

# Senate Judiciary Committee

*Matthew Schelzi 271-3266*

**SB 250**, relative to remote participation in government meetings.

**Hearing Date:** February 21, 2023

**Time Opened:** 1:43 p.m.

**Time Closed:** 2:13 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, Abbas, Whitley and Chandley

**Members of the Committee Absent:** None

**Bill Analysis:** This bill revises the criteria and procedures for holding remote public meetings under RSA 91-A.

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**Sponsors:**

Sen. Lang

Sen. Gray

Sen. Watters

Sen. Perkins Kwoka

Sen. Whitley

Sen. Pearl

Rep. B. Boyd

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**Who supports the bill:** Senator Lang (District 2), Kate Horgan (NHAC), Natch Greyes (NHMA), Glee M. Corsetti-Hooper, Senator Gray (District 6), Katie Lajoie, Senator Watters (District 4), Senator Perkins Kwoka (District 21), and Susan Smith.

**Who opposes the bill:** Karen Rosenberg (DRC-NH), Laurie Ortolano (RTKNH), Anthony Pumilia, and David Saad.

**Who is neutral on the bill:** Douglas Osterhoudt (OPLC)

**Summary of testimony presented in support:**

**Senator Lang** introduced SB 250. He said the bill deals with remote participation in meetings. He offered an amendment that he said clears up some problems that the Municipal Association and Disability Rights Center raised. He said Section IV applies specifically to subdivisions of the State, and not State-level boards and agencies. He said it is becoming increasingly difficult in small towns to have people volunteer for boards and show up in person at meetings. He said SB 250 maintains RSA 91-A but allows for remote participation on boards. It would require one-third of members, less than a quorum, to be physically present and also require all remote members to have their audio and video on for contemporaneous conversations. He said SB 250 will resolve issues small towns are having. He said SB 250 allows boards to vote to revoke

the remote participation provision if it is being abused. It is an opt-in bill. He said the amendment clarifies it is for entities below the State-level.

**Senator Carson** said this is an issue that has come up multiple times. She said town government is the closest to the people, but asked how the public would participate if it's a remote meeting. She referenced Section IV of the amendment and said she doesn't see anything else in SB 250 related to public participation. She said public meetings usually have time set aside for public comments.

Sen. Lang said SB 250 wouldn't prohibit the public from participating remotely. He said regulations during the COVID-19 pandemic allowed remote participation through platforms like Zoom. He said remote participation by the public is allowed currently through teleconference and nothing in this bill would restrict public participation.

Sen. Carson asked if there should be language requiring that every community that chooses to allow remote meetings shall ensure the public has an opportunity to speak.

Sen. Lang said he would be fine with that language. He said the purposes of having a physical presence is that not all communities in New Hampshire have the technology required, so SB 250 wants to ensure those individuals are not disenfranchised.

Sen. Carson asked if there should be a limit on remote participation. She referenced a board member who may relocate to Florida for the winter months. She asked if that kind of absence should be addressed in SB 250.

Sen. Lang said if the remote participation is being abused and a majority of the board agrees they can revoke the privilege.

Sen. Carson asked if there should be a definition of abusing the privilege in the bill.

Sen. Lang said he wouldn't object to it, but believed that was getting granular and could lead to problems about being able to envision every possible situation that could occur. He said the local boards are better able to anticipate the needs of their communities.

Sen. Carson proposed a hypothetical where a town board is hearing a divisive issue and the board holds a remote meeting to avoid facing their constituents. She asked how it can be ensured that that doesn't happen.

Sen. Lang said, under current law, the participants of a meeting can be remote as long as a quorum is physically present. He said SB 250 is just shrinking the number of participants that need to be physically present and allowing the boards to take one vote to authorize remote participation, rather than needing to vote at each individual meeting.

Sen. Carson asked if this language would allow a board to exempt itself from ever meeting in public. She said she did not see anything in SB 250 to that effect.

Sen. Lang referenced (b) on Page 1 of SB 250. He said one-third of the total membership of a board has to be physically present for the meeting to occur. There is a requirement for people to be in a room that is open to the public.

Sen. Carson asked if he would be amenable to have this bill include State entities or counties.

Sen. Lang said counties are subdivisions of the State, so they would be covered by SB 250. He referenced the SB 330-FN (2022) Study Committee and the number of Office of Professional Licensure and Certification boards that cannot meet due to quorum problems. He said there are places in State government where he would be open to permitting remote participation, if there are appropriate guidelines.

**Natch Greyes**, NH Municipal Association, supports the bill and the amendment. He said there were drafting errors in SB 250 that would have erased existing provisions about emergency meetings, which was not the intent of SB 250, and the amendment Sen. Lang offered corrects those. He said SB 250 contains provisions that the governing body of the subdivision has to authorize the remote participation and they also have the ability to revoke that authorization. He said there could be situations where bad actors attempt to abuse the system. He said Section IV allows for enhanced participation for those participating remotely, as simply calling in to a meeting did not seem fair. He said they wanted to ensure they were able to be both seen and heard by people present at the meeting. He said this would require some additional work by the body. He said SB 250 did not add a definition about abuse and revocation because they wanted the language to be as broad as possible to allow for the governing body to respond to their specific situations that may arise. He said SB 250 doesn't address public participation or State boards. He said he would not object to additional requirements, but figuring out specifics for remote public participation in case of a technological snafu is difficult so they wanted the bill to be focused on the members of boards. He said there are some State-level boards that have special rules about remote participation that were not accounted for in SB 250 as introduced, so the amendment corrects that. He said there is a bill in the House that deals with State-level boards specifically.

Sen. Carson said she received an email with suggestions, including if a member of the public notifies the board of a problem with access, the issues have to be noted in the minutes and, if it is proven the public did not have access, then all actions taken during that portion of the meeting would need to be null and void.

Mr. Greyes said SB 250 does not address public access. He said if there is a broadcast of a meeting and there are problems with it, it is separate from what SB 250 is trying to do. He said SB 250 is a narrow carveout of the difference between one-third and one-half of a board being physically present.

Sen. Carson said the other suggestion was if the meeting can be recorded then it shall be recorded and the minutes shall note the meeting was recorded and that the recording is available to the public.

Mr. Greyes said he had no objection to that.

Sen. Carson asked why SB 250 does not address public access.

Mr. Greyes said there have been towns who have spent a lot of money to set up remote access to meetings beyond local cable-access television, and the technology frequently

does not work. He said they were worried about a situation where there's an important item on the agenda and there's a technological snafu that limits public participation. He said the meetings would always need a physical location, so there could never be an all-Zoom meeting, but some board members may participate remotely while still being able to see and hear their constituents.

**Kate Horgan**, NH Association of Counties, expressed support. She said SB 250 would allow counties to accomplish their work. She noted getting a quorum at the county-level can be challenging, especially for Hillsborough and Rockingham County Delegation Meetings. She said there have been County Commissioners who drive around and physically collect delegates so there would be a quorum to meet statutory deadlines. SB 250 seeks to serve the public better by enabling counties to do what they need to do in serving the public.

**Glee Corsetti-Hooper**, Board of Examiners of Naturopathic Doctors, is the public member of the board. She said her board has been unable to meet due to quorum issues because the members are doctors who practice across the state. She said she liked the idea of requiring some of the board members to be physically present. She said they haven't had any problems with public access because OPLC has the technology.

#### **Summary of testimony presented in opposition:**

**Karen Rosenberg**, Disability Rights Center, said she opposed SB 250 as introduced because there was a drafting error that would remove the ability of any entity other than a political subdivision to benefit from remote participation. She said that would affect councils and groups that the DRC participates in and make it harder for people with disabilities, or who care for someone with disabilities, to participate. She could not take a position on the amendment as she hadn't seen it, but she could not support SB 250 as introduced.

**Laurie Ortolano**, Right to Know NH, said she was unaware of Sen. Lang's proposed amendment. She said she does not support SB 250 as introduced. She said RTKNH always considers the equality of public access to meetings as well as remote participation. She said any change to RSA 91-A would be a big step. She said the amendment might alleviate some of her concerns but she had not seen it. She said a similar bill in the House was found Inexpedient to Legislate. She said it's important for the public to have equal access to meetings, and to be able to participate despite technological issues. She said any technological issues need to be worked out before remote meetings can occur. She said it is important that the public can see their elected representatives doing the work they elected them too. She said SB 250 would define what a quorum is, which is not typical because quorums are defined by the body itself, and it does not specify if a chair needs to be present or can operate the meeting remotely. She said if a chair is not visible it may make a meeting more confusing to the public. She said she thought that (b) was confusing because it includes the definition of

a quorum but does not say that members participating remotely do not count towards the number of those present. She said the definition of a quorum in (f) is also confusing. She said it is more normal to preface right-to-know requirements with “Except in an emergency...” rather than how it is done in SB 250. She said critical language about public access is missing in SB 250.

**Neutral Information Presented:** None.

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Date Hearing Report completed: March 2, 2023