

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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1 (4) Reducing the burden and costs of right-to-know complains on citizens aggrieved
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HB 178 - VERSION ADOPTED BY BOTH BODIES

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CHAPTER 126
HB 178 - FINAL VERSION

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17 126:3 Effective Date.

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

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

Approved: June 16, 2017

Effective Date:

I. Section 2 effective November 1, 2017

II. Remainder effective June 16, 2017

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bette Lasky, Vice Chair
Sen Harold French, Member
Sen William Gannon, Member
Sen Martha Hennessey, Member

Date: March 21, 2017

HEARINGS

Tuesday	03/28/2017	
(Day)	(Date)	
Judiciary	SH 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	HB 614-FN	relative to forfeiture of personal property.
9:15 a.m.	HB 474-FN	regulating the use of a cell site simulator device.
9:30 a.m.	HB 178	establishing a commission to study processes to resolve right-to-know complaints.
9:45 a.m.	HB 220	amending the title of the chapter relating to child pornography.
10:00 a.m.	HB 349-FN	relative to out-of-home placements under the child protection act.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 614-FN

Rep. Sylvia

HB 474-FN

Rep. Kurk

HB 178

Rep. Weyler

Sen. Giuda

HB 220

Rep. Cushing

Rep. Messmer

HB 349-FN

Rep. Itse

Rep. Burt

Rep. Murotake

Rep. Souza

Sen. Gray

Rep. Pantelakos

Rep. S. Harvey

Rep. Hoell

Rep. King

Rep. Itse

Sen. Birdsell

Rep. Altschiller

Sen. Fuller Clark

Rep. Spillane

Sen. Avarad

Rep. O'Leary

Sen. Lasky

Jennifer Horgan 271-3092

Sharon M Carson
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-3092

HB 178, establishing a commission to study processes to resolve right-to-know complaints.

Hearing Date: March 28, 2017

Time Opened: 10:53 a.m.

Time Closed: 11:20 a.m.

Members of the Committee Present: Senators Carson, Lasky, French and Gannon

Members of the Committee Absent : Senator Hennessey

Bill Analysis: This bill establishes a commission to study processes to resolve right-to-know complaints.

Sponsors :

Rep. Weyler
Rep. Spillane
Sen. Birdsell

Rep. Souza
Sen. Giuda
Sen. Avard

Rep. Itse
Sen. Gray

Who supports the bill: Representative Weyler; Senator Avard; Senator Guida; Senator Birdsell; Representative Horrigan; Representative Hagan; Representative Kenison; Representative Wuelper; Representative Janvrin; Representative Wall; Representative Itse; Darryl Perry (Liberty Lobby LLC); David Saad (Right to Know NH); Ian Freeman (NH Liberty Party); Cordell Johnston (NH Municipal Association); Harriet Cady; Gloria Riel; Will Anderson; Sylvia Yeates

Who opposes the bill: Representative Keans; Tim King (NH Police Association); Marc Beaudoin (NH Troopers Association)

Summary of testimony presented in support:

Representative Kenison

- This bill was introduced to simplify the process of complaints in regards to Right to Know.
- The House Judiciary Committee agreed this was an important thing to do, but amended the bill to add other members to the Commission including, increasing the number of House members, adding a municipal official, a school board member, and a county official.
- Wanted to have all of the stakeholders involved in this process.
- Municipalities are interested in making this more cost effective and efficient.

Representative Wuelper

- We all believe the Right to Know process needs improvement.
- In cases of dispute, there is no way to resolve it without going to court, which is a costly process.
- There has to be a way to amend this process to be more amenable and cost effective.

Representative Itse

- The Right to Know process is cumbersome and broken.

- Even when there is a ruling in favor of the person who is seeking the Right to Know, sometimes the governmental agency ignores it.
- There are restrictions, usually in relation to the cost.
- The government should be held accountable at all times.
- Need to find some way to keep an eye on the cost, but always ensure it is open, accountable and accessible to the people.

Cordell Johnston (NH Municipal Association)

- Enforcement of the Right to Know law can be expensive for both sides.
- Fully agrees that it would be wonderful if there were easier and quicker way to resolve these complaints.
- There will always be cases where people have to go to court, but believes a number of them can be resolved through another process.

David Saad (Right to Know NH) (provided written testimony)

- The Right to Know Act's preamble states "to ensure the greatest possible access"
- Currently, in NH, the way citizens assert their rights is to go to court.
- Last year, the Center for Public Integrity gave NH an F, 49 out of 50 states, on the access of information. A key factor of that rating was the lack of formal mechanism for appealing an agency's rebuff of an information request.
- This commission will look at ways to reduce the number of complaints and the expenses.
- NH is one of only 19 states where the only option is to go to court.
- The majority of other states have some independent board, arbiter, advisory council, ombudsmen, etc.
- This commission will also look at ways to improve compliance with the law.
- Currently, there is very little training of government employees on how to ensure compliance.
- Senator French asked how many Right to Know complaints are brought to court each year.
 - Believes it is somewhere in the range of ten per year. This is a situation where that is the tip of the iceberg. The chances of getting compensation for attorney fees is not high, so many citizens cannot afford to go to court.
- Senator French asked if the study commission were to come up with a committee to oversee this, would that open the door for an overwhelming number of complaints.
 - It is hard to know what the size of the iceberg is. This bill is just to study the issue and to hear recommendations on this.

Darryl Perry (Liberty Lobby LLC)

- Shared his experience of filing Right to Know requests and the rebuff he has received from some agencies.
- The only resolution for these situations would be to go to court.
- This is the first step.

Harriet Cady (provided written testimony)

- Shared her personal experience of filing Right to Know requests.
- Has gone to court 27 times and has only lost one case.
- There is a real problem out there with these requests.
- The law leaves it up to the citizen to enforce.
- Most people do not have the money to go to court.

Summary of testimony presented in opposition :

None

Future Action: Pending

jch
Date Hearing Report completed: March 30, 2017

Speakers

SENATE JUDICIARY COMMITTEE

Date: 03/28/2017

Time: 9:30 AM

Public Hearing on HB 178

HB 178 – establishing a commission to study processes to resolve right-to-know complaints.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Sen Kevin Aard	SD #12
✓	<input checked="" type="checkbox"/> ####	<input checked="" type="checkbox"/>	<input type="checkbox"/> Darryl W Perry	Liberty Lobby LLC
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Senator Giuda	SD #2
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Senator Regina Birdce II	SD #19
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Sylvester Jackson	Self
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Tim King NH Police Association	
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Marc Beaudin NH Trappers Association	
✓	<input checked="" type="checkbox"/> -	<input checked="" type="checkbox"/>	<input type="checkbox"/> DAVID SAAD	Right to Know NH
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Will Anderson - Concord	Self
-	<input checked="" type="checkbox"/> - <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Rep Timothy Horgan	Stratford 6
✓	<input checked="" type="checkbox"/> -	<input checked="" type="checkbox"/>	<input type="checkbox"/> Rep Kurt Wuelpen	Stratford 3
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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Rep Ken Weyler	Rock 13
	<input checked="" type="checkbox"/> ####	<input checked="" type="checkbox"/>	<input type="checkbox"/> Harriet E Cady	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Rep Jasw B. Javvri	Rock 20
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Rep. James G. Way - House Judiciary	

Testimony

I testify in favor of HB 178 because I am in hopes that it will eventually end up with a hearings board much like the BTLA. If we have a hearings board maybe the lawyer's charges to towns won't be as expensive to taxpayers and they won't then hold the person taking the case for enforcement of the law responsible for costing the towns legal budget.

As we have just had town and school meetings in the majority of towns I am well aware of information withheld and/or being made incomplete to the voters.

As a citizen who has won some and lost some right to know cases, my skin had to thicken because of the personal attacks you take in order to make the public officials obey the law. The oath they take appears to mean nothing to many elected officials but rather their idea of what is right or even what they think is right taking precedence over citizen's rights or the laws.

In 1974 I took my school board to court for violating the Right to Know law because they refused to give my Learning Disabled son an IEP behind closed doors. I was shaking in my high heels to think I was having to talk with and answer the Judges questions, refute the schools attorney, who I must say wasn't able to do much against the minutes they kept which proved my case. Just had to have the Judge review their Non Public minutes and show the letter they had sent by the Superintendent to me. But now for the most heart breaking part, the public officials who have with a vengeance taken after any citizen who dares to take them to court for violating their oath. The lies they tell the community about you as a person and how you have "Cost" the towns taxpayers so much in legal fees and most citizens don't even ask the question "if you obeyed the law could the citizen have taken you to court?"

Although RSA 91-A protects citizens Right to Know it is left to the citizen and newspapers to enforce the law. There is nothing to stop the lies the leadership in the community will tell people what a bad person you are and since they are elected leaders, most often they are believed without question.

So what do we do, are we the only ones to be able to enforce the law? Do we let them violate it till something really bad happens? How about a man who committed suicide after being made to look horrible for asking questions of the officials at their meetings, is the loss of his life enough?

Unfortunately I don't have an answer for how many people have suffered the tales told by elected officials who don't like being sued under Right to Know. However, I do know the people who avoid me for daring to enforce my rights and who have listened to false tales about how I have cost the taxpayers \$500,000. Nearer \$50,000 for the lawyer who defended them in the 6 cases of which I won 4.

Not once have I heard anyone say back, "Well if they broke the law how could she make them obey the law other than going to court?" Will we ever get an Attorney General who can enforce the Right to Know when a citizen brings the facts? Why does the

Attorney General's office have a division of public Integrity if not make elected officials obey the states statues. I just know, once again, a business owner who dared to post the truth has seen retaliation by people stating others shouldn't do business with her. So even though 40 years ago the Office of Civil rights found the school violated my son's educational rights, and the court found they violated the Right-to-Know law, they are still not obeying Right to Know and the person who stood up for her rights has become a victim with attacks on her business. Guess that will fix us who dare to question those who ask to be elected by us so they can serve and who take an oath to uphold the laws of the state of NH and the NH and US Constitution. First we must pay the taxes for the lawyer to defend them and then take the communities condemnation for daring to make an elected official do that which they took an oath to do! How dare we ask them to adhere to what they swore to do!

Harriet E. Cady
Deerfield

Please vote ought to pass

To: Honorable Members of the Judiciary Committee

Re: HB178

I ask you to support HB 178 to establish a commission to study complaints.

The Right-To-Know Law ensures openness and visibility into the actions, decisions, and records of government, therefore we have a right to know what decisions they are making, when they make them, and why they arrived at a given decision. Violations of the law diminishes our access to this information and creates an environment where misuse of power can flourish and distrust of government grows.

Should a citizen feel the law has been violated, currently, enforcement of the law falls squarely on the citizen's shoulders. Costs and legal complexities associated with filing a petition in court is a financial and emotional burden, and for some it's simply prohibitive. Additional costs are also born by public bodies and the courts. Regardless of who wins or loses the lawsuit, the taxpayer is burdened with a great deal of the total expense. To reduce these costs to the taxpayers, this study commission will study ways to reduce both the number of and the expense of resolving complaints.

Some of the alternative ways other states resolve right to know complaints include the use of:

- Independent Arbiters
- Advisory Councils
- Public Access Counselors
- Attorney General's Office
- Compliance Boards
- Ombudsman Office

The appeals boards currently operating in NH (i.e. Tax and Land Appeals, Water Council, etc) also provide a framework and track record for success in resolving complaints.

These and other options should be reviewed for their merits with the goal of establishing a less costly procedure for resolving right to know complaints.

Regards,

David L. Saad 184 Wheeler Lane, Rumney NH 03266

President

Right To Know New Hampshire (RTKNH) Promoting Open Government

RightToKnowNH.wordpress.com

RightToKnowNH@gmail.com

HB 178
TESTIMONY BY REP. KEN WEYLER
March 28, 2017

1. Right-To-Know is a fundamental way for the citizen to keep track of what government is doing, and brings sunshine to the process. Government should not operate in secret, with decisions known only to the elite.
2. There is a long history of citizens asking for documents from a board or municipal officer, and being denied the information, information that should rightly be made public either on-line or in the appropriate office.
3. The process of going to court to have the court order the officials involved to produce the information is expensive for the individual as well as the municipality. It also delays for months the access to the information.
4. We have had many court cases, but still the holders of the information too often are guilty of breaking the right-to-know law because there is rarely any punitive action.
5. This bill proposes a commission that must complete its work by November 1, 2017. The membership of the commission attempts to balance the often conflicting opinions of what is public information.
6. On the municipal side we hear complaints of citizens who demand hundreds of pages of documents on a regular basis, and consume many hours of clerical time.
7. This commission will examine both sides, and will try to make the process less burdensome, less time consuming and fairer to both sides. They will also try to bring more public awareness to the process.
8. This is a very worthy project and I believe it will increase the accountability of government and its relation to its citizens. Please pass bill.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Thursday, April 13, 2017

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, the committee recommends that the Bill

ought to pass

BY A VOTE OF: 5-0

Senator William Gannon
For the Committee

This bill will establish a commission to study processes to resolve right-to-know complaints. The right-to-know complaint process is confusing and costly, and the Committee believes it is an important issue which merits study and consideration.

Jennifer Horgan 271-3092

FOR THE CONSENT CALENDAR

JUDICIARY

HB 178, establishing a commission to study processes to resolve right-to-know complaints.

Ought to Pass, Vote 5-0.

Senator William Gannon for the committee.

This bill will establish a commission to study processes to resolve right-to-know complaints. The right-to-know complaint process is confusing and costly, and the Committee believes it is an important issue which merits study and consideration.

Docket of hb178		
12/28/2016	H	Introduced 01/04/2017 and referred to Judiciary HJ 2 P. 19
01/04/2017	H	Public Hearing: 01/11/2017 10:45 AM LOB 208
01/11/2017	H	Executive Session: 01/17/2017 01:00 PM LOB 208
01/18/2017	H	Committee Report: Ought to Pass with Amendment # 2017-0049h for 01/26/2017 (Vote 18-0; CC)
01/26/2017	H	Amendment # 2017-0049h: AA VV 01/26/2017 HJ 4 P. 4
01/26/2017	H	Ought to Pass with Amendment 0049h: MA VV 01/26/2017 HJ 4 P. 4
02/22/2017	S	Introduced 02/16/2017 and Referred to Judiciary; SJ 7
03/07/2017	S	==CANCELLED== Hearing: 03/14/2017, Room 100, SH, 10:15 am; SC 14
03/21/2017	S	Hearing: 03/28/2017, Room 100, SH, 09:30 am; SC 16
04/13/2017	S	Committee Report: Ought to Pass, 04/20/2017; Vote 5-0; CC; SC 19
04/20/2017	S	Ought to Pass: MA; VV; OT3rdg; 04/20/2017; SJ 14
05/03/2017	S	Enrolled Bill Amendment # 2017-1586e Adopted, VV, (In recess of 04/27/2017); SJ 16
05/03/2017	H	Enrolled Bill Amendment # 2017-1586e: AA VV 04/20/2017 HJ 14 P. 25
05/12/2017	S	Enrolled (In recess 05/11/2017); SJ 17
05/17/2017	H	Enrolled 05/04/2017
06/19/2017	H	Signed by Governor Sununu 06/16/2017; Chapter 126; I. Sec. 2 eff. 11/1/2017 ; II. Rem. eff. 6/16/2017

Other Referrals

April 28, 2017
2017-1586-EBA
06/10

Enrolled Bill Amendment to HB 178

The Committee on Enrolled Bills 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 as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 178

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to HB 178

Amend RSA 91-A:8-a, II(a)(2) as inserted by section 1 of the bill by replacing it with the following:

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

Amend RSA 91-A:8-a, III as inserted by section 1 of the bill by replacing line 2 with the following:

The first meeting of the commission shall be called by the first-named house member. The first meeting of the

COMMITTEE REPORT FILE INVENTORY

H6178 ORIGINAL REFERRAL

_____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

_____ - AMENDMENT # _____ _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION _____ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

2017-1586-EBA

PLEASE INCLUDE THE COMMITTEE OF CONFERENCE REPORT HERE IF IT IS SIGNED BY ALL.

NOTE: IF A BILL HAS BEEN RE-REFERRED, PLEASE MAKE UP A DUPLICATE BILL FILE

DATE DELIVERED TO SENATE CLERK

7/28/17

By:



COMMITTEE AIDE