

HB 307-FN - AS AMENDED BY THE SENATE

01/03/2024 0013s

01/03/2024 0029s

2023 SESSION

23-0469

05/04

HOUSE BILL

307-FN

AN ACT relative to attorney's fees in actions under the right to know law.

SPONSORS: Rep. D. McGuire, Merr. 14; Rep. M. Smith, Straf. 10

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill permits the court to award attorneys' fees to the prevailing party in a right-to-know case provided that the judgment is not reconsidered by the court or reversed by the supreme court.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to attorney's fees in actions under the right to know law.

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

1 1 Access to Governmental Records and Meetings; Remedies. Amend RSA 91-A:8, I and II to
2 read as follows:

3 I. If any public body or public agency or officer, employee, or other official thereof, violates
4 any provisions of this chapter, such public body or public agency shall be liable for reasonable
5 attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that
6 such lawsuit was necessary in order to enforce compliance with the provisions of this chapter ~~[or to~~
7 ~~address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that~~
8 ~~the public body, public agency, or person knew or should have known that the conduct engaged in~~
9 ~~was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be~~
10 ~~paid]~~ **and provided that the court renders a judgment in favor of the requester that is not**
11 **reconsidered by the court or reversed by the supreme court.**

12 II. The court may award attorney's fees to a public body or public agency or employee or
13 member thereof, for having to defend against a lawsuit under the provisions of this chapter, when
14 the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive
15 **and provided that the court renders a judgment against the requester that is not**
16 **reconsidered by the court or reversed by the supreme court.**

17 2 Applicability. Section 1 of this act shall apply to requests for information under RSA 91-A
18 beginning 60 days after the effective date of this act.

19 3 Effective Date. This act shall take effect January 1, 2025.

HB 307-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENTS #2024-0013s and #2024-0029s)

AN ACT relative to attorney's fees in actions under the right to know law.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2024	FY 2025	FY 2026	FY 2027
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

COUNTY:				
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:				
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:
This bill requires the court to issue a final judgment in favor of the requester before attorney's fees are awarded under the Right to Know Law.

The Department of Justice indicates this bill would remove the requirement that the court find that the public body or public agency knew or should have known the conduct engaged in was a violation of RSA 91-A before awarding attorney’s fees. Without this additional finding, the Department assumes the bill would result in a court awarding attorneys fees any time a petitioner was successful in obtaining a judgment that a violation of RSA 91-A occurred. It is unknown how many actions would be filed asserting a violation of RSA 91-A, whether those actions would be successful, and the amount of fees incurred by a petitioner to bring the action. In the event of such successful actions against the State, the State would be ordered to pay attorney fees of the petitioner.

The Judicial Branch indicates the bill would modify and expand the requesting party's right to obtain attorney's fees under the Right to Know Act by providing for fees if the lawsuit was necessary to enforce compliance and the court renders a final judgment in favor of the requestor, and by striking the other preconditions to receive attorney's fees under current law. The Branch is unable to determine if this change would result in changes in either the number of cases filed or the manner in which litigation is managed by the parties. As such, the fiscal impact of the bill on the Judicial Branch is indeterminable.

The New Hampshire Municipal Association states this bill would cause every legal filing where the government lost to result in the government paying for the requestor's legal fees, leading to an indeterminable increase in costs for municipalities.

The New Hampshire Association of Counties states that because the change would allow for the collection of attorney fees whenever a citizen prevails in a suit to enforce the Right to Know laws, it is more likely that governmental entities would have to pay out attorneys' fees in the future, but there is no clear way to quantify this as attorney fees are unique.

AGENCIES CONTACTED:

Department of Justice, Judicial Branch, New Hampshire Association of Counties and New Hampshire Municipal Association