

# LEGISLATIVE BULLETIN

## Committee to Vote on Attorney-Client Communications . . .

If you have not already done so, please contact members of the [Senate Judiciary Committee](#) and your own senator to urge *support* for [Amendment 1251s](#) to **HB 108**. This is the action needed to overturn the New Hampshire Supreme Court’s astonishing ruling last month that confidential communications between a government entity and its attorney are subject to disclosure under the Right-to-Know Law. The committee will be voting on the bill during its executive session this coming **Tuesday, May 25**.

Most legislative initiatives are not urgent—if they fail this year, there’s always next year. This one *is* urgent. Until the legislature corrects this problem, all of your municipality’s written communications with its legal counsel are at risk of being made public. Municipal attorneys will remain reluctant to put anything in writing—and anyone who has ever tried to follow legal advice on a complicated issue understands how essential a written opinion is. Attorneys for the state, counties, and school districts—including the attorney general’s office, the House and Senate legal counsel, and all state agency attorneys—are caught in the same bind.

We are optimistic that the committee and the full Senate will support this amendment, but this issue is too important to be taken for granted. Please act today!

## . . . And Gunfire on Town Property

At the same executive session on **Tuesday**, the Judiciary Committee will vote on **HB 307**, the bill that would prohibit municipalities from regulating the discharge of firearms on their own property. As we have pointed out before, see [Bulletin #19](#) and [Bulletin #20](#), this bill would render cities and towns powerless to regulate gunfire in places such as town forests and cemeteries, and even on some municipal parking lots and airport runways. It would open conservation areas, such as watersheds for drinking water supplies, to shooting ranges that would result in serious environmental contamination from lead bullets.

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Again, we believe the committee appreciates the concerns that were raised by many municipal officials at its hearing two weeks ago; but please contact committee members and your own senator and ask them to ***kill HB 307.***

## Outdoor Dining, Summer Camps, Vaccines—and More

Only a pandemic could create a correlation between outdoor dining, vaccinations, and summer camp nonconforming status—among other items. [SB 155](#), an omnibus bill that originally sought to codify a wide variety of the governor’s existing emergency orders, was pared down in the Senate to contain eight sections, all related to COVID-19. Of specific interest to municipalities are Part 5, non-conforming use status of summer camps; Part 6, procedures to allow construction during the pandemic; and Part 7, temporary expansion of outdoor dining. Two concerning non-germane amendments have also been offered and heard, which are described below.

On April 27, the House Executive Departments and Administration Committee held hearings on **SB 155** and non-germane amendment **1149h**. At the hearing on the bill, NHMA recommended language to clarify that any expansion of outdoor dining would be subject to applicable local ordinances and regulations. Similar language was recommended by the Department of Environmental Services relative to sewer load capacity. (At a subsequent subcommittee work session on **May 11**, the recommended language was incorporated, among some other changes.)

The committee then heard non-germane amendment [1149h](#), which seeks to permit outdoor dining expansion *permanently* (the original bill would permit it only through 2023) and, of even greater concern, would prohibit the state, political subdivisions, and any employer from requiring anyone to receive the COVID-19 vaccine or provide proof of vaccination status. In an even more heavy-handed approach, the amendment would prohibit the state or a municipality from contracting with any “employer or company” that violated these prohibitions. NHMA opposed the amendment for two major reasons. First, although we have not heard of municipalities seeking to mandate vaccines, we do know that municipalities, in their capacity as employers, have a legal obligation to maintain a safe workplace. This obligation includes following appropriate COVID-19 safety protocols. Quarantine, mask wearing, and other requirements also differ depending on the vaccination status of a person, putting municipalities in an impossible situation if they are unable to at least ascertain the vaccination status of employees. Second, prohibiting municipalities from contracting with companies that require or ask about vaccination status is an undue burden on local government, and we are unclear how—or why—local officials would monitor private business practices relative to vaccines.

Two weeks later, on May 18, the committee heard a second non-germane amendment, [1443h](#), which NHMA also opposed. This amendment would, among other things, prohibit a municipality from asking an employee about any vaccine status—not just the COVID-19 vaccine. On point with a trend we wrote about in last week’s [Bulletin](#), several out-of-state doctors were among those testifying in support of the amendment. Several New Hampshire practitioners testified against the amendment, including one VA doctor, previously a practitioner in the North Country, who stated, “If I take seriously my role as an advocate for patients in my community, I see this amendment as dangerous,” citing the amendment’s very broad prohibitions on keeping records or even initiating conversations about vaccine status. The New Hampshire Department of Health and Human Services also opposed the amendment, as did a New Hampshire senator and doctor, who urged the committee to listen to the voices of New Hampshire practitioners and not the out-of-state doctors who testified, many of whom he said were pathologists, not practitioners.

There is still time for local officials to contact the members of the [House Executive Departments and Administration Committee](#) before the executive session on **Tuesday, May 25**. Please urge them to **reject both non-germane amendments** and to recommend **SB 155** as Ought to Pass *only* if the subcommittee's recommended changes are included.

## Immunity Bill Is Finally Dead

After hearing overwhelming opposition to a non-germane amendment that would have revived the substance of **HB 111**, the bill repealing various governmental immunities and defenses in tort actions, the House Judiciary Committee on Tuesday rejected the amendment on a 7-14 vote. This means the amendment will not go to the House floor when the House considers the underlying bill, **SB 96**, in two weeks.

At the start of the hearing, the chairman noted that 26 people had signed in support of the amendment and 1,178 (that is not a typo) had signed in opposition. Of the five people, in addition to the sponsor, who testified in support of the amendment, three were representatives of libertarian organizations based in Virginia or Washington, D.C., one was a retired police chief from Vermont, and one was a retired ice cream maker from Vermont. Fifteen people, including municipal officials and attorneys, fire chiefs, police officers and chiefs, state officials, and the retired chief justice of the state supreme court—every one of them from New Hampshire—spoke in opposition.

We believe a majority of the committee received the message we have been trying to deliver all year—that the bill would go far beyond holding bad police officers accountable for misconduct. It would subject the state and municipalities to liability for injuries resulting from reasonable actions taken by officials and employees in the good-faith exercise of their discretion. Several opponents of the measure, including NHMA, offered again to work on legislation to close any gaps in the law that currently leave government actors unaccountable for actual misconduct. We hope we will be taken up on that offer.

For the current legislative session, the issue is dead. Thank you to all the local officials and employees, attorneys, and legislators who worked to defeat **HB 111** and this amendment!

## Committee Votes Against Remote Meetings

By a straight party-line vote, 11-10, the House Judiciary Committee last week approved an amendment to **SB 95** that would delete the part of that bill that enables public bodies to continue to meet remotely until July 1, 2022, as they have done under [Emergency Order #12](#) during the pandemic. The explanation for removing this was that it is “too soon” to make such a drastic change to how meetings are conducted, and more study is needed before allowing such a change. This despite the fact that remote meetings have been permitted for *fourteen months* and have been almost uniformly successful.

The Senate passed **SB 95** on a 24-0 vote. As a sensible precaution, it included a sunset date of July 1, 2022, for the remote meetings authority, along with a legislative committee to study the matter in the interim and recommend any needed changes. Those measures, along with the 14-month experience with remote meetings, seem to counter any claim that **SB 95** represents a precipitous change.

**SB 95** will go to the full House on June 3. Please encourage your representatives to *vote down* the committee amendment and *pass SB 95 as passed by the Senate*.

## Senate Finance Budget Work Continues and Grows

The final process of writing the state budget for the fiscal year 2022-2023 biennium is presenting a significant challenge due to the timing and opportunities to consider unexpected, higher-than-budgeted revenues received in fiscal year 2021 (*i.e.*, surplus), higher than expected projected state revenues for fiscal years 2022 and 2023, and the receipt by the state, just this past Wednesday, of its first-half allocation amount totaling approximately \$500 million of [American Rescue Plan Act](#) (ARPA) funds. In its budget work sessions thus far, the Senate Finance Committee has taken several actions that could directly affect the amount of state aid and revenue sharing municipalities receive in fiscal years 2022 and 2023.

New Hampshire Retirement System Costs. On May 10, the committee rejected [Amendment 1293s](#) to **HB 2**, which would have restored a 5 percent contribution toward the employer retirement costs for teachers, police, and firefighters. The amendment would have offset \$35.8 million of the fiscal year 2022-2023 costs that will be borne by political subdivision employers as they prepare to fund a 20 percent increase in their overall employer contribution rates.

Highway Block Grant Aid (**HB2**, section 352). On May 14, the committee removed the \$4.0 million additional highway block grant funding that was added to the state budget by the House Finance Committee. As we reported in [Legislative Bulletin #15](#), due to the projected reduction in state highway revenue, which determines the amount (12%) of highway block grant aid distributed to towns and cities, the House added \$4 million in block grant aid to offset the projected decrease in revenue. However, during committee discussions, in justifying the proposal to remove this funding from **HB2**, it was explained an additional \$32 million in American Rescue Plan Act (ARPA) revenue replacement monies is estimated to be available and proposed to be sent back to towns and cities as lost revenue, as a “separate item.” We will report more as details of the separate item become available.

State Aid Grants (**HB2**, section 62).

- Funding for previously approved projects was restored. Also on May 14, the committee approved [Amendment 1473s](#) to restore the \$15.6 million in funding for annual state aid grant payments for all [160 previously approved projects](#) that had been unexpectedly removed from the governor’s proposed budget by the House Finance Committee. However, with state revenues currently exceeding budget plan amounts, it was agreed the funding source for this amount would be from fiscal year 2021 surplus, with a non-lapse provision through June 2023.
- **SB 127**, Part VIII, is still on the Senate table. As previously reported, **SB 127** contains the funding for the [11 projects](#) that have been held back from governor and executive council approval due to the earlier financial concerns caused by the pandemic, plus the [110 projects](#) that the Department of Environmental Services has identified as eligible and hopeful for state aid grant funding in fiscal years 2022-2023. The funding for these projects, totaling \$12.6 million, has not yet been added to the state budget, as we had hoped. **SB 127** was unanimously voted Ought to Pass by the Senate and then laid on the table for possible budget consideration. The moratorium on all the projects that have achieved substantial completion after December 31, 2019, remains in **HB 2**.
- The 11 projects mentioned above are still held back from final approval in the current budget. These 11 projects were substantially complete before the December 2019 moratorium date, and grant funding was included in the current (2020-2021) budget. However, due to earlier concerns about pandemic-related budget shortfalls, the decision was made to hold these projects back from final approval, with discussion of reconsideration if federal monies became available or economic

circumstances changed. It seems clear that funding these projects is now possible, especially since surplus funds can be used to supplant what would have been necessary to appropriate for the fiscal year 2022-2023 contractual grant amounts. We are hopeful the governor and executive council will move these projects forward to assist these communities in receiving the grant assistance they are relying upon.

## Separate Processes for Federal and State Elections?

The House Election Law Committee this week approved, by a party-line 11-8 vote, a [non-germane amendment](#) to [SB 89](#) that seeks to carve out an exception to the “For the People Act,” the bill currently in the U.S. Congress designated as H.R. 1 (and its companion bill, S. 1), which would make sweeping changes to election laws nationwide. The amendment states that *if* that bill is adopted, elections for state and county offices (as opposed to federal offices) in New Hampshire would nevertheless follow “all procedures and requirements relating to elections conducted pursuant to the New Hampshire constitution and as prescribed by New Hampshire law . . . , including but not limited to those procedures and requirements relating to voter eligibility, voter registration, absentee voting conducting the vote, and counting of votes.”

On its face, this raises serious concerns. It would appear to require, at the very least, the use of separate ballots and separate checklists at state and federal elections, because different voters might be eligible under the federal law and under state law. It may even require that two separate elections be held every other November—one for federal races and one for state races.

On the other hand, the federal legislation would create its own mess. Although there are many good things about it—such as requiring that states use independent commissions for redistricting, which NHMA supports—it would also wreak havoc with New Hampshire election laws. It would force some untenable process changes, most notably an early voting period of at least 15 consecutive days before election day, during which the polls must be open for at least 10 hours every day and voters must be able to vote “in the same manner as voting is allowed on [election day].”

That is impossible. While it may make sense in states that have six-hour waits on election day because a single polling location serves several hundred thousand voters, it would be absurd in New Hampshire’s towns and wards, most of which serve between a few dozen and a few thousand voters. Local election officials are a dedicated bunch, but few are likely to be willing (or able) to spend 10 hours a day in a school gym for 15 consecutive days, waiting for a handful of voters to wander in every day. (This also assumes that the voting facility would even be available for this period, particularly if it is a school.)

There are additional problems, but the early voting provision alone is enough to make the bill frightening. (There is a proposed amendment, apparently not publicly available, that would provide a limited exemption for voting districts that have fewer than 3,000 registered voters. That comes nowhere close to solving the problem.) With that in mind, the amendment to [SB 89](#) is an understandable reaction, although we are not convinced that establishing separate procedures for state elections would improve matters.

Realistically, all of this is probably academic, as all indications are that supporters in the U.S. Senate have no plausible path to passage of the federal legislation; they have nowhere close to the 60 votes needed to invoke cloture and end a filibuster, nor do they have the votes to eliminate the filibuster. Nevertheless, we plan to contact New Hampshire’s U.S. senators and urge them to talk to local election officials and the secretary of state’s office about how the bill would affect New Hampshire elections, and to support amendments to eliminate the negative effects or include appropriate exemptions.

## Committee Rejects Pre-Processing

By an identical party-line vote, the same committee approved an amendment to **SB 89** that removes a provision allowing for the pre-processing of absentee ballots.

Pre-processing was wildly popular with election officials in 2020, and it enabled many absentee voters to correct errors so their ballots would count, when they otherwise would have been rejected. The secretary of state's office supported the pre-processing provision in **SB 89**, and the Senate passed it 24-0. We do not recall that anyone opposed it at the House committee hearing.

**SB 89** with its several amendments will go to the full House for a vote at its session on June 3. We will ask representatives to oppose this amendment and reinstate the pre-processing language.

## New Law Allows More Time for Tax Lien Notification

On May 17 the governor signed **HB 126**, which extends the time for the notice of execution of a municipal, county, or state tax lien to be given to a mortgagee. NHMA supported this bill, which will provide municipalities, counties, and the state an additional 15 days to notify all persons holding mortgages on a property of a tax lien executed on the property. Due to the diminishing number of professional abstractors in New Hampshire who perform mortgage searches and generate lien notices, and because nearly all municipalities execute their tax liens at approximately the same time each year, this bill will provide much needed relief to both the abstractors and the municipalities and help ensure that municipalities are able to properly carry out the statutory notification requirements associated with unpaid taxes. The new act, 2021 N.H. Laws Chapter 33, takes effect July 16, 2021.

## House Calendar

There are no committee hearings scheduled next week.

## Senate Calendar

There are no committee hearings scheduled next week.

## SENATE FLOOR ACTION

Thursday, May 20, 2021

**HB 135**, requiring parties responsible for pollution of a drinking water supply to be financially responsible for certain consequences of that pollution. **Re-referred.**

**HB 154-L**, relative to community revitalization tax relief incentives. **Passed.**

**HB 177**, prohibiting the siting of a landfill near a state park. **Inexpedient to Legislate.**

**HB 243**, relative to the form of municipal budgets, relative to municipal estimates of expenditures and revenues, and relative to the requirement that certain governing bodies submit recommendations to the budget committee. **Passed with Amendment.**

**HB 285**, relative to verification of voter checklists. **Passed with Amendment.**

**HB 292**, relative to the absentee ballot application process. **Re-referred.**

**HB 326**, requiring town and city clerks to make electronic lists of persons who have requested, been mailed, or returned absentee ballots available to candidates upon request. **Passed with Amendment.**

**HB 385-FN**, relative to workers' compensation for heart and lung disease in firefighters. **Passed.**

**HB 484**, relative to budget committee recommendations on warrant articles. **Inexpedient to Legislate.**

**HB 486-FN**, relative to eligibility for the low and moderate income homeowners property tax relief. **Passed.**

**HB 523-FN**, requiring a person who registers to vote without any identification to have his or her photo taken before his or her registration to vote is complete. **Passed with Amendment.**

**HB 555**, relative to prisoners' voting rights. **Passed.**

<b>2021 NHMA UPCOMING MEMBER <u>VIRTUAL</u> EVENTS</b>	
Weekly	Friday Membership call (1:00 – 2:00)
May 26	ARPA Informational Session (1:30 – 2:30)
June 9	The Academy for Good Governance (5:00 – 7:00 p.m.)
June 10	Municipal Trustees (9:00 – 3:00)
June 17	The Art of Welfare (9:00 – 1:15)
June 22	<b>Webinar:</b> The Right-to-Know Law & Governmental Records (12:00 – 1:00)
June 29	Collective Bargaining (9:00 – 12:00)
Please visit <a href="http://www.nhmunicipal.org">www.nhmunicipal.org</a> 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.	