

# **DRAFT**

## **March 5, 2007**

This document sets forth the changes proposed in **HB 71, HB 82, HB 83, HB 377, HB 838, HB 854** and **HB 866** inserted within the context of the existing RSA 91-A statute and other statutes. This document does not include any proposed amendments.

Black is the exact text from existing statutes.

Red indicates proposed changes.

Blue indicates Right to Know NH comments.

# TITLE VI

## PUBLIC OFFICERS AND EMPLOYEES

### CHAPTER 91-A

#### ACCESS TO ~~[PUBLIC]~~ **GOVERNMENTAL** RECORDS AND MEETINGS ([HB 377](#))

#### **Section 91-A:1**

**91-A:1 Preamble.** – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

#### **Section 91-A:1-a**

Note: In this section only, the order of the existing statute has been changed to be able to make a side by side comparison with proposed changes.

~~91-A:1-a Definition of Public Proceedings.—~~

91-A:1-a Definitions. In this chapter:

~~II. For the purposes of this section, ""advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.~~

I. “Advisory committee” means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

~~I. The term ""public proceedings" as used in this chapter means the transaction of any functions affecting any or all citizens of the state by any of the following:~~

II. “Governmental proceedings” means the transaction of any functions affecting any or all citizens of the state by a public body.

III. “Governmental records” means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term

“governmental records” includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term “governmental records” shall also include the term “public records.”

IV. “Information” means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

V. “Public agency” means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision.

VI. “Public body” means any of the following:

~~(a) The general court including executive sessions of committees; and including any advisory committee established by the general court;~~

(a) The general court including executive sessions of committees; and

~~(b) The governor's council and the governor with the governor's council; including any advisory committee established by the governor by executive order or by the governor's council;~~

including any advisory committee established by the general court;

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council;

~~(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and including any advisory committee established by such entities;~~

(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities;

~~(d) Any board, commission, agency or authority, of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.~~

(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school

administrative unit, charter school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto. [\(HB 377\)](#)

## Section 91-A:2

### 91-A:2 Meetings Open to Public. –

I. For the purpose of this ~~[section]~~ **chapter**, a “meeting” ~~[shall mean]~~ **means** the convening of a quorum of the membership of a public body, as ~~[provided]~~ **defined** in RSA 91-A:1-a, ~~[to discuss or act]~~ **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, 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) Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter;~~

~~[(b)]~~ **(a)** Strategy or negotiations with respect to collective bargaining;

~~[(c)]~~ **(b)** Consultation with legal counsel; ~~[(d)]~~

~~[(d)]~~ **(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.** [\(HB 377\)](#)

**(e) Deliberations of the members of the board of tax and land appeals, the public utilities commission, the site evaluation committee, or the nuclear decommissioning finance committee relating to an**

*adjudicative proceeding pending before their respective agency.*  
[\(HB 83\)](#)

II. ~~[All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies.]~~ *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 names of members, persons appearing before the **public** bodies ~~[or agencies]~~, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection within 144 hours of the ~~[public]~~ meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any **public** body ~~[or agency]~~, 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 ~~[or agency]~~, 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 ~~[or agency described in RSA 91-A:1-a]~~ 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. [\(HB 377\)](#)

### ***91-A:2-a Communications Outside Meetings.***

***I. Any communications, in whatever form, outside a meeting among the members of a quorum of the membership of a public body which bear upon matters over which such body has supervision, control, jurisdiction, or advisory power shall be disclosed at the next meeting of the body before any decision may be made, including a decision not***

*to act. If such communications are in writing, copies or printouts shall be made a part of the public record. Communications among less than a quorum of members need not be disclosed.*

*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 of this chapter.*

*III. The disclosure requirements of paragraphs I and II shall not apply to communications specifically exempted from the definition of a “meeting” under RSA 91-A:2, I. [\(HB 82\)](#)*

### **Section 91-A:3**

I.(a) **Public** bodies [~~or agencies~~] shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No **public** body [~~or agency~~] may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him **or her**, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the **public** body [~~or agency~~] itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the **public** body [~~or agency~~] or any subdivision thereof, or against any member thereof because of his or her membership in such **public** body [~~or agency~~], until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any **public** body [~~board, or agency~~] for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A. ([HB 866](#))

III. Minutes of [~~proceedings~~] **meetings** in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the **public** body [~~or agency~~] itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event

of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply. ([HB 377](#))

## Section 91-A:4

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

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

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

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

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

*III-a. Governmental records created or maintained in electronic form shall remain accessible for the same retention or archival periods as their paper counterparts. Methods that may be used to accomplish this requirement include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.*

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

[\(HB 377 version\)](#)

IV. Each public body or agency shall, upon request for any ~~[public]~~ **governmental** record reasonably described, make available for inspection and copying any such ~~[public]~~ **governmental** record within its files when such records are immediately available for such release. If a public body ~~[or agency]~~ is unable to make a ~~[public]~~ **governmental** record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a **computer**, photocopying machine, or other device maintained for use by a **public** body ~~[or agency]~~ is used by the **public** body ~~[or agency]~~ to copy the ~~[public]~~ **governmental** record ~~[or document]~~ requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the **public** body ~~[or agency]~~. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of ~~[public]~~ **governmental** records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged. [\(HB 377\)](#)

[\(HB 838 version\)](#)

IV. Each public body or agency shall, upon request for any public record reasonably described, make available for inspection and copying any such public record within its files when such records are immediately available for such release. If a public body or agency is unable to make a public record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the

request shall be granted or denied. If a photocopying machine or other device maintained for use by a body or agency is used by the body or agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the body or agency. ***The body or agency may also recover costs associated with research of and time to process requests for copies of public records or documents.*** Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged. [\(HB 838\)](#)

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

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

***VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.*** [\(HB 377\)](#)

## **Section 91-A:5**

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

I. Records of grand and petit juries.

II. Records of parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, *lists of registered dog owners*, [\(HB 71\)](#) and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a *public* body ~~[or agency]~~ from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

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

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

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

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

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of ~~[those entities defined in RSA 91-A:1-a]~~ *the members of a public body*. [\(HB 377\)](#)

### **Section 91-A:5-a**

**91-A:5-a Limited Purpose Release.** – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall be marked ""limited purpose release" and shall not be redisclosed by the recipient.

**Source.** 2002, 222:5, eff. Jan. 1, 2003.

## Section 91-A:6

**91-A:6 Employment Security.** – This chapter shall apply to RSA 282-A, relative to employment security; however, in addition to the exemptions under RSA 91-A:5, the provisions of RSA 282-A:117-123 shall also apply; this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282-A:117-123 together with all records and data developed from RSA 282-A:117-123.

**Source.** 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

## Section 91-A:7

**91-A:7 Violation.** – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. The courts shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he may order notice by any reasonable means, and he shall have authority to issue an order ex parte when he shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

**Source.** 1967, 251:1. 1977, 540:5, eff. Sept. 13, 1977.

## Section 91-A:8

### **91-A:8 Remedies.** ([HB 377 version](#))

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

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

II. The court may invalidate an action of a public body ~~[or agency]~~ taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter. [\(HB 377\)](#)

#### **91-A:8 Remedies.** [\(HB 854 version\)](#)

I. ~~[If]~~ Any **public** body or agency or employee or member thereof, ~~[in violation of]~~ **who violates** the provisions of this chapter ~~[-refuses to provide a public record or refuses access to a public proceeding to a person who reasonably requests the same, such body, agency, or person]~~ shall be liable for reasonable attorney's fees and costs incurred in ~~[a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the proceeding open to the public. Fees shall not be awarded unless the court finds]~~ **an action brought pursuant to RSA 91-A:7, provided** that the body, agency, or person knew or should have known that the conduct engaged in was a violation of this chapter ~~[or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter,]~~. Upon a finding that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing to allow access to a public proceeding or to provide a public record, the court may award such fees personally against such officer, employee, or other official.

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

II. The court may invalidate ~~[an action]~~ **a decision** of a public body or agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter. [\(HB 854\)](#)

## Section 91-A:9

**91-A:9 Destruction of Certain Information Prohibited.** – A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

**Source.** 2002, 175:1, eff. Jan. 1, 2003.

## Procedure for Release of Personal Information for Research Purposes

### Section 91-A:10

#### **91-A:10 Release of Statistical Tables and Limited Data Sets for Research.** –

I. In this subdivision:

(a) ""Agency" means each state board, commission, department, institution, officer or other state official or group.

(b) ""Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

(c) ""Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.

(d) ""Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.

(e) ""Direct identifiers" means:

(1) Names.

(2) Postal address information other than town or city, state, and zip code.

(3) Telephone and fax numbers.

(4) Electronic mail addresses.

(5) Social security numbers.

(6) Certificate and license numbers.

(7) Vehicle identifiers and serial numbers, including license plate numbers.

(8) Personal Internet IP addresses and URLs.

(9) Biometric identifiers, including finger and voice prints.

(10) Personal photographic images.

(f) ""Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.

(g) ""Limited data set" means a data set from which all direct identifiers have been removed or blanked.

(h) ""Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:

(1) Contains direct identifiers.

(2) Is under the control of the state.

(i) ""Provided by law" means use and disclosure as permitted or required by New

Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.

(j) "Public record" means records available to any person without restriction.

(k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

(D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

(A) a summary of background, purposes, and origin of the research;

(B) a statement of the general problem or issue to be addressed by the research;

(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information

contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications;  
and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request. Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

**Source.** 2003, 292:2, eff. July 18, 2003.

## **Right-to-Know Oversight Commission**

### **Section 91-A:11**

[RSA 91-A:11 repealed by 2005, 3:2 effective Nov. 1, 2010.]

#### **91-A:11 Oversight Commission Established. –**

There is established an oversight commission to study and oversee the right-to-know law in light of the supreme court's decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communications in the transaction of governmental business.

**Source.** 2005, 3:1, eff. May 3, 2005.

### **Section 91-A:12**

[RSA 91-A:12 repealed by 2005, 3:2 effective Nov. 1, 2010.]

**91-A:12 Membership and Compensation. –**

I. The members of the oversight commission shall be as follows:

(a) Four members of the house of representatives, one from the science, technology and energy committee, one from the municipal and county government committee, one from the judiciary committee, and one other member, appointed by the speaker of the house.

(b) Three members of the senate, appointed by the president of the senate.

(c) Three municipal officials, appointed by the New Hampshire Municipal Association.

(d) One school board member, appointed by the New Hampshire School Boards Association.

(e) One school administrator, appointed by the New Hampshire School Administrators Association.

(f) Two county officials, appointed by the New Hampshire Association of Counties.

(g) Four members of the public, one of whom shall be an attorney who has knowledge of and experience with the right-to-know law, one of whom shall be an information technology professional, and one of whom shall be a telecommunications professional, all appointed by the governor with the consent of the council.

(h) The attorney general, or designee.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

**Source.** 2005, 3:1, eff. May 3, 2005.

## **Section 91-A:13**

[RSA 91-A:13 repealed by 2005, 3:2 effective Nov. 1, 2010.]

**91-A:13 Duties. –**

The commission shall study:

I. The need for disclosure requirements or guidelines for email and other electronic communication occurring between and among state, county, and local government appointed and elected officials and employees of governmental entities.

II. The need for disclosure requirements or guidelines for electronic communications with constituents of state, county, and local government appointed and elected officials and employees of governmental entities.

III. Archival requirements for electronic documents.

IV. The status of proprietary data within the definitions of the right-to-know law.

V. The ability to recover costs relative to the retrieval of electronic files and communications.

VI. Issues relative to public records posted to web sites of governmental entities.

VII. Whether a member of a body subject to the right-to-know law may participate in a meeting by teleconference or other electronic means.

VIII. The extent to which the public will be provided access to stored computer data

under the right-to-know law.

IX. Any other matter deemed relevant by the commission.

**Source.** 2005, 3:1, eff. May 3, 2005.

### **Section 91-A:14**

[RSA 91-A:14 repealed by 2005, 3:2 effective Nov. 1, 2010.]

#### **91-A:14 Chairperson; Quorum. –**

The members of the commission shall elect a chairperson from among the members. Nine members of the commission shall constitute a quorum.

**Source.** 2005, 3:1, eff. May 3, 2005.

### **Section 91-A:15**

[RSA 91-A:15 repealed by 2005, 3:2 effective Nov. 1, 2010.]

#### **91-A:15 Report. –**

The commission shall make an annual report beginning on November 1, 2005, together with its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, and the governor.

**Source.** 2005, 3:1, eff. May 3, 2005.

# CHAPTER 42

## OATHS OF TOWN OFFICERS

### Section 42:1-a

#### **42:1-a Manner of Dismissal; Breach of Confidentiality. –**

I. The manner of dismissing a town officer who violates the oath as set forth in RSA 42:1 shall be by petition to the superior court for the county in which the town is located.

II. Without limiting other causes for such a dismissal, it shall be considered a violation of a town officer's oath for the officer to divulge to the public any information which that officer learned by virtue of his official position, or in the course of his official duties, if:

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

(b) The officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body [~~or agency;~~] or would render proposed municipal action ineffective. ([HB 377](#))

III. No town officer who is required by an order of a court to divulge information outlined in paragraph II in a legal proceeding under oath shall be guilty of a violation under this section.

# CHAPTER 71-B

## BOARD OF TAX AND LAND APPEALS

### Section 71-B:7

71-B:7 *Board Meetings*; Hearing Procedure.

*I. The board shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations, and other communications involving a quorum of the board shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the board, are exempted from the provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by a quorum of the board, and served upon the parties.*

*II.* Whenever the board shall hold hearings, it shall not be bound by the strict rules of evidence adhered to in the superior courts in this state. The board shall introduce into evidence and may take into consideration in determining any question any information obtained through its own investigation, including information obtained by persons employed under RSA 71-B:14. ~~[In addition to the provisions of RSA 91-A,]~~ The board shall tape record the proceedings of any taxation hearing before it and shall make such tape recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later. [\(HB 866\)](#)

# CHAPTER 363

## THE PUBLIC UTILITIES COMMISSION

### Appointment, Qualification, etc.

#### Section 363:17-b

**363:17-b Final Orders.** – The commission shall issue a final order on all matters presented to it. The transcript or minutes of oral deliberations shall not constitute a final order. A final order shall include, but not be limited to:

- I. The identity of all parties;
- II. The positions of each party on each issue;
- III. A decision on each issue including the reasoning behind the decision; and
- IV. The concurrence or dissent of each commissioner participating in the decision.

**363:17-c Meetings of the Commission.** The public utilities commission shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations, and other communications involving a quorum of the commission shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the commission held pursuant to RSA 91-A. ([HB 866](#))

# CHAPTER 378

## PUBLIC UTILITIES RATES AND CHARGES

### Information Not Subject to Right-to-Know Law

#### Section 378:43

##### **378:43 Information Not Subject to Right-to-Know Law. –**

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

(b) Any information or records that public utilities commission staff or a party places into the record during a telephone utility proceeding shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

(a) Pertain to the provision of competitive services; or

(b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

III. If the public utilities commission subsequently determines on its own motion or on request of another party, after notice and an opportunity for hearing, that the telephone utility's representation is incorrect and the information or records do not satisfy the requirements of paragraph II, the information or records shall be subject to disclosure under RSA 91-A. Before permitting public disclosure, the commission shall afford the telephone utility 30 days from issuance of its written decision to request reconsideration. The material shall be maintained confidentially pending consideration of any such request and until all rights to appeal the determination have been exhausted.

IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the public utilities commission are exempt from the provisions of RSA 91-A.

[\(HB 866\)](#)

# CHAPTER 162-H

## ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

### Section 162-H:10

#### **162-H:10 Public Hearing; Studies; Rules. –**

I. Within 30 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee and, if a bulk power supply facility application, the commission, shall hold at least one joint public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before said hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. The public hearings shall be joint hearings, with representatives of the other agencies that have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public. Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. Except for informational hearings, subsequent hearings shall be in the nature of adversary proceedings and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent session. *Deliberations and other communications involving a quorum of the site evaluation committee and, if a bulk power supply facility application, the commission, shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the site evaluation committee or commission, as applicable, held pursuant to RSA 91-A or through publication of a written order setting forth findings of fact and conclusions of law. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the site evaluation committee or the commission are exempt from the provisions of RSA 91-A. (HB 866)*

III. The site evaluation committee and, if a bulk power supply facility application, the commission, shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings. The committee and the commission shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

IV. The site evaluation committee and, if a bulk power supply facility application, the commission, shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and counsel for the public and, if a bulk power supply facility application, the commission, shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee in the case of an energy facility, or the committee and the commission in the case of a bulk power supply facility. The site evaluation committee, the commission, and counsel for the public, as provided for by RSA 162-H:9, are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee and, if a bulk power supply facility application, the commission, shall jointly issue such rules, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

# CHAPTER 162-F

## DECOMMISSIONING OF NUCLEAR ELECTRIC GENERATING FACILITIES

### Section 162-F:21

#### **162-F:21 Funding Amount Established; Report; Public Hearing. –**

I. Each committee shall hold at least one public hearing to receive information on funding requirements for each fund. The committee shall have the authority to subpoena witnesses and administer oaths and to compel by subpoena duces tecum the production of any accounts, books, contracts, records, documents, memoranda, and papers in order to determine the amount needed for the fund. *Deliberations and other communications involving a quorum of the nuclear decommissioning finance committee shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A, provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the nuclear decommissioning finance committee held pursuant to RSA 91-A or through publication of a written order pursuant to RSA 162-F:21, III and IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the nuclear decommissioning finance committee are exempt from the provisions of RSA 91-A. (HB 866)*

II. The amount of the fund shall be sufficient to cover all costs of decommissioning the facility to standards set by any state agency with jurisdiction over decommissioning that are not less stringent than those standards set by the Nuclear Regulatory Commission.

III. Each committee shall rely on all available data and experience in determining the amount of such fund including, but not limited to, information from the Nuclear Regulatory Commission; the public utilities commission; the owner or owners of the facility; municipal and regional planning commissions and municipal governing bodies; and relevant construction cost indices. The committee shall publish a transcript of all proceedings during which information was presented or offered into testimony, and a detailed analysis of the facts and figures used in determining the amount of the fund.

IV. Following the committee's deliberation and prior to final hearing, the plan for scheduled payments into the fund and relevant evidence, including the transcripts and analysis published pursuant to RSA 162-F:21, III, shall be available for public review in the clerk's office of the city or town where the facility is located and in the office of the public utilities commission at least 30 days prior to the one or more public hearings on the committee's proposed plan. At least one hearing shall be held in the city or town where the facility is located. A notice of the time and place of each hearing shall be posted in 2 appropriate public places in the city or town where the facility is located and shall be printed at least twice in a newspaper of general circulation for that city or town and in a newspaper of state-wide circulation 2 weeks prior to each hearing. Testimony presented at the hearings held pursuant to this paragraph shall be taken into consideration by the committee when it formalizes the payment schedule plan. All testimony shall be transcribed and made a permanent record.