

LEGISLATIVE BULLETIN

Critical House Session Looms

The House will next meet in session on April 7, 8, and 9, when it will act on the several hundred House bills remaining in its possession. Many of those bills would have devastating effects on municipalities. We wrote about three of those bills—[HB 111](#), [HB 307](#), and [HB 83](#)—in [last week's Bulletin](#). If you have not read about those bills and contacted your representatives about them, please do so as soon as possible.

Unfortunately, the items mentioned last week are just the beginning. Please read on for information on several more frightening bills, and then urge your representatives to *kill them*.

Revenue Cap Mandate Would Impoverish Towns

Along with [HB 111](#), discussed last week, [CACR 9](#) is one of this year's most troubling pieces of legislation. This constitutional amendment would starve municipalities of revenue by prohibiting them from raising property tax revenues by more than two percent in any year. The limit would be "based on the actual tax of the previous year and not the rate." In other words, a town could not increase the total amount of revenue raised from taxes by more than two percent per year.

Thus, imagine a town with a total property valuation of \$600 million and a municipal tax rate (not county or school) of \$5 per thousand, yielding total tax revenue of \$3 million. Now imagine a large industrial facility moves into town; the facility is valued at \$60 million, increasing the town's total valuation overnight to \$660 million. Using the current tax rate, the additional industrial value would increase tax revenues by \$300,000. Alternatively, if the spending level does not change, the following year's tax rate would decrease 30 cents to \$4.70.

Of course, economic development usually comes with some costs; so assume further that the new facility brings with it \$100,000 in additional costs for road maintenance, police and fire protection, etc. The increased valuation would easily allow the town to cover those costs *and* reduce taxes for everyone. [CACR 9](#), however, would limit the town to raising an additional \$60,000 (two percent of \$3 million), leaving it to cover the remaining \$40,000 by cutting services elsewhere.

NHMA Legislative Bulletin 13
March 26, 2021

Inside this issue:

| | |
|---|---|
| Ordinances Threatened | 2 |
| Micromanaging Local Budgets | 2 |
| Taking a Stand on Lemonade Stands | 3 |
| Towns Forced to Violate 1 st Amendment | 4 |
| More Work for Municipalities | 4 |
| Nonpublic Sessions | 5 |
| State Budget | 5 |
| Highway Block Grants | 6 |
| Retirement Bill | 6 |
| Remote Meetings | 6 |
| Pre-Processing Ballots | 7 |
| House/Senate Calendars | 7 |
| Senate Floor Action | 8 |
| NHMA Events | 8 |

GOVERNMENT AFFAIRS CONTACT INFORMATION

Margaret M.L. Byrnes
Executive Director

Cordell A. Johnston
Government Affairs Counsel

Becky I. Benvenuti
Government Finance Advisor

Natch Greyes
Municipal Services Counsel

Timothy W. Fortier
Communications Coordinator

Pam Valley
Administrative Assistant



25 Triangle Park Drive
Concord NH 03301
Tel: 603.224.7447
EM: governmentaffairs@nhmunicipal.org
Website: www.nhmunicipal.org

This defies reason. What town will be interested in economic development if it leads to a *decrease* in its ability to pay for needed services? And what business (or person) would want to move to a town that must continually cut services to stay within a state-imposed revenue cap? **CACR 9** does allow the cap to be overridden “by a vote conducted by ballot”—although it does not say when or how that ballot vote would be conducted—but why should that be necessary? Voters know how to limit tax increases, and they do it all the time.

State law already gives the voters in every municipality the authority to adopt a tax cap. (See [RSA 32:5-b](#) (town tax cap); [RSA 49-C:33, I\(d\)](#) (city tax cap).) They may adopt a limit that fits their individual needs, rather than suffer under a ham-handed state mandate. About half the cities and town-council towns have adopted caps of varying amounts; voters in the others have chosen not to. In the 219 towns that adopt budgets at a town meeting, the voters make informed decisions on how much revenue to raise and spend. They do not need the state telling them how much of *their own money* they may choose to spend.

There are further problems with the bill, most notably a requirement that tax increases be limited to one percent for “citizens 67 years of age or older.” That is entirely unworkable—it is unclear how a town would set a separate tax rate for persons over 67 (as opposed to granting exemptions to people who apply, as they currently do)—or how it would even know who is over 67.

Nevertheless, the Municipal and County Government Committee voted the bill Ought to Pass, 10 to 9. ***Please urge your representatives to vote NO on the committee recommendation and vote YES on a subsequent motion of Inexpedient to Legislate.***

City and Town Ordinances Threatened

As we explained in [Legislative Bulletin #10](#), **HB 439** is yet another of the most serious threats to local authority this legislative session. The bill would amend [RSA 47:17, XV](#) by repealing the authority of city councils to adopt ordinances “that may seem for the well-being of the city.” Although **HB 439** purports to aim solely at the powers of city councils (and, by reference, town councils), three local ordinances were discussed at the bill’s hearing, only one of which would actually be affected by this bill. This seems to portend future legislation that would limit further the ordinance authority of all municipalities.

Cities and towns need to be able to act expeditiously to deal with evolving problems. That’s why the legislature expressly granted them the power to enact ordinances under their police power in 1846. The legislature recognized then that having 234 municipalities ask for detailed legislation at the state level to deal with local problems would be so cumbersome as to either grind the gears of the state legislature to a halt or result in local problems never being solved, to the chagrin of local citizens and local officials. RSA 47:17, XV allows local officials to solve local problems. That is why it needs to remain in the law.

The Municipal and County Government Committee voted the bill Ought to Pass, 10 to 9. ***Please urge your representatives to vote NO on the committee recommendation and vote YES on a subsequent motion of Inexpedient to Legislate.***

Bill Mandates Undefined Budget Formats

Of the four House bills originally relating to municipal budget formats and reporting requirements, only one remains in play. The House Municipal and County Government Committee voted to recommend **HB 243, as amended**, Ought to Pass earlier this month. (The other three bills were voted Inexpedient to Legislate.)

We have serious concerns with **HB 243**, and ***we urge you to contact your representatives and ask them to kill this bill.*** The bill would require municipalities to take numerous undefined actions with respect to their budgets. For example, it requires that all budgets be prepared in “full line item detail,” but the phrase “full line item detail” is not defined.

The bill also requires the governing body to “publish” the “draft budget and revised versions, after making any updates to the budget,” within 5 days. It is unclear what “publish” means, although we assume this means publishing on a website, since the bill also requires that the budget be made available in both “CSV and PDF formats.” Of course, some municipalities and village districts do not have websites, and a significant number of towns and cities use municipal software programs that do not have the capability to export the budget to CSV or PDF formats. Thus, the bill would appear to require municipalities to acquire software compatible with its terms. Additionally, the bill requires the governing body to publish revised budget versions within 5 days after making any updates to the budget. In some of the larger towns and cities, this will require publishing new versions of the budget several times a week.

Although the committee compared the bill to **HB 1460**, which was tabled in the last legislative session, the bills are very different. **HB 1460** was enabling legislation, stating that the budget committee (not the legislature) “may” require a governing body to provide its budget recommendations in full line item detail in active spreadsheet format. That is very unlike **HB 243’s** mandate that all local governments provide budgets in CSV and PDF formats and within 5 days of revision.

Notably, the *state* budget is not required to be provided in this same manner.

The Municipal and County Government Committee reported the bill Ought to Pass in yet another 10-9 vote. ***Please urge your representatives to vote NO on the committee recommendation and vote YES on a subsequent motion of Inexpedient to Legislate.***

House Concerned About Lemonade Stands

One other bill on the House agenda appears, at least on its face, to be far less serious than those described above. In fact, committee members who heard **HB 183** described it as “frivolous,” “foolish,” and “a waste of our time.” The bill would prohibit a municipality from “licensing or regulating a lemonade stand operated by a person under the age of 18.”

Should municipalities regulate children’s lemonade stands? Probably not, and, unsurprisingly, the bill’s prime sponsor stated that the Office of Legislative Services’ researchers had been unable to identify a single instance in New Hampshire of a municipality taking such action.

Then what is the purpose of the bill? In matters ranging from the weighty to the frivolous, there are many legislative efforts this year to “rein in” municipal governments, apparently just for the sake of exercising authority. Although the subject matter of **HB 183** may be trivial, the attitude that it represents toward local government is disturbing.

With even its supporters expressly acknowledging that the bill was “a solution looking for a problem,” the House Municipal and County Government Committee still recommended passage of the bill, once again by a 10-9 vote. The committee’s recommendation includes changing the word “lemonade” to “soft drink”—a change that does not solve the bill’s fundamental problem.

Please ask your representatives to show respect for local officials by voting NO on the committee recommendation and voting YES on a subsequent motion of Inexpedient to Legislate.

“Divisive Concepts” Bill Forces Municipalities to Violate 1st Amendment

Most readers probably have heard about [HB 544](#), the bill that purports to prohibit the “propagation of divisive concepts.” Specifically, the bill would prohibit the state, including its political subdivisions, from instructing employees, contractors, students, or others to believe certain concepts, including, among others, (1) that one race or sex is inherently superior to another; (2) that the State of New Hampshire or the United States is fundamentally racist or sexist; or (3) that an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive. The bill lists seven more prohibited concepts, including “any other form of race or sex stereotyping or . . . race or sex scapegoating.”

Although we do not believe the state needs to be telling local governments what concepts they may convey to their employees or other individuals, that is not (from our perspective) the worst part of the bill. It goes on to say that “all state contracts”—which appears to include every contract entered into by a municipality, since the bill defines “state” to include political subdivisions—must include a lengthy statement (283 words) prohibiting the *contractor* from instructing its employees in any of the same concepts. That is, the municipality must tell private companies what ideas they may and may not convey to their employees.

Any effort by a municipality to enforce a restriction on private speech would be a clear violation of the First Amendment. That is bad enough, but this is being advanced at the same time that legislators are seeking to make it much easier to sue municipalities for constitutional violations. (See [HB 111](#).)

Obviously, if any municipality actually tried to insert a “prohibition on divisive concepts” clause in an equipment lease or a plowing contract, the contractor would simply remove it and wonder whether it is worth doing business with that municipality. Nor would we advise any municipality to take any action that is so clearly unconstitutional.

Despite the bill’s obvious problems, the House Executive Departments and Administration Committee voted it Ought to Pass, 10-9. Even more astonishing, Division I of the House Finance Committee voted this week to include the text of [HB 544](#) as an amendment to [HB 2](#), sending a signal of strong support. We do not know yet whether the full Finance Committee will include it in the bill. But with respect to [HB 544](#) itself, *please ask your representatives to vote **NO** on the committee recommendation, then vote **YES** on a subsequent motion of Inexpedient to Legislate.*

More Work for Municipalities

[HB 108](#) would create extra work for municipal officials without providing significant benefit to the public. The bill requires a municipality to keep a list of all “minutes or decisions” of a public body made in nonpublic session where the minutes of such session will not be made available due to a vote to seal the minutes. Simply put, it requires a separate list of information that is already available—and adds to the paperwork burden without actually helping the public understand what’s occurring in local government. Further, there is no mechanism to remove items listed, so the list will be ever-expanding, making it quite cumbersome in 20 years.

Unfortunately, the House Judiciary Committee voted [HB 108](#) Ought to Pass by a 21-0 vote, so it is on the House’s consent calendar for April 7. In the event the bill is removed from the consent calendar, *please ask your representatives to vote to **kill** [HB 108](#).* Otherwise, we will oppose it when it gets to the Senate.

Creating a Hole in the Nonpublic Session Statute

HB 232 is a bill that appears to have good intentions, but, unfortunately, creates a hole in the nonpublic session section of the Right-to-Know Law.

The bill changes what is commonly referred to as the “real estate transaction” provision of the nonpublic session statute, RSA 91-A:3, II(d). That provision allows a board to enter nonpublic session for the purpose of “[c]onsideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.” The reason for this is obvious: If a town is willing to pay \$1 million for a property and the owner knows it, the town will lose any chance of negotiating a lower price. Similarly, if the town is trying to sell a piece of property and will take a bid as low as \$1, then everyone bidding on the property will try to offer as close to \$1 as possible. The purpose of this section is to enable to a public body to participate fairly in the free market, while also allowing the public to examine the body’s decision-making process after the fact.

HB 232 would upend that delicate balance by allowing only “[c]onsideration of the amount paid, offered or accepted” to be done in nonpublic session; it would not include discussion of the amount the board is willing to pay to buy a property or the amount it wants to sell a property for, in the absence of an actual offer. It would force the board to disclose what it might consider as a minimum or maximum price, thus allowing savvy buyers and sellers to take advantage of the town. The bill also adds a line that eliminates merely discussing whether to proceed with a transaction; this also may result in a situation that would give an advantage to an adverse party. Combined, those defeat the purpose of the exemption.

The House Judiciary Committee recommended **HB 232** as Ought to Pass by an 11-10 vote. ***Please ask your representatives to vote NO on the committee report and vote YES on a subsequent motion of Inexpedient to Legislate.***

Full House Finance Committee to Tackle State Budget

The full House Finance Committee will meet Monday, Tuesday, and Wednesday next week to receive, review, and act upon the three different sections of the state budget proposal, as amended and approved by the committee’s Divisions I, II, and III during their many budget work sessions held these past weeks. Through this process, the full committee will work on the combined three sections of the proposed budget in preparation for making its recommendation of a state budget for the next biennium to the full House at 1 p.m. on April 5. The full House will then vote on the budget at its April 7-9 session.

As we reported in last week’s [Bulletin](#) and in a separate article in this Bulletin, Division I and Division II have proposed significant amendments that would affect municipalities. Division I approved amendments to **HB 1** and **HB 2** that would suspend all state aid grant (SAG) payments for existing projects for fiscal years 2022 and 2023 (totaling \$15.6 million dollars and impacting over 50 communities) unless state revenues exceed budgeted plan amounts and unless the commissioner of the Department of Environmental Services (DES) requests and receives approval for additional appropriations. Out of concern for the financial impact the non-payment of previously committed grants would have on already-approved local budgets, many local officials have contacted their representatives asking them to oppose this amendment. We are hopeful the full Finance Committee will remove this amendment from the budget proposal before it is recommended to the House. On a positive note, Division II approved amendments yesterday that included adding \$4 million for additional highway block grant aid over fiscal years 2022-2023 (see article below).

Amendment to Add \$4 Million to Highway Block Grant Aid

Yesterday, Division II of the House Finance Committee voted Ought to Pass, 7-0, on a budget amendment that appropriates an additional \$4 million in Apportionment A (highway block grant aid) distributions for the biennium ending June 30, 2023. By law, Apportionment A is set at 12 percent of the state's total highway revenue. Due to the COVID pandemic, year-to-date highway revenue is currently 8.3 percent below the revenue for fiscal year 2020. Based on projected revenue estimates for the next two years, this additional \$4 million appropriation would ensure that the fiscal year 2022-2023 biennium distributions would nearly equal the fiscal year 2021-2022 biennium distributions. The full Finance Committee is scheduled to meet Monday, March 29, 2021, to begin its work in receiving and acting on all Division I, II, and III budget amendments.

Retirement Bill Stays Alive

The Senate voted unanimously yesterday to table **SB 72**, the **NHMA policy bill** that would require the state to contribute 15 percent of political subdivision employer contributions for teachers, police, and firefighters. As we reported in last week's [Legislative Bulletin #12](#), the bill, also known as the "*Taxpayer Rescue Act of 2021*," had been voted Inexpedient to Legislate, 5 to 2, by the Senate Finance Committee. This bill would help offset the cost of the employer contributions that have been borne 100 percent by towns, cities, counties, school districts, and village districts since the state eliminated its 35 percent contribution beginning in 2009. This comes at a critical time as contribution rates are scheduled to increase by 20 percent on July 1. As we reported in [Legislative Bulletin #5](#), this bill would provide much needed relief to property taxpayers across the state and would address a broken promise made by the state to its political subdivisions in 1967.

As explained previously, after a bill with an appropriation is placed on the table, senators are 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 9. We will update you when the Senate Finance Committee begins working on the budget.

Senate Approves Remote Meetings

In a welcome bit of good news, the Senate this week unanimously passed an amended version of **SB 95**, which authorizes public bodies to continue holding remote meetings in essentially the same manner that has been permitted under the governor's Emergency Order #12 during the current state of emergency. Recognizing that this is still a relatively new practice and there certainly are benefits to in-person meetings, the Senate included a sunset date of July 1, 2022, and the creation of a committee to study how well the process is working in the meantime. Depending on the committee's findings, the legislature could either make the legislation permanent, make changes, or repeal it.

The bill now goes to the House, where its fate is far from certain. The House Judiciary Committee has reported one bill on remote meetings, **HB 216**, as Inexpedient to Legislate. With a separate bill, **HB 630**, the same committee voted 20-1 to remove the provisions for remote meetings, leaving only an unrelated change to the Administrative Procedure Act in the bill. While we would be happy to see the House overturn the committee report and pass **HB 630**, we will focus our efforts on persuading the House to approve **SB 95** when it arrives there.

Please thank your senator for supporting SB 95.

Pre-Processing Absentee Ballots

The Senate also passed [SB 89](#), an omnibus bill that, among other things, authorizes pre-processing of absentee ballots at state and local elections. The bill's process is somewhat different, however, from the process that was approved for last year's state elections.

Under [SB 89](#), the clerk would be required to open outer envelopes and check affidavits (without removing the inner envelopes) for absentee ballots received before 5:00 on the day before election day, and to attempt to contact any voter whose affidavit appears defective. The bill also provides that "notations may be made on the checklist to help facilitate processing of the ballots on election day." However, the announcement of the names of absentee voters and the public opportunity for challenge would not occur until election day. This is somewhat different from the process used last fall in which election officials held a public session before election day to announce the names and allow challenges. It is still an improvement over current law, under which the entire process must wait until election day.

[SB 89](#) now goes to the House. We will keep you updated on its progress.

HOUSE CALENDAR

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

TUESDAY, MARCH 30, 2021

COMMERCE AND CONSUMER AFFAIRS

- 10:00 a.m. [SB 68](#), requiring an employer to provide reasonable accommodations for pregnant employees.
- 10:30 a.m. [SB 69-FN](#), requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time.

WEDNESDAY, MARCH 31, 2021

ELECTION LAW

- 10:00 a.m. [SB 31](#), relative to voter checklists and modifying the absentee ballot affidavit.
- 10:30 a.m. [SB 46](#), relative to the use of electronic poll books by cities and towns.
- 11:15 a.m. [SB 54](#), relative to the absentee ballot application form.

SENATE CALENDAR

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

MONDAY, MARCH 29, 2021

ENERGY AND NATURAL RESOURCES

- 1:00 p.m. [HB 256](#), adding members from Londonderry to the commission to investigate and analyze the environmental and public health impacts relating to releases of perfluorinated chemicals into the air, soil, and groundwater in Merrimack, Bedford, and Litchfield.
- 1:15 p.m. [HB 73](#), relative to public notice requirements for certain permits issued by the department of environmental services.

WEDNESDAY, MARCH 31, 2021

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

9:10 a.m. **HB 302**, relative to the creation and use of electronic records by government agencies.

SENATE FLOOR ACTION

Thursday, March 25, 2021

HB 173-FN, requiring the independent investment committee of the New Hampshire retirement system to report investment fees. **Passed.**

HB 383, relative to the quarterly or semi-annual collection of taxes in certain municipalities. **Passed.**

SB 72-FN-A-L, relative to a state share of retirement system contributions by employers. **Laid on Table. NHMA Policy.**

SB 85-FN, establishing a broadband matching grant initiative and fund. **Passed.**

SB 89, adopting omnibus legislation relative to election procedures and registers of probate. **Passed with Amendment.**

SB 95-FN, adopting omnibus legislation relative to remote meetings and penalties for violation of privacy. **Passed with Amendment.**

SB 100, adopting omnibus legislation on commissions and committees. **Passed with Amendment.**

SB 102, adopting omnibus legislation on property taxation. **Passed with Amendment.**

SB 119-FN, relative to the ordinary death benefit in the retirement system. **Laid on Table.**

SB 127-FN-A-L, adopting omnibus legislation on appropriations. **Laid on Table. NHMA Policy.**

| 2021 NHMA UPCOMING MEMBER <u>VIRTUAL</u> EVENTS | |
|---|---|
| Weekly | Friday Membership call (1:00 – 2:00) |
| Apr. 6 | 2021 Local Officials Workshop (9:00 – 4:00) |
| Apr. 13 | Webinar: ZBA Basics (12:00 – 2:00) |
| Apr. 15 | Right-to-Know Law: Public Meetings & Governmental Records (1:30 – 3:30) |
| Apr. 16 | Membership Call including 2021 Legislative Half-Time Report (1:00 – 2:00) |
| Apr. 22 | Recycling 101: Municipal Solid Waste & Recycling in NH (9:00 – 12:00) |
| 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. | |