

Committee Report

REGULAR CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred HB 206,**

**AN ACT relative to collective bargaining agreement
strategy discussions under the right-to-know law.**

**Having considered the same, report the same with the
recommendation that the bill OUGHT TO PASS.**

Rep. Kurt Wuelper

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 206
Title:	relative to collective bargaining agreement strategy discussions under the right-to-know law.
Date:	March 2, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill would require the negotiating by public employers and the union representing the public employees to be done in open sessions. The main benefit would be to allow both the public taxpayer and union members to view, in real time, joint bargaining sessions. 22 states allow public employee collective bargaining negotiations as public meetings. We believe openness would speed, not slow, negotiations. Either way, the people, who pay all the costs of the negotiated agreements and the negotiations per se, could see just who is advocating for what and the alternatives offered by both sides. We believe this transparency will make our public officials more accountable to us and the same scrutiny could benefit union members in similar fashion.

Vote 11-10.

Rep. Kurt Wuelper
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 206, relative to collective bargaining agreement strategy discussions under the right-to-know law. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kurt Wuelper for the **Majority** of Judiciary. This bill would require the negotiating by public employers and the union representing the public employees to be done in open sessions. The main benefit would be to allow both the public taxpayer and union members to view, in real time, joint bargaining sessions. 22 states allow public employee collective bargaining negotiations as public meetings. We believe openness would speed, not slow, negotiations. Either way, the people, who pay all the costs of the negotiated agreements and the negotiations per se, could see just who is advocating for what and the alternatives offered by both sides. We believe this transparency will make our public officials more accountable to us and the same scrutiny could benefit union members in similar fashion. **Vote 11-10.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Judiciary to which
was referred HB 206,**

**AN ACT relative to collective bargaining agreement
strategy discussions under the right-to-know law.**

**Having considered the same, and being unable to agree
with the Majority, report with the following resolution:**

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Rebecca McBeath

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 206
Title:	relative to collective bargaining agreement strategy discussions under the right-to-know law.
Date:	March 2, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The minority of the Judiciary Committee believes rather than improving transparency this bill would reduce candor and increase posturing by both management and labor during contract negotiation. Requiring all "meetings" regarding collective bargaining to be open to the public would stifle productive negotiations and drastically curb the ability of parties to reach a timely resolution of issues. The unintended consequences of this bill include prolonging the negotiation sessions, thereby increasing the costs to municipalities by increasing counsel and staff time on negotiations. Another issue significant to medium and smaller communities in New Hampshire is the potential of participants to inadvertently reveal confidential employment information to the point that the public could identify individual employees. Numerous groups including the NH Municipal Association and the NH School Boards Association presented testimony opposing this bill to the committee.

Rep. Rebecca McBeath
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 206, relative to collective bargaining agreement strategy discussions under the right-to-know law. **INEXPEDIENT TO LEGISLATE.**

Rep. Rebecca McBeath for the **Minority** of Judiciary. The minority of the Judiciary Committee believes rather than improving transparency this bill would reduce candor and increase posturing by both management and labor during contract negotiation. Requiring all "meetings" regarding collective bargaining to be open to the public would stifle productive negotiations and drastically curb the ability of parties to reach a timely resolution of issues. The unintended consequences of this bill include prolonging the negotiation sessions, thereby increasing the costs to municipalities by increasing counsel and staff time on negotiations. Another issue significant to medium and smaller communities in New Hampshire is the potential of participants to inadvertently reveal confidential employment information to the point that the public could identify individual employees. Numerous groups including the NH Municipal Association and the NH School Boards Association presented testimony opposing this bill to the committee.

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB206

BILL TITLE: relative to collective bargaining agreement strategy discussions under the right-to-know law.

DATE: 3/2/2021

LOB ROOM: 208/Remote

MOTION: (Please check one box)

- OTP ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (*if offered*)

Moved by Rep. Wuelper Seconded by Rep. Sylvia Vote: 11-10

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st 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 (1st 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 (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (*if offered*)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES XX NO

Minority Report? XX Yes _____ No If yes, author, Rep: McBeath Motion ITL

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 206** Motion: OTP AM #: _____ Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	11		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A.	5		
Silber, Norman J. Smith, Steven	6		
Greene, Bob J.	7		
Kelley, Diane E.	8		
Tausch, Lindsay	9		
Trottier, Douglas R.	10		
Smith, Marjorie K.		1	
Berch, Paul S.		2	
Horrigan, Timothy O.		3	
DiLorenzo, Charlotte I.		4	
Chase, Wendy		5	
Kenney, Cam E.		6	
Langley, Diane M.		7	
McBeath, Rebecca Susan		8	
Paige, Mark		9	
Simpson, Alexis		10	
TOTAL VOTE:	11	10	

Rep Kurt Wuelper *Kurt Wuelper*

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 206

BILL TITLE: relative to collective bargaining agreement strategy discussions under the right-to-know law.

DATE:2/19/2021

LOB ROOM:208/Remote

Time Public Hearing Called to Order: 9:32 AM
Time Adjourned: 10:20 AM

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 Turcotte

TESTIMONY

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

***Rep. Turcotte** Straf 4 I spent two years as a negotiator for an airline union and have negotiate very complex contracts with national airlines. This bill requires collective bargaining contracts to be negotiated in public. By the time taxpayers see the negotiated contract, it is too late to have meaningful input. Similarly, union members are in the dark until agreements are complete. This bill brings those negotiations into the light. The argument that this will stifle negotiations is wrong. I have seen pre-planned theatrics by negotiators, but the public can see those. This bill will encourage both sides to begin negotiations with more realistic proposals which could shorten the process considerably. Historically grievances are handled outside the contract negotiations and they don't need to be brought into those negotiations.

Donna Green School Boards Governance Association Supports In fifteen states government bodies must negotiate in public with no restrictions. Pulling back the curtain of secrecy over what actually occurs during negotiations would enhance the seriousness of the negotiations and give the public another way to evaluate their representatives. This bill asks that both parties operate in public where the current law allows one party to force non-public. Q Horrigan: What problems did you encounter? A Members were unnecessarily hostile, and this would minimize that.

Steve Bolton City Atty Nashua Opposes I have been involved in many of these negotiations. This bill enables strategy sessions to remain non-public and the negotiations themselves public with minutes, etc. available to the public. I think both sides, particularly the union side, would be discouraged from exploring some solutions. In any event, the final contracts must be subjected to public vote. They are made public already. Everything that will be costly must be disclosed. The way the negotiations are conducted in public will complicate and elongate the process.

***David Saad** Right to Know NH Supports Currently negotiations can be conducted in a "non-meeting" with no records kept, essentially in total secrecy. When public bodies meet to negotiate, each group in the room represents a much larger group, but the members of those groups have no way to tell exactly what is said. The anyone who wants these negotiations secret is effectively saying they don't want their own group to know what they are doing. I believe there is a greater benefit to gthe public from making these meetings public. Q Horrigan: Why do we need this in addition to what we have? A Many of times the contracts span several years, so long after the representatives are gone the members of the groups have to pick up the tab.

Brian Ryll Prof Firefighters of NH have been part of many collective bargainings during my career. It appears the intent is to make the negotiating process more transparent, but the current law is already fully transparent. all situation there must be a public hearing including public input before any agreement is reached. The unintended consequence of this bill will be a drawn-out process

costing taxpayers even more. Q Alexander: Where is the increased cost? A City and town negotiators and p\unison officials are paid for their time. The longer the process the more it costs. Also, that longer time frame may cost benefits to union members during the negotiation.

***Don Bettencourt** Self Support Sunapee needs open negotiations to preserve its school which has outrageous costs. This has been the result of a strong teacher's union and a compliant school board. The school board ignored a 65% vote and conducts negotiations in secret. At the recent deliberative session, a warrant article for open negotiations was totally mooted.

Natch Greyes NHMA Opposed We work with over 200 municipalities and we know that when these contracts are debated in public the attendance is dominated by the union membership. We believe public negotiations would encourage more theatrics. It is possible we would have more instances of negotiation between one board member and the union, removing them from the Right to Know law totally.

Becky Wilson Barrett Christina has submitted written testimony for the NH School Boards Association

Jim Durkin: The overwhelming consensus from both sides is this bill will extend the process and be ultimately harmful to both sides. Prolonged negotiations are often heated and rightly so. Open meetings would stifle that kind of discussion and take some solutions off the table. Remember, the final decision rests with voters and the system is working well.



Rep Kurt Wuelper

House Remote Testify

Judiciary Committee Testify List for Bill HB206 on 2021-02-19

Support: 32 Oppose: 19 Neutral: 0 Total to Testify: 8

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>
Bolton, Steven	Nashua, NH boltons@nashuanh.gov	A Member of the Public	Myself and Nashua	Oppose	Yes (5m)	No	2/18/2021 10:10 AM
Green, Donna	Oldsmar, FL SDGAofNH@gmail.com	A Member of the Public	School District Governance Association of NH	Support	Yes (3m)	No	2/17/2021 5:16 PM
Christina, Barrett	Concord, NH bchristina@nhsba.org	A Lobbyist	NH School Boards Association	Oppose	Yes (3m)	No	2/17/2021 4:47 PM
Ryll, Brian	Concord, NH brian@pffnh.org	A Lobbyist	Professional Fire Fighters of NH	Oppose	Yes (3m)	No	2/18/2021 2:54 PM
saad, david	david1@infonetics-usa.com	A Member of the Public	Right to Know NH	Support	Yes (3m)	No	2/15/2021 10:24 AM
Bettencourt, Don	Sunapee, NH Don.Bettencourt@GMail.com	A Member of the Public	Myself	Support	Yes (3m)	No	2/18/2021 5:32 PM
Pauer, Eric	secretary@BrooklineGOP.org	A Member of the Public	Myself	Support	Yes (2m)	No	2/17/2021 10:04 AM
Greyes, Natch	Concord, NH ngreyes@nhmunicipal.org	A Lobbyist	New Hampshire Municipal Association	Oppose	Yes (2m)	No	2/18/2021 10:34 AM
Barczak, Roger	Newmarket, NH Rogerbcz@comcast.net	A Member of the Public	Myself	Support	No	No	2/17/2021 8:30 PM
Underwood, Jody	Croydon, NH jodysun@gmail.com	A Member of the Public	Myself	Support	No	No	2/17/2021 4:31 PM
Collyer, Anne	Newton, NH annicollyer34@gmail.com	An Elected Official	Myself	Oppose	No	No	2/17/2021 5:04 PM
Mahoney, Tammy	KINGSTON, NH tammy.mahoney@yahoo.com	A Member of the Public	Myself	Support	No	No	2/17/2021 5:08 PM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	2/18/2021 2:03 PM
Ryan, Moira	Londonderry, NH	A Member of the Public	Myself	Support	No	No	2/18/2021 4:04 PM

	army51kilo@hotmail.com						
Bettencourt, Janice	SUNAPEE, NH Jan.Bettencourt@gmail.com	A Member of the Public	Myself	Support	No	No	2/18/2021 5:08 PM
See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	No	2/18/2021 9:51 PM
Axelman, Elliot	HOOKSETT, NH aluaxelman@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 7:07 AM
Balani, Kate	Hooksett, NH katebalani@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 7:08 AM
Gericke, Carla	Manchester, NH carlagericke@gmail.com	A Member of the Public	Myself	Support	No	No	2/19/2021 5:43 AM
Baldasaro, Rep Al	Londonderry, NH mbaldasaro@comcast.net	An Elected Official	Myself	Support	No	No	2/19/2021 10:16 AM
Wolf, Daniel	Newbury, NH ddan@hoddan.com	An Elected Official	Myself	Oppose	No	No	2/19/2021 10:20 AM
Thomas, Nicholas	Manchester, NH nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Support	No	No	2/19/2021 10:22 AM
Osborne, Jason	Auburn, NH houserepoffice@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/19/2021 8:13 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	2/19/2021 8:15 AM
Hawkins, Brian	Concord, NH bhawkins@nhnea.org	A Lobbyist	NEA-NH	Oppose	No	No	2/19/2021 9:03 AM
Tudor, Paul	Northwood, NH Paul tudor.1stockingham@gmail.com	An Elected Official	Myself	Support	No	No	2/19/2021 9:07 AM
Smith, Jonathan	OSSIPEE, NH jhsmithnh5@gmail.com	An Elected Official	Myself	Support	No	No	2/19/2021 9:08 AM
Durkin, Jim	Boston, MA jdurkin@afscme93.org	A Lobbyist	Myself	Oppose	No	No	2/19/2021 9:15 AM
Boyd, Stephen	HOOKSETT, NH seboyd2020@gmail.com	An Elected Official	Myself	Support	No	No	2/19/2021 9:45 AM
Post, Lisa CM	Lyndeborough, NH Lisa.Post@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/19/2021 11:23 AM
Lekas, Tony	Hudson, NH Rep.Tony.Lekas@gmail.com	An Elected Official	Hillsborough 37	Support	No	No	2/19/2021 2:52 PM

Frew, Jerry	Concord, NH jerry@nhsaa.org	A Lobbyist	NHSAA	Oppose	No	No	2/19/2021 3:01 PM
Ladd, Carl	Northumberland, NH carl@nhsaa.org	A Lobbyist	New Hampshire School Administrators Association	Oppose	No	No	2/19/2021 3:33 PM
Nunez, Hershel	Pelham, NH hershel.nunez@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/19/2021 4:18 PM
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	Oppose	No	No	2/15/2021 12:50 PM
Everett, Robertit	Rje7@hotmail.com	A Member of the Public	Myself	Oppose	No	No	2/15/2021 3:01 PM
Brackett, Glenn	communications@nhaficio.org	A Lobbyist	The working people of the New Hampshire AFL-CIO	Oppose	No	No	2/15/2021 6:15 PM
Walbridge, Tracy	tracywalbridge@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:31 AM
Lucas, Janet	janluca1953@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/16/2021 12:19 PM
Crompton, Misty	m.crompton.snhu@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/16/2021 4:23 PM
Le, Hon. Tamara	tamaranle@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/10/2021 9:25 PM
Sumner, Deborah	dsumner@myfairpoint.net	A Member of the Public	Myself	Support	No	No	2/12/2021 9:58 AM
Horgan, Kathryn	khorgan@dupontgroup.com	A Lobbyist	NH Association of Counties	Oppose	No	No	2/12/2021 6:42 PM
Zboya, Patrice	pzboya654@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/14/2021 10:41 AM
Josephson, Tim	josephsonth@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/14/2021 11:25 AM
Cutshall, Catherine	vivadofamily@aol.com	A Member of the Public	Myself	Support	No	No	2/14/2021 3:42 PM
Vivado, Mauricio	vivadofamily@aol.com	A Member of the Public	Myself	Support	No	No	2/14/2021 3:42 PM
Molloy, Kathe	KatheMolloy@gmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 9:00 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 10:43 AM

Testimony



Date February 19, 2021

Honorable Ned Gordon
House Judiciary Committee
State House
Concord, New Hampshire

Via Electronic Delivery Only

Re: HB 206

Dear Chairman Gordon and members of the House Judiciary Committee:

HB 206 eliminates the exception from the definition of “meeting” for collective bargaining negotiations, meaning those negotiations would have to be held in public. Only “strategy” sessions, i.e. caucuses, would still be exempt from the requirements of the Right-to-Know Law.

The idea behind HB 206 seems to be that requiring public negotiations will service as a check on the demands of unions and thus lead to lower costs for taxpayers, but the exact opposite is likely. We know from experience with town and school district meetings that when public employee compensation is being debated, it is the employees who fill the room. The consequence is that the union may be less able to barter with management because their members are watching the negotiations. The same could be said if townspersons who support management and come to the negotiation session. This would undermine the purpose of negotiations sessions – coming to an agreement – and/or prolong the sessions, increasing the costs for municipalities by increasing the amount of time town counsel and others need to spend on the negotiation sessions.

As a practical matter, HB 206 would make these sessions public meetings, requiring all the formalities of a public meeting, including opening the meeting, adjourning the meeting while nonmeeting events (i.e. strategy sessions) occur, and presiding over the meeting. This would cause headaches as the two sides try to work out not only the rules for negotiations, but also how to run the meeting, and remember to follow those procedures.

In addition, it is possible that boards would elect to appoint one member to serve on the negotiating team. As it is not possible to have a committee of one, that single member – and anyone that member is empowered to bring to the table, such as town counsel and the town administrator or manager – would not qualify as a “public body” and, thus, not be required to abide by the requirements of the Right-to-Know Law, making these sessions less accessible rather than more accessible.

Sincerely,

A handwritten signature in black ink that reads 'Natch Greyes' in a cursive script.

Natch Greyes
Municipal Services Counsel

cc: Committee members

County adopted contract transparency on November 7, 2017.¹⁰ Most recently, Spokane County passed a transparency resolution on December 11, 2017.¹¹

Collective bargaining transparency in other states

The following sections describe the transparency of the collective bargaining process in other states.

Three states have blanket statutes that prohibit all government workers from collective bargaining, while five other states narrowly allow collective bargaining only for specific public employee groups.

Virginia, North Carolina, and South Carolina fall into the first category; in these states there is no legal collective bargaining process for government workers. Obviously there is no need for collective bargaining transparency laws in those three states.

Texas allows only firefighters and police officers to bargain collectively, Georgia allows only firefighters, Tennessee allows just teachers, Indiana allows a limited scope of collective bargaining for teachers only, while Wisconsin allows a limited scope for all public employees, except for firefighters and police officers, who are exempt from those limitations.

As would be expected, Texas, Tennessee, and Georgia boast some of the strongest collective bargaining transparency laws in the nation.

Surprisingly, despite strong limitations on public employee collective bargaining and right-to-work laws, Wisconsin, and Indiana do not have a transparent process for contract negotiations. Wisconsin expressly allows for collective bargaining negotiations to be held behind closed doors.¹² Indiana also allows collective bargaining negotiations to be done in secret.¹³

The states that allow public workers to collectively bargain and allow such contract negotiations to take place behind closed doors are: California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and Washington. Some of these “anti-Sunshine” states expressly exempt negotiations from their state’s open meetings law, while others leave the choice to the government employer and the union executives. A few that deny public access

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- 10 “Kittitas County adopts collective bargaining transparency reform,” by Jason Mercier, blog post, Washington Policy Center, November 8, 2017, at www.washingtonpolicy.org/publications/detail/kittitas-county-adopts-collective-bargaining-transparency-reform.
 - 11 “Spokane County passes transparency resolution for employee collective bargaining,” by Emily Boerger, Washington State Wire, December 7, 2018, at <https://washingtonstatewire.com/%EF%BB%BFspokane-county-passes-transparency-resolution-for-employee-collective-bargaining/>
 - 12 “Wisconsin legislator briefing book, 2017-18,” Chapter 6, Open Meetings Laws, at https://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch06_open_meetings.pdf
 - 13 “Handbook on Indiana’s Public Access Laws,” Indiana Public Access Counselor, at www.in.gov/pac/files/pac_handbook.pdf

to contract negotiations do provide for some limited measure of public input after negotiations but before ratification.

In contrast, 22 states allow public employee collective bargaining and do not specify any exemption for those negotiations from their state's open meetings law. Some of those state's open meeting laws even go so far as to expressly require some level of public access to various components of those negotiations. Following is a list of those states:

Alabama

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees. However, government employers may meet in closed executive session to discuss collective bargaining negotiating strategy.¹⁴

Alaska

All school district collective bargaining proposals are open records and subject to public comment.

“Before beginning bargaining, the school board of a city or borough school district or a regional educational attendance area shall provide opportunities for public comment on the issues to be addressed in the collective bargaining process. Initial proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements reached by the parties are public documents and are public records available for public review.”¹⁵

All other government employers may close collective bargaining negotiations to the public.¹⁶

Arizona

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.¹⁷ However, government employers may meet in closed executive session to discuss collective bargaining negotiating strategy.¹⁸

Arkansas

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.¹⁹

14 Alabama Code Title 36, Public Officers and Employees § 36-25A-7, at <https://codes.findlaw.com/al/title-36-public-officers-and-employees/al-code-sect-36-25a-7.html>

15 Alaska Senate Bill 204, Sec 203.40.235, at www.akleg.gov/basis/Bill/Text/19?Hsid=SB0204A.

16 Alaska Statute § 44.62.310, Article 6, Open Meetings of Governmental Bodies, at www.legis.state.ak.us/basis/statutes.asp#44.62.319

17 Arizona Revised Statute § 38-431.01, at www.azleg.gov/ars/38/00431-01.htm

18 Arizona Revised Statute § 38-431.03(A)(5), at www.azleg.gov/ars/38/00431-03.htm

19 Arkansas Freedom of Information Act, at <https://arkansasag.gov/resources/foia/>

Colorado

In 2014, 70 percent of Colorado voters approved Proposition 104 to require “... any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public.” This includes strategy sessions and negotiations.²⁰

All other government employers may close collective bargaining negotiations to the public.²¹

Florida

Collective bargaining negotiations between all government employers and employee representatives are open to the public. Government employers may meet in closed executive session to discuss negotiating strategy but the actual negotiations between a public agency and an employee bargaining organization must be conducted in the open.²²

Georgia

All meetings must be open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.²³

Idaho

Collective bargaining negotiations between government employers and employee representatives are open to the public. Government employers may meet in closed executive session to discuss negotiating strategy, consider labor contract offers and formulate counter offers, as well as to discuss sensitive information about a specific employee.²⁴

This expansive public access to labor negotiations for public employees was the result of bipartisan legislation passed unanimously in 2015.

Illinois

While collective bargaining negotiations are exempt from the state’s open meetings law, if contract negotiations reach an impasse such that either side initiates a fact-finding to settle the dispute, and either party subsequently rejects the fact-finding panel’s report and recommended terms of settlement, the fact-finding panel shall “*promptly release the fact-finding panel’s report and the notice of rejection for*

20 “Colorado School Board Open Meetings, Proposition 104 (2014),” Ballotpedia, accessed on August 9, 2017, at [https://ballotpedia.org/Colorado_School_Board_Open_Meetings, Proposition_104_\(2014\)](https://ballotpedia.org/Colorado_School_Board_Open_Meetings, Proposition_104_(2014))

21 Colorado Open Records Act, C.R.S. 24-6-401 et seq., at www.nfoic.org/coalitions/state-foi-resources/colorado-foia-laws

22 Florida Statute § 447.605, Public Meetings and Records Law, at www.flsenate.gov/Laws/Statutes/2014/447.605

23 Georgia Open Meetings Act, at http://law.georgia.gov/sites/law.georgia.gov/files/AG-%23872098-v1-OPENGOV_Open_Meetings_Act_-_March_2016.pdf

24 Idaho House Bill 167, at <https://legislature.idaho.gov/sessioninfo/2015/legislation/H0167/>

public information by delivering a copy to all newspapers of general circulation in the community.”²⁵

Iowa

The first and second collective bargaining negotiating sessions, whereby the government employer and employee representative each present their “initial bargaining positions,” are open to the public.

All subsequent negotiations, strategy meetings, mediation and deliberation are closed to the public.

The terms of a proposed collective bargaining agreement shall be made available to the public prior to a ratification election.²⁶

Louisiana

While collective bargaining negotiations are exempt from the state’s open meetings law and may be closed to the public, no collective bargaining agreement can be accepted or ratified until it has been made available to the public via the Internet website of the public employer for at least 5 business days.²⁷

Minnesota

Collective bargaining negotiations, mediation sessions, and hearings between government employers and employee representatives are open to the public, unless otherwise provided by the commissioner.²⁸ Government employers may meet in closed executive session to discuss negotiating strategy, but those meetings must be recorded, preserved for two years after the contract is signed, and made available to the public after labor agreements are signed.²⁹

Mississippi

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³⁰

25 ILCS Title 80, Chapter III, Part 1130, Section 1130.55, at www.ilga.gov/jcar/admincode/080/080011300000550R.html

26 Iowa Code § 20.17(3), Procedures, at www.legis.iowa.gov/docs/code/20.17.pdf

27 Louisiana R.S. § 42:17(A)9(2) and 44:67.1, Open Meetings Law, at [https://app.la.state.la.us/llala.nsf/BAADB2991272084786257AB8006EE827/\\$FILE/Open%20Meetings%20Law%20FAQ.pdf](https://app.la.state.la.us/llala.nsf/BAADB2991272084786257AB8006EE827/$FILE/Open%20Meetings%20Law%20FAQ.pdf)

28 Minnesota Statute § 179A.14, subdivision 3, Negotiation Procedures, at www.revisor.mn.gov/statutes/cite/179a.14

29 Minnesota Statute § 13D.03, subdivision 1-2, Closed Meetings for Labor Negotiations Strategy, at www.revisor.mn.gov/statutes/cite/13D.03

30 Mississippi Code § Title 25, Chapter 41, at <https://law.justia.com/codes/mississippi/2017/title-25/chapter-41/>

Missouri

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees. Government employers may meet in closed executive session to discuss negotiating strategy.³¹

On June 1, 2018, Missouri's governor signed HB 1413 into law, which implements comprehensive public sector labor law reforms, including significantly expanding what was already reasonably strong collective bargaining transparency in the state. Under the new law, government employers must hold a public hearing before approving any collective bargaining agreement and the tentative agreement must be published on the government employer's website at least five business days prior to that meeting. During the public meeting, the tentative agreement must be discussed in detail, and the public is permitted to provide comment.³²

Montana

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³³

Citizens in Montana enjoy one of the nation's broadest public records and meetings law. In 1972 the state's constitution was rewritten to include a guarantee of the public's right to access government business.³⁴

In 1977, Montana's open meeting law was amended to allow government employers to meet privately to discuss collective bargaining negotiating strategy. A 1992 ruling by the Montana supreme court declared the law unconstitutional, thus reaffirming the state's dedication to open government.³⁵

Nebraska

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³⁶ Government employers may meet in closed executive session if it is "clearly necessary for the protection of the public interest," which specifically includes "strategy sessions with respect to collective bargaining."³⁷ Beyond this one reference to collective bargaining, there

31 Missouri Sunshine Law: Open Meetings and Record Law, Missouri Attorney General, at 610.021(9), at <https://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=4>

32 House Bill No. 1413, Section 105.583(1), at <https://house.mo.gov/billtracking/bills181/hlrbillspdf/4637S.14T.pdf>

33 Montana Code, Title 2, Chapter 3, Part 2, Open Meetings, at https://leg.mt.gov/bills/mca/title_0020/chapter_0030/part_0020/section_0030/0020-0030-0020-0030.html

34 "Open Government Guide: Access to Public Records and Meetings in Montana," The Reporters Committee for Freedom of the Press, 2011, at www.rcfp.org/rcfp/orders/docs/ogg/MT.pdf

35 *Great Falls Tribune v. Great Falls Public Schools*, 255 Mont. 125, 841 P.2d 502 (1992).

36 Nebraska Revised Statute § 84-1408, at <https://nebraskalegislature.gov/laws/statutes.php?statute=84-1408>

37 Nebraska Revised Statutes § 84-1410(1)(a), at <https://nebraskalegislature.gov/laws/statutes.php?statute=84-1410>

are no other provisions in Nebraska's Open Meetings Act relating to negotiations with a union.

Nevada

Collective bargaining statutes do not apply to state employees and their compensation and conditions of employment are set forth by the Legislature.³⁸

Negotiations between a local government employer and an employee organization are not required to be open to the public.³⁹ However, before approving a collective bargaining agreement, local governments must hold a public hearing and provide public access to proposed collective bargaining agreement no less than three days before the hearing.⁴⁰

North Dakota

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.⁴¹ Government employers may meet in closed executive session to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.⁴²

A 1977 ruling by the North Dakota supreme court held that all school board negotiations of teacher contracts are required to be open to the public. "All school board meetings at which teacher contract offers and school board offers and counteroffers are considered are required to be open to the public. In addition, all school board and teacher contract negotiating sessions, regardless of negotiating committee composition, are open to the public."⁴³

Oregon

Collective bargaining negotiations between government employers and government employee representatives are open to the public unless negotiators for both sides request that negotiations be conducted in closed executive session.⁴⁴

38 Nevada Revised Statute § 284, at www.leg.state.nv.us/NRS/NRS-284.html

39 Nevada Revised Statute § 288.220, at www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec270

40 Nevada Revised Statute § 288.153(1)(2), at www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153

41 North Dakota Century Code § 44-04-19, Access to public meetings, at www.legis.nd.gov/cencode/t44c04.pdf

42 North Dakota Century Code § 44-04-19.1(9), Open Records and Open Meetings-Exemptions, at www.legis.nd.gov/cencode/t44c04.pdf

43 North Dakota Open Meetings Manual, Office of Attorney General, April 2017 Edition, at <https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenMeetingsManual.pdf>

44 Oregon Statute § ORS 192.660(3), at www.oregonlaws.org/ors/192.660.

Pennsylvania

While collective bargaining negotiations are exempt from the state's open meetings law and may be closed to the public, in 2016 a new law was passed (SB 644: Act 15) requiring the state's Independent Fiscal Office to provide a cost analysis of every proposed collective bargaining agreement under the governor's jurisdiction, prior to the agreement taking effect.⁴⁵

The cost analysis must include the number of workers covered and detail the changes to employee wages and benefits, including pension contributions, and changes to working hours or working conditions and project the cost of those changes. The analysis must also compare the collective bargaining agreement currently in effect with projections for the proposed contract agreement for the current and five subsequent fiscal years.

Tennessee

Collective bargaining negotiations between government employers and employee representatives are open to the public.⁴⁶

Texas

Collective bargaining negotiations between government employers and employee representatives are open to the public.⁴⁷

Policy Analysis

Opening public employee collective bargaining is clearly working in many states in creating more open, honest, and accountable government. There is no reason it should not also work in Washington and create the same public benefit.

Since government employee contracts account for such a large portion of public spending, they should not be negotiated in secret. Taxpayers provide the money for these agreements. The public should be allowed to follow the process and hold government officials accountable for the spending decisions they make on taxpayers' behalf. Similarly, union members would benefit from knowing exactly what proposals their union representatives are requesting, and what proposals they are rejecting.

In addition to providing taxpayers and union members with current information on how they are being represented, open negotiations would instill more accountability into the process by quickly identifying whether one side is being unreasonable in negotiations to help the public determine who is acting in good or bad faith.

45 Pennsylvania General Assembly, Act 15 of 2016, at www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=15

46 "Tennessee Open Meetings Act," at www.comptroller.tn.gov/openrecords/pdf/open%20meetings%20draft8-44-101.pdf

47 "Texas Local Government Code - Sec. 174.108. OPEN DELIBERATIONS," Texas Legislature, at www.statutes.legis.state.tx.us/SOTWDOcs/LG/htm/LG.174.htm

My name is Len Turcotte and I represent Strafford County District 4, the Town of Barrington. I bring before the committee a bill that is about one thing and one thing only: Transparency.

Executive Overview

House bill 206 would require the negotiating by public employers and the union representing the public employees. The main benefit would be to allow both the public tax payer and union members, the ultimate beneficiaries of a Collective Bargaining Agreement (CBA), to be able to view, in real time, joint bargaining sessions of a negotiations on that CBA.

CBAs generally represent one of the single, largest costs to all public employers, and therefore to the tax payers of the towns, cities, counties or state. CBAs also control many aspects of the union member's pay, benefits and quality of work-life.

We have transparency of public bodies embedded in nearly every other environment, there is no reason to exempt negotiations.

Twenty two of the 47 states that permit bargaining for public employees require some form of negotiations in public view. Unfortunately, NH is currently situated in the category of secrecy along with states such as NY, NJ, Ill, MA and CT.

This is a bi-partisan bill. It is neither republican vs. democrat, it is neither union vs. employer. In one word: transparency.

Testimony

First, I would like to give you a little back-ground on my experience regarding negotiations. I have been a member of the Allied Pilots Association (APA) for almost 36 years, a union that represents the approximate 14,500 pilots of American Airlines. I spent nearly 8 years in various leadership roles at the national level. Those roles included Board of Director and several committee Chairman positions. Additionally, and most applicable to the issue before you, I spent two years as a full-time negotiator and several more years directly involved with the negotiations, interpretation and defense of Section 1 of our contract. Our extremely detailed pilot's contract is approximately 450 pages in length, and Section 1 and the associated supplements are about 75 pages in length alone. Having negotiated opposite the management of the world's largest airline for many years, I am very familiar with the negotiating environment.

This bill would require negotiating sessions to be open to the public, but would still allow caucus sessions by one side to be done in closed session since negotiating goals, strategy and tactics should be confidential.

CBAs generally represent one of the single, largest costs to all public employers, and therefore to the tax payers of the towns, cities, counties or state. CBAs also control many aspects of the union member's pay, benefits and quality of work-life.

From the NH taxpayer's perspective, the first time they ever get to see the impact of a CBA is when their tax bills arrive. You will undoubtedly hear testimony today that "the taxpayer is the ultimate authority; they can vote the employer's representatives out". Unfortunately, that is not very realistic argument

and one meant to dissuade negotiations in public. By the time taxpayers see their annual tax bill, it is too late to have any input to those responsible for representing their interests at the bargaining table.

From the union member's side of things, currently NH public employees normally get to see the final package only after the tentative agreement has been signed off on. With open negotiations, union members could now be made aware prior to the agreement finalized, possibly allowing input to their union reps and officers well in advance of a signed Tentative Agreement (T/A). Just as the taxpayers would have the ability to have input prior to an agreement, so could union membership.

In previous hearings on this subject (SB420 in 2018), there has been testimony submitted that suggests that open negotiations would have a negative impact on the process. I believe this suggestion to simply be a fear grenade to scare members of this body to object.

Here are a few comments from previous testimony submitted:

During the public hearing on a similar bill, Mr. John Killoy (AFSCME), in submitted testimony, stated: "I'll be blunt. There is a lot of arguing and yelling". He went on further to say "Opening negotiations to the public would stifle this type of give and take and thereby drastically curbing both sides ability to reach a resolution in a timely fashion, if at all." I'm hoping that Mr. Killoy doesn't believe arguing and yelling are a required or necessary part of a negotiation. If he does, maybe putting negotiations in view of the public would create a more civil environment. In my many years of negotiations, I never witnessed arguing and yelling. Have I seen emotions run high? Yes, of course, but I have also seen fiery emotions during debates on the State House floor, yet the public gallery has been witness to this and I'm pretty sure they handled it just fine. Have I seen preplanned tactical actions by one side or another that might involve slamming of folders and walking out in mass? Sure. But the suggestion that potential temper outbursts are a reason to suppress transparency just doesn't hold water.

Additionally, public negotiations might have the effect of "tempering" either sides expectations. This could convince both sides to open initial negotiations (and continue negotiations) with more realistic proposals. By starting with realistic proposals, the result could also be the shorting of the time required to finalize a new contract. This would lead to lower costs to both sides, especially for public employers/taxpayers.

Another argument put forth by Mr. Killoy was the need for secrecy, otherwise it would prevent or hinder open discussions of sensitive items of an individual employee nature. But particular instances relating to individuals can certainly be handled without identifying the person by name in a generic sense. Historically, grievances and arbitrations are normally handled confidentially outside of the contract negotiations arena, so those need not be part of public negotiations. Another argument that doesn't hold water.

We have transparency for the public embedded in nearly every current public process. Selectman meetings, planning board meetings, public hearings on pending legislation as we are doing here, right now, and floor debates and voting in the legislative chambers.

You will certainly hear the opposition today, pull the pins and toss many fear grenades into the room, excuses as to why this can't be done. Well, could it possibly be that those who have something to hide from their constituencies want to keep the status quo?

Conclusion

With today's testimony, I have included a couple of extremely relevant reports by both the Better Cities Organization and the Washington Policy Center. The latter is especially instructive as it contains a detailed listing of the 22 States that require some form of public negotiations, the level of public negotiations required and the creative ways each has arrived at the objective of transparency. Note the group of states we reside in when it comes to transparency (see executive discussion above).

I will conclude my testimony with preamble of the State of Washington's "Open Public Meetings Act (OPMA)" which reads:

"The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

POLICY BRIEF

Transparency in public employee collective bargaining: How Washington compares to other states

A loophole in Washington's Open Meetings Act lets government unions negotiate in secret

Erin Shannon, Director, Center for Worker Rights
December 2018

Key Findings

1. Washington state has one of the strongest open government laws in the country. The state's Public Records Act and the Open Meetings Act (OPMA) require that both laws be "liberally construed" to promote open government and accountability to the public.
2. Despite this strong mandate for government transparency, government employee contracts in Washington are usually negotiated in secret. There is no option for the public to know what transpires in such negotiations until well after those negotiations have been concluded and agreements have been signed.
3. These secret negotiations between government unions and public officials often involve billions of dollars in public money. Taxpayers provide the money for these agreements, they should not be negotiated in secret. The public should be allowed to follow the process and hold government officials accountable for the spending decisions they make on taxpayers' behalf.
4. Secrecy is not the rule in every state. Of the 47 states that allow government workers to collectively bargain, 22 states allow some level of public access to various components of those negotiations, including Washington's neighbors to the south and east, Oregon and Idaho.
5. Four local governments in Washington have recently ended secrecy and embraced government employee contract transparency.
6. Opening public employee collective bargaining is clearly working in many states, and even in some Washington local governments, creating more open, honest, and accountable government. There is no reason it should not also work in all of Washington to create the same public benefit.



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Introduction

Washington state has one of the strongest open government laws in the country. The state's Public Records Act and the Open Meetings Act (OPMA) require that both laws be "liberally construed" to promote open government and accountability to the public.

The state's Open Public Meetings Act (OPMA) says:

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Despite this strong mandate for government transparency, government employee contracts in Washington are usually negotiated in secret. There is no option for the public to know what transpires in such negotiations until well after those negotiations have been concluded and agreements have been signed.

These secret negotiations between government unions and public officials often involve billions of dollars in public money.

Since taxpayers are ultimately responsible for funding these contract agreements, they should be allowed to monitor the negotiation process so they may hold the government officials who represent them accountable for their actions.

It is not just taxpayers who are deprived of their right to know how they are being represented. Rank and file public employees on whose behalf their union negotiates are also left in the dark as a result of our state's lack of transparency in the collective bargaining process.

Public employees are taxpayers as well, and they may be concerned about the financial obligations public officials are committing the public to paying, especially when such obligations are agreed to in secret.

Only the government officials and union executives who negotiated the deal have the privilege of knowing the details, such as what offers were made, and rejected, in collective bargaining negotiations. Taxpayers, union members, lawmakers, and the media only find out after the agreement has been reached.

1 Revised Code of Washington, Title 42, Chapter 42.30, Section 010, Open Public Meetings Act, at <http://app.leg.wa.gov/rcw/default.aspx?cite=42.30>

These stakeholders are left wondering whether, and how well, their interests were represented.

Secrecy is not the rule in every state. Washington's neighbors to the south and east, Oregon and Idaho, both require collective bargaining negotiations be open to the public. This Policy Brief provides a review of how transparent the collective bargaining process is in other states compared to Washington.

Background

In 1971, the Washington Legislature passed the Open Public Meetings Act (OPMA), a strongly worded law that requires all meetings of state and municipal governing bodies, even informal sessions, be open to the public, with the exception of the courts and the Legislature.

The OPMA was later amended to create a loophole that exempts public sector collective bargaining negotiations from any requirements of the Act, leaving it to each government employer to decide whether to open such negotiations to the public.² Not surprisingly, very few government officials have acted to allow public access and negotiations are instead conducted behind closed doors.³

Public shut out of talks

In practice, this means the public does not have access to the details of any contract negotiations between government officials and union executives who represent public employees until after an agreement has been struck. At that point, the finalized contract and its cost is posted on the website of the state Office of Financial Management.

Even then, what is not posted online are the details of the proposals and ensuing negotiations that led to the finalized collective bargaining agreement. In order to learn exactly what a government union asked for, what the government employer offered, and what transpired up to the point that both sides came to an agreement, one must wait until the budget funding the contract is signed into law and then file a public records request with the state. After the request is filed, it typically takes two to three months to get the records.

That is not an open, nor timely, means by which taxpayers, union members, lawmakers, and the media can learn the details of exactly what was negotiated before a contract agreement was reached.

There have been several efforts in recent years to close the collective bargaining loophole restricting the people's right to know, but they have not been successful

2 Revised Code of Washington, Title 42, Chapter 30, Section 140, Open Public Meetings Act, at <http://app.leg.wa.gov/RCW/default.aspx?cite=42.30.140>.

3 "Local governments can improve transparency and accountability by opening secret collective bargaining sessions to the public," by Jason Mercier, Washington Policy Center, Policy Note, August 2017, at www.washingtonpolicy.org/library/doclib/Mercier-Local-governments-can-improve-transparency-and-accountability-by-opening-secret-collective-bargaining-sessions-to-the-public-8.10.17-2.pdf.

so far at the state level.⁴ State lawmakers have considered multiple bills (SB 6183, SB 5545/HB 1951, HB 1287) that would have removed the collective bargaining exemption from the state's Open Public Meetings Act. Despite bipartisan support, none of those bills passed the Legislature.

In 2018 an initiative to the people, Initiative 1608, was filed with the Secretary of State and supporters began collecting voter signatures in an effort to qualify for the November ballot. I-1608 would have added new sections to the state's Open Public Meetings Act making collective bargaining sessions between public employers and employee organizations open for public observation and recording, made bargaining proposals public, and established an online library of public collective bargaining agreements.⁵ That measure failed to collect sufficient signatures necessary to qualify for the ballot.

Local governments that closed the loophole

Six local governments in Washington, however, have recently ended secrecy and embraced government employee contract transparency.

The first was Lincoln County on September 6, 2016.⁶ The Pullman School District adopted contract transparency on January 25, 2017.⁷ Ferry County passed a collective bargaining transparency resolution on March 6, 2017.⁸ Next the Tukwila School District adopted a contract transparency resolution on July 11, 2017 (which was then repealed by a new school board despite appeals of residents).⁹ Then Kittitas

4 "SB 5545 and HB 1287: Requiring government employee collective bargaining sessions to be open to the public," by Jason Mercier, Legislative Memo, Washington Policy Center, February 8, 2017, at <http://www.washingtonpolicy.org/publications/detail/sb-5545-hb-1287-requiringgovernment-employee-collective-bargaining-sessions-to-be-open-to-the-public>.

5 "Collective bargaining transparency initiative garners new support," by Emily Boerger, Washington State Wire, May 23, 2018 at <https://washingtonstatewire.com/collective-bargaining-transparency-initiative-garners-new-support/>

6 "Lincoln County embraces collective bargaining transparency," by Jason Mercier, press release, Washington Policy Center, September 8, 2016, at www.washingtonpolicy.org/publications/detail/lincoln-county-embraces-collective-bargaining-transparency.

7 "Pullman Teacher's Union Becomes First in Washington Required to Negotiate Contracts in Public," by Evan Ellis, Pullman Radio (1150 AM), January 25, 2017, at <http://pullmanradio.com/pullman-teachers-union-becomes-first-in-wa-now-requiredto-negotiate-contracts-inpublic/>.

8 Ferry County Resolution No. 2017-07, Collective Bargaining Transparency, March 6, 2017 at https://ferry-county.com/Commissioners_Calendars/Resolutions/2017%20Resolutions/Resolution%202017-07%20Collective%20Bargaining%20Transparency.pdf

9 "Tukwila school board repeals open collective bargaining resolution," by Heidi Jacobs, Tukwila Reporter, February 20, 2018, at www.tukwilareporter.com/news/tukwilaschool-board-repeals-open-collective-bargaining-resolution/.

County adopted contract transparency on November 7, 2017.¹⁰ Most recently, Spokane County passed a transparency resolution on December 11, 2017.¹¹

Collective bargaining transparency in other states

The following sections describe the transparency of the collective bargaining process in other states.

Three states have blanket statutes that prohibit all government workers from collective bargaining, while five other states narrowly allow collective bargaining only for specific public employee groups.

Virginia, North Carolina, and South Carolina fall into the first category; in these states there is no legal collective bargaining process for government workers. Obviously there is no need for collective bargaining transparency laws in those three states.

Texas allows only firefighters and police officers to bargain collectively, Georgia allows only firefighters, Tennessee allows just teachers, Indiana allows a limited scope of collective bargaining for teachers only, while Wisconsin allows a limited scope for all public employees, except for firefighters and police officers, who are exempt from those limitations.

As would be expected, Texas, Tennessee, and Georgia boast some of the strongest collective bargaining transparency laws in the nation.

Surprisingly, despite strong limitations on public employee collective bargaining and right-to-work laws, Wisconsin, and Indiana do not have a transparent process for contract negotiations. Wisconsin expressly allows for collective bargaining negotiations to be held behind closed doors.¹² Indiana also allows collective bargaining negotiations to be done in secret.¹³

The states that allow public workers to collectively bargain and allow such contract negotiations to take place behind closed doors are: California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and Washington. Some of these “anti-Sunshine” states expressly exempt negotiations from their state’s open meetings law, while others leave the choice to the government employer and the union executives. A few that deny public access

10 “Kittitas County adopts collective bargaining transparency reform,” by Jason Mercier, blog post, Washington Policy Center, November 8, 2017, at www.washingtonpolicy.org/publications/detail/kittitas-county-adopts-collective-bargaining-transparency-reform.

11 “Spokane County passes transparency resolution for employee collective bargaining,” by Emily Boerger, Washington State Wire, December 7, 2018, at <https://washingtonstatewire.com/%EF%BB%BFspokane-county-passes-transparency-resolution-for-employee-collective-bargaining/>

12 “Wisconsin legislator briefing book, 2017-18,” Chapter 6, Open Meetings Laws, at https://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch06_open_meetings.pdf

13 “Handbook on Indiana’s Public Access Laws,” Indiana Public Access Counselor, at www.in.gov/pac/files/pac_handbook.pdf

to contract negotiations do provide for some limited measure of public input after negotiations but before ratification.

In contrast, 22 states allow public employee collective bargaining and do not specify any exemption for those negotiations from their state's open meetings law. Some of those state's open meeting laws even go so far as to expressly require some level of public access to various components of those negotiations. Following is a list of those states:

Alabama

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees. However, government employers may meet in closed executive session to discuss collective bargaining negotiating strategy.¹⁴

Alaska

All school district collective bargaining proposals are open records and subject to public comment.

“Before beginning bargaining, the school board of a city or borough school district or a regional educational attendance area shall provide opportunities for public comment on the issues to be addressed in the collective bargaining process. Initial proposals, last-best-offer proposals, tentative agreements before ratification, and final agreements reached by the parties are public documents and are public records available for public review.”¹⁵

All other government employers may close collective bargaining negotiations to the public.¹⁶

Arizona

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.¹⁷ However, government employers may meet in closed executive session to discuss collective bargaining negotiating strategy.¹⁸

Arkansas

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.¹⁹

14 Alabama Code Title 36, Public Officers and Employees § 36-25A-7, at <https://codes.findlaw.com/al/title-36-public-officers-and-employees/al-code-sect-36-25a-7.html>

15 Alaska Senate Bill 204, Sec 203.40.235, at www.akleg.gov/basis/Bill/Text/19?Hsid=SB0204A.

16 Alaska Statute § 44.62.310, Article 6, Open Meetings of Governmental Bodies, at www.legis.state.ak.us/basis/statutes.asp#44.62.319

17 Arizona Revised Statute § 38-431.01, at www.azleg.gov/ars/38/00431-01.htm

18 Arizona Revised Statute § 38-431.03(A)(5), at www.azleg.gov/ars/38/00431-03.htm

19 Arkansas Freedom of Information Act, at <https://arkansasag.gov/resources/foia/>

Colorado

In 2014, 70 percent of Colorado voters approved Proposition 104 to require “... any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public.” This includes strategy sessions and negotiations.²⁰

All other government employers may close collective bargaining negotiations to the public.²¹

Florida

Collective bargaining negotiations between all government employers and employee representatives are open to the public. Government employers may meet in closed executive session to discuss negotiating strategy but the actual negotiations between a public agency and an employee bargaining organization must be conducted in the open.²²

Georgia

All meetings must be open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.²³

Idaho

Collective bargaining negotiations between government employers and employee representatives are open to the public. Government employers may meet in closed executive session to discuss negotiating strategy, consider labor contract offers and formulate counter offers, as well as to discuss sensitive information about a specific employee.²⁴

This expansive public access to labor negotiations for public employees was the result of bipartisan legislation passed unanimously in 2015.

Illinois

While collective bargaining negotiations are exempt from the state’s open meetings law, if contract negotiations reach an impasse such that either side initiates a fact-finding to settle the dispute, and either party subsequently rejects the fact-finding panel’s report and recommended terms of settlement, the fact-finding panel shall “*promptly release the fact-finding panel’s report and the notice of rejection for*

20 “Colorado School Board Open Meetings, Proposition 104 (2014),” Ballotpedia, accessed on August 9, 2017, at [https://ballotpedia.org/Colorado_School_Board_Open_Meetings, Proposition_104_\(2014\)](https://ballotpedia.org/Colorado_School_Board_Open_Meetings, Proposition_104_(2014))

21 Colorado Open Records Act, C.R.S. 24-6-401 et seq., at www.nfoic.org/coalitions/state-foi-resources/colorado-foia-laws

22 Florida Statute § 447.605, Public Meetings and Records Law, at www.flsenate.gov/Laws/Statutes/2014/447.605

23 Georgia Open Meetings Act, at http://law.georgia.gov/sites/law.georgia.gov/files/AG-%233872098-v1-OPENGOV_Open_Meetings_Act_-_March_2016.pdf

24 Idaho House Bill 167, at <https://legislature.idaho.gov/sessioninfo/2015/legislation/H0167/>

public information by delivering a copy to all newspapers of general circulation in the community.”²⁵

Iowa

The first and second collective bargaining negotiating sessions, whereby the government employer and employee representative each present their “initial bargaining positions,” are open to the public.

All subsequent negotiations, strategy meetings, mediation and deliberation are closed to the public.

The terms of a proposed collective bargaining agreement shall be made available to the public prior to a ratification election.²⁶

Louisiana

While collective bargaining negotiations are exempt from the state’s open meetings law and may be closed to the public, no collective bargaining agreement can be accepted or ratified until it has been made available to the public via the Internet website of the public employer for at least 5 business days.²⁷

Minnesota

Collective bargaining negotiations, mediation sessions, and hearings between government employers and employee representatives are open to the public, unless otherwise provided by the commissioner.²⁸ Government employers may meet in closed executive session to discuss negotiating strategy, but those meetings must be recorded, preserved for two years after the contract is signed, and made available to the public after labor agreements are signed.²⁹

Mississippi

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³⁰

25 ILCS Title 80, Chapter III, Part 1130, Section 1130.55, at www.ilga.gov/jcar/admincode/080/080011300000550R.html

26 Iowa Code § 20.17(3), Procedures, at www.legis.iowa.gov/docs/code/20.17.pdf

27 Louisiana R.S. § 42:17(A)9(2) and 44:67.1, Open Meetings Law, at [https://app.la.state.la.us/llala.nsf/BAADB2991272084786257AB8006EE827/\\$FILE/Open%20Meetings%20Law%20FAQ.pdf](https://app.la.state.la.us/llala.nsf/BAADB2991272084786257AB8006EE827/$FILE/Open%20Meetings%20Law%20FAQ.pdf)

28 Minnesota Statute § 179A.14, subdivision 3, Negotiation Procedures, at www.revisor.mn.gov/statutes/cite/179a.14

29 Minnesota Statute § 13D.03, subdivision 1-2, Closed Meetings for Labor Negotiations Strategy, at www.revisor.mn.gov/statutes/cite/13D.03

30 Mississippi Code § Title 25, Chapter 41, at <https://law.justia.com/codes/mississippi/2017/title-25/chapter-41/>

Missouri

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees. Government employers may meet in closed executive session to discuss negotiating strategy.³¹

On June 1, 2018, Missouri's governor signed HB 1413 into law, which implements comprehensive public sector labor law reforms, including significantly expanding what was already reasonably strong collective bargaining transparency in the state. Under the new law, government employers must hold a public hearing before approving any collective bargaining agreement and the tentative agreement must be published on the government employer's website at least five business days prior to that meeting. During the public meeting, the tentative agreement must be discussed in detail, and the public is permitted to provide comment.³²

Montana

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³³

Citizens in Montana enjoy one of the nation's broadest public records and meetings law. In 1972 the state's constitution was rewritten to include a guarantee of the public's right to access government business.³⁴

In 1977, Montana's open meeting law was amended to allow government employers to meet privately to discuss collective bargaining negotiating strategy. A 1992 ruling by the Montana supreme court declared the law unconstitutional, thus reaffirming the state's dedication to open government.³⁵

Nebraska

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.³⁶ Government employers may meet in closed executive session if it is "clearly necessary for the protection of the public interest," which specifically includes "strategy sessions with respect to collective bargaining."³⁷ Beyond this one reference to collective bargaining, there

31 Missouri Sunshine Law: Open Meetings and Record Law, Missouri Attorney General, at 610.021(9), at <https://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=4>

32 House Bill No. 1413, Section 105.583(1), at <https://house.mo.gov/billtracking/bills181/hlrbillspdf/4637S.14T.pdf>

33 Montana Code, Title 2, Chapter 3, Part 2, Open Meetings, at https://leg.mt.gov/bills/mca/title_0020/chapter_0030/part_0020/section_0030/0020-0030-0020-0030.html

34 "Open Government Guide: Access to Public Records and Meetings in Montana," The Reporters Committee for Freedom of the Press, 2011, at www.rcfp.org/rcfp/orders/docs/ogg/MT.pdf

35 *Great Falls Tribune v. Great Falls Public Schools*, 255 Mont. 125, 841 P.2d 502 (1992).

36 Nebraska Revised Statute § 84-1408, at <https://nebraskalegislature.gov/laws/statutes.php?statute=84-1408>

37 Nebraska Revised Statutes § 84-1410(1)(a), at <https://nebraskalegislature.gov/laws/statutes.php?statute=84-1410>

are no other provisions in Nebraska's Open Meetings Act relating to negotiations with a union.

Nevada

Collective bargaining statutes do not apply to state employees and their compensation and conditions of employment are set forth by the Legislature.³⁸

Negotiations between a local government employer and an employee organization are not required to be open to the public.³⁹ However, before approving a collective bargaining agreement, local governments must hold a public hearing and provide public access to proposed collective bargaining agreement no less than three days before the hearing.⁴⁰

North Dakota

All meetings are open to the public, there are no exemptions specified for labor negotiations or collective bargaining of public employees.⁴¹ Government employers may meet in closed executive session to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.⁴²

A 1977 ruling by the North Dakota supreme court held that all school board negotiations of teacher contracts are required to be open to the public. "All school board meetings at which teacher contract offers and school board offers and counteroffers are considered are required to be open to the public. In addition, all school board and teacher contract negotiating sessions, regardless of negotiating committee composition, are open to the public."⁴³

Oregon

Collective bargaining negotiations between government employers and government employee representatives are open to the public unless negotiators for both sides request that negotiations be conducted in closed executive session.⁴⁴

38 Nevada Revised Statute § 284, at www.leg.state.nv.us/NRS/NRS-284.html

39 Nevada Revised Statute § 288.220, at www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec270

40 Nevada Revised Statute § 288.153(1)(2), at www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153

41 North Dakota Century Code § 44-04-19, Access to public meetings, at www.legis.nd.gov/cencode/t44c04.pdf

42 North Dakota Century Code § 44-04-19.1(9), Open Records and Open Meetings-Exemptions, at www.legis.nd.gov/cencode/t44c04.pdf

43 North Dakota Open Meetings Manual, Office of Attorney General, April 2017 Edition, at <https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenMeetingsManual.pdf>

44 Oregon Statute § ORS 192.660(3), at www.oregonlaws.org/ors/192.660.

Pennsylvania

While collective bargaining negotiations are exempt from the state's open meetings law and may be closed to the public, in 2016 a new law was passed (SB 644: Act 15) requiring the state's Independent Fiscal Office to provide a cost analysis of every proposed collective bargaining agreement under the governor's jurisdiction, prior to the agreement taking effect.⁴⁵

The cost analysis must include the number of workers covered and detail the changes to employee wages and benefits, including pension contributions, and changes to working hours or working conditions and project the cost of those changes. The analysis must also compare the collective bargaining agreement currently in effect with projections for the proposed contract agreement for the current and five subsequent fiscal years.

Tennessee

Collective bargaining negotiations between government employers and employee representatives are open to the public.⁴⁶

Texas

Collective bargaining negotiations between government employers and employee representatives are open to the public.⁴⁷

Policy Analysis

Opening public employee collective bargaining is clearly working in many states in creating more open, honest, and accountable government. There is no reason it should not also work in Washington and create the same public benefit.

Since government employee contracts account for such a large portion of public spending, they should not be negotiated in secret. Taxpayers provide the money for these agreements. The public should be allowed to follow the process and hold government officials accountable for the spending decisions they make on taxpayers' behalf. Similarly, union members would benefit from knowing exactly what proposals their union representatives are requesting, and what proposals they are rejecting.

In addition to providing taxpayers and union members with current information on how they are being represented, open negotiations would instill more accountability into the process by quickly identifying whether one side is being unreasonable in negotiations to help the public determine who is acting in good or bad faith.

45 Pennsylvania General Assembly, Act 15 of 2016, at www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2016&sessInd=0&act=15

46 "Tennessee Open Meetings Act," at www.comptroller.tn.gov/openrecords/pdf/open%20meetings%20draft8-44-101.pdf

47 "Texas Local Government Code - Sec. 174.108. OPEN DELIBERATIONS," Texas Legislature, at www.statutes.legis.state.tx.us/SOTWDOcs/LG/htm/LG.174.htm

A good example can be found in the recent teacher strikes in the Tacoma and Battle Ground School Districts. The difference between what school district officials said they were offering, and what the union executives representing teachers claimed was being offered, was so great that both districts asked the Public Employment Relations Commission (PERC) to conduct a “fact finding” investigation to separate the rhetoric from the reality. As the Tacoma District spokesman put it, getting PERC involved would ensure both sides “operate from the same set of facts.”⁴⁸

There was so much misinformation and distrust that a third party was needed to intervene and provide a referee for the dispute. It was impossible for teachers, taxpayers, and even the media, to know who was being truthful and negotiating in good (or bad) faith, since the negotiations were not open to the public.

Opening collective bargaining negotiations to the public would ensure everyone operates from the same set of facts. Open negotiations would allow the public (including the teachers who rely solely on their bargaining team to keep them informed) to witness first hand what offers are being made (and rejected) and the impact those offers would have on the school district’s budget.

Such commonsense arguments explain why ending secrecy in government employee contract negotiations is popular with Washington taxpayers. A statewide poll of 500 Washington voters conducted in 2015 revealed 76 percent supported “requiring collective bargaining negotiations for government employers to be open to the public.”⁴⁹

Editorials from major newspapers across the state have also called for government officials to open the doors to the public concerning government employment contracts.⁵⁰

When Congress was debating the controversial Affordable Care Act in 2010, then-Speaker of the House Nancy Pelosi famously declared, “We have to pass the bill so that you can find out what’s in it.”⁵¹ Her comment was immediately and rightfully criticized as a glaring example of why many voters distrust lawmakers and a closed-door policy making process.

The secret collective bargaining negotiation process between government and public employee unions is no different. Today in Washington state, the public can’t know what is in a collective bargaining agreement until an agreement has been finalized.

48 “Teacher strikes are a perfect example of why open collective bargaining is needed,” Erin Shannon, blog post, Washington Policy Center, September 12, 2018, at www.washingtonpolicy.org/publications/detail/teacher-strikes-are-a-perfect-example-of-why-open-collective-bargaining-is-needed.

49 Wickers Group statewide poll of 500 Washington voters, June 2015, copy available on request.

50 “Will media support I-1608’s quest for more open government?,” by Erin Shannon, Washington Policy Center, March 7, 2018 at www.washingtonpolicy.org/publications/detail/will-media-support-i-1608s-quest-for-more-open-government

51 “Pelosi: People won’t appreciate reform until it passes,” Politico, Live Pulse, March 9, 2010, at www.politico.com/livepulse/0310/Pelosi_People_wont_appreciate_reform_until_it_passes.html.

Conclusion

Earlier this year, Governor Jay Inslee emphasized the importance of open and transparent government:

“The public’s right to government information is one we hold dearly in Washington. Transparency is a cornerstone of a democratic government.”⁵²

The public should always have the right to know what tradeoffs and promises led to final and binding collective bargaining agreements. Especially when those agreements lock into place billions of dollars of annual taxpayer spending.

It is important to remember, as declared by the state’s Open Public Meetings Act, that the people “do not give their public servants the right to decide what is good” for them to know, and “the people insist on remaining informed so that they may retain control over the instruments they have created.”

Following in the successful example of other states that have ended collective bargaining in secrecy and opened the process up to the public is the best way for officials in Washington state to promote responsible civic engagement and to show respect for the people’s right to be informed.

52 “Inslee vetoes ESB 6617-Legislature and media agree to discuss path forward,” Press Release, Governor Jay Inslee, Office of the Governor, March 1, 2018 at www.governor.wa.gov/news-media/inslee-vetoes-esb-6617-%E2%80%93-legislature-and-media-agree-discuss-path-forward

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If you have any comments or questions about this study, please contact us at:

Washington Policy Center
PO Box 3643
Seattle, WA 98124-3643

Online: www.washingtonpolicy.org
E-mail: wpc@washingtonpolicy.org
Phone: (206) 937-9691

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About the Author

Erin Shannon is the Director of the Center for Worker Rights at Washington Policy Center. She has testified numerous times before legislative committees on small business and labor issues. Her op-eds regularly appear in newspapers around the state, including *The Seattle Times* and *The Puget Sound Business Journal*, and she has been interviewed on numerous radio and TV programs including Fox News, CNN Money, and “Stossel with John Stossel” on Fox Business. Before joining Washington Policy Center, Erin was the Public Relations Director of Washington state’s largest pro-small business trade association, and was formerly a Legislative Correspondent for U.S. Congressman Randy Tate in Washington, D.C. Over the past 15 years she has appeared regularly in print, broadcast and radio media. She was a recurring guest on ABC’s Bill Maher’s “Politically Incorrect,” until the show’s cancellation in 2002, and participated in a live, on-stage version of “Politically Incorrect” in Seattle with Bill Maher. Erin has served as the spokesperson for several pro-small business initiative campaigns including Referendum 53, repealing increases in unemployment insurance taxes; Initiative 841, repealing the state’s ergonomics rule; and Initiative 1082, to end the state’s monopoly on workers’ compensation. Erin holds a bachelor’s degree in political science from the University of Washington.

HB206 Testimony

Dear Mr. Chairman and Committee Members:

I am President of the School District Governance Association of NH. We are a non-profit organization whose mission is to give voters a voice by empowering elected school district officials to reclaim control over budgets and curriculum. In addition to offering seminars/webinars to educate and inform school board and budget committee members, we have a legislative agenda of increasing transparency in the budgeting and collective bargaining process in school districts. This is the second time we have attempted this bill. It passed the Senate in 2018 (SB420) and we are grateful to Representative Turcotte and the other sponsors for working to advance it again.

This change to the Right to Know law is not a radical proposal, nor is it "anti-union." As of 2018, 15 states do not have any exemptions from their open meetings laws for public employee collective bargaining. In other words, in 15 states, government employees and public bodies must negotiate in public. One additional state (Alaska) requires school districts specifically to hold public negotiations. Three more states require contracts to be made public before ratification by a public body. Nineteen states, then, have some transparency requirement for public sector collective bargaining. Three states don't allow government employees to collectively bargain at all, which brings the total of states like NH to 28. (Please see the attached excerpt from Washington Policy Center, Policy Brief: *Transparency in Public Employee Collective Bargaining: How Washington Compares to Other States*, by Erin Shannon Dec. 2018.)

I, personally, became convinced of the need for public view of negotiations during my own experience as a school board member on our district's negotiating team. It was evident to me that the behavior I observed from my own team would be unlikely to occur in public. Furthermore, the public, I believed, probably assumes a lot more high powered facts and arguments than ultimately ensued. Pulling back the curtain of secrecy from all this would hold our elected representatives to greater accountability and also give union members a much better understanding of how well their team is working on their behalf. Based on my experience, I believe, both sides would be surprised.

Some people object to public negotiations by asserting that compromises can't be forged in public. To them I ask, what kinds of compromises are your forging that require secrecy?

In this time of great social unrest because of mistrust of public institutions, I would respectfully suggest that it is incumbent on you to require the most transparency possibly in the conduct of governmental affairs, especially where the majority of our taxpayer dollars are spent and, for sadly, diminishing results.

As the law stands now, if both sides agree on negotiating in public, they may do so. If the taxpayer representatives request open negotiations, but the union representatives do not, an old PELRB ruling requires both parties to conduct negotiations in private. This is why we are asking you to change the law to require both parties to do the right thing. Making negotiations public will give both represented parties more insight into how their interests are being represented and advanced, with better accountability for elected officials and union leadership.

Thank you,

HB206 Testimony

Donna Green

President, School District Governance Association

Giving voters a voice by empowering elected school district officials to reclaim control over budgets and curriculum. <https://sdganh.org/>

Dear Honorable Members of the Committee –

I am writing on behalf of the New Hampshire School Boards Association (NHSBA) relative to HB 206. NHSBA opposes this bill and urges the Committee to find HB 206 inexpedient to legislate. By way of background, NHSBA is a non-profit, voluntary organization with 160 members comprised entirely of New Hampshire school boards. NHSBA fields numerous collective bargaining questions every year and provides training opportunities for school board members with respect thereto.

NHSBA believes that HB 206 stands to serve as a significant impediment to maintaining positive management-labor relations throughout New Hampshire's schools which, in the educational realm, is an essential component to positive student outcomes. While NHSBA understands that HB 206 is intended to enhance or further promote transparency in official school district matters, we are concerned that this bill would ultimately have the inverse effect.

First, the most important aspect of collective bargaining is the ability to efficiently and fairly contract with the employer's workforce. The contract is, dependent on compromise, which in turn, occurs when the parties have an opportunity to meet, speak and discuss openly and with candor. Hosting collective bargaining negotiations in public stands to increase posturing, and decrease candor – effects which diminish the opportunity to agree.

Second, collective bargaining negotiations are not always exclusive to the resulting collective bargaining agreement itself. From experience, NHSBA can say with assurance that many of the initial collective bargaining negotiation sessions relate to grievances, informal concerns, and general expectations. There is significant benefit in allowing the parties to speak to these matters, party-to-party, rather than having to address these matters through formal grievance and arbitration procedures. Grievances and arbitration are both time consuming and expensive. Leaving dispute resolution entirely to the grievance process does not serve the public's best interest from an efficiency standpoint, from a financial standpoint, nor from a public governance standpoint.

The topic of grievance and other dispute resolution also highlights questions about the workings of HB206. Does the bill apply arbitration, mediation and fact-finding under RSA 273-A? Or is it intended to only apply to contract negotiations? The bill is not clear.

Third, and most importantly, there already exists in current statute sufficient safeguards to ensure that the public and the voters are fully informed before voting on a collective bargaining agreement. Collective bargaining cost items, to be approved by the voters, must be disclosed at public budget hearings under RSA 32 and the final collective bargaining agreement to be voted on is a public record under RSA 91-A. Municipal budget committees under RSA 32, and cooperative school district

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budget committees under RSA 195, must review the cost items and make a recommendation whether or not to recommend the collective bargaining agreement. Ultimately, the voters either accept or reject the cost items within the collective bargaining agreement. NHSBA believes these safeguards work well without the changes proposed in HB 206.

Last, NHSBA believes that requiring public bodies will significantly impede a school board's competitive advantage with respect to collective bargaining negotiating. The Right to Know law already recognizes that public bodies may meet in nonpublic sessions to discuss various financial matters, outside of public purview. RSA 91-A:3, II(d), (e), (j) and (k) recognize, in limited circumstances, that public bodies need to meet privately to discuss financial matters that greatly impact voters and taxpayers. NHSBA believes that allowing collective bargaining to continue to occur in "non-meetings" under current law is consistent with these provisions of the Right to Know law and best serve the public's financial interests.

Thank you for your consideration and attention to this matter.

Barrett M. Christina Executive Director **NH School Boards Association**

: 25 Triangle Park Drive, Suite 101, Concord, NH 03301 : (603) 228-2061 x307F: (603) 228-2351

Dear Committee;

This email is to express my support of HB 206 that would require union negotiations to be conducted in public. I have taken part in collective bargaining with the NEA back in 1993 and I can assure you that had it been done in public the rude, bullying, and disdainful attitude of the union representative would have been a rude awakening for the public. Thank you for your time and effort.

Sincerely,

Kathe Molloy ?kathemolloy@gmail.com

148 Elm St

Claremont, NH 03743

Date: February 17, 2021

To: Honorable Members of the House Judiciary Committee

Re: HB 206

My name is David Saad. I live in Rumney NH. I am also the President of Right to Know New Hampshire (RTKNH).

Currently, the law allows all discussion of negotiations to be done in non-meetings which means that the public body does not have to provide notice, publish minutes, or in any way inform the public about collective bargaining negotiations. In fact, by the time the public is made aware of the terms, conditions,

HB206 Testimony

and taxpayer obligations regarding negotiated union contracts, it is too late for public response or influence as the contract has been finalized.

By keeping the contract proposal secret from both the budget committee and the public until it is ratified, it is impossible to independently verify the supposed costs and taxpayer obligations of the contract.

Also, when public bodies and unions meet to negotiate a collective bargaining agreement, the people in the room are not representing themselves. The public body is representing the taxpayers and the union is representing the union members. However, the taxpayers and the union members are not allowed to be present during the negotiations. So how does either represented group know how well their representatives performed on their behalf? How much did each side give up and what did they get in return? They don't know but they should know. Transparency is required so taxpayers and union members alike can effectively determine how well their representatives performed their duties. Only those not working to provide full benefit to their represented group would feel threatened by having negotiations open to public scrutiny. The idea that negotiations must be done in secret to save face or to somehow give people the ability to speak freely is just a smoke screen excuse for saying I won't be able to justify to the people I represent, the positions I took during the negotiations.

I ask you to support this bill.

Please vote that HB 206 Ought to Pass.

Dear Chairman Gordon and Distinguished Members of the House Judiciary Committee:

I am writing to correct an error I made at today's public hearing in delivering testimony in opposition to HB 206 – *An Act Relative to Collective Bargaining Agreement Strategy Discussions Under the Right-to-Know Law*.

At the onset of my testimony, I incorrectly stated that Representative Leonard Turcotte was wrong in attributing testimony against the bill in the 2018-2020 legislative session to my colleague John Killoy. In reality, while I did deliver in person testimony against the legislation at a Senate hearing in 2018, Mr. Killoy did in fact deliver testimony against the legislation on April 11, 2018, due to a personal conflict I had at the time.

Upon learning of my error, I immediately reached out via email to Representative Turcotte, who is also copied on this email. I asked Representative Turcotte to call me at his earliest convenience so I may apologize directly to him. Not only did Mr. Turcotte call me immediately, but he was also kind and gracious enough to accept my apology. He noted that he was in the process of emailing the committee to correct my mistake but was kind enough to let me do so myself.

HB206 Testimony

I respectfully request that you accept my apology as well.

Thank you for your consideration and for your continued public service and commitment to the legislative process despite these extraordinarily difficult times.

Sincerely, James Durkin **Jim Durkin** | [AFSCME Council 93](#)

Director of Legislation, Political Action & Communications

8 Beacon Street, Boston MA 02108 Office: 617-367-6012 | Cell: 978-866-2283

Dear Mr. Chairman and members of the committee,

I had planned on testifying at today's hearing but in the interest of time and knowing I would be repeating many of the same points brought up in opposition to HB 206, I elected to send a few of the following brief comments to you in writing. **NEA-NH opposes HB 206 and asks that you find it Inexpedient to Legislate.**

First, I would echo all my colleagues who testified against HB 206 from both the labor and management sides and stated that rather than improve transparency, HB 206 would be detrimental to the collective bargaining process. Negotiation sessions are only one part of the process of reaching a collective bargaining agreement. No final decisions can be made in negotiation sessions other than to reach a "tentative agreement". A final agreement cannot be reached and executed during the negotiation sessions; that is the final purview of the legislative body, whether that be the voters of a town or a city council. As I am sure many of you know, if the voters do not approve of the cost items in a collective bargaining agreement, there is no new agreement, and the parties must go back to the table. This is true as well on the union side, if the union members vote down a tentative agreement after having had a chance to review it, the agreement is not ratified and there is no new contract.

Secondly, I would like to object to one of the central reasons brought forward by the sponsor as to the need for this legislation. Rep. Turcotte indicated that taxpayers do not see the impact of a collective bargaining agreement until they receive their tax bill. This is simply false and misleading. Cost items of collective bargaining agreements are reviewed by budget committees, explained to, and commented on by the public in deliberative sessions and town meetings, and at the local level receive their own separate warrant article that contains the tax impact.

HB206 Testimony

Finally, the public sector collective bargaining process in New Hampshire has worked well over the last several decades but if you have ever been a part of a formal negotiating session, you know that those discussions are not always easy. The ability to speak freely and candidly is critical toward getting through those differences to achieve a tentative agreement. Should HB 206 become law, we fear this would make the negotiation portion of collective bargaining more of a political show, than what it is designed to do, which is again, to reach a labor agreement that can be presented to union members and taxpayers for their approval.

Thank you for your time and attention to this matter and please feel free to reach out with any questions.

Brian Hawkins Director of Government Relations NEA-NH

Cell: (603) 545-7305 E-mail: bhawkins@nhnea.org




Rep Kurt Wuelper

MEETING
IN PROGRESS

COLLECTIVE BARGAINING TRANSPARENCY

A win for the public, for union
members and for local government

BY JASON MERCIER AND F. VINCENT VERNUCCIO



Better Cities Project (BCP)
is a nonprofit that researches and
promotes practical policy solutions for
America's largest cities.

MISSION

*BCP uncovers ideas that work,
promotes realistic solutions and
forges partnerships that help people
in America's largest cities live free
and happy lives.*



C O N T E N T S

COLLECTIVE BARGAINING TRANSPARENCY IS A WIN-WIN-WIN

Government employee wages and benefits have extraordinary impact in virtually every city. A 2018 National League of Cities survey found that wage hikes impacted 88% of surveyed city budgets, more than any other factor listed.

Opening up the negotiations behind those expenditures is good for taxpayers, good for union members and good for local government.

- ▶ **GOOD FOR TAXPAYERS:** Since government-employee contracts account for such a large portion of public spending, they should not be negotiated in secret. Taxpayers provide the money for these agreements and they should be able to follow the process, holding government officials accountable for the spending decisions they make.
- ▶ **GOOD FOR UNION MEMBERS:** Because they know exactly what proposals their union representatives are requesting and rejecting, transparency benefits rank-and-file union members, providing information on how they are being represented.
- ▶ **GOOD FOR LOCAL GOVERNMENT:** Transparency instills more accountability into the collective bargaining process by quickly identifying whether one side is being unreasonable in negotiations or acting in bad faith. This clarity correlates with higher levels of trust in government, an important factor as local officials tackle a range of challenges requiring voter buy-in.

The people have a right to know how public spending decisions are made on their behalf. Ending collective bargaining secrecy and opening union contract negotiations to the public, as other states and cities have done, is a practical and ethical way to achieve that standard.

2

WHY TRANSPARENCY MATTERS

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WORKERS AND TAXPAYERS BENEFIT FROM TRANSPARENCY

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WHY TRANSPARENCY MATTERS

We need look no further than the recent protests across the country to understand the importance that government transparency, or the lack of it, has on building public trust. This is especially true when it comes to the decisions being made in various government employee contracts for those in a position of public trust, like teachers and police.

When these decisions are made behind closed doors and the contracts subsequently undermine common-sense proposals for accountability, frustration and mistrust in our important institutions grow. Thankfully, there is bipartisan support for adopting important contract transparency reforms.

Consider the following statement from a May 24, 2016, legal brief filed by then-President Obama's Department of Justice concerning accountability for the Seattle Police Department (emphasis added):

"We also note that the Accountability Workgroups yielded a number of 'nearconsensus' concepts for the future of SPD's police accountability, including: **possible modifications to the collective bargaining process to enhance the transparency of union negotiations...** It is our understanding that each of these positions – both consensus and near-consensus – will be communicated to City legislators and will serve to inform and assist in their legislative process."

Unfortunately, Seattle officials did not adopt this transparency proposal.

It's not just a Seattle problem though. As reported by Route Fifty:

"In Philadelphia, Rev. Mark Kelly Tyler, a pastor at Mother Bethel A.M.E. Church and a leader with the interfaith organization POWER, has been critical of the local police contract and wants to see more transparency and public input in how it's negotiated. 'It's pretty much done in the dark and without any input from the citizens,' he said."

We can only imagine how things would have been different this year with the recent protests had the public instead been able to be more informed about the various discussions and decisions being made in these various government employment contracts.



WORKERS AND TAXPAYERS BENEFIT FROM TRANSPARENCY

Employee wages and benefits are one of the largest costs in any local government, and those costs are typically established in collective bargaining agreements. But too often, the negotiations behind these agreements are made behind closed doors.

Taxpayers are ultimately responsible for funding these contract agreements, and should be allowed to monitor the negotiation process similar to any other public aspect of the people's work. Similarly, rank-and-file public union employees can also be left in the dark when there's no transparency in the collective bargaining process.

Too often, only the government officials and union executives who negotiated the deal know details such as what offers were made, and rejected, in collective bargaining negotiations. Taxpayers, union members, lawmakers and the media only find out after the agreement has been reached.

Secrecy is not the rule in every state, but it holds sway in too many parts of the country.

It doesn't have to be this way, and there are steps local government leaders can take to establish collective bargaining transparency in their communities.





CONTRACT TRANSPARENCY ACROSS THE COUNTRY

Contract transparency is the norm in nearly half of all states. Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves.

But once public officials meet with union negotiators, the public is allowed to be informed and monitor the process. This is what occurs in Florida, as that state's attorney general explains:

"The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law."

The Governor of Idaho recently signed a bipartisan bill — passed unanimously in the legislature — to bring public employee union negotiations under the open meetings law. The lack of dissent on this reform shows transparency in public union negotiations enjoys broad support among both parties.

Texas also requires, by statute, transparency for government collective bargaining:

"Sec. 174.108. OPEN DELIBERATIONS. A deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively,

or a deliberation by a member of a public employer authorized to bargain collectively shall be open to the public and comply with state law."

In 2014, 70% of Colorado voters approved Proposition 104 to require "any meeting between any representative of a school district and any representative of employees, at which a collective bargaining agreement is discussed to be open to the public."

Several local governments have also enacted contract transparency. In Washington State, for example, Gig Harbor, Lincoln County, Kittitas County, Ferry County, Spokane County, the Pullman School District and the Kennewick School District have adopted this type of transparency policy.

It is also very popular at the local level with voters. In 2019, 76% of Spokane voters adopted a charter amendment: "The City of Spokane will conduct all collective bargaining contract negotiations in a manner that is transparent and open to public observation both in person and through video streaming or playback. This section does not require the city to permit public comment opportunities during negotiations."



HOW DOES CONTRACT TRANSPARENCY WORK IN PRACTICE? A LOOK AT OREGON

One state with government union contract transparency is Oregon. Here is a description of how it is working for school districts.

Lisa Freiley, Director of Human Resource Development for the Oregon School Boards Association, said the following about transparent contract talks:

“Our school districts have been bargaining in public for many years. About 15 years ago, our legislature made a change to collective bargaining law in regards to public vs. private negotiations. The prior law allowed one party to request negotiations take place in executive session (e.g. private) and the result was private session negotiations. When the legislature made the change, they decided to require negotiations to take place in public unless both parties wanted to negotiate in executive session (e.g. private). So there is still an option if you are dealing with some really sensitive subjects. The union was quite upset with the change in the beginning but it is just standard practice these days. Most negotiate in public but some still use executive session (e.g. private).”

The school districts have actually found it to be a useful process because it requires both parties to behave in a professional and respectful manner when you know parents, media and other community members will be watching. This has often resulted in more reasonable proposals (relatively speaking – the really outrageous stuff very seldom makes it to the table during open negotiations). It also allows the other bargaining unit members to hear and see what the board/district is saying rather than having to be filtered through the union’s newsletter. The other thing we have found is that the public and media really only show up either in the beginning (then they get bored and stop coming) or during high conflict negotiations and then we have found the ability for parents, teachers and the community to hear the discussions for themselves to be beneficial.”

This experience confirms points made by transparency advocates: Both the public and union members benefit from not being kept in the dark.

HOW LOCAL GOVERNMENT CAN STEP IN – AND STEP UP – ON BARGAINING TRANSPARENCY

For local governments without collective bargaining transparency at the state level, there's still plenty of room to act. Any local collective bargaining transparency ordinance should include:



A clear statement that labor negotiations between government and government employees are an extension of the people's business and taxpayers have a vested interest in the proceedings.



Definitions clearly covering individuals, labor organizations or their agents, and employees. It does little good to have a collective bargaining ordinance in place if it's so poorly defined that bad actors on either side can skirt it.



A declaration that collective bargaining sessions, with exceptions for grievance, mediation or arbitration meetings, are public meetings subject to advance public notice and all applicable state open meeting laws.



A declaration that documents created or presented by the government or received from the labor organization during collective bargaining sessions are public records subject to state public records laws.



Creation of a public information policy requiring the government to operate or contract for the operation of a website that allows public access to all tentative and finalized collective bargaining agreements pursuant to relevant state statutes.



A severability clause indicating that if any provision of the ordinance or its application is held invalid, that invalidity shall not affect any other provision or application of the measure that can be given effect without the invalid provision or application.

AN ALTERNATIVE TO FULLY OPEN CONTRACT TALKS

Ideally, contract negotiations should be fully open to the public. But at a minimum, government officials should adopt an openness process like the one used by the City of Costa Mesa, California, to keep the public informed. The city's policy is called Civic Openness in Negotiations, or COIN.

Under COIN, all contract proposals and documents to be discussed in closed-door negotiations are made publicly available before and after the meetings, with fiscal analysis showing the potential costs. While not full-fledged open meetings, access to all of the documents better informs the public about promises and tradeoffs being proposed with their tax dollars before an agreement is reached.

This openness also makes clear whether one side or the other is being unreasonable in its demands, and quickly reveals whether anyone is acting in bad faith. It's a hybrid solution that could be adopted by local officials if full open meetings are not allowed.



COLLECTIVE BARGAINING TRANSPARENCY MODEL ORDINANCE/LEGISLATION

Nearly half of all states have legislated some form of collective bargaining transparency. If your state hasn't – or if you lead a community that would like to implement strong transparency practices no matter what your state has done – then the model ordinance/legislation below provides a framework.

Declaration of Findings, Purposes and Policy

The right of public employees to know how labor organizations are collecting and spending their dues and the right of taxpayers to the process and content of collective bargaining agreements is paramount to [state or locality].

The federal Labor-Management Reporting and Disclosure Act provides that the finances of labor organizations with private-sector members to be open to public inspection. However, that disclosure does not extend to labor organization with only public-sector members in [state or locality].

Further, the [state or local open meeting act] allows the public to observe how their tax dollars are spent and how policies are set forth by public officials. However, the [state or local open meetings act] does not extend this same transparency to the collective bargaining process, which is an extension of the people's business and one in which taxpayers have a vested interest.

[State or locality] puts the utmost importance on transparency and protecting the rights of its public employees and taxpayers. Therefore, the legislature expands [state or local open meetings act and freedom of information act] to include collective bargaining sessions between a labor organization and a public employer, including posting draft



and final collective bargaining agreements, and requires labor organizations to publicly disclose their finances.

Sec. 1. As used in this act:

- (A) “Public Employer” means the [state or locality] or any of its political subdivisions, any government agency, instrumentality, special district or school board or district, that employs one or more employees in any capacity.
- (B) “Public employee” means an employee of a public employer, public employees will not include those employees covered by the Federal National Labor Relations Act, the Railway Labor Act or the Federal Service Labor-Management Relations Statute. [include state employees if in a locality]
- (C) “Labor organization” means any organization, agency, or public employee representation committee or plan, in which public employees participate and that exists for the purpose, in whole or in part, of dealing with a public employer concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.
- (D) “Department” means [state or local Department of Labor or another agency].
- (E) “Collective bargaining” for the purpose of this act only, means the duty of a public employer and a labor organization to meet and bargain in good faith or meet and confer in an effort to finalize a written agreement or contract with respect to wages, hours, working conditions or other terms and conditions of employment for public employees.

Sec. 2 Labor organization financial transparency

- (A) Labor organization representing public employees shall maintain financial records substantially similar to and no less comprehensive than the records required to be maintained under 29 U.S.C. sec 431(b) and regulations pertaining thereto or any successor statute or regulation.
- (B) Labor organization shall annually provide records required under subsection (A) in a searchable, electronic format to the Department and to the employees it represents.

- (C) The labor organization shall keep records and the data or summary by which the records can be verified, explained, or clarified for a period of not less than five (5) years.
- (D) The Department shall post the records required under subsection (A) and (B) to their website in a searchable electronic format.

Sec 3. Labor organization contract transparency

- (A) Before a public employer may vote or in any other way ratify a collective bargaining agreement [or contract], amendment or memorandum of understanding agreed to during negotiations between the public employer or their representatives and a labor organization or their representatives, the tentative collective bargaining agreement [or contract] amendment or memorandum of understanding, shall be posted publicly on the website of the Department for not less than 14 days with the ability of the public to comment.
 - (i) In an emergency, as provided for under [state or local Open Meetings Act] an amendment to a current collective bargaining agreement [or contract] or memorandum of understanding between a public employer and labor organization may be entered into immediately but must be posted publicly within 24 hours of agreement and will expire at the end of the emergency unless ratified again under the provisions of this section.
- (B) The notice of such collective bargaining agreement [or contract] shall include:
 - (i) The full text of the agreement in electronic searchable format.
 - (ii) The current number of labor organization members in the bargaining unit covered by the agreement



- (iii) The current total number of public employees covered by the agreement
 - (iv) A fiscal note on the cost estimate of the agreement including other post-employment benefits (OPEB) liabilities both current and projected for at least 5 years in the future.
- (C) Once ratified, the Department shall publicly post the collective bargaining agreement including all provisions in subsection (B) for a period of 5 years past the expiration of the agreement. At least annually, the labor organization shall provide the Department with any updates to subsection (B) and the Department shall post any updates on their website.

Sec. 4 Collective bargaining transparency

- (A) Collective bargaining negotiations between a public employer and a labor organization to reach a collective bargaining agreement shall be subject to [state or local open meetings act].
- (B) The requirement of sub-section (A) applies to negotiations between the public employer’s representatives and representatives of the labor organization. This requirement shall also apply to meetings with any labor negotiation arbitrators, fact finders, mediators or similar labor dispute meeting facilitators when meeting with both parties to the negotiation at the same time. Provided, however, a public employer or its designated representatives may hold an executive session for the specific purpose of:
- (i) Deliberating on a collective bargaining agreement offer or to formulate a counteroffer; or
 - (ii) Receiving information about a specific employee, when the information has a direct bearing on the issues being negotiated and a reasonable person would conclude that the release of that information would violate that employee’s right to privacy.



- (C) For this section, only the public employer may physically close the collective bargaining session required by sub section (A) and the requirements of [state or local open meetings act] may be satisfied if the public employer publicly broadcasts the negotiation session on their website or other widely accessible means.
- (D) All documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes, shall be subject to [state or local freedom of information act.]
- (E) The public employer shall post notice of all negotiation sessions at the earliest possible time practicable but not less than 48 hours in advance except for an emergency as provided in [state or local open meetings act]. This shall be done by the public employer by posting notice of the negotiation session on the front page of its official website. The public employer shall also post notice within 48 hours at its regular meeting physical posting locations.
- (F) Public testimony, if any, shall be posted as an agenda item.
- (G) The public employer shall post a notice on their website of the availability by the Department of any tentative collective bargaining agreement reached under section 3 of this act not less than 24 hours after reaching such a tentative collective bargaining agreement.

Sec. 5 Penalties

- (A) Any person who willfully violates this Act shall be fined not more than [x] and shall be paid to [state or local agency].
- (B) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report or other information required under the Act shall be fined not more than \$[x].
- (C) Any person who willfully makes a false entry in or willfully conceals, withholds or destroys any books, records, reports or statements required to be kept by any provision of this Act shall be fined not more than \$[x] and shall be paid to [state or local agency].
- (D) Each individual required to sign reports under Section 2 shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.
- (E) Whenever it shall appear that any person has violated or is about to violate any of the provisions of this Act, the [insert public official responsible here] may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the [state or local court] where the violation occurred.

Sec. 6 Severability

If any provision, section, subsection, sentence, phrase or word, of this Act or its application is held unconstitutional, in violation of federal law, [include state law if in a locality] or invalid in any way the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected and shall remain in effect to the maximum extent provided by law.



NEXT STEPS **READY TO MAKE YOUR NEGOTIATIONS A WIN-WIN-WIN?**

Whether you have an office at city hall or in the state legislature, a seat at the kitchen table as an informed citizen or a desk in a newsroom, BCP can help you understand collective bargaining transparency and other practical policy solutions.

Want additional insights and ready-to-implement solutions about local government issues? We're here to help.

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Our updates keep thousands of local elected officials and engaged citizens informed about the latest ideas in municipal policy.

GET IN TOUCH

BCP can help identify specific research and recommendations relevant to your city's challenges, direct you to the right experts for answers and offer presentations related to these and other topics. Give us a call or drop us an email: info@better-cities.org or (702) 546-8736.

About the authors:

Jason Mercier is the director of the Center for Government Reform at Washington Policy Center. He has served on the boards of the Washington Coalition for Open Government and Verify More, and was an advisor to the 2002 Washington State Tax Structure Committee. He worked with lawmakers in 2008 to create the state's renowned budget transparency website www.fiscal.wa.gov and has been a champion for many of the state's important budget reform tools including the four-year balanced budget requirement adopted in 2012.

F. Vincent Vernuccio is a labor policy consultant and advises a multitude of policy organizations throughout the country. Vernuccio's advisory positions include senior policy advisor with the State Policy Network, senior fellow with the Mackinac Center, and President of the Institute for the American Worker, among others. Vernuccio served on the U.S. Department of Labor transition team for the Trump Administration, and under former President George W. Bush served as special assistant to the assistant secretary for administration and management in the Department of Labor.

Phone (702) 546-8736

Email info@better-cities.org

Web better-cities.org

4700 W. Rochelle Ave.

Suite 141

Las Vegas, NV 89103



PROFESSIONAL FIRE FIGHTERS

O F N E W H A M P S H I R E

House Judiciary Committee
Legislative Office Building
33 N State Street
Concord, NH 03301

RE: Testimony in opposition of HB 206 relative to collective bargaining agreement strategy discussions under the right-to-know law.

Dear Chairman Gordon and Members of the committee,

My name is Brian Ryll and I serve as the President of the Professional Fire Fighters of New Hampshire and am a Captain for the Portsmouth Fire Department. The Professional Fire Fighters of New Hampshire is a state association representing 42 local unions, and approximately 2,000 active and retired professional fire fighters and paramedics across the Granite State. I am providing testimony in opposition of HB 206 *relative to collective bargaining agreement strategy discussions under the right-to-know law*.

This bill, like many before it, would effectively move all collective bargaining meetings to public meetings by redefining exemptions from public meetings. By only exempting meetings with one party from right-to-know, HB 206 would open all collective bargaining meetings to the public. Approximately 5 states in the continental United States allow for or require components of collective bargaining negotiations to be open to the public. [1] We don't yet know what the long term results are or how heavily this issue has been litigated in other states. The proposed change to RSA 91-A:2 in this legislation is deeply concerning for both labor and management.

The negotiating table has long been a place where representatives from labor and management can come together to talk about the impacts of wages, hours, and working conditions. Oftentimes, this process is an extensive one, but one that is designed to reach fair and equitable agreements for both sides. At the start of any negotiation, all parties will develop a set of ground rules that allow for good faith negotiating in an attempt to ensure that the process will move as swiftly and efficiently as possible.

While all public sector contracts are public knowledge, a public airing during the actual negotiating process is often viewed as an attempt to sway public opinion and breach "good faith bargaining." When developing ground rules, it is explicitly agreed to by both sides not to publicly discuss ongoing negotiations, as it can result in distrust between both parties that damages the integrity of the process - a detriment to the employee, the employer and the community at large.

In order to reach a successful outcome, the employer and employee must be involved in a thoughtful, honest discussion and debate, with minimal distraction. The passing of HB 206 would foster an environment that encourages grandstanding by either side, in an attempt to gain public support. It could

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allow for the sharing of exaggerated and sometimes misleading information that would result in the inability to reach an amicable agreement.

Including collective bargaining discussions under the right-to-know law translates to a waste of time and resources, and ultimately results in an increased cost to the taxpayer. It is for these reasons that we ask the committee to respectfully oppose HB 206 *relative to collective bargaining agreement strategy discussions under the right-to-know law*.

Respectfully Submitted,



Brian Ryll
President
Professional Fire Fighters of New Hampshire

[1] K. negotiations and collective bargaining of public employees Archives. (n.d.). Retrieved February 18, 2021, from <https://www.rcfp.org/open-government-sections/k-negotiations-and-collective-bargaining-of-public-employees/>

Bill as
Introduced

HB 206 - AS INTRODUCED

2021 SESSION

21-0278
04/06

HOUSE BILL **206**

AN ACT relative to collective bargaining agreement strategy discussions under the right-to-know law.

SPONSORS: Rep. L. Turcotte, Straf. 4; Rep. Nunez, Hills. 37; Rep. Cordelli, Carr. 4; Rep. M. Moffett, Merr. 9

COMMITTEE: Judiciary

ANALYSIS

This bill requires that collective bargaining agreement strategy discussions where only one party is present shall not constitute a meeting open to the public under the right-to-know law.

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

21-0278
04/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to collective bargaining agreement strategy discussions under the right-to-know law.

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

- 1 Right-to-Know; Meetings Open to the Public. Amend RSA 91-A:2, I(a) to read as follows:
(a) Strategy [~~or negotiations~~] with respect to collective bargaining ***where only one negotiating party is present;***
- 2 Effective Date. This act shall take effect 60 days after its passage.