

# Legal Q and A: A New Option for Town Meeting: Adding the Estimated Tax Impact to the Warrant

In recent years, a lot of attention has been directed toward the amount of detail on a ballot or warrant article. The estimated tax impact of proposed appropriations, long seen as information of considerable interest to voters, may now be included under a new amendment to RSA Chapter 32, the Municipal Budget Act. Here are some of the new and continuing questions about this issue.

**Q. Haven't we always been able to include explanatory information on warrant articles?**

**A.** No. Only the actual question and the information specifically required or allowed by statute may be included on the printed warrant or ballot.

The fundamental principle of municipal authority is that towns and cities get all of their authority from the legislature through statutes. *Girard v. Allentown*, 121 N.H. 268 (1981). In other words, when a town or city (or one of its officials) wants to take a certain action, it must find a statute granting or necessarily implying the authority to do it. It is not enough to rely on the fact that no statute **prohibits** that action.

The New Hampshire Attorney General's Office addressed this issue in 2010. The New Hampshire Secretary of State asked whether towns were permitted to include a statement of the estimated tax impact of proposed appropriations on the printed warrant or ballot. The AG's Office opined strongly that the answer was "no" because no statute authorized it.

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As the AG's Office explained, New Hampshire's statutes explicitly describe what must be included in the warrant. For instance, the subject matter of all business to be discussed at an annual or special meeting must appear in the printed warrant or it will have no legal effect. RSA 39:2. Petitioned articles properly submitted must be included on the warrant. RSA 39:3. So-called "special" warrant articles must include the recommendation or non-recommendation of the governing body and official budget committee (if any), as must all articles proposing bond issues over \$100,000 or approving the cost items of collective bargaining agreements. RSA 32:5, V; RSA 40:13, V; RSA 32:3, VI; RSA 32:19. The planning board's approval or non-approval is required on all zoning amendments proposed by the governing body or by petition. RSA 675:3, VIII; RSA 675:4, III.

Some statutes provide an option to include additional information. For example, any town or governing body may vote to require that the numeric tally of the vote of the governing body and budget committee appear on the warrant next to any budget items or appropriations articles. RSA 32:5, V-a; RSA 40:13, V-a.

As the AG's Office stated in its letter of August 2, 2010, "[t]hese statutes are evidence that when the Legislature intends that particular information must or may be printed on the warrant or ballot, ... an explicit provision requiring or authorizing that information is enacted." Therefore, "[a]nything not explicitly authorized is prohibited."

**Q. The estimated tax impact of proposed budget items is something voters should know. Shouldn't we be able to include it?**

**A.** The law has recently changed so you can do just that. Under the new section RSA 32:5, V-b, there is now an optional procedure to put the information on the warrant or ballot. It is important to note that **other** explanatory or additional information which is not part of the question itself and which isn't required or permitted by law is still prohibited.

**Q. How does the new law work?**

**A.** The first step is for the legislative body (town, school, or village district meeting) to vote on a warrant article requiring that "the annual budget and all special warrant articles having a tax impact" include a statement of the estimated tax impact of that appropriation. If that article is approved by majority vote, it would presumably take effect at the next annual or special meeting.

**Q. Who decides whether there is a tax impact and what it is?**

**A.** The governing body (board of selectmen, school board, or board of village district commissioners) determines whether an article has a tax impact. In addition, the determination of the estimated tax impact is subject to the approval of the governing body, even if someone else actually performs the initial calculations. So, for example, if an official budget committee prepares the proposed budget and calculates the estimated tax impact, the estimates are subject to the approval of the board of selectmen.

**Q. What if the estimate is wrong?**

**A.** Well, that may happen. It is important to point out to voters that the estimated tax impact will always be just that: an **estimate**. It will rarely be correct.

The tax impact of an appropriation is based on the tax base of the town, which is the total assessed value of taxable property. This figure will not be known until months after town meeting, when the report due on September 1 is filed with DRA on the MS-1 form. RSA 21-J:34, I; N.H. Admin. Code Rev. 1707.03. This means the estimated tax impact will usually be based on the prior year's assessed values. The real number may, of course, be quite different. Property is appraised as of its condition on April 1, but the total value is not usually available from the assessors until several months later. RSA 76:2. For example, a new outlet mall was recently built in the Town of Merrimack, significantly increasing the taxable value of that one property. In another town, a major business may have burned to the ground, and as of April 1 its assessed value likely fell. Every town also does periodic updates and a complete revaluation of its property at least once every five years, potentially changing the overall assessed value.

In addition, many other decisions made during the year affect valuation. It is impossible to know in March how many tax abatements the governing body will grant that summer for previous tax years, or how much lost taxable value and tax revenue those abatements will cause. Likewise, the number of exemptions and credits applied for and granted won't be known until after the annual meeting. When one taxpayer is granted an abatement, an exemption or a credit, it means that the overall property value base of the town is reduced. Since the total amount that needs to be raised hasn't changed, everyone else will pay a little bit more to make up for that loss.

Voters would also like to know what their **total** tax rate is likely to be as they consider particular appropriations. But none of the components of the tax rate is known at the time of town meeting. It is not set until approximately October.

The rate itself is calculated by taking the total amount of appropriations approved and subtracting all non-tax revenue. This leaves the amount of money to be raised by property taxes, which is divided by the total assessed property value (determined from the MS-1 form). The result is multiplied by 1,000 and produces a rate of \$\_\_ per \$1,000 of assessed value. No one knows the total amount of appropriations approved until the annual meeting has ended. The Department of Revenue Administration (DRA) may adjust this number later by disallowing any appropriations it finds were made illegally. RSA 21-J:35.

The actual revenues from sources other than taxation may be far greater or less than the estimates on the budget forms voted on at the annual meeting. For instance, the revenue municipalities receive from the State (meals and rooms tax, revenue sharing, retirement contributions) has dropped repeatedly in recent years, but the actual amounts are not determined by the State until several months after the annual meeting. Car registrations (typically the second largest source of municipal revenue after taxes) may fluctuate, land use change tax is unpredictable, and state or federal grant money may or may not be awarded. If these amounts fall, the amount to be raised by taxes rises. In a town, the board of selectmen also has the option to apply a portion of the unreserved fund balance to the budget when the tax rate is set in the fall. Doing so increases the amount of non-tax revenue and reduces the amount to be raised by taxes.

**Q. If the estimate is only an educated guess, why would it be useful to voters?**

**A.** The estimated tax impact of a particular warrant article can help to put the proposal in perspective by indicating whether it will add pennies, dimes, or dollars to the tax rate, even if the actual impact varies slightly from the estimate.

**Q. How can we estimate the tax impact?**

**A.** To provide a ballpark estimate of how much a certain item will add to the tax rate, DRA came up with its "three-finger rule." Taking the local assessed property value and covering the last three digits with three fingers provides an estimate of the amount of appropriations that represents \$1.00 on the tax rate. Covering the next digit would represent 10 cents on the tax rate, and covering one more digit would be a penny on the tax rate.

For example, in a municipality with \$1,400,000,000 of assessed property value, \$1.4 million in appropriations would be approximately \$1.00 on the tax rate, \$140,000 would be about 10 cents, and \$14,000 would be about a penny. So, a warrant article to purchase a police cruiser for \$28,000 in this municipality would add about 2 cents to the tax rate. Remember, the amount is different for each municipality depending upon the net local assessed valuation.

*Local officials in NHMA-member municipalities may contact LGC's legal services attorneys for more information on this and other topics of interest Monday through Friday, from 8:30 a.m. to 4:30 p.m., by calling 800.852.3358, ext. 3408. School officials should contact the New Hampshire School Boards Association attorney at 800.272.0653.*

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