

LEGISLATIVE BULLETIN

The Busy Season

Hearings are being scheduled fast and furiously. Fifty four hearings of municipal interest occurred this week. NHMA also held a legislative preview in Dover, following up on the legislative preview that we held in Lebanon last week. (Thank you to those of you who attended and to the host communities.) Next week will be even busier, with hearings on a number of priority bills, including **HB 51**, **HB 647**, and a slew of retirement bills, all of which are addressed in articles below. We need members to get engaged this week, so please read on!

Those who have been following our [online bill tracker](#) know that bill language is still being published, and those who have talked to legislators know that many will be coming to their committee hearings with amendments to adjust problematic language. (The record volume of bill requests, 1,187 by last count, combined with the compressed timeline of the first year of session meant that many legislators had less time than usual to gather input on initial bill language and will be asking committees to consider amendments upon first hearing.)

HB 51 Hearing Scheduled

On **Thursday, January 26 at 10:40 a.m.** in **LOB 301-303**, the [Municipal and County Government Committee](#) will hear testimony on **HB 51**, which would require towns and school districts to use separate warrant articles for “lobbying agents,” and which we wrote about at length in [last week’s Bulletin](#). The bill causes a number of issues for municipalities, and we urge the committee to recommend it *Inexpedient to Legislate*. While we encourage you to read last week’s article to fully understand the entire impact of this legislation, we wanted to briefly address it again this week.

In short, **HB 51** would allow the legislature to override the discretion and authority of locally elected officials and local voters with respect to the town warrant and the town meeting. Select boards, not legislators, are the locally elected officials charged with the responsibility of managing the prudential affairs of the town; and voters, as the people who decide what the municipality does with their money, already have the authority to require questions to be included separately on the warrant—and to debate,

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GOVERNMENT AFFAIRS CONTACT INFORMATION

Margaret M.L. Byrnes
Executive Director

Natch Greyes
Government Affairs Counsel

Katherine Heck
Government Finance Advisor

Jonathan Cowal
Municipal Services Counsel

Timothy W. Fortier
Communications Coordinator

Pam Valley
Administrative Assistant



25 Triangle Park Drive
Concord NH 03301
Tel: 603.224.7447
EM: governmentaffairs@nhmunicipal.org
Website: www.nhmunicipal.org

discuss, amend, and ultimately adopt proposed town budgets. That includes removing funding for any group that lobbies. Importantly, this bill would impact all organizations created by local officials, for local officials that provide a variety of support and training for local officials, including the town clerks, assessors, and building officials.

We urge local officials to attend the hearing to testify; or, if you would like to submit written testimony, you can do so by [emailing the committee](#) (select “Email All Committee Members”) or by [registering your opposition online](#). Please be sure to email a copy of your testimony to us at governmentaffairs@nhmunicipal.org as well.

Repeal of Immunity Protections Returns

On **Thursday, January 26 at 9:00 a.m.** in **LOB 206-208**, the [House Judiciary Committee](#) will hear testimony on **HB 647**, which would repeal all existing statutory and common law immunity protections that apply to local government and allow lawsuits for monetary damages for essentially all governmental functions.

All local officials are urged to register their opposition to HB 647. This is a top priority bill for NHMA. You can come to the hearing and testify; register your opposition [online](#) for the committee; or [email](#) written testimony to the committee (select “Email All Committee Members”).

Please read on to understand just some of the devastating consequences of this bill for local governments.

HB 647 would authorize an incredible number of private lawsuits against cities and towns.

HB 647 would delete or nullify the entire body of law on governmental immunity—tossing aside decades of statutory and case law (also known as common law) developed by the New Hampshire Supreme Court. The bill’s opening statement proclaims that “[t]o the extent of any conflict, this chapter supersedes a defense or immunity in RSA 99-D, 507-B, 541-B, or other RSA section enacted prior to the effective date of this chapter.” The bill further states that a claim against a governmental entity **shall not be subject to** statutory immunities; common law doctrines of immunity; federally-recognized doctrines of qualified immunity; sovereign immunity, governmental immunity, custom or policy; or limitations on liability or damages. (The bill would, however, preserve the legislature’s own immunity, as well as judicial immunity.)

But what does that really *mean*? This bill would allow an individual to sue a governmental entity for monetary damages under any state or federal constitutional provision, state statute, or regulation. Your town or city could be sued for monetary damages for:

- Forgetting to include a roll call vote in public meeting minutes;
- Failure to post notice for a ZBA hearing;
- Failure to approve a welfare request;
- Failure to approve a planning board application with 65 days;
- A slippery road during a snowstorm;
- Late property tax bills;
- Not doing or doing something—no matter how innocuous or how quickly the local officials move to rectify it—under any state or federal law that could be read to require or prohibit something.

Currently, governmental bodies, officials, and employees can be sued for monetary damages and held responsible for legal fees only when the legislature or the courts have specifically created a right to sue either in statute or common law. Legislators and courts have—prudently—not created a private action for money damages and attorney’s fees in most state and federal statutes, regulations, and constitutional provisions because they have recognized that such lawsuits would be crippling to governmental operations. **HB 647** would change that entirely, incentivizing lawsuits on a wide variety of issues for which lawsuits are not currently allowed.

HB 647 would dramatically increase expenses for taxpayers.

If this bill passes, it would invite a barrage of lawsuits because there would be no limitation on the amount of damages that could be awarded. Combined with the expansion of municipal liability, taxpayers will see a definite increase in costs due to increases in insurance premiums, settlements, and attorney’s fees.

Insurance premiums are calculated, in large part, based on the risk of suit and the relative costs associated with that risk. By expanding the pool of possible claims and eliminating the cap on the amount of damages, the incentive *to* sue and the incentive for those who sue *to* settle decreases. As any civil attorney will admit, settlements occur largely because it’s cheaper for their client to pay a small fee to make the problem go away—rather than to continue to accrue court (and attorney) costs in defense of their actions. The consequence of expanding the pool of possible claims is that more people may sue, increasing the need to offer settlements. Additionally, the possibility of winning large sums of money as a result of a legal judgement for legitimate suits means that there is less incentive for those types of suits to settle. Combined, this one-two punch is certain to increase the risk of insuring municipalities, increasing costs for insurance, which will ultimately be passed on to the taxpayer.

HB 647 would cripple government operations.

Aside from these “hard costs” discussed above, lawsuits take time to litigate and take administrative staff away from their regular duties. Having an increased number of ongoing lawsuits would create administrative paralysis and undue interference with governmental operations because government employees would need to spend time responding to the lawsuit rather than performing their functions.

The government needs certain protections to be able to function. Cities and towns provide a wide variety of services to the general public, which opens them to the constant risk of something going wrong. Governmental immunity recognizes this reality and allows government to operate and serve the public, without the risk of costly lawsuits at every turn. These protections are even more critical for New Hampshire’s local government system, which rests heavily on regular people who volunteer their time to serve the public.

A fair balance between imposing civil liability on local governments, given the reasonable priority of the competing interests, already exists in the law between managing the needs of the public – as provided by the government – and the need to ensure that the injured are compensated.

We urge our members to attend the hearing to testify; or, if you would like to submit written testimony, you can do so by [emailing the committee](#) (select “Email All Committee Members”) or [registering your opposition online](#). Please be sure to email a copy of your testimony to us at governmentaffairs@nhmunicipal.org as well.

A Full Day of Hearings on Retirement Bills

On **Thursday, January 26**, beginning at **10:00 a.m.** in **LOB 306-308**, the [House Executive Departments and Administration Committee](#) will hold hearings on six retirement bills that will impact municipalities by modifying, changing, or redefining member benefits, *most* of which will increase the unfunded liability, employer costs, and local property taxes. NHMA opposes legislation that expands or changes pension benefits resulting in increased employer costs based on our member-enacted policy. Please contact the committee or your state representative to request that changes to the retirement system be funded by the state.

- **10:00 a.m.** - [HB 250](#) would increase the Group II accidental death benefit from 50% to 100% of member's annual rate of earnable compensation at the date of the member's passing. The estimated increase of this legislation on the employer pension rate for police is .25 percent and .28 percent for fire, totaling just over \$1 million in additional employer costs for fiscal year 2024 alone. The New Hampshire Retirement System (NHRS) estimates a \$4 million increase in the actuarial accrued liability (UAAL).
- **10:45 a.m.** - [HB 571](#) would provide a cost-of-living adjustment (COLA) in 2023 to qualified Group II retirees on the first \$50,000 of a retired Group II member's or beneficiary's allowance. The cost of this COLA would be paid from the state general fund having *no impact* on municipal employers, as proposed.
- **1:00 p.m.** - [HB 436](#) would increase benefits for certain middle tier Group I & II members by reversing several of the retirement reforms enacted in 2011. The fiscal note for the bill as introduced estimated the proposed changes would increase the current \$5.69 billion unfunded liability by an additional \$133.6 million, which would be paid by municipalities over the next twenty years resulting in an increase in employer contributions amounts estimated at \$10 million in fiscal years 2025 and 2026 alone.
- **2:00 p.m.** - [HB 449](#) would increase the service retirement and disability retirement annuity multiplier for the first 20 years of service for Group II retirement system members under the transition provisions adopted in 2011. NHRS estimates a \$82.2 million increase in the UAAL increasing employer rates in fiscal year 2024 by 2.94% (an estimated \$7.26 million) and 2.41% for fire (an estimated 3.72 million) for an aggregate increase of \$10.98 million.
- **2:15 p.m.** - [HB 525](#) would reinstate certain types of earnable compensation and change the calculation of the pension benefit for all members who became vested between January 1, 2012 and December 31, 2013. NHRS estimates an increase of \$124.3 million in the UAAL, and the expected fiscal impact to municipal employers across *all* Group I and Group II is estimated at \$9.8 million in fiscal year 2025 and \$10 million in fiscal year 2026.
- **2:30 p.m.** - [HB 579](#) would eliminate the transition provision adopted in 2011 for Group II retirement system members that began service before July 1, 2011, but were not yet vested. Due to time constraints, NHRS has not issued fiscal analysis of the implications of this bill.

Also on **Thursday, January 26**, at **10:00 a.m.** in **LOB 210-211**, the [House Finance Committee](#) will hold a public hearing on **HB 555**. NHMA supports legislation that promotes a solvent, fiscally healthy, and financially sustainable defined benefit plan that both employees and employers can rely on to provide retirement benefits for the foreseeable future. This bill would require that the state transfer 75 percent of the biennial surplus to NHRS to reduce the retirement system's unfunded actuarial accrued liability (UAAL) to the extent the surplus meets or exceeds certain financial conditions. For fiscal year 2022, NHRS reported

an unfunded liability of \$5.69 billion in the actuarial valuation. Current actuarial valuations estimate that the unfunded liability accounts for more than 75 percent of current employer rates which is borne solely by the participating employers and subsequently the local taxpayers.

State Aid Grants for Wastewater Projects

On **Thursday, January 26, at 10:00 a.m.** in **LOB 210-211**, the [House Finance Committee](#) will hold a public hearing on [HB 311](#), an **NHMA policy bill** which appropriates \$15 million for each of the 2024 and 2025 fiscal years to fund the state share of eligible and completed wastewater projects under the State Aid Grant (SAG) program pursuant to RSA 486. Historically, the legislature has, by law, expressly authorized the SAG program to provide grants to municipalities of 20% to 30% of the principal and interest payments on completed and eligible environmental infrastructure projects. However, sufficient funding for the grants has not been included in the state budget in recent years—thus the need for a separate funding bill. For more information on the importance of this funding, please see the 2023 [SAG Project Priority List](#) issued by the Department of Environmental Services.

New Bills

Please [click here](#) to find a list of newly published bills that NHMA is tracking. We will be publishing a table every week as new bills are published this year. Please note that publication of bills is occurring about two weeks later this session than in prior sessions. Also, the Senate deadline for final sign offs has been extended from January 12 to January 17.

Hearing Schedule

Please [click here](#) to find a list of hearings next week on bills that NHMA is tracking. Please note that the linked PDF only covers hearings scheduled for the next week. For the most up-to-date information on when bills are scheduled for a hearing, please use our [live bill tracker](#).

2023 NHMA UPCOMING MEMBER EVENTS	
Feb. 2	2023 Regional Legislative Preview in Sugar Hill – 6:00 – 7:30
Feb. 4	2023 Town & School Moderators (Traditional Town Meeting) Workshop (hybrid) – 9:00 – 1:30
Feb. 8	Webinar: 10 Steps to Successful Succession Planning – 12:00 – 1:00
Feb. 9	Right-to-Know Law Workshop for Law Enforcement (hybrid) 9:00 – 12:00
Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming events. Click on the Events& Training tab to view the calendar.	
For more information, please call NHMA’s Workshop registration line: (603) 230-3350.	