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A Few Legislative Changes for Town Meeting Season

New Hampshire Town and City, November/December, 2018

By Cordell A. Johnston

The legislature this year passed some new laws that may affect town meeting procedures and budgets. The changes are relatively minor and technical, and some of them will not affect every town, but local officials should take a look at them and be sure to comply with any that are applicable.

Corrections to petitioned warrant articles. One change that does affect all towns (or all towns with a town meeting), at least in theory, addresses the selectmen's authority to make technical changes to petitioned warrant articles.

RSA 39:3 already provided that when the selectmen receive a properly submitted petitioned warrant article, they must insert the article in the warrant for the annual meeting "with only such minor textual changes as may be required." Chapter 325 of the 2018 New Hampshire Laws (SB 506) amends that section by adding the statement, "Such corrections shall not in any way change the intended effect of the article as presented in the original language of the petition."

This is not a significant change. Most people already understood the law to mean that the selectmen could make only technical, non-substantive changes: e.g., correcting spelling or grammar, or revising the language to make it clearer, without changing the intent. The new law merely emphasizes that point: selectmen may not make substantive changes to a petitioned article.

The legislature did *not* take the additional step that some supporters of the bill wanted: to prohibit (only in SB 2 towns, for some reason) amendment of petitioned articles by the town meeting. This is a proposal that gets floated every few years and, thankfully, has never gone anywhere. The proponents

of that idea don't seem to appreciate how illogical it is—it is analogous to prohibiting the state legislature from amending a bill once it has been filed. Fortunately, for at least another year, town meetings are safe from that kind of restriction.

But the lesson here is clear: selectmen may not do anything to change the intent of a petitioned article, regardless of how bad an idea it is or how little sense it makes. That is a job for the town meeting.

Budget committee tallies on warrant article. Chapter 246 (HB 1392) amended a law that keeps getting more complicated, RSA 32:5, V-a. As first enacted in 2007, that section allowed a town to vote to require that all votes by a budget committee or governing body relative to “budget items or warrant articles” be recorded votes, and that the numerical tally of any vote be printed in the warrant next to the affected article. In 2009 it was amended to say “budget items or any warrant articles,” and to provide that the governing body (but not the budget committee) may print the tallies in the warrant on its own initiative if the town has not voted to require it. In 2012 it was amended again to say the governing body could print the tallies on its own initiative “unless the legislative body has voted otherwise.” In other words, the legislative body may vote to require the printing of the tallies or to prohibit the printing of the tallies; if it has done neither, the governing body may (or may not) print the tallies on its own initiative.

This year's amendment states that not only may the governing body choose to print the vote tallies in the warrant, a budget committee adopted under RSA 32:14 may also choose to “require that the tallies of its votes be printed next to the affected article.” Note that because the governing body, not the budget committee, controls the warrant, the amendment does not authorize the budget committee to print the vote tallies, but authorizes the committee to require that the tallies be printed—i.e., the budget committee may tell the selectmen to print the budget committee's tallies, and the selectmen must comply. The budget committee may not require that the selectmen's tallies be printed—only its own tallies. Note also that this authority is given only to a budget committee adopted under RSA 32:14, not to an advisory budget committee.

Definition of default budget. Readers who do not live or work in an SB 2 town can skip the remainder of this article. For those who *are* in an SB 2 town, you definitely need to pay attention.

As everyone familiar with the SB 2 form of town meeting knows, the law defines the “default budget” as “the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget.” An amendment to that law now makes clear which “contracts” can be used to adjust the default budget number.

Under that amendment (Chapter 241, HB 1307), “contracts” are limited to “contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for a previous year.” This language is a little imprecise, because the legislative body does not approve contracts—the governing body approves contracts, and the legislative body approves (or disapproves) the funding for the contracts. Further, the legislative body would not have approved an amount for next year in “the operating budget authorized for the previous year.”

However, the intent of this change is clear: an amount included in a contract cannot be used to adjust the default budget unless that amount was previously approved by the legislative body. For example, if the town meeting last year or two years ago approved the cost items in a collective bargaining agreement that was appropriately “Sanbornized,” and if that agreement includes increases

that will apply in the coming year, those increases should be applied as an adjustment to last year's operating budget to determine the default budget for town meeting. This is because those increases were "previously approved . . . by the legislative body."

On the other hand, if the town's budget for trash-hauling services was \$400,000 this year, and the selectmen entered into a contract mid-year to pay \$450,000 for the same services next year, they cannot include the extra \$50,000 in the default budget. They may certainly include the full \$450,000 in the proposed operating budget for next year, but the default budget number must be the same as this year's budget number—\$400,000.

Some officials may not like this, but it really is just a clarification of the existing law, not a change. The definition of "default budget" has always referred to adjustments for "debt service, contracts, and other obligations previously incurred or mandated by law." A sensible reading of that phrase limits contract amounts to those that were previously approved by the town meeting. Otherwise, the selectmen could circumvent the law by entering into all kinds of contracts in late December and including the increased amounts in the default budget.

Discussion of operating and default budgets at deliberative session. The same new law, Chapter 241, amends RSA 40:13, IV, to say that the first session of the annual meeting in an SB 2 town "shall consist of explanation, discussion, and debate of each warrant article, **including warrant articles pertaining to the operating budget and the default budget.**" This amendment seems wholly unnecessary—the statute already required "explanation, discussion, and debate of each warrant article." By definition, that would include the budget article; but just in case anyone did not understand it, this change emphasizes the point.

Default budget must be reduced for eliminated positions. A more significant change to the default budget provisions is in Chapter 313 (SB 342), which states that, in addition to the other adjustments required by the statute, the default budget must now be reduced "by salaries and benefits of positions that have been eliminated in the proposed budget." This unfortunate change conflates the proposed operating budget and the default budget, which have always been entirely separate. And, curiously, while it requires that the default budget be reduced for positions that are proposed to be eliminated, it does not require that the default budget be increased for positions that are proposed to be added.

Nevertheless, this is now the law. Note that the required reductions are only for positions that are eliminated in the proposed budget. The new law states that "eliminated positions" do not include "vacant positions under recruitment or positions redefined in the proposed operating budget." Those positions should still be included in the default budget.

The new law also states, "In calculating the default budget amount, the governing body shall follow the statutory formula which may result in a higher or lower amount than the proposed operating budget." This statement adds nothing new—the statute already required the governing body to "follow the statutory formula," which obviously could result in a higher or lower amount than the proposed operating budget.

Adjustments to default budget must be presented in detail. Chapter 313 also requires that the default budget be "presented for questions and discussion at the first budget hearing." This is not a major change—the existing law required that it be "disclosed" at the budget hearing, where presumably questions and discussion could be entertained. It now must be "presented," which suggests something more than just having it available for review; and in case there was any doubt, questions and discussion must be permitted.

A more significant addition to the law is that the default budget form must now identify the “specific items that constitute a change [from the prior year’s operating budget] by account code, and the reasons for each change.” Some SB 2 towns already do this, but now all of them must.

Of course, the only changes from the prior year’s operating budget would be adjustments for “debt service, contracts, and other obligations previously incurred or mandated by law,” reductions for “one-time expenditures,” and, now, reductions for “positions that have been eliminated.” Thus, for example, if the prior year’s operating budget included an amount in the police budget to buy land for future expansion of the police station, the reduction for that one-time expenditure must be identified as a reduction in the police budget, with an explanation that the land has been purchased. Similarly, if a position in the highway department has been eliminated, that amount must be shown as a reduction in the highway department budget, with an explanation that the position has been eliminated for next year.

If you have questions about these or other new laws, please contact NHMA’s Government Affairs or Legal Services staff.

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