

**Further Proposed Changes to RSA 91-A:8, Etc.
John Lassey & Steve Judge¹
Jim Garrity & Jim Kennedy**

91-A:8 Remedies. -

- I. If any public body or agency or *officer*, employee or ~~member other official~~ thereof, ~~in violation of the~~ violates any provisions of this chapter, ~~refuses to provide a governmental record or refuses access to a governmental proceeding to a person who reasonably requests the same,~~ such public body, or public agency, ~~or person~~ shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to ~~make the information available or the proceeding open to the public~~ enforce compliance with the provisions of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was ~~a~~ in violation of this chapter or ~~where~~ the parties, by agreement, provide that no such fees shall be paid. ~~In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing to allow access to a governmental proceeding or to provide a governmental record, the court may award such fees personally against such officer, employee, or other official.~~
- I-a. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court *finds* that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.
- II. The court may invalidate an action of a public body ~~or agency~~ taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.
- III. *If the court finds that an officer, employee, or other official of a public body or agency has violated this chapter in bad faith, the court shall impose against such person a civil penalty of not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00). Upon such finding, such person or persons shall also be required to reimburse the public body or agency for any attorneys fees or costs it pays pursuant to paragraph I.*
- ~~III-IV. In addition to any other relief awarded pursuant to this chapter, t~~The court may also ~~issue an order to~~ enjoin future violations of this chapter, ~~and may require any officer, employee, or other official of a public body or agency found to have violated its provisions to undergo appropriate remedial training. The sums obtained from the levying of civil penalties pursuant to paragraph III shall be credited to the department of justice to be used for such state, local or regional remedial training programs deemed appropriate by the attorney general to receive such funding. The department of justice shall establish a revolving fund into which it shall deposit the sums allocated in this paragraph. The department of justice shall be authorized to use the moneys from the revolving fund so created for the purposes outlined in this paragraph.~~
- V. *The attorney general is authorized to accept, budget, and expend moneys in the revolving fund created in paragraph IV of this section without the approval of the governor and council for the purposes of creating state, local or regional training programs outlined in paragraph IV of this section.*

¹ As discussed among members of the Commission on November 14, 2008.

Add a subparagraph (277) to RSA 6:12, I (b) worded as follows:

(277) Moneys received from the levying of civil penalties pursuant to RSA 91-A:8, III, which shall be credited to the revolving fund established in RSA 91-A:8, IV.