

# 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. J. Edwards

Rep. Torosian

Rep. Brown

Rep. Comeau

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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

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Date Hearing Report completed: April 14, 2017