

2025 TRADITIONAL TOWN MEETING MODERATORS WORKSHOP

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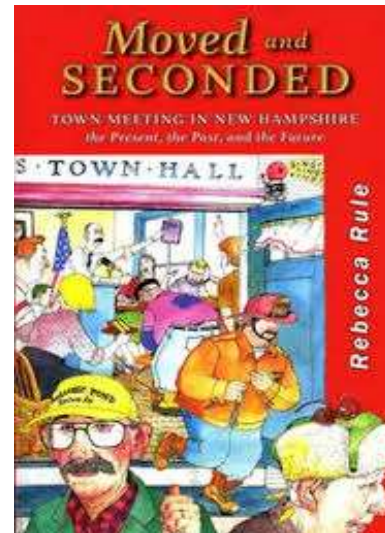
Agenda

- 9:00 AM – 11:00 AM - The Basic Law of Traditional Town, Village District and School District Meeting
Break Out Sessions:
 Advanced Moderators
 Beginning Moderators
- 11:00 AM - Break
- 11:10 AM – What Works & Doesn't Work for Elections- This session will be hosted by experienced moderators as they recap some rules, practices and procedures they have used or seen used in years past along with a discussion of what worked and what maybe didn't work exactly as planned.
- 12:00 noon – Break
- 12:20 PM – Hypotheticals - Break-out sessions for review and answering hypothetical situations that moderators might face.
- 1:30 PM - Workshop Ends

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- Moderator official office in NH since 1718, 300-year tradition!
- 1795 ruling allowed a moderator to have a constable remove troublemakers.
- Prepare for even the simplest item. The smaller the item on the warrant, the bigger the discussion.



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Moderator's Authority and Duties

- The moderator is an elected official responsible for presiding over town meetings and overseeing the election process
 - Presides over town, village, and school meetings
 - Oversees elections
 - Maintains order
 - Ensures compliance with state laws

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Anticipate

- What's your facility plan?
 - The layout of the meeting place and polling place
 - The public and non-public spaces
- How will you run the meeting?
 - Create and refine your Rules of Procedure
 - Get up to speed on the hot local issues; coordinate with the governing board
 - Know which voters may be nettlesome and which are knowledgeable and respected
 - Will town counsel be present?
- Expect the unexpected

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Strategies

- Meeting process
 - Be prepared to explain procedural issues in an unbiased manner
 - Guide the board and voters so the intent of the voters is clearly understood, especially the contingent articles
 - If town counsel is not present, highlight and bring applicable laws and other guides
- Meeting environment
 - Meet with the police chief and fire chief to plan for unruly participants and the need to evacuate
 - Meet with facilities manager about layout, food and drink, etc.
 - Determine how campaigners and fundraisers will be handled

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Only Registered Voters May Speak

- Registered voters who speak and vote during town meetings do so in their capacity as legislators
 - People who are not registered voters are not legislators
 - Non-legislators have no First Amendment right to address sessions of deliberating legislative bodies.
- The moderator and the voters decide whether a nonvoter may speak at a town meeting.

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The Right-to-Know Law

- 91-A applies to the Business Session of Town Meeting
 - The meeting is a “governmental proceeding” that affects any or all citizens of the state
- Obviously, the meeting is open, and the public can attend and participate
- Audio and video recording is allowed
 - Anyone may use recording devices
 - Devices include but are not limited to tape recorders, cameras, and videotape equipment

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Key Election Statute Definitions

652:16-e Business Session. – "Business session" means, in a town that has not adopted the provisions of RSA 40:13, the session of a town meeting at which voters discuss, deliberate, and vote on matters other than the election of officers by official ballot and other questions that are placed on the official ballot.

652:16-f Deliberative Session. – "Deliberative session" means the first session of a meeting in a town that has adopted the provisions of RSA 40:13.

652:16-g Official Ballot Voting Day. – "Official ballot voting day" means the day on which voters in a town vote on the election of officers or other questions authorized by law to be voted on by official ballot, or both, in compliance with the procedures for elections for the partisan official ballot system as set forth in RSA 669:12 or the nonpartisan official ballot system as set forth in RSA 669:19 through RSA 669:22, RSA 670:5 through RSA 670:7, and RSA 671:20 through RSA 671:30, including all requirements pertaining to absentee voting, the polling place, and polling hours.

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Introduction of Warrant Articles

- Except for the caption, the entire warrant article does not have to be read
- The article may be moved for discussion, debate, possible amendment and voting by the body as printed in the warrant
- The measure's proponent may move an article worded differently than as printed in the warrant
 - There may not be an illegal change to the subject matter
 - Must be permitted by the moderator's rules or by a ruling from the podium
- However, best practice is to move the article as printed in the warrant and then make a motion to amend it
 - The Department of Revenue may disallow a warrant article that was not properly amended.

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Warrant Article Amendments – General Considerations

- The legality of amendments is controlled by RSA 39:2, which requires that “the subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant.” This means that any motion or amendment that raises subject matter not contained in the posted warrant does not have legal validity.
- So long as a motion or amendment deals with the same subject matter as appears in the warrant, the action to be taken with respect to that subject matter may vary from what is in the warrant.
- When the language of an article is prescribed by statute, amendments that alter the original intent may not be legal if they go too far.
- Petitioned Warrant Articles can be amended!!

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“ILLEGAL” ARTICLES AND AMENDMENTS

Amendment that creates the illegality:

- Adds or removes a purpose
- Adds appropriation not warned to the voters on the warrant or at a public hearing
- Changes the wording prescribed by law
- Language directly or indirectly violates an applicable state or federal law

Should the moderator rule a motion to amend out of order if it improperly changes the subject matter, or 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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Is This Amendment a Problem?

HARRIET E. CADY V. TOWN OF DEERFIELD, 169 N.H. 575 (2017)

- Two petitioned warrant articles that proposed the Welfare Director and Police Chief would become elected positions with stipulated annual salaries
- Both articles were amended to state an advisory view that the Police Chief and Welfare Director should remain appointed positions with nothing stated about their salaries
- The plaintiff argued that the changes were contrary to RSA 40:13, IV (a)-(c) regarding the substance of warrant articles

ANSWER

- The court decided the RSA was intended to prohibit warrant articles from being amended in a manner that eliminates their subject matter entirely
- Although these amendments substantially changed the original articles, the subject matter—the welfare director and police chief positions—remained the same

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Articles with Wording Prescribed by Law

Make sure you know what warrant articles have wording prescribed by law

- ✓ A best practice is to encourage the governing board to have counsel or the review the article before it is posted
- ✓ Another is to highlight the language that cannot be changed on the warrant copy that you have on the podium

Examples

- ✓ 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
- ✓ Tax Exemptions 72:27-a; 72:28; 72:29-a; 72:37; 72:39 (except as to amounts)
- ✓ Authorizing Tax Anticipation Borrowing, RSA 33:7, V(a)
- ✓ Rescinding action that enlarged Select Board, RSA 41:8-d

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Capital Reserve Funds

- Creating requires a clearly defined purpose, an appropriation and majority vote
- Discontinuing entirely requires a majority vote
- Changing the purpose requires a 2/3 vote
- An amendment seeking to designate an agent to expend cannot be done by amendment at the business meeting (DRA considers this a subject matter change contrary to RSA 39:2)
- Cannot transfer funds from one CRF to another CRF

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Special Revenue Funds

- These funds hold revenue from user fees
 - They are not capital reserve accounts or revolving funds
 - No agents allowed
- An appropriation by the meeting and approval by ballot vote is required to spend money from the fund
- Cannot be transferred to other restricted funds
- Any change to purpose or fractional portion of revenues must approved by a 2/3 vote

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REVOLVING FUNDS

- Six purposes: recycling, ambulance, special details, affordable housing, cable access, energy conservation
 - Other purposes, such as recreation, have different rules of operation
- The agent is a body (board, commission, etc.) or person (town manager, department head) selected by the meeting
- Special limits on expenditures are possible
- “No means no” applies if an appropriation fails
- May create an illegal article if the fund purpose is not allowed
 - For example, cannot have a revolving fund for Highway Block Grant

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Collective Bargaining



- ✓ “Cost items” must be submitted to voters for approval, RSA 273-A:3, II
- ✓ “Cost items” cannot be modified by voters, RSA 273-A:3, II(b)
- ✓ Multi-year contracts require voter approval

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Official Budget Committee – 10% Limit

The total amount appropriated by the meeting, including amounts appropriated in separate and special warrant articles, cannot exceed the committee recommendation by more than 10%

- ✓ Excludes fixed charges including appropriations for principal and interest payments on bonds and notes, as well as mandatory assessments imposed on towns by the county, state or federal governments
- ✓ Consider have town finance staff on hand to keep track of amendments that increase appropriations to monitor compliance with the 10% limit.

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Line-Item Budget Amendments

- Voters may move to amend specific line items in the operating budget, however such amendments are advisory only and do not affect the governing body's power to make transfers unless the line item is deleted or reduced to zero.
- If even one dollar of an appropriation is approved for a line item, then the governing board may transfer unexpended funds from other areas of the budget into that line
- This provision applies only to line items on the posted budget, not to line items in a more detailed chart of accounts
- The amount of a line-item reductions will be binding, not advisory, and that reduction will amend downward the bottom line of the budget
- The governing body may not overspend the bottom line

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Line Items in the DRA Budget Form

The meeting could vote to reduce a line item on the DRA Budget form to zero and that would prohibit spending for that account code purpose during the ensuing fiscal year.



New Hampshire
Department of
Revenue Administration

2022
MS-737

Appropriations

Account	Purpose	Article	Actual Expenditures for period ending 12/31/2021	Appropriations for period ending 12/31/2021	Selectmen's Appropriations for period ending 12/31/2022 (Recommended)	Selectmen's Appropriations for period ending 12/31/2022 (Not Recommended)	Budget Committee's Appropriations for period ending 12/31/2022 (Recommended)	Budget Committee's Appropriations for period ending 12/31/2022 (Not Recommended)
General Government								
4130-4139	Executive		\$0	\$0	\$0	\$0	\$0	\$0
4140-4149	Election, Registration, and Vital Statistics		\$0	\$0	\$0	\$0	\$0	\$0
4150-4151	Financial Administration		\$0	\$0	\$0	\$0	\$0	\$0
4152	Revelation of Property		\$0	\$0	\$0	\$0	\$0	\$0
4153	Legal Expense		\$0	\$0	\$0	\$0	\$0	\$0
4155-4159	Personnel Administration		\$0	\$0	\$0	\$0	\$0	\$0
4191-4193	Planning and Zoning		\$0	\$0	\$0	\$0	\$0	\$0
4194	General Government Buildings		\$0	\$0	\$0	\$0	\$0	\$0
4195	Cemeteries		\$0	\$0	\$0	\$0	\$0	\$0
4196	Insurance		\$0	\$0	\$0	\$0	\$0	\$0
4197	Advertising and Regional Association		\$0	\$0	\$0	\$0	\$0	\$0
4199	Other General Government		\$0	\$0	\$0	\$0	\$0	\$0
General Government Subtotal			\$0	\$0	\$0	\$0	\$0	\$0

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No Means No – RSA 32:10, I (e)

- ▶ If the meeting deletes a purpose in the operating budget, 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 during the ensuing fiscal year.
- ▶ The word “purpose” refers to line on the budget form posted with the warrant, or form submitted to the department of revenue administration

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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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Voting on Multiple Bonds greater than \$100,000



- 3 separate bond articles each article in excess of \$100,000
- Articles must appear on warrant in order of the amount proposed, highest to lowest.
- Each such article must be acted on prior to other business.
- The meeting can change the orders of the day.
- After discussion and debate on the First Bond Article, the moderator would then close the debate and begin ballot voting on that article.

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Voting on Multiple Bonds greater than \$100,000 (cont.)



- A ballot box labeled “First Bond Article” would be used to deposit Yes/No ballots.
- After a majority of voters have voted on the First Bond Article, the moderator could then begin discussion on the Second Bond Article, announcing that while discussion proceeds on the Second Bond Article, ballots on the First Bond Article will be accepted for not less than one hour.
- The same would be true for voting on the Second Bond Article and discussion and voting on the Third Bond Article.

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Restricting Reconsideration - RSA 40:10

- ✓ General rule: any vote can be reconsidered before meeting adjourns, unless reconsideration has been restricted by vote of the meeting.
- ✓ You cannot move to reconsider a vote to restrict reconsideration
- ✓ The action to restrict reconsideration cannot be taken in advance of a vote
- ✓ Motion need not be in writing
- ✓ Motion can be made by a single person

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Meetings and Elections on School Property

- **Firearms:** People may carry firearms into the meeting place. Act only with the assistance of local police if gun-carrying persons exhibit in a brandishing manner. Discuss with the Police beforehand.
- **Registered Sex Offenders:** Sex offenders who are registered voters are NOT prohibited from entering school grounds.
 - Some boards have written policies that result in “no trespass” orders. However, the policy must state that no-trespass orders do not apply to attendance at public or open meetings, including town meetings. Determine if your school has a policy.
- **Tobacco Products:** The use of any tobacco product, e-cigarette, or liquid nicotine in any public educational facility or on the grounds of any public educational facility is prohibited.

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Service Animals at Meetings/Elections

- A service animal is any dog individually trained to do work or perform tasks to benefit an individual with a disability.
- An emotional support animal is not a service animal, and the town is not required to accommodate an emotional support animal.
- Business sessions and Official Ballot Voting Days must accommodate service animals
- The moderator may make two inquiries to determine whether an animal qualifies as a service animal
 - ✓Is the animal required because of a disability?
 - ✓What work or task has the animal been trained to perform?

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Moderator Absence

- If the moderator will be absent:
 - The town Moderator Pro Tempore is appointed by Supervisors of the Checklist
 - The school district clerk appoints the School Moderator Pro Tempore
 - The moderator may appoint an assistant to cover temporary situations (i.e., conflict of interest); that person could also be the designated person to be appointed by Supervisors in case of unexpected absence of the Moderator

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Disturbances MAY Justify Removal or Arrest

- **WILLIAM BAER V. JAMES LEACH (2015):** Mr. Baer was arrested for disorderly conduct after he violated several rules of the school board's public comment session
 - A police officer observed Baer disregarding the rules that public comment was not a "Question and Answer" session and interrupting after his allotted time had ended
 - The chair tried to regain order multiple times, but Baer continued to interrupt, mocking them and stating, "Why don't you arrest me?"
 - These facts demonstrated to the officer that Baer was disrupting the meeting
- The court held that the police officer did have qualified immunity for arresting an individual at a school board meeting, as well as for Mr. Baer's arrest for failure "to comply with a lawful order of a peace officer" based on Baer's course of conduct and his persistent refusal to respect the chair's orders

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Q&A: Is photography disruptive?

- **Background:** A citizen activist who is a professional photographer attended a town meeting, taking photos for the Coalition of NH Taxpayers. The moderator ordered the photographer to cease photographing without the Moderator's permission.
- After the citizen objected, the Moderator accused him of disrupting the meeting, threatened to eject him, and called for a public vote banning further photography. The citizen claimed that he felt threatened and humiliated and declined to participate in the debate on specific warrant articles.
- During a break in the meeting break, the Moderator and a select board member demanded that all photos taken be deleted, but the citizen refused.

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Immunity from Civil Rights Violations

- Legislative immunity protects a moderator during legislative deliberations when enforcing a rule to keep the proceedings in order
 - Local legislators are immune from §1983 liability for their legislative activities
 - If the act is legislative, the court ought not to consider the motives of the legislator
 - If the activity is legislative, the actor may not be held liable even if the activity violates the Constitution, so long as it is not “flagrantly violative of fundamental constitutional protections”

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NHModerators List Serv

- This List Serv group was established to provide a simple way for New Hampshire moderators to communicate with each other.
- Each member will be able to send email to this list, and Google Groups will distribute the email to all of the group subscribers.
- The purpose of the group is to allow moderators to discuss issues, ask questions, and share information about any aspect of the moderator position.
- Messages should be relevant to that topic only, not include obscenity or advertisements, and be free of personal attacks and partisan political postings.
- To added to the NH Moderators List Serv, send an email to o:
info@nhmunicipal.org

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ELECTION ISSUES FOR MODERATORS

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Qualified Voter Affidavit Eliminated

- **Advice from SOS and DOJ:**
 - If a voter does not provide acceptable documentary proof of identity, they may not register to vote.
 - Encourage the voter to retrieve documents that prove they are qualified and return to the polling place.
- Have available [Registering to Vote In New Hampshire – 11/11/24](#)

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Acceptable Citizenship Documentation

- The applicant's birth certificate
- Passport
- Naturalization papers if the applicant is a naturalized citizen
- **Or any other reasonable documentation which indicates the applicant is a United States citizen.**
- Monitor communications from NH SOS or NH DOJ on what is acceptable.
- Coordinate with your Supervisors of the Checklist on acceptable documentation

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Acceptable Age & Domicile Documentation

- AGE: Any reasonable documentation indicating the applicant will be 18 or older at the next election.
- DOMICILE: Driver's license, government-issued ID with address, etc., any other reasonable documentation that establishes that it is more likely than not that the applicant is domiciled at the address in the town or ward in which the applicant desires to vote.
- IDENTITY: Driver's license, government-issued ID with address, etc., and **any other evidence that reasonably establishes that it is more likely than not that the person is who they claim to be, including verification of the person's identity by the moderator or another election official.**

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Accessible Voting for Local Elections

- Cities, towns, and school districts that use an official ballot shall ensure that each polling place has at least one accessible voting system at all local elections.
 - The system is for print-disabled voters and others
- For elections held before July 1, 2025, cities, towns, and school districts must enter into pilot agreements with the Secretary of State to use the one4all accessible voting systems in spring elections.
- The SOS target date for issuing pilot program agreements for municipalities is January 15th.

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Impact of Local Accessible Voting

- Cities, towns, and school districts bear the cost of programming the devices.
 - Coordinating with the vendor and proofing the ballots requires unbudgeted staff hours.
- One4All will be used in 2025, but it is uncertain what happens after then
 - Who pays for the next-generation device?
 - LHS (Dominion) and Voting Works offer accessible devices
- Is the SOS' One4All vendor capable of programming the state's multi-page city, town, school, and regional ballots on time?
 - Milford's school SB2 meeting is on February 6th, less than five weeks before Election Day.
 - What happens if the programming is not completed on time?

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Preprocessing Absentee Ballots

Current Situation

- Processing large volumes of absentee ballots on Election Day, whether beginning at 1:00 or two hours after opening, means extending the day
 - ✓Some large towns did not finish until 2:30-4:30 a.m. Wednesday
- Current law enables ten registered voters to petition the processing begins after the polls close
- Significant drain on election officials, election workers, and support staff (building maintenance, police, DPW, others) when processing delays the final count until Wednesday morning

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Preprocessing Absentee Ballot Legislation

Relevant Proposals

- HB 294 - Relative to the processing of absentee ballots
 - Eliminates challenge by 10 voters that delays processing of absentee ballots until after the polls close
- HB 344 - Enables the processing of absentee ballots before election day
 - Permits opening outer envelope of absentee ballots no more than one week prior to the time for processing absentee ballots.
- HB 217 – Relative to absentee ballots.
 - This bill requires absentee ballot voters to submit information demonstrating citizenship, age, domicile, and identity in order to qualify to vote.
insert text

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HB 294

AN ACT relative to the processing of absentee ballots.

Be it Enacted by the Senate and House of Representatives in General Court convened:

Processing of Absentee Ballots. Amend RSA 659:49, II to read as follows:

II. ~~[Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election.]~~ 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.

Effective Date. This act shall take effect 60 days after its passage.

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HB 344

AN ACT enables the processing of absentee ballots before election day.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Opening the Absentee Ballot Outer Envelopes. Amend RSA 659:49-b to read as follows:

659:49-b Opening Absentee Ballot Outer Envelopes. The moderator or the moderator's designee may authorize the opening of absentee ballot outer envelopes ~~[on election day]~~ **no more than one week** prior to the time established for processing absentee ballots in RSA 659:49, provided that the opening of the outer envelopes occurs in public with notice of the time and place. The envelope containing the ballot shall not be removed from the outer envelope at such time, and the outer envelope containing the inner envelope shall be secured until it is processed pursuant to RSA 659:50.

2 Effective Date. This act shall take effect 60 days after its passage.

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Moderator Listserv

- Information
 - Questions, answers, insights and advice from other moderators and NHMA
- Experiences
 - Shared incidents, practices
- Advocacy
 - Inform and mobilize on election-related laws and proposed legislation
- Participation
 - Input and support for moderators participating in the legislative process
- To be added to the NH Moderators List Serv send your request to join to info@nhmunicipal.org.

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Thank you for attending our Moderators Workshop – please provide us your comments on the workshop by using this QR code – you can either login or simply scroll down to the bottom of the form and provide your feedback



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