CONSENT CALENDAR

November 8, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred HB 149-FN,

AN ACT relative to the handling of requests made under the right-to-know law. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Joe Alexander

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Judiciary**
Bill Number:	**HB 149-FN**
Title:	**relative to the handling of requests made under the right-to-know law.**
Date:	**November 8, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The Judiciary Committee felt that this bill was just not needed, at least not now. The bill would establish periodic reporting requirements for government bodies that do not respond promptly to a right to know request. However, given that recently the legislature created a Right to Know Ombudsman, the committee felt that there needed to be more time for the ombudsman to take care of some of the conflicts that may result from Right to Know requests being denied or not being acknowledged or responded to promptly before any further legislative action is taken on the matter.

Vote 19-0.

Rep. Joe Alexander
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 149-FN, relative to the handling of requests made under the right-to-know law. **INEXPEDIENT TO LEGISLATE.**

Rep. Joe Alexander for Judiciary. The Judiciary Committee felt that this bill was just not needed, at least not now. The bill would establish periodic reporting requirements for government bodies that do not respond promptly to a right to know request. However, given that recently the legislature created a Right to Know Ombudsman, the committee felt that there needed to be more time for the ombudsman to take care of some of the conflicts that may result from Right to Know requests being denied or not being acknowledged or responded to promptly before any further legislative action is taken on the matter. **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON Judiciary

BILL NUMBER: **HB 149-FN**

BILL TITLE: **relative to the handling of requests made under the right-to-know law.**

DATE: **February 1, 2023**

THE COMMITEE HAS VOTED TO RETAIN THIS BILL.

_____

Rep. Lynn, Chair

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 149-FN

BILL TITLE: relative to the handling of requests made under the right-to-know law.

DATE: November 8, 2023

LOB ROOM: 206-208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Alexander Jr. Seconded by Rep. K. Perez Vote: 19-0

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 #: HB149-FN Motion: ITL AM #: ✓ Exec Session Date: 8Nov23

Members	YEAS	Nays	NV
Lynn, Bob J. Chairman	✓		
Wallace, Scott Vice Chairman	✓		
Alexander, Joe H.	✓		
Andrus, Louise	✓		
Testerman, Dave	✓		
~~Stapleton, Walter A.~~ Not in room			
Tripp, Richard P.	✓		
Greeson, Jeffrey	✓		
Kuttab, Katelyn Clerk	✓		
Perez, Kristine	✓		
Smith, Marjorie K.	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Kenney, Cam E.	✓		
Paige, Mark	✓		
McBeath, Rebecca Susan	✓		
Devine, Shelley	✓		
Lanza, Judi	✓		
~~Manos, Zoe R~~ Eaton, Daniel	✓		
Turer, Eric S	✓		
TOTAL VOTE:	19	6	

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2023 SESSION

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

Judiciary

Bill #: HB 149-FN **Motion:** Retain **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. Absent			
Tripp, Richard P.	✓		
Greeson, Jeffrey	✓		
Kuttab, Katelyn Clerk	✓		
Perez, Kristine	✓		
Smith, Marjorie K.		✓	
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.		✓	
~~Kenney, Cam E.~~ Ecton, Daniel		✓	
Paige, Mark		✓	
~~McBeath, Rebecca Susan~~ Brennan, Angela		✓	
Devine, Shelley		✓	
Lanza, Judi		✓	
Manos, Zoe R		✓	
Turer, Eric S		✓	
TOTAL VOTE:	10	9	

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 149-FN

BILL TITLE: **relative to the handling of requests made under the right-to-know law.**

DATE: **January 19, 2023**

LOB ROOM: **206-208** **Time Public Hearing Called to Order:** **11:12 a.m.**

Time Adjourned: **11:59 a.m.**

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

Bill Sponsors:
Rep. M. Smith **Rep. DiLorenzo** **Rep. P. Schmidt**

TESTIMONY

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

1. **Rep M. Smith**, **Sponsor.**
- Introduced bill. Cannot always make records available in time, but communicating that is important.
2. **Gilles Bissonette**, ACLU. **Supports.**
- Important for agencies to timely report any delays.
3. **Natch Greyes,** Attorney NHMA. **Supports with Amendment.**
- Would like to change from 30 days. *Provided written proposed amendment
4. **Rep P. Schmidt**, **Supports**.
- Sometimes requests are so open ended that gathering data is a lengthy process.
5. **Katherine Koko**, Right to Know NH. **Supports.**
- Aligns expectations of process
- Helps to monitor if reasonable efforts are being made to comply with process.
*Will submit written testimony
6. **Carla Gericke**, Self and RTKNH. **Supports.**
- Public body still required to give within 5 days, however when that isn't possible, communicating is imperative.
- Goal is transparency.

Respectfully submitted,

Rep. Katelyn Kuttab, Clerk

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 149 -FN Date: 1/19/23

Committee: Judiciary

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

Name	Address	Phone	Representing	Pro	Con
~~Katharine Hatch~~	~~Milford NH~~		~~Right to Know NH~~	✓	
Elizabeth Sargent,	NH Assoc of Chiefs of Police				X
Carla Gericke			Self + RTKNH	X	
Hope Damon,	Sullivan District & Reg		self	X	

House Remote Testify

Judiciary Committee Testify List for Bill HB149 on 2023-01-19

Support: 3 Oppose: 1 Neutral: 1 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	S
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No	1
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Neutral	No	No	1
Saad, David	Rumney, NH swingdancer007@gmail.com	A Member of the Public	Myself	Support	No	No	1
Taylor, David K.	Durham, NH dktaylor@f5.com	A Member of the Public	Myself	Support	No	No	1
Rosenberg, Karen	Concord, NH KarenR@drcnh.org	A Lobbyist	Disability Rights Center - NH	Support	No	No	1

HB 149

Note: RTKNH will discuss NHMA's proposed amendment to HB149 and provide the bill sponsors with feedback. At first glance, it appears to remove a regular cadence from the update process, which we feel would be detrimental. If a records search is going to take 90 days, an update on progress achieved at Day 60 seems neither unreasonable nor unwarranted, to assure that progress is indeed being made. These updates would also prevent a situation where the entity handling the request does not send the information already available until the last possible moment simply because it set a deadline for itself that was further out than necessary.

Good Morning Honorable Members of the Judiciary Committee. My name is Katherine Kokko, and I am the acting President of Right to Know NH (RTKNH), a citizen-based organization that provides advocacy, education and assistance to those seeking access to public information and increased transparency in government operations.

Our priorities are threefold:

1. Keep government records access free and open to the public, assuring compliance with the NH Constitution Part 1 Article 8, which states that:

   "Government, therefore, should be open, accessible, ***accountable and responsive****. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and* ***accountable*** *government.*"

2. Improve enforcement of NH's Right to Know Law

3. Improve government transparency

RTKNH views HB149 as an incredibly important piece of legislation this year. This is one of two pieces of legislation our members chose to focus on because it addresses a critical issue raised in many of the inquiries we receive from the public. The bill provides clarifying language to make it clear that a public body has ongoing accountability for every RTK request until such time as a decision is made and the records, when available, are provided.

Currently, the only response required under the law is that - within 5 days - the public body must (1) provide the record; (2) provide a denial OR; (3) provide "a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay." Note that there is **no requirement** to ultimately provide a final determination and records when Item 3 is selected.

Unfortunately, we see immediate responses or denials from public bodies far less frequently than we see a standard legalistic response outlining an anticipated wait time for records.

As a predictable result, the MOST common inquiry we receive from the general public regarding right-to-know inquiries is regarding extended timeframes in which requestors have been waiting

for information without receiving updates on the status or completion of their request. Based on the current language, the only advice that RTKNH can provide to those individuals is that the public body is only required to provide them with an anticipated time frame for response. It does not actually provide for *any* further update on the status of the request, the efforts being made to respond, or actual completion of the request. This loophole does not serve the public interest and weighs the balance of power in favor of the public body who may have reasons of its own to wish to delay or otherwise withhold information.

Various court decisions have made it clear that what constitutes an acceptable timeframe for consideration or fulfillment of requests can depend on the size and scope of the request. This revision does not change that. And the language NOT punitive, despite the fact that public bodies do not face motivating disincentives to delaying a response.

Instead, HB149 is proposed as a means of providing the future RTK Ombudsman, and the courts, with relevant information about the public body's good faith efforts to honor the request and adhere to the intent of RSA 91:A. We anticipate that the information provided in these updates will allow for a more objective evaluation of the public body's efforts when those are in question.

We would argue that, once the request is made, the burden of justifying the lack of response should fall on the public body as it is asking for an exception (ie an extension of time). A public body should be accountable for the actions it has or has not taken. The proposed language achieves that without creating a punitive disincentive.

We also feel that a 30-day window is a reasonable period of time to allow before expecting an update. It would not place an undue burden on the public body by being unnecessarily frequent. And, by aligning the expectations of both parties involved in the request process, it should alleviate some of the current demands created by a lack of guidance regarding follow-up.

Our hope is that adding these simple reporting requirements will assist citizens, public bodies and the courts in establishing whether or not reasonable efforts have been made to address Right to Know requests when those efforts are in question.

Thank you.

HB 149-FN
(3)

NHMA
NEW HAMPSHIRE MUNICIPAL ASSOCIATION
EST. 1941

January 18, 2023

Hon. Bob Lynn, Chair
House Judiciary Committee
Legislative Office Building,
Concord, New Hampshire 03301

Re: HB 149, relative to the handling of requests made under the right-to-know law

Dear Rep. Lynn and Members of the Committee:

I write to express the New Hampshire Municipal Association's opposition to HB 149 as written and offer a proposed amendment that would allow NHMA to be neutral on the bill.

NHMA supports the purposes of the Right-to-Know Law: to ensure the greatest possible public access to the actions, discussions, and records of all public bodies, and to ensure government's accountability to the people. To that end, NHMA agrees that best practice is to provide periodic updates where the government's initial written estimate of the time necessary to fulfill the request is too ambitious. As such, NHMA would propose the following amendment to the introduced bill:

> ***If a public body or agency is unable to make a governmental record available for inspection and copying by the time estimated in the initial written statement, the public body or agency shall, prior to that date, provide written updates estimating the additional time necessary to determine whether the request shall be granted or denied, the reason for the delay, and a description of the progress made on the request and of the remaining work to be done.***

NHMA believes that the proposed replace-all amendment would make the law clearer and make compliance with public access requirements easier and less burdensome for public officials and employees and less costly for taxpayers. This amendment would incorporate existing best practices into statute and give the government needed flexibility to provide consistent, periodic updates according to a locally established timeline created in response to the initial request.

Sincerely,

Natch Greyes

Natch Greyes
Government Affairs Counsel
New Hampshire Municipal Association

NEW HAMPSHIRE MUNICIPAL ASSOCIATION
25 Triangle Park Drive • Concord, NH 03301 • Tel: 603.224.7447 • NH Toll Free: 800.852.3358
NHMAinfo@nhmunicipal.org • governmentaffairs@nhmunicipal.org • legalinquiries@nhmunicipal.org
www.nhmunicipal.org

HB 149
Testimony of David K. Taylor before the House Judiciary Committee
January 18, 2023

Please include this letter in the official record of HB 149.

Honorable Members of the House Judiciary Committee,

Thank you very much for allowing me to testify on bill HB 149 today. I support this bill. I am David Taylor of Durham and I served for 12 years on the Oyster River School Board.

HB 149 is needed to fix one of the most common problems with Right-to-Know record requests. RSA 91-A:4, IV provides only 1 time limit for requests, namely a 5 day maximum for an initial written response. If this response does not include the requested records, then the response must include an estimate for the "time reasonably necessary" to provide a second response.

After the 5 day deadline, the statute drops the ball. There is no deadline for the second response. The second response doesn't need to be within the estimated time. There is not even a requirement that the search should be done with a reasonable effort.

HB 149 does not impose a specific deadline on the search after the initial 5 days, but it leaves it to the agency to estimate what is the "time reasonably necessary." However, HB 149 would require the agency to follow up by providing monthly status on the search. No status would be required if the search is completed beforehand.

These monthly status reports would let the requestor know that the agency is still working on the request and how much progress they have made. Once a month status does not pose an unreasonable burden on the agency. HB 149 is a very reasonable mechanism to fix one of the most common problems with RTK requests.

Thank you again for allowing me to submit this testimony today on HB 149 and I hope you will vote that this bill ought to pass.

Sincerely,
David K. Taylor

Durham, NH

Daniel Richardson

Remove statement "The public body or agency shall make every reasonable effort to fulfill the terms of the written statement." It is unenforceable; violation is unprovable and it adds nothing to statute purpose.

David Saad

Current law requires that the public body “Providea written statement of the time reasonably necessary to determine whether therequest shall be granted or denied and the reason for the delay”. What good is a written statement which outlinesthe process the public body must go through up to the point of deciding if arequest will be granted, but then is totally silent on providing specifics onthe process they must follow to update the requestor of their progress atreasonable intervals until the request has been fulfilled?

Article 8, Part 1 of the NH Constitution statesthat our government is “at all times accountable to” the people. In reality, the time between when the publicbody decides to grant the right to know request and when they legally fulfillthe request, they are not accountable to the people.

This bill addresses that deficiency inaccountability by requiring periodic updates on the progress of all overdue outstandingrequests for governmental records.

Please support this bill as it increases thelevel of accountability and result in more timely access to public records.

2023 SESSION

23-0252
05/04

HOUSE BILL ***149-FN***

AN ACT relative to the handling of requests made under the right-to-know law.

SPONSORS: Rep. M. Smith, Straf. 10; Rep. DiLorenzo, Rock. 10; Rep. P. Schmidt, Straf. 14

COMMITTEE: Judiciary

ANALYSIS

This bill requires periodic updates to the requestor when a request is made under the right-to-know law.

- -

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.
23-0252
05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the handling of requests made under the right-to-know law.

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

1 Access to Governmental Records and Meetings; Minutes and Records Available for Public Inspection; Written Statement Regarding Time Required to Respond. Amend RSA 91-A:4, IV(b) to read as follows:
(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:
(1) Make such record available;
(2) Deny the request; or

(3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay. ***The public body or agency shall make every reasonable effort to fulfill the terms of the written statement. If a public body or agency is unable to make a governmental record available for inspection and copying by a written statement of time, the public body or agency shall, prior to that date, provide a written statement of additional time reasonably necessary to determine whether the request shall be granted or denied, the reason for the delay, and a specific description of the progress made on the request and of the remaining work. If any statement of time exceeds 30 days from the prior statement, then a public body or agency shall provide such written statement every 30 days.***

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

LBA
23-0252
12/6/22

HB 149-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the handling of requests made under the right to know law.

FISCAL IMPACT: **[X] State** **[X] County** **[X] 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 [X] Other - Various Government Funds			

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires periodic updates to the requestor when a request is made under the right-to-know law. There is no method to estimate the number of instances where a public body would be required to provide the additional written statements required in the proposed amendment to RSA 91-A:4,IV (b). Such additional statements will result in additional administrative costs to state, county and local governments.

AGENCIES CONTACTED:

None