# *KENO Q&A*

Chapter 229 of the 2017 New Hampshire Laws (SB 191) provided for additional education grants for school districts that have full-day kindergarten, with the funding for those grants to come, in part, from the proceeds of keno operations. The new law allows businesses that hold liquor licenses—restaurants, hotels, private clubs, and certain other establishments—to operate keno games upon obtaining a license from the liquor commission. However, keno may be operated only in cities and towns that have voted to allow it.

The new law has generated many questions from municipal officials. Below are some questions and answers that we hope will help in understanding the new law.

◊ ◊ ◊ ◊ ◊

***Q. How does the new law regarding keno and kindergarten affect municipalities?***

A. From a municipal perspective, the new law does two things: (1) It provides funding to school districts for full-day kindergarten, with the intent that the funding will eventually (but not immediately) come from the proceeds from keno operations in the state. (2) It allows each municipality to vote on whether to allow the operation of keno within the municipality.

***Q. How does the kindergarten funding work, and what is the connection with keno?***

A. Under existing law, state adequate education grants to school districts are based on the "average daily membership in attendance" in each district—essentially, the number of full-time students. The basic grant is $3,561 per student, subject to certain adjustments. Kindergarten students are counted as "½ day attendance," even if they attend for a full day. In other words, adequate education grants are provided only for half-day kindergarten—a little under $1,800 per student.

Under SB 191, for fiscal year 2019 only, the state will distribute an additional $1,100 (for a total of about $2,900) for each student attending a full-day kindergarten program. These distributions do not depend on keno revenue.

For fiscal year 2020 and later years, the state will instead distribute an additional one-half share (approximately $1,800) so that districts are receiving the full grant of $3,561 for full-day kindergarten students. ***However,*** that amount is to be funded by keno proceeds, which will be paid (after certain deductions) into the state's education trust fund. If the amount of revenue raised through keno is less than enough to fund these additional grants, the grants will be reduced proportionally, but not below $1,100 per student. Thus, districts will receive a minimum of $1,100 and a maximum of (roughly) $1,800 per full-time student, depending the amount of keno revenue.

***Q. Must a municipality allow keno in order to receive the full-day kindergarten funding?***

A. No. There is no connection between a municipality's allowance (or disallowance) of keno and its receipt of kindergarten funding. If the school district provides full-day kindergarten, it will receive the funding, both for fiscal year 2019 and for later years, regardless of whether the municipality allows keno. The only effect of a given municipality's allowance of keno is a cumulative one: if a municipality chooses to allow keno, and one or more establishments in the municipality subsequently obtain keno licenses, there may be an increase in the total statewide keno revenue that is available to fund kindergarten beginning in fiscal year 2020.

***Q. Who determines whether a municipality will allow keno?***

A. In a town, the question of allowing keno may be placed on the warrant for an annual town meeting, "and shall be voted on by ballot." In a city, it may be placed on the official ballot for any regular municipal election. If a majority of those voting on the question vote in the affirmative, keno games may be operated within the town or city.

***Q. May the question be submitted at a special town meeting?***

A. No, the law specifically says "an annual town meeting."

***Q. How does it work in a town that doesn't have town meetings?***

A. Unfortunately, the legislature appears to have overlooked that question. The legislation provides for placing the question on the ballot at a city election, or on the warrant for a town meeting. No provision is made for a town that does not have a town meeting. Because those towns are governed much more like cities, it would make sense to put the question on the ballot at a regular town election—but the statute does not say that, and we are not prepared to opine that this would be legal. We urge towns without a town meeting to consult with their legal counsel before taking action. In the meantime, an amendment to clarify the law seems in order.

***Q. What is the process for getting the question onto the ballot or warrant? Is it up to the governing body, or can citizens petition to have it included?***

A. The short answer is either one. Here is the longer answer:

For towns: The new law says the question "shall be placed on the warrant of an annual town meeting under the procedure set out in RSA 39:3." That is the statute that authorizes citizens to submit a warrant article by petition (signed by at least 25 voters or two percent of the registered voters), so one might conclude that *only* the citizens, not the selectmen, may initiate the warrant article. However, RSA 31:131 states, "Any question which an enabling statute authorizes to be placed in the warrant for a town meeting by petition may also be inserted by the selectmen, even in the absence of any petition." Thus, the selectmen may place the question on the warrant at their own initiative, and they *must* place it on the warrant if a valid petition is received under RSA 39:3.

For cities: The new law states that the legislative body (city council or board of aldermen) "may vote to place the question on the official ballot for any regular municipal election, or, in the alternative, shall place the question on the official ballot . . . upon submission to the legislative body of a petition signed by 5 percent of the registered voters."

***Q. So the governing body is not required to put the question on the ballot unless it receives a citizen petition?***

A. Correct. In the absence of a citizen petition, the governing body *may* place the question on the ballot (or the warrant), in its sole discretion. If a valid citizen petition is received, the governing body *must* submit the question to the voters.

***Q. If the question is placed on the warrant for a town meeting, should it go on the official ballot?***

A. It depends. Of course, if a town has adopted the official ballot referendum (SB 2) form of town meeting, *all* questions must go on the official ballot.

In a town with a traditional (non-SB 2) town meeting, the question *may* be, but is not *required* to be, placed on the official ballot. This is because the new law specifies the form of the question and says that it will be "voted on a ballot," but does not use the term "*official* ballot." Under RSA 39:3-d, II, any law that prescribes the wording of a question, but does not use the term "official ballot," is deemed to "authorize, but not require, the use of the official ballot for that question, unless a contrary intent is specified."

RSA 39:3-d, II, goes on to say that if the question is *not* placed on the official ballot, "the prescribed wording shall be placed in the warrant, and may also be placed upon a preprinted ballot to be acted upon in open meeting in the same manner as a secret 'yes-no' ballot." Although the statute says the question *may* be placed on a preprinted ballot, SB 191 says the question *shall* be voted on by ballot, so there is no discretion. Thus, if the question is not placed on the *official* ballot, it must be voted on by "unofficial" written ballot at the open meeting.

In short, non-SB 2 towns have a choice: put the question on the official ballot, or put it on the warrant and vote on it by written ballot at the open meeting.

***Q. What exactly is "the question" that should go on the ballot or warrant?***

A. The law states, "The wording of the question shall be substantially as follows: 'Shall we allow the operation of keno games within the town or city?'"

***Q. Must it be stated exactly in that manner?***

A. No, not *exactly*. Note that the law says "substantially." Further, RSA 31:130 states, "The forms of questions prescribed by municipal enabling statutes shall be deemed advisory only, and municipal legislation shall not be declared invalid for failure to conform to the precise wording of any question prescribed for submission to voters, so long as the action taken is within the scope

of, and consistent with the intent of, the enabling statute or statutes." So, for example, there would be nothing wrong with omitting the words "town or" when the question is placed on the ballot in a city, or omitting the words "or city" on a town meeting warrant.

***Q. In an SB 2 town, the question would be placed on the warrant that goes to the deliberative session. May the deliberative session amend the question?***

A. No. RSA 40:13, IV(a) states, "Warrant articles whose wording is prescribed by law shall not be amended" at the deliberative session. If the question is placed on the warrant, voters may discuss and debate it as much as they want at the deliberative session, but they may not amend it. The question must go on the official ballot "substantially" as provided in SB 191.

***Q. Can the governing body include an explanation of the issue along with the question on the warrant or ballot?***

A. No. This would be a supplement to the language required by the law, and is likely to be deemed inconsistent with the requirement that the question be "substantially" in the form stated in the law. If the question is going to be submitted, it should be as stated above, without anything extra. The time for explaining the issue to voters is at the hearing that is required before the vote. It also can be explained as part of the discussion at the deliberative session (in a SB 2 town) or at the town meeting (in a non-SB 2 town).

***Q. When is the hearing required to be held? Is it different for a town and a city?***

A. For either a town or a city, the governing body must hold a hearing "at least 15 days but not more than 30 days before the question is to be voted on." Notice of the hearing must be "posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing."

In a town, the date of the hearing will depend on the session at which the vote will be taken. In an SB 2 town, because the question will be on the official ballot, the hearing must be held 15 to 30 days before the second (voting) session—*not* before the deliberative session. In a town with a traditional town meeting, if the question is going to be on the official ballot, the hearing must be held 15 to 30 days before the voting session. If, instead, it is going to be voted on by written ballot at the open meeting, the hearing must be held 15 to 30 days before the meeting.

In a city, the hearing must be held 15 to 30 days before the municipal election at which the question will be on the ballot.

In all cases, be sure to post and publish the required notice of the hearing as stated above.

***Q. Does the governing body need to hold a hearing <u>before</u> voting to put the question on the ballot or warrant?***

A. No, unless the municipality has a charter or rules of procedure that require such a hearing.