCOMING MEMBER VIRTUAL EVENTS

Weekly	Friday Membership call (1:00 – 2:00)
Mar. 23	Webinar: The Workings of a Planning Board (12:00 – 2:00)
Mar. 24	2021 NHDOL/USDOL Labor Law (9:00 – 12:00) - <i>free to members</i>
Apr. 6	2021 Local Officials Workshop (9:00 – 4:00) Includes the <i>Knowing the Territory</i> publication, 2021 Edition.
Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming virtual events. Click on the Events and Training tab to view the calendar. For more information, please call NHMA's Workshop registration line: (603) 230-3350.	