

SB-2: Various References

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

NHMA Link Searching for SB-2 information:

<https://www.nhmunicipal.org/search/site?keys=SB2+information#gsc.tab=0&gsc.q=SB2%20information&gsc.sort=&gsc.page=1>

RSA on SB-2 adoption:

<https://law.justia.com/codes/new-hampshire/title-iii/chapter-40/section-40-14/>

40:14 Method of Adopting Official Ballot Referendum Form of Meeting. –

I. This subdivision may be adopted by any local political subdivision as defined in RSA 40:12. A 3/5 majority of those voting on the question shall be required to adopt this subdivision. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. Adoption of this subdivision shall be deemed to constitute a vote to conduct the election of town officers by official ballot under RSA 669:14.

III. The local political subdivision shall place the question on the warrant of the annual meeting under the procedures set out in RSA 39:3 or RSA 197:6. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question.

IV. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper

of general circulation at least 7 days prior to the date of the hearing.

V. The wording of the question shall be: "Shall we adopt the provisions of RSA 40:13 (known as SB 2) to allow official ballot voting on all issues before the (local political subdivision) on the second Tuesday of (month)?"

VI. If a 3/5 majority of those voting on the question vote "yes," RSA 40:13 shall apply within the local political subdivision at the annual or special meeting next following. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

VII. Any local political subdivision which has adopted RSA 40:13 may consider rescinding its action in the manner described in paragraphs III-VI, except that the question shall be placed on the official ballot. The wording of the question shall be: "Shall we rescind the provisions of RSA 40:13 (known as SB 2), as adopted by the (local political subdivision) on (date of adoption), so that the official ballot will no longer be used for voting on all questions, but only for the election of officers and certain other questions for which the official ballot is required by state law?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this subdivision, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

One View of SB-2:

<https://www.nhmunicipal.org/town-city-magazine/januaryfebruary-2017/referee-official-ballot-referendum-my-time-behind-podium>

Default Budget:

<https://www.nhmunicipal.org/town-city-magazine/new-hampshire-town-and-city-novemberdecember-2022/default-budgets-how-they-work>

Budget Committee:

<https://www.nhmunicipal.org/town-city-magazine/septemberoctober-2017/municipal-budget-committee-roles-and-responsibilities>

40:14-b Default Budget Determined by Budget Committee. –

I. A local political subdivision which has adopted the official ballot referenda form of meeting pursuant to RSA 40:14 and has also adopted a municipal budget committee pursuant to RSA 32:14 may delegate the determination of the default budget to the budget committee instead of the governing body.

Who is the local political subdivision and how does that entity "delegate" default budget to BC?

Transition:

https://www.nhmunicipal.org/sites/default/files/uploads/webinars/343_nhma_transition_to_sb_2_webinar_materials.pdf

Moderator's Role and some info comparing Town Meeting to Deliberative Session (pg 18-19):

https://www.nhmunicipal.org/sites/default/files/uploads/webinars/353_moderators_role_at_deliberative_session.pdf

Other:

<https://www.nhmunicipal.org/town-city-magazine/new-hampshire-town-city-magazine-novemberdecember-2019/top-ten-things-you-should>

10.) Official Ballot v. Official Ballot Referendum

Under RSA 39:2-a, I, towns/districts can adopt the official ballot creating two sessions of town meeting. The first session, or official ballot session, involves voting by official ballot for elected officials, zoning questions and certain other questions required to be placed on the official ballot. The second session, also known as the business meeting, is where all other warrant articles are addressed and voted on by the town meeting.

Under RSA 39:2-a, II, known as SB2, towns/districts can adopt the official ballot referendum form of government via RSA 40:12 - :15. This also employs two sessions of town meeting, a deliberative session where all warrant articles are discussed, debated and amended, with no final votes taken until the second or voting session where all warrant articles are voted on by official ballot at the polling place.

<https://www.nhmunicipal.org/town-city-magazine/novemberdecember-2018/15-ideas-better-town-meeting>

1. What day of the week to hold the deliberative 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 deliberative 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 deliberative 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 deliberative 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.

<https://www.nhmunicipal.org/town-city-magazine/novemberdecember-2018/legal-qa-top-10-legal-questions-members-regarding-town>

2. How about discussion and debate of the Default Budget in an SB2 deliberative town meeting, should this be allowed by the moderator?

An amendment to RSA 40:13, HB 1307, 2017 NH Laws Chapter 241, has clarified the default budget's role at the deliberative session. RSA 40:13, IV will now expressly permit voters to discuss and debate the default budget, along with other articles on the warrant. That being said, RSA 40:13, XI(b) still prohibits the voters from amending the default budget at the deliberative session.

<https://www.nhmunicipal.org/town-city-magazine/januaryfebruary-2019/legal-qa-annual-town-meeting-how-do-we-educate-voters>

Q. How can we give voters additional background information about the issues?

A. Other than recommendations, and possibly tax rate impact statements, other background information may be relevant to voters' consideration of the budget and separate warrant articles. Such information may be provided in a variety of ways. The annual report, available to voters at least one week before the annual meeting, is one source of information. RSA 41:13; RSA 41:14. The town annual report includes information regarding the financial condition of the municipality, reports of officials and departments, and the proposed budget. It is also appropriate for the governing body, department heads or budget committee to present background information and answer questions about proposed articles at budget hearings, deliberative session or traditional town meeting. And, of course, any official, voter or petitioner may speak to the relevant issues at public hearings or at town meeting.

It is also common for officials to prepare and distribute a voter guide. Guides usually address each warrant article, explaining why it was proposed and providing information about the issues. Doing this properly requires a careful balance between permissible government speech and excessive advocacy.

Developments in First Amendment law have clarified that a government entity has the right to speak for itself because if it could not do so, it could not function. *Pleasant Grove City, Utah, et al., v. Summum*, 555 U.S. 460 (2009); *Sutcliffe v. Epping, et al.*, 584 F.3d 314 (1st Cir. 2009). It is generally acceptable for the government to use tax dollars to endorse its own existing policy

measures without violating the First Amendment. *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005). These cases hold that governments are not required to offer equal opportunities for those who may oppose the views of "government speech." For instance, a town may be able to explain in a voter guide that an article to purchase a snowplow was proposed because the town's fleet is 20 years old, the life expectancy of a plow is 15 years and the town's mechanic predicts that at least one truck will become unusable within the next year. These are factual statements that permit voters to make a decision.

What would be clearly prohibited is for a public employee to use government property or equipment (i.e., taxpayer dollars) to "electioneer" on behalf of a budget or warrant article, which is prohibited by RSA 659:44-a. Under that statute "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office. Providing purely factual information about warrant articles that is not specifically designed to have a voter vote in a particular way would not be improper electioneering.

Default Budget info – View Graph 22 on page 11:

https://www.nhmunicipal.org/sites/default/files/uploads/webinars/2024-09-11_financial_responsibilities_nhma.pdf

- ∪ Disclosed and presented for questions and discussion at first budget hearing
- ∪ Line item changes must be available at budget hearing:
 - ∪ Appropriations in last year's budget
 - ∪ Reductions and increases, including identification of specific items that constitute a change by account code and the reason for change
 - ∪ One-time expenditures
 - ∪ Reductions for eliminated positions
- ∪ Discussion and debate of default budget at deliberative session (not amended)

Timeline as sample for assessing SB2 vs. current Town Meeting timeline:

<https://www.revenue.nh.gov/sites/g/files/ehbemt736/files/documents/timeline-for-sb2-annual-meeting-march.pdf>

List of Municipalities in NH:

[https://www.nheconomy.com/office-of-planning-and-development/what-we-do/state-data-center-\(census-data\)/municipalities,-counties-and-regions](https://www.nheconomy.com/office-of-planning-and-development/what-we-do/state-data-center-(census-data)/municipalities,-counties-and-regions)

Forms of Town Government in NH:

<https://www.nheconomy.com/getmedia/19b1a519-1c73-4a48-ad4e-b5588a49750f/forms-of-town-government.pdf>