

# Bill as Introduced

SB 144-FN – AS INTRODUCED

2013 SESSION

13-0948  
04/09

SENATE BILL        ***144-FN***

AN ACT            relative to forfeiture of bail.

SPONSORS:        Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Sen. Soucy, Dist 18; Rep. Hackel, Hills  
29; Rep. Gale, Hills 28

COMMITTEE:      Judiciary

---

ANALYSIS

This bill provides for forfeiture of bail after default and permits the aggrieved party to contest the forfeiture.

This bill is a request of the New Hampshire supreme court.

-----

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT           relative to forfeiture of bail.

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

- 1           1 Bail and Recognizances; Declaration of Forfeiture. Amend RSA 597:31 to read as follows:  
2           597:31 Declaration of Forfeiture. If any party recognized to appear makes default, the  
3           recognizance shall be declared forfeited[, ~~state may cause proceedings to be had immediately for the~~  
4           ~~recovery of~~] ***by the court for the benefit of the state, provided that an interested party may***  
5           ***contest the recovery of such forfeiture upon notice in a accordance with court rules.***  
6           2 Effective Date. This act shall take effect January 1, 2014.

LBAO  
13-0948  
01/25/13

**SB 144-FN – FISCAL NOTE**

AN ACT           relative to forfeiture of bail.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, as introduced, at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**SB 144 FISCAL NOTE**

AN ACT            relative to forfeiture of bail.

**FISCAL IMPACT:**

The Judicial Branch states this bill, as introduced, may increase state general fund expenditures by an indeterminable amount in FY 2014 and each year thereafter. There is no fiscal impact on county and local expenditures, or state, county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill amends RSA 597:31 to remove the requirement that the State institute proceedings for the recovery of forfeited bail. The Branch will be required to give notice of the forfeiture to interested parties and allow them to contest the recovery of the forfeiture. The Branch states this bill will not add new cases to the Branch's caseload but could add new hearings within existing cases and increase clerical time to the processing of criminal cases where bail had been received. The Branch does not have information on how much judge or clerical time will be required to determine the impact on expenditures, however the Branch states the impact is not likely to be significant.

# Committee Minutes

**AMENDED**  
**SENATE CALENDAR NOTICE**  
**JUDICIARY**

Printed: 01/28/2013 at 1:41 pm

Senator Sharon Carson Chairman  
Senator Bette Lasky V Chairman  
Senator David Boutin  
Senator Sam Cataldo  
Senator Donna Soucy

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: January 28, 2013**

**HEARINGS**

**Tuesday**

**2/5/2013**

JUDICIARY

SH 100

9:00 AM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** The purpose of this amended notice is to schedule four additional hearings; SB 35 had been previously noticed and will still be heard at 10:00 a.m.

9:00 AM	SB144-FN	relative to forfeiture of bail.
9:30 AM	SB145-FN	allowing publication by electronic means by the probate division.
10:00 AM	SB35	relative to the master jury list.
11:00 AM	SB151-FN	relative to the payment of witness fees in criminal cases.
11:15 AM	SB137-FN	relative to sibling visitation rights.

**Sponsors:**

**SB144-FN**

Sen. Bette Lasky  
Rep. Sylvia Gale

Sen. Sharon Carson

Sen. Donna Soucy

Rep. Paul Hackel

**SB145-FN**

Sen. David Boutin  
Rep. Joe Duarte

Sen. Jim Rausch  
Rep. David Campbell

Sen. Sylvia Larsen  
Rep. Suzanne Smith

Sen. David Watters

**SB35**

Sen. Sam Cataldo

**SB151-FN**

Sen. Donna Soucy  
Sen. Sam Cataldo

Sen. Sharon Carson  
Rep. Janet Wall

Sen. Bette Lasky

Sen. David Boutin

**SB137-FN**

Sen. Sharon Carson

Rep. Mary Gile

Susan Duncan 271-3076

Sen. Sharon Carson

Chairman

# SENATE JUDICIARY COMMITTEE

*Susan Duncan, Senior Legislative Aide*

**SB 144-FN – relative to forfeiture of bail.**

Hearing Date: February 5, 2013

Time Opened: 9:00 a.m.

Time Closed: 9:20 a.m.

**Members of the Committee Present:** Senators Carson, Lasky and Cataldo

**Members of the Committee Absent:** Senators Boutin and Soucy

**Bill Analysis:** This bill provides for forfeiture of bail after default and permits the aggrieved party to contest the forfeiture and was requested by the Supreme Court.

---

**Sponsors:** Senators Lasky, Carson, Soucy; Representatives Hackel and Gale

**Who supports the bill:** Senator Lasky, Carson, Cataldo, Soucy; Attorney Howard Zibel on behalf of the Judicial Branch and Supreme Court; Andrea Cattabriga of the Judicial Branch

**Who opposes the bill:** Debbie Valente on behalf of the NH Property Owners Association; Francine Ryan, NHPOA; Jared Leonard; Tia Phillips, AANH-NH Apt. Assoc.

**Summary of testimony presented in support:**

**Senator Lasky**

Explained that she was asked by the Courts to bring the bill forward.

**Attorney Zibel**

Explained that anyone can bring forward an idea for legislation in the court system. This is one of the requests and it came from Andrea Cattabriga.

**Ms. Cattabriga** explained that she is an Internal Auditor for the Judicial Branch. She became aware of \$53,400 of failed bail that had not been forfeited to the State. She reviewed these with Don Goodnow and they agreed to change the language so that it would forfeit.

**Attorney Zibel** said that among the oldest was one dating back to 1993 in Hillsborough-North Superior Court from a case in 1989. Another one was from 2002 in Carroll County. He said that this legislation puts the burden on the courts



to declare the bail forfeited; forfeited moneys go to the General Fund. He explained that in the system, an interested party can contest the recovery and that the court is required to provide notice. He explained that the requested date of January 1, 2014, to become effective is to give them time to write the needed rules.

**Attorney Lehmann** clarified for the committee that a person who is out on bail can have that bail forfeited either for failure to show up in court or it could be revoked because of behavior.

In response to a question as to the exact language on line 5, **Attorney Zibel** stated that it was merely his word choice and the intention is to get it to be recovered.

**Senator Carson** commented that she wished the intent had been “fleshed out” a bit more in the legislation rather than leaving it up to the rules process. She asked if it could be improved up.

**Senator Carson** commented that if someone has been accused of a crime and they are out on bail and don't show up in court – is there a reason why this has not been forfeited? **Attorney Zibel** responded that it is the state, not the court system – and noted that these cases are occurring in both the Superior Courts and the Circuit Courts. **Senator Carson** asked again for an amendment with more detail.

**Attorney Lehmann** clarified that these “stranded” bails are the exceptions – that forfeiture generally happens as it is supposed to occur.

#### **Summary of testimony presented in opposition:**

**Ms. Valente** testified in opposition on behalf of the NH Property Owners Association and explained that they are the largest state-wide property owners association with approximately 3,500 members. She said that they do have an interest in the bill. Before the earlier testimony, they were unaware of what had triggered it but that it does affect her membership directly. She explained that when the courts give a landlord a judgment, they use the bail process in order to bring the tenant back for the periodic payments that are due. If the tenant forfeits, they can at least ask the Judge if they can recover the bail amount. She explained that the way the bill is written they would have to go out and find that tenant again (and this is not easy).

In response to a question, **Ms. Valente** explained that they now understand the intent of the legislation, but as written currently, it presents a problem for the landlords

**Fiscal Note:** The fiscal note was not prepared at the time of the hearing.

**Future Action:** The Committee took the bill under advisement.

sfd

Date hearing report completed: February 6, 2013

[file: SB 0144-FN report]

# Speakers



# SENATE JUDICIARY COMMITTEE

Date: February 5, 2013 Time: 9:00 a.m. Public Hearing on SB 144-FN

SB 144-FN - relative to forfeiture of bail.

Please check box(es) that apply:

SPEAKING FAVOR OPPOSED

NAME (Please print)

REPRESENTING

*f*

ANDREA CATTABRIGA

JUDICIAL BRANCH

*f*

HOWARD ZIBEL

JUDICIAL BRANCH

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Testimony

**Duncan, Susan**

---

**From:** Howard J. Zibel [HZibel@courts.state.nh.us]

**Sent:** Monday, March 04, 2013 4:26 PM

**To:** Lasky, Bette

**Cc:** Carson, Sharon; Duncan, Susan

**Subject:** SB 144 (forfeiture of bail)

Senator Lasky,

Following the hearing on the above bill, which you kindly sponsored on behalf of the judicial branch, we have done a more detailed analysis of the bail forfeiture issue, especially in light of the concerns raised at the public hearing. We believe we can accomplish the goal we had for this legislation, i.e., to avoid funds for bail remaining on the books for long periods after the conclusion of a case, by means of accounting protocols. As a result, we would not object to an ITL vote on this bill from the Senate Judiciary Committee.

Thanks again for sponsoring this bill on behalf of the judicial branch.

Howie

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Date: March 5, 2013

THE COMMITTEE ON Judiciary  
to which was referred Senate Bill 144-FN

AN ACT                      relative to forfeiture of bail.

Having considered the same, the committee recommends that the Bill:

**IS INEXPEDIENT TO LEGISLATE**

BY A VOTE OF:    5 to 0

AMENDMENT # s

CONSENT CALENDAR VOTE: 5 to 0

Senator Sharon M. Carson for the Committee

This legislation was submitted at the request of the Judicial Branch. Following concerns raised at the public hearing, they have asked that the bill not go forward.

Susan Duncan 271-3076



New Hampshire General Court - Bill Status System

# Docket of SB144

Docket Abbreviations

**Bill Title:** relative to forfeiture of bail.

*Official Docket of SB144:*

Date	Body	Description
1/3/2013	S	<b>Introduced</b> and Referred to Judiciary; <b>SJ 4</b>
1/28/2013	S	Hearing: 2/5/13, Room 100, SH, 9:00 a.m.; <b>SC7</b>
3/6/2013	S	Committee Report: Inexpedient to Legislate, 3/14/13; Vote 5-0; CC; <b>SC11</b>
3/14/2013	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===

---

NH House

NH Senate

---

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL                       RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

**ALL AVAILABLE VERSIONS OF THE BILL:**

AS INTRODUCED                      \_\_\_\_\_ AS AMENDED BY THE HOUSE  
\_\_\_\_\_ FINAL VERSION                      \_\_\_\_\_ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

fiscal note # 13-0948

DATE DELIVERED TO SENATE CLERK

6/7/13

BY:

Susan A. Decker  
COMMITTEE AIDE