

LEGISLATIVE BULLETIN

The Next Step

All committees of conference—there were 45 of them—completed their work yesterday. The House and Senate will each meet next Thursday, June 24, to consider and vote on the committee of conference report for each bill, including those described below. Each vote is a take-it-or-leave-it proposition; there is no opportunity to amend any bill further. If both chambers approve a committee of conference report, the bill passes and goes to the governor; if either chamber rejects it, the bill dies. It is unusual, but certainly not unheard of, for a committee of conference report to be rejected.

Most attention now is focused on the budget bill (**HB 1**) and especially the budget trailer bill (**HB 2**), including the non-budget items contained in the trailer bill. There is little doubt that the Senate will approve the committee of conference reports on both bills, probably along party lines. Their fate is less certain in the House, where some Republican members are said to be unhappy with concessions the committee of conference made to the Senate position on some items.

State Budget Update

The committee of conference on **HB 1**, the biennial state operating budget, met last Friday, and the House quickly receded from its position of nonconcurrency with the Senate amendment. Thus, the committee recommended that the Senate and the House each pass **HB 1** as amended by the Senate. The committee of conference on **HB 2**, the companion “trailer” bill containing statutory changes necessary to implement the budget along with other non-budgetary legislation, began meeting on Monday and reached a compromise, adopting numerous amendments, close to its 4:00 p.m. deadline yesterday.

All of the municipal funding in the Senate-adopted version of **HB 1** and **HB 2** as reported in [Bulletin #23](#), remained intact in the committee’s final budget recommendation, including:

- **\$188 million*** over the biennium in meals and rooms tax distribution through the creation of a new treasury “dedicated fund” to which 30 percent of total meals and rooms tax revenue

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would be deposited for distribution to towns and cities (a **\$50.5 million increase** over the current biennium).

Note: **HB 2 reduces the meals and rooms tax rate from 9 percent to 8.5 percent in fiscal year 2022, which will result in a projected \$3.4 million decrease in this total distribution amount.*

- **\$15.6 million** state aid grant (SAG) funding for 160 previously approved water pollution control projects in 56 communities—source of funding is fiscal year 2021 budget surplus.
- **\$0** SAGs for the 11 wastewater projects completed prior to December 31, 2019, held back from receiving available funding in the current budget.
- **\$0** for SAGs for the 110 wastewater projects identified by the Department of Environmental Services as eligible under RSA 486 in fiscal years 2022-2023. **HB 2** places a moratorium on all projects completed after December 31, 2019.
- **\$34.3 million** and **\$35.4 million** in fiscal years 2022 and 2023, respectively, for highway block grants (\$2.8 million less than amounts distributed in the current budget).
- **\$6.8 million** each year for municipal bridge aid, equal to the current budget amount.
- **\$3.25 million** for highway construction aid for 1.97 miles of Calef Hill Road in Tilton.
- **\$1 million** for matching grants to local law enforcement agencies to assist with the purchase, maintenance, and replacement of body-worn and dashboard cameras.

In addition, the **\$100 million** reduction to the state education property tax (SWEPT) remained intact in the budget, to be funded by education trust fund reserves. This will reduce all property taxpayers' "state education" tax amount by 27.5 percent for fiscal year 2023 only. For comparison, based on the 2021 statewide education property tax rate of \$1.83/1,000, this would amount to a \$.50/1,000 reduction.

Both the House and Senate will act on the committee of conference proposed state budget on June 24. If passed, the budget goes to the governor for signature.

Committee Approves RTK Fix, But Not Virtual Meetings

The committee of conference on **HB 108** has approved an amended version of the bill that fixes a problem with the Right-to-Know Law but does not allow for the continued use of virtual meetings.

By far the most important provision of the bill was the one clarifying that records protected by the attorney-client privilege or the attorney work product doctrine are exempt from disclosure under the Right-to-Know Law. That had been clearly established law until two months ago, when the New Hampshire Supreme Court contradicted its own precedents and ruled that such records may be subject to disclosure. The Senate added an amendment to **HB 108** to correct that error, and the committee-approved version of the bill keeps that section.

Another provision that NHMA had supported did not fare so well. The bill as amended by the Senate would have authorized the continued use of virtual meetings by public bodies, using the same process that proved so useful during the recent state of emergency. The Senate conferees argued hard to keep that section in the bill, but House members did not budge; so it was removed and replaced with a section that merely creates a legislative committee to study virtual meetings. New legislation may be filed next year, but for this year, the issue is dead.

The underlying bill, as originally passed by the House, requires public bodies to keep a list of all their sealed nonpublic session minutes, listing the date and time of the session and other information. We did not support this, as it will create additional busy work for municipal employees with little public benefit; but it is a

relatively small price to pay for the much bigger goal of guaranteeing the confidentiality of attorney-client communications.

Municipal Net Metering Approved

House and Senate conferees finally resolved a disagreement on net energy metering this week, approving a bill that will allow a “municipal host” with generating capacity of up to five megawatts to take advantage of net metering. A municipal host, as defined in the bill (**HB 315**), is a customer-generator that provides electricity exclusively to political subdivisions that are all located within the same utility franchise service territory. The bill also makes numerous changes to the community power law, RSA 53-E.

We know many municipalities are waiting to pursue projects that depend on increasing the allowable generating capacity from one megawatt to five megawatts, so this is promising. We are optimistic that the House and Senate will approve the committee report and the governor will sign the bill.

Committee Approves Changes to PFAS Loan Fund

The committee of conference on **HB 271** and **HB 235**, both dealing with PFAS, has finished its work, combining **HB 235** and some clarifying provisions into **HB 271**. Importantly, municipalities are now included as an entity allowed to access the state PFAS loan and grant program – something that was mistakenly left out of prior legislation – and some additional language relating to private well owners has been included as well.

Municipalities should note that the provisions relating to private well owners involve *voluntary* municipal action. Notably, municipalities that wish to assist private well owners who have detected PFAS levels above the state standard *may* apply to the PFAS fund for grant funding and may distribute those funds to private well owners. As discussed with those municipalities interested in this program, such funding to private well owners will likely be via a rebate program, but it is possible for municipalities to design other programs to administer assistance. The legislation also provides that any municipality that does so may cover its reasonable administrative costs from the amounts disbursed by the fund.

This new mechanism of providing support to those with PFAS in their drinking water will be subject to agency rulemaking. Assuming the legislation is approved and signed into law, the rulemaking process will likely begin in the fall. Those municipalities dealing with PFAS issues are encouraged to pay attention to the Department of Environmental Services (DES) notices relating to rulemaking and provide input as necessary.

State Primary May Move—Or Not

As passed by the House, **HB 98** would have moved the date of the state primary election from the second Tuesday in September to the first Tuesday in June. The Senate amended the bill to move the date to the second Tuesday in August. After lengthy discussion this week, a committee of conference agreed to change the date to the *first* Tuesday in August. However, the change would not take effect until January 1, 2023, so it would not be in effect for the 2022 state election cycle. This is because of concern that the upcoming redistricting process will leave little time for candidates to make decisions about whether (or where) to run for office—since they won’t necessarily know what district they are in until the redistricting process is complete. The Senate conferees felt that moving the primary in a redistricting year would exacerbate that problem.

Or the change may not take effect at all. The governor has said he thinks the current date for the primary is fine, and he sees no reason to move it. It remains to be seen whether he will sign the bill.

It's Time to Request Your LFRF (ARPA) Money

GOFERR (Governor's Office for Emergency Relief & Recovery) has opened the online portal for NEUs (non-entitlement units of local government) to request the first installment of their LFRF (Local Fiscal Recovery Funds) allocation from ARPA (the American Rescue Plan Act). GOFERR sent an email to cities and towns last week with the list of completed [NEU allocations](#). As a reminder, all cities and towns in New Hampshire are NEUs except for Dover, Manchester, Nashua, Portsmouth, and Rochester.

GOFERR has retained Guidehouse, a consulting firm with a team that focuses on state and local government, to provide resources and guidance to NEUs on LFRF eligible uses, compliance, and associated requirements. GOFERR and Guidehouse held a webinar on Wednesday, June 16, in which they discussed eligible uses of the funds and the process for NEUs to request their funds. If you were not able to attend, the recording and slides can be accessed on the [GOFERR](#) and [NHMA](#) websites.

Please be aware that the deadline to submit your application through GOFERR's online portal is August 18, 2021. If an NEU does not apply by August 18, 2021, its allocation will be considered "unassigned," and the state will be required to issue a subsequent distribution of those funds to all other eligible NEUs.

As a separate but related matter, **HB 2** (the so-called state budget trailer bill) includes language allowing all towns to use [RSA 31:95-b](#) to accept and expend the federal LFRF monies. (See state budget article above for more information on the status of **HB 2**.) This provision was included to ensure that this mechanism for acceptance applied to all towns in this instance—even those towns that have not previously adopted the 31:95-b authority. Please review the statute if you are unfamiliar with it, and give NHMA's Legal Inquiries a call if you have questions about it.

We know there is lot of information to review and steps to be taken—but don't panic. You can contact GOFERR with questions through the ["Contact" tab](#) on its website; and, of course, you can always contact NHMA, and we'll be happy to get you where you need to go. NHMA's [ARPA page](#) is also regularly updated with new information.

Retained/Re-Referred Bills—The Fun Never Ends!

As we mentioned previously, the House and Senate this year retained or re-referred 232 bills (190 retained in the House, 42 re-referred in the Senate). Currently, no committees have meetings scheduled to review these bills, so most or all of them will be taken up in the late summer or early fall. As we do not publish the Legislative Bulletin in the summer or fall, we strongly encourage local officials to check the House and Senate calendars—probably starting around mid-August—for meeting times if you are interested in any retained or re-referred bills.

Below, listed by committee, are *some* of the bills that may be of interest. We will follow all of these bills (and others) and will, if time permits, notify local officials who we know are interested when the bills are scheduled for committee work:

House Commerce Committee

- **HB 343**, relative to billing for ambulance services.

House Criminal Justice and Public Safety Committee

- **HB 237**, relative to the legalization and regulation of cannabis.
- **HB 253**, requiring law enforcement officers to use body-worn cameras and establishing a grant program to assist local law enforcement agencies to purchase body-worn cameras.

House Election Law Committee

- **HB 327**, requiring that voters show identification when personally delivering absentee ballots to town and city clerks.
- **HB 406**, relative to the ability of the public to observe the processing and counting of absentee ballots.
- **HB 480**, relative to verification of ballots cast in an election.
- **HB 524**, requiring the secretary of state to conduct random verification counts of polling place results.
- **HB 531**, relative to determining the qualifications of voters and establishing provisional voter registration and provisional ballots.

House Environment and Agriculture Committee

- **HB 585**, allowing the prepayment of dog licensing fees for the duration of a rabies vaccination and reducing fines related thereto.

House Executive Departments and Administration Committee

- **HB 619**, designating police and fire dispatchers as group II members of the retirement system.

House Finance Committee

- **HB 481**, establishing the office of the right-to-know ombudsman and making an appropriation therefor.

House Judiciary Committee

- **HB 379**, relative to electronic notice.
- **HB 597**, relative to the expectation of privacy.

House Labor

- **HB 589**, requiring workers' compensation to cover prophylactic treatment for critical exposure.

House Municipal and County Government Committee

- **HB 132**, relative to acreage required to build certain single-family housing.
- **HB 431**, relative to the responsibilities of an elected animal control officer.

House Resources, Recreation and Development Committee

- **HB 446**, establishing a committee to study the effects of recreational vehicles and other vehicles used in recreational activities on Class V and Class VI roads.
- **HB 611**, abolishing fluoridation in water.

House Science, Technology and Energy Committee

- **HB 169**, establishing a commission to study the removal of unused utility poles.
- **HB 410**, establishing a committee to study the requirements of reporting by utility companies of information required for valuation of certain utility property for purposes of RSA 72.

Senate Election Law and Municipal Affairs Committee

- **SB 53**, enabling municipalities to establish a community preservation and resilience program funded in part through a surcharge on real property.
- **SB 79**, relative to the authority of the moderator to verify the device count.

Senate Executive Departments and Administration Committee

- **SB 153**, relative to retirement benefits for a police officer or firefighter disabled as a result of a violent injury.

Senate Judiciary Committee

- **HB 307**, relative to state preemption of the regulation of firearms and ammunition
- **SB 39**, exempting information and records contained in law enforcement personnel files from disclosure under the right-to-know law.

Senate Ways and Means Committee

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

Study Committees and Commissions

Retained and re-referred bills will not be the only legislative activity between now and next January. The legislature also created about 20 study committees and commissions that will begin work in the late summer or early fall.

There is a meaningful difference between a study *committee* and a study *commission*—it is not just a matter of word choice. A study *committee* consists solely of legislators—typically one or two senators and three to five representatives—although it can solicit information and testimony from non-legislators. A study *commission* includes a few legislators and some number of non-legislators representing parties that have an interest in the subject matter. A study committee is usually required to file its final report by November 1 of the same year, although some are given an extra year. A study commission frequently has a longer term.

Below is a short list of bills creating study committees and commissions that are most likely to be of interest to municipal officials. All of these bills have passed both houses, and although none have been signed into law yet, a veto of a study committee or commission is a rare thing, so all of these are likely to be created.

- **HB 108**, establishing a committee to review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.
- **HB 411**, establishing a commission to study the equalization rate used for the calculation of a property tax abatement by the New Hampshire board of tax and land appeals, the superior court, and all cities, towns, and counties.
- **HB 423**, establishing a commission to study the implementation of enhanced automation of traffic lights.
- **HB 448**, establishing a committee to study and compare federal Occupational Safety and Health Act standards with the safety and health standards the New Hampshire department of labor uses for public sector employees.
- **SB 142**, reestablishing the commission to study the incidence of post-traumatic stress disorder in first responders.

2021 NHMA UPCOMING MEMBER VIRTUAL EVENTS	
Weekly	Friday Membership call (1:00 – 2:00)
June 21	Webinar: NLC’s Race, Equity and Leadership (REAL) 100 (3:30 – 5:00)
June 22	Webinar: The Right-to-Know Law & Governmental Records (12:00 – 1:00)
June 23	The Academy for Good Governance (5:00 – 7:00 p.m.)
June 28	Webinar: NLC’s Race, Equity and Leadership (REAL) 200/300 (3:30 – 5:00)
June 29	Collective Bargaining (9:00 – 12:00)
Please visit www.nhmunicipal.org Click on the Events and Training tab to view the calendar.	
For more information, please call NHMA’s Workshop registration line: (603) 230-3350.	