

LEGISLATIVE BULLETIN

Retirement Bill Goes to House Floor – Support Needed

The House Executive Departments and Administration Committee was unable last week to pass any form of motion on **HB 274**, “The Property Tax Relief Act of 2021,” an **NHMA policy bill**. However, the full House will vote on the bill next week. This bill would require the state to contribute 5 percent of the political subdivision employer contributions for group I teachers and group II police and firefighters in the New Hampshire Retirement System. The state contributed 35 percent of group I and group II employer contributions until 2010, when the state share was reduced; it was eliminated completely after 2012. Since then, political subdivisions have paid more than \$729 million in additional employer costs, much of which has been downshifted to municipal, county, and local school property tax rates. Although a 5 percent contribution, estimated to be \$17.7 million, would restore far less than the state’s original 35 percent share (estimated to be \$123.62 million), this bill would provide significant and much-needed relief to political subdivisions and help offset the major employer rate increase that becomes effective July 1.

HB 274 was heard on January 27. NHMA testified in support, 50 people signed in support, and 3 signed in opposed. On February 8, the committee voted 8-10 on an ITL (inexpedient to legislate) motion, and the motion failed. On February 11, a second executive session was held, and an amendment to the bill was introduced which would remove group I (teachers), requiring the state to contribute only toward police and firefighter employer contributions. The amendment passed by a vote of 10-9, but the bill as amended failed by a vote of 7-12. A motion of ought to pass (original bill without any amendment) then failed by a vote of 9-10. The bill now goes to the House floor without a recommendation by the committee. ***The full house will vote on the bill next Wednesday, February 24. Municipal officials are strongly urged to contact your representatives and ask that they vote to pass HB 274.***

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Budget Transfers = Personal Liability for Local Officials

In its session **next Wednesday and Thursday, February 24 and 25**, the House will vote on **HB 459**, a bill that would punish local officials with fines, attorney fees, court costs, and removal from office for making routine budget adjustments. This is one of several House bills this year that have a troubling anti-local government bent. The House Municipal and County Government Committee reported the bill as Inexpedient to Legislate—which is good—but that vote was very close, at 11-7.

As those familiar with municipal budgets know, [RSA 32:10](#) allows a governing body to transfer funds from one budget line to another during the year (with some limitations), so long as it does not spend more than the total amount appropriated by the legislative body. This is limited by RSA 32:10, I(e), which prohibits the transfer of funds to any “purpose” for which the legislative body has appropriated zero dollars. The term “purpose” is defined as “a line on the budget form posted with the warrant, or form submitted to the department of revenue administration.” The lines on these forms are quite broad—police, fire, highways, etc. Thus, if a town meeting appropriates zero dollars for the police department, the town may not spend any funds on police. Of course, this rarely happens.

HB 459 would take this prohibition to an extreme by prohibiting transfers to any line, no matter how far down in the detailed budget, if the line has zero dollars in it. For example, assume the highway department got a bargain on road salt last year and bought a two-year supply, so it leaves that line in its budget blank this year. Under current law, if an unimaginably brutal winter exhausts the salt supply by mid-January, the selectmen can transfer money from somewhere else in the budget; but under **HB 459**, they will just have to leave the roads untreated for the rest of the winter.

Towns face many unanticipated expenses during a year—certainly very few local officials expected, at the beginning of 2020, to be spending any money for surgical masks or Zoom licenses. Had **HB 459** been in effect, towns might have been prohibited from making those expenditures.

But the bill doesn’t stop there. **HB 459** would make local officials *personally liable* for even innocent violations of the new prohibition. If there is a prohibited transfer, an action may be brought in superior court, and “the elected or appointed local government official . . . under whose authority the violation occurred shall be personally liable.” Even if the court finds that the violation was inadvertent, the local official(s) would be subject to (a) a mandatory civil fine of \$500; (b) an additional fine equal to “3 times the amount of the prohibited transfer”; (c) payment of all attorney fees; and (d) “removal from office by the governor.”

Everyone knows how difficult it is to get people to participate in local government. Legislation that subjects them to shame and financial ruin just for trying to do their jobs will not help. ***Please contact your representatives and urge them to support the committee’s recommendation of Inexpedient to Legislate.***

Bill Inhibits Litigation Settlements

Two years ago, the Senate unanimously killed a bill that would have prohibited the inclusion of “a non-disparagement clause or other language which either prevents the parties from discussing the facts of the underlying claim or speaking negatively about each other” in any settlement agreement involving a governmental entity. Legislators understood that prohibiting such clauses would make it harder to settle lawsuits and would lead to increased legal costs (*i.e.*, increased taxpayer expense).

Nothing has changed since then, but an identical bill, [HB 83](#), was filed this year. It is scheduled for a hearing in the House Judiciary Committee next **Tuesday, February 23, at 9:30 a.m.** Local officials who understand how bad this would be are encouraged to speak or sign in opposition at the hearing and contact [members of the Judiciary Committee](#).

State Aid Grant Bills Retained for Budget Consideration

The House Finance Committee voted 21-0 on Tuesday to retain [HB 398](#) and [HB 412](#), **NHMA policy bills** that would make appropriations to provide state aid grants for municipal water and wastewater projects. Committee members acknowledged that all money bills in the year of a budget should go into the budget document; and by retaining the bills, the committee would have the ability to do just that. Members expressed concerns, however, that they do not yet have state revenue estimates from the House Ways and Means Committee; and although the committee has supported these state aid grant issues in the past, members underscored the need to be prudent in the middle of a pandemic. **HB 398** would appropriate \$5.7 million for fiscal year 2022 and \$6.9 million for fiscal year 2023 to fund [11 eligible wastewater projects](#) not funded in the current biennium, plus [110 new projects](#) expected to be eligible for grant funding in fiscal years 2022-23. **HB 412** would appropriate \$500,000 for each of fiscal years 2022 and 2023 for public water supply grants.

Municipal Aid Property Tax Relief Act Moves to Full Senate

The Senate Finance Committee voted Ought to Pass, 4-3, on [SB 118-FN](#), an **NHMA policy bill**, on Tuesday. As we previously reported, this bill, known as the Property Tax Relief Act, would distribute \$20 million in municipal aid in each of fiscal years 2022 and 2023, requiring that 60 percent of that aid be used for property tax rate reduction. During executive session discussions, committee members expressed concerns about municipalities being directed by the state as to how they must use state aid. They also suggested that further review of the bill's allocation method (based on average daily membership in residence of pupils in the district and of pupils eligible for free or reduced-price meals) may be required, in consideration of the pandemic-related problem of families not submitting school enrollment paperwork. Finally, the bill's sponsor said his underlying goal was to do whatever the committee wanted to get the money back to municipalities. The consensus seemed to be that the bill should be laid on the table when it gets to the Senate floor, to await further consideration in conjunction with other budget-related issues.

Constitutional Amendment Would Cripple Municipalities

One of the most alarming bills we've seen this year is [CACR 9](#), which would amend the New Hampshire Constitution to prohibit any municipality from "rais[ing] property taxes more than two percent per year . . . based on the actual tax of the previous year."

While bills like this are fairly common, they rarely garner significant support. However, **CACR 9** is very much alive, due to a surprising 10-9 Ought to Pass vote this week by the Municipal and County Government Committee. The good news is that a constitutional amendment requires a 60 percent vote in both chambers before it can go on the ballot; still, this needs to be taken seriously.

The harm that a two percent tax cap would wreak is pretty clear, and the more one thinks about it, the worse it gets. If a town, through a combination of good budgeting, frugal spending, and good luck, manages to reduce its taxes by, say, five percent one year, it will have set an artificially low ceiling for the next year. It hardly creates an incentive to cut taxes. It also eliminates any incentive for economic development, because the cap is on the *amount* of tax raised, not on the tax *rate*. Additionally, municipalities cannot control the increasing costs caused by downshifting or new mandates, such as retirement contributions, or the loss of state aid, as with the suspension of the meals & rooms tax “catch-up” formula.

CACR 9 will go to the House floor in early March *Please urge your representatives to vote down the committee report and support a subsequent motion of Inexpedient to Legislate.*

Municipal Potpourri

In other action this week:

- The Senate Election Law & Municipal Affairs Committee unanimously recommended passage of **SB 85**, which establishes a broadband matching initiative to provide grants to municipalities and communications districts to improve broadband access. NHMA supports the bill, which will go to the full Senate at its next session.
- The Election Law & Municipal Affairs Committee also recommended **SB 86** by a unanimous vote. The bill does three things: establishes requirements for planning boards that require third-party inspections during the construction process; establishes the housing and conservation planning program; and prohibits political subdivisions from adopting ordinances or regulations that restrict the installation of a safe and commercially available heating or other energy system. We have “local control” concerns about the third item, but it had strong support, and no one else expressed concerns. This bill will also go to the full Senate at its next session.
- The House Municipal and County Government Committee voted 10-9 to recommend passage of **HB 183**, which prohibits a municipality from “licensing or regulating a lemonade stand operated by a person under the age of 18.” This is another of this year’s anti-local government bills, and one that seems to solve a problem that does not exist, since there was no testimony that any municipality in New Hampshire had ever tried to license a children’s lemonade stand.
- The Municipal and County Government Committee voted 18-1 to retain **HB 132**, which would prohibit municipalities from requiring more than a half-acre lot for single-family housing if the housing does not use a well or a septic tank, and voted 19-0 to recommend Inexpedient to Legislate on **HB 189**, which would require municipalities to allow up to three accessory dwelling units on every single-family dwelling.

Testifying at Hearings

We are going to stop reprinting the instructions, but in case you haven’t seen them, check [Legislative Bulletin #6](#) (page 8 in the PDF version) for instructions on how to sign up and testify at committee hearings. Also see [last week's Bulletin](#) (page 6) for a few additional tips. You can find these and all of our Bulletins under [the Advocacy tab on our website](#).

A Break for the Senate

In case you're wondering why there is no Senate calendar this week, it's because the Senate is taking next week off. This is the traditional break that coincides with New Hampshire's school vacation week. The House, however, is not so fortunate—the full House will be meeting in session next Wednesday and Thursday, and there are committee hearings on the other weekdays.

HOUSE CALENDAR

All hearings will be held remotely. See the [House calendar](#) for links to join each hearing.

MONDAY, FEBRUARY 22, 2021

SCIENCE, TECHNOLOGY AND ENERGY

1:00 p.m. Continued Public Hearing on **HB 315**, relative to the aggregation of electric customers.

TUESDAY, FEBRUARY 23, 2021

JUDICIARY

9:00 a.m. **HB 82**, relative to amending a conservation easement between the state and a landowner.

9:30 a.m. **HB 83**, prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

10:15 a.m. **HB 111**, establishing a cause of action against the state to protect individual rights.

MONDAY, MARCH 1, 2021

CRIMINAL JUSTICE AND PUBLIC SAFETY

10:45 a.m. **HB 419-FN**, relative to assault of a campaign worker at the polling place.

MUNICIPAL AND COUNTY GOVERNMENT

9:00 a.m. **HB 431**, relative to the responsibilities of an elected animal control officer.

9:30 a.m. **HB 439**, relative to the powers of city councils.

10:00 a.m. **HB 463**, requiring the Gorham town clerk to be appointed by the board of selectmen.

10:30 a.m. **HB 467**, relative to current use tax rate eligibility.

11:00 a.m. **HB 486-FN**, relative to eligibility for the low and moderate income homeowners property tax relief.

11:30 a.m. **HB 512**, relative to emergency housing assistance.

12:00 p.m. **HB 545**, relative to the use of certain out-of-state banks by the state treasurer and municipal and county treasurers or trustees.

WEDNESDAY, MARCH 3, 2021

RESOURCES, RECREATION AND DEVELOPMENT

1:00 p.m. **HB 446**, establishing a committee to study the effects of recreational vehicles and other vehicles used in recreational activities on class 5 and 6 roads.

SENATE CALENDAR

There is no Senate calendar this week.

SENATE FLOOR ACTION

Thursday, February 18, 2021

SB 68, requiring an employer to provide reasonable accommodations for pregnant employees. **Passed.**

2021 NHMA UPCOMING MEMBER <u>VIRTUAL</u> EVENTS	
Weekly	Friday Membership call (1:00 – 2:00)
Feb. 25	Webinar: Where Do Our Tax Dollars Go? (12:00 – 1:00)
Mar. 2	Managing Cybersecurity Risk to Local Government (2:00 – 4:30)
Mar. 23	Webinar: The Workings of a Planning Board (12:00 – 2:00)
Mar. 24	2021 NHDOL/USDOL Labor Law (9:00 – 12:00) - <i>free to members</i>
Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming virtual events. Click on the Events and Training tab to view the calendar. For more information, please call NHMA's Workshop registration line: (603) 230-3350.	