

**DISTRICT AGREEMENT
AND BYLAWS
for the
CARROLL COUNTY COMMUNICATIONS DISTRICT**

WHEREAS, the Member Towns listed in Appendix A established the CARROLL COUNTY COMMUNICATIONS DISTRICT PLANNING COMMITTEE (the "Planning Committee" or "CCCDPC") in accordance with RSA 53-G:2; and

WHEREAS, the Planning Committee determined the advisability of establishing a Communications District among the municipalities.

NOW THEREFORE IT IS AGREED:

SECTION 1. COMMUNICATIONS DISTRICT ESTABLISHED: A Communications District is hereby established pursuant to NH RSA 53-G. The Communications District shall be known as the Carroll County Communications District (hereafter, the "District" or "CCCD").

SECTION 2. PURPOSE: CCCD shall encourage, facilitate and promote the establishment of state-of-the-art symmetrical high speed broadband internet connectivity and service to every residence and business within Carroll County, NH, working cooperatively or in partnership with existing communications providers through formal or informal agreement when possible.

SECTION 3. DISTRICT MEMBERS: Each of the municipalities listed in Appendix A whose respective legislative body votes by simple majority at their respective 2023 Annual Town Meeting in accordance with RSA 53-G:4 to accept the provisions of RSA 53-G and of this Agreement, shall be a Member of the District ("Member Town"), each such vote to be certified by the Clerk of such municipality. Affirmative votes by the legislative bodies of two or more of the municipalities listed on Appendix A shall be sufficient to establish the District, providing only those municipalities whose legislative bodies vote affirmatively shall be Member Towns.

SECTION 4. POWERS: CCCD shall be and function as a separate and distinct body politic and public instrumentality of the State for carrying out a public purpose and an essential government function with all of the powers granted to a Communications District under RSA 53-G:5, subject to the limitations in this Agreement.

SECTION 5. LIMITATIONS: The District shall not incur debt that obligates any Member Town or citizen thereof to make payment thereon. Nor shall the District raise revenue from any individual Member Town except in the form of a voluntary contribution by such Member Town. The District shall have no authority to raise revenue by taxation upon any Member Town or citizen thereof. No Member shall have any obligation to the District for providing services or in-kind or monetary contributions or for allowing use of or access to real property, except by written agreement entered between such Member and the District.

SECTION 6. FUNDING SOURCES: The District may raise and accept funding from: federal, state, regional broadband and economic development grants or loans, revenue bonds, private investment or loans, subscriber fees, system revenues, network operations, contributions and revenues pursuant to contractual agreement, Member contributions, and other sources permitted by law, subject to the limitations set forth in Section 5. Acceptance of funding shall require a simple majority vote of the Governing Board, except a 2/3 majority vote of the Governing Board shall be required for raising funds through loans, bonds or indebtedness of the District.

SECTION 7. GOVERNING BOARD: The powers and authority of the CCCD hereunder are vested in the CCCD Governing Board, which shall oversee and control the activities and affairs of the CCCD and be responsible for carrying out the business of the District to achieve its purposes. The CCCD Governing Board shall be composed of Representatives appointed by the Select Boards of the Member Towns. The Select Board of each Member Town shall appoint one Representative, and one Alternate who shall act as the Member's Representative in the absence of the Member's designated Representative. Each such duly appointed Representative and each such Alternate shall become a member or Alternate member of the Governing Board by presenting a letter of appointment from his or her respective Town Select Board effective upon notification of the appointment being received by the CCCD Secretary.

SECTION 8. MEETINGS: The Governing Board shall hold its annual meeting on the second Wednesday of October. During the annual meeting the Board shall review the annual report for the preceding year, approve an operating budget for the current fiscal year, elect officers, and conduct such other business as may be brought to the Board's attention by Members. In addition, the Board shall establish a schedule of regular meetings of the Board.

SECTION 9. SPECIAL MEETINGS: Special meetings of the Board may be called at any time by the Chair or Vice-Chair, or shall be called by the Secretary upon written request of members of the Board representing a majority of the Member Towns. Except in case of emergency, each member of the Board shall be given at least 24-hour prior notice of any special meeting in accordance with the Right to Know Law, RSA 91-A.

SECTION 10. QUORUM: For the purpose of transacting business, the presence in person of Representatives representing more than fifty percent (50%) of the Member Towns, shall constitute a quorum. In person attendance at meetings is not required and members may attend meetings by electronic communications, providing a quorum is present in person in accordance with the requirements of RSA 91-A.

SECTION 11. RULES OF PROCEDURE: The Governing Board shall adopt Rules of Procedure for the conduct of its meetings.

SECTION 12. VOTING: On matters voted on by the Board, each Member Town shall be entitled to cast one vote by a Representative or Alternate present. Except as otherwise provided herein or by law, a simple majority of the votes cast shall be required to approve any action.

SECTION 13. TERMS OF OFFICE: Representatives to the Governing Board shall be appointed by the Member Town Select Boards to serve for one year, or until his or her successor is duly appointed. Executive Committee members shall serve for two years, or until his or her successor is duly elected, and may serve successive terms.

SECTION 14. OFFICERS: There shall be a Chair, Vice-Chair, Secretary and Treasurer, and such other officers as the Governing board shall designate. Officers shall serve two year terms and shall be elected biannually by the Governing Board during its annual meeting from among its Member Representatives.

SECTION 15. CHAIR: The Chair shall preside at meetings of the Board and shall perform the duties incumbent to the position and office.

SECTION 16. VICE CHAIR: During the temporary absence or inability of the Chair to perform his or her duties, the Vice Chair shall perform such duties. If the vacancy becomes permanent due to death, disability, resignation or removal, the Vice Chair shall serve as acting Chair until the vacancy is filled.

SECTION 17. SECRETARY: The Secretary will serve as the Clerk of the District, shall keep minutes of meetings of the Governing Board and of the Executive Committee, shall be responsible for sending notices to Members, and shall maintain and be the custodian for all records and minutes of the District, the Governing Board and the Executive Committee.

SECTION 18. TREASURER: The Treasurer shall have the custody of funds of the District, shall be the disbursing officer of the District, and shall be bonded in accordance with applicable law. The signatures of two Officers, including the Treasurer, shall be required on checks for the disbursement of funds, providing no funds shall be disbursed without prior approval of the Governing Board.

SECTION 19. EXECUTIVE COMMITTEE: The Executive Committee shall be made up of the Officers. The Executive Committee shall perform duties as assigned or delegated by the Governing Board. Vacancies on the Executive Committee shall be filled as soon as practicable by the Governing Board.

SECTION 20. RECORDS: All meetings of the Governing Board and Executive Committee shall be noticed and conducted and records thereof and of the District made available to the public in accordance with RSA 91-A.

SECTION 21. AUDIT: The Governing Board shall cause an audit to be performed annually of CCCD accounts, revenues and expenditures, in accordance with the requirements of RSA 53-G:10.

SECTION 22. COMMITTEES: The Governing Board may choose to establish such committees as the Board may deem necessary for the purpose of advising the Governing Board. Membership in such committees is not limited to Board members.

SECTION 23. OPERATING BUDGET: The District shall operate on a fiscal year beginning on July 1 and ending on the following June 30. The Executive Committee shall annually prepare an operating budget, including revenues and expenses, to be presented for approval by the Governing Board at the annual meeting.

SECTION 24. REIMBURSEMENT OF OFFICERS: Officers and Member Representatives shall serve without compensation. Officers may be reimbursed for such expenses incurred in the discharge of their duties hereunder, providing the same are authorized by prior approval of the Governing Board in accordance with Rules of Procedure adopted by the Board.

SECTION 25. REMOVAL OF OFFICERS: Any member of the Executive Committee may be removed by a two-thirds vote of the Governing Board whenever, in its judgement, the best interest of CCCD will be served thereby.

SECTION 26. ADMISSION OF ADDITIONAL DISTRICT MEMBERS: The Governing Board, by a 2/3 majority vote, in accordance with the provisions of RSA 53-G:7, may authorize the admission of additional municipalities as District Member Towns, upon vote by the legislative body

of any such municipality by simple majority vote to adopt the provisions of RSA 53-G and this District Agreement.

SECTION 27. MEMBER WITHDRAWAL: A District Member may withdraw as a Member Town of the District upon majority vote of the legislative body of such Member Town taken in accordance with RSA 53-G:8. The vote shall be certified by the Clerk of the municipality and presented to the Board. Thereafter, the Board shall give notice to the remaining District members of the vote to withdraw and shall hold a meeting to determine if it is in the best interest of the District to continue to exist. Representatives of the District members shall be given an opportunity to be heard at such meeting together with other interested persons. After such a meeting, the board may declare the District dissolved or it may declare that the District shall continue to exist despite the withdrawal of such member, providing a 2/3 majority vote shall be required to dissolve the district. The membership of the withdrawing municipality shall terminate after the vote to withdraw. The withdrawing Member shall have no continuing obligation to the District, nor shall the District have any continuing obligation to such Member, except in accordance with written agreement entered between such member and the District.

SECTION 28. AMENDMENT OF AGREEMENT: This Agreement may be amended by a 2/3 majority vote of the Governing Board, except for Sections 5, 7 and 12 which shall only be amended by majority vote of the legislative bodies of 2/3 of the Member Towns.

SECTION 29. ANNUAL REPORT: Within 90 days of the close of each fiscal year the Governing Board shall cause to be prepared and published an annual report on the District's activities during the preceding year, including financial statements. The annual report shall be made available for review by the public, posted on the District's website, and an electronic copy delivered to each Member Town. A print copy of each annual report shall be kept at the District's main office address and available for public review during business hours.

SECTION 30. CONFLICTS OF INTEREST: The Governing Board shall adopt a conflict of interest policy, which shall be binding upon Governing Board members and all District Officers. No Representative or Alternate shall be employed by an Internet Service Provider.

SECTION 31. DISSOLUTION: The District may be dissolved by 2/3 majority vote of the Governing Board taken at a public meeting held for that purpose, that is duly noticed 15 days in advance, at which all Members have an opportunity to be heard along with other interested parties and members of the public, prior to the vote being taken. Upon dissolution, no member shall have any continuing rights or obligations or liabilities incident to activities of the District except in accordance with written agreements entered between such member and the District. Upon dissolution, all remaining funds held by the District shall be distributed to Carroll County for use by the County in providing internet service assistance to low income residents of the County, except as may otherwise be required by contractual agreement, and any other assets shall be distributed as determined by the Governing Board to fulfill the purpose set forth in Section 2, subject to the requirements of any contractual agreement entered by the District.

SECTION 32. INDEMNIFICATION: The District hereby adopts the provisions of NH RSA 31:104, 31:105 and 31:106, and shall indemnify and save harmless from loss or damage to the maximum extent permissible pursuant to such provisions, all Representatives and Alternates. At its initial meeting the Governing Board shall adopt a written policy providing such indemnification.

SECTION 33. SEVERABILITY: If any term or provision of this Agreement shall be invalidated, such action shall not affect the balance of this Agreement.

DATE ADOPTED:

Secretary: Name _____

Signature _____

APPENDIX A: Member Towns

APPENDIX B: RSA 53-G

APPENDIX C: RSA 91-A

APPENDIX A

Carroll County Communications District Planning Committee Member Towns

Albany, NH
Brookfield, NH
Chatham, NH
Conway, NH
Eaton, NH
Effingham, NH
Freedom, NH
Hales Location, NH
Hart's Location, NH
Madison, NH
Moultonborough, NH
Ossipee, NH
Tamworth, NH
Tuftonboro, NH

APPENDIX B

RSA 53-G

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 53-G COMMUNICATIONS DISTRICTS

Section 53-G:1

53-G:1 Definitions. –

In this chapter:

I. "Board" means the governing board of the district.

II. "District" means a communications district of 2 or more municipalities established under this chapter.

III. "Equipment and infrastructure" means any and all parts of any communications system, owned, leased, or otherwise contracted by the district, whether using wires, cables, fiber optics, wireless, other technologies, or a combination thereof, and used for the purpose of transporting or storing information, in whatever forms, directions, and media, together with any improvements thereto constructed or acquired after the effective date of this chapter, and all other facilities, equipment, and appurtenances necessary or appropriate to such system. "Equipment and infrastructure" shall not apply to communications facilities, or portions of any communications facilities, intended for use by, and solely used by, a district member and its own officers and employees in the operation of municipal departments or systems of which such communications are merely an ancillary component.

IV. "Governing body" means "governing body" as defined in RSA 21:48.

V. "Legislative body" means "legislative body" as defined in RSA 21:47.

VI. "Long-term contract" means a contract for communications services, or an equipment or infrastructure lease for 5 years or more.

VII. "Member" means any city, town, unincorporated town, or unorganized place that elects to form or join a communications district under this chapter.

VIII. "Municipality" means any city, town, unincorporated town, or unorganized place.

IX. "Person" means any individual, partnership, company, corporation, firm, governmental unit or agency, or any other legal entity.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:2

53-G:2 Communications District Planning Committee; Formation and Responsibilities. –

I. The governing bodies of 2 or more municipalities may at their discretion, and shall upon a vote of their respective legislative bodies, create a special unpaid committee to be known as a communications district planning committee, consisting of at least 2 persons from each municipality appointed by the respective governing bodies. The committee shall elect a chairperson, clerk, and treasurer. Members may be reimbursed by the committee for costs of performing duties directly related to the committee.

II. The committee may accept funds from any public or private source and may expend money for planning purposes which may include, but not be limited to, engaging legal counsel, accountants, engineers, contractors, consultants, and other advisors, paying for member expenses, or organizational and secretarial assistance. The committee shall report in a timely fashion to each governing body the sources and amounts of such funds. Each municipality represented on the committee may appropriate funds to the committee.

III. The committee shall study the advisability of establishing a communications district by examining the types of equipment and infrastructure that would be needed; the methods of organizing, operating, and financing such a district; and the potential benefits and disadvantages to member municipalities. The committee may consider specific sites inside or outside the proposed district for equipment location or which municipalities may have equipment or infrastructure, or both, located within them.

IV. If the committee determines that the formation of a district is desirable, it shall prepare a proposed district agreement in accordance with RSA 53-G:4 and hold a public information session in each municipality which is named in the district agreement as a site. Copies of the proposed agreement and of RSA 53-G shall be made available at and prior to any hearing. Notice of any hearing shall be published in one or more newspapers of general circulation in the proposed district or posted on the website of each member municipality and posted in one public place in each member municipality, and sent to the governing bodies of participating municipalities.

V. After the public hearing and information session, the committee may amend the contents of the proposed agreement and shall send it for review to the attorney general. The attorney general shall approve any proposed agreement unless it is in improper form or is incompatible with the requirements of this chapter and the laws of this state. The attorney general shall inform the governing bodies and the planning committee in writing of any specific respects in which the proposed agreement fails to meet the requirements of law. Approval by the attorney general shall be required for any district agreement to be legally valid. Failure by the attorney general to disapprove an agreement within 30 days of its submission shall constitute approval.

VI. The committee may revise the proposed district agreement as it deems necessary and shall resubmit it to the attorney general. A public hearing shall be held in at least one of the participating municipalities if the agreement is substantially revised. The committee may give final approval to a proposed agreement after approval by the attorney general.

VII. The committee shall report its findings and recommendations, along with any proposed district agreement, to the governing bodies of the participating municipalities.

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Source. 2020, 28:7, eff. July 22, 2020. 2021, 198:2, Pt. I, Sec. 1, eff. Oct. 9, 2021.

Section 53-G:3

53-G:3 Communications District Agreements. –

The business affairs and actions of a district shall be conducted and governed pursuant to the terms, conditions, and provisions of its district agreement. The agreement shall include but not be limited to the following:

I. A list of the municipalities included in the district.

II. Provisions for the sharing of planning, construction, operating, and maintenance of equipment, infrastructure, and services, if any.

III. The method of selection and method of removal of representatives to the district governing board, whether by legislative or governing bodies; the number of representatives; the terms of office of the representatives; rules of procedure concerning the method of conducting the board's business; and, except as provided otherwise by law, the powers, duties, and authorities of the district governing board officers.

IV. A description of equipment, infrastructure, and sites, if applicable.

V. The terms by which other municipalities may be admitted to the district or a member municipality may withdraw from the district before or after debt has been incurred.

VI. The method by which the district agreement may be amended including conditions under which an amendment shall be approved by the governing or legislative bodies of member municipalities.

VII. The procedure for dissolution of the communications district before or after debt has been incurred.

VIII. Provisions for varied levels of participation by member municipalities in equipment and infrastructure, if applicable.

IX. The procedure for the preparation and adoption of the annual budget, including the apportionment of district expenses and a schedule of payments, if applicable, and other procedures relative to governing the district's fiscal affairs in accordance with RSA 53-G:9.

X. The procedure, if any, for establishing the district when not all of the legislative bodies vote to approve the district agreement, as provided in RSA 53-G:4, II.

XI. The funding sources that are acceptable to the district such as: federal, state, regional broadband and economic development grants or loans, general obligation bonds, revenue bonds, private investment or loans, subscriber fees, and member contributions.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:4

53-G:4 Vote on Establishing District. –

I. The governing bodies shall cause the question of accepting any proposed agreement to be presented for determination by vote of the respective legislative bodies. In municipalities that hold town meetings, the proposed agreement shall be voted on at the next annual town meeting or at a special town meeting called for such purpose. In all other municipalities, the legislative bodies shall vote on the proposed agreement within 60 days of the governing bodies' receipt of the proposed agreement, as approved by the attorney general under RSA 53-G:2, V. The question to be voted on shall be: "Shall the (insert name of municipality) accept the provisions of RSA 53-G:1-RSA 53-G:11 providing for the establishment of a communications district, together

with the municipalities of _____ in accordance with the provisions of the proposed agreement filed with the (insert appropriate office for governing body)?"

Approval by a legislative body shall be by simple majority. If all of the legislative bodies vote in the affirmative, the proposed communications district shall thereby be established in accordance with the terms of the proposed agreement. Otherwise, the district shall not be established, except as specified in paragraph II.

II. The proposed agreement may contain a provision for the establishment of the district when more than one but not all of the legislative bodies vote in the affirmative. Such provision need not require any additional votes by the legislative bodies in order to establish the district, but it may not include in the district any municipality, the legislative body of which did not approve the proposed agreement.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:5

53-G:5 Corporate Body; Powers. –

A communications district established under this chapter shall be a body politic and corporate and a political subdivision and public instrumentality of the state carrying out a public purpose and an essential governmental function with the following powers, which are subject to the provisions and limitations of the district agreement:

- I. To adopt a name and a corporate seal. The engraved or printed facsimile of the seal appearing on a bond or note of the district shall have the same legal effect as if it were impressed thereon.
- II. To receive federal or state grants and loans, revenue from subscribers, access fees from subscribers, access to broadband infrastructure bonds, revenue bonds, pledge revenues, and accept member contributions or private investment.
- III. To adopt a budget in accordance with 53-G:9.
- IV. To establish and adjust fees.
- V. To establish public/private partnerships and enter into broadband agreements with Internet service providers as necessary to build and operate the network.
- VI. To provide or contract for communications infrastructure and services for its district members, including the residential and business locations located therein and provide for communications infrastructure and services for such other residential and business locations as its equipment, infrastructure, and obligations may allow, provided such other locations are in a municipality that is contiguous with the town limits of a district member.
- VII. To cause to be operated, or contract for the construction, ownership, management, financing, and operation of a communications plant for the delivery of communications services.
- VIII. To sue and be sued, but only to the same extent and upon the same conditions that a municipality may be sued.
- IX. To hold, deal with, mortgage, pledge, encumber, purchase, acquire, lease, sell, convey, and otherwise dispose of real and personal property of all kinds in furtherance of the purposes of the district, subject to any and all operating agreements.
- X. Each communications district shall have the power, by vote of the members, to borrow money and issue its notes or bonds in accordance with RSA 33, subject to the following:
 - (a) In the case of broadband infrastructure bonds, under RSA 33:3-g.
 - (b) In the case of revenue bonds, under RSA 33-B, when the board, at a regular or special meeting called for such purpose, determines by resolution passed by a vote of a majority of members present and voting that the public interest or necessity demands communications plant improvements, or a long-term contract, and that the cost of the same will be too great to be paid out of the ordinary annual income and revenue of the district, the board may pledge communications plant net revenues and enter into long-term contracts to provide for such improvements. In this chapter, a "long term contract" means an agreement in which the district incurs direct or conditional obligations for which the costs are too great to be paid out of the ordinary annual income and revenues of the district, in the judgment of the board. In this chapter, the term "communications plant improvements" includes improvements that may be used for the benefit of the public, whether or not publicly owned or operated. The pledge of communications plant net revenues and other obligations allowed by law may

be authorized for any purpose permitted by this chapter, or any other applicable statutes.

XI. To receive and disburse funds for any district purpose.

XII. To incur temporary debt in anticipation of revenue to be received.

XIII. To engage legal counsel, accountants, engineers, contractors, consultants, agents, and other advisors.

XIV. To enter into contracts with any person consistent with the authority that a district has under this chapter.

XV. To utilize powers delegated to the district through the district agreement by member municipalities to enact bylaws and regulations concerning communications.

XVI. To insure against liability and other risks, and otherwise to obtain all insurance deemed by the governing board to be necessary or appropriate to the district and its operations.

XVII. To guarantee obligations and to give indemnities to third parties, when in the best interests of and for the benefit of the district.

XVIII. To make contracts, leases, or other agreements with any member municipality within which equipment or infrastructure, or both, is or is to be located. Such contracts, leases, or other agreements may provide for benefits, privileges, payments, or other considerations for such host member municipality which, with respect to that equipment or infrastructure, or both, are different from and not otherwise available to the other member municipalities. The governing body of each member municipality shall be given written notice of the general purposes of the long-term contract, a summary of the terms of the long-term contract, and a copy of the long-term contract within 7 days after the authorization.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:6

53-G:6 Governing Board. –

I. The powers, duties, and liabilities of a district shall be vested in and exercised by a governing board organized in accordance with the district agreement. The governing board shall authorize and govern all actions of a district, and the governing board's actions which are consistent with the district agreement and this chapter are binding on member municipalities without any additional action by the governing or legislative bodies of those municipalities. A majority of governing board members shall constitute a quorum. A simple majority of the voting authority present shall be sufficient to approve an action by the committee except as otherwise provided in the district agreement.

II. The board shall choose a chairperson by ballot from its membership. It shall appoint a secretary and a treasurer, who may be the same person, but who need not be members of the committee, and such other officers as may be provided for in the district agreement. The treasurer shall receive and take charge of all money belonging to the district and shall pay any debt of the district which has been approved by the committee. The treasurer may, by vote of the committee, be compensated for his or her services. Proceedings of the committee shall be held in accordance with RSA 91-A.

III. The committee shall send to the member municipalities, by January 31 of each year, a report on the general activities and affairs of the district, including a detailed financial report.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:7

53-G:7 Admission of Additional District Members. – The board may authorize the inclusion of additional district members in the multi-town communications district upon such terms and conditions as it in its sole discretion shall deem to be fair, reasonable, and in the best interests of the district. The legislative body of any nonmember municipality which desires to be admitted to the district shall make application for admission to the board. The board shall determine the financial and operational effects that are likely to occur if such municipality is admitted and thereafter either grant or deny authority for admission of the petitioning municipality. If the board grants such authority, it shall also specify any terms and conditions, including

financial obligations, upon which such admission is predicated. Upon resolution of the board, such applicant municipality shall become a district member.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:8

53-G:8 Member Withdrawal. – A district member may vote to withdraw in the same manner as the vote for admission to the district. If a majority of the voters of a district member present and voting at a meeting duly warned for such purpose votes to withdraw from the district, the vote shall be certified by the clerk of that municipality and presented to the board. Thereafter, the board shall give notice to the remaining district members of the vote to withdraw and shall hold a meeting to determine if it is in the best interest of the district to continue to exist. Representatives of the district members shall be given an opportunity to be heard at such meeting together with any other interested persons. After such a meeting, the board may declare the district dissolved or it may declare that the district shall continue to exist despite the withdrawal of such member. The membership of the withdrawing municipality shall terminate after the vote to withdraw.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:9

53-G:9 Adoption of Budget. – Annually, the governing board shall determine the amounts necessary to be raised to maintain and operate the district during the next calendar year, and the amounts required for payment of debt and interest incurred by the district that will be due in the next year. The committee shall prepare a budget no later than December 31. The committee shall give at least 7 days' notice of the budget hearing by publication of the budget in a newspaper of general circulation within the district, and by posting a copy of the budget in a public place in each municipality in the district. After the hearing the committee shall adopt a budget.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:10

53-G:10 Audits. – The governing board shall hire a certified public accountant or a public accountant licensed by the state under RSA 309-B:5 to conduct a financial audit, in accordance with generally accepted governmental auditing standards as adopted by the United States General Accounting Office and applicable state statutes, to be completed within 6 months after the close of each fiscal year. Upon completion of an audit, the governing board shall review and vote on acceptance of the audit and send a copy of the audited financial statements, the auditor's opinion on those statements, a report on internal control, a report on compliance, and any other auditor reports to the governing body of each of the member municipalities and to the department of revenue administration. At least every 2 years, the governing board shall vote on whether to contract for a performance audit of the district in accordance with the generally accepted governmental auditing standards. Upon completion of a performance audit, the committee shall review and vote on acceptance of the audit and send a copy of the resulting materials to the governing body of each of the member municipalities and to the department of revenue administration.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:11

53-G:11 Severability. – If any portion of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 2020, 28:7, eff. July 22, 2020.

APPENDIX C

RSA 91-A

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

Chapter 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

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.

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.

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.

Section 91-A:2

See 2020, 8:3, effective July 10, 2020; Executive Order 2020-04 (NH LEGIS E.O. 2020-04 (2020) [1001]) as extended by Executive Orders 2020-05 (NH LEGIS E.O. 2020-05 (2020, 1005:1.)); 2020-08 (NH LEGIS E.O. 2020-08 (2020, 1008:1.)); 2020-09 (NH LEGIS E.O. 2020-09 (2020, 1009:1.)); 2020-010 (NH LEGIS E.O. 2020-010 (2020, 1010:1.)); 2020-014 (NH LEGIS E.O. 2020-014 (2020, 1014:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); 2020-016 (NH LEGIS E.O. 2020-016 (2020, 1016:1.)); 2020-017 (NH LEGIS E.O. 2020-017 (2020, 1017:1.)); 2020-018 (NH LEGIS E.O. 2020-018 (2020, 1018:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); and Emergency Order #12 (NH LEGIS E.O. 2020-12-Emerg. (2020, 2012:1.)), related to the COVID-19 State of Emergency, for potential impact on the terms of this section.

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, 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 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.

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.

Section 91-A:2-b

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

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) [Repealed.]

(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 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.

[Paragraph II(m) effective January 1, 2022.]

(m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.

[Paragraph III effective until January 1, 2022; see also paragraph III set out below.]

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.

[Paragraph III effective January 1, 2022; see also paragraph III set out above.]

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. For all meetings held in nonpublic session, where the minutes or decisions were determined to not be subject to full public disclosure, a list of such minutes or decisions shall be kept and this list shall be made available as soon as practicable for public disclosure. This list shall identify the public body and include the date and time of the meeting in nonpublic session, the specific exemption under paragraph II on its face which is relied upon as foundation for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session under subparagraph II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

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. 2021, 48:7(I), eff. May 25, 2021; 163:1, eff. Jan. 1, 2022; 172:1, eff. Jan. 1, 2022.

Section 91-A:4

See 2020, 8:4, effective July 10, 2020 and Emergency Order #23 (NH LEGIS E.O. 2020-23-Emerg. (2020, 2023:1.)), issued pursuant to Executive Order 2020-04 (NH LEGIS E.O. 2020-04 (2020, 1004:1.)) as extended by Executive Orders 2020-05 (NH LEGIS E.O. 2020-05 (2020, 1005:1.)); 2020-08 (NH LEGIS E.O. 2020-08 (2020, 1008:1.)); 2020-09 (NH LEGIS E.O. 2020-09 (2020, 1009:1.)); 2020-010 (NH LEGIS E.O. 2020-010 (2020, 1010:1.)); 2020-014 (NH LEGIS E.O. 2020-014 (2020, 1014:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); 2020-016 (NH LEGIS E.O. 2020-016 (2020, 1016:1.)); 2020-017 (NH LEGIS E.O. 2020-017 (2020, 1017:1.)); 2020-018 (NH LEGIS E.O. 2020-018 (2020, 1018:1.)), 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)), related to the COVID-19 State of Emergency, for potential impact on the terms of this section.

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 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.

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 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.

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 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.

XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

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. 2021, 163:2, eff. July 30, 2021.

Section 91-A:5-a

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

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

Section 91-A:6

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

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

Section 91-A:7

91-A:7 Violation. – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. 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.

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 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.

Section 91-A:8-a

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

Section 91-A:9

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

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

Procedure for Release of Personal Information for Research Purposes

Section 91-A:10

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

I. In this subdivision:

- (a) "Agency" means each state board, commission, department, institution, officer or other state official or group.
- (b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.
- (c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.
- (d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.
- (e) "Direct identifiers" means:
 - (1) Names.
 - (2) Postal address information other than town or city, state, and zip code.
 - (3) Telephone and fax numbers.
 - (4) Electronic mail addresses.
 - (5) Social security numbers.
 - (6) Certificate and license numbers.
 - (7) Vehicle identifiers and serial numbers, including license plate numbers.
 - (8) Personal Internet IP addresses and URLs.
 - (9) Biometric identifiers, including finger and voice prints.
 - (10) Personal photographic images.
- (f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.
- (g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.
- (h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:
 - (1) Contains direct identifiers.
 - (2) Is under the control of the state.
- (i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.
- (j) "Public record" means records available to any person without restriction.
- (k) "State" means the state of New Hampshire, its agencies or instrumentalities.

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

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

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

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

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

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

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

(3) A research protocol which shall contain:

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

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

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

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

(E) the intended research completion date.

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

(A) general types of information;

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

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

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

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

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

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

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

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

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

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

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

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

(a) The application submitted is complete.

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

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

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

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

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

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request.

Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided. V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation. VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

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

Right-to-Know Oversight Commission

Section 91-A:11 to 91-A:15

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

