



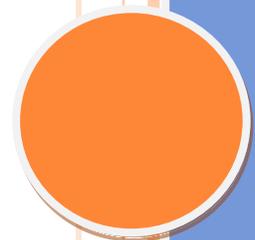
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2021 LEGISLATIVE UPDATE

Last year due to COVID-19, not much legislation was enacted. However, in 2021, the New Hampshire Legislature passed a number of laws impacting municipalities. This memorandum summarizes what we believe to be the most significant New Hampshire Legislation impacting municipalities. As always, please do not hesitate to reach out to us with any questions or concerns regarding the new legislation.

By Anthony M. Muir

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I. Personnel

Wage and Hour Records (Chapter 9)

Effective June 22, 2021, RSA 279:27 was amended to permit employers to sign, acknowledge, approve and retain wage and hour records electronically.

Town Health Officer (Chapter 61)

Effective June 4, 2021, RSA 128:1 was repealed and reenacted, RSA 128:2, RSA 128:3, RSA 128:5-b, and RSA 128:6 were amended and RSA 128:8-11 was added. Effective August 3, 2021, RSA 141-C:5, III-IV, and RSA 141-C:10, V were added. The amendments modify the law regarding town health officers by deleting the residency requirement and adding training and criminal background check requirements.

The local board of health is required to meet at least once per year.

Within one year of appointment, every health officer must complete a minimum three hours of training on topics related to the specific state laws that provide authority to health officers. The training shall be administered at no cost to the municipality by the department of health and human services in collaboration with the New Hampshire Health Officers Association (NHHOA). The curriculum shall cover, but not be limited to, duties and responsibilities of the health officer as required on rental housing standards pursuant to RSA 48-A:3, I(c), assessment and management of health nuisances pursuant to RSA 147, and duties pursuant to RSA 128:5. The required training may be taken in person, or through a remote learning platform as provided by the department of health and human services. Municipalities are required cover reasonable costs for the health officer to attend the NHHOA training subject to the provisions of RSA 129:1.

Each municipality must request and obtain a criminal history record information request from the department of safety, as a prerequisite to any nomination of a health officer or deputy health officer, to be submitted to the commissioner of the department of health and human services or his or her designee, in order to determine if there are any prior convictions that may disqualify the person or interfere with the performance of the health officer's duties.

The amendments also includes new requirements for the health officer regarding isolation and quarantine orders for communicable diseases. After being informed of isolation and quarantine orders issued pursuant to RSA 141-C:12 to persons in the health officer's jurisdiction, the health officer is required to inform the commissioner if the health officer identifies any substantive non-compliance with the order. Furthermore, in the event of a public health emergency declared pursuant to RSA 4:45, the health officer is required to enforce orders issued pursuant to RSA 4:47.

The department may share confidential information with health officers if they sign a confidentiality agreement and successfully completed training on confidentiality and security laws and regulations.

II. Taxation and Finance

Collection of Taxes (Chapter 15)

Effective April 1, 2022, RSA 76:15-a, III and RSA 76:15-aa, V(a) are amended to permit municipalities with semi-annual or quarterly billing to submit an adjusted rate application to the department of revenue administration in the event of an increase of 15 percent or more in the amount of property taxes to be raised for the current year as compared to the previous year.

Tax Liens (Chapter 33)

Effective July 16, 2021, RSA 80:65 was amended to extend the time for the notice of the execution of a municipal or state tax lien to be given to a mortgagee from 45 days to 60 days.

Out-of-State Banks (Chapter 65)

Effective August 3, 2021, RSA 6:7, RSA 6:8, RSA 23:16, II, RSA 29:1, RSA 31:25, RSA 31:25-a, RSA 31:26, RSA 31:27, RSA 31:36, RSA 34:5, RSA 35:9, RSA 41:29, RSA 48:16, and RSA 197:23-a were amended to allow out-of-state banks with a branch in New Hampshire to accept deposits and investments of public funds from the state treasurer and city, town, and school district treasurers.

Community Revitalization Tax Relief (Chapter 81)

Effective April 1, 2022, RSA 79-E:2, II and RSA 204-C:56, IV and V are amended, RSA 79-E:4-b is added, and RSA 204-C:57, IV is repealed and reenacted to enable municipalities to offer community revitalization tax incentives for the construction of additional housing in designated areas and to revise the criteria for assistance from the affordable housing fund administered by the housing finance authority.

Municipal Charter Tax Caps (Chapter 88)

Effective August 20, 2021, RSA 49-B:13, II-a, RSA 49-C:33, I(d) and RSA 49-D:3, I(e) were amended to require municipal charter exclusions and ordinances that have the effect of an override of a tax cap to require a supermajority vote

Municipal Finance (Chapter 105)

Effective August 30, 2021, RSA 38:29, I-a was added to include new provisions regarding municipal water funds.

Under those provisions, the funds received from the collection of water wheeling charges, below the threshold for regulation by the public utilities commission, derived from intermunicipal agreements, by municipalities governed under RSA 49-D:3, I are to be dedicated to the maintenance and upkeep of the portions of the water system necessary to fulfill the intermunicipal agreement. In no case shall less than 50 percent of the funds received be expended for this purpose and pursuant to RSA 38:28. Upon the approval of the legislative body of the municipality, any remaining funds may be expended for the following purposes:

- (a) Pursuant to RSA 38:28.
- (b) For the acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation, and repair of sewer systems, or construction, enlargement, or improvement of such systems.
- (c) Capital reserve funds of the water or sewer system.
- (d) For the expansion or replacement of natural gas lines or systems, by a municipal gas system or gas provider regulated by the public utilities commission.
- (e) For the purposes set forth in RSA 162-G:4.
- (f) For the purposes set forth in RSA 162-K:6, III and RSA 162-K:8.

RSA 80:56 on uncollectible tax checks was amended to update the reference to “checks” to “remittance” so that it applies to payment by electronic means.

RSA 35:15, III is amended to provide that capital reserve funds may be used for lease/purchase agreements.

Form of Municipal Budgets (Chapter 134)

Effective September 21, 2021, RSA 32:3, III, RSA 32:5, I, RSA 32:17, and RSA 32:22 are amended and RSA 32:5, X and RSA 32:3, VII and VIII are added to require towns or districts that use sub-accounts to budget or track financial data to make that information available for public inspection at the budget hearing and prior to and at the annual or special meeting at which time the budget or any appropriation is to be considered.

The amendments also require the governing body to incorporate any sub-accounts created by the budget committee into its budget software.

Governing bodies must also submit to the budget committee information in a format acceptable to the budget committee. The requirement can be satisfied by providing a knowledgeable person to attend budget meetings who has access to and the ability to provide the required information.

“Sub-account” means an optional level of accounting, one or more levels below the account level. Sub-accounts may be used to budget and track expenses when several different activities are funded by the same account. Sub-accounts may be created by the town or district under the authority of the budget committee, or the governing body if

there is no budget committee, but must support the numbering classification system established in the uniform chart of accounts as established by the department of revenue administration in accordance with RSA 21-J:13, IV. The amendments do not require the disclosure of any information or data restricted from disclosure by any other statute.

Property Tax Exemption (Chapter 200)

Effective October 9, 2021, RSA 72:27-a, I, RSA 72:86, RSA 21-J:3, XIII and RSA 72:36, I are amended and RSA 72:87 is added to allow municipalities to adopt under RSA 72:27-a an exemption from the assessed value, for property tax purposes, of a renewable generation facility, as defined in RSA 72:73, and of an electric energy storage system, as defined in RSA 72:84.

III. Elections and Voting

Collective Bargaining Special Meetings (Chapter 77)

Effective August 17, 2021, RSA 197:3, I(d) was added to prohibit the Superior Court from allowing an emergency special meeting if the emergency involves a collective bargaining agreement that was voted down at the regular meeting, including a collective bargaining agreement modified after the regular meeting.

Electronic Poll Books (Chapter 101)

Effective August 30, 2021, RSA 652:27 was amended to permit cities and towns to use electronic poll book devices. The secretary of state is required to prepare at least once each calendar year a regularly updated set of instructions and best practices for the use of electronic poll books in state elections based on reports from the city and town clerks, evaluation vendors, and electronic poll book system providers.

Voter Identification (Chapter 111)

Effective September 7, 2021, RSA 654:12, III-a is added and RSA 659:13, I(c)(2) is amended to require voters who register to vote by using a qualified voter affidavit or sworn statement on the election day registration form instead of other approved identification to have their photograph taken at the time of registration. The photographs must be retained in the same manner as qualified voter affidavits and may be used for the purposes of RSA 659:13, I(c) (challenged voter affidavits).

Domicile of Election Officials (Chapter 125)

Effective September 12, 2021, RSA 658:14 and RSA 658:18 are amended to remove the requirement that election officials for an additional polling place in a town be domiciled in the district of the additional polling place.

Notification of Filings for Elected Office (Chapter 127)

Effective September 21, 2021, RSA 655:18 is amended to require that town and city clerks provide a daily update of candidates who have filed for nomination to the secretary of state. The summary must be submitted electronically and must include the name and address of any candidate who has filed. The secretary of state will then add those persons to the daily report for that day.

Political Parties and Absentee Ballots (Chapter 132)

Effective September 21, 2021, RSA 657:15, III and IV are amended to authorize political parties to request and subscribe to the statewide absentee ballot request list from the secretary of state, and add the date the absentee ballot was returned to the information provided. Information on the statewide absentee voter list is limited to voter name, voter ID number, the date the absentee ballot was requested, and the date that the ballot was returned. The secretary of state must provide the list requested at least once per week and at least twice per week for the four weeks prior to the election.

Verification of Voter Checklists (Chapter 137)

Effective September 21, 2021, RSA 5-C:4, IV, RSA 261:55, I, RSA 654:37, RSA 654:45, I, RSA 654:45, IV, and RSA 74:18 are amended to modify some of the procedures for ongoing verification of the information contained in voter checklists:

1. The secretary of state is required to compare information contained on each death record received by the division of vital records with information contained in the statewide centralized voter registration database and submit to the state registrar a list of every city or town that has a registered voter matching the decedent's information. Where there is not a full match of name, date of birth, and residence, the secretary of state is required to provide information of partial matches for further review and confirmation by the town or city pursuant to RSA 5-C:4, V.
2. Whenever any person after making application for or obtaining the registration of a vehicle moves from the address or changes the postal address named in the application or shown on a registration certificate or certificate of title, that individual person has 30 days to notify the division in writing of his or her old and new address. The division must then inform both the supervisor of the checklist in the town or city in which the new address is located and the supervisor of the checklist in the town or city in which the previous address was located of the change to facilitate periodic maintenance and verification of checklists pursuant to RSA 654:36-b.
3. Whenever an official notice of the death of any person or persons 18 years or over is filed in the office of the clerk or the clerk receives notice of a death record of such person or persons under RSA 5-C:4, V with a full match, the town or city clerk must notify the supervisors of the checklist of said deaths by submitting a notice of same to the supervisors at their next regular meeting. For reports under RSA 5-C:4, V with a possible match, the city or town clerk must look for an

official notice of death and if available shall proceed as described in this section. If there is no official verification, the city or town clerk must follow the procedures in RSA 654:37-a.

4. The secretary of state is required to provide for a verification process that voters sharing a place and date of birth, along with a substantially similar name to include nicknames or likely maiden/married name changes, are unique voters. Should any voter appear to be a duplicate, that information shall be forwarded to the supervisors of the checklist of the cities or towns involved for review and confirmation. The supervisor of the checklist shall notify the secretary of state of the result of such review, and should the records show that a single individual may have voted more than once in any election such information shall be forwarded to the attorney general for further investigation or prosecution.
5. Beginning July 1, 2022, the secretary of state shall, no less than annually, cause voter records to be checked with the United States Postal Service for changes of address. All records identified as moving must be provided to the city or town supervisors of the checklist for verification pursuant to RSA 654:39, III.
6. Municipalities receiving inventories of property transfers shall forward the buyer's and seller's names and post transaction addresses to the supervisor of the checklist in such municipalities to facilitate periodic maintenance of the voter checklist.

Voter Checklists and Absentee Ballot Affidavit (Chapter 175)

Effective September 28, 2021, RSA 654:13 is amended to provide that if the voter applicant entered a place last registered to vote on the voter registration form, the supervisors must enter that data into the statewide centralized voter registration database.

Additionally, the secretary of state is required to provide information on individuals who report being previously registered to vote out of state to the chief elections officer of that state. The secretary of state may use secure electronic information transfer. The secretary of state is required to pursue establishing routine secure electronic transfers of this information between states. When electronic information transfer from another state occurs the supervisors of the checklist where the person is registered in New Hampshire will receive notice through the statewide centralized voter registration database that the voter has registered in another state.

Unless the supervisors possess evidence that the notice is inaccurate, the supervisor must remove the voter from the checklist as provided in RSA 654:36.

Effective August 30, 2021, RSA 657:7, II was amended to change the required language on absentee ballot affidavit envelopes.

Election Procedures (Chapter 177)

Effective September 28, 2021, RSA 659:9-a is amended to change references from the city “chief elections officer” to the “city clerk.” RSA 659:45-a is also added to prohibit individuals from taking or causing any photograph to be taken within the guardrail that captures another voter or another voter's ballot.

Effective July 30, 2021, Chapter 177 established a committee to study post election audit counting devices. The committee is to determine what ballot counting equipment is available which would support a post election audit in New Hampshire, and study the feasibility, time constraints, and cost of conducting a post election audit using any vote counting equipment identified. The committee may use ballots cast in prior elections to test ballot counting equipment, provided that such use is in conjunction with the secretary of state and with the approval of the ballot law commission. A report is due by November 30, 2021.

Effective July 30, 2021, Chapter 177 states that “Notwithstanding the adoption by the United States Congress of S.1, also known as the ‘For the People Act of 2021’, all procedures and requirements relating to elections conducted pursuant to the New Hampshire constitution and as prescribed by New Hampshire law shall remain in full force and effect for all state and county officers, including but not limited to those procedures and requirements relating to voter eligibility, voter registration, absentee voting, conducting the vote, and counting of votes.”

Election Procedures (Chapter 187)

Effective October 9, 2021, RSA 657:15, II is amended to require that town and city clerks make electronic lists of absentee voter applicants available to candidates who request them. If an electronic copy exists, it must be provided without charge in accordance with RSA 91-A.

IV. Police

Destruction of Valueless Property (Chapter 140)

Effective September 21, 2021, RSA 471-C:13 is amended to provide that if noncontraband abandoned or lost personal property cannot be returned, and if it is determined in good faith by the police department or sheriff's office to be of no monetary value, then such property may be destroyed or disposed of as directed by the chief of police for the department or the chief's designee, or the county sheriff or the sheriff's designee.

V. Right-to-Know Law

Public Bodies Under Right-to-Know Law (Chapter 118)

Effective September 7, 2021, RSA 52:11-b is added to provide that every legislative body, governing body, board, commission, or committee of any village district is a “public body” under RSA 91-A (the Right-to-Know Law) and is subject to all applicable provisions of that law.

Minutes in Nonpublic Sessions and Remote Meetings (Chapter 163)

Effective January 1, 2022, RSA 91-A:3, III is amended to require that for all meetings held in nonpublic session where the minutes or decisions were determined to not be subject to full public disclosure, a list of the minutes or decisions must be kept and the list must be made available as soon as practicable for public disclosure. The list must identify the public body, the date and time of the meeting in nonpublic session, the specific exemption which is relied upon for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session for the acquisition, sale or lease of property must be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

Effective July 30, 2021, RSA 91-A:5, XII was added to exempt materials falling within the attorney-client privilege or attorney work product doctrine from public disclosure under the Right-to-Know Law.

Effective September 28, 2021, a committee is established to review virtual meetings and remote access to meetings under the Right-to-Know Law.

Sealed Minutes in Nonpublic Session (Chapter 172)

Effective January 1, 2022, RSA 91-A:3, II(m) is added to provide that the consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances may be acted on in nonpublic session. However, any vote on whether to disclose minutes must take place in public session.

VI. Land Use

Planning Boards (Chapter 69)

Effective August 9, 2021, RSA 676:4, I(c)(1) is amended to clarify the date upon which planning boards begin formal consideration of plats relating to developments of regional impact. In the case of a determination by the board that the application is a development of regional impact requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act to approve, conditionally approve or disapprove.

Summer Camps (Chapter 121:6)

Effective July 9, 2021, RSA 674:73 was added to protect the pre-existing, non-conforming use status of summer camps that were unable to operate during the summer of 2020 or 2021 due to COVID-19. A summer camp's status or ability to operate as a pre-existing, non-conforming use shall not in any way be affected by its failure to operate during the summer of 2020 and/or 2021, or its operation for a shorter season or at a reduced capacity during the summer of 2020 and/or 2021.

Involuntarily Merged Lots (Chapter 136)

Effective September 21, 2021, RSA 674:39-aa, II(a) is amended to repeal the deadline for requests for restoration of lots that were involuntarily merged.

VII. Miscellaneous

Electronic Records (Chapter 67)

Effective August 9, 2021, RSA 294-E:17 and RSA 294-E:18 are amended to clarify that the department of information technology, in cooperation with the secretary of state and the department of administrative services, may set standards for the creation, retention, and acceptance of electronic records by government agencies.

Outdoor Dining (Chapter 121:7)

Effective July 9, 2021, RSA 178:24 was amended to allow for expanded outdoor dining. As before, a business holding a license authorizing the consumption of alcoholic beverages on its licensed premise may petition the commission for permission to extend service for beverages and liquor to any clearly defined area under the control of the licensee. In addition, a licensee may expand into a shared space, such as a sidewalk or street, with the approval of local officials. Businesses served by a waste disposal system, as defined by RSA 485-A:2, XI, must obtain approval from the department of environmental services for any expansion under the section, unless the total number of seats remains the same or is reduced. Businesses that are on municipal sewer may expand seating as permitted by the municipality.

Demolition of Buildings (Chapter 184)

Effective October 9, 2021, RSA 41:14-a is amended to authorize the select board to demolish municipal buildings. This amendment also provides for review of any proposed demolition by the heritage commission and the historic district commission, if any. The provisions of the section do not apply to the demolition or disposal of, and the select board shall no authority to demolish or dispose of, any real estate that has been given, devised, or bequeathed to the town for charitable or community purposes except as provided in RSA 498:4-a or RSA 547:3-d.

Soft Drink Sales (Chapter 166)

Effective September 28, 2021, RSA 31:102-a is amended to exempt persons under the age of 14, who are selling soft drinks on family owned or leased property, from city, town, or village district licensing requirements.