

STATE OF NEW HAMPSHIRE

MEMORANDUM

TO: New Hampshire Election Officials

FROM: William M. Gardner, Secretary of State
Jane E. Young, Deputy Attorney General

RE: 2021 Town/School Meetings, Elections, and Business Sessions

DATE: February 4, 2021

In response to inquiries, this memorandum discusses protocols and procedure for the upcoming 2021 town/school, village district meetings, elections, and business sessions. Notice of a webinar addressing this guidance is at the end of this document.

Below are some frequently asked questions and answers:

1. Do the temporary changes of HB1266 (2020) apply to the 2021 town/school/village district meetings, elections, and business/deliberative sessions?

Answer: No. However, some portions of HB1266 (2020) have been renewed by the Governor's Emergency Order #83 issued on January 22, 2021.

HB1266 (Laws of 2020, Chapter 14) was a law passed by the Legislature effective July 17, 2020. The law made temporary changes to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (COVID-19). These temporary changes were only effective until December 31, 2020. However, Emergency Order #83 renews *some* of the provisions of HB 1266 as outlined below.

Officials should review the language of Emergency Order #83 to ensure they fully understand what has been authorized and the requirements where applicable. A copy of Emergency Order #83 is attached. The list below only summarizes the Order.

Additionally, officials should continue to monitor the status of SB2 (2021), which can be found here:

http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtbillnumber=sb2&txtsessionyear=2021.

Emergency Order #83 states that Section 1 (polling place arrangement) and Section 2 (partial absentee ballot processing) only remain in effect until the enactment of SB2 (2021). In the event of any conflict between these 2 sections of Emergency Order #83 and the enactment of SB2 (2021), SB2 shall control. This means that if SB2 does not authorize

alternative polling place requirements nor partial absentee ballot processing, neither will be available.

Emergency Order #83 provides:

- i. The polling place requirements under RSA 658:9 may be satisfied by alternative requirements “issued by the secretary of state in consultation with the attorney general and the commissioner of the department of health and human services or designee.” Please submit any requested “alternative requirements” in writing to the Secretary of State at NHVotes@sos.nh.gov.
- ii. Absentee ballot processing on Election Day starting one hour after the polls open is authorized and can be used for the 2021 town/school/village district, elections/official ballot voting. On Election Day, processing of previously received absentee ballots must begin at 1:00 p.m. at the polling place on Election Day unless a different time, that is no earlier than 1 hour after the opening of the polls, is posted at the polling place and one other public location at least 24 hours before the polls open. RSA 659:49, II.

Officials should note that Emergency Order #83 does not authorize the use of absentee ballot application forms that were used during the 2020 September Primary and November General elections.

Clerks should encourage use of the absentee ballot application form for town/school/village district elections that is available in *ElectioNet* and on the Secretary of State’s web site. The state 2020 election forms that include “I am unable to vote in person due to concern for the novel coronavirus (COVID-19)” are no longer appropriate. However, provided the applicant marks and signs the disability section of the application and signs the application, the presence of such words does not invalidate the application.

If you have copies of the 2020 version of the Absentee Voter Registration Affidavit replace it with the 2021 version available in *ElectioNet*. The current version does not reference COVID-19. However, concern for COVID-19 is still recognized as a form of disability for voting purposes, a legitimate ground for registering by absentee.

2. May a voter still use concern for COVID-19 as a reason to request an absentee ballot and/or absentee registration?

Answer: Yes.

Prior to the Legislature enacting HB1266, our offices recognized concern about COVID-19 to be a “disability” for the purposes of absentee voting. Even for those who do not consider themselves a person with disability for other purposes, the term applies for registering to vote and voting during the COVID-19 health emergency.

In light of the current public health advisories related to COVID-19, any voter who in the voter's judgment is being advised by medical authorities to avoid going out in public, or to self-quarantine, would qualify to vote by absentee ballot and register by absentee. This applies equally to voters who are experiencing symptoms of COVID-19 or any other severe communicable flu, and those who are self-quarantining as a preventative measure.

If officials have any leftover yellow sticky notes from the 2020 election cycle, which explains that disability for absentee voting purposes includes concern for COVID-19, they may affix those to the absentee ballot application forms and absentee ballot affidavit envelopes.

3. What options are available to local officials in hosting their 2021 town/school/village district meetings, elections, and business/deliberative sessions?

Answer: Based on the current laws and emergency orders, there are four options: i. Hold the meeting, election, and/or business session normally while following protective health guidelines; ii. Adopt the optional meeting procedures under HB1129; iii. Postpone under the authority granted by Emergency Order #83; or iv. Postpone using the Moderator's authority to postpone in an emergency.

i. Hold the Meeting, Election, and/or Business/Deliberative Session Normally

In some cases, local officials have stated that they are comfortable hosting their 2021 town/school/village district meetings, elections, and business/deliberative sessions normally, while observing protective health guidelines.

Our offices have been notified of officials locating a venue to host the meeting large enough to host expected turnout, while observing appropriate social distancing protocols.

If officials choose this option, they should communicate and coordinate with their Emergency Management Director and Health Officer to ensure that appropriate protective health measures are present to safeguard both the attendees and officials. The state guidance on COVID-19 in the *Election Procedure Manual* and the on-demand webinar presented by the State Epidemiologist, Dr. Benjamin Chan, while presented in the context of 2020 elections, remain valid for 2021 town/school/village district elections and meetings/deliberative sessions.

- Election Procedure Manual: <https://sos.nh.gov/media/kzupydju/epm-2020.pdf>
- Replay of 2020 COVID-19 Webinar: <https://attendee.gotowebinar.com/register/5218996180661559051>

ii. Adopt the Optional Meeting Procedures under HB1129

On July 10, 2020, the Legislature enacted HB1129 (Laws of 2020, Chapter 8). This law established temporary optional town meeting procedures for towns, village districts, and school districts that are unable to hold in-person annual meetings in 2020 or 2021 due to COVID-19.

A copy of this law can be found here:

http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2020&id=1239&txtFormat=pdf&v=current

The Legislature enacted a temporary, optional procedure that can be adopted by local officials in order to host their 2021 town/school/village district meetings, elections, and business/deliberative sessions.

The following questions have been asked about this procedure, and we answer those below:

- a. Can the provisions of HB1129 be adopted piecemeal? For example, can we adopt only the virtual information session and ignore the remaining requirements?
 - No. The only exception under HB1129, is when an SB 2 town or district has already held its deliberative session, but has not yet held its official ballot voting session. In that case, local officials do not have to host the live virtual information session, nor the live virtual meeting of the governing body to amend the warrant articles.
- b. Are we permitted to – in addition to the drive-up procedures under HB1129 – also offer in-person voting?
 - Yes. Make sure to speak with your Emergency Management Director and/or Health Officer on how to do so safely.
- c. What if we do not possess the space nor the resources to facilitate drive-up voting procedures?
 - Where voting will be by official ballot, RSA 659:20-a requires the accessible voting process to be available to a voter with a disability. This is the same requirement that applied during the 2020 Election Cycle. This law requires providing a voter with the ability to obtain an absentee ballot outside the polling place. Our offices have concluded that the process under RSA 659:20-a would satisfy the drive-up procedure requirement under HB1129. The voter would complete an absentee ballot application, seal the marked ballot(s) in the absentee ballot affidavit envelope, and sign the absentee ballot affidavit using the disability section. Upon receipt of the marked absentee ballot sealed in the affidavit envelope, use the usual absentee ballot processing procedures to check the voter in at the checklist and in casting the absentee ballot into the ballot box/device. This alternative will likely be most appropriate only where voters will also have the option to vote inside using COVID-19 mitigation social distancing, sneeze guards, face coverings, etc. and therefore you expect the number using the outside accessible/drive up process to be small.

- If you expect a small number of voters will use the outside accessible voting, it is permissible to set up a notification system in place of having staff on standby outside throughout voting hours. One option, among others, is a wireless doorbell system mounted on a post outside with a sign directing a voter seeking to use outside accessible voting to push the doorbell button and a doorbell or other enunciator inside near election staff. This type of system is used in other states. Staff must be in place to promptly provide the voter at their vehicle with the necessary absentee ballot materials. Wireless doorbell systems are available at hardware stores and more expensive purpose built systems that come with temporary stand-alone mounting posts are available from election supply vendors.
 - Alternatively, a drive through procedure may be used. A voter would drive up to a check-in position, be checked in on the checklist, receive all ballots being voted, pull forward and park while marking the ballots, pull forward to a ballot box position and reaching out a window deposit the marked ballot(s) in a temporary ballot box. In hand count towns, the voter would be checked out on the check-out checklist prior to the moderator/deputy depositing the ballot. In ballot counting device towns, in a public process, when convenient, the ballots would be transferred from the temporary ballot box to the ballot counting device. The ballot counting device in most cases should be set up in a heated enclosed space in a building adjacent to the drive through area.
- d. What happens if the town wants to adopt the HB1129 process, but the school district does not (or vice versa)?
- Local officials should work together and discuss an agreeable format to host their 2021 town/school meetings, elections, and business/deliberative sessions uniformly and in conjunction with one another to prevent voter confusion.
 - School districts that have voted to have the town conduct the election voting pursuant to RSA 671:22, RSA 671:26; RSA 671:26-a, should consult with school district legal counsel before pursuing conducting the election in any manner other than following the option chosen by the town. This applies equally to cooperative or other multi-town school districts.
- e. Is there required wording for the question seeking voter approval of the optional meeting procedures?
- Yes. HB1129, requires that the question “ask whether voters approve these optional meeting procedures.” However, the word “these” likely will be unclear to some voters. The governing body should consult with its legal counsel regarding all warrant articles including the exact wording of the required question on optional meeting procedures. Consider a question that references voting on warrant articles using “this ballot.” The governing body may want to include “without further debate or opportunity to amend.”

- f. Does the question on the ballot asking if voters approve the optional meeting procedures go on the official ballot in an SB2 town/school/village district?
- Yes, unless an in-person deliberative session, at which voters could propose and vote on amendments, finalized the warrant questions before the official ballot voting day (election).
 - RSA 33:8-a, II, requires questions for bonds in excess of \$100,000 be acted upon prior to other business, with certain exceptions. If you have such a question, consult with your bond legal counsel. If counsel recommends, place the question of approval of optional meeting procedures following the bond question, otherwise place it first.
 - Keep the numbering for warrant articles on the warrant and the ballot identical for each question. Use either a “1-a” to number the question on approval of optional meeting procedures or leave that question without a warrant article number.
- g. Does HB1129 require that there be at least two separate ballots?
- For an SB2, Official Ballot Referenda, form of annual meeting – No. RSA 40:13 provides that all questions go on the official ballot. But, as discussed above, you must add the question on voter approval of the optional meeting procedures.
 - For a traditional annual meeting – Yes. HB1129 provides that “[a]ll other warrant articles will be printed on a separate ballot (the alternative ballot).” For ballot counting device polling places, the ballot can be printed so as to be device counted, provided it is on a separate paper from the official ballot.
- h. If the voters do not accept the alternative process, does that invalidate the election of elected local officials?
- No. HB1129, Section IV provides that votes for the election of officers and questions which by law must be placed on the official ballot will be effective even if the alternative process is rejected with respect to the other warrant articles. This interpretation applies to both traditional meeting and SB 2 official ballot referendum forms of annual meeting.
- i. Does the virtual information session require an opportunity for testimony/comments by voters or can it be a one-way presentation?
- While it is recommended that local officials invite public comment during the virtual information session, the provisions of HB1129 do not require it. Instead, HB1129 states that “[a]fter 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.”

- To ensure accessibility, if the virtual sessions are conducted with on-line tools (such as Zoom, WebEx, etc.) there should be an option to participate by phone only. Most on-line tools include this option. It will be important to provide both the on-line link and the phone number and password/code, if one is used, in the notice mailed to every voter. Consider having a public space set up with an on-line or phone connection to the sessions. Have that space set up for social distancing and available for any voters who lack access to or the ability to use technology.
 - Under the HB1129 option, voters do not have the opportunity to make motions or to vote. There is no mechanism to verify that those attending virtually are voters. Voters are limited to recommending amendments to the governing body. The governing body ultimately determines the final wording of the warrant articles.
 - Voter comments and recommendations submitted in writing, by e-mail, or voice mail/phone calls summarized in writing for the governing body, will be a matter of public record. Consult with your legal counsel to ensure a process that satisfies the requirements of the Right-to-Know law for meeting minutes and record preservation.
 - Consistent with the practice that a person’s status as a registered voter is verified before that person speaks at a traditional meeting/deliberative session, the governing body should establish whether a person submitting comments or recommendations for amendments must identify himself/herself and whether the person will be similarly verified as a voter before a submission is made part of the record.
- j. During the drive-up procedure, can multiple voters be in one vehicle? Can non-voters be present in the vehicle?
- Yes to both questions. If voters choose to be in a vehicle with other voters or non-voters, it is the voter’s responsibility to maintain the secrecy of their ballot. If you divide the check-in stations alphabetically, you must plan for vehicles occupied by individuals having last names with various first initials. One option is to have ballot clerk “runners” who can obtain the voter’s name, view the photo ID, and then go to the correct checklist section and check in that voter, then return to issue or authorize issuance of a ballot(s).

iii. Postpone under the Authority Granted by Emergency Order #83

Emergency Order #83 authorizes temporary modifications to the postponement procedures for annual meetings and elections. See Emergency Order #83, Section 3.

Officials should review the language of Emergency Order #83 to ensure they fully understand what has been authorized and the applicable requirements. The list below only summarizes Emergency Order #83.

Additionally, officials should also continue to monitor the status of SB2 (2021), which can be found here: http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txbillnumber=sb2&txtsessionyear=2021.

Emergency Order #83 states that Section 3 only remains in effect until the enactment of SB2 (2021). In the event of any conflict between Section 3 of Emergency Order #83 and the enactment of SB2 (2021), SB2 shall control. However, if officials have already provided notice of their postponement before SB2 becomes effective, officials may choose to be governed by the postponement authority of Emergency Order #83, Section 3, instead of SB2 (2021).

- The governing body in consultation with the moderator and the clerk, may postpone the official ballot voting day (the election) to the second Tuesday of April, May, June, or July.
- The governing body may also postpone the business or deliberative session of the annual meeting to one or more dates later in 2021.
- The prohibition under RSA 40:4, II(c) on delaying the deliberative session more than 72 hours and the requirement in RSA 669:1-a that the election be rescheduled to the Tuesday 2 weeks following the original date shall not apply.

iv. Postpone using the Moderator’s authority to postpone in an emergency.

Using the authority under RSA 40:4; RSA 669:1; 669:1-a; and RSA 670:1-a a moderator may postpone an election or meeting “if an accident, natural disaster, or other emergency occurs which the moderator reasonably believes may render use of the meeting location unsafe” or “if an accident, fire, natural disaster, or other emergency occurs that the moderator reasonably believes may render use of the election location unsafe on the date of the election . . .” These are the usual procedures with the usual limitations that have been in place since 2019 and have been addressed in earlier guidance.

4. Are there any materials local officials can refer to in order to host their respective 2021 town/school/village district meetings, elections, and business/deliberative sessions?

Answer: Yes.

In addition to the text of HB1129, local officials may wish to consult the following Emergency Orders addressing how to conduct governmental functions during the public health crisis:

- Emergency Order #12 – [Temporary authority to perform secure remote online notarization](#)
- Emergency Order #23 – [Temporary modification of municipal and local government statutory requirements](#)
- Emergency Order #38 – [Temporary modification of school board and district statutory requirements](#)
- Emergency Order #56 – [Temporary Modification of Procedure Relative to Appropriations and Tax Payments](#)
- Emergency Order #83 – [Temporary provisions to respond to timing challenges related to the enactment of Senate Bill 2 in the 2021 Legislative Session](#)

5. Are local officials able to require attendees of town/school/village district meetings, elections, and business/deliberative sessions to wear a face covering or mask?

Answer: Yes, so long as Emergency Order #74 remains in effect. Emergency Order #74 has been extended by Emergency Order #81 through March 26, 2021.

On November 19, 2020, the Governor enacted Emergency Order #74, which requires persons to wear masks or cloth face coverings when in public spaces without physical distancing. This requirement is subject to the exceptions listed in paragraph 5 of the order.

A copy of Emergency Orders #74 and #81 (#81 extends #74 through March 26, 2021) can be found here:

<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-74.pdf>

<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-81.pdf>

Local officials are encouraged to review the language of these Emergency Orders.

6. If the mask requirement under Emergency Order #74 is triggered, must local officials provide an alternative voting/attendance option?

Answer: Yes, but subject to further clarification below.

Emergency Order #74, Section 5 lists exceptions where it does not apply. These exceptions include, but are not limited to:

- Any person with a medical condition or disability that prevents wearing a mask or other face covering;
- Any person who is deaf or hard of hearing, and any person while communicating with an individual who is deaf or hard of hearing or who has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a mask or face covering difficult.

Emergency Order #74 further states, “[a]ny person who declines to wear a mask or cloth face covering because of a medical or developmental issue, or difficult breathing, shall not be required to produce documentation, or other evidence verifying the condition.” (emphasis added).

The language of Order #74 and its exceptions mean that, while a face covering or mask requirement may be imposed pursuant to the Order, those unable or unwilling to wear a mask must still be allowed inside the polling or meeting place to vote or attend, although this may be in an alternative room or area.

However, as we recognized during the 2020 election cycle, Moderators have broad authority to manage a polling location. This includes imposing a face covering or mask requirement to enter the polling place.

As a result, pursuant to the broad, constitutional authority of moderators, we continue to recognize the moderators’ authority to impose or not impose a face covering or mask requirement to enter the polling or meeting place.

Therefore, masks can be required at a town meeting, business meeting or deliberative session because it is a “public space . . . where they are unable to or do not consistently maintain a physical distance of at least six feet from persons outside their own households.” Emergency Order #74, paragraph 1. They may also be required:

- (1) Where local ordinance requires them; or
- (2) Where they are required as part of the rules governing town meeting.

If moderators choose to invoke this authority and impose a face covering or mask requirement, officials must still provide an alternative voting option for voters unable or unwilling to wear a face covering or mask. [See Attorney General's Supplemental Guidance on 2020 Election Operations.](#) [See also Secretary of State's and Attorney General's Joint Guidance on 2020 Election Operations.](#)

Officials must also provide a way for those unable or unwilling to wear a face covering or mask to attend, observe, and, if a registered voter, vote at an election and participate in a meeting/deliberative session. We have received information from officials who have reported success with using a separate area inside the meeting room, distant from attendees wearing a face covering or mask. Other communities have reported success utilizing another room inside the meeting place, equipped with an audio and/or visual system that can broadcast the meeting in real time between all rooms used for the meeting/deliberative session. At a minimum, all voters attending must be able to hear all who are recognized to speak to the meeting and each room must have the ability to allow a recognized voter in the room to speak and be heard by all voters in attendance.

We understand there are concerns and questions from officials not adopting HB1129, about the availability of alternatives in the context of business or deliberative sessions. Some have asked about remote participation in these business and deliberative sessions via Zoom, Teams, etc.

However, given the unique nature of these business and deliberative sessions, we cannot encourage the use of virtual platforms as an alternative participation option for those unable or unwilling to wear mask.

Typically, during the business and deliberative sessions, participating voters are checked in, and officials are able to verify that people participating in debate or voting in these sessions are registered voters. Using virtual platforms presents challenges to verifying the qualifications of voters, in addition to ensuring that the privacy of voters' personal information is preserved. This is complicated further by these virtual platforms being unable to provide a secure and stable voting process. Officials holding their normal business and deliberative sessions should instead consider offering a separate room set-up, created-by, and monitored by the proper municipal officials or a separate area involving the same, as a possible alternative for those unable to unwilling to wear a mask.

If your polling place or meeting/deliberative session facility presents uncommon challenges, adopt locations and procedures that allow both masked and non-masked voters to participate fully. Consult with your legal counsel to ensure any unusual/creative solutions satisfy the law.

Recognizing the differences in weather between the November General Election and the March town/district elections, in some communities it may be challenging to utilize an outdoor voting area.

If local officials want to utilize an outdoor voting area, but do not believe they will do so successfully, they should consider one of the other options listed under Question #3 above: (1) Adopt the virtual meeting procedure and drive up paper ballot voting under HB1129; (2) Postpone as authorized by Emergency Order #83; or (3) Postpone using the moderator's authority to postpone in an emergency, in anticipation of warmer weather.

7. Emergency Order #83 also authorizes the partial pre-processing of absentee ballots.

The limitations and procedures are essentially the same as existed for partial pre-processing for the September and November 2020 elections:

- Public notice of the partial pre-processing session must be given in two places, if available one must be on the town/school/village district web site or notice may be published in a newspaper of general local circulation at least 48 hours, excluding Sundays and holidays, before the partial pre-processing session;
- The partial processing may only occur during a single session held on the Thursday, Friday, Saturday, or Monday prior to the date of the election and after the supervisors post the finalized checklist;
- The moderator must be assisted by at least 3 other election officers;
- The public must be allowed to observe;
- The ballots cannot be counted until election day after the polls close;
- All absentee ballots received by the end of the day preceding the day when partial pre-processing will occur must be partially pre-processed.

Emergency Order # 83, at Paragraph 2(c) & (d).

At the fall elections, partial pre-processing was reportedly effective at identifying problems with the absentee ballot affidavit envelope which voters could correct before or at the election, allowing their vote to be counted. Towns, school districts, and village districts are encouraged to partially pre-process and, for those voters who provide their phone number and/or e-mail on their absentee ballot application, to make reasonable efforts to notify the voter to take action for their absentee ballot to be counted. Refer to the guidance and training issued for the 2020 fall elections on partial pre-processing for further details.

8. Webinar

At the request of local election officials, the Secretary of State and Attorney General's Office will conduct an on-line webinar addressing this guidance, ElectioNet procedures when an election is postponed, and, to the extent practical, questions that arise. We will repeat the webinar three times and following the final session, a recording of one session will be used to make an on-demand version available. Register to obtain a link to the session that fits your schedule.

After reviewing this guidance, submit questions to nhvotes@sos.nh.gov

Wednesday February 10th – 10:00 AM

Please register for 2021 Town/School/Village District Elections, Meetings and Deliberative Session - COVID 19 on Feb 10, 2021 10:00 AM EST at:

<https://attendee.gotowebinar.com/register/5490140146543372299>

Wednesday February 10th – 6:00 PM

Please register for 2021 Town/School/Village District Elections, Meetings and Deliberative Session - COVID 19 on Feb 10, 2021 6:00 PM EST at:

<https://attendee.gotowebinar.com/register/4761835738932482827>

Saturday February 13th – 10:00 AM

Please register for 2021 Town/School/Village District Elections, Meetings and Deliberative Session - COVID 19 on Feb 13, 2021 10:00 AM EST at:

<https://attendee.gotowebinar.com/register/2483083596715573515>

After registering, you will receive a confirmation email containing information about joining the webinar.