

Bill as Introduced

SB 425-FN - AS AMENDED BY THE SENATE

03/03/10 0793s

2010 SESSION

10-2813
06/01

SENATE BILL

425-FN

AN ACT

relative to exemptions to the right-to-know law.

SPONSORS:

Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18;
Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2;
Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

COMMITTEE:

Judiciary

AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to exemptions to the right-to-know law.

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

1 1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after
2 subparagraph (i) the following new subparagraph:

3 (j) Consideration of confidential, commercial, or financial information that is exempt
4 from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or
5 RSA 541-A.

6 2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking. Amend
7 RSA 365:8 by inserting after paragraph XIII the following new paragraph:

8 XIV. Standards and procedures for public utilities to request protection of routine filings
9 that contain confidential commercial or financial information.

10 3 Repeal. RSA 378:43, relative to information not subject to the right-to-know law, is repealed.

11 4 Effective Date.

12 I. Section 3 of this act shall take effect 180 days after its passage.

13 II. The remainder of this act shall take effect upon its passage.

LBAO
10-2813
01/13/10

SB 425-FN - FISCAL NOTE

AN ACT relative to telephone utilities exemptions to the right-to-know law.

FISCAL IMPACT:

The Public Utilities Commission states this bill will increase state restricted expenditures and state restricted revenue by \$70,727 in FY 2011, \$70,756 in FY 2012, \$74,453 in FY 2013 and \$78,246 in FY 2014. The Commission also states this bill may increase state, county and local expenditures in FY 2011 and each year thereafter. There is no fiscal impact on county and local revenue.

METHODOLOGY:

The Public Utilities Commission states this bill repeals RSA 378:43 that grants regulated telephone companies an automatic presumption that a document is exempt from public disclosure and adds RSA 363:25-a to require the Commission to post to its website all information provided to the Commission or its staff. The Commission states the repeal of RSA 378:43 will have no fiscal impact as any additional work will be absorbed with existing resources. The requirement to post documents on its website will require the addition of one tech support II position (labor grade 21) to gather, categorize, scan, label, upload and manage the Commission's website. The Commission assumes it will not require an additional position until FY 2011. The position costs are as follows:

	FY 2011	FY 2012	FY 2013	FY 2014
Salary (LG 21)	\$37,850	\$39,390	\$41,087	\$42,744
Benefits	21,727	23,371	25,171	27,103
Current Expenses	2,550	2,614	2,679	2,745
Equipment	3,350	0	0	0
Office Space	5,250	5,381	5,516	5,654
Total	\$70,727	\$70,756	\$74,453	\$78,246

LBAO
10-2813
01/13/10

The Commission states it is funded by assessments on regulated entities. Annual assessments are levied on each utility based on the proportion of its respective revenues to the total of all utility revenues. The Commission states the addition of one employee would increase the Commission's annual budget by less than one percent or less than one half cent for each \$100 of utility bills a customer pays. The Commission has no information on the utility bills paid by state, county or local governments to estimate the potential increase in expenditures for those entities.

This bill does not contain authorization or appropriation for a position.

SB 425 FISCAL NOTE

AN ACT relative to exemptions to the right-to-know law.

FISCAL IMPACT:

The Public Utilities Commission states this bill, as amended by the Senate (Amendment #2010-0793s), will have no fiscal impact on state, county and local revenue or expenditures.

METHODOLOGY:

The Public Utilities Commission states this bill repeals RSA 378:43 that grants regulated telephone companies an automatic presumption that a document is exempt from public disclosure and makes the materials filed under RSA 378:43 subject to rules governing the confidential treatment of documents filed with the Commission. The Commission states any costs associated with this bill can be absorbed by the Commission.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.
DATE: March 30, 2010
LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:10 am
Time Adjourned: 10:20 am

(please circle if present)

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

Bill Sponsors: Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18; Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2; Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

TESTIMONY

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

Sen Jackie Cilley, sponsor

Rep. William O'Brien: Q. Exempt records? A. Telecom companies should be treated like all other utilities.

Bob Dunn with Fred Coolbroth, Fairpoint - support with an amendment

* Fred Coolbrith, Divine, Millimet attorney

Says telecommunication companies are different from water, gas utilities. The latter have no competition. Thus Right-To-Know (RTK) rules should not apply to order to protect proprietary information within a contract. A customer may not want its info (revenues, financial projections) disclosed. With disclosure comes the likelihood of leaks of confidential information to competitors. There is a need to protect operating systems and the expertise provided by outside contractors. He opposes Section 3 (repeal of RSA 378:43). Says that rule making filings are currently OK. Section 3 would be a burden on utilities. Says the current law works. The Senate exec'd the bill knowing that FairPoint had this proposed amendment.

Rep. Frances Potter: A. Other communication utilities are not the provider of last resort. They can pick their customers, which FairPoint can't.

Rep. Lawrence Perkins: Q. Position on Section 1? A. No objection. FairPoint is expected to keep customer information private.

Rep. William O'Brien: Q. Section 1 defines info that is confidential? A. Yes. This affects all hearings, and makes it possible to make those hearings confidential. Info of the type used in Public Utilities Company (PUC) hearings. Q: Does passage of this bill open up a huge exception? *Ans.* Maybe. Existing RTK already exempts some records that O'Brien refers to. Need to study impact. Q: Could a minor disclosure make an entire meeting closed to public?

Rep. William O'Brien. Q. Are wireless carriers regulated by feds? A. Some confidentiality rules, but they are completely exempt under New Hampshire law. Q. Why do we need this statute? A. The level of competition has exploded.

Rep. Will Smith: A. Maine and Vermont do not have laws analogous to RSA 378: 43, and finds New Hampshire law beneficial.

* **Ann Ross, Public Utilities Commission (PUC) - supports**

At a public hearing, PUC cannot ask the public to leave room when asking parties to a case for confidential info that they do not want disclosed. She would like to have it possible for the doors to be closed so those questions can be asked and answered. What the PUC does now is close the hearing, and it may be violating RTK now in its current procedure.

Rep. William O'Brien: A. The fiscal note is not correct and should be taken out. A. An amended Fiscal Note has been submitted.

Rep. Rick Watrous. A. The bill not requested by PUC.

Rep. Robert Mead: Q. What is the financial impact? A. No fiscal impact.

Rep. William O'Brien: Q. Bill affects all public hearings? A. Yes. The Board of Land and Tax Appeals cannot now protect private info at hearing. Q: FairPoint is a state-sponsored (enabled) monopoly. Why should their financial info be exempt?

* **Meredith Hatfield, Office of Consumer Advocate. - supports**

Section 1. Bill seeks to treat telecoms like other utilities. RSA 91-A already provides enough protection of public utilities' confidential information. It provides enough protection for Public Service of New Hampshire and all of the other utilities. For the types of info including special contracts, financial projections, and live financial computer models, we might execute confidentiality agreements, or in many cases utilities provide it to us because they know that under 91-A we are prevented from disclosure, and in our office we have specific procedures in place because we understand how important it is to utilities and to their customers to have that information protected. So we do not believe that this special exemption just for telecommunication utilities is necessary, and we also are very concerned how the law currently has been used by telecom utilities. Now, utilities file a cover letter for the information stating that they meet the requirements of Section 2 of the law. So what the consumers and the public lose is the balancing test, so as long as the utilities say to the commission that this information is confidential and then it is treated that way; and it does shift the burden to the public and our office. One of the primary duties is to make sure the public knows what the PUC is doing and what decision it is making. Under RSA 378:43 it does put the burden on us to review everything that the company files and then to make a request that the commission review and direct the company to re-file it, if necessary. This process was very cumbersome during the

Verizon/FairPoint hearings. The balancing test under 91-A:5 must be before a closed session. And we think those closed sessions are very important because the Office of Consumer Advocate) has the right to be in those sessions, and if the PUC could not discuss that information, then we would not get a chance to see the commissioners cross-examine. Regarding the section of the bill requiring rulemaking, we thought that was a good compromise in order to insure that, when the telecoms have routine filings, there would be a process so they would not have to go through the 91-A filing of a motion.

Rep. Frances Potter: Q. Do you like the Dunn amendment? A. Haven't read it.

Rep. William O'Brien: Q. Covers all hearings that would include commercial or financial info? A. A conditional 'No', but her experience is with the PUC only.

Rep. Lucy Weber: Q. Could we limit bill to PUC only? A. there maybe a few agencies (Board of Land Tax Appeals) that could be listed.

Respectfully submitted,

Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: *March 30, 2010*

LOB ROOM: 208

Time Public Hearing Called to Order: *10:10*

Time Adjourned: *11:20*

(please circle if present)

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Brock

Bill Sponsors: Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18; Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2; Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

TESTIMONY

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

FROM: Rep. Philip Preston, Clerk
DATE: Public hearing March 30, 2010
SUBJECT: Meeting minutes on SB 425, (New Title) relative to exemptions to the right-to-know law.

SB 425 relative to exemptions to the right-to-know law

10:10

Sen Jackie Cilley, sponsor

Rep. William O'Brien. Exempt records? Ans. Telecom companies should be treated like all other utilities.

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SB 425 Blue Sheet(s)

Supports:

Opposes:

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: April 27 2010

Subcommittee Members: Reps. G. Richardson, L. Weber, J. Walk, P. Silva and W. O'Brien

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. O'Brien

Seconded by Rep. Weber

Vote: 5-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Gary B. Richardson
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: April 27, 2010

Subcommittee Members: Reps. G. Richardson, L. Weber, J. Wall, P. Silva and W. O'Brien

Comments and Recommendations: *OTP*

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. *O'Brien*

Seconded by Rep. *Weber*

Vote: *5-0*

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,
Rep. *[Signature]*
Subcommittee Chairman/Clerk

[Signature]

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: April 15, 2010

Subcommittee Members: Reps. G. Richardson, Weber, Wall, Silva, and O'Brien

Comments and Recommendations: Meet again on April 22, 2010 at 9:00 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. Gary Richardson
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: April 15, 2010 *met 4/22 @ 9:00am.
Rescheduled for 4/27/10 @ 10:30am*

Subcommittee Members: Reps. G. Richardson, L. Weber, J. Wall, P. Silva and W. O'Brien

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

AN ACT relative to exemptions to the right-to-know law.

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

1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after subparagraph (i) the following new subparagraph:

(j) Consideration of confidential, commercial, or financial information that has been found to be exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking. Amend RSA 365:8 by inserting after paragraph XIII the following new paragraph:

XIV. Standards and procedures for public utilities to request protection of routine filings that contain confidential commercial or financial information.

3 Amend RSA 378:43, relative to information not subject to the right-to-know law as follows:

378:43 Information Not Subject to Right-to-Know Law

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff or to the office of the consumer advocate as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff or to the office of the consumer advocate shall be maintained confidentially and shall be exempt from disclosure as confidential, commercial or financial information, upon the commission's determination that the information is confidential under RSA 91-A:5, IV.

(b) Any information or records that public utilities commission staff or a party places into the record during a telephone utility proceeding shall be maintained confidentially and shall be exempt from disclosure as confidential, commercial or financial information if the commission determines that the materials are confidential under RSA 91-A:5, IV.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall provide sufficient information to the public utilities commission to show that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records pertain to the confidential, commercial or financial information under RSA 91-A:5, IV. Such information may be related to the provision of competitive services or may set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

III. The telephone utility shall have the burden of demonstrating that the information or records satisfy the requirements of paragraph II. Before permitting public disclosure, the

Deleted: is

Deleted: Repeal

Deleted: .

Deleted: . is repealed.

Deleted: 4 Effective Date. ¶
I. Section 3 of this act shall take effect 180 days after its passage. ¶
II. The remainder of this act shall take effect upon its passage. ¶

Deleted: not

Deleted: under RSA 91-A:5, IV

Deleted: considered public records for purposes of RSA 91-A

Deleted: if the information or records satisfy the requirements of paragraph II

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(a) P

Deleted: :

Deleted: ¶
(b) S

Deleted: If the public utilities commission subsequently determines on its own motion or on request of another party, after notice and an opportunity for hearing, that the telephone utility's representation is incorrect and the information or records do not satisfy the requirements of paragraph II, the information or records shall be subject to disclosure under RSA 91-A.

Inserted: The telephone utility shall have the burden of demonstrating that the information or records satisfy the requirements of paragraph II.

commission shall afford the telephone utility 30 days from issuance of its written decision on confidentiality to request reconsideration. The material shall be maintained confidentially pending consideration of any such request and until all rights to appeal the determination have been exhausted.

4 Effective Date.

II. This act shall take effect upon its passage.

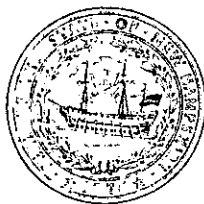
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Testimony

THE STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Meredith A. Hatfield

ASSISTANT CONSUMER ADVOCATE
Kenneth E. Traum



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

FAX No. 271-1177

Website:
www.oca.nh.gov

OFFICE OF THE CONSUMER ADVOCATE
21 S. FRUIT ST., SUITE 18
CONCORD, NEW HAMPSHIRE 03301-2429

March 30, 2010

Representative David Cote, Chair
House Judiciary Committee
Legislative Office Building, Room 208
Concord, NH 03301

Re: SB 425, Relative to exemptions to the right-to-know law

Dear Chairman Cote:

I write on behalf of the Office of Consumer Advocate (OCA) in support of Senate Bill 425, which repeals a special exemption for telephone utilities from RSA 91-A, New Hampshire's "Right-to-Know" law. SB 425 also makes explicit that the Public Utilities Commission (PUC) can maintain the confidential status of certain information during adjudicative hearings, and requires the PUC to undertake rulemaking to create procedures for the routine filings of certain confidential information. We have worked with the lead sponsor, Senator Cilley, as well as with the PUC on the bill, and we believe that this legislation makes an important change in the law that protects public access to information, and does so without denying telecommunications utilities the ability to protect confidential information filed with the PUC.

The OCA is charged by RSA 363:28 with representing the interests of residential ratepayers of regulated utilities primarily before the PUC, as well as the legislature, and in other state, regional and national venues as needed. More information on our Office, including the cases we are currently working on, is available at www.oca.nh.gov.

Repeal of RSA 378:43

This statute currently provides a special exemption from the Right-to-Know law (RSA 91-A) for telecommunications utilities. There is no similar law for electric, natural gas or water utilities. Instead, other utilities, and other non-utility parties who provide confidential information to the PUC, routinely have their confidential information protected from public disclosure under 91-A.



The Right-to-Know law, which clearly prioritizes the “greatest possible public access to the actions, discussions and records of all public bodies,” already includes provisions for the protection of confidential information. For example, RSA 91-A:1 requires that when a privacy interest is at stake which would be invaded by disclosure of certain information, a state agency should protect it from public disclosure. This protection can result due to the existence of “confidential, commercial or financial information” as specified by RSA 91-A:5, which is the basis typically used by the PUC to grant confidential treatment of utility information. The PUC does this routinely, and parties participating in PUC dockets often enter into nondisclosure agreements and are required to ensure that confidential information is protected from public disclosure. Therefore, the special exemption for telecommunications utilities is not needed.

In addition, RSA 378:43 is flawed in that it creates a presumption that information is confidential, undermining the balancing test required by RSA 91-A. It shields information if a telecommunications utility simply invokes the language in Section II of the statute. However, the bases in Section II are all already bases for protection under RSA 91-A, and do not warrant additional, special protection under RSA 378:43. Also, by creating a presumption, RSA 378:43 effectively shifts the burden of proof from the utility, which should be required to prove that the information is confidential, to the PUC and parties such as the OCA, to prove that the information is not confidential.

Perhaps even more importantly, telecommunications utilities have also contended that the standards used to evaluate a claim of confidentiality under RSA 91-A do not apply to claims of confidentiality under RSA 378:43. Instead, they have argued, if a utility merely states that the information is confidential, the PUC is without discretion to consider anything other than whether the utility’s claim of confidentiality is accurate under 378:43. If this is the case, it means that the PUC may not balance the public’s interest in disclosure against the utility’s interest in non-disclosure, as the PUC would do when considering a request pursuant to RSA 91-A. This important balancing test ensures that the public has access to important non-confidential information about both the regulated telecommunications utilities as well as the work of the PUC.

The OCA expects that the telecommunications utilities will contend that SB 425 will result in the disclosure of their confidential information. This is not accurate, and this is not the objective of this legislation. RSA 91-A and the rule promulgated by the PUC to enforce it (Puc 203.08) are routinely used to protect utility information. Under its rule, the PUC protects information at the time that it is filed, and requires that other parties not disclose confidential information both pending its ruling under 91-A, as well as once it is protected. The process works for other utilities including PSNH, National Grid and Unitil; we believe that the 91-A process will also work for the telecommunications utilities. Of note, the telecommunications utilities point to no instance of improper disclosure by the PUC, or by the OCA, of confidential information filed and protected pursuant RSA 91-A.

The OCA also expects the telecommunications utilities to argue that the special exemption from the Right to Know is necessary because they face more competition than non-telecommunication utilities. To the extent that competition exists, RSA 91-A

adequately protects utilities from the disclosure of information which could result in competitive harm. RSA 91-A adequately protects other utilities when they file confidential information such as their periodic cost of gas and electric default service filings, which contain confidential results of competitive bidding.

For all of these reasons, the OCA strongly supports the repeal of the special exemption from RSA 91-A for telecommunications utilities. We believe that such a repeal is consistent with the public good, as well as with the telecommunications utilities' interest in maintaining the confidentiality of its financial and competitively sensitive information.

Amendment of RSA 91-A

As stated above, the PUC routinely protects certain information filed by utilities under RSA 91-A. Most usually the protection is related to "confidential, commercial or financial information" under RSA 91-A:5. By designating this information as confidential, the PUC recognizes that the harms to the utility from disclosure outweigh the benefits of the public's right to know. The PUC often considers this confidential information in making its determinations in adjudicative proceedings, and closes a hearing to those who are not authorized to receive it.

Presently, such authority exists in RSA 378:43, but only in hearings related to telecommunications utilities. With the repeal of this statute, and in light of the fact that 91-A clearly protects this same information in written form, this bill expressly grants the PUC this authority to protect confidential information during hearings relating to all utilities.

Rulemaking

We believe that there are routine filings that contain confidential information, for which it makes sense for the PUC to have a streamlined filing process. The bill requires the PUC to undertake a rulemaking proceeding to develop that process, which we believe addresses any concerns related to the burden of filing motions for confidential treatment and "motion practice" raised by the telecommunications utilities. All other utilities file such motions and their information is protected as required by RSA 91-A. As stated above, the 91-A process works.

Fiscal Note

The bill as passed by the Senate removed the requirement that the PUC post all non-confidential information on its website. As a result, we believe that the fiscal note on this bill should be eliminated as it will not increase PUC costs.

In 2009, the PUC made great strides toward posting all public documents filed in dockets at the Commission on its website. As a result, the PUC's "Docketbooks" can now be found at <http://www.puc.nh.gov/Regulatory/docketbk.htm>. The Docketbook access has significantly improved the ability of both members of the public and parties in dockets to access documents filed by utilities and other parties and Commission Orders. The

Commission also posts industry information on its Division's pages, and has links to Commissions and Boards such as the Energy Efficiency and Sustainable Energy ("EESSE") Board, and the North Country Transmission Commission. In addition, it is our understanding that the PUC is close to finishing a multi-year project to launch an "e-file" initiative that would allow parties to file and access all documents directly through its website, reducing the need for paper filings.

Thank you for your consideration of our testimony. We would be happy to answer any questions and assist the Committee with its consideration of this bill.

Sincerely,



Meredith A. Hatfield
Consumer Advocate

378:43 Information Not Subject to Right-to-Know Law. --

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff or to the office of the consumer advocate as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff or to the office of the consumer advocate shall be maintained confidentially and shall ~~not be exempt from disclosure as confidential, commercial or financial information under RSA 91-A:5, I've considered public records for purposes of RSA 91-A,~~ if the information or records satisfy the requirements of paragraph II.

(b) Any information or records that public utilities commission staff or a party places into the record during a telephone utility proceeding shall be maintained confidentially and shall ~~not be exempt from disclosure as confidential, commercial or financial information under RSA 91-A:5, I've considered public records for purposes of RSA 91-A,~~ if the information or records satisfy the requirements of paragraph II.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

(a) Pertain to the provision of competitive services; or

(b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

III. If the public utilities commission subsequently determines on its own motion or on request of another party, after notice and an opportunity for hearing, that the telephone utility's representation is incorrect and the information or records do not satisfy the requirements of paragraph II, the information or records shall be subject to disclosure under RSA 91-A. The telephone utility shall have the burden of demonstrating that the information or records satisfy the requirements of paragraph II. Before permitting public disclosure, the commission shall afford the telephone utility 30 days from issuance of its written decision to request reconsideration. The material shall be maintained confidentially pending consideration of any such request and until all rights to appeal the determination have been exhausted.

TITLE XXXIV PUBLIC UTILITIES

CHAPTER 378 RATES AND CHARGES

Information Not Subject to Right-to-Know Law

Section 378:43

378:43 Information Not Subject to Right-to-Know Law. –

I. (a) Any information or records that a telephone utility provides to the public utilities commission or its staff as part or in support of a filing with the commission or in response to a request that the information or records be provided to the commission or its staff shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

(b) Any information or records that public utilities commission staff or a party places into the record during a telephone utility proceeding shall be maintained confidentially and shall not be considered public records for purposes of RSA 91-A, if the information or records satisfy the requirements of paragraph II.

II. In order to obtain confidential treatment under paragraph I, the telephone utility shall represent to the public utilities commission that the information or records are not general public knowledge or published elsewhere; that measures have been taken by the telephone utility to prevent dissemination of the information or records in the ordinary course of business; and that the information or records:

(a) Pertain to the provision of competitive services; or

(b) Set forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

III. If the public utilities commission subsequently determines on its own motion or on request of another party, after notice and an opportunity for hearing, that the telephone utility's representation is incorrect and the information or records do not satisfy the requirements of paragraph II, the information or records shall be subject to disclosure under RSA 91-A. Before permitting public disclosure, the commission shall afford the telephone utility 30 days from issuance of its written decision to request reconsideration. The material shall be maintained confidentially pending consideration of any such request and until all rights to appeal the determination have been exhausted.

Source. 1999, 154:1, eff. Aug. 24, 1999.

TITLE VI PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:5

91-A:5 Exemptions. – The following governmental records are exempted from the provisions of this chapter:

- I. Records of grand and petit juries.
- II. Records of parole and pardon boards.
- III. Personal school records of pupils.
- IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.
- V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.
- VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
- VII. Unique pupil identification information collected in accordance with RSA 193-E:5.
- VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.
- IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1, eff. June 22, 1993. 2002, 222:4, eff. Jan. 1, 2003. 2004, 147:5, eff. Aug. 1, 2004; 246:3, 4, eff. Aug. 14, 2004. 2008, 303:4, eff. July 1, 2008.

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:3

91-A:3 Nonpublic Sessions. –

I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions

reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1, eff. June 7, 1993; 335:16, eff. June 29, 1993. 2002, 222:2, 3, eff. Jan. 1, 2003. 2004, 42:1, eff. Jan. 1, 2005. 2008, 303:4, eff. July 1, 2008.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

DATE: April 29, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Richardson

Seconded by Rep. Wall

Vote: 16-2 (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: NO

(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 SB 425-FN

BILL TITLE: (New Title) relative to exemptions to the right-to-know law.

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

Moved by Rep. Richardson

Seconded by Rep. Way

Vote: 16/2 (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: No

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston Clerk

Philip Preston

JUDICIARY

Bill #: SB 425 Title: RTK re utilities

PH Date: / /

Exec Session Date: 04 / 29 / 10

Motion: OTP

Amendment #:

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L <u>Tupper, Frank A.</u>	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Brown, Brenden S <u>Gottling, Suzanne H.</u>	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H <u>Rodd, Beth</u>	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R	Y	
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M	Y	N
Perkins, Lawrence B <i>not</i>		
Silva, Peter L <i>not</i>		
Smith, William B		N
TOTAL VOTE:	16 Y	2 N

Committee Report

REGULAR CALENDAR

May 3, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred SB425-FN,

AN ACT (New Title) relative to exemptions to the right-to-know law. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Gary B Richardson

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: SB425-FN
Title: (New Title) relative to exemptions to the right-to-know law.
Date: May 3, 2010
Consent Calendar: NO
Recommendation: OUGHT TO PASS

STATEMENT OF INTENT

This bill repeals a special exemption from the right-to-know law for telephone utilities in matters being regulated by the Public Utilities Commission. The bill would also require the PUC to adopt rules to protect privileged, confidential, commercial or financial information from public disclosure in routine filings. A bipartisan majority of the committee believes that telecommunication companies should be treated under RSA 91-A in the same manner as all other utilities. The majority also believes that the PUC has and will continue to achieve the appropriate balance to protect proprietary information while at the same time preserving the public's right to disclosure of non-proprietary information

Vote 16-2

Rep. Gary B Richardson
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

FROM: Rep. Gary R. Richardson

DATE: April 29, 2010

SUBJECT: SB 425-FN, (New Title) relative to exemptions to the right-to-know law.

MAJORITY REPORT: OUGHT TO PASS VOTE: 16-2

Yus's bill

SB 425 repeals a special exemption from the right-to-know law for telephone utilities in matters being regulated by the Public Utilities Commission. The bill would also require the PUC to adopt rules to protect privileged confidential, commercial or financial information from public disclosure in routine filings. A bipartisan majority of the committee believes that telecommunication companies should be treated under RSA 91-A in the same manner as all other utilities. The majority also believes that the PUC has and will continue to achieve the appropriate balance to protect proprietary information while at the same time preserving the public's right to disclosure of non-proprietary information.

OK [Signature]

REGULAR CALENDAR

JUDICIARY

SB425-FN, (New Title) relative to exemptions to the right-to-know law. **OUGHT TO PASS**. Rep. Gary B Richardson for the Majority of JUDICIARY. This bill repeals a special exemption from the right-to-know law for telephone utilities in matters being regulated by the Public Utilities Commission. The bill would also require the PUC to adopt rules to protect privileged, confidential, commercial or financial information from public disclosure in routine filings. A bipartisan majority of the committee believes that telecommunication companies should be treated under RSA 91-A in the same manner as all other utilities. The majority also believes that the PUC has and will continue to achieve the appropriate balance to protect proprietary information while at the same time preserving the public's right to disclosure of non-proprietary information **Vote 16-2**.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

May 3, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on JUDICIARY to which was referred SB425-FN,

AN ACT (New Title) relative to exemptions to the right-to-know law. Having considered the same, and being unable to agree with the Majority, report with the following Resolution:
RESOLVED, That it is **INEXPEDIENT TO LEGISLATE**.

Rep. William B Smith

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: SB425-FN
Title: (New Title) relative to exemptions to the right-to-know law.
Date: May 3, 2010
Consent Calendar: NO
Recommendation: INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

Local telephone companies have basic service requirements set by the state to provide low cost service that assures affordable telephone service to low income subscribers. Meeting their requirements traditionally has been accomplished through internal subsidies, which is only feasible in a regulated monopoly market. Currently, local telephone companies are losing subscribers to competitive wireless and cable suppliers of local service. In this sense, local phone companies differ from other utilities. The minority is concerned that Public Utilities Commission procedures for protection of proprietary market information from local phone companies may be insufficient, and serve to damage local phone companies in profitable situations, thereby affecting the sources of subsidies needed to fund basic service for low income subscribers.

Rep. William B Smith
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

SB425-FN, (New Title) relative to exemptions to the right-to-know law. INEXPEDIENT TO LEGISLATE.

Rep. William B Smith for the **Minority of JUDICIARY**. Local telephone companies have basic service requirements set by the state to provide low cost service that assures affordable telephone service to low income subscribers. Meeting their requirements traditionally has been accomplished through internal subsidies, which is only feasible in a regulated monopoly market. Currently, local telephone companies are losing subscribers to competitive wireless and cable suppliers of local service. In this sense, local phone companies differ from other utilities. The minority is concerned that Public Utilities Commission procedures for protection of proprietary market information from local phone companies may be insufficient, and serve to damage local phone companies in profitable situations, thereby affecting the sources of subsidies needed to fund basic service for low income subscribers.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

FROM: Rep. William B. Smith
DATE: April 29, 2010
SUBJECT: SB 425-FN, (New Title) relative to exemptions to the right-to-know law.

MINORITY REPORT: INEXPEDIENT TO LEGISLATE

Local telephone companies have basic service requirements set by the state to provide low cost service that assures affordable telephone service to low income subscribers. Meeting their requirements traditionally has been accomplished through internal subsidies, which is only feasible in a regulated monopoly market. Currently, local telephone companies are losing subscribers to competitive wireless and cable suppliers of local service. In this sense, local phone companies differ from other utilities. The minority is concerned that Public Utilities Commission procedures for protection of proprietary market information from local phone companies may be insufficient, and serve to damage local phone companies in profitable situations, thereby affecting the sources of subsidies needed to fund basic service for low income subscribers.

OK - RQ

REGULAR CALENDAR

FROM: Rep. William B. Smith
DATE: April 29, 2010
SUBJECT: **SB 425-FN**, (New Title) relative to exemptions to the right-to-know law.

MINORITY REPORT: INEXPEDIENT TO LEGISLATE

Local telephone companies have basic service requirements set by the state to provide low cost service that assures affordable telephone service to low income subscribers. Meeting ~~these~~^{these} requirements traditionally has been accomplished through internal subsidies, which is only feasible in a regulated monopoly market. Currently, local telephone companies are losing subscribers to competitive wireless and cable suppliers of local service. In this sense, local phone companies differ from other utilities. The minority is concerned that Public Utilities Commission procedures for protection of proprietary market information from local phone companies may be insufficient, and serve to damage local phone companies in profitable situations, thereby affecting the sources of subsidies needed to fund basic service for low income subscribers.

MINORITY REPORT

COMMITTEE: JUDICIARY

BILL NUMBER: HB 425

TITLE: Relative to exemptions to the right-to-know law

DATE: 4/29/10 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.

STATEMENT OF INTENT:

Local telephone companies have basic service requirements set by the state to provide low cost service that assures affordable telephone service to low income subscribers. Meeting these requirements traditionally has been accomplished through internal subsidies, which is only feasible in a regulated monopoly market. Currently, local telephone companies are losing subscribers to competitive wireless and cable suppliers of local service. In this ^{sense} way, local phone companies differ from other utilities. The minority is concerned that PUC procedures for protection of proprietary market information from local phone companies may be insufficient, and serve to damage local phone companies in profitable situations, thereby affecting the sources of subsidies need to fund basic service for low income subscribers.

COMMITTEE VOTE: 16-2

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep. William B. Paul
For the Minority