

Committee Report

CONSENT CALENDAR

February 21, 2018

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred

HB 1704,

AN ACT requiring court costs and attorneys fees to be paid to the prevailing party. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Sandra Keans

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 1704
Title:	requiring court costs and attorneys fees to be paid to the prevailing party.
Date:	February 21, 2018
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The system used in the United States is working well, each side pays its own expenses. However, the legislature has found that there are certain circumstances where the judge, upon presentation of loss and egregious behavior, may award attorney's fees. Passage of this legislation would have a chilling effect on the little guy, with a legitimate claim from taking on the larger, wealthier entity because of its deep pockets.

Vote 13-0.

Rep. Sandra Keans
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 1704, requiring court costs and attorneys fees to be paid to the prevailing party.
INEXPEDIENT TO LEGISLATE.

Rep. Sandra Keans for Judiciary. The system used in the United States is working well, each side pays its own expenses. However, the legislature has found that there are certain circumstances where the judge, upon presentation of loss and egregious behavior, may award attorney's fees. Passage of this legislation would have a chilling effect on the little guy, with a legitimate claim from taking on the larger, wealthier entity because of its deep pockets. **Vote 13-0.**

COMMITTEE REPORT

CE

COMMITTEE: Judiciary

BILL NUMBER: 1704

TITLE: Requiring court costs and attorney fees to be paid to the prevailing party.

DATE: 2-20-18 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 - OUGHT TO PASS W/ AMENDMENT
 - INEXPEDIENT TO LEGISLATE
 - INTERIM STUDY (Available only 2nd year of biennium)
- Amendment No.

CONSENT CALENDAR

Judiciary
 HB 1704, requiring court costs and attorneys fees to be paid to the prevailing party.
INEXPEDIENT TO LEGISLATE.
 Rep. Sandra Keans for Judiciary. The system used in the United States is working well, each side pays its own expenses. However, the legislature has found that there are certain circumstances where the judge, upon presentation of loss and egregious behavior, may award attorney's fee. Passage of this legislation would have a chilling effect on the little guy, with a legitimate claim from taking on the larger, wealthier entity because of its deep pockets. **Vote 13-0.**

R. Jay 2/27/18

BECAUSE OF ~~WITH~~ ITS DEEP POCKETS.

COMMITTEE VOTE: 13-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Sandra B. Keans
 For the Committee

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1704

BILL TITLE: requiring court costs and attorneys fees to be paid to the prevailing party.

DATE: February 20, 2018

LOB ROOM: 208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Keans

Seconded by Rep. Hopper

Vote: 13-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep Sandra Keans, Clerk

cc

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1704

BILL TITLE: requiring court costs and attorneys fees to be paid to the prevailing party.

DATE: 2-20-18

LOB ROOM: 208

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. KEANS Secoded by Rep. Horner Vote: 13-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

CONSENT CALENDAR: X YES _____ NO

Minority Report? _____ Yes X No If yes, author, Rep: _____ Motion _____

Respectfully submitted: [Signature] Rep Sandra Keans, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2018 10:30:16 AM
Roll Call Committee Registers
Report

2018 SESSION

*Requiring court costs and attorney fees
to be paid to the prevailing party!*

JUDICIARY

Bill #: 1704

Title: _____

PH Date: 01, 16, 2018

Exec Session Date: 2, 20, 18

Motion: ITR

Amendment #: _____

MEMBER

YEAS

NAYS

Hagan, Joseph M. Chariman		✓	
Rouillard, Claire A. Vice Chairman		✓	
Hopper, Gary S.		✓	
Sylvia, Michael J.	ab		
Hull, Robert	ab		
Wuelper, Kurt F.		✓	
Graham, Robert V.		✓	
Hynes, Dan		✓	
Janvrin, Jason A.	ab		
Leavitt, John A.	<i>BAGNE</i>	✓	
Wall, Janet G.	ab	✓	
Horrigan, Timothy O.		✓	
Berch, Paul S.	ab		
Kenison, Linda B.		✓	
Keans, Sandra B. Clerk		✓	
DiLorenzo, Charlotte I.		✓	
Altschiller, Debra	<i>CUSHING</i>		
Sullivan, Brian M.	<i>SMITH</i>	✓	
TOTAL VOTE:		✓	

12-0

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1704

BILL TITLE: requiring court costs and attorneys fees to be paid to the prevailing party.

DATE: January 16, 2018

LOB ROOM: 208 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned: 1:25 p.m.

Committee Members: Reps. Hagan, Rouillard, Keans, Sylvia, Wuelper, Berch, Kenison, DiLorenzo and Altschiller

Bill Sponsors:

Rep. Murphy

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Murphy, prime sponsor

Introduced the bill to the committee. Just wrong when you win you may still be out thousands of dollars. eliminate fishing cases.

Rep. Berch: Q. Does this prevent any small entity to bring a cast against a big company? Ans. Doesn't seem to be a problem in Texas.

Rep. Rouillard: Q. Are there are already costs that can be recoverable now? Ans. Just don't see it happening. **Rouillard:** Defended nurses hospitals to might force. What about a poor tenant suing landlord for damages? If lost could face lifelong financial crisis?

Rep. Hopper: Q. How do you square with equal justice under the law? Ans. Already equal.

Rep. Kenison: Q. If tenant brings claim and loses case?

Rep. Rouillard: Q. Explain___ Lines 1-3 had not thought about but agrees. Ans. Okay for government to pay.

Joseph Haas, Concord, NH, representing self - oppose

Wording problems

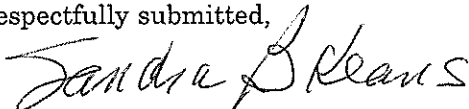
Gilles Bissonnette, ACLU-New Hampshire - informational only

New Hampshire has the ability to recover in limited circumstances. In constitutional cases, there are opportunities.

Rep. Wuelper: Generally would oppose this legislation because cases are often dealing with close issues. This may cool attorneys from bringing.

Rep. Hagan: A judge has ability to award/rule in cases perceived to be frivolous.

Respectfully submitted,



Rep. Sandra B. Keans
Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1704

BILL TITLE: requiring court costs and attorneys fees to be paid to the prevailing party.

DATE: 1-16-18

ROOM: 208

Time Public Hearing Called to Order: 1:00

Time Adjourned: 1:25

(please circle if present)

Committee Members: Reps. Hagan, Rouillard, Hopper, Sylvia, Hull, Wuelper, R. Graham, Hynes, Janvrin, Leavitt, Wall, Horrigan, Berch, Kenison, DiLorenzo, Mulligan, Altschiller and Keans SULLIVAN

Bill Sponsors: Rep. Murphy

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- ① REP MURPHY SPONSOR: JUST WRONG WHEN YOU WIN YOU MAY STILL BE OUT THOUSANDS OF DOLLARS. ELIMINATE FISHING CASES
- Q BERCH DOES THIS PREVENT ANY SMALL ENTITY TO BRING A CASE AGAINST A BIG COMPANY? ANS. DOESNT SEEM TO BE A PROBLEM IN TEXAS.
- Q ROUILLARD - THERE ARE ALREADY COST THAT CAN BE RECOVERABLE NOW?
" ANS. JUST DONT SEE IT HAPPENING.
- Q DEFENDED NURSES HOSPITALS - TO MIGHT FORCE
- Q "R. WHAT ABOUT A POOR TENANT SUING ^{HANDCORN} FOR DAMAGES. IF LOST COULD FACE LIFELONG FINANCIAL CRISIS.
- Q HOPPER - HOW DO YOU SQUARE W/ EQUAL JUSTICE UNDER LAW ANS. ALREADY EQUAL
- Q KENISON - IF TENANT BRINGS CLAIM & LOSES CASE. ?
- Q ROUILLARD EXPLAIN REG LINES 13 HADNT THOUGHT ABOUT BUT AGREES, ANS. OKAY FOR GOVT TO PAY.
- ② JOE HAAS: USING PROBLEMS
- ③ GILLESPISSONNETTE - ARLUNH - NH HAS ABILITY TO RECOVER IN LIMITED CASES - CIRCUMSTANCES. IN CONSTITUTIONAL

CASES. THERE ARE OPPORTUNITIES.

Q WUELPER GENERALLY WOULD OPPOSE THIS LEGISLATION
BECAUSE CASES ARE OFTEN DEALING WITH CLOSE ISSUES
THIS MAY COOL ATTYS FROM BRINGING.

Q HAGAN - GIVE ~~IF~~ A JUDGE HAS ABILITY TO AWARD/RULE
IN CASES PERCEIVED TO BE FRIVOLOUS.

Bill as Introduced

HB 1704 - AS INTRODUCED

2018 SESSION

18-2657
06/01

HOUSE BILL

1704

AN ACT

requiring court costs and attorneys fees to be paid to the prevailing party.

SPONSORS:

Rep. Murphy, Hills. 7

COMMITTEE:

Judiciary

ANALYSIS

This bill requires the court to award court costs and attorney fees to the prevailing party in certain civil cases.

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 Eighteen

AN ACT requiring court costs and attorneys fees to be paid to the prevailing party.

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

1 1 New Subdivision; Costs and Attorney Fees Allowed to Prevailing Party. Amend RSA 507 by
2 inserting after section 17 the following new subdivision:

3 Costs and Attorney Fees Allowed to Prevailing Party

4 507:18 Costs and Attorney Fees.

5 I. Except as otherwise provided by law or by agreement between the parties, attorney fees
6 shall not be awarded to a party in a civil action for personal injury, death, or property damage
7 related to or arising out of fault.

8 II. Except as otherwise provided by law, no court shall discriminate in the award of
9 attorney fees and costs to or against a party in a civil action or appeal based on the nature of the
10 policy or interest advocated by the party, the number of persons affected by the outcome of the case,
11 whether a governmental entity could be expected to bring or participate in the case, the extent of
12 the party's economic incentive to bring the case, or any combination of these factors.

13 III. In a civil action or appeal concerning the establishment, protection, or enforcement of a
14 right under the United States Constitution or the New Hampshire constitution, the court shall:

15 (a) Award, subject to paragraphs IV and V, reasonable attorney fees and costs to a
16 claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or
17 on appeal, has prevailed in asserting the right;

18 (b) Not order a claimant to pay the attorney fees of the opposing party in claims
19 concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or
20 third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or
21 appeal asserting the right was not frivolous, and the claimant did not have sufficient economic
22 incentive to bring the action or appeal regardless of the constitutional claims involved.

23 IV. In calculating an award of attorney fees and costs under subparagraph III(a), the court
24 shall:

25 (a) Include in the award only that portion of the services of the claimant's attorney fees
26 and associated costs that were devoted to claims concerning rights under the United States
27 Constitution or the New Hampshire constitution upon which the claimant ultimately prevailed; and

28 (b) Make an award only if the claimant did not have sufficient economic incentive to
29 bring the suit, regardless of the constitutional claims involved.

30 V. The court, in its discretion, may abate, in full or in part, an award of attorney fees and
31 costs otherwise payable under paragraphs III and IV if the court finds, based upon sworn affidavits

HB 1704 - AS INTRODUCED

- Page 2 -

1 or testimony, that the full imposition of the award would inflict a substantial and undue hardship
2 upon the party ordered to pay the fees and costs or, if the party is a public entity, upon the
3 taxpaying constituents of the public entity.

4 2 Effective Date. This act shall take effect January 1, 2019.