

Bill as Introduced

HB 425-FN-A-LOCAL - AS INTRODUCED

2009 SESSION

09-0520
01/03

HOUSE BILL ***425-FN-A-LOCAL***

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

SPONSORS: Rep. J. Garrity, Rock 6; Rep. Casey, Rock 11; Rep. Osborne, Merr 12;
Rep. Watrous, Merr 12

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law. The bill establishes a civil penalty for violations of the law which are to be deposited in a special fund.

This bill is a request of the right-to-know oversight commission established in RSA 91-A:11.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

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

1 1 Right-to-Know Law; Remedies. RSA 91-A:8 is repealed and reenacted to read as follows:

2 91-A:8 Remedies.

3 I. If any public body or public agency or officer, employee, or other official thereof, violates
4 any provisions of this chapter, such public body or public agency shall be liable for reasonable
5 attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that
6 such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees
7 shall not be awarded unless the court finds that the public body, public agency, or person knew or
8 should have known that the conduct engaged in was in violation of this chapter or the parties, by
9 agreement, provide that no such fees shall be paid.

10 II. The court may award attorney's fees to a public body or public agency or employee or
11 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
12 when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or
13 oppressive.

14 III. The court may invalidate an action of a public body taken at a meeting held in violation
15 of the provisions of this chapter, if the circumstances justify such invalidation.

16 IV. If the court finds that an officer, employee, or other official of a public body or public
17 agency has violated this chapter in bad faith, the court shall impose against such person a civil
18 penalty of not less than \$250 nor more than \$1,000. Upon such finding, such person or persons shall
19 also be required to reimburse the public body or public agency for any attorney's fees or costs it paid
20 pursuant to paragraph I.

21 V.(a) The court may enjoin future violations of this chapter, and may require any officer,
22 employee, or other official of a public body or public agency found to have violated the provisions of
23 this chapter to undergo appropriate remedial training. The sums obtained from the civil penalties
24 imposed pursuant to paragraph IV shall be deposited in the right-to-know remedies fund established
25 in subparagraph (b).

26 (b) There is established in the office of the state treasurer the right-to-know remedies
27 fund which shall be nonlapsing and continually appropriated to the department of justice. The
28 department of justice shall use such funds for state, local, or regional remedial training programs
29 deemed appropriate by the attorney general to receive such funding.

1 2 Right-to-Know Remedies Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (276)
2 the following new subparagraph:

3 (277) Moneys deposited in the right-to-know remedies fund established under
4 RSA 91-A:8, V(b).

5 3 Effective Date. This act shall take effect January 1, 2010.

LBAO
09-0520
01/14/09

HB 425-FN-A-LOCAL - FISCAL NOTE

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

FISCAL IMPACT:

The Department of Justice states this bill will increase state restricted revenues and expenditures by an indeterminable amount in FY 2010 and each year thereafter. This bill may increase state expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Justice states this bill authorizes a civil penalty against an officer, employee, or other official of a public body of not less than \$250 nor more than \$1,000 for violating the law in bad faith. The penalties would be paid into a non-lapsing right-to-know remedies fund to be used by the Department for state, local, or regional remedial training programs deemed appropriate to receive such funding. The program will begin on January 1, 2010. The Department anticipates to draft and create a statewide training program will require 500 hours of time (25 percent of full-time equivalent) for an assistant attorney general in the first year of the program. Thereafter the program will require approximately 50 hours of an assistant attorney general (2.5 percent of full-time equivalent) annually to update the training.

The Department states it is not possible to estimate the number of violations. Therefore, the Department cannot estimate whether the increase in state restricted revenues and expenditures from the right-to-know fund will offset all training costs. The Department assumes training costs not offset by the right-to-know fund will increase state general fund expenditures.

This bill does not include an appropriation or establish positions.

HB 425-FN-A-LOCAL - AS AMENDED BY THE HOUSE

06Jan2010...2009-2383h

2009 SESSION

09-0520
01/03

HOUSE BILL ***425-FN-A-LOCAL***

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

SPONSORS: Rep. J. Garrity, Rock 6; Rep. Casey, Rock 11; Rep. Osborne, Merr 12;
Rep. Watrous, Merr 12

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law. The bill establishes a civil penalty for violations of the law which are to be deposited in a special fund.

This bill is a request of the right-to-know oversight commission established in RSA 91-A:11.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

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

1 1 Right-to-Know Law; Remedies. RSA 91-A:8 is repealed and reenacted to read as follows:

2 91-A:8 Remedies.

3 I. If any public body or public agency or officer, employee, or other official thereof, violates
4 any provisions of this chapter, such public body or public agency shall be liable for reasonable
5 attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that
6 such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees
7 shall not be awarded unless the court finds that the public body, public agency, or person knew or
8 should have known that the conduct engaged in was in violation of this chapter. Fees also shall not
9 be awarded if the parties, by agreement, provide that no such fees shall be paid.

10 II. The court may award attorney's fees to a public body or public agency or employee or
11 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
12 when the court finds that the lawsuit is frivolous or in bad faith.

13 III. The court shall invalidate an action of a public body taken at a meeting held in violation
14 of the provisions of this chapter, unless the court makes a specific finding that the circumstances do
15 not justify such invalidation.

16 IV. If the court finds that an officer, employee, or other official of a public body or public
17 agency has violated this chapter in bad faith, the court may impose against such person a civil
18 penalty of not more than \$1,000. Upon such finding, such person or persons may also be required to
19 reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to
20 paragraph I unless the person or persons involved resign their office. For the purposes of this
21 paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this
22 chapter knowingly and without adequate justification.

23 V.(a) The court may enjoin future violations of this chapter, and may require any officer,
24 employee, or other official of a public body or public agency found to have violated the provisions of
25 this chapter to undergo appropriate remedial training. The sums obtained from the civil penalties
26 imposed pursuant to paragraph IV shall be deposited in the right-to-know remedies fund established
27 in subparagraph (b).

28 (b) There is established in the office of the state treasurer the right-to-know remedies
29 fund which shall be nonlapsing and continually appropriated to the department of justice. The

HB 425-FN-A-LOCAL - AS AMENDED BY THE HOUSE

- Page 2 -

1 department of justice shall use such funds for state, local, or regional remedial training programs
2 deemed appropriate by the attorney general to receive such funding.

3 2 Right-to-Know Remedies Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (276)
4 the following new subparagraph:

5 (277) Moneys deposited in the right-to-know remedies fund established under
6 RSA 91-A:8, V(b).

7 3 Effective Date. This act shall take effect January 1, 2011.

LBAO
09-0520
01/14/09

HB 425-FN-A-LOCAL - FISCAL NOTE

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

FISCAL IMPACT:

The Department of Justice states this bill will increase state restricted revenues and expenditures by an indeterminable amount in FY 2010 and each year thereafter. This bill may increase state expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Justice states this bill authorizes a civil penalty against an officer, employee, or other official of a public body of not less than \$250 nor more than \$1,000 for violating the law in bad faith. The penalties would be paid into a non-lapsing right-to-know remedies fund to be used by the Department for state, local, or regional remedial training programs deemed appropriate to receive such funding. The program will begin on January 1, 2010. The Department anticipates to draft and create a statewide training program will require 500 hours of time (25 percent of full-time equivalent) for an assistant attorney general in the first year of the program. Thereafter the program will require approximately 50 hours of an assistant attorney general (2.5 percent of full-time equivalent) annually to update the training.

The Department states it is not possible to estimate the number of violations. Therefore, the Department cannot estimate whether the increase in state restricted revenues and expenditures from the right-to-know fund will offset all training costs. The Department assumes training costs not offset by the right-to-know fund will increase state general fund expenditures.

This bill does not include an appropriation or establish positions.

LBAO
09-0520
Amended 01/27/10

HB 425 FISCAL NOTE

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

FISCAL IMPACT:

The Department of Justice states this bill, as amended by the House (Amendment #2009-2383h), will increase state restricted revenues and expenditures by an indeterminable amount in FY 2011 and each year thereafter. This bill may increase state expenditures by an indeterminable amount in FY 2011 and each year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Justice states this bill authorizes a civil penalty against an officer, employee, or other official of a public body of not more than \$1,000 for violating the law in bad faith. The penalties would be paid into a non-lapsing right-to-know remedies fund to be used by the Department for state, local, or regional remedial training programs deemed appropriate to receive such funding. The Department anticipates to draft and create a statewide training program will require 500 hours of time (25 percent of full-time equivalent) for an assistant attorney general in the first year of the program. Thereafter the program will require approximately 50 hours of an assistant attorney general (2.5 percent of full-time equivalent) annually to update the training.

The Department states it is not possible to estimate the number of violations. Therefore, the Department cannot estimate whether the increase in state restricted revenues and expenditures from the right-to-know fund will offset all training costs. The Department assumes training costs not offset by the right-to-know fund will increase state general fund expenditures.

Amendments



Rep. L. Weber, Ches. 2
Rep. G. Richardson, Merr 4
Rep. Hackel, Hills. 21
February 12, 2009
2009-0315h
01/09

Amendment to HB 425-FN-A-LOCAL

1 Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

2

3 I. If any public body or public agency or officer, employee, or other official thereof, violates any
4 provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's
5 fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such
6 lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees shall
7 not be awarded unless the court finds that the public body, public agency, or person knew or should
8 have known that the conduct engaged in was in violation of this chapter. Fees also shall not be
9 awarded if the parties, by agreement, provide that no such fees shall be paid.

10 II. The court shall award attorney's fees to a public body or public agency or employee or
11 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
12 when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or
13 oppressive.

14 III. The court may invalidate an action of a public body taken at a meeting held in violation
15 of the provisions of this chapter, if the circumstances justify such invalidation.

16 IV. If the court finds that an officer, employee, or other official of a public body or public
17 agency has violated this chapter in bad faith, the court shall impose against such person a civil
18 penalty of not less than \$250 nor more than \$1,000. Upon such finding, such person or persons shall
19 also be required to reimburse the public body or public agency for any attorney's fees or costs it paid
20 pursuant to paragraph I. For the purposes of this paragraph, a finding of bad faith shall mean that
21 the officer, employee, or other official violated this chapter knowingly and without adequate
22 justification.



2009-0315h

AMENDED ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law. The bill establishes a civil penalty for violations of the law which are to be deposited in a special fund.

Rep. L. Weber, Ches. 2
Rep. Silva, Hills. 26
Rep. W. Smith, Rock. 18
Rep. G. Richardson, Merr. 4
Rep. Hackel, Hills. 21
February 17, 2009
2009-0362h
09/05

Amendment to HB 425-FN-A-LOCAL

1 Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

2
3 I. If any public body or public agency or officer, employee, or other official thereof, violates any
4 provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's
5 fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such
6 lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees shall
7 not be awarded unless the court finds that the public body, public agency, or person knew or should
8 have known that the conduct engaged in was in violation of this chapter and such action was in bad
9 faith. Fees also shall not be awarded if the parties, by agreement, provide that no such fees shall be
10 paid.

11 II. The court shall award attorney's fees to a public body or public agency or employee or
12 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
13 when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or
14 oppressive.

15 III. The court may invalidate an action of a public body taken at a meeting held in violation
16 of the provisions of this chapter, if the circumstances justify such invalidation.

17 IV. If the court finds that an officer, employee, or other official of a public body or public
18 agency has violated this chapter in bad faith, the court may impose against such person a civil
19 penalty of not more than \$1,000. Upon such finding, such person or persons shall also be required to
20 reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to
21 paragraph I unless the person or persons involved resign their office. For the purposes of this
22 paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this
23 chapter knowingly and without adequate justification.

Amendment to HB 425-FN-A-LOCAL
- Page 2 -



2009-0362h

AMENDED ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law. The bill establishes a civil penalty for violations of the law which are to be deposited in a special fund.

Rep. L. Weber, Ches. 2
Rep. W. O'Brien, Hills. 4
Rep. Silva, Hills. 26
Rep. G. Richardson, Merr. 4
Rep. Watrous, Merr. 12
Rep. Hackel, Hills. 21
September 22, 2009
2009-2383h
01/04

Amendment to HB 425-FN-A-LOCAL

1 Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

2

3 I. If any public body or public agency or officer, employee, or other official thereof, violates
4 any provisions of this chapter, such public body or public agency shall be liable for reasonable
5 attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that
6 such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees
7 shall not be awarded unless the court finds that the public body, public agency, or person knew or
8 should have known that the conduct engaged in was in violation of this chapter. Fees also shall not
9 be awarded if the parties, by agreement, provide that no such fees shall be paid.

10 II. The court may award attorney's fees to a public body or public agency or employee or
11 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
12 when the court finds that the lawsuit is frivolous or in bad faith.

13 III. The court shall invalidate an action of a public body taken at a meeting held in violation
14 of the provisions of this chapter, unless the court makes a specific finding that the circumstances do
15 not justify such invalidation.

16 IV. If the court finds that an officer, employee, or other official of a public body or public
17 agency has violated this chapter in bad faith, the court may impose against such person a civil
18 penalty of not more than \$1,000. Upon such finding, such person or persons may also be required to
19 reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to
20 paragraph I unless the person or persons involved resign their office. For the purposes of this
21 paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this
22 chapter knowingly and without adequate justification.

23

24 Amend the bill by replacing section 3 with the following:

25

26 3 Effective Date. This act shall take effect January 1, 2011.

Rep. Hatch, Coos 3
Rep. Major, Rock. 8
February 11, 2010
2010-0650h
03/05

Amendment to HB 425-FN-A-LOCAL

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

2

3 AN ACT relative to remedies under the right-to-know law.

4

5 Amend RSA 91-A:8, V as inserted by section 1 of the bill by replacing it with the following:

6

7 V. The court may enjoin future violations of this chapter, and may require any officer,
8 employee, or other official of a public body or public agency found to have violated the provisions of
9 this chapter to undergo appropriate remedial training.

10

11 Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

Amendment to HB 425-FN-A-LOCAL
- Page 2 -

2010-0650h

AMENDED ANALYSIS

This bill clarifies the remedies for violations of the right-to-know law.

Committee Minutes


HOUSE COMMITTEE ON JUDICIARY

BILL NUMBER: HB 425

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: Feb. 17, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.

A handwritten signature in black ink, appearing to read 'D. Cote', is positioned above a horizontal line.

David E. Cote, Chairman

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 425-FN-A-L

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: JAN 27, 2009

LOB ROOM: 208 **Time Public Hearing Called to Order:** 1:00P

Time Adjourned: 1:50P

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva and W. Smith.

Bill Sponsors: Rep. J. Garrity, Rock 6; Rep. Casey, Rock 11; Rep. Osborne, Merr 12; Rep. Watrous, Merr 12

TESTIMONY

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

Rep. James Garrity; sponsor

The Right-to-Know Law needs teeth and the threat of punishment to encourage obedience. This bill personalizes the punishment (lines 16-20) and includes mandatory awarding of attorney's fees. A public body or agency can recover cost from an employee found guilty of knowingly violating the law.

*** Rich Tomasso; NH Libertarian Party; supports**

Citizens, especially government officials, are expected to know and follow the law. Remedial training will help to diminish the number of future violations.

*** Cordell Johnston; NH Municipal Asn; neutral**

The courts should not be too punitive if public officials do not understand the law. Judges need to see bad faith (defined in the written testimony) in order to determine guilt. He stated that a secretary who is ordered to violate the law should not be charged with bad faith. Additional changes are highlighted in bold italics in the handout.

John Lasseby; Vice Chair, Right-to-Know Commission; supports

This law would require the entity for whom the violator works to pay the plaintiffs fee. The violator, who might to be financially unable to pay the fine and attorney's fee at the time the case is settled, would have to repay the agency or public body. He asaid that Cordell Johnston's amendment to Paragraph I is good.

Harrriet Cady; supports w/amendment

She suggested the removal Paragraph II (lines 10-13) because this issue is already covered in case law, so the legal precedent has been established. In line 14, change 'may' to 'shall'. She agrees that attorney's fees should be awarded, but she also said that, in pro se cases, the plaintiff's time is worth something (loss of wages at a regular job), for which compensation should be awarded. Volunteers should be held no less accountable for violations of the law. "Do we want volunteers who violate the law?" Training is available through the Local Government Center, which is supported by municipalities.

*** Ed Naile; Coalition of NH Taxpayers; opposes in present form**

He suggests removal from office for just cause as an appropriate penalty for violating the RTK Law (such as a case where a person in a supervisory capacity orders a subordinate to violate the law). If there is to be an agreement not to include court costs, it should be made prior in advance of the decision.

Respectfully submitted,



Rep. Philip Preston, Clerk

Rep. James Garrity; sponsor

The Right-to-Know Law needs teeth and the threat of punishment to encourage obedience. This bill personalizes the punishment (lines 16-20) and includes mandatory awarding of attorney's fees. A public body or agency can recover cost from an employee found guilty of knowingly violating the law.

*** Rich Tomasso; NH Libertarian Party; supports**

Citizens, especially government officials, are expected to know and follow the law. Remedial training will help to diminish the number of future violations.

*** Cordell Johnston; NH Municipal Asn; neutral**

The courts should not be too punitive if public officials do not understand the law. Judges need to see bad faith (defined in the written testimony) in order to determine guilt. He stated that a secretary who is ordered to violate the law should not be charged with bad faith. Additional changes are highlighted in bold italics in the handout.

John Lassey; Vice Chair, Right-to-Know Commission; supports

This law would require the entity for whom the violator works to pay the plaintiffs fee. The violator, who might to be financially unable to pay the fine and attorney's fee at the time the case is settled, would have to repay the agency or public body. He said that Cordell Johnston's amendment to Paragraph I is good.

Harrriet Cady; supports w/amendment

She suggested the removal Paragraph II (lines 10-13) because this issue is already covered in case law, so the legal precedent has been established. In line 14, change 'may' to 'shall'. She agrees that attorney's fees should be awarded, but she also said that, in pro se cases, the plaintiff's time is worth something (loss of wages at a regular job), for which compensation should be awarded. Volunteers should be held no less accountable for violations of the law. "Do we want volunteers who violate the law?" Training is available through the Local Government Center, which is supported by municipalities.

*** Ed Naile; Coalition of NH Taxpayers; opposes in present form**

He suggests removal from office for just cause as an appropriate penalty for violating the RTK Law (such as a case where a person in a supervisory capacity orders a subordinate to violate the law). If there is to be an agreement not to include court costs, it should be made prior in advance of the decision.

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 425-FN-A-L

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: 1/27/03

LOB ROOM: 308

Time Public Hearing Called to Order: 1:00

Time Adjourned: 1:50

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFuscia, W. O'Brien, Hagan, L. Perkins, Silva and W. Smith.

Bill Sponsors: Rep. J. Garrity, Rock 6; Rep. Casey, Rock 11; Rep. Osborne, Merr 12; Rep. Watrous, Merr 12

TESTIMONY

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

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 425

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: 1/20/2010

LOB ROOM: 202 **Time Public Hearing Called to Order:** 10:31 a.m.

Time Adjourned: 10:46 a.m.

(please circle if present)

Committee Members: Reps. ~~Almy~~, ~~Hatch~~, ~~Davis~~, ~~Butynski~~, ~~Vachon~~, ~~Shattuck~~, J. Kelley, ~~Mack~~, ~~W. Johnson~~, ~~S. Price~~, ~~Walsh~~, ~~Major~~, Griffin, Lockwood, ~~Boutin~~, ~~Hettencourt~~, ~~R. Ober~~, ~~Sapareto~~, ~~Clery~~ and ~~Osgood~~. *Rep. K. Wagner*

Bill Sponsors: Reps. J. Garrity, Casey, Osborne, Watrous

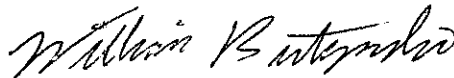
TESTIMONY

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

Rep. Jane Garrity, prime sponsor, supports the bill, for the NH Right-to-Know Oversight Commission.

-Responded to committee questions on penalties, dedicated fund, and options to a dedicated fund, and agreed to provide further information to the committee chair.

Respectfully submitted,



Rep. William Butynski,
CLERK OF THE COMMITTEE

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 425

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: 1/20/10

LOB ROOM: 202 Time Public Hearing Called to Order: 10:31 AM

Time Adjourned: 10:46 AM

(please circle if present)

Committee Members: Reps. Almy Hatch, Davis, Butynski, Vachon, Shattuck, J. Kelley, Mack, W. Johnson, S. Price, Walsh, Major, Griffin, Lockwood, Boutin, Bettencourt, R. Ober, Sapareto, Ulery and Osgood. K. Wyles

Bill Sponsors: Reps. J. Garrity, Casey, Osborne, Watrous

TESTIMONY

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

• Rep. James Garrity, Primary Sponsor - Support the bill for the NH Right-to-Know Oversight Commission. responded to Committee questions on penalties, dedicated fund, + options to a dedicated fund, and agreed to provide further information to the Committee Chair.

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: November 17, 2009

Subcommittee Members: Reps. Weber, Hacker, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

Sponsor: Rep. Weber, O'Brien, & Silva OLS Document #: 2009 2383h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. O'Brien

Vote: 4-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: November 17, 2009

Subcommittee Members: Reps. Weber Hackel Richardson DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

Amendments:

Sponsor: Rep. *O'Brien et al* OLS Document #: *2009-2383h*
Sponsor: Rep. OLS Document #: *4-0*
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Richardson*
Seconded by Rep. *O'Brien*
Vote: *4-0*

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,
Rep. *Weber*
Subcommittee Chairman/Clerk

Rep. L. Weber, Ches. 2
Rep. W. O'Brien, Hills. 4
Rep. Silva, Hills. 26
Rep. G. Richardson, Merr. 4
Rep. Watrous, Merr. 12
Rep. Hackel, Hills. 21
September 22, 2009
2009-2383h
01/04

Amendment to HB 425-FN-A-LOCAL

1 Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

2
3 I. If any public body or public agency or officer, employee, or other official thereof, violates
4 any provisions of this chapter, such public body or public agency shall be liable for reasonable
5 attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that
6 such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees
7 shall not be awarded unless the court finds that the public body, public agency, or person knew or
8 should have known that the conduct engaged in was in violation of this chapter. Fees also shall not
9 be awarded if the parties, by agreement, provide that no such fees shall be paid.

10 II. The court may award attorney's fees to a public body or public agency or employee or
11 member thereof, for having to defend against a person's lawsuit under the provisions of this chapter,
12 when the court finds that the lawsuit is frivolous or in bad faith.

13 III. The court shall invalidate an action of a public body taken at a meeting held in violation
14 of the provisions of this chapter, unless the court makes a specific finding that the circumstances do
15 not justify such invalidation.

16 IV. If the court finds that an officer, employee, or other official of a public body or public
17 agency has violated this chapter in bad faith, the court may impose against such person a civil
18 penalty of not more than \$1,000. Upon such finding, such person or persons may also be required to
19 reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to
20 paragraph I unless the person or persons involved resign their office. For the purposes of this
21 paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this
22 chapter knowingly and without adequate justification.

23
24 Amend the bill by replacing section 3 with the following:

25
26 3 Effective Date. This act shall take effect January 1, 2011.

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hacker, Richardson, DiFrusea, Silva, O'Brien, and Watrous

Comments and Recommendations: Rescheduled to Tuesday, September 22, 2009 at 10:00 a.m.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: September 15, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and

Watrous

*Rescheduled to Tuesday, Sept 22
at 10:00 am.*

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: September 22, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations: No official vote taken. Tentative agreement reached by members of subcommittee, copy attached. Rep. Weber took to Legislative Services for drafting as official amendment, to be voted on prior to full committee executive session.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 425-FN-A

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: September 22, 2009

Subcommittee Members: Reps. Weber, Hackel, Richardson, DiFruscia, Silva, O'Brien, and Watrous

Comments and Recommendations:

No official vote taken. Tentative agreement reached by members of subcommittee, copy attached. Rep. Weber took to LegiServices for drafting as official amendment, to be voted on prior to full committee executive session.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

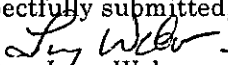
Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Lucy Weber
Subcommittee Chairman/Clerk

Text in agreement of subcommittee as of 22 Sept 09.

Rep. W. O'Brien, Hills. 4
Rep. Rowe, Hills. 6
February 17, 2009
2009-0373h
01/10

O'Brien
Silva
G Richardson
R Webrows
P Haeberl
L. Weber

Amendment to HB 425-FN-A-LOCAL

1 Amend RSA 91-A:8, I-IV as inserted by section 1 of the bill by replacing it with the following:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter ~~and such action was in bad faith~~. Fees also shall not be awarded if the parties, by agreement, provide that no such fees shall be paid.

II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court finds that the lawsuit is ^{frivolous or} in bad faith.

III. The court shall invalidate an action of a public body taken at a meeting held in violation of the provisions of this chapter, unless ^{the court makes a specific finding that} the circumstances do not justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated this chapter in bad faith, the court may impose against such person a civil penalty of not more than \$1,000. Upon such finding, such person or persons ^{may} ~~shall~~ also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I unless the person or persons involved resign their office. For the purposes of this paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this chapter knowingly and without adequate justification.

note clear that ^{the} ~~section~~ V of original bill is retained.

Testimony

Right to Know Issues
Testimony of Ed Naile, CNHT
Jan. 27, 2009

For the most part, 91-A is violated two ways:

Citizen denied documents by claims documents do not exist, are too expensive to provide, delayed until need no longer exists, documents are not public, held until citizen has to pay for court action, documents diverted to third party not subject to 91-A.

Access to Public proceeding is denied by public body holding unpublicized meetings, private electronic meetings, sequential meetings, one or more members of public body left out of meetings, claims entity is not a public body, use of recording devices denied.

Both types of violations are aggravated by municipal attorneys who defend the indefensible.

Penalties should fit the situation and be enforceable.

Where an elected or appointed board is at issue, removal from office should be required as a potential penalty.

If an employee is at issue a fine may be the best solution.

Knight vs. Exeter School District: School destroyed information at issue during the case to hide from plaintiff. Judge had school pay legal fees.

Hampton and Searle Select board tried to remove one selectman for disclosing what they claimed was non-public information which was not a valid non-public personnel issue.

Windsor complete breakdown of public records and repeated violations initiating two court cases.

Amendment to HB 425
Proposed by the New Hampshire Municipal Association

Changes shown are to the bill as introduced.

AN ACT relative to remedies under the right-to-know law and continually appropriating a special fund.

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

1 Right-to-Know Law; Remedies. RSA 91-A:8 is repealed and reenacted to read as follows:

91-A:8 Remedies.

I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter. ~~[or]~~ ***Fees also shall not be awarded if*** the parties, by agreement, provide that no such fees shall be paid.

II. The court ~~may~~ ***shall*** award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

III. The court may invalidate an action of a public body taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated this chapter in bad faith, the court shall impose against such person a civil penalty of not ~~[less than \$250 nor]~~ more than \$1,000. Upon such finding, such person or persons shall also be required to reimburse the public body or public agency for any attorney's fees or costs

it paid pursuant to paragraph I. *For purposes of this paragraph, a finding of bad faith shall mean that the officer, employee, or other official violated this chapter knowingly, without justification, and without compulsion from any person having authority over the person committing the violation.*

V.(a) The court may enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training. The sums obtained from the civil penalties imposed pursuant to paragraph IV shall be deposited in the right-to-know remedies fund established in subparagraph (b).

(b) There is established in the office of the state treasurer the right-to-know remedies fund which shall be nonlapsing and continually appropriated to the department of justice. The department of justice shall use such funds for state, local, or regional remedial training programs deemed appropriate by the attorney general to receive such funding.

2 Right-to-Know Remedies Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (276) the following new subparagraph:

(277) Moneys deposited in the right-to-know remedies fund established under RSA 91-A:8, V(b).

3 Effective Date. This act shall take effect January 1, 2010.

RTK penalties

	Existing law	HB 425	NHMA proposal
Attorney fees payable by public body or agency	Court <i>shall</i> award fees if lawsuit was necessary to enforce compliance, and body or agency knew or should have known conduct violated law.	Same as existing law.	Same.
Attorney fees payable by individual official or employee	Court <i>may</i> award fees against individual official or employee upon finding of bad faith violation.	Court <i>shall</i> require individual to reimburse public body or agency for attorney fee award upon finding of bad faith.	Same as HB 425.
Attorney fees payable by plaintiff	Court <i>may</i> award fees against plaintiff if lawsuit was frivolous, in bad faith, etc.	Same as existing law.	Court <i>shall</i> award fees against plaintiff if lawsuit was frivolous, in bad faith, etc.
Civil penalties	None.	Court <i>shall</i> impose penalty of \$250 to \$1,000 against official or employee who commits bad faith violation.	Same as HB 425, but eliminate \$250 minimum and define bad faith.
Remedial training	None.	Court <i>may</i> require remedial training.	Same as HB 425.
Invalidation of public body's action	Court <i>may</i> invalidate if circumstances justify it.	Same as existing law.	Same.
Injunction against future violations	Court <i>may</i> enjoin future violations.	Same as existing law.	Same.
Definition of bad faith	Not defined.	Not defined.	Person violated the law knowingly, without justification, and without compulsion from another.

Right to Know Issues
Testimony of Ed Naile, CNHT
Jan. 27, 2009

For the most part, 91-A is violated two ways:

Citizen denied documents by claims documents do not exist, are too expensive to provide, delayed until need no longer exists, documents are not public, held until citizen has to pay for court action, documents diverted to third party not subject to 91-A.

Access to Public proceeding is denied by public body holding unpublicized meetings, private electronic meetings, sequential meetings, one or more members of public body left out of meetings, claims entity is not a public body, use of recording devices denied.

Both types of violations are aggravated by municipal attorneys who defend the indefensible.

Penalties should fit the situation and be enforceable.

Where an elected or appointed board is at issue, removal from office should be required as a potential penalty.

If an employee is at issue a fine may be the best solution.

Knight vs. Exeter School District: School destroyed information at issue during the case to hide from plaintiff. Judge had school pay legal fees.

Hampton and Searle Select board tried to remove one selectman for disclosing what they claimed was non-public information which was not a valid non-public personnel issue.

Windsor complete breakdown of public records and repeated violations initiating two court cases.

Testimony for HB425

Remedies for violation of the state right-to-know law and a special fund.

I am speaking in favor of HB425, which provides important additional penalties against government officials that violate the Right To Know law.

We as citizens are expected to know and follow the law and are punished even in our ignorance for any violation of that law, being held personally liable even when acting on behalf of another in many cases. Public officials must be held to the same standard, especially when acting on our behalf. Government officials must abide by the law when enacting policy, else why should we as citizens respect the law if officials do not.

Failure to follow the law on any governmental action should have consequences. This legislation strengthens that policy and sends a very important message that officials will be held to account for their actions with fines. And I would hope remind state and local officials about the seriousness of their duties and the obligation they have to their fellow citizens.

Also remedial training will become available to officials as a result of these fines, hopefully eliminating future abuses.

As someone who has served on public boards and intends to do so again, I welcome this legislation as a vital check and balance on executive actions.

I urge members of the committee to vote OTP for this bill and help protect your fellow citizens from abuses arising from government done behind closed doors.

Thank you for your time,

Richard Tomasso
Libertarian Party of NH



State of New Hampshire

HOUSE OF REPRESENTATIVES

Rockingham District 6
East Road
Atkinson, NH 03811

January 26, 2010

RE: HB-425 - Results of fact-finding with NH Attorney General's Office

Representative Susan Almy, Chair
House Ways and Means Committee
Room 202, Legislative Office Building
Concord, NH

Dear Chair Almy and Committee:

At your request, I contacted the Attorney General's office and spoke at length with Deputy Attorney General Bud Fitch. Bud is the designated subject matter expert in the AG's office for Right-to-Know issues. I asked him to answer the Committee's three questions on HB-425. The questions and his answers follow:

Q: There seems to some concern that creating dedicated funds is an expensive process. Is there an existing fund at the AG's office into which Right-to-Know civil penalties can be paid?

A: No. Mixing funds would not be advisable. These dedicated funds are audited to ensure strict compliance with the stated purpose of the fund. Auditors insist that dedicated funds be separate. However, now that Administrative Services manages the creation of new funds, there is very little expense. They simply create the fund in the computerized accounting system. Administrative Services did this frequently for Mr. Fitch with ARRA (stimulus) funds. Creating a Right-to-Know fund would not be difficult.

Q: Shouldn't the Right-to-Know violators pay for their remedial training on a pay-as-you-go system?

A: No. The AG's office anticipates that there will be so few of these cases each year that it would not be worth building an administrative infrastructure to manage them. In most cases, the AG's office will meet with the violator on a 1 - 1 basis, identify the areas where they need some education/training and develop a customized mentoring plan to help the violator. This can be done with existing staff and resources.

Q: Would you suggest any changes to the current version of HB-425?

A: No. In fact, the AG's office (Mr. Fitch) worked with the House Judiciary Right-to-Know sub-committee during the crafting of the current version. The AG's office is satisfied with the current version.

Mr. Fitch also confirmed that the AG's office (working with other stakeholders) is in the process of developing a Right-to-Know training curriculum for public officials, and hope to have it completed by early 2011. His intention is to make it available on-line and allow officials and the public to take self-paced courses and quizzes from a web site, similar to the very successful Election Official training on the NH Secretary of State's web site.

Respectfully,


James Michael Garrity

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION on HB 425-FN-A-L

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: FEB 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Weber / Nixon	OLS Document #:	2009-0362h (defeated)
Sponsor: Rep.	OLS Document #:	
Sponsor: Rep.	OLS Document #:	

Motions: OTP, OTP/A, ITL, Interim Study, RETAIN

Moved by Rep. WEBER

Seconded by Rep. O'BRIEN

Vote: *approved unanimously*

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION on HB 425-FN-A-L

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: 2/17/09

LOB ROOM: 208

Amendments:

Sponsor: Rep. Weber / Nixon OLS Document #: 2009-0362h defeated
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retain Interim Study (Please circle one.)

Moved by Rep. Weber approved unanimously
Seconded by Rep. O'Brien
Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 425-FN-A-LOCAL

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Weber, O'Brien, & Silva OLS Document #: 2009 2383h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. O'Brien

Vote: 19-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 19-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 425-FN-A-LOCAL

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. *Weber, O'Brien* OLS Document #: *2009-23834*
Sponsor: Rep. OLS Document #: *adopted by voice*
Sponsor: Rep. OLS Document #: *unanimous*

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Weber*

Seconded by Rep. *O'Brien*

Vote: *19/0* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 425

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: February 11, 2010

LOB ROOM: 202

Amendments:

Sponsor: Rep. Hatch & Major OLS Document #: 2010 0650h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. Major

Seconded by Rep. Hatch

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. Kelley

Seconded by Rep. Major

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 17-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. William Butynski, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 425

BILL TITLE: relative to remedies under the state right-to-know law and continually appropriating a special fund.

DATE: 2/11/10

LOB ROOM: 202

② Motion or Amendments: *Moved Unanimously*

Sponsor: Rep. *Majors*

Sponsor: Rep. *Hutch*

Sponsor: Rep.

Strike line 23 (a) line 25 and change to General Fund in line 5
OLN Document #: 2010-0650 k

OLN Document #:

OLN Document #:

① Motions: ~~WYTHDRAWN~~ ~~one amendment~~ OTP OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. ~~Kelley~~ *Kelley*

Seconded by Rep. ~~Made~~ *Made*

Vote: (Please attach record of roll call vote.)

Motions: ~~WYTHDRAWN~~ ~~2010-0650~~ OTP OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. *Kelley*

Seconded by Rep. *Majors*

Vote: *17/0* (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar OK must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. William Butynski, Clerk

WAYS AND MEANS

Bill #: HB 425 Title: relative to remedies under the state right to know law...

PH Date: 1/20/10

Exec Session Date: 2/11/10

Motion: OTPA/Kelley & ~~Major~~ Major

Amendment #: —

MEMBER	YEAS	NAYS
Almy, Susan W, Chairman	✓	
Hatch, William A, V Chairman	✓	
Davis, Frank W	✓	
Butynski, William, Clerk	✓	
Vachon, Dennis P	✓	
Shattuck, Gilman	✓	
Kelley, John D	✓	
Mack, Ron J	✓	
Johnson, William G	✓	
Price, Susan G	✓	
Walsh, Robert M		
Major, Norman L	✓	
Griffin, Mary E	✓	
Lockwood, Priscilla P	✓	
Boutin, David D		
Bettencourt, David J	✓	
Ober, Russell T	✓	
Sepurto, Frank V		
Ulery, Jordan G	✓	
Osgood, Joe	✓	
	<u>17</u>	<u>0</u>
TOTAL VOTE:		

Committee Report

CONSENT CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on JUDICIARY to which was referred
HB425-FN-A-L,**

**AN ACT relative to remedies under the state right-to-
know law and continually appropriating a special fund.**

**Having considered the same, report the same with the
following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Lucy M Weber

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB425-FN-A-L
Title:	relative to remedies under the state right-to-know law and continually appropriating a special fund.
Date:	November 20, 2009
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill is a response to concerns that when a court finds a violation of the right-to-know law, there is often no meaningful penalty to deter future violations. The bill, as amended, provides that a court shall invalidate any action taken at a meeting in violation of the right-to-know law unless the court makes a specific finding that circumstances do not justify the invalidation. The bill also allows the court to fine an official who has been found to have acted in bad faith a penalty of up to \$1000. Because of concerns that the possibility of a fine might deter people from seeking public office or employment, a provision was added allowing the violator to avoid paying the court-ordered penalty by resigning their office. The bill provides that any fines collected under this provision shall be paid into a revolving fund held by the attorney general's office to fund remedial training programs on the right-to-know law.

Vote 19-0.

Rep. Lucy M Weber
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB425-FN-A-L, relative to remedies under the state right-to-know law and continually appropriating a special fund. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Lucy M Weber for JUDICIARY. This bill is a response to concerns that when a court finds a violation of the right-to-know law, there is often no meaningful penalty to deter future violations. The bill, as amended, provides that a court shall invalidate any action taken at a meeting in violation of the right-to-know law unless the court makes a specific finding that circumstances do not justify the invalidation. The bill also allows the court to fine an official who has been found to have acted in bad faith a penalty of up to \$1000. Because of concerns that the possibility of a fine might deter people from seeking public office or employment, a provision was added allowing the violator to avoid paying the court-ordered penalty by resigning their office. The bill provides that any fines collected under this provision shall be paid into a revolving fund held by the attorney general's office to fund remedial training programs on the right-to-know law. **Vote 19-0.**

Original: House Clerk

Cc: Committee Bill File

Ebbs, Heather

From: David E. Cote [davidecote@comcast.net]
Sent: Wednesday, November 18, 2009 10:31 AM
To: Ebbs, Heather
Cc: Weber, Lucy
Subject: HB 425 Blurb--Approved

Judiciary Committee
17 November 2009

HB 425--relative to remedies under the right-to-know law and continually appropriating a special fund

Vote: OTP/A 2009-2383h 19-0 Consent

Rep. Lucy McVitty Weber for Judiciary:

This bill is a response to concerns that when a court finds a violation of the right-to-know law, there is often no meaningful penalty to deter future violations. The bill, as amended, provides that a court shall invalidate any action taken at a meeting in violation of the right-to-know law unless the court makes a specific finding that circumstances do not justify the invalidation. The bill also allows the court to fine an official who has been found to have acted in bad faith a penalty of up to \$1000. Because of concerns that the possibility of a fine might deter people from seeking public office or employment, a provision was added allowing the violator to avoid paying the court-ordered penalty by resigning their office. The bill provides that any fines collected under this provision shall be paid into a revolving fund held by the attorney general's office to fund remedial training programs on the right-to-know law.

CONSENT CALENDAR

February 12, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on WAYS AND MEANS to which was referred HB425-FN-A-L,

AN ACT relative to remedies under the state right-to-know law and continually appropriating a special fund.

Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. John D Kelley

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	WAYS AND MEANS
Bill Number:	HB425-FN-A-L
Title:	relative to remedies under the state right-to-know law and continually appropriating a special fund.
Date:	February 12, 2010
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

The department of justice states the bill authorizes a civil penalty against an officer, employee or other official of a public body of not more than \$1,000.00 for violating the law in bad faith. The department of justice is designing a statewide training program. The bipartisan vote of the committee was 17-0. The department of administrative services has stated the cost of maintaining the dedicated fund is insignificant.

Vote 17-0.

Rep. John D Kelley
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

WAYS AND MEANS

HB425-FN-A-L, relative to remedies under the state right-to-know law and continually appropriating a special fund. **OUGHT TO PASS WITH AMENDMENT.**

Rep. John D Kelley for WAYS AND MEANS. The department of justice states the bill authorizes a civil penalty against an officer, employee or other official of a public body of not more than \$1,000.00 for violating the law in bad faith. The department of justice is designing a statewide training program. The bipartisan vote of the committee was 17-0. The department of administrative services has stated the cost of maintaining the dedicated fund is insignificant. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Ways and means

BILL NUMBER: HB 425

TITLE: Remedies under state right-to-know law

DATE: 2/11/10 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. <u>2010-0650</u>

STATEMENT OF INTENT:

The department of justice states the bill authorizes a civil penalty against an officer, employee or other official of a public body of not more than \$1000.00 for violating the law in bad faith. The Department of Justice is designing a statewide training program. The bipartisan vote of the committee was 17-0. The Department of Administrative Services has stated the cost of maintaining the ^{dedicated} fund is insignificant.

COMMITTEE VOTE: 17-0

RESPECTFULLY SUBMITTED,

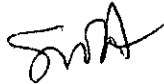
- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. John D. Kelley JMK
For the Committee

HB 425

The department of justice states the bill authorizes a civil penalty against an officer, employee or other official of a public body of not more than \$1,000.00 for violating the law in bad faith. The department of justice is designing a statewide training program. The bipartisan vote of the committee was 17-0. The department of administrative services has stated the cost of maintaining the dedicated fund is insignificant.

Rep. John D. Kelley

A handwritten signature in black ink, appearing to read "JDK", is positioned to the right of the printed name "Rep. John D. Kelley".