

*2020 - SB2  
Moderators Workshop  
Issues for Experienced  
Moderators*



Sandra McGonagle, Moderator,  
Town of Gilford  
Stephen C. Buckley, Esq.

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**Agenda**



- ▶ Advanced Moderators Presentation - 9:00 am to 10:30 am
- ▶ Break - 10:30 am to 10:45 am
- ▶ Law of Polling Place Management - 10:45 am to 11:45 am
- ▶ Hypotheticals - 11:45 am to 1 pm

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**Role of the Moderator**



- ▶ Should the moderator rule a motion to amend out of order if it improperly changes the subject matter?
- ▶ Should moderator simply caution a voter seeking to amend if the amendment might be of questionable legality?
- ▶ Meeting preparation to ensure each article has an assigned front table person to address questionable amendments.
- ▶ Take a break and ask town attorney (if in attendance) to comment on the legality of the proposed amendment.

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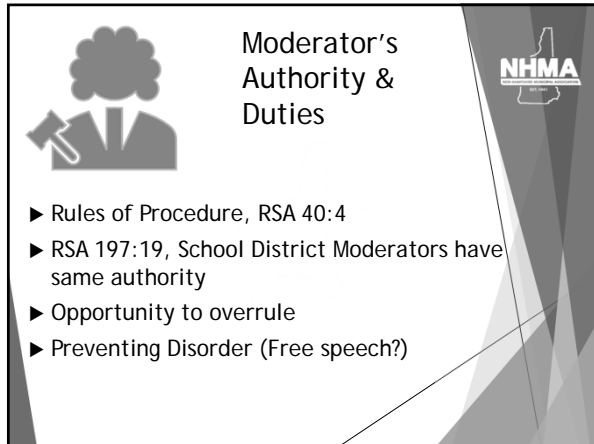
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**Moderator's Authority & Duties**

- ▶ Rules of Procedure, RSA 40:4
- ▶ RSA 197:19, School District Moderators have same authority
- ▶ Opportunity to overrule
- ▶ Preventing Disorder (Free speech?)

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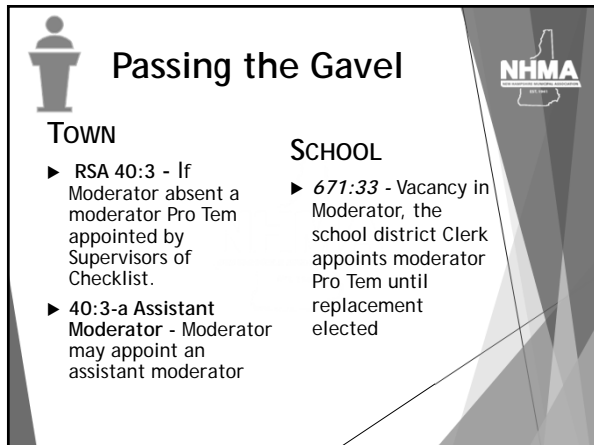
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**Passing the Gavel**

**TOWN**

- ▶ RSA 40:3 - If Moderator absent a moderator Pro Tem appointed by Supervisors of Checklist.
- ▶ 40:3-a Assistant Moderator - Moderator may appoint an assistant moderator

**SCHOOL**

- ▶ 671:33 - Vacancy in Moderator, the school district Clerk appoints moderator Pro Tem until replacement elected

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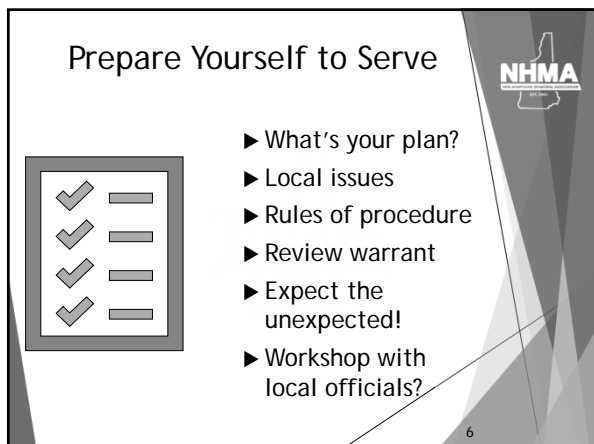
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**Prepare Yourself to Serve**

- ▶ What's your plan?
- ▶ Local issues
- ▶ Rules of procedure
- ▶ Review warrant
- ▶ Expect the unexpected!
- ▶ Workshop with local officials?

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**Official Ballot v. Official Ballot Referendum**



- RSA 39:2-a, I: Allowed towns/districts to adopt **official ballot** - Two sessions:
  - First: Ballot voting (officers, zoning, certain other questions by law)
  - Second: Town Meeting (voting on all other warrant articles)
- RSA 39:2-a, II: New provision (Senate Bill 2) that allowed towns/districts to adopt **official ballot referendum** (a.k.a. "SB 2") via RSA 40:12 - :15
  - Two sessions:
    - First: Deliberative Session
    - Second: Official Ballot Voting Day

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**Meeting at School Property Special Issues:**



- Safe School Zone Gun Act of 1990
- Registered Sex Offenders
- 126-K:7 Use of Tobacco Products



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**Town Meeting Postponement**



- ▶ Senate Bill 104 clarifies the process for a moderator to postpone either the deliberative/business session or the official ballot voting (election) session of a town meeting.
- ▶ The moderator may postpone either session if the National Weather Service has issued a weather event warning and the moderator believes the event may cause the roads to be hazardous or unsafe, or, if an accident, fire, natural disaster, or other emergency renders use of the meeting location unsafe.

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**Town Meeting Postponement - New Definitions**



- ▶ **Business Session (RSA 652:16-e):** The meeting of voters in a traditional town meeting (where the town has not adopted SB 2) where voters discuss, deliberate, and vote on matters *other than the election of officers by official ballot and other questions placed on the official ballot.*
- ▶ **Deliberative Session (RSA 652:16-f):** The first session of a town meeting that has adopted the provisions of SB 2, the Official Ballot Referendum form of meeting, where the voters discuss, debate and amend warrant articles, leaving all final decisions to the official ballot voting day, see below.
- ▶ **Official Ballot Voting Day (RSA 652:16-g):** The day when voters in a town vote using the official ballot to elect officers, or to vote on other matters placed on the official ballot, subject to the requirements pertaining to absentee voting, the polling place and polling hours.

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**Postponement Procedure for a business or deliberative session**



- ▶ The moderator may decide to postpone up to two (2) hours but not more than 48 hours prior to the scheduled session.
- ▶ First, the moderator must consult with certain other town officials before deciding to postpone. Second, provide notice to residents.
- ▶ For an SB 2 deliberative session the postponement shall not delay the deliberative session more than 72 hours.

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**Postponement Procedure for an official ballot voting day**



In the case of postponement of an official ballot voting session, the moderator must notify the secretary of state within two hours of the decision to postpone.

- ▶ The moderator must document the decision to postpone the Official Ballot Voting Day, and, then she must notify the Secretary of State by telephone or electronic mail within two (2) hours of the decision to postpone. It is recommended that the moderator also transmit her statement documenting the decision to postpone to the secretary of state via electronic mail, and then reprint the statement in the annual town report.
- ▶ The moderator must make the decision to postpone an official ballot voting day on the day immediately prior to the election at any time before 6:00 p.m.
- ▶ Any postponed election must be rescheduled to the Tuesday two (2) weeks following the original date of the election.

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**NEW LAWS THAT APPLY**

**DEFAULT BUDGET DEBATE**

- ▶RSA 40:13, IV permits voters to discuss and debate the default budget.
- ▶RSA 40:13, XI(b) still prohibits the voters from amending the default budget at the deliberative session.

**CONTENT OF TOWN MEETING MINUTES**

- ▶ An amendment to RSA 91-A:2, II (HB 1347) will require that minutes of public meetings include the names of the public body members who made or seconded each motion considered at a public meeting.




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**Essential Official Ballot Referendum Requirements:**



- ▶Deliberative session governed by the provisions of RSA 40:4, 40:4-a, 40:4-b, 40:4-f, and 40:6-40:10.
- ▶Deliberative session consists of explanation, discussion, and debate of each warrant article.




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**Manner of introduction of warrant - DRA Issues**



*RSA 39:2:* The subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant.




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### Warrant Article Amendments



- ▶ Warrant articles may be amended at the first session, subject to the following limitations (RSA 40:13, IV):
- ▶ (a) Warrant articles whose wording is prescribed by law shall not be amended.
- ▶ (b) Warrant articles that are amended shall be placed on the official ballot for a final vote on the main motion, as amended.
- ▶ (c) No warrant article shall be amended to eliminate the subject matter of the article. An amendment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph.
- ▶ All warrant articles shall be placed on the official ballot for a final vote, including warrant articles as amended by the first session.

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### Problem Amendments to Avoid



-  Change of Purpose
-  Agents of CRF Not Warned
-  Made "Non-Lapsing" From Floor
-  Not Warned
-  No Recommendations on Special Warrant Articles

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


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### Wording of Articles Prescribed by Law



-  Funds Made Available During the Year 31:95-b, I (a)
-  Special Revenue Funds, 31:95-d, I, (c)
-  Adoption of Town Manager form of government, RSA 37:15
-  Authorizing Tax Anticipation Borrowing, RSA 33:7, V(a)
-  Rescinding action that enlarged Select Board, RSA 41:8-d
-  Rescission of Official Ballot form of government, RSA 40:14, VII

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**NHMA**

**Collective Bargaining**

RSA 32:19 and the Budget Committee  
 RSA 32:19-a-presentation at the annual meeting  
 RSA 273-A:1, IV- "Cost item"  
 RSA 273-A:3, II(b)- Obligation to Bargain

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**Capital Reserve Funds**  
**RSA Chapter 35**

**NHMA**

- Can't change purpose by amendment
- Can't add agent by amendment
- Can't transfer funds by amendment

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**Special Revenue Funds:**  
**RSA 31:95-c**

**NHMA**

- *No agents can be appointed*
- *No transfer to other purpose*
- *Only spent by town meeting*

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**Revolving Funds, RSA 31:95-h**



- ▶ Six purposes: recycling, ambulance, special details, affordable housing, cable access, energy conservation
- ▶ Other purposes, such as recreation under RSA 35-B:2, with different rules of operation
- ▶ "Agent" is the board or body selected by town meeting
- ▶ Special limits on expenditures possible (e.g., limit on single expenditure)
- ▶ "No means no" applies if an appropriation fails

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**Voting**



- ▶ Voice
- ▶ Hands (voting cards)
- ▶ Division (standing vote)
- ▶ Secret Ballot
- ▶ Move the question, point of order

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**The Secret Ballot**



Secret Ballot Voting, RSA 40:4-a, I (a)

- 5 voters
- Written
- Present, prior to vote
- Recount of secret ballot vote RSA 40:4-a, I(b)

Questioning a Vote, RSA 40:4-b

- 7 voters
- Orally or in writing
- Before other business

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Line Item Budget Amendments



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No Means *No!* RSA 32:10, 1(e)



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Conditional Articles

“In the event that Article 7 is defeated, shall the school district raise and appropriate the sum of \$20,000 for the lease of extra classroom space?”



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### Budget Act - 10% Limit



New Hampshire  
Department of  
Revenue Administration

**MS-737**  
Supplemental Schedule

<b>1. Total Recommended by Budget Committee</b>	\$0
<b>Less Exclusions:</b>	
2. Principal Long-Term Bonds & Notes	\$0
3. Interest Long-Term Bonds & Notes	\$0
4. Capital outlays funded from Long-Term Bonds & Notes	\$0
5. Mandatory Assessments	\$0
6. Total Exclusions (Sum of Lines 2 through 5 above)	\$0
<b>7. Amount Recommended, Less Exclusions (Line 1 less Line 6)</b>	\$0
<b>8. 10% of Amount Recommended, Less Exclusions (Line 7 x 10%)</b>	\$0
<b>Collective Bargaining Cost Items:</b>	
9. Recommended Cost Items (Prior to Meeting)	\$0
10. Voted Cost Items (Voted at Meeting)	\$0
11. Amount voted over recommended amount (Difference of Lines 9 and 10)	\$0
<b>12. Bond Overrides (RSA 32:19-a), Amount Voted</b>	\$0
<b>Maximum Allowable Appropriations Voted at Meeting:</b> (Line 7 + Line 8 + Line 11 + Line 12)	\$0

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### Restricting Reconsideration RSA 40:10



*RSA 40: 13, IV: "A vote to restrict reconsideration shall be deemed to prohibit any further action on the restricted article until the second session"*

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### The Right-to-Know Law & Town Meeting



- 91-A applies to town meeting
- Public can attend
- Audio and Video recording allowed

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*Only Registered Voters Have the Right to Speak*



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*Symbolic Speech at Public Meetings*



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*When does a disturbance at a public meeting justify removal and arrest?*



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How does the meeting end?

**RSA 40:13, VI:**  
*"All warrant articles shall be placed on the official ballot"*



*Recess v. Adjournment*



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Post-Meeting Cleanup

- RSA 31:5 Court-based relief
- RSA 31:5-a, disaster relief fund appropriation meeting
- Special Meeting- RSA 31:5-b - procedural meeting defect correction.



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**Hypotheticals**



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