

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 -

1 2 Access to Governmental Records and Meetings; Meetings Open to the Public. Amend RSA 91-
2 A:2, III to read as follows:

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

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

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

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

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

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

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

31 **(d) Each member participating electronically or otherwise [must] in a meeting**
32 **required to be open to the public shall be able to simultaneously hear each other and speak to**
33 **each other during the meeting, and shall be audible or otherwise discernable to the public in**
34 **attendance at the meeting's location, if the meeting has a physical location. Any member**
35 **participating in such fashion shall identify the location from which the person is participating**
36 **and the persons present in the location from which the member is participating. No meeting shall**
37 **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.