

HJR 1-FN - AS INTRODUCED

2015 SESSION

15-0676
04/10

HOUSE JOINT RESOLUTION ***1-FN***

A RESOLUTION making restitution to Jeffrey Frost for inappropriate prosecution.

SPONSORS: Rep. Ingbretson, Graf 15; Rep. Itse, Rock 10

COMMITTEE: Legislative Administration

ANALYSIS

This house joint resolution requests that full restitution be made to Jeffrey Frost, Chrétien/Tillinghast LLC and/or Frost Family LLC for expenses, including reasonable attorney's fees, incurred in their defense against the wrongful application of RSA 397-A against them by the New Hampshire banking department and the office of the attorney general; raises and appropriates the sum of \$176,448.50 for that purpose; and directs that a warrant be issued to the treasurer of the state of New Hampshire pursuant to NH Const., Pt 2, Art 56 to pay said sum to Jeffrey Frost, Chrétien/ Tillinghast LLC and/or Frost Family LLC.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

A RESOLUTION making restitution to Jeffrey Frost for inappropriate prosecution.

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

1 Whereas, the general court finds and declares that during the 2012 legislative session, the house
2 committee on redress of grievances received and accepted a petition from Jeffrey Frost, 444 Walnut
3 Street, Manchester, New Hampshire 03103, and docketed the same as Petition #18, Petition of
4 Jeffrey Frost; and

5 Whereas, following several public hearings and review of extensive documentation, including 3
6 court decisions, the house committee on redress of grievances found as follows:

7 I. That the New Hampshire banking department, in re: the Matter of State of
8 New Hampshire Banking Department and Jeffrey Shawn Frost, NHBD #10-013, pursued criminal
9 and civil complaints against the petitioner despite having had ample notice from his attorneys that
10 its assertion of authority over him was wrongful, illegal, and contrary to public policy, and that in
11 any event he had acted pursuant to advice of competent legal counsel and thus lacked the requisite
12 intent; and

13 II. That as asserted by the petitioner and confirmed by Merrimack district court judge
14 Clifford Kinghorn in State v. Jeffrey Frost, #456-2010-CR-02374 (August 23, 2010), an investigator
15 for the New Hampshire banking department recklessly or intentionally made a materially false
16 representation in an affidavit supporting search warrants for the petitioner's business records,
17 leading to unlawful searches of the petitioner's home and his attorneys' files; and

18 III. That as asserted by the petitioner, confirmed by Merrimack county superior court judge
19 Richard B. McNamara in Jeffrey Frost, Chrétien/Tillinghast LLC & Frost Family LLC v.
20 New Hampshire Banking Department and Peter Hildreth, Commissioner, #217-2010-CV-00288
21 (December 21, 2010), and affirmed by the New Hampshire supreme court in Jeffrey Frost, et.al. v.
22 Commissioner, New Hampshire Banking Department, et. al., #2011-121 (March 16, 2012), the
23 Banking Department had and should have known it had no authority over the petitioner or over
24 Chrétien/Tillinghast LLC or Frost Family LLC (limited liability companies of which the petitioner
25 was a member) under RSA 397-A in that none was engaged in the business of making or brokering
26 mortgage loans secured by real estate, each of the 2 mortgage financing transactions in question
27 clearly having been an isolated private one outside the normal scope of the business of the limited
28 liability company concerned; and

29 IV. That the banking department knew or should have known that its attempted imposition
30 of \$525,000 in civil penalties against the petitioner by applying 2009 amendments to RSA 397-A:4
31 retrospectively violated NH Const., Pt 1, Art 23; and

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1 V. That the office of the attorney general:

2 (a) Knew or should have known that the banking department's affidavit supporting
3 issuance of its search warrant contained a materially false assertion of fact;

4 (b) Knew or should have known that the banking department's assertion of authority
5 over the Petitioner and his limited liability companies was wrongful and illegal;

6 (c) Should have exercised its authority to bring about immediate termination of the
7 banking department's proceedings against the petitioner; and

8 (d) Should have exercised its prosecutorial discretion to decline to defend in the supreme
9 court the banking department's cross-appeal from Judge McNamara's decision; and

10 Whereas, the house committee on redress of grievances, having so found, recommended that a
11 bill be introduced and passed providing:

12 I. That full restitution be made to the petitioner, Chrétien/Tillinghast LLC and/or Frost
13 Family LLC of the expenses, including reasonable attorney's fees, incurred in their defense against
14 the wrongful application of RSA 397-A against them; and

15 II. That such restitution be made in the form of a line item reduction in the appropriations
16 for each of the banking department and department of justice in such proportion as deemed
17 appropriate by the finance committee; and

18 III. That a performance audit review be made of the banking department and the
19 department of justice by the legislative budget assistant's office for the purposes of:

20 (a) Recommending such structural and organizational reforms within and between the 2
21 departments determined to be necessary to ensure a chain of supervision and authority able to
22 recognize, impede and prevent future such unlawful and oppressive enforcement actions; and

23 (b) Determining whether cause may exist for disciplinary action, including impeachment
24 as one possible such action, against any one or more individuals within either department; and

25 Whereas, the petitioner has, agreeably with the request to him from the house committee on
26 redress of grievances, provided the house of representatives with invoices and supporting affidavits
27 from his attorneys to document the petitioner's costs and attorney's fees in his defense against the
28 illegal enforcement actions pursued against him; now, therefore, be it

29 Resolved by the Senate and House of Representatives in General Court convened:

30 That the sum of \$176,448.50 is hereby raised and appropriated, and a warrant shall forthwith be
31 issued to the treasurer of the state of New Hampshire pursuant to NH Const., Pt 2, Art 56 to pay
32 said sum to the order of Jeffrey Frost of 444 Walnut Street, Manchester, New Hampshire 03103,
33 and/or Chrétien/Tillinghast LLC and/or Frost Family LLC, as may be directed by Jeffrey Frost.

34 That a copy of this resolution be sent by the house clerk to Jeffrey Frost, Chrétien/Tillinghast
35 LLC, and Frost Family LLC.

HJR 1-FN - FISCAL NOTE

AN ACT making restitution to Jeffrey Frost for inappropriate prosecution.

FISCAL IMPACT:

The Banking Department and Department of Justice state this legislation, **as introduced**, will have an indeterminable impact on state revenue and expenditures in FY 2016. There will be no fiscal impact on county and local revenue and expenditures.

This bill appropriates \$176,448.50 upon passage of this resolution for the purpose of this resolution. The source of funds is not specified.

METHODOLOGY:

The Banking Department states this bill makes restitution of \$176,448.50 to Jeffrey Frost for inappropriate prosecution, requires the house finance committee to reduce line items in the Banking Department and Department of Justice equaling the restitution amount, and requires a performance audit review of the Banking Department and Department of Justice. The Banking Department assumes any appropriation reduction would occur in FY 2016. The Department is not able to determine how much the house finance committee will reduce its appropriations. The Department is a self-funded agency with its costs and expenses, including personnel costs, paid for by fees, fines and assessments on the entities it regulates when the fees and fines do not cover the actual costs. If this bill results in the Department not having enough funds to cover operating costs, then it is anticipated there would be an increase in the FY 2016 annual assessment costs for the regulated entities.

The Department of Justice states it is not able to determine the fiscal impact of this resolution on the Department because it does not know how the house finance committee will proportion the restitution amount between the Department and the Banking Department.

Any costs for a performance audit review conducted by the Office of Legislative Budget Assistant will be absorbed as part of its normal audit workload.