

LEGISLATIVE BULLETIN

Bills Out, Hearings Scheduled

As this Bulletin went to press, 284 bills for the 2019 legislative session had been released—which means there are still two to three times that many yet to come. A list of new bills released since last week appears on pages 6-9 of this Bulletin.

Meanwhile, a few House committee hearings have been scheduled for the coming week. (See the calendar on page 5 of this Bulletin.) Most House committees will have organizational meetings on Tuesday or Wednesday, and some have scheduled hearings for Wednesday or Thursday. Two of the more important bills that have hearings are described below. We anticipate that the House will have a packed hearing schedule beginning the week of January 14.

No Senate hearings have been scheduled yet, as no Senate bills have been released yet. Those should start arriving soon.

The Ombudsman’s Back in Town

On **Wednesday, January 9, in LOB Room 208, at 10:00 a.m.**, the House Judiciary Committee will hold a hearing on **HB 103**, which would allow a citizen claiming a violation of the Right-to-Know Law to file a complaint with a Right-to-Know ombudsman as an alternative to filing suit in superior court. A superior court action would still be an option; a party would have the choice, and by choosing one option would waive the right to the other. The ombudsman would be administratively attached to the department of justice and would be appointed by the governor with approval of the executive council. Decisions of the ombudsman could be appealed by either party to the superior court.

If this sounds familiar, it’s because the Senate passed a similar bill last year, but it was eventually killed in the House. NHMA stated last year that we supported the concept, but we had some concerns about the bill. Chief among them was the bill’s provision for a 17-person “citizens’ right-to-know appeals commission,” which was not required to have any knowledge of the law and whose authority and connection to the ombudsman were somewhat murky.

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This year's bill eliminates the commission and makes a number of other changes. We still support the concept, but still have some concerns. For example, the bill does not seem to require that a copy of the complaint to the ombudsman be served on the public body or agency that is alleged to have violated the law. We do not oppose the bill at this point, but we will urge the committee to study it carefully before moving it forward.

We encourage members to read the bill and let us know your thoughts. If you have concerns (or plaudits), please consider attending the hearing, and/or contact members of the [Judiciary Committee](#).

And So Is the Housing Appeals Board

In a similar story, the Senate last year passed a bill that would have created a three-person board to hear appeals from local land use board decisions involving housing development proposals, but the bill died in the House. It is back this year as a House bill, [HB 104](#), and it also will have a hearing before the House Judiciary Committee on **Wednesday, January 9, in LOB Room 208**. The hearing is scheduled for **10:30 a.m.**

The housing appeals board is modeled on the Board of Tax and Land Appeals. It would consist of three members—an attorney, a retired judge, and a professional engineer—and land use board decisions could be appealed either to the board or (as now) to the superior court. The board would apply the same law and the same standards that a judge would apply, and decisions by the board would be appealable to the New Hampshire Supreme Court.

Both last year and this year, we have heard from local officials who did not like this idea, but we have not found a compelling reason to oppose it. If the members of the board are well qualified, there is no reason to believe their decisions would be less favorable than those of a superior court judge. Still, as with the ombudsman bill, we encourage the committee to move slowly and deliberately—and we encourage NHMA members to review the bill and let us, and the committee, know if you have concerns.

Meals and Rooms Tax Distribution to Cities and Towns

NHMA recently updated its biennial publication *State Aid to Municipalities: History and Trends*, highlighting funding from the state over the past ten to twenty years for specific municipal programs (water and wastewater facilities, roads and bridges) and general revenue to help offset property taxes (revenue sharing, meals and rooms tax distribution, state retirement contributions). A copy of that publication was mailed to each municipality in December and is also available [here](#) on the NHMA website.

One of the more significant sources of state aid to municipalities is from the revenue generated by the 9 percent tax on meals and room rentals. As explained on page 5 of the *State Aid* booklet, municipalities are supposed to receive forty percent of the revenue generated by that tax but have never come close to that level of funding. A “catch-up” formula enacted in 1993 required that seventy-five percent of any increase in meals and rooms tax revenue over the previous year, up to \$5 million, be added to the following year's distribution to cities and towns. As the revenue from the

meals and rooms tax grew over the years, so did the amount of the distribution to municipalities – until the recession hit in 2008 and 2009. Since then, the catch-up formula has been suspended for eight out of the past ten years. As illustrated on page 6 in the *State Aid* booklet, the cumulative difference between what has been distributed to municipalities since 2010 and what would have been distributed had the catch-up formula remained in place in each of those years is estimated to be approximately **\$97.6 million**.

Many municipal officials have inquired about the meals and rooms tax distribution, what an additional \$5 million means for their municipality, and how much state aid was lost during the years when the catch-up formula was suspended. In response to those inquiries, NHMA has prepared an [estimate by municipality](#) of the amount that an additional \$5 million will provide each year of the state 2020/2021 biennium, if the meals and rooms tax revenue increases enough to hit the \$5 million cap each year. These estimates are calculated based on each municipality’s percentage of the fiscal year 2019 distribution that was paid in December 2018. (Note that the \$5 million is cumulative over the 2020/2021 biennium, meaning that the increase in fiscal year 2021 includes both the \$5 million from fiscal year 2020 and an additional \$5 million for fiscal year 2021 for a total of \$15 million over the biennium—\$5 million in 2020 and \$10 million in 2021.) Using the same percentages, the chart also shows each municipality’s share of the \$97.6 million loss in state aid due to suspension of the catch-up formula.

As the governor and legislators begin to develop the fiscal year 2020/2021 biennial state operating budget, we encourage all our members to talk with their [representatives](#) and [senators](#) about the impact state aid has on your local property taxes, particularly the meals and rooms tax distribution. The following opinion piece written by Scott Myers, Laconia city manager, appeared in several newspapers last fall, and highlights how legislators can provide local property tax relief without raising fees or taxes—simply by allowing the meals and rooms catch-up formula in current law to remain intact during the next biennium!

A Clear Way to Provide Municipal Property Tax Relief By SCOTT MYERS

As we move forward to the general election, we must remember that state leaders can provide municipal property tax relief through their work on the next state biennium budget, and I am asking that they make municipal property tax relief a priority.

Local officials and others are well aware of the state’s approach in being fiscally conservative and cautious with revenue projections and spending. The same budgetary challenges are also found at the municipal level as community leaders struggle to find ways to provide needed services and at the same time try not to overburden residents with property tax increases.

State leaders are to be credited over the past several years for looking to live within our means and not always raising fees and taxes. They have also replenished the state’s “rainy day fund” with year-end surpluses and distributed one-time revenue to cities and towns for road improvement projects.

(Property Tax Relief — Continued from Page 3)

While the one-time distribution of road funds was greatly appreciated, what if there was an opportunity for the state to provide ongoing property tax relief at the local level on a predictable, sustainable basis while not having to raise a fee or implement a new tax? At this point I'm sure you're saying that this must be smoke and mirrors or some kind of gimmick, but it's not. In fact, the mechanism is already in place in state law: It is the Meals and Rooms Tax distribution.

When the Meals and Rooms Tax was first enacted by the state in 1967, the policy was to share the revenue with municipalities, with the state retaining 60 percent and municipalities receiving 40 percent. Over many decades, legislative changes reduced the municipal share so that the dollar amount being distributed locally has never reached the 40 percent level. I am requesting that state officials take the necessary incremental steps to restore the municipal distribution to the intended level and without any risk to the state budget.

The Meals and Rooms Tax is a strong source of revenue for the state. In 1993 the Meals and Rooms statute was amended to provide a municipal "catch-up" formula where 75 percent of the year-over-year increase – but not more than \$5 million – is added to the prior year municipal share in order to work toward the 60/40 split. This provided a good remedy as the additional funds were to be distributed only if revenues increased. It worked for the municipalities and protected the state.

In 2001, the state/municipal share was at 82 percent/18 percent, nowhere near the intended 60/40 split. As Meals and Rooms Tax revenue increased over that decade, the catch-up formula resulted in a 71 percent/29 percent split in 2010.

We are all well aware of the serious financial crisis that faced the state and the nation beginning around 2008. It was an extremely painful time for many, many people as well as businesses and government at all levels, and it has taken many years for the economy to recover. It was understandable that during this time the municipal distribution of Meals and Rooms under the catch-up provision was frozen by the Legislature. However, it is still frozen today even though revenue from this source has been extremely strong for the past five years now. The current municipal share has fallen back to only 21 percent.

In terms of dollars, municipalities are receiving \$68.8 million of the roughly \$322 million being collected. The \$5 million bump under the catch-up provision would increase that amount so that \$73.8 million would be distributed. The following cities would receive an additional first year increase: Concord (\$160,000), Dover (\$115,000), Keene (\$87,000), Portsmouth (\$81,000) and Laco-
nia (\$62,000). The following towns would also receive additional funds: Derry (\$124,000), Goffstown (\$67,000), Hampton (\$57,000), Gilford (\$27,000) and Lancaster (\$13,000). Similar increases based on population would occur in every municipality across the state. Imagine the positive impact on local budgets if increases such as these were to occur over a several-year period. The compounding effect would be significant.

As local residents and officials speak with candidates for statewide office this fall, I hope one of the topics discussed will be restoring the catch-up provision for both years of the state's fiscal 2020/2021 budget. The revenue has been increasing year-over-year as the economy grows, the state is protected in that it doesn't have to distribute the money if it doesn't materialize, and municipalities have a more predictable and recurring source of revenue for budgeting purposes.

(Property Tax Relief — Continued from Page 4)

If state officials want to support local property tax relief, I can't think of a better approach than this. No new taxes, no increase in fees, the provision is already in current law and the state is protected. Why shouldn't this have broad bipartisan support?

Scott Myers has been serving as Laconia city manager since 2011. He also served four terms as the mayor of Dover, from 2004 to 2011.

HOUSE CALENDAR

WEDNESDAY, JANUARY 9, 2019

CRIMINAL JUSTICE AND PUBLIC SAFETY, Room 204, LOB

2:00 p.m. HB 218, relative to the use of deadly force by a law enforcement officer.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:00 a.m. HB 217-FN, relative to bonds for public employees and repealing the board of claims.

10:30 a.m. HB 191-FN, relative to the accountability of public officials.

1:00 p.m. HB 110-FN-A, relative to the cost of fiscal analysis of legislation relating to the retirement system.

1:30 p.m. HB 116-FN, relative to the job classification of positions in the retirement system.

2:30 p.m. HB 133-FN, repealing the licensing requirement for open-air shows and repealing the laws related to the keeping of billiard tables.

JUDICIARY, Room 208, LOB

10:00 a.m. HB 103-FN-A, establishing the office of right-to-know ombudsman.

10:30 a.m. HB 104-FN, establishing a housing appeals board within the attorney general's office.

2:00 p.m. HB 193, relative to unalienable rights of inhabitants.

2:30 p.m. HB 195, relative to the process for inhabitants of the state to effectuate the protections of Article 14.

THURSDAY, JANUARY 10, 2019

ELECTION LAW, Room 308, LOB

10:00 a.m. HB 345, relative to certification of devices for the electronic counting of ballots.

11:15 a.m. HB 187, relative to state representative districts for Hudson and Pelham.

1:00 p.m. HB 106, relative to the terms "resident," "inhabitant," "residence," and "residency."

1:30 p.m. HB 105-FN, relative to domicile residency, voter registration, and investigation of voter verification letters.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 306, LOB

10:30 a.m. HB 194-FN, relative to public bonds.

TUESDAY, JANUARY 15, 2019

ELECTION LAW, Room 308, LOB

- 10:00 a.m. CACR 5, relating to the right to vote. Providing that 17-year-olds who will be eligible to vote in the general election be permitted to vote on that election's primary election.
- 10:30 a.m. HB 242, relative to special elections.
- 1:30 p.m. HB 147, relative to appeals from recounts.
- 2:00 p.m. CACR 6, relating to elections. Providing that any inhabitant who so desires may vote by absentee ballot in primary and general elections. **NHMA Policy.**

New 2019 House Bills

CACR 4 provides that the people of the state have the right of local, community, self-government to enact local laws that protect health, safety, and welfare. Rep. Schmidt of Nashua; **M&CG.**

CACR 5 provides that 17-year olds who will be eligible to vote in the general election may vote in that year's primary election. Rep. Pearson of Keene; **EL.**

CACR 6 provides that any qualified voter who desires to vote by absentee ballot may do so. Rep. Frost of Dover; **EL.**

CACR 8 provides that the people of the state have the right of local self-government. Rep. Read of Newmarket; **M&CG.**

HB 165 prohibits a public official from entering into a contract with a third party to perform his or her official duties and establishes a criminal penalty for such a delegation of authority. Rep. Marple of Hooksett; **ED&A-H.**

HB 167 allows the town of Kingston to hold a bonfire event in 2019. Rep. Weyler of Kingston; **M&CG.**

HB 178 establishes a state minimum wage of \$10 per hour. Rep. Schmidt of Dover; **LABOR.**

HB 191-FN expands the definition of official oppression and provides that a public servant found guilty of official oppression shall be removed from office. Rep. Marple of Hooksett; **ED&A-H.**

HB 192-FN-LOCAL prohibits the introduction of fluoride into public drinking water systems. Rep. Marple of Hooksett; **RR&D.**

HB 193 creates a cause of action based on a public servant's violation of the unalienable rights and privileges of an inhabitant of this state. Rep. Marple of Hooksett; **JUD-H.**

HB 194-FN provides that inhabitants of the state shall have access to the bond covering a public servant or employee who has engaged in certain prohibited conduct. Rep. Marple of Hookset; **ED&A-H.**

HB 195 creates a process for inhabitants of the state to effectuate the protections of Article 14. Rep. Marple of Hooksett; **JUD-H.**

(New Bills — Continued from Page 6)

HB 203 requires cable system television operators to offer a basic tier of programming and an economy-customer select option that allows subscribers to choose a limited number of additional channels. Rep. Somssich of Portsmouth; **COM-H**.

HB 206-FN-A-LOCAL exempts residential owners of non-current use land from filing an intent to cut and from normal yield taxes on timber. Rep. Flanagan of Brookline; **M&CG**.

HB 207 enables municipalities to adopt a credit against the state and local education property tax for individuals over 55 years of age who have no children in the public school system. Rep. Flanagan of Brookline; **M&CG**.

HB 210-FN permits legal action against a public official of a city or town by a person who is aggrieved by the enactment of an ordinance, bylaw, or regulation. Rep. McLean of Manchester; **M&CG**.

HB 211 prohibits an employer from requiring a prospective employee to disclose his or her salary history prior to an offer of employment. Rep. Schmidt of Nashua; **LABOR**.

HB 215 requires the appointment of town managers and administrators to be approved by the legislative body, and prohibits all elected and appointed officials from hiring independent contractors to perform their duties. Rep. Marple of Hooksett; **M&CG**.

HB 217-FN permits certain inhabitants to have access to bonds issued or indemnify public and municipal employees and gives the bonding company an equitable remedy of subrogation. Rep. Marple of Hooksett; **ED&A-H**.

HB 218 removes the legal authority for a law enforcement officer to use deadly force in effecting an arrest. Rep. True of Sandown; **CJ&PS**.

HB 227 limits the definition of an employee leasing arrangement to those that do not exceed 120 days. Rep. Komi of Manchester; **LABOR**.

HB 232-FN-LOCAL requires state and local government entities to comply with federal immigration detainer requests and prohibits state and local government entities from adopting policies that prohibit, restrict, or discourage the enforcement of federal immigration law. Rep. Notter of Merrimack; **M&CG**.

HB 235 establishes requirements relative to foreclosing on vacant and abandoned residential real property. Rep. Gomarlo of Swanzezy; **JUD-H**.

HB 241-LOCAL provides a homestead exemption against any execution with respect to tax collection unless there has been a jury trial. Rep. Marple of Hooksett; **M&CG**.

HB 242 changes the procedure used to fill vacancies in the office of state representative. Rep. Schmidt of Nashua; **EL**.

HB 245 modifies the filing deadline for plats or applications for approval submitted to land use boards. Rep. O'Connor of Derry; **M&CG**.

(New Bills — Continued from Page 7)

HB 246 provides that a public servant who “remains silent and fails to be accountable” shall be guilty of fraud. Rep. Marple of Hooksett; **CJ&PS**.

HB 247 updates the definition of the state building code to include the 2015 editions of the component codes, and adds the International Swimming Pool and Spa Code to the definition of the state building code. **NHMA Policy**. Rep. Beaudoin of Rochester; **ED&A**.

HB 253 prohibits employers from asking a job applicant about his or her criminal history prior to an interview. Rep. Cahill of Newmarket; **LABOR**.

HB 254-FN-A limits to \$100 per month the amount which operators may retain from meals and rooms taxes collected, and continually appropriates certain meals and rooms tax revenues for school building aid grants. Rep. Cahill of Newmarket; **W&M-H**.

HB 255 requires an employer to pay a shift differential for employees working an overnight shift. Rep. Komi of Manchester; **LABOR**.

HB 259 requires building code violations for substandard workmanship or non-approved materials to include the relevant section of the state or local building code. Rep. Beaudoin of Rochester; **ED&A-H**.

HB 261 requires the commissioner of the department of environmental services to revise rules relative to arsenic contamination in drinking water. Rep. Grassie of Rochester; **RR&D**.

HB 266-LOCAL changes the residency requirement for the elderly property tax exemption from 3 to 10 consecutive years. Rep. Gilman of Exeter; **M&CG**.

HB 272 establishes notification and disclosure provisions for the hiring of temporary workers. Rep. Schmidt of Nashua; **LABOR**.

HB 274-FN modifies definitions under the meals and rooms tax to include as taxable motor vehicle rentals the prearrangement of motor vehicle rentals with an online enabled technology application service, website, or system. Rep. Packard of Londonderry; **W&M-H**.

HB 281 permits the installation of “beaver deceiver” water flow control devices for the purpose of discouraging beaver damming and reducing the risk of flooding. Rep. Myler of Hopkinton; **F&G**.

HB 286-LOCAL declares that no cost or fee shall be charged for the inspection or delivery, without copying, of governmental records under the right-to-know law. Rep. Sylvia of Belmont; **JUD-H**.

HB 293 prohibits employers from using credit history in employment decisions. Rep. Cushing of Hampton; **LABOR**.

HB 301-FN-LOCAL authorizes towns and cities to access certain funds for burial or cremation of assisted persons. Rep. Connors of Manchester; **M&CG**.

(New Bills — Continued from Page 8)

HB 303 requires persons appointed as the local enforcement agency for inspections and enforcement of the state building code to have certification or show sufficient knowledge of code compliance requirements. Rep. Beaudoin of Rochester; **ED&A-H**.

HB 311 allows a municipality to adopt an ordinance regulating the occupancy and safety of dwelling units operating as sober living facilities. Rep. Connors of Manchester; **HHS&EA**.

HB 312 defines tiny houses and provides for the authority and requirements for municipal regulations. Rep. Testerman of Franklin; **M&CG**.

HB 323 repeals certain requirement for signs advertising the sale of liquor or beverages. Rep. Janvrin of Seabrook; **COM-H**.

HB 326 defines prime wetland for local protection in connection with fill and dredge permits. Rep. Grassie of Rochester; **RR&D**.

HB 334-LOCAL changes the length of time certain police records are required to be retained. Rep. Keans of Rochester; **M&CG**.

HB 343 provides that a foster family home shall be exempt from local fire regulations and ordinances provided that the home complies with the requirements of the state fire code. Rep. Morrison of Epping; **ED&A-H**.

HB 345 requires the ballot law commission to approve a new secure electronic ballot counting device at regular intervals. Rep. Long of Manchester; **EL**.

HB 352-FN-A appropriates funds to the department of environmental services for the purpose of funding eligible wastewater projects under the state aid grant program. **NHMA Policy**. Rep. Bucio of Conway; **F-H**.

HB 358 removes the exemptions from the construction and demolition debris combustion ban for certain municipal waste combustors and for combustion of bio-oil or biosynthetic gas produced from construction and demolition debris. Rep. Luneau of Hopkinton; **ST&E**.

2019 Upcoming Workshops and Webinars for Members:

Jan 8, 9, and 23: NHMA Webinars

Jan 12 and Feb 16: NHMA Moderators Workshops

Jan 16: NHMA Right-to-Know Law Workshop for Law Enforcement

Please register online through our website www.nhmunicipal.org. (Scroll down on left to Calendar of Events and click View the Full Calendar)

Glossary of Abbreviations Used in
Bill Descriptions and the
Legislative Process

CACR	Constitutional Amendment Concurrent Resolution
CAP BUDGET	Capital Budget Committee (Senate)
C&FL	Children & Family Law Committee (House)
CJ&PS	Criminal Justice & Public Safety Committee (House)
COM-S	Commerce Committee (Senate)
COM-H	Commerce and Consumer Affairs Committee (House)
E&A	Environment & Agriculture Committee (House)
ED&A-S	Executive Departments & Administration Committee (Senate)
ED&A-H	Executive Departments and Administration Committee (House)
EDUC-H	Education Committee (House)
EDUC-S.....	Education and Workforce Development Committee (Senate)
EL	Election Law Committee (House)
EL&MA	Election Law and Municipal Affairs Committee (Senate)
ENR	Energy & Natural Resources Committee (Senate)
F-S	Finance Committee (Senate)
F-H	Finance Committee (House)
F&G	Fish & Game and Marine Resources Committee (House)
FN	Fiscal Note
HB	House Bill
HHS	Health and Human Services Committee (Senate)
HHS&EA	Health, Human Services & Elderly Affairs Committee (House)
JUD-S	Judiciary Committee (Senate)
JUD-H.....	Judiciary Committee (House)
L	Local
LABOR	Labor, Industrial & Rehabilitative Services Committee (House)
LEGIS ADMIN	Legislative Administration Committee (House)
LOB	Legislative Office Building
M&CG	Municipal & County Government Committee (House)
PW	Public Works & Highways Committee (House)
RR&D	Resources, Recreation & Development Committee (House)
RULES	Rules Committee (House)
RULES&EB	Rules and Enrolled Bills Committee (Senate)
SB	Senate Bill
S-FR	State-Federal Relations & Veterans Affairs Committee (House)
SH	State House
ST&E	Science, Technology & Energy Committee (House)
TRANS-S	Transportation Committee (Senate)
TRANS-H	Transportation Committee (House)
W&M-S	Ways & Means Committee (Senate)
W&M-H.....	Ways & Means Committee (House)