

Senate Public and Municipal Affairs Committee

Kelly Flathers 271-3091

SB 19, relative to warrant articles that have been submitted to the department of revenue administration.

Hearing Date: January 18, 2017

Time Opened: 9:00 a.m.

Time Closed: 9:18 a.m.

Members of the Committee Present: Senators Gray, Ward, Birdsell, Kahn and McGilvray

Members of the Committee Absent: None

Bill Analysis: This bill prohibits amendments to petitioned warrant articles that have been submitted to the department of revenue administration.

Sponsors:

Sen. Birdsell

Rep. Weyler

Rep. Green

Rep. Guthrie

Rep. Welch

Who supports the bill: Darryl W. Perry - Liberty Lobby LLC; Rep. Ken Weyler - Rockingham 13

Who opposes the bill: Shaun Mulholland - Town of Allenstown Board of Selectmen; Cordell Johnston - NH Municipal Association

Who is neutral on the bill: Stephan Hamilton - NH DRA

Summary of testimony presented in support:

Senator Regina Birdsell (Prime) – District 19: This bill was requested by a constituent. A group had put in a warrant article petition, got all the required signatures, sent it up to the DRA for the verbiage to go on the warrant article, and when it came back to the deliberative session, the attorney for the superintendent had amended the language to make it ineffective. Once the DRA has sanctioned the wording, it should be given an up and down vote. I knew I would get push back from the Municipal Association, but I talked to Cordell Johnston last night and we're going to put together some new wording. I ask you to not act on it until we get that wording.

Darryl Perry – Liberty Lobby LLC: I am speaking in support of this bill. In Keene for the past several years there have been warrant articles that get petitioned and,

during the deliberative session, are amended to create a nullity. We sued in Keene a couple of years ago and Cheshire Superior Court said it's okay to create a nullity as long as you don't put the word "not" before the verb. There's some ambiguity and this bill deals specifically with warrant articles relating to budgetary issues. HB 495 hopefully makes it out of the house—I believe it's a better bill—but this bill is a step in the right direction. In junior high, you're told that the US system of government is based on majority rule and minority right. The smallest minority is the individual. Just because a plurality of people wants to do something to an individual doesn't mean they should have the right to do so.

Summary of testimony presented in opposition:

Shaun Mulholland – Town of Allenstown Board of Selectmen: I am speaking in opposition to this bill. The language in this bill is too broad. It affects all warrant articles—it doesn't specify whether it involves appropriations or not. Staff in towns and schools use a web-based application that we enter the article into. If this bill passes as written, the staff person seals the fate of that warrant article—nobody can change it. Every year we have petition warrant articles and every year we have some sort of problem with them. We don't change the petition warrant articles—it's up to the voters to do that. The most recent one was to change the Board of Selectmen from 3 to 5. The petitioners made a motion to amend it to fix the wording because they made a mistake. The Senate amends bills that come before committees all the time. The mere administrative action of entering the petition warrant article into the system would tie the hands of the voters.

Sen. McGilvray: You said that when you make a change, it becomes permanent. The bill says that when the Department of Revenue Administration makes a change, it becomes permanent. Can you explain?

Shaun Mulholland: On line 20, it says "no petition warrant article that has been submitted to the department of revenue administration shall be amended". The mere act of submitting it, not whether it has been approved or not, seals the fate of the bill. It's not just money warrant articles, it's all of them.

Cordell Johnston - NH Municipal Association: I am speaking in opposition to the bill. We do have concerns about the bill as drafted, the same concerns as Shawn Mulholland. This has been a problem every year in towns and school districts. Petition warrant articles go in and are then amended to change the intent of the article. However, it becomes difficult when you try to prohibit amending a warrant article. This would be similar to saying that a bill that goes to the floor of the Senate cannot be amended. Sometimes all 24 senators understand and agree that the bill needs to be amended. As Sen. Birdsell indicated, we are working on something that might address the problem.

Neutral Information Presented:

Stephan Hamilton – NH DRA: I am taking a neutral stance on this bill. I have a unique role within the state government to facilitate property tax issues within the state and interact with the municipalities that are trying to manage a process of helping their voters vote on all the issues that come before the legislative body in the town. In total, there are about 5,500 warrant articles that go before the voters of this state annually. The DRA does not approve any of those warrant articles; they are constructed at the local level. There is a statutory process for articles, as well as a process for articles by petition. Municipalities provide us with their warrant article language in advance of publishing the warrant so we can provide them insight into flawed language or a process that needs to be followed. We have a role to provide non-binding technical advice to communities. When we do that, our advice is to keep it consistent and uniform. We always advise the community to take the language from the petition warrant article and put it on the warrant exactly as it was petitioned, whether or not the language is flawed. When it gets to the deliberative session, it is just another warrant article under current law and amendments do get made. The voters ultimately make the approval.

Sen. Kahn: In an SB 2 town, a petition warrant article would be going through a deliberative session, correct?

Stephan Hamilton: In SB 2, the traditional town meeting has 2 phases. The first phase is a deliberative session, where every article may be amended. Those amended articles go forward to all voters and it's voted on as a separate action.

Sen. Kahn: In the non-SB 2, a governing body would hear the petition from a citizen and then act upon those petitions as they normally would, correct?

Stephan Hamilton: At a traditional town meeting, citizens come forward with petitions and the town will take it up as an article. It may be amended on the floor or voted up and down as written. The only difference in SB 2 is that the amending and voting phases are separate.

Future Action: Pending

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Date Hearing Report completed: January 19, 2017