

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:2

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

- (a) Strategy or negotiations with respect to collective bargaining;
- (b) Consultation with legal counsel;
- (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
- (d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

[Paragraph II effective until January 1, 2019; see also paragraph II set out below.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons

appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may 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 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

[Paragraph II effective January 1, 2019; see also paragraph II set out above.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may 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 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative

committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

II-a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

II-b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting

discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018. 2018, 244:1, eff. Jan. 1, 2019.

Section 91-A:2-a

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.