

LEGISLATIVE BULLETIN

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[Live Bill Tracker](#)

Repeal of Immunity Protections Returns Again

On **Wednesday, February 14 at 1:00 p.m.** in **LOB 206-208**, the [House Judiciary Committee](#) will hear testimony on [HB 1640](#), which would repeal all existing statutory and common law immunity protections that apply to local government and allow lawsuits for monetary damages for essentially all governmental functions.

All local officials are urged to register their opposition to HB 647. This is a top priority bill for NHMA. You can come to the hearing and testify or register your opposition [online](#) for the committee. Please read on to understand just some of the devastating consequences of this bill for local governments.

HB 1640 would authorize an incredible number of private lawsuits against cities and towns.

HB 1640 would delete or nullify the entire body of law on governmental immunity—tossing aside decades of statutory and case law (also known as common law) developed by the New Hampshire Supreme Court. The bill states that a claim against a governmental entity **shall not be subject to:** (a) Common law doctrines of immunity; (b) Federally recognized doctrines of qualified immunity; (c) Sovereign immunity, governmental immunity, custom, or policy; or (d) Statutory immunities and limitations on liability or damages.

But what does that really mean? This bill would allow an individual to sue a governmental entity for monetary damages under any state or federal constitutional provision.

Currently, governmental bodies, officials, and employees can be sued for monetary damages and held responsible for legal fees only when the legislature or the courts have specifically created a right to sue either in statute or common law. Legislators and courts have—prudently—not created a private action for money damages and attorney’s fees in most state and federal statutes, regulations, and constitutional provisions because they have recognized that such lawsuits would be crippling to governmental operations. **HB 1640** would change that entirely, incentivizing lawsuits on a wide variety of issues for which lawsuits are not currently allowed.

HB 1640 would dramatically increase expenses for taxpayers.

If this bill passes, it would invite a barrage of lawsuits because there would be no limitation on the amount of damages that could be awarded. Combined with the expansion of municipal liability, taxpayers will see a definite increase in costs due to increases in insurance premiums, settlements, and attorneys’ fees.

Insurance premiums are calculated, in large part, based on the risk of suit and the relative costs associated with that risk. By expanding the pool of possible claims and eliminating the cap on the amount of damages, the incentive to sue and the incentive for those who sue to settle decreases. As any civil attorney will admit, settlements occur largely because it’s cheaper for their client to pay a small fee to make the problem go away—rather than to continue to accrue court (and attorney) costs in defense of their actions. The consequence of expanding the pool of possible claims is that more people may sue, increasing the need to offer settlements. Also, the possibility of winning large sums of money due to a legal judgement for legitimate suits means there is less incentive for those types of suits to settle. Combined, this one-two punch is certain to increase the risk of insuring municipalities, increasing costs for insurance, which will ultimately be passed on to the taxpayer.

HB 1640 would cripple government operations.

Aside from these “hard costs” discussed above, lawsuits take time to litigate and take administrative staff away from their regular duties. Having an increased number of ongoing lawsuits would create administrative paralysis and undue interference with governmental operations because government employees would need to spend time responding to the lawsuit rather than performing their functions.

The government needs certain protections to be able to function. Cities and towns provide a wide variety of services to the general public, which opens them to the constant risk of something going wrong. Governmental immunity recognizes this reality and allows government to operate and serve the public, without the risk of costly lawsuits at every turn. These protections are even more critical for New Hampshire’s local

government system, which rests heavily on regular people who volunteer their time to serve the public.

A fair balance between imposing civil liability on local governments, given the reasonable priority of the competing interests, already exists in the law between managing the needs of the public – as provided by the government – and the need to ensure that the injured are compensated.

We urge our members to attend the hearing to testify; or, if you would like to submit written testimony, you can do so by [registering your opposition online](#). Please be sure to email a copy of your testimony to us at governmentaffairs@nhmunicipal.org as well.

Anti-Lobbying Deja Vu

On Wednesday, the Legislative Administration Committee heard [HB 1479](#), the bill that would prohibit local officials from advocating or engaging in the legislative process and would prevent organizations that receive any public money from lobbying, with criminal penalties and costly lawsuits for taxpayers as the consequences. This same bill, in different iterations, has been filed at least five times in the last several years.

Let's start with a bright spot. We want to thank the following 35 municipalities for submitting letters in opposition to **HB 1479**:

Allenstown	Dover	Hillsborough	New London
Auburn	Dunbarton	Holderness	Newmarket
Barrington	Francistown	Hudson	North Hampton
Bedford	Franklin	Keene	Newton
Bennington	Fremont	Lebanon	Salem
Berlin	Goffstown	Litchfield	Sandwich
Candia	Greenfield	Londonderry	Swanzey
Claremont	Groton	Meredith	Wolfeboro
Dalton	Hampton	Moultonborough	

We also want to thank officials from the towns of Derry, New London, Stratham, and Woodstock for coming to testify against the bill, alongside the Building Officials Association, Town Clerks Association, and the Association of Counties.

Now let's turn to the bill.

First, the bill prohibits local officials from any form of advocacy. It broadly prohibits any public funds from being used to “lobby, attempt to influence legislation, participate in political activity, or contribute funds to any entity for the purpose of

engaging in same.” This would prevent any local official, whether a paid employee or an elected official receiving a stipend, from any advocacy on behalf of its city or town because that activity would be funded with public money.

Some legislators in the hearing attempted to lull local officials who testified in opposition into a false sense of security, by explaining that it would not affect them because RSA 15:1 exempts local officials from registering as lobbyists. If this bill passes, RSA 15:1 would not protect local officials. Instead, it would unconstitutionally deprive them – and those they employ to speak for them – of their voice during the legislative process.

Second, the bill prohibits others—recipients of public funds—from lobbying.

This paragraph—per the prime sponsor and several who came to testify in support—is about preventing NHMA from advocating for you. Despite the focus on NHMA in the hearing, this bill affects every recipient of public funds: every municipal organization, like the Building Officials, Assessors, Town Clerks, Tax Collectors, Police Chiefs, Fire Chiefs; and every single nonprofit organization that receives state or local funds, since “public funds” is defined in the bill “as a grant or appropriation of a state, county, town, city, village district, unincorporated place, or school district.” In fact, the bill is so vague and so broad in its language, that there is no reason it would not also apply to any private corporation that receives payment from a public entity, since the purchase of goods or payment for services constitutes an appropriation of public funds.

There is a so-called exception to this prohibition: the recipient of public funds who wishes to lobby can do so if they segregate the funds for lobbying from public funds. Current state law reflects reality: lobbying time and revenue received must be reported at the end of each quarter. This is because no one can predict the future. It is impossible to know how many bills will be filed of municipal interest, how late committee hearings will run, or how much time will need to be spent on advocacy until after that activity occurs. Current state law also requires that lobbyist reporting be available to the [public](#).

Third, the bill would cost taxpayers money. And that’s not just because the bill would allow any resident of the state to bring a costly lawsuit against a city and town (in addition to criminal penalties). Every year, most of NHMA’s advocacy falls into one of two categories: defeating bills that cost municipalities money and supporting bills that maintain or increase state aid. Every new cost on municipalities is paid for by taxpayers, and every additional dollar sent from the state to the cities and towns offsets property taxes. Some who testified even objected to NHMA providing objective cost analysis in response to inquiries by the Legislative Budget Office (LBA). (You can read about LBA’s Fiscal Note Process on the [LBA’s webpage](#).)

Finally, this bill strips local officials and town meetings of authority to make their own local decisions. Dues paid to organizations that provide services to local officials, such as legal services, training, and advocacy, are included by local officials in municipal budgets. In most of our municipalities, these budgets are adopted by the voters. In the rest, they are adopted by the representatives the voters elect to make those

decisions for them. Cities and towns make decisions every year to be members of organizations that provide these services to make them more efficient and to operate in a more cost-effective manner. The state should not be able to supplant its judgment for that of our local officials or voters on local spending decisions.

Ultimately, this bill is about silencing local government. If you have not yet contacted the [Legislative Administration Committee](#) to ask them to recommend this bill as Inexpedient to Legislate, there is still time. **Raise your voice before you lose your voice.**

You may watch the video of the entire hearing [here](#).

Bills on Billing

Several bills have been introduced this session to address issues around municipal ambulance billing for services.

- **[SB 407](#)**: On Wednesday, the Senate Health and Human Services Committee heard **SB 407**, which would require insurers to directly reimburse ambulance service providers at the usual rate for services or at the rate negotiated between the insurer and ambulance service provider. Currently, out of network insurance companies reimburse the patient, not the ambulance service, creating confusion for the patient and costs for the municipality. There's still time to contact members of the [committee](#) and explain how this bill would protect patients and recover revenue losses borne by property taxpayers.
- **[SB 409](#)**: On Thursday, the Senate passed **SB 409** as amended would allow for Medicaid reimbursements when an ambulance responds to an emergency call originating from 9-1-1 and treats a patient but the patient does not consent does to transport the patient to a hospital emergency room. This bill would help reduce the cost shift to the municipal budget when municipal emergency services respond to a non-transport call under certain circumstances. The Senate Finance Committee will take up **SB 409** to assess the financial impacts on the state Medicaid plan, and we encourage members to contact members of [Senate Finance Committee](#) and your legislators to express support for this policy proposal.
- **[HB 1081](#)**: Coming up on **Wednesday, February 14 at 10:00 a.m.**, in **LOB 302-304**, the [House Commerce and Consumer Affairs](#) committee will hold a work session on **HB 1081** which would require health insurance providers to directly reimburse ambulance service providers. While similar to **SB 407**, **HB 1081** would not preclude insurers from negotiating rates of reimbursement with non-participating ambulance providers. Local officials dealing with ambulance bill should contact the [committee](#) and explain how the current law on direct pay affects your ambulance services and budgets.

Local Option Right-to-Know Cost Bill Recommitted

On Thursday, the House reconsidered its prior vote on [HB 1002](#), the local option Right-to-Know Law bill supported by NHMA. Although the House passed the bill last week by a 14-vote margin, the reconsideration motion passed by a 12-vote margin this week – and a supermajority of House members agreed to send it back to the House Judiciary Committee for further work.

NHMA remains confident that the House Judiciary Committee will be able to work through the remaining concerns with this bill and produce an amendment that resolves those concerns and addresses the issues raised by our members. We are happy to continue to work with other stakeholders as the House Judiciary Committee revisits this important legislation.

Local Solutions to the State’s Housing Crisis Webinar Series

NHMA is proud to partner with New Hampshire Department of Business and Economic Affairs, New Hampshire Planners Association, New Hampshire Association of Regional Planning Commissions, University of New Hampshire Extension, PLAN NH, New Hampshire Housing, Community Development Finance Authority, and the Center for Ethics in Society at Saint Anselm College on a 5-part webinar series focusing on local solutions to New Hampshire’s housing shortage, which will kick off on February 15 with a program titled “[Our Housing Shortage](#).”

The other programs in the series are:

“[The Intersection of Development and Clean Water](#)” (Thursday, February 22)

“[YIMBYism: A Different Approach to Development](#)” (Thursday, February 29)

“[Transfer of Development Rights 101: A Primer](#)” (Thursday, March 7)

“[Attracting Developers](#)” (Thursday, March 14)

The series will highlight a variety of actions municipalities are taking to improve the housing shortage. We’ve all seen numerous news reports about, for instance, the [2,717 housing units that will shortly be under construction in Concord](#) (a [14% increase](#) in housing units), but this series will delve into the factors that lead to success and how growth can balance against existing demands for municipal services. We hope that you will register via the links above and join us during this series.

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 in a city or town 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 strive for 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 5**. 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.

[Bill Hearings Schedule](#)

[NHMA Events Calendar](#)

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