



*“Openness in the conduct of public business is essential to a democratic society.”*

—NH RSA Chapter 91-A

## **Quick Guide to the NH Right-To-Know Law**

**(NH RSA Chapter 91-A)**

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### **References:**

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Heed, Peter W. NH Attorney General. *Memorandum on New Hampshire’s Right-To-Know Law, RSA Chapter 91-A*. March 2003.

Markowitz, Deborah. VT Secretary of State. *Quick Guide to Open Meeting Law 1 VSA 310 et seq.* 1999.

Mitchell, Walter. Mitchell & Bates PA, Hanover Town Counsel. Written response to questions concerning RSA 91-A. April 12, 2006.

Spector, Laura A. Mitchell & Bates PA, Hanover Town Counsel. Written response to questions concerning RSA 91-A. September 14, 2006.

Waugh, Bernard. Gardner, Fulton & Waugh, PLLC, Lebanon, NH. Written comments on draft concerning RSA 91-A. August 6, 2006. Telephone conversation on August 21, 2006.

The Preamble to New Hampshire’s Right-To-Know Law states:

“The purpose... 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.”

The law requires that:

- The public must be given notice in advance of a meeting.
- With limited exceptions clearly stated in RSA 91-A, the public must be allowed to attend meetings.
- The public must have access to minutes of all meetings it was entitled to attend, all minutes of non-public sessions (unless those minutes are sealed pursuant to the statute).
- All public records must be available, except those exempt by statute from disclosure.

## **To whom does the Right-To-Know Law apply?**

RSA 91-A applies to **all appointed or elected public boards or committees** of all political subdivisions of the State and its counties, towns, and school districts. It also applies to all **subcommittees or advisory committees** that have been selected, appointed, recognized or sanctioned by any official body or public official to perform or serve an advisory role with respect to any official or government function. It governs meetings of Select Boards, Planning Boards, School Boards, Conservation Commissions, Recreation Commissions, and all subcommittees or advisory committees, no matter the duration of the activity or existence of the group. NH courts have favored greater, not less, disclosure by public groups.

## **When does the Right-To-Know Law apply?**

Whenever a quorum (usually a majority) of the members of any of the above groups meets to discuss the group's business or to take action, RSA 91-A applies. If a majority of a group is together at a social function or for another purpose, they must not discuss the business of the group. Any exchange of information or opinions on a topic over which that board has authority by a quorum of members via phone, e-mail or by other means between meetings (unless limited to such procedural topics as scheduling of meetings) runs the risk of violating the law as an illegal "meeting."

## **How does a public group give notice of its meetings?**

Excluding Sundays and holidays, a public group must give a minimum of 24 hours advance notice of the time, date and place of a meeting. These must appear in two appropriate places or in a newspaper of general circulation. Exceptions are allowed for genuine emergencies if maximum public notice is given consistent with the emergency, and if the minutes of that meeting clearly state the nature of the emergency.

## **What do minutes need to include?**

Minutes, even if only in draft form, must be recorded and must be available for public inspection within five business days of the meeting. Minutes must include:

- names of all members of the public group (including staff) present at the meeting
- names of persons appearing before the public group
- a brief description of each subject addressed
- a clear description of all final decisions, including all decisions to meet in nonpublic session. This includes actions on all motions which pass. Good practice also records failed motions. The persons making and seconding the motion should also be included.

## **What is the effect of failing to comply with the Right-To-Know Law?**

Failure to comply subjects the public group and potentially individual members of the group to the possibility of judicial sanctions: an order declaring the meeting invalid, an order assessing legal costs and fees, and/or an order invalidating actions or practices by the public group.

## **What rights do individuals and the media have?**

- Any person may attend a meeting. Active participation is at the discretion of the chairperson or board.
- Any person may record, film or videotape a meeting so long as it is done in a manner that does not disrupt the meeting.
- Any person has the right to inspect public records.
- The public and the media have the right to know the reason a public group is going into nonpublic session.

## **When can a public group meet in private?**

A public group may go into nonpublic session only on a motion made in an open meeting that indicates the reason for going into nonpublic session. Permissible reasons are limited to such issues as personnel matters involving any public employee, litigation, or the acquisition or sale of property. A detailed list is set out in RSA 91-A. Additionally, a meeting of a public body with its legal counsel for purposes of receiving legal advice is excluded from the definition of a "meeting" under RSA 91-A.

Minutes of proceedings in nonpublic session must be kept, and the record of all actions must be made available for public inspection within 72 hours of the meeting unless it is determined that publishing the information would adversely affect the reputation of any person other than a member of the public group or agency itself, or render the proposed action ineffective.

## **Can these Right-To-Know requirements be expanded?**

RSA 91-A provides minimum standards to guarantee public access to government. A public group, including all municipal boards and committees, may provide for broader public access to meetings or records than the state law specifies by adopting procedural bylaws governing the group.