

LEGISLATIVE BULLETIN

Mostly Quiet on the Legislative Front

With the passing of the deadline for House committees to make recommendations on Senate bills going to a second committee (known among House members as the deadline for “early” Senate bills), action has slowed down in the House. Senate committees have a slightly longer timeline to take action, and those committees are still actively holding hearings on new bills whereas House committees have all but transitioned to executive sessions.

With the exception of House sessions, we expect the work of the House will be all but completed for this legislative session within the next week. Likewise, the Senate will be wrapping up committee work within the next couple of weeks. Then, it will be time for committees of conference – the frantic couple of weeks where representatives of both bodies negotiate the exact language to include in bills that passed each body with slightly different language.

House Municipal & County Government Executive Sessions

On **Monday**, the **House Municipal & County Government Committee** will hold an executive session on a number of bills of municipal interest **beginning at 10:00 a.m.** This is the last scheduled executive session for that committee for the foreseeable future, and the committee will make recommendations on all of the Senate bills for which it has already had hearings.

Some bills that will be voted on by the committee on Monday include:

- **SB 249**, prohibiting planning and zoning ordinances that prohibit short-term rentals. (See article on page 3)
- **SB 273**, relative to broadband infrastructure funding.
- **SB 312**, relative to adjusted assessments of taxable property.
- **SB 317**, reducing the interest rate for abatements of paid property taxes.
- **SB 400**, relative to training and procedures for zoning and planning boards and relative to financial investments and incentives for affordable housing development.

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Members should be aware that many committees are granting considerable flexibility to amendments, including considering amendments brought forward by original bill sponsors as well as those proposed by committee members. Members who have not yet expressed their opinion on the bills being voted on by the committee on Monday should contact members of the [Municipal & County Government Committee](#) before the vote occurs to express their opinion.

Clarifying the Housing Appeals Board's Jurisdiction

On **Monday**, at **1:45 p.m.** in **State House Room 100**, the **Senate Election Law and Municipal Affairs Committee** will hear testimony on [HB 1307](#), clarifying the jurisdiction of the Housing Appeals Board. As we reported in [Bulletin #2](#), over the summer, the Housing Appeals Board (HAB) issued a decision in [William Evans, Trustee v. Town of Pembroke](#), finding that it had jurisdiction to hear an appeal over a select board's decision whether to reclassify a class VI road as a class V road.

The Housing Appeals Board was created by the legislature to deal with questions of housing and housing development, and its assertion of jurisdiction over road reclassification matters does not comport with that mandate. **HB 1307** modifies [RSA 679:5](#), the Housing Appeals Board's jurisdictional statute, to allow the Housing Appeals Board to hear appeals only from planning boards, zoning boards of adjustment, building code boards of appeals, historic district commissions, and heritage commissions on applications for the development of housing.

NHMA supports the legislative effort to more clearly define the scope of the Housing Appeals Board jurisdiction to appeals from final decisions of municipal land use boards on applications for the development of housing. Please contact the members of the [Senate Election Law and Municipal Affairs Committee](#) and ask them to recommend the bill as Ought to Pass.

Senate Hearing on State-Run Marijuana Establishments

On **Wednesday, April 20**, at **9:00 a.m.** in **State House Room 100**, the **Senate Ways and Means Committee** will hear testimony on [HB 1598](#), legalizing marijuana and selling it at state-run stores. **HB 1598** is a lengthy bill that has a number of implications for municipalities.

First, the bill provides for the legalization of marijuana in certain quantities. The New Hampshire Liquor Commission would set up and operate retail establishments, as well as oversee the production, manufacture, and transportation of legalized marijuana products in the state of New Hampshire. Although the marijuana stores would be physically separated from the liquor stores, it is envisioned that the day-to-day operation and oversight, including enforcement, would be very similar. However, the range of products offered for sale would be more limited than in some other states as "edibles" – such as candies, gummies, brownies, or cookies, or cannabis-infused alcoholic or nonalcoholic drinks or beverages – would not be available for sale.

Second, **HB 1598** would allow municipalities to enact ordinances prohibiting or limiting the number and type of marijuana establishments that may be permitted within the municipality and regulating the time, place, and manner of operation of those establishments. Additionally, municipalities would be authorized to enact ordinances specifying the entity within the municipality responsible for reviewing applications submitted for a registration to operate a marijuana establishment within the municipality.

Finally, the bill allocates the revenue generated by the sale of marijuana products. After the costs of operation, the profit distribution is as follows:

- Fifty percent to the education trust fund,
- Thirty percent to offset the retirement system's unfunded accrued liability,
- Ten percent, or \$25,000,000, whichever is less, to DHHS for substance use-related education, treatment, etc.,
- Five percent to public safety agencies,
- Five percent of remaining funds to DHHS for children's behavioral health services.

Sales projections vary, and statements made during the House committee hearings indicated that much of the profit during the first few years of operation would be dedicated to expanding the network of retail centers to better serve the market. Additionally, future legislation aimed at "edibles" could result in significant increases in sales volume. As such, the amount of revenue generated and used for the purpose of offsetting municipal costs relative to the retirement system or public safety agencies is indeterminable at this time.

NHMA opposes **HB 1598**. The opt-in, as opposed to an opt-out, process for prohibiting or limiting the number and type of marijuana establishments is of major concern. And, given that the bill refers to "municipalities," it will be the legislative body – the town meeting, in most municipalities – that would need to act to opt-in. With the effective date of the legislation, town meetings may not have time to consider the issue prior to the state moving to begin set-up of a marijuana establishment.

Additionally, although five percent of the remaining funds would be allocated to public safety agencies, it is unclear whether this amount would support sustainable and sufficient funding to address local impacts, such as substance abuse treatment; police response and enforcement; fire department and EMS response for increases in overdoses; and Drug Recognition Experts (DRE) for local departments to ensure they can adequately enforce motor vehicle laws related to persons who choose to drive while impaired will be necessary.

Local officials should contact the members of the [Senate Ways and Means Committee](#) to express their opinion on this legislation.

Short-Term Rentals Bill Overwhelmingly Opposed

On Thursday, April 7, the **House Municipal & County Government Committee** held a hearing on **SB 249**, which would require municipalities to allow short-term rentals everywhere. Testimony in opposition to the legislation far outweighed testimony in support. **Thank you to the local officials and New Hampshire residents who testified or sent letters in opposition to this bill.** Additionally, [the governor has again made statements](#) about the problems with this bill, commenting, "I also don't like telling towns what they can and can't do. If you're going to believe in local control, then you believe in local control."

We agree.

Despite the strong showing of opposition at the recent hearing, it is important for municipal officials to continue to speak with their representatives about why **SB 249** is bad for New Hampshire. The committee will hold an executive session on the bill on **Monday**, starting at **10:00 a.m.**

Unprecedented override of local zoning authority. We keep hearing that this legislation is about preventing "bans" on short-term rentals. But that's not what **SB 249** is about. It is about an unprecedented

and extraordinary carve out for one single land use above all others. **SB 249** would require a municipality to allow short-term rentals everywhere. Other than “the tilling of soil and the growing and harvesting of crops,” New Hampshire law does not require municipalities to allow any use of property in all zoning districts. Although certain uses—workforce housing, manufactured housing, accessory dwelling units—must be allowed in some parts of every municipality subject to some conditions, no use must be permitted everywhere. Even single-family dwellings may be prohibited in some districts. In fact, the bill really creates its own ban—a ban on the ability of local legislative bodies to adopt zoning ordinances and other regulations that balance different needs and different land uses.

SB 249 does not even allow municipalities to distinguish between owner-occupied rentals and investment-properties, which are being bought by investors who have no intention of living there and are operating these properties as commercial rentals in residential areas, without regard to the concerns of the neighbors or the town. As a result, this bill does not address the needs or interests of local residents.

Internally conflicting and confusing language. The definition of “short-term rental” and the breadth of the mandate in **SB 249** are deeply problematic and conflicting. Although the bill defines “short-term rental” and “vacation rental” as a “single-family or 2-family building or structure,” it also states that any “building or structure” must be allowed as a short-term rental, regardless of its “classification, use, or occupancy,” and regardless of whether it is “conforming or non-conforming.” This means not only must all dwelling units be allowed as short-term rentals everywhere, so must sheds, pool houses, barns, and offices—just to name a few.

No new authority for cities and towns. **SB 249** does not grant municipalities new authority, as some proponents have claimed. The authority to require inspections of properties already exists: Cities (RSA 47:17, XIX) and towns (RSA 41:11-c) have express authority to “establish regulations relative to businesses obtaining municipal permits.” Municipalities also have authority to require health and safety inspections as a condition to granting a special exception or conditional use permit. Similarly, the section of the bill that allows municipalities to regulate noise, parking, health, sanitation, and enforce other town regulations merely restates authority cities and towns already possess.

You can still contact members of the [Municipal and County Government Committee](#) and ask your own representatives to oppose **SB 249** when it goes to the House for a vote.

Two Bills Now Propose 7.5 Percent State Contribution to NHRS

On **Wednesday**, the **Senate Executive Departments and Administration Committee** held a public hearing [HB 1417](#), which would reinstate a 7.5 percent state contribution toward the employer’s cost of the New Hampshire Retirement System (NHRS) contribution for teachers, police, and firefighters beginning on July 1, 2023. This bill would provide direct property tax relief as the fiscal note states municipalities will see a reduction in expenditures amounting to \$27.7 million in fiscal year 2023, and \$28.47 million in fiscal year 2024. Thank you to our members who testified, submitted written testimony, signed online, submitted estimated impacts for our survey, and contacted their senators and representatives. This bill remains in committee awaiting an executive session.

At the same time as the public hearing on **HB 1417**, the **Senate Ways and Means Committee** was offered a non-germane amendment to [HB 1221](#). As amended, the bill would not only reduce the rate of the business profits tax from 7.6 percent to 7.5 percent, but it would also provide a *one-time* payment by the state of 7.5 percent (estimated \$27.7 million) of the employer contribution costs for teachers, police, and firefighters in

fiscal year 2023. **HB 1221** was recommended as Ought to Pass by the committee and will be taken up by **Senate** on **Thursday, April 21**.

The difference between the two bills is that **HB 1221** would provide a one-time payment from surplus, while **HB 1417** would re-instate the contribution for future years and become part of the state budget. NHMA supports the reinstatement of a consistent state contribution that municipalities can use to build their annual budgets. Should the one-time payment proposed in **HB 1221** pass instead of **HB 1417**, we will continue to advocate for the state contribution to be included next year in the state budget.

We continue to encourage local officials to contact their senators to support **HB 1417** and **HB 1221** as amended.

Right-to-Know Laws Bills

Yesterday, the **Senate Judiciary Committee** heard testimony on **HB 1073**, which would have effectively undone the codification of the Right-to-Know Law exemption for records protected by attorney-client privilege and the attorney-work product doctrine that the legislature passed last year. Late yesterday evening, the committee voted 5-0 to recommend the bill as Inexpedient to Legislate. **Thank you to the attorneys who came out to oppose the bill and the municipal officials who sent written testimony.**

Unfortunately, **SB 344**, which we wrote about last week, did not have a positive outcome yesterday. The **House Judiciary Committee** recommended the bill as Inexpedient to Legislate in a party-line vote of 11-10. This bill would have given public bodies flexibility with allowing remote attendance at public meetings, but with significant safeguards in place to protect the public's access. We are grateful to the senators who worked so hard to move this compromise legislation forward to this point.

HOUSE CALENDAR

MONDAY, APRIL 18, 2022

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 302-304, LOB

10:00 a.m. **SB 53**, relative to confidentiality of department of revenue administration records.

TUESDAY, APRIL 19, 2022

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 302-304, LOB

10:00 a.m. **SB 274**, relative to governmental construction contracts.

SENATE CALENDAR

MONDAY, APRIL 18, 2022

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 100, SH

1:00 p.m. **HB 1163**, relative to over voted ballots.

1:10 p.m. **HB 1174**, relative to election challengers.

1:20 p.m. **HB 1667**, relative to the standard and optional veterans' tax credits and the all veterans' tax credit.

1:30 p.m. **HB 1406**, authorizing municipalities to collect compost.

1:45 p.m. **HB 1307**, modifying the authority and duties of the housing appeals board.

TUESDAY, APRIL 19, 2022

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:10 a.m. **HB 1186**, relative to companion animals during a declared state of emergency.

JUDICIARY, Room 100, SH

1:15 p.m. **HB 1101**, relative to a forfeiture of personal property.

2:00 p.m. **HB 1266**, relative to restrictions on enforcement of federal immigration laws.

2:15 p.m. **HB 1178**, prohibiting the state from enforcing any federal statute, regulation, or Presidential Executive Order that restricts or regulates the right of the people to keep and bear arms.

TRANSPORTATION, Room 101, LOB

1:30 p.m. **HB 1432**, prohibiting the use of state funds for new passenger rail projects.

WEDNESDAY, APRIL 20, 2022

HEALTH AND HUMAN SERVICES, Rooms 201-203, LOB

9:00 a.m. **HB 1455**, relative to state enforcement of federal vaccination mandates.

9:30 a.m. **HB 1210**, relative to exemptions from vaccine mandates.

WAYS AND MEANS, Room 100, SH

9:00 a.m. **HB 1598-FN**, legalizing the possession and use of cannabis.

SENATE FLOOR ACTION

Thursday, April 14, 2022

HB 87, relative to the definition of electioneering. **Interim Study.**

HB 169, establishing a commission to study the removal of unused utility poles following the transition of equipment, lines, and cables to new utility poles. **Passed with Amendment.**

HB 579, requiring notice to the public before immigration checkpoints are conducted. **Inexpedient to Legislate.**

HB 597-FN, relative to the expectation of privacy. **Interim Study.**

HB 1122, authorizing municipalities to collect and resell construction and demolition debris. **Inexpedient to Legislate.**

HB 1157, relative to electronic ballot counting devices. **Passed.**

HB 1457-FN, relative to chain of custody of ballot boxes after an election. **Passed.**

HB 1527-FN, relative to vote returns. **Passed.**

HB 1614-FN, requiring the recording and storing of digital video in all state-funded juvenile detention facilities. **Passed.**

2022 NHMA UPCOMING MEMBER EVENTS

Apr. 28	2022 Right-to-Know Law Workshop (Hybrid) – 9:00 – 1:00
May 5	2022 A Hard Road to Travel Workshop (Hybrid) – 9:00 – 12:30
May 17	2022 Local Officials Workshop (Virtual) – 9:00 – 4:00
May 18	Webinar: Investigations 101 – 12:00 – 1:00

Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming 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.