CHAPTER 14
HB 1266 - FINAL VERSION

2020 SESSION

HOUSE BILL 1266

AN ACT making temporary modifications to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (Covid-19) disease.


COMMITTEE: Election Law

AMENDED ANALYSIS

This bill makes temporary changes to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (Covid-19) disease.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT making temporary modifications to the absentee voter registration, absentee ballot application, and absentee voting processes in response to the novel coronavirus (Covid-19) disease.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 14:1 Absentee Registration and Voting; Covid-19.

I. Notwithstanding any law to the contrary, any person who is domiciled in any town or city in this state and is qualified to vote therein at the next subsequent election to be held in said town or city except for the fact that his or her name does not appear on the checklist to be used at the election, and who is temporarily absent therefrom or who by reason of concern for the novel coronavirus (Covid-19) disease is unable to attend a meeting of the supervisors of the checklist, may cause his or her name to be added to such checklist by applying to the city or town clerk or the secretary of state for a voter registration form provided for in RSA 654:7 and an appropriate absentee registration affidavit provided for in RSA 654:17.

II. Notwithstanding any law to the contrary, any person who cannot appear in public on an election day or who is unable to vote in person in the city, town, or unincorporated place in which he or she is registered because of concerns relating to the novel coronavirus (Covid-19) may vote at such an election as provided in RSA 657 and this act.

III. Notwithstanding any law of the contrary, any voter who, due to extenuating circumstances under Covid-19 is attempting but unable to access the polling place on the day of an election may follow the provisions set forth in RSA 659:20-a.

14:2 Absentee Voting; Application; Forms. To increase accessibility, usage, and confidence of absentee ballots and to minimize errors that overburden clerks’ offices, the absentee ballot application form described in RSA 657:4 is hereby suspended through December 31, 2020, provided that such form may be used in the event of a winter storm the day before the election. The secretary of state shall instead prepare new application forms for absentee ballots worded in substantially the following form to be used prior to any election occurring prior to December 31, 2020. The secretary of state shall insert the names of all parties qualified as set forth in RSA 652:11 in the list of parties on the application form. The secretary of state shall prepare the application forms in such quantity as he or she deems necessary:

Absence (Excluding Absence Due to Residence Outside the United States), Religious Observance, Concern for the Novel Coronavirus (COVID-19), and Disability:
I hereby declare that (check one):

_____ I am a duly qualified voter who is currently registered to vote in this town/ward.

_____ I am absent from the town/city where I am domiciled and will be until after the next election, or I am unable to register in person due to a disability or concern for the novel coronavirus (COVID-19), and request that the forms necessary for absentee voter registration be sent to me with the absentee ballot.

I will be entitled to vote by absentee ballot because (check one):

_____ I plan to be absent on the day of the election from the city, town, or unincorporated place where I am domiciled.

_____ I cannot appear in public on election day because of observance of a religious commitment.

_____ I am unable to vote in person due to a disability.

_____ I am unable to vote in person due to concern for the novel coronavirus (COVID-19).

_____ I cannot appear at any time during polling hours at my polling place because of an employment obligation. For the purposes of this application, the term “employment shall include the care of children and infirm adults, with or without compensation.

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.

I am requesting an official absentee ballot for the following election(s):

_____ State Primary to be held on __________________________

(MM/DD/YYYY)

_____ General Election

For primary elections, I am a member of or I am now declaring my affiliation with the (check one):

_____ Republican Party

_____ Democratic Party

and am requesting a ballot for that party’s primary.

Please print:

Applicant’s Name:

__________________________________________________

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

Applicant’s Voting Domicile (home address):

__________________________________________________

(Street Number) (Street Name) (Apt/Unit) (City/Town) (Ward) (Zip Code)

Mail the ballot to me at this address (if different than the home address):

__________________________________________________

(Street Number) (Street Name) (Apt/Unit) (City/Town) (Ward) (Zip Code)

Applicant’s Phone Number: ________________________
Applicant's Email Address: _______________________

Applicant's Signature: ____________________________

Date Signed: ___________________________

(MM/DD/YYYY)

I attest that I assisted the applicant in executing this form because he or she has a disability.

Signature ______________________

Print Name ______________________

If your absentee ballot application or affidavit envelope has the printed name and signature of a person who assisted you with voting, your signature will not be compared to your signature on the absentee ballot affidavit to verify your identity. Otherwise, if your signatures do not appear to be made by the same person, your absentee ballot may not be counted.

The applicant must sign this form to receive an absentee ballot. Any person who witnesses and assists a voter with a disability in executing this form shall print and sign his or her name in the space provided on the application form. The moderator will not compare the voter's signature on the application with the signature on the absentee ballot affidavit when a person assisting the voter has signed the statement on the absentee ballot application or affidavit envelope that assistance was provided.

14:3 Absentee Registration Affidavit; Covid-19. The absentee registration affidavit form described in RSA 654:17 is hereby suspended through December 31, 2020. The secretary of state shall instead prepare new affidavits worded in substantially the following form to be used prior to any election occurring prior to December 31, 2020:

Affidavit (Absence from town)

I, _________________ do hereby swear or affirm, under the penalties for voting fraud set forth below, the following:

1) That my legal domicile is in the town of _____________, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on ______________, ________ (date), except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in ___________ (city and state or city, province, and country);

4) That I hereby enclose one of the following as proof of identity and domicile:

(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows my name and address; or
(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank
statement, government check, paycheck, other government document that shows my name and
address, or a letter from the administrator of a nursing home or similar facility affirming that I am a
resident of that facility that was provided to me at my request pursuant to the administrator's duty
to provide such a letter upon my request;

5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required
by section 4) above, this application may not be approved; and

6) That I hereby make application for the addition of my name to the checklist of said town to be
used at said election.

___________________________________
Signature of Applicant
_________________________
Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false
information when registering to vote or voting is a class A misdemeanor with a maximum sentence
of imprisonment not to exceed one year and a fine not to exceed $2,000. Fraudulently registering to
vote or voting is subject to a civil penalty not to exceed $5,000.

Affidavit (Physical Disability or Concern for Covid-19)
I, ____________________ do hereby swear or affirm, under the penalties for voting fraud set forth
below, the following:

1) That my legal domicile is in the town of _____________, New Hampshire, I will be of the age
of 18 years or over on election day, and am entitled to vote in the election to be held in said town on
___________, ___ (date), except for the fact that my name does not appear on the checklist to be
used in said town at such election;

2) That I am unable by reason of physical disability or concern for the novel coronavirus (Covid-19)
disease personally to appear before the supervisors of the checklist of said town in their regular
sessions for the correction of the checklist for said election;

3) That I hereby enclose one of the following as proof of identity and domicile or shall send a
photograph or photocopy of that proof to my clerk from the following email
address:__________________________:

   (a) A copy of a current and valid New Hampshire driver's license or an armed services
identification or other photo identification issued by the United States government that shows my
name and address; or

   (b) A copy of a current and valid photo identification and a copy of a current utility bill,
bank statement, government check, paycheck, other government document that shows my name and
address, or a letter from the administrator of a nursing home or similar facility affirming that I am a
resident of that facility that was provided to me at my request pursuant to the administrator's duty to provide such a letter upon my request;

4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 3) above, this application may not be approved; and

5) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

__________________________
Signature of Applicant

__________________________
Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed $2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed $5,000.

14:4 Absentee Voting; Procedure by Clerk. Amend RSA 657:18 to read as follows:

657:18 Procedure by Clerk. Upon receipt of an outer envelope purporting to contain an official absentee voting ballot, the clerk of the city or town shall, subject to RSA 657:16, attach thereto the application for an absentee ballot submitted by said voter and record the information pursuant to RSA 657:15. All such envelopes shall be preserved unopened until election day except as provided by RSA 659:49-b.

14:5 New Section; Absentee Voting; Procedure by Clerk; Single Application for Primary and General Election. Amend RSA 657 by inserting after section 18 the following new section:

657:18-a Procedure by Clerk; Single Application for Both Primary and General Elections. When the application for an absentee ballot requests both the primary and general election absentee ballot, a copy of the application shall be attached to the outer envelope of the primary ballot upon receipt and the original application preserved and attached to the general election ballot upon receipt.

14:6 New Paragraph; Preparation of Polling Place; Arrangement. Amend RSA 658:9 by inserting after paragraph VI the following new paragraph:

VII. The requirements of this section 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.

14:7 Processing of Absentee Ballots. Amend RSA 659:49 to read as follows:

659:49 Processing Absentee Ballots.

I. Processing of previously received absentee ballots shall begin at 1:00 p.m. unless a different time, that is no earlier than [2 hours] one hour after the opening of the polls[,] is posted and announced in accordance with paragraph II. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time for
the processing of such ballots during normal polling hours. Absentee ballots which are received after the start time for processing absentee ballots and prior to 5:00 p.m. on the day of the election shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, [upon the written challenge of 10 or more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election] the moderator, or his or her designee, shall post the time at which the processing of absentee ballots shall begin at the polling place and one other public location at least 24 hours before the polls open. In addition, when the polls open the moderator shall announce the time at which the processing of absentee ballots shall begin.

14:8 Opening Absentee Ballot Outer Envelopes. Amend RSA 659:49-b to read as follows:

659:49-b Opening Absentee Ballot Outer Envelopes. The moderator or the moderator’s designee may authorize the opening of absentee ballot outer envelopes on election day or the Thursday, Friday, Saturday, or Monday prior to the time established for processing absentee ballots in RSA 659:49, but after the corrected checklist has been posted provided that the opening of the outer envelopes occurs in public with notice of the time and place. [The envelope containing the ballot shall not be removed from the outer envelope at such time, and The outer envelope containing the inner envelope shall be secured until it is processed pursuant to RSA 659:50.] After the outer envelope has been opened, the affidavit on the inner envelope shall be examined, the voter's name shall be announced, an opportunity for a challenge of the ballot shall be given, and a notation may be made on the checklist to help facilitate processing of the ballot on election day. Notwithstanding RSA 659:51, if absentee ballots are partially processed before election day a challenge may not be made after the notation has been made on the checklist. The ballot shall remain secure in the unopened affidavit envelope until final processing on election day.

14:9 New Section; Election Procedure; Processing Absentee Ballots; Partial Processing of Absentee Ballots Prior to an Election. Amend RSA 659 by inserting after section 55 the following new section:

659:55-a Partial Processing of Absentee Ballots Prior to an Election.

I. The moderator, or his or her designee, may begin the processing of absentee ballots prior to the opening of the polls provided that the clerk shall post, in an appropriate public place and prior to election day, notice of the time and place of the processing. If the moderator chooses to do so it shall be posted in 2 appropriate public places, one of which shall be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 48 hours, excluding Sundays and legal holidays, prior to such meeting. A copy of the notice shall be provided to the secretary of state. The partial processing of absentee ballots prior to an
election shall occur on the Thursday, Friday, Saturday, or Monday prior to the date of the election after the posting of the checklist. The moderator shall be assisted by at least 3 other election officers as defined under RSA 652:14. Members of the general public may observe this process. Under no circumstances shall absentee ballots be counted prior to the opening of the polls.

II. Once notice of the processing has been posted, all absentee ballots received by the end of the day preceding the posted time for the meeting shall be partially processed. Only one session for the partial processing of absentee ballots may be scheduled prior to an election.

III. Except as otherwise provided, the moderator, or his or her designee, shall adhere to the procedures detailed in RSA 659:49-b, RSA 659:50, RSA 659:51, RSA 659:52, RSA 659:53, RSA 659:54, RSA 659:54-a, RSA 666:4, and RSA 666:5.

14:10 Absentee Voting; Procedure by Clerk RSA 657:18 is repealed and reenacted to read as follows:

657:18 Procedure by Clerk. Upon receipt of an outer envelope purporting to contain an official absentee voting ballot, the clerk of the city or town shall, subject to RSA 657:16, attach thereto the application for an absentee ballot submitted by said voter and record the information pursuant to RSA 657:15. All such envelopes shall be preserved unopened until election day.

14:11 Processing Absentee Ballots. RSA 659:49 is repealed and reenacted to read as follows:

659:49 Processing Absentee Ballots.

I. Processing of previously received absentee ballots shall begin at 1:00 p.m. unless a different time, that is no earlier than 2 hours after the opening of the polls, is posted and announced in accordance with paragraph II. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time for the processing of such ballots during normal polling hours. Absentee ballots which are received after the start time for processing absentee ballots and prior to 5:00 p.m. on the day of the election shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election. The moderator, or his or her designee, shall post the time at which the processing of absentee ballots shall begin at the polling place and one other public location at least 24 hours before the polls open. In addition, when the polls open the moderator shall announce the time at which the processing of absentee ballots shall begin.

14:12 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as follows:

659:49-b Opening Absentee Ballot Outer Envelopes. The moderator or the moderator’s designee may authorize the opening of absentee ballot outer envelopes on election day prior to the time
established for processing absentee ballots in RSA 659:49, provided that the opening of the outer
envelopes occurs in public with notice of the time and place. The envelope containing the ballot shall
not be removed from the outer envelope at such time, and the outer envelope containing the inner
envelope shall be secured until it is processed pursuant to RSA 659:50.

14:13 Repeal. The following are repealed:

I. Sections 1-3 of this act, relative to temporary modifications to the absentee voter
registration, absentee ballot application, and absentee voting processes in response to the novel
coronavirus (Covid-19) disease.

II. RSA 657:18-a, relative to the procedure by clerk upon receipt of a single application for
both primary and general elections.

III. RSA 658:9, VII, relative to alternative requirements for preparation of the polling place.

IV. RSA 659:55-a, relative to partial processing of absentee ballots prior to election.

14:14 Contingent Renumbering; HB 1672-FN. If HB 1672-FN of the 2020 regular legislative
session becomes law, then RSA 659:55-a, as inserted by section 9 of this act and as repealed by
paragraph IV of section 13 of this act, shall be renumbered as RSA 659:55-c.

14:15 Effective Date.

I. Sections 10-13 of this act shall take effect January 1, 2021.

II. The remainder of this act shall take effect upon its passage.

Approved: July 17, 2020
Effective Date:
I. Sections 10-13 shall take effect January 1, 2021.
II. Remainder shall take effect July 17, 2020.