Governor Delivers Budget Address

The governor delivered his budget address on Thursday to members of the House and Senate, not in Representatives Hall, but in a virtual setting via a YouTube link. While describing the unprecedented economic impacts of COVID, he reported that New Hampshire’s fiscal position is strong. The projected budget shortfall to end the biennium is now expected to be only $50 million, significantly down from the $81.5 million shortfall as of June 30, 2020, and well below the $350 million deficit projected last spring. The proposed budget was touted as one that imposes no new or increased taxes or fees, provides tax cuts across the board, invests in essential services, and “sends CASH, not costs, back to cities and towns.”

The governor described the budget as one that responds to decades of local property tax increases, noting the state can assist by providing financial assistance to cities and towns, employing the principle of providing flexibility—“local communities know best.” He said that after years of inaction, the budget will increase the meals and rooms tax revenue sharing for municipalities by up to $15 million over the biennium. The Governor also cited the importance of “flexibility,” stating that municipalities know best how to target their funds.

Here is a summary of the governor’s operating budget for the fiscal years ending June 30, 2022 and 2023, as it relates to towns and cities:

- Provides for the current $68.8 million meals and rooms tax distribution to cities and towns to potentially increase to $73.8 million in 2022 and $78.8 million in 2023. (However, SB 99-FN would remove the annual increase limit of $5 million, so that the full 40 percent of net revenues would be distributed annually.)
- Does not fund Municipal Aid, which provided $20 million per year for fiscal years 2020-2021 (one-time revenue from budget surplus). (However, SB 118-FN provides for $20 million annual municipal aid (see article below).)
- Continues to suspend revenue sharing, which provided $25.2 million per year to municipalities before it was suspended in 2010 and every year thereafter.
- Funds highway block grants based on estimated highway fund revenues at $33.6 million in 2022 (down $3.1 million from FY 21) and $35.8 million in 2021 (up $2.1 million from FY 2022).
• Funds municipal bridge aid at $6 million for both FY 22 and 23 ($800,000 less than 2021).
• Provides no funding for the state’s 20% share of the costs for wastewater projects beyond those that were approved in FY 20. (However, funding for 11 wastewater projects that were slated for funding in the current budget (FY 2021) and 110 new wastewater projects projected to be eligible for grant funding in FY 22-23 is the purpose of HB 398 and SB 127-FN, Part VIII.)
• Fully funds reimbursements to municipalities involved in flood control compacts at $887,000 each year.
• Funds $5 million each year for the Land and Community Heritage Investment Program (LCHIP), maintaining the current funding level.

The governor’s budget will be drafted as HB 1 and will be accompanied by HB 2, scheduled to be released on Monday, February 15. HB 2, the budget trailer bill, will contain statutory changes that are necessary to implement the budget. The House Finance Committee will begin a detailed review of the governor’s budget proposal and will likely make many changes based on their priorities before sending their version of the biennial budget to the Senate to do the same. We will keep you updated each week as this important piece of legislation makes it way through this process.

A recording of the Governor’s budget address, the 1,374 page budget document, and the executive summary are all available here.

Committee Hears Bill to Punish Local Officials

The House Criminal Justice & Public Safety Committee heard testimony this week on HB 307, the bill discussed in last week’s Bulletin that seeks to punish local governing body members for attempting to enact gun restrictions. If there was any doubt that the bill’s intent is strictly punitive, that was dispelled when supporters repeatedly stated that local officials must be punished for “violating the law.”

As we explained both in last week’s Bulletin and in testimony to the committee, RSA 159:26 already preempts local regulation of firearms. The bill’s supporters did not suggest that the existing law is insufficiently clear or broad. They merely stated that governing body members need to be punished.

All local governing body members are volunteers, getting paid little or nothing for their work, and very few of them are legal experts. It is not surprising, then, that they sometimes try to adopt ordinances or regulations that are beyond their authority—whether it is a rent control ordinance, a prohibition on high-voltage transmission lines, or term limits for elected officials. The remedy in most cases is that the town attorney explains that the regulation is invalid; at worst, the matter goes to court and the court rules that the regulation is unenforceable.

The sponsors of HB 307 believe attempts to regulate firearms should be treated differently. Local officials who innocently try to regulate firearms would be personally liable for a $500 fine, “liquidated damages” of $100,000, and payment of their own legal expenses and those of any “aggrieved” person who challenges the regulation. None of these amounts could be paid with public funds or insurance purchased by the municipality. If the violation is found to be “purposeful or knowing,” the local officials would be subject to “removal from office by the governor”; but the financial penalties would apply regardless of knowledge, intent, or purpose.

While the committee heard supportive testimony from several gun-rights groups and opposition from anti-gun advocates, the bill clearly is not about guns. It is about whether the state should have respect for local
officials. If selectmen are going to be fined for adopting gun regulations, there is no reason not to expect similar treatment for all kinds of “violations.” Next year could bring legislation subjecting planning board members to personal liability for improperly rejecting a site plan application, or fining assessors for over-valuing a property.

As readers know, it is difficult enough to find people who are willing to participate in local government. Serving on a board of selectmen, council, or board of aldermen is already a largely thankless job; if the position now brings with it the threat of financial ruin, the pool of candidates will shrink dramatically.

Committee members and your own representatives need to hear from you. Please contact them immediately and insist that they kill HB 307.

**RTK Bills—Remote Meetings, Collective Bargaining, Sealed Minutes**

On Friday, February 19, the House Judiciary Committee will hear testimony on four bills that would make significant changes to the Right-to-Know Law—some good and some not so good.

- **HB 108**, scheduled for 9:00 a.m., would require a public body to keep a list of all its nonpublic sessions for which the minutes were deemed to be not subject to public disclosure. The list must include the date and time of the nonpublic session, the specific exemption that allowed the nonpublic session, the date of the decision to withhold the minutes, and the date of any subsequent decision to make the minutes available. We believe the principal effect of this would be to create additional tedious work for public bodies and employees, with minimal benefit to the public.

- **HB 206**, scheduled for 9:30 a.m., would eliminate the exemption from the definition of “meeting” for collective bargaining negotiations, meaning those negotiations would have to be held in public; only “strategy” sessions would still be exempt. We’ve seen this bill before. The idea seems to be that requiring public negotiations will serve as a check on the demands of unions and thus lead to lower costs for taxpayers, but the exact opposite is likely. Anyone who has been to a few town or school district meetings knows that when public employee compensation is being debated, it is the employees who fill the room. This will reduce union negotiators’ incentive to compromise and potentially intimidate management. In addition, because these sessions typically involve a constant back-and-forth between actual negotiation and caucusing (i.e., “strategy”), the public body would need to adjourn and reconvene the public meeting repeatedly. This would be a mess.

- **HB 216**, scheduled for 10:00 a.m., would allow public bodies to conduct meetings remotely, as they have been permitted to do during the current state of emergency.

- **HB 630**, scheduled for 11:00 a.m., also would allow public bodies to conduct meetings remotely, although the language is somewhat different from that of HB 216.

We will **support** HB 216 and HB 630. Of course, only one of them can ultimately be enacted into law; that will need to be worked out. In addition, there is a bill in the Senate that does the same thing, so there will need to be a reconciliation along the way; but for now, suffice it to say that we support all of these efforts.

We will **oppose** HB 108 and HB 206.

Please sign up to speak at the hearing or register your opinions, and/or contact members of the committee and your own representatives to let them know what you think about these bills.
Meals & Rooms Tax Bill: Mending A Broken Promise

The Senate Ways & Means Committee heard SB 99, an NHMA policy bill, on Monday. 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. Seventy-four people signed in support of the bill; no one signed in opposition. Two municipal officials spoke in support of the bill, along with NHMA.

The bill’s primary sponsor, in introducing the bill, noted that under statute, the state is supposed to share this revenue with cities and towns: 60 percent to the state treasury and 40 percent to municipalities. “However,” she said, “the legislature has broken this promise and kept more than its share.” She also referenced another promise made by the legislature in 1993 to catch up on the lost revenue by increasing the local share by $5 million each year. The legislature has usually failed to keep this promise as well. The state is so far behind that even if it did increase the local share by $5 million every year going forward, it would never get to the full 40 percent.

In fiscal year 2020, when meals and rooms tax revenue was approximately 14.8 percent below budget due to the pandemic, the tax brought in $314 million, and $69 million, or 22 percent, was distributed to towns and cities. Had the legislature shared the full 40 percent, it would have provided an additional $56 million in local property tax relief. NHMA provided a calculation tool to project the municipal impact of SB 99 over the past 11 years if the bill had been in place.

This bill is an opportunity to begin to restore what has been promised to municipalities for decades and has existed in statute for just as long. It is an opportunity to begin to relieve the consequential property tax burden that has been subtly downshifted by the state to the local level. Members are urged to contact their senator and members of the Senate Ways and Means Committee and ask them to support this bill.

State Aid Grants for Water & Wastewater Projects

The House Finance Committee held hearings on Tuesday on HB 398 and HB 412, and the Senate Finance Committees held a hearing on Tuesday on SB 127. These NHMA policy bills are identical House and Senate bills (although in the Senate, the bills are part of a larger omnibus bill) that make appropriations to fund state aid grants (SAGs) for public water system projects and wastewater projects. Representatives from New Hampshire Water Works Association, Granite State Water Association, New Hampshire Water Pollution Control Association, and NHMA testified in support of the bills, and 17 people signed in support.

In the House, HB 398 would appropriate $500,000 for each of fiscal years 2022 and 2023 to provide 20-25 percent of annual principal and interest for eligible project costs for water supply projects, including regional water interconnection. Water SAGs have not been funded since 2008, and this bill would lift that moratorium.

HB 412 would appropriate $5.7 million for fiscal year 2022 and $6.9 million for fiscal year 2023 to fund 11 eligible wastewater projects that were substantially completed by December 31, 2019, but held back from receiving state aid grant monies appropriated in the current budget biennium due to pandemic-related budget concerns. In addition, HB 412 would provide funding for 110 new projects expected to be eligible for funding in fiscal years 2022-2023. HB 412 would help ensure that the state does not return to a previous pattern of placing substantially completed projects eligible for state aid grants on a “deferred and delayed list” as occurred following the Great Recession, leaving municipalities to pick up the anticipated state share. It took 10 years before all those projects were finally funded, only to reach the pandemic, which has now
derailed the appropriations targeted for funding the remaining 11 projects. Senate omnibus bill SB 127-FN, Parts VII and VIII, respectively, contain the identical provisions of both HB 398 and HB 412.

The House Finance Committee is scheduled to vote on HB 398 and HB 412 in executive session on February 16, 2021, at 10:30 a.m. Local officials are urged to contact members of the House Finance Committee and ask them to vote these bills ought to pass. The Senate has not yet scheduled an executive session for SB 127, but members are urged to contact members of the Senate Finance Committee to ask them to support this funding.

Property Tax Relief Act of 2021: Municipal Aid with Strings Attached

The Senate Finance Committee heard SB 118-FN on Tuesday. As we reported last week, cities and towns would receive two more years of “municipal aid” under this bill, but 60 percent of that aid would be required to be used for property tax rate reduction. The municipal aid ($20 million for each year) would be issued to municipalities on or before October 1 in fiscal years 2022 and 2023. Aid received by October 15, 2021, would be considered unanticipated revenue under RSA 31:95-b. Twenty percent of each municipality’s distribution would be based on its statewide ratio of ADMR (average daily membership in residence of pupils who are legal residents of the school district). The remaining 80 percent would be based on its statewide ratio of ADMR eligible for free or reduced-price meals.

In introducing the bill, the prime sponsor explained that this was an opportunity to address concerns heard year after year after year, particularly during the budget process, that the burdens brought to municipalities manifest themselves in property taxes. This bill—unlike the municipal aid from the last biennium that came with “no strings attached”—requires that 60 percent of the aid be used specifically for property tax relief to address those concerns.

It was also noted that the one-time municipal aid appropriated in the last budget was intended to replace the long-standing annual “revenue sharing”—$25 million annually. Revenue sharing, formally titled “Return of Revenue to Cities and Towns” in RSA 31-A, 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. Annual distributions were made under this chapter until 2009, when, in the aftermath of the Great Recession, the distribution was suspended; and the suspension has been repeated each year through 2021. The sponsor expressed his hope of someday returning to the revenue sharing concept, explaining that revenue sharing was annual and consistent, as promised; and as a result, communities did have the option to exercise discretion over how monies were to be used, allowing for reductions in property taxes or to help with other things.

Questions and concerns were expressed by committee members about the constitutionality and/or the concept of telling municipalities what they must do with the money. The importance of looking at the totality of the property tax problem, recognizing it is not a one- or two-year problem, was suggested, noting this bill could provide for an artificial reduction in property tax rates that could create as much or more furor when rates “snap back.” Concern was also expressed about using ADMR as the ratio with which to allocate funds among municipalities, due to a statewide problem this year (pandemic-related) of school enrollment and free and reduced meal forms not being completed, which could unintentionally skew some towns’ or cities’ allocation amounts. NHMA testified in support of the bill, noting that municipalities would receive only $8 million in discretionary aid, and underscored the budgeting difficulty associated with the loss of one-time $20 million appropriations and the continued suspension of the long-standing $25 million revenue sharing distributions. Since this bill is a budget issue, the Senate president expressed his hope that it would be addressed as part of the overall budget process.
370 Years of Perambulation

On Monday, the House Committee on Municipal & County Government heard HB 404. This is the latest bill in a fight that stretches back for well over a decade about the requirement that select boards perambulate their town lines every seven years and renew the marks and bounds.

This requirement dates from 1651 and has changed little since then. At the time, the requirement made sense – new towns (and colonies) were springing up all over the New World. It was important to reaffirm the boundaries of those territories to ensure that other towns and colonies did not try to usurp the lands granted by the king.

Today, no royal grant of lands occurs in the United States – we fought a war a few years back that ended that practice – and the last municipality to be created in New Hampshire was Sugar Hill in 1962. The second most recent was Easton in 1876. The fact is that the last 150 years have not been a hot time for land grabs between municipalities in New Hampshire, yet perambulation persists.

Perambulation is a curious – and, at times, expensive – artifact of the past. It does not really assist municipalities in most areas of taxation. Tax maps, required by RSA 31:95-a, are a much more useful tool (and one that is frequently created using satellite imagery, with consultation of deeds as necessary). Nor does it resolve boundary disputes any more than the switching of flags on Hans Island change ownership between Denmark and Canada. Municipalities believing that their boundaries are infringed upon by other municipalities would have to resort to the courts for a final determination. Since HB 404 would not result in the removal or destruction of any existing boundary markers, those who engage in activities such as timber harvesting could consult the existing markers to determine which municipality to notify with their intent to cut.

After 370 years of required perambulation, we believe it is time to trust local officials to determine when perambulation is appropriate. Sadly, on Tuesday, the Municipal and County Government Committee voted 17-1 to recommend the bill as inexpedient to legislate. Although that likely kills the bill this time around, we are hopeful for a different result next time.

More Hearing Tips

We continue to pick up tips about the remote hearing protocols for House and Senate hearings. We learned this week that you must sign up before 8:00 a.m. on the day of the hearing to get on the list to testify. This was stated in connection with a House committee that had morning hearings, so it is unclear whether it applies to all committees in both chambers—but to be safe, we do recommend signing up before 8:00 a.m., or preferably a day or two in advance, whether it is a House or Senate committee. (We also saw a statement from an unofficial source that you must sign up 24 hours in advance. That is definitely not true, although it is not a bad idea.) If you are unable to sign up early, you can still testify by “raising your hand” when the committee chair asks for additional testimony at the end.

Also, many committees are imposing strict time limits for testimony, ranging from two to five minutes. Typically the committee chair will announce this at the beginning and several times throughout the hearing. Most committee chairs will inform you that your time is up and allow you a sentence or two to finish, but this is not always true. You could find yourself summarily muted in the middle of a sentence at exactly the two-minute mark, so be prepared.
Given the restrictions on oral testimony, you are encouraged to send written testimony to the committee if you have something important to say. Each committee’s web page has a link you can click on to send an e-mail to all members of the committee.

For basic information on how to sign up and testify at hearings, see "How to Watch/Testify at a Legislative Hearing" in last week’s Bulletin (page 8 in the PDF version). And please contact us if you have questions.

### HOUSE CALENDAR

All hearings will be held remotely. See the House calendar for links to join each hearing.

**TUESDAY, FEBRUARY 16, 2021**

**COMMERCE AND CONSUMER AFFAIRS**  
10:30 a.m. **HB 618**, relative to the sale and distribution of polystyrene food service products.

**JUDICIARY**  
9:00 a.m. **HB 135**, requiring parties responsible for pollution of a drinking water supply to be financially responsible for certain consequences of that pollution.  
10:00 a.m. **HB 236**, creating a statute of limitation on civil actions relative to damage caused by perfluoroalkyl and polyfluoroalkyl substances.

**WEDNESDAY, FEBRUARY 17, 2021**

**CRIMINAL JUSTICE AND PUBLIC SAFETY**  
9:00 a.m. **HB 125**, relative to post-arrest photo distribution by law enforcement officers.  
10:45 a.m. **HB 286**, establishing a committee to study the response of law enforcement and the criminal justice system to homelessness in New Hampshire.

**ELECTION LAW**  
9:45 a.m. **HB 151**, relative to changes of registration of certain voters after a primary election.

**ENVIRONMENT AND AGRICULTURE**  
9:00 a.m. **HB 585-FN-L**, allowing the prepayment of dog licensing fees for the duration of a rabies vaccination and reducing fines related thereto.  
2:00 p.m. **HB 413**, establishing a solid waste working group on solid waste management planning and relative to compost.

**WAYS AND MEANS**  
2:00 p.m. **HB 621-FN**, allowing registers of deeds to retain a portion of the land and community heritage investment program surcharge.

**THURSDAY, FEBRUARY 18, 2021**

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**  
11:00 a.m. Continued Public Hearing on **HB 499**, prohibiting the state from using a face recognition system.  
1:30 p.m. Continued Public Hearing on **HB 544**, relative to the propagation of divisive concepts.

**MUNICIPAL AND COUNTY GOVERNMENT**  
8:30 a.m. **SB 30**, permitting the towns of Tilton and Northfield to redraw their boundary lines.  
9:15 a.m. **HB 243**, relative to the form of municipal budgets.
10:00 a.m.  HB 262, relative to the adoption of bylaws and ordinances by municipalities.
10:30 a.m.  HB 284, relative to the restoration of involuntarily merged lots.

FRIDAY, FEBRUARY 19, 2021

JUDICIARY
9:00 a.m.  HB 108-FN-L, relative to minutes and decisions in nonpublic sessions under the right-to-know law.
9:30 a.m.  HB 206, relative to collective bargaining agreement strategy discussions under the right-to-know law.
10:00 a.m. HB 216, relative to public notice of and access to meetings under the right to know law.
11:00 a.m. HB 630, relative to remote board meetings under the right-to-know law and authorizing certain procedures for rulemaking.
2:00 p.m.  HB 474, prohibiting surveillance by the state on public ways or sidewalks.

SCIENCE, TECHNOLOGY AND ENERGY
9:00 a.m.  HB 106, establishing procedures for municipal host customer-generators of electrical energy. NHMA Policy.
1:00 p.m.  HB 225, relative to the calculation of net energy metering payments or credits.
1:30 p.m.  HB 148, allowing increased net energy metering limits for municipal hydroelectric facilities. NHMA Policy.
2:30 p.m.  HB 167-FN, relative to net energy metering limits for customer generators and the purchase of output of limited electrical energy producers. NHMA Policy.

TUESDAY, FEBRUARY 23, 2021

JUDICIARY
9:30 a.m.  HB 83, prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.
10:15 a.m. HB 111, establishing a cause of action against the state to protect individual rights.

SENATE CALENDAR
All hearings will be held remotely. See the Senate calendar for links to join each hearing.

TUESDAY, FEBRUARY 16, 2021

EDUCATION
9:15 a.m.  SB 158-FN-L, relative to the formula for funding an adequate education.

JUDICIARY
1:30 p.m.  SB 134-FN, adopting omnibus legislation relative to civil actions and criminal liability.

WEDNESDAY, FEBRUARY 17, 2021

EXECUTIVE DEPARTMENTS AND ADMINISTRATION
9:15 a.m.  SB 142-FN, adopting omnibus legislation relative to certain study commissions.
9:45 a.m.  SB 143-FN, adopting omnibus legislation relative to certain agency requests.
10:30 a.m. SB 155-FN, codifying provisions included in select emergency orders issued by the governor in response to the COVID-19 pandemic.

HEALTH AND HUMAN SERVICES
8:30 a.m.  SB 152-FN-A, relative to affordable housing program funding.
HEALTH AND HUMAN SERVICES
1:30 p.m.   SB 150-FN, establishing a dental benefit under the state Medicaid program.

New Senate Bills

SB 142, among other things, re-establishes the commission to study the incidence of post-traumatic stress disorder in first responders (PTSD); requires all first responders to receive mental health training focusing on PTSD; and establishes a commission to study barriers to increased density of land development. Sen. Birdsell of Hampstead; ED&A-S.

SB 143, among other things, requires a municipal governing body or chief administrative officer to report known or suspected cybersecurity incidents within the municipality to the department of information technology. Sen. Carson of Londonderry; ED&A-S.

SB 146, among other things, establishes the New Hampshire coastal program to implement the federal Coastal Zone Management Act; establishes a statewide solid waste disposal reduction goal; prohibits the incineration of class B firefighting foam containing PFAS chemicals; and establishes a plastics advisory council. Sen. Watters of Dover; E&NR.

SB 150 requires the commissioner of health and human services to contract with a dental managed care organization to provide dental care to persons under the Medicaid managed care program. Sen. Rosenwald of Nashua; HHS.

SB 152 appropriates $5 million in each of fiscal years 2022 and 2023 to the New Hampshire Housing Finance Authority to provide funding for affordable housing. Sen. Gray of Rochester; HHS.

SB 153 establishes a disability retirement benefit and a medical insurance benefit for a group II member of the New Hampshire Retirement System who is violently injured in the performance of his or her duties. Sen. Carson of Londonderry; ED&A-S.

SB 154 prohibits any person acting under color of state law from taking any action to enforce a presidential executive order that restricts or regulates the right of the people to keep and bear arms. Sen. Bradley of Wolfeboro; JUD-S.

SB 155 codifies provisions included in certain emergency orders, including protection of the non-conforming use status of summer camps that were unable to operate in 2020; temporary suspension of the physical presence and location requirements for meetings of public bodies; allowance of the acceptance and use of electronic records and signatures by local governing bodies; waiver of certain hearing requirements for towns that postpone their town meetings; establishment of procedures to allow construction to continue during the pandemic; establishment of temporary procedures for the swearing in of local officials; and allowing municipalities to modify delivery of services to allow for proper social distancing. Sen. Bradley of Wolfeboro; ED&A-S.

SB 158, among other things, modifies the formula for funding an adequate education; modifies the statewide education property tax and the manner of its collection; and requires municipalities to include information on tax bills about the low- and moderate-income tax relief program. Sen. Kahn of Keene; EDUC-S.
SENATE FLOOR ACTION  
Thursday, February 11, 2021

SB 17, relative to brew pubs allowing customers to bring dogs to outdoor areas. **Passed with Amendment.**

SB 61, prohibiting collective bargaining agreements that require employees to join a labor union. **Passed.**

SB 64, extending unpaid leave benefits to employees for COVID-19 purposes. **Laid on Table.**

SB 79-FN, relative to the authority of the moderator to verify the device count. **Re-referred.**

SB 80-FN-A, establishing an independent advisory commission on redistricting. **Inexpedient to Legislate.**

SB 106, adopting omnibus legislation relative to codes. **Passed.**

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<tr>
<th>2021 NHMA UPCOMING MEMBER VIRTUAL EVENTS</th>
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<tbody>
<tr>
<td><strong>Feb. 17</strong></td>
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<tr>
<td><strong>Feb. 25</strong></td>
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Please visit [www.nhmunicipal.org](http://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.