



NHMA Guidance on 2021 Annual Meeting*

December 24, 2020

***This guidance is updated from the December 4 version. This guidance is subject to further update, clarification, and supplemental material. Please visit NHMA's COVID-19 webpage to ensure that you are reading the most recent version of our guidance and any supplemental information that may be available. Please also refer to the attached Addendum for answers to FAQ.**

HB 1129: "Drive-Thru Voting"

In order to afford local governments the option of holding a virtual annual meeting in 2021, the Legislature adopted [HB 1129](#) (2020 N.H. Laws Chapter 8). The Temporary Optional Town Meeting Procedures of HB 1129, Section 8:3, are set forth at length below, and may be used for either SB2 or "traditional" annual meetings.

The governing body of a town, school district, or village district may elect to convene the annual meeting to approve the posted warrant through a two-step process. Where that decision is going to be made after the warrant has been posted, and thus the town meeting has been scheduled, the moderator should make a determination under 40:4 that an "emergency" (Covid-19) has "render[ed] use of the meeting location unsafe," and the select board would then exercise the option to conduct a virtual meeting as permitted by HB 1129. All procedures that would normally precede posting of the annual meeting warrant would still be followed as prescribed in RSA chapter 39, RSA chapter 40, RSA chapter 52, and/or RSA chapter 194. When the governing body undertakes to employ HB 1129 to conduct the annual meeting virtually, the regular municipal legal counsel should be consulted.

Step 1: First, the governing body must hold two live virtual meetings: one meeting to inform the voters about the proposed optional meeting procedures, and a second to discuss the warrant articles and finalize the warrant content.

Before the first virtual information session is held, the governing body must mail notice to all registered voters at least seven days prior to this virtual information session, providing the date and time of the virtual session and the virtual session's access information. This means that each voter must receive an individually addressed piece of mail, regardless of the number of voters at each address location. The notice must also describe the procedures that will be followed for conducting the annual meeting using the provisions of HB 1129. The notice will also inform voters that a second virtual meeting will be held by the governing body within seven days after the virtual information session. The virtual information session would be a review of the warrant, article by article. During the virtual information session, the proposed optional town or school district meeting procedures must also be outlined. The virtual information session will be hosted by the governing body, but with the moderator presiding. It would be optional whether the virtual information session would be interactive with attendees, specifically, whether to offer the ability for attendees to comment using the virtual meeting platform's chat function or to allow attendees to speak.

After the first virtual meeting is adjourned, questions and comments from the public shall be solicited and received via electronic mail, voice mail, text message, or by other electronic means. Comments are not restricted to registered voters, but of course the governing body can decide how much weight to give to comments from non-voters.

Within seven days after the first information session, the governing body will hold a second live virtual meeting to consider and address comments received from the public after the first session. At that meeting the governing body will discuss, debate, and be permitted to amend the posted warrant. This delegates to the governing body the sole authority to put the warrant in final form. As with the first virtual information session, the moderator would preside at this second virtual meeting. It would also be optional whether the second information session would be interactive with attendees participating via the virtual meeting platform's communication options.

Step 2: Second, after the last information session the governing body would make the final warrant available electronically for printing by voters to be brought to the voting session. The final warrant that is provided electronically would be in the nature of a sample ballot. Voters cannot print, mark, and use this sample ballot to vote during the voting session. The actual ballot to be used for voting purposes would only be provided to each voter at the drive-up voting session. Although HB 1129 permits the governing body to schedule the date and time of the voting session, ideally the date of the voting session should comply with the date prescribed as the Official Ballot Voting Day as defined in RSA 652:16-g. Therefore, it is recommended that the drive-up voting session for a traditional town or school district meeting would be March 9, 2021 or May 11, 2021.

For an SB 2 town or district the drive-up voting session would be on March 9, 2021, April 13, 2021, or May 11, 2021. However, in a town where town elections and school district elections are coordinated, it will be necessary for the town and school district to cooperate, and this may require the drive-up voting session to be held on a different day, especially if the school district is using HB 1129 and the town is not, or vice versa.

Voting on final warrant articles will be by secret ballot cast by voters through drive-up procedures to ensure appropriate social distancing. For SB 2 municipalities and districts, voting by official ballot for the election of officers and for voting on all warrant articles will proceed as provided in RSA 40:13.

In a traditional meeting town or district, an official ballot will be printed for the election of officers and other items that are required to be placed on the official ballot. All other warrant articles will be printed on a separate ballot ("the alternative ballot").

The first article on the SB 2 official ballot (or the alternative ballot for a traditional meeting town/district) will ask whether voters approve the optional meeting procedures. If the optional procedures are not approved by a simple majority, all other warrant articles on the SB 2 official ballot (or the "alternative ballot" for a traditional meeting town/district) shall be deemed disapproved. However, the election of officers and action on other items on the official ballot will be effective.¹ If the optional voting procedures are approved, then all other votes on warrant articles shall be deemed the final action of the meeting, provided that if the operating budget warrant article is not approved, the governing body may vote to:

¹ After consulting with other election law attorneys, we believe that the election of officers would be effective in an SB 2 town or district even if the first article (approving the alternative voting process) does not pass.

- (a) Convene a meeting before September 1 to adopt an operating budget; or
- (b) Elect to deem that the meeting has adopted the previous year's operating budget article, not including separate warrant articles.

Municipalities or school districts that will be voting on bond articles under the provisions of RSA 33:8 and RSA 33:8-a should plan to consult their bond counsel or the Municipal Bond Bank for any additional procedures that should be followed.

In-Person Annual Meetings & Masks

For those towns that do hold in-person deliberative or business sessions, NHMA interprets Emergency Order #74 to apply to those meetings, and persons attending those meetings who cannot consistently maintain a physical distance of at least six feet from persons outside their household must wear a mask or cloth face covering over their noses and mouths. Local officials should review [NHMA's guidance on EO#74](#). (As of this writing, EO #74 is in effect only through January 15, 2021. Local officials should continue to monitor the governor's [emergency orders web page](#) for updates.)

Other Voting-Related Issues

NHMA is pursuing clarification on several other town meeting and election issues. We will keep you updated, and we will also update this guidance if additional clarification or orders/guidance from the state becomes available.

HB 1129- 8:3 Temporary Optional Town Meeting Procedures; State of Emergency. Towns, village districts, and school districts that are unable to hold in-person annual meetings in 2020 or 2021 due to novel coronavirus disease (Covid-19) may conduct virtual meetings in accordance with this section. At the option of the governing body, the town or school district meeting may be convened and proceed to approve the posted 2020 or 2021 warrant in the following fashion:

I. The governing body shall host a live virtual meeting and information session, during which the proposed optional town or school district meeting procedures shall be outlined and warrant articles discussed. At least 7 days prior to this informational session, notice shall be mailed to all registered voters describing the procedures to be followed for conducting an annual meeting pursuant to this section. After the live, virtual meeting is adjourned, questions and comments from the public shall be solicited and received via electronic mail, voice mail, text message, or by other electronic means.

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

III. Voting on final warrant articles shall be by secret ballot cast by voters through drive-up procedures to ensure appropriate social distancing. In a town or district that uses the official ballot for the election of officers and has not yet held its town or district election, an official ballot will be printed for the election of officers and other items that are required to be placed on the official ballot. All other warrant articles will be printed on a separate ballot ("the alternative ballot").

IV. The first article on the alternative ballot shall ask whether voters approve these optional meeting procedures. If the optional procedures are not approved by a simple majority, all other warrant articles shall be deemed disapproved. However, the election of officers and action on other items on the initial ballot will be effective. If the optional voting procedures are approved, then all other

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votes on warrant articles shall be deemed the final action of the meeting, provided that if the operating budget warrant article is not approved, the governing body may vote to:

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

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

V. In a town or district using the official ballot referendum (SB 2) form of annual meeting that has held its deliberative session but has not yet held its official ballot voting sessions, the governing body may choose to use the drive up procedures in paragraph III for the official ballot voting session, and paragraphs I and II shall not apply.

ADDENDUM

NHMA Guidance on 2021 Annual Meeting: Frequently Asked Questions

The following are questions we have received from town officials, primarily about HB 1129, but also about postponing town meetings instead of using HB 1129. Our answers follow the questions in boldface. ***We strongly encourage local officials to consult with their town attorney before either postponing their meetings or choosing to use the HB 1129 option.***

1. Can an SB2 town or district use the two-virtual-meeting process of HB 1129 while retaining its in-person election format instead of a drive-through? **If you use the HB 1129 process, you must have drive-up voting, but the attorney general's office has stated that you may also have a walk-in polling place.**
2. We have a traditional town meeting with our business session scheduled for mid-March. Assuming large indoor gatherings are still problematic in March, can the meeting be postponed (even at this early date) to a date in May when we could hold it outdoors? **Yes. Under RSA 40:4 a, if an "emergency" occurs which the moderator "reasonably believes may render use of the meeting location unsafe," the moderator can postpone the business or deliberative session "at any time prior to the scheduled deliberative or business session."** The attorney general's office issued a [memorandum](#) in March 2020 indicating that the COVID-19 pandemic constitutes such an emergency.
3. RSA 39:3 says that petitioned warrant articles are due "not later than the fifth Tuesday before the day prescribed for an annual meeting." If the governing body selects the method allowed by HB 1129, does that mean the fifth Tuesday before the first virtual public meeting? **We believe so, but we encourage you to confirm this with your town's attorney.**
4. Section 8:3, II, of HB 1129 says that the governing body, "shall be permitted to amend the posted warrant." Does that permission extend to zoning ordinance amendments on the official ballot? **No. RSA 675:3 prescribes the manner for placing a proposed zoning amendment on the official ballot, and it does not allow for changes once the proposed zoning amendment is filed with the town**

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clerk. In addition, municipal officials should note that other articles whose language is prescribed by law cannot be amended by either the governing body or the town meeting.

5. We often have a handful of petitioned articles on the warrant, some of which can be controversial. Ordinarily, the governing body must put a petitioned article on the warrant as submitted. If a town is going to use HB 1129, can the governing body amend petitioned articles? The language suggests that it can. **Since HB 1129 gives the governing body the authority to amend warrant articles at the second virtual meeting, a power that ordinarily would be exercised by the town meeting, it does seem that the governing body could amend petitioned warrant articles at the second virtual meeting. However, this is likely to be politically very unpopular, and we recommend against doing so.**

6. If the town uses the HB 1129 process, can the governing body remove a petitioned article from the warrant? **No. Properly petitioned articles must be placed on the warrant, and once the warrant is posted, an article—petitioned or otherwise—cannot be removed. It can be amended, but not removed. HB 1129 does not change this.**

7. HB 1129 says that notice describing the procedures must be mailed to all registered voters. If one person owns numerous properties, does the town need to mail notice to each property? **No. Notice is mailed to each voter, not to each property owned by a voter.**

8. Our town has a traditional town meeting. If we use HB 1129 and the voters do not approve the operating budget, what happens? **HB 1129 says the governing body can either (a) convene a meeting before September 1 to adopt an operating budget; or (b) elect to deem that the meeting has adopted the previous year's operating budget article, not including separate warrant articles.**

9. Does HB 1129 permit drive-up voting for both the "business" articles on the warrant and the items on the official ballot, such as zoning amendments, the election of town officials, etc.? **Yes—it not only permits but requires drive-up voting for all items on the warrant.**

10. Does HB 1129 permit the town to set different or more restrictive hours for drive-up voting than would normally apply to the hours of voting at the town election? **RSA 669:25 states that "polling hours for a town meeting or election shall be set by the selectmen or by a vote of the town," but it also states that a town election shall be conducted in the same manner as a general election under RSA 658 and 659. Under RSA 659:4, the polls for state elections must be open at least from 11 a.m. to 7 p.m. The attorney general's office has interpreted this to mean that although the selectmen may set the hours, the minimum period of 11 a.m. to 7 p.m. applies.**

11. Are there any special requirements for bond votes? **If there are bond articles on the warrant, voting must be held open for at least one hour pursuant to RSA 33:8-a (but this requirement will automatically be satisfied if the polls are open from 11 a.m. to 7 p.m.—see question 10 above). In a traditional meeting town or school district, bond articles should be printed on a ballot(s) separate from the official ballot and from the alternative ballot, and a separate ballot box or boxes must be used for each bond ballot.**

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12. How do the requirements and deadlines for bond hearings and budget hearings apply if a town uses the HB 1129 procedure? **Under HB 1129, the dates for holding budget hearings under RSA 32:5 should be counted from the date of the first virtual session held by the governing body. The date for holding a bond hearing under RSA 33:8-a should be counted from the date the bond is to be voted on—i.e., from the date of the drive-up voting session. Since bond and budget hearings are held as part of a meeting of the governing body or the budget committee, they may be conducted virtually. You should review any proposed schedule for budget and bond hearings with your bond counsel.**

13. If a town chooses to have an in-person socially distanced deliberative/business session, can the moderator require everyone to wear masks? If not, can the moderator require all non-masked voters to sit in a separate room with video and audio connection to the main meeting room and two-way opportunity to participate? **The governor's [Emergency Order #74](#) requires all persons over the age of five to wear a face covering when they are in a public space and do not consistently maintain a physical distance of at least six feet from persons outside their own households, subject to some exceptions. Anyone who does not observe this requirement is violating the law. (As noted above, EO #74 is currently scheduled to expire on January 15, 2021, but it may be extended.) There is no clear law as to whether the moderator could require all attendees to wear masks if they are able to maintain six feet of physical distance. We recommend that moderators ask all attendees to wear masks and set aside a separate area for non-masked attendees. The separate area could be a separate room with video and audio connection that allows those in the separate room to both hear and participate in the proceedings.**

14. Who runs the virtual meetings under HB 1129? **Although HB 1129 itself does not specify, the attorney general's office has advised that because the virtual sessions are part of the town meeting, the moderator must preside as provided in RSA 40:4.**

15. Can we hold a normal SB 2 deliberative session, or the business session of a traditional town meeting, via Zoom? **No. There does not appear to be any way to confirm that everyone participating and voting during a Zoom session is a registered voter. Further, it would be impossible to conduct a secret written ballot vote using Zoom.**

16. Is HB 1129 optional, or the only alternative meeting format that is permissible? For instance, could we hold the video meetings but then vote by ballot in person and not use the drive-up option? **HB 1129 is the only alternative meeting option that has been authorized. As indicated above (see question 1), if you choose the HB 1129 option and use the video meetings you must then have drive-up voting. However, the attorney general's office has stated that you could have a walk-in polling place in addition to drive-up voting.**

17. Given the scheduling requirements for a budget hearing and the time that will be required under HB 1129 to print extra ballots and program the Accu-Vote machine, it may be difficult to meet the deadlines. Is it possible to solve that problem by combining the budget hearing with the first virtual meeting under HB 1129? **No. A budget hearing under RSA 32:5 is a separate event and cannot be combined with virtual information sessions under HB 1129.**

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18. We have a traditional March town meeting, with official ballot voting on the second Tuesday of March and the business session later that week. If the governor does not extend the state of emergency through March so that we are no longer operating under emergency orders, does the town have the authority to move the business session to a later date? Is there a statutory amount of time between the first session of town meeting (election) and the business session? **The governing body can change the date of the business session if that change is made before the warrant is posted, and the new date is stated in the posted warrant. The applicable statute, RSA 39:2-a, does not limit the time between the first and second sessions, so the second session could be scheduled for any later date, limited only by practical considerations of the town's need to adopt a budget and act on other matters.**

19. It is my understanding that if the governor does extend the state of emergency into the time frame that covers the March town meeting, the town moderator would have the authority to move the town meeting date to a later time—possibly April or May. If that is correct, must both sessions of town meeting be moved to a later date, or could we have the first session (the election) on the traditional March date, and move the second (business) session to a later date? **Under RSA 40:4, II, the moderator may postpone the business session without postponing the official ballot session (election). Thus, a town could hold the official ballot voting session on the traditional March date and then postpone the business session to sometime in April or May (or even later).**

20. Our select board is hoping to find a facility where we can accommodate 125 people with social distancing. With that in mind, we are wondering whether the town can hold its meeting in another town. **Yes, RSA 39:1-b states, "A town may hold its town meeting outside the geographical boundaries of the town, if the town does not have a facility with a large enough seating capacity to accommodate the meeting." A few conditions apply: (1) The selectmen must arrange transportation for voters who need it from the usual meeting place to the out-of-town facility and back; (2) The meeting must be held in an adjacent town "or nearest appropriate facility"; and (3) Warrants and other items required to be posted must be posted at the place of the meeting.**

21. We have an SB 2 town meeting with a deliberative session currently scheduled for January 30. If we do not want to use HB 1129 but are concerned about holding the deliberative session, can we postpone it? **Yes, the deliberative session in an SB 2 town can be postponed the same as the business session in a traditional meeting town. See the answer to question 2. Unfortunately, the statute does not allow the deliberative session to be postponed more than 72 hours. However. It can be postponed repeatedly in 72-hour increments; this is extremely awkward, but it can be done. If you are going to postpone your deliberative session, work closely with your town attorney to make sure it is done correctly. Of course, if you end up postponing your deliberative session into March or later, you will need to postpone your official ballot voting day as well.**

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