

# Committee Report

# **CONSENT CALENDAR**

**March 2, 2021**

## **HOUSE OF REPRESENTATIVES**

### **REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred HB  
108-FN-LOCAL,**

**AN ACT relative to minutes and decisions in nonpublic  
sessions under the right-to-know law. Having  
considered the same, report the same with the  
recommendation that the bill OUGHT TO PASS.**

**Rep. Mark McLean**

**FOR THE COMMITTEE**

## **COMMITTEE REPORT**

Committee:	<b>Judiciary</b>
Bill Number:	<b>HB 108-FN-LOCAL</b>
Title:	<b>relative to minutes and decisions in nonpublic sessions under the right-to-know law.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>OUGHT TO PASS</b>

## **STATEMENT OF INTENT**

This bill requires that public bodies keep a list of sealed minutes from non-public sessions. The list would be available to the public and would contain the date and time of the session, the specific exemption from RSA 91-A:3 II under which the non-public session was authorized, and the date of the decision to withhold the minutes from public disclosure. The majority of the committee felt that the generation and retention of such a list would be a minor burden that would be far outweighed by enhanced transparency with the public. The list will also be useful in assisting with the management of records, and could help streamline facilitation of right to know requests.

Vote 21-0.

Rep. Mark McLean  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### Judiciary

**HB 108-FN-LOCAL**, relative to minutes and decisions in nonpublic sessions under the right-to-know law. **OUGHT TO PASS.**Rep. Mark McLean for Judiciary. This bill requires that public bodies keep a list of sealed minutes from non-public sessions. The list would be available to the public and would contain the date and time of the session, the specific exemption from RSA 91-A:3 II under which the non-public session was authorized, and the date of the decision to withhold the minutes from public disclosure. The majority of the committee felt that the generation and retention of such a list would be a minor burden that would be far outweighed by enhanced transparency with the public. The list will also be useful in assisting with the management of records, and could help streamline facilitation of right to know requests. **Vote 21-0.**

Original: House Clerk  
Cc: Committee Bill File

# Voting Sheets

**EXECUTIVE SESSION on HB108-FN-LOCAL**

**BILL TITLE:** relative to minutes and decisions in nonpublic sessions under the right-to-know law.

DATE:

**LOB ROOM:**

**MOTION: (Please check one box)**

☐ OTP                      ☐ ITL                      ☐ Retain (1<sup>st</sup> year)                      ☐ Adoption of  
Amendment # \_\_\_\_\_  
☐ Interim Study (2nd year)                      (if offered)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

**MOTION: (Please check one box)**

☐ OTP      ☐ OTP/A      ☐ ITL      ☐ Retain (1<sup>st</sup> year)      ☐ Adoption of  
Amendment # \_\_\_\_\_  
☐ Interim Study (2nd year)      *(if offered)*

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

**MOTION: (Please check one box)**

☐ OTP      ☐ OTP/A    ☐ ITL      ☐ Retain (1<sup>st</sup> year)      ☐ Adoption of  
Amendment # \_\_\_\_\_  
☐ Interim Study (2nd year)      (*if offered*)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

**MOTION: (Please check one box)**

☐ OTP      ☐ OTP/A      ☐ ITL      ☐ Retain (1<sup>st</sup> year)      ☐ Adoption of  
Amendment # \_\_\_\_\_  
☐ Interim Study (2nd year)      *(if offered)*

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

**CONSENT CALENDAR:**            **YES**            **NO**

**Minority Report?** \_\_\_\_\_ Yes \_\_\_\_\_ No    If yes, author, Rep: \_\_\_\_\_ Motion \_\_\_\_\_

Respectfully submitted:

\_\_\_\_\_  
Rep Kurt Wuelper, Clerk

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Judiciary

Bill #: HB 108 Motion: \_\_\_\_\_ AM #: \_\_\_\_\_ Exec Session Date: /2021

<u>Members</u> Attendance	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman			
McLean, Mark Vice Chairman			
Sylvia, Michael J.			
Wuelper, Kurt F. Clerk			
Alexander, Joe H.			
Rice, Kimberly A.			
Silber, Norman J.			
Greene, Bob J.			
Kelley, Diane E.			
Tausch, Lindsay			
Trottier, Douglas R.			
Smith, Marjorie K.			
Berch, Paul S.			
Horrigan, Timothy O.			
DiLorenzo, Charlotte I.			
Chase, Wendy			
Kenney, Cam E.			
Langley, Diane M.			
McBeath, Rebecca Susan			
Paige, Mark			
Simpson, Alexis			
TOTAL VOTE:		0	



# Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB HB108-FN-LOCAL

**BILL TITLE:** relative to minutes and decisions in nonpublic sessions under the right-to-know law.

**DATE:**2/19/2021

**LOB ROOM:** 306/Remote

**Time Public Hearing Called to Order:** 9:02 AM  
**Time Adjourned:**

**Committee Members:** Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

**Bill Sponsors:** Rep Ulery

TESTIMONY

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

**\*Rep. Ulery** Hills 37 Sponsor This bill is about keeping a list of non-public sessions so the public can know how many they have and what the public body was doing when they went into non-public. Q Horrigan: What problem does this solve? A It helps eliminate conspiracy theories about what was going on and why. It shines a small light on non-public sessions. People understand why these are needed, but often they don't see why non-public sessions are necessary. In Pelham, we have a huge project underway and, if we had to go into non-public for a personnel matter this would clarify why so no other questions would be asked. Q Sylvia: Isn't this an unfunded mandate? A No, it just adds to the minutes. Q Wuelper Aren't boards already required to state why they have to go into non-public. A Yes, but this adds to what they have to describe.

**Nash Greyes** NHMA Opposed We think this bill would create a lot of work on the part of public bodies because the list is essentially ongoing and over time it will grow to great length because there is no means to take things off the list. As time goes by these minutes become meaningless and the list serves virtually no purpose. The public is interested in what goes on before the board and interested parties can request non-public minutes be unsealed. A list doesn't really facilitate that process. Q Wuelper: how would a citizen know when the board goes into non-public sessions? A Presumably you are looking for a specific subject and you could request all relevant minutes and the body would have to do a thorough search now.

**Steve Bolton** City Atty Nashua Opposed I think this list duplicates information already available because the open meeting minutes contain all the information and, if any decisions are made in non-public, those must be recorded in the open meeting minutes. This list just makes another thing for the body to keep.



Rep Kurt Wuelper

# House Remote Testify

## Judiciary Committee Testify List for Bill HB108 on 2021-02-19

Support: 18 Oppose: 6 Neutral: 1 Total to Testify: 3

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
saad, david	david1@infonetics-usa.com	A Member of the Public	Right to Know NH	Support	Yes (3m)	No	2/15/2021 10:19 AM
Greyes, Natch	Concord, NH ngreyes@nhmunicipal.org	A Lobbyist	New Hampshire Municipal Association	Oppose	Yes (2m)	No	2/18/2021 10:33 AM
Bolton, Steven	Nashua, NH boltons@nashuanh.gov	A Member of the Public	Myself and Nashua	Oppose	Yes (0m)	No	2/18/2021 10:08 AM
Ray, Robert	Dunbarton, NH robraynh@ieee.org	A Member of the Public	Myself	Support	No	No	2/18/2021 11:27 AM
Sumner, Deborah	dsumner@myfairpoint.net	A Member of the Public	Myself	Support	No	No	2/12/2021 9:57 AM
Josephson, Timothy	josephsonth@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/14/2021 11:27 AM
Yokela, Josh	josh.yokela@leg.state.nh.us	An Elected Official	Rockingham 33	Support	No	No	2/14/2021 4:50 PM
Babb, Paul	paulbabb@protonmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 9:04 PM
Martin, Paul A.	forp57@yahoo.com	A Member of the Public	Myself	Support	No	No	2/15/2021 10:42 AM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	2/18/2021 2:01 PM
See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	No	2/18/2021 9:50 PM
Balani, Kate	Hooksett, NH katebalani@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 7:07 AM
Gericke, Carla	Manchester, NH carlagericke@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 5:42 AM
Axelman, Elliot	HOOKSETT, NH aluaxelman@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 7:06 AM
Axelman, Kate	HOOKSETT, NH katebaxelman@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 7:06 AM

Thomas, Nicholas	Manchester, NH nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Support	No	No	2/19/2021 10:21 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	2/19/2021 8:13 AM
Taylor, David K.	Durham, NH dktaylor@f5.com	A Member of the Public	Myself	Support	No	No	2/19/2021 9:01 AM
Ledoux, Maxim	max@tuftonboro.net	A Member of the Public	Myself	Support	No	No	2/15/2021 11:07 AM
Bruce, Susan	susanb.red@mac.com	A Member of the Public	Myself	Support	No	No	2/15/2021 12:49 PM
Walbridge, Tracy	tracywalbridge@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:30 AM
Lucas, Janet	janluca1953@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/16/2021 12:16 PM
Kudlik, Cindy	cindykudlik@protonmail.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 5:10 PM
Gilman, Rep. Julie	julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Oppose	No	No	2/17/2021 10:47 AM
Christina, Barrett	Concord, NH bchristina@nhsba.org	A Lobbyist	NH School Boards Association	Neutral	No	No	2/17/2021 4:51 PM

# Testimony

## HB108-FN-L Testimony

To: Honorable Members of the House Judiciary Committee

Re: HB 108

I was scheduled to testify in support of HB 108 last Friday, however, due to technical issues, I was not able to connect during the Zoom meeting.

In the existing law regarding the sealing of minutes, RSA 91-A:3 III states

**“...Information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply”.**

Thus, to follow the letter and spirit of the current law, current members of each public body should be periodically reviewing all previously sealed minutes, to determine if the original circumstances for sealing the minutes still apply. In practice, this periodic review is never done. Thus, most public bodies are in violation of the law. Since no list of previously sealed minutes exist, if a member of the public or a member of a public body made a right to know request for sealed minutes on a particular subject, the public body would be obligated to make a reasonable search to comply with the request. This would require a detailed review of all minutes for an extended period of time to identify which minutes were sealed.

The benefits of having a list of sealed minutes are:


- Reduce the administrative burden on public bodies to follow the existing law, which is to periodically review all previously sealed minutes to determine if the original circumstances for sealing the minutes still apply. It is much easier to maintain a list on an ongoing basis than to go back and compile the list at a later date in order to comply with the law.
- Reduce the administrative burden on public bodies to respond to Right to Requests made for minutes related to topics which were discussed during nonpublic sessions and previously sealed.
- Ensure a more open government by having a list which tracks, for everyone to see, when discussions took place in which the minutes of those discussions remain hidden from public disclosure.

Please support HB 108

David Saad                      ?<david1@infonetics-usa.com>

President, Right to Know New Hampshire (RTKNH).

Rumney, NH

  
Rep Kurt Wuelper

## HB108-FN-L Testimony



749 E. Industrial Park Dr. Manchester, NH 03109 / [www.pressnh.org](http://www.pressnh.org) / [info@pressnh.org](mailto:info@pressnh.org)

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February 19, 2021

To: Honorable Members of the House Judiciary Committee Re: HB 108

The New Hampshire Press Association urges passage of House Bill 108 because it closes a consequential hole in the state's Right-to-Know law.

Currently, minutes and decisions made in non-public sessions can be kept secret indefinitely if two-thirds of a public body agrees the minutes and decisions fall under special circumstances including the divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism.

The problem is that the public has no clear and discernible accounting of these private sessions. Governmental bodies can skirt the Right-to-Know law by never disclosing why they met in private to discuss and decide public policy. We have too often heard the refrain "We will now enter private sessions to discuss a business matter."

Consequently, the public is powerless to ensure the minutes of these meetings are made public once the governmental body in question determines that the reasons for the private sessions are no longer pertinent, as the law prescribes. What exists today is a situation where countless accountings of private governmental meetings are hidden from public review in perpetuity.

Indeed, provisions of RSA 91-A:3 III that allow private session information to be released when "in the opinion of a majority of members, the aforesaid circumstances no longer apply" never happens because there is no easily accessible accounting of these sessions.

What we have is a system that allows for what happens in private sessions to stay in private sessions. Certainly, no members of the committee believe that reality adheres to the principles of the public's right to know.

The Press Association lauds this legislation for adeptly balancing the realities of governance with the rights of citizens to know what their public servants are doing and how they are doing it.

It does not force public officials to release validly constrained sensitive information. It puts no public official, community member or business interest at risk. It simply requires that public officials provide a reasonable and honest accounting of when they met in private and why.



Finally, this legislation does not place an unfair burden of compliance on public officials. It would require minimal effort to compose and maintain the required list.

The New Hampshire Press Association asks the Judiciary Committee to pass House Bill 108 to the full House with an out-to-pass recommendation.

## **The New Hampshire Press Association**

### **Officers**

President Howard Altschiller  
Executive Editor Seacoast Media Group

Vice President: Mark Gueringue  
Publisher Conway Daily Sun

Secretary Melanie Plenda  
Project Manager Granite State News Collaborative

Assistant Secretary Vanessa Palange  
Valley News

Treasurer Geoff Forester  
Photo Editor Concord Monitor

Assistant Treasurer David Brooks  
Concord Monitor

### **Board Members**

Nancy West - Executive Editor, InDepthNH.org

Matt Burdette - Publisher/Editor. Nashua Telegraph

Dan Tuohy - Digital Engagement Producer, New Hampshire Public Radio

Keith Gentili - Publisher/Editor, The New Boston Beacon

Brendan McQuaid - President, New Hampshire Union Leader

Michael Casey - Associated Press

Rosemary Ford - Editor, Eagle-Tribune/Derry News

Sarah Pearson - Features Editor, Concord Monitor

Carol Robidoux - Publisher/Editor, Manchester Ink Link

Bill as  
Introduced

HB 108-FN-LOCAL - AS INTRODUCED

2021 SESSION

21-0315

08/06

HOUSE BILL

***108-FN-LOCAL***

AN ACT                   relative to minutes and decisions in nonpublic sessions under the right-to-know law.

SPONSORS:           Rep. Ulery, Hills. 37; Rep. Spillane, Rock. 2; Rep. McGuire, Merr. 29; Rep. T. Lekas, Hills. 37

COMMITTEE:       Judiciary

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ANALYSIS

This bill requires that for meetings in nonpublic session where the minutes or decisions were determined to not be subject to public disclosure, a list shall be kept which shall include certain information. The list shall be made available for public disclosure.

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

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT                      relative to minutes and decisions in nonpublic sessions under the right-to-know law.

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

1            1 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

2            III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall  
3 be promptly made available for public inspection, except as provided in this section. Minutes of such  
4 sessions shall record all actions in such a manner that the vote of each member is ascertained and  
5 recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72  
6 hours of the meeting, unless, by recorded vote of 2/3 of the members present taken in public session,  
7 it is determined that divulgence of the information likely would affect adversely the reputation of  
8 any person other than a member of the public body itself, or render the proposed action ineffective,  
9 or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying  
10 out of all emergency functions, developed by local or state safety officials that are directly intended  
11 to thwart a deliberate act that is intended to result in widespread or severe damage to property or  
12 widespread injury or loss of life. This shall include training to carry out such functions. In the event  
13 of such circumstances, information may be withheld until, in the opinion of a majority of members,  
14 the aforesaid circumstances no longer apply. ***For all meetings held in nonpublic session, where  
15 the minutes or decisions were determined to not be subject to full public disclosure, a list of  
16 such minutes or decisions shall be kept and this list shall be promptly made available for  
17 public disclosure. This list shall identify the public body and include the date and time of  
18 the meeting in nonpublic session, the specific exemption under paragraph II on its face  
19 which is relied upon as foundation for the nonpublic session, the date of the decision to  
20 withhold the minutes or decisions from public disclosure, and the date of any subsequent  
21 decision, if any, to make the minutes or decisions available for public disclosure.***

22            2 Effective Date. This act shall take effect January 1, 2022.

LBA  
21-0315  
12/8/20

**HB 108-FN-LOCAL- FISCAL NOTE  
AS INTRODUCED**

AN ACT                      relative to minutes and decisions in nonpublic sessions under the right-to-know law.

**FISCAL IMPACT:**    ☐ State                      ☐ County                      ☒ Local                      ☐ None

**LOCAL:**

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

**METHODOLOGY:**

This legislation requires a public body to keep a list of all minutes of non-public sessions that are not subject to public disclosure, including the date and time of each non-public session, the statutory exemption that was the basis for the non-public session, the date of the decision to withhold the minutes from public disclosure, and the date of any subsequent decision to make the minutes available. The New Hampshire Municipal Association indicates compiling and maintaining such a list will require additional staff time for municipalities. This may result in additional expenditures, but it will depend on the specific circumstances of each municipality. Therefore, the Association is not able to estimate the amount of additional expenditures. There will be no effect on municipal revenues.

The Department of Justice expects the bill would likely result in additional requests for legal advice and training to be provided by existing Department of Justice attorneys in order to make state boards and agencies aware of the new requirement and how to comply. Those requests would be handled by the Civil Bureau and could be done within the current budget resulting in no fiscal impact to the Department.

The New Hampshire Association of Counties states there would be no fiscal impact to the counties.

**AGENCIES CONTACTED:**

Department of Justice, New Hampshire Municipal Association and New Hampshire Association of Counties