

*2022 Traditional Town Meeting
Moderators Workshop*

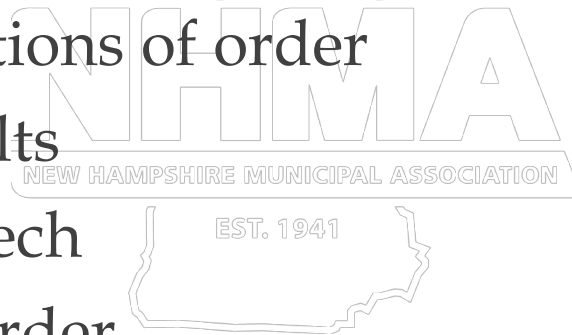


Stephen C. Buckley, Esq.

Moderator's Authority and Duties



- ▶ Preside over the meeting (Duties; 40:4)
 - ✓ Regulate the meeting's business
 - ✓ Rules of Procedure are the foundation
 - ✓ Decide questions of order
 - ✓ Declare results
- ▶ Enable free speech
 - ✓ Prevent disorder
- ▶ No difference whether a Town or School moderator



Passing the Gavel



- ▶ If absent:
 - ▶ Town Moderator Pro Tem is appointed by Supervisors of Checklist (40:3)
 - ▶ School Moderator Pro Tem is appointed by the School District Clerk (671:33)
- ▶ Moderator may appoint an assistant to cover temporary situations (40:3-a)
- ▶ Absent due to Covid? Have a Moderator Pro Tem appointed
 - ▶ An Asst. Moderator may be appointed

Disqualification



- ▶ Under RSA 658:24 the moderator is not disqualified from being inside the guardrail when s/he is on the ballot for any elective office or election official position. Even if a moderator is on the ballot for an election official position, he can still handle marked ballots.
- ▶ Under RSA 659:58 the moderator is allowed to within the guardrail during the counting of votes even if he is a candidate for office

What's your plan?



- ▶ Rules of procedure
- ▶ Review warrant
- ▶ Local hot topics/warrant articles
- ▶ Develop plan with health officer & police dept on how to address unmasked voters
- ▶ Preparatory workshop/meeting with volunteers & election officials
- ▶ Expect the unexpected!

Official Ballot v. Official Ballot Referendum



- RSA 39:2-a, I & RSA 669:13: Allowed towns/districts to adopt **official ballot** -
Two sessions:
 - First: Ballot voting (officers, zoning, certain other questions by law)
 - Second: Town Meeting (voting on all other warrant articles)
- RSA 39:2-a, II: New provision (Senate Bill 2) that allowed towns/districts to adopt **official ballot referendum** (a.k.a. "SB 2") via **RSA 40:12 - :15**
 - Two sessions:
 - First: Deliberative Session
 - Second: Official Ballot Voting Day

Covid-19 & Ensuring a Safe In-Person Meetings



- ▶ Whether RSA 40:4 and RSA 669:1 would permit the moderator to postpone a deliberative session or official ballot voting day solely due to concern for Covid-19 is doubtful.
- ▶ After consultation with the Attorney General's Office, NHMA has concluded that when those statutes were revised in 2019, using a pandemic as a basis for postponement was not contemplated by the Legislature.
- ▶ NHMA recommends moderators consult with your health officer and implement all possible meeting place modifications, including mandating the wearing of face coverings in meeting places and polling stations.
- ▶ Certainly, consult with your town attorney.
- ▶ When asking attendees to wear masks:
 - ▶ Set aside a separate area for non-masked attendees
 - ▶ The separate area could be a separate room with video and audio connection to permit full meeting participation

Suggested Legislative Fix



- ▶ We are encouraging our members to contact their legislators asking them to adopt something similar to HB 1129 from the 2020 session that would permit optional procedures for town meeting.

Postponement



- ▶ RSA 40:4 defines how to postpone the business session or the official ballot voting session
- ▶ The moderator may postpone when:
 - National Weather Service has issued a weather event warning and the moderator believes the event may cause the roads to be hazardous or unsafe
 - If an accident, fire, natural disaster, or other emergency, renders use of the meeting location unsafe.

How to Postpone the Business Session



- ▶ The moderator may decide up to 2 hours but not more than 48 hours prior to the scheduled session due to weather event
 - ▶ Moderator must consult with certain town officials before deciding
 - ▶ Notice to residents must be provided
- ▶ Moderator may postpone at any time prior to the session due to disaster or emergency rendering meeting place unsafe.

How to Postpone the Official Ballot Voting Day



- ▶ Must be made on the day immediately prior at any time before 6:00 p.m.
- ▶ Document the decision and notify the Secretary of State within 2 hours
 - ▶ Recommend documenting the decision in an email to the SOS and later reprint the email in the town/district report
- ▶ Election must be rescheduled to the Tuesday 2 weeks following the original date

Other Option – Scheduling Date of Business Meeting



- ▶ Towns that use the official ballot adopted the provisions of RSA 39:2-a.
- ▶ That statute provides that the select board could “choose another day for the second session of the town meeting for the transaction of all other town business.”
- ▶ The select board could choose any other day for the business meeting of the select board, retaining March 8th as the official ballot voting day.
- ▶ However, it would be necessary when the warrant is posted that the select board set the date for the business meeting for a suitable date later in the Spring. For a March Town Meeting this year the warrant posting deadline is February 21, 2022.

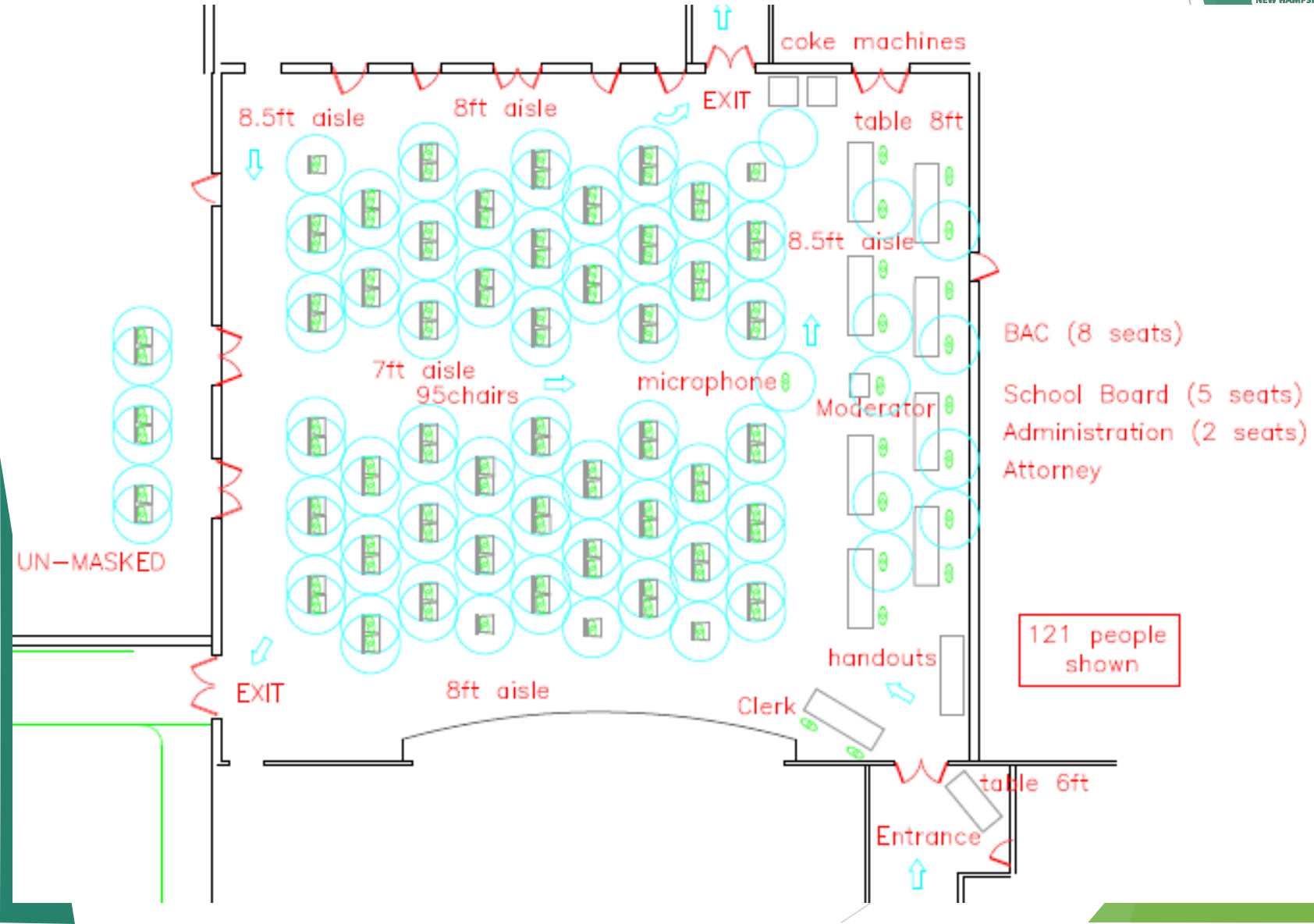
Covid-19 Meeting Place Layout Issues



- ▶ Voter flow through the meeting place (i.e., going to microphone)
- ▶ Locations for information displays and handouts
- ▶ Entrances and exits, both masked and unmasked voters
- ▶ Protective barriers for election officials
- ▶ Personal protective equipment (PPE), spares for voters



Meeting place layout in Milford



Milford's Layout



M
MUNICIPAL
1941

Recent Laws That Apply



CONTENT OF TOWN MEETING MINUTES

- ▶ Right-to-Know Law - RSA 91-A:2, II requires that minutes include the names of those who make or second each motion during a deliberative session.

REDUCED VOTE MARGIN TO APPROVE BOND ISSUE.

- ▶ Chapter 38 (HB 1558) reduces from two-thirds to three-fifths the vote margin that is required for a town meeting to approve the issuance of a bond or note in a town that has not adopted the official ballot referendum (SB 2) form.

INTENT OF THE VOTER

- ▶ **RSA 40:4-g** - In any vote conducted 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.

Manner of introduction of warrant articles - DRA Issues

- ▶ **RSA 39:2:** The subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant.
- ▶ 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.
- ▶ DRA may disallow article that that varies significantly from what appeared in the posted warrant if there is no evidence in the meeting minutes the article was amended by the meeting.

Problem Amendments to Avoid



Change of Purpose



Agents of Capital Reserve Fund
Not Warned



Made "Non-Lapsing" From
Floor



Not Warned

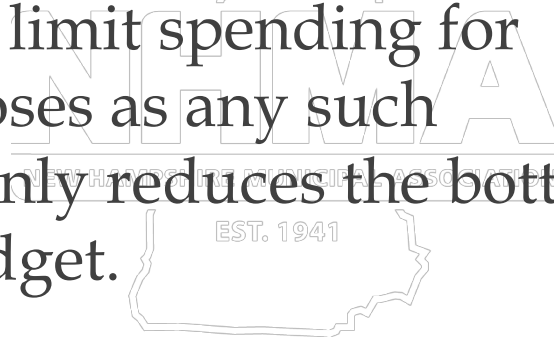


No Recommendations on
Special Warrant Articles

Line-Item Budget Amendments



- ▶ Voters can move to amend a line item on the DRA budget form to zero.
- ▶ Voters cannot amend a line item downward to limit spending for specific purposes as any such amendment only reduces the bottom line of the budget.



Wording of Articles Prescribed by Law

Funds Made
Available During
the Year 31:95-b, I
(a)

Special Revenue
Funds, 31:95-d, I,
(c)

Adoption of Town
Manager form of
government, RSA
37:15

Authorizing Tax
Anticipation
Borrowing, RSA
33:7, V(a)

Rescinding action
that enlarged
Select Board, RSA
41:8-d



Collective Bargaining

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

RSA 32:19 and the Budget Committee

RSA 32:19-a-presentation at the annual meeting

RSA 273-A:1, IV- "Cost item"

RSA 273-A:3, II(b)- Obligation to Bargain

Capital Reserve Funds

RSA Chapter 35



- Can't change purpose by amendment
- Can't add agent by amendment
- Can't transfer funds by amendment



Special Revenue Funds: RSA 31:95-c



- *No agents can be appointed*
- *No transfer to other purpose*
- *Only spent by town meeting*

Revolving Funds, RSA 31:95-h



- ▶ Six purposes: recycling, ambulance, special details, affordable housing, cable access, energy conservation
- ▶ Other purposes, such as recreation under RSA 35-B:2, with different rules of operation
- ▶ “Agent” is the board or body selected by town meeting
- ▶ Special limits on expenditures possible (e.g., limit on single expenditure)
- ▶ “No means no” applies if an appropriation fails

Voting



- ▶ Voice
- ▶ Hands (voting cards)
- ▶ Division (standing vote)
- ▶ Secret Ballot
- ▶ Move the question, point of order

The Secret Ballot

Secret Ballot Voting, RSA 40:4-a, I (a)

- 5 voters
- Written
- Present, prior to vote
- Recount of secret ballot vote RSA 40:4-a, I(b)

Questioning a Vote, RSA 40:4-b

- 7 voters
- Orally or in writing
- Before other business

Voting on Multiple Bonds greater than \$100,000

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



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

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



Budget Act – 10% Limit



New Hampshire
Department of
Revenue Administration

MS-737

Supplemental Schedule

1. Total Recommended by Budget Committee	\$0
Less Exclusions:	
2. Principal: Long-Term Bonds & Notes	\$0
3. Interest: Long-Term Bonds & Notes	\$0
4. Capital outlays funded from Long-Term Bonds & Notes	\$0
5. Mandatory Assessments	\$0
6. Total Exclusions (<i>Sum of Lines 2 through 5 above</i>)	\$0
7. Amount Recommended, Less Exclusions (<i>Line 1 less Line 6</i>)	\$0
8. 10% of Amount Recommended, Less Exclusions (<i>Line 7 x 10%</i>)	\$0
Collective Bargaining Cost Items:	
9. Recommended Cost Items (Prior to Meeting)	\$0
10. Voted Cost Items (Voted at Meeting)	\$0
11. Amount voted over recommended amount (Difference of Lines 9 and 10)	\$0
12. Bond Override (RSA 32:18-a), Amount Voted	\$0
Maximum Allowable Appropriations Voted at Meeting: <i>(Line 1 + Line 8 + Line 11 + Line 12)</i>	\$0



No Means
No

Restricting Reconsideration

RSA 40:10



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



The Right-to-Know Law & Town Meeting



- 91-A applies to town meeting
- Public can attend
- Audio and Video recording allowed
- First Amendment applies
- Only registered voters are permitted to speak (unless non-residents are authorized to speak by the meeting)

NH Moderators List Serv



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

Key Take Aways



- ▶ Covid-19 safe and secure meeting methods
- ▶ Close collaboration with public health officer and emergency management director
- ▶ Governing Body, Town/District Counsel and Police Chief

