

Senate Election Law and Municipal Affairs Committee

Jessica Bourque 271-2104

HB 340-FN, relative to electioneering by public employees.

Hearing Date: April 15, 2025

Time Opened: 9:33 a.m.

Time Closed: 10:12 a.m.

Members of the Committee Present: Senators Gray, Rochefort, Perkins Kwoka and Long

Members of the Committee Absent: Senator Lang

Bill Analysis: This bill defines electioneering in relation to public employees

Sponsors:

Rep. Berry
Rep. Mazur

Rep. Alexander Jr.
Rep. Seidel

Rep. Corcoran
Sen. Murphy

Who supports the bill: Senator Keith Murphy, Rep. Donald McFarlane, Rep. Lisa Mazur, Rep. Sherri Reinfurt, Rep. Joe Alexander, Rep. Ross Berry, Rep. Henry Giasson

Who opposes the bill: Alan Raff (AFL-CIO), Glenn Brackett (AFL-CIO), Sarah Burke Cohen (NHMA), Brian Hawkins (NEA-NH), Elizabeth Sargent (NH Assoc. of Chiefs of Police)

Summary of testimony presented in support:

Representative Ross Berry, Prime Sponsor, Hillsborough-District 44

- This bill attempts to tighten the electioneering statutes relating to public employees.
- It is his view that public employees shouldn't be using their position or public resources to affect the outcome of an election when they are in the performance of their duties.
- Believes that electioneering by public employees erodes citizens' faith in elections.
- The current statute says public employees can't do things "specifically designed" to influence the outcome of an election. The issue is that the Department of Justice (DOJ) has taken that language and interpreted it as "intent", which is hard to prove.
- Some examples of what Rep. Berry believes is abuse of the statute:

- For the last three elections, the Amherst SAU has proposed a ballot initiative to pass a warrant article to make improvements to the school. The district superintendent emailed parents on a Friday to inform them that a film crew would be at the school the following Monday, and their children might appear in the video, but did not explain what the video was for. The video highlighted the issues facing the school building. Rep. Berry feels the superintendent in this case was disingenuous and doesn't think this was appropriate.
- There was an issue in Hooksett where the town clerk encouraged candidates to fill out a survey conducted by one of the local newspapers. The survey was one-sided, which an editor has a right to do, but Rep. Berry feels the clerk crossed the line by telling candidates they should complete the survey.
- Goffstown put out a very one-sided candidate survey, and it turns out 11 of the 12 questions were provided by public employees.
- This bill adds language to help clarify "intent".
- There are safeguards built into the bill because public employees must do some things related to public elections. For example, a town clerk must take in forms related to elections.
- Nothing in this bill would prohibit public employees from doing anything on their own time.
- There is also a carveout for voter registration drives and UNH Surveys.

Senator Perkins Kwoka said she believes the current statute is pretty clear about electioneering by public employees. She asked Rep. Berry to address the language on line 11, which says "having the effect of influencing the vote of a voter on any question or office," and asked how someone would know if something they are doing will affect someone's vote.

- The term "specifically designed" in the current statute is being used to define "intent". Rep. Berry said he believes public employees are hiding behind that because no one knows what someone's "intent" is.
- Changing from "specifically designed" to "any way designed and having the effect of" is being used to increase the statute's coverage.
- When the statute was written, the legislature said public employees should be held to a higher standard.
- It is supposed to be broad.
- Public employees can do what they want on their own time.

Senator Perkins Kwoka clarified that she said it was subjective, not broad. Senator Perkins Kwoka said one person could say something to another person, then the other person thinks about the person's statement later, and it does affect their vote. She said the bill's language says "organizing or conducting surveys, forums, or events that are expressly or primarily political", and asked Rep. Berry to explain the vague language. For example, if someone organizes a raffle fundraiser for a school soccer team, is that influencing the budget?

- Rep. Berry said he believes the language is objective, not subjective.

- Rep. Berry responded to the hallway conversation portion of Senator Perkins Kwoka’s question and said that the language says “public statement”; a private conversation is not a public statement.
- Rep. Berry contends that no reasonable person would look at a raffle for a soccer team as “expressly or primarily political”.

Senator Long asked about line 25, the use of public spaces, and said he is considering public TV and radio. Would an alderman be covered under this?

- An alderman wouldn’t be subject to this because they are an elected official.
- This statute uses the labor definition that was created for union negotiations.
- The courts have said that elected officials are expected to electioneer.

Senator Rochefort asked how this would affect a police chief commenting on something like bail reform, for example, and said it seems like we might be flirting with a line that we don’t want to flirt with.

- That does not influence the vote on a candidate or a measure. Conversely, if a police chief said, “Here is a candidate; don’t vote for them,” that would be crossing a line.
- Agrees that it is a fine line because this deals with the First Amendment.
- When crafting this bill, he tried to parse out what is acceptable advocacy by a public official and what is electioneering.

Rep. Lisa Mazur, Hillsborough-District 44

- Supports this bill.
- Believes public employees should stay neutral.
- This past fall, public employees in her town conducted a politically biased candidate survey. The employees claimed that the questions were gathered from the community, but after a right-to-know request, it was found that only 2 questions were from the community; the rest were from other town employees.
- Public employees not remaining neutral sets a bad precedent and could undermine public trust.
- Other volunteer organizations can do much of the work that public employees are currently doing.

Representative Henry Giasson, Hillsborough-District 29

- Shared several questions from the Goffstown survey referenced in this hearing.
- Noted that when litigation was filed in the Goffstown case, the town attorney admitted that the survey met the definition of electioneering.
- The judge in the litigation case said they didn’t have the authority to rule on it because it was strictly an Attorney General case.
- The time it takes to litigate is too long, so the electioneering of public employees needs to be reigned in.

Summary of testimony presented in opposition:

Brian Hawkins, NEA-NH

- Opposes this bill.
- Supports the current law and believes the current law covers what the sponsor intends to do in this bill.
- This broadens the scope of the statute too much.
- Changing “specifically designed” to “in any way designed” or “having the effect of influencing” is extremely broad and subjective language.
- Asked how someone would know if something they do affects someone’s vote.

Sarah Burke Cohen, NH Municipal Association

- Opposes this bill.
- Believes this language is broad and selective.
- Concerned about the part of the bill related to displaying or distributing of campaign materials on line 13, and spoke about several possible scenarios:
 - A building official who has a bumper sticker on their personal car, and that car is used to travel to do building inspections. Would they be considered to be electioneering?
 - If a police officer goes to pick up coffee while on duty and says to someone behind the counter that they are going to vote for so and so, but another customer overhears that. Is that electioneering?
 - Say two town employees are having a private conversation about an election at the town offices, and someone walks in and overhears the conversation. Technically, that conversation is private but when someone walks into the town office, it becomes public. That is problematic.
- Believes this will have a chilling effect on public employees.
- Candidate introductory nights have been important for NH elections for many years.

Senator Long asked if, for example, libraries are off the table to host candidate forums.

- Believes that the prime sponsor tried to carve out open space, which is okay as long as it is available to both candidates.

Senator Perkins Kwoka asked if Ms. Burke Cohen has heard any public employees raise concerns about changing the “specifically designed” language to “in any way designed”.

- Ms. Burke Cohen said she thinks the current statute is adequate and is the reason we don’t see much of this happening now, because the language is clear.
- The issues NHMA have seen have not been ruled illegal. The AG looks at “intent”.
- It is challenging to parse out when someone is standing there as a public employee or if they are standing there as a citizen of a town because really, they are both.
- Public employees have a right to ask questions of their local candidates as well.

Alan Raff, NH AFL-CIO

- Agrees with the previous opposition speakers on this bill.
- Wants to add that a law fails for vagueness if the average person can't discern it. The average person will wonder what conforms to the law if this passes.
- Noted that the Goffstown survey in question was found by the court to be in violation of the current law. If that is the case, why is changing the current law necessary if it works?