



NHSBA

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

**Annual Meetings & Under HB1129
& Other Covid Related Issues**

NHMA Moderator Trainings – SB2

January 9, 2021

With additional assistance, information and materials provided by
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Temporary Optional Town Meeting Procedure

HB1129

2020 N.H. Laws Chapter 8



HB 1129 Basics

- Legislative response providing alternative for local governments which “are unable to hold in-person annual meetings”
- So called “drive up” or “drive through” meeting
- Modelled generally after Bow 2020 annual meeting



Photo: Concord Monitor

HB 1129 Basics

- Creates a two-part process:
 - Remote Informational Sessions: two remote informational sessions conducted by governing body (but “presided over” by moderator – more on that later).
 - “Drive Through” Ballot Voting: Other than ballots, voting logistics not prescribed. (Discussion re ballots later)
- May be used for traditional or SB2 meetings.
- Significant coordination required for towns and districts, especially cooperatives.

HB 1129 Basics

- Determination to (attempt to) use is “at the option of the governing body”.
- But if a “normal” meeting is scheduled (final warrant and budget posted), the moderator would need to postpone the originally scheduled meeting.
- HB1129 only speaks to the annual meeting itself, and not the related processes such as budget setting and collective bargaining.
- Unless inconsistent with HB1129, all annual procedures, timelines and deadlines should be followed.

HB 1129 Basics

Part 1 - Informational Meeting(s)

- The governing body must host two remote “live virtual meeting[s]”, 8:3, I & II.
- At least 7 days prior to 1st meeting, the governing body must mail (USPS) notice to EACH individual registered voter (may mean multiple notices to a single residence).
- Notice must include a complete description of the procedures for each part of the meeting and how to participate remotely.
- Follow same remote protocols as set forth in EO#12, Paragraph 4 (access information, number to call if connectivity issues).
- Second remote informational meeting to be held within seven days of 1st meeting.

HB 1129 Basics

Part 1 - Informational Meeting(s)

- Board determines whether/how (and includes in the notice) to allow public comment during the informational meetings.
- AG's office has stated that the moderator presides over informational sessions –
 - Given the remote presentation of the informational sessions, to “preside” takes on a new meaning;
 - Especially if no public comment;
 - Moderators as a whole more experience/knowledge as to permitted amendments, and need for precision with respect to final formation of warrant articles;
 - Boards have been running remote meetings for months – have technology.

HB 1129 Basics

Part 1 - Informational Meeting(s)

8:3, I - The governing body shall host a live virtual meeting and information session, during which the proposed optional town or school district meeting procedures shall be outlined and warrant articles discussed.

- At the first informational meeting:
 - Moderator or board chair outlines the meeting process,
 - Moderator regulates presentation of each article one by one,
 - Presentation of articles should be by same personnel who ordinarily do so (BudCom, board member, petitioner);
- Between first and second informational meetings, board will “solicit and receive” questions/comments from the public “via email, voice mail, text message or other electronic means”. *See 8:3, I.*

HB 1129 Basics

Part 1 - Informational Meeting(s)

*8:3, II. Within 7 days of the information session, the governing body shall hold another live virtual meeting to consider and address comments received from the public. The governing body shall then discuss, debate, and be permitted to amend the posted warrant. The final **warrant**, as amended, shall then be made available electronically for printing by voters to be brought to the voting session, which shall be scheduled for a date and time to be determined by the governing body.*

- At the second informational meeting (within 7 days of the first), the board:
 - considers and addresses the comments received from the public;
 - debates and may amend each article (including the budget – subject to 10% rule in official budget committee towns/districts);
 - final “warrant” (not ballot) must then be made available electronically for voters to access and print at home.

HB 1129 Basics

Part 2 – Drive-Up Voting

8:3, III. Voting on final warrant articles shall be by secret ballot cast by voters through drive-up procedures to ensure appropriate social distancing.

- No specific process for “drive-up procedures”.
- AG’s office has opined that normal balloting is permitted, provided that alternative “drive-up” procedures are available;
- Maintain ballot security and procedures for the drive-up;
 - Checklist fidelity;
 - Awaiting clarification on certain aspects (ballot boxes, absentee ballots, etc.).
- See separate handout *Practical Considerations for Conducting a Successful Optional Annual Meeting under HB1129*, Matthew Upton, Drummond Woodsum.

HB 1129 Basics

Part 2 – Drive-Up Voting

- SB2 districts may choose to use the drive-up voting part, but not the informational meeting parts of the HB1129 process (i.e., use 8:3, III – V, but not I & II).
- Two types of ballots, “official” and “alternative”:
 - First question on ballot is whether voters approve the process (bond article(s)? Consult with bond counsel)
 - Official – other than 1st question, “same as it ever was”
 - Alternative – does not apply to SB2 (subject to interpretation, consult with counsel before finalizing ballot)
 - All voting shall be by written secret ballot (non-issue for SB2)

HB 1129 Basics

Part 2 – Drive-Up Voting

8:3, IV - ... If the optional procedures are not approved by a simple majority, all other warrant articles shall be deemed disapproved. However, the election of officers and action on other items on the initial ballot will be effective. If the optional voting procedures are approved, then all other votes on warrant articles shall be deemed the final action of the meeting ...

- If optional meeting process approved, then subsequent votes on articles are deemed final actions.
- If the voters reject the process, all subsequent “business” articles fail, however, the votes on the election of officers and statutory questions (e.g., zoning amendments, withdraw from a coop, etc.).

HB 1129 Basics

Part 2 – Drive-Up Voting

- If the budget fails, governing body may either:
 - convene a second meeting before 9/1 to adopt a budget; or
 - deem previous year's operating budget adopted exclusive of previous year's separate warrant articles.
- HB 1129 specifically allows the governing body to schedule the voting day, however, for official ballots (election of officers, and SB2 districts), balloting should occur on 2nd Tuesday of March/April/May.
- **If using HB 1129, no strong reason to delay deliberative.**

HB 1129
Additional Q & A's
And
Other Practice Suggestions



HB 1129 – New Issues for 2021

- HB 1129 was drafted and passed after most traditional meeting towns and districts had held elections/balloting, but had not completed business portion of a meeting.
- For SB2, only Conway (and perhaps a couple of others) had not held balloting, but all had held deliberative.
- The pressing issue was towns and districts which had not passed a budget for FY21.
- Novel problems for 2021 annual meetings as both balloting and deliberative are in play.

What is the date for measuring other dates referenced by statutes tied to the date of the meeting?

E.g., 197:6 - *Last day for petitioned warrant articles, or 32:19-a & 197:6 for negotiated CBA cost items: “...not later than 30 days before the date prescribed for the school district meeting or the second Tuesday in March, **whichever is earlier...**”*

- HB 1129 does not include language suggesting that dates and deadlines specified other than for the annual meeting itself may be altered.
- Recommend strict adherence to those other dates, (E.g., the language above from 32:19-a sets the latest date at 2nd Tuesday in March).

What notice is required for the informational sessions? The balloting session?

8:3, I - *At least 7 days prior to [1st] informational session, notice shall be mailed to all **registered voters** describing the procedures to be followed for conducting an annual meeting pursuant to this section.*

- The language requires one notice sent separately to each registered voter. May mean multiple notices sent to one address.
- The notice must include an explanation of the meeting procedures (including the remote participating links, participation rules (if any), along with the dates for the 2nd information session and voting).
- No specific requirement regarding additional notice of balloting. Posting should occur in all ordinary locations with additional dissemination as is reasonably feasible.

How do we need to we solicit & receive public comments?

8:3, I – *After the live, virtual meeting is adjourned, questions and comments from the public shall be solicited and received via electronic mail, voice mail, text message, or by other electronic means.*

- “Public” is more inclusive than the “legislative body”.
- Solicitation in the original mailed notice, the posted notice, during the first informational session, on the website of the town/district, and in any other means reasonable.
- Make clear that identification will be publicized.
- Term “or” should be read as a disjunctive. Suggest single reception points:
 - Single email address - e.g., annualmeeting@town.nh.gov,
 - Single voice mail, dedicated or assigned,
 - Mail might be inadequate for time, but hand delivery is ok.

How do we need to handle/receive/discuss public comments? Read/summarize/list?

8:3, II – ... *the governing body shall hold another live virtual meeting to consider and address comments received from the public.*

- The process description in the meeting notice, and as discussed at informational sessions should identify how comments will be archived and addressed.
 - Read or merely discussed?
 - Comments are governmental records, but decision re how to archive (not everything said during normal annual meeting is in the record).
 - Index with names, summary etc.?
 - Separate comment per article?

How should warrant articles be addressed during the second virtual meeting?

8:3, II – ...*Within 7 days of the information session, the governing body shall hold another live virtual meeting to consider and address comments received from the public. The governing body shall then discuss, debate, and be permitted to amend the posted warrant.*

- It is in this area that the moderator role is most significant.
- Moderator should take up each article one by one and regulate the governing body relative to amendments in the same manner as s/he might with the legislative body.
- Presentation of an article should be by same personnel who ordinarily would present (budget committee, board member, petitioner).

Can the governing body amend or remove petitioned warrant articles? The proposed operating budget in a town/district with an official budget committee?

8:3, II – ... *The governing body shall then discuss, debate, and be permitted to amend the posted warrant.*

- HB 1129 gives the governing body the authority to amend warrant articles at the second virtual meeting, a power that ordinarily would be exercised by the town meeting.
- There is no limitation within HB 1129 limiting that authority to governing body's own articles.
- Governing body may amend subject to ordinary amendment rules (amend, not remove, and may not change subject matter).
- Governing body should be mindful of politics of amending petition articles, and community sentiment and expectations.

How does HB 1129 impact SB2 Ballot(s)?

- The language in paragraphs III and IV relative to ballots as they apply to SB2 communities is a bit sloppy.
- After consultation with the Secretary of State's Office, the Attorney General's office, and among the attorneys of NHSBA and NHMA, the consensus is that all questions may be printed on the official ballot.
- The first question on the SB2 ballot shall be whether the voters approve the optional meeting procedures.
- If there is a bond question on the warrant, the bond question would be next.
- If the alternative meeting procedure is rejected, all remaining questions are disapproved. The votes on statutory articles and election of officers shall apply.

What flexibility does the governing body have to set voting hours?

- HB 1129 does not override the provisions of RSA 659 relative to polling hours and official ballots.
- Although voting hours may be set by the governing body, RSA 659:4 requires the polls to be open at least from 11 a.m. to 7 p.m..
- A suggested practice used by Bow during its 2020 “drive-up” voting, was to try to specify voting block times. This may only be a “suggestion” or “request”. Voters may not be turned away if showing up at a different time.

What kind of meeting follows disapproval of the procedure?

8:3, IV - ... *provided that if the operating budget warrant article is not approved, the governing body may vote to:*

(a) Convene a meeting before September 1 to adopt an operating budget; or

(b) Elect to deem that the meeting has adopted the previous year's operating budget article, not including separate warrant articles.

- HB 1129 does not specify the type of meeting.
- Presumably, an ordinary “SB2” type meeting or another meeting using HB 1129 are permissible.
- Only item to be taken up is an operating budget.

HB 1129 – Downsides

- No ability of voters to motion to amend.
- Failure to pass process question constitutes “disapproval” of all other items.
- Significant scheduling complications for coordinated town/district balloting.
- Great possibility that budget shortfalls next year (post-covid) more likely.
- Bond process fidelity more problematic.
- No tried-and-true traditions – heightened potential for confusion/mistakes.

Covid Related Questions for Meetings Using “Ordinary” Meeting Formats



What happens if we do not want to use HB 1129? Can we postpone the deliberative and/or ballot sessions?

- Postponements are available in exactly the same manner as in any other year for emergencies. *See RSA 40:4, II(a) and (c) relative to deliberative sessions, and 40:4, II(b), 669:1, and 669:1-a relative to official ballot voting days.*
- The attorney general's office issued a [memorandum](#) in March 2020 indicating that the COVID-19 pandemic constitutes such an emergency.
- The N.H. Senate unanimously passed SB2 earlier this week. A bill that would allow postponement of annual meetings until late spring (last SB2 ballot voting day on second Tuesday of July). (Problematic for schools).

Can we hold an SB deliberative session via Zoom?

Short answer is NO.

- There is no way to confirm that everyone participating and voting during a Zoom session is a registered voter.
- Further, it would be impossible to conduct a secret written ballot vote using Zoom.

What are other options for safely holding a “normal” deliberative session?

- Locations outside the town/district –
 - RSA 39:1-b for towns, and RSA 197:4-a for school districts, allow meetings outside the geographical boundaries, with conditions:
 - Warrants and other items required for posting must be posted at the meeting/voting location;
 - The meeting must occur in the nearest appropriate facility;
 - The town/district must arrange for transportation to and from the meeting location (ordinary polling place).
- Satellite spaces (multiple rooms and/or buildings):
 - Must have two-way audio visual, and assistant moderators.
 - RSA 198:4 for school districts, inherent authority for Towns.

Can attendees at in-person deliberative be required to wear masks?

- The governor's EO#74 requires masks in public spaces when 6 feet distancing is not available. However, EO #74 is currently scheduled to expire on January 15, 2021, but may be extended.
- There is no clear law as to whether the moderator could require all attendees to wear masks if they are able to maintain six feet of physical distance.
- We recommend that moderators ask all attendees to wear masks and set aside a separate area for non-masked attendees. The separate area could be a separate room with video and audio connection that allows those in the separate room to both hear and participate in the proceedings.

Novel but Ordinary



Novel but Ordinary

...Not exclusive, but sanctioned



Photo: Worcester Telegram & Gazette

Auburn, MA, 2020 Town Meeting

Novel but Ordinary



Photo: Donna Rhodes, The Salmon Press

Winnisquam Regional School District 2020 Annual Meeting

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