

Bill as
Introduced

HB 108-FN-LOCAL - AS INTRODUCED

2021 SESSION

21-0315
08/06

HOUSE BILL ***108-FN-LOCAL***

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

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

COMMITTEE: Judiciary

ANALYSIS

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

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

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

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

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

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

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

LBA
21-0315
12/8/20

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

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

FISCAL IMPACT: ☐ State ☐ County ☒ Local ☐ None

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

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

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

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

AGENCIES CONTACTED:

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

HB 108-FN-LOCAL - AS AMENDED BY THE SENATE

05/27/2021 1711s

2021 SESSION

21-0315

08/06

HOUSE BILL

108-FN-LOCAL

AN ACT

relative to minutes and decisions in nonpublic sessions; an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law; and remote access to public meetings under the right-to-know law.

SPONSORS:

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

COMMITTEE:

Judiciary

AMENDED ANALYSIS

This bill:

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

II. 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.

III. Exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to minutes and decisions in nonpublic sessions; an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law; and remote access to public meetings under the right-to-know law.

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

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

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

25 2 Access to Governmental Records and Meetings; Meetings Open to the Public. Amend RSA 91-
26 A:2, III to read as follows:

27 III. A public body may, but is not required to, allow one or more members of the body to
28 participate in a meeting by electronic or other means of communication for the benefit of the public
- 29 and the governing body, subject to the provisions of this paragraph.

~~[(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.]~~

~~[(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.]~~

~~[(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.]~~

(a) A physical location is not required for any meeting, provided the meeting complies with the provisions of this paragraph.

(b) If a meeting has no physical location, public access shall be provided to the public by telephone, and additional access may be provided by video or other electronic means.

(c) If a meeting has no physical location, public notice of the meeting, with all information necessary to access the meeting telephonically and by other means, shall be given as provided in this chapter. The notice shall provide a mechanism for the public to alert the public body during the meeting if there are problems with access. The meeting shall be adjourned if the public is unable to access the meeting because of any technical communication problems experienced by the provider of the communication media.

(d) Each member participating electronically or otherwise ~~[must]~~ in a meeting required to be open to the public shall be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location, if the meeting has a physical location. Any member participating in such fashion shall identify the location from which the person is participating and the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

~~[(d)]~~ *(e) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.*

HB 108-FN-LOCAL - AS AMENDED BY THE SENATE
- Page 3 -

1 ~~[(e)]~~ (f) A member participating in a meeting by the means described in this paragraph
2 is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting
3 shall be by roll call vote.

4 3 Access to Governmental Records and Meetings; Meetings Open to the Public; Version Effective
5 July 1, 2022. RSA 91-A:2, III is repealed and reenacted to read as follows:

6 III. A public body may, but is not required to, allow one or more members of the body to
7 participate in a meeting by electronic or other means of communication for the benefit of the public
8 and the governing body, subject to the provisions of this paragraph.

9 (a) A member of the public body may participate in a meeting other than by attendance
10 in person at the location of the meeting only when such attendance is not reasonably practical. Any
11 reason that such attendance is not reasonably practical shall be stated in the minutes of the
12 meeting.

13 (b) Except in an emergency, a quorum of the public body shall be physically present at
14 the location specified in the meeting notice as the location of the meeting. For purposes of this
15 subparagraph, an "emergency" means that immediate action is imperative and the physical presence
16 of a quorum is not reasonably practical within the period of time requiring action. The
17 determination that an emergency exists shall be made by the chairman or presiding officer of the
18 public body, and the facts upon which that determination is based shall be included in the minutes of
19 the meeting.

20 (c) Each part of a meeting required to be open to the public shall be audible or otherwise
21 discernable to the public at the location specified in the meeting notice as the location of the meeting.
22 Each member participating electronically or otherwise must be able to simultaneously hear each
23 other and speak to each other during the meeting, and shall be audible or otherwise discernable to
24 the public in attendance at the meeting's location. Any member participating in such fashion shall
25 identify the persons present in the location from which the member is participating. No meeting
26 shall be conducted by electronic mail or any other form of communication that does not permit the
27 public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting
28 location specified in the meeting notice.

29 (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of
30 the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and
31 purpose of this chapter as expressed in RSA 91-A:1.

32 (e) A member participating in a meeting by the means described in this paragraph is
33 deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting
34 shall be by roll call vote.

35 4 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after
36 paragraph XI the following new paragraph:

1 XII. Records protected under the attorney-client privilege or the attorney work product
2 doctrine.

3 5 Effective Date.

4 I. Section 1 of this act shall take effect January 1, 2022.

5 II. Section 3 of this act shall take effect July 1, 2022.

6 III. The remainder of this act shall take effect upon its passage.

LBA
21-0315
12/8/20

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

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

FISCAL IMPACT: ☐ State ☐ County ☒ Local ☐ None

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

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

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

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

AGENCIES CONTACTED:

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

CHAPTER 163
HB 108-FN-LOCAL - FINAL VERSION

05/27/2021 1711s
24Jun2021... 1973CofC

2021 SESSION

21-0315
08/06

HOUSE BILL ***108-FN-LOCAL***

AN ACT relative to minutes and decisions in nonpublic sessions; an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law; and remote access to public meetings under the right-to-know law.

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

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill:

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

II. Exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A.

III. Establishes a committee to review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.

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.

CHAPTER 163
HB 108-FN-LOCAL - FINAL VERSION

05/27/2021 1711s
24Jun2021... 1973CofC

21-0315
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to minutes and decisions in nonpublic sessions; an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law; and remote access to public meetings under the right-to-know law.

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

1 163:1 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

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

25 163:2 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after
26 paragraph XI the following new paragraph:

CHAPTER 163
HB 108-FN-LOCAL - FINAL VERSION

- Page 2 -

1 XII. Records protected under the attorney-client privilege or the attorney work product
2 doctrine.

3 163:3 Committee Established. There is established a committee to review authorizing
4 governing bodies of municipalities to hold virtual meetings and to study remote access to meetings
5 under RSA 91-A.

6 163:4 Membership and Compensation.

7 I. The members of the committee shall be as follows:

8 (a) Two members of the senate, appointed by the president of the senate.

9 (b) Three members of the house of representatives, appointed by the speaker of the
10 house of representatives.

11 II. Members of the committee shall receive mileage at the legislative rate when attending to
12 the duties of the committee.

13 163:5 Duties. The committee shall review authorizing governing bodies of municipalities to hold
14 virtual meetings and to study remote access to meetings under RSA 91-A.

15 163:6 Chairperson; Quorum. The members of the study committee shall elect a chairperson
16 from among the members. The first meeting of the committee shall be called by the first-named
17 senate member. The first meeting of the committee shall be held within 45 days of the effective date
18 of this section. Three members of the committee shall constitute a quorum.

19 163:7 Report. The committee shall report its findings and any recommendations for proposed
20 legislation to the president of the senate, the speaker of the house of representatives, the senate
21 clerk, the house clerk, the governor, and the state library on or before November 1, 2021.

22 163:8 Effective Date.

23 I. Section 1 of this act shall take effect January 1, 2022.

24 II. Sections 3-7 of this act shall take effect 60 days after its passage.

25 III. The remainder of this act shall take effect upon its passage.

Approved: July 30, 2021

Effective Date:

I. Section 1 shall take effect January 1, 2022.

II. Sections 3-7 shall take effect September 28, 2021.

III. Remainder shall take effect July 30, 2021.

Amendments

Sen. Carson, Dist 14
April 15, 2021
2021-1144s
08/06

Amendment to HB 108-FN-LOCAL

1 Amend RSA RSA 91-A:3, III as inserted by section 1 of the bill by replacing it with the following:

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

Sen. Carson, Dist 14
April 29, 2021
2021-1250s
08/06

Amendment to HB 108-FN-LOCAL

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

2

3 AN ACT relative to minutes and decisions in nonpublic sessions and making an exemption for
4 items falling within the attorney-client privilege or attorney work product doctrine
5 under the right-to-know law.
6

7 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
8 read as 3:

9

10 2 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after
11 paragraph XI the following new paragraph:

12

13 XII. Records protected under the attorney-client privilege or the attorney work product
14 doctrine.

Amendment to HB 108-FN-LOCAL
- Page 2 -

2021-1250s

AMENDED ANALYSIS

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

This bill also exempts materials falling within attorney-client privilege or attorney work product from the provisions of RSA 91-A.

UNAPPROVED

Sen. Kahn, Dist 10
Sen. Carson, Dist 14
April 29, 2021
2021-1251s
08/06

Amendment to HB 108-FN-LOCAL

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

2

3 AN ACT relative to minutes and decisions in nonpublic sessions and making an exemption for
4 items falling within the attorney-client privilege or the attorney work product
5 doctrine under the right-to-know law.
6

7 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
8 read as 3:

9

10 2 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after
11 paragraph XI the following new paragraph:

12

13 XII . Records protected under the attorney-client privilege or the attorney work product
14 doctrine.

2021-1251s

AMENDED ANALYSIS

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

This bill also exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A.

UNAPPROVED

Sen. Carson, Dist 14
May 19, 2021
2021-1600s
08/04

Amendment to HB 108-FN-LOCAL

1 Amend RSA 91-A:3, III as inserted by section 1 of the bill by replacing it with the following:

2

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

2021-1600s

AMENDED ANALYSIS

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

UNAPPROVED

Sen. Perkins Kwoka, Dist 21
Sen. Daniels, Dist 11
May 25, 2021
2021-1687s
08/08

Amendment to HB 108-FN-LOCAL

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

2
3 AN ACT relative to minutes and decisions in nonpublic sessions and remote access to public
4 meetings under the right-to-know law.
5

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

7
8 2 Access to Governmental Records and Meetings; Meetings Open to the Public. Amend RSA 91-
9 A:2, III to read as follows:

10 III. A public body may, but is not required to, allow one or more members of the body to
11 participate in a meeting by electronic or other means of communication for the benefit of the public
12 and the governing body, subject to the provisions of this paragraph.

13 ~~[(a) A member of the public body may participate in a meeting other than by attendance~~
14 ~~in person at the location of the meeting only when such attendance is not reasonably practical. Any~~
15 ~~reason that such attendance is not reasonably practical shall be stated in the minutes of the~~
16 ~~meeting.~~

17 ~~(b) Except in an emergency, a quorum of the public body shall be physically present at~~
18 ~~the location specified in the meeting notice as the location of the meeting. For purposes of this~~
19 ~~subparagraph, an "emergency" means that immediate action is imperative and the physical presence~~
20 ~~of a quorum is not reasonably practical within the period of time requiring action. The~~
21 ~~determination that an emergency exists shall be made by the chairman or presiding officer of the~~
22 ~~public body, and the facts upon which that determination is based shall be included in the minutes of~~
23 ~~the meeting.~~

24 ~~(c) Each part of a meeting required to be open to the public shall be audible or otherwise~~
25 ~~discernable to the public at the location specified in the meeting notice as the location of the~~
26 ~~meeting.]~~

27 ***(a) A physical location is not required for any meeting, provided the meeting***
28 ***complies with the provisions of this paragraph.***

29 ***(b) If a meeting has no physical location, public access shall be provided to the***
30 ***public by telephone, and additional access may be provided by video or other electronic***
31 ***means.***

(c) *If a meeting has no physical location, public notice of the meeting, with all information necessary to access the meeting telephonically and by other means, shall be given as provided in this chapter. The notice shall provide a mechanism for the public to alert the public body during the meeting if there are problems with access. The meeting shall be adjourned if the public is unable to access the meeting because of any technical communication problems experienced by the provider of the communication media.*

(d) Each member participating electronically or otherwise ~~[must]~~ *in a meeting required to be open to the public shall* be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location, *if the meeting has a physical location.* Any member participating in such fashion shall identify *the location from which the person is participating* and the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

~~[(d)] (e)~~ Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

~~[(e)] (f)~~ A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

3 Access to Governmental Records and Meetings; Meetings Open to the Public. RSA 91-A:2, III is repealed and reenacted to read as follows:

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

Amendment to HB 108-FN-LOCAL
- Page 3 -

1 (c) Each part of a meeting required to be open to the public shall be audible or otherwise
2 discernable to the public at the location specified in the meeting notice as the location of the meeting.
3 Each member participating electronically or otherwise must be able to simultaneously hear each
4 other and speak to each other during the meeting, and shall be audible or otherwise discernable to
5 the public in attendance at the meeting's location. Any member participating in such fashion shall
6 identify the persons present in the location from which the member is participating. No meeting
7 shall be conducted by electronic mail or any other form of communication that does not permit the
8 public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting
9 location specified in the meeting notice.

10 (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of
11 the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and
12 purpose of this chapter as expressed in RSA 91-A:1.

13 (e) A member participating in a meeting by the means described in this paragraph is
14 deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting
15 shall be by roll call vote.

16 4 Effective Date.

17 I. Section 1 of this act shall take effect January 1, 2022.

18 II. Section 3 of this act shall take effect July 1, 2022.

19 III. The remainder of this act shall take effect upon its passage.

Amendment to HB 108-FN-LOCAL
- Page 4 -

2021-1687s

AMENDED ANALYSIS

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

This bill also establishes requirements for remote access to public meetings under RSA 91-A.

UNAPPROVED

Sen. Carson, Dist 14
May 25, 2021
2021-1690s
08/04

Amendment to HB 108-FN-LOCAL

1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
2 read as 3:

3

4 2 New Subparagraph; Right-to-Know-Law; Nonpublic Sessions. Amend RSA 91-A:3, II by
5 inserting after subparagraph (l) the following new subparagraph:

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

UNAPPROVED

Amendment to HB 108-FN-LOCAL
- Page 2 -

2021-1690s

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.

UNAPPROVED

Amendment to HB 108-FN-LOCAL

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

2

3 AN ACT relative to minutes and decisions in nonpublic sessions; an exemption for items
4 falling within the attorney-client privilege or the attorney work product doctrine
5 under the right-to-know law; and remote access to public meetings under the right-
6 to-know law.
7

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

9

10 1 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

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

Amendment to HB 108-FN-LOCAL

- Page 2 -

2 Access to Governmental Records and Meetings; Meetings Open to the Public. Amend RSA 91-A:2, III to read as follows:

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

~~[(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.]~~

~~(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.~~

~~(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting.]~~

(a) A physical location is not required for any meeting, provided the meeting complies with the provisions of this paragraph.

(b) If a meeting has no physical location, public access shall be provided to the public by telephone, and additional access may be provided by video or other electronic means.

(c) If a meeting has no physical location, public notice of the meeting, with all information necessary to access the meeting telephonically and by other means, shall be given as provided in this chapter. The notice shall provide a mechanism for the public to alert the public body during the meeting if there are problems with access. The meeting shall be adjourned if the public is unable to access the meeting because of any technical communication problems experienced by the provider of the communication media.

(d) Each member participating electronically or otherwise [must] in a meeting required to be open to the public shall be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location, if the meeting has a physical location. Any member participating in such fashion shall identify the location from which the person is participating and the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public

Amendment to HB 108-FN-LOCAL

- Page 3 -

1 to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location
2 specified in the meeting notice.

3 ~~[(d)]~~ (e) Any meeting held pursuant to the terms of this paragraph shall comply with all
4 of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit
5 and purpose of this chapter as expressed in RSA 91-A:1.

6 ~~[(e)]~~ (f) A member participating in a meeting by the means described in this paragraph
7 is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting
8 shall be by roll call vote.

9 3 Access to Governmental Records and Meetings; Meetings Open to the Public; Version Effective
10 July 1, 2022. RSA 91-A:2, III is repealed and reenacted to read as follows:

11 III. A public body may, but is not required to, allow one or more members of the body to
12 participate in a meeting by electronic or other means of communication for the benefit of the public
13 and the governing body, subject to the provisions of this paragraph.

14 (a) A member of the public body may participate in a meeting other than by attendance
15 in person at the location of the meeting only when such attendance is not reasonably practical. Any
16 reason that such attendance is not reasonably practical shall be stated in the minutes of the
17 meeting.

18 (b) Except in an emergency, a quorum of the public body shall be physically present at
19 the location specified in the meeting notice as the location of the meeting. For purposes of this
20 subparagraph, an "emergency" means that immediate action is imperative and the physical presence
21 of a quorum is not reasonably practical within the period of time requiring action. The
22 determination that an emergency exists shall be made by the chairman or presiding officer of the
23 public body, and the facts upon which that determination is based shall be included in the minutes of
24 the meeting.

25 (c) Each part of a meeting required to be open to the public shall be audible or otherwise
26 discernable to the public at the location specified in the meeting notice as the location of the meeting.
27 Each member participating electronically or otherwise must be able to simultaneously hear each
28 other and speak to each other during the meeting, and shall be audible or otherwise discernable to
29 the public in attendance at the meeting's location. Any member participating in such fashion shall
30 identify the persons present in the location from which the member is participating. No meeting
31 shall be conducted by electronic mail or any other form of communication that does not permit the
32 public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting
33 location specified in the meeting notice.

34 (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of
35 the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and
36 purpose of this chapter as expressed in RSA 91-A:1.

Amendment to HB 108-FN-LOCAL

- Page 4 -

1 (e) A member participating in a meeting by the means described in this paragraph is
2 deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting
3 shall be by roll call vote.

4 4 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after
5 paragraph XI the following new paragraph:

6 XII. Records protected under the attorney-client privilege or the attorney work product
7 doctrine.

8 5 Effective Date.

9 I. Section 1 of this act shall take effect January 1, 2022.

10 II. Section 3 of this act shall take effect July 1, 2022.

11 III. The remainder of this act shall take effect upon its passage.

Amendment to HB 108-FN-LOCAL
- Page 5 -

2021-1711s

AMENDED ANALYSIS

This bill:

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

II. 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.

III. Exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A.

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 7, 2021

HEARINGS

Tuesday		04/13/2021	
(Day)		(Date)	
Judiciary		REMOTE 000	1:00 p.m.
(Name of Committee)		(Place)	(Time)
1:00 p.m.	HB 108-FN-LOCAL	relative to minutes and decisions in nonpublic sessions under the right-to-know law.	
1:15 p.m.	HB 178-FN	relative to the parole of prisoners and the procedures of the adult parole board.	
1:30 p.m.	HB 239-FN	relative to prosecutions for certain assaults against minors.	
1:45 p.m.	HB 270-FN	relative to post-conviction DNA testing.	
2:00 p.m.	HB 296-FN	establishing the crime of unsolicited disclosure of an intimate image.	
2:15 p.m.	HB 615-FN	reducing the penalty for certain first offense drug possession charges.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/91749966342>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13017158592,,91749966342# or +13126266799,,91749966342#
4. Webinar ID: [917 4996 6342](https://www.zoom.us/j/91749966342)
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtriRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 108-FN-LOCAL

Rep. Ulery

Rep. Spillane

Rep. McGuire

Rep. T. Leka

HB 178-FN

Rep. Abbas

Sen. Daniels

HB 239-FN

Rep. Abramson

Rep. Ankarberg

HB 270-FN

Rep. Conley

Rep. Schapiro

Rep. Moran

Rep. Cushing

HB 296-FN

Rep. Nutting-Wong

Rep. Frost

HB 615-FN

Rep. Seaworth

Rep. Verville

Rep. Potucek

Rep. Conley

Rep. Roy

Sen. Reagan

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 108-FN-LOCAL, relative to minutes and decisions in nonpublic sessions under the right-to-know law.

Hearing Date: April 13, 2021

Time Opened: 1:05 p.m.

Time Closed: 1:26 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

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

Sponsors:

Rep. Ulery

Rep. Spillane

Rep. McGuire

Rep. T. Lekas

Who supports the bill: David Saad, RTKNH; Alexandra Mennella; Alvin See; Tracy Walbridge; Deborah Sumner; Eric Pauer; Nicholas Thomas; Brett Gagnon

Who opposes the bill: Cordell Johnston, NH Municipal Association; Brian Ryll, Professional Fire Fighters of NH; Alan Raff, New Hampshire AFL-CIO; Tony Sapienza; David Spechuilli; David DellIsols

Summary of testimony presented in support:

David Saad (Right to Know NH) (provided written testimony)

- The existing Right-to-Know law states that "information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply".
- The circumstances which justify the sealing of minutes at one point in time, will, as time passes, eventually no longer apply.
- At that point those minutes should be unsealed.
- However, often the public body seals the minutes and then they rarely go back to revisit minutes and determine if those circumstances no longer apply.

- In practice, often, the sealing of minutes is done indefinitely because there is no easy way for public bodies to know which minutes have been sealed, for what reasons, or have a process to unseal minutes.
- This bill requires the maintenance of a list of those sealed minutes so that public bodies can review them periodically and determine whether or not to unseal them.
- This bill provides a support mechanism for public bodies to follow the law and it provides the public with a document they can request with a list of sealed minutes.
- Senator Whitley asked if when a public body decides to go into nonpublic session is that indicated in the public minutes.
 - Yes, and they must specify the exemption that allows that. When a body comes out of nonpublic, they then many choose to seal those minutes. When that happens, this bill would apply by requiring them to maintain a list of the minutes sealed. This only requires them to maintain the list moving forward and not to build a historic list.
- Senator Whitley asked if there is a decision to seal the minutes the only minutes that are sealed are the ones from the nonpublic session, but the indication remains in the public minutes.
 - Correct.
- Senator Whitley asked if this is just putting public information in one list.
 - Correct. Over a period of time, a public body will get new members that were not there when minutes were sealed and things that were deemed to be kept secret for whatever valid reason no longer apply. Often these public bodies have never reviewed their past sealed minutes, and people have not been able to clear their name because the minutes were sealed.

Summary of testimony presented in opposition:

Cordell Johnston (Municipal Association)

- This is something towns could manage to do, but it is one more statutory responsibility for municipalities, and those keep piling up.
- The cumulative effect of these responsibilities eventually becomes a burden, and it creates one more opportunity for local officials to inadvertently violate the Right-to-Know law.
- A public body can already adopt a policy about reviewing and unsealing minutes, and some do.
- Some boards already maintain a list like this.
- It is a good idea to maintain a list like this, but not every good idea should be mandated by law.
- Not sure what good the information will do anyone, as this information is already required to be public, it is just not in a list.
- The point of the Right-to-Know law is not to require a public body to create more records, but to make records public.

- The Right-to-Know law states, “Nothing in this Chapter shall be construed to require a public body or agency to compile information into a form in which it is not already kept or reported.”
- This bill goes against that by requiring the public body to create a new record.
- If you require public bodies to compile this information into a list, what is going to the next requirement.
- Senator Kahn asked if nondisclosure agreements could require that minutes be sealed and therefore interfere with this.
 - The bill does not change what is and is not allowed to be sealed or the compliance requirements. Does not think this bill would impact that.
- Senator French asked if their biggest objection to this is it will be burdensome to the municipalities.
 - That is the concern. It does not change the substance of the law; it just requires a burden to create this list. Where is the end of these types of requests though? This is not really what the Right-to-Know law is designed to do.
- Senator Carson asked if this information is available to the public, and therefore already satisfies the Right-to-Know law.
 - Yes, assuming the public body complies with the statute. In the public session minutes, they have to indicate the reason to go into nonpublic and if they want to seal the minutes they have to vote on that in public session and give a valid exemption for sealing them and it has to be dated.
- Senator Carson asked if this is asking the municipalities to duplicate what they are already doing.
 - Correct, this is simply asking them to put it into a list.
- Senator Carson asked where the list is meant to be kept.
 - The bill does not say, it would be a record of the public body and therefore the law would require the record be kept with that public body.

jch

Date Hearing Report completed: April 14, 2021

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: May 6, 2021

HEARINGS

Monday		05/10/2021
(Day)		(Date)
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. HB 196	adding trespass as an exception to the charge of criminal threatening.	
1:15 p.m. HB 195	adding display of a firearm as an exception to reckless conduct.	
1:30 p.m. HB 307	relative to the state preemption of the regulation of firearms and ammunition.	
1:45 p.m. HB 334	relative to prohibitions on carrying a loaded firearm on an OHRV or snowmobile.	
2:00 p.m.	Hearing on proposed Amendment #1144s, to HB 108-FN-LOCAL , relative to minutes and decisions in nonpublic sessions under the right-to-know law.	
2:15 p.m.	Hearing on proposed Amendment #1251s, relative to minutes and decisions in nonpublic sessions and making an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law, to HB 108-FN-LOCAL , relative to minutes and decisions in nonpublic sessions under the right-to-know law.	

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1. Link to Zoom Webinar: <https://www.zoom.us/j/98971061867>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,98971061867# or +16465588656,,98971061867#
4. Webinar ID: [989 7106 1867](https://www.zoom.us/j/98971061867)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

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EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 196

Rep. Yakubovich

Rep. Rhodes

HB 195

Rep. Yakubovich

Rep. Aron

HB 307

Rep. Silber

HB 334

Rep. Burt

Rep. Rhodes

Sen. Daniels

HB 108-FN-LOCAL

Rep. Ulery

HB 108-FN-LOCAL

Rep. Ulery

Rep. Binford

Rep. Aron

Rep. Roy

Rep. DeSimone

Rep. Yakubovich

Rep. Nunez

Rep. Gorski

Sen. Giuda

Rep. Spillane

Rep. Spillane

Rep. Roy

Rep. Piemonte

Rep. T. Leka

Rep. Comtois

Rep. Kelsey

Rep. Kofalt

Rep. McGuire

Rep. McGuire

Rep. T. Leka

Rep. DeSimone

Rep. Rhodes

Rep. Gould

Rep. Silber

Rep. Roy

Rep. T. Leka

Rep. T. Leka

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

Amendment 1251s-HB 108-FN-LOCAL, relative to minutes and decisions in nonpublic sessions and making an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law.

Hearing Date: May 10, 2021

Time Opened: 4:41 p.m.

Time Closed: 5:41 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

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

Sponsors:

Rep. Ulery

Rep. Spillane

Rep. McGuire

Rep. T. Lekas

Who supports the bill: 75 people signed up in support of the amendment. Full sign in sheet available upon request.

Who opposes the bill: 5 people signed up in opposition to the amendment. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person signed up neutrally on the amendment. Full sign in sheet available upon request.

Summary of testimony presented in support:

Senator Kahn

- This amendment originated from a recent Supreme Court decision, *Hampstead v. SAU 55*.
- This will ensure governing bodies will continue to have the same privilege as any private citizen would have, to allow privileged attorney-client discussions and products.

- Senator Gannon asked if this would result in people being able to hide or lose information. Asked if people acting in a public position should lose that attorney-client privilege as they are not acting in their personal privilege.

Matthew Broadhead (Attorney General's Office)

- Any person seeking legal advice from a lawyer is subject to attorney-client privilege that is permanently protected from disclosure.
- That protection is owned by the client not the attorney, and it is for the benefit of the client.
- The work product doctrine is any material that is created in anticipation of litigation and might have legal strategies or theories that are the mental processes of the client or the attorney.
- The privilege exists for the purpose of enabling a safe place for people to seek legal advice.
- If you do not have that privilege, clients may not seek advice or will be less likely to tell the truth.
- For decades, under the Right-to-Know law, the privilege has existed based in common law.
- The recent Supreme Court decision upended that privilege saying it is not exempt from RSA 91-A, but instead is subject to a balancing test.
- This raises the possibility that even over the objection of a client, the record could be disclosed.
- Attorneys have an ethical obligation under Rule 1.6 to not turn over any records that relate to representation without the client's informed consent.
- The Department of Justice represents 100 state agencies, licensing boards, commissions, elected and appointed officials, and the executive branch, and many of them rely on the DOJ for near constant legal advice.
- Under RSA99-D the DOJ represents state employees in their official and individual capacity when they are sued in government.
- The Supreme Court has opened the door to set an uneven playing field for state employees.
- Legal theories of investigation could now all be discoverable through the normal rules of discovery.
- In civil litigation Rule 502 protects from discovery confidential client information. Under the new decision that can be circumvented.
- Need to continue to encourage state agencies to come forward with ideas and the unvarnished truth.
- Senator Whitley asked what would the result of fewer conversations be and what could this mean for litigation.
 - The Attorney General's Office provides three functions, counsels on issues of compliance, represents employees in connection with litigation, and enforces criminal laws. This ruling would have an impact on all three. This would mean it would be less likely for a client to contact them and request advice. In terms of cost and impact, it is more difficult to defend a

client in court if the legal strategy is being disclosed to the other side. The cost would be to the protection of the community in criminal cases.

- Senator Gannon asked for more information on work product in relation to this.
 - Work product applies to documents, as opposed to communications. The work product doctrine is a qualified privilege for any document generated in connection with potential litigation, such as a risk assessment or a draft pleading.

Thomas Mullins (City of Keene)

- Mr. Broadhead's testimony applies equally to the city in a smaller version.
- The ruling will make it difficult to communicate with the staff in the City Hall.
- This places counsel in a tenuous position, as they operate under rules of conduct. Attorney's licenses are dependent on those rules and those rules prohibit him from violating confidentiality.
- It is going to be very difficult to reach into his own work product to determine if it meets the balancing test.
- Is going to have to retain outside legal counsel to try and determine the balancing test.
- However, the outside counsel will then be faced with the same issue as they would be representing the city in their role.
- Once the Supreme Court put in the balancing test, he could no longer take a Right-to-Know request from the newspaper requesting all the information in his office and simply say 'no' to that. Will now have to implement a balancing test, which is going to increase the cost to local communities.
- The city is as transparent as they can be, but the representatives are elected to represent the people. The people of Keene are often engaged litigation through their representatives, such as the opioid litigation.
- All of that litigation is at risk of being exposed to the defendant under this.

Jim Kennedy (City of Concord)

- Attorney-client privilege ensures that government officials are acting in accordance with state law.
- This allows them to ask questions, understand rules, and helps them to avoid procedural and more substantive errors.
- The attorney-client privilege is not absolute, and it can be challenged.
- It is not a tool that can be used to hide or protect bad actors as stated under Rule 502.
- It cannot be used to engage in any type of fraud or crime.
- Superior Court Rule 21 gives exceptions to the work product doctrine.
- This is an amendment is very important in the function of government.
- Senator Whitley asked about the court's decision in relation to the plain language of the statute.
 - Respects the Supreme Court and the decisions it issues. Concord, with a number of other cities, filed an amicus brief regarding the Hampstead decision. It outlined the cities position that the Court came to the wrong

decision. The attorney-client privilege is recognized in 91-A, by defining a 'meeting' which excludes consultations with the legal counsel.

Margaret Byrnes (Municipal Association) (provided written testimony)

- Echoes the prior testimony in support.
- Senator Whitley asked what the cost to taxpayers will be if this amendment isn't adopted.
 - If the amendment isn't adopted, it will be devastating for state and local government. It would create a chilling effect on the communication between governmental entities and their counsel. This will lead to governmental clients being more cautious than they should be in reaching out for legal advice to ensure they are complying with the law. This destroys the integrity of the attorney-client relationship. The cost is also a serious concern. If municipalities need to consider engaging outside counsel to assist in reviewing their own legal advice for disclosure under the Right-to-Know law that will result in a financial cost.

Chris Boldt

- The 16 attorneys in his office will work on over 900 billable items this month.
- If the decision moves forward, that will result in an ungodly expense to the municipalities.
- An immense amount of time would be needed to dig the files out from storage.
- This is an attack on the fundamental right of a client.
- Took one oath of office to become a lawyer before the Supreme Court and that oath included that lawyers are bound to protect the confidentiality of a client.
- Does not have two classes of clients.
- This is similar to what the General Court did in response to the Supreme Court's decision in Effingham.
- If a client is sending a document, it is the lawyers answer back that is protected by the attorney-client privilege. His file is deemed generally protected by work product.

Representative Ulery

- When dealing with the city or town some of that information is by nature public.
- This amendment attempts to secure the attorney-client privilege.
- Does not see anything wrong with a public board putting into their minutes that they went into non-public session for discussion.
- Believes that some balance can be reached on this.
- There needs to be a definition for the public of what anyone means by attorney-client privilege.
- An ombudsman may alleviate a lot of these concerns raised.

Summary of testimony presented in opposition:

Donna Green (School District Governance Association)

- The ruling of the Hampstead decision is fair and reasonable as it imposes a balancing test between those who pay for the legal services and those that spend the money.

- The public has a right to know the product of the legal services they pay for unless there is some compelling reason to withhold it from the public.
- Served on the Timberlane School Board and learned about a lawsuit between a parent and the school district from the newspaper.
- The Superintendent claimed he held the attorney-client privilege and would sometimes refuse to share with the board written legal opinions and would engage in litigation without consulting the board.
- Elected officials are often kept in the dark about legal consultations and advice even when it is paid for by their own constituents.
- This is why legal advice should be subject to disclosure with reasonable protections for things that truly do need privacy.
- This ruling is cause for rejoicing.
- There is a clear divergence in interests between those that pay the bills and those that spend the money.
- The lawyer will look out for the wellbeing of the board as a whole, all while the public body is paying for advice that may work against the public interest.
- In 2014 her district received a substantial return in service from the LGC Health Trust. This was unanticipated revenue and by law, the receipt of this money required a public hearing. The superintendent and the board disputed the need for the hearing and obtained a legal opinion on the matter. That opinion was shared with a few members of the board but withheld from her. The legal opinion supported her position but was misconstrued by the superintendent.
- All of this could have been avoided had the legal opinion been provided to the public when it had been received.
- Why can't the public body do the balancing test? Why isn't the public body vetting Right-to-Know requests?
- The Right-to-Know law is very clear and easy to understand.
- The only safeguard to the function of government that citizens have is transparency.

Laurie Ortolano

- Allowing a balance test to exist for this information is the right thing to do.
- There are already provisions in the law to allow for bad actors to be called out, but it is too limiting.
- Has been addressing and investigating an assessing office issue for the last 2.5 years. Thinks there are bad actors, but it is hard to call them out with Right-to-Know and disclosure.
- The mere request to find out the number of Right-to-Know requests that have been submitted is not disclosed because it is protected under the attorney-client privilege.
- The response to a Right-to-Know request should be available to any citizen to know what questions have been raised by the public.

- Boards are voting on settlements and agreements but never release that information.
- This balancing test is appropriate so that citizens can challenge what is going on.
- Nashua has a lot of bad actors.

David Saad (Right-to-Know NH)

- The client is the citizens because they pay for the legal advice, and ultimately, they are the ones that benefit or suffer from the advice.
- This amendment makes attorney-client communications and records per se exemptions.
- The Supreme Court ruling says, 'contention that records protected by the attorney-client privilege or the work product doctrine are per se exempt from disclosure under the Right-to-Know Law rests upon an understandable, but mistaken, interpretation of our precedent.'
- The Supreme Court is clarifying that it has never been a per se exemption, even though for years attorneys have been saying it is.
- The three-part balancing test is a common balancing test for a number of other records that are in some cases withheld from the public.
- How does a citizen measure the actions of public officials who act on legal advice if they are never allowed to see the advice given?
- Often officials hide behind 'on advice of counsel.'
- The Supreme Court ruling clarified what was the case all along.

David Taylor (provided written testimony)

- Every member of the court was a practicing attorney at some point and they understand the importance of the attorney-client privilege.
- Believes the Hampstead case looks like an exceptional case.
- Twice the Supreme Court pointed to the lower court's ruling which stated that the chairman of the board made a public statement characterizing the report given. The question is then was that characterization disingenuous?
- Except for the Ettinger case and the Hampstead case, all other cases have allowed various documents to be withheld from disclosure.
- In the first case on this in 1975 the court put a protection in for consultation with counsel.
- Thinks when the balancing test is applied all the horror stories will not come to pass.
- Looking at the jurisprudence from the last several years, the Supreme Court has been moving away from per se exemptions.
- In *Associated Press v. the State* (2005) the court said a particular statute was unconstitutional 'because it does not permit the court to make the individualized determinations required by the state constitution'.
- This says that a per se exemption of these records may be a violation of the state constitution under Part 1, Article 8, the constitutional right to know.

jch

Date Hearing Report completed: May 19, 2021

Senate Judiciary Committee

Jennifer Horgan 271-7875

Amendment 1144s to HB 108-FN-LOCAL, relative to minutes and decisions in nonpublic sessions under the right-to-know law.

Hearing Date: May 17, 2021

Time Opened: 4:23 p.m.

Time Closed: 4:41 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

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

Sponsors:

Rep. Ulery

Rep. Spillane

Rep. McGuire

Rep. T. Lekas

Who supports the bill: 75 people signed up in support of the amendment. Full sign in sheet available upon request.

Who opposes the bill: 5 people signed up in opposition to the amendment. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person signed up neutrally on the amendment. Full sign in sheet available upon request.

Summary of testimony presented in support:

Senator Carson

- This deals with the substantive language within HB108.

David Taylor

- This amendment requires the list public bodies would be required to create about sealed minutes must be kept in a public place.
- His experience is that sealed minutes are properly kept in a locked filing cabinet.
- If someone were to put that list in a locked filing cabinet that would make it more difficult for a clerk who serves the public to get that list.

- This would make it easier for people to get access to the list.
- While serving on the Oyster River school board for 12 years they would occasionally seal minutes.
- Does not remember an instance of going back and unsealing minutes except for instances where it was related to the acquisition of land and there was a known timeframe.
- In general, the practice is once minutes are sealed it becomes a blackhole.
- If this list was available, it would allow members of boards to say they need to review the sealed minutes.

Summary of testimony presented in opposition:

None

jch

Date Hearing Report completed: May 18, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB108 on 2021-04-13

Support: 9 Oppose: 6 Neutral: 0 Total to Testify: 2

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
saad, david	david1@infonetics-usa.com	Not Given	A Member of the Public	RTKNH	Support	Yes	4/12/2021 10:33 AM
Johnston, Cordell	cjohnston@nhmunicipal.org	603-230-3323	A Lobbyist	NH Municipal Association	Oppose	Yes	4/12/2021 5:47 PM
Mennella, Alexandra	amennella1@protonmail.com	16466109858	A Member of the Public	Myself	Support	No	4/12/2021 9:19 PM
See, Alvin	absee@4Liberty.net	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 11:34 PM
Walbridge, Tracy	tracywalbridge@gmail.com	603.312.1283	A Member of the Public	Myself	Support	No	4/13/2021 9:41 AM
Sumner, Deborah	dsumner@myfairpoint.net	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 11:54 AM
Ryll, Brian	brian@pffnh.org	603-223-3304	A Lobbyist	Professional Fire Fighters of NH	Oppose	No	4/13/2021 9:59 AM
Ortolano, Laurie	laurieortolano@gmail.com	603-930-2853	A Member of the Public	Myself	Support	No	4/18/2021 7:08 PM
Raff, Alan	araff9@gmail.com	603.714.0258	A Lobbyist	New Hampshire AFL-CIO	Oppose	No	4/12/2021 10:45 AM
Sapienza, Tony	tsapienza@ibew1837.org	603.470.4239	A Member of the Public	Myself	Oppose	No	4/12/2021 12:30 PM
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No	4/12/2021 12:31 PM
Spechuilli, David	ports976@gmail.com	603.944.2603	A Member of the Public	Myself	Oppose	No	4/12/2021 12:37 PM
DellIsols, David	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/12/2021 1:01 PM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 3:41 AM
Gagnon, Brett	BrettProtectingNH@Gmail.com	Not Given	An Elected Official	Myself	Support	No	4/12/2021 2:01 PM

Senate Remote Testify

Judiciary Committee Testify List for Bill HB108 on 2021-05-10

Support: 76 Oppose: 5 Neutral: 1 Total to Testify: 10

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Boldt, Chris	cboldt@dtclawyers.com	603.969.9237	A Member of the Public	Myself - Amendment 1251s	Support	Yes	5/7/2021 3:26 PM
Mullins, Thomas	tmullins@ci.keene.nh.us	603.357.9806	A Member of the Public	City of Keene NH - Amendment 1251-s	Support	Yes	5/7/2021 3:30 PM
KennedyCity Attorney, Jim	jkennedy@concordnh.gov	603-225-8505	A Member of the Public	City of Concord, NH	Support	Yes	5/7/2021 11:22 AM
Byrnes, Margaret	mbyrnes@nhmunicipal.org	603.224.7447	A Lobbyist	NHMA-Amendment 1251s	Support	Yes	5/7/2021 11:56 AM
Ortolano, Laurie	laurieortolano@gmail.com	603-930-2853	A Member of the Public	Myself	Oppose	Yes	5/8/2021 2:51 PM
McCarley, Caroline	cmccarley511@gmail.com	603.973.2391	An Elected Official	Myself, Amendment 1251s	Support	Yes	5/10/2021 7:21 AM
Green, Donna	donnagre@gmail.com	617.834.6556	A Member of the Public	School District Governance Association of NH	Support	Yes	5/9/2021 10:17 PM
Taylor, David K.	dktaylor@f5.com	603 969-7756	A Member of the Public	Myself	Support	Yes	5/10/2021 10:03 AM
Broadhead, Matthew	matthew.t.broadhead@doj.nh.gov	603.271.1392	State Agency Staff	NH DOJ	Support	Yes	5/10/2021 10:11 AM
Ulery, Jordan	Repulery@comcast.net	603.231.7867	An Elected Official	Myself	Support	Yes	5/10/2021 1:58 PM
Deschaine, P. R.	p.deschaine@comcast.net	603.778.3945	A Member of the Public	Myself--Amendment 1251s	Support	No	5/10/2021 2:32 PM
Joyal, Jr., J Michael	m.joyal@dover.nh.gov	603.516.6023	A Member of the Public	City of Dover NH Amendment 1251s	Support	No	5/10/2021 2:57 PM
AVLAS, JOHN	Not Given	Not Given	A Member of the Public	Myself	Neutral	No	5/10/2021 3:42 PM
Turner, Margaret	Not Given	Not Given	A Member of the Public	Town of Waterville Valley - Amendment 1251S	Support	No	5/23/2021 8:35 PM
Bolton, Naomi	Not Given	Not Given	A Member of the Public	Myself	Support	No	5/10/2021 7:06 AM
Smith, Bruce	surrysmith1953@gmail.com	16033524572	A Member of the Public	Surry - Amendment 1251s	Support	No	5/10/2021 10:09 AM
Kreider, Hal	nhhalk@metrocast.net	603 315 2721	An Elected Official	Town of Northwood Amendment 1251S	Support	No	5/10/2021 10:10 AM
Curran, Sally	lcoonhound13@gmail.com	603.487.3412	A Member of the Public	Myself	Oppose	No	5/9/2021 5:06 PM
Mennella, Alexandra	am88@fastmail.com	646.610.9858	A Member of the Public	Myself	Support	No	5/9/2021 10:49 PM
Bolton, Steven	boltons@nashuanh.gov	603.891.1766	A Member of the Public	Nashua Supporting Amendment 1251s	Support	No	5/10/2021 11:25 AM
Peter, Malia	Not Given	Not Given	A Member of the Public	Town of Conway-Amendment 1251s	Support	No	5/10/2021 11:47 AM
Beaudin, Jeanne	townadministrator@belmontnh.org	603.267.8300	A Member of the Public	Belmont Amendment 1251S	Support	No	5/10/2021 7:23 AM
Gibbs, Elizabeth	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	5/10/2021 7:59 AM

McNamara, Timothy	tim.mcnamara@lebanonnh.gov	(603) 667-10	An Elected Official	City of Lebanon, Amendment 1251s	Support	No	5/10/2021 8:12 AM
Pschirrer, Peggy	Not Given	Not Given	An Elected Official	Walpole	Support	No	5/10/2021 8:22 AM
Tully, Michael	mtully@northhampton-nh.gov	Not Given	A Member of the Public	North Hampton - Amendment 1251s	Support	No	5/10/2021 8:32 AM
Sterndale, Chris	csterndale@nottingham-nh.gov	603.679.5022	A Member of the Public	Town of Nottingham - Amendment 1251s	Support	No	5/10/2021 8:35 AM
Medeiros, Jesse	Bgtrck458@gmail.com	603.969.6302	A Member of the Public	Myself	Support	No	5/10/2021 8:46 AM
Fillmore, Christine	cfillmore@dwmlaw.com	Not Given	A Member of the Public	City of Lebanon Amendment 1251s	Support	No	5/10/2021 8:58 AM
Upton, Matthew	mupton@dwmlaw.com	Not Given	A Member of the Public	Myself	Support	No	5/10/2021 9:35 AM
Nesbitt, Caroline	Not Given	Not Given	An Elected Official	Town Of Sandwich Amendment 1251s	Support	No	5/10/2021 9:48 AM
Cressman, David	cressmandg@atkinson-nh.gov	603.362.1060	A Member of the Public	Atkinson Amendment 1251s	Support	No	5/10/2021 10:33 AM
Karen, Montgomery	Not Given	Not Given	An Elected Official	Town of Barnstead - Amendment 1251s	Support	No	5/10/2021 10:33 AM
Becksted, Mayor, Rick	Not Given	Not Given	An Elected Official	Portsmouth Amendment 1251S	Support	No	5/10/2021 10:45 AM
Levesque, Joe	joelevesque54@gmail.com	978.257.5891	An Elected Official	Town of Alstead - amendment 1251s	Support	No	5/10/2021 11:10 AM
Jodoin, David	djodoin@pembroke-nh.com	603.485.4747	A Member of the Public	Town of Pembroke	Support	No	5/10/2021 11:11 AM
Deschaine, Paul	p.deschaine@comcast.net	603.778.3945	A Member of the Public	Myself	Support	No	5/10/2021 2:24 PM
Medeiros, Kate	Not Given	Not Given	A Member of the Public	Myself	Support	No	5/10/2021 12:03 PM
Medeiros, Jeffrey	pasnclaws@aol.com	603.422.4566	A Member of the Public	Myself	Support	No	5/10/2021 12:36 PM
Fournier, Steve	sfournier@newmarketnh.gov	603.659.3617	A Member of the Public	Town of Newmarket NH supporting Amendment 1251s	Support	No	5/10/2021 12:41 PM
Lovett, Charlene	clovett.ccc@gmail.com	Not Given	An Elected Official	Claremont Amendment 2021-1251s	Support	No	5/10/2021 1:29 PM
Roman, Keriann	kroman@dwmlaw.com	Not Given	A Member of the Public	Amendment 1251s. Drummond Woodsum attorneys collectively representing over 90 municipalities on general and specialized matters and over 100 school districts on general and special education matters.	Support	No	5/10/2021 1:29 PM
Cass, Neal	ncass603@gmail.com	603.303.0040	A Member of the Public	Town of Hopkinton Amendment 1251s	Support	No	5/10/2021 1:34 PM
Pike, Jamie	selectmensoffice@francetownnh.org	Not Given	A Member of the Public	Myself	Support	No	5/10/2021 1:38 PM
Horn, Todd	toddhorn630@gmail.com	603 284-7220	An Elected Official	Sandwich NH amendment 1251s	Support	No	5/10/2021 1:43 PM
Hiland, Rick	rhiland@myfairpoint.net	603-447-4833	A Member of the Public	Myself - Albany - I support "Amendment 1251s"	Support	No	5/7/2021 4:06 PM
Park, Carina	toc.cp@camptonnh.org	603-726-3223	A Member of the Public	Town of Campton-Amendment 1251s	Support	No	5/7/2021 4:09 PM
Slaughter, Cayla	c.slaughter@camptonnhpd.org	603.726.8874	State Agency Staff	The Town of Campton - Amendment 1251s	Support	No	5/7/2021 4:10 PM
Connors, Ted	Not Given	Not Given	An Elected Official	Town of Newington- Amendment 1251s	Support	No	5/7/2021 4:16 PM

Decoteau, Mark	Wvmanager@watervillevalley.org	Not Given	A Member of the Public	Myself Amendment 1251s	Support	No	5/8/2021 10:50 AM
Wyatt, Joshua	j.wyatt@doover.nh.gov	603-516-6520	A Member of the Public	City of Dover, as City Attorney, on Amendment 1251s	Support	No	5/8/2021 8:36 AM
michaud, jim	jambromichaud@hotmail.com	603.540.6689	A Member of the Public	Amendment 1251s	Support	No	5/8/2021 7:09 AM
Wuelper, Rep Kurt	kurt.wuelper@leg.state.nh.us	603.970.0783	An Elected Official	Strafford 3	Support	No	5/9/2021 9:30 AM
Forrester, Jeanie	jlf@worldpath.net	603.380.2523	An Elected Official	Meredith - Amendment 1251s	Support	No	5/8/2021 4:06 PM
Neil, Johnson	Not Given	Not Given	An Elected Official	Town of Farmington-Amendment 1251s	Support	No	5/7/2021 2:15 PM
Gearreald, Mark	mgearreald@hamptonnh.gov	603 929 5816	A Member of the Public	Town of Hampton Amendment 1251s	Support	No	5/7/2021 2:15 PM
Devine, Joe	josephdevine.henniker@tds.net	603.428.3221	A Member of the Public	Town of Henniker-Amendment 1251s	Support	No	5/7/2021 2:19 PM
Brown, Paul	pbrown@newportnh.gov	16038631360	A Member of the Public	Town of Newport Amendment 1251s	Support	No	5/7/2021 2:32 PM
Martin, Kevin	rkevinmartin@gmail.com	917.613.5328	A Member of the Public	Myself	Oppose	No	5/7/2021 2:34 PM
Sawyer, Rick	rsawyer@bedfordnh.org	603.792.1300	A Member of the Public	Town of Bedford, Amendment 1251s	Support	No	5/7/2021 2:34 PM
Griffin, Julia	julia.griffin@hanovernh.org	16036430701	A Member of the Public	Town of Hanover Amendment 1251s	Support	No	5/7/2021 2:35 PM
Nashawaty, Donna	purplelady.nashawaty@gmail.com	603.630.2373	A Member of the Public	Town of Sunapee "amendment 1251s"	Support	No	5/7/2021 2:36 PM
Seymour, Tom	taseymour11@icloud.com	603-934-9334	A Member of the Public	Hill, NH - Amendment 1251s	Support	No	5/7/2021 3:20 PM
Robichaud, Ken	townadmin@northfieldnh.org	603.507.9150	A Member of the Public	Myself	Oppose	No	5/7/2021 1:29 PM
Caron, David	dcaron@derrynh.org	Not Given	A Member of the Public	Town of Derry	Support	No	5/7/2021 1:44 PM
LeBlanc, Judith	jleblanc@gorhamnh.org	Not Given	An Elected Official	Town of Gorham Amendment 1251s	Support	No	5/7/2021 1:52 PM
Morris, Ed	citymanager@claremontnh.com	603.542.7002	A Member of the Public	City of Claremont NH	Support	No	5/7/2021 1:52 PM
Warren, Phillip	Not Given	Not Given	A Member of the Public	Town of Meredith Amendment 1251s	Support	No	5/7/2021 1:56 PM
Shannon, John	Not Given	Not Given	A Member of the Public	Myself	Support	No	5/7/2021 2:01 PM
Herman, William	Not Given	Not Given	A Member of the Public	Town of Auburn - Amendment 1251s	Support	No	5/7/2021 2:02 PM
Capone, Michael	administrator@holderness-nh.gov	16039682145	A Member of the Public	Town of Holderness- Amendment 1251S	Support	No	5/7/2021 2:04 PM
BUONO, LAURA	Laurag36@aol.com	603.944.1710	A Member of the Public	Amendment 1251s	Support	No	5/7/2021 2:05 PM
Branley, Michael	Not Given	Not Given	A Member of the Public	Town of Swnzey; Amendment 1251s	Support	No	5/7/2021 2:06 PM
Fox, Elizabeth	efox@ci.keene.nh.us	603.357.9858	A Member of the Public	Myself Amendment1251S	Support	No	5/7/2021 4:23 PM
Drabik, Lisa	ldrabik@londonderrynh.org	603.432.1100	A Member of the Public	Town of Londonderry--Amendment 1251s	Support	No	5/7/2021 4:28 PM
Doda, Debra	ddoda@chesternh.org	603-887-3636	A Member of the Public	Town of Chester, NH - Amendment 1251s	Support	No	5/7/2021 1:08 PM
Mulholland, Shaun	shaun.mulholland@lebanonnh.gov	603.448.4220	A Member of the Public	City of Lebanon Amendment 1251s	Support	No	5/7/2021 1:09 PM
LeFevre, David	dlefevre@tarbellpa.com	603 226 3900	A Member of the Public	Town of Hudson Amendment 1251s	Support	No	5/7/2021 2:49 PM
Connors, Margaret	connorsmargo@gmail.com	Not Given	An Elected Official	Sugar Hill Amendment 1251s	Support	No	5/7/2021 7:56 PM
Hambleton, Karen	administrator@bradfordnh.org	Not Given	A Member of the Public	Bradford - Amendment 1251s	Support	No	5/7/2021 1:18 PM
Basora, Danielle	danielle.basora@goffstownnh.gov	Not Given	A Member of the Public	Town of Goffstown-Amendment	Support	No	5/7/2021 1:19 PM

Nowell, Joy

joy@newburynh.org

Not Given

An Elected Official

1251s

Town of Newbury amendment 1251s Support No

5/8/2021 11:42 AM

Testimony

Exhibit #1

**Village District of Eastman
Commissioners' Meeting—Village District of Eastman Office
Jan. 19, 2012
Non-Public Session Draft Minutes**

CLERK'S COMPENSATION

Clerk McClory said she will not be seeking re-election. She said she has concerns about the commissioners having Office Manager Amy Lewis take minutes during their meetings while the office is open.

Commissioners said phone calls can go to voice mail or field operators at the meeting can answer the calls. As for customers coming in, the meeting can be recessed or the field operators can handle them.

The duties of the clerk were reviewed. It was noted that the clerk does not need to attend budget hearings. The office manager will take minutes at the hearings as well.

Commissioner Fairweather noted that the district in 2009 approved compensating the district clerk \$1,200, for which the commissioners included taking minutes at all district meetings and hearings. He said the district needs to have an article to eliminate the compensation.

Clerk McClory said she thinks they should have some amount for compensation since there is some time involved in completing the clerk's duties. She suggested up to \$500 with perhaps \$100 for the annual meeting and compensation for other duties as needed, such as special meetings.

Commissioner Fairweather said he thinks it will be cleaner to have a warrant article to eliminate the \$1,200 compensation and another to pay up to \$500 per year for compensation of duties performed in compliance with state regulations by the commissioners.

EASTMAN SEWER COMPANY

Eastman Sewer Company has asked the VDE to consider taking over the operation of the sewer company. District Manager Weber said he spoke with Joe Desmore, who is the sewer company's field operator, and Commissioner Fairweather said he spoke with sewer Board President Brad Moses.

The ESC is currently under control of the PUC. It is working to disband as a "for profit" company and become a non-profit utility. The request to the VDE was made in consideration of economies of scale to operate a water district and sewer district from the same office.

Commissioners said they are interested in learning more. They agreed to set up a meeting with ESC officials to discuss the issue further. They will request a meeting for 8 a.m. Tuesday, Feb. 7.

CREDIT FOR EFFICIENT FIXTURES

District Manager Weber asked if commissioners would consider giving credit to customers for replacing old fixtures with efficient equipment. Commissioners said the users will get the benefit of saving money on their bills by using less water.

Commissioners voted to return to public session at 10:27 a.m.

Respectfully submitted,

Lorie McClory

Jennifer Horgan

From: dsaad <dsaad@infonetics-usa.com>
Sent: Monday, April 12, 2021 10:53 AM
To: Jennifer Horgan
Subject: HB 108 Testimony in Support of bill

Date: April 12, 2021

To: Honorable Members of the Senate Judiciary Committee

Re: HB 108

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

I ask you to support this bill.

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

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

The circumstances which support the sealing of minutes at one point in time, will, as time passes, eventually no longer apply. So how does a public body follow the letter of the law and determine when the circumstances no longer apply? In practice, many public bodies do not follow the letter of law. Often, the sealing of minutes is done indefinitely because there is no easy way for public bodies to know which minutes have been sealed and for what reasons.

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

The benefits of having a list of sealed minutes are:

- Reduce the administrative burden on public bodies to follow the existing law, which is to periodically review all previously sealed minutes to determine if the original circumstances for sealing the minutes still apply. It is much easier to maintain a list on an ongoing basis than to go back and compile the list at a later date in order to comply with the law.
- Reduce the administrative burden on public bodies to respond to Right to Requests made for minutes related to topics which were discussed during nonpublic sessions and previously sealed.

- Ensure a more open government by having a list which tracks, for everyone to see, when discussions took place in which the minutes of those discussions remain hidden from public disclosure.

HB108 aids the public body in fulfilling their lawful obligation to withhold information only "until, in the opinion of a majority of members, the aforesaid circumstances no longer apply".

NEW HAMPSHIRE BAR ASSOCIATION

Equal Justice Under Law



2 Pillsbury Street, Suite 300, Concord, New Hampshire 03301-3502
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May 25, 2021

Senator Sharon Carson
State House, Room 106
107 North Main Street
Concord, NH 03301


VIA Electronic Mail

Dear Senator Carson,

On May 24, 2021, the Board of Governors of the New Hampshire Bar Association met with a quorum of voting members present. By a majority vote, the Board directed the President or President-Elect of the Association to notify the Legislature by letter that the New Hampshire Bar Association supports Senate Amendment 2121-1251s to House Bill 108. That amendment adds to the exemptions from the Right to Know in N.H. R.S.A 91-A:5, "Records protected under attorney client-privilege or the attorney work product doctrine."

The New Hampshire Bar Association supports this legislation and recommends that it be passed into law.

Sincerely,


Richard Guerriero
2021-2022 President

CC: Bill Gannon
Jay Kahn
Rebecca Whitley
Harold French

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Director of Professional Development

LYNNE G. SABEAN, ESQ.

Director of Marketing, Communications &

Member Outreach

HB 108
Senate Judiciary Committee
May 11, 2021

Honorable Members of the Senate Judiciary Committee,

I strongly oppose amendment 2021-1251s to HB 108 and I ask you to vote against this amendment.

My name is David K. Taylor and I live in Durham. I was on the Oyster River School Board for 12 years and have served on their Long Range Planning Committee for more than 20 years. I have decades of experience with the Right-to-Know Law.

I find this amendment unnecessary given the history of cases protecting these privileges and see the Hampstead case as extraordinary. I also think a per se exemption may be seen as an unreasonable restriction on our Constitutional Right to Know.

This amendment would add a new paragraph as RSA 91-A:5, XII, explicitly exempting “[r]ecords protected under the attorney-client privilege or the attorney work product doctrine” from public disclosure under the Right-to-Know Law.

I understand this amendment is in response to the recent N.H. Supreme Court decision in Hampstead v. SAU 55, Doc. No. 2020-0268 (April 20, 2021). That decision affirmed the well-established ruling that records protected under the attorney-client privileged or attorney work product are exempt under RSA 91-A:5, IV as “confidential” records. So, RSA 91-A:5 does not need the new paragraph to make these records exempt.

However, consistent with other recent cases, the Hampstead Court also confirmed that confidential records are not per se exempt, but must be balanced against the public interest. The amendment is an attempt to make these records per se exempt.

First, there is no need for these records to be per se exempt because the courts would strongly favor balancing these records to keep them withheld from disclosure.

I assume that all the judges who make up the courts in our state started out as practicing attorneys who implemented the attorney-client privilege and attorney work product doctrine as part of their daily practice for all of their clients. They know these exemptions intimately and fully appreciate their importance to their work.

I think this is clearly illustrated by the first case under RSA 91-A to consider a privilege related to attorneys, Society for Protection of N.H. Forests v. Water Supply & Pollution Control Comm'n, 115 N.H. 192 (1975). This case was only a few years after RSA 91-A was enacted in 1967. At the time, RSA 91-A did not contain provision RSA 91-A:2, I(b) exempting “[c]onsultation with legal counsel.” (This provision was added in 1987. See Laws 1986, 83.) In spite of the fact there was no explicit provision, the N.H. Supreme Court ruled these meetings may be closed to the public. “Absent specific legislative intent to plainly and unmistakably

deprive the commission of the benefits of advice of counsel, the commission's receipt of legal advice cannot be deemed a violation of RSA 91-A:3." 115 N.H. at 194 (quotations omitted).

Further, with the possible exceptions of Hampstead and Ettinger, in effectively every other case, the court has ruled that records under these privileges are subject to be withheld from public disclosure: ATV Watch v. N.H. Dep't. of Transp., 161 N.H. 746 (2011) (affirmed records shared between state agency lawyers may be withheld); Hampton Police Ass'n v. Town of Hampton, 162 N.H. 7 (2011) (affirmed attorney-client privileged portions of bills may be redacted); Ettinger v. Town of Madison Planning Bd., 162 N.H. 785 (2011) (non-meetings not allowed for strictly written communications from attorneys); Profl Firefighters of N.H. v. Local Gov. Center, 163 N.H. 613 (2012) (meeting with attorney in a public place with no public attendees does not destroy attorney-client privilege); N.H. Right to Life v. N.H. Charitable Trusts Unit, 169 N.H. 95 (2016) (entire work product document was withheld from disclosure). Even in the Hampstead case, the court remanded the case to determine whether redactions were warranted to protect these privileges.

The Hampstead case also appears to be an exceptional case. Twice the Hampstead Court quoted the lower court that the SAU board chair made public claims about the report without allowing the full board to read the report. To me this raises the question of whether the SAU board chair was being disingenuous in their claims about the report. This factor weighing in favor of public disclosure could have been easily avoided by making no such public claims.

On balance, these cases show the courts give great weight to the attorney-client privilege and attorney work product doctrine already. It is not necessary to add a new statutory provision to cover an exceptional case.

Finally, it is worth noting that the courts are generally moving away from reading provisions of RSA 91-A as per se exemptions. It is extraordinary that the New Hampshire Constitution also enshrines the Right to Know in Part I, Article 8 as "the public's right of access to ... records shall not be unreasonably restricted." Given this, it is likely the amendment language may also be read not as a per se exemption, but one that requires balancing to avoid an unreasonable restriction. That is, a per se exemption in any form may be unconstitutional. See, Associated Press v. State, 153 N.H. 120, 139 (2005) (RSA 458:15-b, III ruled unconstitutional, among other reasons, because it "does not permit the court to make the individualized determinations required by the State Constitution").

Because the courts have clearly shown they strongly favor withholding records subject to the attorney-client privilege or attorney work product doctrine, the balancing test will still protect these records except in extraordinary cases like Hampstead. And, given our Constitutional Right to Know, a per se exemption may be unconstitutional. For these reasons, I ask you to oppose this amendment.

Thank you,
David K. Taylor
Durham, NH

HB 108
Senate Judiciary Committee
May 11, 2021

Honorable Members of the Senate Judiciary Committee,

I support amendment 2021-1144s to HB 108 and I ask you to vote in favor of this amendment.

My name is David K. Taylor and I live in Durham. I was on the Oyster River School Board for 12 years and have served on their Long Range Planning Committee for more than 20 years. I have decades of experience with the Right-to-Know Law. I have also been a member of Right to Know NH for several years and as a member I have worked with people across this state to help them enforce their Right to Know.

This amendment effectively adds one sentence to the end of this bill: "This list shall be maintained in the same location as the public records of the public body."

I support this amendment because my experience is that many public bodies store their sealed minutes in locked file cabinets. Only a very limited number of people can unlock these file cabinets. That is good. But, putting the public list of sealed minutes in these locked file cabinets could make it harder to gain access to them. Making sure these public lists are kept in a public place makes public access a bit easier.

Let me also take this opportunity to express my support for all the language in this amendment, including the original bill. Through my experience as a board member and helping with cases across this state I have seen a wide disparity of how non-public meeting minutes are handled. A public list of sealed minutes will provide a useful tool for boards to make sure they fulfill their statutory duty to unseal minutes when appropriate. It will also make it easier to hold accountable those public bodies who abuse the power to seal minutes when they should not be.

During my many years on the Oyster River School Board, we would occasionally, but not frequently, seal non-public minutes. The vast majority of these minutes were not sealed. However, other than those times when we knew the minutes should be unsealed soon after the meeting, I don't remember a single instance during my long tenure when we went back and unsealed old minutes. Often, that locked file cabinet is a just a black hole.

In other places I know, almost all non-public meeting minutes are sealed. It appears reflexive. And in those few cases where such minutes have been challenged and made public, we know there are sealed non-public minutes that should not have been sealed and indeed they may show violations of RSA 91-A that occurred during the meetings. See, e.g., the attached Village District of Eastman Commissioners' Meeting Minutes from January 19, 2012 (discussing generally the "duties of the clerk" is not a subject allowed in non-public session). These minutes should not have been sealed.

I understand some people fear that HB 108 is a slippery slope leading to overwhelming burden on public bodies. On its face, the burden of keeping this list is minimal. But, every change to

RSA 91-A requires the full legislative process through committees and floor action in both chambers and then approval from the governor. You are all well aware of these details. This slow deliberative process is anything but slippery. There is always strong opposition to even the slightest burden.

Because sealed non-public meeting minutes are not being properly unsealed, and in some cases sealing minutes is being abused, please support this amendment and HB 108 to give this tool to public bodies and the public at large to increase transparency into this black hole.

Thank you,
David K. Taylor
Durham, NH

Jennifer Horgan

From: dsaad <dsaad@infonetics-usa.com>
Sent: Monday, May 10, 2021 5:45 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 108 Please Oppose Amendment 2021-1250s

To: Honorable Members of the Senate Judiciary Committee

Re: HB 108

My name is David Saad. I live in Rumney NH. I am also the President of Right to Know New Hampshire (RTKNH). I ask you to oppose amendment 2021-1250s.

Part I, Article 8 of the New Hampshire Constitution and the Right-to-Know law are the fundamental prerequisites for a self-governing people. As the legislature made clear in the preamble to the Right-to-Know law: "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." The Right-to-Know Law helps further our State Constitutional requirement that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted."

To ensure the 'greatest possible access', the determination of whether certain records should be exempt often comes down to a balance between privacy interests and a public's interest in disclosure. The courts use the following 3 steps to evaluate whether disclosure of confidential information is warranted:

1. Is there a privacy interest at stake that would be invaded by the disclosure?
2. Would disclosure inform the public about the conduct and activities of its government?
3. Balance the public interest in disclosure against the government's interest in non-disclosure and the privacy interest in non-disclosure.

A per se exemption for records protected under attorney-client privilege or attorney work product, as this amendment states, will unnecessarily inflate the reasons for confidentiality for the purpose of deflating a citizen's right to know. For attorney-Client privilege and attorney work product, ultimately, the client are the citizens. The citizens, and not the public body members, pay the legal bill. Ultimately, the citizens benefit from good legal advice or suffer from poor legal advice. In many cases, ultimately, the public's interest in disclosure will outweigh the government's interest in non-disclosure.

How does a citizen measure the actions public officials take based on legal advice received if they are never allowed to see the legal advice given?

The Supreme Court's ruling in Hampstead School Board v. SAU #55, requiring a balancing test instead of a per se exemption for attorney work product records is the reasonable way to ensure the public's right of access to these governmental records is not unreasonably restricted.

Please oppose this amendment.

David Saad

President

Right To Know New Hampshire (RTKNH)

Promoting Open Government

Jennifer Horgan

From: Sharon Carson
Sent: Monday, May 24, 2021 3:42 PM
To: Jennifer Horgan
Subject: FW: HB 108 Amendment 1251s and HB 307

FYI

From: Julia Griffin <julia.griffin@hanovernh.org>
Sent: Monday, May 24, 2021 3:16 PM
To: Sharon Carson <Sharon.Carson@leg.state.nh.us>; William Gannon <William.Gannon@leg.state.nh.us>; Jay Kahn <Jay.Kahn@leg.state.nh.us>; Becky Whitley <Becky.Whitley@leg.state.nh.us>; Harold French <Harold.French@leg.state.nh.us>; Suzanne Prentiss <Suzanne.Prentiss@leg.state.nh.us>
Subject: HB 108 Amendment 1251s and HB 307

Dear Senate Judiciary Committee Members and Senator Prentiss:

On behalf of the Town of Hanover, I would like to urge the Senate Judiciary Committee to take the following actions tomorrow during your Executive Session:

- Hanover urges you to support Amendment 1251s to HB 108 which would overturn the quite surprising recent ruling by the NH Supreme Court that confidential communications between a municipality (and other government entities in NH) and its attorney would be subject to disclosure under the Right-to-Know Law. In my 37 years as a municipal manager, this has to be one of the most bizarre and disconcerting court rulings which would make it virtually impossible for municipal managers in NH to do their job. From employment law matters to criminal and civil legal matters to interpretations of state statutes, interpretations of local ordinances and regulations, local government administrators consult with legal counsel on a daily basis. We do so to ensure that we are accurately interpreting our role, our authority and our ability to move forward on issues that confront us. That we cannot consult outside counsel for their advice without subjecting any written communication to 91-A is confounding, relegating all we do to telephone conversations. Please reverse this impact by supporting the amendment as proposed.
- Hanover Police Chief Charlie Dennis submitted testimony to the Judiciary Committee outlining the Town's many concerns about HB 307. I do not want to repeat his testimony. We urge you to kill HB 307. Allow local communities to make the best decisions related to managing their own public properties given the unique circumstances surrounding each location and an individual community's collective preference.

Thank-you for considering these two requests.

Julia N. Griffin
Town Manager
PO Box 483
Hanover, NH 03755
(603) 643-0701
Julia.Griffin@hanovernh.org

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Jennifer Horgan

From: Deborah Sumner <dsumner@myfairpoint.net>
Sent: Monday, May 10, 2021 11:24 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Cc: RightToKnow NH
Subject: Opposition to Amendment #1251, HB 108

Dear Honorable Members of the Senate Judiciary Committee,

I am a member of Right to Know NH and oppose this non-germane amendment.

I will spare you details of my particular situation re: the Jaffrey town attorney's advice to town meeting. Briefly, I told town meeting the truth and interpretation of law on a particular issue as both the Secretary of State and Attorney General had told me. But HE made up a different interpretation of law to present to Town Meeting voters.

The town attorney and selectboard refused to tell me whether he had consulted with either the SoS or AG before writing his opinion; they refused to publicly correct the information or schedule another vote on that particular issue. I no longer attend town meeting because I don't trust anything the attorney or town officials tell me.

And yes, I did ask for the Attorney General's help; he didn't and I didn't have the resources to hire an attorney. The Attorney Professional Conduct Committee didn't help either.

I have two particular problems with this non-germane amendment.

1. In my view, it should have been presented as a separate bill so more people who are tracking transparency legislation would know this was being considered and have a chance to weigh in.
2. If we (government and public) are to learn how to work more cooperatively and establish a basis of mutual trust and respect, this exemption from RSA 91-A will not move us in that direction. It will do the opposite.

PLEASE do not include this bad amendment in the bill.

Thank you.

Deborah Sumner
474A Great Rd.
Jaffrey, NH 03452
603-532-8010

Jennifer Horgan

From: Martin, Paul A <pamartin@iastate.edu>
Sent: Saturday, May 8, 2021 5:51 PM
To: Laurie Ortolano; Jennifer Horgan
Cc: RightToKnow NH; Cindy Rosenwald; Tom Lanzara
Subject: RE: HB108-FN-LOCAL

All RTK requests in Rochester, must also go through the City Attorney.

From: rtknh@googlegroups.com <rtknh@googlegroups.com> **On Behalf Of** Laurie Ortolano
Sent: Saturday, May 08, 2021 3:22 PM
To: Jennifer.horgan@leg.state.nh.us
Cc: RightToKnow NH <rtknh@googlegroups.com>; Cindy Rosenwald <Cindy.Rosenwald@leg.state.nh.us>; Tom Lanzara <tomlanzara@gmail.com>
Subject: HB108-FN-LOCAL

I am not in support of the Senate changes to HB108 to overturn the attorney-client privilege balance test. I think Nashua is abusing the attorney-client privilege claim and it is preventing transparent open records.

When the City decided to put the RTK coordinator in the legal office, I was opposed. I thought that an Attorney would not work productively with the public and I was correct. There are a lot of denials.

Additionally, All RTK's are being sent to the legal office for responses and are most likely being discussed with a Board in non-public. There is no way of knowing if these requests are discussed in meetings. The City is now saying that these communications are now all attorney-client privilege. Who exactly is the client?

In Nashua, our Board of Assessor has ramped up the use of non-public sessions to address matters. In 2017, the Board held 16 meetings with no non-public session; In 2018, the Board held 20 meetings, with 1 non-public session called. In 2019, the Board held 19 meetings with 11 non-public sessions required and in 2020, the Board held 20 meetings with 18 non-public sessions required. Most of these non-public sessions are for legal advice. As public interest grew in the assessing area, the Board needed a lot more private time.

As it stands, the Board is signing off on property disputes but not disclosing the votes into the public records. They are in direct violation of RSA 91-A, but I believe there is other legal advice going on in there and a documented record of this legal advice is important.

As another example, I emailed the Mayor's Office to find out if they had the phone number for the CFO. His phone number was not on the website. My question was forwarded to the legal office, where it underwent an 5 step process which resulted in a letter from a City attorney informing me

that they were under no obligation to answer the question, but that they would provide the phone number.

If you were to ask for the RTK sent to the legal office for the CFO's phone number, the request would be denied as attorney-client privilege. This is absurd. And most all the other requests being forwarded to the legal department and discussed in non-public should be public because the legal office is only performing a response duty and not an advisement duty.

The balance test is necessary so City's don't abuse Attorney-Client privilege. When the client is any citizen, the balance test will provide the necessary transparency.

Thank you for reading this rather long email.

--

You received this message because you are subscribed to the Google Groups "RTKNH" group.

To unsubscribe from this group and stop receiving emails from it, send an email to

rtknh+unsubscribe@googlegroups.com.

To view this discussion on the web visit

https://groups.google.com/d/msgid/rtknh/CAHjVgXNyz8eycNsKVsqV6eYXpScU_OYiE1p%3DpaqOjri-VXQ5rw%40mail.gmail.com.



749 E. Industrial Park Dr. Manchester, NH 03109 / www.pressnh.org / info@pressnh.org

April 13, 2021

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

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

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

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

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

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

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

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

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

This legislation does not place an unfair burden of compliance on public officials. It would require minimal effort to compose and maintain the required list. Even the New Hampshire Municipal Association testified this legislation does not create an onerous demand. We do not believe it is equitable to foist the "slippery slope" argument when seeking to block means to facilitate the people's right to know the actions of their elected officials.

Finally, it is simply not a sufficient argument to suggest that this legislation is superfluous because the records of private sessions are currently buried in scattered minutes of meetings months and even years old. The public should not be forced to scour for needles in haystacks just to alieve public bodies from the responsibility of keeping track of their actions, especially those conducted in private.

The New Hampshire Press Association asks the Judiciary Committee to recommend House Bill 108 ought to pass.

The New Hampshire Press Association

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Sarah Pearson - Features Editor, Concord Monitor

Carol Robidoux - Publisher/Editor, Manchester Ink Link

Jennifer Horgan

From: hal kreider <nhhalk@metrocast.net>
Sent: Monday, May 10, 2021 10:18 AM
To: Jennifer Horgan
Subject: In support of Amendment 2021-1251s to HB 108

I support the title amendment. We need to be able to maintain confidential communications between the Town and legal counsel. To do otherwise would be counterproductive.

Best regards,

Hal Kreider, Northwood SelectBoard Chair

19 Bell Cove Road
Northwood, NH 03261
Phone: 603 315 2721

Jennifer Horgan

From: Sharon Carson
Sent: Tuesday, May 11, 2021 12:01 PM
To: Jennifer Horgan
Subject: FW: Amendment #1251s, to HB 108-FN-LOCAL

Jen,

Did not see your name on this one, so I am passing it along

Deb

From: Kennedy, James <JKennedy@ConcordNH.gov>
Sent: Tuesday, May 11, 2021 11:36 AM
To: Sharon Carson <Sharon.Carson@leg.state.nh.us>; William Gannon <William.Gannon@leg.state.nh.us>; Becky Whitley <Becky.Whitley@leg.state.nh.us>; Harold French <Harold.French@leg.state.nh.us>; Jay Kahn <Jay.Kahn@leg.state.nh.us>
Subject: Amendment #1251s, to HB 108-FN-LOCAL

Honorable Chair and Members of the Senate Judiciary Committee,

This follows the testimony yesterday regarding 1251s, the Senate amendment to HB 108-FN-LOCAL, relative to exempting the attorney-client privilege and attorney work product from disclosure under RSA ch. 91-A, New Hampshire's Right-to-Know Law.

As set forth in the cities' (Concord, Dover, Keene, Manchester, Nashua, Portsmouth and Rochester) motion for reconsideration to the New Hampshire Supreme Court in *Hampstead School Board, et al. v. School Administrative Unit No. 55*, No. 2020-0269 (Slip Op. April 20, 2021), the 1251s amendment as proposed, is consistent with the plain language of RSA ch. 91-A as currently written.

RSA 91-A:2, I(b) expressly exempts "consultation with legal counsel" from the meeting requirements of the Right-to-Know Law. RSA 91-A:2, I(b) demonstrates that the legislature intended to safeguard the attorney-client privilege and attorney work product for government entities.

In addition, RSA 91-A:3, II(I) expressly authorizes a public body to meet in non-public session for “[c]onsideration of legal advice provided by legal counsel, *either in writing* or orally, to one or more members of the public body, even where legal counsel is not present.” In enacting this law, the Committee of Conference on House Bill 285 noted that this bill would also be a cost saving measure because “legal counsel would no longer need to be present in order to consider correspondence in a nonpublic environment.”

Importantly, there are no requirements that attorney-client privileged communications or attorney work product reviewed under RSA 91-A:2, I(b) or RSA 91-A:3, II(I) be disclosed to the public.

Very best regards, Jim

James W. Kennedy, Esq.
City Solicitor
41 Green Street
Concord, NH 03301
ph. (603) 225-8505
fax: (603) 225-8558

STATEMENT OF CONFIDENTIALITY

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Jennifer Horgan

From: Laura Colquhoun <lauracolquhoun2@gmail.com>
Sent: Saturday, May 8, 2021 6:47 PM
To: Jennifer Horgan; RightToKnow NH
Cc: David1 _; tomlanzara@gmail.com
Subject: HB108

Honorable Members of the Senate Judiciary Committee,

Re: HB 108
Senate Judiciary Committee
January 9, 2019

I am writing this email to formally tell the Senate that I am not in support of the Senate changes to HB108 to overturn the attorney-client privilege balance test.

I live in Nashua and find that the City of Nashua legal department is abusing the attorney-client privilege claim and is preventing transparency of the city government.

Since the City of Nashua has hired Attorney Neumann, the RTK Coordinator, the residents have been stonewalled. Attorney Neumann responses are either denied and/or returned with only a partial answer. City of Nashua residents no longer have any transparency.

In reviewing the expenditures for the City of Nashua, I realized that the city is giving abatements to commercial properties. One property had a decrease in valuation of \$2,527,800. The abatement was brought to the Board of Assessors however it was in a non-public session and therefore Nashua residents do not get to see why this property got this abatement. The City of Nashua is dealing with the commercial properties in direct violation of RSA 91-A.

The Senate cannot support these changes to HB108 because the City of Nashua residents deserve an open and transparent government.

Very truly yours,

Laura Colquhoun
30 Greenwood Dr
Nashua, NH 03062

Jennifer Horgan

From: Martin, Paul A <pamartin@iastate.edu>
Sent: Saturday, May 8, 2021 5:51 PM
To: Laurie Ortolano; Jennifer Horgan
Cc: RightToKnow NH; Cindy Rosenwald; Tom Lanzara
Subject: RE: HB108-FN-LOCAL

All RTK requests in Rochester, must also go through the City Attorney.

From: rtknh@googlegroups.com <rtknh@googlegroups.com> **On Behalf Of** Laurie Ortolano
Sent: Saturday, May 08, 2021 3:22 PM
To: Jennifer.horgan@leg.state.nh.us
Cc: RightToKnow NH <rtknh@googlegroups.com>; Cindy Rosenwald <Cindy.Rosenwald@leg.state.nh.us>; Tom Lanzara <tomlanzara@gmail.com>
Subject: HB108-FN-LOCAL

I am not in support of the Senate changes to HB108 to overturn the attorney-client privilege balance test. I think Nashua is abusing the attorney-client privilege claim and it is preventing transparent open records.

When the City decided to put the RTK coordinator in the legal office, I was opposed. I thought that an Attorney would not work productively with the public and I was correct. There are a lot of denials.

Additionally, All RTK's are being sent to the legal office for responses and are most likely being discussed with a Board in non-public. There is no way of knowing if these requests are discussed in meetings. The City is now saying that these communications are now all attorney-client privilege. Who exactly is the client?

In Nashua, our Board of Assessor has ramped up the use of non-public sessions to address matters. In 2017, the Board held 16 meetings with no non-public session; In 2018, the Board held 20 meetings, with 1 non-public session called. In 2019, the Board held 19 meetings with 11 non-public sessions required and in 2020, the Board held 20 meetings with 18 non-public sessions required. Most of these non-public sessions are for legal advice. As public interest grew in the assessing area, the Board needed a lot more private time.

As it stands, the Board is signing off on property disputes but not disclosing the votes into the public records. They are in direct violation of RSA 91-A, but I believe there is other legal advice going on in there and a documented record of this legal advice is important.

As another example, I emailed the Mayor's Office to find out if they had the phone number for the CFO. His phone number was not on the website. My question was forwarded to the legal office, where it underwent an 5 step process which resulted in a letter from a City attorney informing me

that they were under no obligation to answer the question, but that they would provide the phone number.

If you were to ask for the RTK sent to the legal office for the CFO's phone number, the request would be denied as attorney-client privilege. This is absurd. And most all the other requests being forwarded to the legal department and discussed in non-public should be public because the legal office is only performing a response duty and not an advisement duty.

The balance test is necessary so City's don't abuse Attorney-Client privilege. When the client is any citizen, the balance test will provide the necessary transparency.

Thank you for reading this rather long email.

--

You received this message because you are subscribed to the Google Groups "RTKNH" group.

To unsubscribe from this group and stop receiving emails from it, send an email to

rtknh+unsubscribe@googlegroups.com.

To view this discussion on the web visit

https://groups.google.com/d/msgid/rtknh/CAHiVgXNyz8eycNsKVsqV6eYXpScU_OYiE1p%3DpaqOiri-VXQ5rw%40mail.gmail.com.

--

MAYOR
and
CITY COUNCIL
citycouncil@dover.nh.gov



288 Central Avenue
Dover, New Hampshire 03820-4169
(603) 516-6000
Fax: (603) 516-6666
www.dover.nh.gov

City of Dover, New Hampshire

May 17, 2021

VIA EMAIL

All Members of the Senate Judiciary Committee
State House
107 North Main Street
Concord, NH 03301

RE: House Bill 108, Amendment 1251s: Immediate legislation needed to ensure all public bodies and public officers in New Hampshire can seek legal consultation

Dear Honorable Members:

We write on behalf of our respective communities for your support of Amendment 1251s to House Bill ("HB") 108 to preserve the attorney-client privilege for government entities and public officials. This legislation arises out of a recent decision from the New Hampshire Supreme Court in *Hampstead School Board v. School Administrative Unit No. 55*, Docket No. 2020-268 (April 20, 2021), available at <https://www.courts.state.nh.us/supreme/opinions/2021/2021017Hampstead.pdf>, which effectively eliminates the attorney-client privilege for government entities.

For decades prior to the *Hampstead School Board* decision, state and local officers and public bodies in New Hampshire could seek legal consultation from attorneys knowing those privileged communications were categorically protected by the long-standing attorney-client privilege. It has always been understood that written attorney-client communications enjoyed similar absolute exemption from RSA chapter 91-A disclosure.

All of this changed, however, on April 20th, when the Court released the *Hampstead School Board* decision, effectively overruling numerous prior decisions and holding that attorney-client privileged communications are governmental records subject to the Court-created balancing test and disclosure. Based on the Court's current formulation of the balancing test, we believe there is significant risk of a broad disclosure of otherwise privileged communications.

It is difficult to overstate the gravity, and potential public harm, the *Hampstead School Board* decision threatens. Going forward, public officers and officials likely cannot consult an attorney in writing or receive advice in writing about their official functions without significant risk of public disclosure. The same is true for all public bodies in the state, from local communities all the way to all state agencies and state branches of government.

In litigation, public officers and bodies will be put at significant disadvantage with their private counterparts, who retain all the benefits of attorney-client privilege and attorney work product

May 17, 2021

Page 2

protections for written communications and planning.

No doubt, public bodies now face significant risk, daily, of being inundated with public records requests seeking attorney-client communications going back years prior on all litigation or legal matters, all at the cost and expense of the New Hampshire taxpayer.

We ask that you each vote in support of Amendment 1251s to HB 108, intended to restore a categorical attorney-client privilege and work product doctrine for public officials and public bodies.

Thank you for your consideration.

Sincerely,

/s/ Robert Carrier

Robert Carrier
Mayor of Dover

/s/ Rick Becksted

Rick Becksted
Mayor of Portsmouth

/s/ Paul Grenier

Paul Grenier
Mayor of Berlin

/s/ Joyce Craig

Joyce Craig
Mayor of Manchester

/s/ Charlene Lovett

Charlene Lovett
Mayor of Claremont

/s/ James Donchess

James Donchess
Mayor of Nashua

/s/ James Bouley

James Bouley
Mayor of Concord

/s/ Caroline McCarley

Caroline McCarley
Mayor of Rochester

/s/ Olivia Zink

Olivia Zink
Mayor of Franklin (Interim)

/s/ Dana Hilliard

Dana Hilliard
Mayor of Somersworth

/s/ Andrew Hosmer

Andrew Hosmer
Mayor of Laconia

/s/ George Hansel

George Hansel
Mayor of Keene

/s/ Tim McNamara

Tim McNamara
Mayor of Lebanon



May 11, 2021

Chair Carson and Members of the Senate Judiciary Committee
State House Room 100
Via electronic delivery only

Re: HB 108, Amendment #1251s

Dear Chair Carson and Members of Senate Judiciary:

I am writing to again express the support of the New Hampshire Municipal Association for Amendment 1251s to HB 108.

As the committee heard in testimony yesterday, last month the New Hampshire Supreme Court issued a stunning decision (*Hampstead School Board v. School Administrative Unit No. 55*) in which it ruled that confidential communications between a governmental client (such as a city, town, or state agency) and its legal counsel are not necessarily exempt from disclosure under the Right-to-Know Law. The court overruled its own precedents and held that rather than being per se exempt, attorney-client communications are subject to a “balancing test” that compares the public’s right to know against the government’s interest in non-disclosure and the importance of any privacy interest involved.

The consequences of this decision, if it is allowed to stand, will be devastating both for state and local government. The chilling effect this will have on the attorney-client relationship is daunting, creating an environment where governmental clients and their attorneys will be cautious about receiving and providing written legal advice. Additionally, government officials will now be forced, upon request by any citizen, to apply a subjective balancing test to every attorney-client communication requested under the Right-to-Know Law to determine whether their own communications with legal counsel should be made public; and undoubtedly, some of those communications will be required to be disclosed.

At the hearing yesterday, some opponents of the amendment argued that attorney-client communications of a governmental entity should be subject to public disclosure because the “citizens” of a municipality are actually the “client” receiving the legal advice. This is inaccurate. Just like a corporation or organization, a municipality is a legal entity with the ability to enter into an attorney-client relationship. It is the elected officials/management of a municipality—not the citizens—who obtain legal advice and hold the privilege, just as it is the board of directors and upper management, not the shareholders, who do so in a corporation or organization. As the committee also heard in testimony yesterday, allowing

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

25 Triangle Park Drive • Concord, NH 03301 • Tel: 603.224.7447 • NH Toll Free: 800.852.3358

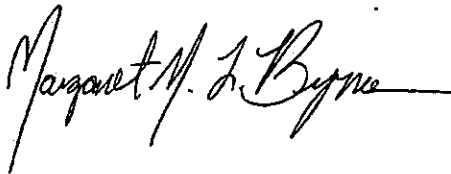
NHMAinfo@nhmunicipal.org • governmentaffairs@nhmunicipal.org • legalinquiries@nhmunicipal.org

www.nhmunicipal.org

attorney-client communications of a governmental entity to be subject to a balancing test means that governments become a separate class of client—one that does not have the right to attorney-client privilege. This is not only bad public policy, but it also forces municipal and governmental attorneys into a dilemma—stuck between an obligation to provide competent and thorough legal advice to their clients and compliance with the New Hampshire Rules of Professional Conduct that govern the practice of law, including not revealing the confidential information of a client.

Since the court's decision was issued, this has become a priority issue for NHMA, our members, and the community of attorneys representing municipal and governmental clients. Amendment 1251s clarifies that "records protected under the attorney-client privilege or the attorney work product doctrine" are exempt from disclosure under the Right-to-Know Law, as they have been for over 50 years, and as they should be to protect the integrity of the attorney-client relationship and to ensure that state and local government entities continue to obtain legal advice to assist them in prudent decision making. We urge the committee to recommend HB 108 Ought to Pass with Amendment 1251s.

Sincerely,

A handwritten signature in black ink, reading "Margaret M.L. Byrnes". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Margaret M.L. Byrnes, Esq.
Executive Director

NEW HAMPSHIRE BAR ASSOCIATION

Equal Justice Under Law



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May 25, 2021

Senator Sharon Carson
State House, Room 106
107 North Main Street
Concord, NH 03301

VIA Electronic Mail

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*Director of Marketing, Communications &
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Dear Senator Carson,

On May 24, 2021, the Board of Governors of the New Hampshire Bar Association met with a quorum of voting members present. By a majority vote, the Board directed the President or President-Elect of the Association to notify the Legislature by letter that the New Hampshire Bar Association supports Senate Amendment 2121-1251s to House Bill 108. That amendment adds to the exemptions from the Right to Know in N.H. R.S.A. 91-A:5, "Records protected under attorney client-privilege or the attorney work product doctrine."

The New Hampshire Bar Association supports this legislation and recommends that it be passed into law.

Sincerely,


Richard Guerriero
2021-2022 President

CC: Bill Gannon
Jay Kahn
Rebecca Whitley
Harold French

Jennifer Horgan

From: Donna Green <sdgaofnh@gmail.com>
Sent: Sunday, May 9, 2021 10:31 PM
To: Jennifer Horgan
Subject: Senate testimony re HB 108 AMENDMENT 2021-1250

Dear Honorable Senators of the Judiciary Committee:

The amendment proposed to HB108 is, as I understand it, a direct response to a NH Supreme Court ruling on April 20, 2021 in the case of Hampstead School District v. SAU 55. This ruling imposes a balancing test between the public interest (those who paid the bill for the legal advice) and the privacy interest of the administration of the public body (those who spent the public money). This seems eminently fair and reasonable, and a gift of renewed transparency to the public by the wisdom of our highest court.

I am representing the membership of the School District Governance Association NH, an organization that empowers elected school district officials to reclaim control over budgets and curricula. As it happens, I am also a former school board member of the Timberlane Regional School Board which was part of SAU55. I left office shortly before the activity mentioned in the suit. On the face of it, it is strange that one part of the SAU board wished to withhold a workplace study done by a lawyer from another part of the SAU board. Since board members have no rights under the law, this case devolved into a Right to Know suit; nevertheless, the court came to the correct judgment. The public, who pays for the legal services, has a right to know the product unless there is some compelling institutional reason to withhold it from the public.

For administrators who are used to being able to hide a great deal from public view behind the cloak of legal consultation and the lawyer-client privilege, this ruling is a disaster. For the public, who has been footing millions of dollars in legal fees for advice that is sometimes in favor of the administration rather than the public's interest, this is a cause for rejoicing. I am asking the lawyers among you to take off your legal gown for a moment and think about the true client in public body representation. A school board, for instance, will retain the services of a lawyer, and

the lawyer will look out for the wellbeing of the board as a whole all the while the public is paying the bill for advice that **may work** against the public interest. There is an inevitable divergence of interests between those that pay the bills and those that hire the lawyers in public bodies.

When I was a Timberlane School Board member, and part of SAU 55's board, I learned about a lawsuit between a parent and my district through an article in the newspaper. By long-standing and reprehensible practice, the board was never informed of Special Education disputes. The superintendent of SAU 55 claimed that he held the client/attorney privilege and would some times refuse to provide the board with written legal opinions when it did not serve his purpose. The same superintendent would pursue legal action without a board vote simply because he had money in the legal line of his budget. He engaged me all the way to the NH supreme Court in a Right to Know dispute that SAU55 ultimately lost and cost the taxpayers 50k....without a vote of the board. Now this is a superintendent you might think is without proper supervision, but in my experience with this administrator, I came to learn that nothing he did was his own invention. Elected officials are very often kept in the dark about legal consultations and advice even when it is paid for by their own constituents. This is why it is imperative that legal advice be subject to disclosure with reasonable protection for things that do truly need privacy.

Let me share one more story from my personal experience on the Timberlane School Board. In 2014, my district received a very substantial return of surplus from the LGC Healthtrust. This was unanticipated revenue and by law the receipt of this money required a public hearing. The superintendent and my own board disputed the need for a public hearing and in light of my protests obtained a legal opinion on the matter. This legal opinion was shared with a few members of the school board but was withheld from me despite my demands to see it. Weeks later this letter was read at a special meeting called specifically to

address my calls for a public hearing. The legal opinion completely exonerated my position but the chairman and superintendent misconstrued it to be otherwise. I was censured at that meeting for "eroding the integrity and credibility of the district as well as the trust of the community." All this could have been avoided had the legal opinion, paid for by my constituents, been provided to me and the public when it had been received instead of being used as a piece of political theatre.

Please do not put into law a provision that will reverse a very wise Supreme Court ruling.

Donna Green
President
School District Governance Association of NH
SDGANH.org
617-834-6556

Jennifer Horgan

From: Kurt Wuelper
Sent: Sunday, May 9, 2021 9:58 AM
To: Sharon Carson; William Gannon; Becky Whitley; Jay Kahn; Jennifer Horgan
Cc: ~House Judiciary Committee
Subject: HB108 amendments

For the record, I think amendment 2021-1144 adding a requirement that "This list [of non-pibic meetings] shall be maintained in the same location as the public records of the public body" is beneficial. The intent of HB108 is to make information about non-pubic session more transparent and enduring the new list will be publicly available will help.

In contrast, amendment #2021-1251s dding another exemption to 91-A for "Records protected under the attorney-client privilege or the attorney work product doctrine." Looks counter productive . The attorney client exemption has long been perceived as abused by bodies desiring to keep things secret. So much so we just had a Supreme court ruling narrowing the application of said exemption. I am not at all convinced that a public body is deserving of any "attorney-client privelege", but even if it is, the discussion about whether to invoke said privelege could, and most certainly would, occur in non-public meetings under current law. That procedure, in my view, provides all the protection any body should ever need.

The purpose of government is to protect Life,
Rep Kurt Wuelper
Sgrafford 3
House Judiciary Committee
603-970-0783

Jennifer Horgan

From: Sandy Pierre <sandy.pierre@gmail.com>
Sent: Monday, May 24, 2021 3:28 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: please support Amendment 1251S to HB108

Sandra Pierre
148 Sand Pond Rd
Marlow NH 03456

Honorable Members of the Senate Judiciary Committee,

I urge you to support Amendment 1251S to HB108. This is the action needed to overturn the New Hampshire Supreme Court's astonishing ruling last month that confidential communications between a government entity and its attorney are subject to disclosure under the Right-to-Know Law. I serve on the Select Board of my town, and we make every effort to comply with the Right-to-Know Law and to be as open and transparent to the residents of our town as possible. However, there have been times where we've needed to consult with an attorney to know what we are and aren't legally allowed to share. This recent ruling makes municipal attorneys reluctant to put advice in writing, which makes it harder for us to do our job *and* to satisfy requests for public information. Thank you for your attention to this urgent matter.

Sincerely,

Sandra Pierre

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB108

Hearing date: _____

Executive Session date: _____

Motion of: 1600 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: 1251 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: 1687 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reported out by: _____

Notes: _____

cont.

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB108

Hearing date: _____

Executive Session date: _____

Motion of: OTPA Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Kahn

Notes: _____

Committee Report

Tuesday, May 25, 2021

to which was referred HB 108-FN-LOCAL

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

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 2021-1711s

Senator Jay Kahn
For the Committee

As amended this bill requires that for meetings in nonpublic session where the minutes or decisions were determined to not be subject to public disclosure, a list shall be kept which shall include certain information; the list shall be made available for public disclosure. 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. Additionally, the bill establishes requirements for remote access to public meetings under RSA 91-A: allowing members of public bodies to participate by electronic or other means and allowing a public body to provide remote access to their meetings to the public. Finally, the bill exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A. These changes are important updates to RSA 91-A, Access to Governmental Records and Meeting, otherwise known as the Right-to-Know Law. The Committee asks for your support in the motion of Ought to Pass with Amendment.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 108-FN-LOCAL, relative to minutes and decisions in nonpublic sessions under the right-to-know law.

Ought to Pass with Amendment, Vote 5-0.

Senator Jay Kahn for the committee.

As amended this bill requires that for meetings in nonpublic session where the minutes or decisions were determined to not be subject to public disclosure, a list shall be kept which shall include certain information; the list shall be made available for public disclosure. 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. Additionally, the bill establishes requirements for remote access to public meetings under RSA 91-A: allowing members of public bodies to participate by electronic or other means and allowing a public body to provide remote access to their meetings to the public. Finally, the bill exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A. These changes are important updates to RSA 91-A, Access to Governmental Records and Meeting, otherwise known as the Right-to-Know Law. The Committee asks for your support in the motion of Ought to Pass with Amendment.

General Court of New Hampshire - Bill Status System

Docket of HB108

Docket Abbreviations

Bill Title: (New Title) relative to minutes and decisions in nonpublic sessions; an exemption for items falling within the attorney-client privilege or the attorney work product doctrine under the right-to-know law; and remote access to public meetings under the right-to-know law.

Official Docket of HB108.:

Date	Body	Description
1/4/2021	H	Introduced (in recess of) 01/06/2021 and referred to Judiciary HJ 2 P. 35
2/19/2021	H	Public Hearing: 02/19/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92168223794 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/2/2021	H	Executive Session: 03/02/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95501229688
3/9/2021	H	Committee Report: Ought to Pass (Vote 21-0; CC) HC 18 P. 17
4/7/2021	H	Ought to Pass: MA VV 04/07/2021 HJ 5 P. 37
4/7/2021	H	Reconsider (Rep. Osborne): MF VV 04/07/2021 HJ 5 P. 50
4/7/2021	S	Introduced 04/01/2021 and Referred to Judiciary; SJ 11
4/8/2021	S	Remote Hearing: 04/13/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; SC 19
5/6/2021	S	Remote Hearing: 05/10/2021, 02:00 pm, on proposed amendment #2021-1144s ; Links to join the hearing can be found in the Senate Calendar; SC 23
5/6/2021	S	Remote Hearing: 05/10/2021, 02:15 pm, on proposed amendment #2021-1251s ; Links to join the hearing can be found in the Senate Calendar; SC 23
5/25/2021	S	Committee Report: Ought to Pass with Amendment #2021-1711s , 05/27/2021; Vote 5-0; CC; SC 25A
5/27/2021	S	Committee Amendment #2021-1711s , AA, VV; 05/27/2021; SJ 17
5/27/2021	S	Ought to Pass with Amendment 2021-1711s, MA, VV; OT3rdg; 05/27/2021; SJ 17
6/7/2021	H	House Non-Concurs with Senate Amendment 2021-1711s and Requests CofC (Reps. Gordon, McLean, Wuelper, M. Smith): MA VV 06/04/2021 HJ 9 P. 51
6/10/2021	S	Sen. Carson Accedes to House Request for Committee of Conference, MA, VV; 06/10/2021; SJ 19
6/10/2021	S	President Appoints: Senators Carson, Daniels, Perkins Kwoka; 06/10/2021; SJ 19
6/14/2021	H	Conference Committee Meeting: 06/14/2021 03:30 pm LOB 206-208
6/17/2021	S	Conference Committee Report Filed, #2021-1973c ; 06/24/2021
6/24/2021	S	Conference Committee Report #2021-1973c , Adopted, VV; 06/24/2021; SJ 20
6/24/2021	H	Conference Committee Report 2021-1973c: Adopted, VV 06/24/2021
7/15/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
7/15/2021	H	Enrolled (in recess of) 06/24/2021

8/3/2021	H	Signed by Governor Sununu 07/30/2021; Chapter 163; I. Sec. 1 Eff: 01/01/2022 II. Sec. 3 to 7 Eff: 09/28/2021 III. Rem. Eff: 07/30/2021
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NH HouseNH Senate

Other Referrals

1 Committee of Conference Report on HB 108-FN-LOCAL, relative to minutes and decisions in
2 nonpublic sessions under the right-to-know law.

3
4 Recommendation:

5 That the House recede from its position of nonconcurrence with the Senate amendment, and
6 concur with the Senate amendment, and

7 That the Senate and House adopt the following new amendment to the bill as amended by the
8 Senate, and pass the bill as so amended:

9
10 Amend the bill by replacing all after the enacting clause with the following:

11
12 1 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

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

Committee of Conference Report on HB 108-FN-LOCAL
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II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

2 New Paragraph; Right To Know; Exemptions. Amend RSA 91-A:5 by inserting after paragraph XI the following new paragraph:

XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

3 Committee Established. There is established a committee to review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.

4 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

5 Duties. The committee shall review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.

6 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

7 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2021.

8 Effective Date.

I. Section 1 of this act shall take effect January 1, 2022.

II. Sections 3-7 of this act shall take effect 60 days after its passage.

III. The remainder of this act shall take effect upon its passage.

Committee of Conference Report on HB 108-FN-LOCAL
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The signatures below attest to the authenticity of this Report on HB 108-FN-LOCAL, relative to minutes and decisions in nonpublic sessions under the right-to-know law.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Carson, Dist. 14

Rep. Gordon, Graf. 9

Sen. Daniels, Dist. 11

Rep. McLean, Hills. 44

Sen. Perkins Kwoka, Dist. 21

Rep. Wuelper, Straf. 3

Rep. M. Smith, Straf. 6

Committee of Conference Report on HB 108-FN-LOCAL
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2021-1973-CofC

AMENDED ANALYSIS

This bill:

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

II. Exempts materials falling within the attorney-client privilege or attorney work product doctrine from the provisions of RSA 91-A.

III. Establishes a committee to review authorizing governing bodies of municipalities to hold virtual meetings and to study remote access to meetings under RSA 91-A.

Senate Inventory Checklist for Archives

Bill Number: HB108

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

☒ Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- ☒ Bill version as it came to the committee
☒ All Calendar Notices
☒ Hearing Sign-up sheet(s)
☒ Prepared testimony, presentations, & other submissions handed in at the public hearing
☒ Hearing Report
☐ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

☒ - amendment # 1144s ☒ - amendment # 1251s x 1687s x 1711s
☒ - amendment # 1250s ☒ - amendment # 1600s x 1690

- ☒ Executive Session Sheet
☒ Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___
___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

- ☒ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 1973
___ Enrolled Bill Amendment(s)
___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

☒ as amended by the senate ___ as amended by the house
☒ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Hergen
Committee Aide

8/12/21
Date

Senate Clerk's Office AK