

CHAPTER 125
HB 266 - FINAL VERSION

2023 SESSION

23-0225
04/10

HOUSE BILL

266

AN ACT relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Ulery, Hills. 13; Rep. Goley, Hills. 21; Sen. Carson, Dist 14; Sen. Lang, Dist 2

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill amends the administrative procedure act to insert notice and public access requirements for hybrid and virtual agency public comment hearings.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 125:1 New Paragraph; Administrative Procedure Act; Definitions; Hybrid Hearings. Amend RSA 541-
2 A:1 by inserting after paragraph VII-b the following new paragraph:

3 VII-c. "Hybrid hearing" means an agency public comment hearing for rulemaking held in a
4 physical location but with the option for participation by the public by electronic means pursuant to RSA
5 541-A:11 and RSA 541-A:19-a.

6 125:2 New Paragraph; Administrative Procedure Act; Definitions; Virtual Hearings. Amend RSA 541-
7 A:1 by inserting after paragraph XVI the following new paragraph:

8 XVII. "Virtual hearing" means an agency public comment hearing for rulemaking held only
9 electronically and which provides public access to participate by electronic means pursuant to RSA 541-
10 A:11 and RSA 541-A:19-a.

11 125:3 Amendment; Administrative Procedure Act; Notice of Rulemaking Proceedings. Amend RSA
12 541-A:6, I to read as follows:

13 I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also
14 give notice of the cut-off date for the submission of written testimony pursuant to RSA 541-A:11, I, on any
15 proposed adoption, [~~amendment,~~] readoption, readoption with amendment, or repeal of a rule. The notice
16 periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be
17 in such form as the director of legislative services shall prescribe and shall include:

18 (a) The name and address of the agency.

19 (b) The statutory authority for the rule.

20 (c) Whether the intended action is an adoption, [~~amendment,~~] repeal, readoption, or
21 readoption with amendment.

22 (d) The rule number and title.

23 (e) The date, ***time, and physical location, if applicable,*** of the first agency public hearing,
24 [~~and~~] the cut-off date for the submission of written materials to the agency[~~;~~] ***and, if practicable for the***
25 ***agency, the format for submitting materials electronically.***

26 (f) If existing rules are being [~~amended,~~] readopted, or readopted with amendment, a concise
27 summary of the existing rules and any proposed amendments, and if the proposed rules are being
28 adopted, a concise summary of the proposed rules.

29 (g) A listing of people, enterprises, and government agencies affected by the rule.

30 (h) The name, ***mailing*** address, [~~and~~] telephone number, ***and e-mail address*** of an individual
31 in the agency able to answer questions on the proposed rule.

32 (i) The fiscal impact statement completed by the legislative budget assistant.

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(j) A statement, with adequate details and supporting data, that the proposed rule does not violate the New Hampshire constitution, part I, article 28-a.

(k) If the agency provides for a virtual or hybrid hearing consistent with RSA 91-A and RSA 541-A:11, I(d), the necessary information for accessing the meeting electronically, and a mechanism for the public to alert the agency during the hearing if there are problems with access.

125:4 Administrative Procedure Act; Public Hearing and Comment. Amend RSA 541-A:11, I-V to read as follows:

I.(a) Each agency shall hold at least one public hearing on all proposed rules filed pursuant to RSA 541-A:3 and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule ***and of any draft, new, or amended form, or screenshot, mock-up, or prototype of an electronic-only form, which the rule incorporates by reference or whose requirements are set forth in the rule pursuant to RSA 541-A:19-b,*** shall be available to the public under RSA 91-A and at least 5 days prior to the date of the hearing.

(b) For rules proposed by a board or commission, a period of at least 5 business days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least 5 business days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended unless the previously-established deadline meets the applicable requirement specified above.

(c) An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.

(d) If consistent with RSA 91-A and the provisions of this section, the agency under subparagraph I(a) may hold a virtual or hybrid hearing, provided that the public may participate by telephone, with additional access possibilities by video or other electronic means in accordance with the terms of the notice filed pursuant to RSA 541-A:3, I, including a mechanism for the public to alert the agency during the hearing if there are problems with access. Each participant in a virtual hearing or hybrid hearing shall be able to simultaneously hear and speak to the other agency and public participants and be audible or otherwise discernable to the public in attendance, whether attendance is in-person or by electronic means.

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1 II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of
2 its members. For rules proposed by an agency official, each hearing shall be held by the official having
3 the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the
4 proposed rules.

5 III. To provide reasonable opportunity for public comment, the agency may continue a public
6 hearing past the scheduled time or to another date, or may extend the deadline for submission of written
7 comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any
8 means it deems appropriate, including notice in the rulemaking register whenever practicable *or by*
9 *posting on the agency's website.*

10 IV. A public comment hearing ~~[may]~~ **shall** be postponed in the event of any of the following:

11 (a) Inclement weather *that would not allow for a reasonable opportunity for the public to*
12 *participate.*

13 ~~[(b) Illness or unavoidable absence of the official with rulemaking authority.]~~

14 ~~[(c)]~~ (b) Lack of a quorum due to illness or unavoidable absence *for rules proposed by a*
15 *board or commission.*

16 (c) *Inability by the public during a virtual or hybrid hearing to access the hearing electronically*
17 *consistent with RSA 541-A:11, I(b), in which case the agency shall adjourn and reschedule the hearing*
18 *pursuant to this section.*

19 (d) Determination by the agency that postponement of the public comment hearing shall
20 facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall
21 provide notice in the rulemaking register at least 5 days before such postponed public comment hearing,
22 and may also provide notice by any other means it deems appropriate.

23 ***IV-a. A public comment hearing may be postponed in the event of illness or unavoidable absence***
24 ***of the official with rulemaking authority for rules proposed by an agency official.***

25 V. A public comment hearing may be moved to another location if the agency determines for any
26 reason that the original location is not able to accommodate the public. If changing the location does not
27 also necessitate a change in the date of the public comment hearing, the agency shall post notice of the
28 new location at the originally scheduled facility. If changing the location necessitates a change in the date
29 of the public comment hearing, the agency shall provide notice as required by paragraph IV.

30 ***V-a. If the public comment hearing is a virtual or hybrid hearing, the agency may change the***
31 ***electronic access possibilities provided in the notice to better afford all interested persons reasonable***
32 ***opportunity to testify and submit material by electronic means. It shall notify the public of the changes by***
33 ***any means it deems appropriate, including notice in the rulemaking register whenever practicable or by***
34 ***posting the changes on the agency's website.***

35 125:5 Amendment; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-
36 A:19-a, II to read as follows:

37 II. Notice of an agency's intent to repeal a rule shall include:

38 (a) The name and address of the agency.

39 (b) The statutory rulemaking authority for the rule.

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1 (c) The rule number and title.

2 (d) An explanation of the reason for the proposed repeal.

3 (e) The name, address, electronic address, and telephone number of an individual in the
4 agency able to answer questions about the proposed repeal and to arrange for reasonable
5 accommodation for persons with disabilities wishing to attend the public comment hearing.

6 (f) The date, time, and *physical* location, *if applicable*, of the public comment hearing.

7 ***(g) If the agency provides for a virtual or hybrid hearing consistent with RSA 91-A, the***
8 ***necessary information for accessing the hearing electronically, and a mechanism for the public to alert the***
9 ***agency during the hearing if there are problems with access.***

10 125:6 New Paragraph; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-
11 A:19-a by inserting after paragraph V the following new paragraph:

12 V-a. If consistent with RSA 91-A, the agency may hold a virtual or hybrid hearing, provided that
13 the public may participate by telephone, with additional access possibilities by video or other electronic
14 means in accordance with the terms of the notice, including a mechanism for the public to alert the
15 agency during the hearing if there are problems with access. Each participant in a virtual or hybrid
16 hearing shall be able to simultaneously hear and speak to the other agency and public participants and be
17 audible or otherwise discernable to the public in attendance, whether attendance is in-person or by
18 electronic means.

125:7 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 30, 2023
Effective Date: August 29, 2023