

Committee Report

CONSENT CALENDAR

Edited

January 18, 2017

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred

HB 178,

**AN ACT establishing a commission to study processes to
resolve right-to-know complaints. Having considered
the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Linda Kenison

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 178
Title:	establishing a commission to study processes to resolve right-to-know complaints.
Date:	January 18, 2017
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 0049h

STATEMENT OF INTENT

As amended, this bill as amended establishes a commission to study processes to resolve right-to-know complaints. Currently, the only recourse for right-to-know complainants is to bring a lawsuit. The sponsors are looking for a less costly and time-consuming remedy to resolve complaints.

Vote 18-0.

Rep. Linda Kenison
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

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Judiciary

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Rep. Linda Kenison
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COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: HB 178

TITLE: establishing a commission to study processes to resolve RTK complaints.

DATE: _____ CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
<u>00494</u>

STATEMENT OF INTENT:

This bill establishes a commission to resolve right to know complaints. Currently the only recourse for right to know complaints is to bring a lawsuit. The sponsors are looking for a less costly and time consuming remedy to resolve complaints.

The committee vote the committee vote was unanimous.

COMMITTEE VOTE: 18/0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. Linda B. Kenison
For the Committee

(Handwritten mark)

Amendment to HB 178

1 Amend RSA 91-A:8-a, I(a) as inserted by section 1 of the bill by replacing it with the following:

2

3 (a) The members of the commission shall be as follows:

4 (1) Three members of the house of representatives, appointed by the speaker of the
5 house of representatives.

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

7 (3) The attorney general, or designee.

8 (4) One municipal official, appointed by the New Hampshire Municipal Association.

9 (5) One school board member, appointed by the New Hampshire School Boards
10 Association.

11 (6) One county official, appointed by the New Hampshire Association of Counties.

12 (7) One member who shall have brought suit pro se under RSA 91-A:7, appointed by
13 the governor.

14 (8) One member representing the New Hampshire Press Association, appointed by
15 that association.

16 (9) One member representing Right To Know New Hampshire, appointed by that
17 organization.

18 (10) One member of the New Hampshire Civil Liberties Union, appointed by that
19 organization.

20 (11) One citizen member, appointed by the governor.

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22 Amend RSA 91-A:8-a, III and IV as inserted by section 1 of the bill by replacing them with the
23 following:

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25 III. The members of the commission shall elect a chairperson from among the members.
26 The first meeting of the commission shall be called by the house member. The first meeting of the
27 commission shall be held within 30 days of the effective date of this section. Seven members of the
28 commission shall constitute a quorum.

29 IV. The commission shall report its findings and any recommendations for proposed
30 legislation to the speaker of the house of representatives, the president of the senate, the house
31 clerk, the senate clerk, the governor, and the state library on or before November 1, 2017.

32

Amendment to HB 178

- Page 2 -

1 Amend paragraph I of section 3 of the bill by replacing it with the following:

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3 I. Section 2 of this act shall take effect November 1, 2017.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 178

BILL TITLE: establishing a commission to study processes to resolve right-to-know complaints.

DATE: January 17, 2017

LOB ROOM: 208

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Kenison Seconded by Rep. Janvrin AM Vote: 18-0

Amendment # 0049h

Moved by Rep. Kenison Seconded by Rep. Janvrin Vote: 18-0

Respectfully submitted,



Rep Sandra Keans, Clerk

cc

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 178

BILL TITLE: establishing a commission to study processes to resolve right-to-know complaints.

DATE: 11/17/17

LOB ROOM: 208

MOTION: (Please check one box) OTPA

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # 00274 (if offered) 0049h
- Interim Study (2nd year)

Moved by Rep. MENISON Seconded by Rep. JANVIN Vote: 18- UNANIMOUS

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

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Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

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- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
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Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO

Minority Report? _____ Yes _____ No If yes, author, Rep: _____ Motion: _____

Respectfully submitted: Sandra B Keans
Rep Sandra Keans, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/6/2017 8:28:02 AM
Roll Call Committee Registers
Report

2016 SESSION

JUDICIARY

Bill #: HB 178

Title: Establishing a commission to study processes to resolve right-to-know complaints.

PH Date: 1/11/17

Exec Session Date: 1/17/17

Motion: OTPA

Amendment #: 0049h

MEMBER

YEAS

NAYS

Hagan, Joseph M. Chariman	✓	
Rouillard, Claire A. Vice Chairman	✓	
Hopper, Gary S.	✓	
Sylvia, Michael J.	✓	
Hull, Robert	✓	
Wuelper, Kurt F.	✓	
Graham, Robert V.	✓	
Ulery, Jordan G.	✓	
Hynes, Dan	✓	
Janvrin, Jason A.	✓	
Leavitt, John A.	✓	
Wall, Janet G.	✓	
Horrigan, Timothy O.	✓	
Berch, Paul S.		
Kenison, Linda B.	✓	
Keans, Sandra B.	✓	
DiLorenzo, Charlotte I.	✓	
deTreville, Andrew N.	✓	
Mulligan, Mary Jane	✓	
TOTAL VOTE:		

18

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Hearing Minutes

Cordell Johnston, New Hampshire Municipal Association - support

Supports the bill with amendment. Do not think membership is balanced; only one member representing locals. Passed HB 606 of 2003; would have to see a closer; it had broad support. Need at least 1 town, 1 school, and 1 county. May want to combine bills. If NHMA went away there would be more lawsuits. Spend a lot of time educating, advising towns to comply.

Rep. Janvrin: Q. How many towns represented? **Ans.** 232-234.

Rep. DiLorenzo: Q. Do towns have insurance against legal issues? **Ans.** Not sure how widespread coverage is.

Harriet Cady, Deerfield, NH - representing self - support. Brought 27 cases. Need this to save money for citizens.

Chair recessed public hearing at 11:58 am; reopened public hearing at 12:10 p.m

***David Taylor, Durham, NH, representing self - support**

(See Appendix 3.) Enforced violation 4 times in the courts, pro se and won 4. There are about 20 cases per year across state.

Rep. Keans: Q. Is there a United States (officials) v. them (citizens)? How did you deal with as an elected official? **Ans.** Don't want to see that but would like the process.

Rep. DiLorenzo: Q. Time frame for filing? **Ans.** Hearing in 30 days usually dealt with in timely manner to the detriment of citizen

Daryl Perry, Executive Director, Liberty Lobby, LLC- support

Filed Right-To-K against Liquor Commission. Got a non-answer - "No documentation."

Respectfully submitted,



Rep. Sandra Keans,
Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 178

BILL TITLE: establishing a commission to study processes to resolve right-to-know complaints.

DATE: January 11, 2017

ROOM: 208, LOB

Time Public Hearing Called to Order: 10:59

Time Adjourned: SUSPENDED 12:00
RESTART 12:10
END 12:25

(please circle if present)

Committee Members: Reps. Hagan, Rouillard, Hopper, Sylvia, Hull, Wuelper, R. Graham, Ulery, Hynes, Janvrin, Leavitt, Wall, Horrigan, Berch, Kenison, Keans, DiLorenzo, deTreville and Mulligan

Bill Sponsors:

Rep. Weyler
Rep. Spillane
Sen. Birdsell

Rep. Souza
Sen. Giuda
Sen. Avard

Rep. Itse
Sen. Gray

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

REP WYLER SPONSOR - INTRODUCED FOR

REP K SOUZA COSPONSOR - AVOID COST OF GOING TO COURT

Q ROUILLARD CONCERN THAT NHMA - ANS. GET 1

Q KENISON " " " ANS FEEL MUNICIPALITIES ARE REPRESENTED

Q BERCH - WOULD YOU SUPPORT BILL IF MORE LOCALS WERE REPRESENTED

ANS. FEEL THAT LOCALS ARE WELL-REPRESENTED

Q WUELPER - SHOULD REPORT DATE BE MOVED TO NOV. 1 2017

Q: HAVEN'T THE MOST KNOWN CASES BEEN BY NEWSPAPERS?

ANS. NOT SURE. DONT THINK NEWS AGENCIES WOULD USE.

REP DAN ITSE COSPONSOR GENERAL CONCERN WITH UNAVAILABLE ESP LOCAL GOVT BECOMING LESS TRANSPARENT

Q HYNES AMAZED TOWNS WOULD IGNORE COURT ORDERS

ANS. DO IT THRU DELAY

Q KEANS IS IT MORE UNKNOWLEDGEABLE OFFICIAL RATHER THAN NOT WANTING TO COMPLY

* DONNA GREEN ~~ET AL~~ SUPPORT ACTUALLY TOOK PRO SE LOCAL SCHOOL BD TO GET MINUTES. EVENTUALLY WON AT SUPREME COURT - HOWEVER DID NOT GET FEES REIMBURSED.

* PATRICIA RODRIGUES SUPPORT FOR 3 YEARS HAVE HAD RTK REQUESTS OVER AN EASEMENTS GRANTED WHICH IN HER OPINION WERE INCORRECT ~~ET AL~~.

Q ROUVILLARD IS THIS IN LITIGATION NOW? ANS. NO

* CORDELL JOHNSON NHMA - SUPPORT BUT ~~DO~~ DO NOT THINK MEMBERSHIP IS BALANCED. ONLY ONE MEMBER REPRESENTING LOCALS. PASSED HB 606 OF 2003. WOULD LOVE TO SEE A CLOSER. HAD BROAD SUPPORT. NEED AT LEAST - 1 TOWN 1 SCHOOL 1 COUNTY MAY WANT TO COMBINE BILLS.

IF NHMA WENT AWAY. THERE WOULD BE MORE LAW SUITS

SPEND A LOT OF TIME EDUCATING, ADVISING TOWNS TO COMPLY

Q JANVIN HOW MANY TOWNS REPRESENTED 232/234

Q DELORENZO DO TOWNS HAVE INSURANCE AGAINST LEGAL ISSUES ANS. NOT SURE HOW WIDE SPREAD COVERAGE

* HARRIET CADDY SUPPORT BROUGHT 27 CASES. NEED THIS TO SAVE \$ FOR CITIZENS.

SUSPENDED 11:58 FOR

* DAVID TAYLOR - SUPPORT 4 PRO SE & WON 4 ABOUT 20 CASES/YEAR ACROSS STATE.

Q KEANS - IS THERE A US(OFFICIALS) V THEM(CITIZENS). HOW DO YOU DEAL W/ AN UNELECTED OFFICIAL ANS DON'T WANT TO SEE THAT BUT WOULD LIKE THE PROCESS BE

Q DELORENZO TIME FRAME FOR FILING ANS. HEARING W/IN 30 DAYS USUALLY DEPT W/ TIMELY TO THE DETRIMENT OF

DARYL PERRY LIBERTY LOBBY EX DIR SUPPORT

FILED RTK AGAINST LIQUOR COMM - GOT A NON-ANSWER - "NO DOCUMENTATION."

Testimony

1

Jan. 11, 2017

House Judiciary Committee

HB 178: Establishing a Committee to Study Processes to Resolve
Right to Know Complaints

Honorable Members of the House Judiciary Committee:

I support this bill because it is trying to get at a profound weakness in the law – namely, that there is a broken enforcement mechanism for violations by public bodies and nuisance requests from citizens. Currently the entire initiative and cost for pursuing violations of the law is upon the individual citizen. Municipalities don't have a proper avenue for fending against nuisance requests, also. Right now, everything comes down to fights in court that tie up the judiciary, cost municipalities gobs of money and often deny citizens fair treatment because they do not have the financial resources to pursue their rights under the law.

I'm Donna Green. I have some experience with the cost to individuals of pursuing Right to Know violations. I represent Sandown on the Timberlane Regional School Board. In the fall of 2015 I argued a pro se Right to Know case against my SAU and school board chairman in Rockingham Superior Court. I paid \$260 to file my case and \$150 to have the summons served, in addition to photocopying costs, mileage and many other incidental costs.

I lost my case at Superior Court and then hired a lawyer to take my appeal to the NH Supreme Court where I won a unanimous decision and thus established for all the right to public information in electronic form if it so exists. My legal fees were thousands, which I did not recover because I did not want to risk more legal fees arguing for fees I was not certain to be awarded. My district paid well over \$30,000 to fight me.

You may be aware that I am once again suing my SAU for public financial information surrounding the default budget. I am asking for public contributions to a legal fund to do this and it is not easy.

Even though the Attorney General's office is charged with looking into public officials who violate their oath of office, the AG's office says unequivocally that they don't investigate Right to Know violations. A law that can only be enforced by individual citizens going to court is a broken law.

We must find a way to resolve disputes over rights to public information in a way that does not disenfranchise those with modest financial means or give overweening advantage to public bodies who use taxpayer money against the taxpayer interest. Similarly, public bodies need a less costly way to defend themselves against Right to Know requests they consider unduly burdensome or plainly malicious. Please support this bill.

Sincerely,
Donna Green
Sandown, NH

#1 SPENKED

Sandown representative to the Timberlane Regional School Board

January 11, 2017

House Judiciary Committee

2

Re: HB 178 concerning RSA 91-A:8-a Commission to Study Processes to Resolve Right-to-Know Complaints.

My name is Patricia Rodrigues. For just over 20 years I and my life partner have owned 1 acre in Westmoreland, NH, which abuts the Historic Cheshire Rail Trail, the townline with Walpole, NH, and the Old Route 12, a road discontinued when the new Route 12 was constructed.

Our need to utilize Right-To-Know laws came about in May 2013, when we learned that NHDOT had, without our knowledge or input, signed contracts with 2 landowners on the other side of the Historic Cheshire Rail Trail from our home, 1 landowner being in Walpole, and 1 in Westmoreland. These 2 contracts incorrectly applied easement rights written within our property deed, to justify a Crossing Agreement and a Temporary Use Agreement (essentially, a private road upon the public rail trail) for these 2 landowners to get from the Old Route 12 in front of our home, then over the Historic Cheshire Rail Trail, and then to their properties.

We have been trying to find out now for 3 YEARS and 7 months how this has happened, and how this can be legal.

We have submitted during this time at least ____ RTK requests, to the towns of Westmoreland and Walpole, NHDOT, NHDES, NHDRA, and utilized this information with them and in communications with the EPA, FHWA, and the NHDHR, among others. We have had 2 different lawyers, I have missed out on many work days and opportunities, and we have been unable to pay past, and newly acquired debt - to the tune of over \$130,000 - during this ordeal, to find out why our property deed is now unmarketable, why our land will be allowed to become uninhabitable - and even why the Historic Cheshire Rail Trail is inappropriately being left unuseable by the Public - as a consequence of these wrongfully issued agreements, with the state, the towns, the landowners, and even the feds refusing to acknowledge the incorrect application of the easement rights written within our property deed, especially with new evidence - a survey - that NHDOT has itself performed during the spring of 2016, proving our claims of incorrect application of the easement rights.

We have had to sometimes wrongly wait 3 months for access or receipt of documents requested via RTK requests, and, even then, the requests have been incompletely and unsatisfactorily fulfilled.

If we had filed in Superior Court every time a town ZB, PB, CC, or Selectboard did not make available their meetings' minutes within 5 business days, or every time they or the various state or federal agencies did not supply requested information within a "reasonable time", we would be even many more thousands of dollars in debt - tho the delays in receiving information, by not filing in Superior Court, have also cost us money.

Additionally, we can prove that various public bodies and agencies have not supplied documents which we know exist and should have been supplied in our RTK requests, but that means, again, filing in Superior Court, and more expense and burden upon ourselves, the public bodies, the courts - and JUSTICE itself.

Please vote to establish this commission to study alternate processes to resolve RTK complaints, for a means to more easily uncover the TRUTH via RTK would also mean more easily supplying NH citizens, and the state itself, cost-effective JUSTICE.

Thank you for your time and consideration,

Patricia Rodrigues and John Corduff, 52 Old Route 12 North, Westmoreland, NH 03467

HB178

Testimony of David K. Taylor before the House Judiciary Committee
January 11, 2017

Honorable Members of the House Judiciary Committee

Thank you very much for allowing me to testify on bill HB178 today. I support this bill. I am David Taylor of Durham and I served for 12 years on the Oyster River School Board. I also have successfully enforced violations of the Right-to-Know Law 4 times in the courts, pro se. I have experienced the Right-to-Know Law from both sides, if you will.

New Hampshire is failing the Right to Know. Last year, the Center for Public Integrity gave New Hampshire the second lowest grade, only Wyoming did worse, on Public Access to Information. 49th out of 50. An F. A key factor in that was "the lack of any formal mechanism for appealing agencies rebuff [of] information requests. In such cases, a citizen's only recourse is the court system."

<https://www.publicintegrity.org/2015/11/09/18467/new-hampshire-gets-d-grade-2015-state-integrity-investigation>

We can do better.

It is a big step to go from a Right-to-Know complaint to a lawsuit. And, it is expensive, for everyone involved. My first case cost me over \$4,000 and cost the school district almost \$60,000. That's a lot of money, and just for one case. There are over 20 Right-to-Know cases a year on average. But, ironically, lawyers don't make a lot of money with Right-to-Know cases compared to others, so they require around \$5,000 up front to take a case. Most people can't afford that out of pocket.

We can do better.

Each of the 50 states and the federal government has some form of the Right-to-Know Law. Each of them has their own way to resolve complaints. While all states I know of rely on the courts in the end, there is a lot of variation between a complaint and going to court. For example, there could be a process for the public body to investigate and report on a complaint without involving anyone else. Or, the public body could have someone independent investigate and

report. The county attorneys or attorney general could have that job. Or, some other state official such as an ethics office. A court could appoint an expert as a master to offload the case. We could have a commission to hear Right-to-Know complaints similar to other commissions we have already in New Hampshire. There are lots of options, with plusses and minuses, that we need to study and weigh.

While there are lots of options to resolve complaints, I encourage you to limit the scope of this study commission to resolving complaints. To broaden the scope would likely open a can of worms. There are a lot of competing interests around the Right to Know. Reducing the cost of resolving complaints is a common ground where everyone can win. The study commission has only a few months to study the options and make a recommendation. Broadening the scope, for example by tasking the commission to handle other bills pending this year, could put the commission at risk of not being able to complete its work and address this important problem.

Right to Know is a balance between the people and our government. It is how the people hold the government accountable. The membership of this study commission reflects this balance. About half of the members represent the government at different levels, making sure each has a voice. The other half represents the people, with the people breaking the tie. It is very likely the legislators on the commission will have municipal experience as well. Any recommendations of the commission will then go through the legislature and governor, maintaining a close balance.

The Municipal Association wants another seat at the table, even though they already have a voice on the commission. This would upset the balance, displacing some other voice to amplify theirs. Perhaps the NHMA should be able to select their representative instead of the governor. But, it would be a mistake to give them another seat.

Thank you again for allowing me to testify today on HB178 and I hope you will vote that this bill ought to pass.

Sincerely,
David K. Taylor
Durham, NH

Amendments

1.17.17

Amendment to HB 178

not adopted

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8 (4) Two municipal officials, appointed by the New Hampshire Municipal
9 Association.

10 (5) One school board member, appointed by the New Hampshire School Boards
11 Association.

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Bill as
Introduced

HB 178 - AS INTRODUCED

2017 SESSION

17-0374
01/08

HOUSE BILL

178

AN ACT

establishing a commission to study processes to resolve right-to-know complaints.

SPONSORS:

Rep. Weyler, Rock. 13; Rep. Souza, Hills. 43; Rep. Itse, Rock. 10; Rep. Spillane, Rock. 2; Sen. Giuda, Dist 2; Sen. Gray, Dist 6; Sen. Birdsell, Dist 19; Sen. Avard, Dist 12

COMMITTEE:

Judiciary

ANALYSIS

This bill establishes a commission to study processes 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 struck through.~~]

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 Seventeen

AN ACT establishing a commission to study processes to resolve right-to-know complaints.

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

1 1 New Section; Commission to Study Processes to Resolve Right-to-Know Complaints. Amend
2 RSA 91-A by inserting after section 8 the following new section:

3 91-A:8-a Commission to Study Processes to Resolve Right-to-Know Complaints.

4 I. There is established a commission to study processes to resolve right-to-know complaints.

5 (a) The members of the commission shall be as follows:

6 (1) One member of the house of representatives, appointed by the speaker of the
7 house of representatives.

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

9 (3) The attorney general, or designee.

10 (4) One member from local government, appointed by the governor.

11 (5) One member who shall have brought suit pro se under RSA 91-A:7, appointed by
12 the governor.

13 (6) One member representing the New Hampshire Press Association, appointed by
14 that association.

15 (7) One member representing Right To Know New Hampshire, appointed by that
16 organization.

17 (8) One member of the New Hampshire Civil Liberties Union, appointed by that
18 organization.

19 (9) One citizen member, appointed by the governor.

20 (b) Legislative members of the commission shall receive mileage at the legislative rate
21 when attending to the duties of the commission.

22 II.(a) The commission shall study alternative processes to resolve right-to-know complaints
23 consistent with the following:

24 (1) Encouraging resolution of right-to-know complaints directly between citizens
25 and public agencies and bodies.

26 (2) Reducing the burden and costs of right-to-know complains on the courts.

27 (3) Reducing the burden and costs of right-to-know complaints on public agencies
28 and bodies.

29 (4) Reducing the burden and costs of right-to-know complains on citizens aggrieved
30 by violations of RSA 91-A.

31 (5) Increasing awareness and compliance with the right-to-know law to minimize

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1 violations.

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

4 III. The members of the commission shall elect a chairperson from among the members.
5 The first meeting of the commission shall be called by the house member. The first meeting of the
6 commission shall be held within 30 days of the effective date of this section. Five members of the
7 commission shall constitute a quorum.

8 IV. The commission shall report its findings and any recommendations for proposed
9 legislation to the speaker of the house of representatives, the president of the senate, the house
10 clerk, the senate clerk, the governor, and the state library on or before December 1, 2017.

11 2 Repeal. RSA 91-A:8-a, establishing a commission to study processes to resolve right-to-know
12 complaints, is repealed.

13 3 Effective Date.

14 I. Section 2 of this act shall take effect December 1, 2017.

15 II. The remainder of this act shall take effect upon its passage.