

CHAPTER 250
HB 481-FN-A - FINAL VERSION

5Jan2022... 2126h
04/21/2022 1554s

2022 SESSION

21-0614
05/04

HOUSE BILL

481-FN-A

AN ACT establishing the office of the right-to-know ombudsman and making an appropriation therefor.

SPONSORS: Rep. DiLorenzo, Rock. 17; Rep. Langley, Hills. 8; Rep. G. Sanborn, Graf. 6; Rep. Hopper, Hills. 2; Rep. Cushing, Rock. 21; Rep. M. Smith, Straf. 6; Rep. Weyler, Rock. 13; Rep. Ulery, Hills. 37; Sen. Rosenwald, Dist 13; Sen. Giuda, Dist 2

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes the office of the right-to-know ombudsman and an alternative, administrative process to resolve right-to-know complaints. The bill includes a prospective repeal date of July 1, 2025.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing the office of the right-to-know ombudsman and making an appropriation therefor.

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

1 250:1 Statement of Intent. The purpose of this act is to provide the public with a simpler, less
2 expensive, and faster alternative process to resolve complaints under RSA 91-A.

3 250:2 Right-to-Know; Violation. Amend RSA 91-A:7 to read as follows:

4 91-A:7 Violation.

5 *I.* Any person aggrieved by a violation of this chapter may petition the superior court for injunctive
6 relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter
7 high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition
8 shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the
9 petitioner or his or her counsel with the clerk of court [~~or any justice thereof. Thereupon the clerk of court~~
10 ~~or any justice shall order service by copy of the petition on the person or persons charged. Subject to~~
11 ~~objection by either party, all documents filed with the petition and any response thereto shall be~~
12 ~~considered as evidence by the court. All documents submitted shall be provided to the opposing party~~
13 ~~prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or~~
14 ~~she may order notice by any reasonable means, and he or she shall have authority to issue an order ex~~
15 ~~parte when he or she shall reasonably deem such an order necessary to insure compliance with the~~
16 ~~provisions of this chapter].~~

17 *II. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the*
18 *ombudsman under RSA 91-A:7-a and in accordance with RSA 91-A:7-b.*

19 *III. A person's decision to petition the superior court forecloses the ability to file a complaint with*
20 *the ombudsman pursuant to RSA 91-A:7-b.*

21 *IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition*
22 *the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.*

23 250:3 New Sections; Office of the Ombudsman; Complaint Process; Appeals. Amend RSA 91-A by
24 inserting after section 7 the following new sections:

25 91-A:7-a Office Established. There is hereby established the office of the right-to-know ombudsman
26 to be administratively attached to the department of state under RSA 21-G:10. The ombudsman shall be
27 appointed by the governor and council and shall have the following minimum qualifications:

28 I. Be a member of the New Hampshire bar.

29 II. Have a minimum of 5 years full-time practice of law in any jurisdiction.

30 III. Be experienced with and knowledgeable of the provisions of this chapter and all New
31 Hampshire laws regarding right-to-know.

CHAPTER 250
HB 481-FN-A - FINAL VERSION
- Page 2 -

1 IV. Annually, complete a minimum of 3 hours of continuing legal education courses or other
2 training relevant to the provisions of this chapter.

3 91-A:7-b Complaint Process.

4 I. Any party aggrieved by a violation of this chapter shall have the option to either petition the
5 superior court or file a signed, written complaint, along with a \$25 fee, with the office of the ombudsman,
6 established under RSA 91-A:7-a. The ombudsman shall have the discretion to waive the \$25 fee upon a
7 finding of inability to pay. Any signed, written complaint filed with the ombudsman shall attach, if
8 applicable, the request served on the public agency or official and the written response of the public
9 agency or official. The complaint shall be deemed sufficient if it states facts constituting a violation of this
10 chapter.

11 II. Once a complaint has been filed and provided by the ombudsman to the public body or public
12 agency, the public body or public agency shall have 20 calendar days to submit an acknowledgment of
13 the complaint and an answer to the complaint, which shall include applicable law and, if applicable, a
14 justification for any refusal to or delay in producing the requested governmental records, access to
15 meetings open to the public, or otherwise comply with the provisions of this chapter. This 20-day deadline
16 may be reasonably extended by the ombudsman for good cause.

17 III. In reviewing complaints, the ombudsman shall be authorized to:

18 (a) Compel timely delivery of governmental records within a period not less than 14 days or
19 more than 30 days unless an expedited hearing is warranted, regardless of medium and format, and
20 conduct a confidential in-camera review of records where the ombudsman concludes that it is necessary
21 and appropriate under the law.

22 (b) Compel interviews with the parties.

23 (c) Order attendance at hearings within a reasonable time if the ombudsman determines that
24 a hearing is necessary. Such hearings shall be open subject to the provisions of RSA 91-A.

25 (d) Issue findings in writing to all parties.

26 (e) Order a public body or public agency to disclose requested governmental records within a
27 reasonable time, provide access to meetings open to the public, or otherwise comply with the provisions
28 of this chapter, subject to appeal.

29 (f) Make any finding and order any other remedy to the same extent as provided by the court
30 under RSA 91-A:8.

31 IV. The ombudsman may draw negative inferences from a party's failure to participate and
32 comply with orders during the review process.

33 V. The ombudsman shall determine whether there have been any violations of this chapter and
34 issue a ruling within 30 calendar days following the deadline for receipt of the parties' submissions. This
35 30-day deadline may be extended to a reasonable time frame by the ombudsman for good cause. The
36 ombudsman may also expedite resolution of the complaint upon a showing of good cause. Rulings on
37 expedited complaints shall be issued within 10 business days, or sooner where necessary.

38 VI. The ombudsman shall, where necessary and appropriate under the law, access governmental
39 records in camera that a public body or public agency believes are exempt in order to make a ruling

CHAPTER 250
HB 481-FN-A - FINAL VERSION
- Page 3 -

1 concerning whether the public body or public agency shall release the records or portions thereof to the
2 public. The ombudsman shall maintain the confidentiality of records provided to the ombudsman by a
3 public body or public agency under this section and shall return the records to the public body or public
4 agency when the ombudsman's review is complete. All records submitted to the ombudsman for review
5 shall be exempt from the public disclosure provisions of RSA 91-A during such review.

6 VII. Nothing in this section shall affect the ability of a person to seek relief in superior court under
7 RSA 91-A:7, I in lieu of this process.

8 91-A:7-c Appeal and Enforcement.

9 I. Any party may appeal the ombudsman's final ruling to the superior court by filing a notice of
10 appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued. The
11 ombudsman's ruling shall be attached to the document initiating the appeal, admitted as a full exhibit by
12 the superior court, considered by the judge during deliberations, and specifically addressed in the court's
13 written order. Citizen-initiated appeals shall have no filing fee or surcharge. The public body or public
14 agency shall pay the sheriff's service costs if the public body or public agency, or its attorney, declines to
15 accept service. Nothing in this section shall prevent a superior court from staying an ombudsman's
16 decision pending appeal to the superior court.

17 II. On appeal, the superior court shall treat all factual findings of the ombudsman as prima facie
18 lawful and reasonable, and shall not set them aside, absent errors of law, unless it is persuaded by a
19 balance of probabilities on the evidence before it that the ombudsman's decision is unreasonable.

20 III. If the ombudsman's final ruling is not appealed, the ombudsman shall, after the deadline has
21 passed, follow up with all parties, as required, to verify compliance with rulings issued.

22 IV. The ombudsman's final rulings which are not appealed may be registered in the superior court
23 as judgments and enforceable through contempt of court. If such action is necessary to enforce
24 compliance, all costs and fees, including reasonable attorney fees, shall be paid by the noncompliant
25 public body or public agency.

26 91-A:7-d Rulemaking. The ombudsman shall adopt rules pursuant to RSA 541-A relative to:

27 I. Establishing procedures to streamline the process of resolving complaints under this chapter.

28 II. Hearing procedures.

29 III. Other matters necessary to the proper administration of RSA 91-A:7-a through RSA 91-A:7-c.

30 250:4 Appropriation; Applicability.

31 I. The amount necessary to pay for the position of ombudsman established in RSA 91-A:7-a as
32 inserted by section 3 of this act is hereby appropriated to the department of state for the biennium ending
33 June 30, 2023. This appropriation shall be nonlapsing and is in addition to any other funds appropriated
34 to the department of state. The governor is authorized to draw a warrant for said sum out of any money in
35 the treasury not otherwise appropriated.

36 II. The governor and council are authorized to search, nominate, and confirm the ombudsman to
37 have the confirmed nominee available to assume the duties of the ombudsman position on July 1, 2022.

38 250:5 Right-to-Know; Violation. Amend RSA 91-A:7 to read as follows:

39 91-A:7 Violation.

CHAPTER 250
HB 481-FN-A - FINAL VERSION
- Page 4 -

[I.] Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court *or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.*

~~[II. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the ombudsman under RSA 91-A:7-b and in accordance with RSA 91-A:7-c.~~

~~III. A person's decision to petition the superior court forecloses the ability to file a complaint with the ombudsman pursuant to RSA 91-A:7-c.~~

~~IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.]~~

250:6 Repeal. RSA 91-A:7-a through 91-A:7-d, relative to the office of the ombudsman, complaint process, appeal and enforcement, and rulemaking, is repealed.

250:7 Effective Date.

I. Section 4 of this act shall take effect upon its passage.

II. Sections 5 and 6 of this act shall take effect July 1, 2025.

III. The remainder of this act shall take effect July 1, 2022.

Approved: June 24, 2022

Effective Date:

I. Section 4 effective June 24, 2022

II. Section 5 and 6 effective July 1, 2025

III. Remainder effective July 1, 2022

