Bill as Introduced

HB 1253 – AS INTRODUCED

2000 SESSION

00-2396
05/09

HOUSE BILL ***1253***

AN ACT establishing a 4-year term for the commissioner of the department of corrections.

SPONSORS: Rep. Lozeau, Hills 30; Rep. Burling, Sull 1

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes a 4-year term for the commissioner of the department of corrections.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

00-2396
05/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT establishing a 4-year term for the commissioner of the department of corrections.

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

1 Term of Appointment. Amend RSA 21-H:6, I to read as follows:

I. The commissioner of the department shall be appointed by the governor, with the consent of the council, [~~and shall serve at the pleasure of the governor~~] ***for a term of 4 years from the date of the appointment and until a successor is appointed and qualified.***

2 Application. The provisions of RSA 21-H:6, I, as amended by section 1 of this act, shall apply to any appointments made after the effective date of this act.

3 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: April 18, 2000
Time: 2:09 pm
Room: 101 LOB

The Senate Committee on Executive Departments Administration held a hearing on the following:

HB 1253 establishing a 4-year term for the commissioner of the department of corrections.

Members of Committee present:
Senator Cohen
Senator Francoeur
Senator Brown
Senator D'Allesandro
Senator Larsen
Senator Roberge

The Chair, Senator Burt Cohen, opened the hearing.

Senator Burton J. Cohen, D. 24: Open the hearing on HB 1253. Neither of the sponsors are here, but let's say, Mike O'Neil.

Representative Mike O'Neil, Rockingham, D. 22: Thank you Mr. Chairman. I am here on behalf of the House ED&A Committee, which heard this bill. It was sponsored by both Representative Lozeau from Nashua and Representative Burling.

It was a bi-partisan bill. It had the support of the Governor when we heard the bill. What this does is make the commissioner of corrections a 4-year term. It takes away the annual appointment or serving at the pleasure of the Governor. There are only 2 commissioners in the state that do not have a set term appointment, the Commissioner of Corrections and the Commissioner of Youth Development Services are the only 2.

This bill would now put the Commissioner or Corrections on a term appointment. The vote in ED&A was 14 to 0 in favor of the bill. Most of the testimony was pretty well split as far as 50/50 both in favor and opposition.

Opposition basically coming from SEA. Governor spoke in favor. Both sides of leadership spoke in favor.

Senator Burton J. Cohen, D. 24: Was there a similar bill like this a couple of years ago?

Representative Mike O'Neil, Rockingham, D. 22: Yes there was. You had a bill I think the last session. I think what happened, there was something that got attached to it. This is just a clean, straight 4-year term appointment.

Senator Burton J. Cohen, D. 24: Do you remember what was attached to it?

Representative Mike O'Neil, Rockingham, D. 22: I do not. I think it was maybe something that go attached here? I am not sure.

We were a little slow in getting the bill out before the appointment of the recent appointment for Corrections Commissioner.

You may want to have research look and see what it was, but I remember this bill appeared before.

Senator Burton J. Cohen, D. 24: Further questions from the committee? Seeing none thank you very much.

Rep. Quandt: Mr. Chairman, I would refer to Attorney Reardon. I think she is much busier than I. OK? Please?

Judy Reardon: Thank you Mr. Chairman, members of the committee. My name is Judy Reardon. I am Governor Shaheen's Legal Council. Governor Shaheen strongly supports HB 1253, which would give the Commissioner of Corrections a 4-year term.

As you know the Commissioner of Corrections currently serves at the pleasure of the Governor. All of the other commissioners of New Hampshire departments with the exception of Youth Development Services have terms. Most of them are in the 4-year category. Some are 5. There might be 1 or 2 that are 6-year terms.

We recently underwent a search process, a national search to find a new Commissioner of Corrections. As you know the former Commissioner Hank Risley died in a plane crash in Hawaii in August. The Governor has nominated the man named Phillip Stanley to be the next Commissioner. Mr.

Stanley comes understanding that under current law he would serve at the pleasure of the Governor.

For Mr. Stanley that was not an issue. But I can tell you having served on the search committee that it was an issue for a number of people who applied. In fact of the top candidates, the ones the search committee asked to come and interview with the search committee, there were seven of those, three of them asked about it and were 3 of the best candidates. So I do think it is an issue in attracting people.

I think having terms makes sense. In most states department heads do serve at the pleasure of the Governor, but New Hampshire and Vermont are the only states that have 2-year terms for Governor. When you have a 2-year term for the Governor as we do here. Having commissioners serve as at the pleasure of the Governor as a general rule creates a potential for great instability.

You would not want a new Governor across the board removing department heads and putting in new people if Governors only serve 2-year terms. Speaking for our experience, Governor Shaheen was elected in 1996. She inherited all the department heads and to a person they were cooperative and operate in a non-partisan manner.

They all care about this state and their jobs. So I think our system works well and that the Commissioner of Corrections, like all the other commissioners, should have a 4-year term. With that, I don't know what was heard by the previous speaker. One question that came up in the house was why is it that this position does not currently have a term?

I have been told that it was an oversight. That when state government was reorganized in the 80's under Governor Sununu and our current departments were created. There was not a Department of Corrections before then as there were not some of the other departments. That it was simply an oversight, that it had not been deliberate. There are other people that say no that it was deliberate that that department was singled out for that.

That is my understanding. I would be happy to answer any questions that the committee has.

Senator Burton J. Cohen, D. 24: Questions from the committee? Seeing none thank you very much. Representative Quandt.

Representative Marshall Quandt, Rockingham, D. 20: Thank you Mr. Chairman. Also I'd like to reassure Attorney Reardon that I'm not stupid

enough to go before her and let her testify after me and clean my clock like a fine Swiss watch maker, so I deferred as a gentleman would.

The Department of Corrections came about after about a 4 or 5 year effort, going from the late 70's to the early 80's. There were 2 people that were instrumental in pulling together the Department of Corrections legislation from a legislator's standpoint.

One was now speaker Donna Sytek and the other was Ken Dalane out of Keene. With those 2 worked 2 probation officers, a gentlemen by the name of Less Rider who is now a warden in another system. He worked his way up and the other was Lee Quandt.

The fact that we did not have a 4-year term for the commissioner was totally intentional because we recognized early on that this was the one position that if you had a commissioner that screwed up people can die. We wanted the ability to pick up the phone and say you are fired. The first Commissioner of Corrections was here for 10 years. That was Commissioner Ron Powell.

Interestingly to note, not one of our commissioner was ever a commissioner before. Not one. They came here to step up. Ron Powell was an Assistant Commissioner in the State of Georgia. He was here 10 years. Steve Merrill came in, Ron left. We had Paul Broader who was from Manchester PD and I think the Captain of the Deputy Chief. Super fine person, cared greatly for his staff.

The system worked when strictly rumor has it Paul received his infamous phone call from the Governor and left shortly afterwards. Nick Pishawn who was then I believe an assistant commissioner took over for a while. We had in Commissioner Risley, unfortunately an airplane accident, but Commissioner Risley was never a commissioner anywhere else either.

We have to face the facts. New Hampshire is a small state. Do you want to start paying a $150,000 a year for a Commissioner to come in and run a relatively small Department of Corrections? We are going to get them. We are going to get them paying 80,000 dollars a year.

I have not heard any testimony that I have gone to in the House or anywhere else where we had to stop interviewing and re-advertise because we didn't have candidates. The fact is, ladies and gentlemen, New Hampshire is a wonderful state to step up. We get people coming to us with master's degrees. Ron Powell had a PHD. They stay here a few years, as long as they can - get a few years in as a commissioner and out go the resumes. I understand that Mr. Smith is a retiree or semi-retiree from the State of

Washington. I am sure he thinks it is nice to come to a small state. Run a nice little Department of Corrections with new prisons, adequate probation staff, so on and so forth.

The only thing I can say is boy is he going to be surprised when he hits the state lines and starts to get his feet wet because of the problems that we have with in our organization.

But the bottom line is we intentionally, when we put this legislation together, left out the 4 year term. This bill has passed the House twice and had been killed in the Senate twice.

Since I was born and raised in New Hampshire I am a great believer in tradition. So let's not break a good tradition. There is a purpose. There is a reason why this was done. I will answer any questions if I can.

Senator Burton J. Cohen, D. 24: Question from the committee? Senator Brown.

Senator Mary E. Brown, D. 17: Representative, couldn't you if you extend the logic out couldn't you say our other commissioners step up and serve in a small state for the same reasons?

Representative Marshall Quandt, Rockingham, D. 20: Well they do, but if Don Shumway for whatever reason is a week late with welfare checks nobody is going to get hurt. Commissioner of Corrections makes a bad decision, comes out with bad policy. I will tell you right now. I retired after 26 years in this system.

What happens in this system very rarely goes to the Governor's Office, very rarely. It is squashed. I will diverse for a moment. We have $2 million in sexual harassment suits. That is being taken care of, correct me if I am wrong Attorney Reardon, none of that ever went to the Governor's Office before the lawsuits really got started flying and the settlements made.

So we need a Commissioner that knows. You produce; you are only a phone call away from a resume search. There is a uniqueness in the Department of Corrections. That uniqueness is just up the road. I mean having worked inside the walls for 3 years in Internal Affairs as their Chief Investigator. I dealt with everything, everything.

Having worked directly for one of the commissioners. I can tell you that it is very important to keep this statute the way that it is. I am also a little disappointed because it was my understanding coming out of the House that

there was going to be some kind of mechanism put on to make it simpler to remove a Commissioner and I don't see that.

Maybe I misunderstood that this was coming as a second piece of legislation because this is a major issue. I suspect that this was not an oversight either with the YDC. When you are dealing with institutions like this and you are dealing with some of the most volatile, some of the most dangerous people in our society that have been taken out of our society, there is a different set of rules, a different set of standards and a different set of survival skills.

I think that if we really care as I do and I loved my co-workers and stood by them many of times, as a Chief investigator I would be the first one going into a cell door, you want to give them an opportunity to come forward and bring about a change.

To my knowledge the last department head that the state ever tried to remove, I think Senator D'Allesandro can remember, it was Senator John King when he was the Director of Probation. Right or wrong it took a year, a year and a half? It cost this state thousands and thousands of dollars.

I think that by keeping it as a phone call we are going to be doing the right thing. We have done the right thing twice in the past.

Senator Burton J. Cohen, D. 24: Further questions? Senator Larsen.

Senator Sylvia B. Larsen, D. 15: I question your belief that the Department of Safety doesn't in fact hold people lives. That the Adjutant General doesn't hold the life and death of people in their hands. That Health and Human Services as it treats any number of people in institutions and sets rules for them doesn't in fact hold life and death decisions in their hands and that they are responsible for acting appropriately.

That logic to me is questionable. I also wonder if you can attract the highest quality of commissioner to the state simply because we are a beautiful state, when we are looking for the highest quality commissioner.

Representative Marshall Quandt, Rockingham, D. 20: What part of the question would you like me to answer first. Let's look at the structure in the department of safety. My question would be when was the last time Commissioner Flynn was out in a riot, giving speeding tickets, patrolling Laconia during Motorcycle races? His structure is such that those decisions are made on a lower level.

You are talking about a super agency over there that is much more diversified in what they are doing than the Department of Corrections is. We have a Commissioner of Corrections. We now have a women's prison, a main prison on Main Street up here, we have Laconia prison, and now we have a Berlin prison. You can house your biggest problems, I understand, right here in the main prison. That is going to be overseen by the Senior Warden.

You are going to have the Commissioner just up the street. Safety the strata is much different. I don't think Don Shumway is going to do much to cause a riot. He may get some welfare mothers very upset, but I don't think anybody is going to get hurt.

I really can't comment on the National Guard because, you know, they are governed by the state and when they are called up they are governed by the military. So then again it is taken off. The Department of Corrections, Senator Larsen is quite unique and I absolutely understand you logic in questioning. It is good. I can't dispute it.

Senator Gary R. Francoeur, D. 14: Further questions? Thank you. I don't have anybody else asking to speak. Anybody else want to speak on HB 1253? Come up and your name for the record please.

Representative Mike O'Neil, Rockingham, D. 22: The name is Michael O'Neil. Just a point of clarification on, the ED&A committee of the house. Representative Quandt referred to a companion bill. What the ED&A committee has elected to do is to do an ad hoc committee to look at the terms of all the commissioners and their removal process. So that will be taken place during the summer.

The issue came up about removal of a commissioner. If you look at the process that currently is involved in a removal of process, of a commissioner, any commissioner that is now appointed. It is a very lengthy process.

The ED&A committee of the house has elected to look at that whole process as it relates to all commissioners not to just single out the Department of Corrections. That will be taking place over the course of the summer.

Senator Gary R. Francoeur, D. 14: Thank you. I have those here in opposition not wishing to speak. Gary Smith, Bill McCann, Denis Parker and Jay Ward. Is there anybody else at this time?

Gary E. Smith: Thank you Senator Francoeur, members of the committee. I just would like to make one point towards what Senator Larsen asked and

that was about the quality. I believe the quality of the candidate that we attract is more a function of the pay rather than the term.

Thank you very much.

Senator Gary R. Francoeur, D. 14: Anybody else wishing to speak on HB 1252? Judy?

Judy Reardon: Thank you Senator Francoeur. This may be a restatement of the obvious, but Senator Larsen's question to Representative Quandt made me want to put this on the record. The Department of Health and Human Services is responsible for a couple of facilities where people lives are at risk. One is a small facility that is up in Laconia on the same grounds as the Laconia Correctional Facility, but separate, and run by the Dept of Health and Human Services. That's where we put people who cannot go to trial because they are incompetent to stand trial but do predatory sexual offenses and so forth. Extraordinarily dangerous people.

The Department of Health and Human services is also responsible for the state hospital where unfortunately sometimes bad things do happen and I think it would be news to Commissioner Richard Flynn to find out that there was a great deal o f bureaucracy separating him from the state police in New Hampshire. So I think that the analogy that Sen. Larsen was making in her question was very well put. With respect to the idea that people who become Commissioner of Corrections in New Hampshire are all people who have not been commissioners before, as Senator Brown got at with the question that she asked of Rep. Quandt, I think that is true of every single commissioner of every single department in this state. The Governor is strongly, again, strongly supports this bill. I think there is every reason to treat the Commissioner of Corrections in the same manner that we treat other commissioners of state departments and that there had been no reason put forward for making a distinction for that position. Thank you.

Senator Gary R. Francoeur, D. 14: Questions? Sen. Brown?

Senator Mary E. Brown, D. 17: Yes. Do you recall any incidences, I don't so I'm asking if you recall any where we needed to remove the Commissioner of Corrections for some urgent reason that this would prevent us from being able to do in the future?

Judy Reardon: I can't think of one. The Governor's reason for wanting to replace former Commissioner Broder did not have to do with there being a riot at the prison or peoples' lives being at risk. It was a management rationale in that Mr. Broder had come from the Manchester Police

Department and not a background in corrections. So I am not aware, maybe perhaps 10, 15 years ago but not to my knowledge Sen. Brown.

Senator Gary R. Francoeur, D. 14: Further questions? Sen. Larsen.

Senator Sylvia B. Larsen, D. 15: I'm wondering if you wouldn't see a similarity. In the past I think perhaps corrections was more of a holding tank for people who have violated society's standards, but wouldn't you need a four year term if you are going to institute the kind of more advanced correctional policies that I think some of us would like to see happen in this state? When you've interviewed people for this position isn't part of it the kind of policies which take several years for people to understand the kinds of things which perhaps lead to rehabilitation of people through practices that educate or counsel people who have gotten into trouble, so that when they are released they are better able to survive with them the way that society would expect.

Doesn't that take longer than a two year term to do that in prison?

Judy Reardon: I don't think there is any question that corrections is a more complicated field now than it was 15 or 20 years ago, but again I think the underlying sentiment in your question is true for a Commissioner of Corrections just as it is for the Commissioner of any department, any sort of structural change that one would want to make in any department; potentially take longer than two years. It is also, it has not been the history in New Hampshire that when a new Governor comes in the new Governor automatically removes the Commissioner of Corrections just because that person is serving at the pleasure of the Governor. So that has not been the pattern in New Hampshire.

Senator Burton J. Cohen, D. 24: Further questions? Thank you again. Anyone else wish to speak to HB 1253?

Rep. Quandt: Mr. Chairman I just have this thing about letting Attorney Reardon have the last word. To answer a little bit about "is corrections more difficult now?" Absolutely, it is much more dangerous. We are dealing with people out here that are dangerous people.

Commissioner Powell was here, it was for 10 years, and I'm not going to draw any analogy, I'm just going to tell you the facts. He left shortly after Steve Merrill was elected governor. Commissioner Broder left not long, a year or so, after Governor Shaheen was there. The system works the way it does right now.

Senator Larsen, policies and procedures if they are good will last, whether it's 2 years, 4 years, 6 years. When I lift in April of '99 we were still using some of Ron Powell's policies. And after the accident with Commissioner Risley, I understand they were trying to remove some of his policies. It is the man. It certainly is the Governor and the support that that person gets. But because when I go back and say the uniqueness of our jobs, the day after day, the night after night of putting your life on the line, whether you're inside the prison or out here on the streets working alone on these non-violent offenders that are supposedly... non-violent offenders that seem to go to prison for very violent reasons, and they are putting out because they have to make room. That's very important. This bill is very important to these people, to these corrections officers and to these probation parole officers.

I could spend three hours in here telling you about the incompetence and the screw-ups within the Department of Corrections, some of which are costing the state thousands of dollars as we speak. Right now. I'm not going to do it because we don't have time. Besides that I am a little tired today. But you can trust me that they're there. And when a new commissioner comes in the Governor ought to sit him aside and say, hey Phil, we've got problems out here and we want you to deal with them. And if you don't deal with them in a couple of years, check out your resume service.

And I think that is the only fair thing. And I am not here, I support SEA but, I'm not here as an SEA spokesman. I'm here as a State Rep. That's been in the system 26 years. I've spent my time out there in the gutters. I've dealt with commissioners that I thought were somewhat stranger than I was, if that is possible. And I had wished that that option had been exercised in the past and it wasn't.

Thank you.

Senator Burton J. Cohen, D. 24: Any more questions? Seeing none, one more person wishes to speak?

Rep. Al Hamel, Rock. 10: Thank you Senator. For the record my name is Rep. Al Hamel, and I represent Rockingham 10, Chester and Freemont. I'm also with the ED & A Committee.

We have just looked at a bill on the reorganization of the Dept of Corrections. And we probably could have exec'd it out last week. But out of deference to the system, knowing that a new commissioner is coming aboard we put it into interim study to give him a chance to take a look at it. And I think he deserves that. He or she whoever comes in, notably a "he" this time. And I think that he's going to have to take some time to look at his system, look at

what was proposed, and give him an opportunity to comment on this proposed bill. And I don't think it is a short term thing.

Do you have any questions? Thank you.

Senator Burton J. Cohen, D. 24: Seeing none I am going to ask if there is anyone else who wishes to speak? I will close the hearing on HB 1253.

The hearing on HB 1253 was closed at 2:37 p.m.

This verbatim transcript respectfully submitted by,
Jennifer Ruffing, Senate Secretary.

Speakers

SENATE EXECUTIVE DEPTS. & ADMIN. COMMITTEE

Date 4-18-00 Time 2:10 pm Public Hearing On HB 1253

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
☒	~~[illegible]~~		
☐	MIKE O'NEIL	P.O. Box 818 HAMPTON	ROCK 22 EDHA
☒	Judy Reardon		
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☐			
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Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

☒	Gary E. Smith	Concord	SEA Chap. 24
☒	Bill McGann	Dover	SEA
☐	Dennis Packen	Concord	SEA
☐	Jay Ward	Pembroke	
☒	Lee Quandt	Rock #20	
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Committee Report

Date: April 18, 2000 Time: 2:09 p.m.

The Senate Committee on Executive Departments Administration held its hearing in Room 101 LOB, Concord, New Hampshire.

BILL NO.: HB 1253 TITLE: establishing a 4-year term for the commissioner of the department of corrections.

Members of the Committee present:

Senator Cohen
Senator Francoeur
Senator Brown
Senator D'Allesandro
Senator Larsen
Senator Roberge

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☒ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Executive Departments Administration

to which was referred House Bill 1253

AN ACT establishing a 4-year term for the commissioner of the department of corrections.

VOTE: 4-0

Having considered the same, report the same with the following resolution:
Resolved, that it is: **INEXPEDIENT TO LEGISLATE.**

Senator Gary R. Francoeur
For the Committee

HB1253 Docket

Bill Title: establishing a 4-year term for the commissioner of the department of corrections.

Date	Body	Description
1/5/2000	H	Introduced and ref to Exec Depts & Admin; HJ5, p92
1/5/2000	H	Copy to Chairman on 12/22/1999
1/5/2000	H	Hearing Feb 15 10:45 RM202,LOB
2/17/2000	H	Subcom Work Session Feb 23 11:00 RM202,LOB (Rep O'Neil)
2/23/2000	H	Subcom Work Session Mar 7 9:30 RM202,LOB
3/16/2000	H	Maj Report OTP for Mar 23 (vote 14-0;CC)
3/23/2000	H	Passed; HJ26, p807.+ 851
3/23/2000	S	Introduced and Ref. to Executive Departments & Administration; SJ 7, Pg.232
3/31/2000	S	Hearing April 18, Room 101, LOB, 2:10 p.m.; SC20, Pg.5
4/26/2000	S	Committee Report Inexpedient to Legislate, 4/27/2000; SC25
4/27/2000	S	Committee Report Inexpedient to Legislate, Sen. Larsen Substitute motion of Ought to Pass;
4/27/2000	S	RC 8y - 13n, MF; Inexpedient to Legislate, MA, VV, ==KILLED== SJ 12, Pg.327-328
5/3/2000	S	Sen. Trombly Served Notice of Reconsideration; SJ 13, Pg.341