**HB 476 - AS AMENDED BY THE HOUSE**

3Jan2018... 2451h
6Mar2018... 0727h

2017 SESSION

17-0174
06/03

HOUSE BILL ***476***

AN ACT relative to the duties of registers of probate.

SPONSORS: Rep. J. Belanger, Hills. 27; Rep. Sterling, Ches. 14; Rep. Horrigan, Straf. 6; Rep. Ammon, Hills. 40; Rep. Itse, Rock. 10; Sen. Gray, Dist 6

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill:

I. Modifies the duties of registers of probate.

II. Modifies the duties of the probate division of the circuit court.

III. Requires the county delegations to determine the salary and benefits of registers of probate.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**HB 476 - AS AMENDED BY THE HOUSE**

3Jan2018... 2451h
6Mar2018... 0727h

17-0174
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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT relative to the duties of 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.***

3 Supreme Court; Entry Fees RSA 490:24, I is repealed and reenacted to read as follows:

I. For the benefit of the state and counties, there shall be paid to the clerk for the entry of every reserved case, bill of exceptions, petition, appeal, or other action, for the filing of every motion or other document supplementary to the entered case, and for any service rendered by the clerk, such fees as shall from time to time be established by the court. The clerk shall determine the total amount of probate entry fees collected in each county. The clerk shall set aside and pay 10 percent of each probate entry fee paid to the probate division of the circuit court for allocation to the counties for the salary, benefits, and other compensation costs of the registers of probate as set forth in RSA 490:27. Of the remaining entry fees, 6 percent shall be set aside for deposit into a special escrow account established under RSA 490:26-c and 30 percent for deposit into the judicial branch information technology fund established under RSA 490:26-h. The proceeds of fees for motions to appear in court pro hac vice shall be paid into the law library revolving fund established in RSA 490:25, III.

4 Escrow Fund for Court Facility Improvements. Amend RSA 490:26-c to read as follows:

490:26-c Escrow Fund for Court Facility Improvements.

I. ***Of the entry fees remaining after 10 percent is set aside for county registers of probate pursuant to RSA 490:24, I,*** six percent of each entry fee collected in the supreme, superior, and circuit courts shall be deposited in escrow for judicial branch facility improvements. Moneys in the escrow fund shall be used for improvements to judicial branch facilities by the department of administrative services as recommended and approved by the supreme court.

II. The state treasurer shall establish procedures for deposits to and expenditures from the ***judicial*** escrow fund for court facilities. The ***judicial*** escrow fund shall be a dedicated capital reserve fund for the improvement of existing court facilities, or those facilities acquired pursuant to an act of the general court.

III. The funds on deposit in the ***judicial*** escrow fund for court facility improvements shall be invested by the state treasurer in obligations of the United States government, in government agency obligations, in obligations which are legal investments for savings banks and trust companies, and in all types of savings accounts or certificates of deposit of both state or federally chartered institutions.

5 Judicial Branch Information Technology Fund. Amend RSA 490:26-h, I(a) to read as follows:

(a) ***Of the entry fees remaining after 10 percent is set aside for county registers of probate pursuant to RSA 490:24, I,*** thirty percent of each entry fee collected in the supreme, superior, and circuit courts and 16.67 percent of the penalty assessment collected pursuant to RSA 106-L:10 shall be deposited in the judicial branch information technology fund.

6 Supreme Court; Probate Division of the Circuit Court Fees. Amend RSA 490:27 to read as follows:

490:27 Probate Court Fees.

I. Probate ***division of the circuit*** court fees as established by the supreme court under RSA 490:26-a shall be paid to the clerk of the applicable circuit court established in RSA 490-F for the benefit of the state ***and counties***.

II. The sum of $5 shall be added to each entry fee collected in the probate ***division of the circuit*** courts and shall be deposited in the mediation and arbitration fund established under RSA 490-E:4. ***Probate entry fees shall be set to allow for the allocation to the counties of up to 10 percent of the fees collected for the salary, benefits, and other compensation costs of registers of probate in eligible counties having established such compensation pursuant to RSA 23:7 and RSA 23:8. Such costs shall only be reimbursed to counties that have established compensation pursuant to RSA 23:7 and RSA 23:8, and only to the extent covered by 10 percent of the probate entry fees collected. No later than 30 days after each calendar quarter, eligible counties shall report the salary, benefits, and other compensation costs for the register of probate to the administrative office of the courts. The office shall distribute up to 10 percent of the probate entry fees collected in the preceding quarter based on each county's share of total statewide probate cases filed.***

7 Circuit Court Clerks; Appointment. Amend RSA 490-F:13 to read as follows:

490-F:13 Circuit Court Clerks; Appointment. The administrative judge of the circuit court shall appoint a clerk with responsibility for each circuit court site. In the interest of the effective administration of justice, any such clerk may have responsibility for one or more circuit court locations. Circuit court clerks shall have the same duties as clerks of the former district court and judicial branch family division [~~and as registers of probate with the exception of RSA 15-B, RSA 456-B, RSA 548, RSA 653, RSA 655, and RSA 661 which shall remain as duties of the registers of probate~~]. Circuit court clerks***, upon request of the register of probate,*** shall ***inform the registers of probate, in a timely manner, of any and all scheduling to insure timely judicial action of probate matters. Circuit court clerks shall*** hold office at the pleasure of the administrative judge of the circuit court. ***The administrative judge shall not have authority over a register of probate.***

8 Judges and Their Jurisdiction; Records. Amend RSA 547:27-b, I to read as follows:

I. The probate ***division of the circuit*** court shall [~~appropriately retain all wills and their probate; all proceedings with regard to real estate; all accounts settled, and all orders, decisions, and appointments from which an appeal may be claimed~~] ***provide system access to the electronic probate files to check on activities related to probate matters***.

9 Judges of Probate and Their Jurisdiction; Probate Division of the Circuit Court Entry Fees. Amend RSA 547:27-c to read as follows:

547:27-c Probate Court Entry Fees.

I. ***Probate division of the circuit court*** entry fees as established by the supreme court under RSA 490:26-a shall be paid to the clerk of each applicable circuit court established in RSA 490-F for the benefit of the state ***and counties***.

II. ***The clerk shall determine the total amount of probate entry fees collected by each county. Of the entry fees remaining after 10 percent is set aside for county registers of probate pursuant to RSA 490:24, I,*** the clerk shall set aside 6 percent of each entry fee paid into the court for deposit into a special escrow account established under RSA 490:26-c and 30 percent [~~of each entry fee paid into the court~~] for deposit into the judicial branch information technology fund established under RSA 490:26-h. The proceeds of fees for motions to appear in court pro hac vice shall be paid into the law library revolving fund established in RSA 490:25, III.

10 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.

11 New Sections; Register of Probate; Training, Duties, and Office Hours; Office Facilities. Amend RSA 548 by inserting after section 2 the following new sections:

548:2-a Training. The administrative judge of the probate division of the circuit court, or designee shall provide instruction to each register of probate on the current computer system, telephone system, and all rules and processes in the probate division of the circuit court .

548:2-b Duties and Office Hours. The register of probate shall be available to county residents and court personnel as necessary to provide services to county residents, court personnel, and the general public on any and all probate filings and issues. The register of probate position may be part-time or full-time. Recommendation of hours or days worked by the register of probate shall be considered by the county delegation, which has final authority over the register of probate hours.

548:2-c Office Facilities and Equipment. Each register of probate shall have a work station or office located in the probate division of the circuit court, or registry of deeds, or county seat in the county in which he or she was elected. If the office space is within a county building, the county shall provide a desk and telephone number for the register of probate. The telephone number shall be communicated to the judicial branch. the judicial branch shall supply the computer equipment and access to email via the court email system. If the office space is within a court building, The work station or office shall include court-supplied office equipment including a desk or desk space, a telephone, a court provided telephone number or telephone extension, and a computer with court supplied email access. Each register of probate shall have access to all open and closed probate matters filed electronically and be aware of the location of all paper probate records needed to assist the public. Probate electronic court records shall be available on a read-only basis.

12 New Sections; Register of Probate; Authority. Amend RSA 548 by inserting after section 4-a the following new sections:

548:4-b Authority. The authority of the register of probate shall include, but not be limited to, access to all probate division filings under RSA 5, RSA 15-B, RSA 87, RSA 151-A:15, RSA 456-B, RSA 490-F, RSA 547, RSA 548, RSA 553, RSA 554, and RSA 661. The register of probate shall work with court personnel to resolve all probate issues presented to the register of probate by the public.

548:4-c Scheduling. The probate division of the circuit court shall provide access to the electronic probate files so information about scheduling is available to the registers of probate.

13 Registers of Probate; Records RSA 548:5 is repealed and reenacted to read as follows:

548:5 Records. The register of probate shall have access to the electronic probate files in order to view the recordings of all wills and their probate; all proceedings with regard to real estate; all accounts settled; and all orders, decisions, and appointments from which an appeal may be claimed. The judicial branch and the secretary of state, division of archives and records management shall make available on their websites 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. Beginning on July 1, 2020, all paper probate records older than 35 years shall be kept in the state archives.

14 New Section; Registers of Probate; 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 division of the circuit court in connection with the administration of any estate that the estate contains real estate located in the state, the probate division of the circuit 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 of his or her office 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. The probate division of the circuit court shall provide the register of deeds the address of the estate administrator for billing.

15 Registers of Probate; Salaries; Benefits. RSA 548:17 is repealed and reenacted to read as follows:

548:17 Salaries; Benefits; Part-time; Per Diem. The county delegation shall determine the method and amount of payment, salary paid, and whether any benefits are offered to the register of probate for the performance of his or her duties, considering available county budget funds. Any salary and benefits, part-time payment, or per diem payment for services offered to the register of probate shall be determined by the county delegation for the county in which the register of probate is elected. The payment for services shall be based upon the responsibilities, duties, and hours of the register of probate and shall be specified in the county budget. Any funds received by a county from the state designated for the operation of the office of register of probate in that county shall be dedicated solely to the operation, support, and function of the office of register of probate in that

county.

16 Probate Division of the Circuit Courts and Estates; Publication of Notice RSA 550:10 is repealed and reenacted to read as follows:

550:10 Publication and Notice in Newspaper. Because probate is an entirely electronic process with no paper records, notwithstanding any other provision of law, whenever notice is required to be published in a newspaper by any provision of this title, the probate division of the circuit court established in RSA 490-F shall instead cause such notice as required by the probate division of the circuit court to be made available to the public on the New Hampshire judicial branch website or by other electronic media for no fewer than 2 weeks beginning no later than 2 weeks before the date for which notice is given, unless otherwise ordered by the judge.

17 County Officers; 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.

18 Repeal. The following are repealed:

I. RSA 548:28 relative to penalty for register of probate.

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

19 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.

20 Effective Date.

I. Sections 3-7, and 9 of this act shall take effect January 1, 2019.

II. RSA 548:2-a as inserted by section 11 of this act shall take effect November 15, 2018.

III. The remainder of this act shall take effect upon its passage.

LBAO
17-0174
1/24/18

**HB 476- FISCAL NOTE**

AS AMENDED BY THE HOUSE (AMENDMENT #2017-2451h)

AN ACT relative to the duties of registers of probate.

**FISCAL IMPACT:** [ X ] State [ X ] County [ ] Local [ ] None

| | Estimated Increase / (Decrease) | | | |
|---|---|---|---|---|
| **STATE:** | **FY 2019** | **FY 2020** | **FY 2021** | **FY 2022** |
| **Appropriation** | $0 | $0 | $0 | $0 |
| **Revenue** | Indeterminable Decrease | Indeterminable Decrease | Indeterminable Decrease | Indeterminable Decrease |
| **Expenditures** | Indeterminable | Indeterminable | Indeterminable | Indeterminable |
| ***Funding Source:*** | [ X ] General Restricted Revenue | [ ] Education | [ ] Highway | [ X ] Other - |

**COUNTY:**

| | | | | |
|---|---|---|---|---|
| **Revenue** | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| **Expenditures** | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |

**METHODOLOGY:**

This bill would decrease State restricted revenues and increase county revenues and expenditures by indeterminable amounts. There would be an indeterminable impact on State expenditures. Expenditures from the specified funds would decrease (assuming other sources of funds are not available) but certain other expenditures would increase. Under current law, the fees below are distributed as follows:

- Entry Fees (RSA 490:24)
  - 6% to Facilities Escrow Account (RSA 490:26-c)
  - 30% to IT Dedicated Fund (RSA 490:26-h)
  - 64% to General Fund (RSA 490:24)
- Fees for Motions to Appear in Court pro hac vice
  - 100% to the Law Library Revolving Fund (RSA 490:25, III)
- Mediation Fee
  - 100% of revenue goes to Mediation & Arbitration Fund (RSA 490:27, II)
- Publication of Notice Fee
  - 100% of fee revenue goes the Court Publications Revolving Fund (RSA 550:10)
- Default Fees Fund
  - 100% of fees go to the Default Fees Fund (RSA 597:38-a)

The bill would reallocate a portion of this fee revenue to county treasurers to pay for the salaries, benefits and related costs of county registers of probate as follows:

- 50 percent of the entry fee revenue collected by the probate division currently deposited

in the Facilities Escrow Account and IT Dedicated Fund would be reallocated to county treasurers.

- 50 percent of the fees for motions to appear in court pro hac vice currently deposited in the Law Library Revolving Fund would be reallocated to the county treasurers.
- Half of the $5.00 Mediation fee (or $2.50) collected by the probate division shall be paid to the county treasurer that collected the fee.
- 50% of the fee revenue paid under RSA 550:10 for publication costs would be reallocated from the Court Publications Revolving Fund to the county treasurers.

In addition, the bill makes a one-time distribution of $100,000 divided equally among the State's 10 counties to pay for register of probate expenses. This money is derived from the default fees collected by the court under RSA 597:38-a. The bill also requires the Judicial Branch to provide the ten registers of probate with a work station or office with a desk, a telephone and a computer. The Judicial Branch estimates the total first year cost to be $52,000 (10 registers of probate x (Workstation @ $3,298 + Computer @ $1,734 + Telephone @ $168/year). Proposed RSA 548:2-a requires Judicial Branch personnel to provide instruction to the registers of probate. The Branch assumes existing circuit court personnel would perform this task but cannot estimate how much time will be devoted to this function. Proposed RSA 548:5 requires Judicial Branch personnel and resources to perform retention, scanning, and destruction of records, including conversion to electronic medium for availability to the general public. The Branch states the conversion to electronic medium will be a significant cost that would likely require a capital appropriation. The Judicial Branch is unable to provide an estimate of this cost at this time. Based on FY 2017 actual amounts, the Judicial Branch estimates the following impact on restricted revenue and known expenditures:

| | |
|---|---|
| Probate Division Entry Fees - Increase/(Decrease) | |
| IT Dedicated Fund | ($197,328) |
| Facilities Escrow Fund | ($39,466) |
| Mediation & Arbitration Fund | ($31,819) |
| Law Library Revolving Fund | ($1,125) |
| Probate Division Entry Fee Subtotal | ($269,738) |
| | |
| Court Publications Revolving Fund | ($49,752) |
| | |
| Total Restricted Revenue | ($319,490) |
| State Expenditures - Increase/(Decrease) | |
| Default Fund (One-time Transfer) | $100,000 |
| Office Costs for Outfitting Registers of Probate (First year purchase) | $52,000 |
| Conversion to Electronic Medium | Unknown |
| First Year Known Expenditures: | $152,000 |
| Phone line cost (second and subsequent years) | $1,685 |

The New Hampshire Association of Counties indicates there will be an indeterminable amount of money sent from the Judicial Branch to the county treasurers as revenue and an indeterminable increase in expenditures depending on the salary and benefits established by the county for the Register of Probate. The Association assumes the funds received from the Judicial Branch will be restricted to pay for Registers of Probate in county budgets. The Association indicates there would be a full-time or part-time Register of Probate in each county with the salary, benefits and working hours established by the county convention upon recommendation of the executive committee. The salaries would be established at a fixed dollar amount and may be established in part or in total as a percentage of fees or other charges collected by the County Treasurer. The Association assumes there would be additional expenditures for physical office space and utilities.

**AGENCIES CONTACTED:**

Judicial Branch and New Hampshire Association of Counties