LEGISLATIVE COMMITTEE MINUTES

SB327

Bill as Introduced

SB 327 - AS INTRODUCED

2022 SESSION

22-3064
04/11

SENATE BILL ***327***

AN ACT relative to the duties of the registers of probate.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Judiciary

ANALYSIS

This bill amends the duties of the registers of probate.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

22-3064
04/11

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the duties of the registers of probate.

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

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

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

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

23:8 Salaries for Counties.

I. Every county shall establish the salary for its register of deeds at a fixed dollar value. Said salaries may not be established either in part or in total as a percentage of fees or other charges or payments collected by said register. Said salaries shall be established not less than biennially by the county convention, upon recommendation of the executive committee. In no case shall the salary of any of said registers of deeds be a lesser amount than the salary which said register was receiving on January 1, 1974.

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

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

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

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

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

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

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

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

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

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

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

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

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

548:1-a Authority. The register of probate may work from home or from such other location as determined by the county commissioners. The authority and responsibility of the register of probate shall be to assist parties with probate court filings and probate process governed under state statute.

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

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

548:5 Preservation of Files. The register of probate shall be responsible for coordinating with the secretary of state and the administrative judge of the circuit court established in RSA 490-F the preservation of any closed files having the potential for historical significance. The register may recommend that these files be sent to the records center established under RSA 5. ***Beginning on July 1, 2023, all paper probate records older than 40 years shall be kept in the state archives unless such records are otherwise necessary for the operation of the probate division.*** The register of probate shall maintain a current index describing the location of any files which have been removed from the court pursuant to this section. ***Except for records that contain personal information as defined by RSA 359-C:19, IV, the secretary of state, division of archives and records management shall make available on its website links to all available electronically scanned New Hampshire probate records, including those created or maintained by any nongovernmental entity until such time as the state has the capability to make all such records available through state resources.***

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

548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other instrument pertaining to real estate filed with the probate court in connection with the administration of any estate that the estate contains real estate located in another county within the state, the probate court shall notify within 15 days the register of deeds of the county in which the real estate lies of the name and date of death of the decedent. A register of deeds who receives such

a notice shall record in the grantor's index the name of the decedent, his or her date of death, and the county in which the estate is being probated. The cost for filing said notice shall be assigned to the estate.

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

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

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

661:9 County Officers.

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

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

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

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

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

IV. Any officer of a county[~~, including the register of probate,~~] may be removed by the county convention for official misconduct. Any removal under this paragraph shall be initiated by petition of a majority of the county commissioners, of the county attorney, or of a superior court judge. No

officer of a county may be removed without notice of the allegations supporting the petition for removal and an opportunity to be heard by the county convention.

12 New Subparagraph; Application of Receipts; Probate. Amend RSA 6:12, I(b) by inserting after subparagraph (382) the following new subparagraph:

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

13 Repeal. The following are repealed:

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

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

14 Effective Date. This act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: January 14, 2022

HEARINGS

Wednesday	01/26/2022	
(Day)	(Date)	
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)

1:00 p.m.	**SB 292**	requiring notice of arrest to a probation and parole officer.
1:15 p.m.	**SB 297**	relative to obtaining out-of-state discovery and testimony.
1:30 p.m.	**SB 327**	relative to the duties of the registers of probate.
1:45 p.m.	**SB 392**	relative to the statutory definition of insane or insane person.
2:00 p.m.	**SB 388**	relative to availability of information or records relating to the enhanced 911 system.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 292

Sen. Reagan	Sen. Gray	Sen. Hennessey	Sen. Gannon
Sen. D'Allesandro	Sen. Avard	Sen. French	Sen. Carson
Sen. Birdsell	Sen. Prentiss	Sen. Soucy	Rep. McGuire
Rep. Spillane	Rep. Verville		

SB 297

Sen. Carson	Sen. Soucy	Sen. Gannon	Rep. Gordon
Rep. McLean	Rep. Alexander Jr.		

SB 327

Sen. Gray

SB 392

Sen. Sherman	Sen. Prentiss		

SB 388

Sen. Carson	Rep. Hunt	Rep. Gordon	Rep. Alexander Jr.

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

SB 327, relative to the duties of the registers of probate.

Hearing Date: January 26, 2022

Time Opened: 1:30 p.m. **Time Closed:** 1:59 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill amends the duties of the registers of probate.

Sponsors:
Sen. Gray

Who supports the bill:Senator Gray

Who opposes the bill: Jim Monahan, NH Association of Counties

Who is neutral on the bill: Richard Head, Judicial Branch

Summary of testimony presented in support:
Senator Gray

- This is an office specified in the NH Constitution, and it ensures there is someone other than the judge for people to go talk to about probate.
- This has been discussed with Supreme Court and superior court representatives; tried to address their concerns in the bill.
- In the bill there is a $25 fee and that is what pays for this.
- Shared how his son had passed away a few years ago and the experience his daughter-in-law had with modifying the estate in probate.
- It cost her $1,700, and in speaking with Justice King he said 'she got taken'
- Most of these things do not need to go through a lot of judicial review.
- People like his daughter-in-law are suffering from a loss and we as a State say they must file electronically, appoint an administrator, and more and more.
- This situation makes it more and more difficult for the person to understand what is going on.
- The court provide a phone service, but all calls come to Concord. A person is not going to get the same operator every time they call.

- There were 46,396 calls in 2019, which averages out to four calls per case.
- These are attorneys who are making most of these calls.
- How many are the calls are from attorneys and how many are people trying to do this pro se?
- Between those four calls, a person it is on the phone for over 18minutes, partly because they must re-explain everything to the new operator each time.
- This is trying to provide someone in the county to help guide citizens through the system.
- For those who do choose to hire an attorney they would still be charged $25 to help those who can't afford it.
- Not every county is going to have the same type of person filling this role.
- People who have done this job before are willing to help train others because the courts do not want to agree to provide that training on an ongoing basis.
- Senator Carson asked if he is aware of the constitutional amendment in the House to remove registers of probate from the Constitution.
    - Not aware of that. Has seen that in the House and the Senate before and they have all been turned down by prior legislatures. The intent of the role is to have someone to assist a person in this process.

Summary of testimony presented in opposition:
Jim Monihan (NH Association of Counties) (provided written testimony)

- It is challenging to un-ring the bell that was rung in 2011.
- The bill does create a new fee and a mechanism to redistribute it to the counties.
- There is no fiscal note on this bill.
- It sets up a mechanism for the counties to spend money to establish a salary for the registrar.
- This is not currently in the counties' budgets.
- The amount of money collected from the fee is unlikely to be sufficient for a salary/benefits.
- The bill includes a provision to have probate records transferred from the counties to State Archives.
- Each county manages their records differently.
- Rockingham, for example, made an investment to digitize that information while some of the other counties have not.
- Wants to be careful this is not resulting in giving the Secretary of State's Office and State Archives a messy bundle of records to manage.
- Thinks there should be some order to that transfer.
- Senator Carson asked if the effective date is an adequate amount of time to go back to the old system.
    - Would agree that is not a lot of time to implement these changes.

Neutral Information Presented:
Richard Head (Judicial Branch) (submitted written testimony)

- Registers of probate existed to run the probate courts, but in 2011 the Legislature restructured the court system and created the circuit court.
- The circuit court has the probate division, the district division, and the family division.
- At that point, the probate court ceased to exist.
- During that restructuring the registers were reduced from 52 to 18.
- Since the restructuring, the elimination of the role of the register of probate was made explicit.
- There was no opposition presented regarding this change at that time.
- During that time, Chief Justice Dalianis said the duties of the register were pared back to essentially nothing.
- That was the intent of the legislation in 2011.
- Judge King said the registers would be responsible for the 'ancient record' and that the clerks are essentially taking over their roles.
- Has seen over the last several years an interest in bringing the registers' role back.
- This creates a confusing situation where you have county registers of probate that have some active role, the courts would be collecting an additional fee from every filing, and the courts would have to figure out how to distribute those fees based on county caseloads.
- The reality of the system is that the vast majority of cases are being managed in Concord regardless of where it is applied to.
- The only thing handled in the circuit courts around the state is adoptions.
- The job of registers of probate requires no experience, knowledge, or training.
- The courts have a very good call center, and they get an incredible number of compliments on it.
- The call center is busy, but they are experienced, trained, and know how to get people through the process.
- Lawyers from neighboring states say it is more help than they get from other states.
- The Branch has been working on simplifying the process.
- Since the beginning of 2020 they have had a file-serve system, which is a pure e-filing system.
- It is a self-guided process with a series of questions and those answers are what creates the file.
- There is a recognition in the bill that this will likely result in electing someone people just know in town and not because of their skills in probate.
- Therefore, the bill creates a deputy register of probate, who presumably the county would hire with knowledge of probate.
- Senator Gannon asked about situations like Senator Gray's daughter-in-law.
    - Does not know that particular case. You don't get the same person every time at the call center, but every time you call the operator can pull up the information. A lot of people say it is so helpful, but any system is

going to have defects. Even through COVID they were able to continue operating the call center. There are times the system is busy, and you have to wait or leave a message. Every message is returned.

- Senator French asked if this bill would eliminate the call center.
    - No. But this would result in 10 people around the state with some sort of undefined role. It would not surprise him if the registers of probate would be calling the call center for help. It is unclear how the fee would be distributed and if the fee will be sufficient enough for the salaries of these roles.
- Senator Carson asked if we currently have elected individuals serving as registers of probate.
    - There are people with that title who are elected every two years. They have no significant role. The Constitution does not describe their role. By statute they have a role relative to ancient records that was modified a few years ago to make it more interactive with the Secretary of State's Office. It has almost become more of an executive branch function. The register of probate's salary was cut, and it is now nominal. It is largely a nonfunctioning role.
- Senator Carson asked if there is anything to stop someone from contacting their register of probate today to ask for help
    - There is not. Typically, it is more family members that provide help. There are some registers of probate that have some knowledge, but even under the old system there were some that did not have answers.

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Date Hearing Report completed: January 27, 2022

Speakers

Senate Judiciary Committee
SIGN-IN SHEET

Date: 01/26/2022 **Time:** 1:30 p.m.

SB 327 AN ACT relative to the duties of the registers of probate

Name/Representing *(please print neatly)*

Sen. James Gray SD6	Support ☒	Oppose ☐	Speaking?	Yes ☒	No ☐
Richard Head	Support ☐	Oppose ☐	Speaking?	Yes ☒	No ☐
James Monahan NH Assn. of Counties	Support ☐	Oppose ☑	Speaking?	Yes ☑	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
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	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐

Testimony

Statement of the New Hampshire Judicial Branch

Senate Bill 327 (Duties of Registers of Probate)

In 2011, the Legislature eliminated the duties of Registers of Probate related to oversight and management of the probate courts as part of the comprehensive court restructuring in 2011. See Laws 2011, ch. 88 (HB 609). Senate Bill 327 seeks to expand the duties of Registers of Probate without regard to the current operation of the Probate Division of the Circuit Court. While this bill is pending in the Senate, the House has pending a proposed constitutional amendment to eliminate Registers of Probate. *See* CACR 21.

This bill seeks to have a dual county/state probate system by providing that counties would establish the salary and benefits of elected Registers of Probate, create a new position of Deputy Registers of Probate, and have the Judicial Branch reimburse counties for those salaries and benefits by transferring to the counties a new $20 entry fee collected in the Probate Division. It is unclear what problem this new system is designed to remedy.

Since 2011, the Circuit Court has streamlined its case management systems by simplifying case processing and introducing e-filing to further increase efficiencies to the Court and provide easier access for citizens. The 2011 changes were approved by the Legislature with bipartisan support and with full knowledge of the impact it would have on Registers of Probate. The Probate Division of the Circuit Court began the roll out of electronic estate filing in May-June of 2017, which has allowed for more efficient and timely consideration of estate matters filed with it each year, with no paper and virtually no work by staff in the local courts. Probate e-filing has since been expanded to include guardianships, wills and estates, and name changes and work is ongoing to bring all probate filings within the e-filing system. The e-file system of guided interviews, along with the establishment of kiosks at court locations with trained court staff to offer advice, has made the process of opening and managing the estate of a loved-one or family-member easier for the citizens of this state.

More specifically, and using 2019 (pre-pandemic figures), the cases handled by the Probate Division can be broken down as follows:

Estates: 7,319 cases, 100% of which are handled centrally at the Administrative Office of the Courts ("AOC"). Only 3% of those cases require a hearing.

Guardianships: 945 cases, 100% of which are handled initially at the AOC before final disposition at the Circuit Court where the case is filed.

Name changes: 1,726 cases, 100% of which are handled centrally at the AOC by referees and reviewed by Circuit Court judges.

Trusts: 56 cases, 100% of which are managed on the Trust Docket in Concord.

Involuntary admissions: 571 cases which are handled at the New Hampshire State Hospital.

Adoptions/surrender: 713 cases, which are handled in Circuit Courts around the State.

Unlike pre-2011, when probate matters were filed and heard in probate courts throughout the state, the current efficient and centralized process does not rely upon county or local personnel. As is described below, probate filings now happen electronically and are handled almost exclusively in Concord.

In addition to how the cases themselves are handled, the Probate Division receives thousands of calls annually. The data for 2019 and 2020 can be summarized as follows:

2019 Probate Queue Report – Call Information Center

- The yearly average length of all calls answered: 3 minutes 24 seconds.
- Yearly total number of Probate calls received in Probate Queue: 46,396.
- Yearly average length of Probate call: 4 minutes 39 seconds.
- Yearly average length of Probate handle of call[1]: 5 minutes and 20 seconds.

2019 report –E-filing Assistance[2]

- Yearly total number of calls received in Electronic Filing Queue: 16,669
- Yearly average length of Electronic Filing call: 6 minutes 05 seconds
- Yearly average length of Electronic handle of call: 6 minutes and 59 seconds

2020[3] Probate Queue Report – Call Information Center

- 3 minutes 22 seconds
- Yearly total number of Probate calls received in Probate Queue: 35,951
- Yearly average length of Probate call: 4 minutes 06 seconds
- Yearly average length of Probate handle of call[1]: 4 minutes and 53 seconds

2020 Report –E-filing Assistance[2]

- Yearly total number of calls received in Electronic Filing Queue: 18,363
- Yearly average length of Electronic Filing call: 5 minutes 13 seconds
- Yearly average length of Electronic handle of call: 5 minutes and 58 seconds

The Circuit Court-Probate Division has endeavored to prepare for challenges it will face by the aging of New Hampshire's population.[4] The constitutional office of Register of Probate was created in the 19th Century to remedy conditions that no longer exist in the 21st Century.

[1] Handle of calls includes the classification and quick e-mailing of information. If something required research or to be printed and mailed this is not reflected in the time.
[2] E-filing assistance includes estates, guardianship of incapacitated persons and minors, and name changes, all of which are handled in the Probate Division. It also includes small claims, name change and civil filings in District Division and Superior Court.
[3] 2020 data may have been impacted by the pandemic.

HISTORY OF THE CONSTITUTIONAL PROVISION

The office of the Register of Probate was established in 1694.[5] One register was appointed for each county. From all available accounts, it appears that their role was to keep the probate records and to keep track of probate matters for the judge.[6] The role of Registers of Probate remained about the same up until 2011.[7] Before the Circuit Court was created, the job of the register was essentially the same as that of a clerk of superior court, district court or the family division.[8] The register managed the day to day operations of the Probate Court office. It was an administrative position, not a political one.

During the political and economic turmoil of the early 1800s that followed the birth of the nation, there were frequent shifts in power in our government.[9] On several occasions during the 1800s, when a new political party came into power, the new legislature would abolish the then current court system and create new courts.[10] The new governor would then appoint new judges and new Registers of Probate, among others.[11] In 1855, when the "Know Nothing" party swept the elections, those voted in removed several officials from office, including some popular probate judges and registers, and appointed new officials.[12] Over the next twenty-two years, there appears to have been a strong undercurrent of dissatisfaction with this practice.[13] There were several attempts to convene a constitutional convention to remedy this and other ills not related to this issue, but there were not enough votes to convene a convention until 1876, when finally enough people voted in favor of holding another constitutional convention (which was set for 1877). In 1877, Part II, Article 71 of the New Hampshire Constitution was amended to provide for the election of Registers of Probate, county solicitors (now called county attorneys) and sheriffs.

While there is little in the records of this convention about the change from appointed to elected officials, the record does reveal concern by the representatives at the convention about the fact that when a judge or register was appointed, that appointment should be made based on the individual's skill to perform the job and should not be subject to partisan politics.[14] Articles

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[4] See Gretchen M. Grosky, *The Changing Face of NH: What it Means to Have the Second Oldest Population in the Nation*. N.H. Union Leader, August 13, 2016.
[5] MANUSCRIPT TREATISE ON PROBATE LAW, SMITH'S REPORTS, p.514 (1879).
[6] See e.g. 10 DeGrandpre and Treat, New Hampshire Practice, Probate Law and Procedure §3-3 at 15-17 (2001) and MANUSCRIPT TREATISE ON PROBATE LAW, SMITH'S REPORTS, pp.513-15 (1879).
[7] Id.
[8] REPORT OF THE NEW HAMPSHIRE SUPREME COURT LONG-RANGE PLANNING TASK FORCE AS NEW HAMPSHIRE APPROACHES THE TWENTY-FIRST CENTURY, July 19, 1990 at p. 27.
[9] See e.g. Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 28-35.
[10] Id.
[11] Id. See also New Hampshire Constitution, Part II, Article 46 (as amended 1792).
[12] See e.g. Id.; Daniel Barnard, *Address of Daniel Barnard*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 90; and Hon. James W. Weeks, *The Probate Courts of Coos County*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 251.
[13] Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 33.
[14] Journal of the Constitutional Convention, 1876, pp. 95-97.

published at the time, albeit less supportive of the notion that registers be elected, also reflect this sentiment. For example:

> The election of a large number of officers provided for by the amendments [of 1877], such as sheriffs, county solicitors, and Registers of Probate, is generally conceded to be a sacrifice of efficiency and capability on some of these offices to a popular clamor mis-named "the rights of the people.
>
> When however all public officers are considered, as of right they are, as servants of the people, and as holding their public positions as trusts for the common welfare, and that that method of election or appointment which brings from such servants the *best* service, is the best, this evil will correct itself.[15]

As the bitter feelings from the Civil War subsided and this country began to move into the industrial revolution, political retaliation seemed to subside.[16] Despite shifts in government, the number of public officials appointed to perform civil service based solely on their politics reduced dramatically.[17]

PROBATE REGISTERS IN THE 21ST CENTURY

In 1877 and indeed up until 1984, Registers of Probate were county employees. Thus, when this amendment was first adopted, the addition of Registers of Probate to the roster of county employees that would be elected made sense given that other county employees, such as registers of deeds, were already in this group. Indeed to this day, county treasurers, sheriffs, registers of deeds and county attorneys are still county employees. However, in 1984, Registers of Probate were no longer county employees, and, at least through 2011, were the only elected non-county officials to run on a county-wide ballot.

In 1984, New Hampshire created a unified court system in order to make justice more predictable and consistent. The Registers of Probate became state employees within the Judicial Branch. Because of the enormity of the change from a county/town based court system to a unified state court system, the Legislature did not tackle the Constitutional amendment that would have been necessary to convert the elected register positions to appointed clerks. In the context of Part II, Article 71, dealing with the constitutional provisions for the county level of government, having elected Registers of Probate simply has not made sense since 1984.

As the only elected employees, it had become obvious that Registers of Probate did not enhance or promote increased efficiency and customer service within the Judicial Branch administrative offices. As our present system of court administration evolved, it brought the responsibility for the internal fiscal control, personnel administration, purchasing, and auditing management under the supervision of the Supreme Court. As the management of the courts

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[15] Daniel Barnard, *Address of Daniel Barnard*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 90.
[16] Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 35.
[17] Id.

became unified however, there remained a single aspect of this supervision that was continually left hanging – how does the Register of Probate fit into this new unified system? The short answer to this question was, and remains, that they do not.

Before adoption of HB 609 in 2011, see 2011 Laws, ch. 88, the Judicial Branch faced numerous administrative problems as it lacked the authority to appoint the person who performs the functions of a clerk of court for the probate courts, namely the register. There were some instances of unacceptable abuse of this dual system of accountability. Court staff work for the Judicial Branch, which sets salaries, benefits and hours to be consistent with all of the other courts. Registers of Probate, however, could not be held accountable as were every other Judicial Branch employee. As elected officials, some Registers of Probate, even though they supervised other Judicial Branch employees, stated that they worked for "the people" and took the position that they were not accountable or responsible to the Judicial Branch. Some Registers set their own hours, and did not work full time. One Register began a project to "strip files" to save file space and shredded what she believed to be non-essential paper from files which initially included the inventories from estates that recorded the volume and page information for real estate. Another newly elected Register refused to issue statutorily required default and citation notices because she didn't think it was fair. This obviously made it difficult to initiate change or institute new programs or procedures or have any degree of control over court functions.

Elections also became disruptive to court staffing. While historically there were few contests for register positions that was not true in the recent years leading up to the creation of the circuit court. When an election was contested, dedicated and knowledgeable employees faced losing their jobs every two years, at the whim of the voters in partisan elections. In one county, the first term incumbent was challenged by her two deputies, in a court with a total of four employees. The fall saw these three co-workers campaigning against each other, getting interviewed by local papers discussing how things could be improved. When the incumbent was re-elected for a second term, the two deputies, with 33 combined years of experience, found themselves stripped of their titles of Deputy Register.

Newly elected Registers often came to the job with little or no experience. It takes a minimum of two years to learn the basics of the job of Register, which is coincidently the length of their term. This could result in someone getting elected to the position and just getting to know the job, at great expense to the taxpayers, and then getting voted out of office, perhaps to be replaced by another inexperienced Register. Imagine the situation that would result from the incumbent being voted out of office in a court with one court assistant in the probate division. In that situation, the court could virtually come to a halt, during the long training process in which ironically, the staff is left to train their boss.

Following unification of the court system, a crisis would unfold and be discovered in the Sullivan County Probate Court, which became known as "The Fairbanks Matter." John Fairbanks was a Newport attorney and part time district court judge who embezzled large sums of money from clients, many involving cases being overseen by the local probate court and Register of Probate. A legislative committee was established to investigate the matter. See Laws 1996, ch. 254 (HB 1593). Among its findings, the Legislative committee concluded that in November 1976 "Sullivan County Register of Probate, Bernice M. MacWilliams, in her eighties

and confined to a nursing home, wins re-election overwhelmingly as Sullivan County Register of Probate. Ms. MacWilliams was first elected to this position some 35 years before, in 1941. In more recent years, she came into the register's office only occasionally, for just a few hours at a time." [18] The report also reflected the fact that Ms. McWilliams "was very political. She knew the people of influence, and the ones to whom favors would be given, and she ran the Registry of Probate on a very personal basis."[19] When this Register of Probate retired, it was discovered that files had not been kept up to date. Various filings made by parties were lying in piles in the Probate Court vault. Notice of various filings to other interested persons had not been sent. Hearings had not been conducted in a timely fashion. It literally took years and untold resources to sort out everything in Sullivan County.

A few years later, the New Hampshire Supreme Court appointed a Long-Range Planning Task Force to "enable the Supreme Court to establish a clear focus and to better allocate resources in meeting the mission of the Judicial Branch of Government..." The Task Force issued its comprehensive report, *The Report of the New Hampshire Supreme Court Long-Range Planning Task Force; As New Hampshire Approaches the Twenty-First Century* on July 19. 1990. One of the findings of this report is as follows: "[t]he task force concludes that election of Probate Registers is anachronistic and recommends that such officers should be approved by and subject to Probate Court supervision in the same manner a Superior Court Clerks are appointed and supervised by the Superior Court. The Constitution should be amended to eliminate Registers as constitutional officers."[20]

DEVELOPMENT OF CIRCUIT COURT SYSTEM

In 2011, the Legislature enacted HB 609, a comprehensive bill overhauling the court system and creating what is now the Circuit Court system.[21] HB 609, which had bipartisan support, consolidated a system of local courts into a Circuit Court with three divisions: the Family Division, the Probate Division, and the District Division. Initially, this consolidation was to take place over ten years and save the courts $29 million. The Legislature saw the value in speeding up the transition, and reduced the transition time to just three months.[22] Although such rapid change was difficult and painful, the Circuit Court instituted those changes as instructed, and has produced a leaner and more efficient court system. As part of the consolidation, it was recognized that certain duties performed by the Registers of Probate could more effectively be performed by court staff. The Legislature understood that having elected officials with supervisory duties in a bare bones management structure simply did not make sense. Consequently, the comprehensive bill concerning Circuit Court formation, HB 609, included provisions repealing tasks legislatively assigned to Registers of Probate included in RSA 548. See 2011 Laws, ch. 88:31-:42. None of the then elected Registers of Probate expressed opposition to the bill at either the House or Senate hearings.

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[18] *Report of the House Committee to Study the State Investigation of the John C. Fairbanks Matter, January 1997,* p.1.
[19] Id. at p. 4.
[20] Id. at 27, 298.
[21] See generally, Brian Wallstin, *A Look at NH Circuit Court after Two Years*, N.H. Bar News, December 13, 2013.
[22] Id.

The elimination of the duties of Registers of Probate in 2011 was widely openly discussed in legislative committee hearings. In the Senate Judiciary Committee, for example, Chief Justice Dalianis testified as follows:

> We changed the definition of the duties of Registers of Probate in a way to, how to say it, make the system more rational, because, to this point, elected Registers are sort of court employees and not sort of court employees, and some of them didn't pay much attention to the way we wanted business to be done, and it seemed to us to make more sense to have the people managing those courts be people who are accountable to us, and, for that reason, *the duties of the Registers were paired back to essentially nothing* ....

Judge King, who at the time was the Administrative Judge of the Probate Court and is now the Administrative Judge of the Circuit Court, testified:

> So what we have done in House Bill 609 is we've changed the definition of Register, which you won't find in the Constitution. You will find it in House Bill 609. It's on page 8. The definition is found at RSA 548:5. Essentially, what it says is the Register of Probate will be a register; they will be responsible for the ancient record which is important and to ensure that the ancient record is kept and that at the appropriate time those records get transferred to archives, so that they are available for people who are doing real estate title searches and need the ancient record or genealogical research they'll be there. As the Chief Justice alluded to, if they don't show up for work, we'll be o.k. without them. But the duty is important, and we hope that people will run for Register at a much reduced salary and take that on, but they won't be the clerks. The reason that's crucial in House Bill 609 is because, Judge Kelly explained, we are going to go from 52 managers down to 21. We can't have half of our managers elected. If you were running a business, you wouldn't say the best way to pick the manager of this business is to have an election and have people elected. It just doesn't work. So the position has changed. I met with the current Registers last summer, and we explained exactly what we are doing.

The process was open, with complete and open disclosure as to what would happen with the position of Register of Probate. In 2011, there was no testimony in opposition to the bill.

The law, as passed in HB 609, retained the register's duty to preserve probate files, in particular those that may have "historical significance." 2011 Laws, ch. 88:14.[23] The Legislature recognized that the office of Register remained subject to election by the Constitution, however the Legislature retained the jurisdiction to establish the duties of the Registers of Probate. In 2017, the courts and the Secretary of State's office agreed on an amendment to RSA 548:5 to make it clear that the register duties would need to be coordinated with both the courts and the Secretary's office, making it also clear that the duties were more aligned with the Executive Branch, which is responsible for the archiving of court records, once the court process is complete and the court no longer needs access to the file.[24]

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[23] The language removing certain administrative duties was part of the comprehensive bill as introduced. Later legislation added to 2011 HB 2 reduced the registers' salary to $100 per year.

[24] See 2017 Laws, ch. 15:1.

Since 2011, the Circuit Court has continued to pursue efficiencies, as required of a system of courts that hear approximately 90% of all cases filed in New Hampshire. The Circuit Court opened an Information Center in 2012 that the Superior Court later joined. Since its inception, the Information Center has answered approximately 4.4 million calls. It has instituted e-filing of guardianship petitions, small claims complaints and all estate matters. The Circuit Court formed the Complex Trust Docket in 2014 to address the growing number of complex trust, estate, and guardianship cases that were taking up a large share of valuable court resources and impeding efficient management of a court's docket. The Complex Family Docket was formed shortly thereafter to address the growing number of complex family cases that were taxing the system as well.

The Circuit Court reduced its clerks and registers who previously served clerk functions from 52 down to 18 over between March and mid-June 2011. These 18 clerks supervise 35 locations and 72 divisions of the Circuit Court. Since the Circuit Court system was implemented in 2011, the Circuit Court has processed over 1.3 million new filings. Of those, approximately 8% were in the Probate Division.

By the end of 2019, virtually all cases filed in the Probate Division were being filed electronically. Many of the equity cases filed in Probate now go into the Complex Trust Docket, which is also a centralized process and often must quickly schedule proceedings as emergencies arise. Of the remaining case types in the Probate Division, the only significant volume is name changes, which in 2020 accounted for 1,552 cases. The bottom line is, by virtue of the changes that began in 2011 with the creation of the Circuit Court structure, the clerks and deputy clerks have virtually no supervision responsibilities for Probate Division cases.

CONCLUSION

The question of what duties Registers of Probate should retain was openly discussed and addressed in 2011 when the Legislature concluded that they cannot, and should not, have a role in the operation of the Probate Division of the Circuit Court. Given the current centralization of virtually all probate court functions and the limited involvement of clerks in probate matters, there is no role Registers of Probate could provide that would not conflict with the current structure of the courts.

President
Wendy Piper
Grafton County Commissioner

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Tom Tombarello
Rockingham County Commissioner

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Toni Pappas
Hillsborough County Commissioner

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Chris Coates
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January 24, 2022

The Honorable Sharon Carson
Chair
Senate Judiciary
State House
Concord, NH 03031

Chairman Carson and Members of the Senate Judiciary Committee,

The NH Association of Counties would like to register its opposition to SB 327, relative to the duties of the registers of probate.

This bill would allow counties to set a salary for their registers of probate at a fixed rate and establishes a fund to offset part or all of the costs for the registers' salaries. The bill also states that probate records older than 40 years be sent to the state archives starting in 2023. While the Association notes the good intension of the bill, the Legislature decided to move most of the responsibilities of the registers to the courts. This system has worked well and adding this additional layer could cause confusion.

The Association asks you to oppose SB 327. If you have any questions, please feel free to reach out to our Executive Director, Kate Horgan at khorgan@dupontgroup.com.

Sincerely,

Wendy Piper
President
NH Association of Counties

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB327

Hearing date: 1/26

Executive Session date: 1/26

Motion of: ~~OTP~~ ITL **Vote:** 4-1

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☒	☐
Sen. Gannon, V-Chair	☒	☐	☒	☐
Sen. French	☐	☐	☐	☒
Sen. Kahn	☐	☒	☒	☐
Sen. Whitley	☐	☐	☒	☐

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☐	☐
Sen. Gannon, V-Chair	☐	☐	☐	☐
Sen. French	☐	☐	☐	☐
Sen. Kahn	☐	☐	☐	☐
Sen. Whitley	☐	☐	☐	☐

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☐	☐
Sen. Gannon, V-Chair	☐	☐	☐	☐
Sen. French	☐	☐	☐	☐
Sen. Kahn	☐	☐	☐	☐
Sen. Whitley	☐	☐	☐	☐

Reported out by: Carson

Notes: Number of times we do have them limited duties went through the change in 2011 might be some bumps. Step backwards

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, January 26, 2022

THE COMMITTEE ON Judiciary

to which was referred **SB 327**

AN ACT relative to the duties of the registers of probate.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 4-1

Senator Sharon Carson
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

SB 327, relative to the duties of the registers of probate.
Inexpedient to Legislate, Vote 4-1.
Senator Sharon Carson for the committee.

SB327

Bill Details

Title: relative to the duties of the registers of probate.

Sponsors: *(Prime)* Gray (R)

LSR Number: **22-3064**
General Status: **SENATE**
Senate:
Committee: Judiciary
Floor Date: 2/3/2022
Status: INEXPEDIENT TO LEGISLATE

Bill Docket

Body	Description
S	To Be Introduced 01/05/2022 and Referred to Judiciary; SJ 1
S	Hearing: 01/26/2022, Room 100, SH, 01:30 pm; SC 4
S	Committee Report: Inexpedient to Legislate, 02/03/2022; SC 5
S	Inexpedient to Legislate, MA, VV --- BILL KILLED ---; 02/03/2022; SJ 2

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB327 **Senate Committee:** Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

___ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Hayes 8/12/22

Committee Aide **Date**

Senate Clerk's Office AK