

HB 292-FN - AS INTRODUCED

2023 SESSION

23-0525

08/04

HOUSE BILL **292-FN**

AN ACT establishing a criminal penalty for theft by a public servant.

SPONSORS: Rep. Corcoran, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes a criminal penalty for theft by a public servant who authorizes payment for legal actions against the municipality, and creates a right of action against such public servants.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing a criminal penalty for theft by a public servant.

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

1 1 New Section; Theft; Theft by a Public Servant. Amend RSA 637 by inserting after section 8
2 the following new section:

3 637:8-a Theft by a Public Servant.

4 I. Any public servant who serves on the governing body of a municipality, who authorizes or
5 attempts to authorize a defense to any legal claim or action against the municipality, except in a
6 public or nonpublic session, as specified in RSA 91-A:2 and RSA 91-A:3, and who authorizes payment
7 for such defense, shall be guilty of theft by a public servant and subject to the penalties in RSA
8 637:11.

9 II. Any citizen of New Hampshire shall have a private right of action to challenge a public
10 servant who serves on the governing body of a municipality who has authorized payment of
11 attorney's fees that were not authorized in a public or nonpublic session, as specified in RSA 91-A:2
12 and RSA 91-A:3. In addition to any actual damages resulting from such action, the municipality
13 shall be liable for reasonable attorney's fees and court costs.

14 2 Effective Date. This act shall take effect January 1, 2024.

**HB 292-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing a criminal penalty for theft by a public servant.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill establishes a criminal penalty for theft by a public servant who authorizes payment for legal actions against the municipality, and creates a right of action against such public servants. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Routine Criminal Case	\$644	\$657	\$779
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
<p>It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.</p>		
Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688
<p>The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.</p>		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

The bill provides, in RSA 237:8-a, II, that the municipality shall be liable for certain reasonable attorney's fees and court costs. Any such court challenges or associated costs cannot be determined.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

CONSENT CALENDAR

February 3, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety
to which was referred HB 292-FN,**

**AN ACT establishing a criminal penalty for theft by a
public servant. Having considered the same, report the
same with the following resolution: RESOLVED, that it
is INEXPEDIENT TO LEGISLATE.**

Rep. Jennifer Rhodes

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 292-FN
Title:	establishing a criminal penalty for theft by a public servant.
Date:	February 3, 2023
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill would have established a criminal penalty and created a right of action against any public servant who serves on the governing body of a municipality, who authorizes or attempts to authorize a defense to any legal claim or action against the municipality except in a public or non-public session. While the committee agrees every elected official should hold themselves to the highest standard and not participate in any illegal activity, creating a right of action against board members would destroy local control. Additionally, the committee agreed there may be other avenues of bringing awareness to the residents of any suspected misconduct.

Vote 20-0.

Rep. Jennifer Rhodes
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 292-FN, establishing a criminal penalty for theft by a public servant. **INEXPEDIENT TO LEGISLATE.**

Rep. Jennifer Rhodes for Criminal Justice and Public Safety. This bill would have established a criminal penalty and created a right of action against any public servant who serves on the governing body of a municipality, who authorizes or attempts to authorize a defense to any legal claim or action against the municipality except in a public or non-public session. While the committee agrees every elected official should hold themselves to the highest standard and not participate in any illegal activity, creating a right of action against board members would destroy local control. Additionally, the committee agreed there may be other avenues of bringing awareness to the residents of any suspected misconduct. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 292-FN

BILL TITLE: establishing a criminal penalty for theft by a public servant.

DATE: January 20, 2023

LOB ROOM: 202-204 **Time Public Hearing Called to Order:** 10:00 a.m.

Time Adjourned: 10:35 a.m.

Committee Members: Reps. Roy, Rhodes, A. Murray, Pratt, Sytek, Proulx, Janvrin, D. Mannion, Reid, Stone, Tenczar, Harriott-Gathright, Meuse, Bouldin, Bradley, N. Murphy, R. Newman, Newell, Selig and Wheeler

Bill Sponsors:
Rep. Corcoran

TESTIMONY

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

Rep Travis Corcoran introduces his bill

- Bill specifically addresses a situation where a board would go into a private, illegal meeting to appropriate funds. It is legal for the town to defend against any lawsuit, however this bill assures that the funds appropriated to do so would be held to a legal and recorded vote.
- Rep Rhodes asks if this is specific to schools and trying to address school issues, Rep Corcoran says that was just an example, can be applied to zoning and other issues
- Rep Meuse states in the wording of the bill “theft” is used liberally. Theft in NH carries criminal penalties but in this bill there are civil penalties. Is there a reason this word was chosen? Rep Corcoran says it was written by OLS and he is open to amending the language
- Rep Selig gave another example of how this bill could impact zoning decisions in order to get clarity on what exactly the bill would make it illegal
- Rep Murray asks for clarification on whether minutes are kept in non-public meetings, Rep Corcoran and Vice Chair Rhodes say that yes, especially in cases regarding lawsuits, but they may be sealed
- Rep Meuse corrects his earlier statement that this bill carries civil penalties, as the RSA referenced states that an eventual penalty could potentially be up to a class B felony, Rep Meuse asks Rep Corcoran if we should be criminalizing this behavior? Rep Corcoran says the intent is not to set specific criminal penalties but to make clear what the boundaries are in these positions

- Rep Newman asks for clarification regarding citizens being able to pursue civil action versus the criminal penalties assigned in the bill. Rep Corcoran says he wants to work with OLS via amendment to clarify the language.
- Rep Meuse asks could a complaint not be filed for right to know? Rep Corcoran yes but the citizen has to reach into his own pocket to sue potentially, the judge could declare that the board must make minutes public, if the minutes don't exist that's the end of the case. Rep Meuse asks if there's any data on how often this actually happens? Rep Corcoran says he knows of several cases where this happened and this motivated him to run for state representative. No hard numbers, but many anecdotes from conversations with local lawmakers and attorneys.
- Chairman Roy asks if the burden of the penalties will fall back on the taxpayers, Rep Corcoran affirms that the intent of the bill is to avoid that

Respectfully submitted,

Rep. Alissandra Murray, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB292 on 2023-

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>
Greyes, Natch	Concord, NH ngreyes@nhmunicipal.org	A Lobbyist	New Hampshire Municipal Association	Oppose	No	No
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Neutral	No	No
Brown, Kyle	Hooksett, NH Kylejosephbrown1998@gmail.com	A Member of the Public	Myself	Support	No	No
corcoran, travis	Weare, NH tjic2020@gmail.com	An Elected Official	Myself	Support	No	No

Thank you Mr Speaker and Committee members.

My name is Travis Corcoran, and I am the sponsor of this bill.

The problem

In theory, New Hampshire town government is open and fair. In practice, it is sometimes secretive, and biased.

From discussions both with constituents and multiple lawyers, the problem of town boards that engage in self-interested governing, or casually violate citizens' rights to open government is a widespread one. As a citizen I have read dozens of New Hampshire court cases and rulings arising out of town boards engaging in conflicts of interest and illegal secret meetings or communications. This is out of the hundreds of such cases that exist, and that is a small subset of the number of times it happens (very few citizens sue when their rights are violated, as lawsuits are very expensive, tedious, and stressful).

Sometimes town boards do not merely deliberate in illegal secrecy, but actually purport to make decisions and authorize expenditures in secrecy. Because they know that they act in secrecy and that their deliberations and votes will never be made public, they are not constrained by possible repercussions. If an action taken in a secret meeting is later revealed, no one need admit to voting for it. Was the decision made 5-0? 4-1? 3-2? Was there actually a majority at all? Was a vote even held? There is no way for anyone but the board members themselves to ever know.

The current incentives (“Heads I win, tails it’s a tie”)

RSA 91-a provides that citizens may sue to force disclosure of illegally hidden public information.

...but there is no remedy if a citizen discovers that actions or decisions have been made in secrecy. There may be no minutes or votes kept, so merely mandating the release of non-existent records does nothing. Expenditures authorized outside of legal meetings can not be clawed back. Judicial actions authorized outside of legal meetings likewise can not be undone.

Further, the incentives for board members suffer from the principal agent problem. If they conduct a secret meeting and authorize expenditures, in the very worst case [for them] a citizen will sue, innocent taxpayers will pay to defend the behavior in court, and if the board loses, then innocent taxpayers will pay a second time, paying the plaintiff's legal fees.

The pain of misbehavior lands entirely on the innocent, and those who broke the laws suffer zero consequences.

Thus the need for this bill: a board member who has a desire to violate the state constitution and the law may not blink at doing so when he knows that he or she is entirely immune to personal repercussions...but is much more likely to take the rights of citizens seriously if there are possible penalties that would affect them.

The political option...that is theoretical, but not realistic

The New Hampshire state legislature correctly has a cultural norm that suggests that local problems should be solved at a local level, via the political process.

In many towns various boards are appointed, not elected, and so are not responsive to political process. A concerned citizen would first need to propose a warrant article, get sufficient signatures on the petition, win at the polls, convert the town to elected zoning and planning boards, and then run additional campaigns to place public minded citizens on the boards...and even then, harms already committed can not be undone, and new board members serve under the same flawed incentives as the old board members.

Complimentary to RSA 91-a

This bill is complimentary to RSA 91-a. RSA 91-a lets citizens attempt to recover illegally classified information. This bill provides penalties for actions taken illegally, outside of legal meetings.

Economy

This bill addresses a real problem experienced by citizens in towns across New Hampshire, is narrowly targeted, imposes no or minimal costs on towns, and is correctly addressed at the state level via legislation not at a town level via political process.

The best law is one that causes correct behavior by well-tuned incentives. This bill, by making board members face some small penalties for egregious violations of ethics laws, would improve life for countless New Hampshire citizens, reduce the number of lawsuits choking our overworked courts (and thus reduce costs on the state), and impose minimal or no costs on towns.

Daniel Richardson

This bill is naturally a good intent, but does current law not render such rogue member action "null and void", if not authorized by the governing body? But what about reimbursement to municipality?

Kyle Brown

I support this bill

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 292-FN

BILL TITLE: establishing a criminal penalty for theft by a public servant.

DATE: February 3, 2023

LOB ROOM: 202-204

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Rhodes

Seconded by Rep. Selig

Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Alissandra Murray, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:55:43 AM
Roll Call Committee Registers
Report

2023 SESSION

Criminal Justice and Public Safety

Bill #: 292-FN Motion: ITL AM #: _____ Exec Session Date: 2/3/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Roy, Terry Chairman	20		
Rhodes, Jennifer M. Vice Chairman	1		
Pratt, Kevin M.	2		
Sytek, John H:11	3		
Proulx, Mark L. Sellers	4		
Janvrin, Jason A.	5		
Mannion, Dennis	6		
Reid, Karen A	7		
Stone, Jonathan F.	8		
Tenczar, Jeffrey	9		
Harriott-Gathright, Linda C.	10		
Meuse, David	11		
Bouldin, Amanda C.	12		
Bradley, Amy Clerk	13		
Murphy, Nancy A.	14		
Newman, Ray E.	15		
Murray, Alissandra	16		
Newell, Jodi K	17		
Selig, Loren	18		
Wheeler, Jonah O	19		
TOTAL VOTE:	20	0	