

LEGISLATIVE COMMITTEE MINUTES

HB1268

Bill as Introduced

HB 1268 - AS AMENDED BY THE HOUSE

17Mar2022... 0680h

2022 SESSION

22-2170

10/05

HOUSE BILL **1268**

AN ACT limiting the authority for city council bylaws and ordinances.

SPONSORS: Rep. Harvey-Bolia, Belk. 4; Rep. Abramson, Rock. 37; Rep. Potucek, Rock. 6; Rep. Renzullo, Hills. 37; Rep. Yakubovich, Merr. 24

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill limits the general authority of city councils to make bylaws and ordinances to the abatement of nuisances that interfere with the use or enjoyment of property..

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT limiting the authority for city council bylaws and ordinances.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Powers of City Councils; Bylaws and Ordinances; Limitations Added. Amend RSA 47:17, XV
2 to read as follows:

3 XV. Miscellaneous. Relative to the grade of streets, and the grade and width of sidewalks;
4 to the laying out and regulating public squares and walks, commons, and other public grounds,
5 public lights, and lamps; to trees planted for shade, ornament, convenience, or use, and the fruit of
6 the same; to trespasses committed on public buildings and other public property, and in private
7 yards and gardens; in relation to cemeteries, public burial grounds, the burial of the dead, and the
8 returning and keeping records thereof, and bills of mortality, and the duties of physicians, sextons
9 and others in relation thereto; relative to public wells, cisterns, pumps, conduits, and reservoirs; the
10 places of military parade and rendezvous, and the marching of military companies with music in the
11 streets of the city; relative to precautions against fire; relative to oaths and bonds of city officers, and
12 penalties upon those elected to such offices refusing to serve; and relative to licensing and regulating
13 butchers, petty grocers, or hucksters, peddlers, hawkers, and common victualers; dealers in and
14 keepers of shops for the purchase, sale or barter of junk, old metals or second-hand articles, and
15 pawnbrokers; under such limitations and restrictions as to them shall appear necessary. They may
16 make any other bylaws and regulations [~~which may seem for the well-being of the city~~] *for the*
17 *abatement of nuisances that interfere with the use or enjoyment of property*; but no bylaw or
18 ordinance shall be repugnant to the constitution or laws of the state; and such bylaws and
19 ordinances shall take effect and be in force from the time therein limited without the sanction or
20 confirmation of any other authority whatever.

21 2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

SENATE CALENDAR NOTICE

Election Law and Municipal Affairs

Sen James Gray, Chair
Sen Regina Birdsall, Vice Chair
Sen Ruth Ward, Member
Sen Donna Soucy, Member
Sen Rebecca Perkins Kwoka, Member

Date: April 6, 2022

HEARINGS

Monday

04/11/2022

Election Law and Municipal Affairs

State House 100

1:00 p.m.

1:00 p.m.	HB 1070	relative to the default budget in official ballot jurisdictions.
1:10 p.m.	HB 1082	prohibiting certain state officers from forming political action committees.
1:20 p.m.	HB 1194	relative to the procedure for overriding a local tax cap.
1:30 p.m.	HB 1268	limiting the authority for city council bylaws and ordinances.
1:45 p.m.	HB 1272	limiting the authority of town health officers.
2:00 p.m.	HB 1496-FN	requiring political subdivisions to make voter checklists available in spreadsheet form to any resident.
2:15 p.m.	HB 1393	relative to the adoption of school district budget caps.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1070

Rep. Boehm

HB 1082

Rep. Prudhomme-O'Brien

HB 1194

Rep. Pauer

Rep. Yakubovich

HB 1268

Rep. Harvey-Bolia

Rep. Yakubovich

HB 1272

Rep. Harvey-Bolia

Rep. Renzullo

HB 1496-FN

Rep. Love

HB 1393

Rep. Pauer

Rep. Hobson

Sen. Gannon

Rep. Berezny

Sen. Avard

Rep. Abramson

Rep. Blasek

Rep. Binford

Rep. Ammon

Rep. Post

Rep. Baxter

Rep. Potucek

Rep. Berezny

Rep. Littlefield

Rep. Greene

Rep. Silber

Rep. Silber

Rep. Renzullo

Rep. Post

Rep. Pauer

Rep. Hill

Rep. Andrus

Tricia Melillo 271-3077

James P. Gray
Chairman

Senate Election Law and Municipal Affairs Committee
Tricia Melillo 271-3077

HB 1268, limiting the authority for city council bylaws and ordinances.

Hearing Date: April 11, 2022

Members of the Committee Present: Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

Members of the Committee Absent : None

Bill Analysis: This bill limits the general authority of city councils to make bylaws and ordinances to the abatement of nuisances that interfere with the use or enjoyment of property.

Sponsors:

Rep. Harvey-Bolia
Rep. Renzullo

Rep. Abramson
Rep. Yakubovich

Rep. Potucek

Who supports the bill: 74 people signed up in support of the bill. The full sign in sheet is available upon request.

Who opposes the bill: 14 people signed up opposed to the bill. The full sign in sheet is available upon request.

Summary of testimony presented in support:

Representative Juliette Harvey Bolia

- This bill proposes to make a simple change to a certain section in Chapter 47. about bylaws and it only changes a few words
- The whole clause states “they may make any other bylaws and regulations which may seem for the well-being of the city.”
- This bill strikes out the words “ which may seem for the well-being” which will eliminate the vagueness of this clause and inserts “ for the abatement of nuisances that interfere with the use and enjoyment of property.”
- This change is very much in keeping with the rest of the chapter.
- The whole chapter is all about nuisances and it’s an old RSA that was written and amended into the statute in 1846.
- It was brought to their attention by way of mask mandates but it is about more than that.
- This change cleans up language by making the law specific.
- This will prevent a patchwork of differing bylaws in each city which we saw over the last couple of years.
- There were quite a few differing mandates in each city to do with communicable diseases.
- Some were rescinded and then reapplied and they often weren’t on the city websites.
- A visitor from the outside would have no way of knowing exactly what the mandate is.
- The law allows DHHS and state agencies to take a lead role in communicable disease efforts as they have planned.
- HB 1268 still allows cities to address any local public health issue because it says for the abatement of nuisances and leaves broader issues such as communicable disease and environmental issues to the state.
- Currently in public health they are dealing with many environmental issues such as carbon and nitrogen.
- As the law stands now there is no process for redress.
- The ordinance can pass without a public hearing whatsoever.

- It can be passed by a majority of the city council and that is considered ancient language by legal standards.
- She has been told that the language is so old that it possibly could have constitutionality issues.
- It was also almost never used prior to 2020 because we have other bylaws that address septic issues, etc.
- She asked the committee to please consider that we need specific laws and specific laws are better laws and to please not allow this very broad allowance.
- Senator Perkins Kwoka asked if she could you clarify her testimony that some things could be passed without a public hearing and is she referring to actions of staff such as the health officer.
 - Rep. Harvey Bolia replied that currently a city council can choose to do a public hearing if they wish but it is not in the statute. It only says that they may have a public meeting. It is her understanding that a city council may have a public meeting and pass a bylaw without a specific hearing of the public.
- Senator Ward asked what the impetus for this legislation was.
 - Rep. Harvey Bolia replied that it was brought to their attention by way of the mask mandates. This particular clause is what city councils used to enact mask mandates in their town/city. She wants the committee to understand that it is much more than that because it can be about any communicable disease measure. She does not see anything that would stop a city council from passing a lock down or other measures that have anything to do with public health. Her motivation is to really define it because having vague laws only leaves the possibility for problems down the road because it is not expressly granted.
- Senator Ward commented that she thought trash on your lawn and loud music could be a nuisance on a particular property but it did not occur to her that a mask mandate would be considered as part of that and asked if she could clarify that.
 - Rep. Harvey Bolia replied that the way it is originally written, cities interpreted this phrase that they may make any other bylaws and regulations which may seem for the well-being of the city. Some may think that a mask mandate is for the well-being of the city and that is what they used to pass them. Her argument is that Chapter 47 is all about dead horses, carcasses, garbage and other nuisances like that. She doesn't think that in 1846 they thought that they would have to deal with a communicable disease. She is hoping the committee will see that they really need specific language here or public health can be almost anything. DHHS is not opposing this bill. In a lot of their guidance, they state that they want to take the lead on communicable health which is proper. A unified approach is the best and DHHS has staff that can perform risk analyses which are very important. These laws have health consequences to the individual. She does not see towns performing risk analyses to see if the laws that they pass are actually going to make people's health worse in the long run or have unintended consequences.
- Senator Soucy commented that the city of Manchester has a health department that she believes DHHS would say is probably one of the foremost in the state in terms of dealing with health issues and asked why would the city of Manchester not want to be able to enact laws dealing with health
 - Rep. Harvey Bolia replied that on their website DHHS states that regarding communicable disease and the handling of that effort they would like to take the lead rather than have each city take a lead. Secondly, leaving the statute as broad as to say "which may seem for the well-being of the city" opens the door for each city to enacting different mandates on all sorts of environmental issues as well as health issues. She urged the committee to please put some boundaries on this language.
- Senator Birdsell commented that this is limiting the authority for city council bylaws and ordinances but not just cities have councils, for instance, Derry has a town council and she asked if this would apply to the town council.

- Rep. Harvey Bolia replied that it applies to powers of city councils and she is not sure if it applies to Derry or towns like Derry.
- Senator Birdsell clarified that basically what she is looking to do, because this ordinance was written long ago and the subject is mostly about nuisances, is eliminate this piece of the sentence to keep it from being used by health departments for whatever they want and asked if that is correct.
 - Rep. Harvey Bolia replied yes, it is in keeping with another section that deals with nuisances. In the interest of allowing towns or cities to make laws about communicable disease we should have a coordinated approach. DHHS should come on board and give a statewide approach.
- Senator Gray commented that if they are looking at an enjoyment of a property it can work both ways that one person's enjoyment may limit someone else's enjoyment of their property and asked if she could speak to where there could be conflicting requirements.
 - Rep. Harvey Bolia replied absolutely and those issues come up all the time in towns and in cities. Cities and towns spend a lot of time trying to mitigate the interplay between the noisemaker and the person with the property and elsewhere in Chapter 47 it does address noises and then of course each city has their own noise ordinance and other nuisance ordinances. The language "for use and enjoyment of the property" is something that she got from a nuisance task force that convened in 2014. They did a study about public nuisances to help towns and cities with this very important problem.

Summary of testimony presented in opposition:

Ren Beaudoin

- This bill if passed will have a large impact on the programs that they run and we operate within their city.
- There are a lot of differences in our state based on which municipality you live in.
- The challenges that we face could be different based on where that is geographically.
- The population density is also extremely different in the 221 towns and 13 cities in our state.
- In New Hampshire we can drive to a beach, hike in a mountain, or be in forest in pretty much less than an hour drive, which highlights how unique our state is.
- The original law stating "for the well-being of the of the city" shows that the uniqueness that we have in our state is critical to keeping that control at the local level.
- One example is mold and indoor air quality.
- There are no laws with mold on a federal level, nothing on a state level nothing on a local level.
- A cities ability to create a law dealing with mold at the local level, because of the density of our housing, would be hampered if this bill passes.
- They would have to utilize the well-being of those that we serve to address that issue.
- The ability for them to address those types of complaints that aren't expressly given to them elsewhere under statute would be hampered.
- In this state one size does not fit all and this bill aims to make that so.
- It will put the power at the state level only and take away control at the local level.

Heidi Peek-Kuioulka

- She got the support of her local board of health, mayor and aldermen to oppose this bill.
- One of the biggest problems is "which may seem for the well-being of the city."
- They are in the RSAs all the time in their enforcement capabilities and they know what the limits are.
- To add something else in there that references nuisances doesn't do justice for what they do on a daily basis.

- Their programs are diverse and none of the communities within the state are identical.
- They are a border city so they have unique needs in that way.
- They are the first and only accredited health department within the state.
- There are some requirements that come along with that and they do conduct their own communicable disease investigations within Nashua.
- Manchester does the same and they are the two health departments within the state.
- If local control or decision making is taken away from them they will not be able to deal with the concerns of the citizens as they happen in real time.
- They have due process and do not just arbitrarily make up rules.
- There is a process that allows the public to express their opinions and they work very diligently on that.
- They know that if something happens they can't just send people to the state because the state will send them right back to the local health department.

Natch Greyes – NH Municipal Association

- Senator Birdsell asked if this would apply to town council towns and there is a provision in the town council statutes that essentially says they can do what city councils do so it would affect them.
- There is already a provision in RSA 47:17 about nuisances and it is under roman numeral 14.
- One of their major issues with this bill is that there's already a provision that allows city councils to abate nuisances.
- They are not sure exactly what this language would add.
- Presumably it would limit the authority of city councils in some form regarding the use or enjoyment of property.
- Senator Gray asked a question regarding how do we determine if there are two competing enjoyments and he does not know how they would solve that.
- He pointed out to the committee that 47:17 is the broad authority of what cities can do and it's a very lengthy statute.
- It has a lot of things in it that have been added over time as cities have had to confront all sorts of new issues that have arisen since the mid-1800s.
- Realistically the provision that is being proposed to be changed here isn't frequently used.
- It has been challenged a couple times when cities have put ordinances in place.
- One was for the regulation, of the display of pornographic magazines and the legislature decided that it was appropriate for cities to regulate that.
- The other one was for topless female sunbathers and again the legislature decided that was appropriate to regulate and that is now part of 47:17 as well.
- This provision allows cities to deal with local issues at the local level when issues arise.
- Senator Perkins Kwoka asked if he would say that this statute has been used to deal with new issues that have arisen for city councils in the past few years.
 - Mr. Greyes replied he thinks that is right. Historically it's been used for new issues that they couldn't anticipate. Then the legislature does what the legislature does which is review whether it's an appropriate use or not and makes a decision from there.
- Senator Perkins Kwoka asked if he would agree that in New Hampshire towns and cities may find themselves differently situated from each other or may want to enact different solutions to new issues.
 - Mr. Greyes stated that's exactly right because different situations are going to rise up depending on how close to the border you are, what border you are on, what your local attractions are, whether that's the lake, or the mountains. That is why NH has a broad local authority statute.

TJM

Date Hearing Report completed: April 17, 2022

Speakers

Senate Remote Testify

Election Law and Municipal Affairs Committee Testify List for Bill HB1268 on 2022 Support: 69 Oppose: 10

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Hansen, Lorraine	A Member of the Public	Myself	Oppose
Bolia, Genevieve	A Member of the Public	Myself	Support
Kudlik, Cindy	An Elected Official	Myself	Oppose
Hatcher, Phil	A Member of the Public	Myself	Oppose
almeida, zulmira	A Member of the Public	Myself	Oppose
Pauer, Diane	An Elected Official	Myself	Support
Pouliot, Cheryl	A Member of the Public	Myself	Support
Smith, Julie	A Member of the Public	Myself	Support
Doughty, Patrick	A Member of the Public	Myself	Support
graustein, alan	A Member of the Public	Myself	Support
Brown, Phyllis	A Member of the Public	Myself	Support
Nadcau, Eilecnc	A Member of the Public	Myself	Support
Brown, Stephen	A Member of the Public	Myself	Support
Foss, Tyler	A Member of the Public	Myself	Support
Sweeney, Margaret	A Member of the Public	Myself	Support
Bryan, Anne	A Member of the Public	Myself	Support
Jensen, Jean	A Member of the Public	Myself	Support
Slack, Michelle	A Member of the Public	Myself	Support
Verschueren, James	A Member of the Public	Myself	Oppose
Andrus, Louise	An Elected Official	Myself	Support
Gladders, Barbara	A Member of the Public	Myself	Support
Kantor, Crissy	A Member of the Public	Myself	Support
Mason, Richard	A Member of the Public	Myself	Support
Lozito, Patrick	A Member of the Public	Myself	Support
Lozito, Viola Marie	A Member of the Public	Myself	Support
Freedman, Aubrey	A Member of the Public	Myself	Support
chapman, kevin	A Member of the Public	Myself	Support
Millman, Linda	A Member of the Public	Myself	Support
Moschetto, Grace	A Member of the Public	Myself	Support
Stefanile, Tom	A Member of the Public	Myself	Support
Martin, Katie	A Member of the Public	Myself	Support
Surman, Elizabeth	A Member of the Public	Myself	Support
Marvin, Kurt	A Member of the Public	Myself	Support
Archambault, Luanna	A Member of the Public	Myself	Support
Maillet, Brenda	A Member of the Public	Myself	Support
Maillet, Ivan	A Member of the Public	Myself	Support
Kras, Krzysztof	A Member of the Public	Myself	Support
Guyen, Taci	A Member of the Public	Myself	Support
Aiello-Cunha, Candice	A Member of the Public	Myself	Support
Meszynski, Edwin	A Member of the Public	Myself	Support
Hand, Cathy	A Member of the Public	Myself	Support
Geremia, Peter	A Member of the Public	Myself	Support
Jorgensen, Patricia	A Member of the Public	Myself	Support
Diggins, Margie	A Member of the Public	Myself	Support
Economakis, Melissa	A Member of the Public	Myself	Support
Tetrault, Leslie	A Member of the Public	Myself	Support

Sommese, Cheryl	A Member of the Public	Myself	Support
Hoell, JR	A Member of the Public	Myself & as a founder of RebuildNH	Support
Johnson, Debra	A Member of the Public	Myself	Support
Schreier, Lori	A Member of the Public	Myself	Support
Cumbee, Lydia	A Member of the Public	Myself	Support
DeBourke, Sheana	A Member of the Public	Myself	Support
Leavitt, Deborah	A Member of the Public	Myself	Oppose
Sylvain, Barbara	A Member of the Public	Myself	Support
Richardson, Katherine	A Member of the Public	Myself	Support
Brocius, Susan	A Member of the Public	Myself	Support
Gragg, Debbie	A Member of the Public	Myself	Support
Kriese, Clay	A Member of the Public	Myself	Support
Lawrence, Johanna	A Member of the Public	Myself	Support
Griffin, Amy	A Member of the Public	Myself	Support
Roy, Lucy	A Member of the Public	Myself	Support
Rousseau, Michael	A Member of the Public	Myself	Support
Barry, Liam	A Member of the Public	Myself	Support
QUISUMBING-KING, Cora	A Member of the Public	Myself	Oppose
thompson, julia	A Member of the Public	Myself	Oppose
Murphy, Kevin	A Member of the Public	Myself	Support
Avallon, Jim	A Member of the Public	Myself	Support
Howland, Curtis	A Member of the Public	Myself	Support
SKIDMORE, CLARENCE	A Member of the Public	Myself	Support
Howes, Debrah	A Lobbyist	American Federation of Teachers - NH	Oppose
Vaughan, Nancy	A Lobbyist	American Heart Association	Oppose
Taku, Fumio	A Member of the Public	Myself	Support
Torosian, Peter	An Elected Official	Rockingham County District # 14	Support
Russell, Leslie	A Member of the Public	Myself	Support
LaPointe, Susan	A Member of the Public	Myself	Support
Petrusewicz, Carol	A Member of the Public	Myself	Support
kirsch, walter	A Member of the Public	Myself	Support
Hitchcock, Elizabeth	A Member of the Public	Myself	Support
Cormier, Jennifer	A Member of the Public	Myself	Support

Testimony

*Anna J. Thomas, MPH
Public Health Director*

*Philip J. Alexakos, MPH, REHS
Chief Operations Officer*

*Jaime L. Hoebeke, MPH, MCHES
Chief Strategy Officer*



BOARD OF HEALTH

*Reverend Richard D. Clegg
Stephanie P. Hewitt, MSN, FNP-BC
Robert G. Ross, DDS
Ellen Tourigny, MEd
Tanva A. Tupick, DO*

CITY OF MANCHESTER
Health Department

March 31, 2022

The General Court of New Hampshire
Election Law and Municipal Affairs Committee
SH Room 100
107 North Main Street
Concord, NH 03301

RE: HB1268 - An Act Limiting the Authority of City Council Bylaws and Ordinances

Dear Chairman Gray and Members of the Committee,

The City of Manchester Health Department, along with the Manchester Board of Health, Mayor and Board of Aldermen, provide this written testimony relative to HB 1268, an act limiting the authority of city council bylaws and ordinances.

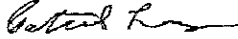
The City of Manchester has concerns with the proposed legislation change to RSA 47:17 XV which would inhibit cities from enacting regulations "which may seem for the well-being of the city." Established in 1839, the City of Manchester Health Department (MHD) is an innovative and proactive local health department grounded in the principles and application of the core public health functions. In 2016, with MHD leadership serving as a backbone for the community, the City of Manchester was one of seven communities selected nationally to receive the Robert Wood Johnson Foundation's "Culture of Health Prize Award". The Department is often a leading advocate for local public health in New Hampshire, and is the chief health strategist within the City. Just like police and fire departments, and our sister local health department in the City of Nashua, we also have a duty to serve and protect the community in the most effective way possible. As outlined in City of Manchester Charter and Ordinance (§91.00 Health Department Established), the Health Department "shall be responsible for routinely and periodically assessing the public health of the community and recommending appropriate policies, ordinances and programs to improve the health of the community, shall investigate and control communicable diseases and shall complete environmental inspections and investigations necessary to protect the public health". However, the proposed change to RSA 47:17 XV would inhibit cities from enacting regulations for the well-being of the city as it relates to public health and safety.

It is well documented that urban areas disproportionately experience complex health challenges at greater volume and intensity compared to rural geographic areas. In addition, the public health system throughout the state of New Hampshire is as diverse as the population it serves. As the largest community north of Boston, the intent and strength of the current law allows cities, like Manchester, and its local health department, to enact policies which address concerns unique to the needs of its constituents and infrastructure. This flexibility provides the local level the tools necessary to protect and improve the health of the population when needed, and as this community sees fit.

1528 Elm Street • Manchester, New Hampshire 03101 • (603) 624-6466
Administrative Fax: (603) 624-6584 ~ Community Health Fax: (603) 665-6894
Environmental Health & School Health Fax: (603) 628-6004
E-mail: health@manchesternh.gov • Website: www.manchesternh.gov/health

We urge this committee to vote HB 1268 as Inexpedient to Legislate to preserve local control which the state of New Hampshire prides so much of itself in. We greatly appreciate the opportunity to comment on this proposed bill. Please feel free to contact us if you have any questions.

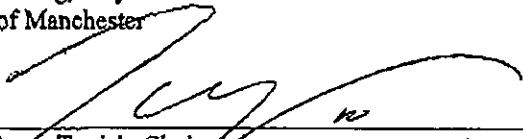
Respectfully,



Pat Long, Chairman Board of Aldermen
City of Manchester



Joyce Craig, Mayor
City of Manchester



Dr. Tanya Tupick, Chairman
City of Manchester Board of Health



Anna Thomas, Public Health Director
City of Manchester Health Department

Tricia Melillo

From: Peter Geremia <p.geremia@icloud.com>
Sent: Monday, April 11, 2022 8:09 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Support for HB 1268 and HB 1272

Hello,

Thank you for reading my email in support of HB 1268 and HB 1272.

Both of these bills are desperately needed to control the city council in NH towns during an emergency. The cities (especially the large ones like my city Portsmouth) have people in charge that were ruled by FEAR and not by FACTS. These people pushed their fear upon the residents of these towns w/o concern or care if they were infringing upon our NH constitution or US constitution.

The Portsmouth MASK MANDATE was one such ordinance. While ALL towns around Portsmouth had no mandate, Portsmouth kept it for as long as they could until basically the residents took them to task and they were forced to remove it. I walk 1 foot into Newington, NH and I could go into restaurants and stores w/o a mask. Back to Portsmouth and masked up everywhere. It was beyond wrong, against our rights and again driven by FEAR and the thought that cloth masks solve all issues. As we know now they do not.

BOTH of this BILLS need to become law because we MUST limit the power of these town councils. We need consistency of policy. Imagine every town council enacting their own traffic laws. Imagine how that would work out?

Please support HB 1268 and HB 1272 and make them law. These are the type of issues that MUST be handled in our legislature and not in local town Councils.

Thanks again for your time. I appreciate the work you do doing what is right for New Hampshire.

Peter Geremia
315 Maplewood Ave.
Portsmouth, NH 03801
603-531-3102



THE CITY OF NASHUA

Division of Public Health and Community Services

"The Gate City"

March 25, 2022

The General Court of New Hampshire
Election Law and Municipal Affairs Committee
SH Room 100
107 North Main St
Concord, NH 03301

RE: HB1268 An act limiting the authority of city council bylaws and ordinances

Dear Chairman Gray and Members of the Committee,

The City of Nashua Division of Public Health and Community Services along with the Nashua Board of Health, Mayor and Aldermen provide this written testimony relative to HB 1268, an act limiting the authority of city council bylaws and ordinances.

The City of Nashua has concerns with the proposed legislation change to RSA 47:17 XV which would inhibit cities from enacting regulations "which may seem for the wellbeing of the city." In 2017, the City of Nashua became the first and only accredited health department in the state of New Hampshire and, as such, is held to the level of national standards in quality performance in programming and service delivery through assessment, assurance, and policy, to protect the wellbeing of the people we serve. Similar to police and fire departments who are accredited, we have a duty to serve and protect the community in the most effective way possible. However, the proposed change to RSA 47:17 XV would inhibit cities from enacting regulations for the wellbeing of the city as it relates to public health and safety.

The state of New Hampshire has large geographic and demographic differences throughout which may require a more tailored approach to how public health and safety concerns are handled statewide. Problems faced in Nashua may look different than those in Portsmouth, Manchester, Keene, or Rochester. The intent of the current law enable cities, like Nashua, to address concerns that may not be seen in other areas of the state. Having the flexibility in the law to create regulations for the wellbeing of our citizens is critical to ensuring their long-term success. The law is not written to cover every problem that exists, but the flexibility inherently built within the current law allows cities to adapt to the continuously and rapidly changing contexts in their social environments.

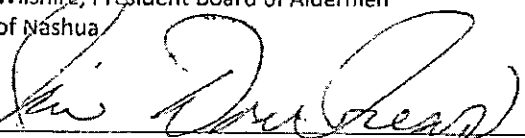
If the proposed legislation is adopted, then cities would lose the right to enact legislation similar to those passed in recent years to combat emerging crises such as the opioid epidemic, hepatitis A outbreak, lead poisoning, PFAS contamination, climate changes and many other emerging threats to the public's health. There is also a potential of existing ordinances becoming unenforceable if their creation was based on the section of RSA 47:17 XV proposed to be removed. The adoption of this legislation would also prohibit cities from enacting new regulations to set standards of safety for hotels/motels, tattoo parlors, massage parlors, rooming houses, or any other public health concern not currently stated in other statutes that impacts the city's population and wellbeing.

We urge this committee to vote HB 1268 as Inexpedient to Legislate as this seemingly innocuous change could have many unintended consequences on the health and wellbeing of New Hampshire citizens. We understand there is no one-size-fits-all solution, however we embrace the intent of the current law in providing the flexibility of cities to be able to address concerns that may uniquely affect their citizens.

We thank you for the opportunity to comment on this proposed bill. Please feel free to contact us if you have any questions.

Respectfully,

Lori Wilshire, President Board of Aldermen
City of Nashua



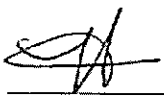
Jim Donchess, Mayor
City of Nashua

Charles T. Cappetta, MD

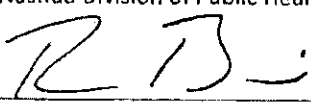
Board of Health
City of Nashua



Bobbie D. Bagley, Director
Nashua Division of Public Health and Community Services



Heidi E. Peek-Kukulka, Health Officer
Nashua Division of Public Health and Community Services



Ren Beaudoin, Deputy Health Officer
Nashua Division of Public Health and Community Services



HB 1268- CITY BYLAWS



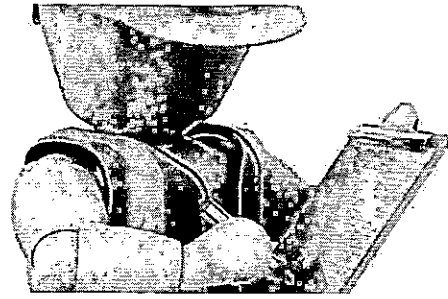
✓ Proposed change:

- **Prevents a “patchwork” of differing bylaws in each city**
- **Allows DHHS/State agencies to lead communicable disease efforts as they have planned**
- **Allows cities to address any local public health issue**
- **Leaves broad/environmental issues up to the state**
- **Is not opposed by DHHS**

Current law:

- **Is vague and allows unchecked power**
- **Has no process for redress in statute**
- **No public hearing requirement**
- **Is considered “ancient” by legal standards (1846)**
- **Was almost never used prior to 2020**
- **Outdated: public health now encompasses environmental issues**

HB 1272- Relative to Health Officers



This bill, as proposed:

- ✓ Passed with broad bipartisan support in Committee and was placed on the consent. Passed on consent
- ✓ Eliminates vague language; an unfair burden to an employee
- ✓ Provides a definitive list of subjects in place of vague language
- ✓ Allows DHHS and state agencies to lead communicable disease efforts

Tricia Melillo

From: MICHAEL O'BRIEN <obie6_7@msn.com>
Sent: Monday, April 11, 2022 8:50 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Please support HB 1268

☆ 1:30 p.m. —**SUPPORT**— **HB 1268**, limiting the authority for city council bylaws and ordinances. This bill changes the enabling statute that allows cities and towns to pass "any" ordinance to only allow cities and towns to pass those bylaws and ordinances that the Legislature has empowered them to make. This law is the way New Hampshire has always operated until the pandemic, when various cities and towns abused their authority and passed several unlawful public health laws; for example, ordinances that forced citizens to wear masks. Citizens should not have to consult a law book when they cross town lines, and this bill would ensure they are protected by uniform laws across the state.

Michael OBRIEN, Sunapee. NH

Tricia Melillo

From: Lori Schreier <schreierlori@aol.com>
Sent: Monday, April 11, 2022 9:29 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Support HB 1272 and HB1268

Please support these two important bills.

SUPPORT— HB 1268, limiting the authority for city council bylaws and ordinances. This bill changes the enabling statute that allows cities and towns to pass "any" ordinance to only allow cities and towns to pass those bylaws and ordinances that the Legislature has empowered them to make. This law is the way New Hampshire has always operated until the pandemic, when various cities and towns abused their authority and passed several unlawful public health laws; for example, ordinances that forced citizens to wear masks. Citizens should not have to consult a law book when they cross town lines, and this bill would ensure they are protected by uniform laws across the state.

SUPPORT— HB 1272, limiting the authority of town health officers. This bill limits local community health officials from imposing unconstitutional or unlawful orders. The House amendment improved the bill drastically and it is now ready for prime time.

Thank you.

Lori Schreier
916 River Road
Westmoreland, NH 03467



American Heart Association.
You're the Cure

April 11, 2022

Re: HB 1268, An act limiting the authority for city council bylaws and ordinances

To: Chairman Gray and members of the Senate Election Law and Municipal Affairs Committee

As Government Relations Director for the American Heart Association, I am providing testimony in opposition to passage of HB 1268, which seeks to limit the authority of city councils to make bylaws and ordinances which are for the well-being of the city under RSA 47:17, XV.

The American Heart Association's mission is to be a relentless force for a world of longer, healthier lives; in part by advocating for public policies to create environments where people can easily make healthy choices, have active lifestyles, access to nutritious foods and beverages, and live tobacco-free. We also advocate for access to affordable quality healthcare, strengthen systems of care for heart attack and stroke, and remove barriers to equitable health and well-being.

We want everyone to benefit from smart and effective policies that promote health, safety and civic engagement. But when states block local governments from passing laws that make sense to communities, it can hurt people most where the need is greatest. If a community, with an identified issue and solution, must appeal to the state legislature to enact policy change for every specific issue, this can be especially harmful for residents by delaying the timeframe for implementation that a local policy change can accomplish quickly.

Local governments are uniquely positioned to meet the needs of the people in their communities. They are more connected to residents and more accountable to them. Most people believe that government plays a role in creating healthier communities, and they trust local government the most to pass laws proven to promote good health and well-being. Residents and local leaders want what's best for their communities – they know how to solve local problems because they see them up close. When local communities come up with a solution for their challenges and work together to put it into practice, the state government should help them to improve it – not strike it down.

The change to a long-existing state law permitting some local authority over regulations and ordinances, as written in the bill, seeks to limit the authority to only nuisances that prevent use and enjoyment of property. The change to statute sought through HB 1268, would negatively impact local authority for addressing other public health and safety issues particular to a community and best solved with local decision-making. I urge you to vote Inexpedient to Legislate on HB 1268.

Thank you for your consideration of these comments.

Submitted By:

Nancy Vaughan

Director of Government Relations, New Hampshire

American Heart Association

2 Wall Street, Manchester NH 03101

nancy.vaughan@heart.org; 603-566-5658

Voting Sheets

**Senate Election Law
& Municipal Affairs Committee
EXECUTIVE SESSION RECORD
2022 Session**

Bill **HB 1268**

Hearing date: 4/11/22

Executive Session date: 4/18/22

Motion of: IS Vote: 4-1

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Perkins-Kwoka	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Gray

Notes: _____

Committee Report

General Court of New Hampshire - Bill Status System

Docket of HB1268

Docket Abbreviations

Bill Title: limiting the authority for city council bylaws and ordinances.*Official Docket of HB1268.:*

Date	Body	Description
11/19/2021	H	Introduced 01/05/2022 and referred to Municipal and County Government
2/15/2022	H	Public Hearing: 02/15/2022 11:30 a.m. LOB301-303
3/4/2022	H	Executive Session: 02/28/2022 09:00 am LOB301-303
3/4/2022	H	Majority Committee Report: Ought to Pass with Amendment # 2022-0680h (Vote 10-9; RC)
3/4/2022	H	Minority Committee Report: Inexpedient to Legislate
3/17/2022	H	Amendment # 2022-0680h : AA VV 03/17/2022 HJ 8
3/17/2022	H	Ought to Pass : MA RC 176-156 03/17/2022 HJ 8
3/22/2022	S	Introduced 03/17/2022 and Referred to Election Law and Municipal Affairs; SJ 6
4/6/2022	S	Hearing : 04/11/2022, Room 100, SH, 01:30 pm; SC 15
4/19/2022	S	Committee Report: Referred to Interim Study, 04/28/2022; SC 17
4/28/2022	S	Refer to Interim Study, RC 21Y-3N , MA; 04/28/2022; SJ 10

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 1268 Senate Committee: ELMA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: (Legislative Aides)

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
 - Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
 - Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: (Legislative Aides)

All amendments considered in committee (including those not adopted):

- amendment # _____ - amendment # _____
- amendment # _____ - amendment # _____

- Executive Session Sheet
- Committee Report

Floor Action Documents: (Clerk's Office)

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____
- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) (Clerk's Office)

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

All available versions of the bill: (Clerk's Office)

as amended by the senate	as amended by the house
final version	

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Tricia Melillo
Committee Aide

6/22/22
Date

Senate Clerk's Office [Signature]