

SB 95-FN - AS AMENDED BY THE SENATE

03/25/2021 1016s

2021 SESSION

21-0993

06/11

SENATE BILL **95-FN**

AN ACT adopting omnibus legislation relative to access to remote meetings, penalties for violation of privacy, and establishing a committee to study remote meetings.

SPONSORS: Sen. Daniels, Dist 11

COMMITTEE: Judiciary

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ANALYSIS

This bill adopts legislation relative to:

- I. Governing bodies meeting virtually.
- II. Remote access to meetings.
- III. Penalties for violation of privacy.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



1 ~~(e) Each part of a meeting required to be open to the public shall be audible or otherwise~~  
2 ~~discernable to the public at the location specified in the meeting notice as the location of the~~  
3 ~~meeting.]~~

4 **(a) A physical location is not required for any meeting, provided the meeting**  
5 **complies with the provisions of this paragraph.**

6 **(b) If a meeting has no physical location, public access shall be provided to the**  
7 **public by telephone, and additional access may be provided by video or other electronic**  
8 **means.**

9 **(c) If a meeting has no physical location, public notice of the meeting, with all**  
10 **information necessary to access the meeting telephonically and by other means, shall be**  
11 **given as provided in this chapter. The notice shall provide a mechanism for the public to**  
12 **alert the public body during the meeting if there are problems with access. The meeting**  
13 **shall be adjourned if the public is unable to access the meeting because of any technical**  
14 **communication problems experienced by the provider of the communication media.**

15 **(d) Each member participating electronically or otherwise ~~must~~ in a meeting**  
16 **required to be open to the public shall be able to simultaneously hear each other and speak to**  
17 **each other during the meeting, and shall be audible or otherwise discernable to the public in**  
18 **attendance at the meeting's location, if the meeting has a physical location. Any member**  
19 **participating in such fashion shall identify the location from which the person is participating**  
20 **and the persons present in the location from which the member is participating. No meeting shall**  
21 **be conducted by electronic mail or any other form of communication that does not permit the public**  
22 **to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location**  
23 **specified in the meeting notice.**

24 ~~(d)~~ **(e) Any meeting held pursuant to the terms of this paragraph shall comply with all**  
25 **of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit**  
26 **and purpose of this chapter as expressed in RSA 91-A:1.**

27 ~~(e)~~ **(f) A member participating in a meeting by the means described in this paragraph**  
28 **is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting**  
29 **shall be by roll call vote.**

30 2 Access to Governmental Records and Meetings; Meetings Open to the Public. RSA 91-A:2, III  
31 is repealed and reenacted to read as follows:

32 III. A public body may, but is not required to, allow one or more members of the body to  
33 participate in a meeting by electronic or other means of communication for the benefit of the public  
34 and the governing body, subject to the provisions of this paragraph.

35 (a) A member of the public body may participate in a meeting other than by attendance  
36 in person at the location of the meeting only when such attendance is not reasonably practical. Any

1 reason that such attendance is not reasonably practical shall be stated in the minutes of the  
2 meeting.

3 (b) Except in an emergency, a quorum of the public body shall be physically present at  
4 the location specified in the meeting notice as the location of the meeting. For purposes of this  
5 subparagraph, an "emergency" means that immediate action is imperative and the physical presence  
6 of a quorum is not reasonably practical within the period of time requiring action. The  
7 determination that an emergency exists shall be made by the chairman or presiding officer of the  
8 public body, and the facts upon which that determination is based shall be included in the minutes of  
9 the meeting.

10 (c) Each part of a meeting required to be open to the public shall be audible or otherwise  
11 discernable to the public at the location specified in the meeting notice as the location of the meeting.  
12 Each member participating electronically or otherwise must be able to simultaneously hear each  
13 other and speak to each other during the meeting, and shall be audible or otherwise discernable to  
14 the public in attendance at the meeting's location. Any member participating in such fashion shall  
15 identify the persons present in the location from which the member is participating. No meeting  
16 shall be conducted by electronic mail or any other form of communication that does not permit the  
17 public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting  
18 location specified in the meeting notice.

19 (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of  
20 the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and  
21 purpose of this chapter as expressed in RSA 91-A:1.

22 (e) A member participating in a meeting by the means described in this paragraph is  
23 deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting  
24 shall be by roll call vote.

25 3 Effective Date.

26 I. Section 2 of Part I of this act shall take effect July 1, 2022.

27 II. The remainder of Part I of this act shall take effect upon its passage.

28 PART II

29 Relative to penalties for violation of privacy.

30 1 New Paragraph; Breaches of the Peace; Violation of Privacy. Amend RSA 644:9 by inserting  
31 after paragraph IV the following new paragraph:

32 IV-a. Any person convicted of a class A misdemeanor under paragraphs I-IV who commits a  
33 second or subsequent offense under paragraphs I-IV may be charged with a class B felony for the  
34 second or subsequent offense.

35 2 Effective Date. Part II of this act shall take effect January 1, 2022.

36 PART III

37 Establishing a committee to review authorizing governing bodies of municipalities to

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1 hold virtual meetings and to study remote access to meetings under RSA 91-A.

2 1 Committee Established. There is established a committee to review authorizing governing  
3 bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA  
4 91-A.

5 2 Membership and Compensation.

6 I. The members of the committee shall be as follows:

7 (a) Two members of the senate, appointed by the president of the senate.

8 (b) Three members of the house of representatives, appointed by the speaker of the  
9 house of representatives.

10 II. Members of the committee shall receive mileage at the legislative rate when attending to  
11 the duties of the committee.

12 3 Duties. The committee shall review authorizing governing bodies of municipalities to hold  
13 virtual meetings and to study remote access to meetings under RSA 91-A.

14 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from  
15 among the members. The first meeting of the committee shall be called by the first-named senate  
16 member. The first meeting of the committee shall be held within 45 days of the effective date of this  
17 section. Three members of the committee shall constitute a quorum.

18 5 Report. The committee shall report its findings and any recommendations for proposed  
19 legislation to the president of the senate, the speaker of the house of representatives, the senate  
20 clerk, the house clerk, the governor, and the state library on or before November 1, 2021.

21 6 Effective Date. Part III of this act shall take effect 60 days after its passage.

**SB 95-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENT #2021-1016s)

AN ACT adopting omnibus legislation relative to access to remote meetings, penalties for violation of privacy, and establishing a committee to study remote meetings.

**PART I: Relative to remote access to meetings under RSA 91-A.**

This part has no fiscal Impact.

**PART II: Relative to penalties for violation of privacy.**

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This section of the bill allows a second or subsequent offense for certain invasion of privacy offenses to be charged as a class B felony. This bill contains a penalty that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class A Misdemeanor	\$78	\$78
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494

Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

**PART III: Establishing a committee to review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.**

This part has no fiscal Impact.