

SB 301-FN-LOCAL - AS AMENDED BY THE HOUSE

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2022 SESSION

22-2998
07/10

SENATE BILL

301-FN-LOCAL

AN ACT establishing the office of the right to know ombudsman and making an appropriation therefor.

SPONSORS: Sen. French, Dist 7; Sen. Avard, Dist 12; Sen. Gannon, Dist 23

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes procedures to streamline the resolution of complaints under RSA 91-A. This bill establishes the office of the right-to-know ombudsman. This bill also establishes an alternative process to resolve right-to-know complaints.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing the office of the right to know ombudsman and making an appropriation therefor.

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

1 Statement of Intent. The purpose of this act is to provide the public with a simpler, less
2 expensive, and faster alternative process to resolve complaints under RSA 91-A.

3 2 Right-to-Know; Violation. Amend RSA 91-A:7 to read as follows:

4 91-A:7 Violation.

5 ***I.*** Any person aggrieved by a violation of this chapter may petition the superior court for
6 injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings
7 under this chapter high priority on the court calendar. Such a petitioner may appear with or
8 without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of
9 this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court ~~[or any~~
10 ~~justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition~~
11 ~~on the person or persons charged. Subject to objection by either party, all documents filed with the~~
12 ~~petition and any response thereto shall be considered as evidence by the court. All documents~~
13 ~~submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice~~
14 ~~shall find that time probably is of the essence, he or she may order notice by any reasonable means,~~
15 ~~and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem~~
16 ~~such an order necessary to insure compliance with the provisions of this chapter].~~

17 ***II.*** *In lieu of the procedure under paragraph I, an aggrieved person may file a*
18 *complaint with the ombudsman under RSA 91-A:7-a and in accordance with RSA 91-A:7-b.*

19 ***III.*** *A person's decision to petition the superior court forecloses the ability to file a*
20 *complaint with the ombudsman pursuant to RSA 91-A:7-b.*

21 ***IV.*** *A person's decision to file a complaint with the ombudsman forecloses the*
22 *ability to petition the superior court until the ombudsman issues a final ruling or the*
23 *deadline for such a ruling has passed.*

24 3 New Sections; Office of the Ombudsman; Complaint Process; Appeals. Amend RSA 91-A by
25 inserting after section 7 the following new sections:

26 91-A:7-a Office Established. There is hereby established the office of the right-to-know
27 ombudsman to be administratively attached to the department of state under RSA 21-G:10. The
28 ombudsman shall be appointed by the governor and council and shall have the following minimum
29 qualifications:

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- 1 I. Be a member of the New Hampshire bar.
- 2 II. Have a minimum of 5 years full-time practice of law in any jurisdiction.
- 3 III. Be experienced with and knowledgeable of the provisions of this chapter and all New
- 4 Hampshire laws regarding right-to-know.
- 5 IV. Annually, complete a minimum of 3 hours of continuing legal education courses or other
- 6 training relevant to the provisions of this chapter.

7 91-A:7-b Complaint Process.

8 I. Any party aggrieved by a violation of this chapter shall have the option to either petition

9 the superior court or file a signed, written complaint, along with a \$25 fee, with the office of the

10 ombudsman, established under RSA 91-A:7-a. The ombudsman shall have the discretion to waive

11 the \$25 fee upon a finding of inability to pay. Any signed, written complaint filed with the

12 ombudsman shall attach, if applicable, the request served on the public agency or official and the

13 written response of the public agency or official. The complaint shall be deemed sufficient if it states

14 facts constituting a violation of this chapter.

15 II. Once a complaint has been filed and provided by the ombudsman to the public body or

16 public agency, the public body or public agency shall have 20 calendar days to submit an

17 acknowledgment of the complaint and an answer to the complaint, which shall include applicable

18 law and, if applicable, a justification for any refusal to or delay in producing the requested

19 information, access to meetings, or otherwise comply with the provisions of this chapter. This 20-

20 day deadline may be reasonably extended by the ombudsman for good cause.

21 III. In reviewing complaints, the ombudsman shall be authorized to:

22 (a) Compel timely delivery of records within a period not less than 14 days or more than

23 30 days unless an expedited hearing is warranted, regardless of medium and format, and conduct a

24 confidential in-camera review of records where the ombudsman concludes that it is necessary and

25 appropriate under the law.

26 (b) Compel interviews with the parties.

27 (c) Order attendance at hearings within a reasonable time if the ombudsman determines

28 that a hearing is necessary. Such hearings shall be open subject to the provisions of RSA 91-A.

29 (d) Issue findings in writing to all parties.

30 (e) Order a public body or public agency to disclose requested records within a

31 reasonable time, provide access to meetings, or otherwise comply with the provisions of this chapter,

32 subject to appeal.

33 (f) Make any finding and order any other remedy to the same extent as provided by the

34 court under RSA 91-A:8.

35 IV. The ombudsman may draw negative inferences from a party's failure to participate and

36 comply with orders during the review process.

1 V. The ombudsman shall determine whether there have been any violations of this chapter
2 and issue a ruling within 30 calendar days following the deadline for receipt of the parties'
3 submissions. This 30-day deadline may be extended to a reasonable time frame by the ombudsman
4 for good cause. The ombudsman may also expedite resolution of the complaint upon a showing of
5 good cause. Rulings on expedited complaints shall be issued within 10 business days, or sooner
6 where necessary.

7 VI. The ombudsman shall, where necessary and appropriate under the law, access
8 governmental records in camera that a public body or public agency believes are exempt in order to
9 make a ruling concerning whether the public body or public agency shall release the records or
10 portions thereof to the public. The ombudsman shall maintain the confidentiality of records
11 provided to the ombudsman by a public body or public agency under this section and shall return the
12 records to the public body or public agency when the ombudsman's review is complete. All records
13 submitted to the ombudsman for review shall be exempt from the public disclosure provisions of RSA
14 91-A during such review.

15 VII. Nothing in this section shall affect the ability of a person to seek relief in superior court
16 under RSA 91-A:7, I in lieu of this process.

17 91-A:7-c Appeal and Enforcement.

18 I. Any party may appeal the ombudsman's final ruling to the superior court by filing a notice
19 of appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued.
20 The ombudsman's ruling shall be attached to the document initiating the appeal, admitted as a full
21 exhibit by the superior court, considered by the judge during deliberations, and specifically
22 addressed in the court's written order. Citizen-initiated appeals shall have no filing fee or
23 surcharge. The public body or public agency shall pay the sheriff's service costs if the public body or
24 public agency, or its attorney, declines to accept service. Nothing in this section shall prevent a
25 superior court from staying an ombudsman's decision pending appeal to the superior court.

26 II. A superior court appeal of the ombudsman's ruling shall review the ruling de novo.

27 III. If the ombudsman's final ruling is not appealed, the ombudsman shall, after the
28 deadline has passed, follow up with all parties, as required, to verify compliance with rulings issued.

29 IV. The ombudsman's final rulings which are not appealed may be registered in the superior
30 court as judgments and enforceable through contempt of court. If such action is necessary to enforce
31 compliance, all costs and fees, including reasonable attorney fees, shall be paid by the noncompliant
32 public body or public agency.

33 91-A:7-d Rulemaking. The ombudsman shall adopt rules pursuant to RSA 541-A relative to:

34 I. Establishing procedures to streamline the process of resolving complaints under this
35 chapter.

36 II. Other matters necessary to the proper administration of RSA 91-A:7-a through RSA 91-
37 A:7-c.

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4 Appropriation; Applicability.

I. The amount necessary to pay for the position of ombudsman established in RSA 91-A:7-a as inserted by section 3 of this act is hereby appropriated to the department of state for the biennium ending June 30, 2023. This appropriation shall be nonlapsing and is in addition to any other funds appropriated to the department of state. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

II. The governor and council are authorized to search, nominate, and confirm the ombudsman to have the confirmed nominee available to assume the duties of the ombudsman position on July 1, 2022.

5 Right-to-Know; Violation; Effective July 1, 2025. Amend RSA 91-A:7 to read as follows:

91-A:7 Violation.

~~[F.]~~ Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court ***or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.***

~~[H. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the ombudsman under RSA 91-A:7-b and in accordance with RSA 91-A:7-e.~~

~~III. A person's decision to petition the superior court forecloses the ability to file a complaint with the ombudsman pursuant to RSA 91-A:7-e.~~

~~IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.]~~

6 Prospective Repeal. RSA 91-A:7-a through 91-A:7-d, relative to the office of the ombudsman, complaint process, appeal and enforcement, and rulemaking, is repealed.

7 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

II. Sections 5 and 6 of this act shall take effect July 1, 2025.

III. The remainder of this act shall take effect July 1, 2022.

SB 301-FN-LOCAL- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-0675s)

AN ACT relative to the procedure for violations under the right to know law.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill establishes a procedure on filing complaints under RSA 91-A with the superior court for further relief and investigation.

The Judicial Branch states this bill would add requirements as to the content of a petition filed with the Superior Court and would require the Court to review the petition to determine if it states a claim upon which relief can be granted. As amended by the Senate, the new provision would apply only to appeals from a denial of a request for the production of governmental records or information. If the Court finds a claim has been stated, the respondent would be required to file affidavits and other evidence to sustain their burden. The Court may, in its discretion, schedule a hearing or decide the case based upon the pleadings, affidavits or other evidence submitted. The Branch expects the additional screening of all petitions to determine if a claim upon which relief will be granted will have a fiscal impact, but that impact is indeterminable. The Branch may have to modify its Odyssey case management system to account for the procedural changes described in the bill, but expects that the fiscal impact to make such changes would be less than \$5,000.

AGENCIES CONTACTED:

Judicial Branch