

HB 1156-FN – AS AMENDED BY THE HOUSE

6Mar2014... 0546h

2014 SESSION

14-2458  
01/10

HOUSE BILL            ***1156-FN***

AN ACT                making certain changes to the right-to-know law and establishing the right-to-know oversight commission.

SPONSORS:            Rep. Tasker, Rock 2; Rep. Sandblade, Hills 18

COMMITTEE:          Judiciary

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AMENDED ANALYSIS

This bill clarifies the nonpublic session of the right-to-know law and adds 2 new matters which shall be considered in nonpublic session. This bill also establishes the right-to-know oversight commission to study and oversee the right-to-know law.

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                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT making certain changes to the right-to-know law and establishing the right-to-know oversight commission.

*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:3, II(e) to read as follows:

2 (e) Consideration or negotiation of pending claims or litigation which has been  
3 threatened in writing or filed **by or** against the public body or any subdivision thereof, or against any  
4 member thereof because of his or her membership in such public body, until the claim or litigation  
5 has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to  
6 law, with any body or board shall not constitute a threatened or filed litigation against any public  
7 body for the purposes of this subparagraph.

8 2 New Subparagraphs; Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, II by  
9 inserting after subparagraph (j) the following new subparagraphs:

10 (k) Consideration of written advice or information from the public body's legal counsel.

11 (l) Consideration of individual pupil matters, including but not limited to student  
12 discipline, hearings, and other matters relative to a pupil's education.

13 3 Right-to-Know Law; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

14 III. Minutes of meetings in nonpublic session shall be kept **as provided in RSA 91-A:2, II**  
15 and the record of all actions shall be promptly made available for public inspection, except as  
16 provided in this section. Minutes and decisions reached in nonpublic session shall be publicly  
17 disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present,  
18 **taken in public session**, it is determined that divulgence of the information likely would affect  
19 adversely the reputation of any person other than a member of the public body itself, or render the  
20 proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the  
21 preparation for and the carrying out of all emergency functions, developed by local or state safety  
22 officials that are directly intended to thwart a deliberate act that is intended to result in widespread  
23 or severe damage to property or widespread injury or loss of life. This shall include training to carry  
24 out such functions. In the event of such circumstances, information may be withheld until, in the  
25 opinion of a majority of members, the aforesaid circumstances no longer apply.

26 4 New Section; Right-to-Know Oversight Commission. Amend RSA 91-A by inserting after  
27 section 9 the following new section:

28 91-A:9-a Right-to-Know Oversight Commission.

29 I.(a) There is established the right-to-know oversight commission to study and oversee the

**HB 1156-FN – AS AMENDED BY THE HOUSE**

**- Page 2 -**

1 right-to-know law. The members of the commission shall be as follows:

2 (1) Two members of the house of representatives, appointed by the speaker of the  
3 house of representatives.

4 (2) One member of the senate, appointed by the president of the senate.

5 (3) The attorney general, or designee.

6 (4) A representative of the New Hampshire Municipal Association, appointed by the  
7 association.

8 (5) A public information officer, appointed by the governor.

9 (6) Five public members, one of whom shall be an attorney who has knowledge of  
10 and experience with the right-to-know law and one of whom shall be an information technology  
11 professional, all appointed by the governor.

12 II. Members of the commission shall serve without compensation, except that legislative  
13 members of the commission shall receive mileage at the legislative rate when attending to the duties  
14 of the commission.

15 III.(a) The commission shall study:

16 (1) The development of standards and procedures to enable public entities to recover  
17 costs relative to complying with the right-to-know law.

18 (2) The treatment under the right-to-know-law of private and quasi-public entities  
19 carrying out public functions.

20 (3) The establishment of guidelines for members of public bodies to participate  
21 electronically.

22 (4) The consideration of how best to handle grievances about application of right-to-  
23 know issues.

24 (5) Any other matter deemed relevant by the commission.

25 (b) The commission may solicit information from any person or entity the commission  
26 deems relevant to its study.

27 IV. The members of the commission shall elect a chairperson from among the members. The  
28 first meeting of the commission shall be called by the first-named house member. The first meeting  
29 of the commission shall be held within 45 days of the effective date of this section. Six members of  
30 the commission shall constitute a quorum.

31 V. The commission shall make an annual report beginning on November 1, 2014, together with  
32 its findings and any recommendations for proposed legislation to the speaker of the house of  
33 representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the  
34 state library.

35 5 Repeal. RSA 91-A:9-a, relative to an oversight commission to study and oversee the right-to-  
36 know law, is repealed.

37 6 Effective Date.

**HB 1156-FN – AS AMENDED BY THE HOUSE**  
**- Page 3 -**

- 1           I. Section 1 of this act shall take effect January 1, 2015.
- 2           II. Section 5 of this act shall take effect November 1, 2018.
- 3           III. The remainder of this act shall take effect upon its passage.

**HB 1156-FN - FISCAL NOTE**

AN ACT                    making certain changes to the right-to-know law.

**FISCAL IMPACT:**

The Judicial Branch and New Hampshire Association of Counties state this bill, as introduced, may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There is no impact on local expenditures, or state, county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill makes changes to RSA 91-A, the right to know law. Specifically the amendments to make court action in RSA 91-A:8, III and IV mandatory rather than discretionary will have a fiscal impact on the Branch. The Branch has no information to estimate how many additional right to know cases may result from the proposed bill. The Branch does have information on the average cost of processing a right to know law case which is classified as a routine equity case. The cost for a routine equity case will be \$234.43 in FY 2015 and \$239.53 in FY 2016 and each year thereafter. The possibility for a case to be appealed increases the cost. All costs are estimated based on case weight information from the last needs assessment completed in 2005.

The New Hampshire Association of Counties states the change from discretionary to mandatory actions by the court in invalidating public actions may cause an increase in county expenditures. The Association has no way to determine the number of instances that would occur to determine the exact fiscal impact.

The Department of Justice states this bill will result in no additional costs to the Department.

The New Hampshire Municipal Association states this bill will have no direct fiscal impact on municipalities.