

Senate Election Law and Municipal Affairs Committee

Jessica Bourque 271-2104

HB 230-LOCAL, relative to the adoption of public health ordinances by municipalities.

Hearing Date: April 8, 2025

Time Opened: 9:30 a.m.

Time Closed: 10:05 a.m.

Members of the Committee Present: Senators Gray, Lang, Rochefort, Perkins Kwoka and Long

Members of the Committee Absent: None

Bill Analysis: This bill changes when town public health officials may make regulations relating to public health.

Sponsors:

Rep. Harvey-Bolia
Rep. Pauer

Rep. Layon
Rep. Drago

Rep. Tom Mannion
Sen. Innis

Who supports the bill: Rep. Harvey-Bolia, Julie Smith

Who opposes the bill: Wayne Whitford, Margaret Byrnes

Who is neutral on the bill: Sophia Johnson

Summary of testimony presented in support:

Representative Juliet Harvey-Bolia, Prime Sponsor, Belknap-District 3

- The “as introduced” version of this bill is the same as last year’s SB 63, which Governor Sununu vetoed. The House amended the original version, and that is what she is introducing today.
- The bill seeks to limit public health ordinances to “nuisances” and limit the broad power given to public health officers.
- There is no requirement for a public hearing for ordinances; they can be adopted during the course of a regular meeting without notification to the public.
- Communicable diseases are more complicated than simple nuisances like trash for example.
- Brought a handout with several examples of ordinances enacted during the COVID-19 pandemic.

- Having such broad power could potentially be used to gatekeep businesses out of town. For example, a tattoo artist may be required to be a licensed physician.

Senator Gray asked why the House removed the words “and such other regulations relating to public health”.

- Rep. Harvey-Bolia said that the House looked at the original bill, considered the Governor's veto, and decided they would prefer to limit the language to “nuisances”.

Senator Lang asked if she would oppose that language being added back into the bill.

- Rep. Harvey-Bolia said she is willing to work with the committee.

Senator Lang said that sometimes a public threat that isn't necessarily classified as a nuisance may arise, and the town needs to address it. For example, a lawn watering ban may be necessary during a drought. Senator Lang asked how something like that would work given the current language and whether Rep. Harvey-Bolia believes towns should have some flexibility.

- Rep. Harvey-Bolia said she couldn't argue with approaching it from that angle.
- This is a challenge. For example, in New Mexico, the Governor declared that gun control is related to public health.
- Definitions would be helpful, so she included the definition of “nuisance” that the 2010 Public Health Task Force came up with in her handout.

Julie Smith

- Would like to see this expanded to cities in addition to towns.
- Nashua had an issue during the pandemic and denied Ms. Smith's right to free speech.
- New Hampshire is not a home rule state.
- If this bill can quash future opportunities for “mask madness,” she supports it.

Summary of testimony presented in opposition:

Wayne Whitford, NH Association of Health Officers

- NH Health Officers are against this bill.
- These procedures have been in place for 40 years; the courts and towns understand them.
- Passing this bill would impede public health officers.
- There are many local issues that towns may need to address independently. Some examples would be:
 - Septic systems and wells
 - Pollution
 - Lead poisoning
 - Standing water, which could result in a large mosquito population

Senator Rochefort asked what the qualifications are for health officers in NH.

- A town selectboard recommends a candidate to the Department of Health and Human Services for approval.

Senator Gray said he thought the approval process was changed last year.

- Mr. Whitford said he doesn't think it changed.

Senator Rochefort followed up with a statement that, as he understands it, a public health officer's background in public health is not required.

- Mr. Whitford said Senator Rochefort is correct.

Senator Gray asked if Mr. Whitford believes the examples the prime sponsor discussed fall under the statute's purview.

- Mr. Whitford does not think they fall under the statute's purview.

Senator Gray asked how to rein in the health officers who are making decisions not authorized by the statute.

- In his community, any recommendations put forth by a health officer go to the board of health in a public meeting.

Senator Lang asked if there is a process for citizens to repeal an ordinance.

- A petition could be filed, which would go through the same process as implementing the ordinance.

Margaret Byrnes, NH Municipal Association

- The Municipal Association's primary concern is what exactly this bill does in the current form, specifically, the removal of the language "and such other regulations relating to public health". It would need to be clarified as it stands now.
- Understands the primary sponsor's intent to clarify the statute, but she doesn't think this clarifies how they intended.
- The language, as amended, would be inconsistent with other sections of RSA 147.
- The term "nuisances" is not defined in the bill, which is confusing and lacks clarity.
- Believes that RSA 128 allows the Department of Health and Human Services to make appointments of public health officers but doesn't think there is anything other than a background check required.

Senator Rochefort asked if Ms. Byrnes believes health officers should have some public health-related background.

- Ms. Byrnes said there seems to be some logic with that.

Senator Gray addressed her concerns about the removal of the language on line 3. He said Attorney Lehmann asked Senator Gray to add "or similar threats to public

health” to SB 63 last year and asked Ms. Byrnes if adding that language to this bill would address her concerns about the other parts of the statute.

- Adding “or other similar threats to public health” language to last year's bill could mean that it would apply to other things similar to nuisances, which raises the question of what “other things similar to nuisances” are. An argument could be made that “nuisances” in the statute could be anything that covers public health issues, so she doesn’t think either version of the language does anything to clarify the statute.
- If the motivation to amend RSA 147 is related to something specific, like COVID-19, it might provide more clarity to address COVID-19 in other parts of the law.

Senator Gray said that Attorney Lehmann stated that there is a vast body of case law regarding the definition of “nuisance,” so adding that definition to the bill was unnecessary.

- Ms. Byrnes said it is true that there is a vast body of case law regarding the definition of “nuisance” and that is where lawyers and judges would look.

Senator Perkins Kwoka asked if Ms. Byrnes agreed that we shouldn't change the statute because we can't foresee all of the circumstances public health officers might have to face.

- Ms. Byrnes said that is why the language “and such other regulations relating to public health” is in the bill and believes that when the legislature adopted RSA 147, they understood that there would be things local officials could not see coming and planned for that in the statute's language.
- Would like to see the committee ensure that public health officials can respond to unexpected health threats locally instead of at a centralized state level.

Senator Lang asked if she would be okay with adding language requiring public health ordinances to be temporary instead of permanent so that their relevance could be reviewed more frequently.

- If the renewal process remains the same as the adoption of ordinances, she would be comfortable working with the committee.

Neutral Information Presented:

Sophia Johnson, Department of Health and Human Services- Division of Public Health

- A bill passed last year allowing local municipalities to maintain control of the background check of the candidate. The department is still the appointing authority.

Senator Rochefort asked if there have been cases in which the Department of Health and Human Services has denied a candidate due to a lack of qualifications.

- Ms. Johnson said not to her knowledge.

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Date Hearing Report completed: April 11, 2025