

HB 590-FN - AS INTRODUCED

2015 SESSION

15-0081
05/09

HOUSE BILL ***590-FN***

AN ACT relative to the accountability of public officials.

SPONSORS: Rep. L. Christiansen, Hills 37; Rep. Marple, Merr 24; Rep. Brewster, Merr 21

COMMITTEE: Criminal Justice and Public Safety

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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 RSA 643:1 is repealed and reenacted to read as follows: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~~] refrained from performing a duty imposed by law.

23 4 Building Permits Restricted. Amend RSA 676:13, II to read as follows:

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

28 5 Effective Date. This act shall take effect January 1, 2016.

HB 590-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 2016 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 offense of official oppression by making it a 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; or (3) fail to respond to and rebut with citations of law an affidavit within 30 days of submission of the affidavit by any inhabitant. The Department states that currently, conduct that satisfies (1) or (2) already constitutes a misdemeanor, provided the public servant acted with the intent to benefit him/herself or another or to harm another. This bill eliminates that requirement and creates the new offense of refusing to respond to an affidavit. The Department states that its Public Integrity Unit investigates and prosecutes crimes committed by public officials in their official capacity. Because the proposed language could potentially cover a wide range of conduct, the Department anticipates it will see a substantial increase in the number of complaints needing investigation and potential prosecution. However, the extent of that increase cannot be estimated, and the fiscal impact is indeterminable.

The Judicial Branch states it has no information on which to estimate how many additional misdemeanor prosecutions may result from the proposed bill. The Branch does, however, have information on the average cost of processing such cases in the trial court. Regarding the cost to the Branch of an average misdemeanor, misdemeanors can be either class A or class B, with the presumption being class B in accordance with RSA 625:9, IV. The Branch projects the cost of processing an average class A misdemeanor in the district division of the circuit court will be \$68.71 in FY 2016, and \$70.95 in FY 2017. That cost for a class B misdemeanor is projected to be \$48.47 in FY 2016, and \$50.63 in FY 2017. These numbers do not consider the cost of any appeals of a misdemeanor that may be taken following trial in the district division of the circuit court, including the potential to appeal a class A misdemeanor to the superior court for a jury trial or a class A or B misdemeanor to the supreme court on issues of law, or to both.

The New Hampshire Association of Counties anticipates this bill will substantially increase the number of complaints needing investigation and potential prosecution. The Association states county prosecutorial costs may increase by an indeterminable amount. The current estimated cost of incarcerating an individual at a county house of corrections is approximately \$35,000 per year.

The Judicial Council states this bill will have no fiscal impact.