

LEGISLATIVE BULLETIN

Agreement on Constitutional Claims Bill

Bulletin 23 — 2019 Session
May 31, 2019

We reported last week that the House had tabled [SB 36](#), the bill providing that any government entity that deprives a person of constitutional rights will be liable in an action for damages. This came after we expressed concerns about the bill, summarized in [Bulletin #21](#), and asked representatives to support a floor amendment that would limit the new cause of action to cases in which the plaintiff does not already have a statutory remedy.

Supporters of the bill have now agreed to the language of the floor amendment, and, as we stated previously, we do not oppose the bill so long as it includes that language. To be clear, the needed language is this: *“This section shall not apply to any case in which the plaintiff has a separate statutory remedy.”*

We expect that there will be a motion to take **SB 36** off the table when the House meets next week. If that passes, the next order of business will be to consider the committee amendment, which we *oppose*. There will then be a motion to adopt the floor amendment, and we are urging representatives to *support* that motion. *If* the floor amendment passes, then we do not object to passing the bill.

Please make sure your representatives understand that if SB 36 comes off the table, they should vote FOR the floor amendment.

PFAS, PFAS, and More PFAS

Several things occurred this week regarding PFAS (perfluorochemical) standards in drinking water and groundwater.

Amendment to Require Cost and Benefit Analysis

On Tuesday the Senate Energy and Natural Resources Committee was presented with an amendment to [HB 737](#), a bill that establishes a study commission to investigate and analyze environmental and health impacts of PFAS in certain municipalities. The amendment addresses the concerns of NHMA and other organizations representing municipal water and wastewater operations regarding the unknown costs and benefits associated

INSIDE THIS ISSUE

To-Do List	2
Municipal Aid in Senate Budget	3
Local Occupancy Fee	4
Net Metering	4
Municipal Miscellany	5
Senate Floor Action	6
NHMA Events	7

GOVERNMENT AFFAIRS CONTACT INFORMATION

- Margaret M.L. Byrnes**, Executive Director
- Cordell A. Johnston**, Government Affairs Counsel
- Barbara T. Reid**, Government Finance Advisor
- Natch Greyes**, Municipal Services Counsel
- Timothy W. Fortier**, Communications & Member Services Coordinator



25 Triangle Park Drive
Concord NH 03301
Tel: 603.224.7447/ Email: governmentaffairs@nhmunicipal.org
Website: www.nhmunicipal.org

(PFAS— Continued from Page 1)

with the Department of Environmental Services' (DES) proposed administrative rules for PFAS.

Chapter 368 of the laws of 2018 ([SB 309](#)) required DES to initiate by January 1, 2019, administrative rules setting maximum contaminant levels (MCL) and ambient groundwater quality standards (AGQS) for four PFAS compounds, based in part on the costs and benefits of the proposed standards. DES issued those proposed standards along with a [Summary Report](#) explaining the cost and benefit analysis undertaken to arrive at the proposed standards. Throughout that report, the department states the inability to fully evaluate costs and benefits as required by law, including the following:

- Inability to analyze costs in keeping with United States Environmental Protection Agency (EPA) and Office of Management and Budget (OMB) guidance, which entails determining costs associated with a number of different potential standards and capturing marginal costs (page 11).
- Inability to recommend treatment of wastewater disposal to groundwater (groundwater discharge permits) in a cost-effective manner (page 13).
- Inability to quantify the costs for biosolids, sludge processing, application sites, and septage land spreading resulting from the proposed standards, noting that communities and industry may see a rise in their biosolid and sludge disposal costs, and potential cost increases at the five domestic septage (material pumped from residential septic tanks) land spreading sites (page 13).
- Unknown costs for the one biosolids processing site that primarily serves municipalities. Any increase in costs is likely to be reflected in increased tipping fees paid for by the New Hampshire municipalities that use that facility.
- Inability to estimate the capital and annual costs relative to fire stations and fire foam sites (page 14).
- Lack of sufficient data to estimate costs to address contaminated sites resulting from the use of a long list of common household, commercial, and industrial products that may contain PFAS, including paints, sealants, household cleaners, stain-resistant fabrics, pesticides, and more (page 15).
- Inability to quantify the value of the benefits resulting from the proposed standards (page 16).

From our experience with the state budget process, we know the state would never adopt laws requiring long-term and far-reaching financial commitments on its part without first understanding the cost implications and anticipated benefits. However, setting these PFAS standards without adequate cost and benefit estimates is essentially asking municipalities to write blank checks to solve this problem that they didn't create!

This week's to-do list

- ✓ Ask your representatives to **support the floor amendment to SB 36**, regarding claims for constitutional violations, when the bill is removed from the table next week.
- ✓ Ask your senator to **support the floor amendment to SB 737**, regarding PFAS standards, to require a thorough analysis of the costs and benefits of the new standards proposed by DES.
- ✓ Ask your senator to vote to remove **HB 641**, the hotel occupancy fee bill, from the table next week and either pass the bill or re-refer it.
- ✓ Contact the governor's office and urge him to **sign HB 365**, increasing the net metering cap.

(PFAS— Continued from Page 2)

The amendment to **HB 737** would require DES to estimate the costs to municipalities for water, wastewater, and solid waste management and the health benefits associated with the proposed standards, and to do so in accordance with EPA and OMB guidance. The amendment sets an effective date of no later than two years after adoption of the standards and requires DES to report annually the costs to the state, municipalities, and utilities to comply with the new standards. Unfortunately, the amendment failed in the committee by a 3-2 vote. However, we expect a similar floor amendment to be introduced when the Senate votes on **HB 737** next Thursday, June 6.

Please contact your [senator](#) about the known and unknown costs the proposed PFAS rules will have on your municipality. **Urge your senator to support the floor amendment to HB 737**, which will require a thorough analysis of the costs and benefits of proposed PFAS standards for drinking water and ambient groundwater.

PFAS Lawsuits

On Wednesday the governor, attorney general, and commissioner of DES announced that the State of New Hampshire has filed two lawsuits against numerous companies (3M, Dupont, Tyco Fire Products, and others) for the manufacture and dissemination of PFAS in New Hampshire. The lawsuits seek damages for contamination of the state's natural resources with four different PFAS substances. Through these lawsuits, the state will seek to recover all costs to investigate, clean up, restore, treat, monitor, and otherwise respond to contamination of the state's groundwater, surface water, fish, wildlife, marine resources, and other natural resources.

A copy of the [news release with a link to the court filings](#) is available on the governor's website.

DES Appropriation

Following announcement of the PFAS lawsuits, the Senate Finance Committee recommended the biennial budget include a \$6 million appropriation to DES from the Drinking Water and Groundwater Trust Fund for the purpose of studying, investigating, and testing for PFAS contaminants and for the preliminary design of a treatment system for such contaminants. As explained to the committee, the latter would be a one-size-fits-all system to avoid municipalities' having to design their own method of PFAS treatment.

Proposed Senate Budget Includes \$40 Million for Municipal Aid

As readers may recall, the biennial state budget proposal passed by the House included **\$12.5 million** in municipal aid to be distributed to cities and towns in the second year of the biennium. On Wednesday the Senate Finance Committee recommended increasing that amount to **\$20 million each year** of the upcoming biennium for a total of **\$40 million**.

These municipal aid grants would be distributed to each municipality by October 1 of 2019 and 2020 and would use a new formula based twenty percent upon the municipality's number of kindergarten through grade 12 students who are legal residents, and eighty percent upon the

(Budget— Continued from Page 3)

number of those students eligible for the federal free or reduced-price meal program in the preceding school year. The committee was provided with a [list by municipality](#) of the estimated grants under this formula. This money will be unrestricted, meaning it may be used to reduce property taxes or spent as the municipality sees fit. (We are seeking clarification that the grants provided by October 1, 2019, may be considered unanticipated revenue under RSA 31:95-b, since the annual budget appropriation process for most municipalities is already completed.) The committee also recommended adding **\$1.7 million** for state aid grants (SAG) to fund the remaining twelve of seventy wastewater projects the House was unable to include in its budget.

The Senate Finance Committee will take a final vote today on the recommended budget, and the budget will be presented to the full Senate for a vote next Thursday, June 6. The next step after that will likely be a committee of conference with the House, leading to a final budget proposal to be voted on by both bodies by June 27.

Hotel Occupancy Fee Bill Tabled

On Thursday, after a rather long and somewhat heated debate, the Senate voted 20-4 to table [HB 641](#), an **NHMA policy bill** that authorizes municipalities to assess a local option hotel occupancy fee of up to \$2 per night. Many senators appeared to initially support the bill; but those opposing the bill as yet another fee (despite the fact it would provide a local option revenue stream other than raising property taxes) seemed to strike a nerve.

Being tabled does not mean the bill is dead ... yet. There is still the opportunity for **HB 641** to be removed from the table and passed next Thursday (the last day for House bills to be acted upon by the Senate); alternatively, it could be removed from the table and re-referred to the Election Law and Municipal Affairs Committee so any concerns about specific provisions of the bill can be addressed this fall and the bill can be presented to the full Senate again in January.

Municipalities interested in assessing this local option fee should contact their senator to urge support for removing **HB 641** from the table and either passing the bill or re-referring it for further consideration next session.

Net Metering Bill in Governor's Hands?

We heard unconfirmed reports this week that [HB 365](#), the NHMA policy bill that increases the cap for net metering projects to five megawatts, had landed on the governor's desk on Wednesday. As of this writing, we have heard nothing more. If it is true that the governor got the bill on Wednesday, he has until Tuesday (five days, excluding Sundays, *see* N.H. Constitution Part 2, Art. 44) to sign or veto it; if he does neither, it becomes law without his signature.

Many municipal officials have been following this issue and are familiar with its history; anyone who needs a refresher can read about it in [Legislative Bulletin #4](#) (page 4). For anyone who happens to have contact with the governor's office in the next few days, please urge him to ***sign HB 365***.

Municipal Miscellany

In other recent action . . .

Non-disparagement clauses. The Senate killed [HB 154](#), which would prohibit the inclusion, in any settlement agreement involving the state, a municipality, or another political subdivision, of a non-disparagement clause or other language that “prevents the parties from discussing the facts of the underlying claim or speaking negatively about each other.” NHMA and others opposed the bill because it would inhibit the negotiation of settlement agreements and lead to the endless trading of accusations even after a settlement agreement is reached.

Voter domicile. In a straight party-line (14-10) vote, the Senate passed [HB 105](#), which would repeal the 2017 law (commonly known as SB 3) that changed the requirements for voters to demonstrate their domicile when they register to vote. The 2017 law, among other things, requires voters who do not have proof of domicile when they register at the polls or within 30 days before an election to provide evidence of domicile within a certain period after the election, and requires election officials to take steps to verify the domicile of such voters. **HB 105** goes next to the governor, who has indicated opposition to the bill.

Restrictions on lawn watering. The Senate passed [HB 443](#), allowing a municipal governing body to restrict the use of water from public water systems or private wells for watering both residential and nonresidential lawns during a declared drought. Current law allows the municipality to restrict only residential lawn watering. Under the bill, recreational fields, golf courses, and grass agricultural fields would be exempt from any municipal restrictions. The Senate amended the bill to clarify that the law would not limit a public water system’s authority to implement conservation measures in accordance with rules of the Department of Environmental Services. Because of the amendment, the bill must go back to the House to concur or request a committee of conference.

Salary history. The Senate passed [HB 211](#), which would prohibit an employer from inquiring about a prospective employee’s wage or salary history before an offer of employment with compensation has been made. The Commerce Committee had reported the bill as Inexpedient to Legislate by a 4-0 vote, but the Senate overturned that recommendation on a 13-11 vote and then passed the bill by the same margin. The bill now goes to the governor.

Employee credit history. Also by a 13-11 vote, the Senate passed [HB 293](#), which prohibits an employer from “us[ing] or request[ing] information in the credit history of a job applicant or employee in connection with or as a criterion for employment decisions related to hiring, termination, promotion, demotion, discipline, compensation, or the terms, conditions, or privileges of employment.” The bill does exempt “any state or local government agency which requires use of the employee’s or applicant’s credit history or credit report.” It also includes an exception if the employer “has a bona fide purpose for requesting or using information in the credit history report that is substantially related to the employee’s current or potential job and the employer complies with the notice and consent requirements of the Federal Fair Credit Reporting Act.” This bill is also on its way to the governor.

Absentee voting. In yet another 13-11 vote, the Senate passed [HB 611](#), which allows all voters to vote by absentee ballot without having to satisfy any of the existing statutory conditions for obtaining an absentee ballot. The bill will now go to the governor’s office, where its fate is uncertain.

HOUSE FLOOR ACTION

There was no House floor action for the week.

SENATE FLOOR ACTION

Thursday, May 30, 2019

HB 25-A, making appropriations for capital improvements. **Passed with Amendment.**

HB 105-FN, relative to domicile residency, voter registration, and investigation of voter verification letters. **Passed.**

HB 110-FN-A, relative to the cost of fiscal analysis of legislation relating to the retirement system and relative to the reclassification of jobs in the retirement system. **Passed.**

HB 186, establishing a state minimum wage and providing for adjustments to the minimum wage. **Re-referred.**

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

HB 272, relative to temporary workers. **Re-referred.**

HB 293, relative to employee credit privacy. **Passed.**

HB 410, allowing the department of environmental services to have access to enhanced 911 information. **Passed with Amendment.**

HB 481-FN-A-L, relative to the legalization and regulation of cannabis and making appropriations therefor. **Re-referred.**

HB 491, relative to questioning and detaining suspects. **Passed.**

HB 524, establishing a committee to study issues and impediments to starting, running, and growing home and commercial day care facilities in New Hampshire. **Passed.**

HB 531, relative to the delivery of absentee ballots cast by elderly or disabled citizens. **Passed with Amendment.**

HB 611-FN, allowing voters to vote by absentee ballot. **Passed.**

HB 635-L, enabling a payment in lieu of taxes for a combined heat and power agricultural facility. **Passed.**

HB 637-FN, relative to criminal history background checks by employers and public agencies. **Passed with Amendment.**

(Senate Floor Action— Continued from Page 6)

HB 641-L, allowing municipalities to collect an occupancy fee from operators of local room rentals. **Tabled. NHMA Policy.**

HB 710-FN, relative to adoption of state building code and fire code amendments. **Passed.**

2019 NHMA UPCOMING EVENTS FOR MEMBERS	
June 14	NHMA/NHMLA: Ethics for Municipal Attorneys
June 25	Municipal Trustees Training, Gorham
June 26	Webinar: 2019 Legislative Wrap-up
July 10	Webinar: Right-to-Know Law and Governmental Records
July 23	Regional RTK and Governmental Meetings (6:30 p.m. - Keene)
August 6	Regional RTK and Governmental Records (1:30 p.m. - Moultonborough)
September	2019 Budget and Finance Workshops (Manchester & Lincoln)
To register for an upcoming event, go to our website: www.nhmunicipal.org and scroll down on the left under CALENDAR OF EVENTS. Click on the green bar <i>View the Full Calendar</i> and go to the workshop or webinar you are interested in. For more information, please call NHMA's Workshop registration line: (603) 230-3350.	