

**Cemetery Trustees
Session 2015**

**Legislative Update –
2015 Session**

- HB 186 - enabling the department of environmental services and the town of New Ipswich to negotiate an agreement regarding the encroachment of the town cemetery on state land.
 - Inexpedient to Legislate

- HB 275 - enables the town of New Ipswich to enter into an agreement with the department of environmental services regarding the lot line of a cemetery in New Ipswich.
- I. The commissioner of the department of environmental services and the selectmen of the town of New Ipswich may enter into a lot line agreement (boundary adjustment) between the state property identified on the New Ipswich tax maps as Map 9, Lot 20 and the Smithville Cemetery, Map 9, Lot 21.

HB 275 (cont)

- II. The New Ipswich selectmen shall have the authority to utilize their December 31, 2014 undesignated fund balance to provide funding for the moving of graves and other related expenses, provided that the amount to be used shall not reduce the town's fund balance to an amount less than 5 percent, as determined by the department of revenue administration at the 2014 tax rate setting.

HB 275 (cont)

- III. Should the town have an insufficient undesignated fund balance available to move the necessary graves, the town shall have permission to hold a special town meeting for this purpose.

- Passed by House and Senate Committees
- Currently enrolled on the consent calendar

HB 497

- relative to interference with a cemetery burial plot - I.
No person, without the written authorization of the owner of a burial plot, or the lineal descendant *or ascendant* of the deceased, if such owner or lineal descendant *or ascendant* is known, or the written authorization of the governing board of the municipality in which the burial plot lies, if the owner or lineal descendant *or ascendant* is unknown, shall: [rest of statute remains unchanged]
 - Passed by House and Senate Committees
 - Awaiting vote of full House and Senate

HB 204

- Incompatible Offices: No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor, ***cemetery trustee***, and highway agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, ***cemetery trustee***, selectman and head of the town's police department on full-time duty.
 - Inexpedient to Legislate

SB 20

- establishing a commission on historic burial grounds and cemeteries – 15 members to consider a variety of issues relating to historic burial grounds and cemeteries
 - NH Old Graveyard Association included in the list
 - Passed House and Senate Committees
 - Awaiting vote by full House and Senate

Legislative Changes – 2014 Session

- SB 219 – relative to funds received from sale of cemetery lots
 - Effective Date May 27, 2014
 - Permits the town's legislative body to determine whether funds received from the sale of cemetery lots (sale of earth money) should be deposited in the town's general fund or deposited in a cemetery expendable trust.
 - *More information later in presentation*

How to Find Cemetery Laws

- Laws are found on pages 64 - 81 of your handout
- New Hampshire Revised Statutes Annotated (RSAs) Chapter 289:1 - 289:23 are the general cemetery laws
- RSA 635:6 - 635:8 are criminal laws relating to cemeteries
- RSA 290:24 relates to the ownership of cemetery plots or burial spaces
- RSA 635 is the Criminal Code

Home Rule?

- N.H. is not a Home Rule state, it is a Dillon's Rule state:
- *A rule of judicial interpretation that a municipality may exercise only those powers expressly conferred by statute, necessarily or fairly implied by the expressed power in the statute, or essential and not merely convenient.*

Areas of Liability for Towns and Cities

- Burying a body in the wrong lot
- Improper use of perpetual care funds and cemetery charitable trust funds
- Personal injury issues
- Disturbance of the contents of a grave

Burying Body in Wrong Lot

- Superior Court case pending in New Hampshire: Lot was sold twice to two different families. The second lot owner has buried a loved one in the lot. Original lot owner is demanding body be removed. "The family says the news of the burial mix up has caused them 'extreme and unthinkable mental and emotion pain' and was devastated to learn that because of a bookkeeping error their loved one is buried in a plot that belongs to another." (Newspaper article 1/27/2015)

Personal Injury

- The Associated Press July 8, 2012
- A 6-foot-tall tombstone that weighed hundreds of pounds fell on and killed a 4-year-old boy who was posing for photos with family and friends at a historic cemetery in a Utah ski resort town. Carson Dean Cheney was holding onto the headstone Thursday when some metal connecting it to the pedestal broke, said Park City police Capt. Phil Kirk.

Definitions Page 64

- Burial Ground
- Burial Space
- Cemetery
- Cemetery Association
- Cemetery Corporation
- Cemetery Trustees
- Corporate Officer
- Owner (we will discuss in more detail)

Burial Ground and Burial Space

"Burial ground" means a private cemetery on private property and not available for use by the public.

"Burial space" means a lot in any cemetery as designed and intended for the interment of a human body or bodies, but presently not used for such purpose.



Example of Burial Ground
photograph by Dana Marshall

Burial Spaces

- Are often designated by "corner markers"



Definition of "family"*

- 289:1 I. For purposes of this paragraph, the term "family" shall mean members of the immediate family and any individuals related by blood or marriage or civil union to members of the immediate family.
 - *This definition was added by the legislature in the 2008 session

Cemetery

"Cemetery" means any cemetery owned, managed, or controlled by any municipality (town or city) within this state or owned and managed by any cemetery corporation chartered by the state.

Mausoleums*

- Mausoleums and columbariums shall be included within the term "cemetery."
 - *This definition was added by the legislature in the 2008 session

Columbarium

- **Is a vault with niches for urns containing ashes of the dead.**

Cemetery Association and Corporation

"Cemetery association" means a cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association.
"Cemetery corporation" means a corporation organized for the purpose of operating a cemetery.

Corporate Officer

"Corporate officer" means the elected or appointed managing officer of a corporation established to operate a cemetery for public interment.

Cemetery Associations and Corporations are nonprofit organizations designated by the Internal Revenue Service as 501(c)(13)

Cemetery Associations

- Internal Revenue Code Section 1.501(c)(13)-1
Cemetery companies.
- (a) A cemetery company [corporation] may be entitled to exemption --
 - (1) If it is owned by and operated exclusively for the benefit of its lot owners who hold such lots for bona fide burial purposes and not for purposes of resale, or
 - (2) If it is not operated for profit.

Funeral Directors

- **325:48 Employment Prohibited.** – No person holding a license under this chapter [funeral directors] shall be employed as a funeral home, funeral establishment, funeral director or embalmer by a cemetery, cemetery association, or cemetery corporation, nor shall such person own or control a cemetery, cemetery association, or cemetery corporation. (Emphasis added)

Funeral Directors (cont)

- This section shall not prohibit such person from (1) serving as an officer, director, or trustee of a cemetery, cemetery association or cemetery corporation without pay or for a salary not exceeding \$500 per year or (2) employment by a cemetery, cemetery association or cemetery corporation in capacities other than that of a funeral home, funeral establishment, funeral director or embalmer

Owner

"Owner" means any person or persons owning or possessing the privilege, license, or right of interment in any burial space, as determined under RSA 290:24.

Tree Wardens: 2012 Law Change

- I. Modifies the method of appointing tree wardens.
- II. Provides that governing bodies of cities and towns have authority over certain trees situated within the limits of town public ways, village commons, parks, cemeteries, and other public grounds.

Tree Wardens

- As determined by the city or town, the duties of a tree warden shall be to help care for, maintain, protect, and perpetuate shade and ornamental community trees and shrubs in town public ways, village commons, parks, cemeteries, and other public grounds, and to advise the governing body from time to time as may be necessary to help accomplish that purpose. The town tree warden shall cooperate and work with other town agencies and officials in carrying out the intent of this chapter.

Tree Wardens

- 231:141 Acquisition of Trees. It shall be the duty of the tree warden to examine the trees growing within the limits of ***town public ways, village commons, parks, cemeteries, and other public grounds***, and to designate from time to time such as may be reasonably necessary for the purpose of shade or ornamentation and to acquire them in the name of the municipality as hereinafter provided, if it can be done, either by gift or by purchase if at a fair price and funds either public or private are available.

Tree Case

- Rockingham County Superior Court – July 15, 2013: Bilodeau o/b/o Inhabitants of Greenland, NH and/or owners of cemetery plots v. Greenland Board of Selectmen
- Involved the cutting down of 100 trees in a cemetery in the town upon advice received from an arborist – trees were infested with pine bark beetles.
- Mr. Bilodeau et al disagreed and filed for an injunction to prohibit the Selectmen from paying for the removal of the trees

Decision

- Judge Delker ruled: "Under New Hampshire law, the Cemetery Trustees have the duty to provide for the care and maintenance of the cemetery and to use money from its trust and funding provided by the municipality to carry out that duty." "The residents should not be able to determine how the Trustees specifically carry out the duty, for which it has been duly appointed."

Decision

- "If the residents of Greenland believe that the trustees are not providing adequate service to the town, they may vote the trustees out of office at the appropriate time. Until then, the trustees are empowered to carry out their appointed duties."

RSA 289:2 Municipality to Provide (page 64)

- *Shall provide one or more suitable cemeteries for the interment of deceased persons within its boundaries*
- Subject to rules and regulations established by vote of the legislative body (town meeting) or the cemetery trustees
- Sample: http://www.derry-nh.org/Pages/DerryNH_Cemetery/Mar2012.pdf
- The operation and maintenance of ALL cemeteries owned and maintained by the municipality SHALL be in the charge of the cemetery trustees

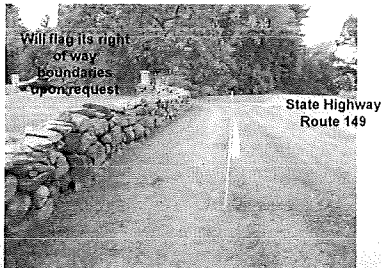
Cemetery Associations

- Towns/cities can enter into an agreement with a private cemetery association to provide burial space for the dead.

RSA 289:3 Location (page 65)

- No cemetery shall be laid out within 100 feet of any dwelling house, schoolhouse or school lot, store or other place of business without the consent of the owner of same, nor within 50 feet of a known source of water or the right of way of any classification of state highway.

Dept of Transportation



RSA 289:3 Location (continued)

- Existing cemeteries which are not in compliance with the above set-back requirements may be enlarged provided that no portion of the enlargement is located any closer to the above-listed buildings, water sources or highways than the existing cemetery, and provided further that no such enlargement shall be located within 50 feet of any classification of state highway.

RSA 289:3 Location (continued)

- Burials on private property, not in an established burial ground, shall comply with local zoning regulations.
- In the absence of such regulations, such burial sites shall comply with the requirements of paragraph I.
- The location of the burial site shall be recorded in the deed to the property upon transfer of the property to another person.

RSA 289:3 Location (continued)

- New construction, excavation, or building in the area of a known burial site or within the boundaries of an established burial ground or cemetery shall comply with local zoning regulations. In the absence of such regulations, no new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery.
- A recently passed law eliminating the fencing requirement has the potential to make the establishment of cemetery boundaries difficult.

Beyond the Pale

- Why do we have setback requirements?
- History tells us that persons of noble birth and the wealthy were buried within the walls of the local church or within the "churchyard" as close as possible to the church. Persons of ill repute, drunkards, witches, slaves, and criminals were buried "beyond the pale" that is, outside the walls of the burial ground.
- The New World continued this practice and we therefore sometimes find bodies buried beyond the boundaries of old cemeteries, hence the setback requirements.

**What Should You Do Upon
Encountering Human Remains?**

- Contact the local police
- Contact the Department of Historic Resources
 - State Archaeologist 271-6433
- RSA 227-C:8-b Jurisdiction Over Remains

If This is Not a Crime Scene

- Subsequent to taking charge of the human remains, the state archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human remains
- this may be extended in the case of bad weather or if the state archaeologist is not available within the 48 hour period.

Unmarked Human Burial

- Means any interment of human remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased. Richard Boisvert, State Archaeologist

Human Remains

- Any part of the body of deceased human being in any stage of decomposition, together with any artifacts or other materials known or reliably assumed to have been on or interred with the deceased human being.
- Richard Boisvert, State Archaeologist

RSA 227-C:8

Unanticipated Discoveries

- 227-C:8-a Notification of Authorities – Cease disturbance and notify County Medical Examiner.
- 227-C:8-b Jurisdiction Over Remains – If case is not forensic, then the State Archaeologist shall take charge of the remains

227-C:8-h

Financial Responsibility

- I None if the result of vandalism, erosion or non-commercial land altering activity
- II Owner bears cost if for commercial activity, including speculative housing.
- III State Agencies/municipalities bear costs for their own projects.

Native American Remains

- 227-C:8-d Consultation with Native American Community. Contact federally and non-federally recognized tribes for guidance on treatment of remains including analysis, report and ultimate disposition. If there is no agreement, then Commissioner and State Historic Preservation Officer decide.

Non-Native American Remains

- 227-C:8-e Consultation with Other Individuals. Publish notice for 4 weeks, consult with next of kin if possible for treatment of remains including analysis, report and ultimate disposition. If no agreement, then handled according to wishes of next of kin.

Prohibited Acts RSA 227-C:8-i

- I Acquire human remains from unmarked graves
- II Exhibit human remains from NH unmarked graves
- III Sell human remains

Exceptions to RSA 227-C:8-i

- Human skeletal remains acquired from commercial biology supply houses or through medical means.

RSA 289:3 Location (continued)

- Exceptions to 25 foot setback:
When such construction, excavation, or building is necessary for the construction of an essential service, as approved by the governing body (Selectmen) of the municipality *in concurrence* with the cemetery trustees, or in the case of a state highway, by the commissioner of the department of transportation *in concurrence* with the cemetery trustees.

RSA 485-A:29

- This law requires the department of environmental services to include known burial sites or cemeteries in the information to be included on plans for sewage disposal systems and prohibits the department from approving a plan that does not meet the requirements for setbacks from cemeteries and burial sites: The department shall not approve any plan which will cause a violation of the setback requirements in RSA 289:3 III
- pages 79 - 80

RSA 289:4 Maintenance (page 65)

- Every municipality **SHALL** raise and appropriate sufficient funds by taxation or otherwise, to provide for the suitable care and maintenance of the municipal public cemeteries within its boundaries which are not otherwise provided for by an alternative funding source.

Wages and Benefits for Town or City Cemetery Workers

- Employee X is a fulltime employee of the town of Graniteville working part of the year in the public cemetery. He is paid **\$20,000** per year in gross wages and receives the health insurance benefit which is worth **\$5,000** per year. For purposes of calculating employee X's total compensation, gross wages are added to the health insurance benefit for a total of **\$25,000.00**.

Wages and Benefits (cont)

- Based on a 40 hour work week for 52 weeks, Employee X works 2,080 hours. If the \$25,000 figure is divided by 2,080 hours, Employee X costs the town roughly \$12 an hour in wages and health insurance.
- Perpetual care trust funds are valid charitable trusts and the income from each perpetual care fund is used to care for a specific perpetual care lot.

Wages and Benefits (cont)

- In my hypothetical, the town can be reimbursed \$12 per hour from perpetual care income **for each hour Employee X is caring for a perpetual care lot.** For any lot that does not have perpetual care, and for any part of the year when Employee X is not working in the public cemetery, the taxpayers are responsible for paying Employee X's wages and health insurance.

Maintenance issues

- **231:63 Additional Duties.** – Any town may vote to require a highway agent, in addition to his usual duties as highway agent, to have charge, under the direction of the selectmen, of the care and maintenance of any one or more of the following: collection of waste, refuse and garbage; care of public dumps; care of public parks and cemeteries; public beaches; public forests; public playgrounds; shade and ornamental trees.

RSA 289:4 Maintenance (continued)

- Every municipality *may* raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted burial grounds and cemeteries which have been declared abandoned in accordance with RSA 289:19-21.

**RSA 289:5 Cemetery Records
(page 66)**

- Corporate officer, designee of cemetery corporation, or cemetery trustees shall keep a record of every burial showing the date of burial and name of the person buried, and the lot, plot or part of such plot or lot, in which the burial was made.
- A copy of such record, duly certified, shall be furnished to any person on demand and payment of a fee established in accordance with RSA 91:A-4 (right-to-know law)

Be Careful

- From the March, 2013 AARP Bulletin: "Dead Ringers" by Sid Kirchheimer:
 - "Each year identity thieves steal the identity of 2.5 million deceased Americans to fraudulently open credit card accounts, apply for loans, and get other services."
 - Cemetery Trustees should keep a record of the name and address of anyone seeking a copy of a cemetery record.
- For more information go to <http://www.aarp.org/money/scams-fraud/info-03-2013/protecting-the-dead-from-identity-theft.html>

**RSA 289:5 Cemetery Records
(continued)**

- The location of each cemetery and private burial site may be annotated on the municipal tax map.
- This practice helps to insure that private burial sites do not "disappear"

Burial Permit Procedures

- **5-C:68 Burial Permit Procedures.** – When a body is to be stored, the burial permit shall be completed by the cemetery sexton where the body is entombed and sent to the clerk of the town or city where the storage vault is located.
- When the body is to be moved from entombment for final disposition, the funeral director, next of kin, or designated agent shall obtain the permit from the clerk of the town or city to use as the permit for final disposition.

Filing Burial Permits

- Burial permits and emergency burial permits shall be completed and signed by the cemetery sexton or person in charge of the cemetery, crematory, or other place of disposition of a body or, if none, by the funeral director, next of kin, or designated agent following such disposition.
- The permit shall be filed with the clerk of the town or city within 6 days after the burial pursuant to RSA 290:6.

Filing Burial Permits (cont)

- The cemetery sexton, crematory authority, funeral director, next of kin, or designated agent shall provide the information required for a burial permit or for a permit for disinterment.
- Burial permits and emergency burial permits shall be retained on file by the clerk of the town or city of the town or city of burial.

Cremations

- RSA 5-C: 71 I. When the body of a deceased person is to be disposed of by cremation, the crematory operator, the funeral director, next of kin, or designated agent in charge of the final disposition arrangements shall present a copy of the death certificate and the burial permit or emergency burial permit with the body to a medical examiner in order to obtain the medical examiner's certificate.

Cremations (cont)

- After cremation, the crematory shall forward one copy of the medical examiner's certificate for cremation, along with the burial permit or emergency burial permit, to the clerk of the city or town of cremation. The crematory shall also forward one copy of the medical examiner's certificate to the office of the chief medical examiner, and keep one copy on file.

RSA 289:6 Cemetery Trustees (page 66)

- Every municipality SHALL elect a board of cemetery trustees consisting of three members, unless at an annual or special town meeting votes that the board shall consist of five members.
- The term of each trustee shall be three years.
- Vacancies are filled by the Board of Selectmen for the remaining term.

**RSA 289:6 Cemetery Trustees
(continued)**

- In cities the trustees shall be chosen and hold their office for such term as shall be provided by city ordinance.
- Trustees shall organize by electing one of their number chairperson and another bookkeeper, who shall keep the records and books of the trustees, and shall issue vouchers as necessary for the funds to be expended.
- The chairperson and the bookkeeper may be the same person

**RSA 289:6 Cemetery Trustees
(continued)**

- Any town that has a town manager form of government may vote to not have cemetery trustees by delegating all of the duties and responsibilities of cemetery trustees to the town manager.
- This option may be adopted by a vote of town meeting. If the majority votes in the affirmative, then the discontinuance shall take effect 90 days after adoption.

**RSA 289:6 Cemetery Trustees
(continued)**

- Any town with a traditional town meeting form of government may adopt by vote of the town meeting to have the board of selectmen serve for the term of elected office as cemetery trustees.
- If the majority vote in the affirmative then the delegation shall take effect 90 days after adoption and shall continue until rescinded by vote of the town meeting.

**RSA 289:6 Cemetery Trustees
(continued)**

- Any town that has a municipal charter form of government may specify in its charter the procedure to be utilized for the election or appointment of cemetery trustees.

**RSA 289:7
Powers and Duties (page 67)**

All cemetery trustees in the state shall:

- Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.
- Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality.

**RSA 289:7
Powers and Duties (continued)**

- A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.
- Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

SB 219

- *Permits the town's legislative body to determine whether funds received from the sale of cemetery lots (sale of earth money) should be deposited in the town's general fund or deposited in a cemetery expendable trust.*
- Local control issue – where do the voters want the money paid for the sale of the earth (town property) to go?
- There are two choices

Choice #1

- The "sale of the earth" money (NOT perpetual care money) represents the sale of town property and, under the statutes, this money is deposited into the general fund of the town.
- General fund money may be used for any budgetary purpose unless otherwise restricted by statute.

Choice #2

- The town meeting has the option of voting to transfer the "sale of earth" money into a cemetery expendable trust created under the provisions of RSA 31:19-a.
- Once the warrant article is passed, it is permanent unless rescinded by a subsequent vote of town meeting.

What do we have to do?

- If the cemetery trustees want to propose a warrant article under SB 219, it is important to either have an existing cemetery expendable trust (RSA 31:19-a) or to create one via warrant article.
- All sale of lot money deposited in the cemetery expendable trust fund is spent under the authorization of the cemetery trustees for the care and maintenance of public cemeteries in their town.

Cemetery Trustees

- "Where a town duly appoints an entity to handle specified matters and later attempts to overturn a decision of that entity by town vote, we have found a circumvention, rendering the town's decision invalid."
 - Neville v. Highfields Farm, Inc. 144 N.H. 423 (1999)

Does taxpayer money have to lapse to the general fund?

- 32:7 Lapse of Appropriations. – Annual meeting appropriations shall cover anticipated expenditures for one fiscal year. All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, unless:
 - I. The amount has, prior to the end of that fiscal year, become encumbered by a legally-enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount; or

Lapse of appropriation (cont)

- II. The amount is legally placed in any nonlapsing fund properly created pursuant to statute,
- including but not limited to a capital reserve fund under RSA 35, or a town-created trust fund under RSA 31:19-a; or
- III. The amount is to be raised, in whole or in part, through the issuance of bonds or notes pursuant to RSA 33, in which case the appropriation, unless rescinded, shall not lapse until the fulfillment of the purpose or completion of the project being financed by the bonds or notes; or

Lapse of appropriation (cont)

- IV. The amount is appropriated from moneys anticipated to be received from a state, federal or other governmental or private grant, in which case the appropriation shall remain nonlapsing for as long as the money remains available under the rules or practice of the granting entity; or

Lapse of appropriation (cont)

- V. The amount is appropriated under a special warrant article, in which case the local governing body may, at any properly noticed meeting held prior to the end of the fiscal year for which the appropriation is made, vote to treat that appropriation as encumbered for a maximum of one additional fiscal year; or

Lapse of appropriation (cont)

- VI. The amount is appropriated under a special warrant article and is explicitly designated in the article and by vote of the meeting as nonlapsing, in which case the meeting shall designate the time at which the appropriation shall lapse, which in no case shall be later than 5 years after the end of the fiscal year for which the appropriation is made.

RSA 289:7

Powers and Duties (continued)

- Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds.

Powers and Duties (cont)

- The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

**RSA 289:7
Powers and Duties (continued)**

- Prepare deeds of cemetery lots for the governing body to sign.
- Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

Delegation to Highway Dept.

- **231:63 Additional Duties.** – Any town may vote to require a highway agent, in addition to his usual duties as highway agent, to have charge, under the direction of the selectmen, of the care and maintenance of any one or more of the following: collection of waste, refuse and garbage; care of public dumps; care of public parks and cemeteries; public beaches; public forests; public playgrounds; shade and ornamental trees.

**RSA 289:8 Enforcement
(page 68)**

- Any person designated as a cemetery trustee failing to comply with the provisions of RSA 289:7 shall be guilty of a violation. Any other person who violates this chapter or any regulation established under the authority of this chapter shall be guilty of a violation.

**RSA 289:9 Use of Trust Funds
(page 72)**

- The law reads: Cemetery corporations and the trust fund trustees of municipalities may take and hold funds in trust, and may apply the income of the trust to the improvement, watering, or embellishment of the cemetery, or to the care, preservation, or embellishment of any lot or its appurtenances.

Understanding 289:9

- The language of the statute cannot be read in isolation.
- RSA 289:9 authorizes towns through their trustees of trust funds and cemetery corporations to take and hold trust funds for certain purposes, it does not authorize the town or corporation to ignore donor intent.

RSA 289:9

- RSA 289:7 states:
- **289:7 Powers and Duties. –**
 - I. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

289:9

- (d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

Perpetual Care Funds

- are valid charitable trusts:
 - "The public interest in the sightly appearance of cemeteries is served by a gift in trust for the perpetual care of a lot therein and such a gift has long been recognized in this state as a charitable one." In re: Byrne Estate, 98 N.H. 300 (1953)

Can the Town take the cemetery Trust Funds?

- The answer is NO.
- Town of Boscawen v. Acting Attorney General, 93 N.H. 443 (1945) (page 139)
- The Court stated "The present lack of funds [in Boscawen] for general cemetery purposes *affords no shadow of claim* for a right to [spend the trust funds]. If the expenditures proposed are desirable the town has the means to provide for them under the taxing power."

RSA 289:10 Investments
(page 68)

- Cemetery corporations holding funds in trust as provided in RSA 289:9 may establish, maintain, and operate common trust funds as provided in RSA 31:27-30.

RSA 289:11 Accounting
(page 68)

- Whenever any cemetery corporation shall take and hold trust funds according to the provisions of RSA 289:9, such corporation shall keep in its books an account of all funds received and held by it in the same manner as required of municipalities, and the account of any such fund shall be open to inspection by any person having an interest in the proper administration of the trust.

RSA 289:12 Reports for Cemetery
Associations
(page 68)

- A copy of the annual financial report of such corporations shall be filed with the attorney general, unless otherwise required by law to file such a report with any town, city, county, or state agency.

For Cemetery Corporations only

- If your organization is incorporated with the Secretary of State it is necessary to renew your corporate charter every five years.
- Renewal is required for years ending in a 5 or a zero; therefore 2015 will be the next year for nonprofit charter renewal

Secretary of State

Charter Renewal must be done electronically; for information go to the Secretary of State Website: <http://www.sos.nh.gov/corporate/>

- HELPFUL HINT: The Business ID to be filled in is not the tax ID #, it is the internal control number assigned by the Secretary of State to your organization. You may find this number by using the "Business Name Lookup" link

**RSA 289:13
Cemetery Association
Termination (page 68)**

- Any cemetery laid out by an individual or corporation and located within the municipality, in which all lots have been sold and for the care of which trust funds are held by the municipality, may be deemed to the municipality with no implied financial liability to the municipality for the maintenance of the cemetery over and above the trust fund income, provided the municipality votes to accept such cemetery transfer

Cemetery Termination (cont)

- . Municipalities may raise and appropriate additional funds for the care of such cemeteries. Upon the transfer of the title to the cemetery, the municipal cemetery trustees shall have the sole management responsibility for the cemetery.

RSA 289:14 Right of Way to Private Burial Ground (page 69)

- 289:14 Right of Way to Private Burial Ground. –
Any person wishing to have a temporary right of entry over private land in order to enter a private burial ground enclosure to which there is no public right of way may apply in writing to the selectmen of a town or the mayor of a city stating the reason for such request, which may include the maintenance, repair, and preservation of the burial ground, and the period of time for which such right is to be exercised.

Right of Way (cont)

- The applicant shall also notify in writing the owner or occupier of the land over which the right of way is desired and obtain the written permission of the owner.

Right of Way (cont)

- The selectmen or mayor, in the exercise of discretion and in consultation with the cemetery trustees, may issue a permit for such temporary right of entry designating the particular place where the land may be crossed.

Right of Way (cont)

- The owner or occupier of the land may recommend the place of crossing which, if reasonable, shall be the place designated by the selectmen or mayor.
- The person exercising the right of entry shall complete the work on the cemetery and restore the right of way to its original condition, if it is disturbed.

**289:14-a Maintenance,
Repair, and Preservation of
Burial Grounds.**

- Page 69: I. Any person or organization interested in caring for a burial ground which has not been maintained and the owner of which is unknown, or whose present address is unknown, may petition the selectmen, town council, mayor, or cemetery trustees for permission to clean, maintain, restore, and preserve that burial ground at the person's or organization's own expense.

Maintenance (cont)

- Upon approval of this petition on any conditions deemed appropriate, including the permission of the owner of the surrounding property, the selectmen, town council, mayor, or cemetery trustees shall require the person or organization to place an advertisement in a local newspaper providing notice that the burial ground is to be entered and that work is to be done, and notifying persons with a property interest in this burial ground who have objections to come forward by a date certain.

Maintenance (cont)

- II. A petition under paragraph I may be granted notwithstanding the fact that the burial ground has not been declared abandoned pursuant to the procedure in RSA 289:20.
- III. Any city, town, or public body shall be immune from civil liability in any action brought on the basis of any act or omission by any person who voluntarily and without compensation undertakes to maintain or to repair any burying ground.

Maintenance (cont)

- IV. No private landowner permitting access over his or her property to a burial ground for the purpose of voluntary maintenance or repair of the burial ground shall be held civilly liable for any breach of duty resulting in injury to the person or damage to the property of those seeking to repair or maintain the cemetery.

Maintenance (cont)

- V. After approval and notice required under RSA 635:6, II, any marker, gate, or other material removed for repair shall be stored and kept safely in a manner determined by the selectmen, town council, mayor, or cemetery trustees. Upon approval of the selectmen, town council, mayor, or cemetery trustees, a marker, gate, or other material deemed to be at risk of irreparable damage or loss may be placed permanently in a safe facility and the fact of its removal or replacement made visible in the cemetery or in public records.

RSA 289:15 Discontinuance (page 70)

- Whenever there is a public necessity for the discontinuance of any municipal cemetery and the removal of the remains of persons buried in such cemetery, the cemetery may be discontinued by a 3/4 vote of the legal voters present and voting at any town meeting held for the purpose, or by 3/4 of each board of the city councils present and voting.

RSA 289:16 Reinterment (page 70)

- The governing body [Selectmen] may, at the expense of the municipality, disinter all the remains of persons buried in such cemetery and reinter the same in the unoccupied part of another cemetery within the municipality, such reinterment to be in the place designated by the nearest surviving relatives of the deceased persons or, in the absence of such surviving relative, by the cemetery trustees. Such removal and reinterment shall be done prudently and with proper care and attention.

**RSA 289:17
Removal of Monuments
(page 70)**

- The monuments, gravestones, and other appurtenances attached to the graves shall be carefully removed and properly set up at the place of reinterment with as little injury as the nature of the case will admit. In case of injury to any monument, gravestone, or appurtenance, the damages shall be assessed by the governing body [Selectmen] in the same manner and with the same right of appeal as in the case of alteration of the grade of highways.

**RSA 289:18 Forfeiture
Procedures (page 70)**

- Unused for a period of 50 years
- Owner has not improved said space
- All purchase contracts for burial spaces executed after August 7, 1994 shall include a notice that the forfeiture procedure may be instituted in the future.

**RSA 289:18 Forfeiture
(continued)**

- Whenever such person, corporate manager, or board of trustees determines that the conditions stated in paragraph 1 have been met, then they may send to the owner a notice of the intent to terminate and forfeit the owner's rights, served on the owner personally by a competent person or sent by certified mail with return receipt requested to the owner's last known address.

**RSA 289:18 Forfeiture
(continued)**

- When the owner receives the forfeiture notice, the owner may notify the cemetery management of continued intent to use the space, in which case this procedure shall be cancelled, or the owner may return the space to the cemetery and receive in compensation the same amount the owner paid for the space, less any portion of the original purchase price that was specified for inclusion in a perpetual care trust fund.

**RSA 289:18 Forfeiture
(continued)**

- If no response is received from the owner for 60 days, the cemetery management may advertise in a paper of local distribution for information regarding the present whereabouts of the owner. If information is forth-coming, the notification process shall be repeated using the new address information. If no information is received, the original purchase contract may be voided and the space sold to a new owner.
- Any owner contacting the cemetery management after the space has been resold shall be reimbursed the amount he originally paid, including the portion set aside for perpetual care.

**RSA 289:19 Neglected Burial
Ground (page 71)**

- Whenever a burial ground within the boundaries of the town has been neglected for a period of 20 years or more, the municipality may declare it abandoned for purposes of preservation, maintenance or restoration.

**RSA 289:20
Procedure for Abandoned Burial Ground**

- The municipality shall place an advertisement in at least one newspaper having general distribution in the municipality and surrounding area.
- Not less than 60 days nor more than 90 days after the notice of the intent has been published, the notice shall be read at a regularly scheduled selectmen's meeting or in the case of a city, a city council meeting.

**RSA 289:20
Procedure for Abandoned Burial Ground**

- If any descendants were located and grant permission, or if no descendants were located, then, after a public hearing, the municipality may declare the burial ground abandoned by a majority vote of the selectmen or city councilmen present and voting.

**RSA 289:21
Rights and Responsibilities
(page 72)**

- Any burial ground declared abandoned under these provisions shall become a municipal cemetery for management purposes and shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants.

**RSA 289:22 Stone Rubbings
(page 72)**

- No person shall make gravestone rubbings in any municipal cemetery or burial ground without first obtaining the written permission of the town selectmen or the mayor of a city or designee. Before granting such permission, the selectmen or mayor will ascertain to the best of their ability that the person making the request knows the proper precautions to be taken and the proper materials to be used for this activity. The town selectmen or city mayor or their designee shall notify the cemetery trustees of the request and its disposition. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

Protection of Cemeteries

- First law designed to protect cemeteries and graveyards was enacted by the NH Legislature in 1834.
- The law was updated in 1839 and included as punishment for a conviction "imprisonment for six months and a fine of \$500.00."
- New Hampshire's laws now define criminal offenses against cemeteries as Class B felonies

**RSA 635:6 Interference with
a Cemetery or Burial Ground (page 78)**

No person, without the written authorization of the owner of a burial plot, or the lineal descendant of the deceased, if such owner or lineal descendant is known, or the written authorization of the governing board [Selectmen] of the municipality in which the burial plot lies, if the owner or lineal descendant is unknown, shall:

Interference

- Purposely or knowingly destroy, mutilate, injure or remove any tomb, monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, curb, or plot delineator or other enclosure for the burial of the dead.

RSA 635:6 Interference with a Cemetery or Burial Ground

- Purposely or knowingly disturb the contents of any tomb or grave in any cemetery or burial ground.
- The governing board [Selectmen] of the municipality in which the burial plot lies shall not grant approval for the removal or disturbance of a tomb, monument, gravestone, marker, or plot delineator without first giving 30 days' notice, along with a report of the full circumstances, to the division of historical resources, that such approval has been requested. The governing board of the municipality shall maintain a record of the date, circumstances, and disposition of the request for removal or disturbance.

RSA 635:7 Unlawful Possession or Sale of Gravestones and Gravestone Items (page 78)

- No person shall possess or sell, offer for sale or attempt to sell, or transfer or dispose of any monument, gravestone, marker, or other structure, or any portion or fragment thereof, placed or designed for a memorial of the dead, or any fence, railing, gate, plot delineator, or curb, knowing or having reasonable cause to know that it has been unlawfully removed from a cemetery or burial ground.
- Keep an eye on: auction brochures, Craig's List, eBay, etc.

RSA 635:8 Penalties (page 79)

- Any person who is convicted of an offense under RSA 635:6 or 635:7 shall be guilty of a class B felony, and shall be ordered by the court to make restitution for damages resulting from the offense and for replacement of removed items.

**RSA 290:24 Ownership of
Cemetery Lots or Burial Spaces
(page 76)**

- Can be a difficult situation especially if there is disagreement in the family
- What can/should cemetery trustees do?

OWNERSHIP ISSUES

- Powers and Duties of Cemetery Trustees:
Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.
- *What do your bylaws and regulations say regarding the purchase and/or sale of cemetery lots?*

Rules and Regulations

- Who is permitted to purchase lots in a public cemetery and under what circumstances?
 - Any member of the public?
 - Town residents only?
 - Individuals with a past or present connection to the town?
 - Any limit on the number of lots that can be purchased?

4/29/2015

133

Lot Ownership

- The original owner of the lot can determine who is permitted to be buried in his/her lot.
- When selling a cemetery lot it is recommended the Cemetery Trustees ask the purchaser for a list of these people.
- This can serve as documentation in dispute over ownership of a lot.
- If there is no list, refer to the following laws.

4/29/2015

134

RSA 290:24 Ownership of Cemetery

- ^{Lots} The ownership of a cemetery plot or burial space, as defined under RSA 289:1, II, shall be governed by the following provisions:

4/29/2015

135

RSA 290:24

- I. If the deceased has designated a person to assume ownership of the cemetery lot or burial space in a written and signed document, ownership passes to that person, subject to the regulations established under RSA 289:2. (Emphasis added)

4/29/2015

136

“Subject to the Regulations”

- If a lot owner wants to sell his or her lot and there are no burials in the lot the Cemetery Trustees should consider whether or not to require the owner to sell the lot back to the town.
- If a lot owner is permitted to sell the lot to a third party and does not advise the Cemetery Trustees, ownership can be difficult to determine.

4/29/2015

137

Written documents?

- A deed from the original lot owner to a new lot owner
- A letter or other document in which the deceased person expresses his/her intent to transfer the cemetery lot to another person
- A list of persons who can be buried in the lot signed by the lot owner at the time of purchase.

4/29/2015

138

RSA 290:24 (continued)

- II. If the deceased has not designated a person to assume ownership of the cemetery lot or burial space in a written and signed document, ownership shall be determined under the provisions of RSA 561:1 [law governing estates of those persons who die without a will]
- *Administrators and Executors of estates have to file an Inventory with the Court.*

4/29/2015

139

Inventory of Estate of Deceased Person

- **554:1 Inventory.** – Every administrator shall file under oath, with the court, within 90 days after the date of appointment, a full, true, and itemized inventory of all the estate of the deceased which has come to the administrator's knowledge. The inventory shall contain a description of the . . . *cemetery plots or burial spaces,"* (Emphasis added)

4/29/2015

140

Estates

- The last will and testament, or the provisions of RSA 561:1 (page 76) if there is no will, can bequeath a cemetery lot to another person.
- That person becomes the new owner.

4/29/2015

141

When all else fails

- III. Notwithstanding other provisions of this subdivision, when the ownership of a cemetery plot or burial space is unclear or in dispute, the court of probate for the residence of the deceased may, upon receipt of a petition filed by the

4/29/2015

142

RSA 290:24

next of kin or other interested party, render a determination regarding ownership of the cemetery plot or burial space in compliance with applicable law, including any regulations established by the municipality or cemetery trustees under RSA 289:2. An order of the court will determine ownership

4/29/2015

143

Unauthorized Burials

- Some individuals prefer to bury the ashes of a loved one without the necessity of involving the town in digging the grave.
- It is recommended the Rules and Regulations address the issue of burials by family members to insure ashes are not buried in the wrong lot.

4/29/2015

144

Cemetery Associations

- "Cemetery association" means a cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association." (Emphasis added)

4/29/2015

145

Cemetery Associations

- *Lot ownership is very important in the case of Associations because ownership determines who the voting members are.*

Cemetery Associations

- 289:13 Cemetery Association Termination. – Any cemetery laid out by an individual or corporation and located within the municipality, in which all lots have been sold and for the care of which trust funds are held by the municipality, may be deeded to the municipality with no implied financial liability to the municipality

4/29/2015

147

Cemetery Associations

- Upon the transfer of the title to the cemetery, the municipal cemetery trustees shall have the sole management responsibility for the cemetery. (Emphasis added)
- *It is important to make sure you receive records regarding lot ownership in the case of a termination.*

4/29/2015

148

Cemetery Records

- **289:5 Cemetery Records.** – The corporate officer or designee of a cemetery corporation or town cemetery trustees charged with the responsibility of operation and administration of any cemetery under their control shall keep a record of every burial showing the date of burial and name of the person buried,

4/29/2015

149

Welfare Assistance: Burials

- **165:3 Burial or Cremation.** –
 - I. If an assisted person shall die in any town or city the overseers of public welfare shall cause such person to be decently buried or cremated at the expense of the town or city.

Welfare Assistance (cont)

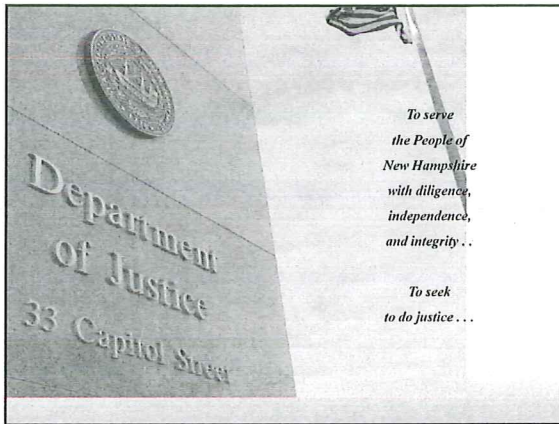
- II. Notwithstanding any provision of paragraph I to the contrary, if an assisted person dies in a county nursing home, the overseers of public welfare shall cause such person to be decently buried or cremated at the expense of the town or city in which the assisted person was a resident, as that term is defined in RSA 21:6, on the date on which the assisted person entered the county nursing home.

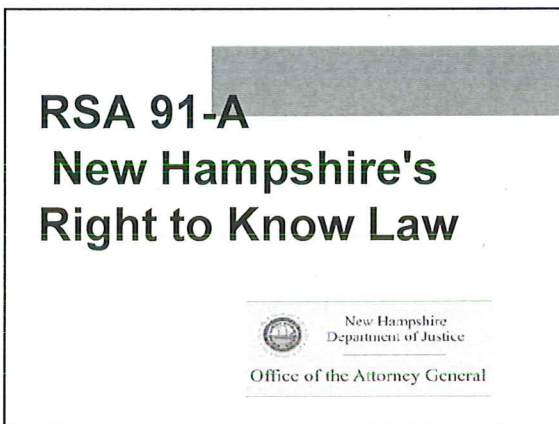
RSA 21:6

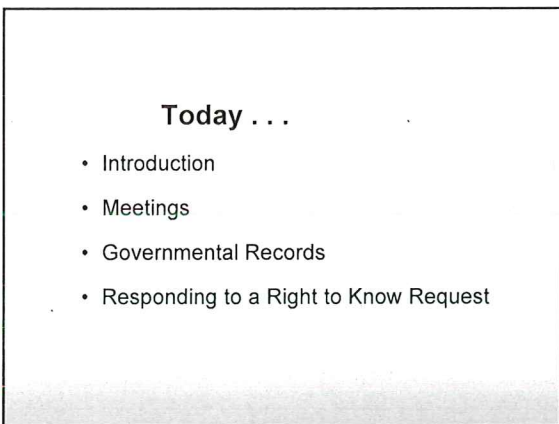
- 21:6 Resident; Inhabitant. – A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

Welfare Guidelines

- Cemetery Trustees should contact the town or city's overseer of the public welfare and obtain a copy of the welfare guidelines for burials.







RSA 91-A:1 Preamble

Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

RSA 91-A "Right to Know Law"

General Rule: unless otherwise provided,

- Agency/public body meetings are public
- Agency/public body records are subject to disclosure
- Specific statute may create exceptions to Right to Know Law (e.g., several professional licensing boards)

History

- 1941 – Governor Robert Blood opened G&C meetings to public
- 1967 – RSA 91-A first passed
- 1976 – NH Constitution Part 1, Article 8 Amended
Open, Accessible, Accountable
- 2008 – RSA 91-A amended to include electronic data and communications
- Continually changing to keep up with demands

MEETINGS OF PUBLIC BODIES

Meetings

"Meeting" means the convening of a quorum of the membership of a public body, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members.

What constitutes a meeting?

The convening of:

- a quorum of the membership so members can communicate contemporaneously
- For purpose of acting on or discussing matters within their powers/authority

What is not a meeting?

- Consultation with legal counsel
- Collective bargaining negotiations
- Email and telephone communications among members, BUT such communications cannot be used to circumvent the spirit and purpose of RSA 91-A.

What is a Public Body?

- Executive Council, legislative committees, boards, and commissions, school boards, planning boards, select boards, trustees of trust funds, library trustees, cemetery trustees...

Member Participation

- A quorum must be physically present, except in an emergency
- Remote participation is permitted when member's attendance is not reasonably practicable
- Remote participant must be:
 - **audible to the public**
 - **able to speak to and hear other members simultaneously**
- All votes by roll call if a remote participant

Notice of Meetings

- Notice must be posted
 - At least 24 hours in advance, except in an emergency
 - 2 appropriate places, one of which may be the municipal website
 - Applies to non-public sessions

Emergency Meeting Notice

- An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting.

RSA 91-A:2, II

Public Participation

- Public must be able to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice
- No email meetings
- Public has the right to videotape, audiotape
- 91-A does not afford a right to speak

Meeting Minutes

- Must be available to public in 5 business days
- Briefly explain what happened and decisions made.
- Include names of all members in attendance.
- Minutes are permanent records of the public body – should not be stored in private residences

Non-Public Sessions

- Specifically defined in RSA 91-A:3, II
- Includes:
 - Hiring, dismissal, etc. of a public employee
 - Negotiating the purchase or sale of specific real or personal property
 - Matters, if publicly discussed, would adversely impact person's reputation

Going Into Non-Public Session

- Must be done by motion and roll call vote
- State the statutory reason for the non-public session.
- Minutes must be taken
- Only matters properly considered in non-public session can be acted upon

Minutes of Non-Public Sessions

- Must be disclosed within 72 hours
- May be kept sealed if 2/3 of members determine that disclosure would:
 - Adversely affect reputation of a non-member of public body
 - Render the proposed action ineffective
 - Pertain to terrorism

Model Non-Public Session Motions

- See Appendix B of the Attorney General's Office Memorandum on New Hampshire's Right to Know law for model non-public session motions

GOVERNMENTAL RECORDS

Governmental Records

- Any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function.

What is Information?

- Knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained
- Including, but not limited to, written, aural, visual, electronic, or other physical form.
 - RSA 91-A:1-a, IV

Electronic Records

- Information created or retained in digital format
 - RSA 5:29, VI
- May include:
 - Documents Stored in a Computer
 - Email
 - Voicemail
 - Instant messages
 - Digital Photos
 - What else???

Retention of Records

- Period of retention for government records is defined by a retention schedule
- Each public body must create a retention schedule in conjunction with its municipal counsel

Retention of Electronic Records

- Electronic records must remain accessible for the same retention or archival periods as their paper counterparts

– RSA 91-A:4, III-a

Maintaining Electronic Government Records

- An electronic record is not subject to disclosure after it has been legally deleted
- Legally deleted means deleted in accordance with retention policy for the record at issue.

– RSA 91-A:4, III-b

Deleted Electronic Record

- An electronic record is deleted only if it's not readily accessible to the public body or agency
- Transferring an electronic record to a readily accessible "deleted items" folder or similar location on a computer is not sufficient
 - RSA 91-A:4, III-b

Right to Know Requests

Inspection of Governmental Records

- The public has a right to:
 - inspect and/or copy (by any means)
 - all non-exempt governmental records
 - in the custody or control of a public body or agency
 - during regular or business hours

What should you do when you receive a Right to Know Request?

Timing is critical!
Must respond to requestor within five business days.

RSA 91-A:4(IV)



4 Possible Responses to a Request

- Make records available for immediate review;
- Make records available within 5 days;
- Deny the request in writing with reasons; or
- Acknowledge receipt of the request in writing and say how much time is reasonably necessary to respond to the request.
 - RSA 91-A:4, IV

If the documents are readily available

- Are the records immediately available for review?
- If so and production is appropriate, make records available for inspection and/or copying
- If production is not appropriate, explain why (i.e. an exempt governmental record).
 - You can request payment for copying costs or production costs.

If the documents are not readily available

- Are the documents not immediately available for review?
 - The records are in use
- The records must be reviewed or redacted prior to responding, or
 - Legal counsel cannot be reached to discuss request.
- It may take time to search physical or electronic files. Even if an electronic record is "deleted", it may still be "readily accessible" and so must be produced. RSA 91-A:4, III-b.
- Produce the records within 5 days, if possible. If not, make sure to write a five-day letter!

**Exemptions From Disclosure
RSA 91-A:5**

- Internal personnel practices
- Confidential, commercial, or financial information
- Personnel, medical, welfare ... and other files whose disclosure would constitute invasion of privacy (requires balancing test)
- Notes or other materials made for personal use that do not have an official purpose
- Written legal advice from legal counsel

Exemptions, cont'd

- Preliminary drafts, notes, memoranda, other documents not in final form and not disclosed or circulated to a quorum or majority of board
- Records a public body received in non-public session to the extent disclosure of such records would frustrate the purpose for the non-public session

Remember . . .

- Portions of a record may be subject to disclosure, while other portions are not
- If necessary, redact portions that are not subject to disclosure

Request for Information in Specific Format

- RSA 91-A does not require public bodies or agencies to compile data into a format specifically requested by a person seeking information under the statute
 - Hawkins v. New Hampshire Dept. of Health and Human Services, 147 N.H. 376, 379 (2001).

Charging for Records

- The person requesting the copy may be charged the **actual cost** of providing the copy
- If a statutory fee applies, then no other cost can be charged
- What is the actual cost of producing an electronic record? PDF, Disc
 - RSA 91-A:4, IV

Destruction of a Requested Government Record

- Once a Right-to-Know request is received, do not delete any responsive record, even if the archival period has expired
- Deletion of a governmental record, after a record has been requested is subject to misdemeanor prosecution
 - RSA 91-A:9

Denial of a Requested Government Record

If a request for inspection is denied on the grounds that the information is exempt, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

– RSA 91-A:9

Remedies for a Violation

- Public body liable for costs if lawsuit necessary to insure compliance with the statute
- Public body liable for attorney's fees if it knew or should have known conduct was a violation
- Court may invalidate the action
- Court may enjoin future violations
- Court may require officers or employees to undergo remedial training at such their own expense

The Attorney General's Memo on
the Right to Know Law is
available on our website at:

[http://www.doj.nh.gov/civil/documents/right-
to-know.pdf](http://www.doj.nh.gov/civil/documents/right-to-know.pdf)

Publications

- **A Graveyard Preservation Primer** by
Lynette Strangstad, 1988
- **Preservation of Historic Burial
Grounds** by the National Trust for
Historic Preservation

Other Resources (pages 203)

- New Hampshire Old Graveyard Association
– <http://www.rootsweb.com/~nhoga/index.htm>
- New Hampshire Cemetery Association
– <http://www.nhcemetery.org/>
- The Association for Gravestone Studies
– <http://www.gravestonestudies.org/>

Contacting the Attorney General

- Website:
<http://www.doj.nh.gov/charitable-trusts/municipalities.htm>
- Phone: 603-271-3591
- Fax: 603-223-6221 or
603-223-6207
- e-mail: thomas.donovan@doj.nh.gov
terry.knowles@doj.nh.gov
audrey.blodgett@doj.nh.gov

Are There Any

**FINAL
QUESTIONS**