

A Closer Look at the New Laws Governing Town Meeting & Election Postponement

By Stephen C. Buckley, Legal Services Counsel

Recently enacted 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. The moderator must consult, to the extent practical, with certain other town officials before deciding to postpone; and 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.

If the official ballot voting session is postponed, it must be rescheduled to the Tuesday two weeks following the originally scheduled date. In the case of a school district or village district election that is coordinated with town elections in two or more towns, the moderators of the towns involved must consult with each other, and the election may be postponed only if a majority of the moderators vote to postpone. The new law defines the terms “business session,” “deliberative session,” and “official ballot voting day,” and contains special provisions for the use of absentee ballots at postponed elections. Statutes amended or added: RSA 40:4, 40: 13, 44:11, 652:16-e through :16-g, 657:1, 669:1 and :1-a, 670:1-a, 671:22-a.

CITY ELECTION POSTPONEMENT PROVISIONS

Amended RSA 44:11 provides that “In the event of a weather or other emergency as described in RSA 669:1, the election may be postponed and rescheduled in the manner provided in that section, except that all references to the moderator shall be deemed to refer to the city clerk.”

The following is a synopsis of the statutory changes and clarifications on town meeting and election postponement.

FIRST, DETERMINE WHAT KIND OF MEETING/ELECTION IS INVOLVED.

The law now supplies new definitions for *business session*, *deliberative session* and *official ballot voting day*, and each type of meeting has varying procedures for how a moderator decides whether to postpone and then reschedules the postponed meeting or election:

1. **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*.
2. **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.

3. **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.

SB 104 EMPLOYS A TERM FROM THE NATIONAL WEATHER SERVICE FOR A *WEATHER EVENT WARNING*, WHAT DOES THAT MEAN?

According to a glossary published on the National Weather Service website (<https://w1.weather.gov/glossary/index.php?letter=w>), a Weather Event Warning is defined as “A warning is issued when a hazardous weather or hydrologic event is occurring, is imminent, or has a very high probability of occurring. A warning is used for conditions posing a threat to life or property.”

HOW DOES A MODERATOR POSTPONE A BUSINESS SESSION?

A business session may be postponed for two (2) reasons, one dealing with an event that may occur in the future (i.e., a Weather Event Warning) and the other dealing with already occurring, dangerous circumstances arising out of an accident, natural disaster, or other emergency:

First, if the National Weather Service issues a *weather event warning*, where the town is within the geographic region of the weather event warning for the date of the business session, and, the moderator reasonably believes the weather event may cause the roads to be hazardous or unsafe, the moderator may postpone the business session *up to two (2) hours but not more than 48 hours prior to the scheduled business session*.

Second, if an accident, natural disaster, or other emergency has occurred which the moderator reasonably believes may render use of the meeting location unsafe the moderator may, *at any time prior* to the scheduled business meeting reschedule the business meeting.

What steps must a moderator take to postpone a business session for either a *weather event warning*, or, an *unsafe meeting place*?

First, consult with appropriate local officials: Prior to making the decision to postpone, and to the extent it is practical, the moderator shall consult with the governing body, the clerk, and as appropriate for the circumstances the police chief, the fire chief, the road agent, and the local emergency management director.

Second, provide notice to residents: The moderator shall employ whatever means are available to inform citizens of the postponement, and, reschedule the business session to another reasonable date, time and place (as necessary).

HOW DOES A MODERATOR POSTPONE A DELIBERATIVE SESSION?

The same reasons and procedures for postponement of a business session apply for the postponement and rescheduling of a SB 2 deliberative session, *except that the date for the rescheduled deliberative session shall not delay that session by more than seventy-two (72) hours.*

ARE STATUTORY TOWN MEETING DEADLINES AFFECTED BY A POSTPONEMENT?

The date of the originally scheduled meeting continues to be deemed to be the business session or deliberative session for the purposes of satisfying statutory meeting date requirements.

HOW DOES A MODERATOR POSTPONE AN OFFICIAL BALLOT VOTING DAY?

An Official Ballot Voting Day may be postponed for two (2) reasons; for a Weather Event Warning, or dangerous circumstances arising out of an accident, fire, natural disaster, or other emergency:

First, if the National Weather Service issues a *weather event warning*, where the town is within the geographic region of the weather event warning for the date of the official ballot voting day, and, the moderator reasonably believes the weather event may cause the roads to be hazardous or unsafe, the moderator may postpone the official ballot voting day.

Second, if an accident, fire, natural disaster, or other emergency has occurred which the moderator reasonably believes may render use of the election location unsafe, the moderator may postpone the official ballot voting day.

WHAT STEPS MUST A MODERATOR TAKE TO POSTPONE AN OFFICIAL BALLOT VOTING DAY FOR EITHER A WEATHER EVENT WARNING, OR, AN UNSAFE MEETING PLACE?

First, consult with appropriate local officials: Prior to making the decision to postpone, and to the extent it is practical, the moderator shall consult with the governing body, the clerk, and as appropriate for the circumstances the police chief, the fire chief, the road agent, and the local emergency management director.

Second, document the decision to postpone and notify the Secretary of State: 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.

WHAT DATE IS THE OFFICIAL BALLOT VOTING DAY RESCHEDULED TO?

Any postponed election must be rescheduled to the Tuesday two (2) weeks following the original date of the election. In addition, all other applicable statutory provisions associated with elections under RSA Chapter 669 are for extended for the same 2 weeks.

SUPERVISORS OF THE CHECKLIST MEETINGS.

The supervisors of the checklist shall not be required to meet again until the postponed town election day.

NOTICE TO VOTERS.

The moderator and the governing body shall employ all reasonable means to provide voters with notice of the postponement, the date on which the postponed election shall be conducted, and information on obtaining absentee ballots for those voters who qualify to vote by absentee ballot at the postponed election. To the extent practical given the circumstances of the postponement, notice shall be posted at the location of the scheduled election, at the municipal offices, and on the website of each town, school district, and village district whose election is postponed.

PROCEDURES FOR HANDLING ABSENTEE BALLOTS

- All ballots prepared for the original date of the election shall be used for the postponed election.
- A notice explaining the deadline for returning an absentee ballot shall be issued to voters who request and are sent an absentee ballot during the period between the original date and the postponed date of the election.
- All absentee ballots submitted to be counted on the date of the original election, all absentee ballots submitted for the original date of the election which arrive

after that date but before 5:00 p.m. on the date of the postponed election, and all absentee ballots submitted to be counted at the postponed election shall be submitted to the moderator for processing in accordance with RSA 659.

- To the extent practicable, the town clerk may decide to be at the location of the originally scheduled election to receive applications for absentee ballots, to provide voters the opportunity to complete absentee ballots, and to receive returned ballots during what would have been normal polling hours. The town clerk may designate a deputy clerk or assistant to provide this service, provided the individual has taken an oath of office and has been trained in the requirements for using an absentee ballot and the procedures for issuing and receiving absentee ballots.
- The absentee ballot of a voter who qualified to vote by absentee ballot because he or she expected to be absent or unable to appear at the polls on the original date of the election and who submitted an absentee ballot which otherwise satisfies the requirements for voting by absentee ballot, shall be counted even if the voter is present in the town or able to appear at the polls on the date of the rescheduled election.
- All absentee ballots shall be processed as provided for by RSA 659.

PROCEDURE FOR MULTI-JURISDICTION OFFICIAL BALLOT DAY POSTPONEMENT.

For Town Elections: The moderators of the towns involved, after consultation with respective town officials, shall communicate with each other to reach a consensus on the proposed postponement. If a consensus cannot be reached, the election shall be postponed if a majority of the moderators vote to postpone. In such instances, one of the moderators shall be selected to document the communications and notify the secretary of state. When a ballot to be used at an election which has been postponed contains questions that are to be voted on simultaneously by more than one town, such as those relating to village, school, or water districts, the postponement of an election shall apply to all towns voting on that issue at the election.

For School District Elections: In the case of a school district that comprises one or more preexisting districts and holds its elections in conjunction with the town elections in the component towns, in the event of a weather or other emergency the town moderators in each town shall attempt to reach consensus on whether to postpone. In the absence of a consensus, the election shall be postponed if a majority of the moderators vote to postpone.

For Village District Elections: In the case of a village district that includes voters from 2 or more towns and holds its elections in conjunction with town elections, in the event of a weather or other emergency as described in RSA 669:1, V, the town moderators in each town shall, as described in RSA 669:1, coordinate to reschedule the town and village district elections as provided in that section.

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