

LEGISLATIVE BULLETIN

State Budget Update

The Senate Ways and Means Committee completed its revenue estimates this week, and the Senate Finance Committee is expected to complete its budget deliberations later today. The Finance Committee is scheduled to conduct a budget briefing on **HB1**, the state budget bill, at 2 p.m. on Tuesday, June 1. The committee made numerous amendments to both **HB1** and **HB2** over the past several weeks with significant actions affecting towns and cities, most notably an amendment to increase significantly the meals and rooms tax distribution to towns and cities (see article below).

The budget bills, with amendments proposed by the Finance Committee, will go before the full Senate for approval on Thursday, June 3. Once approved, the amended bills will go back to the House, where it is expected the House will request a committee of conference. That committee must reach an agreement by June 17, and June 24 is the deadline for final action by both the House and Senate. We will continue to follow the budget closely and will provide a detailed report of the municipal state aid and revenue sharing provisions following the Senate session of June 3.

Committee Votes to Increase Meals & Rooms Tax Distribution

Yesterday the Senate Finance Committee voted unanimously to support an amendment (1738s) to **HB 2** that would: 1) immediately increase the budgeted municipal share of meals and rooms tax revenue for fiscal years 2022-23 by over \$31 million; 2) establish a new dedicated fund in the treasury, “meals and rooms municipal revenue,” for distribution to towns and cities based on population; and 3) reduce the statutory municipal percentage of the total meals and rooms tax revenue from 40 percent to 30 percent. This final point is important: Although the amendment would add approximately \$31 million to the amount included in the House budget for meals and rooms tax revenue distribution to towns and cities in fiscal years 2022 and 2023 (according to initial reports), the amendment does amend the statute to reduce the municipal share. At the same time, it is important to remember that although the statutory percentage is 40 percent, municipalities have not received 40 percent—or even 30 percent—for decades.

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In introducing the amendment, the sponsor referenced [SB 99](#), requiring the immediate distribution of 40 percent of the meals and rooms tax revenue, which was unanimously approved by the Senate and then laid on the table in March. It was explained that this new amendment, although reducing the amount of the municipal share currently required by RSA 78-A from 40 percent to 30 percent, would enable the state to “live up to its word” of distributing (and not suspending) the required municipal share.

As explained in more detail in our [Municipal State Aid and Revenue Sharing booklet](#), in the last 20 years, the so-called “catch-up formula” in the statute has been regularly suspended, resulting in the actual municipal share being well below the intended 40 percent. The percentage distributed to municipalities has ranged from 18.3 percent (in 2001) to 28.9 percent (in 2010); and since 2010, the percentage has steadily decreased to 20.2 percent in fiscal year 2020. The current fiscal year 2021 distribution increased to 22.4 percent of total revenue, but only because the actual dollar amount of the municipal distribution was frozen by the legislature since 2017 at \$68.8 million annually, while total revenue decreased in the current fiscal year due to the pandemic (a scenario similar to the one that caused the municipal percentage to increase in 2010 due to the great recession).

The amendment would also create a new dedicated fund for the municipal share of the meals and rooms tax revenue. It was explained that requiring the proposed 30 percent municipal share to be deposited in a dedicated treasury fund was to ensure that these monies would not be available for use by the legislature in its budgeting process. However, in response to a question, the legislative budget assistant responded that the legislature has in the past been able to suspend the provisions of a dedicated fund and access those funds for other purposes. In an effort to provide further assurance that the state would live up to its word, it was pointed out that efforts were made in drafting the amendment to find a percentage that could work without anyone talking about a suspension again—supporting the choice to reduce the municipal share from 40 to 30 percent of the total revenue.

Thank you to all the senators who have been instrumental in working toward restoring the state’s long-standing commitment to towns and cities for meals and rooms tax revenue. This amendment is a significant step in that direction.

State Aid Grants for New Projects Still on Hold

As the Senate Finance Committee completed its budget work this week, [SB 127](#) remained on the table. As we reported in last week’s [Bulletin #21](#), [SB 127](#) contains the state aid grant funding for the [11 projects](#) held back in the current budget due to earlier financial concerns caused by the pandemic, plus the [110 projects](#) that the Department of Environmental Services has identified as eligible for grant funding in fiscal years 2022-2023. NHMA, along with the state’s water and wastewater associations and towns, cities, and village districts, has supported the inclusion of [SB 127](#) in the state budget and continues to urge members of both the Senate and the House to honor the state’s commitment, established in RSA 486-A, to the state and local partnership for funding clean water infrastructure projects identified by the Department of Environmental Services. Although we have not received any official communication in response to our letters and emails, it is our hope that efforts may be underway to address the funding of these projects—perhaps outside the budget process, through the use of federal funds.

Concerning Amendment on Vaccines Moves Forward

As we wrote [last week](#), **SB 155** is an omnibus bill, involving a variety of matters related to COVID-19.

On Tuesday the House Executive Departments and Administration Committee held an executive session on **SB 155**, in which it considered two new amendments: 1646h and 1685h. Both amendments include the same language on a variety of items, such as outdoor dining and preexisting nonconforming summer camps; however, amendment 1685h also includes a section prohibiting the mandating of vaccinations or asking any person about vaccination status.

Amendment 1685h contains a section that would make mandating vaccinations or asking about vaccination status a violation of RSA 354-A, New Hampshire's Commission for Human Rights statute. The amendment, among other things, would prohibit an employer, including a municipality, from even *asking* employees about vaccination status for the purpose of maintaining a safe workplace and ensuring that proper protocols are followed. Although we have not heard of municipalities seeking to mandate vaccines, we do know that municipalities, in their capacity as employers, have a legal obligation to maintain a safe workplace. This obligation includes following appropriate COVID-19 safety protocols. Quarantine, mask-wearing, and other requirements also differ depending on the vaccination status of a person, putting municipalities in an impossible situation if they are unable to at least ascertain the vaccination status of employees.

SB 155 came out of the committee with no committee recommendation because neither amendment could garner a majority vote. Both amendments will go to the floor next week. ***Before June 3, we urge local officials to contact their representatives and tell them to oppose amendment 1685h, and to pass SB 155 only if amendment 1646h is adopted.***

Attorney-Client Communications Amendment Advances

Yesterday the Senate unanimously passed **HB 108** with an [amendment](#), approved earlier in the week by the Judiciary Committee, that would override last month's troubling ruling by the New Hampshire Supreme Court that attorney communications with a governmental client are subject to disclosure under the Right-to-Know Law. The amendment makes it clear (see page 4) that records protected under the attorney-client privilege or attorney work product doctrine are exempt *per se* from disclosure. This issue had quickly become one of the most significant concerns this year for municipalities (and all state and local government entities) after the court's decision, and we thank the committee and the Senate for acting so promptly.

The bill as amended now goes back to the House with a request for the House to concur. Because the Senate amended the bill significantly (the attorney-client communication amendment is just one of several), it is almost certain that the House will request a committee of conference. That committee will meet the week of June 7 or June 14, so there will not be any significant developments before then; but we will watch this matter closely and keep you informed.

House to Vote on Remote Meetings

As we reported in [last week's Legislative Bulletin](#), the House Judiciary Committee approved an amendment to **SB 95** that would delete the part of that bill that enables public bodies to continue to meet remotely until July 1, 2022. This was in spite of the fact that 102 people signed in support of **SB 95** at the committee hearing, compared to only two signing in opposition, and all of the approximately one dozen people testifying spoke in support.

As evidenced by that support, the 14-month experiment with remote meetings has almost uniformly been considered a smashing success, drawing enthusiastic support both from board members and from the public. This does not mean that all public bodies will continue to meet remotely forever; to the contrary, most are likely to return to in-person meetings as they feel comfortable doing so. But the experience of the last year shows that remote meetings work well and are a useful option when an in-person meeting is either unsafe or inconvenient.

SB 95 will go to the full House at its session next **Thursday, June 3**, and we encourage representatives to *reject* the committee amendment and *pass SB 95 as passed by the Senate*.

Gun Bill Disarmed

By a voice vote yesterday, the Senate voted to re-refer **HB 307**, which would prohibit municipalities from regulating the discharge of firearms on their own property. The vote was less than unanimous, not because any of the senators wanted to pass the bill, but because some wanted to kill it rather than re-refer it. Even the majority who voted for re-referral recognized that the bill has serious problems.

Re-referral means the bill will go no further during this legislative session. Officially, it goes back to the Senate Judiciary Committee, which may work on the bill and make a recommendation for further action next year. Many re-referred bills end up dying without further action, and that certainly would be an acceptable resolution.

Senate Floor Amendment Adds PFAS Grants

A floor amendment (1780s) to **HB 271** that was offered yesterday and passed the Senate would provide *grants*, in addition to low-interest loans, for water system projects needed to meet PFAS drinking water standards and for wastewater projects required to treat effluent and residuals to achieve applicable PFAS standards prior to discharge or disposal. The loans and grants for water system projects would be available to municipalities, community water systems, and non-profit, non-transient non-community water systems for the projects needed to meet PFAS drinking water standards. The loans and grants for wastewater projects would be available to public-owned and non-profit wastewater and/or wastewater residual treatment or storage facilities. The loan and grant program would be administered by the Department of Environmental Services to assist these entities with the cost of complying with applicable PFAS standards. The grants would be available “to the limit of available federal funds deposited into the fund from the American Rescue Plan Act of 2021,” and be provided up to 100 percent of the total eligible cost of the project.

HB 271 now goes back to the House, which we hope will concur with the Senate amendment.

Other Senate Action

The Senate addressed several other bills of municipal interest yesterday, with generally positive results. These include the following:

HB 98 – Date of state primary election – passed with amendment. This bill changes the date of the biennial state primary election, currently the second Tuesday in September. The House version changed the date to the fourth Tuesday in June. Municipal clerks who also serve as tax collectors had expressed alarm at

this move, as it would have the primary and the preparations for it occur during one of their busiest times of year, when they are sending out first-half property tax bills. The Senate, responding to that concern (and also recognizing that it would require legislators to begin campaigning while still in session), amended the bill to change the date to the second Tuesday in August. The bill will likely go to a committee of conference.

HB 232 – Nonpublic sessions – re-referred. This bill would amend the exception in [RSA 91-A:3, II\(d\)](#), that allows a public body to discuss property transactions in nonpublic session if a public discussion would likely benefit a party whose interests are adverse to those of the general community. NHMA opposed the bill because it seemed to allow nonpublic discussion only when there is an actual offer on the table, which would defeat the purpose of the exception.

HB 474 – Surveillance on public ways – killed. This would have expanded the definition of prohibited “surveillance” on public ways. NHMA and others opposed the bill as eliminating the ability of municipalities and the state to use various technologies that are important for public safety, such as dashboard cameras in police vehicles.

HB 566 – Discussion of unsealing minutes – passed with amendment. As amended, the bill clarifies that a public body may enter nonpublic session to discuss whether sealed minutes of a previous nonpublic session should be unsealed, but that the actual vote to unseal the minutes must still occur in public session. The amendment deletes a provision of the bill that became unnecessary because it was incorporated into **HB 108**.

Municipal Bills on House Consent Calendar

Not every bill is contentious this year. At its two-day session on June 3 and 4, the House has a lengthy consent calendar, including many bills that are of interest to municipalities. Among them are the following bills previously passed by the Senate, all of which have unanimous or near-unanimous committee reports recommending passage by the House. Except as noted with respect to **SB 42** and **SB 85**, all of the committee recommendations are Ought to Pass without amendment of the Senate version:

SB 42 – Private dealings by public officials. This bill adds the provision of services to the prohibition under [RSA 95:1](#) on a public official’s engaging in business transactions, except by open competitive bidding, with a political subdivision in which the official holds office. (The current law refers expressly only to buying or selling property.) The House Executive Departments and Administration Committee has recommended an [amendment](#) that increases the statute’s existing \$200 threshold to \$1,000 to account for inflation (it was last amended in 1975), and to clarify that the prohibition would be on providing services in excess of that amount “in any one year.” Assuming the House adopts the committee report, the bill will go back to the Senate with a request to concur.

SB 46 – Electronic poll books. **SB 46** authorizes municipalities to use electronic poll book devices for voter registration and check-in for elections, subject to certain requirements. This makes permanent what had been a trial program, which otherwise would have expired on January 1, 2023.

SB 48 – Current use tax rates. This bill clarifies that the formula used by the Department of Revenue Administration to assist the Current Use Board in determining current use tax rates is not confidential.

SB 84 – Village districts subject to RTK Law. This clarifies that legislative bodies, governing bodies, boards, commissions, and committees of village districts are “public bodies” under the Right-to-Know Law. This is already the law, but because the village district statute does not state it expressly and RSA 91-A does

not refer specifically to village districts (only to “political subdivisions”), it was felt that clarification would be useful.

SB 85 – Broadband matching grants. SB 85 establishes a broadband matching grant initiative and fund in the Office of Strategic Initiatives, to provide grants to broadband providers, political subdivisions, and communications districts to improve broadband availability across the state. The House Finance Committee approved an [amendment](#) that places the program within the Department of Energy that is proposed to be created in **HB 2**. If that department is not created, then the program would remain in the Office of Strategic Initiatives, as provided in the bill as passed by the Senate.

SB 87 – Omnibus legislation on municipal finance. This bill does three distinct things. First, it authorizes certain towns to use a portion of the funds from water wheeling charges derived from intermunicipal agreements to pay for improvements to their water or sewer systems and for other specified economic development purposes. Second, it authorizes municipalities to charge a \$25 fee when an electronic remittance for taxes or fees is returned as uncollectible. (Current law authorizes the fee only for uncollectible checks.) Third, it allows a capital reserve fund to be used for payments under a lease/purchase agreement, regardless of whether the agreement contains a non-appropriation clause.

SB 88 – Bonds for broadband. SB 88 makes changes to the requirements regarding a request for information before a municipality may issue a bond for broadband infrastructure. It also requires the Public Utilities Commission to adopt rules implementing the provisions of “One Touch Make Ready” as adopted by the Federal Communications Commission.

Where We Are

House and Senate committees have issued their reports on all remaining 2021 bills. Next Thursday, June 3, is the deadline for the Senate to act on House bills, including the state budget, and the following day is the deadline for the House to act on Senate bills. Any bills that have passed both chambers with identical language will go next to the governor, if they have not already.

All House bills amended by the Senate will go back to the House with a request for the House to concur, and the converse will be true for Senate bills amended by the House. If the chamber whose bill was amended by the other does not concur with the amendment, in most cases it will request a committee of conference. (Alternatively, it can just let the bill die—this does not happen often.) Decisions on establishing committees of conference will be made at the House and Senate sessions on June 3-4 and June 10. Those committees will meet during the weeks of June 7 and June 14, with a deadline of June 17 to complete their work and sign their reports. Committee of conference reports will then go to the House and Senate for final action on June 24, the last day of the legislative session.

Thank You, By the Way

There’s been a lot of activity the last few weeks, and we haven’t always had time to follow up with the [many](#) local officials who have testified, made phone calls, or sent emails on our important legislative issues. We try to send individual thank-yous and updates, but there isn’t always time.

So thank you to all who have advocated on the state budget, municipal liability, attorney-client communications, municipal regulation of firearms, remote meetings, and other important issues in recent weeks. Your efforts have been critical to our success, and we really do appreciate them!

ARPA Updates

- **NEU Guidance** - On Monday the United States Treasury Department released additional guidance and information for the state to calculate the allocations to non-entitlement units (NEUs) of local government under the American Rescue Plan Act (ARPA)—229 towns and cities in New Hampshire are designated NEUs. In accordance with this guidance, we anticipate that the state will soon provide additional information about the process it will use to allow NEUs to provide information and documentation necessary to receive their fund allocation amounts. Links to all this additional information can be found on NHMA's [ARPA Information Page](#).
- **Updated Treasury FAQs** – Yesterday, the US Treasury released [updated FAQs](#). This update includes answers to the following questions:
 - My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury?
 - My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why?
 - May recipients use funds to pay “back to work incentives” (e.g., cash payments for newly employed workers after a certain period of time on the job)?
 - The Coronavirus Relief Fund (CRF) included as an eligible use: "Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency." What has changed in CSFRF/CLFRF, and what type of documentation is required under CSFRF/CLFRF?
 - What staff are included in “public safety, public health, health care, human services, and similar employees?” Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff?
 - How do I know if a certain type of revenue should be counted for the purpose of computing revenue loss?
 - Are governments required to submit proposed expenditures to Treasury for approval?
 - How do I know if a specific use is eligible?
 - Are recipients required to remit interest earned on CSFRF/CLFRF payments made by Treasury?
 - Is there a deadline to apply for funds?
- **Interim Final Rule (IFR):** The provisions in the IFR are effective May 17, 2021. The rule is open for public comment through **July 16, 2021**. Comments and input are encouraged and will be considered by the Treasury in developing the Final Rule for the program. Submit your comments by clicking [HERE](#) (Coronavirus State and Local Fiscal Recover Funds on regulations.gov). It is important to note that the IFR applies to all units of local government, both NEUs and metropolitan communities.

House Calendar

There are no committee hearings scheduled next week.

Senate Calendar

There are no committee hearings scheduled next week.

Senate Floor Action

Thursday, May 27, 2021

HB 98, relative to the date of the state primary election. **Passed with Amendment.**

HB 108-FN-L, relative to minutes and decisions in nonpublic sessions under the right-to-know law. **Passed with Amendment.**

HB 125, relative to post-arrest photo distribution by law enforcement officers. **Re-referred.**

HB 218, repealing RSA 320 relative to hawkers and peddlers and RSA 321 relative to itinerant vendors. **Re-referred.**

HB 222-FN, relative to official cover plates. **Inexpedient to Legislate.**

HB 232, relative to nonpublic sessions under the right to know law. **Re-referred.**

HB 236, creating a statute of limitation on civil actions relative to damage caused by perfluoroalkyl and polyfluoroalkyl substances. **Passed with Amendment.**

HB 271, relative to standards for per and polyfluoroalkyl substances (PFAS) in drinking water and ambient groundwater. **Passed with Amendment.**

HB 291, relative to public inspection of absentee ballot lists. **Passed with Amendment.**

HB 307, relative to the state preemption of the regulation of firearms and ammunition. **Re-referred.**

HB 474, prohibiting surveillance by the state on public ways or sidewalks. **Inexpedient to Legislate.**

HB 499, relative to the use of face recognition technology. **Inexpedient to Legislate.**

HB 566, relative to the discussion and disclosure of minutes from a nonpublic session under the right-to-know law. **Passed with Amendment.**

2021 NHMA UPCOMING MEMBER <u>VIRTUAL</u> EVENTS	
June 9 & 23	The Academy for Good Governance (5:00 – 7:00 p.m.)
June 10	Municipal Trustees (9:00 – 3:00)
June 17	The Art of Welfare (9:00 – 1:15)
June 21	Webinar: NLC's Race, Equity and Leadership (REAL) 100 (3:30 – 5:00)
June 22	Webinar: The Right-to-Know Law & Governmental Records (12:00 – 1:00)
June 28	Webinar: NLC's Race, Equity and Leadership (REAL) 200/300 (3:30 – 5:00)
June 29	Collective Bargaining (9:00 – 12:00)
Please visit www.nhmunicipal.org Click on the Events and Training tab to view the calendar. For more information, please call NHMA's Workshop registration line: (603) 230-3350.	