Bill as Introduced

HB 302 - AS INTRODUCED

2021 SESSION

21-0547 05/10

HOUSE BILL

302

AN ACT

relative to the creation and use of electronic records by government agencies.

SPONSORS:

Rep. L. Ober, Hills. 37

COMMITTEE:

Executive Departments and Administration

ANALYSIS

This bill clarifies the authority of the department of information technology, in cooperation with the secretary of state and the department of administrative services, to set standards for the creations, retention, and acceptance of electronic records by government agencies.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT

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relative to the creation and use of electronic records by government agencies.

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

- 1 Creation, Retention, Acceptance and Distribution of Electronic Records by Government Agencies. Amend RSA 294-E:17 and RSA 294-E:18 to read as follows:
 - 294-E:17 Creation and Retention of Electronic Records and Conversion of Written Records by Governmental Agencies. The secretary of state in cooperation with the department of information technology and the department of administrative services [, shall determine whether, and the extent to which,] may create standards by which a governmental agency [will] may create and retain electronic records and convert written records to electronic records.
 - 294-E:18 Acceptance and Distribution of Electronic Records by Governmental Agencies.
 - I. Except as otherwise provided in RSA 294-E:12, VI, the department of information technology, in cooperation with the secretary of state and the department of administrative services[5] shall determine whether, and the extent to which,] may develop standards by which a governmental agency [will] may send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. Nothing in this chapter shall be construed to prevent municipalities from using electronic records or signatures.
 - II. To the extent that a governmental agency uses electronic records and electronic signatures under paragraph I, the department of information technology, in cooperation with the secretary of state and the department of administrative services, giving due consideration to security, may create standards to specify:
 - (a) The manner and format in which the electronic records [must] may be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
 - (b) If electronic records must be signed by electronic means, the type of electronic signature [required], the manner and format in which the electronic signature [must] should be affixed to the electronic record, and the identity of, or criteria that [must] should be met by, any third party used by a person filing a document to facilitate the process;
- (c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
- (d) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

HB 302 - AS INTRODUCED - Page 2 -

- III. Except as otherwise provided in RSA 294-E:12, VI, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic
- 3 signatures.

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

CHAPTER 67 HB 302 - FINAL VERSION

2021 SESSION

21-0547 05/10

HOUSE BILL

302

AN ACT

relative to the creation and use of electronic records by government agencies.

SPONSORS:

Rep. L. Ober, Hills. 37

COMMITTEE:

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This bill clarifies the authority of the department of information technology, in cooperation with the secretary of state and the department of administrative services, to set standards for the creation, retention, and acceptance of electronic records by government agencies.

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21-0547 05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT

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28 29 relative to the creation and use of electronic records by government agencies.

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

67:1 Creation, Retention, Acceptance and Distribution of Electronic Records by Government

- Agencies. Amend RSA 294-E:17 and RSA 294-E:18 to read as follows:

 294-E:17 Creation and Retention of Electronic Records and Conversion of Written Records by

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- 8 294-E:18 Acceptance and Distribution of Electronic Records by Governmental Agencies.

electronic records and convert written records to electronic records.

- I. Except as otherwise provided in RSA 294-E:12, VI, the department of information technology, in cooperation with the secretary of state and the department of administrative services [state] shall determine whether, and the extent to which, may develop standards by which a governmental agency [will] may send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. Nothing in this chapter shall be construed to prevent municipalities from using electronic records or signatures.
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- (a) The manner and format in which the electronic records [must] may be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
- (b) If electronic records must be signed by electronic means, the type of electronic signature [required], the manner and format in which the electronic signature [must] should be affixed to the electronic record, and the identity of, or criteria that [must] should be met by, any third party used by a person filing a document to facilitate the process;
- (c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
- (d) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

CHAPTER 67 HB 302 - FINAL VERSION - Page 2 -

- 1 III. Except as otherwise provided in RSA 294-E:12, VI, this chapter does not require a
- 2 governmental agency of this state to use or permit the use of electronic records or electronic
- 3 signatures.

67:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 10, 2021

Effective Date: August 09, 2021

Committee Minutes

SENATE CALENDAR NOTICE Executive Departments and Administration

Sen Sharon Carson, Chair Sen John Reagan, Vice Chair Sen Denise Ricciardi, Member Sen Kevin Cavanaugh, Member Sen Suzanne Prentiss, Member

Date: March 10, 2021

HEARINGS

Wednesday			03/17/2021		
	(Day)		(Date)		
Executive	Departments and	Administration	REMOTE 000	9:00 a.m.	
(Name of C	Committee)		(Place)	(Time)	
9;00 a.m.	HB 94-FN		re renewal dates for certain sional licensure and certific		
9:15 a.m.	НВ 70	authorizing certific	cation for the microblading	of eyebrows.	
9:30 a.m.	HB 425-FN		ical committees and a cyber lepartment of information t		
9:45 a.m̀.	HB 302	relative to the crea	ation and use of electronic r	ecords by government	
10:00 a.m.	HB 137	relative to the rule technology.	emaking authority of the de	partment of information	
10:15 a.m.	HB 173-FN		pendent investment commi nent system to report inves		

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

- 1. Link to Zoom Webinar: https://www.zoom.us/j/91554056560
- 2. To listen via telephone: Dial(for higher quality, dial a number based on your current location):
- 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
- 3. Or iPhone one-tap: +19292056099,,91554056560# or +13017158592,,91554056560#
- 4. Webinar ID: 915 5405 6560
- 5. To view/listen to this hearing on YouTube, use this link:

https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA

6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:

http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors: HB 94-FN			
Rep. McGuire	Rep. T. Lekas		
HB 70			
Rep. McGuire	Rep. T. Lekas	Rep. Pitre	
HB 425-FN			
Rep. L. Ober			
HB 302			
Rep. L. Ober			_
HB 137			
Rep. L. Ober	Rep. McGuire	Rep. Weyler	Rep. Emerick
Sen. Carson			
HB 173-FN			
Rep. Schuett	Rep. Schultz	Rep. Ellison	Rep. M. Pearson
Rep. Merchant			

Cameron Lapine 271-2104

Sharon M Carson Chairman

SENATE CALENDAR NOTICE Executive Departments and Administration

Sen Sharon Carson, Chair Sen John Reagan, Vice Chair Sen Denise Ricciardi, Member Sen Kevin Cavanaugh, Member Sen Suzanne Prentiss, Member

Date: March 17, 2021

HEARINGS

Wednesday			03/31/2021		
(Day)			(Date)		
Executive	Departments and	l Administration	REMOTE 000	9:00 a.m.	
(Name of Committee)			(Place)	(Time)	
9:00 a.m.	HB 137	relative to the rule technology.	emaking authority of the de	partment of information	
9:10 a.m.	HB 302	relative to the cre agencies.	relative to the creation and use of electronic records by government agencies.		
9:20 a.m.	HB 425-FN		nical committees and a cyber department of information to		

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

- 1. Link to Zoom Webinar: https://www.zoom.us/j/98659292409
- 2. To listen via telephone: Dial(for higher quality, dial a number based on your current location):
- 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
- 3. Or iPhone one-tap: +13017158592,,98659292409# or +13126266799,,98659292409#
- 4. Webinar ID: 986 5929 2409
- 5. To view/listen to this hearing on YouTube, use this link:

https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA

6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors: HB 137

Rep. L. Ober Sen. Carson

Rep. McGuire

Rep. Weyler

Rep. Emerick

HB 302

Rep. L. Ober

HB 425-FN

Rep. L. Ober

Cameron Lapine 271-2104

Sharon M Carson

Chairman

Senate Executive Departments and Administration Committee

Cameron Lapine 271-2104

HB 302, relative to the creation and use of electronic records by government agencies.

Hearing Date:

March 31, 2021

Time Opened:

9:14 a.m.

Time Closed:

9:38 a.m.

Members of the Committee Present: Senators Carson, Reagan, Ricciardi,

Cavanaugh and Prentiss

Members of the Committee Absent: None

Bill Analysis: This bill clarifies the authority of the department of information technology, in cooperation with the secretary of state and the department of administrative services, to set standards for the creations, retention, and acceptance of electronic records by government agencies.

Sponsors:

Rep. L. Ober

Who supports the bill: Margaret Byrnes (NHMA), Shaun Mulholland (City of Lebanon), Lucinda Hope, and Representative Deb Stevens (Hillsborough – District 34).

Who opposes the bill: Robin Vogt. Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Carol McGuire

Merrimack - District 29

- Representative McGuire introduced HB 302 on behalf of Representative Lynne Ober, who
 was not present.
- Rep. McGuire said that HB 302 clarifies that municipalities have the authority to use electronic records at their discretion and sets some guidelines.
- Rep. McGuire said that the Department of Information Technology (DOIT) sets standards for State-level and agency electronic records standards. She said that statute had required DOIT to set standards for municipalities and required municipalities to follow them. Rep. McGuire

- said that HB 302 makes it so that municipalities do not have to follow those standards if they have a sufficient set of policies in place.
- Senator Reagan asked why HB 302 was needed, and if the electronic records standards had
 to go through rulemaking.
 - o Rep. McGuire said that the standards did not have to go through rulemaking. She said that municipalities follow industry standards and best practices for electronic documents. She said that the State cannot impose standards if there is not funding in order to come into compliance.
- Senator Prentiss, focusing on the use of "may", asked if the spirit of the HB 302 was that
 DOIT would create standards and suggestions but said that a municipality does not have to
 follow them, but, if a municipality chose to, they would have to follow those standards.
 - o Rep. McGuire said that that was correct in a sense. She said that a municipality would not have to follow the DOIT standards if there is a suitable standard already in place at the municipal level. She said that some municipalities are far along in their electronic records process and others are not.
- Senator Prentiss said that the city of Lebanon, which she represents, is reasonably far along
 in their electronic records process and that the city has done a good job. She said that
 Lebanon is a model that can help other communities.

Denis Goulet

Commissioner, DOIT

- Commissioner Goulet said HB 302 is a request of the New Hampshire Municipal Association (NHMA) and the city of Lebanon. He said it came about early in the COVID-19 pandemic. He said that Lebanon was able to continue their electronic records process through an Emergency Order relating to electronic signatures. He said that HB 302 addresses a concern that the municipalities would be constrained during non-pandemic times.
- Commissioner Goulet said that DOIT standards may or may not be applicable to
 municipalities. He said that DOIT consults through NHMA and tries to be helpful. He said it
 is not valuable or important for DOIT to have authority over municipal electronic records
 policies.
- Speaking for a second time, Commissioner Goulet said DOIT has many rules in place for the
 Executive Branch that do not end up impacting municipalities. He said that DOIT takes a
 "baseline plus" approach, where DOIT creates a baseline for protecting data and expects
 anyone who they interact with to adhere to those rules.
- Speaking for a second time, Commissioner Goulet said that there are rules in place from
 other agencies, such as the Centers for Medicare and Medicaid Services, the Internal
 Revenue Service, New Hampshire Employment Security, Criminal Justice Information
 Services, the Federal Bureau of Investigation, and the payment card industry. He said that
 an attempt to make administrative rules would be difficult and possibly conflict with federal
 rules and would not be necessary.
- Speaking for a second time, Commissioner Goulet said there are DOIT provisions in an
 omnibus bill which both suggest Center for Internet Security Controls best practices and
 require political subdivisions to report their cyber incidents. He said that DOIT is seeking
 federal funds to help municipalities.

Margaret Byrnes

NHMA

- Ms. Byrnes said that many municipalities have transitioned to electronic documents, as they are more efficient and save money. She highlighted the city of Lebanon.
- Ms. Byrnes said that a reading of RSA 294-E would appear to stipulate that political subdivisions can only use electronic records if standards have been adopted by the Secretary of State and DOIT. She said that municipalities have moved forward but the law has not evolved with practice.
- Ms. Byrnes said that DOIT has adopted standards for the State and state agencies for many
 years but no standards for cities, towns, or political subdivisions have ever been adopted
 despite the statute being in place for 20 years.
- Ms. Byrnes said that the State had no regulatory authority of political subdivisions and it does not make sense to require that oversight in electronic records rules.
- Ms. Byrnes said that Emergency Order 23 rectified the issue temporarily during the COVID-19 pandemic and then NHMA worked with DOIT on HB 302 for a permanent solution.
- Ms. Byrnes said that HB 302 brings RSA 294-E and 33-A into congruity, which she said have been disjointed since 2016 when the change was made from microfilm to electronic records.
- Senator Reagan asked if Ms. Byrnes saw an issue with their not being rulemaking.
 - Ms. Byrnes said that she thought rules and policies are important but that municipalities are adopting local policies based on advice from their electronic records firm or their risk liability management. She said that written rules are important but belong on the local level and should not be a burden on the State.
- Senator Reagan asked about rules for the State and state agencies.
 - o Ms. Byrnes said that she did not see a role for the State to adopt specific rules and standards for municipalities to follow at a local level. She said that there is no regulatory authority on the part of DOIT with respect to municipalities.
- Senator Prentiss asked Senator Reagan if his question was whether or not the State should be conducting its business through rulemaking.
 - Senator Reagan said that that was his question.
 - o Ms. Byrnes directed that question to Commissioner Goulet and said that there are standards for state agencies that are available online.
- Senator Prentiss said that the question involved becomes 'is this an area where there needs to be rulemaking?' and 'are the DOIT policies updated often, are they referenced in rules, or are they adopted through rulemaking?'.

Shaun Mulholland

City Manager, City of Lebanon

- Mr. Mulholland said he helped draft HB 302. He said that municipalities have a lot of collaborative work with DOIT and need to have close cooperation.
- Mr. Mulholland said that HB 302 clarifies ambiguities in the cybersecurity relationship between municipalities and DOIT.
- Mr. Mulholland said that there will need to be rules for how municipal systems interact
 with State systems, because a municipal-level breach could contaminate the State
 network
- Mr. Mulholland said that HB 302 allows municipalities to do what they have done for the last 20 years. He said that the law should be clear without further requirements from DOIT.
- Senator Carson asked if Mr. Mulholland saw HB 302 as a first step in establishing a

relationship between DOIT and municipalities.

- o Mr. Mulholland said that DOIT and municipalities need to work together on guidelines and it would be helpful to get guidance and work as a team. He said he did not think DOIT had the resources to do it currently.
- Senator Carson asked if Mr. Mulholland saw a need for rulemaking authority.
 - o Mr. Mulholland said that he only saw a need when it applies to municipalities interacting directly with the State systems. He said that rules already exist but they are under other Departments. He said that the impact of cybersecurity impacts the public beyond one town.
- Senator Carson said that if there are administrative rules, cybersecurity practices would be standardized across all municipalities. She asked if Mr. Mulholland thought that was a good idea at this time.
 - o Mr. Mulholland that that there would be a problem in that Lebanon has hundreds of employees while some towns may only have two. He said it would be difficult to apply rules that work for everyone.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

cml

Date Hearing Report completed: April 5, 2021

Speakers

Senate Remote Testify

Executive Departments and Administration Committee Testify List for Bill HB302 of Support: 4 Oppose: 1 Neutral: 0 Total to Testify: 2

<u>Name</u>	Email Address	Phone	<u>Title</u>	Representing	Position	Testifin
Byrnes, Margaret	mbyrnes@nhmunicipal.org	603.224.7447	A Lobbyist	NH Municipal Association	Support	Yes
Mulholland, Shaun	shaun.mulholland@lebanonnh.gov	603-448-4220	A Member of the Public	City of Lebanon	Support	Yes
Hope, Lucinda	lmhope46@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Vogt, Robin	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Stevens, Representative Deb	debstevens4ward7@gmail.com	603.820.0866	An Elected Official	My 10K constituents	Support	No

intra01/senate/remoteComMgt/

Voting Sheets

Senate Executive Departments and Administration Committee

EXECUTIVE SESSION RECORD 2021 Session

Bill # HB 302 Hearing date: 3-31-11 Executive Session date: 4-18-11 Motion of: Second Yes Committee Member Present Made by Sen. Carson, Chair Sen. Reagan, Vice Chair Sen. Ricciardi Sen. Cavanaugh Sen. Prentiss Vote: Motion of:__ Committee Member Present Made by Sen. Carson, Chair Sen. Reagan, Vice Chair Sen. Ricciardi Sen. Cavanaugh Sen. Prentiss Vote: Motion of: Committee Member No **Present** Made by Second Yes Sen. Carson, Chair Sen. Reagan, Vice Chair Sen. Ricciardi Sen. Cavanaugh Sen. Prentiss Reported out by: 5th. Calmaugh Notes:_

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, April 28, 2021

THE COMMITTEE ON Executive Departments and Administration to which was referred HB 302

AN ACT

relative to the creation and use of electronic records by government agencies.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 4-0

Senator Kevin Cavanaugh For the Committee

Cameron Lapine 271-2104

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 302, relative to the creation and use of electronic records by government agencies. Ought to Pass, Vote 4-0. Senator Kevin Cavanaugh for the committee.

General Court of New Hampshire - Bill Status System

Docket of HB302

Docket Abbreviations

Bill Title: relative to the creation and use of electronic records by government agencies.

Official Docket of HB302.:

Date	Body	Description
1/9/2021	н	Introduced (in recess of) 01/06/2021 and referred to Executive Departments and Administration HJ 2 P. 42
1/28/2021	Н	Public Hearing: 02/08/2021 10:30 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/99308877767 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
2/9/2021	Н	Committee Report: Ought to Pass (Vote 19-0; CC) HC 12 P. 6
2/24/2021	Н	Ought to Pass: MA VV 02/24/2021 HJ 3 P. 8
3/4/2021	S	Introduced 03/04/2021 and Referred to Executive Departments and Administration; SJ 7
3/17/2021	S	Remote Hearing: 03/31/2021, 09:10 am; Links to join the hearing can be found in the Senate Calendar; SC 16
4/28/2021	S.	Committee Report: Ought to Pass, 05/06/2021; SC 22
5/6/2021	S	Ought to Pass: RC 23Y-0N, MA; OT3rdg; 05/06/2021; SJ 14
6/2/2021	S	Enrolled Adopted, VV, (In recess 05/27/2021); SJ 18
6/3/2021	Н	Enrolled (in recess of) 06/03/2021
6/14/2021	н	Signed by Governor Sununu 06/10/2021; Chapter 67; Eff: 08/09/2021

NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside Final docket found on Bill Status Bill Hearing Documents: {Legislative Aides} Bill version as it came to the committee All Calendar Notices Hearing Sign-up sheet(s) Prepared testimony, presentations, & other submissions handed in at the public hearing Hearing Report Revised/Amended Fiscal Notes provided by the Senate Clerk's Office Committee Action Documents: {Legislative Aides} All amendments considered in committee (including those not adopted): ____ - amendment # _____ - amendment # ____ - amendment #_____ ____ - amendment#____ Executive Session Sheet Committee Report Floor Action Documents: {Clerk's Office} All floor amendments considered by the body during session (only if they are offered to the senate); ____- - amendment # _____ - amendment # _____ ____ - amendment#_____ ____ - amendment#_____ Post Floor Action: (if applicable) (Clerk's Office) Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): Enrolled Bill Amendment(s) Governor's Veto Message All available versions of the bill: {Clerk's Office} as amended by the senate as amended by the house final version Completed Committee Report File Delivered to the Senate Clerk's Office By: Committee Aide Date

Senate Clerk's Office