

HB 1201-FN – AS INTRODUCED

2014 SESSION

14-2124
04/03

HOUSE BILL ***1201-FN***

AN ACT relative to the accountability of public officials.

SPONSORS: Rep. Christiansen, Hills 37

COMMITTEE: Judiciary

ANALYSIS

This bill amends the legal standard necessary to charge a public servant with official oppression.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the accountability of public officials.

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

1 1 Purpose. The legislature finds that part 1, article 8 of the New Hampshire constitution makes
2 public officials at all times accountable to the people and states that “government, therefore, should
3 be open, accessible, accountable and responsive.” This act is intended to strengthen penalties for a
4 public official who fails to respond to an affidavit, commits an unauthorized act which purports to be
5 an official act, or refrains from performing an official duty.

6 2 Official Oppression. RSA 643:1 is repealed and reenacted to read as follows:

7 643:1 Official Oppression.

8 I. A public servant, as defined in RSA 640:2, II, is guilty of a misdemeanor if such public
9 servant:

10 (a) Commits an unauthorized act which purports to be an act of his or her office;

11 (b) Knowingly, willingly, and intentionally refrains from performing a duty imposed on
12 him or her by law or clearly inherent in the nature of his or her office; or

13 (c) Fails to respond to, and rebut with citations of law, an affidavit within 30 days of
14 submission of the affidavit by any inhabitant.

15 II. A public servant found guilty under paragraph I shall, in addition to the criminal
16 penalties imposed for the misdemeanor under RSA 651:2, be removed from public office with no
17 appeal and shall be prohibited from holding public office for 10 years.

18 3 County Convention; Exceeding Appropriations. Amend RSA 24:15, IV to read as follows:

19 IV. If any county commissioner, or elected or appointed county officer, is found in a
20 prosecution for violation of RSA 643:1 to have paid or incurred any liability for the payment of any
21 sum of money contrary to this section, it shall be prima facie evidence that such county commissioner
22 or officer has knowingly, **willingly, and intentionally** refrained from performing a duty imposed
23 by law.

24 4 Building Permits Restricted. Amend RSA 676:13, II to read as follows:

25 II. If any building inspector is prosecuted for violation of RSA 643:1 and found guilty of
26 issuing any permit contrary to the provisions of this section, it shall be prima facie evidence that the
27 building inspector has knowingly, **willingly, and intentionally** refrained from performing a duty
28 imposed on the building inspector by law.

29 5 Effective Date. This act shall take effect January 1, 2015.

HB 1201-FN - FISCAL NOTE

AN ACT relative to the accountability of public officials.

FISCAL IMPACT:

The Department of Justice, Judicial Branch, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Department of Justice states this bill expands the definition of official oppression by making it an unspecified misdemeanor for any public official to (1) commit an unauthorized act purported to be an act of his or her office; (2) refrain or refuse to perform a duty imposed on him or her by law or clearly inherent in the nature of the office; and (3) fail to respond to and rebut point for point an affidavit within 30 days of submission of the affidavit by any inhabitant. The Department states that currently, conduct that satisfies (1) or (2) constitutes a misdemeanor, if the public servant acted with the intent to benefit him or herself or to harm another. This bill eliminates that requirement and creates the new offense of failing to respond to an affidavit. The Department's Public Integrity Unit is responsible for investigating and prosecuting crimes committed by public officials in their official capacity. Because the language in the proposed bill could potentially cover a wide range of conduct, the Department anticipates that it may see a substantial increase in the number of complaints requiring investigation and potential prosecution. The Department states that the extent of this potential increase is indeterminable.

The Judicial Branch states that it does not have information on which to estimate how many additional prosecutions will result from the bill. The Branch does, however, have information on the average cost of processing such cases in the trial court. The Branch projects the average cost of processing a class A misdemeanor will be \$66.17 in FY 2015, and \$67.64 in FY 2016, and the average cost of processing a class B misdemeanor will be \$46.99, in FY 2015 and \$48.08 in FY 2016. These numbers do not account for any appeals that may be undertaken following trial.

The New Hampshire Association of Counties states the crime of official oppression is typically a Class B misdemeanor with no penalty of incarceration and no impact on county correction costs. To the extent more individuals are charged and to the extent any county attorney pursues the prosecution, county expenditures may increase. However, the Association cannot determine the extent of any change in the number of prosecutions for this crime, and so the fiscal impact is indeterminable.