

LEGISLATIVE BULLETIN

Stricter Arsenic Standard

Bulletin 17 — 2019 Session
April 19, 2019

On Tuesday the Senate Energy and Natural Resources Committee held a hearing on [HB 261](#), which requires the Department of Environmental Services to lower both the maximum contaminant level (MCL) in drinking water and the ambient groundwater quality standard (AGQS) for arsenic from 10 parts per billion (ppb) to no more than 5 ppb. While we support improving water quality, we are concerned about the costs to comply with this stricter standard. The fiscal note for [HB 261](#) is based on a cost/benefit analysis done by the New Hampshire Department of Environmental Services in the [Review of the Drinking Water MCL and AGQS for Arsenic](#) report issued December 31, 2018. The department estimates the cost of compliance with the 5 ppb standard for public water systems, sewage lagoons, landfills, and other facilities with groundwater discharge permits to be approximately **\$3.76 million** in capital costs and **\$4.6 million** in additional annual costs.

To address our concerns with the costs of compliance, NHMA offered language for an amendment to [HB 261](#) that would require the state to reimburse public water and wastewater systems 50 percent of the incremental costs to comply with this stricter arsenic standard. While the Drinking Water Trust Fund or the State Aid Grant (SAG) program may provide some funding for capital costs, there is currently no state support for ongoing maintenance and operating costs. We know that stricter water quality standards are a priority for many legislators; we are merely asking that stricter water quality standards also be a legislative *budget* priority in the form of state funding for a share of the incremental costs, particularly the annual maintenance costs, that public water and wastewater systems will incur to comply with an arsenic standard of 5 ppb.

Please contact members of the [Senate Energy and Natural Resources Committee](#) and ask that they amend [HB 261](#) to include state funding to reimburse public water and wastewater systems for a portion of the costs to comply with the stricter arsenic standard.

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GOVERNMENT AFFAIRS CONTACT INFORMATION

Margaret M.L. Byrnes, Executive Director

Cordell A. Johnston, Government Affairs Counsel

Barbara T. Reid, Government Finance Advisor

Natch Greyes, Municipal Services Counsel

Timothy W. Fortier, Communications & Member Services Coordinator



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

Senate Hearing on Retiree COLA

On **Wednesday, April 24, at 9:30 a.m., in LOB Room 101**, the Senate Executive Departments and Administration Committee will hold a hearing on **HB 616**, which provides a 1.5 percent cost-of-living-adjustment (COLA) to New Hampshire Retirement System (NHRS) retirees who have been retired at least 5 years by July 1, 2019. The COLA will be calculated on the first \$50,000 of the retiree's pension and paid to each retiree on his or her first retirement anniversary date following July 1, 2020.

The cost to terminally fund this COLA is slightly less than **\$77 million**, which will be added to the \$5 billion unfunded liability (*i.e.*, deficit) that currently exists in the NHRS pension fund. The COLA will be funded by increased employer contribution rates beginning July 1, 2021.

We have no objection to COLAs, but in the past COLAs have been paid for by the state or from the "special account," not by additional assessments on municipal, school, and county employers. We continue to be concerned that financing retiree COLAs through increased employer contribution rates violates the unfunded mandate provision in Part 1, Article 28-a of the New Hampshire Constitution. Additionally, **HB 616** is contrary to the desire expressed by many legislators to lower property tax burdens across the state. Please talk with your [senator](#), particularly if he or she is a member of the [Senate Executive Departments and Administration Committee](#), about the unfunded mandate and increased property tax concerns associated with **HB 616**.

State Aid Grants for Wastewater

On **Wednesday, April 24, at 11:00 a.m., in LOB Room 210**, the House Finance Committee will hold a hearing on **SB 254**, an **NHMA policy bill** that appropriates funds for 70 completed or nearly completed wastewater projects in 35 municipalities under the State Aid Grant (SAG) program pursuant to [RSA 486:1](#). **SB 254** is identical to **HB 352**, which the House Finance Committee retained before incorporating funding for 58 of the 70 projects in the fiscal year 2020-2021 state operating budget passed by the House last week.

The hearing on Wednesday provides an opportunity for the remaining projects (project numbers 59-70 on the [NHDES spreadsheet](#)), particularly those that will be completed in 2019, to advocate for funding those projects in the upcoming biennium. As we reported

This week's to-do list

- ✓ Express your concerns about **HB 261**, regarding arsenic in drinking water and groundwater, to your senator and members of the Energy and Natural Resources Committee. Ask them to include an amendment providing for state funding to comply with the stricter standards.
- ✓ Attend the hearing on **HB 616**, creating a municipally funded cost-of-living increase for retirees, or talk to your senator and members of the Senate Executive Departments and Administration Committee; point out that it is an unfunded mandate and ask them to either kill the bill or require the state to pay for the COLA.
- ✓ Attend the hearing or contact members of the House Finance Committee and ask them to support **SB 254**, appropriating funds for state aid grants for wastewater facilities.
- ✓ Ask your senator and members of the Election Law and Municipal Affairs Committee to support **HB 409**, increasing the maximum amount of the local option municipal transportation improvement fee.

in several recent Bulletins, [HB 2](#) (the budget trailer bill) contains language in section 87 (page 26) continuing a moratorium on funding any new wastewater projects completed after December 1, 2018. Projects 59-70 all have substantial completion dates after December 2018 and will not be funded unless additional legislative action is taken in either **SB 254**, the biennial 2020-2021 budget, or future legislation.

Municipalities involved in wastewater projects 59-70 are encouraged to testify on **SB 254** at the hearing before the [House Finance Committee](#) on Wednesday or submit written testimony to committee members.

Funding for Transportation Improvements

On **Thursday, April 25 at 1:00 p.m., in LOB Room 102**, the Senate Election Law and Municipal Affairs Committee will hear testimony on [HB 409](#), an **NHMA policy bill** that would increase from \$5 to \$10 the maximum fee that a municipality may collect under RSA 261:153, VI. That statute allows a municipality, by vote of the legislative body, to establish a transportation improvement fund “to fund, wholly or in part, improvements in the local or regional transportation system, including roads, bridges, bicycle and pedestrian facilities, parking and intermodal facilities and public transportation.” Money for the fund comes from an additional motor vehicle registration fee, established by the legislative body, not to exceed \$5 per vehicle. With local roads and bridges badly in need of repair, allowing municipalities the option of increasing this local charge (in most cases by vote of the town meeting) up to \$10 annually is a sensible approach to providing a modest amount of additional funding.

In the past few years similar bills received overwhelming support from a variety of constituencies, including city and town officials, regional planning commissions, regional transportation associations, and the New Hampshire Department of Environmental Services. **HB 409** raises local dollars used for local projects approved by the local legislative body of each municipality that assesses this fee. Voting for this bill is not supporting a “tax increase.” It is supporting the ability of local taxpayers to control their own finances. With state and municipal budgets struggling to keep up with the maintenance and improvement costs of our aging infrastructure, **HB 409** is the perfect method to help supplement the financing of diverse modes of transportation.

Those municipalities that assess this local option fee, or others who may be interested in doing so in the future, are encouraged to contact members of the [Senate Election Law and Municipal Affairs Committee](#) and/or plan to attend the hearing to explain the transportation improvements and services being funded by this fee, and why a modest increase in the maximum amount of the fee is so important!

Committee Recommends Utility Valuation Bill

The Senate Ways and Means Committee heard testimony this week on [HB 700](#), the utility valuation bill we have written about frequently, most recently in [last week's Legislative Bulletin](#). The committee then immediately went into executive session and voted 5-0 to report the bill as Ought to Pass. The bill will go to the Senate floor next week, and barring a dramatic new development, passage is all but certain.

Senate Passes Second Net Metering Bill

Having already passed [SB 159](#), an **NHMA policy bill** that increases to five megawatts the capacity limit for an customer-generator to participate in net metering, the Senate this week passed the similar [HB 365](#). The Senate amended **HB 365**, which is now *almost* identical to **SB 159**. We have not followed all of the minor tweaks to the two bills, so we are not sure which one is now the preferred version, but from our perspective, both bills do what is needed.

SB 159 is scheduled for a hearing next **Wednesday, April 24, at 2:30 p.m., in LOB Room 304**, before the House Science, Technology and Energy Committee. Meanwhile, **HB 365** will go back to the House to concur or request a committee of conference. We understand there is no significant disagreement between the House and the Senate, so it seems very likely that one of the bills will be going to the governor with veto-proof majority approvals from both chambers.

Notification About Union Rights

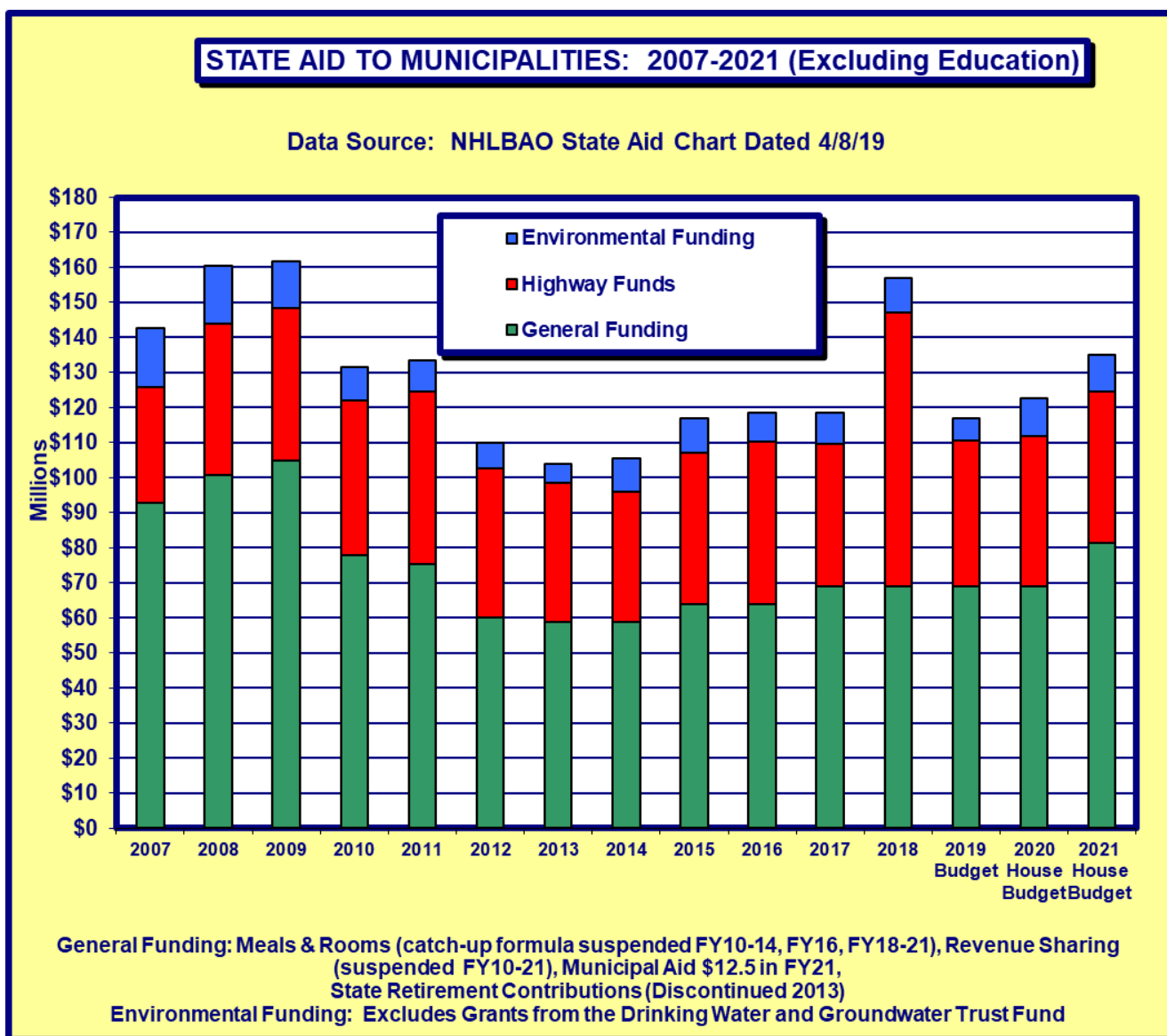
We reported in [Legislative Bulletin #15](#) about [SB 148](#), which, as passed by the Senate, would require every public employer, at the time of hiring, to provide written notice to every new employee about the person's constitutional right to join or not join a union. That bill had a hearing in the House Labor Committee last week, and even the bill's supporters seemed to agree with us that, if such a notice is required, it should be provided by the union that is asking the employee to join, not by the employer. We believe the bill will be amended to make that change.

Less certain is whether the committee will agree with us that the rest of the bill is unnecessary and should be scrapped. In addition to the notice requirement, the bill requires a public employer to give union representatives access to members of the bargaining unit that the union represents, including: (1) the right to meet with employees on the work premises to investigate and discuss grievances; (2) the right to conduct worksite meetings during lunch and other breaks and before and after the workday to discuss workplace issues and union matters; and (3) the right to meet with newly hired employees for 60 minutes not later than 10 days after hire.

No one at the hearing presented a persuasive argument for the necessity of these provisions. Although "solution in search of a problem" is an overused expression at the legislature, it seems to apply here. The [Labor Committee](#) has scheduled a subcommittee work session for next **Wednesday, April 24**. Please continue to let committee members and your own representatives know that you oppose this bill.

State Budget Update

In last week's Bulletin, we summarized the state aid to municipalities included in the biennial budget passed by the House. Based on data provided by the New Hampshire Legislative Budget Assistant's Office (NHLBAO), below is a graph comparing the municipal funding in the House budget for fiscal years 2020-2021 to funding provided in years 2007-2019. The increase in highway funds in 2018 reflects the additional \$38 million provided for municipal roads and bridges. The proposed \$12.5 million in municipal aid in the House budget accounts for the increase in 2021. The fiscal year 2020 and 2021 House budgets represent approximately 76% and 85%, respectively, of the state aid provided to municipalities in 2009, before the state began reductions to address budget challenges associated with the recession.



PFAS Standards for Drinking Water and Ambient Groundwater

Last Friday was the deadline for interested parties to submit written comments to the New Hampshire Department of Environmental Services (NHDES) on proposed administrative rules regarding water quality standards, monitoring, compliance, reporting, and public notification for certain perfluoro-chemicals referred to as PFCs. Click these links for a copy of the [proposed administrative rules](#) and the [Summary Report](#) documenting how the NHDES arrived at the recommended standards.

We understand that NHDES received a significant number of written comments on the proposed rules (including comments submitted by [NHMA in a joint letter](#) with the Granite State Rural Water Association and the North East Biosolids and Residuals Association) The department will be reviewing all comments and expects to file final proposed rules in time to be on the agenda for the June 21 public meeting of the [Joint Legislative Committee on Administrative Rules](#) (JLCAR). If approved by this committee, the administrative rules will have the effect of law.

Recent public statements by NHDES officials suggest that the final rules submitted to JLCAR may recommend lower (*i.e.*, stricter) PFC standards than those initially proposed in January and disseminated for public comment. As indicated in NHMA's joint letter and comments submitted by others, we are concerned that the statutory requirement of analyzing the "*costs and benefits to affected parties that will result from establishing the standard*" has not been adequately addressed in the standard-setting process to date. This will be even more of a concern should the final recommended standards be lower than initially proposed. We will keep you posted as this standard-setting process proceeds.

Legislative Hodgepodge

We are experiencing a bit of a post-crossover lull in major legislative developments, so we will take this opportunity for an update on (1) important bills that are currently awaiting action and (2) a few recent developments on less significant matters.

Right-to-Know ombudsman. The House killed [HB 729](#), establishing the office of Right-to-Know ombudsman and a citizens' Right-to-Know Law commission, two weeks ago. The House had passed the bill once, but it was then sent to the Finance Committee, which recommended killing it, and the House followed that recommendation.

However, the very similar Senate bill, [SB 313](#), remains alive in spirit if not in body. The Senate passed the bill in late March and then laid it on the table, where it remains. As the deadline for the Senate to act on its own bills has passed, [SB 313](#) itself will not go to the House, but we anticipate that the Senate may attach the substance of the bill to [HB 2](#), the budget trailer bill. That means it would likely become a subject of negotiation for the committee of conference on the budget in June.

Housing appeals board. The Senate also passed and then tabled [SB 306](#), establishing a board to hear appeals from local land use board decisions involving housing development. That bill also may end up as an amendment to [HB 2](#) and go to the budget committee of conference.

Plastic bags and straws. Several bills this year were aimed at plastic products, either through state-level regulation or by enabling municipal regulation. At this point, state-level regulation seems to be the preferred route. The House Municipal and County Government Committee has retained [HB 102](#), which would authorize municipalities to adopt ordinances “regulating the distribution of single-use plastics to consumers.” It also retained [HB 559](#), which would allow municipalities to “prohibit the distribution, sale, and purchase of products that contribute to plastic pollution which is harming the New Hampshire environment.”

Meanwhile, the House passed [HB 558](#), which prohibits restaurants, grocery stores, and other food service businesses from providing single-use plastic straws unless a customer explicitly asks for one, and [HB 560](#), which prohibits a store or food service business from providing single-use plastic carry-out bags to customer at the point of sale, subject to some exceptions. Both bills are waiting for hearings in the Senate.

Highways to summer cottages. The Senate has passed [SB 53](#), which would allow a municipality, by vote of its legislative body, to extend the period during which it is exempt from maintaining roads to summer cottages under RSA 231:79. The current period is December 10 to April 10. [SB 53](#) would allow the municipality to begin the period as early as November 15 and end it as late as April 30. The bill had a hearing in the House Municipal and County Government Committee this week. NHMA supports the bill.

Commercial and industrial construction exemption. The Senate has passed [SB 22](#), which amends the local option property tax exemption for new construction of commercial or industrial property under RSA 72:81 (enacted two years ago). The amendment gives municipalities more discretion in adopting and administering the exemption by allowing them to adopt the exemption for less than the entire municipality and to grant the exemption in varying amounts and for varying periods on a case-by-case basis, depending on the extent of the public benefit that a given project would create. The municipality’s legislative body would define what constitutes a public benefit when it adopts the exemption. The bill had a hearing in the House Municipal and County Government Committee last week, and a subcommittee worked on the bill this week. It appears likely to get a favorable committee recommendation.

More freedom for city planning board members. The Senate Election Law and Municipal Affairs Committee held a hearing last week on [HB 370](#), already passed by the House, which would allow city planning members the same freedom to hold other municipal positions that town planning board members have. Under current law, any two members of a town planning board may serve on another town board or commission, except that only one may serve on the governing body, the conservation commission, or another local land use board; and there is no restriction on their holding other municipal positions. In contrast, a city planning board member may not hold *any other municipal office*, except that one member may serve on the governing body, the conservation commission, or another local land use board. [HB 370](#) eliminates the separate and very restrictive treatment for cities. NHMA supports the bill. No one opposed the bill, and we anticipate a favorable recommendation.

HOUSE CALENDAR

TUESDAY, APRIL 23, 2019

ENVIRONMENT AND AGRICULTURE, Room 303, LOB

- 10:00 a.m. **SB 79**, relative to required reporting on waste reduction.
- 11:00 a.m. **SB 163**, relative to permits for operation of solid waste management facilities.
- 1:00 p.m. Public hearing on non-germane amendment #2019-1530h to **SB 77**, relative to costs of care for animals seized in cruelty cases and prohibiting the future ownership of animals in certain animal cruelty cases. The amendment adds to the bill the establishment of a cost of care fund to assist municipalities caring for animals during animal cruelty cases, an exception for breeders of cats and ferrets from being licensed if they do not meet the definition of commercial breeder, and a requirement that all transfers of a dog, cat, or ferret for a fee be accompanied by a health certificate. Copies of the amendment are available in the Sergeant-at-Arms Office, Room 318, State House.

FINANCE, Rooms 210-211, LOB

- 1:00 p.m. **SB 169**, relative to recovery of expenditures from the drinking water and groundwater trust fund

MUNICIPAL AND COUNTY GOVERNMENT, Room 301, LOB

- 10:00 a.m. **SB 286-FN-L**, relative to aggregation of electric customers by municipalities and counties.
- 2:00 p.m. **SB 285-FN**, establishing a coastal resilience and economic development program.

PUBLIC WORKS AND HIGHWAYS, Room 201, LOB

- 10:30 a.m. **SB 39**, relative to the repair of roads not maintained by a municipality.
- 1:00 p.m. **SB 221**, establishing a commission to study highway fund revenue for hybrid and electric vehicles.

TRANSPORTATION, Room 203, LOB

- 11:00 a.m. **SB 238-FN**, relative to the registration of motor vehicles owned by veterans.

WEDNESDAY, APRIL 24, 2019

FINANCE, Rooms 210-211, LOB

- 11:00 a.m. **SB 254-FN-A**, appropriating funds to the department of environmental services for the purpose of funding eligible wastewater projects under the state aid grant program. **NHMA Policy.**

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Rooms 305-307

- 10:00 a.m. Public Hearing on non-germane amendment #2019-1516h to **SB 59-FN**, an act adding post traumatic stress disorder and acute stress disorder to the definition of “injury” for purposes of workers’ compensation and reestablishing the commission to study the incidence of post traumatic stress disorder in first responders. The amendment clarifies workers’ ompensation for firefighters with heart, lung or cancer disease. Copies of the amendment are available in the Sergeant-at-Arms office, Room 318, State House.
- 11:00 a.m. **SB 100**, relative to discrimination in employment based on criminal background checks.
- 1:00 p.m. **SB 146-FN**, relative to eliminating the waiting period before eligibility to receive unemployment benefits.
- 2:00 p.m. **SB 10**, establishing the state minimum hourly rate based on whether an employer offers paid sick days to an employee.

(House Calendar— Continued from Page 8)

SCIENCE, TECHNOLOGY AND ENERGY, Room 304, LOB

2:30 p.m. **SB 159**, relative to net energy metering limits for customer-generators. **NHMA Policy.**

SENATE CALENDAR

TUESDAY, APRIL 23, 2019

ENERGY AND NATURAL RESOURCES, Room 103, SH

9:45 a.m. **HB 326**, relative to the definition of prime wetland.

JUDICIARY, Room 100, SH

9:35 a.m. **HB 481-FN-A-L**, relative to the legalization and regulation of cannabis and making appropriations therefor.

WEDNESDAY, APRIL 24, 2019

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB

10:00 a.m. **HB 345**, relative to certification of devices for the electronic counting of ballots.

10:30 a.m. **HB 479-FN**, relative to eligibility for the low and moderate income homeowners property tax relief.

10:45 a.m. **HB 611-FN**, allowing voters to vote by absentee ballot. **NHMA Policy.**

11:15 a.m. **HB 443**, relative to municipal watering restrictions.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

9:00 a.m. **HB 116-FN**, relative to the job classification of positions in the retirement system.

9:30 a.m. **HB 616-FN**, relative to a cost of living adjustment for retirees in the state retirement system.

THURSDAY, APRIL 25, 2019

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 102, LOB

1:00 p.m. **HB 409**, relative to the maximum optional fee for transportation improvements charged by municipalities when collecting motor vehicle registration fees. **NHMA Policy.**

1:15 p.m. **HB 415**, relative to the official ballot referendum form of town meetings. **NHMA Policy.**

1:45 p.m. **HB 531**, relative to the delivery of absentee ballots cast by elderly or disabled citizens.

TUESDAY, APRIL 30, 2019

TRANSPORTATION, Room 103, LOB

1:15 p.m. **HB 591**, amending the laws governing OHRVs and snowmobiles.

HOUSE FLOOR ACTION

There was no House floor action for the week.

SENATE FLOOR ACTION

Thursday, April 18, 2019

HB 253, relative to criminal records checks in the employee application process. **Re-referred.**

HB 365, relative to net energy metering limits for customer generators. **Passed with Amendment. NHMA Policy.**

HB 406, relative to reporting and investigation of serious injuries and death in the workplace. **Passed.**

HB 475, establishing a shoreland septic system study commission. **Passed.**

| 2019 NHMA UPCOMING EVENTS FOR MEMBERS | |
|---------------------------------------|---|
| May 3 | Regional Right-to-Know Workshop in Dover |
| May 8 | 2019 Local Officials Workshop (All day), Lebanon |
| May 10 | How to Avoid Costly Mistakes! A Wage & Hour Compliance Workshop |
| May 14 | Webinar: Who Not to Hire! |
| May 17 | A Guide to Effective Code Enforcement Workshop |
| May 21 | 2019 Local Officials Workshop (All day), Sugar Hill |
| May 30 | NHMA/NHMLA – Managing Public Rights of Ways Workshop |
| June 8 | (Saturday) 2019 Local Officials Workshop (All day), Concord |

To register for an upcoming event, go to our website: www.nhmunicipal.org and scroll down on the left under CALENDAR OF EVENTS. Click on the green bar *View the Full Calendar* and go to the workshop or webinar you are interested in. For more information, please call NHMA's Workshop registration line: (603) 230-3350.