

# Bill as Introduced

HB 460 - AS INTRODUCED

2017 SESSION

17-0538  
01/03

HOUSE BILL            **460**

AN ACT            relative to minutes under the right-to-know law.

SPONSORS:        Rep. True, Rock. 4; Rep. J. Edwards, Rock. 4; Rep. Torosian, Rock. 14; Rep. Brown, Graf. 16; Rep. Comeau, Carr. 5

COMMITTEE:      Judiciary

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ANALYSIS

This bill requires any objection to a discussion taking place in a meeting of a public body, including nonpublic sessions, under the right-to-know law to be recorded in the minutes of the meeting.

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Explanation:      Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT relative to minutes under the right-to-know law.

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

1           1 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:2, II to read as follows:  
2           II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means  
3 of telephone or electronic communication, or in any other manner, shall be open to the public.  
4 Except for town meetings, school district meetings, and elections, no vote while in open session may  
5 be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not  
6 limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such  
7 meetings, including nonpublic sessions, shall include the names of members, persons appearing  
8 before the public bodies, and a brief description of the subject matter discussed and final decisions.  
9 ***Minutes of all such meetings, including nonpublic sessions, shall also include any***  
10 ***objections made to any discussion in a meeting of such body if a member of a public body***  
11 ***believes that the discussion in a meeting of such body is in violation of the provisions of***  
12 ***this chapter. The objection shall include the name of the person objecting to the***  
13 ***discussion and a description of the specific violation. If such member's objections to the***  
14 ***discussion in the meeting are overruled by the majority of those present, such member may***  
15 ***continue to participate in such meeting without penalty, provided he or she has complied***  
16 ***with the duties imposed upon him or her by this chapter.*** Subject to the provisions of RSA 91-  
17 A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business  
18 days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent  
19 records of any public body, or any subordinate body thereof, without exception. Except in an  
20 emergency or when there is a meeting of a legislative committee, a notice of the time and place of  
21 each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of  
22 which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of  
23 general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior  
24 to such meetings. An emergency shall mean a situation where immediate undelayed action is  
25 deemed to be imperative by the chairman or presiding officer of the public body, who shall post a  
26 notice of the time and place of such meeting as soon as practicable, and shall employ whatever  
27 further means are reasonably available to inform the public that a meeting is to be held. The  
28 minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting  
29 of a legislative committee is held, publication made pursuant to the rules of the house of  
30 representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the  
31 charter of any city or town or guidelines or rules of order of any public body require a broader public

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1 access to official meetings and records than herein described, such charter provisions or guidelines  
2 or rules of order shall take precedence over the requirements of this chapter. For the purposes of  
3 this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday,  
4 excluding national and state holidays.

5 2 Effective Date. This act shall take effect January 1, 2018.

HB 460 - AS AMENDED BY THE HOUSE

8Mar2017... 0155h

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COMMITTEE:      Judiciary

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4 Except for town meetings, school district meetings, and elections, no vote while in open session may  
5 be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not  
6 limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such  
7 meetings, including nonpublic sessions, shall include the names of members, persons appearing  
8 before the public bodies, and a brief description of the subject matter discussed and final decisions.  
9 ***Minutes of all such meetings, including nonpublic sessions, shall also include any***  
10 ***objections made to any discussion in a meeting of such body if a member of a public body***  
11 ***believes that the discussion in a meeting of such body is in violation of the provisions of***  
12 ***this chapter. If such an objection is made in nonpublic session, the same information***  
13 ***regarding such an objection shall also be specifically recorded in the public minutes. The***  
14 ***objection shall include the name of the person objecting to the discussion and a***  
15 ***description of the specific violation. If such member's objections to the discussion in the***  
16 ***meeting are overruled by the majority of those present, such member may continue to***  
17 ***participate in such meeting, provided he or she has complied with the duties imposed***  
18 ***upon him or her by this chapter, he or she shall not be subject to the penalties under RSA***  
19 ***91-A:8, IV for such action.*** Subject to the provisions of RSA 91-A:3, minutes shall be promptly  
20 recorded and open to public inspection not more than 5 business days after the meeting, except as  
21 provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any  
22 subordinate body thereof, without exception. Except in an emergency or when there is a meeting of  
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24 session, shall be posted in 2 appropriate places one of which may be the public body's Internet  
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29 such meeting as soon as practicable, and shall employ whatever further means are reasonably  
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1 publication made pursuant to the rules of the house of representatives or the senate, whichever  
2 rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or  
3 rules of order of any public body require a broader public access to official meetings and records  
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5 over the requirements of this chapter. For the purposes of this paragraph, a business day means  
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HB 460 - AS AMENDED BY THE SENATE

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HOUSE BILL           **460**

AN ACT               relative to minutes under the right-to-know law.

SPONSORS:           Rep. True, Rock. 4; Rep. J. Edwards, Rock. 4; Rep. Torosian, Rock. 14; Rep. Brown, Graf. 16; Rep. Comeau, Carr. 5

COMMITTEE:          Judiciary

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AMENDED ANALYSIS

This bill declares that a member of a public body may object to a discussion in a meeting of the body, including nonpublic session, if the member believes the discussion violates RSA 91-A. Upon request of the member who is objecting to the discussion, the public body shall record the member's objection in its minutes of the meeting.

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- 1       1 New Paragraph; Right-to-Know Law; Objection by Member of Public Body. Amend RSA 91-  
2 A:2 by inserting after paragraph II the following new paragraph:  
3       II-a. If a member of the public body believes that any discussion in a meeting of the body,  
4 including in a nonpublic session, violates this chapter, the member may object to the discussion. If  
5 the public body continues the discussion despite the objection, the objecting member may request  
6 that his or her objection be recorded in the minutes and may then continue to participate in the  
7 discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the  
8 public body shall record the member's objection in its minutes of the meeting. If the objection is to a  
9 discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the  
10 notation in the public minutes shall include only the member's name, a statement that he or she  
11 objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II,  
12 that was the basis for the discussion.  
13       2 Effective Date. This act shall take effect January 1, 2018.

HB 460 - VERSION ADOPTED BY BOTH BODIES

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05/11/2017 1620s

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HOUSE BILL           **460**

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12 that was the basis for the discussion.  
13           2 Effective Date. This act shall take effect January 1, 2018.

CHAPTER 165  
HB 460 - FINAL VERSION

8Mar2017... 0155h  
05/11/2017 1620s

2017 SESSION

17-0538  
01/03

HOUSE BILL           **460**

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SPONSORS:           Rep. True, Rock. 4; Rep. J. Edwards, Rock. 4; Rep. Torosian, Rock. 14; Rep.  
Brown, Graf. 16; Rep. Comeau, Carr. 5

COMMITTEE:          Judiciary

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CHAPTER 165  
HB 460 - FINAL VERSION

8Mar2017... 0155h  
05/11/2017 1620s

17-0538  
01/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT relative to minutes under the right-to-know law.

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

1 165:1 New Paragraph; Right-to-Know Law; Objection by Member of Public Body. Amend RSA  
2 91-A:2 by inserting after paragraph II the following new paragraph:  
3 II-a. If a member of the public body believes that any discussion in a meeting of the body,  
4 including in a nonpublic session, violates this chapter, the member may object to the discussion. If  
5 the public body continues the discussion despite the objection, the objecting member may request  
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10 notation in the public minutes shall include only the member's name, a statement that he or she  
11 objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II,  
12 that was the basis for the discussion.

165:2 Effective Date. This act shall take effect January 1, 2018.

Approved: June 28, 2017  
Effective Date: January 01, 2018

# Amendments

Amendment to HB 460

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Right-to-Know Law; Objection by Member of Public Body. Amend RSA 91-  
4 A:2 by inserting after paragraph II the following new paragraph:

5 II-a. If a member of the public body believes that any discussion in a meeting of the body,  
6 including in a nonpublic session, violates this chapter, the member may object to the discussion. If  
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14 that was the basis for the discussion.

**Amendment to HB 460**

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2017-1620s

**AMENDED ANALYSIS**

This bill declares that a member of a public body may object to a discussion in a meeting of the body, including nonpublic session, if the member believes the discussion violates RSA 91-A. Upon request of the member who is objecting to the discussion, the public body shall record the member's objection in its minutes of the meeting.



# Committee Minutes

**SENATE CALENDAR NOTICE**  
**Judiciary**

Sen Sharon Carson, Chair  
Sen Bette Lasky, Vice Chair  
Sen Harold French, Member  
Sen William Gannon, Member  
Sen Martha Hennessey, Member

Date: April 6, 2017

**HEARINGS**

Thursday	04/13/2017	
(Day)	(Date)	
Judiciary	SH 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	HB 338	relative to grounds for termination of parental rights.
9:15 a.m.	HB 460	relative to minutes under the right-to-know law.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

HB 338

Rep. Burt

HB 460

Rep. True

Rep. Comeau

Rep. J. Edwards

Rep. Torosian

Rep. Brown

Jennifer Horgan 271-3092

Sharon M Carson  
Chairman

**Senate Judiciary Committee**  
*Jennifer Horgan 271-3092*

HB 460, relative to minutes under the right-to-know law.

**Hearing Date:** April 13, 2017

**Time Opened:** 9:15 a.m.

**Time Closed:** 9:34 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, French, Gannon and Hennessey

**Members of the Committee Absent :** None

**Bill Analysis:** This bill requires any objection to a discussion taking place in a meeting of a public body, including nonpublic sessions, under the right-to-know law to be recorded in the minutes of the meeting.

**Sponsors :**

Rep. True  
Rep. Brown

Rep. J. Edwards  
Rep. Comeau

Rep. Torosian

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**Who supports the bill:** Representative True

**Who opposes the bill:** Barrett Christina (NH School Boards Association); Cordell Johnston (NH Municipal Association)

**Summary of testimony presented in support:**

**Representative True**

- This will strengthen NH's right-to-know laws.
- It will allow members of a public body to make objections to any proceeding and have that noted in the public and non-public meeting minutes.
- It also will allow the objecting member to remain in the meeting after their objection has been overruled.
- Shared an anecdote where a public meeting goes into a non-public session to discuss the actions of a certain person. During that non-public session other topics come up and a member objects because those topics had not been the stated intent of the non-public session.
- This is a minor change, but it is an important increase for transparency.
- Senator Lasky asked why someone speaking positively for a proceeding would not also be noted.
  - Agrees that should be recorded. There are no laws that state what must be in the minutes. This simply states that an objection must be in the minutes.

**Summary of testimony presented in opposition :**

**Barrett Christina** (NH School Boards Association)

- Supports the intent and stated purpose of the bill.
- Primary concern is the language is on lines 14-15, "a description of the specific violation"

- That is very broad and vague.
- School boards have specific standards to adhere to in regards to privacy and confidentiality, especially when it comes to student discipline, special education, staff issues, and medical issues.
- Concerned that the specific description requirement would inadvertently violate those privacy and confidentiality standards.
- That members objections could still be stated, but the specificity of the objection may touch on the confidentiality standards.
- Senator Lasky asked if this would apply to members of the public body or anyone attending the meeting.
  - Reads the bill to say the objection would be made by a member of the public body.
- Senator Carson pointed out that in a non-public session it would be someone on the board, but in a regular public meeting, it could be a public person. Asked if those objections in both instances are already being recorded.
  - Attorney Lehmann pointed out that there is not a lot of guidance on what has to go into the minutes. Someone in the minority of a public body may have difficulty getting their objections into the minutes. In non-public sessions they are required to state the purpose of that non-public meeting and the discussion might weave outside of that scope, and that is when someone might object.
  - By staying in the meeting after being overruled that individual may potentially be participating in an illegal meeting. The problem is with ascertaining whether or not there was a violation, you would have to know the specific context of what was discussed, which is where you may run into some confidentiality issues. Minutes are only required to record members present, persons appearing before the body, a brief description of the subject matter discussed, and a record of all final decisions and actions.
- Senator Lasky asked if this should be in that section of the law instead.
  - It could be or possibly create a separate section for this. There is not a section of the right-to-know law specifically regarding the content of the minutes.

**Cordell Johnston** (NH Municipal Association)

- The confidentiality issue is a more frequent issue for school boards than municipal bodies, but is still concerned about that.
- Concerned about “the objection shall be recorded” language. It may be better to have the objector put that objection in writing and have that be included in the minutes.
- Pointed out that an objector that currently stays after being overruled could be personally liable under the right-to-know law.
- This could be an issue in public sessions as well, due to the provision in the law that says a member of a public body may participate in a meeting by telephone if that person can’t be there. There are very strict requirements for allowing that. Someone could be participating by phone, but the board isn’t necessarily following the required procedures to allow that and a member could object.
- Thinks the stakeholders could work on some language that could address the sponsor’s goal while satisfying the concerns brought forward.
- **Future Action:** Pending

Jch  
Date Hearing Report completed: April 14, 2017

# Speakers







# Testimony

Proposed Amendment to HB 460

Amend the bill by replacing section 1 with the following:

1 Right-to-Know Law; Objection by Member of Public Body . Amend RSA 91-A:2 by inserting after paragraph II the following new paragraph:

II-a. If a member of a public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Wednesday, May 3, 2017

THE COMMITTEE ON Judiciary

to which was referred **HB 460**

AN ACT relative to minutes under the right-to-know law.

Having considered the same, the committee recommends that the Bill

SHOULD PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1620s

Senator William Gannon  
For the Committee

This bill requires for any objection to a discussion taking place in a meeting of a public body, including nonpublic sessions, be recorded in the minutes of the meeting at the request of the objector. Furthermore, if the discussion continues, the objector may continue to participate without being subject to the penalties of RSA 91-A:8, IV or V.

Jennifer Horgan 271-3092

FOR THE CONSENT CALENDAR

**JUDICIARY**

**HB 460**, relative to minutes under the right-to-know law.

Ought to Pass with Amendment, Vote 5-0.

Senator William Gannon for the committee.

This bill requires for any objection to a discussion taking place in a meeting of a public body, including nonpublic sessions, be recorded in the minutes of the meeting at the request of the objector. Furthermore, if the discussion continues, the objector may continue to participate without being subject to the penalties of RSA 91-A:8, IV or V.

Docket of hb460		
01/12/2017	H	Introduced 01/05/2017 and referred to Judiciary HJ 3 P. 13
01/18/2017	H	Public Hearing: 01/24/2017 02:30 PM LOB 208
02/01/2017	H	Executive Session: 02/08/2017 10:00 AM LOB 208
02/22/2017	H	Committee Report: Ought to Pass with Amendment # 2017-0155h for 03/08/2017 (Vote 11-2; CC)
03/08/2017	H	Amendment # 2017-0155h: AA VV 03/08/2017 HJ 9 P. 37
03/08/2017	H	Ought to Pass with Amendment 0155h: MA VV 03/08/2017 HJ 9 P. 37
03/14/2017	S	Introduced 03/09/2017 and Referred to Judiciary; SJ 9
04/06/2017	S	Hearing: 04/13/2017, Room 100, SH, 09:15 am; SC 18
05/03/2017	S	Committee Report: Ought to Pass with Amendment # 2017-1620s, 05/11/2017; Vote 5-0; CC; SC 22
05/11/2017	S	Committee Amendment # 2017-1620s, AA, VV; 05/11/2017; SJ 16
05/11/2017	S	Ought to Pass with Amendment 2017-1620s, MA, VV; OT3rdg; 05/11/2017; SJ 16
06/01/2017	H	House Concurs with Senate Amendment 1620s (Rep. Hagan): MA VV 06/01/2017
06/13/2017	S	Enrolled (In recess 06/08/2017); SJ 20
06/13/2017	H	Enrolled 06/08/2017
06/29/2017	H	Signed by Governor Sununu 06/28/2017; Chapter 165; eff 01/01/18

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

HB460 ORIGINAL REFERRAL

\_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 16205 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_\_ - AMENDMENT # \_\_\_\_\_ \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED  AS AMENDED BY THE HOUSE  
 FINAL VERSION  AS AMENDED BY THE SENATE

\_\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

PLEASE INCLUDE THE COMMITTEE OF CONFERENCE REPORT HERE IF IT IS SIGNED BY ALL.

NOTE: IF A BILL HAS BEEN RE-REFERRED, PLEASE MAKE UP A DUPLICATE BILL FILE

DATE DELIVERED TO SENATE CLERK

7/28/17

BY:

  
\_\_\_\_\_  
COMMITTEE AIDE