



TO: GOVERNOR CHRISTOPHER T. SUNUNU

FROM: THE NEW HAMPSHIRE MUNICIPAL ASSOCIATION BOARD OF DIRECTORS

RE: RELIEF FROM STATUTORY REQUIREMENTS IN LIGHT OF COVID-19

DATE: MARCH 20, 2020

Municipalities are facing unprecedented challenges in operating local government and complying with standards for combatting the spread of COVID-19, including social distancing and avoiding large group gatherings. Many laws that govern the operations of local government require in-person meetings and interactions that now create a risk to local government officials and employees, as well as New Hampshire citizens. Legislative action to provide municipalities relief and flexibility in compliance with laws is not currently available, as the New Hampshire State Legislature has suspended all legislative activity for the next several weeks due to the COVID-19 pandemic.

Therefore, on March 20, 2020, the New Hampshire Municipal Association Board of Directors met and identified, after taking into account the comments, requests, and issues from the Association's members, the most current and pressing issues municipalities are facing in light of the COVID-19 pandemic. The New Hampshire Municipal Association Board of Directors asks that Governor Sununu, through his Emergency Declaration powers, provide the following relief to New Hampshire local government and its citizens:

I. Public Meetings and The Right-to-Know Law, RSA Chapter 91-A

A. Public Meetings. Notwithstanding RSA Chapter 91-A, local rules, or municipal charters, public bodies under RSA Chapter 91-A will be permitted to conduct public meetings exclusively through telephonic, video, or other remote means of communication, without providing a physical location for the meeting, as long as the following conditions are met: (1) providing notice to the public of the means of communication (e.g., telephone, video, electronic, etc.) by which the meeting will be held; (2) ensuring that members of the public can call-in or otherwise hear the meeting, so that the meeting is "open to the public"; and (3) ensuring that members of the body can speak and be heard by other members of the body, and members of the public can hear all participants in the meeting; and (4) taking all votes via roll call.

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B. Signing Documents. Governing bodies are permitted to use RSA 41:29, I(a) to noncontemporaneously sign manifests outside a public meeting. This permission shall be extended to all public bodies, allowing them to sign manifests and all other documents necessary for the continued operations of local government. Notwithstanding the provisions of RSA 294-E:18, all local governmental agencies are hereby permitted to send and accept electronic signatures consistent with RSA Chapter 294-E and the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.

C. Required Meetings. Public bodies will be relieved from any statutory, local, or charter provisions requiring them to meet on a particular schedule or a certain number of times within a given time frame, including, but not limited to, the requirement that planning boards hold one regular meeting in each month, pursuant to RSA 673:10, II.

II. Town Meetings & Elections

A. Postponement. Pursuant to RSA 40:4, RSA 44:11, and RSA 669:1, all town meetings and municipal elections may be postponed due to “an emergency that the moderator reasonably believes may render use of the election location unsafe on the date of the election,” as long as the governor’s state of emergency declaration remains in place, or as long as the moderator, in consultation with other municipal officials as required by law, determines that there remains an emergency that renders the election location unsafe. Municipalities that have already postponed their meetings or elections as of this date due to the COVID-19 pandemic will be permitted to further postpone if the above circumstances are met. The requirement for postponing no sooner than 48 hours in advance shall be waived, allowing municipalities to postpone sooner.

1. Required Hearings. Municipalities that postpone their town meetings or elections shall not be required to repeat statutory hearings, including hearings on bonds over \$100,000, pursuant to RSA 33:8-a.

2. Swearing in of Officers. Local government officials will be authorized to swear in officers within 30 days of being elected, regardless of whether the business session of the town meeting has been postponed. RSA 42:3 states that officials may be sworn in only after the business session of town meeting. However, RSA 42:6 states that officials must take office within 30 days of being elected (or within 6 days of receiving notice via the town clerk). Given the current COVID-19 situation, and the unique emergency it has created, RSA 42:3 and RSA 42:6 appear to be in conflict as it is unlikely that towns which postponed their business sessions will be able to conduct those within the 30 day timeframe of RSA 42:6.

3. Municipal Budgets and Spending for Postponed Town Meetings. In the event that town meetings are postponed and cannot be held on the rescheduled date, the budget approved for the prior year, excluding any appropriations funded by bonds or notes but including this year’s debt service associated with those bonds or notes, shall be deemed the budget for the current year in order to continue local government operations and meet debt obligations. This includes appropriations funded in last year’s operating budget article, and all special or separate articles

approved by the legislative body other than bond articles, and includes this year's debt service for any bond articles approved last year. The governing body may exercise existing transfer authority provided by RSA 32:10 to adjust last year's line items to meet current budgetary needs. The governing body shall certify this budget to the Department of Revenue Administration for the purpose of setting the 2020 property tax rate pursuant to RSA 21-J:35.

B. Absentee Voting. Absentee voting at municipal elections will be permitted without requiring a reason, as a means of reducing the size of crowds at the polling place and increasing social distancing, while not forcing citizens to choose between their right to vote and their health.

C. Special Town Meeting. In the event that a municipality's budget adoption is delayed due to a postponed meeting or election and/or the municipality is forced to overspend to respond to COVID-19, a special town meeting may be deemed necessary, later in the year, to appropriate additional funds. In these circumstances, the provisions of RSA 31:5 requiring attendance by at least half of the registered voters or superior court approval to hold the special town meeting shall be waived.

In addition, in the case of a town that is deemed to adopt the previous year's budget under paragraph II.A.3 above, a special town meeting may be called later, without attendance by at least half of the registered voters or superior court approval as required by RSA 31:5, for the sole purpose of voting on an appropriation to be funded by a bond or note if the appropriation was included on the warrant for the current year's annual meeting.

D. Emergency Spending. Whether town meeting was postponed or not, if, later in the year, the budget is insufficient to fund additional costs associated with addressing the COVID-19 pandemic, a municipality is authorized to overspend the bottom line of the budget to the extent unrestricted fund balance is available to meet those expenses. The provision of RSA 32:11 regarding permission from the Department of Revenue Administration to overspend the bottom line of the budget or to spend on a purpose for which no appropriation had been made, shall not apply to COVID-19 related costs.

III. Statutory deadlines and other requirements

A. Hearings. Notwithstanding RSA Chapter 91-A, local rules, or municipal charters, hearings on applications, including land use board applications, may be held exclusively through telephonic, video, or other remote means of communication, without providing a physical location for the meeting, as long as the following conditions are met: (1) providing notice to the public of the means of communication (e.g., telephone, video, electronic, etc.) by which the meeting will be held; (2) ensuring that members of the public can call in or otherwise hear the meeting, so that the meeting is "open to the public"; and (3) ensuring that members of the body can speak and be heard by other members of the body, and members of the public can hear all participants in the meeting; and (4) taking all votes via roll call.

B. Deadlines. Municipalities shall be relieved from complying with statutory or local deadlines or deadlines set forth in a municipal charter for taking actions on applications and requests, including but not limited to deadlines for accepting, hearing, and acting on planning board applications under RSA

676:4 and for zoning board of adjustment applications under RSA 676:7, and for responding to public records requests under RSA 91-A:4, IV, and allowing municipal officials to postpone or limit conducting inspections for permits and building code and fire code compliance.

C. Flexibility in Means of Providing Services. Municipalities will be permitted to transition to phone and online services and limited appointment only services to allow for proper social distancing as defined by the Center for Disease Control. This includes, but is not limited to, motor vehicle and other registrations, requests for information under RSA Chapter 91-A, vital records requests and applications, and applications for welfare and other municipal services.