

HB 1565-FN – AS INTRODUCED

2014 SESSION

14-2356
04/05

HOUSE BILL

1565-FN

AN ACT

establishing the crime of filing a false lien or encumbrance against a public servant.

SPONSORS:

Rep. Gidge, Hills 33; Rep. Horrigan, Straf 6

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill establishes a criminal offense for filing a false lien or encumbrance against a public servant.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 establishing the crime of filing a false lien or encumbrance against a public servant.

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

1 1 New Section; False Liens or Encumbrance Against Public Servants. Amend RSA 638 by
2 inserting after section 15-a the following new section:

3 638:15-b False Liens or Encumbrances Against Public Servants.

4 I. Any person who files a lien or encumbrance in a public record or private record that is
5 generally available to the public against the real or personal property of a public servant, as defined
6 in RSA 640:2, II(a), based on the performance of such public servant's official duties, knowing or
7 having reason to know that such lien or encumbrance is false or contains a materially false,
8 fictitious, or fraudulent statement or representation shall be guilty of a class A misdemeanor for a
9 first or second offense, and a class B felony for a third or subsequent offense.

10 II. Any person who violates the provisions of paragraph I shall, upon conviction, be
11 sentenced to a term of imprisonment of not less than one nor more than 10 years, a fine not to exceed
12 \$10,000, or both.

13 2 Effective Date. This act shall take effect January 1, 2015.

HB 1565-FN - FISCAL NOTE

AN ACT establishing the crime of filing a false lien or encumbrance against a public servant.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, Department of Corrections, Judicial Council, 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 Judicial Branch states this bill establishes the crime of filing a false lien or encumbrance against a public servant, punishable as a class A misdemeanor for a first or second offense and a class B felony for a third or subsequent offense. The Branch states it has no information on which to estimate how many prosecutions will be brought under the bill. The Branch does, however, have information on the average cost of processing 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. Any felony offense under the bill will be classified as a routine criminal case in the superior court; the Branch projects that the cost of prosecuting an average routine criminal case in the superior court will be \$425.27 in FY 2015, and \$433.34 in FY 2016. These numbers do not consider the cost of any appeals that may be undertaken following trial. All costs are estimated based on case weight information from the Branch's last needs assessment completed in 2005.

The Department of Justice states that it will likely investigate and prosecute a small number of cases brought as a result of this bill, but that the number and cost cannot be estimated and thus the fiscal impact is indeterminable.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to the legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The Judicial Council states the bill may result in an indeterminable increase in general fund expenditures. The Council states that anyone who is charged and cannot afford the assistance of council will be eligible for a lawyer at state expense. Under the statutory order of assignment contained in RSA 604-A:2, representation is provided in the first instance by the public defender program, which provides representation in over 85 percent of indigent-defense cases. If a conflict of interest prevents the public defender program from providing representation in one or more cases, representation is provided by a contract attorney. These attorneys work on a per-unit basis. Misdemeanor cases are paid at a rate of \$275 per case, while Class B felonies are paid at a rate of \$756.25 per case. Defendants are ordered to repay these costs through the Office of Cost Containment. If a contract attorney is unavailable, the case will go to the assigned counsel system, in which compensation is paid at \$60 per hour up to a cap of \$1,400 for misdemeanors, and \$4,100 for felonies.

The New Hampshire Association of Counties states the fiscal impact of the bill is indeterminable. The Association states the average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.