

# LEGISLATIVE BULLETIN

## Governor Delivers Budget Address

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February 15, 2019

On Thursday Governor Sununu presented his budget proposal for the biennium beginning July 1, 2019, to a joint session of the House and Senate, describing his \$13 billion 2-year budget as one that is fiscally responsible, contains no empty promises, has no new taxes, does not raise fees, and “does not downshift costs to municipalities” . . . and that last item was pretty much the only mention of municipalities. While the governor touted the extra \$35 million that went for local roads and bridges in the previous biennial budget, and while this budget proposal provides *school* property tax relief by funding targeted school building aid and increasing funding for special education, there is nothing new or more for roads, bridges, wastewater projects, or general municipal property tax relief.

Here is a summary of what’s in and out of the governor’s proposed 2020-2021 budget:

- Level funds the meals and rooms tax distribution to cities and towns at the 2017 amount of \$68.8 million each year by suspending the statutory catch-up formula for another 2 years. Based on the meals and rooms tax revenue projections, this will lower the municipal share to 19% compared to the 40% required by statute.
- Continues suspension of revenue sharing, which provided \$25.2 million per year to municipalities before it was suspended in 2010 and every year thereafter.
- Funds highway block grants at \$36.3 million in 2020 and \$35.8 million in 2021, which is similar to the level of funding for 2019.
- Funds municipal bridge aid at \$6.8 million, the same level as *before* the four-cent gas tax increase in 2014, which was supposed to double the annual funding for municipal bridges.
- Provides no funding for the state’s 20% share of the costs for wastewater projects beyond those that were approved prior to 2013. (However, funding for 70 wastewater projects in 35 municipalities is the subject of [HB 352](#) and [SB 254](#)).
- Fully funds reimbursements to municipalities involved in flood control compacts at \$887,000 each year.
- Funds \$3.5 million each year for the Land and Community Heritage Investment Program (LCHIP).

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*(Governor's Budget Address— Continued from Page 1)*

The governor's budget proposal will likely be drafted as HB 1, accompanied by HB 2, containing the statutory changes necessary to implement the budget. The House Finance Committee will begin a detailed review of the budget proposal and will no doubt make many changes based upon its priorities and preferences, before sending its version to the Senate to do the same. We will update you weekly as this important piece of legislation makes its way through the process.

Copies of the Governor's [budget address](#), the 1,200 page [budget document](#), and the [executive summary](#) are available here.

## State Retirement Contribution

On Thursday, by a vote of 256-120, the House passed [HB 497](#), an NHMA policy bill that restores a portion (15%) of the state contribution toward the New Hampshire Retirement System costs for teachers, police and firefighters. [Click here](#) to see the list of representatives who voted in favor of the bill (yeas) and those who opposed (nays). ***Be sure to thank your representatives if they voted for the bill!*** The bill is now scheduled for a work session on **Wednesday, February 20, at 10:30 a.m., in LOB Room 212**, in Division I of the House Finance Committee. In [Legislative Bulletin #7](#) we provided links to charts estimating the impact **HB 497** will have in reducing retirement costs for each municipality. Please review these charts and let [House Finance Committee members](#) know what **HB 497** means to your municipality.

### New Hampshire Constitution Part 1, Article 28-a

**Mandated Programs.** The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

November 28, 1984

***Before discussing the following three bills that had legislative activity this week, we refer our readers to the language above from the New Hampshire Constitution.***

## COLA for NHRS Retirees

On Tuesday the House Executive Departments and Administration Committee voted 17-2 to recommend Ought to Pass on [HB 616](#), which provides a 1.5 percent cost of living adjustment (COLA) for all New Hampshire Retirement System (NHRS) members who have been retired at least 5 years on or prior to July 1, 2019. This COLA would be a permanent addition to the retirement allowance paid in the future.

*(COLA— Continued from Page 2)*

The NHRS actuary estimates that this COLA will increase the current \$5 billion unfunded actuarial accrued liability of the system by **\$67.7 million**, which will be paid for by increases in future employer retirement rates over the next 20 years. The cost to terminally fund this COLA (*i.e.*, pay it all up front rather than through future employer contribution rates) would be **\$77.9 million**. These increased costs were noted by the committee members. However, since employer rates are scheduled to decrease slightly for all employee categories other than teachers, some committee members felt the increase in employer rates necessary to pay for this COLA was justified.

We certainly can sympathize with retirees who have not seen an adjustment to their annual pension in nearly a decade, but the NHRS was never designed to provide COLAs funded by increases in employer contribution rates. In fact, for many years, COLAs were funded from the state general fund. If the state wanted to pay for these COLAs out of the general fund, that would be fine, but that's not what **HB 616** does. Spreading this additional cost to employers over 20 years does not change the fact that *this is an expansion of retirement benefits that necessitate additional local expenditures*.

We have heard many legislators talk this year about their determination to stop downshifting costs to municipalities and to provide property tax relief to local taxpayers. **HB 616** is a big step in the opposite direction. At the very least, COLAs could be limited to retirees with pensions below a certain ceiling, as several committee members suggested. Should taxpayers really be paying for COLAs on top of six-figure pensions, as this bill requires?

**HB 616** will likely go to the full House on February 27 or 28. Please urge your representatives to ***vote no on the committee recommendation of Ought to Pass on HB 616.***

### **SB 287 Stricter Water Quality Standards**

On Tuesday the Senate Energy and Natural Resources Committee heard testimony on **SB 287**, which directs the New Hampshire Department of Environmental Services (NHDES) to revise the water quality standards for certain perfluorochemicals referred to as PFCs by setting standards at significantly lower levels than the department has proposed. (See page 5 of last week's [Bulletin](#) regarding NHDES proposed standards and public hearing schedule on those standards.)

NHMA submitted [written testimony](#) urging the Committee to follow the process enacted in **SB 309** last year, which requires NHDES to initiate rulemaking for PFC standards based on health risk assessments and to consider the ability to detect and remove the contaminant along with the costs and benefits to affected parties. NHMA and many others supported the standard-setting process contemplated in **SB 309**, along with the necessary resources (technical staff) the bill provided for NHDES to establish standards based on peer-reviewed scientific data regarding health risks and a comprehensive understanding of the impact and practicality of the recommended standards. NHDES issued the proposed standards in January and is now in the early stages of the rulemaking process enacted in **SB 309**.

Additionally, NHMA raised concerns regarding the cost, as estimated in the fiscal note for **SB 287**. NHDES estimated county and local costs ranging from a **low of \$79 million to a high of \$138 million**, with no mention of how these costs will be funded.

*(Water Quality— Continued from Page 3)*

Please contact members of the [Energy and Natural Resources Committee](#) and ask that they recommend killing **SB 287**, or at a minimum retain the bill to allow the standard-setting to continue as outlined in **SB 309**.

### **Arsenic in Drinking Water**

**HB 261** would require the New Hampshire Department of Environmental Services (NHDES) to revise its rulemaking procedures regarding arsenic contamination in drinking water. At Tuesday’s hearing before the [House Resources and Recreation Committee](#), the bill sponsor introduced an amendment to replace the entire bill. According to [NHDES’s written testimony](#), the amendment would require NHDES to initiate rulemaking pursuant to its existing authority to revise the ambient groundwater quality standard (AGQS) and the drinking water maximum contaminant level (MCL) for arsenic to a value not to exceed 5 micrograms per liter, or 5 parts per billion (ppb). The current arsenic standard is 10 ppb. The amendment also calls for a law change to remove the provision that any proposed changes to the AGQS for arsenic require the approval of the General Court.

Although there is no fiscal note for **HB 261**, NHDES testified that it would cost approximately **\$5 million** for all public water systems (\$1 million in capital outlay and \$4 million in annual operating costs) to comply with this new standard. In addition, municipal landfills and lagoon operators will face nearly **\$3 million** in capital outlay and **\$1 million** in annual operating costs to comply with any new AGQS standards. Although NHMA may disagree with these “conservative” cost estimates, there was no consideration given to the concept of affordability as applied to this proposed standard.

It is important to note that **HB 261** applies only to public water systems. There is no state standard for arsenic for private wells. Drinking water from private wells is not regulated under federal law, either. In New Hampshire more than 40% of the population (about 530,000 people) is served by private water wells. Many of these private wells have surprisingly unhealthful levels of arsenic that will not be addressed by **HB 261**.

Please let [House Resources and Recreation Committee members](#) know of your concerns regarding the arsenic standards proposed in **HB 261**.

### **Revenue Sharing Resurrected**

On a positive note, on Wednesday the Senate Ways and Means Committee heard testimony on **SB 301**, an NHMA policy bill that restores revenue sharing to cities and towns, the funding of which is to come from the suspension of business tax rate reductions scheduled to take effect in the next biennium. NHMA’s testimony in support of **SB 301** included the history of revenue sharing as explained on page 7 of our [State Aid booklet](#). The Department of Revenue Administration estimates that, based on certain assumptions and timing of tax filings, the fiscal impact of **SB 301** would be an increase in municipal revenue of **\$37.5 million** in fiscal year 2020 and **\$55.5 million** in fiscal year 2021. We will try to provide a town-by-town estimate in next week’s Bulletin.

## Relief for Moderators

The House Election Law Committee voted this week to recommend passage of [HB 556](#), which would allow moderators to begin processing absentee ballots before election day. Under current law, the processing of absentee ballots may not begin until two hours after the polls open on election day. The bill would allow absentee ballots to be processed (not counted) within the seven-day period before election day. The moderator would be required to post notice of the session at least 48 hours in advance, and citizens would be allowed to observe the process in the same manner as they may on election day.

The only argument made against the bill was that it would be inconvenient for someone who wants to observe the processing of the ballots. Currently, processing occurs at the election, and an observer knows the election date far in advance and is able to plan for it; with only 48 hours' notice, it would be more difficult.

That is a legitimate point, but not, in our opinion, sufficient reason to reject the bill. The purpose of allowing citizens to observe the processing of absentee ballots is to ensure the integrity of the process, not to accommodate the schedule of an observer. If one political party or another wants to be able to observe the process, it should be able to find someone who is available on 48 hours' notice.

There are many polling places that receive several hundred absentee ballots for a state election; accounting for all ballots, one at a time, is a painstaking process that can easily take several hours. Doing this during the election is a significant disruption—it takes the moderator and clerk away from other duties, and it creates a much greater risk of error as ballot clerks are trying to mark absentee voters on the checklist at the same time they are checking in voters who are voting in person. The alternative—processing the ballots after the polls close—leads to extremely late nights and delayed reporting. **HB 556** gives local election officials a third option that could avoid these problems. To be clear, it is only an *option*—if a moderator does not choose it, the ballots would be processed at the polls on election day.

**HB 556** will likely go to the House floor on **February 27 or 28**. The committee vote on **HB 556** was straight down party lines, 12-8, with the Democratic majority prevailing. We cannot imagine why this would be a partisan issue, but we strongly encourage representatives to ***support the committee recommendation of Ought to Pass.***

## House Kills Municipal Liability Bill

The House voted yesterday to kill [HB 210](#), the bill that would have required municipalities to pay attorney fees when they lose a lawsuit challenging the validity of an ordinance, even in cases where the municipality acted in good faith and on the advice of its legal counsel. The motion of Ought to Pass with Amendment failed by a large margin, 123-222, and a motion of Inexpedient to Legislate then passed on a voice vote.

[Here is a link](#) to the roll call vote on the Ought to Pass motion. A “yea” was to pass the bill. *Please thank your representatives who voted “**Nay.**”*



## Changes to NHRS Grandfathering Provision for Part-Time Retirees

**HB 418**, dealing with emergency exceptions to the limitation on working after retirement for members of the New Hampshire Retirement System, appeared headed toward a recommendation of Inexpedient to Legislate by the Executive Departments and Administration Committee. However, an amendment was offered that replaced the entire bill with a change to the grandfathering provision of the working-after-retirement legislation enacted last year in Chapter 293, Laws of 2018 (HB 561). That law required a retiree to remain in the *same* position for the *same* employer as of the effective date of the legislation in order to be grandfathered (*i.e.*, allowed to work up to 1,664 hours per calendar year instead of being limited to 1,352 hours).

The amendment to **HB 418** allows a retiree to continue being grandfathered even when working in a *different* part-time position, but still for the *same* employer. For example, a retired firefighter working in a part-time position could be promoted to captain or assume the role of fire inspector in the same municipality and still be considered grandfathered in terms of the annual hours authorized per calendar year. By a vote of 19-0, the Committee recommended **HB 418** Ought to Pass as amended. The bill will be on the consent calendar for the next House session.

## Committee Acts on Property Tax, Funeral Expense Bills

On Tuesday, the Municipal & County Government Committee voted Inexpedient to Legislate on two bills that would create new property tax exemptions: [HB 129](#), which would establish a cap on the education property tax for residents 65 and older, and [HB 207](#), allowing an education property tax credit for certain individuals over 55 without children in school. In their discussions, committee members recognized that there are existing tax relief opportunities for many individuals in these groups, and that these bills would shift the tax burden to other taxpayers.

The committee also took action on several other property tax-related bills: [HB 266](#), changing the durational residency requirement from three to ten years for the elderly property tax exemption (Inexpedient to Legislate), [HB 142](#), requiring a mortgage holder to pay any deferred property taxes when a property owner with a tax deferral dies and the mortgagee forecloses (Inexpedient to Legislate); and [HB 130](#), clarifying the definition of a “permanently and totally disabled” veteran for the purposes of the tax exemption (Ought to Pass with Amendment).

The committee deferred action on [HB 144](#), which would require a municipality to individually notify every property owner of a change in the property’s assessed value prior to issuance of a tax bill. We were encouraged that some committee members acknowledged **Article 28-a** and **unfunded mandates** in the course of that discussion. However, a majority of the committee ultimately appeared to support the proposed notification process, arguing that it would allow taxpayers to discover potential assessment errors early and avoid going through the tax abatement process. Therefore, the committee recessed the discussion until February 26 to propose an amended version that will narrow the circumstances under which the prior notice is required. The committee also deferred action on [HB 128](#), which would create a new tax exemption for disabled veterans, until February 26; the committee is likely to propose amending the bill to create a study committee.

Finally, the committee recommended Ought to Pass with Amendment on [HB 301](#), which, as amended, would allow a funeral home to apply available assets of an assisted person, up to \$2,000, to offset burial or cremation expenses paid by town or city welfare.

All of the bills on which the committee took a final vote are likely to go to the full House for action on **February 27 or 28**.

## HOUSE CALENDAR

### TUESDAY, FEBRUARY 19, 2019

#### **ENVIRONMENT AND AGRICULTURE, Room 303, LOB**

10:00 a.m. **HB 426**, establishing a committee to study allowing town clerks to accept proof of certain exemptions from the rabies vaccine for the purpose of registering dogs.

### WEDNESDAY, FEBRUARY 20, 2019

#### **LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES, Rooms 305-307, LOB**

1:00 p.m. **HB 178**, establishing a minimum wage.

1:05 p.m. **HB 186**, establishing a state minimum wage and providing for adjustments to the minimum wage.

1:10 p.m. **HB 731-FN**, relative to the minimum hourly rate.

### TUESDAY, FEBRUARY 26, 2019

#### **JUDICIARY, Room 208, LOB**

1:30 p.m. **HB 155**, relative to procedures for determining and disclosing exculpatory evidence in a police officer's personnel file.

#### **RESOURCES, RECREATION AND DEVELOPMENT, Room 305, LOB**

10:00 a.m. **HB 683-FN**, relative to the rights of property owners abutting certain highways and railroads.

1:00 p.m. **HB 495**, establishing a commission on drinking water.

1:30 p.m. **HB 707**, relative to settlement money from actions pertaining to the contamination of groundwater or drinking water.

## SENATE CALENDAR

### TUESDAY, FEBRUARY 19, 2019

#### **EDUCATION AND WORKFORCE DEVELOPMENT, Room 103, LOB**

11:00 a.m. **SB 309-FN-L**, relative to stabilization grants for education.

11:30 a.m. **SB 280-FN-L**, relative to the cost of an adequate education

#### **ENERGY AND NATURAL RESOURCES, Room 103, SH**

9:00 a.m. **SB 286-FN-L**, relative to aggregation of electric customers by municipalities and counties.

10:00 a.m. **SB 122-FN**, relative to expenditures from the energy efficiency fund.

#### **FINANCE, Room 103, SH**

1:00 p.m. **SB 310-FN-A-L**, relative to casino gambling.

### WEDNESDAY, FEBRUARY 20, 2019

#### **ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB**

11:00 a.m. **SB 8**, establishing an independent redistricting commission. **NHMA Policy.**

## HOUSE FLOOR ACTION

Thursday, February 14, 2019

HB 110-FN-A, relative to the cost of fiscal analysis of legislation relating to the retirement system. **Passed; referred to F-H.**

HB 116-FN, relative to the job classification of positions in the retirement system. **Passed with Amendment; referred to F-H.**

HB 125, allowing county officers to be chosen by secret ballot, and exempting secret ballots from the right-to-know law. **Inexpedient to Legislate.**

HB 136, increasing the maximum period for the zoning board of adjustment to hold a public hearing. **Passed.**

HB 143, relative to incompatibility of offices. **Recommitted.**

HB 145, relative to the counting of secret ballots. **Passed.**

HB 146, relative to the counting of defective ballots. **Passed with Amendment.**

HB 147, relative to appeals from recounts. **Inexpedient to Legislate.**

HB 149, relative to the apportionment of costs in cooperative school districts. **Passed.**

HB 165, prohibiting a public official from contracting out his or her duties. **Inexpedient to Legislate.**

HB 187, relative to state representative districts for Hudson and Pelham. **Inexpedient to Legislate.**

HB 206-FN-A-LOCAL, eliminating timber taxes for certain properties. **Inexpedient to Legislate.**

HB 210-FN, relative to civil actions against public officials in cities or towns. **Inexpedient to Legislate.**

HB 211, relative to inquiries by prospective employers concerning salary history. **Passed with Amendment.**

HB 227, relative to the length of time an employer may lease an employee through an employee leasing company. **Inexpedient to Legislate.**

HB 242, relative to special elections. **Inexpedient to Legislate.**

HB 245, relative to the planning board's procedures on plats. **Passed with Amendment.**

HB 253, relative to criminal records checks in the employee application process. **Passed with Amendment.**



*(House Floor Action— Continued from Page 8)*

HB 259, relative to building code violations. **Passed with Amendment.**

HB 272, relative to temporary workers. **Passed with Amendment.**

HB 281, relative to beaver deceivers. **Passed with Amendment.**

HB 303, relative to certification of building code compliance inspectors. **Passed with Amendment.**

HB 311, regulating sober living facilities. **Passed with Amendment; referred to M&CG.**

HB 334-LOCAL, relative to disposition of certain municipal records. **Passed with Amendment.**

HB 343, relative to application of the state fire code to foster homes. **Passed.**

HB 391, relative to permits for vehicle registration. **Recommitted.**

HB 392-FN-LOCAL, requiring the northern New Hampshire correctional facility to make a payment in lieu of taxes to the city of Berlin. **Inexpedient to Legislate.**

HB 407-FN, clarifying the non taxability of certain telecommunications devices and equipment. **Passed; referred to W&M-H.**

HB 410, allowing all state agencies and political subdivisions to have access to enhanced 911 information. **Passed with Amendment.**

HB 497-FN-A-LOCAL, relative to payment by the state of a portion of retirement system contributions of political subdivision employers. **Passed; referred to F-H.**

HB 517-FN-LOCAL, repealing municipal permits for registration of vehicles. **Inexpedient to Legislate.**

HB 524, relative to child day care agencies compliance with local codes. **Passed with Amendment.**

HB 617, establishing a committee to study recycling streams in New Hampshire. **Passed.**

HB 635-LOCAL, enabling a payment in lieu of taxes for a combined heat and power agricultural facility. **Passed; referred to M&CG.**

HB 636-FN-A-LOCAL, relative to state reimbursement of town and city property tax credits and exemptions. **Inexpedient to Legislate.**

## SENATE FLOOR ACTION

Thursday, February 14, 2019

SB 19, relative to the privacy of certain information concerning public employees. **Passed with Amendment.**

SB 21, relative to notice to cut timber. **Passed.**

SB 28, relative to an active employee member of the retirement system independent investment committee. **Passed with Amendment.**

SB 39, relative to the repair of roads not maintained by a municipality. **Passed with Amendment.**

SB 53-L, relative to maintenance of roads and highways to summer cottages. **Passed.**

SB 54-FN, relative to the road toll bond requirements for licensed fuel distributors. **Passed with Amendment.**

SB 59-FN, adding post traumatic stress disorder and acute stress disorder to the definition of “injury” for purposes of workers’ compensation and reestablishing the commission to study the incidence of post-traumatic stress disorder in first responders. **Passed with Amendment.**

SB 146-FN, relative to eliminating the waiting period before eligibility to receive unemployment benefits. **Passed.**

SB 151-FN, establishing an administrative hearing procedure and penalty for an employer who fails to make payment of wages or who fails to secure workers’ compensation coverage. **Passed.**

SB 153, establishing state holidays for biennial state primary elections and quadrennial presidential primary elections. **Inexpedient to Legislate.**

SB 202-FN-A, establishing a stormwater management and flood resilience fund within the department of environmental services. **Passed with Amendment; referred to F-S.**

SB 238-FN, relative to the registration of motor vehicles owned by veterans. **Passed.**

SB 254-FN-A, appropriating funds to the department of environmental services for the purpose of funding eligible wastewater projects under the state aid grant program. **Passed; referred to F-S.**

SB 264-FN, relative to motorcycle registration for a period of less than one year. **Inexpedient to Legislate.**

Please go to NHMA's website: [www.nhmunicipal.org](http://www.nhmunicipal.org) for upcoming member webinars and workshops listed under Calendar of events.