Bill as Introduced

HB 606 – AS INTRODUCED

2003 SESSION

03-1016
01/09

HOUSE BILL ***606***

AN ACT establishing a right-to-know study commission.

SPONSORS: Rep. Thomas, Belk 31; Rep. J. Pratt, Ches 24; Rep. Bergin, Hills 47; Rep. Patten, Carr 7; Rep. Rowe, Hills 47

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 606 – AS INTRODUCED

03-1016
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT establishing a right-to-know study commission.

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

1 Purpose. The general court hereby establishes a commission to study clarifying the right-to-know law in light of the supreme court's December 31, 2001 decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communication in the transaction of governmental business. The general court recognizes that guidance is needed for all government officials as well as for members of the public regarding what meetings and what documentation are considered subject to RSA 91-A, the right-to-know law.

2 Commission Established. There is established a commission to study the right-to-know law in light of the supreme court's decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communications in the transaction of governmental business.

3 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, one from the science, technology and energy committee, one from the municipal and county government committee, and one from the judiciary committee, appointed by the speaker of the house.

(b) Three members of the senate, appointed by the president of the senate.

(c) Three municipal officials, appointed by the New Hampshire Municipal Association.

(d) One school board member, appointed by the New Hampshire School Boards Association.

(e) One school administrator, appointed by the New Hampshire School Administrators Association.

(f) Two county officials, appointed by the New Hampshire Association of Counties.

(g) Four members of the public, one of whom shall be an attorney who has knowledge of and experience with the right-to-know law, one of whom shall be an information technology professional, and one of whom shall be a telecommunications professional, all appointed by the governor with the consent of the council.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the committee.

4 Duties. The commission shall study:

I. The need for disclosure requirements or guidelines for email and other electronic communication occurring between and among state, county, and local government appointed and elected officials and employees of governmental entities.

II. The need for disclosure requirements or guidelines for electronic communications with constituents of state, county, and local government appointed and elected officials and employees of governmental entities.

III. Archival requirements for electronic documents.

IV. The status of proprietary data within the definitions of the right-to-know law.

V. The ability to recover costs relative to the retrieval of electronic files and communications.

VI. Issues relative to public records posted to web sites of governmental entities.

VII. Whether a member of a body subject to the right-to-know law may participate in a meeting by teleconference or other electronic means.

VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.

IX. Any other matter deemed relevant by the commission.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Nine members of the commission shall constitute a quorum.

6 Report. The commission shall make an interim report on or before November 1, 2003 and a final report on or before November 1, 2004, together with its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library.

7 Effective Date. This act shall take effect upon its passage.

Amendments

Sen. Flanders, Dist 7
April 10, 2003
2003-1255s
01/10

Amendment to HB 606

Amend the title of the bill by replacing it with the following:

AN ACT establishing a right-to-know study commission and relative to meetings open to the public.

Amend the bill by replacing all after section 6 with the following:

7 Meetings Open to the Public; Certain Caucuses Not Meetings. Amend RSA 91-A:2, I(b) and (c) to read as follows:

(b) Strategy or negotiations with respect to collective bargaining; [~~or~~]

(c) Consultation with legal counsel*; or*

(d) A caucus by the members of a public body whose members were elected on a partisan basis at a state general election or elected on a partisan basis by a town which has adopted a partisan ballot system pursuant to RSA 669:12.

8 Effective Date. This act shall take effect upon its passage.

2003-1255s

AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

This bill also declares that certain caucuses by members of a public body are not meetings under the right-to-know law.

Sen. Flanders, Dist. 7
April 23, 2003
2003-1371s
01/10

Amendment to HB 606

Amend the title of the bill by replacing it with the following:

AN ACT establishing a right-to-know study commission and relative to meetings open to the public.

Amend paragraph I of section 3 of the bill by inserting after subparagraph (g) the following new subparagraph:

(h) The attorney general, or designee.

Amend the bill by replacing all after section 6 with the following:

7 Meetings Open to the Public; Certain Caucuses Not Meetings. Amend RSA 91-A:2, I(b) and (c) to read as follows:

(b) Strategy or negotiations with respect to collective bargaining; [~~or~~]

(c) Consultation with legal counsel***; or***

(d) A caucus by the members of a public body whose members were elected on a partisan basis at a state general election or elected on a partisan basis by a town which has adopted a partisan ballot system pursuant to RSA 669:12.

8 Effective Date. This act shall take effect upon its passage.

2003-1371s

AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

This bill also declares that certain caucuses by members of a public body are not meetings under the right-to-know law.

Internal Affairs
May 14, 2003
2003-1644s
01/09

Amendment to HB 606

Amend the title of the bill by replacing it with the following:

AN ACT establishing a right-to-know study commission and relative to meetings open to the public.

Amend paragraph I of section 3 of the bill by inserting after subparagraph (g) the following new subparagraph:

(h) The attorney general, or designee.

Amend the bill by replacing all after section 6 with the following:

7 Meetings Open to the Public; Certain Caucuses Not Meetings. Amend RSA 91-A:2, I(b) and (c) to read as follows:

(b) Strategy or negotiations with respect to collective bargaining; [~~or~~]

(c) Consultation with legal counsel***; or***

(d) A caucus by the members of a public body whose members were elected on a partisan basis at a state general election or elected on a partisan basis by a town which has adopted a partisan ballot system pursuant to RSA 669:12.

8 Effective Date. This act shall take effect upon its passage.

2003-1644s

AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

This bill also declares that certain caucuses by members of a public body are not meetings under the right-to-know law.

Committee Minutes

Internal Affairs Committee

Hearing Report

To: Members of the Senate

From: Susan Duncan
Senior Legislative Aide

Re: **HB 606** – *AN ACT establishing a right-to-know study commission*

Hearing date: April 23, 2003

Members present: Senators Boyce and Flanders

Members absent: Senators Larsen, Kenney and O'Hearn

Sponsor(s): Representatives Thomas, J. Pratt, Bergin, Patten & Rowe

What the bill does: This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

Who supports the bill: Representative John Thomas
Representative Rowe
Attorney Mary Schwitzer, Dept. of Justice
Attorney Maura Carroll, NH Municipal Assoc.

Who opposes the bill: No one appeared in opposition

Summary of testimony received:

- This legislation was filed due to the **Cassandra Hawkins v. NH Department of Health & Human Services** case that went to the Supreme Court.
- Unless the Legislature establishes a method for access to stored data, it could be determined by court case law.
- The Legislature needs to address the "black hole" dealing with electronic communications and stored data (i.e., e-mails, teleconferencing, etc.)
- What is a conversation? Is it when two Selectmen e-mail back and forth? How much access does a citizen have to computer records or to the computer itself? How far do we want to go? What types of information are covered?
- The Supreme Court order told HHS to produce redacted claims for 50,000 children for 5 years time. Currently, HHS has appealed that order.

- The Legislative Policy Committee at the Municipal Association has had the same discussion and are very much in support of the study going forward.

Funding: None

Action: The committee took the bill under advisement.

sfd
[file: HB 606 report]
Date: April 28, 2003

Date: April 23, 2003
Time: 10:50 a.m.
Room: LOB, Room 103

The Senate Committee on Internal Affairs held a hearing on the following:

HB 606 establishing a right-to-know study commission.

Members of Committee present: Senator Boyce
Senator Flanders

The Chair, Senator Robert K. Boyce, opened the hearing on HB 606 and called on the prime sponsor, Representative John Thomas, to provide testimony.

Representative John Thomas: Good morning, Mr. Chairman. This got me out of banging nails this morning and we will now move into the world of cyberspace.

I am happy to introduce this bill. This is really a continuation of another committee from last year that was addressing right issues and it was brought forth by the Municipal & County Association, who I believe a representative of that Association, Maura Carroll, is here.

There was a case Cassandra Hawkins v. Health & Human Services that came before the, went to court and, of course, went to Supreme Court. This kind of little black hole that we have arrived at just through the use of newer technologies and such which is filtering down to the lower levels of the well, brings forth many, many questions. This Supreme Court handling of this case was basically the plaintiff requested the Health & Human Services to make certain records available to them. In response, H&HS provided three formatted tabular summaries and plaintiff claimed that these were unresponsive. The plaintiff, of course, filed a petition and requested that the data sought was public record and H&HS be required to copy onto tapes the requested computer data and the plaintiff paid only for the actual cost of the tape itself. This is kind of one of the things that is really a mind boggling thing, especially when you get down to the lower levels, the local level, I

should say. H&HS asserted that none of its programs were capable of generating the information in the format that was requested. The plaintiff moved to compel production of the data and the Superior Court granted H&HS's motion, concluded that the plaintiff here does not simply seek a copy of a particular government document, but rather asks a court to order the defendant to create a new document to meet the requests of the plaintiff. The cost of creating an entirely new manipulation program assembling the diverse pieces of data and encrypting or removing any confidential information would exceed $10,000 by the defendant's estimate. As a matter of law, RSA 91-A, does not intend such a result.

Well, this went through and went on and there were following appeals and 91-A:4 V provides in the same manner as set forth in 91-A:4 IV, any body or agency which maintains its records in a computer storage system may, in lieu of providing original documents, provide a print out of any record reasonably provided for which the agency has the capacity to do so in a manner that does not reveal information which is confidential under this chapter or in other law. It does not require that H&HS create new records. 91-A does not require H&HS to compile data into a formal format specifically requested by a person seeking information. It does, however, require that public records received by H&HS be maintained in a manner that makes them available to the public.

In the final analysis, it was found that 91-A:5 the cost is not listed as an exemption to disclosure of otherwise public information. The statutes provide that, if a photocopy machine or other device maintained for use by a body or agency is used by the body or agency to copy the public records or documents requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the body or agency. So, this whole thing really is about costs.

This is the kicker. The Supreme Court came out with this statement, saying the issues in this case foreshadow the serious problems that requests for public records will engender in the future as a result of computer technology. Unless the Legislature addresses the nature of the computerized information and the extent to which the public will be provided access to stored data, we will be called upon the establish accessibility on a case by case basis. I think this is what the Supreme Court is trying to avoid doing. It is our hope that the Legislature will promptly examine the right to know law in the context of advancing computer technology. Hence, the black hole that we have fallen into.

This committee, as I stated, we were looking into some of these issues last year. Many questions, some of the questions, I should say, that arise is what

is just conversation? In other words, two selectmen get together or three selectmen get together and they start e-mailing back and forth and using their little chat room. Is that conversation or is that actually a meeting? This is a very gray area.

Another one is how much access does one have. If it is determined that a meeting, or the discussion constituted a meeting, how much access does a person have to those computer records or to the computer itself? Most people don't know that under IRS rules, if you file with the IRS your tax return by computer, your whole computer is accessible to the IRS. All of the equipment and everything. So, how far do we go? This opens up a whole huge gray area. Types of information is another question that comes about and we will deal with now with the new technologies.

So, because of all of these reasons and some of the questions that were brought forth on the actual makeup of the committee itself, that is one of the reasons why, when it comes to the House and the Senate, we have the standard three and three. But, we brought forth, as far as the administrative people or the local officials, one school board member appointed by the New Hampshire School Boards Association; one school board administrator appointed by the New Hampshire School Administrators Association; two county officials appointed by the New Hampshire Association of Counties; four members of the public. This is one of the, because of the questions that will be coming up, this is the reason why these four members will be. One of whom shall be an attorney who has knowledge of and experience in the right to know law; one of whom shall be an information technology professional; and one of whom shall be a telecommunications professional, all appointed by the Governor with consent of the Council. And, then the duties primarily will be answering the questions as we go through the process.

So, hence, that is my testimony. If there are any questions, I would be more than likely to answer them.

Senator Robert K. Boyce, D. 4: Thank you very much. I don't have any questions and I don't see anyone else who has questions. So, I thank you for your testimony.

Representative Thomas: Well, thank you very much. I urge passage of this and I think it will clear up a lot of questions.

Senator Robert K. Boyce, D. 4: Thank you. Representative Rowe, did you wish to speak?

Representative Robert Rowe: No, I do not, except to say that it passed our committee with a unanimous vote. We support the bill.

Senator Robert K. Boyce, D. 4: I will next call on Mary Schwarzer. Thank you. I couldn't make out the last two letters. It could have been two e's or it could have been er.

Assistant Attorney General Mary Schwarzer: Good morning, Mr. Chairman. My name is Mary Schwarzer and I am the Assistant Attorney General who served as trial counsel on the Hawkins lawsuit and on the appeal.

Representative Thomas has done a fine job of summarizing the issues involved in the case and I am here to tell you that the Attorney General's Office supports this bill and would welcome participation on the committee, either formally or informally. If you have any questions about the case, I can update you.

Following the 2002 Supreme Court order remanded the case to the Superior Court, there were additional proceedings before that court. They ordered us, when I say us, I mean the Department of Health & Human Services, to produce redacted records of individuals and claims for 50,000 children for a span of more than five years. We are appealing that decision because the court did not rule upon one of the statutes we had argued that exempted those records and it is now on appeal before the New Hampshire Supreme Court for the second time.

If there are questions, I would be happy to answer them.

Senator Robert K. Boyce, D. 4: I just have one. Would the Attorney General's Office like to have one of the members of this be designated by them, if they add a member to this that would be someone representing the Attorney General's Office?

Attorney Schwarzer: We would welcome that.

Senator Robert K. Boyce, D. 4: Thank you. I will speak with the rest of the committee. Thank you.

Attorney Schwarzer: Thank you, Mr. Chairman.

Senator Robert K. Boyce, D. 4: And I will now call Maura Carroll.

Maura Carroll: Thank you very much, Mr. Chairman. I do have some written testimony for the Committee. **Please see "N.H. Municipal**

Association, Testimony of HB 606, Senate Internal Affairs Committee", attached hereto and referred to as Attachment #1.

My name is Maura Carroll. I serve as general counsel for the New Hampshire Municipal Association and appear here in strong support of HB 606.

We were very pleased to have Representative Thomas, Representative Rowe, and other co-sponsors who were willing to put this legislation in because we think it has become a critical issue for government generally.

Just by way of background, it was discussed as part of our legislative policy process in this biennium, it even went to a subcommittee of one of our policy committees and there was a great deal of discussion about attempting to narrow down the changes that might need to be made to the right to know law to make sure that we all, at the local level and other levels of government, were complying with open access to government. What really happened as a result of that was that it became clear that it was very difficult to answer some questions without the input of state government, county government, school government. So, it made more sense to look at it from a commission standpoint.

So, we are in strong support and happy to provide whatever support we can to the commission, to the Senate as you are deliberating this, and we look forward to a lengthy discussion on this issue and hopeful resolution to some of the e-mail issues, tele-conferencing, video conferencing kinds of issues that have come about.

So, with that, I thank you very much.

Senator Robert K. Boyce, D. 4: Thank you. Is there anyone else who wishes to speak on HB 606? I will close the hearing.

Hearing concluded at 11:05 a.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary
4/29/03

1 Attachment

ATTACHMENT #1

N. H. Municipal Association

PO Box 617, Concord, NH 03302 ▪ (603) 224-7447

TESTIMONY ON HB 606
SENATE INTERNAL AFFAIRS COMMITTEE

Wednesday, April 23, 2003

Mr. Chairman and members of the Committee, my name is Maura Carroll and I serve as General Counsel for Legal Services and Government Affairs for the New Hampshire Municipal Association. I appear here today in **STRONG SUPPORT** of **HB 606** as the number one action item recommended by the General Government, Revenue and Intergovernmental Relations Committee of the Association. It was adopted without dissent by the membership in attendance at NHMA's Biennial Legislative Policy Conference in September, 2002.

This is a simple bill in that it creates a study commission. However, the subject matter of the study is of the utmost importance to government officials and to members of the public. Technology has advanced quickly in our world, and well beyond the anticipation of those who drafted the right to know law only a few decades ago. RSA 91-A addresses well the issues of public documents and public meetings as far as it goes. Yet, we have the technological capability to hold a meeting among people in different cities and towns, and even in different countries. How do we address notice and participation in those meetings so that the public both knows about the meetings and can participate in discussions about public issues? How do we address e-mail and the ability to communicate in seconds with several people at once? How should we address items that are accessible on the Internet and are part of governmental websites?

When the members of NHMA's policy committee met to discuss these issues, a number of questions arose. Some local boards have used e-mail to schedule the dates and times of board meetings but have not discussed any substantive items that would be on a meeting agenda. Should those e-mails be subject to the right to know law? If two members of a five member board discuss a substantive issue via e-mail, should that be subject to the right to know law? Currently, a telephone conversation between those two individuals is not subject to RSA 91-A. Some public boards and agencies have access to teleconferencing and videoconferencing and can hold

meetings without all board members physically present in the same room. How does the public participate and how is notice given of the meeting? Is broader notice required when a meeting has the technical capability of being in more than one place at one time?

It was very difficult for municipal officials to narrow the questions regarding the right to know law and technology. They found it hard to recommend a specific policy without input from schools, counties and the State. Thus, the NHMA policy resulted in this legislation. We appreciate the willingness of the sponsors to bring this forward and will work with all of you to see this study carried out. We think that this is an important study and until various public officials have a detailed discussion, there will be more questions than answers to the concerns raised.

We urge you to recommend **HB 606 Ought To Pass.**

Thank you for the opportunity to be heard.

Speakers

SENATE INTERNAL AFFAIRS COMMITTEE

Date 4/23/03 Time 10:45 a.m. Public Hearing on **HB 606**

HB 606 - establishing a right-to-know study commission.

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☒	☑	☐	Rep. John Thomas	Belknap 3/
☐	☐	☐	~~Lyn's Schultz~~	
☒	☑	☐	Mary Schwarzer,	Assistant Attorney General
☑	☑	☐	MAURA CARROLL	N.H. MUNICIPAL ASSN
☐	☑	☐	Rep. Robert Rowe	
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Internal Affairs

to which was referred House Bill 606

AN ACT establishing a right-to-know study commission.

VOTE: 3-0

2003- 1644s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Robert B. Flanders
For the Committee

HB606 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: (New Title) establishing a right-to-know study commission and relative to meetings open to the public.

Date	Body	Description
1/9/2003	H	Introduced and ref to Judiciary; HJ 12, p201
1/29/2003	H	Hearing Mar 5 1:00 RM208,LOB
3/10/2003	H	Maj Report OTP for Mar 20 (Vote 11-0;CC)
3/20/2003	H	Passed; HJ27, p786 + 805
4/3/2003	S	Introduced and Ref. to Internal Affairs; SJ 11, Pg.269
4/17/2003	S	Hearing; April 23, 2003, Room 103, LOB, 10:45 a.m.; SC19
5/16/2003	S	Committee Report; Ought to Pass with Amendment{1644},(New Title), [05/22/03]; SC23, Pg.20
5/22/2003	S	Committee Amendment{1644},(New Title); SJ 17, Pg.455-456
5/22/2003	S	Sen. Below Moved Laid on Table, RC 6Y-16N, MF; SJ 17, Pg.456
5/22/2003	S	Sen Below Moved to Divide the Question Section 7 [Line 11-19], RC 17Y- 6N, MA; SJ 17, Pg.456
5/22/2003	S	Question is on [Lines 1-10 and 20], MA, VV; SJ 17, Pg.456
5/22/2003	S	Ought to Pass with Amendment{1644},(New Title), MA, VV; OT3rdg; SJ 17, Pg.457
5/22/2003	S	Sen. D'Allesandro Moved Reconsideration, MA, VV; SJ 17, Pg.457
5/22/2003	S	Sen. Larsen Floor Amendment{1774},(New Title), RC 6Y-17N, AF; SJ 17, Pg.457
5/22/2003	S	Ought to Pass with Amendment{1644},(New Title), MA, VV; OT3rdg; SJ 17, Pg.458
5/22/2003	S	Passed by 3rd Reading Resolution; SJ 17, Pg.479-480
6/5/2003	H	House Nonconc with Sen Am req Conf Comm, rep Mock MA VV; HJ 47, p1495
6/5/2003	H	(Spkr appts: Reps Mock, Haytayan, Thomas & Wall)
6/5/2003	S	Sen. Boyce Accede to House Request For Committee of Conference, MA, VV
6/5/2003	S	President Appoints; Senators Flanders, Odell, Cohen
6/9/2003	H	Conf Comm Meeting June 11 1:00 RM208,LOB
6/11/2003	H	Continued Conf Comm Meeting June 17 1:00 RM208,LOB
6/17/2003	H	Conferee Change: Rep Dudley replaces Wall;
6/18/2003	S	Conferee Change; Senator Boyce Replaces Senator Cohen
6/19/2003	S	Committee of Conference Report; Sen. Am+New Am.{2203}, Filed;
6/24/2003	S	Conference Committee Report{2203} RC 17Y-6N, Adopted
6/24/2003	H	Conf Comm Report Adopted RC(244-111);

Next|Prev|Results List|Main|Bill Status