

# Committee Report

**CONSENT CALENDAR**

**March 2, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred HB  
474,**

**AN ACT prohibiting surveillance by the state on public  
ways or sidewalks. Having considered the same, report  
the same with the following amendment, and the  
recommendation that the bill OUGHT TO PASS WITH  
AMENDMENT.**

**Rep. Michael Sylvia**

**FOR THE COMMITTEE**

## **COMMITTEE REPORT**

Committee:	<b>Judiciary</b>
Bill Number:	<b>HB 474</b>
Title:	<b>prohibiting surveillance by the state on public ways or sidewalks.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2021-0461h</b>

### **STATEMENT OF INTENT**

This bill, as amended, clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership but also to vehicle location. It also expands these protections to include pedestrians using public sidewalks. Finally, it provides a private right of action for those injured by a violation of the prohibition. These changes are an important legislative step in keeping with the recently passed informational privacy amendment to the State's Constitution.

Vote 17-3.

Rep. Michael Sylvia  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Judiciary

**HB 474**, prohibiting surveillance by the state on public ways or sidewalks. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Michael Sylvia for Judiciary. This bill, as amended, clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership but also to vehicle location. It also expands these protections to include pedestrians using public sidewalks. Finally, it provides a private right of action for those injured by a violation of the prohibition. These changes are an important legislative step in keeping with the recently passed informational privacy amendment to the State's Constitution. **Vote 17-3.**

Original: House Clerk  
Cc: Committee Bill File

Rep. Erf, Hills. 2  
February 19, 2021  
2021-0461h  
06/08

Amendment to HB 474

1 Amend the bill by replacing all after section 2 with the following:

2

3 3 New Subparagraph; Highway Surveillance Prohibited. Amend RSA 236:130, III by inserting  
4 after subparagraph (g) the following new subparagraph:

5 (h) Is undertaken for security and to facilitate law enforcement in the investigation of  
6 criminal activity at properties under the jurisdiction of the department of natural and cultural  
7 resources, provided that no video recording shall be stored longer than 24 days except if needed in a  
8 judicial or administrative proceeding in a particular case. The properties on which surveillance  
9 occurs shall display signage indicating the presence of 24-hour video cameras.

10 4 Effective Date. This act shall take effect upon its passage.

# Voting Sheets



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 474** Motion: \_\_\_\_\_ AM #: **0461h** Exec Session Date: **3/2/2021**

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
<b>Gordon, Edward M. Chairman</b>	18		
<b>McLean, Mark Vice Chairman</b>	1		
<b>Sylvia, Michael J.</b>	2		
<b>Wuelper, Kurt F. Clerk</b>	3		
<b>Alexander, Joe H.</b>	4		
<b>Rice, Kimberly A.</b>			
<del>Silber, Norman J.</del> <b>Smith, Steven</b>	5		
<b>Greene, Bob J.</b>	6		
<b>Kelley, Diane E.</b>	7		
<b>Tausch, Lindsay</b>	8		
<b>Trottier, Douglas R.</b>		1	
<b>Smith, Marjorie K.</b>	9		
<b>Berch, Paul S.</b>	10		
<b>Horrigan, Timothy O.</b>		2	
<b>DiLorenzo, Charlotte I.</b>	11		
<b>Chase, Wendy</b>	12		
<b>Kenney, Cam E.</b>	13		
<b>Langley, Diane M.</b>	14		
<b>McBeath, Rebecca Susan</b>	15		
<b>Paige, Mark</b>	16		
<b>Simpson, Alexis</b>	17		
<b>TOTAL VOTE:</b>	<b>18</b>	<b>2</b>	

Rep Kurt Wuelper *Kurt Wuelper*



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 474** Motion: OTPA AM #: 0461h Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
<b>Gordon, Edward M. Chairman</b>	17		
<b>McLean, Mark Vice Chairman</b>	1		
<b>Sylvia, Michael J.</b>	2		
<b>Wuelper, Kurt F. Clerk</b>	3		
<b>Alexander, Joe H.</b>	4		
<b>Rice, Kimberly A.</b>			
<del>Silber, Norman J.</del> <b>Smith, Steven</b>	5		
<b>Greene, Bob J.</b>	6		
<b>Kelley, Diane E.</b>	7		
<b>Tausch, Lindsay</b>	8		
<b>Trottier, Douglas R.</b>		1	
<b>Smith, Marjorie K.</b>	9		
<b>Berch, Paul S.</b>		2	
<b>Horrigan, Timothy O.</b>		3	
<b>DiLorenzo, Charlotte I.</b>	10		
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<b>Kenney, Cam E.</b>	12		
<b>Langley, Diane M.</b>	13		
<b>McBeath, Rebecca Susan</b>	14		
<b>Paige, Mark</b>	15		
<b>Simpson, Alexis</b>	16		
<b>TOTAL VOTE:</b>	<b>17</b>	<b>3</b>	

Rep Kurt Wuelper *Kurt Wuelper*

# Public Hearing

## HOUSE COMMITTEE ON JUDICIARY

### PUBLIC HEARING ON HB 474

**BILL TITLE:** prohibiting surveillance by the state on public ways or sidewalks.

**DATE:** 2/19/2021

**LOB ROOM:** 306/Remote      **Time Public Hearing Called to Order:** 2:00 PM  
**Time Adjourned:** 2:32 PM

**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 Erf

### TESTIMONY

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

**\*Rep. Erf Hills 2 Sponsor** Bill passed the House last year and tabled in Senate due to Covid. This bill prohibits tracking location of occupants of vehicles and of pedestrians on sidewalks. It clearly defines 'public ways' and 'sidewalk'. We recommend an amendment: "If undertaken for security of buildings ...for Dept of Cultural and Natural Resources..." requested from OLS. Q Silber: how does this affect cameras at toll booths? A the statute is in law and this bill won't interfere with it. Q Chase: Is this something someone is in an office maintaining? A Neil Kirk will have better answer than I.

**Neil Kirk:** Supports Current statute was interpreted by a court improperly This bill is a correction. Dept. of Cultural Resources says the bill would make what they are doing illegal, but it is already illegal. See the Erf amendment. The purpose is to bar the use of cameras on public ways so the State can't set up cameras as they have in Britain and other countries, and then track people all over. I have been in touch with Chief David Cahill about any concerns police might have. This bill clarifies that cameras on public roads is not what was desired by the current law. The bill extends that protection to sidewalks. Q Alexander: What about around parking meters where they take a picture with time stamp to prove the car is there? A The bill only prohibits pictures to identify the vehicle or its occupants. Q Chase: Do you know how this is being used? A Not sure. In Park and Rides unmanned cameras surveil the area and the images used to identify crimes. In Laconia there is a manned system which is being used appropriately. Q Gordon: Is there an exception for EZ pass? A Yes in a different statute Q Difference between a picture and surveillance? A Yes. RSA 236:30 IIIb . Q Horrigan: How does this affect State house or other public bldgs.? A This bill does not apply to buildings.

**Jeanne Hruska:** ACLU NH Supports This is an opportunity to do just what was intended by the existing law. NY has over 10,000 cameras and it's estimated that London has 600,000. Rather than waiting for cameras to be installed, this is an attempt to avoid that fight. This is a bill that the state shall not take general pictures of people travelling around the state. RSA 236:130 addresses most of the questions that have been brought up.

**\*Gary Abbott** Exec VP of Assoc General Contractors NH The construction industry uses a lot of cameras. A concern is are they an extension of the State when working on public projects? We question the word "surveillance". We need to know cause the court has only established a floor for privacy if this would apply to us when we are looking over a project or our property. This bill could conflict with RSA 236:130. We are not sure if this would apply to us or if we need an exemption.

**Ross Connolly** AFP NH Support HB474 updates the current law. The court has established a floor for privacy and HB474 is a good addition.

*Kurt Wulper*

Rep Kurt Wulper

# House Remote Testify

## Judiciary Committee Testify List for Bill HB474 on 2021-02-19

Support: 17 Oppose: 7 Neutral: 1 Total to Testify: 5

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>
Abbott, Gary	Bow, NH gabbott@agcnh.org	A Lobbyist	Associated General Contractors of NH	Neutral	Yes (4m)	No	2/18/2021 4:37 PM
kurk, neal	weare, NH rep03281@aol.com	A Member of the Public	Myself	Support	Yes (3m)	No	2/18/2021 4:49 PM
Hruska, Jeanne	Concord, NH Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Support	Yes (3m)	No	2/18/2021 5:02 PM
Connolly, Ross	rconnolly@afphq.org	A Lobbyist	Americans for Prosperity New Hampshire	Support	Yes (3m)	No	2/16/2021 11:27 AM
Erf, Keith	Keith.erf@leg.state.nh.us	An Elected Official	Myself	Support	Yes (3m)	No	2/17/2021 8:53 AM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/17/2021 4:46 PM
Kindeke, Grace	Manchester, NH gkindeke@afsc.org	A Lobbyist	American Friends Service Committee	Support	No	No	2/17/2021 8:24 PM
Hope, Lucinda	Tilton, NH lmhope46@gmail.com	A Member of the Public	Myself	Support	No	No	2/18/2021 9:46 AM
Groetzing, Tonda	Farmington, NH groetzing6@aol.com	A Member of the Public	Myself	Support	No	No	2/18/2021 2:10 PM
Johnston, Cordell	Concord, NH cjohnston@nhmunicipal.org	A Lobbyist	NH Municipal Association	Oppose	No	No	2/18/2021 5:47 PM
Mott-Smith, Wiltrud	Loudon, NH wmottsm@worldpath.net	A Member of the Public	Myself	Support	No	No	2/18/2021 9:28 PM
Guinn, Will	Concord, NH william.guinn@dncr.nh.gov	State Agency Staff	DNCR	Oppose	No	No	2/19/2021 1:11 PM
Lewicke, John	Mason, NH john.lewicke@leg.state.nh.gov	An Elected Official	Myself	Support	No	No	2/19/2021 2:10 PM
Laurent, Tara	Greenland, NH	A Member of the Public	Greenland Police Department	Oppose	No	No	2/19/2021 10:15 AM

	tlaurent@greenlandpd.us						
Sargent, Elizabeth	Concord, NH esargent@sheehan.com	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	No	2/19/2021 10:51 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	2/19/2021 8:28 AM
Warden, Mark	liberty.warden@gmail.com	An Elected Official	Myself	Support	No	No	2/10/2021 5:19 PM
Fordey, Nicole	nikkif610@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/13/2021 8:28 PM
Yokela, Josh	josh.yokela@leg.state.nh.us	An Elected Official	Rockingham 33	Support	No	No	2/14/2021 4:52 PM
Babb, Paul	paulbabb@protonmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 9:07 PM
Krohn, Suzanne	suzanne.c.krohn@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 10:50 AM
Krohn, Matthew	makrohn@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:14 AM
Gould, Rep. Linda	lgouldr@myfairpoint.net	An Elected Official	Myself	Support	No	No	2/15/2021 2:15 PM
Frost, Sherry	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Oppose	No	No	2/15/2021 2:44 PM
McGuire, Daniel	danmcguire@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 6:34 PM

# Testimony



STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
**OFFICE OF THE COMMISSIONER**

172 Pembroke Road, Concord, New Hampshire 03301

Phone: 271-2411 Fax: 271-2629

TDD ACCESS: Relay NH 1-800-735-2964

February 19, 2021

The Honorable Edward Gordon  
and the House Judiciary Committee  
Legislative Office Building, Room 208  
Concord, NH 03301

**RE: HB 474 prohibiting surveillance by the state on public ways or sidewalks.**

Dear Chair Gordon and Members of the Committee,

While we support the purpose of the legislation to "protect the personal privacy of residents and visitors to the state", we must oppose it as written because of the impact it would have on the safety of our visitors to state parks and forests and the ability to protect the many structures and improvements on state land managed by this department.

We read this legislation to restrict the use of surveillance equipment for public ways and sidewalks. Public ways under RSA 259:125 Way includes a road, alley, park or any public or private parking lot which is maintained primarily for the benefit of paying customers. Given that we charge entrance fees to many state parks and operate concessions, we assume that our operations would be included. It is unclear to us if the exceptions in Paragraph II, in RSA 259:125, would include properties under the jurisdiction of the department.

By way of example, cameras and surveillance equipment are used in the following situations:

1. The Rye Police Department has deployed cameras successfully in one of our state park parking lots to deter broken car windows, theft of wallets and purses and the resulting identity theft.
2. The Hampton Police Department uses a mobile surveillance trailer at various areas within or overseeing state park property, such as North Beach and during the Seafood Festival, to help maintain public safety.
3. Forest Management staff will often use game cameras on timber harvests to verify the number of truck loads leaving the harvesting job with the number of trip tickets reported to ensure against timber theft. We will also use cameras to monitor gated roads on state reservations that are frequently breached.
4. DNCR's Forest Rangers use cameras while conducting criminal investigations, including illegal OHRV use and vandalism at fire towers and other remote facilities.
5. With the assistance from local police, we have placed cameras at White Lake to track down vandalism and theft.
6. We have cameras at Pawtuckaway's office and tollbooth, placed in response to a break in and vandalism.
7. We also use trail cameras in areas without electricity to try to catch people dumping trash or destroying park property.



8. We permit third parties such as WMUR and the Hampton Village District to place cameras on structures (Hampton Seashell building).

Many of our agency's buildings and assets are in remote locations. We do not have the staff resources to patrol these locations continuously year round. The cameras are an efficient way to protect state resources.

While we do not want to infringe on the privacy of visitors to our state parks and lands, we respectfully request that we continue to be able to use surveillance equipment to maintain public safety, enforce laws and rules, and protect the resources under the jurisdiction of the department.

Thank you for the opportunity to testify and we would be glad to provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Sarah L. Stewart  
Commissioner

CC: Philip A. Bryce, Director – Div Parks and Recreation  
Patrick D. Hackley, Director – Div Forests and Lands

SLS/PB/PH/ttl-021821



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February 19, 2021  
Chair Gordon and the House Judiciary Committee  
Page 2

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Sincerely,

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Sarah L. Stewart  
Commissioner

CC: Philip A. Bryce, Director – Div Parks and Recreation  
Patrick D. Hackley, Director – Div Forests and Lands

SLS/PB/PH/ttl-021821



February 18, 2021

Hon. Edward Gordon, Chairman  
House Judiciary Committee  
Legislative Office Building, Room 208  
Concord, New Hampshire

Via Electronic Mail Only

*Re: HB 474, prohibiting surveillance by the state or political subdivisions*

Dear Chairman Gordon:

The New Hampshire Municipal Association *opposes* HB 474. The official analysis of this bill states that it “prohibits the use of surveillance to determine the location of a motor vehicle or the identity or location of a pedestrian.” However, it is only partly accurate to say the bill “prohibits the use of surveillance.” The more significant aspect of the bill is that it greatly *expands the definition* of “surveillance.”

Under RSA 236:130, the state and political subdivisions are already prohibited from “engag[ing] in surveillance on any public way of the state or its political subdivisions.” The current law defines “surveillance” as

the act of determining the ownership of a motor vehicle or the identity of a motor vehicle’s occupants on the public ways of the state or its political subdivisions through the use of a camera or other imaging device or any other device . . . that . . . can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants.

HB 474 would amend this definition by deleting the reference to “the act of determining” the ownership of a motor vehicle or the identity its occupants, and leaving the definition as “the use of a camera or other imaging device or any other device” that can be used for such purposes. It also adds a reference to the location of a motor vehicle and the identity or location of a pedestrian.

Thus, it would no longer matter whether the state or a municipality is actually trying to determine the ownership of a vehicle or the identity of its occupants. If it uses—for any purpose—a camera or other device that “can be used” to determine ownership or identity (or, now, location), that use would be illegal.

This would effectively render the governmental use of any camera, for any purpose, illegal. Because a dashboard camera or a body-worn camera *can* be used to determine the ownership or

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NEW HAMPSHIRE MUNICIPAL ASSOCIATION

25 Triangle Park Drive • Concord, NH 03301 • Tel: 603.224.7447

NHMAinfo@nhmunicipal.org • governmentaffairs@nhmunicipal.org • legalinquiries@nhmunicipal.org

www.nhmunicipal.org

location of a motor vehicle or the identity of its occupants or of pedestrians, any use of such a device would constitute illegal “surveillance,” even though the camera is not actually *being* used for that purpose. Similarly, use of a building-mounted security camera to monitor for illegal activity would be prohibited because the camera *can* be used to determine someone’s identity, even though it is *not* used for that purpose.

This bill would cripple law enforcement and hinder local governments’ ability to protect their properties.

We understand that the purpose of the bill is to protect individual privacy. The existing statute accomplishes that. If the legislature wants to protect the privacy of pedestrians as well as motor vehicle owners and occupants, it can do so by simply adding references to “the identity of a pedestrian” in RSA 236:130, I, as follows:

I. In this subdivision, "surveillance" means the act of determining the ownership of a motor vehicle, [ø] the identity of a motor vehicle's occupants, ***or the identity of a pedestrian*** on the public ways ***or sidewalks*** of the state or its political subdivisions through the use of a camera or other imaging device or any other device, including but not limited to a transponder, cellular telephone, global positioning satellite, or radio frequency identification device, that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle, [ø] the identity of a motor vehicle' s occupants, ***or the identity of a pedestrian***.

No other changes should be made. I urge you to either amend HB 474 as suggested or find the bill inexpedient to legislate.

Thank you very much for your consideration.

Sincerely,



Cordell A. Johnston  
Government Affairs Counsel

cc: Committee members

## HB474 Testimony

Sponsor Testimony From:

Rep. Keith Erf Hillsborough District 2 Deering and Weare Feb 18, 2021

### **HB 474: Prohibiting surveillance by the State on Public Ways or Sidewalks**

#### **Summary**

This bill clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership but also to vehicle location. It also expands these protections to include pedestrians using public sidewalks. Finally, it provides a private right of action for those injured by a violation of the prohibition. These changes are an important legislative step in keeping with the recently passed informational privacy amendment to the State's Constitution.

#### **Testimony**

Thank you Mr Chairman and Honorable Members of the Committee. I am Representative Keith Erf, Hillsborough District 2 representing the towns of Deering and Weare, sponsor of HB474. I am speaking in support of HB474.

HB474 is a bill prohibiting surveillance by the State on Public Ways and Sidewalks. In 2018 New Hampshire citizens passed the Right to Privacy amendment to our State constitution with 81% voting in favor. This amendment states "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent." HB474 continues the process of defining this right in statute.

This is the same bill that passed the House in 2020. It passed out of committee 16-3 and passed the House 267 - 18. The constraints of Covid prevented the Senate from considering it last year and it was Laid on the Table.

HB474 clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership and occupants but also to vehicle location. It expands these protections to include pedestrians using public sidewalks. This assures that the State is not part of the location and identity tracking that surrounds us as we move through the world today.

Testifying after me is the Honorable Neal Kurk who authored the original bill that has been resubmitted this year. In the interest of your time it might be best to address your questions to him as he can provide more in-depth responses. End Erf testimony

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February. 21, 2021

Dear Mr. Chairman:

There are three matters relating to HB 474, the highway surveillance bill I sponsored, that I wish to bring to your attention.

## HB474 Testimony

First, at Friday's hearing on HB 474, I spoke of an amendment to exempt properties of the Department of Natural and Cultural Resources from the provisions of current law (RSA 236:130), as the Department apparently was not aware of that current law applied to it. A copy of the amendment is attached to this email.

Second, also at Friday's hearing, Gary Abbott of Associated General Contractors questioned whether contractors to supply state services, such as constructing roads, were subject to RSA 236:130. I think the answer is they are not. Current law, RSA 236:130, II, imposes restrictions with respect to highway surveillance on "the state of New Hampshire . . ." That would include agents of the state, but it does not include those who enter into contracts with the state to provide goods or services, as they are not agents. Although in my opinion it is not necessary, the matter could be clarified by further defining the state in RSA 235:130, II to include agents but not contractors. If you wish such an amendment, please let me know.

Third, in a letter to the Committee dated February 18, 2021, the New Hampshire Municipal Association raised certain objections to HB 474. These NHMA objections were raised and resolved when RSA 236:130 was enacted in 2006. HB 474 does not change that.

With respect to dash cams and body-worn cameras: those are currently exempt and will remain exempt if HB 474 is enacted. RSA 236:130, II(b) exempts "surveillance" "undertaken on a case-by-case basis in the investigation of a particular violation, misdemeanor or felony." That's what these devices do: body-worn cameras are turned on at the scene of a crime and used there, while dash cams take a broader picture of, say, a traffic stop. If the dash cam is being used continuously to record all traffic, yes, that would not come under the exception, but that's what current law is intended to stop: generalized surveillance of people traveling the roadways of our state.

With respect to building-mounted cameras: RSA 236:130, II(d) currently exempts "surveillance" that "is incidental to the monitoring of a building or other structure under the control of the state or a political subdivision of the state."

In sum, the attached amendment 2021-0461h deals with the concerns raised by the Department of Natural and Cultural Resources. The various situations that concern the Associated General Contractors and the NHMA are dealt with under current law and will not be affected by the enactment of HB 474.

I would be pleased to respond to any concerns you might have.

Respectfully, Rep. Keith Erf Hills. Dist. 2

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Rep Kurt Wuelper

## HB474 Testimony



February 21, 2021

Dear Mr. Chairman and Honorable members of the Judiciary Committee:

There are three matters relating to HB 474, the highway surveillance bill I sponsored, that I wish to bring to your attention. I have discussed these with the Honorable Neal Kurk, author of HB474.

First, at Friday's hearing on HB 474, I spoke of an amendment to exempt properties of the Department of Natural and Cultural Resources from the provisions of current law (RSA 236:130), as the Department apparently was not aware that current law applied to it. A copy of the proposed amendment is attached to this email. That amendment has also been forwarded by OLS to Ann Fitzgerald of House Committee Services who may have already provided it to you.

Second, also at Friday's hearing, Gary Abbott of Associated General Contractors questioned whether contractors that supply state services, such as constructing roads, were subject to RSA 236:130. Based on my conversations with Mr Kurk, I think the answer is they are not. Current law, RSA 236:130, II, imposes restrictions with respect to highway surveillance on "the state of New Hampshire . . ." That would include agents of the state, but it does not include those who enter into contracts with the state to provide goods or services, as they are not agents. Although in Mr Kurk's opinion it is not necessary, the matter could be clarified by further defining the state in RSA 235:130, II to include agents but not contractors. If you wish such an amendment, please let me know.

Third, in a letter to the Committee dated February 18, 2021, the New Hampshire Municipal Association raised certain objections to HB 474. Mr Kurk indicated these NHMA objections were raised and resolved when RSA 236:130 was enacted in 2006. HB 474 does not change that.

With respect to dash cams and body-worn cameras: those are currently exempt and will remain exempt if HB 474 is enacted. RSA 236:130, II(b) exempts "surveillance" "undertaken on a case-by-case basis in the investigation of a particular violation, misdemeanor or felony." That's what these devices do: body-worn cameras are turned on at the scene of a crime and used there, while dash cams take a broader picture of, say, a traffic stop. If the dash cam is being used continuously to record all traffic, yes, that would not come under the exception, but that's what current law is intended to stop: generalized surveillance of people traveling the roadways of our state.

With respect to building-mounted cameras: RSA 236:130, II(d) currently exempts "surveillance" that "is incidental to the monitoring of a building or other structure under the control of the state or a political subdivision of the state."

In sum, the attached amendment deals with the concerns raised by the Department of Natural and Cultural Resources. The various situations that concern the Associated General Contractors and the NHMA are dealt with under current law and will not be affected by the enactment of HB 474.

I would be pleased to respond to any concerns you might have.

Respectfully,

Rep. Keith Erf  
Hills. Dist. 2

**Archived:** Wednesday, July 7, 2021 10:04:22 AM  
**From:** [Keith Erf](#)  
**Sent:** Wednesday, February 17, 2021 8:54:02 AM  
**To:** [~House Judiciary Committee](#)  
**Subject:** NH House Remote Testify: 2:00 pm - HB474 in House Judiciary  
**Importance:** Normal

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My testimony is below.

Keith Erf  
NH State Representative  
Weare and Deering

To: The Honorable Edward Gordon  
Chairman Judiciary Committee  
and  
Judiciary Committee members

Sponsor Testimony From:  
Rep. Keith Erf  
Hillsborough District 2  
Deering and Weare  
Feb 18, 2021

**HB 474: Prohibiting surveillance by the State  
on Public Ways or Sidewalks**

**Summary**

This bill clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership but also to vehicle location. It also expands these protections to include pedestrians using public sidewalks. Finally, it provides a private right of action for those injured by a violation of the prohibition. These changes are an important legislative step in keeping with the recently passed informational privacy amendment to the State's Constitution.

**Testimony**

Thank you Mr Chairman and Honorable Members of the Committee. I am Representative Keith Erf, Hillsborough District 2 representing the towns of Deering and Weare, sponsor of HB474. I am speaking in support of HB474.

HB474 is a bill prohibiting surveillance by the State on Public Ways and Sidewalks. In 2018 New Hampshire citizens passed the Right to Privacy amendment to our State constitution with 81% voting in favor. This amendment states "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent." HB474 continues the process of defining this right in statute.

This is the same bill that passed the House in 2020. It passed out of committee 16-3 and passed the House 267 - 18. The constraints of Covid prevented the Senate from considering it last year and it was Laid on the Table.

HB474 clarifies the existing statute that prohibits the state or its municipalities from using cameras or similar devices to determine ownership of a motor vehicle or the identity of its occupants on any public way. It ensures that the prohibition applies not just to vehicle ownership and occupants but also to vehicle location. It expands these protections to include pedestrians using public sidewalks. This assures that the State is not part of the location and identity tracking that surrounds us as we move through the world today.

Testifying after me is the Honorable Neal Kurk who authored the original bill that has been resubmitted this year. In the interest of your time it might be best to address your questions to him as he can provide more in-depth responses.

Thank you for your time. If you do have questions for me I will try to address them.

**Archived:** Wednesday, July 7, 2021 10:04:22 AM

**From:** [Connell, Lisa](#)

**Sent:** Friday, February 19, 2021 9:55:10 AM

**To:** ~House Judiciary Committee

**Subject:** HB 474 prohibiting surveillance by the state on public ways or sidewalks - Letter from DNCR

**Importance:** Normal

**Attachments:**

[HB474 testimony H-Jud 021921.Final.doc](#) 

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Dear Chair Gordon and Members of the Committee,

Please find attached a letter from the Department of Natural and Cultural Resources of opposition to HB 474 as written.

The Division of Forests and Lands representative, Will Guinn, will be monitoring the hearing and can answer questions if necessary but will not be providing any additional testimony.

Thank you!

*Lisa Connell*

Department of Natural and Cultural Resources

Office of the Commissioner

172 Pembroke Road

Concord, New Hampshire 03301-5767

603.271.2412 (tel)

603.271.2629 (fax)

[Lisa.M.Connell@dncr.nh.gov](mailto:Lisa.M.Connell@dncr.nh.gov)

Amendment to HB 474

1 Amend the bill by replacing all after section 2 with the following:

2

3 3 New Subparagraph; Highway Surveillance Prohibited. Amend RSA 236:130, III by inserting  
4 after subparagraph (g) the following new subparagraph:

5 (h) Is undertaken for security and to facilitate law enforcement in the investigation of  
6 criminal activity at properties under the jurisdiction of the department of natural and cultural  
7 resources, provided that no video recording shall be stored longer than 24 days except if needed in a  
8 judicial or administrative proceeding in a particular case. The properties on which surveillance  
9 occurs shall display signage indicating the presence of 24-hour video cameras.

10 4 Effective Date. This act shall take effect upon its passage.

UNAPPROVED

Bill as  
Introduced

HB 474 - AS INTRODUCED

2021 SESSION

21-0621  
06/10

HOUSE BILL **474**

AN ACT prohibiting surveillance by the state on public ways or sidewalks.

SPONSORS: Rep. Erf, Hills. 2; Rep. Warden, Hills. 15

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits the use of surveillance to determine the location of a motor vehicle or the identity or location of a pedestrian.

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.

21-0621  
06/10

STATE OF NEW HAMPSHIRE

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

AN ACT prohibiting surveillance by the state on public ways or sidewalks.

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

- 1 Highway Video Surveillance; Highway Surveillance Prohibited. Amend RSA 236:130, I and II to read as follows:
- I. In this subdivision, "surveillance" means [~~the act of determining the ownership of a motor vehicle or the identity of a motor vehicle's occupants on the public ways of the state or its political subdivisions through~~] the use of a camera or other imaging device or any other device, including but not limited to a transponder, cellular telephone, global positioning satellite, or radio frequency identification device, that by itself or in conjunction with other devices or information can be used to determine the ownership **or location** of a motor vehicle, [~~or~~] **the identity of a motor vehicle's occupants, or the identity or location of a pedestrian.**
- II. ***In order to protect the personal privacy of residents and visitors to the state***, neither the state of New Hampshire nor its political subdivisions shall engage in surveillance on any public ways, ***as defined in RSA 259:125, or sidewalks, as defined in RSA 259:100***, of the state or its political subdivisions.
- 2 New Paragraph; Highway Surveillance Prohibited. Amend RSA 236:130 by inserting after paragraph V the following new paragraph:
- VI. Any person who suffers injury as a result of a violation of this section shall be entitled to damages from the person who committed the violation of not less than \$1,000 for each such violation, and an award of costs and reasonable attorney fees.
- 3 Effective Date. This act shall take effect upon its passage.