

# MEMORANDUM

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TO: John Suttie, Regional School Unit No. 23

FROM: E. William Stockmeyer, Drummond Woodsum & MacMahon

DATE: June 9, 2020

RE: Remote Public Hearing and Budget Referendum in Lieu of Budget Meeting and Validation Referendum Pursuant to Order of the Governor: Procedures

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***NOTE:** During the COVID Emergency, most board meetings of schools and municipalities are being held remotely and board members will sign warrants and other documents electronically or at some time after the meeting. We recommend, however, that posted warrants bear original attestations of both the District resident and the municipal resident/constable/clerk.*

This Memorandum provides a brief explanation for the procedures for Regional School Unit No. 23 (the “RSU”) to conduct a Remote Public Hearing and RSU Budget Referendum as described in the Governor’s Executive Order 56 FY 19/20. These procedures are to be followed by Regional School Units, School Administrative Districts and Community School Districts.

## **I. Remote Public Hearing Procedures**

Prior to the date of the Budget Referendum, the School Board must provide an opportunity for public comment on the proposed budget and referendum questions by a hearing conducted in accordance with the remote participation requirements of P.L. 2019, c. 617, Part G.

The School Board must provide notice of the remote public hearing in accordance with 1 M.R.S. §403-A, including the method by which the public may attend and participate. In general, this notice will be in similar manner as notice of remote School Board meetings.

In addition to notice of the remote public hearing, there is also a posted notice of public hearing for the referendum. We have provided a Notice of Public Hearing for that purpose.

The Notice of Public Hearing must: (a) be signed by a majority of the School Board; and (b) specify the time and date of the hearing and the means by which the public may participate in the hearing and provide comment.

A copy of the Notice of Public Hearing must be posted by the person to whom it is directed in some conspicuous public place in each of the municipalities within the RSU at least 7 days before the public hearing. The person who gives notice of the meeting should make a return of the posting on the Notice of Public Hearing stating the manner of notice in each municipality and the time when it was given.

## **II. Budget Referendum Procedures**

Title 20-A, section 1486 provides that the method of calling and voting at a Budget Referendum is as provided in sections 1502 and 1503, except as otherwise provided by section 1486 or as is inconsistent with other requirements of section 1486 or Executive Order #56 FY 19/20.

Under 20-A M.R.S. §§ 1502-1503, the following steps must be followed to hold the required election:

### **A. Calling the Election**

1. The RSU referendum must be initiated by a warrant and notice of election signed by a majority of the School Board. 20-A M.R.S. § 1502.
2. It is the responsibility of the School Board to prepare the warrants and notices of election for the referendum, which must be countersigned by the Municipal Officers of each municipality where they are posted. 20-A M.R.S. § 1502.
3. The warrant and notice of election must specify that the Municipal Officers are to call a referendum on a certain date and time, as determined by the School Board. 20-A M.R.S. § 1502(1). The polls for elections on statewide referendum dates must open between 6:00 a.m. and 8:00 a.m., except that in municipalities with a population of less than 500, the polls must be opened by 10:00 a.m. The polls for elections on statewide referendum dates must close at 8:00 p.m., except that in municipalities with a population of less than 100, the polls may close after all registered voters have voted. 21-A M.R.S. § 626.
4. The warrant and notice of election must contain the question or questions to be acted upon in each municipal referendum, using substantially the form set forth in 20-A M.R.S. § 1502(2).
5. The warrant and notice of election must be directed to a resident of the RSU by name, ordering the resident to notify the Municipal Officers of each municipality to call a town meeting or city election on the specified date. 20-A M.R.S. § 1502(1)(A).
6. Within three days of the date of the warrant and notice of election, , an attested copy of it must be served by hand on each of the municipal clerks in the RSU, with the person serving the warrant and notice of election making a return on it stating the manner and time of service. 20-A M.R.S. §§ 1502(1)(A) and (B), 1486(3)(C).
7. The warrant and notice of election must be served on the clerk of each municipality at least 30 days prior to the date set for the referendum. 20-A M.R.S. § 1502(1).

8. Once the municipal clerk is served with the warrant and notice of election, the clerk must immediately notify the Municipal Officers who shall “forthwith” meet, countersign and have posted the warrants and notices of election prepared by the School Board. 20-A M.R.S. § 1502(1)(B).
9. The warrants and notices of election for the referendum are required to be in the same manner as provided in Title 21-A. Title 21-A, section 621-A requires that the municipal clerk, after being sent a notice of election, shall announce the election as follows:
  - a. The clerk shall post or have posted a notice of election, attested by the clerk, in a conspicuous public place in each voting district in the municipality at least 7 days immediately before election day and at each voting place on election day.
  - b. The clerk shall post or have posted a notice of absentee ballot processing times, attested by the clerk, in a conspicuous public place in each voting district in the municipality at least 7 days immediately before election day and at each voting place on election day.
  - c. The clerk shall record a copy of the notice along with the times and places of posting.
10. The contents of the warrant and notice of election and return are set forth in Title 21-A, section 622-A. In practice, the warrant and notice of election required by Title 21-A and the RSU meeting warrant and notice of election required by Title 20-A, section 1502, are combined in a single document.

## **B. Pre-election Procedures**

1. When the voting is to be held simultaneously with a statewide election, the election must be conducted in accordance with Title 21-A, except that the duties of the Secretary of State shall be performed by the School Board. 20-A M.R.S. § 1503(2)(A).
2. The required number of ballots for the election, including absentee ballots, and all other materials for the voting must be prepared and furnished by the School Board. 20-A M.R.S. § 1503(1). Note: We anticipate that paper ballots will be needed; time may not exist for machine counted ballots.
3. The statute no longer contains specific dimensional and folding requirements, or a requirement that the ballot be printed on paper of a distinctive color from other ballots being used such as the state election or other local ballots. The ballot must have printed on it “Official Ballot for the Town/City of (name of municipality),” the date of the election, and a facsimile of the signature of the Chair of the School Board. 30-A M.R.S. § 2528(6)F). The RSU must review with the municipal clerks the number of votes cast at the last election of that type, and current registration and enrollment statistics to determine the number of ballots required. 21-A M.R.S. § 606(1). We recommend that it supply at least 75 ballots for each

50 votes cast at that voting place at the last election of that type. The ballots must be packed in sealed, marked packages in standard units as determined by the board. The other election materials must be separately packed in a sealed package or box. 21-A M.R.S. § 606(2). Each package or box must be labeled on the outside with the number of each kind of material enclosed and the name of the voting place for which they are intended. 21-A M.R.S. § 606(2). The School Board must keep a record of the time when and the manner that the ballots are furnished to each voting place.

4. If any municipality in the RSU uses an electronic tabulating system, as defined in 21-A M.R.S. § 808(6), the clerk may remove and mark with indelible ink an appropriate number of ballots for testing purposes in accordance with 21-A M.R.S. § 606 and § 854. Electronic tabulating system means either a punch card voting system or a mark-sense voting system where votes are marked on paper ballots or ballot cards and counted by automatic sensing equipment. The clerk is required to keep a record of the number of test ballots and to seal the record with the test ballots in a container labeled, “TEST BALLOTS” at the conclusion of testing.
5. Upon receipt of the ballots, the municipal clerks are required to send a receipt to the RSU immediately. The clerk must immediately notify the School Board if a ballot is incorrect or an incorrect number has been received. 21-A M.R.S. § 606(3). Upon receipt of a package or box containing ballots, the clerk shall open it in the presence of at least one witness. The clerk shall inspect the ballots to ensure that the ballots do not contain any errors and that the correct number has been received.
1. Under 21-A M.R.S. § 603, the School Board is required to prepare a reasonable number of sample ballots (we suggest at least 20 for each municipality and municipal voting district). A reasonable time before the election the School Board must make available for publication a sample ballot in all newspapers having general circulation in the RSU. 21-A M.R.S. § 603(3). The sample ballots must be printed on paper of a distinctive color (i.e. a different color from the regular ballots) and the facsimile of the signature of the Chair of the School Board must not be placed on the sample ballot. The words “Sample Ballot” should be printed in bold type at the top of the ballots.

The sample ballots must be printed flat with the back blank; otherwise, they must be substantially the same as the official ballots. Upon receipt, the clerk must inspect the sample ballot for accuracy and immediately notify the School Board of any errors. 21-A M.R.S. § 603(4-A). Each municipal clerk must post a sample ballot at least seven days prior to the election in one or more conspicuous public places in each voting district. 21-A M.R.S. § 625. On election day, at least one set of sample ballots must be posted outside the guardrail where they are visible to the voters. 21-A M.R.S. § 651(2).

7. The absentee ballots should be exactly the same as the official ballots. 21-A M.R.S. § 752(1). The absentee ballots should include the facsimile signature of the Chair and should also be packed in sealed packages with marks on the outside specifying the number enclosed. The absentee ballots for the Budget Referendum must be delivered to the municipal clerks not later than 30 days prior to the election day. 20-A M.R.S. § 1486(3)(C).
8. The School Board is required to provide the municipal clerks with an equal number of absentee ballot applications, absentee ballots, return envelopes and outside envelopes. In practice, however, many municipal clerks will provide their own return and outside envelopes or use envelopes provided by the Secretary of State. Check with each municipal clerk for an estimate of quantities of absentee ballot materials needed, if any.
9. Because the referendum is being conducted in conjunction with a statewide election, the municipal clerks should receive an adequate number of instruction posters from the Secretary of State. 21-A M.R.S. § 605-A(2).
10. The School Board must also provide election return forms.

**C. Voting Procedures** *Note: The following procedures may have been modified by Governor order for the July 14, 2020 election.*

1. Before the polls are opened, the municipal clerks shall deliver or have delivered the election materials for each voting place to the warden at the voting place. The warden shall give the clerk a receipt for them. 21-A M.R.S. § 651. The RSU must provide uniform tabulation sheets to be used by the workers at the polls. The clerk or the clerk's designated agents should then post an adequate number of instruction posters, sample ballots, an attested copy of the notice of absentee ballot processing times, and an attested copy of the notice of election in the voting room outside the guardrail. 21-A M.R.S. §§ 621-A(1), 651(2), 759(7). When the polls are opened, or no more than ½ hour before they open, the warden should break the seals on the packages containing the ballots and distribute the ballots to the election clerks in charge of them. The warden then opens the ballot box, examines it and shows publicly that it is empty. The warden then locks the box and delivers the key to the ward clerk who keeps it until the polls are closed. After the box has been locked again, the warden permits the voting to start. 21-A M.R.S. § 651(3)(4). Certified copies of the voting list provided by the registrar shall be utilized for the checklist and the voting procedures set forth in 21-A M.R.S. § 671 must be followed.
2. The registrar is required to hold office hours while the polls are open. 21-A M.R.S. § 622.
3. As soon as the polls have closed, the election officials count the ballots under the supervision of the warden and the ballots are separated into lots in accordance with the procedures of 21-A M.R.S. § 695. As soon as the ballots are counted, the

warden declares the results publicly at the voting place. As soon as the results of the election have been declared, each municipal clerk is required to fill out in duplicate the election return form provided by the School Board, showing the number of votes cast for and against the question or questions. The municipal clerk must sign the return, have it attested by the warden and immediately deliver it to the School Board. 21-A M.R.S. § 711. If any municipality in the RSU has more than one voting district, then an alternative procedure described in section 711 must be used in that municipality. The ballots and lists must be packaged and returned to the clerk in accordance with 21-A M.R.S. § 698. The clerk must keep these materials in the clerk's office for two months. 21-A M.R.S. § 23(7).

4. Ballot inspection and recount procedures are described in 21-A M.R.S. §§ 736 and 737.
5. The qualifications for voting in the referendum are set forth in 21-A M.R.S. § 111.

**E. Election Returns**

1. After the ballots are counted but within twenty-four hours of the vote, the municipal clerk must certify the number of votes on the budget questions to the School Board. 20-A M.R.S. § 1503(3)(A).
  2. As soon as all the votes have been certified, the School Board must meet and compute the total number of votes cast in all the municipalities in the affirmative and in the negative for each question. 20-A M.R.S. § 1503(3)(B).
  3. For each question, if the vote is in the affirmative, the School Board so declares the vote, finds that the question has passed, enter the computation on their records, and send certified copies of the computation to each town or city clerk within the RSU. 20-A M.R.S. § 1503(3)(C) and (E). If the vote is in the negative, the same procedure applies. If there is a tie vote, the School Board must declare that the question has not passed. 20-A M.R.S. § 1503(3)(D).
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