

# LEGISLATIVE BULLETIN

## House Schedules Hearing on Biennial State Budget

In an another unusual legislative session development, the House Finance Committee has scheduled just one public hearing on [HB 1](#), the governor’s proposed state operating budget for the period July 1, 2021 – June 30, 2023, and [HB 2](#) (see the [HB 2 Index](#)), known as the trailer bill that contains the statutory changes necessary to implement the biennial budget. Traditionally, there have been three public hearings scheduled around the state, an approach that would not make much sense in a year when all hearings are held remotely. We reported in [Bulletin #7](#) a summary of the municipal items included and excluded from the governor’s proposed budget, most notably:

- the continued suspension of funding for revenue sharing ([HB 2](#), section 42);
- no inclusion of the continuation of the \$20 million municipal aid from the previous budget;
- a clarification that if there is no increase in the meals and rooms tax revenue compared to the previous year, the municipal distribution (limited to \$5 million) would not increase ([HB 2](#), section 100); and
- a moratorium on funding state aid grants for wastewater projects ([HB 2](#), section 60) (see related article on state aid grants in [Bulletin #6](#)).

Graphs and information comparing impacts of the governor’s budget and finance-related legislation can be found here, [How We Fund Public Services in NH](#), from the NHMA-sponsored February webinar.

The public hearing on the budget is scheduled to be held:

- **Tuesday, March 16 at 1:00 p.m., via Zoom** (See the [House calendar](#), top of page 6, for the Zoom link)

In lieu of or in addition to oral testimony, written testimony may be submitted or emailed to the [House Finance Committee members](#). Additionally, NHMA is happy to submit your testimony along with our written testimony at the public hearing on March 16. Please remember to

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send NHMA a copy of any testimony or comments you offer at the public hearings, and contact us at [governmentaffairs@nhmunicipal.org](mailto:governmentaffairs@nhmunicipal.org) with any questions about **HB 1/****HB 2**, the budget process, or legislative life in general!

## Senate Passes, Tables Meals & Rooms Tax Bill

Yesterday the Senate unanimously passed **SB 99**, the **NHMA policy bill** that removes the annual increase limit (*i.e.*, repeals the “catch-up formula”) on the meals and rooms tax distribution to municipalities so that 40 percent of net revenue would be immediately distributed annually. See this [New Hampshire Senate News Release](#).

The Senate then voted 24-0 to table the bill. As explained previously by the Senate President, it is standard practice to place a bill like this on the table; senators are then invited to come back to the Finance Committee, when the Senate receives the budget from the House, to talk about how those bills can be worked into the budget. The House is scheduled to act on the budget by April 8. We will update you when **SB 99** is scheduled to receive budget consideration by the Senate Finance Committee.

## A Slew of Bad Municipal Bills

The House Municipal and County Government Committee completed its hearings on House bills this week and took final action on all its remaining bills. The following (including a couple from the week before) are the most significant, and all of them presumably will be going to the full House at its next session, in early April. ***Every one of these bills is bad for local government.*** Oddly, the committee vote on each bill was straight down party lines—but in some cases the vote was “ought to pass,” while in others it was “inexpedient to legislate.”

There are so many bills with differing 10-9 committee recommendations that it is difficult to keep them straight, even for those of us who are following them closely. To make things easier, we will issue a “cheat sheet” that summarizes our recommendations on the major bills that will be going to the House floor at its next session. Look for that in a future Bulletin or in a separate legislative alert.

***Powers of city councils.*** We reported on **HB 439** in [last week’s Bulletin](#), but it warrants another mention. This bill repeals the authority of city and town councils to adopt ordinances “which may seem for the well-being of the city.” This authority has been in statute for 175 years and has never been controversial. Nevertheless, the committee recommended the bill as “ought to pass” on a 10-9 vote. *Representatives should vote **no** on the “ought to pass” motion and support a subsequent motion of “inexpedient to legislate.”*

***Adoption of SB 2.*** We also reported in [last week’s Bulletin](#) on **HB 374**, which would change the process for adopting the official ballot referendum (SB 2) form of town government. The law was changed two years ago to require that the question be voted on at the town meeting’s deliberative 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.

In addition to NHMA, three local officials, one of whom is the former chairman of the Municipal and County Government Committee, testified in opposition to the bill. The only people to speak in support of the bill were the sponsor and a resident of her town. Twenty-three people signed in opposition to the bill, and one in support.

Nevertheless, the committee voted 10-9 to recommend the bill as “ought to pass.” As with all the others, this was a straight party-line vote. We cannot imagine why this is a partisan issue. *Representatives should vote **no** on the “ought to pass” motion and support a subsequent motion of “inexpedient to legislate.”*

**Enforcement of immigration laws.** **HB 266** would prohibit municipalities from adopting any policy that restricts or discourages “inquiring about the immigration status of any individual.” It also would require municipalities to “fully comply with, honor, and fulfill any instruction or request made in [an immigration] detainer request and in any other legal document provided by a federal agency” with respect to a person in its custody who is the subject of such a request. (An Immigration and Customs Enforcement (ICE) detainer request is merely a *request*—not a document with the force of law. Federal law does not require local authorities to hold anyone based on an ICE detainer request alone.)

We believe police chiefs and other local officials should be left alone to adopt the policies they believe are best suited to their cities and towns; their priority is ensuring public safety, not ascertaining anyone’s immigration status. Further, local and state law enforcement agencies have been held to violate the Fourth Amendment’s prohibition on unreasonable searches and seizures when they hold a person based on an immigration detainer request alone. This is particularly troubling in light of another House bill that seeks to hold police officers responsible for constitutional violations even when they are simply following state law. Together, these bills would leave police officers in an impossible situation.

The committee voted 10-9 to recommend the bill as “ought to pass.” *Representatives should vote **no** on the “ought to pass” motion and support a subsequent motion of “inexpedient to legislate.”*

**Tiny houses.** The committee had a lengthy debate about **HB 588**, which would require every municipality with a zoning ordinance to allow “tiny houses” in all residential districts. Several committee members, arguing in support of the bill, stated that it is only “enabling,” and that it would not require any municipality to require tiny houses. That is incorrect—the bill very clearly states, “A municipality that adopts a zoning ordinance pursuant to the authority granted in this chapter shall allow tiny houses as a matter of right in all zoning districts that permit single family dwellings, and may allow in its discretion tiny houses in all other districts.”

Much of the argument for **HB 588** centers on the belief that it will alleviate the state’s affordable housing problem, but there is little evidence of this. NHMA has supported, or at least not opposed, several efforts in recent years to make more affordable housing available, but this is not one of them. This is mandatory zoning for a niche market. **HB 588** would immediately preempt zoning ordinances across the state to accommodate a housing option that sounds interesting but ultimately appeals to extremely few people. Any municipality that wants to allow “tiny houses” can already do so—no enabling legislation is necessary—and if people want their town to allow them, they can petition for any necessary zoning amendments.

This was another 10-9 committee vote, but this time we support the committee’s recommendation, which was “inexpedient to legislate.” *Representatives should vote **yes** on the ITL motion.*

**Mandatory four-unit zoning.** The committee had a similar discussion, with an identical result, on **HB 341**, which would require municipalities to allow every single-family dwelling in a residential district that is served by municipal water and sewer to be configured as a four-unit building. Converting large single-family homes

into quadruplexes is undoubtedly a good idea in some circumstances, and municipalities certainly should consider this kind of innovative approach to creating more affordable housing and encouraging more compact development. But for the state to mandate this in every residential district in the state, with no regard for local conditions, is excessive.

Again, the committee voted “inexpedient to legislate,” 10 to 9, and, again, we support the committee’s recommendation. *Representatives should support the ITL motion.*

***Amending petitioned warrant articles.*** As originally filed, **HB 67** provided that if a petitioned warrant article is amended at the deliberative session in an SB 2 town, both the original article and the article as amended would go on the official ballot. We opposed this as being certain to cause confusion.

The committee recommended an amendment, but the amendment is no better than the original bill. It states that no petitioned article in an SB 2 town may be amended “to change its specific intent.”

We have seen this proposal more times than we can count, and the legislature has killed it every time, with good reason. We know of no legislative body in the United States where a legislative proposal—whether it is a warrant article in a town meeting or a bill in Congress or the state legislature—cannot be amended before the body votes on it. If the body can improve the bill/warrant article, why should it not? What if the sponsors/petitioners themselves change their minds and want to approach the subject differently? What if the petitioners made a mistake in writing the article and would like to amend it so it properly reflects their “specific intent”?

By yet another party-line vote, the committee recommended passage of the bill with this amendment. *Representatives should vote against the committee report and support a subsequent motion of “inexpedient to legislate.”*

***Please encourage your representatives to vote to kill every one of these bills.***

## Remote Meetings In Jeopardy

On Wednesday, the House Judiciary Committee voted 11-10 along party lines to recommend that the House kill **HB 216**, a bill that would allow municipalities – and other governmental entities – to hold meetings remotely. We do not understand why remote meetings should be a partisan issue – most of the language in **HB 216** came from Governor Sununu’s Emergency Order #12, and we’ve seen widespread support for remote meetings both from public bodies and from the public.

The full House will vote on the bill when it meets in early April. We encourage our members to contact their legislators and ask them to vote against the “inexpedient to legislate” motion and explain how helpful the remote meeting procedures have been over the past year, as well as how helpful they could be if some natural or other disaster strikes. Having the ability to conduct a meeting that provides greater access to the public in the midst of a disaster certainly seems like something that everyone should support.

Meanwhile, the Senate Judiciary Committee voted 3-2 to recommend removing provisions in **SB 95** that would allow remote meetings, instead substituting the creation of a committee to study the subject. There had been a bipartisan amendment allowing remote meetings in a manner similar to **HB 216**, which we had hoped would receive full committee support. The bill will go to the full Senate next week. We still have some hope that the Senate may adopt a floor amendment to allow remote meetings.

## Electronic Notice Postponed

On Wednesday the House Judiciary Committee voted to retain **HB 379**, the **NHMA policy bill** that would allow municipalities to substitute electronic notice for newspaper notice in some instances. (We discussed the bill in more detail in [Bulletin #9](#).)

While we are disappointed with the result, at least the bill will come back next year. It is not possible to change the current result, because the full House does not get to vote on retention of a bill. The committee vote to retain ends this bill's journey until the fall. We will continue to work with legislators to build support for this needed change over the summer and into the fall.

## Senate Actions Support Municipalities

Not all the news this week was bad. In addition to its action on **SB 99** (see article above), the Senate took several actions demonstrating an appreciation for the concerns of municipalities.

**Project labor agreements.** **SB 55** would have prohibited the state or any municipality from requiring that a contractor enter into a "project labor agreement," defined as "a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project." NHMA had opposed the bill, stating that it was fine if the state wanted to limit its own contractors in that manner, but it should not interfere with municipal contracting practices.

The Senate agreed and killed the bill yesterday. In its report, the Executive Departments and Administration Committee stated, "Although the Committee heard extensive testimony on both sides, the Committee was concerned over provisions in the bill forcing the State to regulate municipal and federal contracts. The Committee did not feel it was appropriate to force the provisions of SB 55 on those other political units . . ."

**Municipal finance.** **SB 87** makes several minor changes affecting municipal finance:

- Part I of the bill gives certain towns flexibility in the use of funds received from water wheeling charges derived from intermunicipal agreements.
- Part II clarifies that when any remittance, whether by check or electronic means, to a municipality for property taxes, fees, licenses, special assessments, or water or sewer bills is returned as uncollectible, the municipality may charge a \$25 fee, plus protest, bank, and related fees, to cover the cost of collecting the debt.
- Part III authorizes a municipality to use capital reserve funds to make payments under a lease/purchase agreement, regardless of whether the agreement contains a non-appropriation clause.

A fourth part of the bill would have required that bonds in excess of \$1 million be approved by a two-thirds majority and be voted on by official ballot, even in towns that do not use the SB 2 form of town meeting. We had explained the problems this would cause, most notably requiring voters to vote on a bond without having discussed it at town meeting and with no opportunity to amend it. The Election Law and Municipal Affairs Committee unanimously approved an amendment removing that provision from the bill, and the Senate passed the amended bill yesterday.

**Maintaining private roads.** Part IX of **SB 131** would have required municipalities to maintain private roads in certain "qualified private communities" or to reimburse property owners in those communities for the expense of maintenance. Although many residents living on private roads spoke in support of this provision at the hearing, NHMA and others explained that this would lead to enormous increases in

municipal costs, not to mention that it is unconstitutional to use public funds for a purely private purpose. The Transportation Committee heard those concerns and voted unanimously this week to recommend an amendment that removes part IX from the bill. The bill will go to the full Senate with that recommendation next week.

Thank you to all the senators who listened to municipal concerns and took them seriously!

## Marathon House Session in April

While the Senate continues to hold weekly remote sessions, the House has met in session only twice since the beginning of the year because of the challenges of hosting a 400-person gathering safely and the limited availability of venues. The House is not meeting again until April 7, at which time it is scheduled to hold a rare three-day session. On those days it will act on all of its remaining bills; we have not counted, but there must be several hundred.

The next three weeks should afford plenty of time for local officials to contact their representatives and urge them to take appropriate action on the bills they will be considering. In almost all cases, the correct action will “inexpedient to legislate.” We will provide a list as the time draws nigh.

## HOUSE CALENDAR

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

### MONDAY, MARCH 15, 2021

#### **EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

1:15 p.m. Public Hearing on non-germane amendment #2021-0594h to **HB 141**, requiring the department of environmental services to maintain a public registry of where certain fire suppressants have been used. The amendment replaces the bill with a provision allowing a county to exempt its chief administrative officer from compulsory participation in the NH Retirement System.

### TUESDAY, MARCH 16, 2021

#### **FINANCE**

1:00 p.m. **HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2022 and June 30, 2023; **HB 2-FN-A-L**, relative to state fees, funds, revenues, and expenditures.

#### **WAYS AND MEANS**

10:30 a.m. **SB 48**, relative to the formula used to determine current use tax rates.

### THURSDAY, MARCH 25, 2021

#### **LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES**

10:00 a.m. **SB 61**, prohibiting collective bargaining agreements that require employees to join a labor union.

## SENATE CALENDAR

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

### MONDAY, MARCH 15, 2021

#### ELECTION LAW AND MUNICIPAL AFFAIRS

9:30 a.m. **HB 383**, relative to the quarterly or semi-annual collection of taxes in certain municipalities.

#### ENERGY AND NATURAL RESOURCES

1:00 p.m. **SB 109**, relative to municipal host customer generators serving political subdivisions.

#### WAYS AND MEANS

9:15 a.m. **SB 100**, adopting omnibus legislation on commissions and committees.

### TUESDAY, MARCH 16, 2021

#### COMMERCE

9:30 a.m. **SB 67**, relative to paid sick leave.

### WEDNESDAY, MARCH 17, 2021

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

10:15 a.m. **HB 173-FN**, requiring the independent investment committee of the New Hampshire retirement system to report investment fees.

## SENATE FLOOR ACTION

Thursday, March 11, 2021

**SB 13-FN**, adopting omnibus legislation on state taxes and fees. **Passed with Amendment; Laid on Table.**

**SB 26**, relative to roads within the Woodsville Fire District. **Passed with Amendment.**

**SB 55**, relative to project labor agreements in government contracts. **Inexpedient to Legislate.**

**SB 84**, (New Title) relative to village district public bodies. **Passed with Amendment.**

**SB 87**, adopting omnibus legislation relative to municipal finance. **Passed with Amendment.**

**SB 99-FN-L**, relative to the amount of meals and rooms tax revenue that is distributed to municipalities. **Passed; Laid on Table. NHMA Policy.**

**SB 128-FN-A-L**, relative to a temporary change to operator compensation under the meals and rooms tax. **Passed with Amendment; Laid on Table.**

**SB 142-FN**, adopting omnibus legislation relative to certain study commissions. **Passed with Amendment; referred to Finance.**

## 2021 NHMA UPCOMING MEMBER VIRTUAL EVENTS

Weekly	Friday Membership call (1:00 – 2:00)
Mar. 23	<b>Webinar:</b> 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>
Apr. 6	2021 Local Officials Workshop (9:00 – 4:00) Includes the <i>Knowing the Territory</i> publication, 2021 Edition.
Apr. 13	<b>Webinar:</b> ZBA Basics (12:00 – 2:00)

Please visit [www.nhmunicipal.org](http://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.