

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

SB 52, relative to city charter provisions for tax caps.

Hearing Date: January 28, 2021

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

Members of the Committee Absent : None

Bill Analysis: This bill requires city charter exclusions and ordinances that have the effect of an override of a tax cap, to require a supermajority vote.

Sponsors:

Sen. Avard
Rep. Homola

Sen. Giuda

Rep. Pauer

Who supports the bill: Senator Kevin Avard, Senator Bob Giuda, Rep. Susan Homola, Rep. Tom Lanzara, Rep. Diane Pauer, Bill Ohm, Dan Moriarty, Timothy Twombly, Beth Scaer, Patrick Parks, Michael Dyer, Allison Dyer, Alicia Houston, Doris Hohensee, Deborah Foley, John Foley, Jack Tulley, Paula Uzdانovich, Karen Thoman, Paul Thoman, Daniel Richardson

Who opposes the bill: Rep. Mangipudi, Rep. Jan Schmidt, Rep. Patricia Klee, Rep. Laura Telerski, Cordell Johnston, Brian Hawkins, Phil Hatcher

Summary of testimony presented in support:

Senator Kevin Avard

- This bill was brought to his attention by former alderman, Dan Moriarty.
- His concern, along with many others in Nashua, is out of control spending and up shifting of blame on the state for high property taxes.
- In 1993 there was a spending cap that was voted on by referendum in Nashua.
- Previous Nashua city administrations have abided by the law, only bypassing it with a supermajority vote, through a loophole in the law.
- In 2017, Dan Moriarty and Fred Teeboom, brought a lawsuit that went all the way to the Supreme Court.
- This case found that because of the loophole, the spending cap could not be enforced.
- This bill, using suggestions by the Supreme Court, allows the will of the people and the 1993 spending cap to be enforced.
- It is simple language to fix the loophole for the people of Nashua.
- Senator Perkins Kwoka asked how widely has he been able to inquire with other municipalities that have tax caps to make sure this language is not going to cause any procedural issues with enforcement.
 - Senator Avard replied that this is a spending cap and not a tax cap, which was already voted in by the people in 1993 and they want it enforced. It is brought forth to avoid over spending. When the people speak they want their voices heard.
- Senator Perkins Kwoka asked if there were any other fixes that he had explored so that it does not affect any other spending or tax caps in other communities.
 - Senator Avard replied that this will only enforce spending or tax caps that other communities already have.

SB 52 - AS AMENDED BY THE SENATE

03/18/2021 0710s

2021 SESSION

21-0860
06/10

SENATE BILL

52

AN ACT

relative to municipal charter provisions for tax caps.

SPONSORS:

Sen. Avard, Dist 12; Sen. Giuda, Dist 2; Rep. Pauer, Hills. 26; Rep. Homola, Hills.
27

COMMITTEE:

Election Law and Municipal Affairs

ANALYSIS

This bill requires city charter exclusions and ordinances that have the effect of an override of a tax cap, to require a supermajority vote.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 52 - AS AMENDED BY THE SENATE

03/18/2021 0710s

21-0860
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to municipal charter provisions for tax caps.

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

1 1 Municipal Charters; Separability, Preservation. Amend RSA 49-B:13, II-a to read as follows:

2 II-a. ***Notwithstanding RSA 49-B:1***, all town or city charters which have been adopted,
3 revised, or amended ***before July 5, 2011*** to include a tax or spending cap of any kind and all charter
4 commissions which have been properly established and elected; all elections properly held; and all
5 actions properly taken related to the tax or spending cap in such charters are hereby endorsed,
6 ratified, validated, and legalized and are fully enforceable~~[, without regard to whether such entities
7 or actions were authorized by law at the time they were established or taken].~~

8 2 City Charters; Limitations. Amend RSA 49-C:33, I(d) to read as follows:

9 (d) A limit on the annual spending increases that increase the amount raised by taxes
10 under the city budget adopted pursuant to RSA 49-C:23. Such a tax cap shall provide for an override
11 threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as
12 determined in the charter. A tax cap provision in the city charter may provide for specific exclusions
13 for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or
14 revenue from sources other than local taxes, ***or interest and principal payments on municipal***
15 ***bonded debt, or capital expenditures which shall be by a supermajority vote as determined***
16 ***in the charter. An ordinance or accounting practice that redistributes excludable budget***
17 ***items from within the limits of the capped budget to outside the limits of the capped budget***
18 ***shall be by a supermajority vote as determined in the charter.***

19 3 Optional Forms of Legislative Body. Amend RSA 49-D:3, I(e) to read as follows:

20 (e) Other matters of local concern may be included in a charter including, but not limited
21 to, conflict of interest provisions which shall be at least as strict as those established in the general
22 laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, the adoption and
23 periodic review of an administrative code, a merit personnel system, a purchasing system, and a
24 town investment policy, and the adoption of a tax cap limiting the annual increases in amounts
25 raised by taxes under the town budget. Such tax cap shall include an override threshold on a vote to
26 exceed the limit on annual increases which shall be by a supermajority as determined in the charter.
27 Such tax cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or
28 accounts, capital reserve funds, grants, or revenue from sources other than local taxes, ***or interest***
29 ***and principal payments on municipal bonded debt, or capital expenditures which shall be***
30 ***by a supermajority vote as determined in the charter. An ordinance or accounting practice***
31 ***that redistributes excludable budget items from within the limits of the capped budget to***

SB 52 - AS AMENDED BY THE SENATE

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1 *outside the limits of the capped budget shall be by a supermajority vote as determined in*
2 *the charter.*

3 4 Effective Date. This act shall take effect 60 days after its passage.

Dan Moriarty

- The purpose of SB 52 is to rectify the current inconsistencies within RSA 49-C:33, the statute that sets the framework for cities to establish tax or spending caps.
- These inconsistencies involve two words, override and exclusion.
- To summarize everything, when the Supreme Court reviewed this, they decided that the specific definition of the word override is not the same as exclusion.
 - The Legislature, over several repairs, tried to make that the case, there are laws on the books that are inconsistent with each other.
- Ultimately, because RSA 49-C:33 talks about an override, and an exclusion, which the Supreme Court ruled is not the same, this bill aims to repair that inconsistency.
 - Historically, the Mayor of the City of Nashua and the Board of Aldermen had met the intent of the spending cap as established in its City Charter for several Mayoral administrations.
 - This has been on the books for a long time, people were used to doing things a certain way and it worked.
 - Now, there are growing instances where the Mayor and Board of Aldermen have bypassed the intent of the spending cap via maneuvers that allowed spending in excess of the cap - only requiring a simple majority vote - while still claiming to meet the letter of the spending cap as written in the charter.
 - In SB 52, two main problems are resolved. It responds to the recommendations made by the Supreme Court Justices in 2018, relative to RSA 49-C:33 and clears up the inconsistencies in paragraph D.
 - The spending cap is a single sentence in the City Charter and its over-ride provision is a 2nd sentence located immediately following the cap sentence.
 - The intent of the spending cap put in place by the people of Nashua still exists, but the Mayor and Board of Alderman have found a way around it.
 - The ruling of the Supreme Court nullifies the actions of prior Mayoral administrations, along with the supermajority vote of those Boards of Aldermen, which overrode the spending cap via a clause well understood to be an override provision in compliance with RSA 49-C:33.I(d).
 - Rather, the NH Supreme Court holds that the clause in question is actually an "exclusion" - not an override - and thus does not meet the letter of the law and is therefore unenforceable.
 - The Supreme Court agreed that this needs to be fixed because even though a city might want an override by a supermajority, that is not what the language currently means.
 - SB52 will resolve misinterpretations and prevent manipulations of established spending caps in future budgeting for any city across New Hampshire where the tax-paying residents have spoken in support of reasonable spending and expect their representatives to act within the law.

Timothy Twombly

- In the six years he was a state representative he voted for legislation in favor of spending and tax caps.
- Testimony at that time stated that the new legislation would not affect existing caps and they would remain enforced.
- Recently, the Supreme Court has ruled differently on this matter for Nashua.
- This legislation will resolve the issue of bad or inconsistent wording and closes loopholes in the current law.

Beth Scaer

- She would like them to vote OTP on this bill to protect the spending caps on NH cities and towns.
- Nashua has been struggling with a very spend happy Board of Alderman and Mayor who have very little fiscal restraint.
- Having the spending caps back in place would put a check on them.
- She has neighbors that are struggling to pay their property tax. They are elderly and living on social security.

- People cannot afford to keep paying increases in property tax due to the heavy spending of elected officials.
- With property taxes shooting up, rents are going to be raised even higher and there will be even less affordable housing.
- They are projected to have a 5.5% increase in property taxes.
- The spending cap is critical to the people of Nashua.

Paula Johnson

- She was on the Board of Alderman in 2002 – 2005.
- She helped get the spending caps passed because of outrageous spending in the city of Nashua.
- The people of Nashua overwhelmingly voted for it each time it was on the ballot.
- It is the will of the people that we have the spending caps back.
- She helped to get exclusions clarified.
- New Hampshire and other states will be looking for revenue because of the shut downs due to the pandemic and the people have no more tax revenue to give.
- This is a spending cap not a tax cap and it worked very well before.
- They are trying to avoid runaway spending.
- She is only asking that they fix the language so We the People, can have their rights back and have a spending cap to protect them from higher taxes.

Bill Ohm

- He has lived in Nashua for sixteen years and has benefitted greatly from the spending cap that was in place and honored by the Mayor and Alderman at the time.
- Currently, desperate for more funds, the current elected officials have chosen to use accounting gimmicks to get additional spending passed rather than going to a supermajority.

Amanda Reichert

- She sells real estate across New Hampshire.
- The property taxes that people are having to pay are crippling their budgets.
- As a private citizen she has to budget her finances, and the city should have to do that as well.
- Rising property taxes means that the city has more money to work with and to add increases on top of that is unfair.
- It is making it increasingly impossible for people to continue to afford to live in Nashua.
- In addition, she sees people who are middle class, who are considered low income because they cannot even afford to rent.
- People are having to pay \$2300 just to have a decent place to live.
- Taxes going up is a major contributor to that.

Dan Moriarty - 2nd Testimony

- It is important that they make this readable, but the intent still holds.
- Specifically, with Manchester, the fact that this allows the bonding as an override is fine because there is still an override.
- This does not cause any problems for overrides in other city charters.
- RSA 49:3 is specific to cities so this would not affect town votes at all.

Summary of testimony presented in opposition:

Cordell Johnston – NH Municipal Association

- He spent a lot of time reading the bill and trying to understand the language.
- His main concern is that it is confusing and very hard to understand but also will create some problems.
- The current statute on tax caps in a city charter says that “ a charter may contain a limit on spending increases that increase tax revenue.” “The tax cap must provide for an override by a supermajority of the legislative body.” “It may exclude revenue from dedicated or enterprise funds or other revenues from non-tax sources.”
- In this statute, clearly an override and an exclusion are two separate things.
- You can exclude certain things from the revenue of the tax cap at the same time you have to have a provision that allows an override of the tax cap.
- He understands from prior testimony, that the goal of the bill is to make an override and an exclusion the same thing, but they are not.
- SB 52 states, “ if the charter has an exclusion provision, that requires a supermajority vote, that satisfies that statutory requirement for an override.”
- He does not agree with that and looked at several charters with tax cap provisions.
- Manchester’s tax cap basically states that budgeted tax revenues may not exceed last year’s tax revenues, plus an inflation factor. This may be overridden by a 2/3rds vote of the alderman.
- It also contains an exclusion for enterprise funds and bond payments and states that capital improvements may be excluded by a 2/3rds vote.
- Under SB 52, Manchester would not need an override provision and he does not think that was the intent.
- In paragraph two of the bill the language contradicts itself regarding when an exclusion is enacted and the votes that are needed.
- He would suggest that Committee members talk to their local officials and see how it would affect tax caps.
- Senator Soucy commented that sometimes the IRS may do an audit which then requires the city to change some line items and asked if on line 20, where it talks about accounting practices changing the organization of the budget, would require a supermajority to comply with law.
 - Mr. Johnston replied that is what it seems to say, and he does not see how that can work.

TJM

Date Hearing Report completed: February 5, 2021

Comparing Budget Caps between NH Communities									
	NH Community	Type of Gov't	Effective		Exemption/Exclusion from the Budget Cap*	annual Override**	inflation	Comments	Meets 2011 NH state law?
1	Nashua	city	adopted Nov 1993***	Spending Cap	municipal bonds and capital expenditures with a 2/3 annual vote.	NO	GDP/IPD	2011 NH state law requires an unrestricted override vote.	NO
2	Franklin	city	amended Nov 1998	Tax cap	municipal bonds and capital expenditures with a 2/3 annual vote.	2/3 vote limited to lost revenues	CPI		
3	Laconia	city	adopted Nov 2005	Tax cap	municipal bonds and capital expenditures with a 2/3 annual vote.	2/3 vote	CPI-U	2011 NH state law does not require a supermajority vote for exclusions/exemptions.	
4	Rochester	city	adopted July 2009	Tax cap	municipal bonds and capital expenditures with a 2/3 annual vote.	2/3 vote	CPI-U		
Budget Caps Adopted or Amended after July 5, 2011									
5	Manchester	city	amended Nov 2011	Tax cap	enumerated funds plus capital expenditures with a 2/3 annual vote.	2/3 vote	CPI-U	2011 NH state law does not allow exempting municipal bonds and capital expenditures, sourced from local taxes, from the capped budget.	Deviation from NH 2011 tax cap law has not been challenged in a court of law
6	Somersworth	city	Adopted Nov 2012	Tax cap	municipal bonds and capital expenditures with a 2/3 annual vote.	2/3 vote	CPI-U		
7	Derry	town	amended March 2020	Tax cap	municipal bonds and capital expenditures with a 2/3 annual vote.	2/3 vote	CPI-U		
8	Dover	city	amended Nov 2011	Tax cap	enumerated funds	2/3 vote	CPI-Boston	Fully Compliant	yes

* Exemption/exclusions = Budget items from sources other than local taxes not subject to the cap.

** Override = Supermajority vote to exceed the budget cap

<u>Cities</u>	
<p>RSA 49-C:33(d) "A limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A tax cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes."</p>	
<u>Towns</u>	
<p>RSA 49-D:3.1(e) "..... and the adoption of a tax cap limiting the annual increases in amounts raised by taxes under the town budget. Such tax cap shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. Such tax cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes."</p>	