

LEGISLATIVE BULLETIN

Bring Your Testimony in Hard Copy

Several weeks ago, we [reported](#) on the new process in the House to submit written testimony. As with all new technological changes, there are always some technical challenges. While those who have submitted testimony via the new process should rest assured that their testimony has been reviewed by the relevant committee, we have heard from several committee chairs that it is good practice to bring hard copies of testimony for the committee if testifying in front of a House committee.

Snow Day

All of the hearings scheduled for today (Friday, February 4) were rescheduled to next week. Some committees that were scheduled to have hearings late in the day Thursday also rescheduled to next week. Importantly, among the hearings that were rescheduled are the numerous statewide zoning mandate bills that were to be heard by the Municipal & County Government Committee today. Those bills have now been rescheduled for **Wednesday, February 9**, beginning at **9:00 a.m.** in **LOB Room 301-303**. Bills originally scheduled to be heard by the Municipal & County Government Committee on Monday are still scheduled for Monday. The bills rescheduled for **Wednesday** include:

- 9:00 AM – [HB 1070](#), relative to the default budget in official ballot jurisdictions.
- 9:30 AM – [HB 1087](#), relative to zoning for single family housing lots.
- 10:00 AM – [HB 1098](#), limiting the number of parking spaces required per occupied dwelling.
- 10:30 AM – [HB 1122](#), authorizing municipalities to collect and resell construction and demolition debris.
- 11:00 AM – [HB 1155](#), relative to persons elected to a local board serving on another board.
- 11:30 AM – [HB 1172](#), requiring composting and waste recycling to be made available to residents of public housing.
- 12:00 PM – [HB 1617](#), relative to housing projects of the community development finance authority and establishing a committee to prevent state subsidies for housing development that is not income-sensitive.

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February 4, 2022

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GOVERNMENT AFFAIRS CONTACT INFORMATION

Margaret M.L. Byrnes
Executive Director

Natch Greyes
Government Affairs Counsel

Katherine Heck
Government Finance Advisor

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

Housing Appeals Board Jurisdiction

On **Monday, February 7, at 11:30 a.m.** in **LOB Room 301-303**, the Municipal & County Government Committee will hear [HB 1307](#), clarifying the jurisdiction of the Housing Appeals Board. This bill modifies RSA 679:5 to allow the Housing Appeals Board to hear appeals only from planning boards, zoning boards of adjustment, building code boards of appeals, historic district commissions, and heritage commissions on applications for the development of housing.

As we mentioned in [Bulletin #2](#), the Housing Appeals Board was created to speedily decide housing-related appeals. Over its year of operation, however, it has decided several cases that originated from a source other than an appeal from a decision of a local land use board in a case related to housing. NHMA supports the legislative effort to more clearly define the scope of the Housing Appeals Board jurisdiction to appeals from final decisions of municipal land use boards on applications for the development of housing. Please contact the [House Municipal & County Committee](#) and your representatives and urge them to support this bill.

Federal Background Check Mandates for Library Employees and Volunteers

On **Thursday, February 10, at 11:00 a.m.** in **LOB Room 305-307**, the House Labor, Industrial and Rehabilitative Services Committee will hold a public hearing on [HB 1529](#). This bill would **require prospective employees and volunteers** of public libraries to obtain a federal background check before beginning employment or volunteer service. As the bill reads, in addition to employees, any individual who “volunteers” his or her expertise to speak, conduct a program or activity, or volunteer at a one-time event would be subject to fingerprinting and federal background check requirements.

Many of our libraries already conduct a state background check as part of the hiring process and expand the check to volunteers. The requirement to fingerprint and conduct a federal background check on volunteers will hamper a local library’s ability to plan programs, book speakers, and plan activities due to added time and cost associated with this mandate. A fiscal note was not provided, but additional costs will certainly be incurred, leading to increases library budgets. Please register your opposition to this bill online using the online [House of Representatives Remote Sign in Sheet](#).

Long Hearing for Short Term Rentals

On Tuesday of last week, the **Senate Commerce Committee** heard testimony on [SB 249](#), which would prohibit municipalities from regulating or prohibiting the use of *any building or structure*— including a garage, barn, toolshed, or workshop—as a short-term rental business. In a hearing that spanned more than three hours, many realtors and individuals who identified themselves as “homeowners,” (many of whom do not live in New Hampshire) asked the Senate Commerce Committee to pass the bill to prohibit municipalities from restricting their short-term rental businesses.

Opposing the bill were many local officials and others who do reside in the affected towns; they talked about the problems they have experienced as a result of the operation of short-term rentals. For example, officials from Laconia described the problems that city experienced with out-of-control properties before enacting an ordinance to regulate them. A former senator described a bus pulling up to a house near his home in Sunapee, and depositing 38 Harvard students for the weekend, and the predictable noise and trash problems that followed.

Supporters of the bill dismissed these stories as evidence of “a few bad apples.” However, the hearing testimony disclosed that there are “bad apples” in plenty of other towns around the state, and even the hearing testimony just scratched the surface of the body of complaints we have heard from our members over the last few years.

But the matter of bad apples v. good apples is not the crux of the issue for local officials trying to respond to the proliferation of short-term rentals. The real question is why, of the thousands of possible uses for a piece of property, a short-term rental should be the only one (other than tilling of soil and harvesting of crops) that is completely exempt from municipal zoning authority. Here are the answers offered by some supporting the bill:

Prohibiting STRs is an unconstitutional taking of property. At least two people made this claim. It’s been almost 100 years since the U.S. Supreme Court ruled that zoning restrictions on the use of property that serve a legitimate public interest are not unconstitutional. This is not subject to serious debate.

An STR is a residential use that can’t be treated differently from other residential uses. This has been an ongoing argument against any regulation of short-term rentals, and it is simply wrong. If you occasionally invite some friends over for dinner, you are making an ordinary use of your residence; but if you regularly serve meals to the public at your house and charge for it, you’re running a restaurant. Similarly, if you occasionally have a few overnight guests, that’s a normal residential use; but if you rent your house to a different group every night or every week, you’re running a hotel. It is treated as a business for meals and rooms tax purposes, federal and state income tax purposes, insurance purposes, and every other purpose.

At one point, a supporter said that problems like “beer cans on the front yard” can happen even at residential homes that are not short-term rentals. Of course, no one would dispute that, but there is one significant difference: short term rentals have constant turnover of guests, and there is rarely a consistent on-site contact person for police or local officials to contact about recurring issues. Indeed, this is a requirement at least one municipality has adopted to ensure that short-term rental operators are not allowing their renters to disrupt residential communities.

Restricting short-term rentals will jeopardize meals and rooms tax revenue. If this is the basis for the legislation, then there is no reason hotels, motels, bed & breakfasts, restaurants, bars, and night clubs should not also be exempt from zoning, because surely restricting those uses hurts tax revenue. A representative of the NH Bed & Breakfast Association testified about how patently unfair this legislation is to B&Bs and similar establishments, who all pay the M&R tax but also comply with other regulations, including zoning.

Further, our members have reminded us that the municipal M&R distribution is based on residential population. As a result, a municipality where many residential properties are converted to short-term rentals will likely see a *decrease* in its M&R tax distribution. That decrease in revenue will be compounded by the increased costs associated with issues related to short-term rentals, including for police and fire.

Municipal officials are properly situated to understand the issues and needs related to short term rentals, and to address the same through local zoning and regulatory processes, after public hearings and, in most New Hampshire municipalities, town meeting action to adopt any applicable ordinances or regulations. Municipal officials continue to voice the need to pass reasonable regulations to respond to the needs of their residents, including permitting short-term rentals in certain zones, requiring registration and particular inspection

requirements, or permitting short-term rentals through special exceptions or conditional use permits to ensure appropriate protections for the community. Notably, *none* of the municipalities where short-term rentals have been a significant issue have tried to prohibit them; instead, they are working to allow them under appropriate conditions.

Municipal officials and year-round residents have also drawn a distinction between owner-occupied short-term rentals—i.e., homes occupied by the property owner for most of the year—and short-term rentals owned by investors or out-of-state investment companies that are used purely as income-generating commercial businesses. The latter create most of the issues for residents and local officials. Businesses are not typically permitted in residential neighborhoods, and other businesses have on-site staff to manage issues and ensure compliance with rules and local requirements. But **SB 249** would not allow municipalities to regulate investor-owned properties any more than owner-occupied rental properties.

An amendment was offered during the hearing, which represented a small step in the right direction, by removing the prohibition on “regulating” short term rentals. However, the amendment still would not allow a municipality to prohibit the use of *any building or structure* as a short-term rental, based on classification, use, or even *occupancy*—among other issues.

The Committee has not yet voted on **SB 249**, but it may do so as early as *this coming Tuesday*. We encourage all local officials to speak with their senators about the impact of the bill.

House Judiciary Holds All-Day Executive Session

On Thursday, the **House Judiciary Committee** held an executive session and acted on approximately 40 bills. Below is the action taken on just some of the bills NHMA is following in this committee. These bills will go to the full House in February.

- **HB 1014**, allowing public bodies to meet virtually without a physical meeting place. An amendment was offered to keep in place the physical meeting space requirement. Although this may be the end of House bills related to remote meetings, there are still two bills alive in the Senate and we remain optimistic that a compromise will be reached. *Committee Recommendation: Inexpedient to Legislate, 11-10.*
- **HB 1021**, prohibiting regulation of religious land use based on the religious nature of the assembly or speech taking place on the land or in the structure. We remain concerned as to how this would function given some ambiguity in the language of the bill. *Committee Recommendation: Ought to Pass, 21-0.*
- **HB 1034**, redefining “employee or official of a governmental unit” for the purpose of immunity under RSA chapter 507-B to require that the individual’s “decisions, acts, or omissions are discretionary, rather than ministerial and not made in a wanton or reckless manner.” This is an incredibly complex area of the law, and this change would have significant effects on municipal immunity. *Committee Recommendation: Ought to Pass, 21-0.*
- **HB 1036**, rewriting a portion of the statute relative to when a public body may hold a non-public meeting concerning an employment matter. As we stated in testimony, our interpretation is that this would not alter the interpretation of existing law, but would clarify the ambiguity of the language. *Committee Recommendation: Ought to Pass, 20-0.*
- **HB 1195**, amended from the [original language](#) to now require public meetings of school boards and school administrative units (SAUs) to begin with a public comment period. Originally, the language

applied to every public meeting of every public body, which concerned us for the reasons stated in [Bulletin #4](#), but the amendment altered the language so that it does not apply to municipalities. *Committee Recommendation: Ought to Pass with Amendment, 21-0.*

The committee did **not** act on [HB 1073](#), which would repeal the right-to-know exemption for attorney-client work product. We understand that an amendment will be forthcoming.

Landfill Omnibus Bill

On Wednesday, the **Senate Ways and Means Committee** heard testimony on [SB 379](#), establishing the solid waste management fund and establishing a solid waste disposal surcharge. This is very similar to 2020's [SB 629](#), which had its path through the legislature disrupted due to COVID-19. An amendment to the bill was offered at the hearing. Our position has remained the same through the various iterations of the bill: support it with the very important caveat that the funding to municipalities remains in the bill.

The bill is not perfect, but it is an important first step to dealing with our state's solid waste crisis. Current projections see New Hampshire running out of landfill capacity within the next decade, and prior work by the legislature revealed that New Hampshire needs to pursue various options – more recycling, composting, source reduction, and probably expanded landfill capacity – in order to avert the crisis. NHMA wants to help find a solution because we know that the costs will be astronomical if one isn't found, but we know that no one solution alone will solve the problem.

The hearing allowed a number of interested parties to testify to the fact that implementing many of the solutions will require a good deal of technical knowledge, and we heard from several witnesses how critical state-level support from the New Hampshire Department of Environmental Services (DES) will be in formulating and implementing knowledge. Unfortunately, DES currently only has one position dedicated to and filled for solid waste issues, and it simply isn't possible for one person to provide the amount of technical support that is needed in addition to take all the actions that the state is required to take under various provisions in state and federal law.

While we are hopeful that funding provision of the bill will stay and provide additional funds to allow some small steps to be taken in the right direction, asking for funding on an off-budget year is not usually likely to succeed. Nevertheless, the policies implemented by the bill even without the funding would allow the state to begin to take preliminary action on solid waste and to prepare for the possibility of an infusion of federal dollars thanks to the passage of the recent federal infrastructure bill.

Unintended Consequences of Fuel Sources Bill

On Tuesday, the **House Science, Technology and Energy Committee** heard testimony on [HB 1148](#), prohibiting municipalities from restricting the types of fuel sources that may be used for energy. The bill is very similar to last year's [SB 86](#), which barred municipalities from adopting any ordinance, regulation, code, or administrative practice that prohibits or restricts a person or entity from installing a safe and commercially available heating or other energy system of their choice or to engage the services of an energy provider of their choice to install, connect, or resupply such energy system.

Although there is considerable overlap between the bills, **HB 1148** is not merely targeted at point-of-use energy sources. It encompasses the entire system of distribution of fuel sources as well. So, the issue is not just, e.g., whether a homeowner can install a propane stove, but everything related to propane in the

municipality itself. (And every other kind of “energy,” some of which may be subject to local regulations at present.) Equally concerning is the possibility that the broad language of the bill could undermine the decision in *Liberty Utilities v. City of Concord*, No. 2015-0510 (2017). In that case, the issue was whether the city could require the utility to pay for the costs of repair of the road under which the utility’s line ran. The highly technical legal analysis at the Supreme Court revealed the Court’s concern with the interaction between state law and municipal regulations, particularly where those intersection. Ultimately, the city’s interpretation prevailed, but we are concerned that the broad language of this bill could undermine that decision.

We are hopeful that these considerations will cause the committee to recommend this bill as Inexpedient to Legislate.

Get Involved in NHMA’s Legislative Policy Process

NHMA’s biennial legislative policy process is getting underway. As a first step, we are recruiting volunteers to serve on our three legislative policy committees. These committees will review legislative policy proposals submitted by local officials and make recommendations on those policies, which will go to the NHMA Legislative Policy Conference in September.

If you are a municipal official and are interested in serving on one of the policy committees, please contact the Government Affairs staff at 603-224-7447 or governmentaffairs@nhmunicipal.org.

Each of the committees deals with a different set of municipal issues. The committees and their subject areas are as follows:

- Finance and Revenue – budgeting, revenue, tax exemptions, current use, assessing, tax collection, retirement issues, education funding.
- General Administration and Governance – elections, Right-to-Know Law, labor, town meeting, charters, welfare, public safety.
- Infrastructure, Development, and Land Use – solid/hazardous waste, transportation, land use, technology, environmental regulation, housing, utilities, code enforcement, economic development.

When you contact us, please indicate your first and second choices for a committee assignment. We will do our best to accommodate everyone’s first choice, but we do need to achieve approximately equal membership among the committees. We hope to have 15-20 members on each committee.

There will be an organizational meeting for all committees on **Friday, April 1**. After that, each committee will meet separately as many times as necessary to review the policy proposals assigned to it—typically three to five meetings, all held on either a Monday or Friday, between early April and the end of May.

HOUSE CALENDAR

MONDAY, FEBRUARY 7, 2022

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

- 9:00 a.m. **HB 1177**, relative to permissible residential units in a residential zone.
9:30 a.m. **HB 1194**, relative to the procedure for overriding a local tax cap.
10:30 a.m. **HB 1238**, relative to zoning powers and the supply of workforce housing.

- 11:00 a.m. **HB 1259**, relative to the election and resignation of members of school boards and elected budget committees.
- 11:30 a.m. **HB 1307**, modifying the authority and duties of the housing appeals board.

SCIENCE, TECHNOLOGY AND ENERGY, Room 306-308, LOB

- 1:00 p.m. **HB 1644-FN**, relative to the placement of telecommunication antennae and establishing a registry for residents who are experiencing biological symptoms from wireless radiation exposure.

TUESDAY, FEBRUARY 8, 2022

EDUCATION, Room 205-207, LOB

- 11:00 a.m. **HB 1576-FN**, repealing the law relative to certain discrimination in public workplaces and education.

SCIENCE, TECHNOLOGY AND ENERGY, Room 306-308, LOB

- 9:00 a.m. **HB 1596-FN**, relative to net energy metering limits for individual and business customers.
- 2:00 p.m. **HB 1248**, relative to replacement power for net metering customer-generators.
- 3:00 p.m. **HB 1491-FN-L**, relative to natural gas transmission pipeline safety.

TRANSPORTATION, Room 201-203, LOB

- 10:10 a.m. **HB 1302-FN**, relative to the weighing of vehicles.

WEDNESDAY, FEBRUARY 9, 2022

MUNICIPAL AND COUNTY GOVERNMENT, Room 301-303, LOB

- 9:00 a.m. **HB 1070**, relative to the default budget in official ballot jurisdictions.
- 9:30 a.m. **HB 1087**, relative to zoning for single family housing lots.
- 10:00 a.m. **HB 1098**, limiting the number of parking spaces required per occupied dwelling.
- 10:30 a.m. **HB 1122**, authorizing municipalities to collect and resell construction and demolition debris.
- 11:00 a.m. **HB 1155**, relative to persons elected to a local board serving on another board.
- 11:30 a.m. **HB 1172-FN**, requiring composting and waste recycling to be made available to residents of public housing.
- 12:00 p.m. **HB 1617**, relative to housing projects of the community development finance authority and establishing a committee to prevent state subsidies for housing development that is not income sensitive.

THURSDAY, FEBRUARY 10, 2022

ELECTION LAW, Room 306-308, LOB

- 9:30 a.m. **HB 1153**, relative to absentee ballot requests.
- 10:30 a.m. **HB 1359**, relative to the election-day duties of incumbent election officials who also appear on the ballot.
- 11:00 a.m. **HB 1543-FN**, relative to the voter registration process.
- 11:30 a.m. **HB 1203-FN**, relative to domicile residency, voter registration, and investigation of voter verification letters, and relative to the terms “resident,” “inhabitant,” “residence,” and “residency.” Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Room 305-307, LOB

- 10:00 a.m. **HB 1143**, relative to medical mandates adopted by employers.
- 11:00 a.m. **HB 1529-FN**, requiring prospective employees and volunteers of public libraries to obtain a background check prior to commencing employment or volunteer service.
- 11:30 a.m. **HB 1508-FN**, prohibiting discharge of volunteer firefighters or volunteer emergency medical technicians from other employment.

- 1:00 p.m. **HB 1514-FN**, relative to an employee's unused earned time.
1:30 p.m. **HB 1569-FN**, relative to the status of "totally unemployed" for purposes of unemployment compensation.

MONDAY, FEBRUARY 14, 2022

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS, Room 210-211, LOB

- 9:30 a.m. **HB 1481**, repealing the statute relative to medical freedom in immunizations.
2:15 p.m. **HB 1495**, relative to vaccine mandates for government contractors.

SENATE CALENDAR

MONDAY, FEBRUARY 7, 2022

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 100, SH

- 1:00 p.m. **SB 250**, enabling municipalities to adopt a tax credit for qualified private community property owners.
1:15 p.m. **SB 251**, relative to the advisory board of a tax increment financing district.
1:30 p.m. **SB 252**, relative to information on property tax bills.
1:45 p.m. **SB 325**, relative to local organization for emergency management and first responders.

TUESDAY, FEBRUARY 8, 2022

COMMERCE, Room 100, SH

- 9:00 a.m. **SB 203**, relative to the state minimum hourly rate.

WEDNESDAY, FEBRUARY 9, 2022

HEALTH AND HUMAN SERVICES, Room 100, SH

- 10:30 a.m. **SB 374-FN**, relative to the SARS-CoV-2 vaccinations.

THURSDAY, FEBRUARY 10, 2022

ENERGY AND NATURAL RESOURCES, Room 103, SH

- 9:30 a.m. **SB 257**, enabling municipalities to incorporate sewage disposal systems as part of their stormwater utility.
9:45 a.m. **SB 455**, requiring the commissioner of the department of environmental services to adopt ambient groundwater quality standards for certain per and polyfluoroalkyl substances.

TUESDAY, FEBRUARY 22, 2022

TRANSPORTATION

- 1:00 p.m. **HB 116**, relative to personal delivery devices and mobile carriers.
1:40 p.m. **HB 571**, repealing the prohibition against OHRV travel on Hoit Road Marsh.

SENATE FLOOR ACTION

Thursday, February 3, 2022

SB 200, relative to the election of district commissioners in Haverhill. **Passed.**

SB 223, relative to requirements for recovery houses. **Passed.**

SB 227-FN, relative to death benefits for first responders who die from suicide. **Laid on Table.**

SB 242, relative to the disqualification of certain persons from performing the duties of an election official. **Passed.**

SB 265, relative to the aggregation of electric customers by counties. **Passed with Amendment.**

SB 267-FN-A, establishing the upland invasive species program, program fund, and program coordinator in the department of agriculture, markets, and food. **Passed with Amendment.**

SB 272, establishing a committee to study the oversight and operation of the public deposit investment pool. **Passed with Amendment.**

SB 273-A, relative to broadband infrastructure funding. **Passed with Amendment.**

SB 274, relative to governmental construction contracts. **Passed with Amendment.**

SB 275, relative to the opioid abatement trust fund. **Passed with Amendment.**

SB 312, relative to adjusted assessments of taxable property. **Passed.**

SB 315-L, directing that a portion of revenue distributions from the meals and rooms municipal revenue fund be used by municipalities to reduce the local property tax rate. **Laid on Table.**

SB 317-L, reducing the interest rate for abatements of paid property taxes. **Passed with Amendment.**

SB 329, establishing a commission to study barriers to housing development in New Hampshire, including workforce and middle-income housing. **Passed with Amendment.**

SB 337-FN, relative to emergency medical and trauma services data sharing to the purposes of analysis. **Passed.**

SB 342, relative to the minutes of nonpublic sessions under the right to know law. **Inexpedient to Legislate.**

SB 357-FN, relative to mental health training for first responders. **Passed.**

SB 364, relative to the use of electronic poll books. **Passed.**

SB 395, relative to the broadband matching grant initiative. **Passed with Amendment.**

SB 425-FN, relative to the establishment of an election information portal. **Passed.**

2022 NHMA UPCOMING MEMBER EVENTS	
Feb. 7	Washington Update with Congressman Chris Pappas (ZOOM): 10:15 – 11:00
Feb. 12	Town & School Moderator Traditional Town Workshop (Virtual): 9:00 – 1:30
Feb. 23	Webinar: Preparing to Defend Against Today’s Cyber Threats: 12:00 – 1:00
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.	