

**CONSENT CALENDAR**

**February 3, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred HB  
1322,**

**AN ACT modifying the governmental records exempted  
from RSA 91-A. Having considered the same, report the  
same with the following resolution: RESOLVED, that it  
is INEXPEDIENT TO LEGISLATE.**

**Rep. Marjorie Smith**

**FOR THE COMMITTEE**

## **COMMITTEE REPORT**

|                   |   |
|-------------------|---|
| Committee:        | <b>Judiciary</b>  |
| Bill Number:      | <b>HB 1322</b>  |
| Title:            | <b>modifying the governmental records exempted from RSA 91-A.</b> |
| Date:             | <b>February 3, 2022</b>   |
| Consent Calendar: | <b>CONSENT</b>  |
| Recommendation:   | <b>INEXPEDIENT TO LEGISLATE</b>                                   |

### **STATEMENT OF INTENT**

While perhaps well-intentioned, this bill lacks definition of key terms such as “governmental agency.” It would permit personnel records to be widely shared and could be detrimental to the individual and the agency. There are statutes in the area of labor and law enforcement that address in a more appropriate manner the issues raised by the bill.

Vote 19-2.

Rep. Marjorie Smith  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Judiciary

**HB 1322**, modifying the governmental records exempted from RSA 91-A. **INEXPEDIENT TO LEGISLATE.**

Rep. Marjorie Smith for Judiciary. While perhaps well-intentioned, this bill lacks definition of key terms such as “governmental agency.” It would permit personnel records to be widely shared and could be detrimental to the individual and the agency. There are statutes in the area of labor and law enforcement that address in a more appropriate manner the issues raised by the bill. **Vote 19-2.**

**HOUSE COMMITTEE ON JUDICIARY**

**EXECUTIVE SESSION on HB 1322**

**BILL TITLE:** modifying the governmental records exempted from RSA 91-A.

**DATE:** February 3, 2022

**LOB ROOM:** 206-208

**MOTIONS: INEXPEDIENT TO LEGISLATE**

Moved by Rep. M. Smith

Seconded by Rep. Simpson

Vote: 19-2

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk



2021 SESSION

Judiciary

Bill #: HB1322 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2-3-22

| <u>Members</u>                       | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--------------------------------------|-------------|-------------|-----------|
| Gordon, Edward M. Chairman           | ✓           |             |           |
| McLean, Mark Vice Chairman           | ✓           |             |           |
| Sylvia, Michael J.                   |             | ✓           |           |
| Wuelper, Kurt F. Clerk               | ✓           |             |           |
| Alexander, Joe H.                    | ✓           |             |           |
| <del>Rice, Kimberly A.</del> EDWARDS | ✓           |             |           |
| <del>Silber, Norman J.</del> MERNER  | ✓           |             |           |
| Greene, Bob J.                       | ✓           |             |           |
| Kelley, Diane E.                     |             | ✓           |           |
| <del>Tausch, Lindsay</del> ANDRUS    | ✓           |             |           |
| Trottier, Douglas R.                 | ✓           |             |           |
| Smith, Marjorie K.                   | ✓           |             |           |
| <del>Berch, Paul S.</del> woods      | ✓           |             |           |
| Horrigan, Timothy O.                 | ✓           |             |           |
| DiLorenzo, Charlotte I.              | ✓           |             |           |
| Chase, Wendy                         | ✓           |             |           |
| Kenney, Cam E.                       | ✓           |             |           |
| Langley, Diane M.                    | ✓           |             |           |
| McBeath, Rebecca Susan               | ✓           |             |           |
| Paige, Mark                          | ✓           |             |           |
| Simpson, Alexis                      | ✓           |             |           |

*Kurt Wuelper*

19      2

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1322

**BILL TITLE:** modifying the governmental records exempted from RSA 91-A

**DATE:** 1-20-22

**LOB ROOM:** 206/8

**Time Public Hearing Called to Order:** 9:45 AM

**Time Adjourned:** 10:10 AM

**Committee Members:** ~~Reps. Gordon McLean, Wuelper, Sylvia, Alexander Jr., Notter, Merner, Greene, D. Kelley, Andrus, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson~~

**Bill Sponsors:**

**Rep. Hough, Belk. 3; Rep. Potucek, Rock. 6**

TESTIMONY

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

**Rep Hough Sponsor**

The bill Revises RSA-91A to so that government personnel who have had problems in one agency may not be able to conceal those problems in another agency or jurisdiction. It was inspired by questions about law enforcement but could easily be applied in other places.

**Q Trottier:** Can't other agencies already do this?

**Ans:** I have to defer

**Laurie Ortolano RTKNH Opposed**

The lack of definition of "governmental agency" means that personnel files may shared far more broadly than justified. This broad language could have detrimental effects on a person's employment.

**Sheriff Bill Wright Belknap County Sheriff Supports**

As it relates to hiring, I have seen good and bad employees and been involved in background checks and we could have done better if we had access to personnel files. As a hiring authority I think this will give us a valuable tool in hiring decisions. Even disclosures of minor investigations that were done would be of value to us, but they are currently hidden in personnel files.

**Q Trottier:** Would prospective employee know the files exist?

**Ans:** We have different levels of internal investigation.

**Q:** Are you concerned about hiring officer or all employees?

**Ans:** Pretty much all.

**Q** Are you indicating that other agencies who would conceal problems with officers?

**Ans:** The responses we typically get is "the employee was employed between these dates" and nothing more. These types of records would help us.

**Q** Has the typical 'Laurie list' information been available?

**Ans:** If a person is on the list, we would have access to that fact and we would have to investigate why they are on it.

**Q DiLorenzo:** What value is a polygraph in the hiring process?

**Ans:** people are more likely to tell the truth when we use one.

**Q** How much weight would that be given?

**Ans:** It's up to the hiring official.

**Brian Hawkins      NEA-NH      Opposed**

We share Ms. Ortolano's concerns. I'm unsure about which agencies we can share information with and I doubt this belongs in 91A. I think it should be in labor law. I think there are existing statutes that cover many issues and doubt the entire personnel file should be shared. Each employer has their own personnel record process. If an individual consents, we can get their personnel file today.

**Q Gordon:** I read about teachers who have moved from one district to another, and bad prior behavior wasn't disclosed to the hiring agency.

**Ans:** I don't know that 91-A is the place to make any corrections to that problem.

**Q Trottier:** I know about the Laurie list: is there anything like that in education?

**Ans:** State board of Education has established a similar process.

**Q Langley** Are all employees given background checks?

**Ans** Yes. **Q Trottier:** is it just a criminal check or what? **Ans:** I'm not completely sure.

**Margaret Burns      NHMA Comment**

Testimony has focused on law enforcement. 91-A is about access to records as opposed to what records are kept. We think this belongs elsewhere.



**Rep Kurt Wuelper, Clerk**





# House Remote Testify

## Judiciary Committee Testify List for Bill HB1322 on 2022-01-20

Support: 6 Oppose: 4 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

| <u>Name</u>        | <u>City, State</u><br><u>Email Address</u>          | <u>Title</u>           | <u>Representing</u>                           | <u>Position</u> | <u>Testifying</u> | <u>Non-Germane</u> | <u>Signed Up</u>   |
|--------------------|---|------------------------|---|-----------------|-------------------|--------------------|--------------------|
| Hamer, Gary        | Manchester, NH<br>ghamer@mansd.org                  | An Elected Official    | Myself  | Oppose          | No                | No                 | 1/16/2022 1:42 PM  |
| Potucek, John      | Derry, NH<br>potucek1@comcast.net                   | An Elected Official    | Myself  | Support         | No                | No                 | 1/17/2022 1:50 PM  |
| Richardson, Daniel | Nashua, NH<br>daniel6_22@comcast.net                | A Member of the Public | Myself  | Support         | No                | No                 | 1/19/2022 1:12 PM  |
| Sanborn, Alisa     | South berwick, NH<br>tuckersanborn@gmail.com        | A Member of the Public | Myself  | Oppose          | No                | No                 | 1/19/2022 6:41 PM  |
| Loveless, Eric     | bedford, NH<br>nassur34@protonmail.com              | A Member of the Public | Myself  | Support         | No                | No                 | 1/20/2022 12:18 AM |
| Lord, Brian        | Deering, NH<br>blord@antrimpolice.com               | A Member of the Public | Myself  | Support         | No                | No                 | 1/20/2022 8:39 AM  |
| Croft, David       | Salisbury, NH<br>dcroft4@msn.com                    | A Member of the Public | Myself  | Oppose          | No                | No                 | 1/20/2022 9:11 AM  |
| Duquette, Gary     | Deerfield, NH<br>policechief@toownofdeerfieldnh.com | A Lobbyist             | NH Chiefs of Police Association               | Support         | No                | No                 | 1/20/2022 9:14 AM  |
| Hoebeke, Joseph    | Hollis, NH<br>jhoebeke@hollisnh.org                 | A Member of the Public | New Hampshire Association of Chiefs of Police | Support         | No                | No                 | 1/20/2022 12:36 PM |
| Petrusewicz, Carol | Rochester, NH<br>clmcc2befree@yahoo.com             | A Member of the Public | Myself  | Oppose          | No                | No                 | 1/20/2022 7:06 PM  |

**Archived:** Wednesday, March 16, 2022 10:52:09 AM

**From:** [Kate Horgan](#)

**Sent:** Monday, January 17, 2022 11:56:51 AM

**To:** [~House Judiciary Committee](#)

**Subject:** HB 1322

**Importance:** Normal

**Attachments:**

NHAC HB 1322 1.14.22.pdf ;

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Good afternoon Members of the House Judiciary Committee.

Attached please find a letter from the NH Association of Counties in opposition of HB 1322. Please let me know if you have any questions. Thank you.

-Kate

Kathryn Horgan  
The Dupont Group  
29 School St. | Ste. 200 | Concord, NH 03301  
603-228-3322 x111  
[khorgan@dupontgroup.com](mailto:khorgan@dupontgroup.com)



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**HB 1322 - AS INTRODUCED**

2022 SESSION

22-2146  
07/04

HOUSE BILL            **1322**

AN ACT                modifying the governmental records exempted from RSA 91-A.

SPONSORS:            Rep. Hough, Belk. 3; Rep. Potucek, Rock. 6

COMMITTEE:          Judiciary

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ANALYSIS

This bill allows governmental agencies and departments to share personnel records with one another for the purposes of hiring.

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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 Two*

AN ACT                    modifying the governmental records exempted from RSA 91-A.

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

1            1 Access to Governmental Records and Meetings; Exemptions; Permitting Sharing of Personnel  
2 Records Between Governmental Agencies and Departments for Hiring Purposes. Amend RSA 91-  
3 A:5, IV to read as follows:

4            IV. Records pertaining to internal personnel practices; confidential, commercial, or financial  
5 information; test questions, scoring keys, and other examination data used to administer a licensing  
6 examination, examination for employment, or academic examinations; and personnel, medical,  
7 welfare, library user, videotape sale or rental, and other files whose disclosure would constitute  
8 invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this  
9 paragraph shall prohibit a public body or agency from releasing information relative to health or  
10 safety from investigative files on a limited basis to persons whose health or safety may be affected **or**  
11 ***prohibit a governmental agency or department from sharing personnel records with other***  
12 ***governmental agencies or departments for hiring purposes.***

13            2 Effective Date. This act shall take effect 60 days after its passage.