

Senate Judiciary Committee

Matthew Schelzi 271-3266

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

Hearing Date: March 28, 2023

Time Opened: 2:59 p.m.

Time Closed: 3:22 p.m.

Members of the Committee Present: Senators Carson, Whitley and Chandley

Members of the Committee Absent: Senators Abbas and Gannon

Bill 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.

Sponsors:

Rep. Yokela

Rep. Ammon

Rep. Verville

Rep. Alexander Jr.

Rep. Ulery

Rep. McWilliams

Sen. Gannon

Who supports the bill: Katherine Kokko, Tom Mullins (City of Keene), Natch Greyes (NHMA), Rep. Josh Yokela (Rock. 32), Julie Smith, Walter Kirsch, Deborah Glidden, Curtis Howland, Jeffrey Dickler, Louise Spencer, Joanne Casino, Kathy Sue Spielman, Andrew Jones, Gary Devore, Patrick Doughty, Laura Colquhoun, Claudia Damon, Susan Morre, Hannah Bissex, Lynn Merlone, A. Thomas, Patricia Martin, Jane Hershey, Diana Schuman, Jennifer Mercer, Deborah Walker, David Holt, Ruth Perencevich, Deborah Sumner, David Saad, Nancy Brennan, Richard DeMark, Harriet DeMark, Maura Willing, and Susan Richman.

Who opposes the bill: None.

Who is neutral on the bill: Shane Goulet (OPLC), and Douglas Osterhoudt (OPLC).

Summary of testimony presented in support:

Representative Josh Yokela introduced House Bill 321-FN-LOCAL. The purpose of this bill is to clarify language regarding nonpublic meeting minutes. The minutes of a public meeting must remain confidential if the minutes contain information that could harm someone's reputation, make an action ineffective, or involves an emergency situation. In the event of such circumstances, information may be withheld until the majority of the members agree that those circumstances no longer apply. This implies

a regular review of minutes conducted by members to determine if these circumstances still apply. The Municipal Association recommends that the minutes are reviewed annually. The outside limit to review minutes is ten years. If minutes are not reviewed in ten years, they will be made accessible to the public. Rep. Yokela had worked on the language of HB 321-FN-LOCAL with Right to Know New Hampshire and the Municipal Association. HB 321-FN-LOCAL had no opposition in the House, and the bill was on the consent calendar.

Natch Greyes, New Hampshire Municipal Association, stated there are three reasons for a board to seal minutes, and essential this bill would require boards to adopt the best procedure to review the minutes. If the boards do not review their minutes, the bill would provide for a statutory alternative that the boards would follow after a ten year period, which the Municipal Association believed was a good solution.

Senator Chandley asked if Mr. Greyes hears from municipalities that it is difficult for them to make the determination as to whether minutes should be unsealed because they do not have enough information.

Mr. Greyes said the New Hampshire Municipal Association hears frequently from municipalities that experience board turnover, that there are challenges in assessing why minutes were previously sealed. The Right to Know law provides that minutes can only remain sealed for as long as there is a reason for the minutes to be sealed. If the reason cannot be determined, the minutes are opened to citizens.

Tom Mullins, City attorney for Keene, emphasized that it is critical for the legislature to clarify the procedures which fall under certain statutes. He suggested that the language of HB 321-FN-LOCAL should authorize an administrative release of non-public records. These minutes could then be reviewed by the city clerk, town council, or city council. Mr. Mullin believed the language in the first sentence of HB 321-FN-LOCAL should explicitly state that “The public body or agency may adopt a procedure to regularly review and vote or to authorize an administrative release of the minutes.”

Senator Carson asked Mr. Greyes if he would support Mr. Mullins previous recommended changes.

Mr. Greyes responded yes, he would support that change.

Katherine Kokko, Right to Know New Hampshire, stated this bill requires a routine review process for minutes that are withheld. She believed most municipalities are not aware of the clause in RSA 91-A:3, that requires a review of minutes, but there is also no enforcement mechanism to review sealed minutes. A recent amendment to RSA 91-A:3 required a listing of non-public minutes beginning in January 2022. There is a current protocol to review minutes; however previous minutes are not grandfathered in. This bill does not create an undue burden on public bodies, it provides considerable leeway. She also noted this bill does not create a new requirement; but operationalizes an existing statute.

Summary of testimony presented in opposition: None.

Neutral Information Presented:

Shane Goulet, attorney with the Office of Professional Licensure and Certification and **Douglas Osterhoudt**, General Counsel for the Office of Professional Licensure and Certification. Mr. Osterhoudt did not take a position on this bill; however, he voiced some concerns of OPLC. He stated that the most common reason boards go into non-public sessions are under RSA 91-A:3, matters that would adversely affect the reputation of an individual. A board might also meet in a non-public session due to RSA 91-A:5, information disclosed from public exposure. The board makes the decision to make minutes public or not. Mr. Osterhoudt stated that his concern is that if one board fails to address some non-public minutes then the default is to make the minutes public even after ten years. He stated the fall out would harm the individuals that RSA 91-A:3 was meant to protect.

Mr. Goulet explained that there are certain boards that have specific statutory prescriptions with their own statute that illustrates what should be non-public and public. So, the bill may conflict with current statutory authority. Mr. Goulet questioned who is to determine what should be made public or non-public.

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Date Hearing Report completed: April 3, 2023