

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

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.

(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.

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.

IV. (a) A public body or agency may adopt procedures to review minutes of meetings held in nonpublic session and to determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. If the public body determines that those circumstances no longer apply, the minutes shall be available for release to the public pursuant to this chapter.

(b) In the absence of an adopted procedure to review and determine whether the circumstances no longer apply for meeting minutes kept from the public, the public body or agency shall review and determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. This review shall occur no more than 10 years from the last time the public body voted to prevent the minutes from being subject to public disclosure. Meeting minutes that were kept from the public prior to the effective date of this paragraph that are not reviewed by the public body or agency within 10 years of the effective date of this paragraph shall be subject to public disclosure without further action of the public body.

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. 2023, 189:1, eff. Oct. 3, 2023.