Bill as Introduced

HB 135 - AS INTRODUCED

2009 SESSION

09-0458
01/04

HOUSE BILL ***135***

AN ACT relative to remedies for violation of the state right-to-know law.

SPONSORS: Rep. W. O'Brien, Hills 4; Rep. Rowe, Hills 6; Rep. Splaine, Rock 16; Rep. L. Ober, Hills 27; Rep. Baldasaro, Rock 3

COMMITTEE: Judiciary

ANALYSIS

This bill requires a court to invalidate an action of a public body or agency taken at a meeting held in violation of the provisions of RSA 91-A. Current law does not mandate a court to invalidate such action.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09-0458
01/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to remedies for violation of the state right-to-know law.

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

1 Right-to-Know Law; Remedies. Amend RSA 91-A:8, II to read as follows:

II. The court [~~may~~] ***shall*** invalidate an action of a public body or agency taken at a meeting held in violation of the provisions of this chapter[~~, if the circumstances justify such invalidation~~].

2 Effective Date. This act shall take effect January 1, 2010.

Committee Minutes

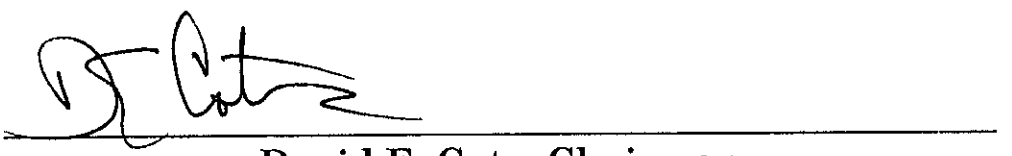
HOUSE COMMITTEE ON JUDICIARY

BILL NUMBER: **HB 135**

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: Mar.17, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.



David E. Cote, Chairman

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 135 Date 1/14/09

Committee Judiciary

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Cliff Newton	Rochester	332-5643		X	
Dean Michener	Concord	228-2061	N.H. School Bds Assn		✓
Ken Grant	Barrington NH	664-2529		X	
Hollis Austin	76 Old Long Island Rd, Moultonborough	253-4478	self	X	
Rep Jessie L. Osborne	Merrimack 12				X
Rep Al Baldasaro	Londonderry			A	
Faith Cook	Concord		LPNH	X	~~X~~
Mark Warden	Manchester		self/citizen	✓	
Fred Leonard	Rochester, NH	603 509 3327	Self	✓	
Maria Fantoni	Derry		Self	✓	
Rep Kim Casey					✓
Rep John Hughes				X	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: Jan 14, 2009

LOB ROOM: 208 **Time Public Hearing Called to Order:** 3:00p

Time Adjourned:

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Pearson, Hagan, D. Perkins, Silva and W. Smith.

Bill Sponsors: Rep. W. O'Brien, Hills 4; Rep. Rower, Hills 6; Rep. Splaine, Rock 6; Rep. L. Ober, Hills 27; Rep. Baldasaro, Rock 3

TESTIMONY

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

Rep. William O'Brien; sponsor
*Written testimony. Openness is the foundation of good government. RSA 91-A fulfills the citizens' rights enumerated in Article 8 of the NH Constitution. This right is compromised when judges are allowed to use their discretion in cases where they deem the consequences of a violation of the Right-to-Know Law to be 'insignificant'. The sponsor said that the instructions in the law about giving notice of hearings are clear and that there are no reasons not to enforce those procedures.

What is the specific problem? (Wall) Rep. O'Brien cited the Grafton County jail case, recently decided, in which the judge said that the violation of 91-A did not warrant invalidation of the decision made when the law was violated. The injunctive relief sought by the plaintiff does not warrant the inconvenience to the public that invalidation of the decision would cause.

Is there some standard for judges to follow in using discretion when making a decision? (Richardson) The answer was 'no'. That would open a hole in the law. There is no ambiguity in the law on how to notice a meeting.

Rep. James Splaine; co-sponsor
He believes in very strict adherence to the Right-to-Know Law, saying that we need laws to protect us from ourselves. He does not trust government and does not assume that those in government are acting in our best interest or that government knows best.

Rep. Robert Rowe; supports
Judges are trained to balance the equities of both sides of an issue, but he was totally in support of the RTK Law and believes it must be followed to the letter.

What is in the best interest of the community? (Richardson) 'Enforce the RTK Law.'

Rep. Jessie Osborne; opposed
This proposal has not been vetted by the Right-to-Know Commission, and it should be before a vote is taken. This bill is pre-mature.

Rep. Shawn Jasper; opposed
He was sympathetic to the sponsors since he is someone whose rights have been violated when he was a selectman, but we need to leave discretion to the court in order to avoid unintended consequences. Sometimes the violation may be beyond the control of the offender (example: the fault of a newspaper for not printing a notice on schedule). Some action cannot be invalidated, such as resultant actions that take place the following day. Sometimes everyone knows about the issue, and an invalidation may cause the public to suffer. How do would you handle invalidation of an employee issue?

Might there be the possibility of selectmen not meeting to deal with a threatened or an existing emergency situation for fear of violating the law? (Hackel)

Claire Ebel; Exec. Dir. NHCLU; supports
There are many public officials who openly and knowingly admit to violating the Right-to-Know Law. A law with no teeth has no meaning and will only be honored in the breech. This proposal does not need to go to the RTK Commission. She did suggest the following change in wording; '…shall invalidate the decision unless the judge provides a written order stating the reason why an exception is being allowed.'

Suggested by Rep. Weber: a list of exceptions to required invalidation 'includes, but is not limited to' hiring, firing, economic burden, and de minimis issues.

Cordell Johnston; NH Municpal Association; opposed
Written testimony; also authorized to speak for NH School Boards Association in opposition. This bill would be a disaster. Improper notice might just be a wrong room number. Rep. O'Brien said that the law is clear; but sometimes it is not. The Local Government Center gets 500-1,000 calls a year with questions about the RTK Law. There are people who continually harass local boards to interrupt the

business of government. He thought Claire Ebel's suggestions would be confusing.

Ryan Marvin; Manchester; supports
Pass the bill as introduced. RSA 91-A needs teeth to make sure that people follow the RTK Law. He opposed all changes suggested earlier in the hearing.

Cliff Newton; Rochester; supports
All government business is the people's business. Some violations can be corrected (such as noticing a second meeting. The bill will make everybody 'tighten up'.

Ed Naile; Coalition of NH Taxpayers; supports
The punishment [in the bill] fits the crime. Many minor, illegal decisions can be corrected with a new notice. For the larger, more important issues: do it right! Some judges do assign court costs in frivolous cases. One benefit of this bill is that elected officials will respect the law.

Betsy Miller; NH Association of Counties; opposes
She was opposed to the original bill but was more receptive to to subsequent suggestions. She distributed a copy of the Grafton County decision mentioned earlier in the hearing.

Rich Tomasso; Libertarian Party of NH; supports
Written testimony provided. The state should follow its own laws. Changing 'may' to 'shall' sends an important message, enforcing better behavior. There may be room for an amendment regarding a de minimis violation.

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The bill will hold people accountable.

James Kennedy; Assistant Attorney General
Rep. Jasper's testimony reflected the reasons Kennedy came to the hearing. An unintended consequence could be invalidation of a 3-person meeting with 1 person on the phone talking from a room in which there is another person. If that 1 person fails to mention (intentionally or otherwise) that there is someone else with him or her in the same room, any decision reached could be invalidated. This could possibly mean that one person could invalidate any decision, even if the vote were 12-to-1. Newspapers do make minor typographical errors. He was concerned that Claire Ebel's suggestion weakens the law.

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He re-emphasized the deadlines set by the legislature. We should not accept little violations, but he was willing to compromise on wording to build consensus.

Rep. Kathleen Hoelzel; supports
Unable to stay for to testify, but written testimony was submitted.

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: 1/14/09

LOB ROOM: 208 **Time Public Hearing Called to Order:** 3:00

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Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: March 5, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study, (Retain)

Moved by Rep. RICHARDSON

Seconded by Rep. HACKEL

Vote: 5-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: 3/5/09

Subcommittee Members: Reps. Weber, Hackel, Richadson, diFruscia, Silva

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, ~~Interim Study~~ Retained (Please circle one.)

Moved by Rep. Richadson

Seconded by Rep. Hackel

Vote: 5-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: September 22, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Hackel

Vote: 6-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: September 22, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Hackel

Vote: 6-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations: Rescheduled to Tuesday, September 22, 2009 at 10:00 a.m.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 135

BILL TITLE: relative to remedies for violation of the state right-to-know law.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Rescheduled to Tuesday, Sept 22 @ 10:00am

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. L Weber
Subcommittee Chairman/~~Clerk~~

Testimony

-----Original Message-----
From: Mike Powers [mailto:mspowers@metrocast.net]
Sent: Sat 1/17/2009 11:32 AM
To: Cote, David
Cc: Michelle Antosiewicz; Moira Taylor; Henry Aliberti; Todd Worcester; Chip Beckwith
Subject: HB 135

Dear Chairman Cote:

Please consider my opposition to HB135 in the House Judiciary Committee debate. Certainly, the court has existing power to deem whether or not punitive action is justified for a violation of the Right-to-Know Law, and school board members, who are essentially volunteers using their best judgement while conducting their business, should not be overburdened by excessive regulation which invalidates their action over minor technical errors. As the law stands now, the court can invalidate action where serious harm is caused, and that is a sensible procedure for a law as complicated and complex as RSA 91-A.

Thank you for time and consideration,

Mike Powers
Chairman
Barrington School Board

Testimony for HB135
Relative to remedies for violation of the state right-to-know law.

I am speaking in favor of HB135, which provides important relief against government agencies and bodies that violate the right to know law.

We as citizens are expected to know and follow the law and are punished even in our ignorance for any violation of that law, often forfeiting any gain from such action. Public officials must be held to the same standard, especially when acting on our behalf. The state must abide by it's own laws when enacting policy, else why should we as citizens respect the law when officials do not.

Failure to follow the law on any official action should make such actions void on their face. This legislation would make such policy the law of the land and send a very important message that citizens will be protected from a governing body that does not follow the law. And I would hope remind state and local officials about the seriousness of their duties and the obligation they have to their fellow citizens.

As someone who has served on public boards and intends to do so again, I welcome this legislation as a vital check and balance on executive actions.

I urge members of the committee to vote OTP for this bill and help protect your fellow citizens from abuses arising from government done behind closed doors.

Thank you for your time,
Rich Tomasso
LPNH

Testimony of William O'Brien
Committee on Judiciary
January 14, 2009

Within the first several passages of the New Hampshire Constitution and prominently placed in its Bill of Rights is a provision stating that it is a right that all of us, as New Hampshire citizens, have that "[g]*overnment ... should be open, accessible, accountable and responsive.*" NH CONST. Part 1, Art. 8. "*To that end,*" this Constitutional passage continues, "*the public's right of access to governmental proceedings and records shall not be unreasonably restricted.*"

It does not take any extraordinary insight by anyone considering the importance of this right of access to governmental proceedings and records to understand why our forebearers of 222 years ago should so prominently enshrine this right in the Constitution along side those provisions guarantying such significant personal rights as jury trials, religious freedom, and the like. It is a fundamental right because a republic can exist last only while its government functions under the continuing gaze of the public and its records are open to public scrutiny.

It is neither farfetched nor hyperbole to say that this constitutional right of openness establishes a foundation for our government and that all considerations of convenience, efficiency and process should fall away as necessary for the full and unfettered exercise of this right. Without governmental openness and accountability, our freedoms surely will erode behind veils of governmental secrecy.

RSA 91-A is the statutory enactment fulfillment of this constitutional right. It provides definitions and requirements for open records and open meetings so government itself will be open. It further gives private parties – aggrieved citizens – the incentive to come forward to litigate and preserve this right to the benefit of all of us.

This remedy and consequently the guaranty of open government is lost however when courts deny relief – denials not because of a lack of violation of the constitutional and statutory right of open meetings – but because in their discretion the violations don't warrant inconveniencing government.

This is a report from the trenches of Right to Know litigation. It is clear from practice – and, indeed, has been said explicitly – that the courts are less likely to invalidate the results of meetings held in violation of RSA 91-A if those results are deemed by them to be "significant."

You may think that makes sense, but the result of such a judicial environment of denying relief when open meetings are not provided in the "important" cases, is that the more significant the violation, the less incentive – the less necessity – that the open meeting guaranty of RSA 91-A is met. Consequently, in those cases, there is less incentive for aggrieved citizens to come forward, because they will know or come to know that in those circumstances, courts will be less likely to remedy violations.

This reaction on the judges may be understandable – their reaction is that no notice or a defective notice of a public meeting is much less significant that the government's need for a bond, or to go forward with a hiring, or such. We will hear that in opposition today. The effect however is to eviscerate the constitutional right of open government.

HB 135 will go far to remedy this defect in RSA 91-A. It is a simple, yet powerful change. It takes the language of section 8 and changes one word – the word "may" – to "shall" and then eliminates the ending phrase "if the circumstances justify such invalidation."

With this change, the statutory remedy for denying open meetings in New Hampshire government will rise to the level of the constitutional guaranty. Just as the constitution does not say open and accountable government is everyone's right "if circumstances justify" so too will RSA not contain such a qualification.

We will have a statute as powerful as our constitution

What of the objections:

1. Insignificant violations will result in invalidations.

   The language of RSA 91-A is clear on how to notice and conduct an open meeting. There aren't the ambiguities that violators always claim. That statute says does not say for example say post the meeting "24 hours" at 2 places "unless circumstances justify."

Allow that language to remain in the remedy section makes the commitment to public notice illusory.

2. Judges need discretion to fashion appropriate remedies.

The courts do not have any kind of fine-tuning discretion now, except as to attorney's fees and that discretion remains. When it comes to invalidate meetings the only discretion the courts now have is to abandon the open meeting guaranty of RSA 91-A or enforce it. This change merely says, "Enforce it."

New Hampshire
Municipal Association

January 14, 2009

Hon. David E. Cote, Chairman
House Judiciary Committee
Legislative Office Building, Room 208
Concord, New Hampshire 03301

Re: House Bill 135, relative to remedies for violations of the Right to Know Law

Dear Rep. Cote:

I write to express the opposition of the New Hampshire Municipal Association to House Bill 135, which requires a court to invalidate any action taken at a meeting held in violation of the Right to Know Law.

Under current law, if a public body holds a meeting in violation of the Right to Know Law (for example, by failing to post timely notice or by refusing public access to the meeting), a court ***may*** invalidate any action taken at the meeting *"if the circumstances justify such invalidation."* HB 135 would change the law to state that the court ***shall*** invalidate action taken at the meeting—period. Thus, even the most minor technical violation of the law would require a court to invalidate all actions taken at the meeting, regardless of whether the violation had any actual effect on the public's right of access.

This bill would do far more harm than good. Courts have not been hesitant to invalidate actions taken at a meeting held in violation of the law when "the circumstances justify such invalidation." By deleting this language from the statute, HB 135 would force a court to invalidate an action when the circumstances do *not* justify invalidation.

The Right to Know Law is an extremely comprehensive and intricate law, and the public bodies that are governed by it are made up almost entirely of volunteers. There are any number of judgment calls that must be made in satisfying the public meeting requirements: What are "appropriate places" for posting notice? What constitutes an "emergency," such that 24 hours' notice is not required? When might a discussion damage someone's reputation, justifying holding the discussion in non-public session?

Even experienced municipal officials and attorneys frequently encounter issues under the Right to Know Law that have no clear answers, and that can be resolved definitively only by the courts. Under current law, if municipal officials do their best to comply, courts are unlikely to penalize them if their actions cause no harm. This bill,

25 Triangle Park Drive • PO Box 617 • Concord, NH 03302-0617 • Tel. 603.224.7447 • NH Toll Free 800.852.3358 • Fax 603.224.5406
e-mail: governmentaffairs@nhlgc.org • Web site: www.nhlgc.org

however, would force courts to punish municipalities when their officials make good-faith judgments that turn out to be wrong, regardless of the consequences.

Further, some of the existing law's requirements, in particular those for non-public session, are detailed and can easily lead to innocent errors. For example, a vote to enter non-public session must be taken by roll call (not required for any other action), and the motion to enter non-public session must cite the specific subparagraph of RSA 91-A:3, II, that allows for a non-public session. The inadvertent failure to follow these requirements to the last detail should not automatically render the body's action invalid.

A few hypothetical cases should illustrate clearly the problems with the bill:

Example 1. At a regular, properly posted public meeting of the board of selectmen, with no one from the public present, the board votes to go into non-public session to discuss the applicants for the police chief position, as is clearly permitted under RSA 91-A:3, II(b). However, in making the motion to enter non-public session, the moving member erroneously cites RSA 91-A:3, II***(a)***. Therefore, the non-public session is technically illegal. During non-public session, the board votes to hire one of the applicants. If anyone (*e.g.*, one of the other applicants) challenges that action, it would automatically be invalidated, even though no imaginable harm has been done.

Example 2. Selectmen's meetings are held every other Tuesday at 6:00. The selectmen's secretary always posts notice in the town hall when she leaves work at 5:00 on Monday afternoon, and posts a second notice at the post office on her way home, thus satisfying the law's 24-hour notice requirement. One Monday she gets home and realizes that she forgot to post the notice at the town hall, so she goes back and posts it at 6:15. The town hall closes at 5:00, so even if she had posted it when she left the first time, no one would have seen it until the next day. Nevertheless, since she failed to post the notice 24 hours in advance, a court would have to invalidate everything that happens at the meeting.

Courts already have the power to invalidate actions that truly compromise the principle of open government. **HB 135,** however, threatens to disrupt local government for every innocent and harmless error. We urge the committee to vote the bill ***Inexpedient to Legislate.***

Thank you very much for your consideration of our views.

Sincerely,

Cordell Johnston
Government Affairs Attorney

HB 1135

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS. **SUPERIOR COURT**

No. 08-E-056

Robert P. Hull and John J. Babiarz

v.

Grafton County, Commissioner Michael J. Cryans, Commissioner Martha Brown Richards, Commissioner Raymond S. Burton, and Executive Director Julie L. Clough

RECOMMENDATIONS OF THE JUDICIAL REFEREE

The parties are before the Court on a Petition for Injunctive Relief under RSA 91-A, New Hampshire's "Right-to-Know Law." The petitioners—Robert P. Hull and John J. Babiarz—seek a declaration that the respondents committed violations of RSA 91-A during the planning and approval of a new correctional facility in Grafton County, New Hampshire, and an order enjoining the respondents from raising money for and constructing the correctional facility. They also request attorney's fees. The respondents argue that no violations of RSA 91-A occurred and that, even if a violation can be found, the appropriate relief does not include attorney's fees or enjoining construction of the correctional facility.

Prior to the commencement of the final hearing, the parties agreed to the appointment of retired Associate Justice Harold W. Perkins to preside over this matter in the capacity of a Judicial Referee. This assignment was approved by Chief Justice Robert Lynn. Accordingly, the Judicial Referee heard evidence on seven days in August and September 2008 and took a view of the exterior of the current correctional facility and the meeting room in the basement of that facility, where many of the events at issue in this case occurred. The following recommended findings of fact and rulings of law are based

on all of the testimony, evidence, and pleadings. Having heard extensive testimony, the Judicial Referee also had ample opportunity to observe the witnesses in this case and many of the recommendations contained herein are also based on the Judicial Referee's assessment of witness credibility.

I. Factual and Procedural Background

While the alleged violations of RSA 91-A are interrelated, each violation pled relies on separate facts. The Judicial Referee will therefore address the alleged violations in chronological order and provide the relevant findings of facts under the specific discussion of each of the alleged violations. Before turning to the law that applies and the alleged violations, however, the Judicial Referee finds the following background facts relevant to all of the alleged violations.

Both petitioners reside in the Town of Grafton in Grafton County, New Hampshire. They have filed suit against Grafton County, its three commissioners, and its executive director. The dispute centers on a bond vote held February 11, 2008, at a meeting ("the Delegation Meeting") of the Grafton County Delegation ("the Delegation"). The Delegation consists of the State Representatives elected from Grafton County. At the time of the Delegation Meeting it consisted of nineteen Democrats and seven Republicans and its leadership included Chair Catherine Mulholland, Vice Chair Burton Williams, and Clerk Susan Almy. At the Delegation Meeting, the Delegation approved a $38 million bond for construction of a new correctional facility by a vote of 18-8.

Testimony and evidence established that Grafton County has spent a substantial amount of time over the past three years planning for construction of a new correctional

facility and that the current correctional facility suffers from a number of shortcomings, including, in particular, overcrowding. (E.g., Clough Cross Ex. 9/18/08; Cryans Cross Ex. 9/22/08.) The conditions of the current correctional facility have no bearing on the Judicial Referee's recommendations. A brief history of the planning of the proposed facility is, however, useful as background to the Delegation Meeting and vote and as context for the alleged violations.

In 2006, the Executive Committee of the Delegation allocated $400,000 in the fiscal year 2007 budget for the preliminary phases of planning a new correctional facility, including conducting a needs assessment. (Exec. Comm. Minutes of 6/19/06, Resp'ts' Ex. B at 4.) In February 2007, the Executive Committee discussed the results of the needs assessment and agreed to move forward with the pre-architectural phase of the project. (Exec. Comm. Minutes of 2/12/07, Resp'ts' Ex. C.) In May 2007, the Executive Committee voted to proceed with the development phase. (Exec. Comm. Minutes of 5/21/07, Resp'ts' Ex. D.) The full Delegation also approved an additional $1 million in the fiscal year 2008 budget for the project. In October 2007, the full Delegation held an informational meeting on the project, which included extensive discussion of costs, needs, tax impacts, and other implications of the project. At the close of that meeting, the Delegation voted to continue the project into the design development phase. (Delegation Minutes of 10/15/07, Resp'ts' Ex. E.)

Between August 2007 and February 2008, there were many efforts made to inform the public about the proposed correctional facility. The commissioners spoke about the project at public meetings in a number of towns. (Clough Cross Ex. 9/18/08; Notice of

Public Meetings, Resp'ts' Ex. G.) Newsletters providing information on the project were mailed out and posted on the Grafton County website. (Clough Cross Ex. 9/18/08: Newsletters, Resp'ts' Ex. F.) In November 2007 and January and February 2008, the County held public informational meetings to discuss the tax impact of the project and to answer questions about the project. (Clough Cross Ex. 9/18/08; Delegation Minutes of 11/28/07, Resp'ts' Ex. H; Delegation Minutes of 2/4/08, Resp'ts' Ex. I.) A public hearing was also held on February 7, 2008, for discussion of tax implications of a $40 million bond and bonds of lesser amounts. (County Commissioner Minutes of 2/7/08, Resp'ts' Ex. J.) The Judicial Referee finds that Grafton County invested a great deal of time and effort in making the planning of the correctional facility public.

In their initial pleadings, the petitioners alleged only that a violation of RSA 91-A took place during the Delegation Meeting when certain members of the Delegation went behind a partition during a recess and held what they describe as an illegal meeting closed to the public. They moved for a preliminary injunction prohibiting Grafton County from taking any action based on the bond vote of February 11, 2008, including raising and appropriating funds for the new correctional facility. The court (O'Neill, J.) denied the preliminary injunction, finding that the petitioners had not established likelihood of success on the merits and that evaluation of the hardship factor did not weigh in their favor. After discovery, the petitioners amended their pleadings to add three other alleged violations—two stemming from gatherings prior to the Delegation meeting and one from an alleged failure to produce documents in response to a lawful request. After a summary of the applicable law, the Judicial Referee will address each violation in turn.

II. Applicable Law

Part I, Article 8 of the New Hampshire Constitution requires government to "be open, accessible, accountable and responsive" and guarantees that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." Toward this end, the legislature has enacted RSA 91-A.[1] The purpose of 91-A "is to ensure both the greatest possible access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1 Preamble. The particular issues raised by the petitioners in this case pertain to the public's access to governmental meetings and records.

Under RSA 91-A:2, I, a meeting is "the convening of a quorum of the membership of a public body . . . to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power." There are two exceptions to this definition that are relevant to this case. First, the term meeting does not include a "chance meeting or social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter[.]" Id. at 91-A:2, I(a). Second, the term meeting does not include "[a] caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city

[1] The Judicial Referee notes that during the course of this litigation, on July 1, 2008, amendments to RSA 91-A took effect. The amendments primarily targeted electronic communications but also included clarifications of definitions and correction of minor inconsistencies throughout the Chapter. The parties have relied on the prior law, as does the Judicial Referee, and all references in these recommendations

which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2." Id. at 91-A:2, I(d).

Public proceedings must be open to the public. Id. at 91-A:2, II. Except in the case of emergency, notice of public meetings must be posted in two appropriate places and announced in a newspaper of general circulation. Id. Minutes of such meetings must be "promptly recorded and open to public inspection not more than 5 business days after the public meeting." Id. The minutes must include the "names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions." Id. Only under limited circumstances may public bodies meet in nonpublic sessions, id. at 91-A:3, and neither party argues that the events giving rise to this case fall within those limited circumstances.

With respect to records, every person has the right to "inspect all notes, materials, tapes or other sources used for compiling the minutes of such meetings." Id. at 91-A:4, II. Public records in the possession of a public body must be maintained at its regular office or place of business. Id. at 91-A:4, III. "Each body . . . shall, upon request for any public record reasonably described, make available for inspection and copying any such public record within its files when such records are immediately available for such release." If the public body is unable to make the record available, it must, "within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied." Id. at

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are to the prior version of the law that was in effect at the time of the events at issue.

91-A:4, IV.

If a public body or its employee refuses to provide a public record to a person who reasonably requests it, that body or employee "shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under [RSA 91-A] provided that the court finds that such lawsuit was necessary in order to make the information available." Id. at 91-A:8, I. The same rule applies if a person is forced to bring suit to gain access to a public proceeding. Id. Fees may only be awarded, however, if the public body "knew or should have known that the conduct engaged in was a violation of [RSA 91-A]." Id.; ATV Watch v. N.H. Dep't of Resources & Econ. Dev., 155 N.H. 434, 442 (2007). Courts may also "invalidate an action of a public body or agency taken at a meeting held in violation of the provisions of [RSA 91-A], if the circumstances justify such invalidation" and issue orders to enjoin future violations. RSA 91-A:8, II.

"The ordinary rules of statutory construction apply to [courts'] review of the Right-to-Know Law, and [courts] accordingly look to the plain meaning of the words used." Union Leader Corp. v. N.H. Housing Fin. Auth., 142 N.H. 540, 547 (1997) (quotation omitted). Courts are, however, obligated to "'construe provisions favoring disclosure broadly, while construing exemptions narrowly.'" N.H. Civil Liberties Union v. City of Manchester, 149 N.H. 437, 439 (2003) (quoting Goode v. N.H. Legislative Budget Assistant, 148 N.H. 551, 553 (2002)). Moreover, courts "resolve questions regarding the law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents." Goode, 148 N.H. at 553 (quotation omitted). Though the respondents' arguments are primarily aimed

at denying any failures to disclose, to the extent that they assert any right to nondisclosure, they bear the burden of proof. N.H. Civil Liberties Union, 149 N.H. at 439.

III. The Dinner Gathering

Factual Background

On or about July 2007, Commissioners Cryans and Burton appeared on Dr. Janine Weins's radio program, which they do regularly to discuss county and state issues. (Cryans Cross Ex. 9/18/08; Burton Cross Ex. 9/22/08.) It is a tradition that after appearing on the program, the three have dinner at the Three Tomatoes Restaurant in Lebanon, New Hampshire. (Cryans Cross Ex. 9/18/08.) After appearing on the program in July 2007, the commissioners and Weins had such a dinner and were joined by Representative Gene Andersen, a member of the Delegation. Representative Andersen was invited by Weins. Neither Commissioner Cryans nor Commissioner Burton directed Weins to invite Representative Andersen. (Cryans Direct Ex. 9/18/08; Burton Cross Ex. 9/22/08.) Representative Andersen and Weins have been friends since approximately 1990 and are former neighbors. (Andersen Cross Ex. 8/28/08.)

During discovery in this case, there was some confusion as to when the dinner at issue took place, and Representative Andersen apparently mistakenly testified during his deposition that it occurred closer to November or December 2007. (Andersen Direct Ex. 8/28/08.) At the hearing, however, Representative Andersen testified that after talking to his wife and thinking about particular events taking place in his life around the time of the dinner and after remembering that the group sat outside during dinner, he realized that the dinner must have occurred closer to August 2007. (Andersen Direct & Cross Ex.

8/28/08 & 9/2/08.) It has since been established, by other testimony and by the receipt of the dinner, that the dinner occurred in July 2007.

Throughout dinner, conversation focused on personal and social matters involving the group. Specific topics of conversation included Representative Andersen's daughters and his door-to-door election campaign. (Andersen Cross Ex. 8/28/08.) There was also discussion of the communities in which they live. (Id.) At the end of dinner, Commissioner Burton paid the bill. As he was paying, he suggested to Representative Andersen that he should go and look at the current jail and see if he thought that Grafton County needed a new one. (Andersen Direct Ex. 8/28/08.) Representative Andersen interpreted these words as a suggestion that he go look at the jail. (Id.) Representative Andersen did tour the correctional facility sometime after this dinner and before the Delegation Meeting There was no other discussion of the correctional facility or any other county business during the dinner.

Discussion

The Judicial Referee finds that the dinner at issue falls squarely within the social gathering exception to RSA 91-A:2, I. Though this dinner was not a chance social encounter, the facts show clearly that it was "neither planned nor intended for the purpose of discussing matters relating to official business" and that it did not result in any decisions. See id. The Judicial Referee also cannot find that any of the friends who gathered at Three Tomatoes were using this social gathering to circumvent the spirit of RSA 91-A.

It was Weins, and not either of the commissioners, who invited Representative

Andersen to the dinner. There is no evidence that she planned the dinner so that the commissioners and Representative Andersen could discuss official business regarding the correctional facility. Weins did not invite Representative Andersen at their direction. Representative Andersen did not understand the dinner to be a commissioners meeting and did not expect the correctional facility to be discussed. (Andersen Cross Ex. 8/28/08.) Neither of the commissioners convened the dinner for the purpose of discussing official business. (Cryans Direct Ex. 9/18/08; Burton Cross Ex. 9/22/08.) Testimony in this case clearly established that Weins and Representative Andersen are personal friends, as are Weins and Commissioners Cryans and Burton. The dinner was a social gathering of personal friends.

The petitioners have focused a great deal of attention on the fact that Commissioner Burton, after paying for the meal, submitted the bill for reimbursement from Grafton County. The Judicial Referee cannot find that this fact requires any particular outcome in this case. This case is not about whether Grafton County needs to revise its system for meal reimbursement. Whether it is proper practice for the commissioners to submit bills for meals that occur immediately after Weins's radio program or to submit other bills for meals that are social in nature though tied closely to county business trips is not a matter at issue in this case. Whether Commissioner Burton should or should not have submitted the bill for reimbursement is not dispositive of whether the dinner at issue was a social meeting within the meaning of RSA 91-A.

The only reference to any county business during the dinner was Commissioner Burton's suggestion to Representative Andersen that he tour the current correctional

facility. It is apparently a suggestion that Commissioner Burton makes regularly to individuals who inquire about the correctional facility project. (Burton Direct Ex. 9/22/08.) The Judicial Referee finds that Commissioner Burton's suggestion did not convert the social gathering of friends into an impermissible meeting closed to the public. The public's right to know and right to open government were not undermined by the Three Tomatoes dinner. The dinner was not planned for discussion of county business and no decisions related to county business occurred. For these reasons, the Judicial Referee finds that the dinner is exempt from RSA 91-A.

IV. The February 11, 2008 8:15 a.m. Gathering

At approximately 8:15 or 8:30 a.m. on February 11, prior to the Delegation Meeting, the commissioners, Representative Mulholland, Director Clough, and other individuals involved in planning of the jail gathered briefly at the County Administration Building ("the 8:15 Gathering"). Director Clough testified that on the preceding Friday, she and Commissioner Cryans had spoken and he suggested that the commissioners assemble there before the Delegation Meeting. (Clough Direct Ex. 9/2/08.) Commissioner Cryans likewise testified that he asked Director Clough to have the commissioners arrive at around 8:15 a.m. to ensure that they would all be on time to walk over to the Delegation Meeting together. (Cryans Direct Ex. 9/18/08.)

The purpose of this 8:15 Gathering was best explained by Commissioner Cryans as a time when they could make sure that everyone was present and that they had everything they needed for the Delegation Meeting—including, for example, handouts, a screen if it was needed, and other items that might be required. (Cryans Direct Ex.

9/18/08.) The 8:15 Gathering was brief, and the only specific topics that were raised regarding the bond vote were what effect the bond would have on the tax rate and what exact motion would be offered. (Mulholland Direct Ex. 8/28/08.) With respect to the tax information, there was not detailed discussion of the potential tax implications, but rather the group asked Director Clough to quickly prepare a spreadsheet showing the tax impact of a $38 million bond in case someone at the Delegation Meeting asked for this information. (Mulholland Direct Ex. 8/28/08.) Director Clough and the project's financial advisor, Richard Ranaghan, had previously prepared similar spreadsheets showing the tax impact of other bond amounts and her task that morning was to adjust the figures to show the impact of a $38 million bond. (Clough Cross Ex. 9/18/08.)

Other individuals related to the project were also present at the 8:15 Gathering, including Ranaghan, Superintendent Glenn Libby, Arthur Thompson of SMRT, and Ben Harrington of HP Cummings. It is not clear how all of these individuals were informed of the 8:15 Gathering. (See Clough Direct Ex. 9/2/08.) Some of them may not have been invited and may have simply arrived early in anticipation of the Delegation Meeting and ended up at the 8:15 Gathering by chance. (Id.) Commissioner Cryans testified, for example, that as he was entering the building, he saw Ranaghan in the parking lot and invited him into the offices. (Cryans Direct Ex. 9/18/08.)

None of the individuals at the 8:15 Gathering who testified viewed it as an official meeting of the commissioners. Moreover, none of the testimony established any intent to purposely exclude the public from a meeting or to circumvent RSA 91-A. (See e.g., Mulholland Direct Ex. 8/28/08.) As Representative Mulholland explained, she had no

intention of hiding any information from the public when she went to the 8:15 Gathering and it is her belief that the gathering was so "innocuous" that there was nothing to hide. (Id.) Commissioner Burton similarly described the informal gathering as "a place to hang their hats" before going to the Delegation Meeting. (Burton Direct Ex. 9/22/08.)

Discussion

Though the Judicial Referee finds credible the testimony of Representative Mulholland and Commissioners Cryans and Burton that they did not intend to exclude the public from a meeting it had a right to attend, the facts establish a violation of RSA 91-A. A quorum of the commissioners was present. The purpose of the 8:15 Gathering was to discuss, albeit briefly, the Delegation Meeting that was to follow immediately and the vote on the correctional facility. Furthermore, the Judicial Referee finds that the commissioners had an advisory and/or supervisory role over the correctional facility project. As the political leadership of the County, it was the commissioners' role to perform the executive functions related to the correctional facility. Having heard all of the testimony on the role played by the commissioners, it is only reasonable to conclude that their role was supervisory and advisory.

The Judicial Referee finds further that the commissioners and Director Clough should have known that this was the type of meeting that requires notice to the public. The 8:15 Gathering was the last opportunity for the commissioners and Representative Mulholland to discuss the correctional facility before the scheduled vote. The individuals responsible for providing financial advice and design and construction plans for the project were also present. The commissioners and Director Clough knew there was an

obligation to give notice of meetings of a quorum of the commissioners when official business would be discussed. They should have known that a meeting convened for the purpose of discussing the upcoming vote on the correctional facility was such a meeting. The Judicial Referee recognizes that little, if anything, resulted from this meeting. Nonetheless, the public has a right to be informed of and attend public proceedings even if they do not yield important results.

Remedy

The proper remedy for this violation does not include invalidating the bond vote. The Court only has the authority to invalidate an action taken at a meeting held in violation of RSA 91-A. See RSA 91-A:8, II. There was no action taken at the 8:15 Gathering. Though there was a brief discussion of the fact that a $38 million bond would be proposed at the Delegation Meeting, the decision to propose a bond of that amount was not reached at the 8:15 Gathering. The First Bond Motion had already been prepared prior to the 8:15 Gathering and it had already been determined who would make the motion. The only other result of the 8:15 Gathering was that Director Clough prepared a tax impact spreadsheet. Having reviewed the DVD of the Delegation Meeting several times, the Judicial Referee cannot find that the spreadsheet was even discussed or that it in any way affected the bond vote. (See DVD, Pet'rs' Ex. 2.) It was simply prepared in case the information was requested. For these reasons, the Judicial Referee finds that there was no action taken at the 8:15 Gathering that could be invalidated and that the 8:15 Gathering ultimately had no impact on the bond vote.

For the same reasons, the Judicial Referee does not recommend enjoining the

respondents from raising the money approved by the bond vote or continuing with the correctional facility project. The Judicial Referee cannot find that the brief gathering before the Delegation Meeting had an effect on the bond vote. The Delegation passed the bond after an almost two-hour meeting that was the culmination of years of preparation and work. It did not pass the bond as the result of the 8:15 Gathering. The injunctive relief requested is far larger in scope than the actual violation. The injunctive relief requested also has no direct relationship to the violation found. Accordingly the circumstances do not warrant such relief.

While the violation is best described as minor, the Judicial Referee would still recommend an award of costs and reasonable attorney's fees related to this violation. Absent this litigation, the petitioners would not have been aware of the 8:15 Gathering and would not have been able to determine what, if any, actions were taken at the 8:15 Gathering unknown to the public. It is true that in this case the lawsuit revealed that no real decisions were reached or actions taken as a result of this closed meeting, but this is information that the petitioners could not have known without this litigation. As the Judicial Referee has already discussed, the elected officials present at the 8:15 Gathering should have known that even if they did not intend to discuss the correctional facility project in great detail, convening a quorum to discuss the project even in a brief or cursory manner outside the presence of the public was improper. Only as a result of this lawsuit were the petitioners able to determine what occurred at the meeting that was otherwise closed to them. Accordingly, the Judicial Referee recommends an award of costs and attorney's

fees for this violation.[2]

V. The February 11, 2008 Delegation Meeting

Factual Background

At 9:00 a.m. on Monday, February 11, 2008, the Delegation held a public meeting in the basement of the current correctional facility for the purpose of voting on funding for the proposed correctional facility. Petitioner Hull's video camera was set up at the back of the meeting room and recorded much of the Delegation Meeting until it ran out of power.[3] (Hull Direct Ex. 8/25/08.) At the initial role call, twenty-five members of the Delegation were present, meaning seventeen votes in favor would be required to pass the bond. (DVD, Pet'rs' Ex. 2 at 2:30.)

Representative Philip Preston made a motion ("First Bond Motion") stating:

> "That the County is hereby authorized to raise and appropriate a sum of up to Thirty-eight Million Dollars ($38,000,000) for the construction and development of the proposed correctional facility and related costs and expenses, such sum to be raised by the issuance of bonds or notes issued

[2] The Judicial Referee notes that under RSA 91-A:8, I, the petitioners are entitled to costs for the violation even absent a finding that the respondents knew or should have known of the violation. The discussion of knowledge relates only to the award of fees.

[3] The Judicial Referee received into evidence two copies of the DVD of the Delegation Meeting, which are identified as Petitioners' Ex. 2 and Respondents' Ex. N. The respondents informed the Judicial Referee that the DVD player on which they viewed the DVD was unable to display tracking information on the screen while the DVD was playing, making it difficult for them to reference specific points on the DVD. Accordingly, they hired Bryant Ragas of Legal Media Services to layer tracking information onto the DVD. Ragas testified that he made no alterations to the content of the DVD, but simply added a counter that displays on the screen regardless of what machine is playing the DVD. The counter appears to be approximately 3 seconds off from the tracking that is imbedded in the DVD. Ragas explained that he started the counter when he saw the video start, but that there may have been a 3 second delay between him actually seeing the video start and the counter starting. The 3 second delay does not change durations on the recording. (Ragas Direct Ex. 9/5/08.) The Judicial Referee has viewed both DVDs in their entirety and they are identical apart from the tracking. The Judicial Referee was able to use a DVD player that could display tracking on the screen and therefore all time references in this Order are to Petitioners' Ex. 2. To the extent that there are any minor discrepancies between times referenced in this Order and the respondents' pleadings, they are likely attributable to the 3 second delay previously explained or to human error in assigning precise times.

> pursuant to the provisions of RSA 28 and RSA 33, as amended; and to authorize the County Commissioners to issue, negotiate, sell and deliver such bonds and notes and to determine the rate of interest thereon and the maturity and other terms thereof.

(Id. at 2:45-3:22; Delegation Minutes of 2/11/08, Pet'rs' Ex. 4.) Representative Williams seconded the motion. Discussion was held on the First Bond Motion. (DVD, Pet'rs' Ex. 2 at 4:45-26:54.) During the course of the discussion, Representative Ruth Bleyler arrived, meaning passage of the bond would require eighteen, rather than seventeen, votes. (Id. at 26:54-27:07.) The First Bond Motion failed by a vote of 17-9.

The video recording of the Delegation Meeting shows that after the First Bond Motion failed, there was some confusion as to what would occur next. Representative Edmond Gionet moved to adjourn the meeting (id. at 31:35), but the motion failed on a show of hands. (Id. at 34:19-34:50.) Representative Mulholland then called for a five minute recess. (Id. at 35:09.)

Memories regarding what occurred during the recess are somewhat incomplete due to the passage of time. Having sorted through the testimony and limited video evidence, the Judicial Referee finds the following facts. Within 30 seconds of the recess being called, Democratic members of the Delegation began leaving the main meeting room and entering a partitioned-off area ("Partitioned Area") that was located immediately behind where Representative Mulholland had been standing. (Id. at 35:34-36:45; Direct Ex. Gionet 8/25/08.) Individuals in the main part of the meeting room mingled and talked in small groups.

During the hearing on this matter, the Judicial Referee took a view of the meeting

room, including the Partitioned Area. The partition is partial. It does not go to the ceiling and there is also a large opening at the left side that the petitioners measured to be between five and six feet. (See Diagram, Pet'rs' Ex. 1.) Thus, while the partition does create some privacy, it is possible to easily pass between the meeting room and the Partitioned Area or to stand at the opening to the Partitioned Area and look in. The most private part of the Partitioned Area is the far right, which is furthest from the partition opening and better blocked from the view of the main part of the meeting room.

During the recess, in the Partitioned Area a group of at least six but no more than twelve delegates clustered at the far right. This group included the three Democratic members of the Delegation who had voted against the First Bond Motion—Representatives Andersen, Carol Friedrich, and David Pierce. Memories regarding who else was in or near this group differed slightly, but included Representatives Sharon Nordgren, Martha McLeod, Bernard Benn, Anna Harding, Almy, Bleyler, and Mulholland. (Almy Direct Ex. 8/26/08; Mulholland Direct Ex. 8/28/08; Andersen Direct Ex. 8/28/08; Clough Cross Ex. 9/5/08; Bleyler Direct & Cross Ex. 8/26/08; Pierce Dep. at page 32, lines 9-18.) The three Democrats who had voted against the bond were at the center of the clustered group with the others standing very close to them. (Bleyler Direct Ex. 8/26/08.) The focus of the conversation was whether there was a way to compromise and also whether Representative Friedrich would propose a bond for a lesser amount. (Id.; Andersen Direct Ex. 8/28/08; Pierce Dep. at page 34, lines 4-23.) Representative McLeod also explained that her goal in the conversation was to understand why the three Democrats had voted against the bond. (McLeod Direct Ex. 9/22/08.) There was no

discussion of a vote to reconsider the First Bond Motion. (E.g., id.)

During the course of the recess, several individuals who were not Democratic State Representatives entered or hovered near the entrance of the Partitioned Area, including (in chronological order) Commissioner Richards, Republican Representative Vernon Dingman, Director Clough, Commissioner Cryans, Republican Representative Williams. (DVD, Pet'rs' Ex. 2; see also Direct Ex. Gionet 8/25/08.) A reporter also looked into the Partitioned Area, but left after speaking to Representative Nordgren.

Representatives in the more tightly clustered group appear to have been largely or entirely unaware that commissioners or other individuals who were not Democratic State Representatives were in the Partitioned Area. (Direct Ex. Bleyler 8/26/08.) None of the individuals who testified that were part of the clustered group—including Representatives Andersen, Bleyler, Pierce, Almy, and Mulholland—remember speaking to or seeing any Republicans in the Partitioned Area. Only Representative McLeod remembered seeing Commissioners Cryans and Richards. (McLeod Direct Ex. 9/22/08.) Republican Representative Dingman likewise testified that when he looked into the Partitioned Area, he did not speak to or interact with anyone. (Dingman Direct & Cross Ex. 8/26/08.) When Representative Williams went into the Partitioned Area, he saw the group clustered at the right, but did not speak to anyone and testified that he had no interaction with that group. (Williams Direct Ex. 8/26/08.) Commissioner Cryans testified that he did approach the clustered group, but that the discussion was already winding down and he only heard the end of a conversation about Representative Friedrich offering her motion. He did not participate in the discussion. (Cryans Direct Ex. 9/18/08.)

In addition to the Democrats in the tightly clustered group, there were other Democrats in the Partitioned Area that were seated or standing apart from the clustered group and not taking part in its conversation. Executive Director Clough spoke separately to Representative Suzanne Laliberte on the left side of the Partitioned Area, for example, but they were not involved with the clustered group discussing the project. (Clough Direct Ex. 9/7/08.) It appears, as Director Clough described, that within the Partitioned Area, there were discrete groups of people having separate conversations. (Id.)

There are differing opinions regarding whether a caucus was taking place in the Partitioned Area. Representative Mulholland recalls that Representative Harding called for a caucus. (Mulholland Cross Ex. 8/28/08.) The minutes reflect the same. (Delegation Minutes of 2/11/08, Pet'rs' Ex. 4.) Representative Andersen remembers Representative McLeod suggesting a caucus, but he did not believe a caucus actually took place and he personally prefers not to participate in caucuses. (Andersen Direct Ex. 8/28/08.) Representative McLeod remembers suggesting to Representative Nordgren that they caucus and then hearing Representative Harding call louder for a caucus. (McLeod Direct Ex. 9/22/08.)

On the DVD recording it is impossible to discern the word "caucus" at the beginning of the recess, but there are two clear subsequent uses of the word during the recess. At approximately 45:21 on the DVD, Register of Deeds Bill Sharp stated, "They're back in the back caucusing." (DVD, Pet'rs' Ex. 2; Clough Cross Ex. 9/5/08.) The term "caucus" was again used when Representative Gionet stated, "They're having a Democratic caucus." (DVD, Pet'rs' Ex. 2 at 47:21-23; Clough Cross Ex. 9/5/08.)

Representative Dingman testified that while he did not necessarily hear the word "caucus," he was sure that Republicans were not invited into the Partitioned Area and that it was a gathering of Democrats. (Dingman Direct Ex. 8/26/08.) When the Executive Committee approved the minutes of the Delegation Meeting, there was no objection to the use of the word "caucus" to describe the gathering in the Partitioned Area. (Almy Cross Ex. 9/2/08.)

After the recess ended and the meeting was reconvened (DVD, Pet'rs' Ex. 2 at 55:25), Representative Friedrich made a motion (Second Bond Motion) to approve a bond of $35 million with projected operating costs of up to 150 percent of the 2007-2008 operating costs of the existing facility. (Id. at 55:57-56:20). It was seconded by Representative Andersen. After discussion (id. at 56:40-1:13:45), the Second Bond Motion failed by a vote of 23-3 with Representatives Andersen, Friedrich, and Pierce casting the only votes in favor. (Id. at 1:15:05-1:16:12)

After the Second Bond Motion failed, the Delegation discussed and ultimately rejected a motion to recess the meeting and form a committee to try to work out differences on the project. (Id. at 1:16:25-1:35:25.) Representative Andersen then moved to reconsider the original motion. (Id. at 1:35:50) The Motion for Reconsideration passed (id. at 1:39:29), and after the First Bond Motion was re-read, it passed by a vote of 18-8 ("Third Bond Vote"). Only Representative Andersen changed his vote.

Discussion

The petitioners ask the Judicial Referee to find that an illegal closed meeting took place in the Partitioned Area during the recess. The respondents argue that the

discussion in the Partitioned Area falls within the caucus exception of RSA 91-A:2, I. The Judicial Referee finds, however, that the haphazard gathering of people in the Partitioned Area did not constitute a meeting, meaning it is unnecessary to determine whether it falls within the caucus exception.

As previously explained, a meeting under RSA 91-A:2, I, is a "convening of a quorum of the membership of a public body . . . to discuss or act upon a matter or matters over which [it] has supervision, control, jurisdiction, or advisory power." Though the statute does not define "convene," it is commonly understood to mean "to come together, meet, or assemble in a group or body." Webster's Third New International Dictionary 497 (unabridged ed. 1993). In this case, the facts do not establish that a quorum of the Delegation ever convened in the Partitioned Area.

It is apparent that between six and twelve Democrats—though witnesses could only identify ten by name and the number twelve was an estimate—actually came together at the far right of the Partitioned Area and discussed the correctional facility. The remaining individuals in the Partitioned Area, including Democratic Representatives and other individuals, were not part of this discussion. They did not take part in the conversation. The individuals in the tightly clustered group were not even aware of their presence. All testimony on this issue is completely consistent.

There may have been an intention to caucus in the Partitioned Area. The undisputed facts show, however, that a quorum of the Delegation never actually participated in any way—by listening or talking—with the small group at the far right of the Partitioned Area. A quorum of the Delegation did not come together, meet or assemble.

The testimony established that there were several discrete groups of individuals talking in the Partitioned Area apart from the more tightly clustered group on the right, just as the DVD shows several small groups of people engaging in conversation in the main meeting room during the recess. The individuals in the Partitioned Area were never called to order or otherwise joined in a single group. None of the individuals who testified stated that there was any effort to assemble the individuals in the Partitioned Area as a single body to discuss the bond vote.

Having viewed the Partitioned Area, the Judicial Referee finds that it is possible that a group could have clustered tightly in the right corner while other individuals stood or sat to the left side without interacting with the clustered group. It is also possible that individuals wandered in and out of the Partitioned Area without interacting with the clustered group and that other individuals stood near the opening of the partition without joining in the clustered group's conversation or even understanding the conversation taking place. The Partitioned Area is small, but not so small that separate groups could not have gathered within it. The Judicial Referee's personal observations do not weigh against a finding that the witnesses' entirely consistent descriptions of what occurred in the Partitioned Area are credible.

Even if a quorum was present in the Partitioned Area, a quorum did not discuss the correctional facility or the failed bond vote. The individuals in the Partitioned Area instead engaged in several discrete conversations, none of which meets the definition of meeting under RSA 91-A. For all of these reasons, the Judicial Referee finds that no meeting took place in the Partitioned Area. Having reached this finding, the Judicial

Referee need not consider whether any decision was made in the Partitioned Area that should be invalidated. Because the petitioners spent a great deal of time at the hearing and in their pleadings trying to establish some improper dealing in the Partitioned Area, however, the Judicial Referee will address this issue briefly.

First, the Judicial Referee finds no evidence that Representative Andersen was pressured into changing his vote. The petitioners tried to elicit testimony from Representative Andersen that during the recess he was pressured or coerced into changing his vote. He flatly denied any such improper influence and the Judicial Referee finds his testimony on this issue highly credible. Representative Andersen testified that he was not pressured by Representative Almy in particular and that he was unaware of what power she has as Chair of the Ways and Means Committee in the State House of Representatives. (Andersen Direct Ex. 8/28/08.) Representative Andersen also testified that he did not fear any kind of trouble or retaliation from Democratic leadership based on his vote against the correctional facility. (Andersen Direct & Cross Ex. 8/28/08 & 9/2/08.) Representative Almy similarly testified that no offers were made to Andersen to change his vote and that in her opinion Representative Andersen is simply not persuadable. (Almy Direct Ex. 8/26/08.) Representative Andersen's demeanor during his testimony supports this description.

The Judicial Referee also finds that Representative Andersen did not actually decide to change his vote during the recess and did not change his vote based on anything that was said during the recess. No deals were made with Representative Andersen. No threats were made against him. He ultimately changed his vote because he

believed that a new correctional facility was needed and that the First Bond Motion was the best option available to the Delegation. (Andersen Cross Ex. 9/2/08.) As Representative Andersen explained, he was worried that the Delegation was headed toward "an abyss." After Representative Friedrich's Second Bond Motion failed, he determined the First Bond Motion was preferable to continued discussion of the project. (Id.) He simply wanted to end the discussion and move forward with the project. (Andersen Re-Cross Ex. 9/2/08.)

The Judicial Referee finds that no violation of RSA 91-A occurred at the Delegation Meeting. The Judicial Referee bases this finding on the fact that a quorum of the Delegation never actually convened in the Partitioned Area to discuss the correctional facility. There is evidence that there was an intent to caucus and there is some testimony that certain individuals believed a caucus took place. The Judicial Referee need not determine, however, whether a caucus within the meaning of RSA 91-A occurred. If no meeting took place, there is no need to determine whether that meeting fits within one of the enumerated exceptions. The petitioners are not entitled to relief on this ground.

VI. The Request for Records

Factual Background

On February 20, 2008, the petitioners and two other individuals delivered a request for records ("February 20 Request") to Jeri Martino, Executive Secretary to Executive Director Clough, at the Grafton County Administration Building. In the February 20 Request, the petitioners asked for "the February 11 Minutes and all notes, materials, tapes or other sources used for compiling the February 11 Minutes." (Records Request,

Pet'rs' Ex. 3.) They defined the "February 11 Minutes" to include minutes of the open Delegation Meeting and also minutes of the events that occurred in the Partitioned Area during the recess. (Id.)

In response to the February 20 Request, the petitioners received an undated letter from Director Clough and certain documents. Those documents included the Sign In Sheet for the Delegation Meeting, a vote tally sheet, handwritten notes taken by Martino, and a draft copy of the minutes. (Clough Response, Pet'rs' Ex. 7.) The letter explained that the minutes were in draft form pending final approval, which could not occur until the Executive Committee met and approved the minutes. (Id.; Clough Cross Ex. 9/18/08; Almy Cross Ex. 9/2/08.) In fact, the final minutes were not available until July 2008, when changes proposed at the March 17, 2008 Executive Committee meeting were completed and Representative Almy signed the final version. (Almy Cross Ex. 9/2/08.) The letter from Director Clough also stated that there were no minutes taken during the recess of the Delegation Meeting, explaining that, "consistent with the provisions of RSA 91-A, there are no minutes for the caucuses of the Delegation that took place on February 11, 2008." (Clough Response, Pet'rs' Ex. 7.) Petitioner Hull testified that he received the documents approximately three days after making the request—on or around February 23, 2008. (Hull Direct Ex. 8/25/08.)

On August 12, 2008, shortly before trial, the petitioners received additional documents during the course of discovery which they claim are also responsive to the February 20 Request. The documents include: (1) "Motion #1 + 5" which is the written motion for a $38 million bond; (2) "#3" which is a motion to recess the meeting and form a

committee; (3) "Motion #2" which is Representative Friedrich's motion to approve a $35 million bond; (4) an unofficial vote tally sheet kept by Martino; (5) a copy of the final minutes of the Delegation Meeting as approved by the Executive Committee and signed by Representative Almy; (6) a worksheet showing the tax impact of the $38 million bond. (Discovery Documents, Pet'rs' Ex. 4.)

The petitioners allege that the respondents violated RSA 91-A by not making the documents included in Petitioners' Ex. 4 available prior to trial and in a timely manner in response to their document request. They also claim that the respondents failed to timely respond to their initial request for documents. The petitioners state further that the respondents have still, to date, failed to turn over responsive materials. They point specifically to photographs of the Delegation Meeting that Martino took (see DVD, Pet'rs' Ex. 2 at 32:45) that were not produced and a newspaper article that Martino relied on in drafting the minutes.

Discussion

The Judicial Referee has identified certain violations of RSA 91-A related to the February 20 Request. First, the Judicial Referee finds a violation of RSA 91-A:2, II, which provides that minutes of public meetings "shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting." When the petitioners requested the minutes on February 20—more than five business days after the Delegation Meeting—the minutes had not been prepared. The petitioners presented their request for documents and were informed that the minutes were not ready. (Hull Direct Ex. 8/25/08.) The minutes had not been recorded within five business days of the

Delegation Meeting. The provision itself is unambiguous and the violation evident.

The Judicial Referee recognizes that there was testimony in this case that the final draft of the minutes could not be produced until the minutes were approved by the Executive Committee and signed by Representative Almy, as Clerk of the Delegation. The Judicial Referee does not find that Grafton County committed error by not having the final draft of the minutes on file. It is reasonable that the final version would not be available until after the Executive Committee approved them, and the Judicial Referee cannot find that RSA 91-A:2, II would impose the unreasonable requirement that the final draft be recorded within five days. Still, RSA 91-A:2, II requires that the minutes be recorded not more than five days after the public meeting and in this case even the draft minutes were not recorded in that time. Though the minutes were provided within five business days of the February 20 Request, as the Judicial Referee will discuss below, they were not promptly recorded within five days of the public meeting. The Judicial Referee finds a violation on this basis.

The second violation pertains to the newspaper article from which the term "caucus," as used in the minutes, was appropriated. Martino testified that she used an article written by Bernie Marvin in the Bridge Weekly, a weekly newspaper with circulation in the Upper Valley area of New Hampshire and Vermont, in writing the minutes. (Martino Direct Ex. 9/2/08.) She stated that she would not have used the term "caucus" in the minutes if she had not read the word in the article. (Id.) The Judicial Referee need not comment on whether it is proper to use a newspaper as a source of information for compiling public meeting minutes. Even assuming Martino committed no error in using

the newspaper article as a source of information, a violation of RSA 91-A:4, II is apparent. The statute requires the public body to make available for inspection all "sources used for compiling minutes" of public meetings. RSA 91-A:4, II. Because Grafton County used the newspaper article as a source of information in compiling the minutes, it should have made that article available.

In this case, whether a caucus took place was the center of the controversy and the public had a right to know that Martino, the employee responsible for drafting the minutes that are meant to provide an accurate description of what occurred at the Delegation Meeting, relied on a newspaper article in writing the minutes. The petitioners had a right to know that the word "caucus" was taken from an article and did not originate with Martino, who never personally heard the word "caucus" at the Delegation Meeting. (Martino Direct Ex. 9/2/08.) Furthermore, the Judicial Referee finds that the newspaper article was responsive to the petitioners' request because it was a "source[ ] used for compiling the February 11 Minutes." The petitioners only learned this information as a result of this suit and have never actually been provided the article.

The Judicial Referee finds further that the respondents violated RSA 91-A by not producing the texts of the motions, which are labeled "Motion #1 + 5," "#3," and "Motion #2." Martino testified that these documents were in her possession, but that she did not believe they were responsive to the February 20 Request. (Martino Direct Ex. 9/2/08.) Both she and Director Clough took the position that because the draft minutes contained the text of these motions, they were not required to produce the actual motions.

As the Judicial Referee has already explained, RSA 91-A:4, II requires the public

body to make available for inspection all "sources used for compiling minutes" of public meetings, and the petitioners plainly requested these documents because they are "sources used for compiling the February 11 Minutes." RSA 91-A does not permit employees to decide that such documents will not be made available because the minutes themselves are sufficient. To the contrary, it guarantees the public the right to inspect such documents. Id. at 91-A, IV.

The Judicial Referee finds no violations, however, with respect to the remaining documents or items the petitioners complain that they did not receive. The Judicial Referee also finds that the respondents timely responded to the request for documents. The petitioners argued that Director Clough's initial response was not timely because it was undated. Petitioner Hull testified, however, that he received the response in about three days. The Judicial Referee therefore has no basis for finding the response untimely.

The Judicial Referee also finds no error in Director Clough not having turned over Martino's unofficial vote tally or the tax impact spreadsheet. Martino testified that while she did try to keep her own tally, it was unofficial and she used Representative Almy's tally, which was produced in response to the February 20 Request, in composing the minutes. (Martino Cross Ex. 9/2/08.) As the Judicial Referee has already discussed, there is no evidence that the tax spreadsheet was actually discussed or relied on at the Delegation Meeting and Martino also did not use it to compile the minutes. Neither of these documents was therefore responsive to the February 20 Request because they were not "sources used for compiling the February 11 Minutes," (Records Request, Pet'rs' Ex. 3.) The same can be said of the photographs taken at the Delegation Meeting. There

is no evidence in the record to show that they were used to compile the minutes and they were therefore not responsive to the request.

Finally, the Judicial Referee finds no error in the County not having turned over the final draft of the minutes in response to the February 20 Request. Testimony in this case established that the Minutes were approved at the March 17, 2008 Executive Committee meeting, but that they were not signed in their final form until July 2008. They were then produced during discovery. It is unclear to the Judicial Referee why the final signed draft was not available until July if they were approved in March. Still, the Judicial Referee finds that the respondents compiled with the February 20 Request by making the preliminary draft version available. They subsequently turned over the final draft once it was prepared. This litigation was not necessary to make the final draft available since it would have been available once it was prepared even without suit.

Remedy

None of the violations identified by the Judicial Referee warrants setting aside the vote at the Delegation Meeting or enjoining construction of the correctional facility. As a preliminary matter, none of the violations regarding records had any impact on the vote and they were committed subsequent to the vote. The Judicial Referee also finds no evidence that invalidating the vote would be a proper or effective way to discourage or prevent future violations of this type. The violation at issue pertains to records production and not the Delegation Meeting. Under these circumstances, there is no basis for setting aside the vote or enjoining the correctional facility project.

The Judicial Referee also cannot find that attorney's fees or costs are warranted

based on the first identified violation—failure to promptly record minutes—since the litigation was not necessary to make the minutes available and the petitioners received the minutes within five business days. The Judicial Referee does recommend, however, that attorney's fees and costs be awarded for the other two violations identified. RSA 91-A:8, I, provides that reasonable attorney's fees and costs shall be awarded if a lawsuit is necessary in order to make a public record available to the public. In this case, the Judicial Referee finds credible Martino and Director Clough's testimony that they did not know that they should turn over the documents. But, the Judicial Referee finds that Director Clough, as Executive Director of Grafton County, and Martino, as the employee responsible for taking minutes, should have known that by not turning over all sources used in compiling the minutes they were violating RSA 91-A and not responding completely to the petitioners' February 20 Request.

Absent this litigation, the petitioners would never have seen the original bond motions and they would not have known that the minutes were drafted in reliance on a newspaper article. These are public records that they had a right to inspect. The employees responsible for performing the duties required by RSA 91-A should have known that the public had the right to inspect these records. Accordingly, the Judicial Referee recommends that costs and reasonable attorney's fees be awarded based on these two violations.

VII. Conclusion

For the reasons set forth, the Judicial Referee recommends that the Court find the identified violations of RSA 91-A related to the 8:15 Gathering and the February 20

Request for records. The Judicial Referee recommends an award of costs and reasonable attorney's fees related to these violations. After the petitioners have filed the appropriate affidavits and the respondents have had an opportunity to respond, the Judicial Referee will recommend in greater detail what amount should be awarded. The Judicial Referee does not recommend setting aside the Third Bond Vote or issuance of any injunctive relief. The Judicial Referee also notes that certain issues discussed at length during this hearing, for example emails regarding a possible re-vote, are beyond the scope of this case and not relevant to the issues presented. The Judicial Referee has not discussed or made findings with respect to issues not relevant to the violations alleged.

The parties have requested findings of fact and rulings of law. The Judicial Referee has made extensive recommended findings in narrative form. See Harrington v. Town of Warner, 152 N.H. 74, 86 (2005). It is recommended that the parties' findings and rulings consistent with the Judicial Referee's recommendations be granted, and otherwise, that they be denied.

Date: 11/19/08

H. W. P.

Harold W. Perkins
Judicial Referee

The recommendations of the Judicial Referee are APPROVED in their entirety.

SO ORDERED.

Date: 11/24/08

Peter H. Bornstein

Peter H. Bornstein
Presiding Justice

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 135

BILL TITLE: **relative to remedies for violation of the state right-to-know law.**

DATE: MAR 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study, RETAINED (Please circle one.)

Moved by Rep. WEBER

Seconded by Rep. WALL

Vote: 13-7 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR (please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 135

BILL TITLE: **relative to remedies for violation of the state right-to-know law.**

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Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) Retain

Moved by Rep. Weber

Seconded by Rep. Wall

Vote: 13/7 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

~~REGULAR or CONSENT CALENDAR (please circle one)~~

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 135 Title: Relative to remedies for violation of the state right-to-know law.

PH Date: 1/14/2009 Exec Session Date: 3/17/09

Motion: Retain Amendment #:

MEMBER	YEAS	NAYS
Cote, David E, Chairman	✓	
Wall, Janet G, V Chairman	✓	
Potter, Frances D	✓	
Hackel, Paul L	✓	
Preston, Philip, Clerk	✓	
Richardson, Gary B	✓	
Weber, Lucy M	✓	
Browne, Brendon S	✓	
Nixon, David L	✓	
Thompson, Robert B	✓	
Watrous, Rick H	✓	
Rowe, Robert H		✓
Elliott, Nancy J		✓
DiFruscia, Anthony R	✓	
Mead, Robert D		✓
O'Brien, William L		✓
Hagan, Joseph M		✓
Perkins, Lawrence B		✓
Silva, Peter L		✓
Smith, William B	✓	
TOTAL VOTE:	13	7

Printed: 2/11/2009

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 135

BILL TITLE: **relative to remedies for violation of the state right-to-know law.**

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. O'Brien

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0 - YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 135

BILL TITLE: **relative to remedies for violation of the state right-to-know law.**

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: 18/0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. O'Brien

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

Phil Preston

OFFICE OF THE HOUSE CLERK 2009 SESSION

JUDICIARY

Bill #: HB 35 Title: Remedies...

PH Date: ____/____/____ Exec Session Date: 11/____/____

Motion: ITL Amendment #:

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Browne, Brendon S	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R		
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M	Y	
Perkins, Lawrence B		
Silva, Peter L	Y	
~~Smith~~, ~~William~~ B Bates		
TOTAL VOTE:	18	0

Printed: 2/11/2009

Committee Report

CONSENT CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred HB135,

AN ACT relative to remedies for violation of the state right-to-know law. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Lucy M Weber

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**JUDICIARY**
Bill Number:	**HB135**
Title:	**relative to remedies for violation of the state right-to-know law.**
Date:	**November 20, 2009**
Consent Calendar:	**YES**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The subject matter of this bill has been covered in HB 425.

Vote 18-0.

Rep. Lucy M Weber
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB135, relative to remedies for violation of the state right-to-know law. **INEXPEDIENT TO LEGISLATE.**

Rep. Lucy M Weber for JUDICIARY. The subject matter of this bill has been covered in HB 425.

Vote 18-0.

Original: House Clerk

Cc: Committee Bill File

HB 135

ITL

The subject matter of this bill has been covered in HB 425.

Lucy Weber

OK-LW

COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: HB135

TITLE: relative to remedies for violation of the state right-to-know law.

DATE: 17 Nov 2009 CONSENT CALENDAR: YES ☑ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

The subject matter of this bill has been covered in HB 425.

COMMITTEE VOTE: 18-0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. Lucy Weber
For the Committee

Rev. 07/30/99

OK-SL