

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.

- 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.
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.

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Date Hearing Report completed: April 5, 2021