

2019 Election Law Changes



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Counting Defective Ballots at Municipal Elections

RSA 40:4-g

Intent of the Voter. *“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.”*

Counting Defective Ballots at Municipal Elections

Case Law

For municipal elections this puts into statute the standard previously established in a Supreme Court decision:

“care must be taken that the matter is not decided on the basis of unwarranted technicalities. The goal must be the ascertainment of the legally expressed choice of the voters. The object of election laws is to secure the rights of duly qualified voters, and not to defeat them. . . . [D]etermine a voter’s intent by giving weight to all marks placed on the ballot, regardless of the method by which the voter chose to cast a vote.”

Appeal of McDonough (Ballot Law Comm'n), 149 N.H. 105, 112, (2003).

Delivery of Absentee Ballots

RSA 657:17

Marked absentee ballots in the affidavit and outer envelopes may be delivered to the clerk by:

- Personal delivery by the voter;
- Personal delivery by a voter's “delivery agent;”
- Mail: U.S. Postal Service or commercial delivery service (UPS, FedEx, DHL, etc.)

Delivery of Absentee Ballots

RSA 657:17

“Delivery agent” means:

- The voter’s spouse, parent, sibling, child, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, or;
- If the voter is a resident of a nursing home, the nursing home administrator or a staff member designated in writing by the administrator; or
- 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)(2), the administrator or a staff member designated in writing by the administrator; or
- A person who has signed the statement on the absentee ballot affidavit envelope that he or she assisted a blind voter or a voter with a disability with marking their absentee ballot. *
 - * Limit of 4 absentee ballots in any election.

Delivery of Absentee Ballots

RSA 657:17

- A “Delivery agent” who is a person who has signed the statement on the absentee ballot affidavit envelope that he or she assisted a blind voter or a voter with a disability with marking their absentee ballot **may not personally deliver more than 4 absentee ballots in any election.**
 - The limit of 4 ballots does not apply to a family member, a facility administrator, or administrator’s written designee who is qualified as a delivery agent.
 - This means no more than 4 absentee ballots for a primary election and no more than 4 absentee ballots for a general election.
 - The law does not require any specific tracking of the number of absentee ballots delivered by such a person.

Delivery of Absentee Ballots

RSA 657:17

The statutes referenced in RSA 657:17 that describe “nursing homes” and “residential care facilities” are available in [ElectioNet>Help>Instructions](#).

Local knowledge of the presence of these types of facilities in your town/city may be an easier source of sorting out which will be entitled to send “delivery agents” to your office with completed absentee ballots.

Delivery of Absentee Ballots Cast By Elderly or Disabled Citizens

RSA 657:17

On election day, at the polling place, a clerk shall not accept an absentee ballot from a delivery agent unless the delivery agent:

1. completes an Absentee Ballot Return Form; and
2. Presents a government issued photo identification or has his or her identity verified by the clerk.



STATE OF NEW HAMPSHIRE

Absentee Ballot Return Form

(RSA 657:17)

To be completed by a qualified person who is returning an Absentee Ballot for a different person voting absentee due to Absence, Religious Observance, or Disability

This form MUST be completed for each absentee ballot delivered to the polling place on Election Day

For Official Use Only
Voter Not registered

I. I hereby declare that I am the voter's "delivery agent" because I am (initial the line and circle the relationship that applies to you):

- The voter's spouse, parent, sibling, child, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild; or
- The nursing home administrator, licensed pursuant to RSA 151-A:2, or a nursing home staff member designated in writing by the administrator to deliver ballots; or
- The residential care facility administrator, or a residential care facility staff member designated in writing by the administrator to deliver ballots; or
- *The person assisting a blind voter or a voter with a disability who has signed a statement on the affidavit envelope acknowledging the assistance. * Cannot deliver more than 4 absentee ballots.

Any person who votes or attempts to vote using an absentee ballot who is not entitled to vote by absentee ballot shall be guilty of a misdemeanor. RSA 657:24

II. Absentee Ballot Voter's Name (Please Print):

Last Name _____ First Name _____ Middle Name _____ (Jr., Sr., II, III)

Absentee Ballot Voter's Domicile (home) Address:

Street Number _____ Street Name _____ Apt/Unit _____ City/Town _____ Ward _____ Zip Code _____

III. Name of "delivery agent" who delivered the absentee ballot (Please Print) * If you are the person who assisted the blind voter or a voter with a disability you were required to sign the affidavit envelope. By completing this form you are affirming that your name is on the affidavit envelope:

Last Name _____ First Name _____ Middle Name _____ (Jr., Sr., II, III)

Signature: _____ Date Signed _____

IV. Election Name (check only one and enter date):

- Town/ City Election Date: ____/____/____
- State Special Primary Election Date: ____/____/____
- State Special General Election Date: ____/____/____
- Presidential Primary Date: 02/11/2020
- State Primary Election Date: 09/08/2020
- State General Election Date: 11/03/2020

V. Proof of Identification (check only one):

- Government-issued Photo ID
- Identity verified by city or town clerk

VI. City or Town Clerk signature:

Printed Name of Clerk: _____

Clerk's Signature: _____ Date Signed: _____

Voter ID #

Date Returned: ____/____/____

Clerk Completes Date & Voter ID#

Separate form for each absentee voter

Voter's Name

Delivery Agent's Name

Separate form for each election

Record type of proof of identity the delivery agent provided

Clerk, Deputy, or Assistant Receiving the Absentee Ballot

Best Practice

Nursing Homes, Residential Care Facilities

Consider conducting a voter registration and absentee voting event at the facility, conducted by the clerk, supervisors of the checklist, or deputy/assistants trained by the clerk. The clerk or clerk's designee can then ensure the right to vote independently is protected and that requirements are satisfied for voter registration and absentee voting.

Misusing Absentee Ballot

RSA 657:24

The law making it a misdemeanor to show or exhibit a marked unsealed absentee ballot prior to the processing of the ballot was amended to exempt a voter who because of disability receives assistance, as allowed by RSA 657:17, with marking the absentee ballot and any person assisting that voter.

Absentee Voting if “will be” absent RSA 657:1

Absentee voting is available to a person who “will be” absent.

The law previously applied to a person who “is” absent, however, the need to apply for and submit absentee ballots in advance of the election meant the voter would not know for certain if he or she would actually be absent until election day.

This change to statute, in effect, brought the law into conformance with long standing practice of allowing a person to vote absentee who plans to be absent on election day.

Absentee Voting the Day Before an Election

National Weather Service Warning RSA 657:1, II

When the National Weather Service has issued a winter storm, blizzard, or ice storm warning for election day that is applicable to the town or city:

Concern for Safety When Traveling

Absentee voting is available on the day before the election to a person who would have voted in person, but has concerns for his or her safety traveling in the storm.

Care of Children/Infirm Adults

Absentee voting is available on the day before the election to a person who cares for children or infirm adults who reasonably anticipates that school, child care, or adult care will be canceled.

Absentee Voting the Day Before an Election

National Weather Service Warning RSA 657:1, II

The clerk's office must be open on the day immediately prior to the election, at least from 3PM until 5PM, to receive absentee ballot applications, issue ballots, and receive back completed absentee ballots sealed in the affidavit and outer envelopes.

Assess whether your office will face high demand. The Clerk may designate a deputy or assistant, trained in issuing and receiving absentee ballots, to manage or assist in providing this service.

Unofficial Notice of Death

RSA 654:37-a

If Supervisors of the Checklist learn of the death of a voter, but that death is not officially reported, a special 30-day letter shall be mailed to voter's last known address. It is appropriate to wait to see if an official notice of death becomes available.

- If no response is received after 30 days, the supervisors will remove the voter's name from the checklist.
- If a response is received confirming the voter's death, the supervisors may remove the voter's name from the checklist at the next properly noticed and conducted session.

The Secretary of State will provide a model special 30-day letter, worded as an inquiry seeking to correct or confirm the report of death.

Unofficial Notice of Death

RSA 654:37-a

- For in-state deaths, generally the death will be promptly reported to Vital Records.
- ElectionNet will provide a death notification, through NHVRIN Matched Death Records, only if the name and date of birth is an exact match to the name in the Vital Records death record.
- Supervisors must work with the Clerk, who can provide them a special report called Voter Checklist report from the Vital Records system. The Supervisors should advise the clerk as to what the date range is needed on this report. Often, Supervisors will find an official death notice on that list, but that there is a minor difference in the spelling of the name or some other difference between the two records.

Unofficial Notice of Death

RSA 654:37-a

The need to address an unofficial notice of death is usually limited to circumstances where the voter dies while in another state.

A Vital Records system exists for information exchange between states that will in many cases, over time, result in an official notice of death in the New Hampshire Vital Records system.

Unofficial Notice of Death

RSA 654:37-a

Contacting the family of a recently deceased voter is a sensitive matter.

While not required by RSA 654:37-a, best practice is to exhaust reasonable efforts to obtain an official notice of death instead of sending an inquiry.

- If a supervisor or the clerk personally knows a member of the family of the deceased voter, consider informally seeking that person's assistance with obtaining a copy of the death or burial certificate.
- If you can identify the funeral home that served the family, usually reported in an on-line obituary, the funeral home may also be of assistance.

2019 Law Changes Impacting other Election Laws

- Driver's License/Non-Driver ID photos may be color or black & white. RSA 263:40, I.
- The name and address on political advertising identifying a political committee or political advocacy organization as responsible for the ad must match the name and address registered with the Secretary of State for that entity. RSA 664:14, I.
- The Ballot Law Commission is required to review current and new ballot counting devices at least every 5 years to determine whether the devices require upgrading. A device may be approved by the Ballot Law Commission only upon request. RSA 656:41.
- Candidates subject to the state campaign finance law may use contributions to pay for child care, which must be reported as an expense. RSA 664:2, VIII & IX.

- For the purposes of felon disenfranchisement, “final discharge” has been defined to be “release from incarceration.” The correctional facility shall provide a felon who is paroled or given a suspended sentence written notice that he or she may vote. Public office held at the time of being sentenced for a felony is forfeited. The felon may seek nomination to or become a candidate for public office upon release from incarceration. RSA 607-A:2.

2019 Law Changes to the Right- to-Know Law of interest to Election Officials

Right-to-Know Exemption – Contact information RSA 654:31-a

“Contact information, including but not limited to a phone number and email address, provided to the secretary of state or other election officials for the purpose of receiving information about elections” shall be treated as confidential information. These governmental records are exempt from the public disclosure provisions of the Right-to-Know law, Chapter 91-A.

- This change to law allows election officials to invite people to provide e-mail or phone numbers to receive information on elections, without that information becoming subject to public disclosure.

Right-to-Know Law – delay or denial of access to records RSA 91-A:4, IV

No cost or fee may be charged for the inspection or delivery, without copying using government copying equipment, of governmental records.

The only exception is where a fee is established by law for obtaining a copy of the governmental record requested.

Even where a statute sets a fee for a copy of a record, for example the current public checklist, no fee can be charged for inspection of that record where the person either does not take a copy or produces a copy with their own equipment (photo or scanner).

Right-to-Know Law – delay or denial of access to records RSA 91-A:4, IV

In election law, one example is the fee set for a copy of the public checklist (the current checklist from ElectionNet).

“The supervisors of the checklist or city or town clerk shall charge a fee of \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist or city or town clerk shall charge a fee of \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist or city or town clerk may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.” RSA 654:31, II.

Right-to-Know Law – delay or denial of access to records RSA 91-A:4, IV

When records are not immediately available and cannot be provided within 5 business days of the receipt of the request, provide a written statement of:

1. A specific date by which a substantive response to the request will be made.
 - A substantive response may be:
 - A search has been completed and you possess no records that are responsive to the request;
 - Providing access to the responsive records found;
 - Providing access to redacted versions of responsive records found. (Consult town/city legal counsel).

AND

Right-to-Know Law – delay or denial of access to records

RSA 91-A:4, IV

2. A short explanation of the reason for the delay. Examples:
 - Time is required to complete a search to determine if you possess responsive records;
 - Time is required to obtain legal advice regarding the response to the request;
 - Time is required to prepare redacted records;
 - Other legitimate reasons may exist – consult town/city legal counsel.

Right-to-Know Law – delay or denial of access to records RSA 91-A:4, IV

When denying access to records, in whole or in part, **provide a written statement of the specific exemption authorizing withholding the record and a brief explanation of how the exemption applies to the record withheld.**

- RSA 654:31 sets forth when checklist and voter information is publicly available.
- RSA 654:31-a sets forth the exemption of certain governmental records from public disclosure.
- Consult your town or city legal counsel if it is unclear whether you may disclose particular governmental records that have been requested.

Right-to-Know Law Exemption – Certain Election Records

RSA 654:31-a

Review RSA 654:31-a, which exempts many voter registration records from disclosure under the Right-to-Know law.

2019 Law Changes Impacting Municipal Election Administration

Method of Adopting Official Ballot Referendum (SB2) Form of Meeting RSA 40:14, III & IV

The procedures for adopting or rescinding adoption of the Official Ballot form of annual meeting, commonly called “SB2,” were changed:

Adopting

Voting to adopt the SB2 form of meeting shall be by unofficial ballot, the polls must be open and ballot accepted for not less than one hour following completion of discussion on the question.
(Under the prior law the vote was by official ballot)

Rescinding

Voting to rescind the SB2 form of meeting shall be by official ballot.

Both questions still require a 3/5ths supermajority to pass.

2019 Law Changes addressing Postponement of Local Elections will be addressed in separate guidance

Thank you!

If you have questions after today's presentation, please
contact the Elections Division Help Desk

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