

Sen. Burling, Dist. 5
Rep. Thomas, Belk. 5
April 30, 2007
2007-1380s
01/09

Amendment to HB 377-FN-LOCAL

1 Amend RSA 91-A:4 and RSA 91-A:5 as inserted by section 4 of the bill by replacing them with the
2 following:

3

4 91-A:4 Minutes and Records Available for Public Inspection.

5 I. Every citizen during the regular or business hours of all ~~[such]~~ *public* bodies or agencies,
6 and on the regular business premises of such *public* bodies or agencies, has the right to inspect all
7 ~~[public]~~ *governmental* records *in the possession, custody, or control of such public bodies or*
8 *agencies*, including minutes of meetings of the *public* bodies ~~[or agencies]~~, and to *copy and make*
9 *memoranda[;] or abstracts[; and photographs or photostatic copies]* of the records or minutes so
10 inspected, except as otherwise prohibited by statute or RSA 91-A:5. *In this section, "to copy"*
11 *means the reproduction of original records by whatever method, including but not limited*
12 *to photography, photostatic copy, printing, or electronic or tape recording.*

13 I-a. Records of any payment made to an employee of any public body or agency listed in RSA
14 91-A:1-a, ~~[§] VI(a)-(d)~~, or to the employee's agent or designee, upon the resignation, discharge, or
15 retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other
16 leave, shall immediately be made available without alteration for public inspection. All records of
17 payments shall be available for public inspection notwithstanding that the matter may have been
18 considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

19 II. After the completion of a meeting of ~~[such] a public [bodies or agencies] body~~, every
20 citizen, during the regular or business hours of ~~[all] such public [bodies or agencies] body~~, and on
21 the regular business premises of such *public* ~~[bodies or agencies] body~~, has the right to inspect all
22 notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to
23 make memoranda[;] or abstracts[; ~~photographs or photostatic copies, or tape record~~] or to *copy* such
24 notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-
25 A:5.

26 III. Each *public* body or agency shall keep and maintain all ~~[public]~~ *governmental* records
27 in its custody at its regular office or place of business in an accessible place and, if there is no such
28 office or place of business, the ~~[public]~~ *governmental* records pertaining to such *public* body or
29 agency shall be kept in an office of the political subdivision in which such *public* body or agency is
30 located or, in the case of a state agency, in an office designated by the secretary of state.

31 III-a. *Governmental records created or maintained in electronic form shall remain*

1 *accessible for the same retention or archival periods as their paper counterparts. Methods*
2 *that may be used to accomplish this requirement include, but are not limited to, copying to*
3 *microfilm or paper or to durable electronic media using standard or common file formats.*

4 *III-b. A governmental record in electronic form shall no longer be subject to*
5 *disclosure pursuant to this section after it has been initially and legally deleted. For*
6 *purposes of this paragraph, a record in electronic form shall be considered to have been*
7 *deleted only if it is no longer readily accessible to the public body or agency itself. The*
8 *mere transfer of an electronic record to a readily accessible "deleted items" folder or*
9 *similar location on a computer shall not constitute deletion of the record.*

10 *IV. Each public body or agency shall, upon request for any [public] governmental record*
11 *reasonably described, make available for inspection and copying any such [public] governmental*
12 *record within its files when such records are immediately available for such release. If a public body*
13 *or agency is unable to make a [public] governmental record available for immediate inspection and*
14 *copying, it shall, within 5 business days of request, make such record available, deny the request in*
15 *writing with reasons, or furnish written acknowledgment of the receipt of the request and a*
16 *statement of the time reasonably necessary to determine whether the request shall be granted or*
17 *denied. If a computer, photocopying machine, or other device maintained for use by a public body*
18 *or agency is used by the public body or agency to copy the [public] governmental record [or*
19 *document] requested, the person requesting the copy may be charged the actual cost of providing the*
20 *copy, which cost may be collected by the public body or agency. Nothing in this section shall exempt*
21 *any person from paying fees otherwise established by law for obtaining copies of [public]*
22 *governmental records or documents, but if such fee is established for the copy, no additional costs*
23 *or fees shall be charged.*

24 *V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which*
25 *maintains [its] governmental records in [a computer storage system] electronic format may, in*
26 *lieu of providing original [documents] records, [provide a printout of any record reasonably*
27 *described and which the agency has the capacity to produce] copy governmental records*
28 *requested to electronic media using standard or common file formats in a manner that does*
29 *not reveal information which is confidential under this chapter or any other law. If copying to*
30 *electronic media is not reasonably practicable, or if the person or entity requesting access*
31 *requests a different method, the public body or agency may provide a printout of*
32 *governmental records requested, or may use any other means reasonably calculated to*
33 *comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1.*
34 *Access to work papers, personnel data, and other confidential information under RSA 91-A:5, IV*
35 *shall not be provided.*

36 *VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or*
37 *other claim, entered into by any political subdivision or its insurer, shall be kept on file at the*

1 municipal clerk's office and made available for public inspection for a period of no less than 10 years
2 from the date of settlement.

3 VII. *Nothing in this chapter shall be construed to require a public body or agency*
4 *to compile, cross-reference, or assemble information into a form in which it is not already*
5 *kept or reported by that body or agency.*

6 91-A:5 Exemptions. The following *governmental* records are exempted from the provisions of
7 this chapter:

8 I. Records of grand and petit juries.

9 II. Records of parole and pardon boards.

10 III. Personal school records of pupils.

11 IV. Records pertaining to internal personnel practices; confidential, commercial, or financial
12 information; test questions, scoring keys, and other examination data used to administer a licensing
13 examination, examination for employment, or academic examinations; and personnel, medical,
14 welfare, library user, videotape sale or rental, and other files whose disclosure would constitute
15 invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this
16 paragraph shall prohibit a *public* body or agency from releasing information relative to health or
17 safety from investigative files on a limited basis to persons whose health or safety may be affected.

18 V. Teacher certification records~~[both hard copies and computer files]~~ in the department of
19 education, provided that the department shall make available teacher certification status
20 information.

21 VI. Records pertaining to matters relating to the preparation for and the carrying out of all
22 emergency functions, including training to carry out such functions, developed by local or state
23 safety officials that are directly intended to thwart a deliberate act that is intended to result in
24 widespread or severe damage to property or widespread injury or loss of life.

25 VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

26 VIII. Any notes or other materials made for personal use that do not have an official
27 purpose, including *but not limited to*, notes and materials made prior to, during, or after a *[public]*
28 *governmental* proceeding.

29 IX. Preliminary drafts, notes, and memoranda and other documents not in their final form
30 and not disclosed, circulated, or available to a quorum or a majority of ~~[these entities defined in~~
31 ~~RSA 91-A:1-a]~~ *the members of a public body.*

32

33 Amend the bill by replacing all after section 4 with the following:

34

35 5 Remedies. Amend RSA 91-A:3, I and I-a to read as follows:

36 I. If any *public* body or agency or employee or member thereof, in violation of the provisions
37 of this chapter, refuses to provide a *[public]* *governmental* record or refuses access to a *[public]*

1 *governmental* proceeding to a person who reasonably requests the same, such *public* body, *public*
2 agency, or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under
3 this chapter provided that the court finds that such lawsuit was necessary in order to make the
4 information available or the proceeding open to the public. Fees shall not be awarded unless the
5 court finds that the *public* body, *public* agency, or person knew or should have known that the
6 conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that
7 no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding
8 that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing
9 to allow access to a ~~[public]~~ *governmental* proceeding or to provide a ~~[public]~~ *governmental* record,
10 the court may award such fees personally against such officer, employee, or other official.

11 I-a. The court may award attorneys' fees to a ~~[board, agency]~~ *public body or public*
12 *agency* or employee or member thereof, for having to defend against a person's lawsuit under the
13 provisions of this chapter, when the court makes an affirmative finding that the lawsuit is in bad
14 faith, frivolous, unjust, vexatious, wanton, or oppressive.

15 6 Reference Change. Amend RSA 42:1-a, II(a) to read as follows:

16 (a) A public body properly voted to withhold that information from the public by a vote of
17 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an
18 invasion of privacy, or would adversely affect the reputation of some person other than a member of
19 the public body ~~[or agency]~~ or would render proposed municipal action ineffective; or

20 7 New Section: Communications Outside Meetings. Amend RSA 91-A by inserting after section
21 2 the following new section:

22 91-A:2-a Communications Outside Meetings.

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

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

29 8 Right-to-Know Law; Report Required. On or before July 1, 2009, the public utilities
30 commission and the board of tax and land appeals shall make separate reports relative to their
31 compliance procedures with RSA 91-A to the speaker of the house of representatives, the
32 right-to-know oversight commission, established under RSA 91-A:11, and the president of the senate.
33 Prior to the date of the report required under this section, the public utilities commission and the
34 board of tax and land appeals shall continue to operate relative to RSA 91-A in the same manner as
35 they are operating relative to RSA 91-A on July 1, 2007.

36 9 Effective Date. This act shall take effect July 1, 2007.

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AMENDED ANALYSIS

This bill clarifies the manner in which the right-to-know law applies to both governmental records kept in electronic form and electronic communication used to transact governmental business.

This bill also clarifies communications outside a meeting for the purposes of RSA 91-A.