



# WORKSHOP

## 2020 Local Officials Workshop

Presented by:

- ▶ Stephen Buckley, Legal Services Counsel
- ▶ Natch Greyes, Municipal Services Counsel

May 19, 2020

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## Today's Presenters



*Stephen Buckley*  
Legal Services Counsel



*Natch Greyes*  
Municipal Services Counsel

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**AGENDA**

9:00 am - Introduction - Steve Buckley, Tim Fortier

9:10 am - HealthTrust - David Salois

9:15 am - COVID-19 Issues

- Emergency Orders & COVID-19 - Steve
- Municipal Finances, Town Meeting Postponement & Reopening Issues - Steve
- Local Health Officer Authority, Enforcement, Tents - Natch
- Virtual Meetings and 91-A - Natch

**10:15 am - 10:30 am - BREAK**

10:30 am - Governance & Select Board Authority - Steve

11:45 am - Right-to-Know Law Meetings/Nonpublic Sessions - Natch

**12:15 pm - 12:45 pm - LUNCH BREAK**

12:45 pm - Governmental Records - Steve

1:45 pm - Ethics - Natch

**2:30 pm - 2:45 pm - BREAK**

2:45 pm - Effective Meetings - Steve

3:45 pm - Final Questions, Upcoming Workshop Info

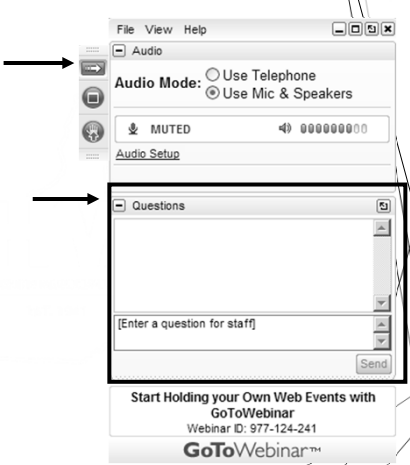
4:00 pm - Program Ends - Thank you for joining us!

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## How to Participate Today

- Open and close your panel
- Submit text questions
- Q&A addressed during the webinar session



The screenshot shows the GoToWebinar interface. The 'Audio' panel is open, showing 'Audio Mode' with radio buttons for 'Use Telephone' and 'Use Mic & Speakers'. Below it, a 'MUTED' indicator and a volume level bar are visible. The 'Questions' panel is also open, showing a text input field with the placeholder '[Enter a question for staff]' and a 'Send' button. Arrows point from the text instructions to these two panels.

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# WORKSHOP

*Thank You to Our Sponsors!*




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CELEBRATING **35** years of providing employee benefits to New Hampshire public sector employees, retirees and their families



*Benefits You Can Trust*

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## Who is HealthTrust?

A nonprofit, public risk pool dedicated to serving our Members - the people who work in and govern New Hampshire's schools, towns, cities, counties and other public entities.

- *Exceptional service with a personal touch*
- *More than 70,000 NH public sector workers and their family members choose HealthTrust for their coverage*


### Our Board of Directors Represents You

 <small>Chair, Cathy Ann Stearns Mayor of Dover, Hodgdon County</small>	 <small>Vice Chair, David Reutter Business Administrator, SAU #88</small>		
 <small>N. Jeanne Boudreau Town Administrator, Belmont</small>	 <small>Russell Dean Town Manager, Limerick</small>	 <small>James Ferris Chief Financial Officer, SAU #60</small>	 <small>Susan Michay Director of Student Services, SAU #25, Bedford County</small>
 <small>Brian Page Landmarks, Clermont Fire Department</small>	 <small>Jill Fanning HR Payroll Coordinator, Bedford County</small>	 <small>Adam Stone Superintendent, SAU #29</small>	 <small>Sarah Roberts Social Studies Teacher, Winnonah Middle School</small>


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## Why HealthTrust?

- Medical, Dental, Life, Long & Short Term Disability
- Quality, cost-effective, comprehensive benefit plan
- Benefit Advantage - HRA & FSA Administration
- Innovative programs - including *Grand Rounds*
- Enrollee Services Center
- Slice of Life Wellness Program
- Secure Enrollee & Member Portal
- HealthTrust Mobile
- Transition Care & Survivor Care







**53,247**  
TOTAL MEDICAL COVERED LIVES







**25,883** TOTAL MEDICAL ENROLLEES  
**17,993** ACTIVE  
 5,684 SINGLE; 4,628 TWO-PERSON; 7,585 FAMILY  
**7,890** RETIREES (Early Retirees + MC3)


As of January 1, 2020



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**For additional information**

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David Salois  
Member Relations Representative, HealthTrust

Telephone 603.230.3382  
or  
Email [Dsalois@HealthTrustnh.org](mailto:Dsalois@HealthTrustnh.org)

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**Thank you!**

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Today's  
Agenda

- COVID-19: What You Need to Know
  - Emergency Orders & COVID-19
  - Municipal Finances, Town Meeting Postponement & Reopening Issues
  - Local Health Officer Authority, Enforcement, Tents
  - Virtual Meetings
- General Governance & Select Board Authority
- Right-to-Know Law
  - Meetings & Nonpublic Sessions
  - Governmental Records
- Ethics
- Running Effective Meetings 10

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## COVID-19 Effects on Gov't

- ▶ Governor declared State of Emergency on March 13, 2020.
- ▶ Governor prohibited gatherings of 10 or more people on March 23, 2020. Prohibition still in effect due to extension.
- ▶ Governor issued closure of non-essential business and stay at home order on March 26, 2020. Stay at Home 2.0 now in effect!
- ▶ Governor issued Emergency Order #23 on April 1, 2020, impacting municipal operations.
- ▶ CDC & Department of Health & Human Services (DHHS) guidance still encourages "social distancing."
  - ▶ "[r]emaining out of crowded public places where close contact with others may occur, such as shopping centers, movie theaters, stadiums, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible."
- ▶ CDC & DHHS also recommending that those 60 years or older stay home and avoid exposure to public locations as much as possible.

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## COVID-19 Effects Cont.

- ▶ Events rapidly unfolding on an international, national, and state scale.
- ▶ We anticipate that there may be future Executive Orders which will impact the functioning of municipal government.
- ▶ NHMA providing updates at: <https://www.nhmunicipal.org/covid-19-resources>
- ▶ Check the State of NH Emergency Order Page: <https://www.governor.nh.gov/news-and-media/emergency-orders-2020>

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## Emergency Orders & COVID-19

- ▶ EO 2020-04, Governor Sununu invoked his powers under RSA 4:45 and 4:47, including additional temporary orders, directives, rules, and regulations.
- ▶ The Governor has the power to make, amend, suspend, and rescind necessary orders, rules and regulations to carry out the provisions of this subdivision in the event of a disaster beyond local control. RSA 4:47, III.
- ▶ RSA 21-P:45 expressly authorizes the governor to enforce emergency orders, while RSA 21-P:47 sets forth the penalty for failure to comply with emergency orders issued pursuant to RSA 4:45.
- ▶ The Attorney General memorandum on the enforcement of Governor's Emergency Orders:  
<https://www.doj.nh.gov/news/2020/documents/20200327-law-enforcement-memo-covid19.pdf>

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## Emergency Orders of Immediate Concern to Municipalities

- ▶ EO#12 Temporary Modification of Public Access to Meetings Under RSA 91-A:  
<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-12.pdf>
- ▶ EO#16 Temporary Prohibition on Scheduled Gatherings of 10 or More Attendees:  
<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-16.pdf>
- ▶ EO#23 Temporary Modification of Municipal & Local government Statutory Requirements:  
[https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-23\\_0.pdf](https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-23_0.pdf)
- ▶ EO#40 "Stay at Home 2.0":  
<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-40.pdf>

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## Emergency Order #23 and You - Remote Operations

### *Electronic Transactions:*

- ▶ Use non-contemporaneous public body signature procedures mirroring RSA 41:29, I (a).
- ▶ Use electronic signature, such as facilitated in Adobe Acrobat DC.

### *Transition to Phone, Online or Limited Appointment Delivery of Service:*

- ▶ Transition to allowing for applicants for vital records, welfare and other municipal services to apply online, via email, phone or other accessible manner, and, provide notice of how to apply at conspicuous place at town hall if town hall is closed.
- ▶ Allow reasonable flexibility when seeking documentation from welfare applicants.
- ▶ Administration of Oaths of Offices can be handled remotely. See EO #23, ¶ 9 (a-f).

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## Emergency Order #23 and You - Procedures

### *Mandated Meetings & Deadlines, Extension:*

- ▶ Any mandated meetings for public bodies under statute, local ordinance or charter are deemed waived, such as the monthly meetings required by the planning board under RSA 673:10, II.
- ▶ Municipalities are relieved from statutory deadlines, including but not limited to:
  - ▶ Timely planning board and ZBA action under RSA 676:4 and RSA 676:7 respectively.
  - ▶ Deadlines for conducting inspections for permits and building code and fire code compliance.
- ▶ Construction in the absence of building permits & inspections
  - ▶ For municipalities with state building & fire code enforcement under 674:51 that have stopped issuing build permits, contractors in those communities may continue construction operations with client permission without permits or inspections provided completed work is documented by photo and video. See EO#2, ¶6.

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## COVID-19 & Municipal Finances

- ▶ \$32 Million Municipal Relief Fund created by Governor Sununu. Read NHMA's Guidance: [https://www.nhmunicipal.org/sites/default/files/uploads/partners/nhma\\_guidance\\_on\\_municipal\\_funding.pdf](https://www.nhmunicipal.org/sites/default/files/uploads/partners/nhma_guidance_on_municipal_funding.pdf)
- ▶ Reimbursement from FEMA for eligible costs incurred during the response to and recovery from the COVID-19 Pandemic. More details are available at: [https://www.nhmunicipal.org/sites/default/files/uploads/documents/fema-3445-em-nh\\_covid-19\\_-\\_public\\_assistance\\_qa.pdf](https://www.nhmunicipal.org/sites/default/files/uploads/documents/fema-3445-em-nh_covid-19_-_public_assistance_qa.pdf)
- ▶ First Responder COVID-19 Stipend Program FAQ's: [https://prd.blogs.nh.gov/dos/hsem/?page\\_id=8624](https://prd.blogs.nh.gov/dos/hsem/?page_id=8624)

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## COVID-19 & Town Meeting

- ▶ For the 21 municipalities that have not held their annual meetings it is expected the Governor will be issuing an Emergency Order that will authorize an optional form of the annual meeting like those held in Bow and Conway.
- ▶ That expected Emergency Order will also permit expenditures consistent with prior year's budget until adoption of a budget by the annual meeting, extending the provisions of RSA 32:13, II to municipalities with a fiscal year calendar.

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# Reopening Issues

## Municipal Building Reopening:

- ▶ Select Boards under RSA 41:11-a (management of Town property) and Library Trustees under RSA 202-A:6 (management of public library property) have the authority to mandate that people entering a town building or library wear a face covering.
- ▶ CDC recommends that everyone 2 years and older wear a cloth face covering that covers their nose and mouth when they are out in the community. Cloth face coverings should NOT be put on babies or children younger than 2 because of the danger of suffocation.
- ▶ It is recommended that the town and library have at hand a supply of disposable face masks a person can wear if they do not have their own.
- ▶ If a person refuses to wear a facemask or covering they could be denied access to a town building. This ability to mandate the wearing a facemask or covering would only apply while the Covid-19 pandemic is still considered a public health emergency.

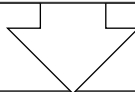
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## Authority of Local Health Officers: *Generally*

DHHS is lead authority on health issues involving COVID-19. RSA 141-C:3-:4.

Local Health Officers act in a support role to DHHS.



Local Health Officers shall report individuals who they know or believe to be afflicted with a communicable disease, including COVID-19, to DHHS.

RSA 141-C:7.

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## Local Health Officers, Quarantines & Public Events

- ▶ Local Health Officers may **NOT** order isolation or quarantines independent of DHHS. RSA 141-C:11-:12.
  - ▶ However, Local Health Officers may be asked by DHHS to assist with isolation or quarantines. RSA 141-C:5.
  - ▶ DHHS will notify local health officers if DHHS feels it is appropriate to extend isolation or quarantine authority to local health officers. RSA 141-C:12.
- ▶ Local Health Officers may **NOT** order that public events be cancelled. RSA 141-C:16-b.
  - ▶ Only the Commissioner of DHHS via written order, with written approval of the Governor, may cancel public events. RSA 141-C:16-b.
  - ▶ However, municipalities may always cancel their own events.

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## Local Health Officers, Closing Buildings & Health Codes

- ▶ Local Health Officers may **NOT** order that buildings be closed and/or decontaminated due to Covid-19. RSA 141-C:16-a.
  - ▶ Only the Commissioner of DHHS, via written order, with written approval of the Governor, may order the closure and decontamination of any building for purposes of communicable disease only. RSA 141-C:16-a.
- ▶ Local health officers **do** have a leadership role in certain State health laws and local codes relating to rental housing standards, health nuisances, and certain health inspections -
  - ▶ RSA 128:5 - Pertaining to sanitary investigations;
  - ▶ RSA 48-A:8, I - Pertaining to housing standards;
  - ▶ RSA 147:3 - Pertaining to health "nuisances."

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## Stay at Home 2.0

- ▶ Emergency Order #40 largely delegated enforcement to local law enforcement.
  - ▶ Note: Local law enforcement is different than local health officers.
  - ▶ Note also: Local health ordinances were not overridden by Emergency Order #40, and those may still be enforced via the ordinary enforcement mechanisms.
- ▶ Attorney General's Enforcement Memorandum of March 27, 2020 should guide enforcement activities for law enforcement.
- ▶ Governor issuing industry-specific guidance on how to reopen for any businesses affected by closures.
  - ▶ Note: Governor did not close municipal buildings, but most municipalities did take closure precautions.
- ▶ Governor issuing guidance on reopening at <https://www.covidguidance.nh.gov/>

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## Tents!

We've had a few questions about restaurants (and other businesses) setting up tents. The Fire Marshall has put out the following guidance:

- ▶ 1. Obtain local permits if required.
- ▶ 2. Install tent in accordance with manufacturer's instructions and SFMO checklist: Tent Inspection Checklist.
- ▶ 3. Tents shall not have sides (overhead cover only).
- ▶ 4. Complete required local inspections.
- ▶ 5. Obtain Place of Assembly permit as needed from the local Fire Department. Permit will be based on State Fire Code occupant load numbers and not reduced COVID seating/social distancing. Reduced capacity to be determined by the restaurant based on the orders of the Governor and Health and Human Services.

If you need further assistance, please contact your local fire department or Deputy Fire Marshal Sean Toomey at the NH State Fire Marshal's Office at 223-4289 or at [Sean.Toomey@dos.nh.gov](mailto:Sean.Toomey@dos.nh.gov).

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## Virtual Meetings, Part I



- ▶ Emergency Order #12 waived the provision of RSA 91-A, III(b) requiring that a quorum of a public body be physically present unless immediate action is imperative.
  - ▶ In other words, meetings can be conducted entirely remotely now.
- ▶ Emergency Order #12 does require that any remote meeting have a telephonic connection for the public.
  - ▶ Other technological options are encouraged:
    - ▶ Conference call lines;
    - ▶ Streaming services;
    - ▶ Etc.
- ▶ Promote available technological options as well as access information in all notices of meeting.
- ▶ Chair should clearly and succinctly explain process at beginning of meeting -
  - ▶ E.g. Public comment period and how that will work.

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## Virtual Meetings, Part II

- ▶ Boards participating remotely must still:
  - ▶ identify the reason why the in-person attendance of any remote board members is not reasonably practicable in the minutes of the meeting;
  - ▶ identify any persons present in the location where the board member is calling from; and
  - ▶ take all votes by roll call.
- ▶ In addition, there must be a mechanism for the public to alert the public body during the meeting if there are problems with access.
  - ▶ Intended to allow the body to know whether there is an issue with the conference call overall, not an issue with the public just hearing a particular speaker.
- ▶ The meeting must be adjourned if it is determined that the public is unable to access the meeting, e.g. the conference call software stops functioning.

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**Governance & Select  
Board Authority  
Chapters 1 - 4**

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**Types of Governmental Entities**

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Cities

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Towns

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Village Districts

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School Districts

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Counties

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Intergovernmental Agreements

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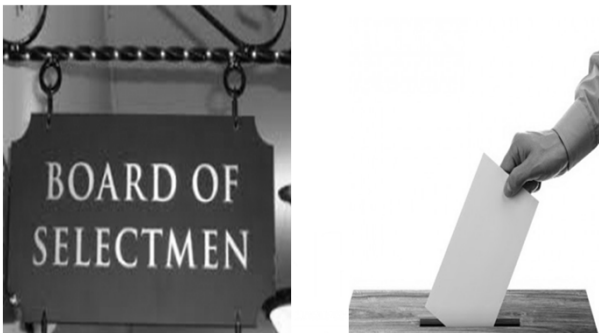
**Authority of  
Towns & Cities**

**Chapter 1**

- No Home Rule
- RSAs
- Admin. Rules
- Case Law
- Preemption

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**Separation of Powers**

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**Town Meeting  
is Legislative  
Body**

Voters = Legislators

Traditional v. "SB2"

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**Town  
Meeting  
Authority**

- ▶ Elects town officials
- ▶ Adopts ordinances & budget
- ▶ Petitioned warrant articles

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**Checklist  
for  
Adopting  
Ordinances**

- Authority
- Preemption?
- Who votes/adopts?
- Procedure
- Enforcement

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**Select  
Board is  
Governing  
Body**

- Select Board must act as a Board
- May have a 5 - member Board

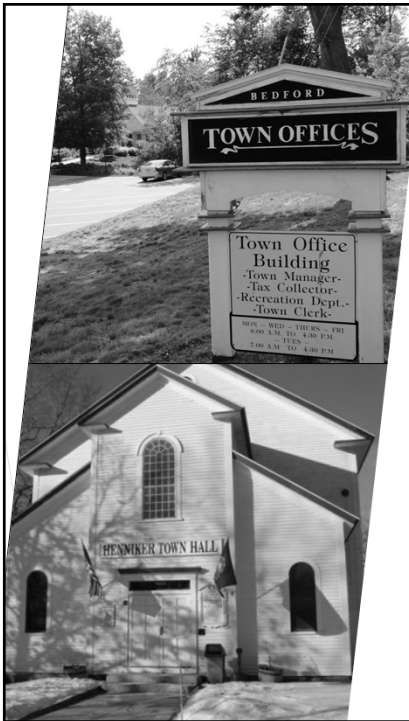
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## Select Board Essential Authority

<p><b>Executive, managerial, administrative body</b></p>	<p><b>Calls annual meeting and posts warrant, RSA Chapter 39</b></p>	<p><b>Manages prudential affairs, RSA 41:8</b></p>
<p><b>Has financial responsibilities/duties</b></p> <ul style="list-style-type: none"> <li>•Presents budget</li> <li>•Expenditures, RSA 41:9</li> <li>•Financial duties, RSA 41:9</li> </ul>	<p><b>Manages public property, RSA 41:11-a/41:14-a</b></p>	<p><b>Regulates town highways, RSA 41:11</b></p>
<p><b>Manages employment</b></p>		<p>35</p>

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# Town Administrator

v.

# Town Manager

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## Supervisory Authority Over Certain Key Officials



- ▶ Road Agent
- ▶ Appointed Police Chief
- ▶ Appointed Fire Chief

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## Select Board Relationship with Other Elected Officials, Generally



- ▶ No Interference
- ▶ Cooperation
- ▶ Statutory Term and Duties

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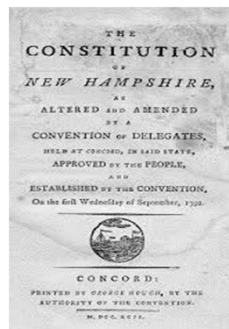
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## The Right-to-Know Law RSA Chapter 91-A

PART I, ARTICLE 8 OF THE NH  
Constitution: Government ...  
should be open, ....

SECTION 1 OF RSA 91-A:

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.



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## Governmental Meetings & The Right-to-Know Law

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**What is a Public Meeting?**  
**RSA 91-A:2**

- Quorum
- Public body
- Convenes so that they can communicate contemporaneously
- To discuss or act upon a something over which the public body has supervision, control, jurisdiction, or advisory power

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**What is *not* a "Meeting"?**  
**(i.e. "non-meeting")**

-  Social or other encounter, no decisions
-  Collective bargaining
-  Consultation with legal counsel
-  Circulation of draft documents
-  ***Different than nonpublic session!***

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# What are the Requirements of a Public Meeting?

- Public notice
- Open to the public
- Meeting minutes

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# "Posting Requirements"

The corkboard contains the following notes:

- Give Notice 91-A:2
- 24 hours minimum
- Two public places
- More restrictive law?
- Emergency Notice, 91-A:2, II
- Posting Requirements 91-A:2, II-b(b)

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## **“Emergency” Notice Requirements**

- ▶ “Emergency”: a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body.
- ▶ That presiding officer shall post a notice of the time and place of such meeting as soon as practicable.
- ▶ Further, the presiding officer shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.
- ▶ “Emergency” meetings do not require 24-hour notice posted in 2 public places but should provide as much notice as practical.

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## **Ordinary Procedures: Meetings “Open to the Public”**

- ▶ “All meetings . . . shall be open to the public.” RSA 91-A:2, II.
- ▶ “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.”
- ▶ Public’s has right to record, etc.
- ▶ No secret ballot voting
- ▶ Public Comment?

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## Avoid Temptation to Use Inaccessible Technological Options During Pandemic

-  Remember that fundamental principal of RSA 91-A is to allow the public access.
-  Text messages, emails, and other electronic means of communication which excludes the public should not take the place of publicly accessible meetings.
-  As much as possible, government should try to maintain normalcy during this abnormal time.

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## Nonpublic Sessions RSA 91-A:3

- It's a nonpublic session, not a nonpublic meeting
- A nonpublic session is different from a "non-meeting"
- Nonpublic session is the exception, not the rule
- Nonpublic sessions are permitted, not required
- Boards meeting remotely should consider technological options for holding nonpublic sessions: e.g. starting a separate call

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## When May a Public Body Enter Nonpublic Session?\* RSA 91-A:3, II

- Public employee (specific employee)
- Hiring
- Reputation
- Real or personal property
- Lawsuits
- Emergency preparation
- Discuss legal advice
- Discuss student tuition contract

\*Most common, but not complete list

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## Entering Nonpublic Session for COVID-19

- ▶ RSA 91-A:3, II(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.
  - ▶ Conversation must focus on *deliberate act* that is being thwarted.
  - ▶ Basic conversation about Covid-19 does not qualify - Virus will not change its spread based on knowing what the government is planning.
  - ▶ However, news reports have indicated that known infected have purposefully evaded quarantine. Planning for that may qualify.

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## How Does a Public Body Enter Nonpublic Session?

RSA 91-A:3, I



Motion to enter nonpublic session must be made and seconded.



Motion must state on its face the specific exemption relied upon.



Vote must be by roll call; simple majority is sufficient. RSA 91-A:3, I(b).

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## Disclose or Seal?

Minutes must be publicly disclosed within 72 hours unless board determines, by 2/3 vote taken in public session, that:

- Disclosure would have adverse effect on reputation;
- Disclosure would “render the proposed action ineffective”; or
- Discussion in nonpublic session pertained to terrorism.

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# Governmental Records & The Right-to-Know Law

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## GOVERNMENTAL RECORDS

STEP 1: Is it a  
*Governmental Record?*

STEP 2: Is the record  
exempt from disclosure?

STEP 3: Make available  
non-exempt records.

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**Is it a  
Governmental  
Record?**

**RSA 91-A:1-a**


- 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

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**EXEMPTIONS TO DISCLOSURE OF  
GOVERNMENTAL RECORDS**

**General Standards Governing Exemptions -  
RSA 91-A:5**



- ▶ RSA 91-A:5 provides a list of records categorically exempt from disclosure; master jury list or teacher certification records.
- ▶ Some statutory exemptions require detailed analysis, such as records whose disclosure would constitute invasion of privacy.
- ▶ The Right-to-Know Law's purpose is to provide the utmost information to the public about what its government is up to. If disclosing the information does not serve this purpose, disclosure may not be required.
- ▶ When a public body or agency seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to avoid nondisclosure.

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## REDACT EXEMPTED INFORMATION



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## Drafts & Notes

### Preliminary Drafts - RSA 91-A:5, IX -

- “[N]ot in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.”

### Personal Notes - RSA 91-A:5, VIII -

- “Any notes or other materials made for personal use that do not have an official purpose are exempt from disclosure.”

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**MANDATED  
ACCESS TO  
CERTAIN  
RECORDS**

- Employee separation payments if in addition to regular salary, or accrued vacation or sick time - 91-A:4, I-a
- Meeting minute raw materials available after completion of public meeting - 91-A:4, II
- All lawsuit settlements on file with town clerk and available for public inspection for 10 years - 91-A:4, VI

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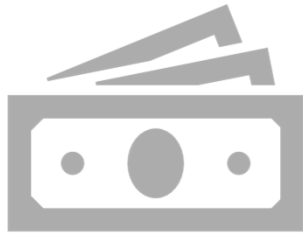
**Basics of Record Production**

- ▶ Records must be provided immediately *only* when they are immediately available for release. (But not under E.O. #23!)
- ▶ RTK *does not* give citizens the right to review records in any quantity and wherever kept immediately upon demand.
- ▶ Requiring appointment to review records is permitted.
- ▶ RTK does not require document “compilation.”

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# No Flat Fees!



- ▶ ONLY  
REASONABLE FEES  
ARE ALLOWED!
- ▶ RSA 91-A:4, IV

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# We have 5 days...



*...right?*

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## “Something” w/in 5 Days

- ▶ As of Jan. 1, 2020, municipalities must:
  - ▶ Provide a written statement of time necessary to determine whether request granted or denied; AND
  - ▶ *Provide a reason for the delay!*
  - ▶ Amendment to RSA 91-A:4, IV - HB 396 - 2019 NH Laws Chapter 107
- ▶ NHMA Suggestion for Reason for Delay -
  - ▶ Need time to determine whether or not record exists;
  - ▶ Need time to determine whether it is disclosable;
  - ▶ If disclosable, need time to determine how much time it will take to make the requested records ready for review or copying.

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## Production of Electronic Records

- ▶ Green v. SAU #55: Electronic Records Produced Electronically.
- ▶ 91-A:4, IV: . . . . 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.
- ▶ Taylor v. SAU #55: School Administrative Unit’s policy requiring use of a thumb drive to produce electronic records was valid under The Right-to-Know Law.

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**How are Violations of RSA Chapter 91-A Enforced?**

- No enforcement agency
- “Aggrieved person”
- Lawsuit
- RSA 91-A:7, :8

65

The diagram features a central question on the left, 'How are Violations of RSA Chapter 91-A Enforced?'. To its right, four rounded rectangular boxes are stacked vertically, each connected to the central text by thin lines. The boxes contain the following text: 'No enforcement agency', '“Aggrieved person”', 'Lawsuit', and 'RSA 91-A:7, :8'. The number '65' is centered at the bottom of the diagram.

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**Records Retention**

- RSA 33-A:3-a contains 156 categories of records to be retained.
- Records retained for the prescribed period.
- Once the retention period has expired records may be discarded, but if still available must be produced.

66

The diagram features a central title on the left, 'Records Retention'. To its right, three rounded rectangular boxes are stacked vertically, each connected to the central text by thin lines. The boxes contain the following text: 'RSA 33-A:3-a contains 156 categories of records to be retained.', 'Records retained for the prescribed period.', and 'Once the retention period has expired records may be discarded, but if still available must be produced.'. The number '66' is centered at the bottom of the diagram.

66

# Main Takeaways

Every citizen can request records. \*

The record request must be “reasonably described.” RSA 91-A:4, IV.

Any search for records must be reasonably calculated to uncover relevant documents.

There is no obligation to compile, cross reference or assemble records.

Requiring a citizen make an appointment to review records is permitted.

When denying access provide written reasons.

Redact exempt information

Reasonable fees allowed

Is it really deleted? RSA 91-A:4, III-b

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## ETHICAL ISSUES, INCOMPATIBILITY OF OFFICES & CONFLICTS OF INTEREST



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# WHAT ARE "ETHICS"?



Conflicts of Interest  
v.  
Incompatibility

69

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# INCOMPATIBILITY OF OFFICES RSA 669:7



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## LEGISLATIVE V. QUASI-JUDICIAL

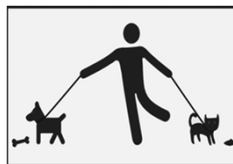
- Widely felt
- Policy decisions
- Must act in public's interest, but don't need to be "indifferent"
- Decision invalidated if deciding vote
- Affects rights of specific petitioner
- Notify & hear parties
- Weigh evidence
- Must be indifferent
- Decision invalidated

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## AVOIDING CONFLICTS

- Recusal, not abstention
- Advisory Vote, RSA 673:14, II
- Alternates, RSA 673:14
- Proceeding without a full board
- Disclosure to parties



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## **LOCAL CONFLICTS ORDINANCES: RSA 31:39-a**

- Apply to officials and employees
- Require financial disclosures
- Stricter incompatibility of offices
- Adopted by town meeting
- Not exempt from 91-A
- Superior court removal for violation

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## **EFFECTIVE MEETINGS**

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## Preparation for Meeting







- ▶ Do you have rules of procedure? Chair's role
- ▶ Agenda
- ▶ Circulate materials in advance
- ▶ Read packet, think about comments and questions in advance
  - ▶ No discussions prior to/outside meeting!



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## Rules of Procedure - Basic Content

-  Regular Meeting Day, Time & Location
-  Annual Election of Officers
-  Authority of Presiding Officer/Chair
-  Duties & Privileges of Board Members
-  Quorum & Voting
-  Agenda for Board Meetings

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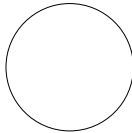
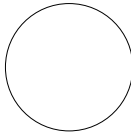
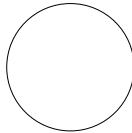
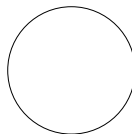
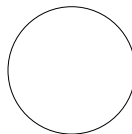
**Rules of Procedure - Basic Content (cont.)**

-  Order of Business at Board Meetings
-  Meeting Procedure and Decorum
-  Procedures for Public Hearing, Public Comment
-  Right-to- Know Law
-  Committees/Liaisons/Appointments
-  Enactment of Ordinances, Resolutions & Motions

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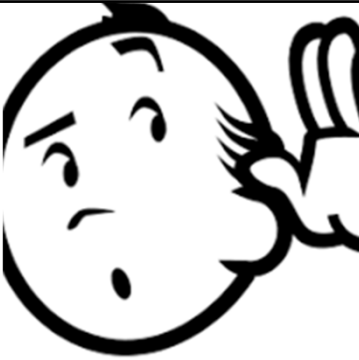
77

**Conducting the Meeting**

-  BE AND START ON TIME
-  CHAIR'S RESPONSIBILITIES
-  APPLY RULES OF DECORUM EVENLY
-  ELECTRONIC MEDIA DURING MEETING
-  DON'T FORGET THE MINUTE TAKER

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- ▶ Paraphrase what the person says.
- ▶ “What I heard you says was . . .”
- ▶ Listening actively can be hard work.




ACTIVE  
STENI

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## Effective Meeting: Respect and Decorum



- ▶ All eyes are on you
- ▶ Pay attention!
- ▶ Electronic media use during meetings

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## Riggins Rules

- ▶ **Don't mingle with friends, acquaintances, unknown applicants** before the meeting.
- ▶ **Don't indicate how you intend to vote** during hearings & presentations.
- ▶ **Do rotate the seating** in some regular manner to prevent a "strong" member from gradually dominating a "weak" member.
- ▶ **Don't interrupt a presentation** until the question period.
- ▶ **Don't use first names** in addressing *anyone at all* during the course of the hearing.
- ▶ **Don't make anyone appearing before you look like a fool** by the nature of your questions or remarks.

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## Riggins Rules (Con't)

- ▶ **Do not permit people to leave the podium** and approach closer to the hearing body except in unusual circumstances.
- ▶ **Don't become involved in neighborhood quarrels.**
- ▶ **Do not take staff recommendations lightly.**
- ▶ **Don't try to ease your conscience and toss the applicant a bone.**
- ▶ **Don't show any displeasure or elation,** by word or action, over the outcome of a vote.
- ▶ **Do sit down and have a long soul searching session with yourself** if you find you are consistently "out in left field."

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## Public Comment

- No right to speak in meeting, unless you give it to them (remember hearings are different).
- Establish & explain rules, apply consistently.
- First Amendment: Many restrictions are not acceptable!
- Maintain control & order
  - Removal?



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## Academy for Good Governance






### Academy for Good Governance

**New FREE Certificate Program**

The Academy for Good Governance is a series of six courses created by NHMA and Primex, exclusively for elected governing body members (select board, town council, city council, board of aldermen, school board, and village district commissioners). Courses are taught by experienced attorneys and staff from NHMA, Primex, HealthTrust, and the New Hampshire School Boards Association (NHSBA). Attendees will receive education and training intended to make them more knowledgeable and effective in their governing body roles.

Attendance at the Academy is free and open to governing body members from municipalities and school districts that are members of NHMA and Primex. Space is limited, and registration will open on the NHMA website on April 9th. Attendees must attend all six courses to receive a Certificate of Completion. All classes run 5:00 pm–7:00 pm.

**CREATE NEW CONNECTIONS**

*Questions?*  
Call NHMA's Event Coordinator Ashley Mathet at 800.852.3358 or email [NHMAregistrations@nhmunicipal.org](mailto:NHMAregistrations@nhmunicipal.org)

Don't miss this chance to build your skills and connect with fellow municipal officials!  
Find out more: [www.nhmunicipal.org/workshops](http://www.nhmunicipal.org/workshops)

**DATES AND LOCATIONS:**

**Governance & Governing Body Authority**  
Presented by NHMA/NHSBA  
Wednesday, June 3, 2020, NHMA Office

**Financial Responsibility**  
Presented by NHMA  
Wednesday, June 17, 2020, NHMA Office

**Employment Liability Measurement**  
Presented by Primex  
Wednesday, September 16, 2020, Primex Office

**Contracts and General Risk Management**  
Presented by Primex  
Wednesday, September 30, 2020, Primex Office

**Health Care and Affordable Care Act**  
Presented by HealthTrust  
Thursday, October 8, 2020, NHMA Office

**Effective Public Meetings**  
Presented by NHMA/NHSBA  
Wednesday, October 20, 2020, NHMA Office

**WHO CAN ATTEND?**

- Select board members
- Town council
- School board members
- City council
- Board of Aldermen
- Village district commissioners

**REGISTER NOW!**

**il.org**

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# Upcoming Trustee Training

**NHMA 2020 MUNICIPAL TRUSTEE VIRTUAL TRAINING**

**TENTATIVE AGENDA**  
**Wednesday, June 10, 2020**  
 9:00 am - 9:10 am:  
 Introduction to Charitable Trusts Division  
 Tom Donovan, Director, Attorney General's Office  
 9:10 am - 10:40 am:  
 A Little Help From My Friends  
 Terry Knowles, Emeritus Assistant Director  
 10:40 am - 10:45 am: Break  
 10:45 am - 12:15 pm:  
 Governance and Right-to-Know Law  
 Stephen Buckley and Nath Greyes  
 NH Municipal Association  
 12:15 pm - 12:30 pm: Lunch  
 12:30 pm - 2:00 pm:  
 Trust Fund Administration  
 Jamie Dow  
 NH Department of Revenue Administration  
**Thursday, June 11, 2019**  
 Cemetery Trustees III  
 10:00 am—11:30 am  
 North Grafton, Municipal Services Council  
 Mike House, Sec./Treasurer, NH Cemetery Association  
 The Roles & Responsibilities of Trustees of Trust Funds  
 1:00 pm—2:30 pm  
 Stephen Buckley, Legal Services Council, NHCLA  
 Jill Senter, Chair, Trustees of the Trust Fund, Town of  
 Plattsford

**REGISTRATION FEE**  
**\$65 per person**

**WHEN**  
**Wednesday, June 10**  
**9:00 am—2:00 pm**  
**Thursday, June 11**  
**Cemetery Trustees Breakout Ses-**  
**sion—10:00 am—11:30 am**  
**Trustees of Trust Funds Breakout**  
**Session—1:00 pm—2:30 pm**

**WHERE**  
**VIRTUAL TRAINING**

**CONTACT INFO**  
**Ashley Methot**  
**Events Coordinator**  
**25 Triangle Park Drive**  
**Concord, NH 03301**  
**603.230.2340**  
**amethot@nhmunicipal.org**

**FOR ADDITIONAL**  
**DETAILS VISIT**  
**www.nhmunicipal.org**

**REGISTRATION**  
**NOW OPEN!**

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# Complimentary Webinar

**PROD.**  
**COMING ATTRACTIONS**

**May 20**  
**What is Community Power and**  
**How Does it Work?**

**VENUE**

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**NOW!**

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**Complimentary Webinar**



**PROD.**  
**COMING ATTRACTIONS**  
**May 27**  
*Trails for People and Wildlife*  
**VENUE**

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**Complimentary Webinar**



**PROD.**  
**COMING ATTRACTIONS**  
**June 3**  
*Reopening Municipal Offices  
in New Hampshire*  
**VENUE**

**REGISTRATION NOW OPEN!**

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## 2020 Land Use Law VIRTUAL Conference

**SAVE THE DATE**  
**SATURDAY, OCTOBER 31**

*Join NHMA and the New Hampshire Office of Strategic Initiatives for the*

**Fall 2020 Land Use Law Conference**  
(formerly known as the Municipal Law Lecture Series)

**9:00 am—3:00 pm**  
**Saturday, October 31, 2020**

Full day workshop for municipal land use officials including members of planning and zoning boards, planners, land use administrators, select boards, town and city councilors, building inspectors, code enforcement officers and public works personnel. Presentations will focus on the legal authority and procedures these land use boards must understand with content structured to be beneficial to both novice and experienced municipal officials.

**Registration to open later this summer!**



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*for attending  
our Local Officials  
Virtual Workshop  
today!*

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