

LEGISLATIVE BULLETIN

Local Option Hotel Occupancy Fee

As long days at the State House begin to blur into one another this late into the session, on one of those days this week the Senate Election Law and Municipal Affairs Committee voted 3-2 to recommend Ought to Pass with Amendment on [HB 641](#), an **NHMA policy bill** that allows municipalities to collect a local option hotel occupancy fee of up to \$2 per night. [Committee amendment 2224s](#) clarifies that the vote by the municipality to authorize the fee shall specify the number of consecutive days of occupancy to which the fee will apply.

HB 641 is on the agenda for the May 30 Senate session. NHMA members have adopted a legislative policy position to support local option non-property tax revenue streams that fund specific municipal needs, and **HB 641** is one of several bills this session addressing that policy. Whether or not your municipality is likely to enact a local option hotel occupancy fee, please urge your senator to support this important **NHMA policy bill** by voting **YES** on the committee recommendation of Ought to Pass with Amendment on **HB 641**.

Constitutional Claims Bill Tabled

Yesterday the House tabled **SB 36**, the bill we wrote about in [last week's Bulletin](#) that creates a new civil cause of action for violation of a person's constitutional rights by government officials or employees. We had expressed concerns about the bill's potential to turn ordinary statutory claims like zoning appeals into constitutional tort actions requiring jury trials and awards of attorney fees. We were supporting a floor amendment that would allow constitutional claims, but only if the plaintiff does not have an existing statutory remedy.

Although we cannot predict how the vote on the floor amendment would have gone, we know from conversations with many representatives that it had strong support in both party caucuses. We also know this is largely due to the work of local officials, because legislators told us they had been hearing from their cities and towns—so thank you for your efforts.

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The bill is not dead—it can still be removed from the table. The next House session is scheduled for **Wednesday and Thursday, June 5 and 6**, and June 6 is the last day for the House to act on Senate bills. There is a strong chance that a motion will be made to take **SB 36** off the table.

As we have made clear, we do not oppose **SB 36**, so long as it includes the floor amendment that would prohibit the layering of new constitutional claims on top of existing statutory claims. ***Please continue to tell your representatives to support the floor amendment if SB 36 is taken off the table.***

Retiree COLA Passes Senate

On Thursday the Senate voted 12-11 to pass **HB 616**, which provides a 1.5% cost of living adjustment (COLA) to all New Hampshire Retirement System (NHRS) retirees who have been retired at least five years on the first \$50,000 of their pension. This means that even those retirees with a pension of \$80,000, \$90,000, or over \$100,000 will receive a COLA of \$750 (1.5% of \$50,000) permanently added to their pensions. As we explained in last week's [Bulletin](#), the cost of this COLA to local governments is estimated at \$116 million, and the cost to the state at \$26 million. This will be added to the system's current \$5 billion unfunded liability. The local government share will be paid by property taxpayers through increased NHRS employer contribution rates over the next 20 years.

[Floor amendment #2019-2218s](#) would have made a \$500 payment to retirees with pensions under \$40,000 to be paid from the state general fund at a cost of approximately \$8 million, rather than increasing property taxes for years to come. Debate on the amendment and bill lasted over an hour. Senators supporting the amendment highlighted the fact that the amendment would make a \$500 payment to retirees with the lowest pensions (which is more than most would receive from a 1.5% adjustment) and make the payment sooner, without increasing the NHRS unfunded liability, without saddling property taxpayers with a \$116 million bill, and without raising an unfunded mandate concern under Part 1, Article 28-a of the New Hampshire Constitution. The amendment also created a study committee to look at alternative methods of funding COLAs in the future. The amendment failed by a vote of 11-12, leading to the subsequent vote to pass the bill.

This was not an easy vote for the 11 senators who opposed **HB 616**. they did not oppose granting an additional payment to public service retirees—in fact, the amendment was a better deal for retirees at the

This week's to-do list

- ✓ Ask your senator to support the committee recommendation of Ought to Pass with Amendment on **HB 641**, the local option hotel occupancy fee.
- ✓ Tell your representatives to watch for **SB 36**, dealing with claims for constitutional violations, to be taken off the table, and remind them to support the floor amendment if it goes to a vote.
- ✓ Continue to express concerns to all your legislators, and the governor, about **HB 616**, the unfunded mandate COLA bill.
- ✓ Enjoy Memorial Day and the long weekend.

(Retiree COLAs— Continued from Page 2)

low end of the pension scale, since it sent more money sooner to those who need it the most. Rather, they opposed the liability the bill creates, the increased property tax burden it will place on their constituents, and the potential for a costly unfunded mandate lawsuit.

We urge lawmakers to reconsider the long-term consequences of **HB 616** and to provide targeted monetary remuneration to those retirees who need it the most, without creating a 20-year obligation on property taxpayers.

Town Meeting Postponement Bill to Governor

With little fanfare—or actually none at all—the House this week passed **SB 104**, the compromise bill that affirms and clarifies the moderator’s authority to postpone either session of a town meeting, including the session at which town elections are held, for a weather or other emergency. The bill was on the consent calendar and passed without debate. The bill will now go to the governor, and we anticipate that he will sign it. Excellent news!

Stricter Arsenic Standard

On Thursday **HB 261**, dealing with the arsenic standard for drinking water, passed the Senate on a voice vote. The bill requires the Department of Environmental Services to revise administrative rules regarding the ambient groundwater quality standard for arsenic to a value not to exceed 5 parts per billion. A floor amendment changed the effective date of the standard from “no sooner than July 1, 2021” to “no later than July 1, 2021”. Because of this amendment and other Senate amendments that we reported in **Bulletin #21**, **HB 261** goes back to the House for concurrence with the Senate changes, non-concurrence, or request for a committee of conference.

Housing Appeals Board Added to Budget Bill

The Senate Finance Committee voted this week to add the language of **SB 306**, establishing a housing appeals board, to the budget “trailer bill,” **HB 2**. We have written about **SB 306** several times, most extensively in **Legislative Bulletin #6**. The Senate passed the bill in March, then immediately tabled it, holding it for inclusion in the budget.

As we explained previously, the bill would create a three-person board, following the same model as the Board of Tax and Land Appeals, to hear appeals from local land use board decisions involving “questions of housing and housing development.” The bill requires the board members to “individually and collectively be learned and experienced in questions of land use law or housing development or both.” At least one member must be a New Hampshire-licensed attorney and at least one must be either a professional engineer or a land surveyor.

Local planning and ZBA decisions could be appealed either to the housing appeals board or (as now) to the superior court. The board would apply the same law and the same standards that a judge would apply, so a municipality would not be prejudiced by having an appeal brought to the board rather than to the court. Decisions of the board would be appealable directly to the supreme court.

(Housing Appeals Board— Continued from Page 3)

In Bulletin #6, we mentioned that we had several concerns with the bill. Those concerns were addressed by a subsequent amendment, and the amended version is what the Finance Committee included in its amendment to **HB 2**, so we do not oppose this addition.

We have heard a flurry of opposition in the past week based on concerns that the bill allows unelected state actors to overturn the decision of a local land use board. But that situation already exists—that is what happens when superior court judge reverses a planning or zoning board decision. The process is exactly the same under **SB 306**, except that the reviewing body is a three-person board, rather than a judge.

SB 306 itself will die on the table; but assuming the full Senate adopts the Finance Committee’s amendment, the text of that bill will become part of **HB 2**, which will go back to the House for the inevitable committee of conference.

And the RTK Ombudsman, Too

The Senate Finance Committee also voted to add the language of **HB 313**, establishing a right-to-know ombudsman and a citizens’ right-to-know commission, to **HB 2**. The bill would allow a citizen claiming a violation of the Right-to-Know Law to file a complaint with the ombudsman as an alternative to filing suit in superior court; the ombudsman’s decisions could be appealed to the superior court for *de novo* review.

We also wrote about **HB 313** in [Legislative Bulletin #6](#), and until this week the bill was in the same status as **SB 306**—passed by the Senate in March, then immediately tabled. We supported the ombudsman concept but had some concerns about the bill, in particular the usefulness of the citizens’ commission. Those concerns remain, but we are cautiously optimistic that the commission will do no harm.

There is, however, one amendment to the language from **SB 313** that was added to **HB 2**. The bill originally provided for an appropriation of “the amount necessary to pay for the position of ombudsman” for the 2020 fiscal year. That appropriation was deleted from the language inserted into **HB 2**, and instead the amendment states that the ombudsman “may serve in such capacity on a pro bono basis.”

That makes us nervous. The integrity of the ombudsman process depends on the ombudsman’s credibility, and so far that credibility has depended on the bill’s requirement that the ombudsman be a member of the New Hampshire bar with at least ten years of full-time practice and that he or she be experienced with and knowledgeable about the Right-to-Know Law—and on the expectation that he or she would be paid a reasonable salary. The position would be half-time, not more than 20 hours per week, but we still wonder how easy it will be to find a credible attorney with ten years’ experience who is willing to work even half-time for no pay. Time will tell.

SB 313, like **SB 306**, will die on the table, and its text will be included in **HB 2** when it goes to the House, again assuming the full Senate approves.

Stealth Right-to-Know Law Exemption

We were surprised this week to learn that both houses have adopted a bill, now on its way to the governor, that adds a new exemption from disclosure of records under the Right-to-Know Law. As introduced, [HB 329](#) merely allowed a school board to review and adopt its student and employee data and privacy plan in a “non-public meeting.” We don’t follow bills that affect only school districts, so we did not follow **HB 329**. The bill was assigned to the House Education Committee, as it dealt solely with school board processes.

However, the Education Committee recommended, and the House adopted, an amendment that establishes a much broader exemption from disclosure of governmental records under RSA 91-A:5 for any records pertaining to information technology systems whose public release could aid an attempted security breach. With this amendment, the bill no longer dealt specifically with school data security plans, or even mentioned schools at all. However, the bill’s title (“relative to review and adoption of school data security plans”) was never amended, and when it crossed over to the Senate, it went to the Education Committee, rather than to the Judiciary Committee, where Right-to-Know Law bills almost always go. The Senate passed the bill without amendment.

The good news is that this was a positive result. We believe most people would agree that IT information should not be disclosed if that information could be used to create a security breach. We anticipate that the governor will sign the bill.

No More Hearings

Next Thursday, May 30, is the deadline for House and Senate committees to report all remaining bills. Setting aside the possibility of a last-minute emergency bill or non-germane amendment, there are no more committee hearings to be scheduled. Therefore, the House and Senate Calendar sections will no longer appear in the Bulletin.

HOUSE FLOOR ACTION

Thursday, May 23, 2019

SB 36, creating a cause of action for certain constitutional deprivations of right. **Tabled.**

SB 54-FN, relative to the road toll bond requirements for licensed fuel distributors. **Passed.**

SB 97, (New Title) relative to special health care services licenses and establishing a committee to study providing certain health care services while ensuring increased access to affordable health care in rural areas of the state. **Passed.**

SB 100, relative to discrimination in employment based on criminal background checks. **Passed with Amendment.**

SB 154, (New Title) allowing municipalities to adopt a credit against property taxes for certain workforce housing, and authorizing the sale of certain property by the town of Milton. **Passed with Amendment.**

SB 164, (New Title) establishing a committee to study unprotected drinking water sources and estimating the costs of protecting such sources. **Passed with Amendment.**

SENATE FLOOR ACTION

Thursday, May 23, 2019

HB 116-FN, relative to the job classification of positions in the retirement system. **Passed.**

HB 153, relative to circumstances under which police officer disciplinary records shall be public documents. **Re-referred.**

HB 155, relative to procedures for determining and disclosing exculpatory evidence in a police officer's personnel file. **Re-referred.**

HB 261, requiring the commissioner of the department of environmental services to revise rules relative to arsenic contamination in drinking water. **Passed with Amendment.**

HB 464, relative to the definitions of solar energy systems and wind-powered energy systems for assessed value of real estate exemptions. **Passed with Amendment.**

HB 468-FN-L, relative to the inclusion of attendance stipends as earnable compensation in the retirement system. **Passed with Amendment.**

HB 479-FN, relative to eligibility for the low and moderate income homeowners property tax relief. **Re-referred.**

HB 593, relative to updating official voter checklists. **Passed with Amendment.**

HB 616-FN, relative to a cost of living adjustment for retirees in the state retirement system. **Passed.**

HB 706-FN-A, establishing an independent redistricting commission. **Passed with Amendment. NHMA Policy.**

2019 NHMA UPCOMING EVENTS FOR MEMBERS	
June 13	2019 Fundamentals of Local Welfare
June 14	NHMA/NHMLA: Ethics for Municipal Attorneys
June 25	Municipal Trustees Training, Gorham
June 26	Webinar: 2019 Legislative Wrap-up

To register for an upcoming event, go to our website: www.nhmunicipal.org and scroll down on the left under CALENDAR OF EVENTS. Click on the green bar *View the Full Calendar* and go to the workshop or webinar you are interested in. For more information, please call NHMA's Workshop registration line: (603) 230-3350.