



## New Hampshire Municipal Association recommendations for April 7-9 House session

The following are NHMA's recommendations for voting during the April 7-9 House session on the bills that will most affect cities and towns. **The bills of greatest concern are highlighted.** For each bill, our recommendation appears after the description of the bill and the committee recommendation.

### CONSENT CALENDAR

**NOTE:** The following bills are on the consent calendar; they will be voted on separately only if they are removed from the consent calendar.

#### JUDICIARY

***HB 83, prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.***

This bill would prohibit the inclusion in a settlement agreement of a non-disparagement clause or "other clause which either prevents the parties from discussing the facts of the underlying claim or speaking negatively about each other." This would make it much more difficult to settle litigation involving government entities, leading to longer and more expensive litigation and increased taxpayer expense. **Committee report: Ought to Pass with Amendment, 20-1 (consent calendar).**

**If the bill is removed from the consent calendar, vote NO on the committee report of Ought to Pass, and vote YES on a subsequent motion of Inexpedient to Legislate.**

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***HB 108, relative to minutes and decisions in nonpublic sessions under the right-to-know law.***

This requires every public body to create and maintain a list of all sealed nonpublic session minutes, identifying the date and time of the meeting, the reason for the nonpublic session, the date of the decision to seal the minutes, and the date of any subsequent decision to release them. It will create unnecessary busy work for public bodies with no significant benefit to the public. **Committee report: Ought to Pass, 21-0 (consent calendar).**

**If the bill is removed from the consent calendar, vote NO on the committee report of Ought to Pass, and vote YES on a subsequent motion of Inexpedient to Legislate.**

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***HB 111, establishing a cause of action to protect individual rights and repealing immunity for state and local officials and employees.***

This extremely dangerous bill would subject local officials and employees to lawsuits for discretionary actions that are subsequently determined to violate a statute or constitutional provision, even if the official/employee acted in good faith and reasonably believed his or her conduct was legal. Although the individual official or employee would not be financially liable, he or she would be named as a defendant in the lawsuit and would be subject to termination. The municipality could be financially liable for the innocent, good-faith actions of the official or employee. This will lead to increased legal and insurance expenses and make it much more difficult for municipalities to hire employees and recruit volunteers. **Committee report: Ought to Pass, 19-2 (consent calendar).**

**HB 111 will be removed from the consent calendar and will most likely be taken up at the end of the session. Vote NO on the committee report of Ought to Pass, and vote YES on a subsequent motion of Inexpedient to Legislate.**

## **REGULAR CALENDAR – PART TWO**

### **CRIMINAL JUSTICE & PUBLIC SAFETY**

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

This would prohibit municipalities from regulating the discharge of firearms even on municipal property. For example, a town would have no ability to prohibit target shooting—or just random gunfire—on a town-owned athletic field or in a town cemetery. Worse, it imposes fines to punish local governments that may innocently adopt such regulations because they are unaware of the prohibition. To our knowledge, this would be the first time the state has ever sought to impose financial penalties on municipalities for inadvertently adopting regulations that are beyond their authority. This is not how the state should treat its political subdivisions. The committee amendment makes the bill only marginally less objectionable. **Committee report: Ought to Pass with Amendment, 11-9.**

**Vote NO on the committee report of Ought to Pass with Amendment, and vote YES on a subsequent motion of Inexpedient to Legislate.**

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## **EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

***HB 544, relative to the propagation of divisive concepts***

This patently unconstitutional bill not only prohibits municipalities from instructing their employees about certain “divisive concepts,” it also require them to violate the First Amendment by including a clause in every contract prohibiting the contractor from doing the same. It is a remarkable

governmental effort to control private speech. Any municipality that complies with the requirement would subject itself to a lawsuit for a First Amendment violation—a heightened concern in light of HB 111 (above). The bill also violates House Rule 45(d), which prohibits a committee from reporting a bill with a positive recommendation if the bill would violate the United States or New Hampshire Constitution. **Committee report: Ought to Pass with Amendment, 10-9.**

Vote **NO** on the committee report of Ought to Pass with Amendment, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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## **JUDICIARY**

***HB 206, relative to collective bargaining strategy discussions under the right-to-know law.***

Under HB 206, collective bargaining negotiations would no longer be exempt from the Right-to-Know Law. Strategy sessions, where only one party (management or labor) is present, would still be exempt, but negotiations between the parties would be required to take place in public. This will make negotiations more difficult and costly, as the parties will likely engage in grandstanding and harden their positions. Collective bargaining sessions typically involve repeated rounds with each side caucusing, returning to the negotiating table to present their positions, and immediately returning to caucus again. Requiring that the brief “negotiations” occur in public will only make the process unwieldy and provide no benefit to the public. **Committee report: Ought to Pass, 11-10.**

Vote **NO** on the committee report of Ought to Pass, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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

This amends RSA 91-A:3, II(d), which currently allows a public body to enter nonpublic session for “consideration of the acquisition, sale, or lease of real or personal property, which, if discussed in public, would likely benefit a party . . . whose interests are adverse to those of the general community.” The bill would allow a nonpublic session only to consider “the amount paid offered, or accepted” for the property, thus prohibiting a private discussion of amounts the public body is willing to pay or accept for the property. This defeats the whole purpose of allowing a nonpublic session. **Committee report: Ought to Pass, 11-10.**

Vote **NO** on the committee report of Ought to Pass, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 566, relative to sealing records in nonpublic session under the right-to-know law.***

With the proposed amendment, this bill provides that a public body may enter nonpublic session to discuss whether to unseal minutes that have previously been sealed. This is a helpful clarification of the law. It also provides that sealed minutes relating to a discussion about the sale or acquisition of property shall be unsealed immediately after the transaction has closed or the public body has decided

not to proceed with the transaction. This is not an unreasonable requirement. **Committee report: Ought to Pass with Amendment, 11-10.**

Vote YES on the committee amendment, then vote YES on the bill as amended.

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## LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

***HB 348, requiring a public employer to provide notice of a new or amended collective bargaining agreement.***

With a [proposed amendment](#), HB 348 requires a public employer to post notice and a copy of a “tentative agreement on any new or amended collective bargaining agreement” in a conspicuous place on the public employer’s internet website. The agreement could not be “ratified by the public employer” until after the agreement has been posted for 30 days. This is one of many efforts to micromanage local processes, making local government more difficult with no corresponding benefits. There are also several flaws in the bill. Not every public employer has an internet website. The bill does not define “tentative agreement,” a term that also is not defined anywhere else in the law. Finally, it is unclear whether “ratified by the public employer” refers to the governing body’s approval of the contract or the legislative body’s approval of cost items. Collective bargaining agreements that have been approved by the governing body are already required to be available for inspection. Making the governing body jump through one more hoop will only increase the burden on municipal staff and increase the likelihood of a mistake. **Committee report: Ought to Pass with Amendment, 11-9.**

Vote NO on the committee report of Ought to Pass with Amendment, and vote YES on a subsequent motion of Inexpedient to Legislate.

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## MUNICIPAL AND COUNTY GOVERNMENT

***CACR 9, relative to municipal taxes. Providing that municipalities may not raise property taxes greater than 2 percent per year and no greater than 1 percent per year on disabled or senior citizens.***

This constitutional amendment would starve municipalities of revenue by prohibiting them from raising property tax revenues by more than two percent in any year. Where a town’s economic development would ordinarily enable it to increase its tax *revenue* while reducing the actual property tax *bills* for everyone in town, CACR 9 would prohibit it from doing so. Thus, the town will be stuck with increasing costs from development with no way to pay for them. CACR 9 would leave New Hampshire municipalities with deteriorating roads, infrastructure, and schools, and greatly diminished services. Voters already have the ability to enact a tax cap at the local level—they do not need the state to tell them how much of *their own money* they may spend. **Committee report: Ought to Pass, 10-9.**

Vote NO on the committee report of Ought to Pass, and vote YES on a subsequent motion of Inexpedient to Legislate.

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***HB 67, relative to warrant articles in official ballot towns and school districts.***

[As amended](#), this bill would prohibit the voters at a town meeting deliberative session in an official ballot referendum (SB 2) town from amending a petitioned warrant article “to change its specific intent.” Similar or identical bills have been filed many times in recent years, and they have always been killed because the legislature understood that they simply made no sense. In any legislative body, once a question—whether a warrant article at town meeting or a bill in the legislature—is filed, the legislative body can amend it as it sees fit, so long as it does not change the subject matter. The petitioners/sponsors *themselves* may wish to amend the article/bill. The irony here is that the committee’s amendment to HB 67 would *change the bill’s specific intent*—yet it would prohibit voters at town meeting from doing exactly the same thing. **Committee report: Ought to Pass with Amendment, 10-7.**

Vote **NO** on the committee report of Ought to Pass with Amendment, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 183, prohibiting municipalities from requiring a license for a lemonade stand operated by a person under the age of 18.***

Even its supporters described this bill as “a solution looking for a problem,” while others called it “frivolous,” “foolish,” and “a waste of our time.” Yet the committee recommended passage of the bill, which would prohibit a municipality from “licensing or regulating a lemonade stand operated by a person under the age of 18.” The bill’s prime sponsor acknowledged that no New Hampshire municipality had ever tried to do this. Because it does not address a real issue, it can only be viewed as an effort by the legislature to show its dominance over local government. That should not be encouraged. The [committee amendment](#), which merely changes the word “lemonade” to “soft drink,” does not improve the bill. **Committee report: Ought to Pass with Amendment, 10-7.**

Vote **NO** on the committee report of Ought to Pass with Amendment, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 243, relative to the form of municipal budgets.***

This is another effort to control local government, this time by micromanaging how towns prepare their budgets. It requires that all budgets be prepared in “full line item detail,” but does not define that term. It requires the budget to be “published”—without saying how or where—in both “CSV and PDF formats for easy viewing and use by common spreadsheet programs.” Municipalities should be able to use the budgeting formats that work best for them, subject to compliance with existing requirements established by DRA. Municipal budgets, in whatever form they exist, are already subject to disclosure to anyone who asks for them. The bill imposes requirements on municipalities that the state itself does not follow. **Committee report: Ought to Pass with Amendment, 10-9.**

Vote **NO** on the committee report of Ought to Pass with Amendment, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 266, relative to enforcement of immigration laws and the prohibition of sanctuary policies.***

This is yet another intrusion by the state into local processes. The bill prohibits municipalities from adopting any policy that restricts or discourages “inquiring about the immigration status of any individual.” Police chiefs across the state and across the country have emphasized that a policy of not inquiring about immigration status tends to improve police-community trust and enhance public safety. Local authorities should be left alone to adopt the policies they believe are best suited to improving public safety in their cities and towns. The bill also requires municipalities to comply with detainer requests issued by Immigration and Customs Enforcement. Several courts have held that local law enforcement agencies violate the Fourth Amendment’s prohibition on unreasonable searches and seizures when they hold a person based on an immigration detainer alone—so this is yet another bill that would subject municipalities to lawsuits. **Committee report: Ought to Pass, 10-9.**

Vote **NO** on the committee report of Ought to Pass, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 374, relative to the official ballot referendum form of town meeting.***

In 2019 the legislature made a rare improvement to the law governing the so-called SB 2 form of town meeting. Under the new law, the question of adopting SB 2 is voted on at the town meeting’s business session, like almost every other town meeting question. Under the previous law, the question had been relegated to one sentence on the official ballot, leaving voters a few seconds in a voting booth to make up their minds on the most significant change a town meeting is ever likely to make. The 2019 change enabled voters to have a full, informed discussion at town meeting before voting. HB 374 would reverse that change and reinstate the flawed process that encourages uninformed decision making. Despite overwhelming opposition and almost no support at the hearing (twenty-three people signed in opposition, one person in support), the committee voted to recommend the bill. **Committee report: Ought to Pass, 10-9.**

Vote **NO** on the committee report of Ought to Pass, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

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***HB 439, relative to the powers of city councils.***

The bill amends the city ordinance statute to eliminate a city council’s authority to adopt ordinances “that may seem for the well-being of the city.” For 175 years, this general grant of authority has given cities (and towns with town councils) the flexibility to act quickly to address evolving problems. Without it, municipalities would have to go to the legislature regularly to seek specific grants of authority. Although the bill directly affects only cities and town council towns, it is of concern to all municipalities, as it seems to portend a general goal of restricting local authority. As all legislators presumably know, New Hampshire is not a home rule state—municipalities have only the authority specifically granted by the legislature, so their authority is already quite limited. Further restriction is not warranted. **Committee report: Ought to Pass, 10-9.**

Vote **NO** on the committee report of Ought to Pass, and vote **YES** on a subsequent motion of Inexpedient to Legislate.

## REGULAR CALENDAR – PART THREE

### JUDICIARY

*[HB 216](#), relative to public notice and access to meetings under the right-to-know law.*

One of the very few helpful bills the House will be voting on, HB 216 would allow public bodies to continue to hold remote meetings as they have been doing since the beginning of the current state of emergency. Remote meetings have worked very well, making attendance easier for board members and enabling the public to attend without leaving their homes. The bill includes appropriate safeguards to ensure that public access is maintained. Public bodies would, of course, still be able to meet in person, and most of them probably would once they are able to do so. **Committee report: Inexpedient to Legislate, 11-10.**

Vote **NO** on the committee report of **Inexpedient to Legislate**, and vote **YES** on a subsequent motion of **Ought to Pass with Amendment**.

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### MUNICIPAL AND COUNTY GOVERNMENT

*[HB 341](#), relative to permissible residential units in a residential zone.*

This is a statewide zoning mandate that would require every municipality to allow any single-family dwelling to be configured into four units—including, for example, a single four-unit building, four single units, or a single-family house with three accessory dwelling units—if the property is in a residential zoning district and is served by municipal water and sewer. Requiring every single-family lot in a municipality’s compact area to be re-zoned as a four-family lot would be an unprecedented interference with local zoning authority. **Committee report: Inexpedient to Legislate, 10-9.**

Vote **YES** on the committee report of **Inexpedient to Legislate**.

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*[HB 588](#), relative to building codes for tiny houses.*

The title is misleading—this bill is not primarily about building codes. It is a mandate that every municipality “allow tiny houses as a matter of right in all zoning districts that permit single family dwellings.” Every zoning ordinance would also be required to “make provision for locating tiny homes in group park settings of at least 4 units.” NHMA has nothing against tiny houses, but zoning is a municipal job, not the state’s. NHMA has supported, or not opposed, at least three bills this year that would encourage the development of affordable housing, but this is not one of them. “Tiny homes” are of interest to only a very small population, and there is no reason to believe that requiring every municipality in the state to amend their zoning ordinances to allow tiny homes will have any real effect on the housing market. **Committee report: Inexpedient to Legislate, 10-9.**

Vote **YES** on the committee report of **Inexpedient to Legislate**.

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*[HB 616](#), relative to review of planning board decisions.*

This bill simply does not make sense. It creates a separate statute governing appeals of planning board decisions without repealing the existing statute. The new statute would contain several provisions that are inconsistent with the existing statute. Having separate and inconsistent statutes that govern the same process will lead to confusion. **Committee report: Inexpedient to Legislate, 11-8.**

Vote YES on the committee report of Inexpedient to Legislate.