



Basic Information for Town Meeting 2021

Prepared by New Hampshire Municipal Association

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Using Emergency Order #83 to postpone, reschedule and manage annual meetings:

As a prelude to final legislative action adopting the new [SB 2](#), Governor Sununu has issued all of the essential elements of that proposed law as an Emergency Order. A complete copy of Emergency Order #83 (hereinafter EO#83) is found at the end of this guidance. EO#83 provides the following new authority on how to schedule and manage voting at annual meetings:

1. It authorizes the Secretary of State, in consultation with the Attorney General, to authorize alternative polling place arrangements that will modify the requirements spelled out in [RSA 658:9](#). These alternative polling place requirements will presumably decrease the number of voting booths and similar statutory requirements allowing for greater social distancing in polling places.

2. It restores the ability of towns to conduct partial processing of absentee ballots similar to what had been permitted by [HB 1266](#).

3. It permits the governing body (select board, school board or village district commissioners) to postpone the official ballot voting day, or the business meeting or deliberative session. After consulting with the moderator and town clerk, the official ballot voting day may be postponed to the second Tuesday of April, May, June, or July. The governing body may also postpone and reschedule the business meeting or SB 2 deliberative session to one or more dates in 2021. When postponing an SB 2 deliberative session the requirement in RSA 40:4, II(c) that the delay not exceed 72 hours shall not apply, and the requirement in RSA 669:1-a that an election be rescheduled to the Tuesday 2 weeks following the original date shall also not apply.

How does a governing body provide notice that a meeting is being postponed? Promptly after making the decision to postpone a meeting, the governing body must post notice of that decision on the town, school or village district website (if such exists) and in two other public places. It is further recommended (although not required) that the notice of postponement be published in a newspaper in general circulation in your municipality. That notice must provide notice of the new date for the official ballot voting day, business meeting, or deliberative session. The governing body shall also re-post notice at least 14 days before the date(s) of the rescheduled official ballot voting day and business or deliberative session.

How does a change in the date of an annual meeting due to postponement modify the dates for hearings, notices and other actions necessary before the postponed meeting? EO#83

very clearly states in paragraph 3 (b) that “any hearings, notices, or other actions required to be taken before the annual meeting shall be deemed sufficient if taken the legally required number of days before the postponed session.” Because a decision to postpone by the governing body may be made after the normal sequence of dates, hearings, notices and other actions necessary for the annual meeting may have already taken place, in whole or in part, those timely prior actions should be deemed accepted or allowed. For instance, all timely, previously received candidate declarations and petitioned zoning amendments and petitioned warrant articles would be carried forward for action at the new official ballot voting day. In no case shall a town reopen a filing period and create a second deadline for zoning amendments, petitioned warrant articles and candidate declarations. As for hearings and other notices, it is permissive, but not mandatory to calculate new deadlines using the rescheduled date of the election/meeting. However, in some circumstances certain hearings may need to be rescheduled. For instance, under RSA 33:8-a, a public hearing on a bond or note in excess of \$100,000 must be held at least 15 days but not more than 60 days prior the date when the vote on that bond or note is to take place, and this might necessitate another hearing. For budget hearings under RSA 32:5 the date of a hearing need only be not later than 25 days before the annual meeting and an earlier held budget hearing might suffice, or, changed budgetary circumstances might dictate a supplemental budget hearing. Towns that wish to adjust their deadlines should consult NHMA’s calendar page. We have previously prepared calendars for April ([SB 2](#)) and May ([Traditional](#) & [SB 2](#)) which may be of assistance to towns looking to use those dates.

If we postpone our annual meeting using EO#83 how does this affect the terms of office of elected officials whose terms expire in 2021? In the event of postponement, the terms of office of elected officials whose terms expire in 2021 shall continue until the completion of the postponed election and meeting.

If we postpone our annual meeting, how does this affect budgets and expenditures until the postponed meeting? EO#83 provides that the governing body in both calendar year and fiscal year towns or districts may make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purpose during the same time period. Budgets shall be adopted no later than September 1, 2021, and any interim expenditure not authorized in the adopted budget shall cease. This spending authority shall be read in harmony with [Emergency Order #56](#) issued by the Governor on June 25, 2020.

Does EO#83 affect or modify the authority of a moderator to postpone annual meetings and elections as provided in RSA 40:4 and RSA 669:1?

EO#83 allows the governing body to choose to schedule town meeting later in the spring or early summer. It provides several options for the date of the official ballot voting day, and allows the governing body discretion to schedule the other portion of town meeting in accordance with the governing statutes. EO#83 does not impact the moderator’s ability to use the provisions of RSA 40:4 and RSA 669:1.

What happens if SB 2 is enacted by the Legislature and is signed into law by the Governor? In general, the finally enacted version of SB 2 will control all of these annual meeting postponement issues, and it is expected that final enactment will be in harmony with EO#83. However, to the extent a town or district has used EO#83 by giving notice of

postponement under that provision, that town or district's meeting shall be governed by EO#83 and not any contrary provision in enacted SB 2.

OTHER ANNUAL MEETING ISSUES OF CONCERN:

In light of the extension of Emergency Order #74, can an in-person town meeting or deliberative session have seating that is spaced less than 6 feet apart provided everyone in the "public space" is wearing a mask or cloth face covering?

Emergency Order #74 requires face coverings to be worn if persons are not at least 6-feet apart. We recommend that towns follow all available CDC and DHHS guidance related to preventing the spread of Covid-19.

Can we require that all persons attending an in-person annual meeting wear a mask or cloth face covering?

The moderator has authority to manage the meeting place and may choose to require all those attending the meeting to wear a face covering or mask. This was confirmed in a [memorandum](#) issued by the Secretary of State and Attorney General on August 19, 2020. However, voters who refuse to wear a mask or cloth face covering must still be accommodated. This may require that non-masked voters be placed in a separate room to allow them to participate in the meeting. .

Can town officials who are uncomfortable with appearing at town meeting in person, appear virtually?

No. Any town official who is uncomfortable with appearing at town meeting in person should consult the relevant statutes to ensure that someone is able to perform his/her statutorily assigned tasks. For example, a town clerk should appoint a deputy who can serve in his/her stead pursuant to RSA 41:18 or, if that is not possible, notify the moderator and other election officials that a Clerk Pro Tem will need to be elected pursuant to RSA 41:17. The same applies for a select board member pursuant to RSA 658:21-a.

The language in the HB 1129 does not address procedures for absentee balloting - are we required to provide for absentee balloting if we use HB 1129 for voting on the warrant? We are a traditional town meeting town, not SB 2.

According to the Attorney General's office a town is permitted to allow absentee voting for the alternative ballot. This ability to provide absentee voting on the alternative ballot would be approved by the voters when they approve the optional voting procedures. Since the date and time of the drive-up voting session is established by the governing body, the selection of that date by the governing body should be done in consultation with the the town clerk, to afford adequate time for preparing the ballots, including absentee ballots.

Can we hold an in-person official ballot voting day on March 9th and then conduct the business meeting using the virtual procedures outlined in HB 1129?

This is not specifically authorized by HB 1129. It is NHMA's interpretation that when a municipality uses HB 1129 to conduct a virtual meeting with drive-up voting procedures, both the official ballot voting day and the business meeting must follow the process provided in HB 1129.

About swearing in elected officials, my understanding was that the swearing in of elected officials had to wait until the close of the business meeting under Emergency Order #83 paragraph 3c. ("In the event of postponement, the terms of office of elected officials whose terms expire in 2021 shall continue until the completion of the postponed election and meeting."). Is that correct?

Ordinarily, under RSA 42:3, newly elected town officials are not sworn in until after completion of the business session. Nevertheless, Emergency Order #23 permits the swearing in of newly elected officials before the business meeting has concluded. However, this is seemingly contradicted by Emergency Order #83 which states that in the event of postponement the terms of office of elected officials whose terms expire in 2021 shall continue until the completion of the postponed election and meeting.

Under RSA 39:2-a where a town uses official ballot voting, the select board is authorized "to choose another day for the second session of the town meeting for the transaction of all other town business." For any town that has not posted their warrant the select board would simply choose a date for the business meeting later this spring, and then warn that date in the posting of the warrant. In that instance there is no "postponement." Therefore, the first sentence of EO #83 (3) (c) does not apply, and the terms of office are not extended, permitting the swearing in of newly elected officials before the conclusion of the business meeting using EO#23.



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE BY
HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #83 pursuant to Executive Order 2020-04 as extended by Executive Orders, 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25

Temporary provisions to respond to timing challenges related to the enactment of Senate Bill 2 in the 2021 Legislative Session

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, during the 2020 legislative session, in response to the COVID-19 emergency, the General Court passed and the Governor signed House Bill 1266, an act making temporary modifications to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (Covid-19) disease; and

WHEREAS, the provisions of HB 1266 applied only to the September 2020 primary and November 2020 general elections; and

WHEREAS, numerous towns throughout New Hampshire have requested that certain provisions in HB 1266 be reenacted on a temporary basis to apply to the 2021 town meetings and elections; and

WHEREAS, in addition to certain provisions of HB 1266, towns have also requested the ability to postpone their 2021 town meetings and elections if such postponement becomes necessary due to concerns regarding COVID-19; and

WHEREAS, in response to the requests of New Hampshire's towns, the General Court has introduced Senate Bill 2, an act allowing the preprocessing of absentee ballots for certain 2021 elections and allowing for the postponement of annual town meetings in calendar year 2021 where concerns exist during the COVID-19 health emergency; and

WHEREAS, Senate Bill 2 passed the Senate by a vote of 24-0 on January 6, 2021; and

WHEREAS, the House of Representatives has scheduled a public hearing on Senate Bill 2 and expects to pass the bill in early February 2021; and

WHEREAS, some towns in New Hampshire have stated that an early February enactment date for Senate Bill 2 would be too late for these towns to set their schedules and determine their procedures for their 2021 town meetings and elections, and these towns have requested an Emergency Order from the Governor to bridge the gap between the current date and the final enactment of Senate Bill 2; and

WHEREAS, in consultation with the Senate President and the Speaker of the House, the Governor has determined that Senate Bill 2 is likely to be enacted and that an emergency order is necessary to bridge the gap and fulfill the timing needs of certain New Hampshire towns.

NOW, THEREFORE, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24 and 2020-25 it is hereby ordered, effective immediately, that:

1. Notwithstanding any law or other regulation to the contrary, for all 2021 town elections, the requirements of RSA 658:9 may be satisfied by alternative requirements issued by the secretary of state in consultation with the attorney general and the commissioner of the department of health and human services or designee.
2. Notwithstanding any law or other regulation to the contrary, the following provisions regarding the processing of absentee ballots shall apply to all 2021 town elections:
 - (a) Processing of previously received absentee ballots shall begin at 1:00 p.m. unless a different time, that is no earlier than one hour after the opening of the polls, is posted and announced in accordance with paragraph II of RSA 659:49. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time for the processing of such ballots during normal polling hours. Absentee ballots which are received after the start time for processing absentee ballots and prior to 5:00 p.m. on the day of the election shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.
 - (b) Notwithstanding the provisions of section 2(a) of this Order, the moderator, or his or her designee, shall post the time at which the processing of absentee ballots shall begin at the polling place and one other public location at least 24 hours before the polls open. In addition, when the polls open the moderator shall announce the time at which the processing of absentee ballots shall begin.
 - (c) The moderator, or his or her designee, may begin the processing of absentee ballots prior to the opening of the polls provided that the clerk shall post, in an appropriate public place and prior to election day, notice of the time and place of the processing. If the moderator chooses to do so it shall be posted in 2 appropriate public places, one of which shall be the public body's Internet website, if such exists, or shall be printed in a

newspaper of general circulation in the city or town at least 48 hours, excluding Sundays and legal holidays, prior to such meeting. A copy of the notice shall be provided to the secretary of state. The partial processing of absentee ballots prior to an election shall occur on the Thursday, Friday, Saturday, or Monday prior to the date of the election after the posting of the checklist. The moderator shall be assisted by at least 3 other election officers as defined under RSA 652:14. Members of the general public may observe this process. Under no circumstances shall absentee ballots be counted prior to the opening of the polls.

- (d) Once notice of the processing has been posted, all absentee ballots received by the end of the day preceding the posted time for the meeting shall be partially processed. Only one session for the partial processing of absentee ballots may be scheduled prior to an election.

3. Notwithstanding any law or other regulation to the contrary, the following provisions regarding the postponement of annual town meetings and elections shall apply for any such meetings and elections conducted in the calendar year 2021:

- (a) Notwithstanding any law to the contrary, for calendar year 2021, where concern exists for conducting the annual meeting and election during the COVID-19 health emergency, the governing body of a town, school district, or village district, in consultation with the moderator and the clerk, may postpone the official ballot voting day to the second Tuesday of April, May, June, or July. The governing body may also postpone the business or deliberative session of the annual meeting to one or more dates later in 2021. The prohibition in RSA 40:4, II(c) on delaying the deliberative session more than 72 hours and the requirement in RSA 669:1-a that the election be rescheduled to the Tuesday 2 weeks following the original date shall not apply.
- (b) The governing body shall provide notice to voters of the date or dates promptly after making the decision to postpone. The governing body shall also re-post notice at least 14 days before the date(s) of the rescheduled official ballot voting day and business or deliberative session. At a minimum, notice shall be posted on the town, school, or village district website, if such exists, and in 2 public places. Any hearings, notices, or other actions required to be taken before the annual meeting shall be deemed sufficient if taken the legally required number of days before the postponed session.
- (c) In the event of postponement, the terms of office of elected officials whose terms expire in 2021 shall continue until the completion of the postponed election and meeting. The governing body in both calendar year and fiscal year towns or districts may make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purpose during the same time period. Such budget shall be adopted no later than September 1, 2021, and any interim expenditure not authorized in the adopted budget shall cease. This spending authority shall be read in harmony with emergency order 56 issued by the governor on June 25, 2020.

4. The provisions of Sections 1-2 of this Order shall remain in effect until the enactment of Senate Bill 2. In the event that any provisions of the final enacted version of Senate Bill 2 conflict with any part of Sections 1-2 of this Order, the provisions of the final enacted version of Senate Bill 2 shall control.

5. The Provisions of Section 3 of this Order shall remain in effect until the enactment of Senate Bill 2. In the event that any provisions of the final enacted version of Senate Bill 2 conflict with any part of Sections 1-2 of this Order, the provisions of the final enacted version of Senate Bill 2 shall control, provided that any town which has given notice of the postponement of its meeting and election prior to the enactment of Senate Bill 2 may elect to be governed by the provisions of Section 3 of this Order notwithstanding a conflict between the provisions of Senate Bill 2 and Section 3 of this Order.

Given under my hand and seal at the Executive Chambers in Concord, this 22nd day of January, in the year of Our Lord, two thousand and twenty-one, and the independence of the United States of America, two hundred and forty-five.



GOVERNOR OF NEW HAMPSHIRE