HB 399-FN – AS AMENDED BY THE HOUSE

13Mar2013... 0717h 27Mar2013... 1030h

2013 SESSION

13-0324 05/04

HOUSE BILL	399-FN
AN ACT	establishing the New Hampshire liberty act.
SPONSORS:	Rep. Itse, Rock 10
COMMITTEE:	State-Federal Relations and Veterans Affairs

ANALYSIS

This bill establishes the New Hampshire liberty act. The bill prohibits the state from supporting or implementing 2 sections of the National Defense Authorization Act for Fiscal Year 2012, pertaining to the authority of the United States armed services to detain persons suspected of terrorism.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Thirteen

AN ACT

T establishing the New Hampshire liberty act.

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

1 Findings.

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I. The legislature finds that the enactment into law by the United States Congress of Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012, Public Law Number 112-81, is inimical to the liberty, security, and well-being of the people of New Hampshire, and was adopted by the United States Congress in violation of the limits of federal power in United States Constitution.

II. The legislature finds that, together, Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012, as they purport to authorize (i) detainment of persons captured within the United States of America without charge, (ii) military tribunals for persons captured within the United States of America, and (iii) the transfer of persons captured within the United States of America to foreign jurisdictions, are violative of the following rights enshrined in the Constitution of the United States of America:

(a) Article I, Section 9, Clause 2's right to seek writ of habeas corpus;

(b) The First Amendment's right to petition the government for a redress of grievances;

(c) The Fourth Amendment's right to be free from unreasonable searches and seizures;

16 (d) The Fifth Amendment's right to be free from charge for an infamous or capital crime17 until presentment or indictment by a grand jury;

(e) The Fifth Amendment's right to be free from deprivation of life, liberty, or property,without due process of law;

20 (f) The Sixth Amendment's right in criminal prosecutions to enjoy a speedy trial by an
21 impartial jury in the state and district where the crime shall have been committed;

22 (g) The Sixth Amendment's right to be informed of the nature and cause of the 23 accusation;

(h) The Sixth Amendment's right to confront witnesses;

(i) The Sixth Amendment's right to counsel;

26 (j) The Eighth Amendment's right to be free from excessive bail and fines, and cruel and 27 unusual punishment; and

(k) The Fourteenth Amendment's right to be free from deprivation of life, liberty, orproperty, without due process of law.

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1 III. The legislature finds that, together, Sections 1021 and 1022 of the National Defense 2 Authorization Act for Fiscal Year 2012, as they purport to authorize (i) detainment of persons 3 captured within the United States of America without charge, (ii) military tribunals for persons 4 captured within the United States of America, and (iii) the transfer of persons captured within the 5 United States of America to foreign jurisdictions, violate the following Articles of the Constitution of 6 New Hampshire:

7 (a) Part I, Article 7, which provides: the people of this state have the sole and exclusive 8 right of governing themselves as a free, sovereign, and independent state; and do, and forever 9 hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is 10 not, or may not hereafter be, by them expressly delegated to the United States of America in 11 Congress assembled; and

12 (b) Part I, Article 10, which provides: government being instituted for the common 13 benefit, protection, and security, of the whole community, and not for the private interest or 14 emolument of any one man, family, or class of men; therefore, whenever the ends of government are 15 perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, 16 the people may, and of right ought to reform the old, or establish a new government.

17 2 New Chapter; New Hampshire Liberty Act. Amend RSA by inserting after chapter 646-A the18 following new chapter:

CHAPTER 646-B

NEW HAMPSHIRE LIBERTY ACT

21646-B:1 Support of National Defense Authorization Act Prohibited. The state of New 22Hampshire shall not provide material support or participate in any way with the implementation of 23Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 within the 24boundaries of this state. The department of safety is hereby directed to report to the governor and 25the legislature any attempt by agencies or agents of the United States government to secure the 26implementation of Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 272012 through the operations of that or any other state department.

28 3 Lawsuit Challenging the National Defense Authorization Act for Fiscal Year 2012. The 29 general court urges the attorney general to initiate or support any lawsuit challenging the 30 constitutionality of the detainment provisions of the National Defense Authorization Act for Fiscal 31 Year 2012.

32 4 Effective Date. This act shall take effect upon its passage.

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LBAO 13-0324 Revised 03/28/13 Amended 03/18/13

HB 399 FISCAL NOTE

AN ACT establishing the New Hampshire liberty act.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, <u>as</u> <u>amended by the House (Amendments #2013-0717h and #2013-1030h)</u>, as it is awaiting information from the Judicial Branch, Department of Justice, New Hampshire Association of Counties, Department of Corrections, and the Judicial Council. When completed, the fiscal note will be forwarded to the House Clerk's Office.