

HB 321-FN-LOCAL - AS AMENDED BY THE SENATE

05/18/2023 1729s

2023 SESSION

23-0423

05/04

HOUSE BILL

321-FN-LOCAL

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

SPONSORS: Rep. Yokela, Rock. 32; Rep. Ammon, Hills. 42; Rep. Verville, Rock. 2; Rep. Alexander Jr., Hills. 29; Rep. Ulery, Hills. 13; Rep. McWilliams, Merr. 30; Sen. Gannon, Dist 23

COMMITTEE: Judiciary

ANALYSIS

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 not reviewed after 10 years shall be made public.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

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

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

1 1 New Paragraph; Minutes from Nonpublic Session. Amend RSA 91-A:3 by inserting after
2 paragraph III the following new paragraph:

3 IV.(a) A public body or agency may adopt procedures to review minutes of meetings held in
4 nonpublic session and to determine by majority vote whether the circumstances that justified
5 keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. If the public body
6 determines that those circumstances no longer apply, the minutes shall be available for release to
7 the public pursuant to this chapter.

8 (b) In the absence of an adopted procedure to review and determine whether the
9 circumstances no longer apply for meeting minutes kept from the public, the public body or agency
10 shall review and determine by majority vote whether the circumstances that justified keeping
11 meeting minutes from the public under RSA 91-A:3, III no longer apply. This review shall occur no
12 more than 10 years from the last time the public body voted to prevent the minutes from being
13 subject to public disclosure. Meeting minutes that were kept from the public prior to the effective
14 date of this paragraph that are not reviewed by the public body or agency within 10 years of the
15 effective date of this paragraph shall be subject to public disclosure without further action of the
16 public body.

17 2 Effective Date. This act shall take effect 60 days after its passage.

HB 321-FN-LOCAL- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-1729s)

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

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	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:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> 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 not reviewed after 10 years shall be made public.

The Department of Justice states there are a number of public bodies attached to the Department of Justice. This bill would require public bodies at a minimum of every ten years to review non-public minutes and determine whether to unseal the minutes. There would be an indeterminable additional cost related to staff time and resources to implement the tracking and updating of meeting minutes. 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 necessary to produce the minutes that were voted to be kept from the public 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 undisclosed minutes. Some public bodies will likely see a de minimis additional cost, due to the initial review requirement spanning 10 years. Other record keepers and public bodies may see significant additional costs due to file keeping structures that

do not lend themselves to quick file retrieval. However, costs will depend upon the willingness of the public body and record keeper to search the archives of undisclosed minutes. Some public bodies may choose not to review minutes prior to a certain date and allow those to lapse into the public view after the initial 10 year period. Therefore, it is not possible to estimate the impact of the bill on local expenditures.

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

AGENCIES CONTACTED:

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