Bill as Introduced

HB 568 – AS AMENDED BY THE HOUSE

2122h

1999 SESSION

99-0530
09/01

HOUSE BILL ***568***

AN ACT establishing a program for performance evaluations of judges.

SPONSORS: Rep. Soltani, Merr 10; Rep. Marple, Merr 11; Rep. Christiansen, Hills 23; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill requires the supreme court, in consultation with the administrative judges of the superior, district, and probate courts, to design and implement, by court rule, a program for performance evaluation of judges.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-0530
09/01

STATE OF NEW HAMPSHIRE

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

AN ACT establishing a program for performance evaluations of judges.

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

1 New Paragraph; Complaints; Committee on Judicial Conduct. Amend RSA 490:30 by inserting after paragraph III the following new paragraph:

IV. In all cases, whether a complaint is dismissed or not, complaints received by the committee on judicial conduct shall be made available to the administrative judge of the court in which the judge complained against holds office. Furthermore, all complaints against judges received by the administrative judges of the superior court, the district court and the probate court shall be forwarded to the committee on judicial conduct.

2 New Subdivision; Judicial Performance Evaluations. Amend RSA 490 by inserting after section 31 the following new subdivision:

Judicial Performance Evaluations

490:32 Judicial Performance Evaluations.

I. The chief justice and a majority of the supreme court, in consultation with the administrative judges of the superior, district and probate courts, shall design and implement by court rule, a program for performance evaluation of judges. The sole purpose of this program shall be the improvement of the performance of individual judges and of the judiciary as a whole. Notwithstanding any law to the contrary, all information compiled through this program shall be confidential, except as otherwise provided in this section.

II. The program for performance evaluation shall include, but shall not be limited to, review of records of the supreme court's committee on judicial conduct which are public records under supreme court Rule 40; a questionnaire, to be designed by the supreme court; and a self-evaluation form to be completed by the judge. The supreme court shall strive to achieve uniformity among court evaluation questionnaires, recognizing that the questionnaires for each court may differ due to the jurisdiction of the courts. Questionnaires shall be distributed to a representative sample of attorneys, parties, witnesses, jurors, court personnel, and others who have appeared before a judge during the evaluation period, for the purpose of evaluating the performance of the judge. The questionnaire shall include, but shall not be limited to, questions relative to the judge's performance, temperament and demeanor, judicial management skills, legal knowledge, attentiveness, bias and objectivity, and degree of preparedness. Completed forms shall be returned to the administrative judge, unsigned, within 30 days of issuance. All responses shall remain confidential.

III. The program for performance evaluation shall ensure that each judge is evaluated a

minimum of once every 3 years.

IV. The chief justice of the supreme court shall evaluate the administrative judges of the superior, district and probate courts.

V.(a) The chief justice and a majority of the supreme court, in consultation with the administrative judges of the superior, district and probate courts, shall establish judicial evaluation standards, and shall design or determine appropriate programs for judges who need improvement in achieving the judicial evaluation standards. The supreme court shall establish disciplinary rules and may initiate disciplinary action when appropriate. If a judge fails to achieve judicial evaluation standards after 2 consecutive evaluations, or purposely fails to complete assigned programs, the judge's right to confidentiality shall be waived.

(b) Upon consideration of nomination for another judicial appointment, a judge's evaluations shall be made available to the governor upon request. Upon nomination, such evaluations shall be made available to the executive council upon request. The contents of such evaluations shall be kept in strict confidence by the governor and executive council.

(c) Judicial performance evaluations shall be retained by the judicial branch for the duration of the judge's tenure.

VI. The supreme court shall prepare a report on the implementation of the performance evaluation program described in this section within one year of the effective date of this section and submit such report to the governor, the speaker of the house, the president of the senate, and the chairpersons of the house and senate judiciary committees. Such report shall be made available to the public. Beginning in 2001, the supreme court shall annually file a report on the evaluation process, including, but not limited to, the number of evaluations performed by each court, the percentage of responses received, and, without identifying individual judges, a summary of the overall evaluation results and all actions taken to correct inadequacies and deficiencies. The annual report shall be submitted on or before June 30 of each year to the governor, the speaker of the house, the president of the senate, and the chairpersons of the house and senate judiciary committees. Such report shall be made available to the public.

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

Committee Minutes

Date: **March 22, 2000**
Time: **11:00 A.M.**
Room: **103, State House**

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

HB 568 ***(New Title) establishing a program for performance evaluations of judges.***

Members of Committee present:

Senator Pignatelli
Senator Brown
Senator Cohen ~ 11:20 A.M.
Senator Squires ~ 11:15 A.M.
Senator Trombly
Senator Wheeler

The Chair, Senator Debora B. Pignatelli, opened the hearing by introducing and calling upon to testify, Representative Henry Mock.

Senator Debora B. Pignatelli, D. 13: Representative Henry Mock? Now, you're not a sponsor of the bill, but you're signed up first. Do you want to be first to testify on the bill?

Representative Henry Mock: That's fine with me ... I just would like to bring you the history of it.

Senator Debora B. Pignatelli, D. 13: It's fine with Representative Marple? So ... thank you, Representative Marple.

Representative Henry Mock, Carroll D: 3: Madam chairman, members of the committee, for the record, my name is Henry Mock, and I represent Carroll County, District 3. Which consists of the towns of Conway, Bartlett, Jackson, Chatham, Hart's Location, and Hale's Location.

This piece of legislation is the result of the House Judiciary Committee's attempt at some judicial reform. And, even though we didn't make lots of progress in judicial reform, we didn't discover a lot of things that really ... that we could reform, but this is one area that I think ... one area that needed to be addressed, and that is the evaluation of judges. As you know, judges are appointed for life, and after that point ... after the appointment, they are basically in for the rest of their lives. And, there seemed to us to be little accountability.

Now, the ... all the courts, probate, district, superior and I presume supreme, have an evaluation process in place. However, we found that process to be sporadic at best. And, we felt there should be in place, a good evaluation system to evaluate the judges that was not totally secret and yet, did have confidentiality. We didn't think that their evaluation should be open to the public at all times, anymore than a state employee's evaluation should be open.

And therefore, if you look at the bill paragraph by paragraph, you'll see that we have tried our best to ... and I should say that we worked hand in hand with Eileen Fox on the wording that you see here. And, we made many, many, many changes in this piece of legislation. And, I know another committee member here that has a great deal of interest in this bill. Representative Craig is here, and would get into details with you if you wish to. But, you will not see anything in here that should be objectionable to anybody. I think everyone in every state position should be accountable. And, what that is exactly ... what this does and, it says in paragraph three that every single judge will be evaluated once every three years. And, the evaluations are confidential, except in the case of ... where the Governor is going to promote the judge. And, I think it's in V. (b), you'll notice that, "Upon consideration of nomination for ... judicial appointment, a judge's evaluation shall be made available to the Governor upon request." And, "...the council." But, the contents shall be kept in strict confidence by the Governor and Council.

So, that's the only case where these things get out to us. Unless, a judge fails his or her evaluation two times in a row, then it can become public. So, I'll stop there and not talk anymore.

Senator Debora B. Pignatelli, D. 13: Thank you very much, Representative Mock. Are there any questions? Senator Brown?

Senator Mary E. Brown, D. 17: What is ... what's the consequence for the judge? I mean, is it somehow a tool to help them improve, or what?

Representative Henry Mock: Yes. And, as a matter of fact, you will find that over in V., line 4 of page 2, I think it is ... the Chief Justice and a majority of the court, in consultation with the Administrative Judge shall establish judicial evaluation standards. And, if a judge is failing in any one of the ... in any particular area, that judge has to attend classes, or whatever ... to be brought up and fulfill that deficiency.

Senator Mary E. Brown, D. 17: Okay, thank you.

Senator Debora B. Pignatelli, D. 13: Representative Mock, does this bill have the support of the courts? I see there are no judges or representatives here that are signed up to speak ...?

Representative Henry Mock: I can't answer the question. I can speak to them. I can tell you that Eileen Fox and I met for many hours and changing wording and so forth. Eileen is not the court, but ... it's getting pretty close.

Senator Debora B. Pignatelli, D. 13: All right, thank you. Yes, Senator Squires?

Senator James W. Squires, D. 12: Representative Mock, I'm struggling a little bit to figure out the impetus of this bill. You indicated that review is not ... there is a process for review now, but in the course of your deliberations it became evident that it's done perhaps, sporadically. And the response to that was not to improve the present ... the current system, which is to make it function as perhaps it was originally intended. But, to substitute a whole new body of requirements ... I'm curious as to why you chose that route rather than taking what now exists, and say to the clerk, would you mind doing what you're supposed to be doing, if in fact, that's the case?

Representative Henry Mock: That is exactly what this bill does. This does not throw out their present evaluation system. It tells them to improve the system, and to do it every three years. Now, by improving, I can find you police officers. I can find attorneys, and we did it. We found these people, been practicing for years and years before courts and had never received any kind of an inquiry. That's the way it works. They send it out to attorneys, law enforcement officers, people who've been before the courts, both defendants and plaintiffs. How were you treated? Did court start on time? And, incidentally, that was the biggest deficiency we found in the court system ... starting on time.

And, ah ... so, we couldn't find anyone who'd ever received these things. Yet, they were being done ... supposedly. Now, I do know that in the last two or three months, it has become much more prevalent ... I don't know if this was the impetus to do that, but I know way up north some game wardens received these things from the court, and they'd been on the force for 20 years, 25 years ... and they'd never seen these things. They evaluated the judges. And, incidentally, the old system that they'd been using, you'd sign your name. You used to sign your name. You can't sign your name to an evaluation ... a true, real evaluation. So, you get a lawyer that appears before Judge X, every Friday morning at 10 o'clock, and he does an evaluation, and he signs his name. This specifically states, it shall be unsigned. If they're going to be real, they've got to be unsigned. All they were doing is favoring up to the judge. I mean, that's ridiculous to have in an evaluation system.

The best evaluation system we saw in our study here, was in probate courts. That one specifically said, do not sign this evaluation. The others didn't say that, and the people would sign their names. That's very bad. So, we are not tearing down the old system. Just asking them to improve it.

Senator Debora B. Pignatelli, D. 13: Senator Squires?

Senator James W. Squires, D. 12: So, then I can conclude that the present system asked questions, but not necessarily limited to judges' performance, temperament and demeanor, judicial management skills, legal knowledge, attentiveness, bias and objectivity, and degree of preparedness. Those are all that's being asked now. That's where that comes from?

Representative Henry Mock: That's right.

Senator James W. Squires, D. 12: Thank you.

Senator Debora B. Pignatelli, D. 13: Senator Brown?

Senator Mary E. Brown, D. 17: Thank you madam chairman. I notice that there is no FN on this bill, did you discuss at all if there were any costs involved? For example, if a judge needs improvement, and has to take courses or something, did that come up at all?

Representative Henry Mock: No, it did not.

Senator Debora B. Pignatelli, D. 13: I don't see any other questions. Thank you very much Representative Mock. Representative Richard Marple?

Representative Dick Marple: Good morning.

Senator Debora B. Pignatelli, D. 13: Good morning.

Representative Dick Marple: Madam chairman, members of the committee. For the record, my name is Richard Marple, I am representing one third of Hooksett, which has three reps. So, I'm just one third. District #11 for Merrimack County. And, Representative Soltani asked me if I would be interested in reviewing this piece of proposed legislation, and I am in general ... or should I say, support of it in general. However, I am a student of history. And, I'm a great supporter of the supreme law of the land. More particularly, the Bill Of Rights.

NH's Bill Of Rights, to me, is something which is extremely important, and I find that our general respect for the rights of the people which are enumerated in the 39 Articles of the BOR, is sometimes overlooked. And, it is with this in mind, I find that Part II [Part Second] of our Constitution simply enumerates the obligations and duties of we, the people, and representing ... I should say we the people and the representatives of them, to protect those 39 Articles that are in the BOR. And, so I come to Part II, Article 4, which gives we, the Representatives, both houses ... this house [Senate] and the House that I am a member of, the obligation and duty to provide for all laws and rules and regulations, with or without penalties. I don't see any penalties in here. Number one, so that's something we might want to consider.

Included in Article 4, not only do we have the obligation and duty in protecting the rights of the people, but there is an admonishment made not once, but twice in Article 4, and I quote; "...so long as the same is not contrary or repugnant to this Constitution," ... now I submit, I am no professor of syntax, but words and the location of words in the manner in which they are presented, have been ... shall we say, tested by the judiciary. There are several Supreme Court cases that state that the "plain" language of the Constitution must be read as being "self executing" ... now, self executing in my understanding is that there is no ancillary legislation necessary in order to implement the admo-

nition that is given. And, so the admonition that is given to us not once, but twice ... and, I can say well, why did they say it twice ... well, maybe it was because we've already told you once, now we're going to tell you again! [sic] So, in Article 4., we have that admonition. So is the same as not contrary or repugnant to this Constitution.

Well, Article 8. of the BOR is extremely explicit, and again, we come back to the plain language of A.8. And, A.8. says that all power residing in and being derived from the people, and here is the language, "...all magistrates," and that's what we're talking about here, judges. "All magistrates and officers of government, are their substitutes and agents, and at all times accountable to them."

Now, the previous speaker, Representative Mock, referred to accountability. And, I was very pleased when I heard them say that this legislation was addressing the accountability of these judges. Hopefully, they would become more accountable. Well, therein is where I see somewhat of a conflict. And, now ... let me refer to the lines which I highlighted here, that I think might be in conflict with A.8. of our BOR, as far as accountability was concerned. Now, I have gone down to line 16, where it says, "...notwithstanding any law to the contrary."

Now, line 16 really opens the door for me. Because that's where I would like to introduce you to A.8. of the BOR. I believe that, in line 17, where it says "...shall be confidential." I think the confidentiality of the reports is where we are now diminishing the accountability that I believe these judges are accountable to us for. They have been operating in confidentiality for too long, and it is only when a spotlight of truth is shown upon those, that they will then have a more, shall we say, tendency to conform with the law.

Ah, the next ones that I highlighted were on page 2, line 9 and 10. The judges right to confidentiality shall be waived. Well, again, we have confidentiality. And, I hope that the word confidentiality will be addressed here, because we find it again showing up on line 14. Shall be kept in strict confidence. Kept in strict confidence, again we are diminishing the accountability that these judges are answerable to.

Ah, self executing ... and I think if you've got Black's Law Dictionary there, you'll find that's exactly what it is defined as. The self executing language of the Constitution cannot be contorted or twisted to mean something other than what it says. And, that's what self executing means. And, it is something that has been adjudicated by the courts, and there have been several Supreme Court cases, and I have the research on them, and I will be happy to submit them if you need that information. But, I do believe that there should be ... as generally I said, I'm in total agreement with the goal ... or perceived goal of this legislation ... however, I do feel that we have to open up this to the public. And, what has previously been held in confidence, with regards to the accountability to those who do have life tenure. With that, I would be happy to answer any questions that you folks might have.

Senator Debora B. Pignatelli, D. 13: Thank you for your testimony, Representative Marple, and I don't think there are any questions.

Representative Dick Marple: And, I thank you for that opportunity to express those thoughts.

Senator Debora B. Pignatelli, D. 13: Representative Jim Craig, did you want to speak?

Representative Jim Craig: Yes, I would today if I can. Thank you. I just wanted to sweep up here a little bit on some of the things you heard. The reason that this was crafted the way it was, is because what was going on over at the House at the time, there were a couple of bills to elect judges, and to review them every seven years. And, there was a lot of concern about that because of separation of powers, and all that kind of stuff. And, so the House formed a subcommittee to see whether ... what really was going on, what really needed to be done. And, nobody ... as Representative Mock said ... nobody really had anything concrete to say bad about the judges, except sometimes they were late, sometimes they were rude, sometimes they were arrogant ... whatever that means. And, so we felt that ah ... so, we understood, we all felt that's probably a fairly good assessment of the way things stand.

Ah, we've all had situations ... I know I have as a lawyer ... where, you know, I could've done the same thing. I would have said the same thing. But, we've all felt that ... you know, it didn't make sense to change the system and to go to electing judges and have them reviewed every seven years, because those have a whole different set of problems. But, we did recognize that there are these smaller issues that have to be dealt with. And, you should also keep in mind that the Judiciary [sic] [*Judicial*] Conduct Committee [JCC], which is there to determine ... has its own set of penalties, and that deals with serious violations, ethical violations that judges may commit. So, we didn't want to step on their toes, because that's already in place, and that process has been opened up by the courts themselves ... I mean, I don't need to go into that. Speaking of confidentiality, once a complaint is filed now, I think it's public.

So, what this bill attempts to address is really the rudeness, the arrogance, and the ... those kinds of things, which don't really rise to the ... which the JCC would say, that's not in our purview, that doesn't count. So, now we have something that can deal with these minor problems. And, that's the reason why it has to be confidential, because we're all human ... judges are all human, and some don't act ... some have bad manners and those things. But, those are the kinds of things that don't necessarily need to be public. You know, these people sit up there, and they're judges, and if you ... if you expose all their warts and everything, there's no real ... there's really no sense in that ... you know, we have to respect their offices, and if we tear them down at every opportunity, that's just ... it's not good for the office that they hold.

So, there is the confidentiality, there's no question about that. However, we did want the judges to understand that we're serious about this, and so that if a judge does not meet the standards that are set, the confidentiality ... and he

doesn't for instance, go to counseling or take a course that he's required to take, twice ... then his record becomes not confidential. Or, if he deliberately refuses to do anything that the administrative judge orders him to do, if he says, well, I'm not doing that ... well, then his record is no longer confidential. So, there is a tie in there to keep judges honest, we hope.

We were concerned about ... we didn't want to micromanage how this was going to run, so the bill requires that the court design and implement the program for evaluating the judges. But, they have to have questionnaires sent to all the courts as self-evaluation. And, we found that the administrative judges weren't talking to the JCC, so any reports made to one body or the other will be shared with the other from now on. So, those are the bases from which the evaluations are supposed to be drawn from. It's up to the court to come up with these standards, and they will be reviewed by the legislature ... I think once every year. So, the legislature will know what's put in place, but it won't be micromanaging it, that was our intention.

I just wanted to point out that each judge is to be evaluated a minimum of once every three years ... I think three years. And, the court will be required to send every year, a report on the implementation of performance of evaluations. So, that's basically what we have done here, we've given them a ... the courts a lot of latitude, but we did that for a reason. This is only for the minor issues that don't ... that aren't going to go to the JCC. And, that was our reasoning in doing it the way that we did it. So, with that, if there are any questions?

Senator Debora B. Pignatelli, D. 13: Senator Wheeler?

Senator Katherine W. Wheeler, D. 21: Representative Craig ... when you said that it's just for the minor issues, I'm having a hard time understanding why we're putting a whole process in place for minor issues that could be done in a conversation, rather than a minimum of every three years ... a fairly in depth evaluation ... and, also in lines 27 and 28, on the first page, when you talk about what the questionnaire shall include, it seems to me that the legal knowledge ... the bias of objectivity would be something that the committee on judicial conduct would deal with. Those don't strike me as being minor.

Representative Jim Craig: Senator, you may be right about that ... but, we heard a lot of complaints about people coming with ... you know, that was the trouble, a lot of abstract complaints, nobody had any real ... there was a lot of abstract talk when they were talking about complaints to the judges. But, one complaint from people was that they would send it to the JCC, and it would come back, it's not in our jurisdiction.

So, some of these things ... you're right, maybe minor ... maybe I used the wrong word. Not within the jurisdiction of the JCC, I guess is what this was intended to encompass. Rather than "minor" ... a bad term, I guess.

Senator Debora B. Pignatelli, D. 13: Are there any further questions? I don't see any, thank you very much. Senator Roberge, as a sponsor, would you like to testify?

Senator Sheila Roberge, D. 9: Thank you madam chairman, good morning. Sheila Roberge, representing District #9 in the NH Senate. I noticed that the legislation has been amended, and I think now, it's a very fair piece of legislation. I don't think there's any place, either in state government or any place else where there is absolutely no review at any time. The judges have a lifetime tenure, and I think at some point they should be reviewed. I think that it calls attention to the fact that there are people in the real world are not there in a job for life. I think sometimes they do tend ... some of them tend to lose track of the general public. I think this is a consumer friendly piece of legislation, it's very friendly to the court ... it just instructs them that the legislature would like to keep in touch and know what they're doing from time to time.

And, I think that's very fair. We stand for election every two years, and we don't mind doing that, and ... it reminds us who we're responsible to, it's a reality check, I think. So, I think this is fair anyway. It puts them more in touch with the people they serve, and they are there to serve all of us. So, with that, thank you.

Senator Debora B. Pignatelli, D. 13: Is there anyone else who would like to testify on ... oh, Representative Christiansen, you're a sponsor, but I didn't see you'd signed up.

Representative Lars Christiansen: For the record, I'm Lars Christiansen, I represent Hillsboro 23, of Hudson. I'm going to speak as a past retiree from the department of post secondary. Twenty years I spent working for the state.

In my time since then, up here in the legislature, I've sat through many, many hearings. Myself, up on the Labor Committee, but I've watched many of these hearings, and heard many, many complaints where people actually have documentation of misbehavior of some of the judges. So, what evaluation they were going through, and then passed, we all know it was not enough. Something is needed. This calls for three year evaluation. In post-secondary, you would have to have a professional improvement plan, and you were evaluated yearly. And, you had to be accountable. And, meet your evaluations and so on.

Anywhere in state government we have to be accountable to our constituents. All the branches of the government has to be accountable to our constituents. Ah, and we go on a little further ... in the military, okay. You have to have an improvement and move up the ladder, or you reach a certain point that they just cut you loose. Because, they have an evaluation. Everybody who works for the government has a form of evaluation. And, this self-evaluation of these justices, which is hidden in confidentiality, is really not an evaluation. So, I think this bill is a good start ... I have other ideas, I'm not ... I didn't participate in the hearings and the sub-committee, and so on ... because I'm not on that committee. And, I think it could be improved on, but, I think it's a beginning that we should continue and live with it. That's all I'll comment on. Any questions ... or anything?

Senator Debora B. Pignatelli, D. 13: Thank you Representative. I don't see any, thank you for your testimony. Is there anyone else who would like to testify on this bill? Eileen?

Eileen Fox, Counsel to the Court: Yes, I don't want to testify, I just wanted to indicate that the court system does support the bill.

Senator Debora B. Pignatelli, D. 13: Thank you very much. I'm going to close the hearing on this bill, HB568, is there a willingness to go into executive session? Is there a motion ...?

THE HEARING ON HB568 WAS CLOSED AT 11:30 A.M.

Respectfully submitted,
Laurel J. Gallant-Hanlon, Senate Judiciary Secretary

3/22/2000 1:10 pm HB568

Rep Henry Mock: Carroll Cty.

→ current process as "sporadic" at best!

evaluations should be open to public!

Sen M. Brown: – consequences – improvement – incentive?

Sen D.P.: → support of Courts?

Mock: – w/ Eben Fox –

Aguirre: "impetus" of this bill?

Mock: this bill "... tells them to improve the system..."

most significant deficiency = starting on time...

Signing = !?!?!?

Aguirre: present system asked questions – limited to –?

present

11:15 = KSW
DP
RT
JS
MB
MAB
ONT

11:20 = IN → Cohen

Sen MB: → No fiscal note?

Rep Maple (Dick) re: Dist 11 - Incr. Cty
Sequence Bill of Rights ... sometimes
overlooked!
Reviews a number of Articles
W/in Const. boundaries
"... accountability of judges."

Please refer to audio → detailed
breakdown of legislation,
para by para, section by
section...

Rep Jon Craig: → crafting of
this bill = PURPOSE!!!
Complaints become public now!

Kerr: → minor issues? plain
process? 27, 28 - pp. 1 = JCC
issues??

Craig: → Yes!

Cuban
D.P.
R.T.
Kwaw
J.S.
MB
our

1 mother

2 Zaal

Jim Rokeberg: → co-sponsoring
"a very fair piece of legislation..."
Some tend to lose "track" of the
general public — comparisons
(to legislators...)

Rep. Dave Christiansen: →
need for evaluation and accountability.
Self evaluation and critique in h

Eileen — court support the bill.
close 11:30
Exec session. Trombly - Brown
motion DTP. Trombly 2nd - Brown.
6-0
Sen. Brown take out.

April 12 - wed.

Judiciary Committee

HB 568 Hearing Report

TO: Members of the Senate

FROM: Susan Duncan
Legislative Assistant

RE: Hearing report on **HB 568** – ***AN ACT establishing a program for performance evaluations of judges.***

HEARING DATE: March 22, 2000

Sponsor: Representative Soltani, Merr. 10
Representatives Marple and Christiansen
Senator Roberge

What the bill does: This bill requires the Supreme Court, in consultation with the administrative judges of the Superior, District, and Probate Courts, to design and implement, by Court rule, a program for performance evaluation of judges.

Who supports the bill:
Representative Soltani
Representative Marple
Representative Christiansen
Senator Roberge
Representative Henry Mock, Carr. 3
Representative Craig
Eileen Fox, for the Supreme Court

Who opposes the bill: No one testified in opposition

Summary of testimony received:

- This legislation is the result of the House Judiciary Committee's work on judicial reform.
- There is a need for a good evaluation system for judges that is not total secret, but is confidential.
- Eileen Fox assisted with this legislation.
- Every judge is to be evaluated a minimum of once every three years.
- This evaluation system would be anonymous (as opposed to the current, sporadic system).
- Testimony received before a House Judiciary sub-committee indicated that sometimes judges are rude, late or arrogant.
- The mechanism provided in HB 568 is for addressing issues such as rudeness, job performance. It is not an answer to larger judicial problems which are reviewed by the Judicial Conduct Committee.
- These evaluations are kept confidential.
- The Court must establish standards for judicial evaluations and report on its implementation and use.
- This review would put judges more in touch with the people they have been chosen to serve.
- All branches of government must remember that they are accountable to the people.
- All other government employees must pass employment evaluations.

Funding: Not applicable.

Action: The Committee voted 6 to 0 in support of "Ought to Pass." Senator Brown will report the bill out of committee.

sfd
[file: HB 568 report – JUD]

Speakers

HB 568 Senate Judiciary Hearing Sign In

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: MARCH 22, 2000 TIME: 11:00 AM NAME / REPRESENTING	WISH TO SPEAK?
✓		Rep. Henry Mack	Yes
✓		Rep. RICHARD MAPLE	YES
✓		RCP TIM DRAFT	YES
✓		Sen. Sheila Roberge	yes.
✓		Rep. Christiansen	Yes

Hearing Minutes

HB 568 – AS AMENDED BY THE HOUSE

2122h

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AN ACT establishing a program for performance evaluations of judges.

SPONSORS: Rep. Soltani, Merr 10; Rep. Marple, Merr 11; Rep. Christiansen, Hills 23; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

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This bill requires the supreme court, in consultation with the administrative judges of the superior, district, and probate courts, to design and implement, by court rule, a program for performance evaluation of judges.

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.

2122h

99-0530
09/01

STATE OF NEW HAMPSHIRE

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

AN ACT establishing a program for performance evaluations of judges.

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

1 New Paragraph; Complaints; Committee on Judicial Conduct. Amend RSA 490:30 by inserting after paragraph III the following new paragraph:

IV. In all cases, whether a complaint is dismissed or not, complaints received by the committee on judicial conduct shall be made available to the administrative judge of the court in which the judge complained against holds office. Furthermore, all complaints against judges received by the administrative judges of the superior court, the district court and the probate court shall be forwarded to the committee on judicial conduct.

2 New Subdivision; Judicial Performance Evaluations. Amend RSA 490 by inserting after section 31 the following new subdivision:

Judicial Performance Evaluations

490:32 Judicial Performance Evaluations.

I. The chief justice and a majority of the supreme court, in consultation with the administrative judges of the superior, district and probate courts, shall design and implement by court rule, a program for performance evaluation of judges. The sole purpose of this program shall be the improvement of the performance of individual judges and of the judiciary as a whole. Notwithstanding any law to the contrary, all information compiled through this program shall be confidential, except as otherwise provided in this section.

II. The program for performance evaluation shall include, but shall not be limited to, review of records of the supreme court's committee on judicial conduct which are public records under supreme court Rule 40; a questionnaire, to be designed by the supreme court; and a self-evaluation form to be completed by the judge. The supreme court shall strive to achieve uniformity among court evaluation questionnaires, recognizing that the questionnaires for each court may differ due to the jurisdiction of the courts. Questionnaires shall be distributed to a representative sample of attorneys, parties, witnesses, jurors, court personnel, and others who have appeared before a judge during the evaluation period, for the purpose of evaluating the performance of the judge. The questionnaire shall include, but shall not be limited to, questions relative to the judge's performance, temperament and demeanor, judicial management skills, legal knowledge, attentiveness, bias and objectivity, and degree of preparedness. Completed forms shall be returned to the administrative judge, unsigned, within 30 days of issuance. All responses shall remain confidential.

III. The program for performance evaluation shall ensure that each judge is evaluated a

minimum of once every 3 years.

IV. The chief justice of the supreme court shall evaluate the administrative judges of the superior, district and probate courts.

V.(a) The chief justice and a majority of the supreme court, in consultation with the administrative judges of the superior, district and probate courts, shall establish judicial evaluation standards, and shall design or determine appropriate programs for judges who need improvement in achieving the judicial evaluation standards. The supreme court shall establish disciplinary rules and may initiate disciplinary action when appropriate. If a judge fails to achieve judicial evaluation standards after 2 consecutive evaluations, or purposely fails to complete assigned programs, the judge's right to confidentiality shall be waived.

(b) Upon consideration of nomination for another judicial appointment, a judge's evaluations shall be made available to the governor upon request. Upon nomination, such evaluations shall be made available to the executive council upon request. The contents of such evaluations shall be kept in strict confidence by the governor and executive council.

(c) Judicial performance evaluations shall be retained by the judicial branch for the duration of the judge's tenure.

VI. The supreme court shall prepare a report on the implementation of the performance evaluation program described in this section within one year of the effective date of this section and submit such report to the governor, the speaker of the house, the president of the senate, and the chairpersons of the house and senate judiciary committees. Such report shall be made available to the public. Beginning in 2001, the supreme court shall annually file a report on the evaluation process, including, but not limited to, the number of evaluations performed by each court, the percentage of responses received, and, without identifying individual judges, a summary of the overall evaluation results and all actions taken to correct inadequacies and deficiencies. The annual report shall be submitted on or before June 30 of each year to the governor, the speaker of the house, the president of the senate, and the chairpersons of the house and senate judiciary committees. Such report shall be made available to the public.

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

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

HB# 568

~~SB~~

Date: 3/22/2000

Room: 103 SH

Motion of: OTP

Made by Senator:		*Seconded by Senator:*	
Pignatelli	☐	Pignatelli	☐
Gordon	☐	Gordon	☐
K. Wheeler	☐	K. Wheeler	☐
Squires	☐	Squires	☐
Trombly	☒	Trombly	☐
Brown	☐	Brown	☒
Cohen	☐	Cohen	☐
Fernald	☐	Fernald	☐

6/0
OTP

Committee Member	*Present*	*Vote*	*Reported out by*
Senator Debora Pignatelli, Chairman	☐	✓	
Senator Edward Gordon, Vice-Chair	☐		
Senator Katherine Wells-Wheeler	☐	✓	
Senator James Squires	☐	✓	
Senator Rick Trombly	☐	✓	
Senator Mary Brown	☐	✓	✓
Senator Burton Cohen	☐	✓	
Senator Mark Fernald	☐		

*Amendments:

NOTES:

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **MARCH 30, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **House Bill 568**

AN ACT ***(New Title) establishing a program for performance evaluations of judges.***

file copy

VOTE: **6 / 0**

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Mary Brown
For the Committee

|HB568 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: (New Title) establishing a program for performance evaluations of judges.

Date	Body	Description
1/28/1999	H	Introduced and ref to Judiciary; HJ18, p275
2/9/1999	H	Copy to Chairman on 2/9/1999 due on E e
2/11/1999	H	Hearing Mar 2 10:00 Rm208,LOB
3/31/1999	H	Maj Report RE-REF for Apr 14 (vote 16-1;CC#1)
4/14/1999	H	Re-Referred to Judiciary committee; HJ40, p900
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 1/5/2000 (vote 16-0; CC)
11/1/1999	H	Prop Comm Am{2122}(New Title); HC93, p2273-2274
1/5/2000	H	Passed with Am; HJ5, p117-118 + 165
1/13/2000	S	Introduced and Ref. to Judiciary ; SJ 1, Pg.36
3/13/2000	S	Hearing March 22, Room 103, SH, 11:00 a.m.; SC17, Pg.28
3/27/2000	S	Committee Report Ought to Pass;3/30/00, SC19
3/30/2000	S	Ought to Pass, MA, VV; OT3rdg, MA, VV; SJ 8, Pg.238
3/30/2000	H	Enrolled; HJ35, p1055
4/6/2000	S	Enrolled Bill; SJ 9, Pg.279
4/17/2000	H	Signed by the Governor on 4/17/2000 Eff: 4/17/2000 Chap: 0053

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