

HB 1322-FN - AS INTRODUCED

2026 SESSION

26-2982

09/08

HOUSE BILL ***1322-FN***

AN ACT reestablishing the judicial conduct commission.

SPONSORS: Rep. Sabourin dit Choiniere, Rock. 30; Rep. Bailey, Straf. 2; Rep. Burnham, Straf. 2; Rep. DeRoy, Straf. 3; Rep. D. Kelley, Hills. 32; Rep. Nalevanko, Ches. 9; Rep. Potenza, Straf. 19; Rep. Sirois, Hills. 32; Rep. Terry, Belk. 7

COMMITTEE: Judiciary

ANALYSIS

This bill reestablishes the judicial conduct commission to investigate complaints against judges and clerks and make recommendations to the legislature regarding the exercise of the legislature's constitutional powers. The commission is designed to operate concurrently with the New Hampshire supreme court's disciplinary authority.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT reestablishing the judicial conduct commission.

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

1 1 Short Title. This act may be known and cited as the “Judicial Conduct Commission Act.”

2 2 Findings. The general court hereby finds and declares that:

3 I. The right to a fair and impartial judiciary is fundamental to the administration of justice
4 and essential to maintaining public confidence in our legal system, as recognized in part I, article 35
5 of the New Hampshire constitution.

6 II. The legislature possesses constitutional authority under part II, articles 17 and 73 to
7 remove judges through impeachment and address proceedings, but lacks an effective mechanism to
8 investigate and evaluate complaints that may warrant such action.

9 III. Members of the general court have received numerous complaints regarding judicial
10 conduct through informal channels, creating an inconsistent and inefficient system for addressing
11 legitimate concerns while lacking procedures to filter unfounded grievances.

12 IV. The prior judicial conduct commission established under RSA 494-A, enacted in 2001,
13 was intended to provide a structured process for investigating judicial misconduct and assisting the
14 legislature in fulfilling its constitutional duties.

15 V. The New Hampshire supreme court's decision in *Petition of the Judicial Conduct*
16 *Committee*, 151 N.H. 123 (2004), found constitutional deficiencies in the prior statute's allocation of
17 authority between the legislative and judicial branches, but did not invalidate the legislature's
18 legitimate interest in establishing procedures to investigate potential grounds for impeachment or
19 address.

20 VI. The complete repeal of RSA 494-A in 2024, rather than its amendment to address
21 constitutional concerns, has left the legislature without necessary procedural mechanisms to
22 effectively exercise its constitutional responsibilities regarding judicial accountability.

23 VII. Historical practice in New Hampshire demonstrates that judicial accountability to the
24 people's representatives has deep roots in our constitutional tradition, including the general court's
25 historical role in addressing petitions for redress of grievances.

26 VIII. The separation of powers doctrine permits and indeed requires each branch to possess
27 the tools necessary to fulfill its constitutional functions, including the legislature's need for
28 investigative mechanisms to support its impeachment and address powers.

29 IX. Public confidence in the judiciary requires both the independence necessary for impartial
30 decision-making and appropriate accountability mechanisms to address misconduct that undermines
31 the administration of justice.

1 I. The commission shall select and appoint an executive director as the administrator of the
2 commission. The executive director shall be appointed by majority vote of the commission after 30
3 days public notice and a public hearing. The executive director shall hold office for a term of 5 years.
4 The executive director may be removed from office by vote of 2/3 of the commission. The executive
5 director may be reappointed using the same procedure for appointment. The executive director shall
6 be a nonclassified state employee.

7 II. The executive director shall be the administrative head of the commission. The duties of
8 the executive director shall also include:

9 (a) Employing and supervising commission staff, under RSA 494-A:17.

10 (b) Submitting an annual report to the governor, senate president, speaker of the house,
11 and chief justice of the supreme court, by October 1 of each year, which details the performance of
12 the commission for the preceding fiscal year. This report shall be a public document.

13 (c) Submitting budgets to be funded through general funds in the biennial operating
14 budget.

15 (d) Acting as secretary for all commission meetings.

16 494-A:4 Commission Membership.

17 The commission shall consist of the following 11 members:

18 I. Two judges, consisting of one judge or retired judge from each of the superior court and
19 circuit court, appointed by the chief justice of the supreme court with the concurrence of the majority
20 of the supreme court members.

21 II. One member appointed by the president of the New Hampshire Bar Association.

22 III. Two public members who are not judges, attorneys, or elected or appointed public
23 officials, appointed by the governor.

24 IV. Two public members who are not judges, attorneys, or elected or appointed public
25 officials, appointed by the senate president.

26 V. Two public members who are not judges, attorneys, or elected or appointed public
27 officials, appointed by the speaker of the house.

28 VI. Two members who are sitting legislators, appointed by the speaker of the house.

29 494-A:5 Terms of Office.

30 I. The initial terms of office for the 11 commission members shall be determined by lot at the
31 commission's first meeting as follows:

32 (a) Three members shall serve initial terms of 2 years.

33 (b) Four members shall serve initial terms of 3 years.

34 (c) Four members shall serve initial terms of 4 years.

35 II. After the initial appointment, a member may be reappointed for an additional term of 4
36 years. Members may not serve more than 2 consecutive terms. Members who have served 2
37 consecutive terms may not be reappointed until they have been off the commission for a period of 4

1 years. Notwithstanding the term limits established in this paragraph, members may serve until
2 their successors have been appointed.

3 III. Commission members shall serve without compensation for their services, but shall be
4 reimbursed for necessary expenses incurred in the performance of their duties.

5 494-A:6 Vacancies.

6 I. A vacancy in the office of the commission occurs:

7 (a) At the expiration of a member's term.

8 (b) When a member ceases to hold the office, by submitting his or her resignation to the
9 commission, or for some other reason.

10 (c) When a non-attorney or non-judge member becomes an attorney or judge.

11 (d) When an attorney member ceases to be a member of the New Hampshire bar, is
12 elected or appointed to public office, or is appointed a judge.

13 (e) When a member ceases to be domiciled in New Hampshire.

14 (f) When removed by the commission as provided in RSA 494-A:16.

15 II. A vacancy shall be filled by the same appointing authority. The successor shall have the
16 same qualifications as the person who is being replaced. If the vacancy results from other than
17 expiration of the term, the successor shall hold office for the unexpired term.

18 494-A:7 Disqualification.

19 I. No member shall participate in any proceeding before the commission involving his or her
20 conduct or in which he or she is a witness or is otherwise involved.

21 II. No member shall participate in any proceeding in which his or her impartiality might
22 reasonably be questioned.

23 III. If a member is disqualified under this section, the commission may vote to name an
24 alternate in his or her place.

25 IV. If the entire commission is disqualified under this section, the appointing authorities
26 under RSA 494-A:4 shall name alternates.

27 494-A:8 Numbers for Quorum and Action.

28 Six members of the commission shall be a quorum. Six members shall be necessary to take
29 routine action. A vote of 7 members shall be required to recommend to the legislature that it
30 consider impeachment or address proceedings.

31 494-A:9 Election of Chairperson and Vice Chairperson.

32 The members of the commission shall elect their own chairperson and vice chairperson.

33 494-A:10 Duties; Proceedings.

34 I. The commission shall be responsible for investigating complaints concerning the conduct
35 of judges and clerks in the courts of this state as they relate to potential grounds for impeachment or
36 address under part II, articles 17 and 73 of the New Hampshire constitution. The commission shall
37 determine if a complaint warrants further investigation and whether conduct may constitute

1 grounds for legislative action. The commission shall adopt rules for its proceedings under this
2 chapter. The commission may not impose disciplinary actions but may issue findings and
3 recommendations to the legislature or New Hampshire supreme court.

4 II. If the commission finds evidence of criminal acts, it shall report such evidence to the
5 attorney general.

6 III. If the commission finds that a judge's or clerk's conduct may warrant removal, it shall
7 prepare a detailed report with findings of fact and recommendations for the legislature's
8 consideration.

9 IV. If the commission finds that a judge's or clerk's conduct might warrant a lesser sanction
10 by the New Hampshire supreme court, it shall forward a non-binding recommendation to the New
11 Hampshire supreme court, which shall have exclusive powers to act on such recommendation.

12 V. The commission may consider any factor set forth in RSA 494-A:10-a when making a
13 recommendation.

14 VI. Nothing in this chapter shall be construed to limit or interfere with the New Hampshire
15 supreme court's inherent and constitutional authority to regulate, supervise, and discipline members
16 of the judiciary through its own procedures.

17 494-A:10-a Standards for Evaluation.

18 The commission shall evaluate:

19 I. Violations of the code of judicial conduct adopted by the New Hampshire supreme court,
20 particularly when such violations are:

- 21 (a) Willful or repeated.
- 22 (b) Involve corruption, bribery, or criminal conduct.
- 23 (c) Demonstrate unfitness for judicial office.

24 II. Conduct that violates constitutional requirements, including but not limited to:

25 (a) Violations of due process under the Fourteenth Amendment or part I, article 15 of
26 the New Hampshire constitution.

27 (b) Violations of the appearance of impartiality standard under part I, article 35 of the
28 New Hampshire constitution.

- 29 (c) Demonstrated inability or unwillingness to uphold constitutional duties.

30 III. Pattern of judicial errors suggesting incompetence rather than good faith mistakes,
31 considering:

- 32 (a) Frequency of reversal.
- 33 (b) Nature of appellate criticism.
- 34 (c) Whether errors reflect fundamental misunderstanding of law.

35 IV. Nothing in this section shall be construed to make mere judicial error or good faith
36 differences in legal interpretation grounds for legislative action.

37 494-A:11 Procedures for Complaints; Public Availability.

1 The commission shall adopt rules of procedure to be followed in making its determinations which
2 shall incorporate the following:

3 I. When a complaint is received by the commission, the commission shall determine if the
4 complaint alleges conduct that could potentially constitute grounds for impeachment or address. If
5 the commission determines that the complaint on its face alleges no such grounds, the commission
6 shall dismiss the complaint and respond to the complaining party, explaining the basis for its
7 decision. The commission shall forward a copy of all complaints received to the New Hampshire
8 supreme court or its duly appointed representative for its independent review and action as it deems
9 appropriate.

10 II. If the commission determines that the complaint warrants investigation, the commission
11 shall send a copy of the complaint to the judge or clerk, and the judge or clerk shall have 21 days to
12 respond in writing. There shall be no direct communications between the judge or clerk and the
13 complaining party. Following the response from the judge or clerk, the commission shall send a copy
14 of the response to the complaining party.

15 III. The commission may conduct such further investigation as it may deem necessary. The
16 commission shall, within 90 days of the first meeting following receipt of the complaint, or for good
17 cause shown, such longer period as determined by the commission, determine whether there is
18 probable cause to believe that the judge's or clerk's conduct may warrant legislative consideration for
19 impeachment or address.

20 IV. After making a finding of probable cause, the commission shall conduct a public hearing
21 before making a final determination. After probable cause has been found, the complaint, response,
22 transcripts, findings, deliberations, and reports of actions taken shall be available to the public
23 under the provisions of RSA 91-A.

24 V. Following its investigation and hearing, the commission may:

25 (a) Dismiss the complaint if it finds no grounds for legislative action;

26 (b) Issue a report to the legislature recommending consideration of impeachment
27 proceedings;

28 (c) Issue a report to the legislature and governor recommending consideration of address
29 proceedings; and

30 (d) Issue a report noting concerns about conduct that, while not warranting removal,
31 should be brought to the legislature's attention.

32 VI. If the complaint referred to the commission alleges conduct that would constitute a
33 crime, the commission chairperson shall immediately refer the matter to the attorney general. The
34 referral shall not supersede the commission's investigation, but the commission shall suspend its
35 activities until criminal proceedings, if any, are concluded.

1 VII. In all cases, whether a complaint is dismissed or not, complaints received by the
2 commission shall be made available to the administrative judge of the court in which the judge or
3 clerk complained against holds office.

4 VIII. The statute of limitations for any complaint shall be 7 years from the act which is the
5 subject of the complaint or from the conclusion of the trial or appeal during which the act occurred,
6 whichever is later.

7 494-A:11-a Access to Information; Hearings on Confidential Cases.

8 I. Notwithstanding any other provision of law to the contrary, a person subject to the code of
9 judicial conduct may provide to the members of the judicial conduct commission, its staff, and
10 agents, and in the performance of its official duties the judicial conduct commission may review, any
11 tapes, transcripts, records of proceedings, information, files, and other documents which would
12 otherwise be confidential. No member, staff, or agent of the judicial conduct commission shall
13 disclose such information except in the course of official duty.

14 II. In a hearing under RSA 494-A:11, IV if any part of the complaint involves the conduct of
15 a person in a case required to be confidential by law, the commission may, by majority vote, conduct
16 the hearing, or any part thereof, in a session not open to the public. In such circumstances the
17 commission shall make available to the public a summary of the nature of the complaint, the names
18 of the person complained against and the complainant, and the decision of the committee.

19 494-A:12 Rules.

20 The commission shall have the authority to adopt rules, after public notice and hearing,
21 necessary to perform the objectives of this chapter. Such rules shall be limited to procedural matters
22 and shall not include adoption of a code of judicial conduct.

23 494-A:13 Subpoena Power.

24 The commission shall have the powers of subpoena.

25 494-A:14 Review by Legislature.

26 All reports and recommendations of the commission shall be transmitted to the president of the
27 senate and the speaker of the house. The legislature shall determine, in its sole discretion, whether
28 to initiate impeachment or address proceedings based on the commission's recommendations.

29 494-A:15 Funding.

30 The commission shall prepare and administer its own budget, including funding for such items
31 as staff, office space, and operating expenses. Funding shall be authorized by the legislature only
32 from sources other than those appropriated for the judicial branch.

33 494-A:16 Removal.

34 The chairperson, with the majority of the commission, may remove a member for cause,
35 including unexcused absences or serious violations of a commission rule.

36 494-A:17 Staff and Facilities.

1 I. The executive director shall, with the approval of the commission, hire staff, which may
2 include attorneys, investigators, and clerks, as may be necessary to carry out the duties of the
3 commission. The executive director may contract for such temporary professional, administrative,
4 and clerical services as deemed necessary by the commission. Full-time staff shall be nonclassified
5 personnel who shall be entitled to state employee benefits.

6 II. The commission shall select office space, which shall be as independent as possible from
7 other facilities of any branch of government.

8 494-A:18 Administrative Support.

9 Notwithstanding RSA 494-A:1, upon request of the commission, the department of
10 administrative services shall assist the commission in matters related to personnel and benefits
11 administration, purchasing, telecommunications, enterprise applications management, and property
12 management. Upon request of the commission, the state library shall assist the commission in the
13 development and maintenance of a web page on the official state website.

14 494-A:19 Legal Costs.

15 With the approval of the joint legislative fiscal committee, the commission may employ counsel,
16 attorneys, and other assistants, in case of reasonable necessity, and may pay them reasonable
17 compensation. The governor is authorized to draw a warrant for the costs of such compensation out
18 of any money in the treasury not otherwise appropriated.

19 494-A:20 Relationship to Judicial Branch Disciplinary Authority.

20 I. Nothing in this chapter shall be construed to:

21 (a) Limit or replace the inherent authority of the New Hampshire supreme court to
22 regulate and discipline judges;

23 (b) Require complaints to be filed exclusively with the commission;

24 (c) Prevent the supreme court from maintaining its own disciplinary procedures; or

25 (d) Create exclusive jurisdiction in the commission over judicial conduct matters.

26 II. The commission's role is limited to assisting the legislature in exercising its
27 constitutional powers of impeachment and address, and does not extend to imposing discipline or
28 regulating judicial conduct.

29 494-A:21 Severability.

30 I. If any provision of this act or its application to any person or circumstance is held invalid,
31 such invalidity shall not affect other provisions or applications of this act that can be given effect
32 without the invalid provision or application, and to this end the provisions of this act are severable.

33 II. If any portion of this chapter is found to violate part II, article 73-a regarding the
34 supreme court's inherent authority over court practice, such finding shall not invalidate the
35 remainder of this chapter, which shall continue to govern the procedural mechanisms for the
36 legislature to consider whether impeachment proceedings are warranted.

37 4 Effective Date.

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- 1 I. RSA 494-A:21, as inserted by section 3 of this act, shall take effect upon its passage.
- 2 II. RSA 494-A:1 through RSA 494-A:9, as inserted by section 3 of this act, shall take effect
- 3 60 days after its passage.
- 4 III. The remainder of this act shall take effect January 1, 2027.

**HB 1322-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT reestablishing the judicial conduct commission.

FISCAL IMPACT: This bill does not provide funding.

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

***Expenditure = Cost of bill**

***Appropriation = Authorized funding to cover cost of bill**

METHODOLOGY:

This bill reestablishes the Judicial Conduct Commission to investigate complaints against judges, clerks, and deputy clerks, and to make recommendations to the legislature regarding judicial discipline or impeachment. The Commission would operate separately from the Supreme Court's existing disciplinary process.

The Judicial Branch states this bill will result in an indeterminable increase in state expenditures from the General Fund. This bill creates a new Judicial Conduct Commission with independent staffing and administrative authority. The extent to which the new Commission would require judges and clerks to spend time responding to complaints and proceedings before the Commission is unknown, and therefore the associated costs cannot be estimated at this time.

The fiscal impact will depend on the number of complaints received, the volume of investigations conducted, and the administrative and legal support required for the new Commission. If a significant number of complaints are filed, this could result in substantial costs to the Judicial Branch related to judicial and staff time shifted to complaint response and hearings. However, the number of complaints and level of activity before the Commission are not known at this time, making the overall impact indeterminable.

AGENCIES CONTACTED:

Judicial Branch