

HB 266 - AS INTRODUCED

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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 1 New Paragraph; Administrative Procedure Act; Definitions; Hybrid Hearings. Amend RSA
2 541-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
5 RSA 541-A:11 and RSA 541-A:19-a.

6 2 New Paragraph; Administrative Procedure Act; Definitions; Virtual Hearings. Amend RSA
7 541-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
10 541-A:11 and RSA 541-A:19-a.

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

19 (a) The name and address of the agency.
20 (b) The statutory authority for the rule.
21 (c) Whether the intended action is an adoption, [~~amendment,~~] repeal, readoption, or
22 readoption with amendment.

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

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

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

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

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

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

6 ***(k) If the agency provides for a virtual or hybrid hearing consistent with RSA***
7 ***91-A and RSA 541-A:11, I(d), the necessary information for accessing the meeting***
8 ***electronically, and a mechanism for the public to alert the agency during the hearing if***
9 ***there are problems with access.***

10 4 Administrative Procedure Act; Public Hearing and Comment. Amend RSA 541-A:11, I-V to
11 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 V. A public comment hearing may be moved to another location if the agency determines for
 36 any reason that the original location is not able to accommodate the public. If changing the location
 37 does not also necessitate a change in the date of the public comment hearing, the agency shall post

1 notice of the new location at the originally scheduled facility. If changing the location necessitates a
2 change in the date of the public comment hearing, the agency shall provide notice as required by
3 paragraph IV.

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

10 5 Amendment; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-
11 A:19-a, II to read as follows:

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

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

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

15 (c) The rule number and title.

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

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

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

21 ***(g) If the agency provides for a virtual or hybrid hearing consistent with RSA***
22 ***91-A, the necessary information for accessing the hearing electronically, and a mechanism***
23 ***for the public to alert the agency during the hearing if there are problems with access.***

24 6 New Paragraph; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-
25 A:19-a by inserting after paragraph V the following new paragraph:

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

33 7 Effective Date. This act shall take effect 60 days after its passage.

CONSENT CALENDAR

February 8, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Executive Departments and Administration to which was referred HB 266,

AN ACT relative to notice and public access

requirements for hybrid and virtual agency public

comment hearings for rulemaking. Having considered

the same, report the same with the recommendation

that the bill OUGHT TO PASS.

Rep. Jaci Grote

FOR THE COMMITTEE

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

Committee:	Executive Departments and Administration
Bill Number:	HB 266
Title:	relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking.
Date:	February 8, 2023
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill clarifies requirements for hybrid and virtual agency meetings now that the emergency orders regarding this matter have been lifted. The bill codifies what should be happening to assure proper notice and public access requirements.

Vote 19-0.

Rep. Jaci Grote
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Executive Departments and Administration

HB 266, relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking. **OUGHT TO PASS.**

Rep. Jaci Grote for Executive Departments and Administration. This bill clarifies requirements for hybrid and virtual agency meetings now that the emergency orders regarding this matter have been lifted. The bill codifies what should be happening to assure proper notice and public access requirements. **Vote 19-0.**

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 266

BILL TITLE: relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking.

DATE: January 19, 2023

LOB ROOM: 306-308 **Time Public Hearing Called to Order:** 10:00 am

Time Adjourned: 10:05 am

Committee Members: Reps. C. McGuire, Simon, Sirois, T. Lekas, Bailey, Santonastaso, True, T. Dolan, Abare, Gerhard, Grote, P. Schmidt, Schuett, O'Brien, F. Davis, Fitzpatrick and S. Gould

Bill Sponsors:

Rep. C. McGuire
Sen. Carson

Rep. Ulery
Sen. Lang

Rep. Goley

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. McGuire:** HB 266 codifies what should be happening.

Respectfully Submitted,

Shane Sirois

House Remote Testify

Executive Departments and Administration Committee Testify List for Bill HB266 on 2
Support: 4 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>
Lang, Senator Tim	Sanbornton, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 2	Support	No	No
Carson, Senator Sharon	Londonderry, NH Sharon.Carson@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No
saad, david	rumney, NH davidsaad2017@gmail.com	A Member of the Public	Myself	Support	No	No

Daniel Richardson

Great improvement to fair citizen access to rule-making of the state's pseudo-lawmaking agencies!
Say no to rogue agencies and save law-making for legislature.

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 266

BILL TITLE: relative to notice and public access requirements for hybrid and virtual agency public comment hearings for rulemaking.

DATE: February 8, 2023

LOB ROOM: 306-308

MOTIONS: OUGHT TO PASS

Moved by Rep. Grote

Seconded by Rep. T. Lekas

Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Shane Sirois, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:25:09 PM
Roll Call Committee Registers
Report

2023 SESSION

Executive Departments and Administration

Bill #: 266 Motion: OTP AM #: _____ Exec Session Date: 2-8-23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
McGuire, Carol M. Chairman	✓		
Simon, Matthew J. Vice Chairman	✓		
Lekas, Tony	✓		
Bailey, Glenn	✓		
Santonastaso, Matthew	✓		
True, Chris	✓		
Dolan, Tom	✓		
Abare, Kimberly L	✓		
Gerhard, Jason	✓		
Sirois, Shane A	✓		
Grote, Jaci L.	✓		
Schmidt , Peter B.			
Goley, Jeffrey P.	✓		
Schuett, Dianne E.	✓		
O'Brien, Michael B.	✓		
Wilhelm, Matthew B. <u>MASSAMILLA</u>	✓		
Davis, Fred E.	✓		
Fitzpatrick, Daniel W	✓		
Gould, Sherry L	✓		
Smith, Juliet L <u>SOULY</u>	✓		
TOTAL VOTE:			

19-0