LEGISLATIVE COMMITTEE MINUTES

HB266

Bill as Introduced

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1. Ju

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT

6

7

8

9 10

11

12

13

14

15 16

17 18

19

20

21

22

23

2425

26

27

28

29 30 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 New Paragraph; Administrative Procedure Act; Definitions; Hybrid Hearings. Amend RSA 541-A:1 by inserting after paragraph VII-b the following new paragraph:
- VII-c. "Hybrid hearing" means an agency public comment hearing for rulemaking held in a physical location but with the option for participation by the public by electronic means pursuant to RSA 541-A:11 and RSA 541-A:19-a.
 - 2 New Paragraph; Administrative Procedure Act; Definitions; Virtual Hearings. Amend RSA 541-A:1 by inserting after paragraph XVI the following new paragraph:
 - XVII. "Virtual hearing" means an agency public comment hearing for rulemaking held only electronically and which provides public access to participate by electronic means pursuant to RSA 541-A:11 and RSA 541-A:19-a.
 - 3 Amendment; Administrative Procedure Act; Notice of Rulemaking Proceedings. Amend RSA 541-A:6, I to read as follows:
 - I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also give notice of the cut-off date for the submission of written testimony pursuant to RSA 541-A:11, I, on any proposed adoption, [amendment,] readoption, readoption with amendment, or repeal of a rule. The notice periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be in such form as the director of legislative services shall prescribe and shall include:
 - (a) The name and address of the agency.
 - (b) The statutory authority for the rule.
 - (c) Whether the intended action is an adoption, [amendment,] repeal, readoption, or readoption with amendment.
 - (d) The rule number and title.
 - (e) The date, time, and physical location, if applicable, of the first agency public hearing, [and] the cut-off date for the submission of written materials to the agency[-] and, if practicable for the agency, the format for submitting materials electronically.
 - (f) If existing rules are being [amended,] readopted, or readopted with amendment, a concise summary of the existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.
 - (g) A listing of people, enterprises, and government agencies affected by the rule.

HB 266 - AS INTRODUCED - Page 2 -

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

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

HB 266 - AS INTRODUCED - Page 3 -

(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.

- II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.
- III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable or by posting on the agency's website.
 - IV. A public comment hearing [may] shall be postponed in the event of any of the following:
- (a) Inclement weather that would not allow for a reasonable opportunity for the public to participate.
 - [(b)-Illness or unavoidable absence of the official with rulemaking authority.]
- [(e)] (b) Lack of a quorum due to illness or unavoidable absence for rules proposed by a board or commission.
- (c) Inability by the public during a virtual or hybrid hearing to access the hearing electronically consistent with RSA 541-A:11, I(b), in which case the agency shall adjourn and reschedule the hearing pursuant to this section.
- (d) Determination by the agency that postponement of the public comment hearing shall facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.
- IV-a. A public comment hearing may be postponed in the event of illness or unavoidable absence of the official with rulemaking authority for rules proposed by an agency official.
- V. A public comment hearing may be moved to another location if the agency determines for any reason that the original location is not able to accommodate the public. If changing the location does not also necessitate a change in the date of the public comment hearing, the agency shall post

HB 266 - AS INTRODUCED - Page 4 -

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

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

- 5 Amendment; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A:19-a, II to read as follows:
 - II. Notice of an agency's intent to repeal a rule shall include:
 - (a) The name and address of the agency.
 - (b) The statutory rulemaking authority for the rule.
 - (c) The rule number and title.

- (d) An explanation of the reason for the proposed repeal.
- (e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to attend the public comment hearing.
 - (f) The date, time, and physical location, if applicable, of the public comment hearing.
- (g) If the agency provides for a virtual or hybrid hearing consistent with RSA 91-A, the necessary information for accessing the hearing electronically, and a mechanism for the public to alert the agency during the hearing if there are problems with access.
- 6 New Paragraph; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A:19-a by inserting after paragraph V the following new paragraph:
- V-a. If consistent with RSA 91-A, the agency 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, including a mechanism for the public to alert the agency during the hearing if there are problems with access. Each participant in a virtual 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.
 - 7 Effective Date. This act shall take effect 60 days after its passage.

HB 266 - VERSION ADOPTED BY BOTH BODIES

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

8

9

10

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

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 New Paragraph; Administrative Procedure Act; Definitions; Hybrid Hearings. Amend RSA 2 541-A:1 by inserting after paragraph VII-b the following new paragraph:
- WII-c. "Hybrid hearing" means an agency public comment hearing for rulemaking held in a physical location but with the option for participation by the public by electronic means pursuant to RSA 541-A:11 and RSA 541-A:19-a.
- 2 New Paragraph; Administrative Procedure Act; Definitions; Virtual Hearings. Amend RSA 541-A:1 by inserting after paragraph XVI the following new paragraph:
 - XVII. "Virtual hearing" means an agency public comment hearing for rulemaking held only electronically and which provides public access to participate by electronic means pursuant to RSA 541-A:11 and RSA 541-A:19-a.
- 3 Amendment; Administrative Procedure Act; Notice of Rulemaking Proceedings. Amend RSA 541-A:6, I to read as follows:
 - I. The agency shall give at least 20 days' notice of its intent to hold a public hearing and shall also give notice of the cut-off date for the submission of written testimony pursuant to RSA 541-A:11, I, on any proposed adoption, [amendment,] readoption, readoption with amendment, or repeal of a rule. The notice periods shall begin on the day after the date of publication in the rulemaking register. The notice shall be in such form as the director of legislative services shall prescribe and shall include:
 - (a) The name and address of the agency.
 - (b) The statutory authority for the rule.
 - (c) Whether the intended action is an adoption, [amendment,] repeal, readoption, or readoption with amendment.
 - (d) The rule number and title.
 - (e) The date, time, and physical location, if applicable, of the first agency public hearing, [and] the cut-off date for the submission of written materials to the agency[-] and, if practicable for the agency, the format for submitting materials electronically.
 - (f) If existing rules are being [amended,] readopted, or readopted with amendment, a concise summary of the existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.
 - (g) A listing of people, enterprises, and government agencies affected by the rule.

HB 266 - VERSION ADOPTED BY BOTH BODIES - Page 2 -

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

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

HB 266 - VERSION ADOPTED BY BOTH BODIES - Page 3 -

(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.

- II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.
- III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable or by posting on the agency's website.
 - IV. A public comment hearing [may] shall be postponed in the event of any of the following:
- (a) Inclement weather that would not allow for a reasonable opportunity for the public to participate.
 - [(b) Illness or unavoidable absence of the official with rulemaking authority.]
- [(e)] (b) Lack of a quorum due to illness or unavoidable absence for rules proposed by a board or commission.
- (c) Inability by the public during a virtual or hybrid hearing to access the hearing electronically consistent with RSA 541-A:11, I(b), in which case the agency shall adjourn and reschedule the hearing pursuant to this section.
- (d) Determination by the agency that postponement of the public comment hearing shall facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.
- IV-a. A public comment hearing may be postponed in the event of illness or unavoidable absence of the official with rulemaking authority for rules proposed by an agency official.
- V. A public comment hearing may be moved to another location if the agency determines for any reason that the original location is not able to accommodate the public. If changing the location does not also necessitate a change in the date of the public comment hearing, the agency shall post

HB 266 - VERSION ADOPTED BY BOTH BODIES - Page 4 -

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

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

- 5 Amendment; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A:19-a. II to read as follows:
 - II. Notice of an agency's intent to repeal a rule shall include:
 - (a) The name and address of the agency.
 - (b) The statutory rulemaking authority for the rule.
 - (c) The rule number and title.

- (d) An explanation of the reason for the proposed repeal.
- (e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to attend the public comment hearing.
 - (f) The date, time, and physical location, if applicable, of the public comment hearing.
- (g) If the agency provides for a virtual or hybrid hearing consistent with RSA 91-A, the necessary information for accessing the hearing electronically, and a mechanism for the public to alert the agency during the hearing if there are problems with access.
- 6 New Paragraph; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A:19-a by inserting after paragraph V the following new paragraph:
- V-a. If consistent with RSA 91-A, the agency 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, including a mechanism for the public to alert the agency during the hearing if there are problems with access. Each participant in a virtual 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.
- 7 Effective Date. This act shall take effect 60 days after its passage.

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.

CHAPTER 125 HB 266 - FINAL VERSION

23-0225 04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT

26

27

28

29

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 2 RSA 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. 6 125:2 New Paragraph; Administrative Procedure Act; Definitions; Virtual Hearings. Amend 7 RSA 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. 11 125:3 Amendment; Administrative Procedure Act; Notice of Rulemaking Proceedings. Amend 12 RSA 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
 - (f) If existing rules are being [amended,] readopted, or readopted with amendment, a concise summary of the existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.

practicable for the agency, the format for submitting materials electronically.

CHAPTER 125 HB 266 - FINAL VERSION - Page 2 -

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

- 2 (h) The name, *mailing* address, [and] telephone number, and e-mail address of an individual in the agency able to answer questions on the proposed rule.
 - (i) The fiscal impact statement completed by the legislative budget assistant.
 - (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

CHAPTER 125 HB 266 - FINAL VERSION - Page 3 -

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.

26_.

- (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 inperson or by electronic means.
- II. For rules proposed by a board or commission, each hearing shall be attended by a quorum of its members. For rules proposed by an agency official, each hearing shall be held by the official having the rulemaking authority, or designee, who shall be knowledgeable in the particular subject area of the proposed rules.
- III. To provide reasonable opportunity for public comment, the agency may continue a public hearing past the scheduled time or to another date, or may extend the deadline for submission of written comment. If the agency continues the hearing or extends the deadline, it shall notify the public by any means it deems appropriate, including notice in the rulemaking register whenever practicable or by posting on the agency's website.
 - IV. A public comment hearing [may] shall be postponed in the event of any of the following:
- (a) Inclement weather that would not allow for a reasonable opportunity for the public to participate.
 - (b) Illness or unavoidable absence of the official with rulemaking authority.
- [(e)] (b) Lack of a quorum due to illness or unavoidable absence for rules proposed by a board or commission.
- (c) Inability by the public during a virtual or hybrid hearing to access the hearing electronically consistent with RSA 541-A:11, I(b), in which case the agency shall adjourn and reschedule the hearing pursuant to this section.
- (d) Determination by the agency that postponement of the public comment hearing shall facilitate greater participation by the public. If a public comment hearing is postponed, the agency shall provide notice in the rulemaking register at least 5 days before such postponed public comment hearing, and may also provide notice by any other means it deems appropriate.
- IV-a. A public comment hearing may be postponed in the event of illness or unavoidable absence of the official with rulemaking authority for rules proposed by an agency official.

CHAPTER 125 HB 266 - FINAL VERSION - Page 4 -

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

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

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

- II. Notice of an agency's intent to repeal a rule shall include:
 - (a) The name and address of the agency.
 - (b) The statutory rulemaking authority for the rule.
 - (c) The rule number and title.

- (d) An explanation of the reason for the proposed repeal.
- (e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed repeal and to arrange for reasonable accommodation for persons with disabilities wishing to attend the public comment hearing.
 - (f) The date, time, and physical location, if applicable, of the public comment hearing.
- (g) If the agency provides for a virtual or hybrid hearing consistent with RSA 91-A, the necessary information for accessing the hearing electronically, and a mechanism for the public to alert the agency during the hearing if there are problems with access.
- 125:6 New Paragraph; Administrative Procedure Act; Expedited Repeal of Rules. Amend RSA 541-A:19-a by inserting after paragraph V the following new paragraph:
- V-a. If consistent with RSA 91-A, the agency 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, including a mechanism for the public to alert the agency during the hearing if there are problems with access. Each participant in a virtual 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.

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

Approved: June 30, 2023

CHAPTER 125 HB 266 - FINAL VERSION - Page 5 -

Effective Date: August 29, 2023

Committee Minutes

SENATE CALENDAR NOTICE Judiciary

Sen Sharon Carson, Chair Sen Bill Gannon, Vice Chair Sen Daryl Abbas, Member Sen Rebecca Whitley, Member Sen Shannon Chandley, Member

Date: April 12, 2023

HEARINGS

		HEARINGS	
	~ Tuesday	04/18/20	23
(Day)		(Date)	
Judiciary		State House 100	1:00 p.m.
(Name of Committee)		(Place)	(Time)
1:00 p.m.	HB 266	relative to notice and public access requirement virtual agency public comment hearings for ru	
1:15 p.m.	HB 343	relative to release of confidential records of a p guardian.	erson appointed a
1:30 p.m.	HB 315	prohibiting provocation based on the defendan sexual orientation, national origin, political be or gender identity.	
Sponsors	E	XECUTIVE SESSION MAY FOLLOW	

Sponsors:			
HB 266			
Rep. C. McGuire	Rep. Ulery	Rep. Goley	Sen. Carson
Sen. Lang	•	• •	
HB 343			
Rep. P. Schmidt	,		
HB 315			
Rep. Filiault	Rep. Toll	Rep. Kuttab	Sen. Perkins Kwoka
=	-	•	

Matthew Schelzi 271-3266

Sharon M. Carson Chairman

Senate Judiciary Committee

Matthew Schelzi 271-3266

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

Hearing Date:

April 18, 2023

Time Opened:

1:00 p.m.

Time Closed:

1:02 p.m.

Members of the Committee Present: Senators Carson, Abbas, Whitley and

Chandley

Members of the Committee Absent : Senator Gannon

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

Sponsors:

Rep. C. McGuire

Rep. Ulery

Rep. Goley

Sen. Carson

Sen. Lang

Who supports the bill: Rep. Carole McGuire (Merr. 27), Senator Carson (District 14), and Senator Lang (District 2).

Who opposes the bill: None.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Carol McGuire said this bill is a request of the JLCAR staff, and it gives the notice and public access requirements for hybrid or virtual hearings on rules. It does not allow them to hold virtual or remote hearings, but it sets forth the requirements. She said this is essentially a recodification of the Governor's executive orders, and she believed the notice and public access requirements work well.

Senator Carson said this bill is not authorizing the members to hold Zoom or electronic meetings; instead, it just sets up the parameters if some point in the future there would be a need to do these types of meetings.

Rep. McGuire said that is correct. She said this just deals with virtual and hybrid meeting requirements to ensure the public has full access.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

mjs Date Hearing Report completed: April 19, 2023

Speakers

Senate Judiciary Committee

SIGN-IN SHEET

Date: Tuesday April 18th, 2023

Time: 1:00 p.m.

HB 266

AN ACT relative to notice and public access requirements for hybrid and virtual

agency public comment hearings for rulemaking.

Name/Representing (please print ne	eatly)					
	Support	Neutral	Oppose	Speaking?	Yes	No
Carol M'Guire Merra7	∑				2	
	Support	Neutral	Oppose	Speaking?	Yes	No
C	Support	Neutral	Oppose	Speaking?	Yes	No
Sen. Corson SD-14						Q'
	Support	Neutral	Oppose	Speaking?	Yes	No
Sert Lang SD-2	T					\square
	Support	Neutral	Oppose	Speaking?	Yes	No
· ,						
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No
	Support	Neutral	Oppose	Speaking?	Yes	No

Voting Sheets

Senate Judiciary Committee EXECUTIVE SESSION RECORD

2023-2024 Session

H/14/23 Bill# HB 266
Hearing date:
Executive Session date: 4/27/23
Motion of: Vote: 5-0
Committee Member Made by Second Yes No Sen. Carson, Chair Sen. Bradley Sen. Abbas Sen. Whitley Sen. Chandley Vote: 5-0
Committee Member Made by Second Yes No Sen. Carson, Chair Sen. Bradley Sen. Abbas Sen. Whitley Sen. Chandley
Motion of: Vote:
Committee Member Made by Second Yes No Sen. Carson, Chair
Reported out by: Sen. Bradley
Notes:
·

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE FOR THE CONSENT CALENDAR

Friday, April 28, 2023

THE COMMITTEE ON Judiciary

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, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Jeb Bradley For the Committee

House Bill 266 would amend the Administrative Procedure Act to insert notice and public access requirements for hybrid and virtual agency public comment hearings. This bill was a request from the JLCAR staff, and it is essentially a recodification of the Governor's executive orders when dealing with virtual and hybrid meeting requirements to ensure the public has full access.

Matthew Schelzi 271-3266

FOR THE CONSENT CALENDAR

JUDICIARY

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

Ought to Pass, Vote 5-0.

Senator Jeb Bradley for the committee.

House Bill 266 would amend the Administrative Procedure Act to insert notice and public access requirements for hybrid and virtual agency public comment hearings. This bill was a request from the JLCAR staff, and it is essentially a recodification of the Governor's executive orders when dealing with virtual and hybrid meeting requirements to ensure the public has full access.

General Court of New Hampshire - Bill Status System

Docket of HB266

Docket Abbreviations

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

Official Docket of HB266.:

Date	Body	Description
1/9/2023	н	Introduced (in recess of) 01/05/2023 and referred to Executive Departments and Administration HJ 3 P. 9
1/11/2023	Н	Public Hearing: 01/19/2023 10:00 am LOB 306-308
2/2/2023	Н	Executive Session: 02/08/2023 01:30 pm LOB 306-308
2/9/2023	Н	Committee Report: Ought to Pass 02/08/2023 (Vote 19-0; CC) HC 11 P. 7
2/14/2023	Н	Ought to Pass: MA VV 02/14/2023 HJ 5
3/7/2023	S	Introduced 02/22/2023 and Referred to Judiciary; SJ 9
4/12/2023	S	Hearing: 04/18/2023, Room 100, SH, 01:00 pm; SC 18
5/1/2023	S	Committee Report: Ought to Pass, 05/11/2023; Vote 5-0; CC; SC 21
5/11/2023	S	Ought to Pass: MA, VV; OT3rdg; 05/11/2023; SJ 14
6/20/2023	S	Enrolled Adopted, VV, (In recess 06/15/2023); SJ 20
6/20/2023	Н	Enrolled (in recess of) 06/15/2023 HJ 16 P. 14
7/12/2023	Н	Signed by Governor Sununu 06/30/2023; Chapter 125; Eff: 08/29/2023 HJ 17

Ī	NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill N	umber: HB 266 Senate Committee: TUD
	include all documents in the order listed below and indicate the documents which have been ed with an "X" beside
X	Final docket found on Bill Status
	earing Documents: {Legislative Aides}
\boldsymbol{X}	Bill version as it came to the committee
ANXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	All Calendar Notices
×	Hearing Sign-up sheet(s)
FIR	Prepared testimony, presentations, & other submissions handed in at the public hearing
X	Hearing Report
MK	Revised/Amended Fiscal Notes provided by the Senate Clerk's Office
Comm	uttee Action Documents: {Legislative Aides}
All am	endments considered in committee (including those not adopted):
	amendment # amendment #
. /	amendment # amendment #
X,	Executive Session Sheet
X	Committee Report
Floor	Action Documents: {Clerk's Office}
All floo	r amendments considered by the body during session (only if they are offered to the senate):
	amendment # amendment #
	amendment # amendment #
Post F	loor Action: (if applicable) {Clerk's Office}
	Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
	Enrolled Bill Amendment(s)
	Governor's Veto Message
Allava	ailable versions of the bill: {Clerk's Office}
	as amended by the senate as amended by the house
	final version
Compl	leted Committee Report File Delivered to the Senate Clerk's Office By:
Comm	Palltun Schely 8-31-23 ittee Aide Date
Senate	e Clerk's Office