

# Memo

**To:** Mayor & Council  
**From:** Jim Wheeler, City Manager  
**Date:** May 11, 2020  
**Re:** NHMA Recommendation on CARES Act Funding

Attached please find a recommendation from NHMA. Citing RSA 21-P:43, the governing body of a municipality does not technically have to vote to authorize the acceptance and expenditure of emergency management funding. Nonetheless, they do recommend a vote of the City Council:

**“That the City Council vote to accept and expend CARES Act funding for COVID-19 related expenses and that the City Manager is authorized to do all things necessary to procure such funding.”**

We are currently sifting through a variety of funding sources guidance to determine the appropriate method of applying to multiples sources. We do fully expect that Cares Act funding will be one of the sources.



## **New Hampshire Municipal Association**

**April 29, 2020**

### **Acceptance and Expenditure of CARES Act Assistance by Local Government**

New Hampshire law permits municipalities to authorize acceptance and expenditure of funds from the state, federal or other governmental unit, or a private source, which becomes available during the fiscal year. RSA 31:95-b. In most municipalities the town meeting or legislative body (i.e., town or city council, board of aldermen, etc.) have previously granted authority to the select board or governing body to accept and expend such grants. Once authorized, a grant in the amount of \$10,000 or more must be approved by the governing body at a public hearing, with notice of the hearing published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held. For grants of less than \$10,000, these may be accepted by vote of the select board at a public meeting provided notice of the proposed acceptance is noted in the published agenda and recorded in the minutes. Any such accepted grant cannot require the expenditure of other town or village district funds except those funds lawfully appropriated for the same purpose.

Notwithstanding RSA 31:95-b, RSA 21-P:43 would permit acceptance and expenditure of CARES Act grants in any amount, including amounts of \$10,000 or greater, without a public hearing or notice being published in a newspaper 7 days in advance. RSA 21-P:43 states that gifts, grants or loans for emergency management purposes may be accepted by the “executive officer, city council, or board of selectmen.” There is no public hearing requirement. Although this law would seemingly permit a city manager, town manager, or mayor to accept and expend a CARES grant, we think the better practice is to have the city or town council, select board or board of commissioners vote to accept and expend a CARES Act gift or grant. In order for a public body to accept a CARES Act, grant a public meeting would be required, which could be conducted in a virtual manner, and the ordinary notice requirements for public meetings under RSA 91-A should be followed.

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 21-P

#### DEPARTMENT OF SAFETY

#### Homeland Security and Emergency Management

##### Section 21-P:43

**21-P:43 Appropriations and Authority to Accept Services, Gifts, Grants, and Loans.** – Each political subdivision may make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency management. Whenever the federal government or any federal agency or officer offers to the state, or through the state to any of its political subdivisions, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency management the state, acting through the governor, commissioner, or such political subdivision, acting with the consent of the governor and through its executive officer, city council, or board of selectmen, may accept such offer, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. Whenever any person, firm or corporation offers to the state or to any of its political subdivisions services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency management the state, acting through the governor, or such political subdivision, acting through its executive officer, city council, or board of selectmen, may accept such offer, subject to its terms.

**Source.** 2002, 257:7, eff. July 1, 2002.



# TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

## CHAPTER 31 POWERS AND DUTIES OF TOWNS

### Miscellaneous

#### Section 31:95-b

##### **31:95-b Appropriation for Funds Made Available During Year. –**

I. Notwithstanding any other provision of law, any town or village district at an annual meeting may adopt an article authorizing, indefinitely until specific rescission of such authority, the board of selectmen or board of commissioners to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year. The following shall apply:

(a) Such warrant article to be voted on shall read: "Shall the town (or village district) accept the provisions of RSA 31:95-b providing that any town (or village district) at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the selectmen (or commissioners) to apply for, accept and expend, without further action by the town (or village district) meeting, unanticipated money from a state, federal, or other governmental unit or a private source which becomes available during the fiscal year?"

(b) If a majority of voters voting on the question vote in the affirmative, the proposed warrant article shall be in effect in accordance with the terms of the article until such time as the town or village district meeting votes to rescind its vote.

II. Such money shall be used only for legal purposes for which a town or village district may appropriate money.

III. (a) For unanticipated moneys in the amount of \$10,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) The board of selectmen may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$10,000. For unanticipated moneys in an amount less than such amount, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular board of selectmen meeting.

IV. Action to be taken under this section shall:

(a) Not require the expenditure of other town or village district funds except those funds lawfully appropriated for the same purpose; and

(b) Be exempt from all provisions of RSA 32 relative to limitation and expenditure of town or village district moneys.

**Source.** 1979, 42:1. 1991, 25:1. 1993, 176:3, eff. Aug. 8, 1993. 1997, 105:1, eff. Aug. 8, 1997. 2005, 188:2, eff. Aug. 29, 2005. 2014, 237:1, eff. Sept. 19, 2014.