

From: Gilles Bissonnette
Sent: Sunday, January 21, 2024 4:51 PM
To: HouseJudiciaryCommittee@leg.state.nh.us
Subject: January 18, 2024 amendment (2024-1097h) to HB1002

Dear Chairman Lynn and the members of the House Judiciary Committee:

The ACLU-NH, the New England First Amendment Coalition, the N.H. Press Association, the N.H. Union Leader, and the N.H. Bulletin have reviewed the January 18, 2024 amendment (2024-1097h) to HB1002, which would continue to allow labor, search, retrieval, and redaction costs to be imposed on requesters. We oppose this amendment for the same reasons that we oppose the original bill.

I. The Amendment Will Still Deter Modest Requests.

The amendment does not materially change the original bill in our view, which we think would be devastating for government transparency and accountability. Like the original bill, we believe that this amendment will continue to deter even modest requests, not just ones that proponents of this bill deem “excessive.”

Once again, under this proposed amendment, we believe that it will be inevitable for government actors—even for modest requests—to, as a default under this bill, estimate that the collection could exceed ten (10) hours, thereby deterring the requester from moving forward. And these collection estimates can be through no fault of the requester. They could include (i) manually retrieving documents because the government entity has a poor document retention system or (ii) needless and excessive redactions and reviews by lawyers and government officials. In our view, excessive redactions are, unfortunately, not uncommon, and we do not believe that requesters should have to pay for either an agency’s overzealous attempts to keep information secret or the agency’s poor document management policies.

The amendment does little to address these concerns. Indeed, further indicating the excessive time municipalities will bill to requesters under this amendment, the House Judiciary Committee heard testimony last week that even the simplest requests can somehow take 2-3 hours to comply with. This presumably includes when the documents are easily accessible (and, thus, in our view can and should be disseminated in merely minutes).

II. The Ombudsman Provisions of the Amendment Place Burdens on Requesters and, In Any Event, the Ombudsman Law Lapses in July 1, 2025.

In our view, the only meaningful difference between the amendment and the original bill is the amendment’s language giving a requester the opportunity to appeal a labor cost estimate to the ombudsman.

But this language still places a significant resource and time burden on a requester to challenge an estimate decision – a burden that should not fall on them when the presumption under RSA ch. 91-A is in favor of disclosure. Given this significant burden, we know that a significant number of requesters will not have the time or resources to challenge an agency’s labor estimate decision through the ombudsman, which will likely cause the request to go unfiled, and documents not released. In other words, the amendment – like the original bill – will give government agencies another tool for obstruction in many cases. Government transparency and accountability, thus, will be harmed.

Further, the ombudsman is an office of one person and likely does not have the resources to handle the potential volume of complaints from this bill. And the ombudsman certainly will not be able to address issues within the 30 days a regular response is required. Moreover, the ombudsman law automatically sunsets on July 1, 2025. *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/billText.aspx?sy=2022&id=627&txtFormat=html. One cannot drastically reduce a constitutional right of the people – as this amendment does – and set the only remedy as any office that may not exist next year.

Fulfilling public records request is a public good. Government agencies should view this obligation as an important public service that is part of their jobs, not a nuisance. These documents already belong to the public, not the government. Unfortunately, the amendment – like the original bill – would undermine these principles.

Best,

Gilles Bissonnette

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Legal Director

American Civil Liberties Union of New Hampshire

18 Low Avenue, Concord, NH 03301

603-227-6678 | gilles@aclu-nh.org

aclu-nh.org  

