



NH Association of Conservation Commissions
54 Portsmouth Street
Concord, NH 03301
(603) 224-7867

Changes to RSA 36-A (conservation commission law)

Important changes to RSA 36-A took effect on January 1st 2009.

In the spring of 2008, The New Hampshire Legislature passed a bill (SB 381) that authorizes towns to contribute conservation funds to projects sponsored by private conservation groups (such as land trusts) without having to hold a legal interest in property. The law resolves a grey area in the interpretation of the RSA that had long divided municipal attorneys. Specifically, the bill adds language to the state statute governing town conservation commissions (RSA 36-A), authorizing them to make contributions from their conservation funds to “qualified organizations,” for acquisitions of property interests (fee or easement) held by the organizations, and/or transaction costs related to these purchases. The bill also adds language to statute declaring town expenditures to such organizations as a public purpose because they protect the state’s natural resources. There is also a section of the law that specifically allows towns to purchase property outside of the town boundaries. Conservation Commissions who wish to have the ability to contribute to land conservation projects **without holding an interest in real estate**, and/or be able to expend funds on land outside of town boundaries need to ask their governing bodies (again, boards of selectmen or aldermen, city or town councils) must pass one or both of these warrant articles at town meeting. Please be aware that this warrant article language is specified in the changes to RSA 36-A. Several municipal attorneys have advised against changing this language; if you are considering this strategy you should consult with an attorney.

If your commission would like to have the ability to support land protection projects by giving money to a qualified organization (such as a land trust) without taking a property interest, your community will need to pass this article:

"Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(b) to authorize the conservation commission to expend funds for contributions to 'qualified organizations' for the purchase of property interests, or facilitating transactions related thereto, where the property interest is to be held by the qualified organization and the town will retain no interest in the property?" This article must be passed by the legislative body (town meeting, town council, city council, mayor and council, mayor and board of aldermen).

Why your municipality may want to take this action:

Purchasing and caring for conservation land has substantial costs in money, time and responsibility. There are times when partnering with another organization such as a land trust may be the most efficient use of your conservation dollars.

Once the article has passed:

Conservation commissions are NOT required to get governing body or town meeting approval before specific expenditures are made. The law requires a public hearing before specific expenditures are made. If you are taking a property interest you will still need to get governing body approval.

If your commission would like the ability to spend money on a project that occurs outside of your municipal boundaries your community will need to pass this article:

"Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(a) to authorize the conservation commission to expend funds to purchase interests in land outside the boundaries of our municipality, subject to the approval of the local governing body?"

This article must be passed by the legislative body (town meeting, town council, city council, mayor and council, mayor and board of aldermen).

Why your municipality may want to take this action:

Important natural resources such as drinking water supplies, aquifers, wildlife corridors, etc. often cross municipal boundaries. Working across municipal boundaries often provides the opportunity for communities to work together protect the whole resource.

Once the article has passed:

Conservation commissions are required to get approval from the governing body (boards of selectmen or aldermen, city or town councils) before expending funds.

Things to remember:

Legislative body votes are only taken once and not for each project.

These articles can be considered at any time. If your commission does not feel that this is the best year to bring this subject forward, you can consider these articles at another time.

Frequently Asked Questions:

Q: Does the CC/Town need to re-adopt the entire Chapter RSA 36-A?

A: No, if you already have a conservation commission you simply include one or both of the warrant articles for consideration by the legislative body (e.g. town meeting).

Q: Our town has traditionally sent money to land trusts without taking a property interest. Our town attorney, Board of Selectmen etc. has never had a problem with this type of expenditure. If we want to continue with this practice do we still need to pass this article?

A: YES!

Q: Can the warrant article be changed?

A: Several attorneys have stated that the word "shall" in RSA 36-A indicates that the warrant article language should not be changed. It is strongly

suggested that you check with your town attorney and/or the Local Government Center before you consider a change to this language. It's also possible for the conservation commission to vote on certain procedures that would be used during the process. For example, you may decide that you will not spend over \$20,000 without gaining Selectmen approval for the project. If this is stated at town meeting it may appease citizen concerns.

Q: Does this only apply to the Conservation Fund and not to other town funds such as an open space bond?

A: This vote is specific to the conservation commission. It's probable that the passage of this warrant article is the only allowable way to give \$ to a project absent of a property interest. So, you should still pass the warrant and probably will have to pass the \$ through the conservation fund.

Q: What about giving money to a project outside of town where the town would not hold an interest?

A: Attorneys have opined that the outside of town bounds warrant is specific to taking a property interest and therefore wouldn't be required if you were to give \$ to a project outside town boundaries but not taking an interest. The safest thing to do, of course, is to pass both articles.

Q: If the conservation commission is doing a project which includes the town taking a property interest and the property is within town boundaries, then the passing or not of the warrant articles doesn't affect these projects, is that correct?

A: Yes

Q: What if the project straddles two towns and some of the value applies to the abutting town. Does the town need to pass the warrant article to be able to contribute \$\$ to a qualified organization even if the town will hold some interest?

A: If the town holds an interest, then the "giving \$ to qualified organizations" warrant would not need to be passed. *However, NHMA recommends the best practice is to pass Optional Powers at town meeting before donating any money to a qualified organization.* If the interest in land is outside of the municipal boundaries then of course you will have to pass the warrant article about buying land outside of town.

Q: Does the Optional Powers warrant language need to be moved into other ordinances in town?

A: The warrant language does not necessarily need to be moved into any other documents. Communities are encouraged to revise any affected policies and procedures documents and circulate them to affected boards or committees. Ideally the town would keep a list of important decisions.

Conservation commissions are encouraged to research every vote that's related to their work and to document these changes.

Q: What are some suggested strategies for supporting the warrant article that allows donations to qualified organizations?

A: If your community has worked with land trusts in the past it's a good idea to mention successful projects.

- If your community has not done this kind of project in the past, bring up the fact that many towns and cities have successfully done funded conservation projects with land trusts.
- Many NH conservation commissions have used this as a fiscally responsible tool to do their work. This legislation simply clarifies that it IS permissible for conservation commissions to direct their money to support land protection projects.
- It was the intent of the legislature to allow this important work to continue by declaring it as a public purpose!
- Make a case for using partnerships to leverage your modest conservation dollars. It's just makes good sense and is fiscally responsible. More money is generated for cooperative projects!
- A municipality can decide to take a property interest whenever their conservation dollars are spent. This can prove to be expensive in the long run. Commissions must consider if it is appropriate to spend a small sum of money and get perpetual liability in return.
- Reference how this vote will support your Master Plan, Conservation Plan, Hazard Mitigation Plan or documents from other visioning processes.
- Mention projects in town that could have been more successful if you had this authority.

Conservation commissions can hold public meetings, develop flyers, and develop web content to support initiatives to pass these warrant articles, though caution is advised with spending Conservation Fund or any public money on such activities. It's much better to print a flyer that states no public money was used to produce the document.