

#### D. Meeting Procedures

Meetings of public bodies subject to the Right-to-Know law are open to the public unless the body is authorized to hold a non-public session. RSA 91-A:2. Any person may attend an open meeting. The public's right to attend a meeting established by the Right-to-Know law does not convey a right to speak or participate. Other laws may require that the public be afforded a regulated opportunity to speak at public hearings or certain other meetings of public bodies. Many public bodies voluntarily establish appropriate regulated public comment periods at some meetings; however, this is not required by the Right-to-Know law.

##### 1. Member Participation and Attendance at Meetings

- a. Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice. RSA 91-A:2, III(b).
- b. 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 attending in person is not reasonably practical. RSA 91-A:3(a). The reason for participation from some place other than the location of the meeting shall be stated in the minutes of the meeting. RSA 91-A:2, III(a).
- c. Each member participating electronically or otherwise must be able to simultaneously hear each other member and speak to each other member during the meeting. The member participating by phone or other electronic means shall also be audible or otherwise discernable to the public in attendance at the meeting's location. RSA 91-A:2, III(c). One practical solution is participating by telephone, provided there is a speaker phone used in the meeting room that can be heard by the public.
- d. Any member participating electronically at a meeting must identify all other persons present at the place from which the member is participating. RSA 91-A:2, III(c).
- e. A member participating in a meeting by electronic means is deemed to be present at the meeting for purposes of voting.
- f. All votes taken during a meeting in which any member participates electronically shall be by roll call vote. RSA 91-A:2, III(e). The Right-to-Know law does not explicitly require that every roll call vote be recorded member by member in the minutes. However, compliance with the roll call requirement should be documented.

## 2. Basic Meeting Requirements

- a. 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 the meeting discussion contemporaneously at the meeting location specified in the meeting notice. RSA 91-A:2, III(c).
- b. RSA 91-A:2, III(c) explicitly requires that when a member is participating by phone or other electronic means each part of a meeting required to be open to the public shall be as audible or otherwise discernable to the public as it would be if all members were participating in person.

Generally, a public body should plan to hold meetings in a space that is accessible to persons with disabilities and that will accommodate any reasonably anticipated public attendance. If necessary, the body should make provisions for amplifying the discussions between members and parties presenting to the public body. While outside the scope of this Memorandum, public bodies should consult with legal counsel to ensure the body is prepared to meet the requirements of the Americans with Disabilities Act should any person require accommodation.

If extraordinary unanticipated public attendance results in some members of the public being effectively denied the opportunity to attend the public meeting, it may be necessary to reconvene the meeting in a more suitable space. For example, if a crowd in excess of the fire code limit for the meeting room shows up and others wishing to attend are limited to hallways or other rooms where they can neither hear nor see, the right of public access is put in question. If practical, move the meeting to a sufficiently large nearby space. Ensure those arriving at the location shown on the meeting notice are informed where the meeting has been moved to. If moving is impractical, consult with legal counsel before proceeding with a meeting where members of the public are present who are being denied the opportunity to attend due to space limitations.

- c. Any person shall be permitted to use recording devices including, but not limited to, tape recorders, cameras, and videotape equipment at such meetings. RSA 91-A:2, II; see *WMUR v. N.H. Dept. of Fish and Game*, 154 N.H. 46 (2006) (prohibiting television cameras at a hearing on issuance of a hunting and fishing license because the presence of cameras would impair the applicant's ability to present his case violated the Right-to-Know law where the applicant had not established that he had a due process right to a hearing without cameras present).<sup>7</sup> Public bodies

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<sup>7</sup> The Court did not reach the question of whether the right to due process, if it had been established by the person seeking a license, would outweigh the right to use television cameras at a public hearing. Television cameras should generally be allowed at public meetings and hearings.