

HB 1749-FN - AS INTRODUCED

2018 SESSION

18-2544
04/03

HOUSE BILL ***1749-FN***

AN ACT relative to the state's authority to prohibit or regulate firearms and relative to the selectmen's authority to manage town property.

SPONSORS: Rep. Hoell, Merr. 23; Rep. Comeau, Carr. 5; Rep. Itse, Rock. 10; Rep. Sylvia, Belk. 6; Rep. Burt, Hills. 39; Rep. Spillane, Rock. 2; Rep. Notter, Hills. 21; Rep. Baldasaro, Rock. 5; Rep. McConnell, Ches. 12; Rep. Wallace, Rock. 33

COMMITTEE: Municipal and County Government

ANALYSIS

This bill revises the law on the state's authority to prohibit or regulate firearms, firearms components, ammunition, firearms supplies, and knives. The bill also renders the selectmen's authority to manage town property subject to the provision of RSA 159:26.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to the state's authority to prohibit or regulate firearms and relative to the selectmen's authority to manage town property.

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

1 1 Legislative Findings and Purpose. The general court finds that:

2 I. New Hampshire is not a home rule state.

3 II. Municipal ordinances and regulations regarding firearm regulation may differ from
4 municipality to municipality which may place a citizen in danger of inadvertently violating the law.

5 III. A growing number of towns and local boards are violating RSA 159:26.

6 IV. The issue is a growing problem as in the last 6 months, the following events have
7 transpired, all of which violate RSA 159:26:

8 (a) The board of selectmen of the town of Milford has banned target shooting on town
9 land.

10 (b) The city of Lebanon school board is attempting to ban firearms in or on school
11 property and at school events that take place on non-school property.

12 (c) The Lebanon police department has pledged to enforce the illegal gun ban enacted
13 by the Lebanon school board.

14 V. It is in the best interest of the citizens of the state of New Hampshire for the resources of
15 local units of government to be used to enforce current law and not to waste time enforcing
16 decisions that are in clear violation of statutes.

17 VI. Repealing and reenacting RSA 159:26 to clarify the intent and further, to include
18 penalties, will prevent these violations of state law.

19 2 Firearms, Ammunition, and Knives; Authority of the State. RSA 159:26 is repealed and
20 reenacted to read as follows:

21 159:26 Firearms, Ammunition, and Knives; Authority of the State.

22 I. The general court shall have exclusive authority and jurisdiction by statute over the sale,
23 purchase, ownership, use, possession, transportation, licensing or permitting, taxation, or other
24 matters pertaining to firearms, firearms components, ammunition, firearms supplies, and knives in
25 the state. Notwithstanding any other provision of law to the contrary, all delegations of legislative
26 authority shall be by statute and shall explicitly state the extent and limits of the jurisdiction or
27 authority delegated. Except as otherwise specifically provided in statute, no ordinance, regulation,
28 rule, or policy of an agency, political subdivision, committee, or other governmental unit of the
29 state, or agent thereof may prohibit or regulate in any way the sale, purchase, ownership, use,
30 possession, transportation, licensing or permitting, taxation, or other matter pertaining to firearms,

1 firearms components, ammunition, firearms supplies, or knives in the state.

2 II. No public or private entity shall prohibit the sale, use, or possession of firearms,
3 ammunition, or knives on any property owned, in whole or in part, by the state, or an agency,
4 political subdivision, committee, or other governmental unit thereof, unless expressly authorized in
5 statute.

6 III. Upon the effective date of this section, all ordinances, regulations, rules, and policies
7 relating to firearms, firearms components, ammunition, firearms supplies, and knives, which are
8 preempted under paragraphs I or II shall be null and void.

9 IV.(a) Any person, county, agency, municipality, town, or other subdivision of the state, or
10 other entity that violates the legislature's occupation of the whole field of regulation of firearms and
11 ammunition, as provided in paragraph I, by enacting or causing to be enforced any local ordinance
12 or administrative rule or regulation impinging upon such exclusive occupation of the field shall be
13 liable as set forth in this section.

14 (b) If any county, city, town, or other local government violates this section, the
15 superior court shall declare the ordinance, regulation, or rule invalid and issue a permanent
16 injunction against the local government prohibiting it from enforcing such ordinance, regulation, or
17 rule. It shall be no defense that in enacting the ordinance, regulation, or rule the local government
18 was acting in good faith or upon advice of counsel.

19 (c) If the court determines that a violation was made knowingly, the court shall assess a
20 civil fine of up to \$5,000 for each violation against the elected or appointed local government official
21 or officials or administrative agency head under whose jurisdiction the violation or violations
22 occurred.

23 (d) Except as required by applicable law, public funds shall not be used to defend or
24 reimburse the unlawful conduct of any person found to have knowingly violated this section.

25 (e) A knowing violation of any provision of this section by a person acting in an official
26 capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or
27 regulation prohibited under subparagraph (a) or otherwise under color of law shall be cause for
28 termination of employment or contract or removal from office by the governor or other appropriate
29 official.

30 (f) A person or an organization whose membership is adversely affected by any
31 ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused
32 to be enforced in violation of this section may file suit against any county, agency, municipality,
33 district, or other entity in any superior court of this state having jurisdiction over any defendant to
34 the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by
35 the violation. A court shall award the prevailing plaintiff in any such suit:

36 (1) Reasonable attorney's fees and costs in accordance with the laws of this state,
37 including a contingency fee multiplier, as authorized by law; and

38 (2) The actual damages incurred, but not more than \$100,000. Interest on the sums

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1 awarded pursuant to this subparagraph shall accrue at the legal rate from the date on which suit
2 was filed.

3 3 Town Property. Amend RSA 41:11-a, I to read as follows:

4 I. The selectmen shall have authority to manage all real property owned by the town and to
5 regulate its use, unless such management and regulation is delegated to other public officers by
6 vote of the town, or is governed by other statutes, including but not limited to RSA 31:112, RSA 35-
7 B, RSA 36-A:4, ***RSA 159:26***, and RSA 202-A:6.

8 4 Effective Date. This act shall take effect upon its passage.

**HB 1749-FN- FISCAL NOTE
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AN ACT relative to the state's authority to prohibit or regulate firearms and relative to the selectmen's authority to manage town property.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General Fund and other funds <input type="checkbox"/> Education <input checked="" type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Turnpike			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill revises RSA 159:26 relative to the state's exclusive authority to prohibit or regulate firearms, firearms components, ammunition, firearms supplies and knives. It also stipulates the selectmen's authority to regulate the use of town property be subject to RSA 159:26.

The Judicial Branch states RSA 159:26, IV(b) and (f) provide for injunctive relief in superior court and both such actions would be considered complex equity cases. The cost to the Judicial Branch of an average complex equity case in the superior court will be \$740 in FY 2019 and \$746 in FY 2020. The civil fine of up to \$5,000 in proposed RSA 159:26, IV(c) has no enforcement mechanism and the type of proceeding in the superior court most akin to these civil actions for the imposition of a substantial penalty would be a complex civil case. The cost of processing such cases in the superior court will be \$737 in FY 2019, and \$745 in FY 2020. The Branch has no information on how many actions would be filed in superior court or how many appeals may be filed, which would add to the cost. Therefore the fiscal impact is indeterminable. It should be noted that average case cost estimates for FY 2019 and FY 2020

are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.

The Department of Safety indicates this bill may have an indeterminable impact on state, county and local expenditures related to civil penalties and attorney costs to the extent county or local government violates this law or challenges the law in court.

The New Hampshire Municipal Association indicates it is assumed that municipalities will comply with the law, and therefore there should be no impact on municipal revenues and expenditures.

The New Hampshire Association of Counties states this bill should have no impact on counties.

AGENCIES CONTACTED:

Judicial Branch, Department of Safety, New Hampshire Municipal Association, and New Hampshire Association of Counties