

**Senate Election Law and Municipal Affairs Committee**  
*Tricia Melillo 271-3077*

**SB 89**, adopting omnibus legislation relative to election procedures and registers of probate.

**Hearing Date:** March 8, 2021

**Members of the Committee Present:** Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

**Members of the Committee Absent :** None

**Bill Analysis:** This bill adopts legislation relative to:

- I. The city chief elections officer.
  - II. Prohibiting the taking of certain photographs within the guardrail.
  - III. Allowing the opening of the absentee ballot outer envelopes and the preprocessing of absentee ballots.
  - IV. Establishing a committee to study post election audit counting devices.
  - V. The duties of the registers of probate.
- 

**Sponsors:**  
Sen. Gray

---

**Who supports the bill:** Request Sign In Sheet From Committee Aide

**Who opposes the bill:** Request Sign In Sheet From Committee Aide

**Who is neutral on the bill:** None

**Summary of testimony presented in support:**

**Senator James Gray**

- This bill has five separate Parts that have all been requests of either agencies or constituents.
- Part I deals with the conflict regarding who the Chief Election Officer is.
- Every town in the State of New Hampshire has a Town Clerk and that Clerk has to be a resident or voter in that town.
- For cities in New Hampshire, there is a provision, due to the number of duties he/she is responsible for, that they also have the title of Chief Elections Officer.
- This causes a problem because in other parts of statute the Moderator is in charge of the polls.
- This legislation will only take away the title to resolve the confusion and conflict between the City Clerk and the Moderator. It does not take away any of the duties.
- There is no statutory requirement for a City Clerk to be an inhabitant of the city in which they are the Chief Election Official which causes concern on many levels.
- This happens quite often and sometimes ( in the border cities) the Clerk does not even reside in New Hampshire.
- Part II of the bill prohibits taking certain photos within the guardrail during an election.

- The courts have found that a person who wants to take a photo of their ballot is permitted.
- We will honor that, but when inside the guardrail voters should not be taking photos that may have other voters or ballots in them.
- During the last election, races were printed on both sides of the ballot and while the voter walked from the booth to the ballot box it would be easy to capture their ballot information in a photo.
- Part III addresses preprocessing of the absentee ballots.
- This was popular during the last election and was successful.
- Many of the Moderators wanted to broaden the preprocessing by marking the checklist.
- In these times with municipalities having large numbers of absentee ballots, being able to preprocess is a big help.
- It allows election officials the ability to move voters through on Election Day much more efficiently.
- He does not have a problem with this as long as removing the ballot from the inner envelope and marking the checklist with the red AV do not happen until Election Day.
- Opening the outer envelope before Election Day, gave an opportunity for people who did not complete the affidavit correctly a chance to correct it and have their vote count.
- If a person somehow destroyed the outer envelop that the Clerk had sent them and used another one, they would still accept that ballot when it got to the clerk.
- This portion of the bill that addresses preprocessing, opening of the outer envelope, will ensure that voters who made a simple error on the affidavit will not be disenfranchised.
- In the last election, the Clerks only had a few days before Election Day to notify a voter of an error, this bill will allow them to preprocess as soon as they receive the absentee ballot and contact the voter if corrections are needed.
- Part IV establishes a committee to study post-election audits and counting devices.
- In light of the Windham situation, voter confidence is at an all-time low and they do not trust the voting machines.
- There are voters that want to go back to a complete hand count and not use the ballot machines at all.
- As a Moderator for over twenty years, he can say that it takes a considerable amount of time and people, even in a small Ward, to be able to do hand counts efficiently and quickly.
- The accuracy of hand counts on election night, by people who have been at the polls all day, is not 100 percent. Unintentional errors are made.
- If you are recounting a race that is a hand count town instead of a machine count town, you expect there to be a higher difference in the hand count town.
- This needs to be pursued. The Commission on Elections in Washington D.C had two findings against New Hampshire.
- One, was that NH did not have an audit procedure for checking the machines and the other was that NH did not use a device that was certified by their organization.
- The machine we use was certified by NH's Ballot Law Commission after a rigorous review process.
- This happened before the Commission on Elections came into existence.
- In the future NH is going to have to replace the AcuVote 2000 machines because they are no longer manufactured, and parts are no longer available.
- Part V is legislation that deals with the Registers of Probate.
- There will be several people that are going to speak to this Part.
- They are not trying to go back to way the Registers of Probate were pre-2011.
- In the budget that year, many changes were made in the Court System to balance the budget.
- They have heard that there are a lot of people that normally would be able to conduct a probate process without an attorney but because of the complicated nature and the lack of a person that knows what the process is, are forced to pay a substantial fee to the Court and an attorney.
- Mr. Head has submitted that in 2019 there were 7,319 estate cases and the number of phone calls regarding probate cases was 46,396. That is over six calls per probate case. In 2020 there was 35,291 calls.

- He is concerned that NH should be treating people who have just lost a loved one the way they would want to be treated.
- It is a long process, and this bill is not trying to take away any of the duties that were given to the Clerk of the Circuit Court.
- They are trying to provide assistance to the people involved in these cases by having someone available that can answer their questions.
- They have dropped the request for a new computer system.
- The intent is just to provide service and Counties have contacted him to say they want to provide that service.
- This bill will give them the compensation needed to provide the service.
- Senator Soucy asked if in Part III, regarding the opening of the ballots, it means that the Clerk can open the outer envelopes every day leading up to the election. She added that her concern is that there will not be a consistent process for each town and that transparency will be more difficult.
  - Senator Gray replied that the intent is to have the Clerks be able to open the outer envelope with enough time to have corrections made by the voter if need be. The inner envelope will not be opened and will be checked to make sure that they are not opened. The Moderator will have the list from Election Net of people who requested and returned an absentee ballot. The challenge process that was in HB 1166 has been moved to Election Day instead of having it at the preprocessing to safeguard the information of those that will not be home on Election Day.

### **Daniel Healey**

- He asked Senator Gray if requiring the City Clerk live in the city where they work is in this legislation.
  - Senator Gray replied that it is not mandated in this bill.

### **Margaret Byrnes – NH Municipal Association**

- They are in support of Part III.
- It creates more efficiency in the absentee ballot preprocessing process.
- It allows the clerk to open the outer envelopes as absentee ballots are received.
- Additionally, it will allow the Moderator to authorize preprocessing by making notations on the checklist to help facilitate processing on election day.
- SB 89 will provide incremental efficiencies for officials by allowing some level of preprocessing to occur before Election Day.
- Signature matching is an improper practice and has been deemed unconstitutional and illegal by the Federal District Court.
- The Secretary of State's Office makes it very clear that it is not an allowable practice.
- She does not see a reason why Part III would create a problem or allow election officials to use a process that has already been deemed illegal by the Court.

### **William Gardner – NH Secretary of State**

- His office supports all five Parts of this legislation.
- In regards to Part V, his office has a connection with the Registers of Probate because of the archives division.
- The Registers work with them to make sure probate records in the archives are protected for longevity.
- This past election, 633 thousand NH voters, voted for a Register of Probate.
- They run in each County and after the election they met to discuss this legislation and the idea of retaining some of the duties that historically the Registers have had.
- At the first meeting, they chose Jane Bradstreet to speak on their behalf.

### **Jane Bradstreet – Register of Probate**

- The records that the probate division now create and has been created over the years by the court, works with the Registry of Deeds to prove all of the land in all of New Hampshire.
- This is a very important historic record and the Registers have not been allowed to perform this duty.
- They still have the duty and is a misdemeanor if they do not perform the duty, but they have no cooperation from the courts to perform this.
- This bill may rectify some of that.
- The second issue is a customer service issue.
- She was involved in creating the call center in 2011 to help people as efficiently as they could.
- It is difficult with all the calls coming into the call center for people to interact with a computer system and get the answers they need.
- In the past when there was a Register of Probate at the Courthouse you could go in and get guidance in person.
- Currently, there is a computer in the lobby that people are directed to if they have questions and if they have trouble with that there is an 855 number they can call.
- The issues that people need help with are private and sometimes emotional issues and there is no privacy in the lobby to discuss them.
- NH has supervised probate which is a little harder to for residents to get the help they need compared to Maine which has unsupervised probate.
- She believes people deserve to have the help they need, especially with emotional family matters.
- This bill uses the Court Filing Fees for funding, and she understands that the Court will not welcome this as they are careful with their budget.
- NH has some of the lowest filing fees in the Country and she believes this is money that has to be spent to provide people the help that they need.
- She believes it will hamper the job of the Registers not to have at least view only access to the Court's computer records.

### **Paul Mirski**

- He was in the Legislature in 2011-2012 when the Register of Probate office disappeared.
- He was unaware that the Court, during the budget process, had convinced the leadership of the House and Senate, to statutorily gut a constitutional provision for the Register of Probate.
- This office existed primarily for transparency with regard to probate proceedings.
- For the Court to have engineered the destruction of this provision is astonishing.
- He is very supportive of seeing this role restored.
- The writers of the Constitution did not provide for the Judicial Branch to be equal with the Legislative Branch. The Legislative Branch oversees the Judicial Branch.
- Oversight is essential, especially over probate which produces a lot of money for the state.
- He believes that the Registers of Probate can fulfill this role and make sure that individuals that are going through probate will not be taken advantage of.

### **Raymond Tweedie – Register of Probate, Rockingham County**

- He supports this Part of SB 89 which restores duties to the office of Register of Probate.
- Before them today is a group of 9 of the 10 Registers of Probate, 6 Republicans and 3 Democrats who believe in this Bill.
- They are not only a bipartisan group they represent 90% of the NH's Counties in this process.
- Over all Granite Staters cast 633,279 thousand votes for someone to represent them as Registers of Probate.

- In 2010 the state faced a budget crisis which was an 865 million dollar deficit and cuts had to be made.
- The Registers of Probate were cut, and a hot line and kiosks were added to the courts for probate issues.
- These solutions did not work well for the majority of probate issues.
- The Courts did well in light of the tremendous budget cuts, probate however, is a different animal.
- Most people do not plan to be in probate, and it can be a sad, traumatic and emotional time.
- The biggest issue involves literacy. Clerks have had to help people that cannot read or write, do not have computer literacy or financial literacy.
- This creates a huge burden when having to use the hot line or the kiosk.
- Hiring an attorney to help can be a solution but is a costly one.
- Sometimes constituents need help just filling out a form or getting generic advice on how to piece things together during a time that can be emotionally trying.
- He has heard complaints from many that they cannot go to the County Courthouse and sit in a private space and have a private conversation about a lost loved one and their estate.
- He believes that the bill is incredibly well written as it provides flexibility for the Counties to work on their own solutions to problems, based on the needs of their communities.
- The group of 10 Registers of Probate believe that this bill will give more local control and transparency and more than 600 thousand Granite Staters agree with them.
- They are sure that the Judicial Branch can work to resolve the issues they have with the Bill.

#### **Jane Bradstreet – Response**

- She wanted to clarify that all information regarding estates in probate is public and you would have to get a court order to make it confidential.
- The confidential records in the Court system are clearly identified as such.
- She believe that training is key to the success of this new system.
- There is organized training for all Court employees, and she knows that the Court can provide that to new Registers of Probate.

#### **Paul Mirski – Response**

- He believes that Judges overseeing their own activities does not serve the legislative intent.
- One of the benefits of restoring the Register of Probate roles is that they will be more divorced from the Court rather than being captured by it, which is in the public interest.

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

##### **Gilles Bissonnette**

- They have one concern with Part III of the bill.
- On page 2, lines 24-29 could be interpreted to mean that re-instituting signature matching is allowed.
- The court struck down the process of poll workers comparing signatures from the absentee application and the signed affidavit due to voters ballots being thrown out in error.
- It would be problematic to re-institute that process and it would add burdens and errors for the Clerks as well as the Voters.
- They did not find any evidence in past elections of voters who were disenfranchised were ineligible to vote or were engaged in voter fraud.
- Signature matching is unreliable especially when the election officials do not have training in handwriting analysis.
- Their last concern is that signature matching is very uneven in how it will be implemented.
- In the 2016 election all of the signature mismatches rejections came from 26% of NH's 318 polling places. The last 74% did not reject any absentee ballots due to signature mismatching.

- The standards are not uniform, a voter who submits his/her two weeks before the election will have more time to correct errors than someone who submits it two days before.
- He appreciates Senator Gray trying to codify preprocessing in statute.
- Senator Birdsell asked what page and lines he was referring to.
  - Mr. Bissonnette stated that he was on Part III and page 2, lines 24 – 29.
- Senator Birdsell commented that she does not see anything in there that refers to signature matching.
  - Mr. Bissonnette replied that she is correct, it is not explicitly in there but if she could look at line 24, it states “the affidavit shall be reviewed pursuant to RSA 659:50.” That statute is the one that goes through and codifies the signature matching process. The way they read the statute is that now when you look at paragraph four, those signatures would be subject to the signature mismatch process.

### **Maureen Heard**

- She is opposed to restarting the signature matching of absentee applications and affidavit envelopes.
- She was one of the plaintiffs in the court case.
- She was disenfranchised in a past election by a town election official who was not a handwriting expert and was not using consistent guidance to do the matching.
- She had no notice that her ballot was disqualified until well after the election.
- If she had been notified before the election she is not sure she would have been able to prove it was her signature as she was out of town on Election Day.
- Without a consistent approach to contacting voters and allowing time for a voter to respond she believes a cure in this instance is not possible
- Her daughter is a registered NH voter serving the military in Germany.
- There is a high probability that she would be disenfranchised with these changes because of the inability to contact her if there was a problem with her ballot.

### **Janice Kelble**

- Her husband was diagnosed with Parkinson’s and his handwriting changed due to the constant movement of his hands.
- She had to start signing for him on documents that were not legal.
- On legal documents she had to bring him multiple copies so he could practice his signature until it was legible.
- If they were trying to match his signature, which would look different every time, he would lose his ability to vote.
- She is worried about people losing their voice because of a signature mismatch.

### **Daniel Healey – Part III**

- In his town they have about 23,000 registered voters and about 6,500 absentee ballots.
- They preprocessed over two days about 2,000 ballots each day and it did help them on Election Day.
- He has some suggestions for the language of Part III, line 17.
- The opening of the absentee ballots and outer envelopes is the responsibility of the Moderator, not the Clerk.
- A Town or City Clerk should have the option to preprocess the absentee ballots or not, so he suggests they change the word from shall, to may.
- For a town election they only have about 80 absentee ballots and they do not see the need to preprocess.
- It should be an option for the Moderator to choose to preprocess or not.
- Another concern they have is that there is not procedure for what to do with the ballots after they have been preprocessed.

- In Derry, they put them in a box and sealed them with tamper proof tape until Election Day.

### **Richard Head – Government Affairs Director, NH Court**

- He is thankful to Senator Gray for discussing the intent of Part V of this bill with him but feels it goes beyond what is intended and may cause some problems.
- His recommendation is that SB 89 be amended to strike Part V.
- They would be happy to work with Senator Gray over the summer to see if there is a role relative to having Registers of Probate assist with getting people through the electronic filing process that they can agree on.
- In sections I and II of Part V, they have no particular issues with the salaries, but are not clear how the payment of those salaries will occur.
- As written it is not clear if the Counties are paying the salaries and then the Counties are being reimbursed by the Court Fees.
- Sections 3 through 6, require the Court to adjust the fees to account for those salaries.
- It is also unclear as to who has the liability if there is not enough money in the fund to pay the salaries.
- In sections 7, 8, and 12 of Part III, it talks about the role of the Circuit Court Clerks and it seems to strike their role over the Probate Court.
- This makes it unclear as to who has a role over the Circuit Court Probate Division.
- Also, in section 12 it states that the Registers of Probate shall oversee the filings of the Probate Division, which he believes is a much more significant role than what Senator Gray described.
- They have concern about giving access of the court records due to the confidential nature of the information within them.
- The result of allowing the Registers of Probate to have essentially, a managerial role, with access to the records, is an elected official from a specific county who is not subject to the Courts policies, discipline, or reviews.
- This gives a great deal of access to someone who has not had a background check with the Court.
- Registers of Probate have no criteria to be eligible for that position.
- Another concern is how to be sure the Register of Probate is not straying into giving advice to the people they are trying to help which would be a liability to either the County or the State.
- These are concerns that need to be thought through and discussed and he is happy to work with Senator Gray to resolve them if possible
- He believe this Part is creating a greater role for the Registers of Probate than the Senator was intending.

### **Richard Head – Response**

- In regards to training, Registers of Probate are not Court employees or State employees, so they do not have the ability to review and determine qualifications for them.
- There would be access to the confidential records and the Court would have no way to review if the Registers of Probate had opened those records.
- The voters elected the current Registers of Probate based on the roles that they now have.
- Those roles are not in the Constitution but defined legislatively.

TJM

Date Hearing Report completed: March 13, 2021