2023 SESSION

23-0423
05/04

# HOUSE BILL *321-FN-LOCAL*

AN ACT relative to meetings of public bodies subject to the right-to-know law.

SPONSORS: Rep. York, Dist 3; Rep. Baker, Dist 3; Rep. Ames, Dist 3; Rep. Hinch, Dist 42; Rep. Vezilla, Dist 42; Rep. Pearson, Dist 2; Rep. Alexander, Dist 2; Rep. Ashworth, Dist 29; Rep. Jr., Hi
Ulery, Hills 13; Rep. Williams, Merr 31; Sen. Gannon, Dist 23

COMMITTEE: Judiciary

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## ANALYSIS

This bill requires public bodies to review meeting minutes within 10 days of the meeting to determine whether they should continue to be withheld from public disclosure, at least every 10 years and

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0423
05/04

STATE OF NEW HAMPSHIRE

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

AN ACT relative to meetings of public bodies subject to the right-to-know law.

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

1 New Paragraph; Minutes of Nonpublic Sessions. Amend RSA 91-A:3 by inserting after paragraph III the
following new paragraph:
IV. The public body or agency may adopt a procedure to review regularly, and at a minimum every 10 years, the circumstances under which the deliberations and votes of any meeting or portion of a meeting held pursuant to RSA 91-A:3, II may be disclosed to the public, to determine whether the circumstances justifying nondisclosure still apply. In the absence of an additional vote to continue confidentiality, the deliberations and votes shall be disclosed when the circumstances no longer apply. Minutes of meetings held pursuant to RSA 91-A:3, II shall be disclosed to the public when they are no longer entitled to be kept confidential. Nothing in this paragraph shall be construed to require the retention of meeting minutes beyond the time periods established elsewhere by law.
2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0423
12/30/22

**AS INTRODUCED**

AN ACT relative to minutes from nonpublic sessions under the right to know law.

**FISCAL IMPACT:** [ X ] State [ ] County [ ] Local [ ] None

| | Estimated Increase/(Decrease) | | | |
|---|---|---|---|---|
| **STATE:** | **FY 2023** | **FY 2024** | **FY 2025** | **FY 2026** |
| **Appropriation** | **$0** | **$0** | **$0** | **$0** |
| **Revenue** | **$0** | **$0** | **$0** | **$0** |
| **Expenditures** | **$0** | **Indeterminable Increase** | **Indeterminable Increase** | **Indeterminable Increase** |
| *Funding Source:* | [ X ] General | [ ] Education | [ ] Highway | [ ] Other |

**LOCAL:**

| | | | | |
|---|---|---|---|---|
| **Revenue** | **$0** | **$0** | **$0** | **$0** |
| **Expenditures** | **$0** | **Indeterminable Increase** | **Indeterminable Increase** | **Indeterminable Increase** |

**METHODOLOGY:**

This bill requires public bodies to review meeting minutes withheld from public disclosure at least every 10 years to determine whether they should continue to be withheld. Minutes reviewed after 10 years shall be made public.

The Department of Justice states there are numerous public bodies that the Department of Justice advises. This bill would require public bodies to review every ten years their non-public minutes to determine whether to unseal the minutes. The bill would create additional tasks related to staff time and resources to implement the tracking and updating of pertaining information. It is unknown how frequently a public body may choose to review its minutes.

The New Hampshire Municipal Association suggests additional costs may be incurred for staff time needed to produce the minutes that were voted to be kept private by a public body prior to the enactment of the "list" requirement of RSA 91-A:3 and for staff to provide the minutes to the public body for review. The amount of time and cost will depend on the body's record keeping and the volume of minutes discussed in nonpublic bodies will likely see a decrease in additional cost, due to the required review requirement span. Other record keepers and public bodies may see significant additional costs due to the need to hire staff to not lend themselves to quick retrieval. However, costs will depend upon the willingness of the public body and record keeper to search archives of records disclosed. Some public bodies may choose not to review minutes prior to a certain date and allow those to remain private after the initial 10 year period. Therefore, it is not possible to estimate the impact of this bill on local expenditures.

The New Hampshire Association of Counties indicates no fiscal impact is anticipated as the anticipated reviewing, storing, and posting of public meeting minutes can be incorporated into existing processes with existing resources.

**AGENCIES CONTACTED:**

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

**CONSENT CALENDAR**

**February 1, 2023**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred HB 321-FN-LOCAL,**

**AN ACT relative to minutes from nonpublic sessions under the right to know law. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.**

**Rep. Joe Alexander**

**FOR THE COMMITTEE**

Original: House Clerk
Cc: Committee Bill File

# COMMITTEE REPORT

| | |
|---|---|
| Committee: | **Judiciary** |
| Bill Number: | **HB 321-FN-LOCAL** |
| Title: | **relative to minutes from nonpublic sessions under the right to know law.** |
| Date: | **February 1, 2023** |
| Consent Calendar: | **CONSENT** |
| Recommendation: | **OUGHT TO PASS** |

## STATEMENT OF INTENT

This bill would require municipalities to review sealed nonpublic minutes every ten years. Last session the General Court passed a bill requiring municipalities to keep a list of all sealed minutes and the date the minutes were sealed. This bill would expand the law to require each board to review their sealed minutes every 10 years and vote on whether to keep the minutes sealed or unseal them. The bill was supported by Right to Know NH and NH Municipal Association and according to the fiscal note would have a negligible if any fiscal effect on municipalities.

Vote 20-0.

Rep. Joe Alexander
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

**CONSENT CALENDAR**

Judiciary

**HB 321-FN-LOCAL,** relative to minutes from nonpublic sessions under the right to know law. **OUGHT TO PASS.**

Rep. Joe Alexander for Judiciary. This bill would require municipalities to review sealed nonpublic minutes every ten years. Last session the General Court passed a bill requiring municipalities to keep a list of all sealed minutes and the date the minutes were sealed. This bill would expand the law to require each board to review their sealed minutes every 10 years and vote on whether to keep the minutes sealed or unseal them. The bill was supported by Right to Know NH and NH Municipal Association and according to the fiscal note would have a negligible if any fiscal effect on municipalities. **Vote 20-0.**

Original: House Clerk
Cc: Committee Bill File

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 321-FN-A Date: 1/19/23

Committee: Judiciary

**** Please Print All Information ****

| Name | Address | Phone | Representing | Pro | Con |
|---|---|---|---|---|---|
| Carla Gericke | | | RTKNH + self | X | |
| Rep Josh Yokela | | | Rockingham 32 | x | |
| Rep Rebecca McWilliams | | | Merr 30 | X | |
| Rep Fran Nutter-Upham | | | Nashua | ✓ | |
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**HOUSE COMMITTEE ON JUDICIARY**

**PUBLIC HEARING ON HB 321-FN-LOCAL**

**BILL TITLE:** **relative to minutes from nonpublic sessions under the right to know law.**

**DATE:** **January 19, 2023**

**LOB ROOM:** **206-208** **Time Public Hearing Called to Order:** **2:57 p.m.**

**Time Adjourned:** **3:33 p.m.**

**Committee Members: Reps. Stapleton, Tripp, Greeson, K. Perez, M. Smith, Horrigan, DiLorenzo, Kenney, M. Paige, Devine, Lanza, Manos, Turer, Lynn, Wallace, Kuttab, Alexander Jr. and Andrus**

**Bill Sponsors:**

| | | |
|---|---|---|
| **Rep. Yokela** | **Rep. Ammon** | **Rep. Verville** |
| **Rep. Alexander Jr.** | **Rep. Ulery** | **Rep. McWilliams** |
| **Sen. Gannon** | | |

**TESTIMONY**

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

1. **Rep Yokela, Sponsor.**
- Introduced bill. Requiring regular reviews to determine if non-public minutes need to continue to be withheld.
- If not voted on after 10 years, minutes shall be released.
2. **Rep. McWilliams, Co-Sponsor.**
- Puts a timeline on needing to release minutes, to keep things transparent.
3. **Katherine Kokko**, RTKNH, Strongly **Supports**.
- Many towns don't have a process on unsealing minutes.
- Historical records don't currently have a way to unseal, if were sealed before 2022.
- Sets an exceptionally long amount of time to give a chance to review for sensitive information.
- **Rep Tripp** asked if 91a training should be mandated. Ms. Kokko would strongly support this.
4. **Margaret Byrnes**, NHMA, **Supports**.
- Believes it clarifies existing law.
- Allows for a fallback if the public body doesn't review.
- Does have concern for if a review didn't happen if a subject could be a victim to minutes being automatically unsealed that were sensitive.
- **Rep Alexander Jr** asked if yearly trainings are done to municipalities. Ms Byrnes confirmed.
- **Rep Tripp** asked if SB is apart of this training, Ms. Byrnes said no, they're not allowed to be members but can be of SBA.

Respectfully submitted,

Rep. Katelyn Kuttab, Clerk

# House Remote Testify

## Judiciary Committee Testify List for Bill HB321 on 2023-01-19

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

Export to Excel

| Name | City, State<br>Email Address | Title | Representing | Position | Testifying | Non-Germane | S |
|---|---|---|---|---|---|---|---|
| Richardson, Daniel | Nashua, NH<br>daniel6_22@comcast.net | A Member of the Public | Myself | Support | No | No | |
| Saad, David | Rumney, NH<br>swingdancer007@gmail.com | A Member of the Public | Myself | Support | No | No | |
| Taylor, David K. | Durham, NH<br>dktaylor@f5.com | A Member of the Public | Myself | Support | No | No | |

**HB 321**

In response to a question asked at today's hearing: Although RTKNH strongly supports a training requirement for those making decisions related to RSA 91:A requirements, we do not feel that such an amendment would be appropriate for this bill. This bill has bilateral support from both NHMA and RTKNH and creates an important change that should stand alone. We would be pleased to work with any legislator who wants to advocate for a training requirement as part of another bill or in another context.

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RTKNH strongly supports of HB321.

HB321 requires a routine review process for minutes that are withheld from the public. This occurs under a process colloquially referred to as "sealing the minutes" and can be done when any of three specific exemptions apply to the contents of those minutes. When this happens, under 91-A:3(III), "*information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply."*

The sad reality is that although 91-A:3(III) implies the existence of a review process to decide whether or not the circumstances still apply, most towns **do not** have one. The fact that there is usually no historical record of non-public minutes that were sealed, and the reasons why, further complicates an informed citizen's ability to review potentially relevant materials. A recent amendment to 91-A now requires a listing of non-public minutes beginning in January of 2022 and has changed that process moving forward. This is very much for the good. However, the historical record remains "barred" to public review and for the most part, if minutes were sealed in 2015, 2005, or 1995, they remain sealed and without review.

Until very recently, the practice in my hometown seems to have been to seal all minutes of non-public session. Minutes were sealed for the same reasons that the Board went into non-public session, rather than for one of the three allowable reasons for sealing those minutes. And the Town considered all sealed materials as sealed indefinitely unless the Board took the proactive step of unsealing them, usually due to public pressure. I have personally had the experience of combing through several years' worth of past Selectboard agendas to identify when nonpublic sessions may have occurred. I then requested the minutes of those scheduled non-public sessions. When I was told that certain minutes were sealed, I asked that they be reviewed for possible "unsealing" and was told by the administrative staff that "After reviewing the minutes… there is no reason for the remaining ones to be unsealed. " At the time, my review request was not escalated to the Board level for a review process. After some back-and-forth with my community, I understand that they now have a review process mapped out. To my knowledge it has yet to take effect and applies primarily to prior year minutes (although I have not confirmed the details of that process yet.) I do not know what will happen when and if I begin asking for older materials. This bill helps set a standard for that scenario.

This bill does not create an undue burden on public bodies. It provides considerable leeway by allowing them to determine their own processes. It also sets a minimum threshold of time for reviewing and confirming the status of sealed materials moving forward. And finally, it sets an exceptionally long period of time (10 years) for retroactive review of the historical record before

making it mandatory to release unreviewed materials. If the public body is concerned about information getting out that might be sensitive, it has an entire decade to review minutes for those concerns.

This bill also does not create a new requirement. Under 91-A:3(III), public bodies should routinely be reviewing their minutes for information that may be opened up to the public. It simply hasn't been happening because 91-A does not specify any requirements around that activity. This language essentially operationalizes an existing requirement. By doing so, the public body will be meeting its responsibility to only withhold information for as long as necessary and the public itself will gain access and informed insight into its own history.

Thank you.

HB 321
Testimony of David K. Taylor before the House Judiciary Committee
January 19, 2023

Please include this letter in the official record of HB 321.

Honorable Members of the House Judiciary Committee,

Thank you very much for allowing me to testify on bill HB 321 today. I support this bill. I am David Taylor of Durham and I served for 12 years on the Oyster River School Board.

HB 321 would require public bodies to adopt a policy for regularly reviewing sealed minutes, or do so every 10 years if they fail to adopt such a policy. This is a very reasonable requirement to make sure public bodies do their duty to unseal minutes when appropriate.

My experience over 12 years on the Oyster River School Board is that the board did not regularly review sealed minutes. We certainly sealed minutes on occasion, and there were a very few times when we unsealed them. But, I don't remember a single time when we reviewed all the sealed minutes and decided which ones should remain sealed.

The importance of a regular review is the minutes should not be sealed for any longer than they need to. In general, sealed minutes deprive the public about the actions of a public body. As soon as the condition for sealing passes, the minutes should be unsealed. If sealed minutes languish, then this is not likely to occur.

Thank you again for allowing me to submit this testimony today on HB 321 and I hope you will vote that this bill ought to pass.

Sincerely,
David K. Taylor
Durham, NH

Daniel Richardson

Please add penalty for violation of these requirements. Nashua has sealed meeting minutes going back over 100 years. In my 35 years of watching local government, never have sealed minutes ever been reviewed for expired circumstances and public disclosure.

David Saad

In the existing law regarding the sealingof minutes, RSA 91-A:3 states “Information may be withheld until, in theopinion of a majority of members, the aforesaid circumstances no longer apply”.
The circumstances which support thesealing of minutes at one point in time, will, as time passes, eventually nolonger apply. So how does a public bodyfollow the letter of the law and determine when the circumstances no longerapply? In practice, many public bodiesdo not follow the letter of law. In mostcases, actual sealing of minutes is done indefinitely because there is no requirementfor public bodies to periodically review minutes. This bill will set a maximum period of 10years when sealed minutes must to be reviewed.

**HOUSE COMMITTEE ON JUDICIARY**

**EXECUTIVE SESSION on HB 321-FN-LOCAL**

**BILL TITLE:** relative to minutes from nonpublic sessions under the right to know law.

**DATE:** February 1, 2023

**LOB ROOM:** 206-208

**MOTIONS: OUGHT TO PASS**

Moved by Rep. Alexander Jr. Seconded by Rep. Wallace Vote: 20-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Katelyn Kuttab, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:53:34 AM
Roll Call Committee Registers Report

2023 SESSION

## Judiciary

Bill #: HB321-FN Motion: OTP AM #: — Exec Session Date: 1Feb23

| Members | YEAS | Nays | NV |
|---|---|---|---|
| Lynn, Bob J. Chairman | ✓ | | |
| Wallace, Scott Vice Chairman | ✓ | | |
| Alexander, Joe H. | ✓ | | |
| Andrus, Louise | ✓ | | |
| Testerman, Dave | ✓ | | |
| Stapleton, Walter A. | ✓ | | |
| Tripp, Richard P. | ✓ | | |
| Greeson, Jeffrey | ✓ | | |
| Kuttab, Katelyn Clerk | ✓ | | |
| Perez, Kristine | ✓ | | |
| Smith, Marjorie K. | ✓ | | |
| Horrigan, Timothy O. | ✓ | | |
| DiLorenzo, Charlotte I. | ✓ | | |
| ~~Kenney, Cam E.~~ Eaton, Daniel | ✓ | | |
| Paige, Mark | ✓ | | |
| ~~McBeath, Rebecca Susan~~ Brennan, Angela | ✓ | | |
| Devine, Shelley | ✓ | | |
| Lanza, Judi | ✓ | | |
| Manos, Zoe R | ✓ | | |
| Turer, Eric S | ✓ | | |
| **TOTAL VOTE:** | 20 | — | — |