

# Bill as Introduced

HB 83 - AS AMENDED BY THE HOUSE

7Apr2021... 0369h

2021 SESSION

21-0060  
04/05

HOUSE BILL

**83**

AN ACT prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

SPONSORS: Rep. Berch, Ches. 1; Rep. Schultz, Merr. 18; Rep. M. Smith, Straf. 6; Rep. Sylvia, Belk. 6; Rep. Meuse, Rock. 29; Rep. McGuire, Merr. 29; Rep. Amanda Bouldin, Hills. 12; Rep. Stevens, Hills. 34; Rep. DiLorenzo, Rock. 17

COMMITTEE: Judiciary

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ANALYSIS

This bill prohibits and renders unenforceable the inclusion of a non-disparagement clause in a settlement agreement involving a governmental unit.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

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

1 1 Actions Against Governmental Units. Amend RSA 507:17 to read as follows:

2 507:17 Actions Against Governmental Units; Definition; Court Records.

3 I. "Governmental unit" means the state and any political subdivision within the state  
4 including any county, city, town, precinct, school district, chartered public school, school  
5 administrative unit, or departments or agencies thereof.

6 II. In any action *or claim by or* against a governmental unit *or any former or current*  
7 *elected official, appointed official, officer, or employee*, where the governmental unit has  
8 agreed to a settlement of such action *or claim*, the complete terms of the settlement and the decree  
9 of the court judgment shall be available as a matter of public record pursuant to RSA 91-A.

10 III. *A non-disparagement clause or other language which either prevents the*  
11 *parties from discussing the facts of the underlying claim or speaking negatively about each*  
12 *other shall not be included in any settlement agreement involving a governmental unit.*  
13 *Any such language included in a settlement agreement involving a governmental unit*  
14 *shall be unenforceable.*

15 IV. The court may redact the names of minor children or any other person the court  
16 determines to be entitled to privacy.

17 2 Effective Date. This act shall take effect 60 days after its passage.

# Committee Minutes

# SENATE CALENDAR NOTICE

## Judiciary

Sen Sharon Carson, Chair  
Sen Bill Gannon, Vice Chair  
Sen Harold French, Member  
Sen Rebecca Whitley, Member  
Sen Jay Kahn, Member

Date: April 7, 2021

### HEARINGS

Wednesday

04/14/2021

(Day)

(Date)

Judiciary	REMOTE 000	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. <b>HB 83</b>	prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.	
1:15 p.m. <b>HB 360</b>	relative to the rental of shared living facilities.	
1:30 p.m. <b>HB 436</b>	relative to eyewitness identification procedures.	
1:45 p.m. <b>HB 474</b>	prohibiting surveillance by the state on public ways or sidewalks.	
2:00 p.m. <b>HB 540</b>	relative to supported decision-making as an alternative to guardianship.	
2:15 p.m. <b>HB 630</b>	authorizing certain procedures for rulemaking.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98477564267>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,98477564267# or +16465588656,,98477564267#
4. Webinar ID: [984 7756 4267](https://www.zoom.us/j/98477564267)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: [remotesenate@leg.state.nh.us](mailto:remotesenate@leg.state.nh.us) or call (603-271-6931).

### EXECUTIVE SESSION MAY FOLLOW

#### Sponsors:

**HB 83**

Rep. Berch

Rep. Schultz

Rep. M. Smith

Rep. Sylvia

Rep. Meuse  
Rep. DiLorenzo

**HB 360**

Rep. Frost

**HB 436**

Rep. Cushing

**HB 474**

Rep. Erf

**HB 540**

Rep. Chase

Rep. Cannon

Sen. Whitley

**HB 630**

Rep. McGuire

Sen. Reagan

Rep. McGuire

Rep. Harriott-Gathright

Rep. Warden

Rep. Langley

Rep. Gordon

Rep. McMahon

Rep. P. Schmidt

Rep. Amanda Bouldin

Rep. Welch

Rep. Marsh

Rep. M. Pearson

Sen. Rosenwald

Rep. Hatch

Rep. Stevens

Rep. Weber

Rep. Berch

Rep. Schuett

Jennifer Horgan 271-7875

Sharon M Carson

Chairman

# Senate Judiciary Committee

*Sonja Caldwell 271-2117*

**HB 83**, prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

**Hearing Date:** April 14, 2021

**Members of the Committee Present:** Senators Carson, Gannon, French, Whitley and Kahn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill prohibits and renders unenforceable the inclusion of a non-disparagement clause in a settlement agreement involving a governmental unit.

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**Sponsors:**

Rep. Berch

Rep. Schultz

Rep. M. Smith

Rep. Sylvia

Rep. Meuse

Rep. McGuire

Rep. Amanda Bouldin

Rep. Stevens

Rep. DiLorenzo

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**Who supports the bill:** Rep. Paul Berch, Rep. Marjorie Smith, Eric Pauer, Nicholas Thomas, Dan McGuire, Alexandra Mennella, Rep. Wendy Chase

**Who opposes the bill:** Barrett Christina (NH School Boards Assoc.), Cordell Johnston (NH Municipal Assoc.), Diane Bessey, Elizabeth Sargent (NH Assoc. of Chiefs of Police), Brian Hawkins (NEA-NH), Elizabeth Fox, Vinnie Baiocchetti

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

**Rep. Paul Berch**

- This bill would prohibit non-disparagement clauses in settlement agreements involving a governmental unit.
- This means that when someone settles a case involving a governmental body, that settlement cannot include a clause that prohibits the parties from discussing the facts of the claim or speaking negatively about each other.
- This bill does not apply to private suits that do not involve government actors. For example, if he was involved in a motor vehicle accident with his neighbor and they settled between the two of them and he paid them and agreed they would not talk about it anymore, that is fine, this bill would not affect that.
- In a suit that involves a governmental entity or employee, the public has a right to know.
- He stated that a reporter tried to check in on a large settlement for misconduct involving a county jail and went to a plaintiff who settled for a large sum and was told they could not

talk about it or they would lose their settlement money. This is a problem that happens in NH and that is what got him interested in this.

- Sometimes a law enforcement officer is determined to have violated the rights of a citizen and a secret settlement is reached and an officer is able to be hired in another town.
- Civil trials are disappearing in the US. Parties are turning to private settlements.
- Systemic discrimination has been obscured through sealed settlements and non-disparagement provisions.
- One of the core values of the first amendment is to promote public understanding through free speech of the workings of our government.
- The objection the committee will hear is that this will increase the cost of litigation. This claim has been widely discredited. Courts and scholarly studies have rejected it.
- He was a career public defender. Most of his work was negotiation. Criminal cases get settled every day without anti disparagement clauses.
- NH has a statute that requires the fact of settlement be recorded at the town clerk's office. It is of little use if the parties cannot talk about what happened.

Sen. French asked if this bill would prohibit an individual from negotiating with a county and prohibit them from being able to say anything.

Rep. Berch said an individual will still be able to settle a suit with a county; the bill just stipulates that the settlement cannot contain a clause that bars the individual from being able to talk about what happened to them.

Sen. French asked him to clarify that this bill doesn't prohibit an individual from negotiating that the state cannot say anything. He thought there would be times when the public wouldn't want the state to be able to say anything.

Rep. Berch said the public has an independent right to know what happened by actions of the government and government employees. People may find it convenient not to have that known but it is the public's right to know. This bill would not affect statutes that might pertain to the protection of the name of a juvenile.

Sen. Gannon said Rep. Berch is putting the public good ahead of his. Rep. Berch is giving them standing in a case, which could interfere with Sen. Gannon's personal interests.

Rep. Berch said the principle is right but would not use that language.

Sen. Kahn said in a settlement agreement, sometimes it involves money and sometimes it does not. For example, there might be a mutual agreement for an employee to separate from an organization. He asked if that would be considered a settlement.

Rep. Berch said yes. Settlements can be nonmonetary.

Sen. Kahn asked if the term "non-disparagement" is defined.

Rep. Berch said it is not defined in statute but there are legal definitions.

Sen. Kahn asked what the side effect of a non-disparagement clause might be. For example, he said there could be an agreed upon statement and asked if that would be considered a non-disparagement clause.

Rep. Berch said this bill keeps the state from barring the plaintiff from talking about it afterward. If the agreement is there is a statement of fact and no one can say otherwise, that becomes a non-disparaging statement.

Sen. Carson said Senate Judiciary has seen versions of this issue before. One concern is that when you have a disparagement clause in there, it puts an end to the issue. Without it, you will have individuals that will keep going at each other. The disparagement clause is meant to put an end to that. She asked if banning these prevent people from moving on from an issue



Rep. Berch said they are competing values. Yes, there are people who carry torches about cases, but the point is that democracy can be messy. Just because there is finality now about an incident that happened does not mean it will not become relevant in a few years. There could be a pattern of incidents and if they are covered with non-disparagement clauses, how can you effect change.

Sen. Carson asked if getting rid of it would be unfair to government. They are often prohibited from disclosing information about the privacy of an individual.

Rep. Berch said it is less of a problem than you might think because of the concept of waiver of privacy. If you are talking about something in public, you have waived your right to privacy and the government can respond. That does not cover legally confidential material and this bill doesn't address that.

### **Lisa Marie Mulkern**

- She is in favor of the bill. She is the former programs information officer at the NH veterans' home from 2002-2006.
- 7 years ago, she testified about her experience at the home before a senate committee. She has a settlement agreement that she was forced into. She was not given the opportunity to go before the personnel appeals board. She settled for nothing more than monetarily what she would have been given if she had been allowed to go before the personnel appeals board and win her job back. The only thing she wanted out of her agreement was a non-disparagement.
- She knew about the management and financial issues going on at the home. It was difficult to get the agreement so that she could speak about it. She raised concerns and showed evidence of what was going on.
- This bill is important. Very few people would go to the lengths she did to not be silenced.

### **Summary of testimony presented in opposition:**

#### **Barrett Christina – NH School Board Association**

- The NHSBA is opposed to the bill.
- There are certain statutes already indicate or present that public employees have privacy rights. RSA91A:3 paragraphs 2, a, b, and c all allow public bodies to go into nonpublic session to discuss employment matters. RSA189:67 paragraphs 3 and 4 talk about school staff private information that cannot be disclosed by the Dept. of Education.
- NHSBA has concerns related to student privacy if non-disparagement agreements were prohibited. In a school context, it would be difficult to bifurcate facts if a student was involved.
- Non-disparagement agreements are more efficient and cost effective for public entities.
- On line 11 it says a non-disparagement clause that prevents parties from discussing the facts of an underlying claim, however facts are often in dispute.
- Non-disparagement clauses also protect the employee from embarrassing facts from coming out that might prohibit that person from gaining further employment or protecting their reputation.
- The person filing a lawsuit against a governmental entity should be free to negotiate and settle as they see fit.

Sen. Carson asked if he believes that often times settlements are larger than they normally would be because of the disparagement clause in order to compensate one side.

Mr. Christina said he could not answer that.

Sen. Kahn asked if under RSA198, if there is a separation agreement reached between a school employee and a school board and there was a sequence of evaluations that occurred prior, would all

of those evaluations become part of public record and is that an issue he believes is in conflict with this legislation.

Mr. Christina said that is going to be one of the confusing aspects of this bill. Certain employee records of public employees are confidential under RSA91A:5. Those would become public records. Non-disparagement agreements protect the employee as well as the employer.

Sen. Kahn said there may be facts that ought to be known to future employees and that public interest trumps personal interest. He asked how you reconcile that.

Mr. Christina said that was a good question that school districts are challenged with. If there was alleged wrongdoing and that employee is certified by DOE, there would be an investigation to determine if they should still be working in a school with children. Whether or not a previous employer would write a letter of recommendation could be part of a settlement agreement.

#### **Cordell Johnston – NH Municipal Association**

- The NHMA is strongly opposed to the bill.
- It has been mentioned that there has been similar legislation in the past. The Senate killed an identical bill, HB154, two years ago. It was a bipartisan vote.
- The state should not be dictating to local governments what they can or cannot include in their contracts. Parties have a right to settle disputes as they see fit. In almost all cases, parties are represented by legal counsel and they enter into agreements voluntarily.
- A town might have a claim against a vendor and there could be a commercial claim. It is an important settlement tool. It defies common sense that taking a settlement tool away from the parties would not make it harder to settle cases. If they cannot do this, it will prolong litigation. It may not lead to higher settlements but will lead to higher attorney fees and longer litigation.
- Under NH statute, any information that would constitute invasion of privacy, that a town official learns in the course of official duties or in nonpublic session, they are prohibited from talking about publicly. If you do not allow a non-disparagement clause, then the town officials are prohibited from talking about it under RSA42:1A, but the individual on the other side would have no restriction whatsoever, which is unfair.
- He believes the public does not have a right to hear an individual talk if they voluntarily signed an agreement that says they would not talk.

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Date Hearing Report completed: April 15, 2021

# Speakers

# Senate Remote Testify

## Judiciary Committee Testify List for Bill HB83 on 2021-04-14

Support: 7 Oppose: 7 Neutral: 0 Total to Testify: 4

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Christina, Barrett M.	Not Given	Not Given	A Lobbyist	New Hampshire School Boards Association	Oppose	Yes	4/12/2021 1:03 PM
Johnston, Cordell	cjohnston@nhmunicipal.org	603-230-3323	A Lobbyist	NH Municipal Association	Oppose	Yes	4/12/2021 5:49 PM
Berch, Paul	pberch@myfairpoint.net	603.399.4960	An Elected Official	Myself	Support	Yes	4/10/2021 9:58 AM
smith, marjorie	Not Given	Not Given	An Elected Official	Myself	Support	Yes	4/12/2021 1:52 PM
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No	4/12/2021 12:54 PM
Baiocchetti, Vinnie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/8/2021 3:24 PM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 4:04 AM
McGuire, Dan	danmcguire@gmail.com	603.782.4918	A Member of the Public	Myself	Support	No	4/10/2021 7:22 PM
Mennella, Alexandra	amennella1@protonmail.com	16466109858	A Member of the Public	Myself	Support	No	4/12/2021 9:31 PM
Bessey, Diane	dbessey@monarchschoole.org	603-332-2848	A Member of the Public	Myself	Oppose	No	4/13/2021 5:13 PM
Sargent, Elizabeth	esargent@sheehan.com	603-568-0213	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	4/13/2021 5:23 PM
Hawkins, Brian	bhawkins@nhnea.org	603-545-7305	A Lobbyist	NEA-NH	Oppose	No	4/14/2021 9:55 AM
Fox, Elizabeth	efox@ci.keene.nh.us	Not Given	A Member of the Public	Myself	Oppose	No	4/14/2021 11:44 AM
Chase, Wendy	wendy.chase@leg.state.nh.us	603.319.7259	An Elected Official	Myself	Support	No	4/14/2021 1:13 PM

# Testimony

February 22, 2021

*Via email and first class mail*

Edward Gordon, Chair  
New Hampshire House Judiciary Committee  
Legislative Office Building, Room 208  
33 North State St.  
Concord, NH 03301

Re: HB 83 (prohibiting nondisparagement clauses in settlement agreements involving government units)

Dear Representative Gordon,

I am writing on behalf of the New Hampshire Association of Special Education Administrators (NHASEA), which represents special education directors employed by school districts throughout the State.

The NHASEA submits that HB 83 is too broad. The bill would prohibit *any* settlement agreement “involving a government unit” from including “[a] nondisparagement clause or other language which either prevents the parties from discussing the facts underlying the claim or speaking negatively about each other.”

The bill is overly broad in two respects. First, it relates to “any” such settlement agreement with a government unit. Second, by including all settlements that “involve” a government unit, without defining the term “involve,” the bill arguably sweeps in claims where the government unit was only indirectly involved.

The NHASEA recognizes that non-disparagement clauses have a bad reputation. In a healthy democracy, the electorate needs to know the truth about instances of government malfeasance.

However, state and federal laws sometimes prohibit government entities and public employees from telling their side of the story. For example, the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b)(1), bars a school district from disclosing personally identifiable information about a student without prior written parental consent. When parents publicly claim a school district or school employee did not do right by their child, FERPA prevents the targets of criticism from defending themselves by revealing the true facts. That is not fair. Nor does one-sided publicity promote a healthy democracy.

In order to level the playing field, school districts sometimes insist on nondisparagement clauses in settlement agreements.

Edward Gordon, Chair  
February 22, 2021  
Page 2

For instance, in the realm of special education, school districts and parents often agree on cost-sharing arrangements for tuition at specialized private schools; these agreements sometimes include non-disparagement clauses. Parties enter into these agreements with open eyes in order to avoid the expense, acrimony, and unpredictability of litigation. When a school district buys its peace by compromising, it rightfully expects these parents will not then litigate the case in the court of public opinion, especially if FERPA bars the school district or its employees from defending themselves.

For these reasons, the NHASEA opposes HB 83 as overbroad. The NHASEA's concerns can be remedied by: (1) narrowly defining the term "involve"; and (2) exempting settlement agreements where state or federal law restricts the government unit or its officers and employees from telling the public their side of the story.

Thank you for considering these comments.

Very truly yours,

*Gerald M. Zelin*

Gerald M. Zelin

cc: Jane Bergeron, Executive Director, NHASEA

## Jennifer Horgan

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**From:** Barrett Christina <bchristina@nhsba.org>  
**Sent:** Tuesday, April 13, 2021 10:07 AM  
**To:** Sharon Carson; William Gannon; Jay Kahn; Becky Whitley; Harold French  
**Cc:** Jennifer Horgan; Gerald M. Zelin; Rebecca Wilson  
**Subject:** HB 83 - written comments  
**Attachments:** 2021-02-22 ltr to House Judiciary Comm re HB 83.pdf

Dear Honorable Members of the Committee –

Please accept this email as the New Hampshire School Boards Association's written comments in opposition to HB 83. Additionally, NHSBA refers the Committee to the attached testimony submitted by Attorney Gerald M. Zelin, also in opposition to HB 83. Attorney Zelin is not able to attend tomorrow's hearing and asked the School Boards Association to submit the attached letter on his behalf.

NHSBA believes HB 83 is imprudent for the following reasons.

First, governmental employees are frequently accused of all sorts of misdoings that have little basis in fact. A lawsuit, however, is often resolved for a "nuisance value" or other limited amount reflecting a cost-risk analysis. These resolutions can save governmental entities hundreds of hours and tens of thousands of dollars (or more) associated with protracted litigation. The lack of a confidentiality agreement could induce public officials - even those not associated with the claim - to fight to the end. Additionally, as written, the prohibition in paragraph III applies equally when the governmental unit is the plaintiff. Governmental efficiency will be negatively impacted in having to pursue cases that would otherwise be settled, and worse yet, possibly lead governmental officials to simply forego the claim in the first place, thereby losing the opportunity to collect on various claims.

Second, lack of a confidentiality agreement or non-disparagement agreement in a settlement can invite additional copy-cat claims, which often have less merit than the original.

NHSBA also believes that HB 83 would serve as an impediment – to both parties – to efficient resolution of lawsuits, which are costly in terms of money and personnel resources.

Additionally, in the school context, many of these claims or lawsuits may involve children or students. These sorts of non-disparagement clauses or confidentiality clauses are not always intended to protect the parties to litigation. Rather, they are intended to protect sensitive and confidential matters involving children. School districts are obligated to protect student privacy through a myriad of state and federal laws. NHSBA has concerns that prohibiting such clauses in settlement agreements may put student privacy at risk.

Last, it should also be noted that non-disparagement clauses are not always included for the benefit of the public body. Indeed, these clauses are mutually agreed to by the parties – sometimes to protect the litigant or plaintiff. Matters of the plaintiff's reputation, medical condition, substance misuse or other embarrassing facts may be key components to the litigation. As such, the non-disparagement clauses have general benefits to others and not just the public body.

For these reasons, NHSBA opposes HB 83 and asks the committee to find this bill inexpedient to legislate.

Thank you for your consideration.





**Barrett M. Christina**

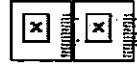
Executive Director

**NH School Boards Association**

P: (603) 228-2061 x307F: (603) 228-2351

A: 25 Triangle Park Drive, Suite 101, Concord, NH 03301

W: [nhsba.org](http://nhsba.org)E: [bchristina@nhsba.org](mailto:bchristina@nhsba.org)



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## Jennifer Horgan

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**From:** Bill Herman <townadmin@townofauburnnh.com>  
**Sent:** Monday, April 12, 2021 1:17 PM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** HB 83 - Relative to Prohibiting Non-Disparagement Clauses  
**Importance:** High

April 12, 2021

Honorable Sharon Carson, Chair, and Members  
of the Senate Judiciary Committee  
Room 100  
State House  
Concord, NH 03301

Dear Chair Carson and Members of the Committee:

I wanted to take this opportunity to write and express our concern for the adoption of HB 83 – an act relative to prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

I am aware when this measure was before the House, supporters of the bill referred to non-disparagement clauses as “gag orders,” which they are not. They are contractual terms negotiated freely between two parties to a lawsuit. They can operate for the benefit of both the government entity and the other party to the litigation, and they serve the purpose of ending the dispute once the agreement is signed, rather than allowing the parties to continue to trade false or questionable claims (or true but damaging claims) about each other.

As you are likely aware, non-disparagement clauses are frequently an essential term in settlement agreements and prohibiting them would take away an important incentive to settle. Removing this common settlement tool from the toolbox will likely lead to protracted litigation, additional legal expense, and ultimately more costs for taxpayers.

Further, litigation settlements are often discussed and resolved in nonpublic sessions of a board of selectmen, city council, or school board; the minutes are inevitably (and appropriately) sealed, and the members of that body are prohibited by law (RSA 42:1-a) from making any of those discussions public. The other party to the litigation, however, is not subject to any such prohibition, so that party is free to make public statements—true or not—about the dispute, which the public entity has no ability to counter. That is why a non-disparagement clause may be necessary.

In addition, which you would likely know better than I, various state and federal laws prohibit government entities from disclosing information that would violate individual privacy. Such an example from the school context is the federal Family Educational Rights and Privacy Act (FERPA), which prohibits a school district from disclosing personally identifiable information about a student. If a parent files a lawsuit claiming that a school district or school employee mistreated a child, HB 83 would prevent the school district and the parent from entering into a settlement agreement that contains a non-disparagement clause. Thus, while the school district would be prohibited by federal law from saying anything publicly about the situation, the parent could make any public claims he or she wants, and the school district (and its employee) would have no recourse.

For these reasons, I urge the Senate Judiciary Committee to vote HB 83 as Inexpedient to Legislate.

Thank you for your consideration.

*Bill*

Bill Herman, CPM  
Town Administrator  
Town of Auburn  
PO Box 309  
Auburn, NH 03032  
(603) 483-5052, ext. 111



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## Jennifer Horgan

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**From:** Sharon Carson  
**Sent:** Thursday, April 15, 2021 3:33 PM  
**To:** Jennifer Horgan  
**Subject:** FW: HB 83 follow up for testimony items referenced

Jen,

Info from testimony yesterday. Also note her correct last name as she states below.

Thanks.

Deb

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**From:** Lisa Marie Mulkern <fosterdogsummit@gmail.com>  
**Sent:** Thursday, April 15, 2021 1:41 PM  
**To:** Sharon Carson <Sharon.Carson@leg.state.nh.us>  
**Cc:** Paul Berch <pberch@myfairpoint.net>  
**Subject:** HB 83 follow up for testimony items referenced

Senator Carson,

For your reference with respect to my testimony on HB 83, provided are links to HB 591 from 2014 as well as the recorded testimony from the HB 83 from the house hearing earlier this year.

Also please note for the official record that my name is Lisa Marie Mulkern with a k not Mulhern with an h as it appears you may have misheard me in my introduction on the phone yesterday.

Thank you.

Testimony begins at 1:26:20  
<https://youtu.be/lqJCRqSasU4>

HB 591

[http://gencourt.state.nh.us/bill\\_Status/sos\\_archives.aspx?lsr=671&sv=2014&sortoption=&txtsessionyear=2014&txtbillnumber=Hb591](http://gencourt.state.nh.us/bill_Status/sos_archives.aspx?lsr=671&sv=2014&sortoption=&txtsessionyear=2014&txtbillnumber=Hb591)

Sincerely,  
Lisa-Marie Mulkern

# Voting Sheets

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # HB83

Hearing date: \_\_\_\_\_

Executive Session date: \_\_\_\_\_

Motion of: ITL Vote: 4-1

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Wednesday, April 21, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 83**

AN ACT

prohibiting non-disparagement clauses in  
settlement agreements involving a governmental  
unit.

Having considered the same, the committee recommends that the Bill  
IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 4-1

Senator Sharon Carson  
For the Committee

Jennifer Horgan 271-7875



**JUDICIARY**

**HB 83**, prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.

Inexpedient to Legislate, Vote 4-1.

Senator Sharon Carson for the committee.

## General Court of New Hampshire - Bill Status System

**Docket of HB83**

Docket Abbreviations

**Bill Title:** prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.*Official Docket of HB83.:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/4/2021	H	<b>Introduced</b> (in recess of) 01/06/2021 and referred to Judiciary <b>HJ 2 P. 34</b>
2/23/2021	H	Public Hearing: 02/23/2021 09:30 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/91815905671">https://www.zoom.us/j/91815905671</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/2/2021	H	Executive Session: 03/02/2021 09:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/95501229688">https://www.zoom.us/j/95501229688</a>
3/9/2021	H	Committee Report: Ought to Pass with Amendment <b>#2021-0369h</b> (Vote 20-1; CC) <b>HC 18 P. 16</b>
4/7/2021	H	Amendment <b>#2021-0369h</b> : AA VV 04/07/2021 <b>HJ 5 P. 37</b>
4/7/2021	H	<b>Ought to Pass with Amendment</b> 2021-0369h: MA VV 04/07/2021 <b>HJ 5 P. 37</b>
4/7/2021	H	Reconsider (Rep. Osborne): MF VV 04/07/2021 <b>HJ 5 P. 50</b>
4/7/2021	S	Introduced 04/01/2021 and Referred to Judiciary; <b>SJ 11</b>
4/7/2021	S	Remote <b>Hearing</b> : 04/14/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; <b>SC 19</b>
4/21/2021	S	Committee Report: Inexpedient to Legislate, 04/29/2021; <b>SC 21</b>
4/29/2021	S	Inexpedient to Legislate, <b>RC 24Y-0N</b> ; MA === <b>BILL KILLED</b> ===; 04/29/2021; <b>SJ 13</b>

NH House

NH Senate

# Other Referrals

## Senate Inventory Checklist for Archives

Bill Number: HB83

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

\_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan  
Committee Aide

8/12/21  
Date

Senate Clerk's Office AK