Bill as Introduced

HB 53 – AS AMENDED BY THE HOUSE

6jan00.....2121h

1999 SESSION

99-0055
09/10

HOUSE BILL ***53***

AN ACT relative to qualifications and appointments of marital masters.

SPONSORS: Rep. Hunter, Hills 7; Rep. Pepino, Hills 40

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill establishes certain qualifications for marital masters. The bill requires marital masters to be nominated by the governor and confirmed by the executive council. The bill also requires the governor and council to approve marital master contracts.

. . . . . .

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 53 – AS AMENDED BY THE HOUSE

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to qualifications and appointments of marital masters.

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

1 New Section; Qualifications and Appointments of Marital Masters. Amend RSA 491 by inserting after section 25 the following new section:

491:26 Marital Masters.

I. Marital masters selected to serve in the marital master program, pursuant to New Hampshire superior court rule, shall possess the following qualifications:

(a) Professional experience in family law matters.

(b) Legal and personal qualities including, but not limited to:

(1) Knowledge of family matters, including related matters such as tax and pension law;

(2) Personal maturity so as to understand and make decisions on matters before the court; and

(3) Personal qualities of patience and understanding of the difficult personal matters which are the subject of divorce and a willingness to deal with complex family matters in a non-adversarial manner.

II. The governor shall nominate and the council shall confirm all new marital masters. The governor and council shall approve those seeking a renewed contract term and the terms and conditions of the marital master contract.

2 Effective Date. This act shall take effect upon its passage.

Amendments

Senate Judiciary
May 17, 2000
2000-4561s
09/04

Amendment to HB 53

Amend the title of the bill by replacing it with the following:

AN ACT relative to the family division of the courts and relative to the jurisdiction of the family division in Rockingham county.

Amend the bill by replacing all after the enacting clause with the following:

1 Intent. It is the intent of the general court that a family court be implemented statewide in a manner which most expeditiously achieves the goal of providing enhanced services to parties involved in cases relating to divorce, custody, children, domestic violence, and other family law matters. The general court finds that this area of law requires the skills and attention of experienced and committed individuals who are dedicated to serving families and to the appropriate, timely resolution of family law cases in a manner which best services the public interest. The goals of the family division are the respectful treatment of all citizens by justices, marital masters and other family division staff, the prompt and fair resolution of family issues by justices and marital masters specially selected and trained to deal effectively with such issues, the use of alternative dispute resolution to reduce the adversarial nature of proceedings involving families, and the assignment of all family matters of a single family to one family division justice or marital master located in a family division that is geographically accessible to the family.

2 New Subdivision; Family Division Established. Amend RSA 490 by inserting after section 31 the following new subdivision:

Family Division

490:32 Family Division.

I. There is hereby established a family division which shall be a permanent component of the judicial branch under the administrative authority of the supreme court in the counties of Rockingham and Grafton on the effective date of this subdivision. All matters under the jurisdiction of the family division shall be transferred from other state courts no later than 6 months after the effective date of this section.

II. The supreme court shall expand the family division to 2 counties of the supreme court's choice during the biennium beginning July 1, 2001.

III. In establishing the family division, the supreme court shall:

(a) Designate the courthouses within each county which will house the family division.

(b) Select and designate judges, marital masters, and other court personnel from the district, probate and superior courts to serve in the family division, based on their expertise in, and commitment to, family law matters;

(c) Designate an administrative judge for the family division by selecting, from among the district and probate court judges serving in the family division, a jurist who has demonstrated an interest in legal issues affecting the family and a commitment to the values, objectives, and ideals of the family division.

490:33 Jurisdiction. Notwithstanding any law to the contrary, for each county in which the family division is established, jurisdiction over the following matters shall be exclusively exercised through the family division as jurisdiction was previously exercised in the superior, district and municipal and probate courts:

I. Petitions and libels of divorce, and petitions of nullity of marriage, alimony, custody of children, support, and to establish paternity.

II. Actions for support or custody for children of unwed parties.

III. Actions under RSA 169-B, relating to delinquent children.

IV. Actions under RSA 169-C, relating to abused and neglected children.

V. Actions under RSA 169-D, relating to children in need of services.

VI. Actions under RSA 173-B, relating to protection of persons from domestic violence except for concurrent jurisdiction with the superior and district and municipal courts to enter temporary protective orders under RSA 173-B:4.

VII. The adoption of children.

VIII. The guardianship of the person of minors.

IX. The termination of parental rights.

X. The change of names of persons who apply therefor in matters relating to jurisdiction in paragraphs I-IX.

490:34 Equity Jurisdiction. Notwithstanding any law to the contrary and for each county in which the family division is established, the family division shall have the powers of a court of equity in cases where subject matter jurisdiction lies with the family division. Suits in equity where subject matter jurisdiction lies with the family division including, but not limited to, petitions and libels of divorce, and petition of nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear. Such suits may be heard by any justice or marital master of the family division at any time, but nothing contained in this section shall be construed as limiting the power of the family division to have issues of fact framed and tried by a jury, unless federal law preempts a jury trial, according to the rules in equity, or the course of such proceedings at common law.

490:35 Judges and Marital Masters. With the understanding of the special nature of matters

within the family division, judges and marital masters selected to serve shall possess the following qualifications:

I. Willingness to serve in the family division;

II. Professional experience in family law matters;

III. Legal and personal qualities including, but not limited to:

(a) Knowledge of family matters, including related matters such as tax and pension law;

(b) Personal maturity so as to understand and make decisions on matters before the court; and

(c) Personal qualities of patience and understanding of the difficult personal matters which are the subject of the division and a willingness to deal with complex family matters in a non-adversarial manner.

3 Committee Established. There is established a committee to study procedures for implementation of a statewide family division.

4 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house, 2 of whom shall be members of either the judiciary committee or the children and family law committee and one of whom shall be a member of the finance committee, appointed by the speaker of the house.

(b) Three members of the senate, who shall be members of the judiciary committee, appointed by the senate president.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

5 Duties. The committee shall study and recommend the best method of establishing procedures for implementing a statewide family division.

6 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

7 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before January 1, 2001.

8 Transfer of Funds and Personnel. Funds within the judicial branch operating budget and court personnel shall be transferred to the family division from the superior court and other courts as necessary.

9 Jurisdiction; Family Division in Rockingham County. Amend 1995, 152:4, IV as amended by 1996, 265:14 to read as follows:

IV. The courthouses in Rockingham county which will house the program shall be the

Rockingham county courthouse, the Portsmouth district court, the Salem district court, and the Auburn district court. In the case of the Auburn district court, the supreme court shall have discretion to designate such other facility within the Auburn or Derry district as it deems appropriate.

(a) Matters arising in municipalities located within the Portsmouth district and the Hampton district shall be heard in the Portsmouth district court ***or such other location within the Portsmouth or Hampton district as the supreme court may designate.***

(b) Matters arising in municipalities located within the Salem district shall be heard in the Salem district court.

(c) Matters arising in municipalities located within the Auburn district***, except for the towns of Deerfield, Northwood, and Nottingham,*** and the Derry district shall be heard in the Auburn district court or such other location within the Auburn or Derry district as the supreme court may designate.

(d) Matters arising in municipalities located within the Exeter district and Plaistow district***, as well as the towns of Deerfield, Northwood, and Nottingham,*** shall be heard in the Rockingham county courthouse.

10 Effective Date.

I. Sections 3-7 of this act shall take effect 60 days after its passage.

II. Section 9 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect July 1, 2000.

2000-4561s

AMENDED ANALYSIS

This bill establishes a family division of the courts in Rockingham and Grafton counties and requires the supreme court to expand the family division to 2 other counties during the biennium beginning July 1, 2001. The bill also establishes a committee to study implementation of a statewide family division.

The bill also provides that family division matters arising in the towns of Deerfield, Northwood and Nottingham shall be heard in the Rockingham county courthouse in Brentwood. Currently, such matters arising in those towns are heard in the Auburn district court. The bill allows the supreme court to designate a location other than the Portsmouth district court within the Portsmouth or Hampton district for the hearing of family division matters.

Committee Minutes

Date: March 22, 2000
Time: 10:00 a.m.
Room: 103 State House

The Senate Committee on Judiciary held a hearing on the following:

HB53 relative to qualifications and appointments of marital masters

Members of Committee present: Senator Pignatelli
Senator Trombly
Senator Cohen
Senator Brown
Senator Wheeler

The Chair, Senator Debora Pignatelli, opened the hearing, by calling on Representative Mock to introduce the bill.

Representative Henry Mock: For the record, my name is Henry Mock. I represent Carroll County District #3, which entails the towns of Conway, Bartlett, Jackson, Chatham, Hart's Location, and Hale's Location.

We have before us this morning a bill that has some mileage on it. This subject matter, as a matter of fact, the exact wording of this, was in the family court's bill that the House sent over here to the Senate last year. The family court piece of legislation, I understand, is still breathing over here, but I am not sure exactly where it is; whether it is in Senate Finance, or whether it may have died. But anyway, I do know, however, that the Senate took this portion relative to marital masters out of the family court statute. That was how the Senate amended the family court bill.

My committee, the Judiciary Committee of the House, is very tenacious about this issue. Consequently, we had a bill relative to a similar issue introduced by Representative Hunter and Representative Pepino in our committee last year and, as part of the judicial reform legislation that we were seeking all summer and last fall, one of the prime issues that we were very interested in was the issue of marital masters.

Now, the philosophy that my committee has and I also have, of marital masters is this. Martial masters make very important decisions, which affect the lives of men and women and children in this State. Very, very important decisions in the divorce arena particularly. Because of that, we feel that they should be appointed in the very same manner as a judge because, in reality, they are acting as judges, any way you cut the mustard. True, their decisions are signed off by a judge. Now, life being as busy as it is, do you really, really think that the superior court judge sits there and reads all the transcripts, reads all the documents before signing their name? I contend, and my committee contends, they do not. We feel that these individuals should be nominated by the Governor, confirmed by the Council just like a judge. That is all we are asking. We are not asking that they be made judges. We just think that they should get their position exactly the same way as a judge gets their positions – through Governor and Council, and not being selected by the chief justice.

That's it in a nutshell and we just keep hanging on to this piece of legislation like a bulldog and we probably will. I welcome any questions, but that is all this piece of legislation does. The first paragraph really is some fluff that doesn't do any harm, but the second part is where the meat of this bill is, right there in that last paragraph.

I am open to questions if you have any.

Senator Debora B. Pignatelli, D. 13: Thank you for your testimony and we knew that you felt strongly about that part staying in when the family court bill came over and we didn't feel the same you did, as you probably know. The family court bill has just been re-introduced in the Senate, so there will be a hearing in the Senate coming up probably within the next few weeks or so. I don't think that it reads this way in the Senate bill. Any questions for Representative Mock?

Representative Mock: Thank you.

Senator Debora B. Pignatelli, D. 13: Representative Hunter, you didn't want to speak, but you are in favor of the bill?

Representative Bruce Hunter: I am in favor of the bill. I was out for surgery when the bill was heard last year, so I could not follow it, but I am in favor of the bill.

Senator Debora B. Pignatelli, D. 13: Tina Nadeau from the Superior Court? In opposition to the bill?

Justice Tina Nadeau: Thank you. Good morning. It is nice to see you; it is nice to be here to see some old friends and colleagues. I have to say, though, that it is a little bit easier to represent 28 judges although no less enjoyable than it was to represent an energetic governor. It is nice to be back here.

I am appearing on behalf of the Superior Court to state our opposition to HB53 and, as Senator Pignatelli has indicated, this particular provision was before the Senate previously in the family division and, at that time, Senator Pignatelli I think appropriately voiced her concern about one thing and that is the ambiguous nature of the bill.

It is unclear, at best, how often from this bill, how often the marital masters would be subject to review. It could be every ten years, every five years, even every one year and, if there is any area of law that should be protected and shielded from the political process, it is the law involving family and marital masters. Oftentimes those type of hearings can be highly emotional, hotly contested, and incredibly acrimonious.

I understand from Representative Mock that what he wants you to understand is that this is not asking for a whole lot. He is asking for the Governor to appoint and the Council to confirm. He is not asking for them to be judges, but that is the problem with the bill. Judges do have some protection in the constitution from the political process. The marital masters, if they were still treated as masters, yet appointed in the way judges are appointed, would not be afforded that same type of protection. So, let me tell you just briefly the two reasons why the Superior Court thinks this bill is unnecessary.

First of all, let me tell you what the process is. The chief justice does not select the marital masters. What happened recently was that the superior court committee, made up of marital masters and superior court justices, solicited applications through the *Bar News*, through the local papers. We received over 100 applications from qualified, quality, knowledgeable individuals with character and integrity. The judges and marital masters reviewed each and every one of those 100 applications and they were four or five page long applications asking questions about the individual's background and their interest in marital masters and why they wanted to become a marital master. But, each of the names were sent to every sitting judge in the superior court and every marital master for their input because these people practice in front of the marital masters and the judges on a daily basis. After receiving the input from those judges, the committee narrowed the field to 15. After that, the committee interviewed each of those 15 candidates and narrowed the field then to the top 5. After that, the

committee sent the top 5 recommended candidates to the Board of Governors of the Bar. The Bar reviewed that applications and recommended to the superior court the top 3 candidates that the Bar believed were the most appropriate. At that time, the full superior court voted on the top 3 and selected the most recent nominee, who is Michael Gardner, and he is eminently qualified. I think Senator Gordon, if he were here, could attest to that. He knows of his qualifications and probably Senator Trombly as well. He went to Cornell Law School, he practiced in family law for thirteen years, sixty percent of his case load is dedicated to family matters, thirty percent of his case load is dedicated to guardian ad litems, he is a certified guardian ad litem, he is a certified neutral evaluator, and marital master. So, I don't think that the superior court could have picked a better candidate. That is reason number one.

Reason number two is something I alluded to. Since they are not constitutional officers, they will not be protected from the political process and the appearance of impropriety that could result, I think, would be devastating to the superior court system and the judicial system. Imagine, if you would, somebody who has some connections or strong relationship to the Council having to appear before a master in a divorce case three months before the master's term is up for review. I think that the appearance of impropriety would outweigh the benefits that you could see from passing this bill.

Finally, let me say that the Bar has recently conducted a survey, its own survey, of how the court system is doing and, consistently and across the board in every county, the marital masters were the one group of court service providers that received the highest marks from litigants and lawyers alike. I think they are highly regarded, they are carefully selected, their performance is reviewed regularly, at least it was under the previous chief justice, and they are highly regarded professionals.

It would be a mistake to inject politics into this delicate area of law and, for those reasons, the superior court disagrees with this bill and I would be happy to answer any questions.

Senator Debora B. Pignatelli, D. 13: Are there any questions from the committee? I don't see any. Thank you for your testimony.

Justice Nadeau: Thank you very much. It was nice to see you all again.

Senator Debora B. Pignatelli, D. 13: It is good to see you, too. Is there anyone else who like to testify on HB 53? I don't see anyone. I am going to close the hearing on this bill and we will take it under advisement.

Hearing concluded at 10:15 a.m.

Respectfully submitted,
L. Gail Brown, Senate Secretary

Speakers

HB 53 Senate Judiciary Hearing Sign In

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: MARCH 22, 2000 TIME: 10:00 AM NAME / REPRESENTING	WISH TO SPEAK?
	✓	Tina Nadeau / Superior Court	yes
✓		Rep. Henry Mock	yes
✓		REP BRUCE FHUNTER	
			NO

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **MAY 18, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **House Bill 53**

AN ACT ***(New Title) relative to qualifications and appointments of marital masters.***

VOTE: **7 / 1**

AMENDMENT: **# 00-4561s**

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Debora Pignatelli
For the Committee

|HB53 Docket

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Bill Title: (New Title) relative to qualifications and appointments of marital masters.

Date	Body	Description
1/6/1999	H	Introduced and ref to Judiciary; HJ10, p125
1/7/1999	H	Copy to Chairman on 01/05/99 due on
1/7/1999	H	Hearing Jan 13 9:30 Rm208,LOB
1/28/1999	H	Continued Hearing Feb 09 10:15 Rm208,LOB
3/10/1999	H	Maj Report RE-REF for Mar 18 (vote 14-1;CC)
3/18/1999	H	Re-referred to Judiciary committee; HJ29, p603
8/5/1999	H	Re-Ref Subcom Org mtg Aug 19 10:00 RM303,LOB
8/5/1999	H	(Re-Ref Subcom: Reps Mock, Rowe, L Jean, Lasky, J Wall, Craig, Soltani, Keans, Woods & Picconi)
8/19/1999	H	Re-Ref Subcom work sessions Sep 1 & 8 10:00 Rm208,LOB
9/8/1999	H	Re-Ref Subcom work session Sep 15 10:00 RM208,LOB
9/15/1999	H	Rerefer subcom work session Sept 22 9:30 Rm208,LOB
11/1/1999	H	RE-REF Maj Report OTP/AM for 1/6/2000 (vote 14-1; Reg)
11/1/1999	H	Prop Comm Am {2121}(New Title); HC93, p2261-2262
1/6/2000	H	Comm Am, AA VV; Passed with Am VV; HJ6, p179-180 + 188
1/13/2000	S	Introduced and Ref. to Judiciary; SJ 1 (cont) Pg.35
3/13/2000	S	Hearing March 22, Room 103, SH, 10:00 a.m.; SC17, Pg.28
5/17/2000	S	Committee Report Ought to Pass with Amendment{4561},(New Title), 05/18/00; SC30
5/18/2000	S	Committee Report Ought to Pass with Amendment {4561}, {New Title}, AA VV; SJ 15, Pg.431-434
5/18/2000	S	Sen. Squires Motion LOT, MA, VV; SJ 15, Pg.434
5/18/2000	S	== KILLED BY RESOLUTION ==

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Docket Abbreviations