



NEW HAMPSHIRE MUNICIPAL ASSOCIATION



Preparing for Town Meeting

Presented by:

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January 24, 2018

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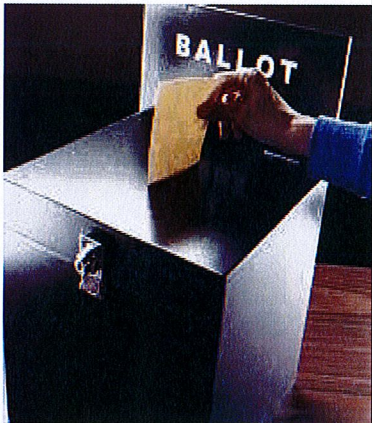



- [2017 General Calendar](#)
- [2018 General Calendar](#)
- [Traditional \(March\) Town Meeting Calendar](#)
- [Traditional \(May\) Town Meeting Calendar](#)
- [SB2/Official \(March\) Town Meeting Calendar](#)
- [SB2/Official \(April\) Town Meeting Calendar](#)
- [SB2/Official \(May\) Town Meeting Calendar](#)

Official Ballot v. Official Ballot Referendum



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





RSA 40:12-:15, a format created in 1995, must be adopted by town meeting
 Alters format of town/district meeting so that there are two sessions

- 1st Session, Deliberative – Discussion and amendment of warrant article to their final language (date set by governing body). RSA 40:13, I. Ultimately, role of the first session is to decide the final form of ballot questions.
- 2nd Session, Ballot Voting – Official ballot used to vote on articles in written form; no discussion or amendment
- March SB 2 Town/District deliberative session occurs in late January or early February, at least 28 days earlier than a traditional business session of town meeting.
- April option, first session is late February/early March, with ballot voting on the second Tuesday in April.
- Requirement for a default budget

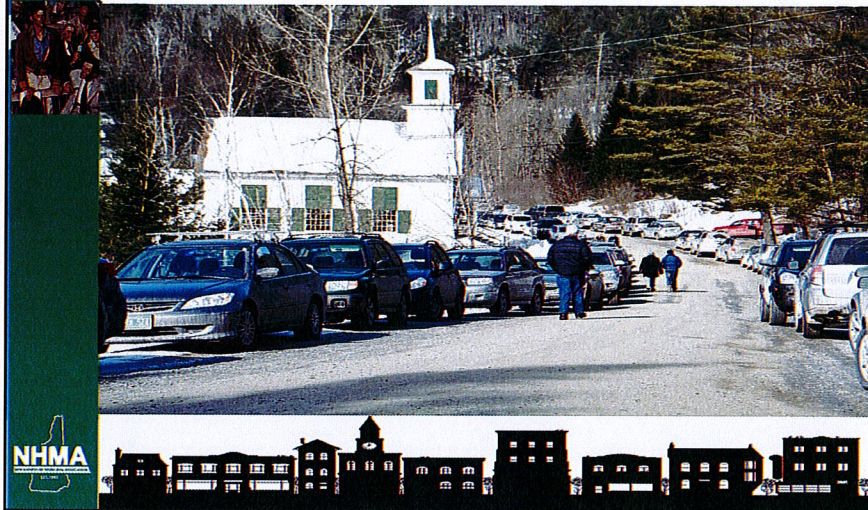
Everything is ultimately voted on by ballot.

However, voters can amend articles, but with more limitations than those in traditional town meeting municipalities. RSA 40:13, IV(c)

Cannot delete, table, pass over, or indefinitely postpone articles. RSA 40:13, VI
 Your deadlines are in RSA 40:13 (e.g. budget hearings, bond hearings)

Official ballot referendum; different from “official ballot”

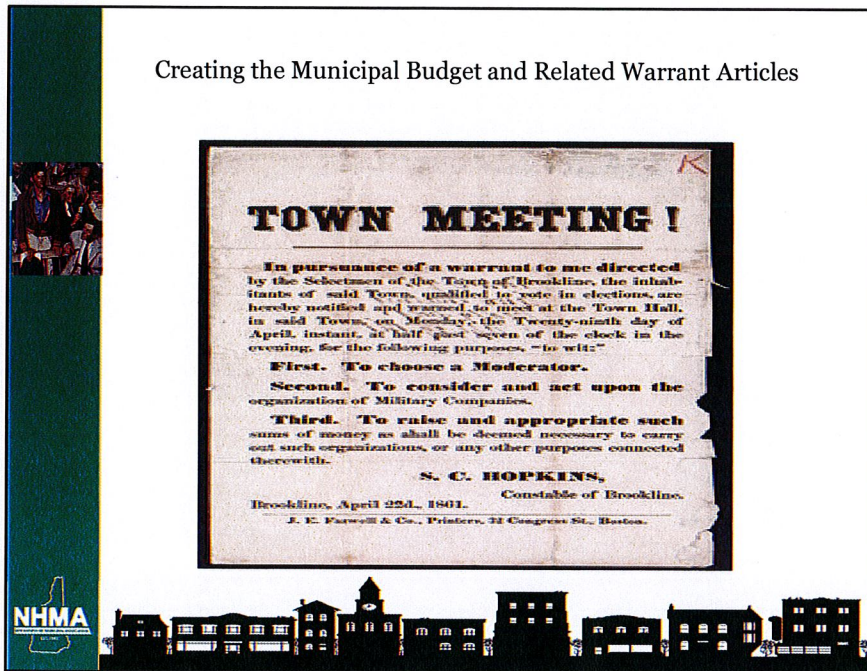
RSA Chapter 40 – SB 2 Statute



RSA 40:13: The “SB 2 statute”

- ✓ Schedule (March, April, or May)
- ✓ Deadlines (e.g. budget hearings) → NHMA Important Dates Calendars
- ✓ Warrant Articles/Amendments
- ✓ Procedural rules in RSA 40:4, :4-a, :4-b, :4-f and :6 – :10 apply to traditional town meetings and SB 2 deliberative sessions (197:19, schools)
- ✓ Restricting Reconsideration
- ✓ Second session

Creating the Municipal Budget and Related Warrant Articles



- Governing Body/Select Board
- Town Administration
- Budget Committee
- Planning Board
- Library Trustees
- Cemetery Trustees
- Trustees of Trust Funds
- Town Clerk/Tax Collector/Treasurer
- Municipal Attorney

The governing body, the select board or town council. This body creates the initial version of the budget, and in the absence of an official budget committee also conducts the required public hearings. The governing body also creates the language of the warrant considered by the deliberative session in an official ballot (SB 2) municipality or the business session of a traditional town meeting.

The administrators, whether a town manager or town administrator, and the department heads. These staff members perform the difficult tasks of creating detailed budget proposals to be considered by the governing body, and also provide support to the advisory or official budget committee by answering inquiries for supporting details as they are developed.

The official budget committee. If the municipality has created one of these committees,

these citizens review the proposed municipal and school district budgets in detail, offer comments on the proposed appropriations for the upcoming year, conduct the required public hearings and create the budget of recommended appropriations actually presented to the legislative body.

The planning board. This board is the source of proposals for land use ordinance adoption or change.

The library trustees and library staff: This group creates the budget proposal for library services.

The cemetery trustees. The trustees create the budget proposal for maintenance and upkeep of municipal cemeteries and private burial grounds that have come under municipal control.

The trustees of the trust funds. These trustees administer funds held in trust for the long term to achieve specific objectives, such as perpetual care of cemeteries, capital reserve funds, and scholarship funds. They have specific reporting requirements and account annually for the principal and income of the funds entrusted to them.

Elected officials. These officials, including the town clerk, the elected tax collector and elected treasurer often prepare the proposed budgets for their offices and also advocate for their schemes of compensation. They have many statutory duties to perform daily, as well as specific accounting and reporting duties for the funds entrusted to them.

Optional elected officials, such as the road agent. In the municipalities which have created these offices, these officials often prepare and advocate for appropriations needed to achieve their statutory responsibilities.

The municipal attorney. The attorney assists the governing body in the preparation of the annual warrant, and also offers opinions on the meaning and enforceability of any warrant articles created by the petition of citizens.

Drafting Warrant Articles Using the MTRSP



New Hampshire Department of Revenue Administration
Property Tax Rate Setting Software Quick Help Sheet:
Drafting Warrant Articles

To begin select the "Create Article" button on the bottom of the *Budget Hom*

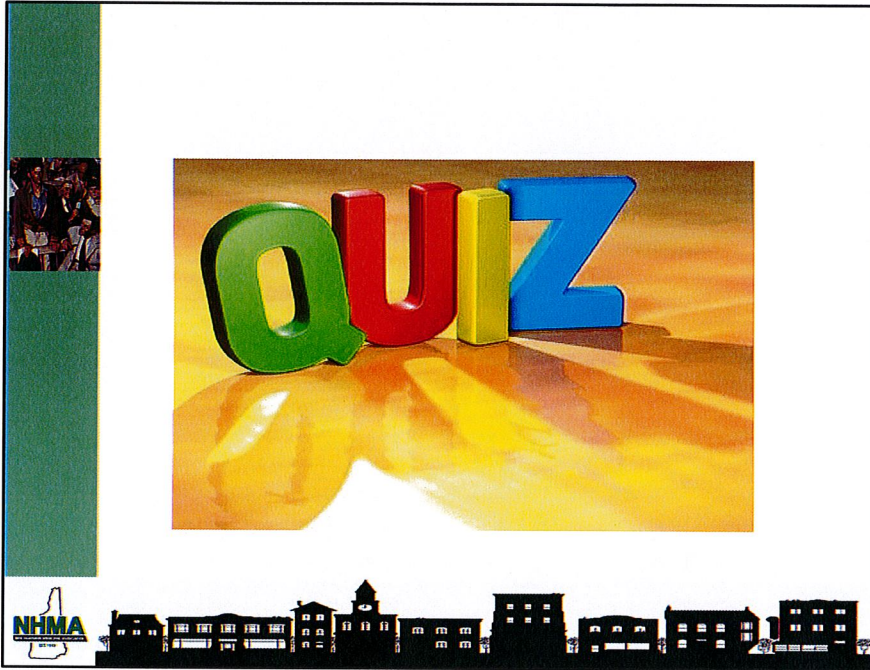
Show 10 entries Search

Actions	Number	Category	Type	Purpose	Raise Amount	Offset Amount	Status
No data available in table							

Showing 0 to 0 of 0 entries

CREATE ARTICLE



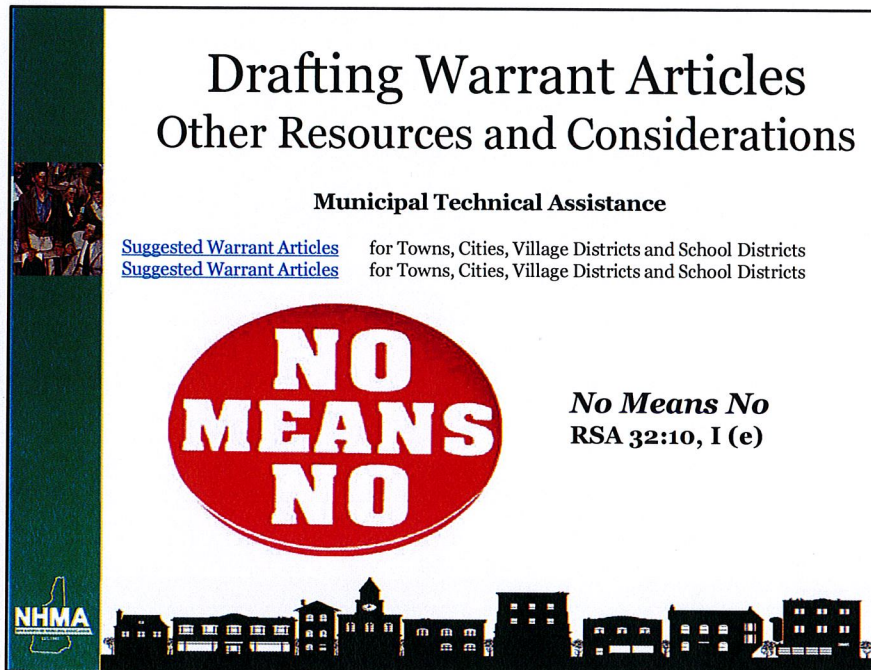


In what year was the position of moderator made an official office across the State of New Hampshire?



1. 1715
2. 1718
3. 1803
4. 1813
5. 1878





RSA 32:10, I(e)

Any warrant article can be affected

If the meeting deletes a purpose RSA 40:13, IV(c)?, or
 Reduces an appropriation to zero (still permitted by RSA 40:13,
 IV)

No amount shall be expended or transferred for such purpose
 Significant impact upon governing body's ability to spend for that
 purpose.

The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.



Any Twenty Five Voters Have the Right to Add Articles to the Warrant by Petitioning the Selectmen Five Weeks in Advance of the Annual Town Meeting.

Under state law, the selectmen have complete control over the contents of the warrant, *except* that they must insert any article submitted by petition, signed by 25 or more voters, submitted to them by at least the *fifth Tuesday* before the annual meeting (RSA 39:3). (There is a different deadline for SB 2 towns.) In other words, ordinary citizens can contribute to the agenda (can keep the meeting from being "rigged," if you will), but it takes a little advance planning.

[EXCEPTION: Petitions for Zoning or Building Code amendments have to be submitted at least 90 days before the annual meeting (RSA 675:4).

39:3 Articles. – Upon the written application of 25 or more registered voters or 2 percent of the registered voters in town, whichever is less, although in no event shall fewer than 10 registered voters be sufficient, presented to the selectmen or one of them not later than the fifth Tuesday before the day prescribed for an annual meeting, the selectmen shall insert in their warrant for such meeting the petitioned article with only such minor textual changes as may be required.

Is Your Meeting Space Ready?



- ✓ ***Room arrangement***
- ✓ ***Technology***
- ✓ ***Moderator's "Toolkit"***
- ✓ ***Security?***

Meeting Place

Seats, podium, microphones

Projection equipment/PowerPoint

A method to separate voters and nonvoters

Sufficient voting supplies for secret ballots

Remember, as moderator, you are mainly confined to the podium and can't leave without good cause and without someone else in charge, except for a break in the meeting

- Water, etc.
- Laptop computer with internet access, if possible
- Blank paper and pen/pencil
- Calculator to check the math on amendments
- THE WARRANT (the signed version)

- Typed copies of YOUR RULES
- An AGENDA of things not to forget.
- Town report, this year and last year in order to have THE BUDGET and LINE ITEMS
- Copies of Important Statutes

Technology

PowerPoint, internet, social media, video

Whose equipment, software, etc.?

Should you require it to be pre-loaded?

Texting between select board members?

Passwords to wireless networks?

Smartphone video and YouTube?

Facebook and Twitter

Other Meeting Place Issues...



First Amendment and Tables for Non-Profits

- There is no First Amendment right for groups to have tables or booths in the deliberative session space. However, once a municipality allows a private organization or organizations to have tables/booths in the space (let's say there's space at the back of the meeting room for them), there is an argument that you have created a public forum for private speech.
- What does that mean? It means that if you've historically allowed the Girl Scouts to have a table, you probably also need to let the Young Republicans have a table because you don't want to engage in viewpoint or content-based discrimination.
- The best way to handle it is to have a first come, first served basis with a maximum amount of allowable tables based on space (and a deadline for requesting a table). These groups cannot be disruptive or interfere with the session in any way, just like any other person there. The other way to handle it is not to allow any tabling in the meeting space, but this can be questionable if you have historically allowed it.

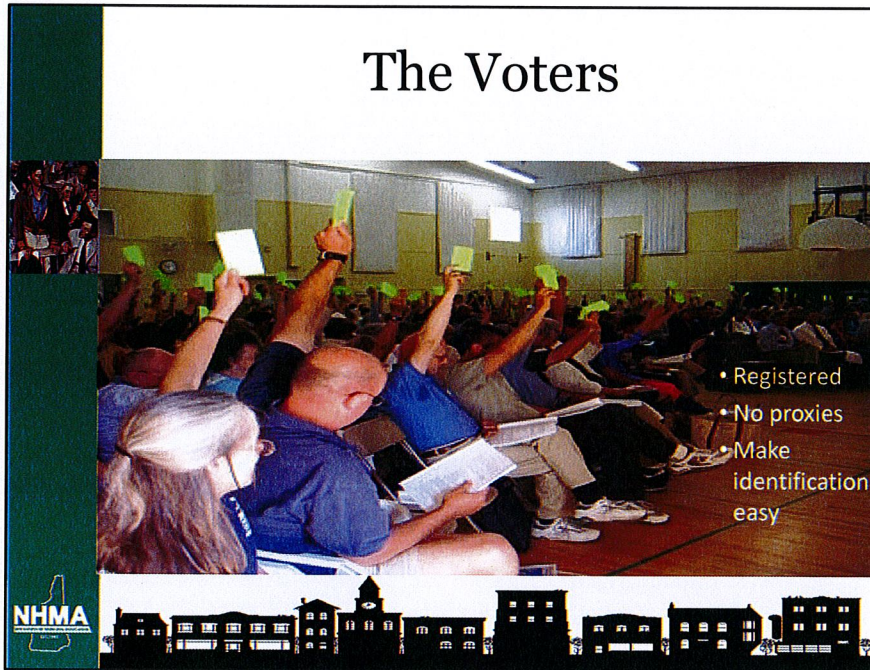
Service Animals at Town Meeting

28 C.F.R. § 35. 136 (f)

A public entity . . . may make two inquiries to determine whether an animal qualifies as a service animal.

- A public entity may ask if the animal is required because of a disability, and,
- What work or task the animal has been trained to perform.

The Voters



Who votes?

Must be physically present; no proxies.

Only registered voters may vote.

Use supervisors of the checklist as assistants as people arrive.

Use updated checklist. Required—669:5

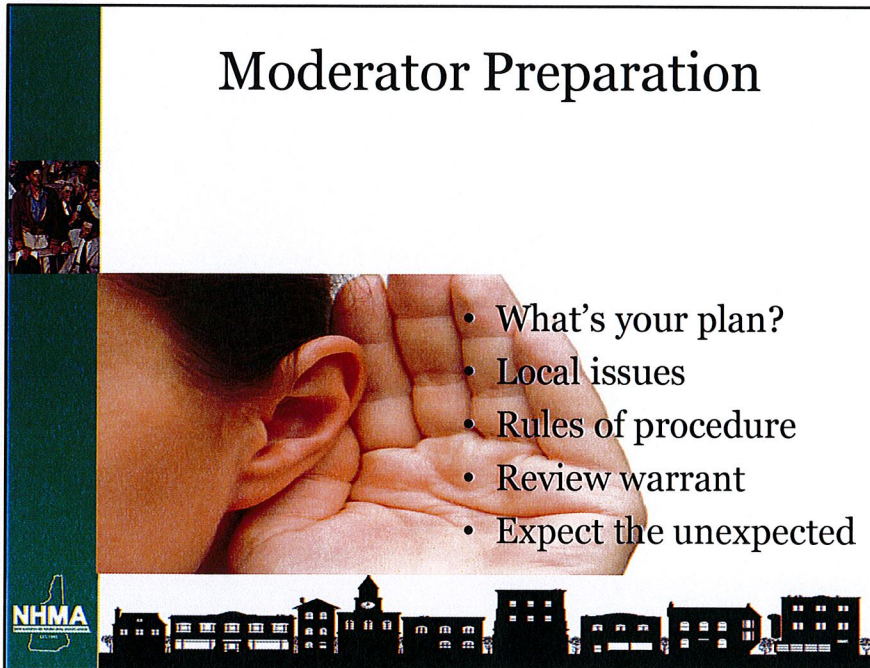
No same day registration at deliberative session.

Should the Moderator Vote?

There is no legal bar to the moderator voting at town meeting. But traditionally, because of the moderator's duty to remain scrupulously impartial, he or she usually votes only to break a tie.

Or, if a motion he or she opposes would otherwise pass by one vote, the moderator might cast a vote against it, causing a tie and defeat of the motion.

Moderator Preparation



- What's your plan?
- Local issues
- Rules of procedure
- Review warrant
- Expect the unexpected

Study the law, local issues

- Meet with governing body, school board, budget committee, election officials, town/district counsel
- Plan the meeting with governing body/school board
- Go to the budget hearings/keep your “ear to the ground”:
 - Issues that interest/inflame the public
 - The source of likely amendments and requests for secret ballots
 - Questions on legal issues which may be researched in advance
 - Try to do everything you can to avoid surprises—although, you must also be prepared for the unexpected!

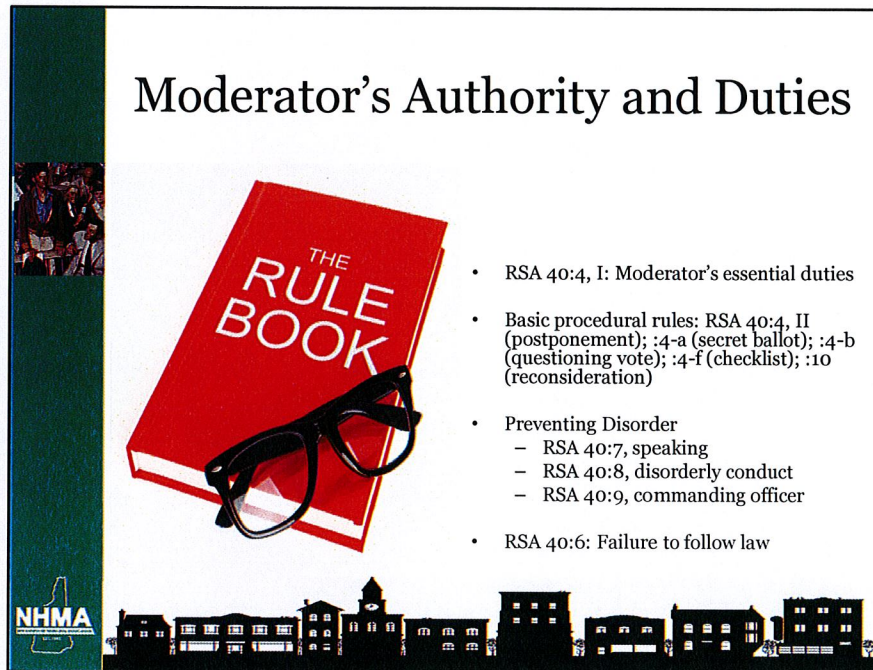
Who will do and say what?

- Who will make motion, enter a second, and speak to the issue(s)?
- Who will respond to legal and other questions about substance of the articles?
- Contact author(s) of petitioned articles

Are you prepared for legal issues/other problems?

- Has DRA reviewed all language on warrant under the Municipal Finance Law?
- Town counsel, district counsel, bond counsel on articles with borrowing over \$100,000?
- Any articles on the warrant which appear to be legally defective/questionable?
- Any likely amendments which will raise legal issues?

Moderator's Authority and Duties



- RSA 40:4, I: Moderator's essential duties
- Basic procedural rules: RSA 40:4, II (postponement); :4-a (secret ballot); :4-b (questioning vote); :4-f (checklist); :10 (reconsideration)
- Preventing Disorder
 - RSA 40:7, speaking
 - RSA 40:8, disorderly conduct
 - RSA 40:9, commanding officer
- RSA 40:6: Failure to follow law

Ch. 2 & 3

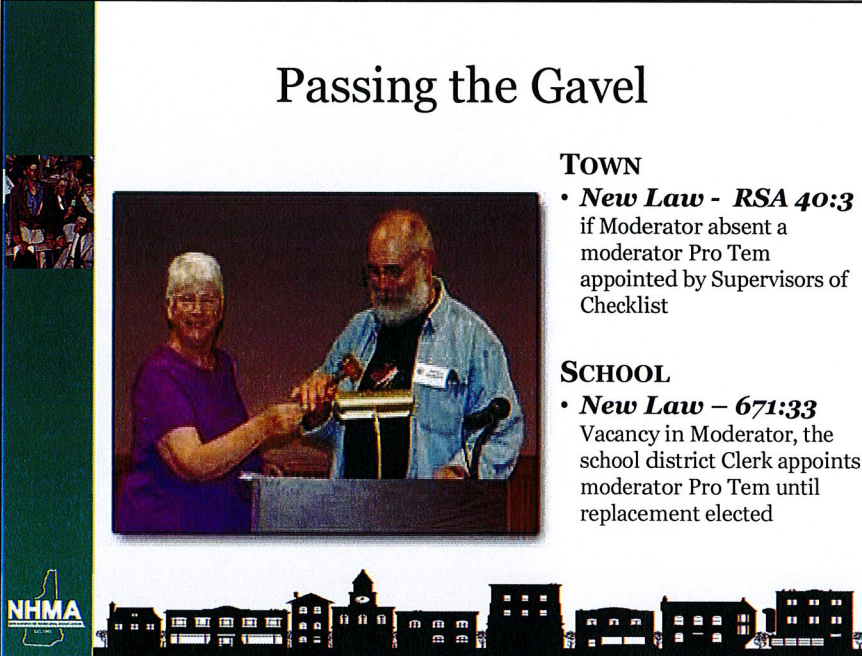
- The moderator is in charge of the election/meeting process from start to finish
- 40:4, I: “The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe rules of proceeding; but such rules may be altered by the town.”
- No specific form of parliamentary procedure is required either by law
- Rules announced by the moderator may be altered by the meeting
- Moderator’s ruling will stand unless challenged by the meeting (and unless inconsistent with state law)
- Establish rules at the beginning—don’t necessarily highlight that they can overrule rules
 - Sample Rules used in Bow are provided in book
 - Harold’s introduction/rules are in the packet
 - Robert’s Rules of Order are a study guide only—not binding

Preventing Disorder

40:7 Debate. – No person shall speak in any meeting without leave of the moderator, nor when any person speaking is in order; and all persons shall be silent at the desire of the moderator, on pain of forfeiting \$1 for each offense, for the use of the town.

40:8 Disorder. – If any person shall behave in a disorderly manner, and, after notice from the moderator, persist in such behavior, or shall in any way disturb the meeting, or willfully violate any rule of proceeding, the moderator may

Passing the Gavel



TOWN

- **New Law - RSA 40:3**
if Moderator absent a moderator Pro Tem appointed by Supervisors of Checklist

SCHOOL

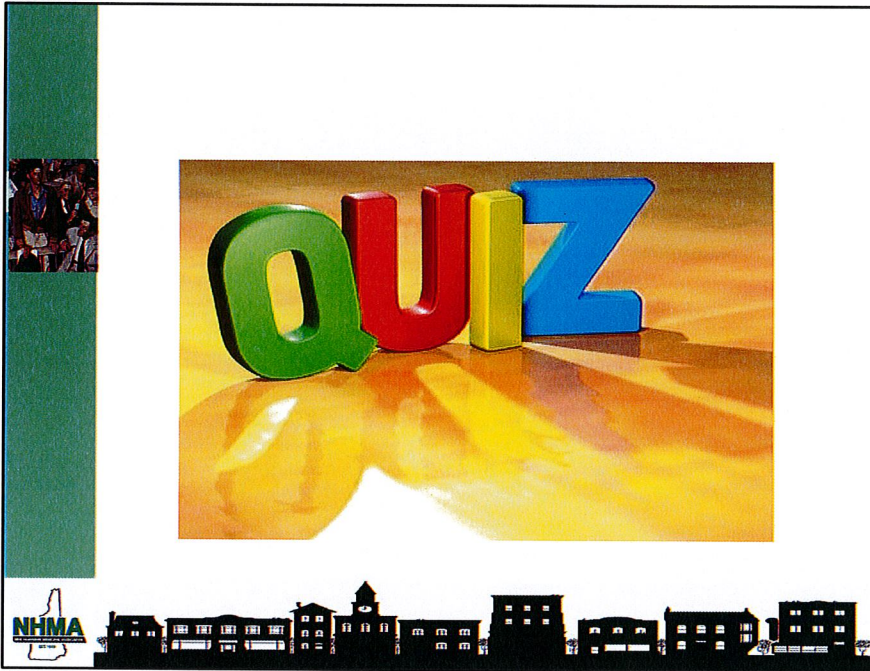
- **New Law - 671:33**
Vacancy in Moderator, the school district Clerk appoints moderator Pro Tem until replacement elected

“Assistant moderator,” RSA 40:3-a/RSA 197:19-a.


As provided in recently amended RSA 40:3, when a moderator is absent from a town meeting or unable to perform the duties of the office, a moderator pro tempore is to be appointed by the supervisors of the checklist, or by the selectmen in a town or ward where there is no board of supervisors. (Note that under RSA 658:19, if a moderator is absent from a state election, it is the moderator who appoints the moderator pro tempore. This amendment did not change this.)

Furthermore, an amendment to RSA 671:33 provides that in the case of a vacancy (as opposed to mere absence) in the office of school district moderator, the school district clerk may appoint a moderator pro tempore until a replacement is elected, as opposed to the current requirement that the clerk serve as moderator in the interim.



School Moderator absent – school district clerk acts as moderator until a moderator pro tem is chosen which can either be by the school district clerk or the legislative body itself.



**Of the 96 towns which considered SB 2,
how many have adopted it?**



1. 42
2. 48
3. 56
4. 63
5. 70



Can the Meeting be Postponed?
RSA 40:4

Is the Moderator postponing a town meeting session that *does not*:

- > Choose officers by official ballot
- > Have voting by official ballot referenda
- > Allow voter a right to vote by absentee ballot.

The moderator can postpone, . . . however if you are voting by ballot at the polls, talk with your town attorney

NHMA

Can the meeting be rescheduled? Page 9, TMSMHB:

If the moderator is only postponing a deliberative session that does not involve choosing of officers by official ballot, or voting by official ballot referenda, or any voting where a voter has a right to vote by absentee ballot, the moderator has the discretion to postpone a deliberative session of town meeting.

RSA 40:4

Bad weather, Moderator's decision:

Reasonable belief roads are hazardous

At least 2 hours before start of meeting

Be practical: arrange in advance with the police to get their advice

Reschedule to time, date & place certain

Not more than 72 hours later for SB 2 first session

Later on same day?

Inform citizens by whatever means available

Have notices typed in advance

The moderator may postpone an election that does involve choosing of officers by official ballot, or voting by official ballot referenda, or



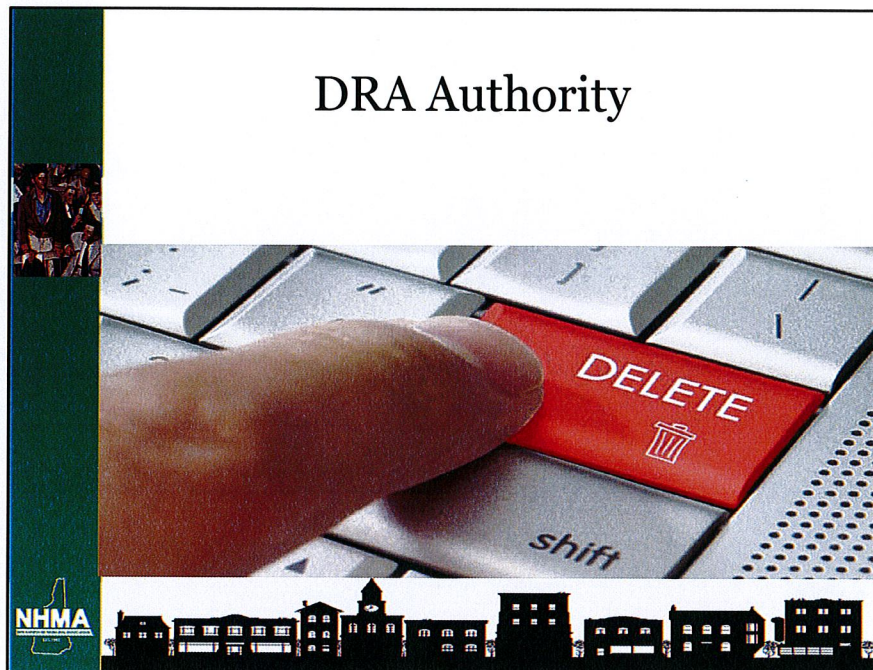
- General rule: any vote can be reconsidered until the deliberative session adjourns, unless reconsideration has been restricted by vote of the meeting.
RSA 40:10, I and RSA 40:13, IV
- Can't be restricted in advance of a vote
- Motion need not be in writing
- Motion can be made by a single person
- Motion is made after the article is discussed/amended
- Once reconsideration has been restricted, the article can no longer be considered/amended—it will go onto the ballot in whatever form it is in at the time reconsideration was restricted

Virtually any Town Vote can Later be Reconsidered and Rescinded.

So you think you finally finished the debate over the blanket-blank town administrator's salary. The rest of the meeting is routine. Now you can go home and pay the babysitter. Right? Well, no, you'd better not. Unless the meeting votes to restrict reconsideration, that salary vote can legally be reconsidered later, right up until the meeting is finally adjourned, even if it's 2 a.m. and almost everyone's gone home (*Byron v. Timberlane School District*, 113 N.H. 449).

In fact, if two votes taken by a town meeting are inconsistent, the Courts will probably say that the later vote impliedly rescinded the earlier vote, even if there was no formal vote to reconsider. (*Lamb v. Danville School Board*, 102 N.H. 569).

However, the town meeting may vote to restrict reconsideration on one or more articles (RSA 40:10), and this is commonly done. This action doesn't prohibit reconsideration. If the meeting votes to restrict reconsideration of an article, it may



DRA has authority to delete an appropriation if not made in strict accordance with state statute. RSA 21-J:35, III. Effect is that sum will not be allowed to be raised in the property tax.

Department of Revenue has duty to assist municipalities, and in fact does so.

See resources published by NHMA and DRA about correcting procedural and substantive drafting issues prior to the meeting. That is, avoid the matter by good preparation.

DRA's Suggested Warrant Articles

NHMA's Basic Law of Budgeting

Contact DRA, NHMA, municipal attorney

Leading candidates for disallowance:

Subject matter not properly warned

Amendments involving Reserve Funds

Multi-year lease obligation without super majority vote or fiscal funding clause.

Exceeding 10% limitation, official budget committee—important for moderator to keep notes and let voters know immediately if they will exceed the 10% limitation!

PROD.
COMING ATTRACTIONS
February 21
Election Law Changes in 2018
VENUE
www.nhmunicipal.org

NHMA

PROD.

COMING ATTRACTIONS

March 14
**Municipal Social Media Policies
and Free Speech**

VENUE
www.nhmunicipal.org



2018 Town & School Moderators Workshops

Beginner & Advance Training Available



Traditional Meeting
Saturday, February 17
Snow date: Saturday, February 24

9:00 a.m.—1:00 p.m.
25 Triangle Park Drive, Concord, NH
Cost: \$60.00

Registration and continental breakfast begin at 8:30 a.m.
Attendees will receive a copy of NHMA's 2018-2019 edition of *Town Meeting and School Meeting Handbook*.

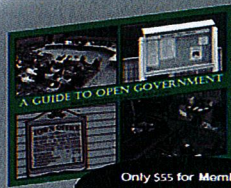
[Register Here!](#)



NHMA RELEASES NEW PUBLICATION ON NEW HAMPSHIRE'S RIGHT-TO-KNOW LAW



Check out our new "go-to" resource for public officials who are confronted with the numerous legal issues surrounding New Hampshire's Right-to-Know Law.



Order Today

Only \$55 for Members
\$95 for Non-members

The Right-to-Know Law (RSA, Chapter 91-A) affects every aspect of local government in our state. Every board, committee, commission, and sub-committee in every town, city and village district in New Hampshire must comply with this law. As a result, all local officials and employees must understand the law and their responsibilities regarding both public meetings and governmental records.


Join Legal Services Counsel Stephen Suckey, Government Affairs Counsel Cora Johnston, and Staff Attorney Margaret Byrnes for a full day workshop on Thursday, September 14 on the Right-to-Know Law. They will address some of the most difficult issues under the law, including confidential information, electronic records and communication, procedures for nonpublic sessions, and communications outside a meeting. There will be ample time for questions and answers on all aspects of the law.

Go to NHMA's online store at www.nhmunicial.org/shop to order your new book today!



Learn more about the Right-to-Know Law at a full-day workshop on Thursday, September 14 at NHMA Offices in Concord. \$90 includes workshop, meals and new book! Check our website for registration details.





THANK
YOU

*for attending
our webinar presentation
today!*



Mission Statement

The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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