New Hampshire Municipal Association

THE SERVICE AND ACTION ARM OF NEW HAMPSHIRE MUNICIPALITIES

LEGISLATIVE BULLETIN

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Where We Are

Yesterday was the deadline for House and Senate committees to report all bills, so committee hearings are done for this year. (That is why you will no longer see a House or Senate calendar in the *Bulletin*.) Next Thursday, June 1, is the deadline for the House to act on all Senate bills, and *vice versa*. Both chambers have quite a few bills to get through, and the Senate's menu includes the budget bills (see article below). The House will be in session on Thursday, and the Senate on both Wednesday and Thursday.

Both chambers have also begun taking action on their own bills that were amended by the other chamber—*i.e.,* concurring, requesting a committee of conference, or "non-concurring" and letting the bill die. Many committees of conference will be formed next week and the following week; June 8 is the deadline to form those committees. The committees will meet over the next few weeks; June 15 is their deadline to sign off and send the bills back to the full House and Senate for final action, and June 22 is the deadline for both chambers to act on committee of conference reports.

Airbnb Bill Shreds Local Authority, Threatens Local Businesses

The House will likely vote next **Thursday, June 1,** on whether to accept the Senate's version of **HB 654,** dealing with short-term and vacation rentals. There will be a motion to concur with the Senate amendment. ***Please ask your representatives to vote "no" on the motion to concur.***

As explained in last week's *Bulletin*, the bill as passed by the House merely created a committee to study short-term and vacation rentals, but the Senate Ways & Means Committee approved an amendment, with no notice and no input from municipalities, that virtually eliminates any local (or state) regulation of these businesses. It also creates a severe competitive disadvantage for New Hampshire's many locally owned hotels, inns, and bed and breakfasts. The Senate last week adopted the committee amendment on a 15-7 vote and then passed the bill as amended.

The bill as amended defines "vacation rental or short-term rental" as "any individually or collectively owned single-family house or dwelling unit or

INSIDE THIS ISSUE

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(Airbnb Bill — Continued from Page 1)

any unit or group of units in a condominium, cooperative, or owner occupied residential home, that is offered for a fee and for less than 30 consecutive days." This could include any of the following, if rented for less than 30 consecutive days:

- A stand-alone single-family home;
- A unit in a duplex;
- Any number of apartments, whether a single apartment attached to a single-family home or multiple units in an apartment building;
- One or more units in a condominium;
- One or more bedrooms in an owner-occupied single-family home.

Under this definition, a property that is only nominally different from a bed and breakfast or even a large hotel could be classified as a collection of short-term rentals and reap the benefits of the bill.

One of those benefits is that a municipal agent would be prohibited from entering the premises to make inspections without "an individualized showing of probable cause that a particular dwelling is unfit for human habitation sufficient to support issuance of a search warrant." Since a search warrant is issued only in *criminal* cases to allow the seizure of property related to a crime (see RSA 595-A:1), and would never be issued to enforce housing standards, this essentially prohibits any inspection of short-term rentals. Yet all other dwellings are subject to inspection under existing law (see RSA 48-A:8). Under **HB 654,** short-term rentals are singled out for exemption.

Another effect is that a municipality would be prohibited from requiring a certificate of occupancy or other license for short-term rentals. Under existing law, a certificate of occupancy may be required for any residence, any business, or any other structure (RSA 674:51, IV). Again, short-term rentals would be entirely exempt.

Perhaps the most significant impact is that a short-term rental would be deemed a "residential use of property." This presumably is intended to preempt local zoning control and other land use regulation. The argument of those pushing this legislation is that short-term rentals are "residential uses, not businesses." That is nonsense. There is an obvious difference between (1) leasing a house or an apartment on a long-term basis to a person or a family to occupy as their primary residence, and (2) offering rooms to the general public on a nightly or weekly basis. The former is a residential rental, the latter a business. That is why, for example, the former is not subject to the meals and rooms tax, while the latter is. It is also why local zoning ordinances typically distinguish between a single-family residence, whether rented or owner-occupied, and a hotel or a bed and breakfast.

However, conceding for the sake of argument that a short-term rental is merely a "residential use," then presumably it should be treated the same as any other residential use. This bill, however, would make properties used as short-term rentals the *only buildings in the state* that are exempt from certificate of occupancy requirements, and the *only dwellings in the state* that are not subject to inspection for habitability. It is not an effort to treat them the same as other residential uses—it is exactly the opposite, an effort to grant them special status that no other residential use enjoys.

Further, although this is not an issue for NHMA, this preferential treatment would convey an enormous competitive advantage, largely for the benefit of Airbnb and Expedia (parent of HomeAway), and at the expense of local hotel and B&B owners, who have to comply with all state

(Airbnb Bill — Continued from Page 2)

and local regulations. We often hear legislators saying that the government "shouldn't pick winners and losers." That is exactly what this bill does. If the legislature does want to give an advantage to someone, maybe it should be the local businesses, not a couple of West Coast giants worth over $50 billion.

This legislation is part of a nationwide campaign that these companies have waged to circumvent restrictions on their operations. As multi-billion corporations are wont to do, they have complained about having to deal with a "patchwork of local regulations." In other words, zoning and land use regulation are for the common folk; Fortune 500 companies shouldn't have to be bothered. And yet there are plenty of national and multi-national companies—Walmart, Home Depot, McDonald's—that are able to navigate the "patchwork." Why are Airbnb and Expedia different?

We have heard that this legislation is needed because one city, Portsmouth, has been targeting short-term rentals and subjecting them to inspections. That is simply not true. Although Portsmouth has expressed concern about short-term rentals, it has taken absolutely no action to inspect or license them, and has instead waited to see what the legislature would do. The bill as passed by the House would have created a committee to study these issues and recommend legislation. Not interested in having those issues studied and debated publicly, the industry slipped in an amendment that subverts the process by legislating on exactly the matters the committee was supposed to study.

If this assault on local government and local businesses is permitted to stand, what's next? ***Please contact your representatives before Thursday and urge them to oppose the motion to concur on HB 654.***

Senate Finance Recommends Two-Year Spending Plan

On Wednesday, the Senate Finance Committee finished work on its version of a two-year spending plan to take effect July 1, 2017. HB 1/HB 144 (operating budget) and HB 2/HB 517 (trailer bill making statutory changes necessary to implement the budget), approved by a 4-2 vote along party lines, will head to the full Senate next week. When passed, the Senate version will go back to the House, which will likely have some different spending priorities. Although the House did not pass its own version of the budget, we expect there will be some form of a committee of conference to resolve any differences between the House and Senate, and we will continue to report as the process continues.

So, what's in, or not in, the Senate budget for municipalities? As we note in a separate article, additional funding of $36.8 million for roads and bridges and $3.5 million for water and wastewater projects is contained in bills outside the budget. The Senate operating budget and trailer bill contain the following of interest to municipalities:

- $68.8 million each year for meals and rooms tax distribution, with the suspension of the statutory catch-up provision (which would provide up to an additional $5 million each year) for both years of the biennium;
- Funding of $12.7 million for existing state aid grant projects that have already been approved by the Governor and Executive Council, with a continuation of the moratorium on funding any new projects during the biennium;

(Spending Plan — Continued from Page 3)

- Highway block grant funding of approximately $35 million each year
- Municipal bridge aid of $6.8 million each year;
- Full funding for flood control reimbursements of $866,250 each year, with a requirement that the Attorney General's Office undertake every reasonable effort to collect all amounts due to New Hampshire from other states under the flood control compacts;
- Continued suspension of revenue sharing, which provided $25 million each year to municipalities up until 2010;
- An amendment to the drinking water and groundwater trust fund statute enacted last year to administer approximately $300 million from the MTBE remediation settlement. The amendment changes the spending authority from the Department of Environmental Services to the advisory commission, adds additional members to serve on the commission, including an additional municipal member, and expands the purposes for which trust fund money may be granted.

Again this year, the Senate budget bill proposes to reduce business taxes. Unfortunately, the proposal does not help to reduce *property* taxes, which affect residential property owners as well as businesses. The House Finance Committee's proposal to provide $25 million in each year of the budget for municipal property tax relief was not discussed by the Senate Finance Committee. Nor are we aware of any discussion relative to lifting the 2010 suspension on revenue sharing—a loss of almost $202 million over the last eight years.

Especially disappointing is the refusal of Senate budget writers to lift the suspension on the meals and rooms tax catch-up formula for the 2018-2019 biennium. On behalf of all municipalities, the NHMA Board of Directors specifically voted to make the reinstatement of the catch-up formula a priority in order to continue the path to the promised 40/60 sharing of those revenues. The NHMA Board position was shared in writing and in meetings with senators. Senate revenue estimates show sufficient increase in meals and rooms tax revenues over the biennium to easily support the additional $5 million distribution to municipalities each year. Just think—based on the Senate revenue projections for the meals and rooms tax, if municipalities received their 40% statutory share, the distribution would be $127.7 million in fiscal year 2018 and $134.3 million in fiscal year 2019. Instead, it will be about half those amounts. As these revenues have continued to increase over the years, the municipal share (which had risen to 29% in 2010 as a result of the catch-up formula) has dropped to 24% in 2016, and will drop to 20% by the end of the upcoming biennium.

We understand there are many demands on legislators for state dollars, but in this instance there is a specific revenue source with a specific distribution to municipalities and a specific remedial catch-up formula in statute. There are also sufficient revenues to fulfill that formula, if only it would be honored by the state.

House to Vote on Domicile Bill

The House will vote on **SB 3**, the voter domicile bill, on Thursday. We have written plenty on this, most recently in last week's *Bulletin*. As we stated there, the bill still has some inconsistencies and still seems likely to create additional work for election officials. We believe an overly complex bill has been rushed through the process to address a "problem" that is dubious at best. We urge representatives to ***reject the committee recommendation of Ought to Pass.***

House to Vote on Highway and SAG Funding

On Wednesday, the House Finance Committee voted unanimously (26-0) to recommend ought to pass to the full House on **SB 38** and **SB 57**, both **NHMA policy bills.**

SB 38 provides $30 million in additional highway block grant funding and an additional $6.8 million in state bridge aid. This will nearly double the amount of highway block grant funding that municipalities received in fiscal year 2017. The bill states that this additional $30 million shall not be used to "supplant" local budgeted amounts appropriated for road and bridge maintenance and repairs. It also authorizes this money to be considered "unanticipated revenue" under RSA 31:95-b, II, so towns may expedite the acceptance and expenditure process and not have to wait until next year's town meetings to appropriate these funds. The additional bridge aid will advance eight to ten projects currently enrolled in the state bridge aid program, thereby helping to advance other projects on the waiting list.

SB 57 provides funding for 19 municipal water and wastewater projects in 10 municipalities that were eligible for grants prior to July 1, 2013. Both **SB 38** and **SB 57** will be funded by from the state's anticipated surplus at June 30, 2017.

Please encourage your representatives to support targeted funding for local infrastructure projects by voting in support of **SB 38** and **SB 57**.

Treatment Costs and Scientific Methods

We last wrote about **HB 463** in April, before a hearing on an amendment that would require the Department of Environmental Services (DES) to "adopt the lowest MCL [maximum contaminant level] reasonably supported by science" for PFAS in drinking water. That hearing was well attended by those who want stricter standards, as well as by those who feel the legislature is moving too fast on this complex issue.

New Hampshire has already adopted EPA *guidance* levels as rules; sharp reductions in those levels, as advocated by some, would result in enormous municipal costs to treat public water supplies. For example, see the fiscal note on **HB 485**, a related bill retained in the House Finance Committee. Some have questioned whether these costly treatment programs would result in a meaningful reduction in exposure given the myriad of other exposure pathways for these chemicals. See *Bulletin #18*.

While the amendment ultimately adopted by the Senate Energy and Natural Resources Committee was an improvement over several earlier versions, there are well established protocols and methods by which water quality regulations and standards are developed, and these should be followed for PFAS. Instead, the language calls for a departure from the normal rule-making process employed by DES, directing certain processes and considerations by statute.

The full Senate adopted this amendment on May 18 and referred the bill to the Senate Finance Committee. On May 24, the Finance Committee briefly questioned DES Assistant Commissioner Clark Freise about the costs association with the bill, which he stated would not apply to private wells but would apply to public water supplies. He noted that the treatment costs would depend on what the rules set as the maximum contaminant level. He said that he thought DES might have

(Treatment Costs — Continued from Page 5)

previously underestimated costs, based on what it is seeing with clean-up efforts in the Merrimack area, and suggested that $40 million would be a reasonable estimate. He also assured the committee that DES was actively monitoring PFAS around the state. The Senate Finance Committee then voted to recommend **HB 463** as Ought to Pass, and the bill now goes back to the full Senate.

Posting of Meeting Notices and Minutes

The Senate Judiciary Committee this week approved an amendment to **HB 170,** relative to posting notice and minutes of meetings on a public body's website.

As passed by the House, the bill states that if minutes of a public body's meetings are posted on the public body's website, "then they shall be posted on such website consistently for all subsequent meetings once they become available." It contains a similar requirement as to the posting of meeting notices.

The Senate committee amendment eliminates this language, which both the committee and NHMA found a bit confusing, and instead states that if a public body has a website, it shall either post its approved meeting minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed. A similar requirement would apply to meeting notices—either post them on the website or post and maintain a notice stating where meeting notices are posted.

This is, technically, a new mandate for municipalities, but recall that **HB 170** as introduced would have *required* a municipality to post notices and minutes on the website if it has one. We believe the Senate amendment is quite reasonable—if the municipality has a website, it is a minor task to post a notice on it indicating where meeting notices and minutes may be found. This is all that the bill would require, and doing this—or going further and actually posting the meeting notices and minutes on the website, as many municipalities already do—will almost certainly be more efficient in the long run, not to mention making local government more accessible to residents.

The bill is on the Senate's consent calendar for next week, with the committee's report of Ought to Pass with Amendment. We hope the Senate will pass it, and we will encourage the House to concur with the Senate amendment.

Retention of Electronic Records

The House has concurred with the Senate's amendment to **HB 108,** dealing with retention of electronic records. The final version, which will go to the Governor for signature, allows a municipality to scan paper records into portable document format/archival (PDF/A) and dispose of the paper records as it chooses. The bill continues to allow electronic records to be retained solely electronically in their original format if their retention period is 10 years or less, and continues to require that ten-year-plus records in electronic form be transferred to paper, microfilm, or PDF/A. It also adds a requirement that "[a]t least once every 5 years from date of creation, the municipal committee shall review documents and procedures for compliance with guidelines issued by the secretary of state and the municipal records board."

Federal Budget Proposal

This week the Trump Administration sent its full fiscal year 2018 budget proposal to Congress. The proposal includes unprecedented cuts that would eliminate crucial federal programs that invest in cities and towns, including Community Development Block Grants (CDBG), Water and Wastewater Loan and Grant programs for rural water projects, and TIGER grants for transportation projects. You can review the list of proposed cuts here; they would reduce investment in cities and towns by almost $54 billion. The priorities of the administration are instead focused on homeland and national security, immigration reform, health care reform, and a national infrastructure plan.

One key principle contained in the budget proposal is a move toward privatization, which may have the unintended consequence of shifting decision-making away from the local level. The National League of Cities (NLC) is also concerned that smaller cities and towns would fare the worst under this proposal, since they are less able to compensate for the cuts. NHMA will continue to follow these developments and ask our members for their grassroots action by contacting New Hampshire's congressional delegation.

Please register through our website: www.nhmunicipal.org scroll down on the left and click View the Full Calendar

For more information or questions, please call 1-800-852-3358, Ext. 3350.

UPCOMING 2017 EVENTS FOR NHMA MEMBERS

2017 Effective Approaches to Employee Discipline
Presented by Drummond Woodsum Law Firm (8:30 – 10:30 a.m.)

June 14 – Derry	June 16 – Lebanon	June 20 – Dover
June 22 – Berlin	June 23 – Laconia	June 28 - Keene

NHMA Webinars from your own computer (12:00 – 1:00 p.m.)

June 28 -- 2017 Legislative Wrap-up
July 12 -- Drones: The Sky Has Its Limits
August 16 -- Running Effective Public Meetings

September 8 9:00 a.m. – 4:00 p.m.	Right-to-Know Law Workshop Location to Be Determined
September 20 9:00 a.m. – 4:00 p.m.	Employment Law Update – Hot Trends and Developments

2017 NHMA Budget and Finance Workshops

September 12 – Manchester Area
September 26 – Attitash Grand Summit Hotel, Bartlett

October 27 9:00 a.m. – 1:00 p.m.	The Intersection of Land Use and Road Law: A *New* Hard Road to Travel Workshop