

Amendment to SB 89

1 Amend Part III of the bill by replacing section 2 with the following:

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3 2 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as
4 follows:

5 659:49-b Opening Absentee Ballot Outer Envelopes.

6 I. The town and city clerks or their designee shall open outer envelope of all absentee ballots
7 received prior to 5:00 pm on the day prior to election day. The envelope containing the ballot shall
8 not be removed from the outer envelope at such time.

9 II. The clerk shall establish a policy identifying when the outer envelopes will be opened and
10 the review of the affidavit conducted. Such policy shall include posting the time and location of the
11 review at least 24 hours in advance. The policy shall allow the opening of the outer envelope and
12 review of the affidavit while the voter or voter's delivery agent as defined in RSA 657:17, II is
13 present. When election day is within 2 weeks the opening of the envelope and review of the affidavit
14 shall occur not later than the next business day after the clerks receive the returned absentee ballot.
15 The public shall have a right to attend and observe as the clerk opens the envelopes and reviews the
16 affidavits.

17 III. The affidavit shall be reviewed to determine if the affidavit is properly executed, such as
18 whether there is a missing signature or incorrect name.

19 IV. If during this review the affidavit does not appear to be properly executed, such as
20 having a missing signature or incorrect name, the town or city clerk or their designee shall attempt
21 to contact the voter to notify them of the errors and possible methods to correct the error using the
22 telephone or email information, if provided, on the application. The clerk shall make a record that
23 notice was provided to the voter on the clerk's list of absentee ballots.

24

25 Amend the bill by replacing Part IV with the following:

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PART IV

28 Establishing a Committee to Study Post Election Audit Counting Devices and Authorizing the
29 Attorney General to Count Ballots as Part of an Investigation into Recount Discrepancies.

30 1 Committee Established.

31 I. There is established a committee to study post election audit counting devices.

32 II. The members of the committee shall be as follows:

Amendment to SB 89

- Page 2 -

1 (a) Two members of the senate, appointed by the president of the senate.

2 (b) Three members of the house of representatives, appointed by the speaker of the
3 house of representatives.

4 III. Members of the committee shall receive mileage at the legislative rate when attending
5 to the duties of the committee.

6 IV. Duties. The committee shall determine what ballot counting equipment is available
7 which would support a post election audit in New Hampshire, and shall study the feasibility, time
8 constraints, and cost of conducting a post election audit using any vote counting equipment
9 identified. The committee may use ballots cast in prior elections to test ballot counting equipment,
10 provided that such use is in conjunction with the secretary of state and with the approval of the
11 ballot law commission.

12 V. Chairperson; Quorum. The members of the study committee shall elect a chairperson
13 from among the members. The first meeting of the committee shall be called by the first-named
14 senate member. The first meeting of the committee shall be held within 45 days of the effective date
15 of this section. Three members of the committee shall constitute a quorum.

16 VI. Report. The committee shall report its findings and any recommendations for proposed
17 legislation to the president of the senate, the speaker of the house of representatives, the senate
18 clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library
19 on or before November 30, 2021.

20 2 State General Election Recounts; Conduct of Recount. Amend RSA 660:5 to read as follows:

21 660:5 Conduct of Recount. If directed by the secretary of state, the state police shall collect all
22 ballots requested from the town or city clerks having custody of them and shall deliver them to the
23 public facility designated by the secretary of state. At the time and place so appointed, the ballots
24 cast for such office *or question, including votes cast for the candidates or question on the*
25 *ballot, write-in votes, and not voted (resulting from overvotes or undervotes)*, shall be
26 counted by the secretary of state and such assistants as the secretary of state may require. When
27 counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot.
28 No mechanical, optical, or electronic device shall be used for the counting of ballots. The candidates,
29 their counsel, and assistants shall have the right to inspect the ballots and participate in the recount
30 under such suitable rules as the secretary of state may adopt. If the candidate requesting the
31 recount cannot attend the recount, the candidate shall designate, in writing, to the secretary of state
32 the name of an individual who will attend the recount and who will be authorized to make decisions
33 on the candidate's behalf. Each candidate or his or her counsel or designee shall have the right to
34 protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on
35 said ballot and shall attach thereto a memorandum stating such ruling and the name of the
36 candidate making the protest. If, at any time during the counting of the ballots, a discrepancy
37 appears in any ballot for any reason, the secretary of state shall suspend the recount until the

Amendment to SB 89

- Page 3 -

1 discrepancy is resolved, at which time the secretary of state shall continue the recount. In no event
2 shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

3 3 Ballot Law Commission; General Duties. Amend RSA 665:6, III to read as follows:

4 **III. When the ballot law commission finds by a majority vote of members present**
5 **and voting that a significant and unexplained discrepancy exists between the election**
6 **results reported by moderators and the recount conducted pursuant to RSA 660, the results**
7 **of any audit conducted by the secretary of state, or any other credible information that the**
8 **commission believes, if not resolved, could undermine public confidence in the accuracy of**
9 **election results, the commission shall request the attorney general to investigate.**

10 **IV.** The jurisdiction vested in the ballot law commission under paragraphs I and II of this
11 section shall be exclusive of all other remedies.

12 4 Attorney General; Enforcement of Election Laws. Amend RSA 7:6-c, II to read as follows:

13 **II. Without limiting the authority granted pursuant to paragraph I, whenever the**
14 **ballot law commission requests an investigation to be conducted pursuant to RSA 665, or**
15 **upon his or her own motion, the attorney general may unseal and reseal ballot boxes,**
16 **examine or cause to be examined for that purpose any equipment, books, records, papers,**
17 **ballots, or other documentary materials, or may examine any person under oath and**
18 **subject to the pains and penalties of perjury that the attorney general thinks may have**
19 **knowledge of any violation of election laws.**

20 **III.(a)** Beginning January 31, 2013, the attorney general shall, at least once during every 6-
21 month period, provide a rolling report to the general court on the status of all complaints of alleged
22 violations of the election laws received. The attorney general shall submit the report to the standing
23 committees of the senate and house of representatives with jurisdiction over election law.

24 (b) The report shall include, but not be limited to the following:

25 (1) A summary of complaints received during the preceding 6 months, or during the
26 period since the previous report if such period is less than 6 months, including the number of
27 complaints categorized by type of complaint and month received.

28 (2) For each complaint investigated, the results of the investigation and a
29 description of actions taken following the investigation.

30 (3) For each complaint not investigated, an explanation of why the complaint was
31 not investigated.

32 (c) The requirements of subparagraph (b)(2) or (b)(3) may be satisfied by including with
33 the report, for the complaint described, a closure letter, settlement agreement, cease and desist
34 order, or complaint filed with a court, or any other official communication.

35 5 Enforcement of the Election Laws; Impounding Ballots. Amend RSA 666:13 to read as follows:

36 666:13 Impounding Ballots. If directed by the attorney general as part of his enforcement of the
37 election laws **pursuant to RSA 7:6-c**, the state police which he designates shall collect all ballots

Amendment to SB 89

- Page 4 -

1 requested from *secretary of state or* the town and city clerks who have custody of the ballots. The
2 state police shall deliver the ballots to the public facility which is designated by the attorney general
3 *and may conduct inspections of the ballots as the investigation requires.*

4 6 Effective Date. Part IV of this act shall take effect upon its passage.
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6 Amend the bill by replacing Part V with the following:
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8 PART V

9 Relative to the Duties of the Registers of Probate.

10 1 Establishing Compensation; Register of Probate. Amend RSA 23:7 to read as follows:

11 23:7 Establishing Compensation. Every county convention shall have the power to establish
12 salaries, benefits, and other compensation paid to elected county officers including the county
13 attorney, sheriff, register of deeds, *register of probate*, treasurer, and county commissioners. For
14 the purposes of this section, *except for the register of probate*, "compensation" shall include
15 salary, longevity pay, vacation and sick pay, allowances, and all other payments made by the county
16 to its officers, plus the fair market value of any compensation paid in kind if reportable as income for
17 federal income tax purposes, plus all fringe benefits that may be provided including health insurance
18 and retirement, and may also include an upper limit on the amount of mileage and out-of-pocket
19 expenditures reimbursable to each officer. Said compensation shall be established biennially by the
20 county convention prior to the filing date required under RSA 655:14 for the elected offices listed in
21 this section, upon recommendation of the executive committee which shall remain in effect during
22 their term of office. Notwithstanding any other provision of law to the contrary, in counties in which
23 any of the officers listed in this section receive fees or mileage, or both, for services performed by
24 them as part of their compensation, the county convention may put such officer on a salary and
25 expenses basis. Such officer may be required to continue to collect the usual fees and mileage for the
26 service performed and to pay over all such fees and mileage to the county treasurer for the use of the
27 county. In such event, the amount such officer received in fees and mileage, less expenses, shall be
28 included in determining the minimum at which his *or her* salary may be established unless a lesser
29 amount is agreed upon by the incumbent officer at that time. In no case, *except for the register of*
30 *probate*, shall the salary or other compensation of any of such officers be established at a lesser
31 amount than that which was in effect December 31, 1972.

32 2 Salaries for Counties; Register of Probate. Amend RSA 23:8 to read as follows:

33 23:8 Salaries for Counties.

34 *I.* Every county shall establish the salary for its register of deeds at a fixed dollar value.
35 Said salaries may not be established either in part or in total as a percentage of fees or other charges
36 or payments collected by said register. Said salaries shall be established not less than biennially by
37 the county convention, upon recommendation of the executive committee. In no case shall the salary

1 of any of said registers of deeds be a lesser amount than the salary which said register was receiving
2 on January 1, 1974.

3 *II. Every county shall establish the salary for its register of probate at a fixed dollar*
4 *value. Said salaries may be established either in part or in total as a percentage of fees or*
5 *other charges or payments collected by the county treasurer or the state and consistent*
6 *with RSA 548:17. Said salaries shall be established not less than biennially by the county*
7 *convention, upon recommendation of the executive committee.*

8 *III. There is hereby established in the state treasury a separate fund to be known as*
9 *the county registers of probate fund, which shall be used to help fund salaries, benefits and*
10 *other compensation paid by counties to registers of probate. The fund shall consist of all*
11 *moneys collected pursuant to RSA 490:24, III and RSA 490:27, III. Payment to the counties*
12 *shall be limited to the extent funds are available in the county registers of probate fund.*

13 *IV. Moneys in the county registers of probate fund shall be nonlapsing and*
14 *continually appropriated to the counties for the purposes stated in RSA 23:8, III.*

15 *V. Counties shall report to the state treasurer each year on or before the 15th of*
16 *March, June, September, and December the total salary and benefits paid to registers of*
17 *probate in each county since the last report. The administrative judge of the circuit court*
18 *shall provide by the same dates a summary of the number of probate court filings by county*
19 *since the last report. The state treasurer shall pay to the counties on or before the 30th of*
20 *March, June, September, and December of each year a distribution from the county*
21 *registers of probate fund an amount up to the total salary paid by each county in the*
22 *previous reporting period. The distribution to the counties shall be calculated on a pro-*
23 *rata allocation based on the number of probate court cases filed in each county.*

24 3 New Paragraph; Supreme Court; Costs; Entry Fees. Amend RSA 490:24 by inserting after
25 paragraph II the following new paragraph:

26 III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of
27 the circuit courts and shall be deposited into the county register of probate fund established under
28 RSA 23:8, III.

29 4 New Paragraph; Probate Court Fees. Amend RSA 490:27 by inserting after paragraph II the
30 following new paragraph:

31 III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of
32 the circuit courts and shall be deposited in the county registers of probate fund established under
33 RSA 23:8, III.

34 5 Judicial Conduct Commission; Definitions; Clerk. Amend RSA 494-A:2, I to read as follows:

35 I. "Clerk" means a clerk of court or a deputy clerk, [~~a register of probate or deputy register,~~]
36 a court stenographer or reporter, and any person performing the duties of a clerk[~~-register,~~] or
37 reporter.

Amendment to SB 89

- Page 6 -

1 6 Registers of Probate; Residence. Amend RSA 548:1 to read as follows:

2 548:1 Residence, Etc. The register of probate shall ~~[dwell]~~ **reside** in the county in which ~~[the~~
3 ~~probate records are required to be kept]~~ **he or she is elected**. If a register shall ~~[dwell]~~ **reside** in
4 any other county and continue so ~~[dwelling]~~ **residing** for 30 consecutive days, the office shall be
5 deemed vacant.

6 7 New Sections; Registers of Probate; Authority; Deputy Registers of Probate. Amend RSA 548
7 by inserting after section 1 the following new sections:

8 548:1-a Authority. The register of probate shall have an office collocated with the county
9 register of deeds or such other location as determined by the county commissioners. The authority
10 and responsibility of the register of probate shall be to assist parties with probate court filings and
11 probate process governed under state statute.

12 548:1-b Deputy Registers of Probate. The county commissioners may appoint a deputy to
13 perform the duties of the register of probate in case of sickness, temporary absence, disability, or
14 other cause. Such appointment shall be made in writing and shall be for a length of time not
15 exceeding the register of probate's remaining term of office. The deputy shall be qualified in the
16 same manner as the appointing officer and perform the duties of the register of probate under
17 statute, until such time as the appointment is no longer necessary. The appointed deputy shall be
18 compensated from the register of probate's salary or as otherwise directed by the county delegation.

19 8 Registers of Probate; Preservation of Files. Amend RSA 548:5 to read as follows:

20 548:5 Preservation of Files. The register of probate shall be responsible for coordinating with
21 the secretary of state and the administrative judge of the circuit court established in RSA 490-F the
22 preservation of any closed files having the potential for historical significance. The register may
23 recommend that these files be sent to the records center established under RSA 5. ***Beginning on***
24 ***July 1, 2022, all paper probate records older than 40 years shall be kept in the state***
25 ***archives unless such records are otherwise necessary for the operation of the probate***
26 ***division***. The register of probate shall maintain a current index describing the location of any files
27 which have been removed from the court pursuant to this section. ***Except for records that***
28 ***contain personal information as defined by RSA 359-C:19, IV, the secretary of state,***
29 ***division of archives and records management shall make available on its website links to***
30 ***all available electronically scanned New Hampshire probate records, including those***
31 ***created or maintained by any nongovernmental entity until such time as the state has the***
32 ***capability to make all such records available through state resources***.

33 9 New Section; Record of Decedent's Real Estate. Amend RSA 548 by inserting after section 7-a
34 the following new section:

35 548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other
36 instrument pertaining to real estate filed with the probate court in connection with the
37 administration of any estate that the estate contains real estate located in another county within the

Amendment to SB 89
- Page 7 -

1 state, the probate court shall notify within 15 days the register of deeds of the county in which the
2 real estate lies of the name and date of death of the decedent. A register of deeds who receives such
3 a notice shall record in the grantor's index the name of the decedent, his or her date of death, and
4 the county in which the estate is being probated. The cost for filing said notice shall be assigned to
5 the estate.

6 10 Probate Courts and Decedents' Estates; Publication and Notice in Newspaper RSA 550:10 is
7 repealed and reenacted to read as follows:

8 550:10 Publication and Notice in Newspaper. Whenever notice is required to be published in a
9 newspaper by any provision of this title, the probate division of the circuit court shall cause such
10 notice to be made available to the public on the New Hampshire judicial branch website or by other
11 electronic media not less than 2 weeks before the date for which notice is given, unless otherwise
12 ordered by the judge.

13 11 County Officers; Vacancies; Registers of Probate. Amend RSA 661:9 to read as follows:

14 661:9 County Officers.

15 I. If a vacancy for a period of one year or longer occurs in the office of county sheriff, county
16 attorney, register of deeds, **register of probate**, or county treasurer, the members of the county
17 convention shall fill the vacancy for the unexpired term by a majority of the ballots cast. If a
18 vacancy for a period of less than a year occurs in any such office, the members of the county
19 convention shall, by majority vote of the county convention, vote to either fill the vacancy or to leave
20 the office vacant.

21 II.(a) If a vacancy occurs in the office of a county commissioner, the members of the county
22 convention, or, if the vacancy occurs in Hillsborough county, the members of the county convention
23 representing the cities and towns in the commissioner's district, shall fill the vacancy by a majority
24 of the ballots cast until the next biennial election of county officers. If the term filled is less than the
25 unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district
26 filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by
27 the voters of the county for a 2-year term.

28 (b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no
29 later than 30 days preceding the printing of the ballots for the primary election.

30 (c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate
31 party committees for vacancies in an office on a primary or general election ballot, respectively, shall
32 apply to vacancies to be filled under this paragraph.

33 III. If any person holding a county office enumerated in paragraph I or II becomes
34 temporarily absent or incapacitated, the county convention may, upon application of the county
35 attorney or county commissioners, declare a temporary absence and fill the same for a limited period
36 of time expressed in the appointment.

Amendment to SB 89

- Page 8 -

1 IV. Any officer of a county~~[, including the register of probate,]~~ may be removed by the county
2 convention for official misconduct. Any removal under this paragraph shall be initiated by petition
3 of a majority of the county commissioners, of the county attorney, or of a superior court judge. No
4 officer of a county may be removed without notice of the allegations supporting the petition for
5 removal and an opportunity to be heard by the county convention.

6 12 New Subparagraph; Application of Receipts; Probate. Amend RSA 6:12, I(b) by inserting
7 after subparagraph (364) the following new subparagraph:

8 (365) Moneys deposited into the county registers of probate fund established in RSA
9 23:8, III.

10 13 Repeal. The following are repealed:

11 I. RSA 548:28, relative to the penalty for registers of probate.

12 II. RSA 661:9-a, relative to vacancies in office of register of probate.

13 14 Effective Date. Part V of this act shall take effect January 1, 2023.