

# MEMORANDUM

To: Jonathan Freedman, Chair, Natick Board of Selectmen  
Melissa Malone, Town Administrator  
Frank Foss, Town Moderator  
Diane Packer, Town Clerk  
Anna Nolin, School Superintendent

From: Karis North, Town Counsel

Re: "Muni III" Legislation

Date: June 5, 2020

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On June 4, 2020, the House and the Senate enacted H. 4777/S. 2680. It was signed by the Governor on June 5, 2020. Muni IIL provides further municipal relief, and impacts the following areas: municipal caucuses; municipal elections; town meeting quorum; representative town meeting methodology and process; relocation of town meeting outside of town boundaries; use of stabilization funds in FY 2021; payment of existing school service contracts for school committees or regional school districts; and issuance of emergency educator licenses.

A copy of the signed law, to be codified as Chapter 92 of the Acts of 2020, is attached. I have also attached a very brief summary prepared by DOR/DLS.

The law provides as follows:

1. Amends Chapter 45 of the Acts of 2020 so that municipal caucuses or elections scheduled between March 23, 2020 and June 30, 2020 may be continued up until August 1, 2020. (Sections 1-3)
2. Municipal caucuses scheduled in that same time period may be eliminated. (Section 1A)
3. A town may vote, by action of its select board or board of selectmen (hereinafter "select board"), in consultation with the town moderator ("moderator"), to prescribe the number of votes necessary to constitute a quorum at any town meeting held during the Governor's March 10, 2020 declaration of a state of emergency at a number less than would otherwise be required, but not less than 10 percent of that number. (Section 7)
  - a. If utilizing this provision, the select board must publicize its intention to consider an adjustment of the town meeting quorum not less than 7 days before the vote of the select board. The vote must be taken in a meeting

that provides for adequate public access which will allow the general public to clearly follow the deliberations as they are occurring.

- b. Not less than 10 days after such vote to adjust the quorum requirement, the town clerk shall notify the attorney general of the adjusted requirement.
4. A moderator, in a town having a representative town meeting form of government, may determine that it is not possible to safely assemble the town meeting members and interested members of the public while complying with any applicable orders regarding public assemblies, and may request that the select board call for a representative town meeting to be held through remote participation, including video or telephone conferencing (Section 8).

Such request shall be in writing, and shall include (but not be limited to) (Section 8(a)):

- a. The moderator's determination and request to hold a town meeting through remote participation in accordance with this section;
- b. The video or telephone conferencing platform the moderator has determined to use to hold town meeting;
- c. Confirmation that the moderator has consulted with the local disability commission or coordinator for the federal Americans with Disabilities Act compliance; and
- d. A certification by the moderator that the moderator has tested the video or telephone conferencing platform, and the platform satisfactorily enables the town meeting to be conducted in substantially the same manner as if the meeting occurred in person at a physical location.

The video or telephone conferencing platform used by a town meeting for remote participation shall provide for the ability for (Section 8(a)):

- a. The moderator, town meeting members, town officials and any other interested members of the public to identify and hear the moderator and each town meeting member who attends and participates in the remotely-held town meeting, as well as any other participants;
- b. The ability to determine whether a quorum is present;
- c. A town meeting member, town official or individual to request recognition by the moderator without prior authorization;
- d. The moderator to determine when a town meeting member wishes to be recognized to speak, make a motion, or raise a point of order or object to a request for unanimous consent;
- e. The moderator to recognize a town meeting member, town official or other individual to speak and to enable that person to speak;
- f. The ability to conduct a roll call vote;
- g. Any interested members of the public to access the meeting remotely for purposes for witnessing the deliberations and actions taken at the town meeting; and
- h. The town meeting to be recorded.

Registered voters residing in the town wishing to participate in a remote town meeting shall submit a request to participate to the town clerk not less than 48 hours in advance of town meeting. Upon receipt of the request and verification of the voter registration status, the clerk shall provide the requester instructions for participating in the remote town meeting.

Not later than 10 business days following receipt of a written request by the moderator for remote participation at a town meeting, the select board shall vote to determine if the town meeting shall be held remotely, by the means selected by the moderator (Section 8(b)).

If the select board votes to approve the request of the moderator for remote participation at a town meeting, and the select board has already issued a warrant under M.G.L. c. 39, section 10 (which is the case in Natick), the select board shall approve and issue (at the same meeting with the moderator), a notice that expressly states (Section 8(c)):

- a. that the town meeting shall be held remotely by means of the video or telephone conferencing platform requested by the moderator;
- b. the date and time of the meeting; and
- c. any information necessary for the moderator, town meeting members, town officials, and interested members of the public to access and witness the deliberations and actions taken at the town meeting remotely.

The notice issued by the select board shall be:

- a. accompanied by the written request of the moderator submitted to the select board;
- b. filed and posted in accordance with the requirements of M.G.L. c. 39, section 10A(b);
- c. distributed to each town meeting member; and
- d. publically posted not less than 10 days before the scheduled date of the remote town meeting.

The notice may include a date, time, and place for the town meeting to be resumed if the town meeting does not vote to continue the town meeting remotely.

Not later than five (5) business days after a vote of select board to approve the request of the moderator to hold a town meeting remotely pursuant to subsection (c) or (d), the town clerk shall submit certified copies of the vote of the select board and the written request of the moderator to the attorney general (Section 8(e)).

Prior to taking up any business at a representative town meeting held through remote participation under this section, the town meeting members present and voting at the meeting shall vote on whether or not to commence business at the town meeting remotely by means of the chosen video or telephone conferencing platform. If the town meeting votes to continue conducting the town meeting remotely, then the town meeting shall proceed by remote participation to address

the articles included in the warrant. If the town meeting does not vote to continue conducting the town meeting remotely, then the town meeting shall be adjourned to the date, time and place specified in the notice under subsection (c). If no date, time and place has been specified in the notice, the town meeting shall immediately be dissolved without taking any votes on any other matters and the select board may call the town meeting pursuant to a new warrant that provides for the town meeting to be held in person at a physical location in accordance with said section 10 of said chapter 39, all other applicable laws and provisions of the town charter and by-laws (Section 8(f)).

Any roll call vote taken at a representative town meeting held through remote participation pursuant to this section shall be taken by any means that the moderator determines accurately and securely records the votes of those entitled to vote at the meeting, including, but not limited to, roll call vote, electronic voting, voting by ballot, voting by phone or any combination thereof. The vote of each town meeting member on a roll call vote shall be recorded and kept with the minutes of the town meeting (Section 8(g)).

A representative town meeting held remotely pursuant to this section shall be recorded and the recording shall be preserved and made publicly available on the town's website for not less than 90 days after the conclusion of the remote town meeting (Section 8(h)).

All actions taken during a remote town meeting held pursuant to this section are hereby ratified, validated and confirmed to the same extent as if the town meeting had been conducted in person and such actions are in accordance with all other applicable laws, charter provisions, ordinances and by-laws (Section 8(i)).

5. A select board, with the approval of the moderator, may vote to hold a town meeting outside the geographic limits of the town, if the select board determines that it is not possible to adequately conduct town meeting in a location within the geographic limits of the town that ensures health and safety (Section 9).
  - a. All elections by ballot or other matters determined by ballot at an election must be held within the geographic limits of the town.
  - b. Notice of the location of a town meeting held outside the geographic limits of the town must be publically posted, not less than 10 days before the date of the town meeting.
6. As a result of the COVID-19 pandemic and the Governor's Declaration of Emergency (Section 10):
  - a. A town may suspend the dedication of revenues to 1 or more special funds for fiscal year 2021, when such funds are dedicated to a stabilization fund under M.G.L. c. 40, section 5B, or dedicated to a special fund pursuant to special law, and such revenue may be credited to the general fund.

- b. For fiscal year 2021, a town may appropriate funds from any stabilization fund created under M.G.L. c. 40, section 5B or special fund established by special law, for any lawful purpose, notwithstanding the specified purpose of the fund.
  - c. In a town with a town meeting form of government, these two options above shall be exercised by a 2/3 vote of the select board.
  - d. Subsection (a) does not apply to surcharges assessed under M.G.L. c. 40 section 39M (water) or chapter 44B (CPA fund) or any other special fund established under the General Laws.
- 7. Notwithstanding M.G.L. c. 41, sections 52 and 56, a town may approve a payment for the period beginning on or after March 10, 2020 through the remainder of fiscal year 2020 on an existing service contract for school or education-related services entered into by the school committee or renegotiated or modified by the school committee in order to maintain the availability of and access to the services secured under the underlying contract between the parties (Section 12).
  - a. The underlying service contract must have been in effect prior to March 10, 2020 and the service provider was unable to perform the services under the contract as a result of the disruptions from the COVID-19 pandemic and there are sufficient unencumbered available funds remaining for such payment in the appropriation for the purpose.
  - b. Before any payment, the service contractor shall present to the approving authorities (for a town, the school committee, a town accountant or other similar officers, and the chief executive officer (in Natick, the select board)), a sworn statement reporting grants, discounted loans or other financial support that the service contractor has received from a state, federal, or local government as a result of the COVID-19 pandemic, or if none and none to be received, a sworn statement affirming none. If the service contractor has received grants, discounted loans or other financial support from a state, federal or local government, the payments to the service contractor made under this section or section 13 shall not exceed the total amount to which the service contractor is eligible, less the amount the service contractor has received in grants, discounted loans or other financial support, and the sworn statement shall include an attestation that the payment is not in excess of that amount.
  - c. This section does not apply to tuition and rates set by the bureau of purchased services within the operational services division under M.G.L. c. 7, section 22N, which are set and non-negotiable for fiscal year 2020.
- 8. The same provisions as in 7 above, apply to regional school districts (Section 13). In a regional school district, the payment shall be approved by the regional school comment and a business manager, superintendent for business, or other employee with title of similar import and responsibilities as those of a town accountant.
- 9. The commissioner of elementary and secondary education may issue emergency educator licenses to individuals, upon application to the commissioner, during the

period of the state of emergency, and for up to 180 days following the termination of the state of emergency. An emergency educator license shall be valid through June 30, 2021, or a different time period specified by the commissioner (Section 14).

- a. To be eligible for a special educator license, an individual must possess a bachelor's degree and must have been prevented from completing the testing, demonstration of subject matter knowledge, coursework or program requirements for an educator license because of the COVID-19 pandemic or the March 10, 2020 declaration of a state of emergency.
  - b. Emergency educator licenses are only available to individuals seeking their first Massachusetts academic and vocational teacher, specialist teacher, administrator or professional support license. Individuals shall identify the field and level of the license sought in their application to the commissioner.
  - c. Service under an emergency educator license shall not be counter was service in acquiring a professional teacher status or rights under M.G.L. c. 71, section 41; however, if the employee obtains a temporary, initial, provisions or professional educator's license in the same field as the emergency educator's license by June 30, 2021 (or a different deadline specified by the commissioner), and continues to work for the same employer, the service under the emergency educator's license shall be counted as service toward professional teacher status.
10. The law also ratifies actions taken by a town to postpone elections or the deadline for filing papers, postponement of municipal caucuses, or to hold a virtual representative town meeting, if taken before the legislation passed (Sections 15-17).