

Amendment to SB 555-FN-A

1 Amend the bill by replacing all after section 2 with the following:

2
3 3 New Sections; Citizens' Right-to-Know Appeals Commission; Office of the Ombudsman;
4 Complaint Process; Appeals. Amend RSA 91-A by inserting after section 7 the following new
5 sections:

6 91-A:7-a Citizens' Right-to-Know Appeals Commission Established. There is established a
7 commission to provide oversight for an alternative right-to-know complaint resolution process.

8 I. The members of the commission shall be as follows:

9 (a) One member of the senate, appointed by the president of the senate.

10 (b) Two members of the house of representatives, appointed by the speaker of the house
11 of representatives.

12 (c) A member, appointed by the chief justice of the supreme court.

13 (d) The secretary of state, or designee.

14 (e) A representative of Right to Know NH, appointed by that organization.

15 (f) Ten citizen members, one from each county, no more than 4 of whom shall be
16 current, local, county, state or federal employees or currently serving in any elected or appointed
17 capacity with any political subdivision, public agency or public institution; and 10 alternate
18 members, one from each county, no more than 4 of whom shall be current local, county, state, or
19 federal employees or currently serving in any elected or appointed capacity with any political
20 subdivision public agency or public institution; all appointed by the governor with advice and
21 consent of the council.

22 II. The members of the commission shall serve without compensation, but shall be
23 reimbursed for necessary travel and other necessary expenses. Legislative members shall receive
24 mileage at the legislative rate when attending to the duties of the commission.

25 III. Legislative members of the commission shall serve a term coterminous with their term
26 in office. The members appointed under subparagraph I(g) shall serve for a term of 3 years, except
27 that the initial appointment of such members shall be for staggered terms of one, 2, and 3 years. No
28 member shall serve more than 3 consecutive terms. No member under subparagraph I(g) shall be a
29 current lobbyist or an attorney for any entity subject to this chapter, or an attorney for any
30 organization representing the interests of such entity. Nor shall any such member be employed by
31 any such lobbyist or attorney. The member appointed under subparagraph I(d) shall recuse himself
32 or herself from any court proceedings involving appeals under this chapter. The members

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1 appointed under subparagraphs I (c)-(f) shall be advisory only members who shall advise the voting
2 members on questions of law and existing policy governing RSA 91-A.

3 IV. The commission shall:

4 (a) Establish rules of procedure, pursuant to RSA 541-A, to accomplish the mission of
5 the commission to make resolution of complaints under this chapter fast, easy, and inexpensive.

6 (b) Make recommendations to the legislature concerning proposed changes to this
7 chapter.

8 (c) Create, and update annually, educational materials relative to this chapter.

9 V. The members of the commission shall elect a chairperson and a vice chairperson
10 annually from among the voting members. The first meeting of the commission shall be called by
11 the senate member. The first meeting of the commission shall be held within 45 days of the
12 effective date of this section. Seven voting members of the commission shall constitute a quorum.

13 VI. The commission shall be administratively attached to the department of state.

14 VII. Beginning November 1, 2019, and each November 1 thereafter, the commission shall
15 submit an annual report of its findings and any recommendations for proposed legislation to the
16 president of the senate, the speaker of the house of representatives, and the governor. The report
17 shall also include the total number of complaints received, the number of complaints received
18 concerning public records and public meetings, the number of complaints received concerning state
19 and county agencies, municipalities, school administrative units, and other public entities, the
20 number of complaints in which a ruling was rendered by the ombudsman, the number of violations
21 of each provision of this chapter found by the ombudsman, and the number of ombudsman rulings
22 that were appealed to the superior court, including whether the appeal was from a complainant or a
23 public agency or official, and whether the ombudsman's ruling was sustained before the superior
24 court.

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

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

30 II. Have a minimum of 10 years full-time practice of law in any jurisdiction.

31 III. Be experienced with and knowledgeable of the provisions of this chapter, the federal
32 Freedom of Information Act, and other states laws regarding right-to-know.

33 IV. Complete a minimum of 3 hours of continuing legal education courses or other training
34 relevant to the provisions of this chapter.

35 91-A:7-c Complaint Process.

36 I. Any party aggrieved by a violation of this chapter shall have the option to either petition
37 the superior court or file a signed, written complaint with the office of the ombudsman, established

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1 under RSA 91-A:7-b. Any signed, written complaint filed with the ombudsman shall attach, if
2 applicable, the request served on the public agency or official and the written response of the public
3 agency or official. The complaint shall be deemed sufficient if it states facts constituting a violation
4 of this chapter.

5 II. Once a complaint has been filed and provided by the ombudsman to the public body or
6 public agency, the public body or public agency shall have 20 calendar days to submit an
7 acknowledgment of the complaint and an answer to the complaint, which shall include applicable
8 law and, if applicable, a justification for any refusal to or delay in producing the requested
9 information. This 20-day deadline may be extended to a reasonable time frame by the ombudsman
10 for good cause.

11 III. In reviewing complaints filed with the ombudsman, the ombudsman shall be authorized
12 to:

13 (a) Compel timely delivery of records within a reasonable time, regardless of medium,
14 and conduct a confidential in-camera review of records where the ombudsman concludes that it is
15 necessary and appropriate under the law.

16 (b) Compel interviews with the parties.

17 (c) Order attendance at hearings within a reasonable time if the ombudsman
18 determines that a hearing is necessary.

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

20 (e) Order a public body or public agency to disclose requested records within a
21 reasonable time, provide access to meetings, or otherwise comply with the provisions of this chapter,
22 subject to appeal.

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

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

27 V. In implementing the provisions of this section, the ombudsman shall follow the
28 procedures established by the commission.

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

34 VII. The ombudsman shall, where necessary and appropriate under the law, access
35 governmental records in camera that a public body or public agency believes are exempt in order to
36 make a ruling concerning whether the public body or public agency shall release the records or
37 portions thereof to the public. The ombudsman shall maintain the confidentiality of records

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1 provided to the ombudsman by a public body or public agency under this section and shall return
2 the records to the public body or public agency when the ombudsman's review is complete. All
3 records submitted to the ombudsman for in camera review shall be exempt from the public
4 disclosure provisions of RSA 91-A.

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

7 91-A:7-d Appeal and Enforcement.

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

16 II. A superior court appeal of the ombudsman's ruling shall review the ruling de novo.

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

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

24 91-A:7-e Rulemaking. The commission, in consultation with the secretary of state, shall adopt
25 rules pursuant to RSA 541-A relative to:

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

28 II. Content of educational materials under RSA 91-A:7-a.

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

31 4 Appropriation. The sum of \$48,000 for the fiscal year ending June 30, 2019 is hereby
32 appropriated to the department of state for the purpose of compensating the position of ombudsman
33 established in RSA 91-A:7-b as inserted by section 3 of this act. This appropriation is in addition to
34 any other funds appropriated to the department of state. The governor is authorized to draw a
35 warrant for said sum out of any money in the treasury not otherwise appropriated.

36 5 Effective Date.

37 I. Sections 1 and 4 of this act and, RSA 91-A:7-a and RSA 91-A:7-e as inserted by section 3

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1 of this act shall take effect July 1, 2018.

2 II. The remainder of this act shall take effect April 1, 2019.