

# Committee Report

**REGULAR CALENDAR**

**March 10, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Judiciary to which  
was referred HB 566,**

**AN ACT relative to sealing records in nonpublic session  
under the right-to-know law. Having considered the  
same, report the same with the following amendment,  
and the recommendation that the bill OUGHT TO PASS  
WITH AMENDMENT.**

**Rep. Joe Alexander**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 566
Title:	relative to sealing records in nonpublic session under the right-to-know law.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-0425h

**STATEMENT OF INTENT**

The majority of the Judiciary Committee believes that the minutes of non-public meetings regarding acquisition, sale, or lease of real or personal property should not be kept from the public after the sale is completed or fell through. However, public bodies are not going back to reverse the vote to keep those minutes from the public. Pursuant to this bill, as amended, such minutes would now be automatically available to the public after the close of the transaction. The majority believes this is a simple step to add more transparency to our government. The amendment was agreed to by the New Hampshire Municipal Association and Right-to-Know NH.

Vote 11-10.

Rep. Joe Alexander  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### Judiciary

**HB 566**, relative to sealing records in nonpublic session under the right-to-know law. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Joe Alexander for the **Majority** of Judiciary. The majority of the Judiciary Committee believes that the minutes of non-public meetings regarding acquisition, sale, or lease of real or personal property should not be kept from the public after the sale is completed or fell through. However, public bodies are not going back to reverse the vote to keep those minutes from the public. Pursuant to this bill, as amended, such minutes would now be automatically available to the public after the close of the transaction. The majority believes this is a simple step to add more transparency to our government. The amendment was agreed to by the New Hampshire Municipal Association and Right-to-Know NH. **Vote 11-10.**

Original: House Clerk  
Cc: Committee Bill File

# **REGULAR CALENDAR**

**March 10, 2021**

## **HOUSE OF REPRESENTATIVES**

### **REPORT OF COMMITTEE**

**The Minority of the Committee on Judiciary to which  
was referred HB 566,**

**AN ACT relative to sealing records in nonpublic session  
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. Timothy Horrigan**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 566
Title:	relative to sealing records in nonpublic session under the right-to-know law.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

**STATEMENT OF INTENT**

This bill, as introduced would have required public bodies to review each and every set of sealed minutes at least once every year to see if they should be unsealed. The minority recognized that this would be a waste of time and effort. After few years, some bodies could end up with no time to do anything but continually debate unsealing their old sealed minutes. Many of those sealed minutes would never turn out be worth unsealing. The minority is also opposed to the bill as amended, which would require all unsealing motions to be debated in public session, even when it would be impossible to debate the merits of the motion without divulging details of the sealed material in the minutes in question. Also, both versions of the bill would make it effectively impossible to seal minutes of non-public meetings related to buying, selling, or leasing real estate, even when there might be a valid reason to seal those minutes.

Rep. Timothy Horrigan  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### Judiciary

**HB 566**, relative to sealing records in nonpublic session under the right-to-know law.  
**INEXPEDIENT TO LEGISLATE.**

Rep. Timothy Horrigan for the **Minority** of Judiciary. This bill, as introduced would have required public bodies to review each and every set of sealed minutes at least once every year to see if they should be unsealed. The minority recognized that this would be a waste of time and effort. After few years, some bodies could end up with no time to do anything but continually debate unsealing their old sealed minutes. Many of those sealed minutes would never turn out be worth unsealing. The minority is also opposed to the bill as amended, which would require all unsealing motions to be debated in public session, even when it would be impossible to debate the merits of the motion without divulging details of the sealed material in the minutes in question. Also, both versions of the bill would make it effectively impossible to seal minutes of non-public meetings related to buying, selling, or leasing real estate, even when there might be a valid reason to seal those minutes.

Original: House Clerk  
Cc: Committee Bill File

Amendment to HB 566

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the discussion and disclosure of minutes from a nonpublic session under  
4 the right-to-know law.  
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 New Subparagraph; Right-to-Know-Law; Nonpublic Sessions. Amend RSA 91-A:3, II by  
9 inserting after subparagraph (l) the following new subparagraph:

10 (m) Consideration of whether to disclose minutes of a nonpublic session due to a change  
11 in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take  
12 place in public session.

13 2 Right-to-Know Law; Nonpublic Minutes. Amend RSA 91-A:3, III to read as follows:

14 III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall  
15 be promptly made available for public inspection, except as provided in this section. Minutes of such  
16 sessions shall record all actions in such a manner that the vote of each member is ascertained and  
17 recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72  
18 hours of the meeting, unless, by recorded vote of 2/3 of the members present taken in public session,  
19 it is determined that divulgence of the information likely would affect adversely the reputation of  
20 any person other than a member of the public body itself, or render the proposed action ineffective,  
21 or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying  
22 out of all emergency functions, developed by local or state safety officials that are directly intended  
23 to thwart a deliberate act that is intended to result in widespread or severe damage to property or  
24 widespread injury or loss of life. This shall include training to carry out such functions. In the event  
25 of such circumstances, information may be withheld until, in the opinion of a majority of members,  
26 the aforesaid circumstances no longer apply. *Minutes related to a discussion held in nonpublic*  
27 *session under subparagraph II(d) shall be made available to the public immediately after*  
28 *the transaction has closed or the public body has decided not to proceed with the*  
29 *transaction.*

30 3 Effective Date. This act shall take effect January 1, 2022.



**Amendment to HB 566**

**- Page 2 -**

2021-0425h

**AMENDED ANALYSIS**

This bill allows discussion of disclosure of the minutes of a nonpublic session to occur in nonpublic session, provided the vote on disclosure takes place in public session. The bill also requires that sealed minutes of a nonpublic session related to the acquisition, sale, or lease of real or personal property be released once the transaction closes or the public body decides not to proceed.

# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on

HB566

BILL TITLE:

DATE: 3-10-2021

LOB ROOM: 208/Remote

MOTION: (Please check one box)

☐ OTP ☐ ITL ☐ Retain (1<sup>st</sup> year) ☒ Adoption of Amendment # 0425h (if offered)  
☐ Interim Study (2nd year)  
Moved by Rep. Alexander Seconded by Rep. Gordon Vote: 11-10

MOTION: (Please check one box)

☐ OTP ☒ OTP/A ☐ ITL ☐ Retain (1<sup>st</sup> year) ☐ Adoption of Amendment # \_\_\_\_\_ (if offered)  
☐ Interim Study (2nd year)  
Moved by Rep. Alexander Seconded by Rep. Gordon Vote: 11-10

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1<sup>st</sup> year) ☐ Adoption of Amendment # \_\_\_\_\_ (if offered)  
☐ Interim Study (2nd year)  
Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1<sup>st</sup> year) ☐ Adoption of Amendment # \_\_\_\_\_ (if offered)  
☐ Interim Study (2nd year)  
Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR: ☒ YES ☒ NO

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

Respectfully submitted:

Kurt Wuelper  
Rep Kurt Wuelper, Clerk



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

## 2021 SESSION

## Judiciary

Bill #: HB566 Motion: OTPA AM #: 0425h Exec Session Date: 3-10-2021

<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		
<del>Silber, Norman J.</del> <u>Lacelles, R</u>	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	







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Roll Call Committee Registers  
Report

## 2021 SESSION

## Judiciary

Bill #: \_\_\_\_\_ Motion: OTPA AM #: 09254 Exec Session Date: \_\_\_\_\_

TOTAL VOTE:

			
	11	10	



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Roll Call Committee Registers  
Report

## 2021 SESSION

## Judiciary

Bill #: HB566 Motion: Amend AM #: 0425h Exec Session Date: 3-10-2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
	11		
Gordon, Edward M. Chairman			
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A.	5		
<del>Silber, Norman J.</del> <u>Laceilles, R</u>	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	



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Roll Call Committee Registers  
Report

## 2021 SESSION

## Judiciary

Bill #: \_\_\_\_\_ Motion: \_\_\_\_\_ AM #: 04251 Exec Session Date: 3-10-2021

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TOTAL VOTE:  11  10

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# Public Hearing



COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 566

**BILL TITLE:** relative to sealing records in nonpublic session under the right-to-know law

**DATE:** 1/26/2021

**LOB ROOM:** 208/remote

**Time Public Hearing Called to Order:** 2:45 PM

**Time Adjourned:** 3:10 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. Yokela

TESTIMONY

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

**Rep. Yokela** Sponsor Right to Know tries to balance transparency and public benefit. The law provides no means to reconsider the cost/benefit relationship later. The reason for sealing minutes changes as time goes by. Right to Know proposes we automatically unseal automatically after the contract is signed. This would not address the larger question of what would happen if the deal failed to complete.

**\*David Saad** Right to Know NH Support  
Support with amendment. Decisions reached in non-public are often sealed because the discussion render the proposed action. Once the contract is signed, such condition no longer exists. The release of the minutes should happen immediately and automatic unsealing after contract finalization solves ghat issue. WE could change the wording to be after finalization to address Rep Yokela's concern. Since his bill deals only with property exemption this totally applies. This amendment talks to unsealing after a year, but if the board votes to continue to seal, that vote would occur in non-public. I suggest that the vote to keep minutes sealed should occur in public session McLean-Is the intent to develop a broad solution or only target this narrow paragraph? A RTK NH recognizes the broader question of und=sealing minutes. The public body rarely looks at unsealing old records because they are focused on current activity. This is a step in the right direction, but only a step.

**\*Cordell Johnston** NHMA Oppose  
NHMA supports part of the bill. We like section 1ssss that allows the consideration of whether to unseal minutes to happen in non-public. The word 'seal' isn't in 91-A which talks to "disclose" vice "seal". WE are concerned ab out selecting only one category of minutes and giving them a specific timeline. I think we would prefer to automatically unseal would be better. "Finalization" is a better term than "signing of a contract" because contracts fail.



Rep. Kurt Wuelper

# House Remote Testify

## Judiciary Committee Testify List for Bill HB566 on 2021-01-26

Support: 7 Oppose: 3 Neutral: 0 Total to Testify: 3

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Johnston, Cordell	cjohnston@nhmunicipal.org	A Lobbyist	NH Municipal Association	Oppose	Yes (0m)	No	1/23/2021 11:50 AM
saad, david	david1@infonetics-usa.com	A Member of the Public	Right to Know NH	Support	Yes (0m)	No	1/25/2021 10:18 AM
Yokela, Josh	josh.yokela@leg.state.nh.us	An Elected Official	Rockingham 33	Support	Yes (0m)	No	1/25/2021 2:10 PM
Gericke, Carla	carlagericke@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2021 2:53 PM
Calitz, Louis	lc_nhhouse@free603.org	A Member of the Public	Myself	Support	No	No	1/25/2021 3:32 PM
Rathbun, Eric	ericsrathbun@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2021 7:23 PM
ploszaj, tom	tom.ploszaj@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/25/2021 9:10 PM
Gilman, Julie	jgilman@exeternh.gov	An Elected Official	Exeter	Oppose	No	No	1/25/2021 11:24 PM
Silber, Norm	njs@silbersnh.com	An Elected Official	Myself	Support	No	No	1/25/2021 11:34 PM
Christina, Barrett	bchristina@nhsba.org	A Lobbyist	New Hampshire School Boards Association	Oppose	No	No	1/26/2021 8:12 AM

# Testimony

Bill as  
Introduced

HB 566 - AS INTRODUCED

2021 SESSION

21-0239  
04/08

HOUSE BILL **566**

AN ACT relative to sealing records in nonpublic session under the right-to-know law.

SPONSORS: Rep. Yokela, Rock. 33; Rep. Yakubovich, Merr. 24

COMMITTEE: Judiciary

ANALYSIS

This bill requires that sealed minutes in nonpublic sessions under the right-to-know law may be unsealed if in the opinion of a majority of members voting in nonpublic session determine that circumstances have changed. The minutes sealed pursuant to RSA 91-A:3, II(d) would become public after one year.

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.

21-0239  
04/08

STATE OF NEW HAMPSHIRE

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

AN ACT relative to sealing records in nonpublic session under the right-to-know law.

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

1 New Subparagraph; Right-to-Know-Law; Nonpublic Sessions. Amend RSA 91-A:3, II by inserting after subparagraph (l) the following new subparagraph:

(m) Consideration of whether to unseal minutes after one year due to a change in circumstances under paragraph III.

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

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members ***voting in nonpublic session***, the aforesaid circumstances no longer apply. ***An exception shall apply to those minutes generated from subparagraph II(d), which may be***

*unsealed at any time but which will automatically be unsealed after one year unless a majority of the members vote that the minutes should remain sealed.*

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