

LEGISLATIVE BULLETIN

Clarifying the Right-to-Know Law

On Tuesday, the Senate Judiciary Committee held a hearing on [HB 307](#), which would require that the government bear the cost of resolving a gray area of the Right-to-Know Law if the requestor wins. NHMA opposed the bill, as did several municipal attorneys.

One of the points of discussion was the historical language of the attorney's fees section of the Right-to-Know Law. A review of that history, in fact, demonstrates that the current law is a carefully balanced policy that reflects multiple perspectives and stakeholders.

That section, RSA 91-A:8, came into being in 1973 with the passage of Chapter Law 113. That law read:

Any body or agency which, in violation of the provisions of this chapter, refuses to provide a public document or refuses access to a public proceeding, to a person who reasonably requests the same, shall be liable for reasonable attorney's fees and costs incurred in making the information available or the proceeding open to the public provided the court renders final judgement in favor of such request.

Five years later, in 1977, the legislature passed HB 845, Chapter Law 540, which substantially rewrote the Right-to-Know Law, including section A:8. According to the House Journal on May 4, 1977, the bill was originally recommended for Interim Study by the House Judiciary Committee, but a floor amendment resulted in ultimate passage. ([Pages 539-541](#).) The Senate then took up the bill and noted in its own journal, of June 14, 1977 ([page 2668](#)), that at the Senate hearing, "there were representatives from the press who endorsed it heartily, the New Hampshire Press Association which has a membership of 22, endorsed it." No other endorsements were noted, and no objections—other than some concerns voiced by senators about the applicability of the Right-to-Know Law to the Senate—were noted. Upon enactment, the law read:

If any body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a public document or refuses access to a public proceeding to a person who reasonably requests the same, such body, agency or person may be liable for reasonable attorney's fees and costs incurred in making the information available or the proceeding open to the public, at the discretion of the court.

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In 1986, the law was changed to substantially reflect existing law, which clearly requires the government to bear the cost of attorney's fees when it "purposefully" violates the law.

In this history, we think that this demonstrates how the legislature—over the period of a little more than a decade—carefully evaluated the policy relative to when the government *should* be responsible for attorney's fees, and made a good policy decision. After four years of requiring the government to pay in all instances, the legislature (with, it appears, the hearty endorsement of the press) decided that the pendulum should swing in the other direction—giving courts ultimate discretion. Nine years later, the legislature realized that a happy medium of punishing bad actors but protecting those who acted in good faith was appropriate. And the law has been that way for 37 years. Additionally, in 2022, the legislature created the Right-to-Know Law Ombudsman, recognizing the need for a speedier and more cost-effective alternative for resolving and adjudicating these matters.

We urge our members to [contact the members of the Senate Judiciary Committee](#) and ask them to recommend **HB 307** as Inexpedient to Legislate. This is an area of the Right-to-Know Law that has already been carefully evaluated by multiple legislatures and needs no further changes.

House to Vote on Proposed Biennial State Budget

On Wednesday, the House Finance Committee voted 14-11 to adopt **HB 1** and associated provisions in **HB 2**, the budget "trailer" bill, with amendments. Please reference [Bulletin #13](#) for the highlights related to municipalities in the original version, which remain unchanged in the recommended budget. Among the changes to **HB 2** adopted by the committee is the addition of the language of **HB 436**, which would increase benefits for certain middle tier Group II members of the New Hampshire Retirement System (NHRs) by reversing several of the retirement reforms enacted in 2011. The **HB 2** proposal restores the governor's repeal of the communication tax to fund this \$250 million NHRs policy change through state general fund revenue as well as the costs that the policy would have assessed against municipalities over the next 10 years of this plan.

The House will meet in full session on **Thursday, April 6th at 9:00 a.m.**, when it will vote on **HB 1** and **HB 2** and act on any remaining House bills. A slew of floor amendments is expected that could alter the current budget proposal.

Cannabis Compromise Considered

HB 639, the cannabis bill supported by Democratic and Republican House leadership, had its final hearing in House Ways and Means this week. The committee recommended adoption of an amendment, [2023-1231h](#), which creates a 12.5 percent excise tax on producers and alters the spending formula for revenues generated by sale of cannabis.

The new formula would create the following distribution of tax proceeds, after deducting the cost of setup and \$100,000 to the Department of Safety for data collection and reporting on cannabis: five percent to the education trust fund; 30 percent to the New Hampshire Retirement System's unfunded accrued liability; 10 percent or \$25,000 (whichever is less) to the substance abuse prevention and recovery fund administered by the Department of Health and Human Services; five percent to public safety agencies; and five percent to the Department of Health and Human Services for children's behavioral health services. There would also be an initial outlay of \$100,000 to the Department of Safety for data collection and reporting, \$15 million to

the liquor commission/cannabis fund for the cost of administration and initial programmatic setup, and \$500,000 for the substance use prevention and recovery fund. (In total, \$15.6 million will need to be repaid by tax proceeds for initial setup prior to distribution of any funds pursuant to the above formula.)

The committee briefly considered whether to change the municipal-regulatory authority language to provide for an opt-in rather than any opt-out regulatory scheme, which would comply with NHMA's [policy position on cannabis](#). However, that potential amendment was withdrawn in recognition that it would be a policy change and second committees are only supposed to consider the financial side—not the policy side—of the bills before them.

For those concerned about how to apply the current language in the municipal regulatory section of the bill, NHMA will be proposing an amendment in the Senate to clarify local authority. Current language allows municipal regulation of "the time, place, and manner of operation of a cannabis establishment," or municipalities to opt-out of allowing cannabis establishments within their borders. For those without a legal background, "time, place, and manner" regulations are the type of regulations that apply in First Amendment cases (think: parades) and not usually the type of regulation that would apply for retail businesses. Instead, municipal regulation of retail businesses typically falls under land use law, *i.e.* zoning ordinances, and we think that clarifying that would benefit all involved parties.

The bill must still face a final House vote before it can move to the Senate. Assuming the House passes the bill on April 6, we anticipate that it will be assigned to a Senate committee shortly thereafter and a Senate hearing will be scheduled. We will keep you abreast of any future amendments to this bill and its status in the Senate.

Closing the Digital Gap

On Thursday, the Senate amended and passed [SB 222](#), which would allow communications districts formed under RSA 53-G to finance broadband through revenue bonds. This bill would enable municipalities participating in a communications district to expand broadband in unserved and underserved areas through tax exempt financing paid back through funds generated by the project's revenues, rather than the taxpayers. Since 2018, significant legislation has been signed into law to give municipalities more tools for expanding this essential infrastructure to address middle and last mile broadband service across the Granite State.

Hearing Schedule

Please [click here](#) to find a list of hearings next week on bills that NHMA is tracking. Please note that the linked PDF only covers hearings scheduled for the next week. For the most up-to-date information on when bills are scheduled for a hearing, please use our [live bill tracker](#).

2023 NHMA UPCOMING MEMBER EVENTS

Apr. 5	Webinar: Succeeding at Tax Deeding – 12:00 – 1:00
Apr. 5	2023 Regional Legislative Update in Exeter – 6:00 p.m.
Apr. 6	Local Officials Workshop (hybrid) – 9:00 – 4:00

Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming events. Click on the Events & Training tab to view the calendar. For more information, please call NHMA's Workshop registration line: (603) 230-3350.