



Conservation Commission  
Laconia, New Hampshire

# Rules of Administrative Procedure

Enacted: 02/17/2021

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SECTION I. AUTHORITY AND ADOPTION

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 36-A, as amended, granted the City of Laconia authority to establish the Conservation Commission, which was established in August, 1987. The Conservation Commission shall have all the powers granted to Conservation Commissions outlined in Chapter 36-A, as well as Chapter 5-30 of the Laconia City Ordinances.

SECTION II. PURPOSE AND INTENT

1. Pursuant to RSA 36-A:2, the Laconia Conservation Commission is established for the proper utilization and protection of natural resources and for the protection of watershed resources of the City. The Commission holds the following responsibilities:
  - 1.1 Such commission shall conduct researches into its local land and water areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work.
  - 1.2 It shall keep an index of all open space and natural, aesthetic or ecological areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the state or lands owned by a town or city.
  - 1.3 It shall keep an index of all marshlands, swamps and all other wetlands in a like manner, and may recommend to the city council or selectmen or to the department of natural and cultural resources a program for the protection, development or better utilization of all such areas.
  - 1.4 It shall keep accurate records of its meetings and actions.
  - 1.5 The commission may appoint such clerks and other employees or subcommittees as it may from time to time require.

SECTION III. ORGANIZATION

1. The Commission shall consist of five (5) regular members and up to three (3) alternate members appointed by the Mayor, with approval of the council, pursuant Chapter 5-30:B in the Laconia City Ordinances. Officers will be elected during the annual meeting on January and generally perform the following duties:
  - 1.1. Chair
    - 1.1.1 Conducts all Commission meetings as provided for by statute. When unavailable to act as chair due to schedule conflicts or potential conflict of interest, the Chair shall direct the Vice Chair, or other experienced member in that order to act as chair.
    - 1.1.2 The original Chair will be appointed by the Mayor for a term of three years. The second term Chair shall be selected annually every January by the members from one of their number.

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- 1.1.3 Acts as Conservation Commission representative in meeting with the City Manager, Mayor, and/or City Council subcommittees as requested;
  - 1.1.4 Calls special meetings of the Conservation Commission as necessary;
  - 1.1.5 Appoints subcommittees of the Conservation Commission as necessary.
  - 1.1.6 Has the authority to sign and provide comments on applications and materials on behalf of the Commission, such as NH Department of Environmental Services (NHDES) permit applications.
- 1.2. Vice Chair
- 1.2.1. Acts to fulfill the Chair's duties in the event of illness, absence, or recusal of the Chair.
- 1.3. Alternates
- 1.3.1. Alternate members may be appointed as provided for in RSA 36-A:3 and Chapter 5-30:B of the City Code. They may participate in the meeting, but cannot vote unless they are a sitting member.
- 1.4. Advisory Members
- 1.4.1. One member of the Laconia Planning Board and one member of the Laconia City Council will be appointed by the Mayor, with the approval of the Council, to act as advisory members to the Conservation Commission.
2. The Conservation Technician- Shall be appointed by the Director of Planning and Community Development. The Conservation Technician shall provide the Commission the following services:
- 2.1. Receive and review applications for completeness, create and maintain application files;
  - 2.2. Prepare Commission packets;
  - 2.3. Publish required agendas for meetings, and shall notify the applicant and other appropriate parties of the time and place of such hearings;
  - 2.4. Take and prepare minutes of the meetings, and post minutes in accordance with RSA 91-A;
  - 2.5. Prepare and disseminate any necessary memos for each meeting; and
  - 2.6. Maintain general files, manage correspondence, and perform other duties as requested from time to time.
  - 2.7. If the Conservation Commission requests the Conservation Technician to conduct duties outside of what is listed above in 2.1-2.6, approval is needed by the Director of Planning and Community Development.

The Director of Planning and Community Development or their designee shall be responsible for the assignment of the Conservation Technician's duties to other department staff in any instance

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where the Conservation Technician is unavailable, as the Conservation Technician has responsibilities outside of assisting the Conservation Commission.

SECTION IV. FINANCE

1. The Conservation Commission will adhere to RSA 36-A:4. I. regarding financial matters.

SECTION V. MEETINGS

1. **Time** - Meetings of the Commission are held on the first and third Wednesdays of each month, except when noted otherwise. All meetings of the full Commission will commence at 6:00 PM and no business will be begun after 10:00 PM without a vote of the Commission to extend the meeting further. All meetings shall be held in the Armand A. Bolduc City Council Chamber, City Hall, unless noted otherwise.
2. **Quorum** – Four (4) voting members shall constitute a quorum for the transaction of business, but a less number may meet only for the purposes of continuance or adjournment. All members should provide an RSVP for each scheduled meeting to the Conservation Technician by either email or telephone at least 48-hours in advance.

If there is a lack of quorum, the meeting will be canceled.

3. **Notice** - The Conservation Technician shall post notice of all meetings on the City website or in two public places at least seventy-two hours in advance of the meeting, not counting Sundays and holidays. RSA 91-A:2, II. Special meetings, such as public hearings will also be posted in the newspaper, at least ten days prior to the meeting.

The Chair can call a special meeting to order, if necessary, with at least 24-hour notice and posted in two public places, pursuant RSA 91-A:2, II. This includes work sessions.

All meetings, including subcommittee meetings, are open to the public with the exception of non-public sessions properly called and held under RSA 91-A:3.

Cancelations due to weather, or other reasons will be posted prior to the original meeting time, if known in advance.

4. **Attendance**- If a member misses five (5) consecutive meetings with no contact, this shall be evidence for non-interest. The Commission shall then vote to recommend to the City Council that the member be removed from the Commission.
5. **Voting**- After discussion has occurred on an item or application, the Chair will call for a motion to be made. If seconded, discussion will be called for on the motion. A majority vote of the voting members present is needed to approve any item. If a vote is not unanimous, the record shall indicate by naming those who are in favor, opposed and abstaining.

If the vote amongst members results in a tie, the motion is defeated.

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SECTION VI. MEETING ORDER

1. At each regular meeting, the general order of the proceedings shall be as follows, unless revised by the Chair:
  - 1.1. Call to order and quorum check
  - 1.2. Salute to the flag
  - 1.3. Approval of previous meeting minutes
  - 1.4. Permits and Applications
    - 1.4.1. Continued Permits and Applications
    - 1.4.2. New Permits and Applications
  - 1.5. Old Business
  - 1.6. Liaison and Subcommittee Reports
  - 1.7. Other Business
  - 1.8. Staff Report
  - 1.9. Adjournment

SECTION VII. AGENDA

1. Format – In respect to SECTION VI. 1., meetings of the Commission shall follow a standard meeting format, as determined by City policy, as set by the Chair in consultation with the Director of Planning and Community Development or their designee and shall provide opportunity for the Commission to conduct regular business sessions for both current and long range planning. Any suggested items for the agenda must be provided to the Conservation Technician no later than five (5) business days prior to the scheduled meeting.

SECTION VIII. OPERATIONAL PROCEDURES

1. CITY OF LACONIA PERMIT APPLICATION REVIEW

1.1. Meeting Procedures

- 1.1.1. The Conservation Commission will schedule to review the application during a regular meeting when,
  - 1.1.1.1. A Wetlands Conditional Use permit application has been submitted to the Planning Department. One of the sets of plan proposal shall be submitted by the filing deadline to the Conservation Technician, as listed on the annual review schedule.
  - 1.1.1.2. The applicant requests feedback from the Commission on their application proposal, prior to submitting a formal Wetlands Conditional Use Permit application to the Planning Department. Materials for the proposal should be submitted to the Conservation Technician at the Planning Department in advance of the scheduled meeting.

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- 1.1.1.3. The Planning Department, Technical Review Committee (TRC) or other Board recommends that the application is reviewed by the Conservation Commission.
  - 1.1.2. Members of the Conservation Commission are responsible for reviewing the applications and visiting the site prior to the meeting, if deemed necessary. See Section IX regarding the rules of procedure on site visits.
  - 1.1.3. The Commission will provide feedback on the application during the regular meeting sessions and vote to approve support, decline support, or approve support of the application with conditions. Any conditions will be noted in a memo to the Planning Board for Staff to include during the application's Staff Review.
2. NHDES WETLANDS BUREAU APPLICATION REVIEW
- 2.1. The Conservation Commission, or Chair of the Conservation Commission, shall review NHDES Fill and Dredge in Wetlands permit applications, pursuant RSA 482-A.
  - 2.2. Meeting Procedures
    - 2.2.1 A copy of the NHDES Wetlands Bureau permit application for Conservation Commission review should be provided to the Conservation Technician, at least five (5) business days prior to the scheduled Conservation Commission meeting date.
    - 2.2.2 On behalf of the Commission, the Chair and Director of Planning and Community Development or their designee, can use their discretion to have the Chair sign the application without full review of the Commission, or
    - 2.2.3 The application will be reviewed during the next regular meeting. The Conservation Technician will add the application to the agenda of the next scheduled Conservation Commission meeting.
    - 2.2.4 During a regular meeting, the Commission will provide feedback on the application and vote to approve support, decline support, or approve support of the application with conditions. Any conditions will be noted in a memo that will accompany the application to NHDES, and a copy will be retained in the City's records.
    - 2.2.5 If the application was signed by the Chair, without the full review of the Commission, the project and brief description of the proposal will be added to the next meeting agenda to inform the Commission of the Chair's signature, which waives the Commission's right to intervene on the application.

If the Conservation Commission, or Chair on behalf of the Commission, chooses to intervene on an applicable application, they may do so pursuant RSA 482-A.

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SECTION IX. SITE VISITS

1. The Commission may request to conduct a site visit in order to provide input on an application, monitor conservation easements, investigate a complaint, or to gather other data, such as natural resource inventory.
2. Per RSA 36-A:4, no commission, its members, or designee shall enter private property to gather data about the property for use in a wetlands designation, prime wetlands designation, natural resource inventory report or map, or natural heritage map without first obtaining permission of the property owner or agent, or a lawfully issued warrant. Such permission may be oral or written, provided that record is made of oral authorization. If consent for entry is denied, the conservation commission, or designee, may obtain an administrative inspection warrant under RSA 595-B.
3. Per RSA 36-A:4, III. Prior to requesting permission, the commission, its members, or designee shall notify the landowner of the purpose of the data gathering, the specific features that will be evaluated, the manner in which the data collected will be recorded and distributed, and possible known consequences of the data collection.
4. The site visit will be run by the Chair or their designee, with the purpose of data collection, questions about the location of proposed project features, etc. There will be no debates or discussion of merits or opinions of the project during the site visit.

SECTION X. RULES OF ORDER

1. For purposes of conduct of the meeting, except as specifically provided herein, the procedures as outlined in 'Robert's Rules of Order' shall be generally followed, at the discretion of the Commission.
2. A motion shall be carried by a majority of members present and voting in the affirmative, unless otherwise specified. Members shall signify their votes on all actions taken by the raising of one hand, so that the recording secretary may indicate those in favor, opposed, and abstaining for the record. As necessary, the Chair may direct a showing of hands or voice vote for clarification.

SECTION XI. RECORDS

All plans, applications, supporting documents and minutes of the proceedings of the Conservation Commission shall be maintained by the Planning Department and be made available to the public, press, and officials, except sealed minutes taken in a non-public session.

The procedure to seal nonpublic session minutes will be followed under RSA 91-A:3, III

SECTION XII. OTHER MATTERS

1. The Director of Planning and Community Development or their designee acts as liaison for the Conservation Commission with all federal, state and local officials and bodies, the press, public, applicants and land owners and their representatives except



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where the Commission specifically expresses its wish that the Chair of the Conservation Commission act as its policy spokesperson. Thus, all official contact with the parties as enumerated should occur through the Director of Planning and Community Development or their designee or Chair, as specified. This policy is adopted for the purposes of coordination and accuracy and should not act to limit any Commission member in the expression of a personal or private point of view as a resident, citizen, or abutter. However, it is the responsibility of every Commission member to ensure that statements made as a private citizen are recognized as such and not necessarily the position of the Conservation Commission.

2. Contact with legal counsel for the Commission should also be directed through the Director of Planning and Community Development or their designee to maintain coordination and cost responsibility to the City. In the event that a member is not satisfied with the response of the Director of Planning and Community Development or their designee to a specific concern, (s)he should address that concern to the Chair and request discussion or action by the Committee or full Commission.
3. The Commission will conduct itself in accordance with the City of Laconia Code of Ethics as described in Article V of the City Ordinances. The Chair must maintain civil and professional dialogue amongst members, applicants, and members of the public at all times during the meeting. Any member of the Commission can request a motion to the Chair to have the Commission take a brief recess and reconvene, as described in Robert's Rules of Order.

SECTION XIII. WAIVER

The Conservation Commission may vote to waive any requirement of these Rules by a majority vote taken at a meeting with a quorum present when it is determined that such waiver will properly carry out the purpose and intent of these Rules.

SECTION XIV. AMENDMENTS

These Rules of Procedure may be amended from time to time by vote of a majority of the full membership (not alternates) of the Commission at a public meeting. Prior to the Commission's consideration of any rule change, any member proposing such a change shall draft or request staff to draft, the change in written form and have prepared and distributed copies of the proposed change at least one meeting (month) prior to the meeting at which the change is to be considered. As with other administrative matters, the Director of Planning and Community Development or their designee, in consultation with the Chair, shall place the matter on the Commission's agenda for action at the earliest convenient time.

ENACTED: 2/17/2021

AMENDED:

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SECTION XV. ATTACHMENT A: Chapter 5-30 from City of Laconia Ordinances

§ 5-30. Conservation Commission.

- A. The City Council of the City of Laconia, New Hampshire, hereby does adopt the provisions of Chapter 36-A of the Revised Statutes Annotated of the State of New Hampshire, which chapter authorized the establishment of a Conservation Commission for the promotion and development of the natural resources and for the protection of the watershed resources of the city.
- B. There hereby is established the Laconia Conservation Commission, which shall consist of seven members to be appointed by the Mayor, with the approval of the Council. In addition to the seven members, one member of the Laconia Planning Board and one member of the Laconia City Council will be appointed by the Mayor, with the approval of the Council, to act as advisory members to the Conservation Commission. The Mayor shall appoint the original Chairman for a term of three years and shall appoint the other original members so that two members shall have two-year terms and two members shall have one-year terms. The second-term Chairman shall be selected by the members from one of their number. The sixth and seventh members shall be appointed for terms to expire in August 1987. All members thereafter appointed shall be for terms of three years. Any member of the Commission so appointed may, after a public hearing, if requested, be removed for cause by the City Council. [Amended 4-29-1986 by Ord. No. 125-86.10]
- C. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment.
- D. The duties and powers and terms of membership shall be as set forth in said Chapter 36-A.

SECTION XVI. ATTACHMENT B: Chapter 36-A of New Hampshire Statutes

**1.1 CHAPTER 36-A  
CONSERVATION COMMISSIONS**

**1.1.1 Section 36-A:1**

**36-A:1 Method of Adoption.** — Any city by vote of its city council, and any town at any duly warned meeting, may adopt or rescind the provisions of this chapter.

**Source.** 1963, 168:1, eff. Aug. 20, 1963. 2008, 317:1, eff. Jan. 1, 2009.

**1.1.2 Section 36-A:2**

**36-A:2 Conservation Commission.** — A city or town which accepts the provisions of this chapter may establish a conservation commission, hereinafter called the commission, for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town. Such commission shall conduct researches into its local land and water areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. It shall keep an index of all open space and natural, aesthetic or ecological areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the state or lands owned by a town or city. It shall keep an index of all marshlands, swamps and all other wet lands in a like manner, and may recommend to the city council or selectmen or to the department of natural and cultural resources a program for the protection, development or better utilization of all such areas. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the annual town or municipal report. The commission may appoint such clerks and other employees or subcommittees as it may from time to time require.

**Source.** 1963, 168:1. 1973, 550:1, eff. Sept. 3, 1973. 2017, 156:14, I, eff. July 1, 2017.

**1.1.3 Section 36-A:3**

**36-A:3 Composition of Commission.** — The commission shall consist of not less than 3 nor more than 7 members. In a town which has a planning board, one member of the commission may also be on the planning board. In a city which has a planning board, one member of the commission may be on the planning board. In cities, the members of the commission shall be appointed by the mayor subject to the provisions of the city charter, and in towns the members of the commission shall be appointed by the selectmen. Alternate members may be appointed in a like manner and when the alternate serves in the absence or disqualification of a regular member, the alternate shall have full voting powers. When a commission is first established, terms of the members shall be for one, 2, or 3 years, and so arranged that the terms of approximately 1/3 of the members will expire each year, and their successors shall be appointed for terms of 3 years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. Members of a conservation commission shall be residents of the city or town which they represent. Members of a conservation commission also may serve on other municipal boards and commissions, including, but not limited to a

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historic district commission established under RSA 673:4, and a heritage commission established under RSA 673:4-a.

**Source.** 1963, 168:1. 1973, 550:2. 1974, 44:2. 1987, 318:1. 1995, 138:1, eff. July 23, 1995. 1997, 31:1, eff. June 27, 1997.

#### 1.1.4 Section 36-A:4

##### **36-A:4 Powers. –**

I. Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

II. No commission, its members, or designee shall enter private property to gather data about the property for use in a wetlands designation, prime wetlands designation, natural resource inventory report or map, or natural heritage map without first obtaining permission of the property owner or agent, or a lawfully issued warrant. Such permission may be oral or written, provided that record is made of oral authorization. If consent for entry is denied, the conservation commission, or designee, may obtain an administrative inspection warrant under RSA 595-B.

III. Prior to requesting permission, the commission, its members, or designee shall notify the landowner of the purpose of the data gathering, the specific features that will be evaluated, the manner in which the data collected will be recorded and distributed, and possible known consequences of the data collection.

IV. No data gathered by entering property without the permission of the landowner or an administrative warrant shall be used for any purpose other than law enforcement purposes authorized by statute.

V. The conservation commission, in reviewing an application to provide input to any other municipal board, shall not require submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or providing such input.

**Source.** 1963, 168:1. 1973, 550:3. 1995, 138:2, eff. July 23, 1995. 2008, 317:2, eff. Jan. 1, 2009. 2012, 202:2, eff. June 13, 2012. 2013, 270:4, eff. Sept. 22, 2013.

#### 1.1.5 Section 36-A:4-a

##### **36-A:4-a Optional Powers. –**

I. The legislative body of a city or town may vote at an annual meeting to authorize the conservation commission to:

(a) Expend funds for the purchase of interests in land outside the boundaries of the municipality, subject to the approval of the local governing body; and

(b) Expend funds for contributions to "qualified organizations," as defined in section 170(h)(3) of the Internal Revenue Code of 1986,<sup>1</sup> for the purchase of property interests or facilitating transactions relative thereto to be held by the qualified organization, when such purchase carries out the purposes of this chapter. Because such contributions further the protection of the state's natural resources, they are hereby declared to be a public purpose.

II. A vote under this section may be taken simultaneously with the adoption of this chapter or any time thereafter. If the vote is taken simultaneously with the adoption of this chapter, a separate question shall be placed on the warrant.

(a) The wording of the question under subparagraph I(a) shall be: "Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(a) to authorize the conservation commission to expend funds to purchase interests in land outside the boundaries of our municipality, subject to the approval of the local governing body?"

(b) The wording of the question under subparagraph I(b) shall be: "Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(b) to authorize the conservation commission to expend funds for contributions to 'qualified organizations' for the purchase of property interests, or facilitating transactions related thereto, where the property interest is to be held by the qualified organization and the town will retain no interest in the property?"

III. The provisions of this section may be rescinded by vote of the legislative body.

<sup>1</sup> 26 U.S.C.A. § 170(h)(3).

**Source.** 2008, 317:3, eff. Jan. 1, 2009.

#### 1.1.6 Section 36-A:5

##### **36-A:5 Appropriations Authorized. –**

I. A town or city, having established a conservation commission as authorized by RSA 36-A:2, may appropriate money as deemed necessary for the purpose of this chapter. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 36-A:4 may be placed in a conservation fund and allowed to accumulate from year to year. Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting.

II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the conservation commission. The disbursement of conservation funds shall be authorized by a majority of the conservation commission. Prior to the use of such funds for the purchase of any interest in real property or for a contribution to a qualified organization for the purchase of property interests under RSA 36-A:4-a, I(b), the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7.

III. In the municipality that has adopted the provisions of RSA 79-A:25, II, the specified percentage of the revenues received pursuant to RSA 79-A shall be placed in the conservation fund.

**Source.** 1963, 168:1. 1973, 550:4. 1987, 318:2. 1988, 120:1, eff. June 18, 1988. 2008, 317:4, eff. Jan. 1, 2009.

#### 1.1.7 Section 36-A:6

**36-A:6 Commissioner of Resources and Economic Development. –** The commissioner of the department of natural and cultural resources may establish a program to assist, at their request, the cities and towns which have adopted the provisions of this chapter, in acquiring land and in planning of use and structures as described in RSA 36-A:2.

SECTION XVII. ATTACHMENT C: Chapter 91-A of New Hampshire Statutes

### 1.2 CHAPTER 91-A

#### *ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS*

##### 1.2.1 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.

**Source.** 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

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

##### **91-A:1-a Definitions. –**

In this chapter:

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.

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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, chartered public 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.

(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 any committee, advisory or otherwise, established by such entities.

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

(e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

**Source.** 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

### 1.2.3 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.

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,

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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

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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.

#### 1.2.4 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.

**Source.** 2008, 303:4, eff. July 1, 2008.

#### 1.2.5 Section 91-A:2-b

##### **91-A:2-b Repealed by 2012, 232:14, eff. Dec. 1, 2012. –**

#### 1.2.6 Section 91-A:3

##### **91-A:3 Nonpublic Sessions. –**

I. (a) Public bodies 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 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 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 by or against the public body or any subdivision thereof, or by or against any member thereof because of his or her membership in such public body, 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 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 or state correctional facilities by county correctional superintendents or the commissioner of the department



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of corrections, 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.

(k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.

(l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

III. Minutes of 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 of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. 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 taken in public session, 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 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.

**Source.** 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016.

### 1.2.7 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 public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts 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 a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, 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 or to

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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 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 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 be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may 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 or agency 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.

[Paragraph IV effective until January 1, 2020; see also paragraph IV set out below.]

IV. Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such 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 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 governmental record 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. No fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

[Paragraph IV effective January 1, 2020; see also paragraph IV set out above.]

IV. (a) Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release.

(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:

- (1) Make such record available;
- (2) Deny the request; or
- (3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

(c) A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(d) 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 governmental record 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. No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to

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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 or agency 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.

**Source.** 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009. 2016, 283:1, eff. June 21, 2016. 2019, 107:1, eff. Jan. 1, 2020; 163:2, eff. Jan. 1, 2020 at 12:01 a.m.

### 1.2.8 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.

I-a. The master jury list as defined in RSA 500-A:1, IV.

II. Records of parole and pardon boards.

III. Personal school records of pupils, including the name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the assessment under RSA 193-C:6.

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, 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 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 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 the members of a public body.

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and

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assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.

**Source.** 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017. 2018, 91:2, eff. July 24, 2018. 2019, 54:1, eff. Aug. 4, 2019.

### 1.2.9 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.

### 1.2.10 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.

### 1.2.11 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. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high 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 or her 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. Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

**Source.** 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008. 2018, 289:1, eff. Jan. 1, 2019.

### 1.2.12 Section 91-A:8

#### **91-A:8 Remedies.** –

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency 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 enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the

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provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than \$250 and not more than \$2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.

V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

**Source.** 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

### 1.2.13 Section 91-A:8-a

**91-A:8-a Repealed by 2017, 126:2, eff. November 1, 2017. –**

### 1.2.14 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.

## 1.3 Procedure for Release of Personal Information for Research Purposes

### 1.3.1 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.

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(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.

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- (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.

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

### **1.4.1 Section 91-A:11 to 91-A:15**

***1.5*** *91-A:11 to 91-A:15 Repealed by 2005, 3:2, eff. Nov. 1, 2010. –*