

SB 438 statutory conflicts

RSA 21-J:34, II – report certifying town appropriations must be filed with DRA within 20 days after the close of the annual or special town meeting. In SB 2 towns, it will have to be filed within 20 days after the deliberative session, because, under SB 438, that is the only “meeting” they have. That will require certifying the appropriations before the town actually makes any appropriations, which it does by voting on the official ballot.

RSA 21-J:34, VI – town’s adopted budget must be filed within 20 days after close of town meeting. Again, in SB 2 towns, it will have to be filed within 20 days after the deliberative session—before the budget is adopted.

RSA 32:2 -- municipal budget law applies to all towns “which adopt their budgets at an annual meeting of their voters.” So it will no longer apply to SB 2 towns, because under SB 438, they adopt their budgets at an “election,” not at a “meeting.” There will be no law governing budgets in SB 2 towns.

RSA 32:5-b & :5-c-- local tax cap -- may be adopted by any town whose legislative body raises and appropriates funds through an annual meeting. So it can’t be adopted by an SB 2 town.

RSA 33-A – disposition of municipal records. Annual meeting minutes must be kept permanently. For “elections,” the only requirement is that ballots, absentee ballot applications, affidavit applications, and lists be kept for 60 days. So anything else related to the second session in an SB 2 town can be discarded.

RSA 35:3 -- towns can appropriate money for a capital reserve fund only at an annual or special meeting. SB 2 towns would have to do this at the deliberative session, because that’s their only “meeting” under SB 438—except that they can’t take a final vote on any articles at the deliberative session, so apparently they can’t establish capital reserve funds.

RSA 35:16 – change of purpose of a capital reserve fund – same problem. Can be done only at an annual meeting, so would have to be done at deliberative session, but since no final votes are taken at deliberative session, it can’t be done.

RSA 37 – town manager statute – can be adopted only at a town meeting. Same problem for SB 2 towns—they can never adopt it.

RSA 38 -- municipal electric, gas, and water utilities – town may establish a plant by vote at an annual or special town meeting. SB 2 towns won’t be able to do it, for same reason as above.

RSA 39:1 -- says “a meeting of every town shall be held annually on the second Tuesday in March.” So, under SB 438, the business session must be held on that day, not any other day. Meanwhile, RSA 39:2-a allows the voters to choose to hold the meeting in two sessions, with the first session being to elect officers and take other actions on the official ballot, and the second for transaction of all other business. But under SB 438, the first session is now an “election,” not a “meeting.” The only event that is considered a “meeting” is the business session—so apparently

that must be held on the second Tuesday in March, contrary to what many towns have done, legally, for years.

Further, in a town that elects its officers by *unofficial* ballot at the business session, as allowed by RSA 669:14, the business session will not meet the definition of a meeting—SB 438 defines a meeting as “the discussion of business of the town and voting on warrant articles only by voice, division, or secret ‘yes-no’ ballot vote.” Because that does not include electing officers by unofficial ballot, that session is no longer considered a meeting. But it is not an election, either. (See comment on RSA 669:1.) So what is it?

RSA 39:2-a allows a town to decide to have two sessions for the town meeting (as almost all towns do). This no longer makes any sense—under SB 438, there can’t be two sessions for the meeting. There is a meeting, and there is an election.

RSA 39:2-b (additional polling places for town meeting) also no longer makes sense—there will be no polling places at the annual meeting.

39:5 – Selectmen must post warrant “at least 14 days before the day of the meeting.” In a town where the business session (the “meeting”) is held sometime after the official ballot voting session (the “election”), this means the warrant may not have to be posted until just a few days before, or even after, the first session.

RSA 40:1 – moderator is elected “at the annual town meeting in every even-numbered year.” Under SB 438, the moderator would now be elected at the deliberative session in an SB 2 town, and at the business session in a non-SB 2 town.

RSA 40:3 -- moderator pro tem may be appointed “if the moderator is absent from any meeting.” But there is no provision for a moderator pro tem if the moderator is absent from the “election.”

RSA 40:4 -- “The moderator shall preside in the town meetings.” Who presides at the town election?

RSA 40:13 (the “SB 2” statute) – Entire statute is rendered nonsensical because it refers repeatedly to the official ballot session as the “second session of the meeting”; under SB 438, that is an election, not a session of the meeting.

41:2-b – Voters may decide “at any annual town meeting under an article in the warrant” to have a 3-year term for the tax collector. SB 2 towns will not be able to do this, for same reason cited above. (See 35:3). Other towns will have to do it at the business session, even though the statute allows it to be done by official ballot.

41:2-c and 2-d – town may choose “at any annual meeting under an article in the warrant” to establish a 3-person board of assessors. SB 2 towns would not be able to do this, for the reason cited above.

41:3 – All town officers shall continue in office until the next annual meeting. Under SB 438, terms of office in an SB 2 town will expire at the deliberative session (the “meeting”), so those offices will be vacant between the deliberative session and the “election.”

41:8 – One selectman is elected “at the annual meeting.” SB 2 towns will have to elect them at the deliberative session, and other towns will elect them at the business session. Apparently this means they can no longer use the official ballot—they will have to be elected on the floor.

41:8-b – Voters may decide at “any annual meeting” to increase the size of the board to 5 members. Same problem as under 35:3 and other statutes—SB 2 towns would have to do it at the deliberative session, because that’s their only “meeting” under SB 438—except that they can’t take a final vote on any articles at the deliberative session.

41:9-a –Town may vote “at any annual or special meeting” to authorize the selectmen to establish fees. Same problem.

41:14-c – Town may vote, “at any duly warned meeting,” to give selectmen authority to buy and sell land and buildings. Same problem.

41:16 – Town clerk elected “at the annual meeting.” Same issue as for selectmen under 41:8

41:16-b – Town may vote “at any annual meeting under an article in the warrant” to have a 3-year term for town clerk. Vote will take place at deliberative session in an SB 2 town?

41:26 – Town treasurer elected “at the annual meeting.” Same issue as for other officers.

41:26-b – Town may vote “at any annual town meeting under an article in the warrant” to have a 3-year term for town treasurer. Same problem.

41:26-e – Town may vote, “under an article in the warrant for the annual town meeting” to have an appointed town treasurer. Same problem.

41:31-b – Town that has not hired an auditor under 21-J:19 shall, “at the annual meeting, under an article in the warrant,” choose one or more auditors.

41:32-a – Town may, “under an article in the warrant for the annual town meeting,” vote to elect a board of auditors.

41:45-a – Town may, “at any annual town meeting under an article in the warrant,” vote to combine the offices of town clerk and tax collector.

41:47 – Town may, “at any annual meeting, under an article in the warrant” vote to have an elected police chief.

RSA 273-A:3, II(b) – Cost items under a collective bargaining agreement are submitted for approval at the “annual meeting.” In an SB 2 town, they will need to be submitted for approval at

the deliberative session. But the town can't take a final vote on any articles at the deliberative session, so it can't approve the cost items in a CBA.

RSA 273-A:12 – If a neutral party's recommendations in a collective bargaining dispute are rejected by the governing body, the recommendations shall be submitted to the legislative body at the next annual meeting. Same problem as above.

RSA 669:1 – All towns shall hold an election annually for the election of town officers on the second Tuesday of March. Under SB 438, an election means only “the choosing of officers by official ballot.” But some towns do not choose officers by official ballot—they choose them by unofficial ballot as allowed under RSA 669:14 and 669:54-60. This does not qualify as an “election” under SB 438. So will those towns now be in violation of the law, because they do not hold an “election” on the second Tuesday in March—or ever? (See also comment on RSA 39:1.)

RSA 670:1 – Election of village district officers is conducted at the “annual meeting.” Under SB 438, they will be required to be elected at the business session, or at the deliberative session in an SB 2 district—same problem as for town officers.

RSA 671:2 – School district officers are elected either at the town meeting or at an annual school district meeting. Same issue as for towns and village districts.

RSA 673:1 – “Local legislative body” may establish a planning board and other land use boards. Because RSA 672:8 defines “local legislative body” as the town *meeting*, land use boards in an SB 2 town would be established by vote at the deliberative session. But RSA 40:13 does not allow any final votes at a deliberative session.

RSA 673:2, II – Local legislative body—*i.e.*, the town *meeting*—may decide that planning board members are to be elected. But the decision of whether and how to elect the planning board is to be done by official ballot—so this will be done by official ballot at the deliberative session in an SB 2 town and by official ballot at the business session in other towns; except that the official ballot is not used at those sessions (and no final votes are allowed at an SB 2 deliberative session).

RSA 673:3 – Local legislative body—*i.e.*, the town *meeting*—decides whether zoning board of adjustment members are to be elected or appointed. Same with building code board of appeals. In an SB 2 town, these decisions would need to be made at the deliberative session, which is not permitted under RSA 40:13.

RSA 673:4 – Historic district commission members are appointed in a manner determined by the legislative body—*i.e.*, town meeting. In an SB 2 town, this would have to happen at the deliberative session, which is not permitted under RSA 40:13.

RSA 673:4-a – Same for heritage commission.

RSA 673:4-b – Same for agricultural commission.

RSA 673:4-c – Same for housing commission.

RSA 673:6 – Same for appointment of alternate members to land use boards.

RSA 673:16 – Land use board expenditures must be within amounts appropriated by the legislative body—*i.e.*, town meeting. In an SB 2 town, the “meeting” is the deliberative session, so no appropriation can be made.

RSA 674:5 – Local legislative body—*i.e.*, town meeting—may authorize the planning board or capital improvements program committee to prepare a capital improvements program. Same problem for SB 2 towns.

RSA 674:16 – Local legislative body—*i.e.*, town meeting—may adopt and amend a zoning ordinance. Same problem for SB 2 towns.

RSA 674:22 – Local legislative body—*i.e.*, town meeting—may adopt a growth management ordinance. Same problem.

RSA 674:23 – Local legislative body—*i.e.*, town meeting—may adopt a moratorium on building permits. Same problem.

RSA 674:40 – Local legislative body—*i.e.*, town meeting—may approve layout of public streets. Same problem.

RSA 674:43 – Local legislative body—*i.e.*, town meeting—may authorize planning board to delegate its site plan review powers to a technical committee. Same problem.

RSA 674:46 – Local legislative body—*i.e.*, town meeting—may establish historic districts. Same problem.

RSA 674:51 – Local legislative body—*i.e.*, town meeting—may adopt additional provisions of state building code and adopt enforcement provisions for building code.

RSA 675:3 – Zoning ordinance, historic district ordinance, or building code is adopted at a meeting. So it must be adopted at the deliberative session in an SB 2 town, and at the business session in other towns. But if the town has adopted the official ballot, it must be on the official ballot, which is not used at the deliberative/business session.

RSA 675:4 – Petitioned zoning amendments may be voted on only at an annual or special meeting. Same issues.