

# Bill as Introduced

SB 502 - FN - AS INTRODUCED

1998 SESSION

98-2932  
04/01

SENATE BILL        **502-FN**

AN ACT            allowing federal judges to perform marriages after obtaining a special license.

SPONSORS:        Sen. Larsen, Dist 15; Sen. Pignatelli, Dist 13; Sen. Gordon, Dist 2;  
Sen. D. Wheeler, Dist 11; Sen. Squires, Dist 12; Rep. Kurk, Hills 5; Rep. Mercer,  
Hills 27; Rep. Richardson, Ches 12; Rep. Peterson, Hills 8; Rep. Keans, Straf 16

COMMITTEE:      Executive Departments and Administration

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ANALYSIS

This act allows federal judges appointed pursuant to Article III of the United States Constitution, and federal magistrate judges appointed pursuant to federal law, to perform marriage ceremonies after obtaining a special license.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

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

AN ACT allowing federal judges to perform marriages after obtaining a special license.

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

1           1 Solemnization of Marriages; Federal Judges and Magistrates Added. Amend RSA 457:31 to  
2 read as follows:

3           457:31 Who May Solemnize. Marriage may be solemnized by a justice of the peace as  
4 commissioned in the state; by any minister of the gospel in the state who has been ordained  
5 according to the usage of his *or her* denomination, resides in the state, and is in regular standing  
6 with the denomination; by any clergyman who is not ordained but is engaged in the service of the  
7 religious body to which he *or she* belongs, resides in the state, after being licensed therefor by the  
8 secretary of state; and within his *or her* parish, by any minister residing out of the state, but having  
9 a pastoral charge wholly or partly in this state; *by judges of the United States, residing in this*  
10 *state appointed pursuant to Article III of the United States Constitution, or by United*  
11 *States magistrate judges residing in this state and appointed pursuant to federal law.*

12           2 New Section; License and Fee; Judges of the United States. Amend RSA 457 by inserting  
13 after section 32 the following new section:

14           457:32-a Judges of the United States. The secretary of state may issue a special lifetime license  
15 to a judge of the United States residing in this state who is appointed pursuant to Article III of the  
16 United States Constitution, or to a United States magistrate judge residing in this state and  
17 appointed pursuant to federal law, to marry a couple within the state. There shall be a one time fee  
18 of \$25 for such license and the secretary of state shall maintain a record of all special lifetime  
19 licenses issued. A copy of the marriage license of the couple proposed to be married shall be filed  
20 with the secretary of state who shall maintain a permanent record of all such marriage licenses and  
21 the name and residence of the judge or magistrate performing the ceremony.

22           3 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
98-2932  
2/12/98

**SB 502-FN - FISCAL NOTE**

**AN ACT** allowing federal judges to perform marriages after obtaining a special license.

**FISCAL IMPACT:**

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 1998 through 2002.

# Committee Minutes



It is my understanding that they are precluded from holding a State commission if they are Federal judges. So, therefore, they somehow lose this ability to marry, once they become Federal judges.

Bill Gardner worked with Judge Stahl to create an amendment for a special license process through his office. There is a fee attached in this bill. The bill says that the Federal judge would apply for a one time fee of \$25 through the Secretary of State's office to obtain a license and that the Secretary of State will maintain a record of who has applied for those licenses.

A copy of the marriage license of the couple would be filed with the Secretary of State as well, and would remain on file at the Secretary of State, as well as a notice of which judge performed the marriage. You will note that this is only referring to judges who reside in this State, so we are not doing like California has done, which is to authorize any Federal judge to come in and marry. Although, I personally have no problem with that. This is only to apply to our New Hampshire Federal judges and it includes Justice Souter of the Supreme Court, as well as the Federal judges in the United States District Court in the District of New Hampshire .

Senator Eleanor Podles, D. 16: How many of the judges would there be that would be willing to do this?

Senator Sylvia B. Larsen, D. 15: I have been in contact with the Federal judges here in Concord in Federal Court. At least Barbadoro, McAuliffe, and Stahl ---- all of whom have indicated support and interest for this. In fact, if I have permission, I will read Judge McAuliffe's letter in support, because he could not be here today. (See attachment A)

They are all aware of this bill. They are all supportive of this bill. It is their request that I bring this forward. I also indicated I faxed copies of the bill to Justice Souter and I haven't heard back from him, but I didn't expect to on this minor issue. I know that Justice Souter, like the others, there may be a situation where a personal friend or the daughter of a personal friend, or a son might be getting married, and he too would probably like privilege and the honor of being able to marry a personal friend's child.

Senator Eleanor Podles, D. 16: I noticed the fiscal note. The fiscal note says that it will have a fiscal impact of less than \$10,000 in each of the fiscal years 1998 through 2002. So what we are doing is we are giving them a job, but it is costing the State money ---

Senator Sylvia B. Larsen, D. 15: No, it is revenue.

Senator Eleanor Podles, D. 16: Wait a minute, until I am finished, because now we are assigning them, or assigning this work to the Secretary of State's office and they have to deal with this and they have to have a permanent record of such marriage licenses. So that poses a question ---- is it worthwhile?

Senator Sylvia B. Larsen, D. 15: Well, I would point out to you that it has a total fiscal impact of less than \$10,000.00. The impact is probably more in the range of \$100 in revenue. How many marriages are Federal judges going to be performing? They have far more important duties. It is not that they are going to do this more than once --- probably once a year would maximum. Even that -----

Senator Eleanor Podles, D. 16: That is why I can't understand why they are asking for this. Why would they want this?

Senator Sylvia B. Larsen, D. 15: Because, if I may Senator?

Senator John A. King, D. 18: Go right ahead.

Senator Sylvia B. Larsen, D. 15: Its --- even my husband who is an attorney, he has the right to marry people. It is a privilege as an attorney that they have gotten in being Justices of the Peace to be able to marry people. They are in a high position of authority and people assume that you are a lawyer, you are a judge, therefore you should be able to marry them and they have to inform them ---- no, we can't. Even a lawyer in the lowest ranks of the Bar can marry, and yet to have Justice Souter be unable to do that, is unusual for a lawyer. As I say, I don't believe that this will be a high number. This is a process that Bill Gardner essentially supported. He is out of the State for 3 weeks, I understand. I tried to contact his office and they said, he is gone for 3 weeks. I haven't pursued where he is, but I don't believe that it is heavy workload for them. They probably create one small file that says Marriage Certificates by Federal judges and they keep a list of those certificates when they come in. There is no paperwork involved in other than the issuance of a one time license to the few Federal judges that we have in this State. So I would say that the work involved is in assigning 4 people a special license and taking their \$25 check. And the occasional receipt of a marriage license from a town clerk that the marrying couple brings over to the Secretary of State. They open a file. They put it in that file. And that is the amount of work that is involved.

If I could, I would like to read to you Steven J. McAuliffe's letter. I just received it today. (see attachment A) I was not in touch with some of the judges who received carbon copies because I don't know them. And it was mostly the Concord District that had contacted me.



Senator John A. King, D. 18: Would this include retired judges?

Senator Sylvia B. Larsen, D. 15: I am sorry but I am not up to speed on everybody's status these days.

Senator Debora B. Pignatelli, D. 13: I am happy be a co-sponsor to my roommate's bill. I think that this is a fairly simple bill and I think its an oversight that judges, that Federal judges are not allowed to marry couples once they become Federal judge. I know that I had a brief conversation with Judge Stahl and he had said that it is an honor for him to be asked to marry someone ---- a friend, a close friend's child. I know that my husbands former law partner is a Federal judge now, and should my children want, I would be honored to ask him to perform the wedding of my son, or sons. I just hope that I never need to ask them for services for me.

Senator Sheila Roberge, D. 9: The person that Judge Stahl wanted to marry, the last time this legislation came through --- did they finally get married without him? What happened?

Senator Debora B. Pignatelli, D. 13: I don't know. Senator Larsen --?

Senator Sylvia B. Larsen, D. 15: They may still be waiting.

HEARING CLOSED  
1:55 PM

Attachment A

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Chambers of  
STEVEN J. McAULIFFE  
District Judge

55 Pleasant Street  
Concord, New Hampshire 03301  
Telephone 603-226-7304

March 5, 1998

Hon. Sylvia B. Larsen  
Senate of the State of New Hampshire  
107 N. Main Street, Room 302  
Concord, NH 03301-4951

Re: Senate Bill 502-FN

Dear ~~Senator~~ <sup>Sylvia</sup> Larsen:

Judge Stahl is in Washington today, testifying before congress in his capacity as chair of a national judicial conference committee, and so cannot appear to testify relative to SB 502. He has asked me to formally convey his personal regrets and to provide written testimony in his stead.

We appreciate your introducing this legislation, which will permit resident federal judges to perform valid marriage ceremonies in New Hampshire. Marriage is of course a legal relationship governed exclusively by state law. Many states have enacted provisions similar to those in SB 502, in the interests of comity, to make it possible for federal judges to preside over wedding ceremonies in the same manner as justices of the peace, or sitting state judges. California, for example, permits any federal judge (not just those resident in California) to perform a valid marriage ceremony in that state. Under that provision, I recently had the distinct honor of presiding over the wedding of my former law clerk at Stanford University in Palo Alto. Needless to say, I was deeply touched to be asked and will never forget the experience.

Judges, whether state or federal, are generally not in the marriage business, and I should point out that none of us expects (or particularly wants) to regularly preside at civil weddings. I make the point only because I am given to understand that some legislators (no doubt tongue in cheek) may have expressed concern that the federal courthouse might become a competitive wedding

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Hon. Sylvia B. Larsen  
March 5, 1998  
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chapel should the Bill pass and be signed into law. It will not. But, from time to time our law clerks, or family members, or former partners or associates, ask that we preside at their weddings, thinking that all judges have that power. On those infrequent occasions we naturally would like to accept such invitations and participate meaningfully in the lives of those with whom we are close. The need for legislation arises from the fact that, as officers of the federal government, we cannot, by federal statute, simultaneously hold a state office. So, we cannot continue as justices of the peace or notaries public, offices most attorneys hold, after appointment to the bench. Absent specific authorizing legislation, then, federal judges simply cannot perform valid marriages in New Hampshire.

Again, thank you for your thoughtfulness and spirit of comity in sponsoring the legislation, and please extend our appreciation to the committee for its consideration of the matter.

Best personal regards,



Steven J. McAuliffe  
United States District Judge

SJM/lag

cc: Judge Stahl  
Chief Judge Barbadoro  
Judge Devine  
Judge DiClerico  
Magistrate Judge Muirhead

**NEW HAMPSHIRE SENATE RESEARCH**  
**MEMORANDUM**

**TO:** Carol Pletcher  
**DATE:** February 26, 1998  
**FROM:** Kristin Tupper *KT*  
**IN RE:** 1998 SB502 and related prior NH legislation

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You requested information related to past proposals for legislation allowing federal judges to perform marriages in New Hampshire. You recalled hearing a discussion relative to this issue, but concluded that the matter likely received no further consideration.

This appears to be the case. I found no previous attempts to legislate the performance of marriages in NH by federal judges, specifically. Below are the closely related points of interest which led to this conclusion.

**BILL STATUS HISTORY**

I searched Bill Status History on the Wang, and located 1995 HB159 -establishing a one-day justice of the peace certificate and certificate fee. It was found inexpedient to legislate by the House. The January 26, 1995, House Journal entry explains this action:

*Rep. Sandra Balomenos Keans for Judiciary and Family Law:  
The purpose of this bill is to allow a one-day license so that any individual may perform a marriage for a friend or relative. It does not permit any other duties of regular Justices of the Peace. There are two major concerns: (1) a regular Justice of the Peace is confirmed by the Governor and Council. The one-day request is automatic upon filing. (2) there is the possibility for confusion between the duties and authority for a one-day vs a regular Justice of the Peace. There also appears to be no pressing need for this legislation based on the testimony. Vote 15-0.*

No other germane bills surfaced in Bill Status History despite the variety of search terms entered.

**NH STATUTES**

An examination of related NH Revised Statutes Annotated produced the following existing law, but no further clues:

**§ 457:32. Special Commission.**

The secretary of state may issue a special license to an ordained minister residing out of the state authorizing him in a special case to marry a couple within the state. The names and residences of the couple proposed to be married in such special case shall be stated in the license, and no power shall be conferred to marry any other

parties than those named therein. The fee for such license shall be \$5. The secretary of state shall keep a permanent record of all such special licenses, which record shall contain the names and residences of the couple to be married and the name and residence of the minister to whom the license is issued.

Source. RS 147:6. CS 156:6. 1861, 2484:1. GS 161:9. 1877, 57:1. GL 180:9. PS 174:8. 1919, 56:1. 1921, 79:1. 1925, 27:1. PL 286:29. RL 338:32.

Annotations

#### CROSS REFERENCES

Issuance of special licenses to nonresident rabbis, see **RSA 457:37**.

#### **§ 457:37. Exceptions.**

Nothing contained in this chapter shall affect the right of Jewish Rabbis residing in this state, or of the people called Friends or Quakers, to solemnize marriages in the way usually practiced among them, and all marriages so solemnized shall be valid. Jewish Rabbis residing out of the state may obtain a special license as provided by RSA 457:32.

#### History

Source. RS 147:8. CS 156:8. 1854, 1518:4. GS 161:7. GL 180:7. PS 174:13. PL 286:34. 1927, 45:1. RL 338:37. RSA 457:37. 1992, 243:2, eff. July 12, 1992.

Annotations

Amendments--1992. Deleted "who are citizens of the United States" following "Jewish Rabbis" in the first and second sentences.

#### **CONSTITUTION OF THE STATE OF NEW HAMPSHIRE**

The **Constitution of the State of New Hampshire** contains the following related article and reference to a 1986 Opinion of the Justices at 128 N.H. 17 (1986):

#### **Art. 72-a. Supreme and Superior Courts.**

The judicial power of the state shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish under Article 4th of Part 2.

Annotations

Amendments--1966. Added this article.

Annotations

#### **1. Jurisdiction.**

**The legislature may not constitutionally empower any individual but a judicial officer to exercise marital jurisdiction, although the legislature has authority to determine which judicial officers should exercise that jurisdiction, or to create special judicial positions for that purpose.**

**Opinion of the Justices, 128 N.H. 17 509 A.2d 746 (1986).**

Cited. O'Neil v. Thomson, 114 N.H. 155 316 A.2d 168 (1974); State v. Stevens, 121 N.H. 287 428 A.2d 1241 (1981); Opinion of the Justices, 121 N.H. 552 431 A.2d 783 (1981); Monier v. Gallen, 122 N.H. 474 446 A.2d 454 (1982); State v. LaFrance, 124 N.H. 171 471 A.2d 340 (1983); State v. Cooper, 127 N.H. 119 498 A.2d 1209 (1985).

**CONCLUSION**

It appears that the NH Constitution bars from performing marriages anyone other than a judicial officer for the state of New Hampshire as appointed by the Governor and Council or those with special licenses as above. Although the NH legislature has the authority to create special judicial positions, I found no evidence that it has seriously attempted to do so.

Please advise if I may provide further information for this or a related question. My extension is 3028 or 2351.

# Speakers





# Committee Report

Date: March 5, 1998

Time: see attached

The Senate Committee on Executive Departments & Administration held its hearing in Room 104 LOB, Concord, New Hampshire.

**BILL NO.:** SB 502 FN

**TITLE:** allowing federal judges to perform marriages after obtaining a special license.

Members of the Committee present: see attached

Those appearing in favor:

Name and Address

Representing

See Attached.

Those appearing in opposition:

Name and Address

Representing

See Attached.

**REPORT OF THE COMMITTEE:**

- |  |  |
|--|--|
| <input type="checkbox"/> Ought to Pass                         | <input type="checkbox"/> Interim Study     |
| <input checked="" type="checkbox"/> Ought to Pass w/ Amendment | <input type="checkbox"/> Continued Hearing |
| <input type="checkbox"/> Inexpedient to Legislate              | <input type="checkbox"/> Postponed Hearing |
| <input type="checkbox"/> Rereferred                            |  |