

# CITY VIEWS

## New NHMA Policy Positions Determined by Membership Meeting Vote

**M**embers of the New Hampshire Municipal Association (NHMA) gathered at the Local Government Center on Wednesday, March 11 to discuss policy issues relative to the 2010/2011 biennial state budget. Among those in attendance were representatives of 10 of the 13 cities, who joined others at the meeting in voting on a variety of policies recommended by NHMA's Municipal Advocacy Committee (MAC). Every NHMA member municipality has one vote on

issues before the membership, and delegates from 68 municipalities participated in the discussion and vote.

It came as no surprise to local officials that the state budget process is shaping up to be a particularly challenging one. The March member meeting was scheduled as a result of discussions held by members at a January membership meeting relative to budget issues. It is unprecedented for NHMA members to hold special meetings to act on legislative policy issues outside of the regular biennial policy process. However, the economic conditions facing the state and the effect they would have on municipal revenues led MAC to believe that discussion specific to state budget and revenue issues should occur prior to key decision points in the state budget deliberation process.

Municipalities have experienced their own reductions in local revenues and increases in costs, making it difficult to maintain current levels of service. What did come as a surprise to local officials was the depth of cuts recommended by the Governor, which would result in the elimination of at least two-thirds of the aid shared by the state with cities and towns. As soon as the Governor's budget was released on February 12, local officials began to advocate for the restoration of state aid amounts. Over time, as more was learned about federal economic stimulus funding, it became clear that the Governor had discretion over "federal fiscal stabilization" money, a part of the stimulus package, and that such money could be used for general education programs, including the funding of educational adequacy. Just a few days before the March membership meeting, the Governor recommended that \$123 million of the fiscal stabilization money be used to fund adequacy aid, thus freeing up state money to fund the meals and rooms tax distribution to cities and towns at

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Keene Mayor Dale Pregent shares views on the proposed change to the motor vehicle permit fee.

NEW HAMPSHIRE  
**CITY VIEWS**  
NEWS FOR NEW HAMPSHIRE  
CITY OFFICIALS

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**LGC Mission:**

The New Hampshire Local Government Center's mission is to provide programs and services that strengthen the quality of its member governments and the ability of their officials and employees to serve the public by being a catalyst for dialogue and action, an advocate on issues, an advisor on problems, a provider of benefits and risk management services, an educator/trainer in skills and a resource for information.



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**NHMA Policy Positions... *continued***

\$117 million. (The House has since approved the Governor's recommendation and funded the meals and rooms tax distribution at \$58.5 million in each year of the biennium.)

Against that state and local fiscal backdrop, representatives from municipalities across the state gathered to voice their concerns and look for areas of consensus on addressing these budget issues. The following policies were adopted by the requisite two-thirds membership vote:

**Meals and Rooms Tax:**

NHMA **supports** sharing any meals and rooms tax revenues with municipalities pursuant to the same method that exists under current statute.

**Legacy and Successions Tax:**

NHMA **supports** taking no position on the re-establishment of this tax.

**Retirement:**

NHMA continues to **oppose** any increases to municipal employer costs.

NHMA continues to **oppose** any increases to the 65 percent municipal employer share for police and fire employees.

NHMA **supports** increasing the employee contribution in an amount that corresponds to any reduction in the state's 35 percent employer share for teachers, police and fire employees.

**Regionalization:**

NHMA **supports** an internal study of the development of mechanisms for shared and cooperative services.

**Motor Vehicle Permit Fee:**

NHMA **supports** eliminating the 3 mil rate from the minimum motor vehicle permit fee beginning with 2005 vehicles.

**Federal Stimulus Revenues:**

NHMA **supports** utilizing federal stimulus funds for shoring up the state budget in order to fully fund revenue sharing and the meals and rooms tax distribution to cities and towns.

NHMA advocacy will be guided by these policies as the legislature continues its deliberations on the state budget. Involvement by local officials will continue to make a huge difference in the process as legislators wrestle with budget cuts and the threat of discontinuing programs and staff in fiscal years 2010 and 2011. The budget will not be finalized until after the House version and the Senate version have been reconciled by a conference committee, which will meet in June, so please stay vigilant!

*Contact Government Affairs staff at 800.852.3358, ext. 384, or e-mail [government-affairs@nhlgc.org](mailto:government-affairs@nhlgc.org).*

## Mayors Discuss Funding Concerns with Governor Lynch

On Monday, March 30, eleven of the state's thirteen mayors met with Governor John Lynch. They discussed the economy, generally, as well as the state budget, local budgets and the American Recovery and Reinvestment Act. Governor Lynch and the mayors emphasized their desire to work together during the current budget process and beyond. Mayor Lozeau of Nashua advocated that, once the stress of the budget season is over, the group meet to discuss policy items that can provide long-term budget relief at both the state and local government levels, such as retirement. The mayors requested and received a commitment to have substantive issue discussions in the fall.

The mayors expressed concern about the loss of revenue sharing and the reduction in the state's share of the employers' retirement contribution. Governor Lynch reported that the State distributes, in the aggregate, more than \$1 billion to cities and towns each year. School districts are included in that calculation and account for the majority of the distribution. The Governor also stated that he had suggested to the leg-

islature that they use \$20 million of the discretionary fiscal stabilization money to restore the bulk of revenue sharing, explaining that of the \$200 million in fiscal stabilization funds that are part of the federal stimulus package, \$40 million is discretionary money, while \$160 million is required to fund specific programs. However, the Governor emphasized that the legislature is looking at competing alternatives for the money and, clearly, the House determined that an alternative use was a higher priority than restoring revenue sharing because it was not funded in the House version of the budget. The mayors also voiced concern about funding on-going programs with one-time stimulus money because the need for funds would still exist two years from now, but the federal money would be gone. The mayors asked if the Governor's office could provide a one-page summary for each city that specifically identifies what moneys will be available to each and whether the money is available through formula or competitive grants. Governor Lynch agreed to provide that information to each mayor and underscored his willingness to continue to work with the Mayors' Alliance.

Prior to meeting with the Governor, mayors and city officials gathered at Concord City Council Chambers to discuss fiscal challenges and issues of concern. New Hampshire Municipal Association General Counsel Maura Carroll answered questions and provided input on various budget issues before the group departed to the State House.



Above: Claremont City Councilor Jeffrey Goff (left) and Laconia Mayor Matthew Lahey (right) listen as Manchester Mayor Frank Guinta outlines the fiscal challenges in his city at a March 30 meeting of the Mayors' Alliance.



Left: Concord Mayor Jim Bouley (second from left) shares budget strains and impact on staffing. Also shown, from left to right, are Franklin Mayor Ken Merrifield, Portsmouth Mayor Tom Ferrini and Dover Mayor Scott Myers.

# Superior Court Holds Proposed Spending Cap Charter Amendment Unauthorized Under New Hampshire Law

*City of Concord v. William M. Gardner, Sec’y of State et als., Merrimack County Superior Court, Case No. 08-406, March 18, 2009*

Several cities have amended their charters to enact “tax” or “spending” caps, which limit the amount by which the city council or board of aldermen may increase appropriations from year to year. These charter amendments vary in their details but typically contain a formula that regulates increases in appropriations with reference to some version of a consumer price index.

Voters in Concord submitted a petition under RSA 49-B, the statute controlling charter procedures, to amend the City of Concord charter to impose a spending cap. The proposal would limit the annual budget to an amount equal to what could be appropriated using the tax rate for the previous fiscal year, adjusted by a factor equal to the change in the National Consumer Price Index—Urban for the previous fiscal year. The restriction could be overridden by a two-thirds vote of the city council. Under RSA 49-B:5-a the municipal clerk submits a proposed charter amendment to the Secretary of State, Attorney General and Commissioner of Revenue Administration for review “to insure that it is consistent with the general laws of this state.” The decision is subject to appeal to the Superior Court. In this case the State agencies determined that the amendment was not unlawful, and the City, pursuant to vote of the city council, appealed, claiming that the amendment was not authorized by RSA 49-B or RSA 49-C, which prescribes the contents of city charters. Petitioners intervened in support of the amendment. (For background on the history of municipal charters and the current process, see LGC’s *Guidebook for New Hampshire Elected City Officials*, 2008 Edition, Chapter Two, p. 13.)

In its analysis, the Court first noted the basic principle of municipal law: municipalities have only such powers as the State grants them. *Girard v. Allentown*, 121 N.H. 268, 270 (1981). The Court then cited recent New Hampshire Supreme Court decisions that have narrowly construed the scope of power that may be exercised through charter amendment:

- *Appeal of Barry*, 143 N.H. 161 (1998) (city’s retirement system not subject to change by charter amendment)

- *Hooksett v. Baines*, 148 N.H. 625 (2002) (charter could not impose term limits on elected officials)
- *Manchester School District v. Manchester*, 150 N.H. 664 (2004) (charter could not make school district a city department)

The Court next turned to RSA 49-C:23, which addresses the city budget process and fiscal control in detail. The statute requires that a charter budgetary process have the following features: (1) dates for submission and final adoption by the legislative body, failing which the budget submitted by the chief administrative officer (manager or mayor) is deemed adopted; (2) at least one public hearing on the annual budget with published notice; (3) procedures for supplemental appropriations, after public hearing, which require a two-thirds vote; (4) periodic financial reports and a process for reducing appropriations as necessary to keep total expenditures within anticipated revenues. RSA 49-C:23 also deals with transfers, audits, bonding of officials, deposit of funds and a fiscal control function administered by a qualified professional.

The Court found that “in adopting RSA 49-C:23 the legislature has created a comprehensive statutory scheme for the budget process,” and “the legislature has not authorized municipalities to regulate the budget process.” The proposed amendment is, therefore, not permitted. The Court also found that the proposed amendment was inconsistent with the role of the city manager by giving the voters unauthorized control over the contents of the original budget.

An appeal to the New Hampshire Supreme Court is anticipated, as New Hampshire cities consider the implications for their existing or proposed spending cap amendments.

*If you have questions regarding this topic, contact LGC Legal Services attorneys at 800.852.3358, ext. 384, or [legalinquiries@nhlgc.org](mailto:legalinquiries@nhlgc.org).*

## Cities Go Green

A special summer issue of *City Views* will highlight energy efficiency projects and initiatives.

# HEALTHCARE

## New Program Offers Prescription Discounts for Your Citizens

The National League of Cities (NLC) has partnered with CVS Caremark® to offer residents of NLC member municipalities a prescription discount card that gives the user an average discount of 20 percent at participating retailers. This benefit can be especially valuable to residents who don't have health insurance, have prescriptions that are not covered by their insurer or who may be enrolled in the Medicare drug program and have prescription costs that fall into the several thousand dollar gap before Medicare picks up all the costs. Program features include:

- No cost to NLC-member municipalities
- No cost to your residents
- No age or income limits
- Customized cards with municipality's name and logo provided at no cost
- Promotional material provided at no cost (available in English and Spanish)
- Eight weeks to set up program from receipt of a completed application form

NLC membership is required, however, NLC offers several "introductory" membership plans featuring one or two year discounts of 15 percent or 35 percent, respectively. Given the nature of the discount program, the NLC dues might be allocated among several different accounts such as General Assistance, Senior and/or Youth Services, Health, etc. The chart below outlines the NLC membership introductory dues schedule.

Is this program worth the price of NLC membership? Consider the cost of your community's NLC dues for two years and assume that *only* 10 percent of your residents use the card and save *only* \$50 per year on their prescriptions (based on \$250 per year drug expenses) ... you do the math! Those savings stay in your residents' pockets for groceries, heating fuel and other necessities. To obtain more information and an NLC membership application, contact Mark Shapiro at [shapiro@nlc.org](mailto:shapiro@nlc.org) or 202.626.3019, or visit [www.nlc.org](http://www.nlc.org).

### NLC INTRODUCTORY DUES SCHEDULE

Population Range	One Year (15% discount)	Two Years (35% discount)
5,001–10,000	\$949	\$1,452
10,001–20,000	\$1,266	\$1,936
20,001–30,000	\$1,582	\$2,419
30,001–40,000	\$2,769	\$4,235
40,001–50,000	\$3,241	\$4,957
80,001–90,000	\$5,692	\$8,706
100,001–125,000	\$7,432	\$11,366



## Nashua Hosts Right to Know Law Session

City and town officials gathered on March 19 at the Nashua City Auditorium for a workshop on New Hampshire's Right to Know Law. Presented by LGC Legal Services Attorney Christine Fillmore, the session outlined the purpose and requirements of the law regarding public meetings, governmental records and electronic communication. Nashua City Clerk Paul Bergeron arranged the event as an educational session for city officials and employees, also inviting other municipalities to take advantage of the opportunity. More than 45 attendees representing 13 towns and cities—including Dover and Keene—gathered for the two-hour session. The event coincided with "Sunshine Week," an open-government awareness initiative spearheaded by the American Society of Newspaper Editors and annually observed during the week of President James Madison's birthday, which is celebrated on March 19. (Visit [www.sunshineweek.com](http://www.sunshineweek.com) for more related information.) LGC Legal Services attorneys welcome the opportunity to present municipal law topics for member communities. To learn more, please call 800.852.3358, ext. 384, or e-mail [legalinquiries@nhlgc.org](mailto:legalinquiries@nhlgc.org).



LGC Legal Services Attorney Christine Fillmore presents a Right to Know Law session at Nashua City Hall.

NEWS FOR NEW HAMPSHIRE CITY OFFICIALS



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