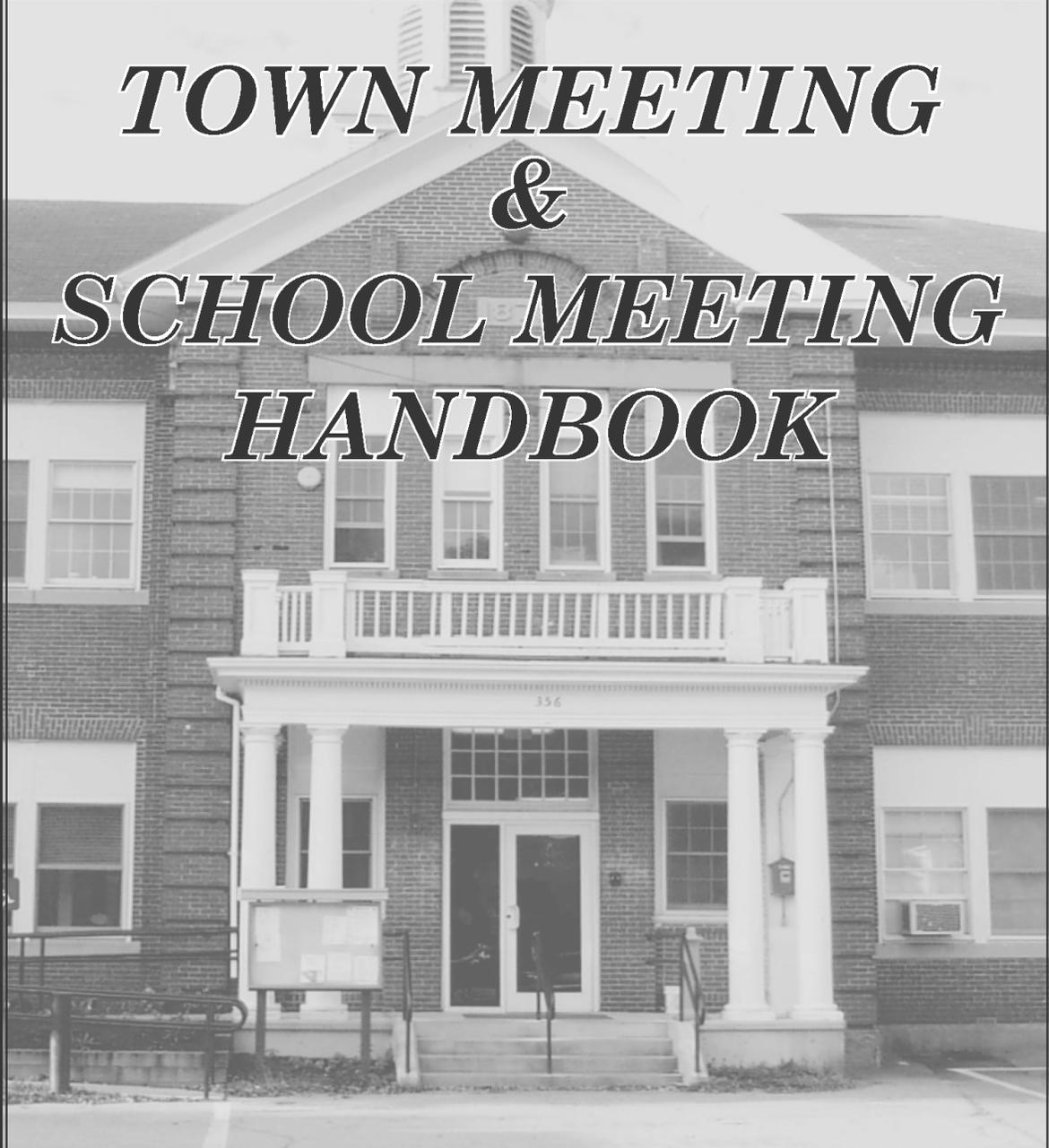


NEW HAMPSHIRE MUNICIPAL ASSOCIATION



***TOWN MEETING
&
SCHOOL MEETING
HANDBOOK***

2020-2021

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Introduction

This publication is intended for use in conjunction with the New Hampshire Municipal Association's 2020 and 2021 Moderators' Workshops and as a reference throughout the year. Other NHMA publications are available to provide further information on the Municipal Budget Law, the various roles of local officials, and other municipal law issues, including *The Basic Law of Budgeting: A Guide for Towns, Village Districts and School Districts*, and *Knowing the Territory: A Survey of Municipal Law for New Hampshire Local Officials*.

We are grateful for the contribution of William J. Phillips, Staff Attorney and Director of Policy Services, of the New Hampshire School Boards Association (NHSBA), to this effort. This handbook assumes a town has no charter. Statements in this handbook may require modification by reference to the charter in charter towns that retain some aspect of the town meeting form of government, such as the budgetary town meeting, or official ballot town meeting charter adopted under RSA 49-D:3, for example.

The information presented is not intended as legal advice and is not a substitute for consulting your municipal attorney or calling NHMA's Legal Services attorneys or the New Hampshire School Boards Association's Staff Attorney. Legal Services attorneys are available to answer inquiries and provide general legal assistance to elected and appointed officials from New Hampshire Municipal Association member towns, cities and village districts. Attorneys can be reached by phone at 603-224-7447 or 800.852.3358, or by email at legalinquiries@nhmunicipal.org. For inquiries regarding school matters, contact NHSBA staff attorney, Will Phillips at 603-228-2061 or wphillips@nhsba.org.

We hope you find this publication helpful as you carry out your duties as a local official. It is dedicated to the many town, village, and school district moderators of New Hampshire who make the town meeting process fair and effective. Your service helps to assure that local elections are carried out in a fair and transparent manner, and that the conduct of the public's business is fair, orderly, and efficient.

1. The Town Meeting

I. The Annual Meeting

A. Date

A meeting “for the choice of town officers and the transaction of all other town business” shall be held annually on the second Tuesday of March. RSA 39:1. Towns that have adopted the optional fiscal year in accordance with RSA 31:94-a may vote to hold the annual meeting on the second Tuesday of May. RSA 39:1-a. Towns and districts that have adopted the official ballot referendum provisions of RSA 40:13 may choose to hold the annual meeting in March, April or May.

A “special” meeting may be called by the select board “when, in their opinion, there shall be occasion therefore.” RSA 39:1. It is a common misconception that superior court permission is necessary for all special meetings. Only if the special meeting is to appropriate money will court permission be necessary. RSA 31:5.

B. New Town Meeting Definitions

The law now supplies new definitions for business session, deliberative session and official ballot voting day, and each type of meeting has varying procedures for how a moderator decides whether to postpone and then reschedules the postponed meeting or election:

1. Business Session (RSA 652:16-e): The meeting of voters in a traditional town meeting (where the town has not adopted SB 2) where voters discuss, deliberate, and vote on matters other than the election of officers by official ballot and other questions placed on the official ballot.
2. Deliberative Session (RSA 652:16-f): The first session of a town meeting that has adopted the provisions of SB 2, the Official Ballot Referendum form of meeting, where the voters discuss, debate and amend warrant articles, leaving all final decisions to the official ballot voting day, see below.
3. Official Ballot Voting Day (RSA 652:16-g): The day when voters in a town vote using the official ballot to elect officers, or to vote on other matters placed on the official ballot, subject to the requirements pertaining to absentee voting, the polling place and polling hours.

C. Separate Business Meeting

A town has the option of conducting the election of town officers and other actions required to be on the official ballot at the official ballot voting day of the town meeting (second Tuesday in March or May) and acting on all other business on another day to be chosen by the select board. This is often called a “bifurcated town meeting.” In order to adopt this option, the question that appears in RSA 39:2-a should be printed on the official ballot. This two-session system becomes effective in the year after it is adopted. Towns that do not use an official ballot to elect their officers cannot adopt this option. In choosing a day for the second (business session) session, the select board is not bound to the time or day chosen in prior years. This flexibility is important, for example, in towns that hold their meetings outside town.

D. Selection of Meeting Location

The select board is charged with selecting the place for town meeting and specifying it in the warrant. RSA 39:2. A town may hold a meeting outside the town “in an adjacent town or nearest appropriate facility” if there is no facility within the town with a large enough seating capacity. If so, the select board must arrange transportation between the regular polling place and the out-of-town facility. RSA 39:1-b.

E. Restriction on Use of Official Ballot

The official ballot system for electing town officers is described in RSA 669:18 – :29. It is often called an “Australian ballot” and should not be confused with the official ballot referendum (SB 2) form of town meeting.

For towns with bifurcated town meeting, RSA 39:2-a, 39:3-d and 40:4-e all provide that no question may be placed on the official ballot unless authorized by statute. RSA 39:3-d, II goes on to specify that an article (a) must be placed on the official ballot if the enabling legislation uses the term “official ballot” and (b) may be placed on the official ballot where the enabling legislation specifies the language of the article but does not use the term “official ballot.” There is some doubt about the effect of this prohibition arising from the case of *McDonnell v. Town of Derry*, 116 N.H. 3 (1976), which was decided under RSA 39:2-a, but prior to enactment of RSA 39:3-d and 40:4-e. In *McDonnell*, an article capping town employees’ salaries was placed on the official ballot and approved. The Court remarked that such official ballot votes are not “necessarily void” under RSA 39:2-a, but the Court resolved the case by deciding that the official ballot vote had been implicitly reconsidered by a subsequent vote on the budget at the second session of the meeting, which approved higher salaries.

If voters want to use the official ballot for types of warrant articles that are not explicitly authorized, the town has the option of adopting one of the official ballot referendum meeting systems described in Chapter 5. Keep in mind, also, that any warrant article question can be put to a secret “yes/no” ballot vote at the traditional town meeting business session.

F. Statutory Wording of Questions Advisory Only

When the exact wording of a warrant article or ballot question is prescribed by statute, that wording should be used. However, if the select board mistakenly words the question differently, or needs to change the wording slightly to make it more understandable, alternate wording is permitted. RSA 31:130 says that the prescribed wording of enabling statutes is advisory only, and the vote will not be declared invalid just for using slightly different wording “so long as the action taken is within the scope of, and consistent with the intent of, the enabling statute or statutes.”

G. Warrant

Preparation of the warrant is the responsibility of the select board, and they may insert additional articles of business right up to the day the warrant is posted. However, RSA 32:5 prohibits adding a money article—that is, a purpose or amount of appropriation—to the warrant unless it was “disclosed or discussed” at the budget hearing required to be held prior to the meeting. This limitation on adding amounts not disclosed at the budget hearing (RSA 32:5) is a limitation only on what the select board or the budget committee can put on the warrant or in the budget. It does not limit the voters’ ability to amend amounts of appropriation—to increase or decrease amounts—on the floor of the meeting.

The warrant must state the place, day and time of the meeting. If officers are elected by official bal-

lot, the warrant must state the time the polls are to be open and an hour before which the polls may not close. RSA 39:2. If the town has more than one polling place, the warrant must state that the additional location will open at the same time as the polls at the central polling place. RSA 39:2-b.

1. Source of Warrant Articles

Any warrant article that can be inserted by petition can also be inserted by the select board. RSA 31:131. If the select board wants an article to appear, there is no need for them to go out and search for petitioners as the select board has independent authority to place articles on the warrant.

2. Subject Matter and Amendment of Warrant Articles

The subject matter of all business to be acted upon at the town meeting must be distinctly stated in the warrant. No action taken at any meeting is valid unless its subject matter was stated in the warrant, except the election of any town officer required by law. RSA 39:2. However, an article may be amended on the floor of the meeting, so long as the basic subject matter is not changed. For example, the amount of an appropriation can be amended up or down, or a highway discontinuance could be amended to a discontinuance subject to gates and bars. No vote taken under an article entitled “other business” has any legal effect, since such an article did not properly warn a subject to be addressed by the meeting.

3. Posting the Warrant

The select board should address the warrant “to the voters of the town.” They must post an attested copy of the warrant at the place of the meeting and in at least one other public place in the town. Posting must be at least 14 days before the day of the meeting. This 14-day period does not include the day of posting or the day of the meeting. RSA 39:5. The select board is subject to penalties, a violation as defined in the criminal code, if they neglect to issue a warrant for any town meeting or election, if they neglect to post copies of the warrant, or if notice of the annual meeting or election fails to conform to any town meeting vote previously taken concerning the form or manner of notice. RSA 39:13.

4. Locally Altering Notice Requirements

RSA 39:13, in its reference to “notice of such meeting or election to be given agreeably to any vote of the town,” impliedly allows voters to vote to make the town meeting notice requirements more stringent than the stated 14-day requirement provided for in RSA 39:5. An example might be requiring that the warrant be printed in the town report, or posting the warrant on the town’s website.

5. Return

The select board, or the constable serving the warrant, must return it at the meeting—that is, give a copy with a signed certification as to proper posting to the town clerk. In the clerk’s absence the warrant may be returned to one of the supervisors of the checklist. RSA 39:7.

II. Postponing Meetings Due to Bad Weather or Other Emergency

A. Overview of Senate Bill 104

Recently enacted Senate Bill 104 clarifies the process for a moderator to postpone either the deliberative/business session or the official ballot voting (election) session of a town meeting. The moderator may postpone either session if the National Weather Service has issued a weather event warning and the moderator believes the event may cause the roads to be hazardous or unsafe, or if an accident, fire, natural disaster, or other emergency renders use of the meeting location unsafe. The moderator must consult, to the extent practical, with certain other town officials before deciding to postpone; and in the case of postponement of an official ballot voting session, the moderator must notify the secretary of state within two hours of the decision to postpone.

If the official ballot voting session is postponed, it must be rescheduled to the Tuesday two weeks following the originally scheduled date. In the case of a school district or village district election that is coordinated with town elections in two or more towns, the moderators of the towns involved must consult with each other, and the election may be postponed only if a majority of the moderators vote to postpone. The new law defines the terms “business session,” “deliberative session,” and “official ballot voting day,” and contains special provisions for the use of absentee ballots at postponed elections. Statutes amended or added: RSA 40:4, 40: 13, 44:11, 652:16-e through :16-g, 657:1, 669:1 and :1-a, 670:1-a, 671:22-a.

The following is a synopsis of the statutory changes and clarifications on town meeting and election postponement.

First, determine what kind of meeting/election is involved, a business session, a deliberative session or an official ballot voting day.

B. How Does A Moderator Postpone A Business Session?

A business session may be postponed for two (2) reasons, one dealing with an event that may occur in the future (i.e., a Weather Event Warning) and the other dealing with already occurring, dangerous circumstances arising out of an accident, natural disaster, or other emergency:

First, if the National Weather Service issues a weather event warning, where the town is within the geographic region of the weather event warning for the date of the business session, and, the moderator reasonably believes the weather event may cause the roads to be hazardous or unsafe, the moderator may postpone the business session up to two (2) hours but not more than 48 hours prior to the scheduled business session.

Second, if an accident, natural disaster, or other emergency has occurred which the moderator reasonably believes may render use of the meeting location unsafe the moderator may, at any time prior to the scheduled business meeting reschedule the business meeting.

What steps must a moderator take to postpone a business session for either a weather event warning, or, an unsafe meeting place?

First, consult with appropriate local officials: Prior to making the decision to postpone, and to the extent it is practical, the moderator shall consult with the governing body, the clerk, and as appropriate for the circumstances the police chief, the fire chief, the road agent, and the local emergency management director.

Second, provide notice to residents: The moderator shall employ whatever means are available to inform citizens of the postponement, and, reschedule the business session to another reasonable date, time and place (as necessary).

C. How Does A Moderator Postpone A Deliberative Session?

The same reasons and procedures for postponement of a business session apply for the postponement and rescheduling of a SB 2 deliberative session, except that the date for the rescheduled deliberative session shall not delay that session by more than seventy-two (72) hours.

D. How Does A Moderator Postpone an Official Ballot Voting Day?

An Official Ballot Voting Day may be postponed for two (2) reasons: for a Weather Event Warning, or dangerous circumstances arising out of an accident, fire, natural disaster, or other emergency.

First, if the National Weather Service issues a weather event warning, where the town is within the geographic region of the weather event warning for the date of the official ballot voting day, and, the moderator reasonably believes the weather event may cause the roads to be hazardous or unsafe, the moderator may postpone the official ballot voting day.

Second, if an accident, fire, natural disaster, or other emergency has occurred which the moderator reasonably believes may render use of the election location unsafe, the moderator may postpone the official ballot voting day.

E. What Steps Must A Moderator Take to Postpone an Official Ballot Voting Day for Either a Weather Event Warning, or, an Unsafe Meeting Place?

First, consult with appropriate local officials: Prior to making the decision to postpone, and to the extent it is practical, the moderator shall consult with the governing body, the clerk, and as appropriate for the circumstances the police chief, the fire chief, the road agent, and the local emergency management director.

Second, document the decision to postpone and notify the Secretary of State: The moderator must document the decision to postpone the Official Ballot Voting Day, and, then he/she must notify the Secretary of State by telephone or electronic mail within two (2) hours of the decision to postpone. It is recommended that the moderator also transmit his/her statement documenting the decision to postpone to the secretary of state via electronic mail, and then reprint the statement in the annual town report.

The moderator must make the decision to postpone an official ballot voting day on the day immediately prior to the election at any time before 6:00 p.m.

F. What Date is the Official Ballot Voting Day Rescheduled To?

Any postponed election must be rescheduled to the Tuesday two (2) weeks following the original date of the election. In addition, all other applicable statutory provisions associated with elections under RSA Chapter 669 are extended for the same 2 weeks.

G. Supervisors of the Checklist Meetings.

The supervisors of the checklist shall not be required to meet again until the postponed town election day.

H. Notice to Voters.

The moderator and the governing body shall employ all reasonable means to provide voters with notice of the postponement, the date on which the postponed election shall be conducted, and information on obtaining absentee ballots for those voters who qualify to vote by absentee ballot at the postponed election. To the extent practical given the circumstances of the postponement, notice shall be posted at the location of the scheduled election, at the municipal offices, and on the website of each town, school district, and village district whose election is postponed.

I. Procedures for Handling Absentee Ballots

- All ballots prepared for the original date of the election shall be used for the postponed election.
- A notice explaining the deadline for returning an absentee ballot shall be issued to voters who request and are sent an absentee ballot during the period between the original date and the postponed date of the election.
- All absentee ballots submitted to be counted on the date of the original election, all absentee ballots submitted for the original date of the election which arrive after that date but before 5:00 p.m. on the date of the postponed election, and all absentee ballots submitted to be counted at the postponed election shall be submitted to the moderator for processing in accordance with RSA 659.
- To the extent practicable, the town clerk may decide to be at the location of the originally scheduled election to receive applications for absentee ballots, to provide voters the opportunity to complete absentee ballots, and to receive returned ballots during what would have been normal polling hours. The town clerk may designate a deputy clerk or assistant to provide this service, provided the individual has taken an oath of office and has been trained in the requirements for using an absentee ballot and the procedures for issuing and receiving absentee ballots.
- The absentee ballot of a voter who qualified to vote by absentee ballot because he or she expected to be absent or unable to appear at the polls on the original date of the election and who submitted an absentee ballot which otherwise satisfies the requirements for voting by absentee ballot, shall be counted even if the voter is present in the town or able to appear at the polls on the date of the rescheduled election.
- All absentee ballots shall be processed as provided for by RSA 659.

J. Procedure for Multi-Jurisdiction Official Ballot Day Postponement

For Town Elections: The moderators of the towns involved, after consultation with respective town officials, shall communicate with each other to reach a consensus on the proposed postponement. If a consensus cannot be reached, the election shall be postponed if a majority of the moderators vote to postpone. In such instances, one of the moderators shall be selected to document the communications and notify the secretary of state. When a ballot to be used at an election which has been postponed contains questions that are to be voted on simultaneously by more than one town, such as those relating to village, school, or water districts, the postponement of an election shall apply to all towns voting on that issue at the election.

For School District Elections: In the case of a school district that comprises one or more preexisting districts and holds its elections in conjunction with the town elections in the component towns, in the event of a weather or other emergency the town moderators in each town shall attempt to reach consensus on whether to postpone. In the absence of a consensus, the election shall be postponed if a majority of the moderators vote to postpone.

For Village District Elections: In the case of a village district that includes voters from 2 or more towns and holds its elections in conjunction with town elections, in the event of a weather or other emergency as described in RSA 669:1, V, the town moderators in each town shall, as described in RSA 669:1, coordinate to reschedule the town and village district elections as provided in that section.

III. Petitioned Warrant Articles and Special Meetings

The select board has authority to establish the warrant for town meeting and to call special town meetings anytime it determines a special meeting is necessary, but voters also have the right to submit warrant articles by petition and to petition for a special town meeting. If the select board unreasonably neglects or refuses to warn a special meeting or to insert any petitioned article in the warrant, 25 voters or one-sixth of the town's voters, whichever is fewer, may petition the superior court to issue a warrant for the meeting or to order the insertion of an article in the warrant. RSA 39:9.

A. Petitioned Articles

Upon written application of 25 or more town voters or 2 percent of all registered voters, whichever is less but in no case fewer than 10, submitted to the select board not later than the fifth Tuesday before the annual meeting, the select board must insert a petitioned article in the warrant for town meeting. The petitioned article must be placed on the warrant with "only minor textual changes as may be required." In other words, minor changes in grammar can be made, but changes in meaning or substance cannot. RSA 39:3. An amendment to RSA 39:3 clarifies that any "minor textual changes" made by the selectmen or school board before placing a petitioned article on the warrant for an annual meeting "shall not in any way change the intended effect of the article as presented in the original language of the petition."

B. Petitioned Special Meetings

- In towns with fewer than 10,000 inhabitants upon the written application of 50 or more voters or 1/4 of the voters in town, whichever is fewer, the select board shall warn a special town meeting to act upon any question specified in the petition.
- In towns with 10,000 or more inhabitants upon the written application of 5 percent of the registered voters in the town, so presented not less than 60 days before the next annual meeting, the select board shall warn a special meeting to act upon any question specified in such application. RSA 39:3.
- A special town meeting cannot be held on the date of a state biennial election.

C. Invalid or 'Illegal' Articles

An illegal warrant article is one that, if passed, cannot have any legal effect, typically because it calls for the town to exercise a power or use a procedure that the legislature has not authorized. If the select board receives a petitioned article that calls for the town meeting to take some unauthorized action, the New Hampshire Supreme Court has, in some cases, said that the select board is not required to place it on the warrant. *Levasseur v. Selectmen of Hudson*, 116 N.H. 342 (1976). In addition, if an "illegal" article is petitioned for a special meeting, the Court has said the select board is not required to call the special meeting. *Winchester Taxpayers' Association v. Selectmen*, 118 N.H. 144 (1978). Nevertheless, the Court has also referred to the inclusion of petitioned articles on the warrant as a "right." *Woodside v. Selectmen of Derry*, 116 N.H. 606 (1976). Because of these mixed decisions, and because the failure to include a petitioned article subjects the select board to a criminal penalty (RSA 39:3-b), it is recommended that in most cases the article should be placed on the warrant anyway. The select board could seek a legal opinion that a vote on the article will have no legal effect, and that opinion could be shared with the meeting voters. In short, it is probably good

practice to put all petitioned articles on the warrant, unless the select board has a clear legal opinion from the town's attorney, or a ruling from a court, stating that the article can be omitted.

D. Special Meetings

When calling a special meeting, the select board must publish a copy of the warrant in a newspaper of general circulation in the town within one week after posting the warrant. RSA 39:4. No money can be raised or appropriated, nor can any appropriation previously made be reduced or rescinded, at any special meeting unless voting is by ballot and the number of ballots cast is equal to at least half of the number of legal voters on the town checklist at the preceding annual or biennial election. RSA 31:5. Otherwise, superior court permission is required. As a practical matter, almost no town can expect a turnout of half the voters, so the alternative of petitioning the superior court must be used. The court must find that an "emergency" exists. If the court grants permission, then the special meeting has the same authority as an annual meeting over the particular emergency expenditure. RSA 31:5.

1. Special Notices

If the select board votes to seek court permission for a special town meeting, a copy of that vote must be posted within 24 hours, and the court petition cannot be filed until at least 10 days later. Within 24 hours of receiving notice from the court of the date of the hearing, the select board must post notice of that court hearing date. Both notices must be posted at the select board's office as well as at two other public places and must be published in a newspaper. RSA 31:5, IV. On or before the date of filing the petition with the superior court, the select board must forward a copy of the petition and warrant article(s) by certified mail to the commissioner of the department of revenue administration.

2. What Is an Emergency?

In order for the superior court to grant a petition from the select board for a special meeting to appropriate money, without half the town's voters present, there must be "an emergency ... requiring an immediate expenditure of money." RSA 31:5, I(b) and (c) provide as follows:

'Emergency' for purposes of this section shall mean a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

To verify that an emergency exists, a petitioner shall present and the court shall consider a number of factors, including:

- The severity of the harm to be avoided.
- The urgency of the petitioner's need.
- Whether the claimed emergency was foreseeable or avoidable.
- Whether the appropriation could have been made at the annual meeting.
- Whether there are alternative remedies not requiring an appropriation.

A similar statute, RSA 197:3, largely identical in wording, applies to school districts.

Once court permission is granted, the special meeting can be used to act on other warrant articles that the select board may wish to insert, even though the court order doesn't include those articles, so long as the town does not try to appropriate money for a purpose not approved by the court.

3. Exceptions to Requirement of Court Permission

There are two exceptions to the requirement that special meetings called to appropriate money must have court permission.

Disaster Funds: If the purpose of a special town meeting is to authorize the expenditure of federal funds allocated to the town as a result of a major disaster as declared by the governor and to appropriate the local matching share for such funds, the law allows this to be done without either meeting the 50 percent voter attendance requirement or receiving court permission. The authorization to expend federal funds and the appropriation of matching funds are the only actions that can be taken at this kind of special meeting. RSA 31:5-a.

Collective Bargaining: When an article dealing with collective bargaining agreement cost items or a fact finder's report has been placed properly on the warrant for the annual meeting, a contingent article may be inserted by the governing body or by petition allowing the governing body to call a later special meeting if the cost items or fact finder's report are rejected at the annual meeting. The suggested wording is: "Shall [the local political subdivision], if article ____ is defeated, authorize the governing body to call one special meeting, at its option, to address article ____ cost items only?" RSA 31:5, III.

2. The Moderator

I. Election

A. Two-Year Term

A moderator is chosen every two years, in even-numbered years, by ballot, by plurality vote. The moderator assumes office when the regular town business meeting held that year has adjourned and upon his or her “qualification” for office, which means upon taking of the oath of office in accordance with RSA Chapter 42. The moderator serves through the adjournment of the regular town business meeting two years following election and until the qualification of a successor, whichever is later. However, if an election is postponed to a date that follows the business session, the end of the term of the moderator is extended through the completion of all election day duties or until the qualification of a successor, whichever is later. RSA 669:1-a. The election of moderators in city wards is at every other regular city election. RSA 40:1.

B. Compensation

Financial compensation of the town moderator, if any, is set by the annual meeting in accordance with RSA 31:9-b.

C. Oath of Office

Every town officer, including the moderator, must take the oath of office, which any selectperson, town clerk or justice of the peace can administer. RSA 42:1 and :2. As with any other officer, a moderator can be removed from office by the superior court for violating the oath of office.

D. Vacancy

Vacancies in the office of town moderator are filled by appointment made by the supervisors of the checklist in accordance with RSA 669:62. Although the statute provides that vacancies are filled by the select board where there are no checklist supervisors, the fact is that a town is required to have supervisors of the checklist. RSA 41:46-a.

E. Moderator Pro Tempore

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.)

Furthermore, 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.

F. Assistant Moderator

The moderator may appoint an assistant moderator, who must take the oath of office in the same manner as the moderator. The assistant holds office at the pleasure of the moderator and has all the powers and duties of the moderator, subject to the moderator's control. RSA 40:3-a. An assistant moderator may be, and usually is, appointed as moderator pro tem if the moderator will be absent.

G. Incompatible Offices

RSA 669:7 lists the multiple town offices that cannot be held by any one person at the same time. (See Chapter 7 for the full text of the statute.) A moderator may not simultaneously hold any of the following offices: selectperson, treasurer, trustee of trust funds, collector of taxes, auditor, highway agent, head of any police department on full-time duty or supervisor of the checklist.

II. Moderator's Duties

A. At Town Meeting

RSA 40:4 requires the moderator "to preside at town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed."

B. Rules of Procedure at Meetings

RSA 40:4 provides that the moderator "may prescribe rules of proceeding but such rules may be altered by the town." This means that the moderator has full control over procedure used at town meetings. Actions taken and rulings made by the moderator under the extensive powers granted by this statute may not be reversed except by vote of the meeting at which the ruling is made. *Exeter v. Kenick*, 104 N.H. 168 (1962). Therefore, one rule that is legally binding is that a moderator must conduct the meeting in such a way that voters who wish to do so are given an opportunity to move to overrule the moderator. See Chapter 3.

Strict adherence to any set of rules for parliamentary procedure is not required, nor recommended. Sample rules of procedure are found in Appendix D of this publication, but rules are not binding, even if they are adopted by vote of the meeting itself. This is because a specific ruling of the moderator will stand even if inconsistent with previously adopted rules, unless that ruling is challenged and reversed by the voters at that meeting. However, the moderator may not override existing state law. *Pierce v. Langdon*, 110 N.H. 170 (1970). Moderating is, of course, in many ways an art rather than a science. Good moderators avoid getting hung up on the technicalities of meeting rules and bend to the political wisdom of the voters. As it was explained by the Supreme Court in *Hill v. Goodwin*, 56 N.H. 441, 454 (1876):

Nothing can be better settled than that every deliberative assembly (and undoubtedly a town-meeting is theoretically and nominally such, however it may be in fact) is and must be the final judge of its own parliamentary law. No doubt the ordinary rules of parliamentary law, as laid down in the manuals and books of authority, are a very convenient aid to the orderly transaction of business; but its rules are in many matters complicated, and the distinctions subtle and nice; ... and when the various champions of discussion engage in a game of parliamentary tactics, a town-meeting would very soon find itself entangled in the complicated meshes of parliamentary rules, which would effectually stop all proceedings, and bar all legitimate action, if they were of any binding force. All of this, however, avails nothing against the

omnipotence of a deliberative assembly. The moderator, excepting in those matters where he is bound by statute law, rules as he understands that he ought to rule. If his ruling is incorrect, any person who is dissatisfied may appeal to the meeting, and its decision, being not against the statute, is final and conclusive.

C. At Elections

The moderator is in charge of the election process from start to finish, whether it is by unofficial ballot, partisan official ballot or the non-partisan official ballot (the so-called “Australian” ballot). See Chapter 6 for more detailed information on these types of ballots. Upon completion of the ballot counting, the moderator files a certification of election with the town clerk that indicates the number of votes received by each candidate.

If the moderator is a candidate for another elective town office, certain disqualification and conflict of interest standards apply to limit the moderator’s role in overseeing the election. See Chapter 6 for a more detailed discussion on the conduct of elections at the polling place.

For a complete discussion of the moderator’s role in state elections, see the New Hampshire Election Procedure Manual:2018-2019, published by the Secretary of State, who has authority to oversee all state elections.

D. Appointments and Filling Vacancies

1. Official Budget Committee

In towns that have adopted a municipal budget committee in accordance with RSA 32:14 – :24, the moderator plays a role in making appointments and filling vacancies on the budget committee if the town meeting has decided that all budget committee members-at-large are to be appointed. RSA 32:15, I (a). However, if the moderator fails to fill a vacancy within five days of being notified of the vacancy, the budget committee itself can fill the vacancy. RSA 32:15, VII.

If the town opts for elected budget committee members, the budget committee itself fills vacancies, and the moderator plays no role.

2. Supervisors of the Checklist

The moderator plays a role in filling vacancies in the board of supervisors of the checklist. Usually the remaining supervisors fill such vacancies, but if only one supervisor remains in office, or if none remains, such vacancies are filled by the moderator. RSA 669:64.

3. Conduct of the Meeting

I. Rules of Procedure

A. Establishing Rules

As mentioned in Chapter 2, New Hampshire law vests the moderator with the authority to establish rules of procedure and also vests the meeting with the power to overrule the moderator's rules or rulings. RSA 40:4. The New Hampshire Supreme Court has held that an open town meeting is not a continuing body, and one meeting may not adopt standing rules or bylaws to govern the proceedings of subsequent meetings. Each meeting is independent and entitled to the privilege of adopting its own rules. *Exeter v. Kenick*, 104 N.H. 168 (1962).

From a practical standpoint, a set of rules adopted by the voters is only advisory, even at that same meeting, because rulings made by the moderator, even when clearly contrary to such adopted rules, will stand unless successfully challenged by the voters at that meeting. From this perspective, there is no strong legal impetus for adopting of a set of rules at the beginning of a meeting. Instead, the justification for doing so is to provide notice of how the moderator intends to govern the meeting in the absence of any challenges. This will help assure voters that the meeting will be fair and orderly.

B. Overruling the Moderator

Occasionally, a moderator will make a ruling that is clearly erroneous or for some other reason meets with general disfavor by the town meeting. If this happens, any qualified voter may appeal to the meeting to overrule the moderator's ruling. The voter is not required to give any reason for the request to overrule, but should be given an opportunity to do so. The moderator is then legally obliged to poll the house to see whether or not the moderator is sustained. RSA 40:4. As with most other votes, a simple majority controls.

C. Failure to Follow Rulings of the Meeting

RSA 40:6 establishes a limit on the discretion of the moderator. Any moderator or presiding officer who willfully neglects or refuses to follow any rule or proceeding established by RSA Chapter 40 or the vote of the town, including any vote to overrule the moderator, is guilty of a misdemeanor. RSA 40:6. We are not aware of any moderator actually becoming subject to this penalty, but in light of *Exeter v. Kenick*, discussed above, such a penalty would be applicable only if the voters actually had made a particular procedural vote or demanded a secret ballot or recount (discussed below), and the moderator blatantly ignored it. Because of the element of willfulness, it could be difficult to prove a violation in the absence of a direct challenge to the moderator at the meeting and a majority vote in support of the challenge.

D. Wording of Articles, Motions and Amendments

The select board and voters often ask about the "correct" way to word a warrant article, motion or amendment. Usually, there are no legal magic words, with some notable exceptions, such as a motion to discontinue a highway "subject to gates and bars." Votes on appropriations must comply with the Municipal Budget Law, RSA Chapter 32. (See Chapter 4 for further information.) Simplicity is usually best so that the intent of the voters is understood by those present and will be understood by

those not present. Courts usually interpret town meeting votes so that technical errors are not held to defeat the obvious wishes of the voters.

Even where the wording of a question is explicitly prescribed by statute, this wording is not mandatory. RSA 31:130 provides that the prescribed wording of enabling statutes is “advisory only,” and the vote will not be declared invalid if slightly different wording is used “so long as the action taken is within the scope of, and consistent with the intent of, the enabling statute or statutes.”

Moderators have no inherent power to re-word motions or amendments, but most moderators, in the interest of fairness, make some effort before a vote is taken to ascertain whether the intent and effect of a proposed vote is well understood. If there are doubts, a moderator may even make friendly suggestions for wording if this can be done in an impartial way. The moderator may also consult with the town’s attorney, if present, to resolve doubts about the legal effect of the proposed action.

In *Lamb v. Danville School Board*, 102 N.H. 569 (1960), a warrant article had called for the appropriation of \$98,000 for a new school, to be raised through bonds or notes. A motion was made to raise and appropriate \$60,000 for the school. It lost. A second motion was to raise and appropriate \$98,000 for the school. That lost also. A third motion sought to raise and appropriate \$95,000 for the school and to raise it through bonds or notes. That vote passed. The plaintiff argued in court that this vote was invalid because it was inconsistent with the earlier votes, and there was never a motion to reconsider. The Court, quoting from U.S. Supreme Court Justice Oliver Wendell Holmes, said:

The machinery of government would not work if it were not allowed a little play in the joints....
The failure to observe the niceties of parliamentary procedure involving no violation of statutes does not void the district action.

Mandatory versus Advisory: A persistent source of confusion is whether a vote is intended by the voters to be mandatory or merely advisory. It is best to clarify that intention in the wording of the vote itself. Otherwise, a court may later have to delve into the voters’ intent. In *McMahon v. Town of Salem*, 104 N.H. 219 (1962), a vote to “authorize” the town manager to appoint a recreation commission was construed as a mandate. The Court held that the manager must appoint, observing: “To hold otherwise would attribute to the voters greater indecision than is commonly encountered at town meetings.” On the other hand, in *Stamper v. Selectmen of Hanover*, 118 N.H. 241 (1978), a vote stating the “sense of the meeting” that hawkers and peddlers are a benefit to the town was held not to deprive the select board of the authority to prohibit hawkers and peddlers on some of the town’s streets in accordance with RSA 41:11.

E. Legal Validity of Motions and Amendments

The legality of motions and 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.

Of course, a motion to name someone Volunteer of the Year or thank the Scouts for providing cookies isn’t intended to have any legal validity. It is not illegal to make these kinds of motions or vote on them, but votes that the voters intend to have a legal effect must comply with the subject matter requirement.

1. Commencing Consideration of Warrant Articles

There is no legal requirement for the main motion made under a warrant article to reflect the exact wording of the article as printed in the warrant. However, if the article is moved with significant changes to the article as printed in the warrant, the better practice is first move the article as printed in the warrant; thereafter, a proposed amendment can be made. The

Department of Revenue Administration has indicated that where an article as printed in the warrant differs significantly from the article as adopted by the meeting, with no indication in the town meeting minutes the article was amended by way of a motion to amend approved by the meeting, DRA might disallow that article. Although this would apply to only those articles containing appropriations, it is better to have a consistent practice for all warrant articles.

When the Moderator does accept a motion to adopt or discuss a warrant article, and the Moderator's practice is to get a second to that motion, a new provision of The Right-to-Know Law requires that the minutes of the town meeting record the names of the members of the meeting who made or seconded each motion. RSA 91-A:2, II.

2. Adding or Altering Details by Amendment

It has long been held that, 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 considerably from what is in the warrant. *Pittsburg v. Danforth*, 56 N.H. 272 (1875). For example, in *Sawyer v. Railroad*, 62 N.H. 135 (1882), the warrant article had called for the town to build a particular railroad by January 1878. The vote actually taken omitted the condition of the completion date. The Court said the vote was nevertheless valid and said that alternative and additional conditions could have been added as well. In other words, an amendment may legally change the intent and impact of a warrant article, but may not change the subject matter. There are, however, two exceptions to this general rule. 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. In addition, the law limits the voters' ability to amend articles under the official ballot referendum form of town meeting (SB 2). For more information on SB 2, see Chapter 5.

F. Reconsideration and Limits on Reconsideration

Generally, any vote taken by a town meeting may be reconsidered and/or rescinded later at that same meeting or at any subsequent meeting unless a third-party contractual obligation or other vested right has already been created in reliance on that vote. *Jewett v. Alton*, 7 N.H. 253 (1834). A vote that is required to be taken by official ballot cannot be reconsidered on the floor at a later business session. *McDonnell v. Town of Derry*, 116 N.H. 3 (1976).

In *Preston v. Gillam*, 104 N.H. 279 (1962), the original town meeting vote instructed the select board to sell certain town property by auction. The select board had already scheduled an auction when they got a valid petition for a special town meeting to reconsider that vote, a meeting that could only have occurred after the already-scheduled auction. The select board held the auction, sold the property and refused to schedule a meeting to reconsider because it was too late. The Court held that the select board's actions were proper.

In *Byron v. Timberlane Regional School District*, 113 N.H. 449 (1973), a bond issue failed to pass by the required two-thirds vote at the March 31 annual meeting, but there was a motion to reconsider at an adjourned session on April 6. At that session a new vote was taken, and the bond issue was again defeated. However, later in that same meeting, around 2 a.m., when most voters had left, a motion to reconsider again was made. This time the bond issue passed. The Court upheld this vote. The lesson seems to be that voters who leave before the final adjournment do so at their peril.

Perhaps because of voter dissatisfaction with such tactics, there are now two statutes that limit the ability to reconsider, even if the meeting later changes its mind. These laws supersede any local rules. They also supersede any late-night attempt to change local rules.

1. Bonds over \$100,000

RSA 33:8-a requires that a vote on the issuance of bonds or notes over \$100,000 cannot be reconsidered at that same session. If there is a motion to reconsider and it passes, actual reconsideration must take place at an adjourned or recessed session of the meeting held at least seven days later. Notice of the adjourned session must be given in a newspaper in circulation in the town at least two days before the reconsideration vote.

2. Restricting Reconsideration

The more general statute restricting reconsideration is RSA 40:10, which can be made to apply to any vote. This statute allows a meeting, on a vote-by-vote basis, to limit reconsideration of a vote or warrant article in the same manner as bond issue votes are protected under RSA 33:8-a above. After any vote passes at the meeting, the meeting may then vote to restrict reconsideration of that prior vote or article. If the vote to restrict reconsideration passes, the vote or warrant article that is subject to the restriction is, until final adjournment of that meeting, protected as provided by RSA 40:10. If, later in that meeting, there is a motion to reconsider the restricted vote or warrant article, and the motion passes, actual reconsideration cannot take place until an adjourned session held at least seven days later. The time, date and place at which the reconsideration will occur must be announced before the close of the prior session and must also be published in a newspaper at least two days prior to the reconsideration.

The actual vote to restrict reconsideration cannot itself be reconsidered. That would have been an obvious loophole in the scheme. The motion to restrict reconsideration does not have to be made immediately after the original vote. The law provides that “any vote previously taken at that meeting” can be restricted. For example, it is possible to vote “to restrict reconsideration of all votes taken up to now.” However, the voters cannot adopt a rule at the beginning of the meeting to restrict reconsideration of all votes at that meeting. A vote to restrict reconsideration under RSA 40:10 can be taken only after the vote on the article being restricted.

For example, at 8 p.m. a motion is made under a proper warrant article to appropriate \$50,000 for a particular purpose, and it passes. Then a motion is made to restrict reconsideration of this article, and that motion passes. Hours later, a motion is made and passed to reconsider the 8 p.m. vote. The result is that at least seven days later, an adjourned session must be held, with proper notice, to vote again on the \$50,000 appropriation.

3. Implied Reconsideration

According to RSA 40:10, a restriction adopted under this section shall apply to any subsequent action by the meeting which alters or modifies the result of the restricted vote, or which involves the same subject matter as does the restricted vote or warrant article, regardless of whether or not the term “reconsider” is actually used.

4. Restricting Reconsideration at SB 2 Deliberative Session

In an SB2 deliberative session, an affirmative vote to restrict reconsideration prohibits any further action on the restricted article until the second session, when the article is voted on by ballot. Therefore, SB 2 municipalities do not follow the procedure for taking up the reconsideration at a meeting seven days later as provided in RSA 40:10, II, like in traditional town meeting towns. In other words, a vote to restrict reconsideration in an SB 2 municipality means discussion, deliberation, and amendments to that article has ended.

G. Preventing Disorder

The moderator may command any constable, police officer or legal voter to remove from the meeting and detain any person conducting himself or herself in a disorderly manner. RSA 40:8. Police and

constables are guilty of a violation for not obeying the commands and orders of the moderator for the preservation of order. RSA 40:9. No person may speak during the meeting without permission of the moderator, nor may anyone speak when any person already speaking is in order. Everyone “shall be silent at the desire of the moderator, on pain of forfeiting \$1 for each offense, for the use of the town.” RSA 40:7.

In *State v. Dominic*, 117 N.H. 573 (1977), the New Hampshire Supreme Court upheld the disorderly conduct conviction of a select board member who, at a meeting of the select board, refused to follow the orders of the chair. The Court said the First Amendment right to free speech was not violated by an order to leave the room for failing to follow the procedural orders of the chair. The same legal principle applies to support the authority of the moderator to have disorderly persons removed from the meeting. In *Artus v. Atkinson*, U.S. District Court, D.N.H., No. 09-cv-87-PB, 2009 DNH 154 (October 14, 2009), the court held that a moderator is protected by “absolute legislative immunity” from liability for civil rights violations committed in his capacity as moderator. Legislative immunity will protect a moderator who enforces a rule to keep town meeting proceedings in order.

In a more recent case, *Baer v. Leach*, Opinion No. 2014 D.N.H 214 (November 24, 2015), Baer, who was attending a school board meeting, was arrested for being disruptive. The U.S. District Court determined that Leach, the arresting officer, was immune from liability. Leach had sufficient reason to believe that the arrest was lawful based on the circumstances. Specifically, Leach had observed Baer disregarding the rules governing the public meeting—namely, that public comment was not a “Question and Answer” session and subsequently by interrupting after his allotted time had ended. Furthermore, when the board chair tried to regain order multiple times to allow others to speak, Baer continued to interrupt, mocking them and stating, “Why don’t you arrest me?” The chair finally instructed Leach to arrest Baer. These facts demonstrated to Leach that Baer was disrupting the meeting. Although the judge did say that there is no “magic number” of warnings necessary before someone can be removed from a meeting, these facts are instructive and show that multiple attempts to resolve the situation should be made before removal is even considered.

H. Separating Voters from Non-Voters

RSA 669:5 requires an updated checklist to be used for all town meetings, including the business session. The moderator must, therefore, make sure that only registered voters vote, so that the town meeting process is orderly. The details are up to the moderator, so long as whatever arrangement is made assures that only registered voters are voting.

In some towns, the moderator causes a barrier to be put up through the seating area so that the front part of the area is reserved for voters and the back part for spectators. The moderator might assign a couple of constables or other designated persons to keep the non-voters from entering the restricted area. In other towns, non-voters are allowed to sit where they wish, but the supervisors of the checklist hand out colored cards to registered voters, to be raised when a voice vote is questioned. Some towns, particularly smaller ones, also give voters pre-printed yes/no ballots, sometimes with numbered sections that can be torn off whenever a secret ballot is called for. Then the moderator causes boxes to be sent down the aisles when secret ballot votes are held, so that the voters can vote without leaving their seats and going through the checklist on every vote.

Whatever method is chosen to make sure only qualified voters vote, it must be possible for someone to challenge the restrictions. The ultimate authority should be the voter checklist, and the supervisors of the checklist can settle any issue of voter eligibility.

1. Non-Voter Speech

Non-voters cannot speak without permission of the moderator. In many towns, the moderator traditionally asks for a ruling from the meeting before allowing a non-voter to speak, but this is not legally required. Some towns even allow the objection of only one voter to defeat the request of a non-voter to speak, but this practice is questionable since all rules are subject to approval or alteration by a simple majority. In *Curnin v. Egremont*, 510 F.3d 24 (1st Cir. 2007), a case arising in Massachusetts, this view of town meeting was upheld against the claim by a nonresident property owner that he had a First Amendment right to speak. The First Circuit Court of Appeals held that town meeting is a legislative proceeding, not a public forum for free speech.

2. 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.

I. Counting and Declaring Votes

With the exception of certain votes required by statute to have a two-thirds majority in order to pass, a vote at town meeting will be considered passed if it receives a majority of those present and voting. There is no quorum requirement, and those present but silent (abstaining) are not counted either as positive or negative. *Sugar Hill v. Lisbon*, 104 N.H. 40 (1962); *Laconia Water Co. v. Laconia*, 99 N.H. 409 (1955).

Another limitation on the moderator's discretion is the moderator's merely "ministerial capacity" in counting votes in an election of officers. A court can overturn a moderator's ruling on a vote count, even if no objection or request for recount was made at the time. *Pierce v. Langdon*, 110 N.H. 170 (1970). It is unclear whether this rule applies only to elections or also to votes on other subjects.

J. Ballot Counts if Voter's Intent Can Be Determined

HB 146 added a new section, RSA 40:4-g, which states, "In any vote conducted pursuant to this chapter, every ballot shall be counted if the intent of the voter can be determined, regardless of whether the voter followed any instructions relative to marking the ballot provided before the vote." The reference to "this chapter" means RSA 40, which governs town meeting procedures.

It addresses a situation such as a secret ballot vote at town meeting in which voters receive ballots with "yes" and "no" printed on them. Perhaps they are instructed to circle their choice, but a voter instead crosses out the "no" instead of circling "yes." Or perhaps voters are instructed to tear the ballot down the middle and deposit only the "yes" or the "no" half in the box. Some voters instead circle "yes" or "no" and deposit the entire ballot. In both cases the voters did not follow instructions, but their intent is clear. Most moderators would have counted the ballots anyway, but the new law clarifies that they must.

The new law is analogous to RSA 659:64, which instructs election officials to count a ballot if they can agree on what the voter intended; but that statute applies only to the election of officers, not to other ballot votes.

K. Requests for Secret Yes/No Ballot

The moderator must conduct a secret yes/no ballot whenever five voters (three voters in a town of 500 or less) make a written request prior to a voice vote or division vote. RSA 40:4-a. Voters must be present at the meeting to request a secret ballot vote. Most moderators have not permitted petitions signed by five voters to be submitted before the meeting, asking for secret yes/no ballots on some or all questions. The statute requires the written requests to come “prior to a voice vote or division vote on the article.” The procedure for a secret yes/no ballot is not prescribed in detail by the statute. Some towns use blank white paper, and voters are requested to print “yes” or “no.” Other towns print the words “yes” and “no” with boxes beside them in which the voters place an “X.” Many towns use different colored paper for each question to avoid confusion. To save time, some towns have found it useful to pass a “ballot box” up and down the aisles for the collection of secret ballots. Fraud is prevented by the manner in which differently marked ballots are distributed as voters enter the hall.

L. Questioning a Vote

If the moderator is in doubt as to the result of a voice vote, he or she may call for the taking of the vote by other means. See Chapter 9 for other types of votes. In addition, RSA 40:4-b requires the moderator to take a secret yes/no ballot when seven or more voters question any non-ballot vote immediately after the moderator declares the vote and before any other business is begun. The voters must be present. The request may be oral or in writing.

Often a moderator can sense when there is an overwhelming desire for a secret ballot vote and will call for one without any specific requests. This is perfectly valid under the general power of the moderator to prescribe rules, unless overruled by a majority of voters present.

M. Recounts

1. Yes/No Ballot Votes

RSA 40:4-a, I(b) permits five voters to request a recount of any vote taken by secret yes/no ballot. The request must be made immediately after the announcement of the result. If the vote margin is less than 10 percent of the total vote cast, the moderator must order the recount immediately. The voters must be present. The request need not be in writing.

It should go without saying that if the moderator or other election official actually discovers a mistake in the counting of yes/no ballots, the moderator may correct the declaration of results, even after an incorrect result has been announced and even if there was no request for a recount. *Felkner v. Chesley*, 66 N.H. 381 (1891).

2. Official Ballot Votes

Any 10 voters of a town may apply in writing to the town clerk, within seven days after a meeting, for a recount on any question appearing on the official (Australian or nonpartisan) ballot used at the meeting. The clerk must appoint a time and place for the recount, but not earlier than five days nor later than 10 days after the receipt of the application. The applicants for the recount must pay to the town clerk, for the use of the town, a fee of \$10. The clerk must give notice by mail of the time and place of the recount to the first named voter who requested the recount and to any other person who requested notice in writing. Notice of the time and place of the recount must also be posted in 2 public places at least 24 hours prior to the recount. The recount shall be held at the time and place appointed, and the ballots shall be recounted by the board of recount in accordance with the procedures for recounts of town elections found in RSA 669:30 – :33. See Chapter 6. See also RSA 40:4-c. If the recount

shows a result on the question that differs from the result declared by the moderator, RSA 40:4-d provides that the board of recount declares the result. The board of recount is made up of the moderator, town clerk and the select board. RSA 669:32.

N. Articles Requiring Two-Thirds Vote

Although most articles require a majority vote for passage, there are several for which state law explicitly requires a two-thirds vote:

- To alter town lines after being authorized by the legislature to do so. RSA 51:9.
- To acquire or establish a municipal utility plant. RSA 38:4.
- To change the purpose of a capital reserve fund. RSA 35:16.
- To issue bonds and notes other than tax anticipation notes. RSA 33:8.
- To issue revenue bonds. RSA 33-B:2.
- To approve an amendment to, or to repeal, a zoning ordinance after a signed protest (a) of the owners of 20 percent of the area of lots included in the proposed change, or (b) of the owners of 20 percent of the area within 100 feet immediately adjacent to the area affected by the change or across a street from such area. RSA 675:5, I-a.
- To change the source or fractional portion of revenue going into a special revenue fund or to change the purpose of expenditures from such a fund. RSA 31:95-d, V.

O. Records

Although the town clerk is charged with keeping records of the meeting, it is prudent for the moderator to keep notes of the actions taken. This is especially crucial in towns and districts with a municipal budget committee, where the voters are restricted as to the amount of money they can appropriate by the 10 percent rule. RSA 32:18. The moderator should do whatever it takes to let the voters know when they are about to pass an appropriation that will be invalid because of that rule. DRA maintains on its website form MS-737, the last page of which contains a form to be used to calculate the 10 percent threshold; moderators in official budget committee towns and districts are well advised to download the form and have an assistant use the form to keep track of the meeting's progress to ensure amendments to appropriations do not exceed the 10 percent limit.

P. Summary of Moderator's Role at the Meeting

The moderator should take the following steps on each article in the warrant:

- Read the article in full.
- Always secure an affirmative motion and second on the article as printed in the warrant and be sure to identify the name of the person who made the motion and the person who seconded the motion.
- Recognize the select board or person(s) responsible for giving the town meeting the necessary background on the article under consideration.
- Open general discussion from the floor.

- After the conclusion of discussion, the motion should be restated, with a check to make sure its effect is generally understood.
- The vote should be taken and the outcome announced. If the vote is to be challenged, this is the appropriate time for action.

Moderators aren't always correct, and they can be overruled by the town meeting. Whenever a voter indicates a desire to challenge the moderator's ruling, the voter should be recognized by the moderator and should be given an opportunity to state the rule he or she believes is applicable.

The moderator should then poll the town meeting to determine whether that ruling is sustained.

Q. Adjournment

The town meeting may be adjourned (some towns use the word "recessed") to a later date, provided the time, date and place are announced at the prior session. If the announced date of the adjourned session happens to fall on a Sunday, the meeting should be held on the following regular business day at the same time and place. RSA 39:14.

Be careful with the word "adjourn." It has no official legal meaning. Some people think it means recessed and some people think it means the meeting is completely over. Make sure there is no confusion. Some moderators use the word "dissolved" to indicate that the meeting will not reconvene at any later time.

RSA 40:11 requires that every article must be acted upon before final adjournment of the meeting.

4. Procedure for Appropriations

I. Municipal Budget Law

A. Application

The first 13 sections of the Municipal Budget Law, RSA chapter 32, apply to all towns, school districts and village districts that adopt budgets at an annual meeting of voters, not just to those municipalities with budget committees. RSA 32:2.

B. General Requirements

The effects of RSA 32:1 – :13 on the town meeting are the following:

1. Amending Line Items

Voters are explicitly authorized to amend a budget, one-line item at a time if they wish, even without any prior warning of such amendment. RSA 32:10, I(e). However, such line item voting will not, for the most part, legally restrict the governing body's ability to transfer appropriations during the year from one-line item to another. RSA 32:10. The exception is that if the voters delete an entire line item on the posted budget form or defeat a separate warrant article, then no money can be spent for the purpose that was deleted or defeated. In practice, deletion of an entire line item will almost never occur, because the line items on the Department of Revenue Administration (DRA) forms posted with the warrant are so broad and general that deleting a line would wipe out an entire municipal function. Note the special definition of "purpose" in RSA 32:3, V.

2. Transfers of Appropriations

If voting on individual line items is not usually binding on the governing body, why do it? Even though restrictions on the governing body's authority to transfer funds are limited, transfers are required to be documented, such that the voters always know how money is actually spent. RSA 32:10, I(b). Budgeting is an ongoing process. On the DRA budget forms, the voters are given figures to enable them to compare, in any budget, this year's recommended appropriation with last year's appropriation and last year's expenditure. Voters can and should ask questions about differences in these columns and express their views. Obviously, the bottom line is binding, and the bottom line is ultimately simply a composite of judgments about individual line items.

3. Special Articles

Special articles include petitioned money articles, bond issue articles, articles appropriating money into or out of special funds such as capital reserve or trust funds, and any other article designated by the select board in the warrant as a special, non-lapsing or nontransferable article, or calls for an appropriation for a capital project under RSA 32:7-a. RSA 32:3, VI. Only the governing body can designate an article as "special," "non-lapsing," or "nontransferable." Where an article is designated "non-lapsing," the article must also designate the time at which the appropriation shall lapse, no later than five years after the fiscal year for which the appropriation is made. It appears that the voters may amend the period of non-lapsing. RSA 32:7, VI.

4. Special Article Transfers

Money cannot be transferred during the year from the purpose of a special warrant article to some other purpose. RSA 32:10, I(d). (Note that amounts can be transferred into the purpose of a special article. The restriction is only one-way.)

II. Budget Committees

A. Limitation on Expenditures

In towns that have voted to establish official budget committees, as provided for in RSA 32:14 – :24, the total appropriations made at the annual meeting—the adopted budget plus any other warrant articles appropriating money—may not exceed the total expenditures recommended by the budget committee by more than 10 percent. RSA 32:18.

When calculating the 10 percent allowable increase, fixed charges, including mandatory county, state or federal assessments and appropriations for debt payments, are not included. Debt payment appropriations include all notes except tax anticipation notes. These fixed charges are excluded from the 10 percent calculation, not from the effect of the 10 percent rule itself. For example, if a \$10 million proposed budget includes a \$9 million operating budget and \$1 million of fixed charges, the allowable increase would be \$900,000, and the maximum permissible appropriations would be \$10,900,000.

1. Override Exception

RSA 32:18-a allows the town or district voters to override the 10 percent limitation on expenditures when a bond request in its entirety is not recommended by the budget committee. The governing body must first vote in favor of the bond request at a public meeting, and then add to the warrant article for the bond request a statement that passage of the bond article will override the 10 percent limitation. Also, the governing body must send a copy of the minutes of the public meeting at which it voted in favor of the bond request to the DRA.

2. Collective Bargaining Agreement Exception

Any amount that represents cost items in a collective bargaining agreement is exempt from the 10 percent limitation if those cost items were not recommended by the budget committee. RSA 32:19.

B. Budget Committee Recommendations

The budget that is posted with the warrant contains the amounts as recommended by the budget committee. RSA 32:5, VII. However, the budget committee is required to submit to the town meeting any items requested by the select board but which the budget committee does not recommend. The budget committee also determines whether to recommend any petitioned article that involves an appropriation. The voters at town meeting may approve any item not recommended by the budget committee, so long as the total budget approved remains within the parameters of the 10 percent rule and its exceptions.

The budget committee's recommended budget must reflect its honest opinion. It cannot use the subterfuge of determining adequate funding levels for town operations and then cutting that figure by 10 percent in anticipation that the annual meeting will reinstate that amount. The New Hampshire

Supreme Court has said that a built-in 10 percent deficit would effectively remove the ability of the annual meeting to meaningfully alter budget committee recommendations and is therefore illegal. *Baker v. Hudson School District*, 110 N.H. 389 (1970).

However, in a 2015 superior court case, it was determined that a budget committee's cut of approximately \$650,000 from the school district's recommended budget did not violate the principle set forth in *Baker. Brentwood School District v. Budget Committee of the Town of Brentwood*, Rockingham Superior Court, Docket No. 218-2015-CV-150 (March 5, 2015). The budget committee was somewhat vague about where in the budget these particular cuts were coming from, and the ultimate result was that the voters could not amend the budget to reflect the school district's originally proposed budget. The judge looked at the budget committee's intent and determined there was no evidence that the committee dishonestly proposed a budget that it knew to be unworkable or that it intentionally "neutered" the voters' amendment capability in light of the 10 percent rule.

III. Requirements for Bond Articles

A. Two-Thirds Vote Required

A two-thirds ballot vote of all voters present and voting is required for all bond and note issues except tax anticipation notes. RSA 33:8. At a special meeting, those voting must constitute a majority of the legal voters in the town, unless the superior court has granted the town permission to hold the special meeting. RSA 31:5; Opinion of Justices, 86 N.H. 604 (1964). For more information on special town meetings, see Chapters 1 and 3.

B. Bonds Exceeding \$100,000

1. Public Hearing

At least one public hearing must be held by the governing body of the municipality for any proposed municipal bond or note issue, except tax anticipation notes, in excess of \$100,000. The hearing is held at least 15 days, but not more than 60 days, before the meeting at which the bond or note issue is to be voted upon. Notice of the time, place and subject of the hearing must be published in a newspaper of general circulation in the municipality at least seven days before it is held. The governing body determines the form of the warrant article after the public hearing. RSA 33:8-a.

2. Acted Upon First

All articles appearing in the warrant that propose a bond or note issue exceeding \$100,000 must appear in consecutive numerical order on the warrant. They must be acted upon prior to all other business except the election of officers and other questions required to be on the official ballot, such as zoning matters. This requirement that they be "acted upon" does not require final action be taken prior to acting on other articles in the warrant. Often voters will want to know the outcome of some other related article before they vote on the bond issue and, in our view, action to delay the bond issue until after acting on that other article is consistent with the statute.

3. One Hour Voting

Polls must remain open and the moderator must accept ballots on each bond or note article for not less than one hour following the completion of discussion on each respective article. A separate ballot box is provided for each bond article to be voted upon. RSA 33:8, :8-a. This

does not mean that other business cannot be transacted during the hour the polls are open (*Byron v. Timberlane Regional School District*, 113 N.H. 449 (1973)), but it is recommended that the bulk of the voters present should be allowed to go through the line before proceeding to other business. If more than one bond issue over \$100,000 is being voted on, there's no reason they cannot all be discussed first before opening the balloting, in such a manner that the one-hour required voting periods overlap each other. However, in no case should the one-hour period be shortened, even if the meeting votes to close voting early. DRA has invalidated bond votes taken in this manner.

4. Debt Limit

All municipalities have a limit on the total amount of debt that may be outstanding at any one time. This limit is calculated as a percentage of the total market value (equalized assessed value) of all taxable property in town. The percentage is 3 percent for towns, 1 percent for village districts and 7 percent for school districts. However, it is possible that the limit for any town, village district or school district may actually be less at any particular time, because the total debt limit for any municipality that contains an overlapping municipality (such as a school district and town that cover the same geographic area) can be limited to 9.75 percent. RSA 33:4-a and 33:4-b.

5. Items Outside the Debt Limit

Certain bonds and notes may be issued outside the debt limit. These include:

- Sewage treatment facilities ordered by the Department of Environmental Services (DES). RSA 33:5.
- Water works ordered by DES, without debt limitation, or water works not so ordered, subject to a limitation of 10 percent of valuation. RSA 33:5-a.
- Voluntary sewer projects on approval of Governor and Council. RSA 33:5-b.
- Revenue bonds or notes issued for the financing of revenue-producing facilities as provided by RSA chapter 33-B. RSA 33-B:2.
- Parking facilities to be paid for by parking meter revenue, upon approval of DRA, with a limitation of one-half percent of the last equalized value. RSA 33:6-a.
- Water conservation projects under contract with DES. RSA 481:8-a.
- Emergency borrowing made necessary by war or disaster. RSA 33:6.

C. Limiting or Rescinding Bonding Authority

1. Limiting Time to Issue Bonds

In a vote to approve bonding authority, a town may limit the length of time the bond authorization remains valid. If, after the expiration of any such period, no bond or note has been issued, the bonding authority shall be considered rescinded. RSA 33:8-f, I.

2. Rescinding Authority to Issue Bonds

Using the same procedures required to adopt authority to issue bonds, a town may vote at an annual meeting to rescind an authorized but unissued bond or note; provided:

- The vote to rescind shall not take place less than five years after the vote to authorize

the bond or note;

- The vote to rescind must pass by the same majority required, at the time of the rescission vote, to adopt a bond or note; and
- Notwithstanding RSA 33:8-a, II, a warrant article proposing the rescission of a bond or note in excess of \$100,000 need not be acted upon prior to other business.

RSA 33:8-f, II.

IV. Special Warrant Article Recommendations

RSA 32:5, V requires all appropriations contained in special warrant articles to be accompanied by a notation of whether they are recommended by the governing body (select board, school board, village district commissioners) and, if there is a budget committee, whether they are recommended by the budget committee. However, the failure to include recommendations does not affect the legal validity of the appropriation if enacted.

V. Option to Display Numeric Tallies of Recommendations on All Appropriations

RSA 32:5, V-a allows any town operating by traditional town meeting to require that the numeric tally of all votes of an advisory or official budget committee and all votes of the governing body be printed in the warrant next to the article. A vote to include the numeric tally under this law also authorizes a town to include these recommendations on individual warrant articles, not just special warrant articles and those relating to cost items in a collective bargaining agreement.

RSA 40:13, V-a allows any town operating under the official ballot referendum (SB 2) system to require that the numeric tally of an advisory or official budget committee and all votes of the governing body be printed on the ballot next to the affected article. A vote to include the numeric tally under this law also authorizes a town to include these recommendations on separate warrant articles as well as ballot questions, in addition to special articles and those relating to cost items in a collective bargaining agreement.

In either case, the town may authorize this by a vote of town meeting, or if the town has not voted to do so, the governing body or the budget committee may vote at a public meeting on their own initiative. The “numeric tally” means the total result of the vote on the item, such as “Budget Committee recommends this article by a vote of 9 to 2. The select board does not recommend this article by a vote of 3 to 2.” Unless and until such a vote of town meeting or the governing body or budget committee has occurred, recommendations should continue to appear without the numeric tally and only with special articles and cost items of collective bargaining agreements. The New Hampshire Supreme Court has also affirmed the select board’s authority to place recommendations on non-money articles, i.e., other separate articles that do not contain appropriations. *Olson v. Town of Grafton*, 168 N.H. 563 (2016). The Court determined that the language in RSA 32:5, V-a authorizing recommendations on “any warrant articles” was meant to apply to non-money articles as well as money articles.

VI. ‘Gross Basis’ Wording of Appropriation Articles

One of the most important requirements of the Municipal Budget Law is the “gross basis” budgeting

requirement—the notion that no money can be spent without an appropriation. Every year a few towns experience the invalidation of an appropriation by DRA for failure to abide by this requirement, usually because of a motion or amendment made by a citizen who thought that only tax money needs to be in the “raise and appropriate” clause of a vote.

In fact, all revenue intended to be put toward a particular purpose must be appropriated, such as when the town wants to sell an old piece of equipment and use the proceeds to buy a new piece of equipment. It is important to make sure the entire amount is appropriated. It is equally important to state in the article the source of any non-tax revenue, its amount and the amount of the remainder intended to be raised from taxes.

Here are three examples of actual warrant articles that resulted in invalidation by DRA:

I move to raise and appropriate the sum of \$75,000 to renovate [a particular building] and to authorize the withdrawal of \$75,000 from the Capital Reserve Fund created for this purpose; and further to combine this \$150,000 with the \$26,000 appropriated last year for [another purpose].

The total amount of money to be appropriated was never stated. DRA disallowed the \$26,000 because the fact that it was appropriated last year for another purpose doesn't exempt it from the requirement of being appropriated this year for this new purpose. An appropriation normally lapses at the end of the fiscal year. Better wording would have been: “I move to raise and appropriate \$176,000 for the purpose of X; \$75,000 of that total is authorized to be withdrawn from the Capital Reserve Fund; the remaining \$101,000 to be raised through taxation.” The fact that \$26,000 of that had been raised but unspent the year before would be brought out in discussion but not in the article itself.

I move to raise and appropriate a supplemental appropriation of \$18,500 for the cost of replacing [the roof of a certain building]; and further to authorize the withdrawal of \$4,000 from the Building Capital Reserve Fund; the balance of \$14,500 is to be funded by current excess revenues received in the current year [an insurance settlement].

This article is confusing because it looks like the \$14,500 and the \$4,000 were part of the \$18,500, yet the true intent was that they be in addition to it. The \$14,500 insurance settlement may be money the town already has in hand, but that doesn't exempt it from the gross basis appropriation requirement. The grand total amount must always be set forth in the “raise and appropriate” clause, including any amount from trusts or capital reserves and any amount from anticipated revenue or existing fund balance. Then, state the various sources of funding. For example: “I move to raise and appropriate the sum of \$100,000 to repair the town's memorial statue; of this amount \$20,000 is authorized to be withdrawn from the Memorial Trust Fund, \$30,000 is anticipated revenue from a settlement with Statue Insurance Company and the balance of \$50,000 is to come from general taxation.”

I move to raise and appropriate the sum of \$_____ for the purpose of X, to be funded from unassigned fund balance.

The voters apparently thought unassigned fund balance was money that wouldn't cost them anything. However, “unassigned fund balance” is a phantom number representing unspent appropriations, not actual money. Its function is to offset the next year's tax rate, unless an actual amount of unassigned fund balance is appropriated again for a specific purpose. In this case, DRA disallowed the appropriation because it turned out the actual unassigned fund balance wasn't high enough to cover the cost of this particular appropriation

5. The Official Ballot Referendum System (SB 2)

I. Official Ballot Referendum Options

In 1995 the legislature enacted two bills to allow towns and districts that appropriate their budgets through an annual meeting of voters to act on any or all warrant articles by means of the official ballot referendum system. Without adopting one of the two options discussed below, the use of the official ballot for warrant article voting is restricted, as set forth in RSA 39:3-d and 40:4-e.

A. RSA 40:13

The “standardized” official ballot referendum option, still referred to colloquially as “SB 2” for the Senate bill that enacted it, is found at RSA 40:13 and is summarized in the following sections of this chapter.

B. ‘Customized’ Charter

Also enacted in 1995 was legislation that added two official ballot referendum options to the types of town government that can be adopted via the “home rule” charter process as set forth in RSA chapter 49-B. They are the budgetary official ballot referendum town meeting, described in RSA 49-D:3, II-a, and the budgetary official ballot referendum town council, described in RSA 49-D:3, I-a.

Under these charter options, the details of the charter—that is, how the official ballot would be utilized—are left up to each municipality’s discretion, as exercised through the charter adoption process in RSA chapter 49-B. A town charter cannot, however, alter the basic official ballot procedures, such as voting booth specifications, absentee voting and other such requirements. The charter must specify with precision:

- the types of questions that will go on the official ballot;
- a finalization process for the budget, in case it is rejected by ballot;
- the process for public hearing, debate and amendment of questions to be placed on the ballot;
- the procedure for transferring funds during the year; and
- the procedure for balloting at special meetings.

In 2008, the legislature made it clear that RSA chapter 32 applies to these two varieties of government. RSA 49-B:13, III.

A pair of cases between the same parties, *Forsberg v. Kearsarge Regional School Dist.*, 160 N.H. 264 (2010), and 156 N.H. 560 (2007), illustrates the flexibility available through a charter under RSA chapter 49-B. The Court upheld procedures that differed from what is prescribed by RSA chapter 32, relative to recommendations on the official ballot (see Chapter 4, section V), and RSA 40:13, relative to options for voting for an operating budget by official ballot (see section II below).

II. SB 2 Official Ballot Referendum System

Under the standardized official ballot referendum system provided for in RSA 40:13, any town, school district, village district or cooperative school district that raises money at an annual meeting can adopt a system whereby all matters coming before the legislative body are given their final vote by means of the official ballot. The procedures for adopting this system of government are contained in RSA 40:14.

Note that RSA 40:14 was amended in 2019 by House Bill 415. The change modifies the process for a town (or a school district or village district) to adopt the official ballot referendum (SB 2) form of town meeting. Under previous law the question of adopting SB 2 was placed on the official ballot; under the new law, the question is placed on the warrant for action at the business session of the annual meeting. It must be voted on by ballot (but not official ballot), and polls must remain open and ballots accepted for at least one hour following the completion of discussion on the question. A three-fifths majority is still required to adopt the proposal. The process for rescinding SB 2 is not changed—it still must be voted on by official ballot. RSA 40:14, III and VII.

A. Two Sessions

If this option is adopted, the annual meeting consists of two sessions. SB 2 towns have the choice of March, April or May town meetings. For the March option, the first session, known as the “deliberative session,” is held “between the first and second Saturdays following the last Monday in January, inclusive of those Saturdays.” The second session, known as “official ballot voting day,” takes place the second Tuesday in March. For the April option, the first session is held between the first and second Saturdays following the last Monday in February, with the second session on the second Tuesday in April. For the May option, the first session is held between the first and second Saturdays following the last Monday in March, with the second session on the second Tuesday in May. RSA 40:13, III, VII; RSA 652:16-f - g.

Within the requirements of RSA 40:13, III, the governing body prescribes the date and time of the first session. There are other special timing provisions for budget hearings, submission of petitioned warrant articles and posting of the warrant and budget required by RSA 40:13, II-a – II-d. If the town or district has chosen the March town meeting, the second Tuesday in January is the final date for posting notice of budget and bond hearings as well as the final date for submission of petitioned warrant articles and cost items for collective bargaining agreements. Provided, however, if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline for submission is the preceding Friday. RSA 40:13, II-a (b). The budget hearing must be held on or before the third Tuesday in January. The budget and warrant must be posted on or before the last Monday in January.

B. Deliberative Session

The deliberative session is conducted like the business session discussed in Chapter 3, complete with the authority to discuss and amend all warrant articles, except those whose wording is prescribed by law and those required by statute to be voted on by official ballot (such as amendments to a zoning ordinance). The role of the deliberative session, in addition to information and debate, is to decide the final form of ballot questions. However, there are limits to the deliberative session’s ability to amend articles.

After several years of experimentation with the extent of permissible amendments and a variety of New Hampshire Supreme Court opinions on the matter, the legislature amended RSA 40:13, IV(c) in 2011 to provide that “[N]o warrant article shall be amended to eliminate the subject matter of the article. An amendment that changes the dollar amount of an appropriation in a warrant article shall not

be deemed to violate this subparagraph.” In other words, an article may still be amended to change the dollar amount, including reducing it all the way to zero, but it may not be amended by deleting everything after the words “To see” (formerly a popular maneuver).

Questions remain, however, even without the option of deleting the substance of an article, voters at deliberative sessions are as creative as they have ever been. The Town of Exeter’s 2011 deliberative session addressed a warrant article that proposed the establishment of an official budget committee under RSA 32:14. The voters amended the article to read, in part, “To see if the [town] will not establish an official budget committee....” Everyone agreed that this amendment made the article ineffective because, regardless of the outcome of the vote, no official budget committee would have been established. The Rockingham County Superior Court found this was not permissible under RSA 40:13, IV(c) because it “made the subject matter of the article a nullity” and that was not allowed under the law. The Town was ordered to hold a special town meeting to correct the problem, and it did not appeal the decision to the New Hampshire Supreme Court.

Although it is binding only upon the parties, the opinion may be persuasive and has implications for all SB 2 jurisdictions. In the universe of potential warrant article amendments, it is difficult to know exactly which ones may be found to render an article meaningless, or even what that word means. The only certainty after this opinion is that further development in this area of the law, whether in the legislature or the courts, is likely.

C. Official Ballot Voting Day

The official ballot voting day consists of the election of officers and final voting on all articles in their amended form. It is run just like an election by official ballot, with no further opportunity for discussion or amendment. Voting at the official ballot voting day must conform to the nonpartisan ballot system procedures provided for in RSA 669:19 – :29 (towns), RSA 670:5 – :7 (village districts) or RSA 671:20 – :30 (school districts). See Chapter 6 for more information on ballot systems.

D. Default Budget

If the operating budget, which is defined as total appropriations minus special warrant articles and other appropriations voted separately, RSA 40:13, IX(a), is rejected by ballot, then the prior year’s operating budget with certain adjustments (the “default budget”) takes effect, unless the select board or school board decides to call a special meeting for another try at adopting a revised operating budget. In this case, permission of the superior court is not required. See RSA 40:13, XI(c) for the proper wording of the operating budget warrant article.

The default budget is defined by RSA 40:13, IX(b). The governing body calculates the default budget using a form provided by DRA, unless the town or district has voted to delegate responsibility for calculation of the default budget to the budget committee. RSA 40:14-b. The default budget must be disclosed at the first budget hearing. RSA 40:13, XI. At the deliberative session, the default budget must also be explained, discussed and debated; nevertheless, the amount of the default budget cannot be amended by the meeting.

E. Special Meetings

Special meetings also require two sessions under the official ballot referendum system, one for discussion and amendment and one for official balloting. RSA 40:13, XVI. The second session must be held not fewer than 28 days or more than 60 days after the first session. No more than one special meeting may be held to raise and appropriate money “for the same question or issue in any one cal-

endar year or fiscal year, whichever applies.” If the sole purpose of the special meeting is to consider the adoption, amendment or repeal of a zoning ordinance, historic district ordinance or building code, no deliberative session is required, and the meeting consists only of one session for ballot voting. RSA 40:13, XVII. This makes sense because those articles may not be amended by a deliberative session.

F. Supermajority Needed for Bond Articles

The issuance of bonds or notes by towns and school districts that have adopted the official ballot referendum system requires a three-fifths majority of votes for approval, instead of the two-thirds majority required under the traditional town meeting system. The constitutionality of this 1999 amendment to RSA 33:8 was challenged in both state and federal court, and at all levels the courts dismissed the challenge of the petitioners. *Walker v. Exeter Region Co-op School Dist.*, 157 F.3d 42 (1st Cir. 2002); *McGraw v. Exeter Region Co-op. School Dist.*, 145 N.H. 709 (2001).

RSA 33:3-a, II, provides that in towns and districts that have adopted the official ballot referendum town meeting, a three-fifths vote, rather than two-thirds, is required to approve the use of bond proceeds for a different purpose than originally authorized, where no expenditure of bond proceeds has been made for the bond’s purpose, or where unspent proceeds remain after completion of the project. In towns that have adopted the official ballot town council by charter under RSA 49-D:3, I-a, the approval majority is two-thirds unless the town charter provides for three-fifths vote.

G. Other Official Ballot Referendum Facts

1. Secret Ballot

Voters at the first session may ask for a secret written ballot under RSA 40:4-a and:4-b. Voters may request a secret yes/no ballot on a proposed amendment, or motion differing from the printed article, being voted on at the first session. However, the secret yes/no ballot under RSA 40:4-a and :4-b does not include any opportunities for absentee voting.

2. Amendments

The role of the first session, in addition to information and debate, is to decide the final form of ballot questions. Except where the wording of a question is prescribed by law, all warrant articles, including petitioned articles, may be amended. RSA 40:13, IV and RSA 40:13, VI. As previously mentioned, however, amendments must relate to the general subject matter of the article and may not eliminate the subject matter entirely. RSA 40:13, IV(c). Adding the word “not” to make an article negative is also a risky move and is not advisable.

The New Hampshire Supreme Court recently addressed the meaning of “eliminate the subject matter of an article” found in RSA 40:13, IV(c). *Cady v. Town of Deerfield*, 169 N.H. 575 (2017). Deerfield is an “SB 2” Official Ballot Referendum municipality. The Town had received two petitioned warrant articles that proposed making the positions of welfare director and police chief elected offices with stipulated annual salaries. By amendment at the deliberative session, both articles were revised to state that the town meeting would express the advisory view that both the police chief and welfare director should remain appointed positions with nothing stated about annual salaries.

The Court determined that the term “subject matter” in RSA 40:13, IV(c) was ambiguous. Looking to the legislative history, the Court decided that the statute was intended to prohibit warrant articles from being amended in a manner that eliminates their subject matter entirely, thereby making it impossible for voters at the second session to determine what the article

is about. Although these amendments substantially changed the original articles, the subject matter—the welfare director and police chief positions—remained the same. The Court also rejected the petitioner’s argument that voters are prohibited from changing the intent of an article, noting that this would require the Court to read the word “intent” into the statute. Since the warrant article amendments still reflected the same intent - determining how the welfare director and police chief positions were to be filled - those amendments were permitted. Accordingly, deliberative session amendments to warrant articles in an SB2 town may substantially change a warrant article, provided the subject matter is not effectively eliminated. This means that, if the subject matter remains the same, the intent of the article may be changed by amendment.

3. Action Required on All Articles

RSA 40:13, VI requires all articles appearing on the warrant for the first session to appear on the official ballot in the original or amended form. Therefore, the moderator should rule out of order any motion or amendment at the first session to pass over an article or postpone indefinitely.

4. Multiple Motions under Single Article

More than one main motion can be made under an article. Both questions would then appear on the official ballot. For example, suppose Article 9 said: “To see what action the town will take concerning the lease or conveyance of the old police station.” This article might well generate two separate ballot questions, as follows: “Question 9-A: Shall the town authorize the select board to lease the old police station for up to five years to the highest bidder?” “Question 9-B: Shall the moderator appoint a five-member advisory panel to study the possible sale of the old police station, to report to the town at next year’s annual meeting?”

5. Conditional Motions

Since ballot voting on all questions happens simultaneously, there’s no way to know the result of an earlier question before voting on a later one when the outcome of one article hinges on the outcome of another article. But there is no legal reason why a motion could not be made conditional. Suppose that Article 3 is a bond issue for a school addition and Article 7 calls for a lease of extra classroom space, a question that will be moot if Article 3 is approved. The ballot question under Article 7 could have the following conditional statement added to the end of the article, “In the event Article 3 is approved, this appropriation will be reduced to \$1.00?”

6. Deleting Line Items

The first session, by amendment, can delete line items from within a budget. This action does not improperly deprive the second session of the right to vote on those items. The only things the first session cannot do by amendment are (a) delete an entire warrant article, because that would violate the requirement that all articles be acted on by ballot, and (b) eliminate the subject matter of an article. RSA 40:13, IV.

7. Recount

A recount can be requested on any question on the official ballot. RSA 40:4-c allows a recount to be requested within seven days on any official ballot question, if a \$10 fee is paid. That statute is specifically referenced in RSA 40:13, XIV.

8. Restricting Reconsideration

In an SB2 deliberative session, an affirmative vote to restrict reconsideration prohibits any further action on the restricted article until the second session, when the article is voted on by ballot. Therefore, SB 2 municipalities do not follow the procedure for taking up the

reconsideration at a meeting seven days later as provided in RSA 40:10, II, like in traditional town meeting towns. In other words, a vote to restrict reconsideration in an SB 2 municipality means discussion, deliberation, and amendments to that article has ended.

6. Ballot Systems and Conduct of Elections

I. The Unofficial Ballot System

A. Adoption

If a town has not voted at a previous town meeting to adopt an official ballot system, or if a town has voted to rescind the official ballot system, then the town must elect its officers by means of the unofficial ballot system in accordance with the provisions of RSA 669:54 – :60. Few towns still use this system.

B. Nominations and Ballots

Nominations of candidates are by motion from the floor of the town meeting. RSA 669:54. In the election of officers by unofficial ballot, the town clerk provides the moderator with white paper of uniform size and weight to be used as ballots. The ballots may, at the discretion of the clerk, have printed on them the offices to be elected, such as “For Selectman” or “For Town Treasurer.” However, no candidate names are printed on the unofficial ballots. RSA 669:55.

C. Conduct of Election

Upon receipt of a ballot from the moderator, each voter writes the name of each person for whom he or she desires to vote, then delivers the ballot to the moderator in open meeting. The moderator, upon receiving it, directs the town clerk to check the person’s name on the checklist and examines the ballot only to determine whether it contains more than one ballot. If it does not, the moderator places the ballot in the ballot box; but, if it does, the moderator makes it manifest to the meeting and rejects it unless the voter corrects the ballot. RSA 669:57. Unlike the official ballot system described below, the unofficial ballot system has no opportunity for absentee voting.

D. Counting

When all votes have been cast, the moderator sorts and counts the votes in open meeting. The select board and town clerk assist in sorting and counting the votes, and no other person may interfere. After the counting, the moderator makes a public declaration of the number of ballots cast, with the name of every person voted for and the number of votes for each. The town clerk makes a fair record of the vote in the books of the town. No ballot can be received and counted after the moderator has declared the results of voting. RSA 669:58. Ballot counting must conform with RSA 40:4-g, and every ballot shall be counted if the intent of the voter can be determined.

E. Blank Votes

If several offices are to be voted for upon the ballot, no person is required to vote for all offices. Any ballot that does not contain at least one vote for each office is regarded as blank for the office omit-

ted. Blank pieces of paper are not counted as ballots. RSA 669:59.

F. Majority to Elect; Tie Vote

In determining the results of any election by unofficial ballot, the number of persons voting for any office is ascertained and then the vote for each candidate seeking office is determined. In order to win an office by unofficial ballot, a candidate must receive a majority of the votes cast for a certain office. RSA 669:11; RSA 669:60. Where more than one position is being filled, the candidates with the largest majority of votes are declared elected. In the event that two candidates receive an equal number of votes such that a winner cannot be determined, another balloting is taken. RSA 669:60.

II. Official Ballot System

A. Partisan and Non-Partisan Official Ballot Systems

Towns must elect town officers on the second Tuesday in March, except for towns that have decided, by majority vote at a previous town meeting under the provisions of RSA 31:94-a, to elect officers on the second Tuesday in May; towns that have adopted an alternative date (second Tuesday in April or second Tuesday in May) under official ballot referendum provisions RSA 40:14 and RSA 669:1; and towns that have adopted a charter under RSA Chapter 49-B (March, May or November). RSA 669:1. All appropriate provisions of RSA Chapter 39 relative to warning the town meeting and posting the town meeting warrant also apply to the town election. RSA 669:3.

Any town may vote to adopt the partisan or non-partisan official ballot system for election of town officers using an article in the warrant for the town meeting. In fact, most towns have adopted the non-partisan official ballot. The action may be rescinded in the same way. Neither system comes into effect until the town election in the year following its adoption. A plurality of votes is required for election in towns using either the partisan or non-partisan official ballot system. RSA 669:12 and :13.

B. Changing from Partisan to Non-Partisan in Larger Towns

Special provisions apply to towns with populations of 4,500 or more when a warrant article proposes to change from a partisan to non-partisan ballot system. The question must be placed on the official ballot with prescribed language. RSA 669:13. If there is no official ballot, the question is decided by a special ballot prepared with the prescribed language at town meeting.

C. Nominations and Declarations of Candidacy

1. Partisan Ballot System

In a town that has adopted the partisan ballot system as provided in RSA 669:12, nominations are made by caucus. The procedures for caucus are provided in RSA 669:37 – :53. RSA 669:18.

2. Non-Partisan Ballot System

In a town that has adopted the non-partisan ballot system, all candidates must file a declaration of candidacy during a period that begins the seventh Wednesday before the town election and ends on Friday of the following week. The form of the declaration is found in RSA 669:19. In 2008 the legislature eliminated the filing fee. In 2014, HB 1320 created a prohibition on filing a declaration of candidacy for 2 or more elected offices that are incompatible under RSA

669:7,I-a.

3. Nominating Petitions

In 2008 the legislature eliminated the option to establish candidacy by filing nominating petitions.

D. Withdrawal of Candidacy

If a candidate has duly filed according to RSA 669:19 for a non-partisan town election, or if a party nominee has been certified to the clerk as provided in RSA 669:50 for a partisan town election, no withdrawal or declination of a candidate shall be accepted by the town clerk after the last dates for filing, unless the candidate dies or makes oath that he or she does not qualify for the public office for which he or she has filed because of age, domicile or incapacitating physical disability acquired after the filing. RSA 669:22.

E. Conduct of Official Ballot System Election

1. Statutes that govern

In towns that have adopted an official ballot system, either partisan or non-partisan, the town election is conducted in the same manner as a state general election, as provided in RSA Chapters 658 and 659, except that all duties required to be performed by the Secretary of State under those chapters are performed by the town clerk. Additionally, no copy of marked or unmarked checklists needs to be forwarded to the state archives or federal district court as provided in RSA 659:102. Polling hours for a town meeting or election shall be set by the select board or by a vote of the town. RSA 669:25. As described below in subsection F, absentee voting procedure is also governed by the relevant provisions in RSA Chapter 657.

2. Election Date and Polling Hours

The polling hours for local elections are set by the select board or by vote of the town. RSA 669:25. In official ballot system towns, polling hours must be posted in the warrant as opening at a certain time and closing not earlier than another time. The warrant must also clearly state the officers to be elected and the items to be voted upon by official ballot. RSA 669:2. For unofficial ballot elections, the warrant must state the place, date and hour of the meeting, the items to be considered and the officers to be elected. The voters present may vote to extend these posted hours, but cannot shorten them. RSA 39:2.

A moderator must be thoroughly familiar with the state election laws, as summarized in the New Hampshire Election Procedure Manual:2018-2019 available on the Secretary of State website. Moderators' duties, in either a state or town election, include, among others, the following (this content has been copied from the New Hampshire Election Procedure Manual: 2018-2019, pp. 94-97 with some slight editing for brevity):

POLL OPENING CHECKLIST

Prior to the opening of the polls, the moderator should ensure that:

- 3 copies of the Instructions for Voters have been posted outside the guardrail. RSA 658:28.
- 1 copy of the Instructions for Voters has been posted inside every booth. RSA 658:28.

- Sample ballots have been posted outside the guardrail (8 for the state general election and 8 of each party for the primary, and at least several for local elections). RSA658:26.
- At least one sample ballot for the general election and one sample ballot for each party at a primary election are posted no higher than 48” for those voters in wheelchairs. RSA 658:26.
- A notice indicating the time for processing absentee ballots is posted.
- A sharp pencil or pen has been placed in each voting booth.
- Purity of Elections statutes are posted outside the voting area. RSA 658:29.
- Proof of Voter Identity Instructions are posted outside the guardrail. RSA 658:29-a.
- Two duplicate checklists to be used at the election are ready and available. The supervisors of the checklist have certified the checklist as accurate and complete, as of the start of the election, by signing the supervisor’s certification section printed on the last page of a checklist printed from ElectionNet.
- Ballot clerks should be instructed to make only those marks on the checklist that are required by law. Non-public information, such as voter’s date-of-birth or other data that may be missing from voter records may not be written onto the election day checklist.
- Certify that all electronic ballot counting devices and memory cards have passed testing requirements and deposit evidence of testing in the front pocket of the canvas bag for the device. Verify that all device seals are intact and that appropriate activity and access logs are recorded, signed and stored in the front pocket of the canvas bag. RSA 656:42. Do not put a ballot counting device into use that has not been properly tested or which is not properly sealed.
- Count all the ballots delivered to him or her from the clerk, to establish the number of official ballots. This number must be reported on the moderator’s certificate, will aid the moderator in anticipating the need for the clerk to prepare extra ballots if there is a heavy turnout, and is available as a cross reference when checking the accuracy of the ballot counting and completing the Moderators Worksheet. This pre-election count establishing the number of ballots in the inventory may be done prior to election day, provided the clerk posts a notice and the public has an opportunity to observe. RSA 658:31.
- Fill out the two copies of the moderator’s certificate if the election is a state election. One copy is for the moderator’s records and one will be returned to the Secretary of State with the Return of Votes.
- Position all officials:
 - Trained greeters are positioned to meet voters as they enter the polling place and to ask them to go to (a) the supervisors of the checklist if they are unregistered (b) the “No Photo ID” table if they have no approved photo ID, or (c) the “Voter Check-in” line if they are registered and have a photo ID or a completed Challenged Voter Affidavit.
 - A “No Photo ID table” should be equipped with a camera, film, copy of the checklist, ballot clerk instructions, a copy of RSA 659:13 (the photo ID law), and copies of Challenged Voter Affidavits.
 - Ballot clerks sit at the check-in table.
 - In hand count towns, the town or ward clerk, or a deputy clerk/assistant clerk is positioned at the checkout table by the ballot box.

- In hand count towns, the moderator or an assistant moderator stands where the ballot box is placed and inserts the ballot handed to him or her by the voter. In towns where ballot counting devices are used, the voter may insert his or her cast ballot into the device without the assistance of the moderator. The moderator or a designee should still closely monitor the process to provide assistance and ensure that only the proper number of ballots are inserted by any one voter.
- Position any challengers appointed by either a party committee or the Attorney General, outside the rail, but in a position where he or she can hear and see each voter as the voter checks in.
- Position the selectmen, supervisors and any other assistants he deems necessary within the polling place.
- Open the polls punctually at the appointed hour.
- Inspect the ballot box, prior to the first ballot being issued to a voter, and show any members of the public present that it is empty. If a ballot counting device is used, the moderator should display the zero tape produced by the device when it is set up and turned on for the election. This tape shows that the starting count for each candidate and question is zero. The zero tape must be preserved and kept with the results tape following the election.
- Seal the ballot box.
- Publicly announce when the processing of absentee ballots shall begin. This customarily begins at 1 PM. However, if 24-hours' notice is provided in two public places, the moderator may announce the beginning of processing absentee ballots no earlier than two hours after the polls open. RSA 659:49.
- The moderator shall designate 2 or more of the inspectors of election, one from each party, to act as ballot clerks for each check-in station. RSA 658:25; RSA 659:23.
- Begin accepting voters.

RSA 658:30 – :36.

Additional duties include:

- Designating an inspector of elections to assist any voter who declares to the moderator under oath that said voter needs assistance marking his or her ballot. RSA 659:20.
- Writing “cancelled” on any spoiled ballot and sealing it with other ballots at the end of the counting. RSA 659:22.
- Receiving each ballot for placement in the box. RSA 659:23.
- Presiding over challenges to voters. RSA 659:27 – :32.
- Reporting violations of the election laws to the Attorney General. RSA 659:45.
- Designating the 10-foot wide “non-electioneering” corridor in front of the door to the polling place. RSA 659:43, II.
- Directing the processing of absentee ballots. RSA 659:46 – :55.
- Certification of the checklist. RSA 659:56.

- Overseeing the counting of votes. RSA 659:60.
- Announcing the final counts. RSA 659:70.
- Sealing and certifying ballots (RSA 659:95) and delivery to the town clerk. RSA 659:98.

3. Qualification of Voters

Any person having domicile within the town and who is listed on the town checklist, having registered to vote under the procedures of RSA Chapter 654, is qualified to vote in town elections. RSA 669:4. An updated checklist must be used at all town meetings and elections for the same purposes a checklist is used at a state election, and to ensure that only qualified voters participate in town meeting discussions and votes, by voice or otherwise.

The supervisors of the checklist must prepare, post and revise the checklist for a town meeting or election in accordance with the provisions of RSA 654:25 – :31. RSA 669:5 requires that a session for correction of the checklist be held on the Saturday between 6 and 13 days prior to the town election. This requirement also applies to any special town meeting. In addition, the supervisors also must hold one session to update the voter checklist on the day immediately prior to the first day of the filing period for candidates for town office. RSA 669:5.

The supervisors of the checklist must permit any qualified person to vote on the day of the election, whether it is a state or local election. RSA 654:7-a. The requirements for showing appropriate proof of qualification—citizenship, age and domicile—are the same as provided for in RSA 654:12. Although certain changes were made through Senate Bill 3 that became effective September 8, 2017, on October 22, 2018 and October 25, 2018, a New Hampshire superior court judge issued orders preliminarily enjoining the application of the SB 3 voter registration process. Those orders specify that SB 3 is enjoined in its entirety pending the outcome of the litigation. Consequently, beginning on November 7, 2018, the SB 3 voter registration process can no longer be used to register persons to vote in New Hampshire. Instead, beginning on November 7, 2018, local election officials should use the voter registration process and forms in effect on the date immediately prior to the effective date of SB 3 (September 7, 2017). Under that voter registration process, local election officials must use the July 2016 New Hampshire Voter Registration Form, the 03/2017 Domicile Affidavit, and the Qualified Voter Affidavit in connection with registering new voters. The July 2016 New Hampshire Voter Registration Form and the 03/2017 Domicile Affidavit are currently available in ElectionNet.

Although not entirely clear from the statutes, the use of the term “election” suggests that if a town has the bifurcated town meeting system, the option for same-day voter registration should only be offered on the day of the Official Ballot Voting Day, not the day of the Business Session. The result might be different in those smaller towns that use the unofficial ballot system, since in those towns the business meeting is the election.

4. Voting Booth Requirements

There are two recent amendments regarding voting booths worth noting. First, fewer voting booths are now required for local elections: HB 493 reduced the number of required voting booths from one for every 150 voters to one for every 200 voters. RSA 658:9, V(b)(3). Second, HB 1545 created the option of setting up portable voting booths. See RSA 658:9, VI for the requirements.

5. “Disruptive” Behavior

In *Chao-Cheng Teng v. Kensington et al.*, U.S. District Court, D.N.H., No. 09-cv-8-JL, February 17, 2010, a moderator was held not liable for violating the plaintiff’s constitutional rights at the polls. When confronted with threatening behavior by the plaintiff, the moderator sim-

ply asked her to leave if she had finished voting. Instead, she walked out without voting and claimed racial discrimination. In ruling that there had been no improper restriction on voting rights, the court noted that “the government has a compelling and non-discriminatory interest in the ‘avoidance of ... disruption at polling places....”

6. The “Ballot Selfie”

In 2014, HB 366-FN amended RSA 659:35, I to prohibit voters from taking and distributing and/or sharing photographs of their marked ballots. The federal court in New Hampshire subsequently determined that the statute was unconstitutional and struck it down. *Rideout v. Gardner*, 2015 123 F. Supp. 3d 218 (D.N.H. 2015), *aff’d*, 838 F. 3d 65 (1st Cir. 2016) cert. denied, 137 S. Ct. 1435 (2017) .

F. Absentee Voting

One of the defining characteristics of any official ballot system is the requirement of provisions for absentee voting, which is governed by RSA 669:26 – :29. Furthermore, under RSA 669:29 the same provisions found in RSA Chapter 657 regarding absentee voting in state elections also apply to local elections, except that absentee ballots can be sent to absent uniformed services voters or absent voters temporarily residing outside the United States “as long before election day as is practical.” Under RSA 669:26, any eligible voter who is absent from such a town on the day of a town election, or who cannot appear in public on election day because of his or her observance of a religious commitment, or who, by reason of physical disability, is unable to vote in person may vote by absentee ballot. A person who is unable to appear at any time during polling hours at his or her polling place because of an employment obligation shall be considered “absent.” For these purposes, the term “employment” includes the care of children and infirm adults, with or without compensation. In conformance with recently enacted Senate Bill 104, when the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning for election day applicable to the town:

(a) A person who is elderly or infirm or who has a physical disability, who otherwise would have voted in person but has concerns for his or her safety traveling in the storm, shall be considered absent for purposes of this section and RSA 669:27-669:29 and may vote absentee on the Monday immediately prior to the election.

(b) A person who cares for children or infirm adults who reasonably anticipates that school, child care, or adult care will be canceled, who otherwise would have voted in person but will be deterred from voting by the need to care for children or infirm adults, shall be considered absent for purposes of this section and RSA 669:27-669:29 and may vote absentee on the Monday immediately prior to the election.

The clerk must prepare the necessary forms and envelopes, which must be similar in form to the requirements in RSA 657:7 and :8. RSA 669:27. The clerk sends the absentee ballot to the voter once the necessary application and certifications are received. RSA 657:15. Note that, pursuant to a 2017 amendment, the voter’s signature on the form required to obtain an absentee ballot must match the signature on the affidavit envelope in which the absentee ballot is returned, or the ballot may be rejected. RSA 657:4 (SB 248). If the voter fails to provide the necessary certifications, the clerk must follow the procedure set forth in RSA 657:16, which requires marking of the outer envelope in addition to marking of the application and affidavit with the words “Not registered.” Sealing of the envelope and completion of the voter affidavit is covered in RSA 657:17, which was amended in 2016, and procedure for recording properly certified absentee ballots is governed by RSA 657:18.

Completed absentee ballots must be delivered to the town, city, or ward clerk no later than 5:00 p.m. on the day of the election. RSA 657:17. Absentee ballots can be delivered to the city or town clerk on election day by a “delivery agent” defined as the voter’s spouse, parent, sibling, child, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild. If the voter is a resident of a nursing home as defined in RSA 151-A:1, IV, the nursing home administrator, licensed pursuant to RSA 151-A:2, or a nursinghome staff member designated in writing by the administrator may be the “delivery agent.” If the voter is a resident of a residential care facility licensed pursuant to RSA 151:2, I(e) and described in RSA 151:9, VII(a)(1) and (2), the residential care facility administrator, or a residential care facility staff member designated in writing by the administrator may be the “delivery agent.” Finally, a voter who has been properly designated as an absentee voter (“A.V.”) is not permitted to vote in person. If such a voter appears in person to vote on election day, the ballot clerk is now required to notify the moderator. RSA 659:55.

G. Recounts

1. Application

Any person for whom a vote was cast and recorded for any office at a town election may apply in writing to the town clerk no later than the Friday following the election for a recount. The fee is \$10. The clerk appoints a time for the recount not earlier than five days nor later than 10 days after receipt of the application. RSA 669:30. Under certain circumstances, an elected person can be sworn in even before the period for requesting a recount has expired. See Chapter 7 for more details. The clerk notifies each of the candidates for the office at least three days before the recount. In addition, the town clerk is required to provide notice of the time and place for a recount of a question that has been voted on by official ballot at a town meeting. The notice must be mailed, at least three days before the recount, to the first-named voter who requested the recount and to any other person who has requested notice in writing. The notice also must be posted in at least two public places at least 24 hours before the recount. RSA 40:4-c, I.

2. Board of Recount

The town clerk, moderator and select board constitute the board of recount. RSA 669:32.

Visual Inspection The board of recount must visually inspect each ballot when performing a recount of election or ballot question results. No “mechanical, optical, or electronic device” may be used to recount ballots.

3. Declaration of Results

Upon completion of the recount, the board of recount declares the result and certifies the result to the town clerk. If the recount affirms the original result, the winner may be sworn in immediately, subject to an appeal to the superior court within five days. If a different person is declared the winner, that person may not be sworn in until there is no possibility of appeal. RSA 669:34.

H. Tie Vote

In case of a tie vote at any town election, except as provided for unofficial ballots in RSA 669:60, the winner shall be determined by lot by the town clerk in the presence of the candidates who are tied, if upon notice from the clerk they elect to be present. RSA 669:36.

I. Electioneering

No election officer can “electioneer” while performing official duties. “Electioneer” means acting in any way designed to influence a voter’s vote. RSA 659:44. Within the building where the election is being held, no candidate or person campaigning for a candidate can distribute or display any campaign material intended to influence a vote. Furthermore, a 2016 amendment to RSA 659:43, I (HB 1503) now also prohibits the wearing at a polling place of any pin, sticker, or article of clothing that is intended to influence the action of any voter within the building where the election is being held. The Secretary of State’s manual states “Upon observing a voter enter the polling place to vote wearing campaign material, where the nature of the material and the individual’s attire make doing so appropriate, it is reasonable to ask the voter to remove or cover up campaign material being worn which is intended to influence voters in the polling place.” However, moderators should be aware that in 2018 the United States Supreme Court ruled in *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876, that a Minnesota law prohibiting individuals, including voters, from wearing a “political badge, political button, or other political insignia” inside a polling place on Election Day clearly violated the First Amendment. However, the Court indicated that a message that supports or opposes a candidate or measure on the ballot at that election and polling station can be prohibited. The moderator must set up an outdoor area at least 10 feet wide and extending out from the entrance door of the polling place building as far as the moderator deems appropriate where electioneering and distributing campaign literature will be prohibited. RSA 659:43.

Local Electioneering Ordinances: Towns may enact ordinances or bylaws concerning electioneering that are more stringent than state law, except that the display of material attached to motor vehicles or wholly on private property cannot be regulated. Such regulations must be provided to the town clerk immediately, so as to be made available to candidates. They must also be posted at the polling place at least 72 hours prior to the election. RSA 31:41-c.

The town should be cautious about enacting any local electioneering ordinance, especially one that regulates the polling place itself differently than state law. A proposed electioneering ordinance should be discussed with the town attorney because it will involve complex First Amendment issues. Candidates will file lawsuits over these issues, or will simply ignore the local ordinance if they believe their First Amendment rights are at stake.

J. Disqualification of Certain Election Officials Who Are Candidates for Other Elective Office

RSA 658:24 requires disqualification of certain election officials who are candidates for elective office other than the position of election official. Moderators, clerks, selectpersons, inspectors of elections or supervisors of the checklist are exempt from disqualification, except that they are disqualified from handling marked ballots and counting votes.

The vast majority of New Hampshire towns and districts hold local elections using the non-partisan official ballot system, previously described in this chapter. Therefore, much of the information included in this chapter assumes use of the non-partisan official ballot.

7. Town Officers

I. Election of Officers

A. Officers Who Must Be Elected

The following town officers must be elected by a ballot vote at a town election by the voters of a town: selectperson, moderator, supervisor of the checklist and town clerk. The treasurer, tax collector and highway agent, unless provision has been made for appointment, are also elected by ballot. RSA 669:15.

B. Optional Elective Offices

If the following offices are established by a town, they must be elected by ballot: town clerk-tax collector, constable or police officer for full-time duty (does not include appointed officers), trustee of trust funds, sewer commissioner, tax collector for a three-year term, town auditor and library trustee. These officers cannot be elected by official ballot until the annual election first following the establishment of the office. However, whenever a town votes to establish an optional office, the town may also vote to elect, by unofficial ballot at the same meeting, an officer to serve until the next annual town election. If a town fails to elect an officer by unofficial ballot, the office is deemed vacant and is filled as provided in RSA 669:61 – :75. RSA 669:16.

C. Discontinuance of Optional Elective Office

When an optional elective office is discontinued, even if it is going to be succeeded by an appointive officer for that same office, the person holding the elective office at the time continues to hold it until the following annual election, at which time the elective office terminates irrespective of the length of the term. RSA 669:17-b, :17-d.

D. Optional Use of Official Ballot

The following town officers may be elected by ballot or by other means at annual town elections or meetings by the voters of the town: town assessor, overseer of public welfare, constables or police officers other than those elected under RSA 41:47, elected planning board members, elected zoning board of adjustment members, elected budget committee members, tax collector for a one-year term and any other officers the town may judge necessary for managing its affairs under RSA 41:2. An officer may not be elected by official ballot until the annual town election first following the establishment of the office. RSA 669:17.

II. Qualification, Conflicts and Vacancies

A. Qualification of Officers

Unless otherwise provided by law, no person can hold an elective town office without a domicile within the town. RSA 669:6. For appointed officials, residency is often, but not always, required. All

appointed and elected officials must be citizens of the United States. RSA 91:2.

B. Oath

Every town officer is required to take the oath of office. RSA chapter 42. Any selectperson, moderator, town clerk or justice of the peace can administer the oath. Under certain circumstances, an elected official can be sworn in as soon as the results are declared and prior to the expiration of the deadline for requesting a recount: (a) the annual business meeting must be concluded; (b) there was no opponent on the ballot; and (c) no write-in candidate received as much as five percent of the vote.

The oath, as prescribed in Part 2, Article 84 of the New Hampshire Constitution is:

I, [name] do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all duties incumbent on me as [position], according to the best of my abilities, agreeably to the rules and regulations of this constitution and the laws of the State of New Hampshire. So help me God.

Any person who violates the oath of office is subject to removal from office by the superior court. RSA 42:1. In addition, anyone elected who refuses to take the oath within six days of personal notice, or within 30 days in case of absence, shall be guilty of a violation, and the office is considered vacant. RSA 42:6; RSA 652:12, IV.

C. Conflicts of Interest

All public officials are subject to a common law conflict of interest standard that prohibits an official from participating in a matter in which the official has a direct personal and pecuniary interest. *Atherton v. Concord*, 109 N.H. 164 (1968). That interest must be “immediate, definite, and capable of demonstration; not remote, uncertain, contingent or speculative.” The annual meeting may adopt an ordinance defining and regulating conflicts of interest for local officers and employees. The ordinance may include provisions that require disclosure of financial interests for specified officers and employees, establish incompatibility of office requirements stricter than those specified by state law, or establish conditions under which prohibited conflicts of interest will require removal from office. Any ordinance must include provisions to exempt affected officers and employees who are in office or employed at the time the ordinance is adopted, for a period not to exceed one year from the date of adoption. The superior court has jurisdiction over any removal proceedings instituted under a conflict of interest ordinance adopted under RSA 31:39-a.

For land use boards, RSA 673:14 controls disqualification from quasi-judicial decisions.

D. Incompatibility of Office

RSA 669:7, I prohibits individuals from holding certain multiple town offices:

No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of the town’s police department on full-time duty. No person shall at the same time hold the offices of town treasurer and town clerk. No full-time town employee shall at the same time hold the office of selectman. No official handling funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school

district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

RSA 669:7, II also prohibits an individual from filing a declaration of candidacy for two or more elected offices that are incompatible under RSA 669:7, I. There is also a limitation in towns on multiple planning board members serving together on other boards. Only one current planning board member (or alternate) may sit on the conservation commission, select board, zoning board of adjustment, or historic district commission. A maximum of two current planning board members may sit on any other town board or commission. RSA 673:7.

Two positions might also be incompatible even though they are not listed in RSA 669:7. Whenever two positions bear a special relationship to each other, one being subordinate to and interfering with the other, with inconsistent loyalties or responsibilities, one person cannot legally hold both positions. McQuillin, *Municipal Corporations*, § 12.67; *Cotton v. Phillips*, 56 N.H. 220 (1875); *Littleton v. Taylor*, 138 N.H. 419 (1994).

E. Vacancy

A vacancy occurs in a public office if, after election and before the completion of the term, the person elected to that office:

- dies, resigns or ceases to have domicile in the state or the district from which elected;
- is determined by a court having jurisdiction to be insane or mentally incompetent;
- is convicted of a crime that disqualifies him from holding office;
- refuses to take the oath of office or to give or renew an official bond if required by law; or
- has his or her election voided by court decision or state Ballot Law Commission decision. RSA 652:12.

A vacancy also occurs if the town fails or refuses to fill an elective office at the annual town election. RSA 669:61.

Filling Vacancies in Town Offices: Whenever a vacancy as defined above occurs in any elective town office, or whenever a town neglects or refuses to fill an elective town office, the vacancy is filled by action of the body or person authorized by law to fill a vacancy in that office. Those authorized to fill vacancies in town offices are enumerated in RSA 669:61 – :75. The person chosen to fill the vacancy serves a term ending at the next annual town election, unless otherwise provided. At that time, the voters of the town elect an officer for the full term provided by law, or the balance of an unexpired term. If the vacancy occurs after the beginning of the filing period, the person appointed to fill the vacancy serves until the following year when an election is held. RSA 669:61. RSA 669:61 enables the town meeting to adopt an optional procedure for filling vacancies by special election upon petition of voters if the authorized person or body fails to fill a vacancy within 45 days. RSA 669:61, IV. This procedure applies only if your town has previously adopted it.

F. Tenure in Office

All town officers continue in office until the next annual meeting “and until others shall be chosen or appointed and qualified in their stead except in cases where the law otherwise directs.” RSA 41:3; RSA 669:10, I. The effect of this language is that the incumbent officer remains as a holdover in office, with complete authority to act, until such time as the new officer is elected and properly takes the oath of office. In most cases, this prevents vacancies between terms.

8. School Meeting

Generally, a school district meeting operates in the same manner and is subject to the same laws as a town meeting. Therefore, almost all the principles discussed in Chapter 1, The Town Meeting, also apply to school district meetings, except as provided for in this chapter. All provisions of RSA Chapter 40, as described in Chapter 3, apply equally to school meetings. Since school districts are authorized to adopt the official ballot referendum (SB 2) form of meeting, Chapter 6 should be referred to if your school district has adopted that system.

I. Annual Meeting

A meeting of every school district must be held annually between March 1 and March 25, inclusive, or in accordance with RSA 40:13 if adopted in the district, for raising and appropriating money for the support of schools for the fiscal year beginning the next July 1, for the transaction of other district business and, in those districts not electing their district officers at town meeting, for the choice of district officers. RSA 197:1.

A. Location

School district meetings may be held at a suitable place selected by the school board to accommodate the voters. The meetings can even be held at multiple locations, if the locations are connected by a 2-way visual and audio closed circuit, meaning that the different locations and can see and hear each other. RSA 197:4. A district may hold a meeting outside the district “in an adjacent town or nearest appropriate facility” if there is no facility within the district with a large enough seating capacity. If so, the school district officers must arrange transportation between the in-district polling place and the out-of-district meeting facility, and warrants and other items required to be posted must be posted for review by qualified voters at the place of the meeting on the day of the meeting. RSA 197:4-a. For cooperative school districts, the meeting location is within one of the pre-existing districts (i.e. towns), or may be in “the nearest appropriate location” as described above. However, different statutes allow “dispersed” voting within the constituent towns for official ballots (e.g., traditional meeting districts which have adopted official ballots for elections and/or for certain statutory questions), and for referendum ballot voting (i.e., SB2 districts). See RSA 671:17, III, and 40:15, respectively. For further discussion regarding cooperative district SB2 elections, see Chapter 8.IV.B, below.

B. Budget

The school board must prepare a budget for the annual or any special meeting upon a form prescribed and provided by DRA and must post it simultaneously with the warrant for the meeting. RSA 197:5-a However, if the school district is under the jurisdiction of an official municipal budget committee per RSA 32:14, et seq. or a cooperative school district budget committee per RSA 32:14 and 195:12-a, then the budget committee prepares the budget for the annual or special meeting. RSA 32:16. All portions of the Municipal Budget Law, including provisions pertaining to public hearings, purposes of appropriation, transfers of appropriations, etc., apply in full to school districts. RSA 32:1 – :13 . See Chapter 4.

C. Warrant and Articles

The school board prepares the warrant. No article may be inserted after the posting of the warrant.

RSA 197:6. Upon the written application of 25 or more voters or 2 percent of the voters of the school district, whichever is less, but in no case fewer than 10, presented to the school board or one of its members at least 30 days before the date prescribed for the school district meeting, the school board shall insert the petitioned warrant article in the school district warrant for such meeting.

1. Penalty

A school board is guilty of a violation if it refuses to insert an article in the warrant, after being properly petitioned to do so. RSA 197:6-a.

2. Posting Warrants

If the annual meeting of the school district for business other than election of officers is to be held at some other time than in conjunction with the town meeting, the school board must post the warrant for the meeting, omitting the article relative to election of district officers.

The school election warrant must prescribe the time the polls are open and an hour before which the polls may not close. RSA 197:1-g. If the district holds its elections in conjunction with the town's elections, as set forth in RSA 671:22 – :26, then the hours for the school election must be the same as for those of the town election.

The warrant must be addressed to the voters of the district, stating the time and place of the meeting and the subject matter of the business to be acted upon. RSA 197:5. The school board or justice issuing a warrant posts an attested copy at the place of the meeting and at one other place in the district 14 days before the day of meeting, not counting the day of posting nor the day of the meeting, but including any Saturdays, Sundays and legal holidays within said period. RSA 197:7. For cooperative districts, the warrant must be posted in a public place in each pre-existing district, as well as at the place of the meeting. RSA 195:13.

3. Return and Record

The warrant, with a certification verified by oath of the person who did the posting, stating the time and places when and where copies of it were posted, must be given to the clerk of the district at or before the time of the meeting and must be recorded by him or her in the records of the district. RSA 197:10.

II. School District Annual Report

The school boards and school districts have a duty to publish several categories of financial information in the annual report.

A. Budget

A school district may vote under an article inserted in the warrant to require the district to print its budget in an annual report made available to the district's voters at least one week before the date for the annual meeting. The report may be separate or combined with the annual report of the town. This obligation is in addition to the requirement to post the budget with the warrant. RSA 32:5, VII(a).

B. Actual Expenditures for Special Education Programs and Services

Every district must provide in its annual report an accounting of actual expenditures by the district for special education programs and services for the previous two fiscal years. The accounting shall include offsetting revenues from all sources, including but not limited to, reimbursements from state funds, federal funds or Medicaid funds; private or other health insurance coverage; transferred special education moneys received from another school district; and any other special education resources received by the district. RSA 32:11-a.

C. Financial Reports

School boards shall publish in the next annual report, or post at the annual meeting, the general fund balance sheet from the most recently completed audited financial statements or from the most recently completed financial report filed pursuant to RSA 21-J:34, V. RSA 189:28-a, I. In case of an accumulated general fund deficit, the school board shall insert an article in the warrant recommending such action as they deem appropriate, including raising a sum of money to reduce the deficit. RSA 189:28-a, II.

D. Estimates

An old statute calls for the school board in the annual report to state in detail the additional sums of money, if any, which will be required during the ensuing fiscal year for the support of the public schools; for the purchase of textbooks, scholars' supplies, flags and appurtenances; for the payment of the tuition of the pupils in the district in high schools and academies in accordance with the law; and for the payment of all other statutory obligations of the district. RSA 198:4.

E. Health Insurance Expendable Trust Funds

If a district creates an expendable trust fund for the purpose of maintaining health insurance funds for the benefit of employees and retired employees, an annual accounting and report of the activities of the trust shall be published in the annual report. RSA 198:20-c, III.

III. Special Meetings

A. School Board or Petition

A special school district meeting may be called by the school board at its discretion and must be called upon petition for such a meeting is received by the school board and is signed by: 50 or more voters, or 25 percent of the district's voters, whichever is fewer, for a single district, see RSA 197:2; or, for cooperative districts, 5 percent of the cooperative district's voters, see RSA 195:13. When the school board calls a special meeting, it must cause a copy of the warrant to be published once in a newspaper of general circulation in the district within one week after posting the warrant. RSA 197:8. Special meetings may not be held on the date of a state general election, except when the meeting has been approved by the court, and the district has adopted the official ballot referendum form of meeting (SB2) pursuant to RSA 40:14. RSA 197:2.

B. By Order of the Superior Court

If the school board unreasonably neglects or refuses to warn an annual meeting, or to call a special meeting after a sufficient petition is made, a justice of the superior court, upon petition of 10 or more voters or one-sixth of the voters of the district, may issue such a warrant and cause it to be posted, and, if for a special meeting, to be published as required by law. RSA 197:9.

C. Raising Money at Special Meetings

The restrictions on appropriating money at special town meetings also apply to special school district meetings, including the statutory factors defining an emergency. RSA 197:3. See Chapter 1. An “emergency” means “a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money.” To verify that an emergency exists, the school board shall present, and the superior court shall consider: (1) the severity of harm to be avoided; (2) the urgency of the school board’s need; (3) whether the claimed emergency was foreseeable or avoidable; (4) whether the appropriation could have been made at the annual meeting; and (5) whether there are alternative remedies not requiring an appropriation. RSA 197:3, I.

In the event that the legislative body at an annual meeting amends or rejects the cost items or fact finder’s reports as submitted pursuant to RSA Chapter 273-A, the school board may call one special meeting for the sole purpose of addressing all negotiated cost items without petitioning the superior court for authorization. Such a special meeting may be authorized only by a contingent warrant article with prescribed language inserted on the warrant or official ballot either by petition or by the school board. RSA 197:3, III.

IV. Elections

A. Officers Elected and Procedures

The officers of all school districts, including cooperative school districts, are elected according to the provisions of RSA Chapter 671. Election procedures are specified in RSA 671:22 – :26-a for selecting school district officers at the town election and in RSA 671:27 – :31 for selection of officers at a separate school district election. Checklist specifications are found in RSA 671:14 – :16.

B. Coordination with Town Elections

RSA 671:22 – :26-a permits a school district, including a cooperative school district, to coordinate its elections with town elections. Towns that have not adopted the official ballot referendum (SB 2) system may vote to authorize coordination of town elections with the school district elections in districts that have adopted the SB2 system. RSA 40:14-a; 671:26-a. If the district is a cooperative district, it may also vote to hold elections at “dispersed” polling places— those of the towns. RSA 40:15. If this occurs, the school district moderator appoints an assistant moderator for each such town, and the district clerk appoints assistant clerks. These may be, but need not be, the actual town moderator and town clerk. Any additional election costs as a result of coordination with the town election are borne by the school district.

Rescheduling Elections

School district elections (and SB2 ballots) are postponed in the same manner as for town elections/ ballot voting as discussed in Chapter 1, II, above, with two exceptions. First, in the case of a single town school district that holds its elections in conjunction with the town elections in the component towns as provided in RSA Chapter 671, in the event of a weather or other emergency as described in RSA 669:1, V, the town moderator in each town shall, as described in RSA 669:1, coordinate to reschedule the town and school district elections. RSA 671:22-a. For cooperative school districts which hold elections/balloting in the component towns as provided in RSA Chapter 671:22-a, a majority of the town moderators must agree to postpone. RSA 669:1.

C. Voter Checklist

In 2017, HB 391 repealed RSA 671:16 and RSA 671:24 and deleted some of the language in RSA 671:15. Now, RSA 671:15 simply requires an updated checklist to be used at all school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5. That statute further requires the supervisors of the town checklist to act as supervisors of the school district checklist, and correct, certify, and post the checklist for the district as required in RSA 654:25 – 654:31.

D. Candidate Qualifications

To become a candidate for any school district office, a person must be a registered voter in the district. No person holding the office of a member of the school board can at the same time hold the office of district moderator, treasurer or auditor. No person employed on a salaried basis by a school administrative unit or by any school district within a school administrative unit shall be a school board member in any district of the school administrative unit. Salaried positions subject to this limitation include, but are not limited to: teacher, custodian, administrator, secretary, school bus driver (if paid by the district), school lunch worker and teacher's aide. RSA 671:18. (Note: while the statute specifically references "salaried positions", of the five examples listed, only teachers and administrators are typically paid on a salaried basis. As such, most school attorneys interpret 671:18 to apply to all employees of a school district irrespective of whether compensation is salary, hourly or stipend based. For specific positions, school officials should consult with local counsel.)

E. School District Officers

At each school district election, each school district that is not a cooperative school district as defined in RSA 195:1 must elect a school district clerk, moderator, treasurer and any other optional officer as the voters of the district shall have voted to elect to manage the affairs of the district.

An optional officer cannot be elected by official ballot until the year after that office is established, but the district may, by vote, decide to elect a temporary officer (by unofficial ballot), or authorize the school board to appoint a temporary officer to serve until the next annual district election. RSA 671:6.

F. Terms of Office

The term of any elected school officer begins upon his or her election and qualification (taking the oath of office) and ends upon the election and qualification of his or her successor. RSA 671:3. This prevents time gaps between officers' terms.

The school moderator takes office upon the adjournment of the regular school district meeting held in the year of his or her election and upon qualification for office (taking the oath of office), whichever is later. The treasurer takes office upon the close of the fiscal year for the district and upon his or her qualification for office, whichever is later. RSA 671:6.

At any annual school district meeting under an article in the warrant placed there by petition, the voters may vote for two-year or three-year terms for the school district clerk, moderator and treasurer. RSA 671:6-a.

G. Moderator

The school moderator has the same powers and duties as a moderator of a town meeting to conduct the business and preserve order. He or she may administer oaths to district officers. RSA 197:19. See Chapters 1, 2 and 3.

H. Clerk

The clerk must keep a true record of all the actions of the legislative body; must make an attested copy of any record of the district for any person upon request and tender of legal fees therefor; acts as moderator of any meeting until a moderator pro tempore is chosen, if the moderator is absent or the office has become vacant; and has the same power to administer oaths that the moderator has. If the clerk is absent at any meeting a clerk pro tempore must be chosen. RSA 197:20.

I. Treasurer

The school district treasurer has custody of all money belonging to the district and must make payments only upon orders of the school board or upon orders of the two or more members of the school board empowered by the school board as a whole to authorize payments. RSA 197:23-a details how funds are kept, invested and reported.

1. Acting Treasurer

If the treasurer, by reason of illness, accident, absence from the state or other cause, becomes temporarily incapacitated and unable to perform the duties of office, the school board may declare a temporary vacancy and appoint an acting treasurer to perform the duties of the office for a limited period. The appointee shall be subject to all the requirements and liabilities of the treasurer while he or she serves. RSA 197:24.

2. Deputy Treasurer

Any school district may, under an article in the warrant for the annual meeting, vote to authorize the treasurer, with the approval of the school board, to appoint a deputy treasurer. RSA 197:24- a.

V. Vacancies

The school board has authority to fill any vacancies occurring on the school board or in other district offices, except the position of moderator, until the next annual meeting. In case of vacancy of the entire membership of the school board, or if remaining members are unable to agree on an appoint-

ment, the select board of the town, upon application of one or more voters in the district, shall fill the vacancies until the next annual meeting of the district. RSA 197:26; RSA 671:33, I. Vacancies in the office of moderator are filled by vote at a school meeting or election, provided that, until a replacement is chosen, the school district clerk shall serve as moderator. RSA 671:33, III.

Cooperative School Districts: If there is a vacancy on a cooperative school district board, the remaining school board members representing the same town or towns (e.g., at large members in a cooperative district) as the departed member fill the vacancy on the school board, provided that there are at least 2 such members. If there are less than 2 remaining members on the cooperative school board representing the same town or towns as the departed member, or if the remaining members are unable, by majority vote, to agree upon an appointment, the select board of the town or towns involved shall fill the vacancy by majority vote in convention. If the select board is unable to fill the vacancy then the cooperative school district moderator makes the appointment. A member appointed to fill a vacancy under this subparagraph shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term. RSA 671:33, II(b). The moderator fills vacancies among members of cooperative or area school planning committees for the unexpired term. RSA 671:33, I.

Where there is a vacancy occurring on the budget committee of a cooperative school district, the remaining budget committee members representing the same town or towns as the departed member shall fill the vacancy, provided that there are at least 2 such members. If there are less than 2 remaining members on the budget committee representing the same town or towns as the departed member, or if the remaining members are unable, by majority vote, to agree upon an appointment, the select board of the town or towns involved shall fill the vacancy by majority vote in convention. If the select board is unable to fill the vacancy, then the cooperative school district moderator shall make the appointment. If the vacancy is for the cooperative school board representative to the cooperative school district budget committee, such vacancy shall be filled by the cooperative school board. A member appointed to fill a vacancy under this subparagraph shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term. RSA 671:33, IV.

9. Parliamentary Procedure

Up to this point, this handbook has focused upon legal requirements. Chapters 9 and 10 review traditional rules of procedure and fairness used at some town meetings by some moderators. The following rules are based partly on Robert's Rules of Order, but they have no official status. Any moderator is free to adopt alternative rules, and any assembled group of voters is free to overrule the moderator by a simple majority vote. Please also note that we do not recommend adopting Robert's Rules in their entirety. Instead, moderators should use Robert's Rules as a guide only, and adopt a simpler set of rules more appropriate for the setting.

Surveys continue to show that attendance at town meetings is dropping and that many voters who do attend feel left out, or that they don't understand the procedures followed. One cannot help but feel that perhaps some of that sentiment is what led to the enactment of the official ballot referendum system. At any rate, it is the moderator's duty to conduct meetings in a manner that overcomes such impressions. The meeting must not merely be fair. It must appear fair to the voters. The following procedures are only an aid to that goal and should not be abused to "railroad," exclude or confuse those who do not understand them.

In addition to Chapters 9 and 10, Appendices B and C provide ideas and information that may assist you in running a smooth and effective town or school district meeting, and Appendix D includes the Bow Town/School District Rules of Procedure to use as a guide in creating or updating your own rules.

I. Quick Definitions

A. Warning

"A town meeting may be warned by the selectmen...." RSA 39:1. The warrant warns of the date, time and place of the meeting and the subject of all business to be acted upon. RSA 39:2. The items of business are usually referred to as "articles." From a legal standpoint, the motion made when an article is read does not have to mimic word-for-word the warrant article, so long as it deals with the same general subject matter and does not introduce new substantive subject matter that wasn't warned.

B. Motions

All action by a town meeting is by votes taken on motions. The motions that may come from the floor can be thought of in four categories: main, subsidiary, privileged and incidental. A fifth category, sometimes called frivolous, requires little explanation. The following are brief descriptions of motions:

1. Main Motion

This motion is introduced to advance, approve, amend, defeat, reconsider or rescind the subject matter of an article.

2. Subsidiary Motion

This motion is voted on before a main motion and is used to speed up consideration, slow down consideration or amend the content of the main motion.

3. Privileged Motion

This motion is voted on before a main or subsidiary motion and is used to regulate adjournments, safety, comfort and integrity of the whole group and of individuals.

4. Incidental Motion

This motion has the same rank as the motion it rises under. It governs voting, rules, information, nominations to committee and withdrawal of a motion.

5. Frivolous Motion

This is what the name implies. The moderator, considering a motion from the floor patently absurd, dismisses it and considers it out of order. Clearly, the moderator must try to keep a sense of the flow of the meeting and the wishes of the body. Many of the following types of motions, even though proper from a parliamentary standpoint, might be ruled frivolous if the moderator knows the motion is sure to be defeated and the person is just wasting the body's time. Obviously, though, even a ruling that a motion is frivolous is subject to being overruled, and great caution must be used in departing from established rules. After all, the purpose of rules themselves is to establish fairness. Thus, the only valid reason for departing from rules is to remedy some unfairness that strict adherence might cause.

C. Handling Various Motions

To illustrate what a moderator may have to cope with, here is a pyramid of motions from the floor at a town meeting:

- Main Motion
- Motion to Limit Debate
- Motion to Adjourn Until Noon Next Day
- Motion to Adjourn Permanently
- Motion to Vote by a Voice Vote
- Request to Read Papers
- Appeal of Moderator's Ruling
- Suspension of Rules

What the moderator faces is a main motion, a subsidiary motion, two privileged motions and four incidental motions. The highest-ranking motion, to adjourn permanently, would normally be dealt with first, but while it was pending the incidental motions could be introduced. Incidental motions have no rank, but since they are introduced at the time of the motion to adjourn permanently, they inherit that rank. So, the moderator must dispose of the incidental motions, work his or her way to the privileged motions, through the subsidiary motions and ultimately to the main motion—presuming the adjournment motions are defeated. It may appear cumbersome, but the ranking system may help the moderator handle motions from the floor, thus speeding debate. Some motions are debatable, some are not. This will be explained below.

It goes without saying that this ranking system is only to aid the moderator and is probably not understood by most voters. Again, even a ruling by the moderator as to ranking of motions is subject to challenge by the meeting. It is highly recommended that if a procedural motion is about to be voted on, the effect of that vote should be explained in simple English, especially if it will limit citizens' op-

portunity to debate. Some moderators, if they believe most of the assembly does not understand a motion, will refuse to accept it.

II. Explanation of Motions and Rank

A. Main Motion

Although a main motion may be the first order of business, it has no rank if a subsidiary motion affects it. It ranks lowest in precedence. Main motions can be debated.

B. Subsidiary Motion

This is a method of altering or eliminating a main motion. The key here is the words “alter” or “eliminate,” and this is where rank of motions appear. Starting with the lowest ranking motion, these are the subsidiary motions that may be encountered by a moderator through action of citizens from the floor:

1. Postpone Indefinitely

This motion is a procedure to attempt to kill a main motion or even test the strength of it by forcing a vote. It is debatable.

2. Amend

The main motion may or may not be acceptable if it is changed or altered, so an amendment may, itself, be altered by another amendment. It is debatable.

3. Refer

This is a motion to refer the subject to a committee, the moderator, or the assembly for further study. The main motion may or may not be affected by referral. It is debatable.

4. Postpone

This motion can call for a postponement later during the meeting, or even at a later meeting when considering a main motion. This motion is debatable.

5. Limit or Extend Limits of Debate

Discussion may be taking up too much time, or there may not be enough time to consider the main motion. It is not debatable, so a two-thirds favorable vote is traditionally required for passage.

6. Call the Previous Question

This cuts off debate. When this motion is made, it must be voted upon immediately. It is not debatable, so a two-thirds vote is traditionally required.

7. Lay on the Table

This is simply a motion to lay the main motion aside, without setting a definite time for it to be considered again. This is not debatable, and if a motion to remove the matter from the table is not forthcoming during the meeting, the matter is killed following adjournment. Again, traditionally a two-thirds vote is required.

Subsidiary motions are always applied to a pending motion. They always affect the pending motion in some way. Subsidiary motions have rank; some are debatable, some are not.

C. Privileged Motion

These motions have nothing to do with current business from the floor but rank even higher than subsidiary motions. Generally, a privileged motion is considered without debate. The following are privileged motions, ranked from lowest to highest, that a moderator may have to deliberate upon:

1. Call for the Orders of the Day

A voter, believing the agenda or order of business is not being followed, may make this motion to try to enforce what he or she thinks should be a two-thirds vote of those present in order to deviate from the order of business.

2. Question of Privilege

This motion can be introduced in the middle of pending business. It usually relates to conditions such as over-crowding, noise or similar issues. Generally, it is a simple matter for the moderator or chairman to remedy the situation. The moderator may rule the motion out of order and continue with pending business.

3. Point of No Quorum

This is a question that requires no second or vote; it is not debatable and may not be amended or reconsidered. Absence of a quorum prevents the meeting from taking up any new business but does not affect business completed before the point was raised. There is no legal quorum requirement for town meetings; thus, such a motion should not be considered in order.

4. Recess

This is a privileged motion that is not debatable when moved while a question is pending.

5. Adjourn

This is another motion that may be called in the middle of business. Whatever business is on the floor at the time of adjournment must be continued at the next meeting.

D. Incidental Motion

Incidental motions vary widely but always pertain to the business under consideration. These incidental motions are in order when they are legitimately incidental to another pending motion. They then take precedence over any other pending motions. The following are examples:

1. Point of Order

This is a call for the chair to follow the rules of the meeting or to explain them. This motion may interrupt pending business.

2. Appeal

If two members of the meeting still feel the moderator is not following the rules correctly, they may move for an appeal. Then the entire assembly may vote on the moderator's ruling.

3. Suspend the Rules

The meeting may want to do something contrary to established rules. A motion to suspend the rules, if passed, allows the assembly to handle business in this manner. This action normally takes a two-thirds majority for passage.

4. Division of a Question

If a main motion, or amendment to it, contains several parts that can be considered separately, the assembly may vote to break up the motion. There are variations to this; some main motions may be broken into paragraphs for consideration by the members of the meeting.

Notice that incidental motions can be varied. Generally, an incidental motion must hinge on a prior pending motion. Other incidental motions include requests and inquiries: motions to withdraw a motion, motions to ask that something be read out loud for a specific purpose, etc.

III. Types of Votes

A. Five Voting Methods

There are five methods of voting that may be used by a town meeting, and they are set out below in the order of precedence:

1. Voice Vote

This vote is the “yeas” and “nays” and is the lowest of all in order of precedence.

2. Show of Hands

When a voice vote is questioned and no demand is made for a voting method with greater precedence, the moderator may call for a show of hands on the affirmative and then the negative. This vote saves a considerable amount of time over other types of votes while still returning the desired result.

3. Standing Vote

If the show of hands is for some reason indecisive, the moderator may then call for a standing vote. In this type of vote the proponents stand first and are counted by the moderator or by appointed assistants, then the opponents stand and are counted.

4. Division of the House

Of the first four types of votes, this one is the most decisive. Under this method of voting, the persons who vote in the affirmative move to the moderator’s right and those who vote in the negative move to the moderator’s left simultaneously. The moderator then appoints assistants who count the number of persons on each side and return the count orally to the moderator. The moderator announces the outcome and then the persons return to their seats. This method of voting is by far the quickest and most effective and can be used by the town meeting when the secrecy of the ballot is not an issue. If the secrecy of the ballot is a matter in issue, then all other forms of voting should be ignored and a ballot should be taken.

5. Secret Written Ballot

This type of balloting is done in open town meeting where assistants pass out slips of paper that are written on by the voter indicating his or her decision. See discussion in Chapter 3.

B. Procedural Issues

One frequent but unsound voluntary practice that moderators face is the improper use of the negative motion. This is a motion where the voter must vote “no” to mean “yes.” An example of such a negative motion is a motion to pass over a particular question. Moderators are encouraged not to recognize a motion to “pass over.” If the intent is to table the question for action later in the town meeting, the motion should explicitly state the intent; otherwise, the moderator should always attempt to entertain a motion to accept the article. The issue is then clearly before the voters. Those desiring the adoption of the main motion vote “yes”; those against it vote “no.”

Another parliamentary rule sometimes mistakenly overlooked in dealing with articles in the warrant containing a specific sum of money to be appropriated is that the amount indicated in the article can be increased or decreased. However, towns with budget committees are limited to a 10 percent increase of the budget committee’s total recommended expenditures, less fixed county, state and federal charges.

The problem of whether an amendment to an article is proper can be difficult for a moderator. The general rule established by case law is that any amendment that deals with the same subject matter as the original article is proper. See Chapter 3. Suppose, for example, that the article calls for appropriating money to purchase a truck. A procedural amendment, such as requiring the purchase to be by public bid, is proper, as would be a change in the amount to be appropriated. An amendment to change the article to purchase a police cruiser instead of a truck is a change in the subject matter and should not be allowed. An amendment that introduces subject matter not stated in the warrant article can never be legally binding, even if enacted.

10. Rules of Debate

Typically, debate over an article should progress this way: an individual seeks recognition, the moderator grants recognition, the individual makes a motion and the moderator calls for a second. Someone other than the person who made the motion seconds, and the moderator restates the motion. If it is acceptable, the moderator opens the floor to discussion. Debate for and against may follow, along with allowable subsidiary and incidental motions. The question is called from the floor, the moderator restates the motion and calls for a vote. The moderator then announces the result, but may be challenged.

The following are some suggested rules regarding debate, evolved through experience and designed to simplify the moderator's task.

- **Right to Speak**

Every eligible member of a meeting or assembly has the right to speak on any debatable subject. Generally, this right cannot be interfered with, except by a vote of the legislative body. For example, according to Robert's Rules of Order, this could be done by a two-thirds vote.

- **No Debate Without Main Motion**

There cannot be debate on a subject until a motion has been brought before the meeting. The motion must be seconded, and then the moderator asks: "Are you ready for the question?" or "Is there discussion?" At this point debate may begin. The person introducing a motion should always have the opportunity to speak first.

- **Control of the Floor**

Even though the moderator is running the meeting, he or she must never cut off debate while it is in progress simply to call a vote on the issue. There are some exceptions. Debate may be cut off if a member of the meeting calls for a point of order, an appeal or objection to consideration of the question, or another acceptable motion. However, if the moderator rules that the subject remains debatable, the floor is turned back over to the person who was speaking before debate was cut off. If a person has the floor and is speaking, it is out of order for someone else to move to adjourn or lay the question on the table while the person still has the floor.

- **Time Limits**

Town meetings in New Hampshire are considered legislative. Therefore, there is no time limit on debate. For other assemblies, however, Robert's Rules suggest a maximum for debate by any one person to 10 minutes. This is a flexible rule and the meeting, by two-thirds vote, may set any limitations on debate before formal motions are considered. Because "debate" and the term "deliberative" are tied together, it is proper for the chairman to ask the speaker to come back to the point if it appears his or her remarks are straying too far afield.

- **Use of Names**

There is some conflict among authorities regarding use of names during meetings. Robert's Rules advises to "avoid as much as possible" the use of names. Another authority, Johnson, Trustman and Wadsworth, suggests it is a good rule for members of a meeting to give their names when speaking from the floor. **However, New Hampshire's Right-to-Know law, RSA 91-A:3, II, now requires that the minutes of all public meetings, including town meetings, includes the names of the people who made or seconded each motion at a town meeting.**

- **Personal Attacks**

It is well known that debate during town meetings in New England sometimes gets heated. All parliamentary authorities agree that the moderator should never allow a speaker to engage in personal attacks or impugn the motives of an opponent during debate. Words like “fraud,” “liar,” “cheat” or worse should never be allowed, and the moderator should stop that tone of debate immediately.

- **All Discussion Through the Moderator**

The moderator does not allow members of a meeting to address each other during debate. Remarks go through the moderator at all times.

- **Moderator Impartiality**

During debate, the moderator should establish a “hands-off” policy about matters under consideration. A moderator should step down and speak to an issue only if the moderator feels it is necessary to bring significant information to the attention of the meeting about a subject under debate. If the moderator does step down, someone else must preside. To preserve impartiality, the moderator should vote only in two instances: as a tie-breaker, or if a motion he or she opposes could carry by one vote, the moderator may vote against it. This would then create a tie that would defeat the motion. Authorities agree these are the only times a moderator should vote.

- **Repetition of Motions**

When debate has ceased and the question is called, the motion under consideration must be repeated word-for-word. This rule avoids misunderstanding.

Appendix A

Advance Preparation for a Meeting

I. A Smooth Meeting is a Team Effort

Experienced moderators know that they are but one person, and that the cooperation and assistance of many other persons is needed in order to plan, prepare, and conduct the business meetings of a municipality. Consider the roles that others perform:

A. Creating the Municipal Budget and Related Warrant Articles

1. 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.

2. 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. These persons often draft and file the necessary forms with the Department of Revenue Administration during the entire year, and input data into the Municipal Tax Rate Setting Portal (MTRSP). They also interact with their counterparts at the school district to provide information and to transfer funds appropriated to the school, but collected through the municipal tax collector.

3. 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 process takes hours of time over a several-month period. When working appropriately, the committee members often identify areas for improvements in efficiency and municipal and school program delivery. If the committee is an advisory committee, rather than an official committee, they do not conduct the public hearings or create the actual budget presented to the legislative body.

4. The planning board. This board is the source of proposals for land use ordinance adoption or change. These proposed changes are often detailed and complex and respond to changes in state and federal environmental laws and regulations. They may take months to create, and are the subject of public hearings and comment.

5. The library trustees and library staff: This group creates the budget proposal for library services to be offered for the upcoming year. They administer the appropriation from the legislative body, and also often administer funds left to the library in trust for the provision of library services.

6. 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. They administer the appropriation received for these purposes as well as funds

received from income of perpetual trusts held by the trustees of the trust funds.

7. 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.

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

9. 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.

10. 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. The attorney may offer suggestions for possible governing body authored amendments to such warrant articles, and may be present at a deliberative session (SB 2) or business session (traditional town meeting) to assist the governing body and/or moderator with procedural aspects of these sessions, or the meaning or enforceability of amendments offered by citizens.

11. Municipal Services Staff of the DRA. DRA assists the governing body and the moderator with the review of the language of the annual warrant to determine whether the language complies with statutory requirements, or may create issues that would cause this regulatory agency to disallow an appropriation contained within a warrant article.

B. Creating the School Budget and Related Warrant Articles

1. The school board as the school district governing body has the same responsibilities as the municipal governing body in creating the school budget and school district annual warrant.

2. The administrators, including the superintendent, principal, business administrator, and special education coordinator have the same responsibilities to the governing body, any budget committee, their municipal counterparts, and the Department of Revenue Administration as the municipal administrators.

3. The advisory or official budget committee considers the proposed annual school district budget in the same manner as the proposed municipal budget and presents their findings and recommendations to the annual meeting of the school district.

4. The school district attorney supports the school board, school district moderator and school administrators in the same manner as the municipal attorney supports the municipal officials.

C. Other Officials Who Plan and Conduct the Municipal and School District Elections

1. The Governing Body: Under their respective election statutes, the governing body members of the municipality and the school district have specific roles as election officials to assist in the preparation of the polling place, the conduct of the election, the counting and certification of ballot results, and the preservation of voting materials. A full discussion of these duties is beyond the scope of this publication, but a complete discussion of the election related duties of these bodies may be found in the Election Procedure Manual that is published by the New Hampshire Secretary of State's Office and is available on the official website.
2. The clerks of the municipality and the school district: The town and school district clerks prepare voting materials, and have specific roles at the election in assuring that materials are distributed correctly, and have roles in the counting of ballots, preservation of materials, and receipt of recount requests. These duties are detailed in the Election Procedure Manual described above.
3. Assistant moderator: An assistant moderator is appointed by the moderator and assists in the conduct of elections and in the conduct of the business sessions of the municipality or the school district. This person must be prepared to perform such duties as the moderator may direct. See RSA 40:3- a.
4. Supervisors of the Checklist: These elected officials prepare the official checklist that is used to determine who has the right to vote at a municipal election, both as to official balloting and in the conduct of the deliberative session or business meeting of the municipality and the school district. The timely and accurate completion of their duties is crucial to the fair conduct of the balloting and business of these political subdivisions.
5. Ballot clerks are the additional persons who staff both the official balloting session and the business sessions of the political subdivisions. They allow for voting to be conducted quickly and efficiently, and assist in the function of counting ballots once cast. They must be trained in their duties, and conduct themselves in strict neutrality during the sessions.

D. Persons Who Assist at the Meeting Place

1. Owner(s) of the place where the official balloting or the business meeting is held. The moderator, along with the respective governing bodies, works with the facility owner to assure that the polling place is set up in accordance with statutory requirements, and that the facility can safely accommodate the number of persons expected to attend. This requires attention both to the interior of the building and also the exterior, to assure that it is accessible for persons with disabilities, and that there is adequate and safe parking.

There must be an adequate number of chairs for a meeting, as well as adequate light and ventilation. Sometimes the building is a municipal structure, sometimes a school structure, and sometimes a rented or borrowed hall. All of these details require preparation and a team approach to assure that the facility is ready to allow for the efficient conduct of the voting or business session.

2. Audio Visual Assistants. At the facility, there should be adequate sound equipment to permit people to both hear the discussions, and be heard when they speak. Depending upon where the meeting is to be held, and the size of the session, audio equipment may already in

place, or it may need to be rented and maintained by a trained person. Frequently, meetings will also require visual equipment to allow for the presentation of PowerPoint presentations, videos of proposed equipment purchases, videos of areas to be repaired or reconstructed by a proposed appropriation, or presentation of spreadsheets of financial information. The moderator should be prepared for such presentations, whether offered by the governing body, a department head, a member of one of the boards of trustees, or by a citizen with an opposing viewpoint. This will often require the installation of computer equipment, connection to the internet, and the operation of the software programs.

3. Facilities Staff involved in set up and cleanup of the location where the voting or business session is held. These persons will be responsible to the owner of the facility, rather than to the moderator, but the moderator should deal with the facility owner to assure that a support person is available to deal with the need for extra chairs, any malfunction in equipment provided by the facility, or other issue that would require some immediate corrective action.

4. Safety and Security concerns. The local police chief is charged by RSA 105:9 with determining what support is needed to maintain safety at public gatherings. Depending upon the number of persons expected to attend and any known local controversies, the security needs may range from parking control and traffic control to the safety of persons within the meeting. If the moderator is forced to seek the ejection of a person for misbehavior, or take other steps to control a group, the local police should be available to perform this function and keep order.

5. Given the large number of people on the team, the moderator should be in contact with these persons as part of the preparation for the logistics of the meeting. The more that the moderator knows about the issues to be considered on the warrant, the better the moderator can be prepared to deal with the possible strategies that might be employed by those in attendance, and to promptly offer the appropriate and legally correct response to the strategies.

II. The Moderator Must be Prepared for the Actual Conduct of the Meeting

Once the moderator takes the podium and starts the business session or deliberative session of a municipal or school district meeting, those in attendance expect the meeting to proceed from article to article in a prompt and orderly fashion. This means that the moderator should have all of the necessary materials and tools at the podium.

A. Here is a quick checklist of materials to remember, some of which will avoid embarrassing moments:

1. A copy of the warrant for the meeting. Since the moderator will be reading the language to the meeting, it may be helpful to have this copy printed in a larger font size, with more spacing between the articles.

2. A copy of the rules that will be announced to the meeting. Again, this copy will be read to the meeting, so a larger font size with more spacing is suggested. Some municipalities place a copy of these rules in the town report to make it easier for those in attendance to refer back to the rules of the meeting.

3. An agenda of tasks to be completed, including the names of people to be recognized. The moderator has many pressures on the meeting day, and it is very easy to forget to recognize a person at the appropriate time for the presentation of an award, or a recognition plaque or some other task. It is also easy to temporarily forget someone's name, even if you know the person well.
4. A copy of the town report for the current year and for the prior year. These items often help to quickly answer a question about a line item in the budget, or exactly what the town voted upon in the prior meeting.
5. A calculator, to assure that the effect of proposed amendments upon amounts to be voted is correctly calculated and reported to the persons in attendance. Some paper to write on, with a pen or pencil, so you can deal with the text of proposed amendments from the floor.
6. A copy of important statutes. This would include not only those portions of RSA Chapter 40 that control the conduct of the meeting itself, but also any statutes that may be important to the consideration of a warrant article. These statutes would be identified in advance upon consultation with the governing body, and the text of the statutes is often included in a governing body PowerPoint presentation that will show those in attendance the laws applicable to a question under consideration.
7. For many of us, a pair of eyeglasses, to be able to read the text of warrant articles. A water glass or bottle, to deal with a loss of voice; or to give you a moment to think about an appropriate answer to a difficult question from the floor.
8. For some meetings, a laptop computer with internet access may be very helpful, especially if you need to access additional state statutes, or information that is on the municipal or school website.

B. The moderator cannot perform all of the necessary functions at a meeting. Thus, the moderator should know in advance:

1. Who will assist in counting the votes if taken by show of hands? It is best if these assistants are not members of the governing body, or town employees. The governing body has enough duties during the meeting without stopping for these matters, and it raises a question about the fairness of such voting if the matter is closely contested, and the position taken by the governing body may not be approved.
2. Who has the supplies needed to conduct a written secret ballot, and how the voting materials will be given to persons checked in on the checklist.
3. Who will check voters in using the checklist, to assure that only the votes of registered voters are counted?
4. Who will actually count and tally the ballots received in a secret balloting procedure, and how the materials will be preserved for a recount.
5. Who is serving as the assistant moderator to permit the moderator to step down long enough to cast a ballot, or to take a restroom break at an appropriate point in a meeting?
6. The member of the local police department available to assist if a security problem is presented.
7. The person who can respond immediately to an equipment or audio malfunction, a computer problem, or a facilities issue that requires immediate correction.

C. Newer Technology is Creating New Challenges. The answers to many of these questions are unclear, and we do not have statutory guidelines or decisions of New Hampshire courts to help resolve them.

1. The use of PowerPoint and similar presentation software. While this tool can be very helpful to show those in attendance the text of proposals and relevant photographs of equipment under consideration, or areas of town property that require repair, there are questions that a moderator must be prepared to resolve.

a. What if a person with an opposing viewpoint also wishes to give a PowerPoint presentation? What if the presentation is too long, or presents information that is not germane to the question, or presents information that could violate a copyright, or might be seen as libel or slander toward some person?

b. Should the moderator require all presentations to be screened in advance to present these problems?

c. What if a person attends the meeting with an opposing presentation created in a different type of software that is not installed on the computer in use at the meeting?

d. What if the computer owner refuses to load that person's material because of a fear that the files could be infected with a virus or other malware? Does this result in a denial of a citizen's right to speak in a public forum? Would the answer change if the moderator's procedure for receipt of such files was published in advance in the town report?

e. Should the moderator permit other persons to set up additional computer equipment, or require that all such files be operated from a single computer?

2. Social media and messaging software in use during the meeting. Should the moderator attempt to deal with any of these issues:

a. Members of the governing body or the audience using smartphones to text information between themselves in a way that is not shared with the rest of the meeting?

b. Passwords to wireless networks that may be present at the facility, which would permit the network to be accessed by devices belonging to anyone in attendance?

c. Is a YouTube video or other file available on a social networking site something that could or should be shared with those in attendance at the meeting?

d. What if a person wished to speak with the meeting via a service such as SKYPE?

e. Should the moderator have a rule against the use of all cell phones, smartphones, tablets, or portable computers during the session in order to deal with these questions? What if these items are held by someone in attendance who is not a voter, such as a member of the press covering the meeting?

Summary:

The logistical challenges facing the moderator in advance of the meeting are substantial. This annual event may attract hundreds of persons, and the planning for the session needs to be taken seriously and accomplished with an eye for detail.

Once the meeting itself commences, the moderator should have all of the tools at the podium needed to quickly and efficiently move the meeting along. The moderator must be prepared to accurately record and compute proposed financial amendments to warrant articles, and effectively record the

language of other wording proposed for amendments.

New technology is presenting new challenges and creating questions that do not as yet have clear answers. The moderator should tailor the rules of the meeting to minimize the disruptions that such technology can cause, yet permit the technology to present information more quickly and clearly than has been possible in the past.

Appendix B

Town Meeting Best Practices

Best Practices for a Better Town Meeting By Stephen C. Buckley

As seen in January/February 2015 Town & City

The author of this article has attended more than 60 town meetings as town counsel from 1984 to 2014. Many of those meetings were traditional town meetings, but, starting in 1996, most of those meetings were Senate Bill 2 (SB2) deliberative sessions. In addition, the author has lived in Bow since 1991 and has attended both the school district and town meeting each year since then.

New Hampshire State Representative and Hollis Town Moderator Jim Belanger, Bow Town Moderator Peter Imse, Bow School District Moderator Jim Hatem, and Town of Richmond Select Board Chair Sandra Gillis have also generously contributed their experiences and suggestions to the content of this article.

What day of the week to hold the business session? For those towns that have adopted RSA 39:2-a, and therefore employ the official ballot to elect officers and vote on other specified matters to be addressed by official ballot, the select board must choose another day for the second or business session of the town meeting. In those towns using the SB2 method, the select board must also designate a date for the deliberative session.

Holding a business session on a week day after people have come home from work may cause meetings to be more contentious and less productive. Too many times when the evening business-session runs late a second recessed meeting must be scheduled and held. Also, many people may not arrive in time to be checked-in as voters, delaying the start of the meeting and further exacerbating the “time crunch,” which is compounded by people feeling less-than-relaxed and distracted because they must get up for work the next morning. Saturday deliberative sessions are often more relaxed and less likely to be recessed for another day, except where inclement weather ensued.

Pre-Review of Warrant by DRA and Counsel. When the warrant has been prepared by the select board, but before posting, obtain review of each warrant article by town counsel and by the Department of Revenue Administration. The DRA auditor assigned to the town will review and send email comments and suggestions for correction to any proposed warrant articles.

Meeting to prepare for town meeting. Prior to town meeting, set up a time for the moderator to meet with the select board. Discuss each warrant article and write down how much time the select board expects to take on each warrant article. Write down who will make the motion to bring that article to the floor, who will second that motion, and who will provide a more detailed explanation. Prepare a detailed script using this information and provide copies to town counsel and the town clerk so that keeping minutes is much easier.

Include the Budget Committee (if there is one) in the pre-meeting planning process. Find out who will bring the budget article to the floor, who will second it, and how much time is needed to present the budget. If possible, have the person presenting the budget from the budget committee make a short (under five minutes) presentation on the work undertaken by the budget committee to review and present the budget. If the budget committee members are divided on the budget, offer a majority statement and a minority statement to explain the differing opinions.

Consult with authors of petitioned warrant articles. Have the moderator contact anyone who submitted a petitioned warrant article and determine who will present the petitioned articles. Discuss also if presenters want to employ any overheads or PowerPoint presentations and how much time they will need to present their article.

Meeting space organization. Organization of the meeting space matters. Ideally, assign the moderator a separate podium with a microphone. The public officials will sit at the front of the meeting room with the select board, town officials on one side, and the budget committee on the other side. Microphones should be available on the tables where the public officials, select board, and budget committee are sitting so that these individuals can speak and be easily heard. Depending on the size of the room and number of people likely to attend, there must be at least one standing microphone positioned in the center aisle towards the front of the meeting space, along with more standing microphones towards to the rear of the meeting space as necessary.

Appoint Persons to Assist the Moderator. Appoint one or more persons to assist the moderator with counting votes, monitoring presence of registered voters, and answering questions and assisting voters. Have all assistants wear brightly color vests, and have the moderator introduce the assistants at the start of the meeting.

Publish and Distribute Rules of Meeting Procedure. A guide for meeting procedures should be prepared and distributed to voters either in the town report or as a handout at the town meeting. Such rules should cover how to be recognized, making motions, rules of debate and decorum, the manner of presenting each warrant article, limitations on the duration of presentations, etc.

Identify voters and use of voting cards. At voter check-in, provide a way to identify all voters, such as using a wrist band for each voter. This will allow the moderator and assistants to ensure only registered voters are participating in the meeting. At the same time, issue to each voter a brightly-colored card that can be used when hand voting is undertaken. Also issue a set of multi-colored “yes/no” slips of paper for ballot votes, and as each ballot vote is announced, the voters can be told which color ballot should be used for each question.

Use of Overhead Projection and PowerPoint. Preload the entire warrant as a PowerPoint presentation. Have a knowledgeable person operate a laptop to show each PowerPoint slide, and make sure that person can make changes/amendments to each presented warrant article as necessary. Make sure the video display can be seen and read by the entire audience by staging a “dry-run” viewing of the PowerPoint presentation in the town meeting space prior to the business session.

Introduction of public officials. Have the moderator introduce all the people at the head tables: select board members, budget committee members, town clerk, town counsel, and any department heads present. Also introduce and welcome any State Senators or Representatives in the audience.

Introduce and have the meeting understand the rules of procedure. At the commencement of the meeting, have the moderator review the rules of procedure using a brief PowerPoint presentation.

Remind the voters at the start of the meeting of the ability to restrict reconsideration. RSA 40:10 is a powerful tool the meeting can use to prevent late night motions to reconsider. Ordinarily, the town meeting can vote to reconsider any article previously passed while the meeting is still in progress. RSA 40:10 permits the meeting to restrict reconsideration of any prior vote and require that any motion to reconsider an article that has been restricted shall result in the actual reconsideration taking place at an adjourned session of the meeting held seven (7) days later.

Allowing non-residents to speak. Some towns permit officials who are non-residents to speak, such as the town attorney, without formal vote of the meeting. Others require a vote of the meeting to allow non-residents to speak. If a vote of the meeting is required to permit certain non-residents to speak, that should be handled at the start of the meeting.

How to handle limiting debate. Motions to call the question or move the question require a consistent approach that balances the right to debate against prolonging the meeting. Some moderators permit all persons already standing and waiting in line to speak; others cut off debate regardless of the number of people standing and waiting to speak, provided the motion to cut off debate is adopted. Whatever approach you choose, be consistent.

Appendix C

“16 Things”

16 Things Every Citizen Should Know About Town Meetings

By H. Bernard Waugh, Jr. Edited by Cordell Johnston

As seen in January/February 2015 *Town & City*

This article, written by H. Bernard Waugh, Jr., then NHMA Legal Counsel, first appeared in *Town and City* magazine in February, 1990. It has been updated by Cordell A. Johnston, NHMA Government Affairs Counsel, where necessary. Although this article was first written before the adoption of “SB 2,” and therefore contemplated only the “traditional” form of town meeting, almost everything in it applies to SB 2 town meetings as well.

We keep hearing it in New Hampshire: “Town meetings don’t work anymore.” “They’re an anachronism.” “They’re rigged.” “Nothing important is decided there.” But these are self-fulfilling prophecies. Local voter apathy feeds on itself.

It’s not all apathy, either. This article assumes that part of the problem is good old honest ignorance: people who’ve moved in from places without town meetings; young people who grew up in families with no tradition of participation for them to absorb; people who for years have heard their cynical friends telling them they can’t make a difference and never bothered to find out the truth.

This is for them, and you. Officials and others receiving this magazine should feel free to share or reproduce this article for other voters. An informed town is in everyone’s interest. In the end, nobody benefits from voter ignorance.

1.) Every Voter is a Legislator.

Those quaint sayings about town government being a “pure democracy” are true! State law refers to the town meeting as the “legislative body” (RSA 21:47). The town meeting is to the town what the Legislature is to the State, or the Congress is to the United States: the town meeting has all the basic power. There is no higher authority in town. But in order to have the right to participate, you must be a registered voter of the town, and you must attend. If you don’t go, how can you justify blaming anybody but yourself?

2.) The Moderator Presides, and Can do What it Takes to Maintain Order.

The town meeting’s business is regulated by the moderator, and your right to vote is subject to the moderator’s authority to keep order. Voters may not talk without being recognized. If someone keeps on being disruptive after being warned, the moderator can ask a police officer to escort him/her out of the meeting (RSA 40:9).

3.) The Voters can Always Overrule the Moderator by a Simple Majority.

The moderator isn’t a king. S/he is merely a facilitator to enable the voters to take orderly joint actions. It is illegal for the moderator to preside in such a way as to make it impossible to overrule his/her rulings. Therefore, people who say that the moderator “rigs” the meeting are talking through their hats.

Many voters mistakenly believe that state law contains all sorts of complicated parliamentary rules governing town meetings. It doesn't. All state law says is that the moderator can prescribe rules, but the voters can alter those rules (RSA 40:4). Nobody can pull parliamentary tricks

if the voters stay alert and remain aware that they can vote, by a simple majority, to change the rules to accomplish what the majority wishes to accomplish.

Some towns, at the beginning of the meeting, adopt some set of rules for convenience, such as Robert's Rules of Order. In other towns, the moderator just makes rulings as the meeting goes along. Either way is fine. Either way, the *only* legally binding rule is that the voters can overrule the moderator by a simple majority.

Example: Suppose the town begins the meeting by deciding to adopt Robert's Rules for the duration. And suppose, a little later, someone moves to amend a motion a certain way, which is perfectly proper under Robert's Rules, and the moderator declares that the amendment is valid. But now suppose it is moved and seconded to overrule the moderator, and the motion carries. Who wins? The voters, of course. Even though the moderator was "right" under Robert's Rules, the voters are "right" because they are the higher authority when acting by majority vote.

4.) There's No Such Thing as an "Illegal Vote."

"What!? You mean the town's lawyers are all wrong?" No, I don't mean that. Pay close attention. It's true that there are plenty of types of town votes which, if they pass, will not be legally binding (i.e. would not be enforceable in court). But that doesn't mean the town can't vote on those things anyway. No group of voters has ever been arrested for taking a vote, no matter how off-the-wall it might be.

Example: Suppose it is moved and seconded to create a "No Parking" zone in front of the town hall. Then the town's attorney says that vote would be of no legal effect because state law gives the select board, not the town meeting, complete control over parking regulations. Does that mean the vote can't be taken? Of course not. If you let the lawyer intimidate you like that, you don't have the stubborn, independent Yankee gumption I think you have. In my view, legal opinions are far too often used to effectively deprive voters of their right to express their views and preferences to the officials they have elected to serve them.

If a vote most likely isn't going to be binding, then it's best, in order to avoid later confusion, to rephrase the motion in a form that recognizes that it may not be enforceable in court, but still lets the officials know that it may be enforceable at the ballot box. For example, "I move that the select board be strongly urged to create a 'No Parking' zone in front of the town hall."

Most of the rules in this article tell you what types of town meeting votes are legally enforceable in court. But don't be misled into thinking that non-binding votes are somehow "illegal." Use the lawyer's advice to help make your votes as effective as they can legally be, not to discourage you from taking a vote.

5.) It's OK to ask Questions.

The beauty of the traditional "deliberative" session of town meetings (as compared with questions on the "Official" or "Australian" ballot usually used for elections) is that through the process of discussion and debate, the voters can educate themselves about the question at hand, and about the procedure, and become able to vote more intelligently. Don't shyly assume that everybody but you knows what's going on. They probably don't.

6.) No Vote can be Legally Binding Unless its Subject Matter was Stated in the Warrant.

The "warrant" is a sort of agenda for the town meeting, which is posted two weeks in advance by the select board. In most towns it's also printed in the town report, published before the annual town

meeting. The requirement that all subject matter must be stated in the warrant (RSA 39:2) keeps the meeting orderly, prevents surprise, and lets voters who might otherwise stay home know that some topic of interest to them is coming up for discussion and possible action.

The warrant law requires only the *general* subject matter to be stated. The actual votes don't have to be word-for-word the same as the warrant articles. You don't have to "take it or leave it." Amendments will be legally valid, so long as they are within the same general subject matter. But amendments which add some brand-new subject matter will not be legally effective. (*Sawyer v. Railroad*, 62 N.H. 135 (1882))

You can see from this rule that any vote taken under a warrant article entitled "other business" cannot be legally binding, because that article doesn't state any subject matter. Of course, a vote to name someone "Volunteer of the Year," a vote to thank the Girl Scouts for the sandwiches, or even a vote to strongly urge the select board to appoint an advisory committee to look into a parking garage, doesn't *have* to be legally binding, and therefore can be passed under an "other business" article.

7.) Any Twenty-Five Voters Have the Right to Add Articles to the Warrant by Petitioning the Select Board Five Weeks in Advance of the Annual Town Meeting.

Under state law, the select board has complete control over the contents of the warrant, except that they must insert any article submitted by petition, signed by 25 or more voters, or 2 percent of the registered voters in town, whichever is less, but not fewer than 10 registered 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) and need 25 signatures instead of just 10.]

8.) Ordinary, Everyday Language is Perfectly Okay.

Are you hesitant to submit petitioned warrant articles, or to make motions at town meeting, because you think you'll need to hire a lawyer to come up with the right wording? Don't be! The N.H. Supreme Court has said time and again that technical rules will not be used to defeat the plain intent of the voters, using ordinary common language. As U.S. Supreme Court

Justice Holmes once said:

"The machinery of government would not work if it were not allowed a little play in the joints." (Quoted in *Lamb v. Danville School Board*, 102 N.H. 569 (1960))

In fact, if you're worried about the wording, it might be better to check with, say, an English teacher, instead of a lawyer, to see if your proposed wording says what you intend it to. There are a few types of articles where the traditional words can be legally important [the worst example is a vote to discontinue a road "subject to gates and bars"], but these are few and far between.

9.) Any 50 Voters can Call a Special Town Meeting.

A "special" town meeting means any meeting other than the annual meeting. In most towns, the annual meeting is held the second Tuesday in March (RSA 39:1). But the select board can call a "special" meeting whenever they feel there's a need for it. In order to petition for a special meeting, you need 50 voters' signatures on a petitioned warrant article, submitted to the select board. The select board *must* call the meeting, unless the annual meeting is only 60 days away or less, in which case they can just add your petitioned article to the annual meeting warrant (RSA 39:3).

[CAUTION! Money articles (i.e. articles requiring the appropriation of funds) can't be voted on at special meetings unless at least half the town's voters show up, or unless the select board

has petitioned the Superior Court (RSA 31:5).]

10.) You can Ask for a Secret Written Ballot on any Question.

There are two ways for the voters to request a secret written ballot at town meeting: (a) Any 5 voters can make the request in *writing* to the moderator before a vote is taken, (if the town's population is less than 500, it only takes 3 voters) or (b) *After* a vote has been taken and declared by the moderator, any *seven* voters can *orally* request the vote to be taken again using a secret written ballot, but the request must be made immediately, before the meeting moves on to other business (RSA 40:4-a and 40:4-b).

11.) Virtually any Town Vote can Later be Reconsidered and Rescinded.

So, you think you finally finished the debate over the blankety-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 Regional School District*, 113 N.H. 449 (1973)).

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 still subsequently vote to reconsider the article; but if it does, the reconsideration must take place at an adjourned session held at least seven days later. Notice of the time and place of the adjourned session must be announced before the close of the original session and published in a newspaper at least two days before the session.

In an SB 2 town, a vote at the deliberative session to restrict reconsideration is deemed to prohibit further action on the restricted article until the official ballot voting day. (RSA 40:13, IV.) Votes taken on the official ballot may not be reconsidered.

12.) The Actions of One Town Meeting are not Binding on Later Town Meetings.

This rule is just a logical extension of the rule that all (or at least most) votes can later be reconsidered. The right to reconsider and rescind a prior vote (either explicitly or by implication) carries over from one year to the next, or from the annual meeting to a special meeting.

Example: Suppose you went home after that important vote on the anti-surfing ordinance. But, listening to the radio the next day, you find out that the vote was reconsidered and rescinded after you left. If you can get 49 other voters to join you in petitioning for a special meeting, you can bring about another vote on that same ordinance.

Of course, there are some *Exceptions*:

A vote can't be reconsidered where action has been taken in reliance on that vote. Example: Suppose the annual meeting passes a vote to sell town-owned land. Later, 50 voters petition to have a special meeting to reconsider. But before the special meeting is held, the select board signs the deed in reliance on the first vote. The deed creates a vested interest, and reconsideration would now be too late. (*Preston v. Gillam*, 104 N.H. 272 (1962))

A vote to go into debt (to authorize the issuance of bonds or notes) is obviously binding, since as soon as the bonds are issued, the town is legally obligated to pay off that debt. The fact that such a vote is binding on future town meetings (unlike most votes) is precisely the reason for the next rule, which is:

13.) A Vote to go into Debt (Issue Bonds or Notes) Must Pass by a 2/3 Ballot Vote.

In fact, if the amount of the proposed debt exceeds \$100,000, the moderator must keep the polls open for at least one hour after the end of the discussion on the issue (RSA 32:8-a). If you couldn't get a babysitter, now's the time to rush home and tend the kids so your spouse can rush in to vote on that bond issue too.

Don't be confused about this. A vote on bonds or notes does require a ballot vote, but it's not something that can appear on the "official" ballot (the one used for electing officers). It's simply a "Yes/No" paper ballot during the business session of the meeting, the same type of ballot used when a secret written ballot is requested.

Things are necessarily a little different in an SB 2 town, where ultimately every article appears on the official ballot, including bond articles. Also, a bond in an SB 2 town requires only a 3/5 vote for approval. (RSA33:8.)

14.) You Can Act on, or Amend, Particular Line Items in a Budget.

The proposed budget must be posted with the warrant, and is considered part of the warrant, giving you notice of what you're going to raise and appropriate money for. To "appropriate" money means to earmark a certain sum for a particular purpose, so that the governing board (select board or school board) is then authorized to spend that amount for that purpose over the course of the fiscal year.

Money can be "appropriated" either through a line item in the budget, or under a separate warrant article. The amount of any particular appropriation (line item) can be amended up or down, or an appropriation can be deleted entirely by the voters. However, it is not legally effective to *add* a new purpose (line item) to the budget. Why not? Because adding a new purpose violates Rule #6 (above)—the requirement that all business must be stated in the warrant. The voters can't take any binding action on a subject matter which wasn't stated in the warrant (or in this case in the budget).

Some people believe that voters can only act on, or amend, the bottom line of the budget, and not specific line items. That's not quite right. What is right is that the voters cannot *limit* the governing board's ability to *transfer* amounts from one line item to another during the year, as needs and priorities change. (*McDonnell v. Town of Derry*, 116 N.H. 3 (1976)). Therefore, even if you do vote to lower, say, the police budget by \$1,000, the select board, later in the year, can still replace that \$1,000 into the police budget, as long as they don't exceed the bottom line of the entire budget.

Hint: Transfers cannot be made from appropriations made by separate warrant articles (RSA 31:10, IV). Therefore, the way to prevent an appropriation from being diverted to other purposes is to submit a petitioned warrant article for that appropriation.

But just because only the bottom line is legally binding, doesn't mean the voters can't amend line items. The voters have a legal and political right to express their preferences. A vote on specific line items sends a strong message that may later be "enforceable" through the ballot box, even if it's not enforceable in court.

Budget Act Towns: If your town has adopted the Municipal Budget Law, RSA chapter 32, (and thus has an official Budget Committee to prepare the budget to be voted on), then the voters are legally bound by the so-called "Ten Percent Rule." Under this rule, the voters cannot appropriate more money at any single town meeting than the total amount recommended for that meeting by the Budget Committee, plus ten percent.

Also, if the meeting votes to delete an appropriation within a warrant article or budget, or reduces the amount to zero, or does not approve an appropriation contained in a separate article, no amount of money may be spent for that purpose. (RSA 32:10, I(e).) This is often referred to as the "no means no" rule.

15.) Attend your School District Meetings too!

The low attendance at most New Hampshire school meetings shows that far too few people understand their significance. A school district is, legally, a separate municipal entity, on equal footing with the town. Its meetings work the same way. Every one of the above rules still applies. Just erase “select board” and insert “school board.” And erase “town meeting” and insert “school district meeting.” The voters still have all the legislative power. If they don’t seem to have all the power, that’s only because they aren’t exercising it.

Towns, and not school districts, send out the tax bills in New Hampshire. But don’t lose sight of the fact that your tax bill includes money being raised for the school district, as well as for the town. In fact, usually the school share is higher than the town share. If you don’t go to the school meeting and vote on the budget, more than half your property tax bill represents taxation without representation—representation you’re giving up without a fight.

16.) Democracy – Use it or Lose it.

In a town meeting, more than any other form of government on earth, your community and the services it provides emanate not from some “they” in the sky, but from *you*, the voters. If you haven’t been to town meeting lately, this is a good year to inform yourself, attend, vote, and make it work.

Appendix D

Sample Rules of Procedure

A special thank you to Bow Town Moderator, Peter Imse, and Bow School Moderator, Jim Hatem, for generously allowing us to reprint their rules of procedure for you below. These rules are meant to be a sample only to assist moderators in drafting or revising their rules of procedure.

BOW TOWN MEETING

BOW SCHOOL DISTRICT MEETING MODERATORS' RULES OF PROCEDURE

Unless changed by the voters at the Meetings, the Town and School Moderators will use the following Rules of Procedure to conduct the respective Meetings:

1. The Moderator will not follow Robert's Rules. The Moderator will use the following general rules of procedure, whose main purpose is to keep the meeting moving, and not get bogged down in procedural quagmires.
2. By majority vote, the voters can overrule any decision that the Moderator makes and any rule that the Moderator establishes. A voter can raise such a request by Point of Order.
3. The Moderator will take Articles in the order that they appear on Warrant unless the Moderator announces the intent to take Articles out of order.
4. The Moderator will consider each Article, as follows:
 - a. The Moderator will announce the Article number, and the text of the Article will be displayed on the overhead screen or will be otherwise made available at the Meeting. The Moderator need not read the full text of the Article.
 - b. The Moderator will recognize a member of the Budget Committee or of the Board of Selectmen/School Board, or the petitioner (if a petitioned Article) to move the adoption of the Article.
 - c. If the Motion is seconded, the Moderator will recognize a member of the Board of Selectmen/School Board or the petitioner to explain the Article.
 - d. The Meeting will debate and then vote on the Article.

5. Everyone who speaks must use a microphone so they can be heard. (The Moderator will announce the location of the microphones in the Meeting room.) If a voter is unable to reach one of the stand-up microphones, the voter should raise his/her hand and one of the hand-held microphones will be provided.
6. No one may speak unless he or she has the floor.
 - a. No one may have the floor unless recognized by the Moderator.
 - b. Except for Points of Order, the Moderator will not recognize speakers unless they are standing at or holding one of the microphones.
 - c. Each speaker must provide his/her name and address.
 - d. Even if a voter does not have the floor, a voter may speak to raise a Point of Order, to challenge a Moderator's ruling, or to overrule the Moderator.
7. The Moderator will allow only one motion on the floor at a time. There are two exceptions to this rule:
 - a. A voter may raise a Point of Order at any time, and
 - b. If a voter has the floor, the voter may make
 - i. A motion to amend the pending motion, or
 - ii. A motion to Call the Question
8. The Moderator will not accept negative motions, which are motions that require a "no" vote to vote in the affirmative such as "I move that we not adopt the budget."
9. Motions to Call the Question limit debate and require a 2/3 vote. If passed, these motions stop debate on a motion. However, all those voters who are standing at a microphone or holding a microphone, and anyone seated at the head table who has previously told the Moderator that he/she wishes to speak on the Motion will be allowed to speak. In addition, the Moderator shall have the right to refuse to recognize a Motion to Call the Question, if, in the Moderator's opinion, the voters have not yet had an adequate opportunity to discuss an issue.
10. Non-voters may not speak at the Meeting without the permission of the voters except, the Moderator will allow non-resident Town officials and consultants or experts who are at the Meeting to provide information about an Article to speak.
11. All speakers must be courteous and must speak to the issues, not the individuals raising them. The Moderator will not allow personal attacks or inappropriate language.

12. If any person behaves in a disorderly manner, and after notice from the Moderator, persists in such behavior, or shall in any way disturb the meeting, or willfully violate any rule of proceeding, the Moderator may have a police officer, or any legal voter of the town, remove such person from the meeting. (RSA 40:8).

13. All questions and comments should be addressed to the Moderator. The Moderator will choose who responds to the questions.

14. With the exception of initial presentations on Articles which the Moderator requests be limited to ten (10) minutes, all speakers in debate will be limited to three (3) minutes.

15. Each speaker may only speak once until everyone has spoken.

16. The Moderator may determine the method of voting except as determined by law. However, any voter who doubts the accuracy of any non-counted vote may require the Moderator to determine a vote by a counted show of hands or counted standing vote.

17. Any vote on a bond issue of over \$100,000 must be voted on by secret ballot. In addition, any five (5) voters may require that the vote on any Article or question be by secret ballot. To do so:

- a. All five (5) voters must be present and identified, and
- b. The request must be presented in writing to the Moderator prior to the end of debate on the Article or question.

18. Motions to reconsider an Article may only be made immediately after the vote on the Article, and may only be made by a voter who voted on the prevailing side of the vote to be reconsidered. However, the following limits may apply to the reconsideration of an Article:

- a. **Mandatory Restriction:** In accordance with RSA 33:8-a, if a motion to reconsider a ballot vote on a bond issue of over \$100,000 passes, the Article cannot be reconsidered until a reconvened Meeting that is at least seven (7) days after the original vote. With respect to bond votes, the restriction on reconsideration automatically applies without the need for the Meeting to vote for it.
- b. **Optional Restriction:** Voters may postpone reconsideration of any Article at this Meeting by voting to restrict reconsideration of the Article in accordance with RSA 40:10. If the Meeting passes such a motion, then the Article cannot be reconsidered until a reconvened meeting held at least seven (7) days after the date of the original vote.

Reminder: Since any rule of the Moderator or decision of the Meeting can be reversed or changed at any time prior to the end of the meeting by a majority vote of the Meeting, there is no rule that can be adopted that can absolutely prevent the reconsideration of an Article.

19. The Moderator may vote on all Articles. However, the Moderator plans to vote only in two (2) instances:

- a. To break a tie
- b. To make a vote a tie vote if a motion the Moderator opposes would otherwise carry by one (1) vote.

20. If the Meeting is not finished at 11:00pm, the Moderator will recess the Meeting to a future date.

Peter F. Imse, Bow Town Moderator

James V. Hatem, Bow School District Moderator

BOW TOWN MEETING

BOW SCHOOL DISTRICT MEETING VOTERS' RIGHTS AND RESPONSIBILITIES

Every Voter is responsible to:

1. Recognize that the Meeting is a legislative assembly where voters gather together to conduct business, and that the Moderator has volunteered to preside over the Meeting to bring order to the process.
2. Review the Town and School Reports in advance of the Town and School Meetings.
3. Seek answers to any questions that you have from the appropriate Town or School officials in advance of the Meetings. Attend informational sessions to learn the background of significant proposals and to ensure meaningful debate at the Meeting.
4. Become familiar with the Rules of Procedure for the Meetings which are published in the Town Report.
5. Give the Moderator fair warning if you would like to do anything out of the ordinary, like present slides or use alternative rules of procedure.
6. Arrive early enough for the Meetings to allow sufficient time to check in and find a seat.
7. Be courteous to all officials, presenters, and other voters.
8. Avoid personal attacks and inappropriate language.
9. Understand that occasional problems are to be expected when presenting information to or managing the movement of large numbers of voters, and be patient and courteous with officials and other voters when they occur.
10. Be aware that since any rule of the Moderator or decision of the Meeting can be reversed or changed at any time by a majority vote of the Meeting, there is no rule that can be adopted that can prevent reconsideration of an Article. Restricting reconsideration can only postpone the second vote to a reconvened meeting held at least seven (7) days after the date of the original vote.

11. Remember that if the Moderator cancels a Meeting due to inclement weather, the decision will be communicated via the same radio and TV stations that the School District uses to announce school cancellations.
12. Help the Meeting to promptly complete the business on the warrant.
13. Speak on every Article by approaching a microphone or by requesting a hand held microphone, unless debate has been limited by a successful Motion to Call the Question.
14. Request the Meeting to overrule the Moderator or to change the Rules of Procedure, as follows:
 - a. Seek to be recognized by saying “Mr./Ms. Moderator, I have a Point of Order”, and
 - b. Once recognized by the Moderator, proceed to state your request or make your Motion.
15. Request that any Article or question be acted upon by secret ballot, as follows:
 - a. A minimum of five voters who are present and identified at the Meeting must make the request in writing; and
 - b. The written request must be presented to the Moderator prior to the end of the debate on the Article or question.
16. Request the Meeting to postpone the reconsideration of an Article at the Meeting until a future Meeting, as follows:
 - a. At any time after the Article has been voted upon, seek to be recognized at a microphone by the Moderator.
 - b. Once recognized by the Moderator, say “Mr./Ms. Moderator, I move that the Meeting restrict consideration of Article __, in accordance with NH RSA 40:10.”
 - c. NOTE: Voters need not vote to restrict reconsideration of any ballot vote on a bond issue over \$100,000 because State law provides that the recon sideration vote may not be held until an adjourned Meeting that is at least seven (7) days after the date of the Meeting.

Peter F. Imse, Bow Town Moderator

James V. Hatem, Bow School District Moderator

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