

# Bill as Introduced

SB 136-LOCAL - AS INTRODUCED

2005 SESSION

05-1035  
03/01

SENATE BILL

***136-LOCAL***

AN ACT

relative to curbside voting at polling places by persons with disabilities.

SPONSORS:

Sen. Roberge, Dist 9; Rep. Graham, Hills 18; Rep. Hawkins, Hills 18;  
Rep. D.L. Christensen, Hills 19

COMMITTEE:

Internal Affairs

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ANALYSIS

This bill authorizes, and establishes procedures for, curbside voting at polling places by persons with disabilities.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to curbside voting at polling places by persons with disabilities.

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

1 Assistance in Voting; Curbside Voting. Amend RSA 659:20 to read as follows:

2 659:20 Assistance in Voting.

3 ***I.*** Any voter who declares to the moderator under oath that said voter cannot read or that,  
4 because of disability, is unable to mark his or her ballot shall, upon the voter's choice and request,  
5 receive the assistance of one or both of the inspectors of election detailed for that purpose by the  
6 moderator or of a person of the voter's choice provided that the person is not the voter's employer or  
7 union official. Such person so assisting shall be sworn, shall mark the ballot as directed by said  
8 voter, and shall thereafter give no information regarding the same. Such person so assisting shall  
9 leave the space within the guardrail with the voter.

10 ***II.*** *The moderator of any town or school district and the clerk of any city may for*  
11 *any election permit voters with disabilities that would make it difficult for the voters to*  
12 *enter the polling place and vote inside the rail, to vote from a vehicle parked in a parking*  
13 *space directly adjacent to the polling place, subject to the following restrictions:*

14 (a) *The moderator or city clerk shall determine whether curbside voting will be*  
15 *permitted in his or her municipality prior to the posting of the warrant for the election. If*  
16 *the moderator determines that curbside voting will be permitted, the moderator shall*  
17 *provide written notice to the town clerk no less than 10 days prior to the deadline for the*  
18 *posting of the warrant. If a city clerk determines that curbside voting will be permitted or*  
19 *if a town or school clerk receives notice that curbside voting will be permitted, the clerk*  
20 *shall post a notice that curbside voting will be permitted with the warrant for the election*  
21 *and in any communications giving notice to voters of the election.*

22 (b) *The moderator or city clerk shall ensure that sufficient inspectors of election*  
23 *are appointed so that one inspector of elections from each party is available to provide*  
24 *curbside voting service at all times when the polls are open.*

25 (c) *A voter who has a disability that permits the voter to drive or be driven to the*  
26 *polls, but which would make it difficult for the voter to enter the polling place to vote*  
27 *within the rail, may, upon arrival at the polling place cause the moderator to be alerted to*  
28 *the voter's desire to vote curbside. The moderator, an assistant moderator, or deputy*  
29 *moderator shall determine the person's eligibility to vote and if found eligible shall assign*  
30 *2 inspectors of election, one from each political party, to take an absentee ballot and an*  
31 *envelope to the voter.*

1           (d) *The inspectors of election assigned to assist a voter with disabilities to vote*  
2 *curbside shall provide the voter with the appropriate absentee ballots for the election and*  
3 *an appropriate marking device. The voter shall mark the ballots without exhibiting them*  
4 *to the inspectors of election or any other person, unless the voter qualifies for assistance in*  
5 *marking the ballot as provided in paragraph I, in which case the voter may have the*  
6 *assistance of a person of his or her own choosing as provided in paragraph I, or one*  
7 *inspector of election shall mark the ballot as instructed by the voter in full view of the*  
8 *second inspector of election. Once the ballot has been marked, it shall be sealed in an*  
9 *envelope. The voter shall be instructed to remain at the polling place until notified that*  
10 *his or her vote has not been challenged and that it has been cast.*

11           (e) *The inspectors of election shall take the ballot, sealed in the envelope, to the*  
12 *ballot clerk and cause the voter's name to be marked on the checklist as having voted by*  
13 *absentee ballot. Any person qualified to do so may challenge the voter when the voter's*  
14 *name is announced by the ballot clerk. If the voter is challenged, the moderator, an*  
15 *assistant, or deputy moderator shall process the challenge in accordance with law,*  
16 *provided, however, that the process shall be conducted curbside to the extent necessary.*

17           (f) *If the voter is not challenged or if the moderator determines as a result of the*  
18 *challenge process that the voter's ballot is to be cast, the sealed envelope shall be taken by*  
19 *the inspectors to the moderator. The moderator shall open the envelope and cast the ballot*  
20 *in a manner that does not display how the ballot is marked. The moderator shall cause the*  
21 *voter to be notified that his or her vote has been cast.*

22           2 Election Procedure; Prohibited Acts; Removing Ballot; Exception Added. Amend RSA 659:38  
23 to read as follows:

24           659:38 Forgery; Removing Ballot. No person shall forge or falsely make the official endorsement  
25 on any official ballot, or furnish to any voter a ballot with the intent that such voter shall use the  
26 same in voting instead of the ballot given him *or her* by the ballot clerk, or take or remove any  
27 ballot, *except as provided in RSA 659:20*, outside the guardrail before the close of the polls, or  
28 knowingly delay the delivery of any ballots. Whoever knowingly violates this provision shall be  
29 guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

30           3 Effective Date. This act shall take effect January 1, 2006.

# Committee Minutes

# Internal Affairs Committee

## Hearing Report

**To:** Members of the Senate

**From:** Kate Whitegiver  
*Legislative Aide*

**Re:** SB 136-LOCAL AN ACT relative to curbside voting at polling places by persons with disabilities.

**Hearing date:** February 9, 2005

**Members present:** Sen. Boyce, Sen. Bragdon, Sen. Flanders, Sen. Roberge, Sen. Hassan, Sen. Larsen

**Members absent:** None.

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**Sponsor(s):** Sen. Roberge, Rep. Graham, Rep. Hawkins, Rep. D.L. Christensen

**What the bill does:** This bill authorizes, and establishes procedures for, curbside voting at polling places by persons with disabilities.

**Who supports the bill:** Sen. Roberge, Rep. Hawkins, Rep. Christensen, James Fox (Disabilities Rights Center), Ryk Bullouc, Roy Stewart (BTA),

**Who opposes the bill:** Tricia Precuch (Manchester), Cheryl Killam (Gov. Comm. On Disability), Maura Carroll (NH Municipal Association), Russ Doerr (Gov. Comm. On Disability), Gayle Baird (Gov. Comm. On Disability), Terri Voth (Granite State Independent Living).

**Other testimony:** Bud Fitch (Attorney General's Office)

### Summary of testimony received:

#### In Support:

- Senator Roberge introduced the bill in response to a constituent request.
- Ryk Bullouc has been involved in the polling process in Bedford for the past 36 years. Often when a person comes to vote on Election Day and can not make it in to the polling place they will send a poll worker out to the car so that the person can vote.
  - They have recently found out that it is presently illegal to send a poll worker out and allow people to vote from their car.
  - The types of cases they are looking to accommodate are, extremely pregnant women, people who have had a very recent accident or injury, elderly people who are unable to get in due to unexpected extreme weather and other such unexpected disabilities.
  - Other towns have also made accommodations in such cases over the years and did not realize it was illegal.

- Senator Flanders noted that people with disabilities or elderly people can request and absentee ballot and that a great deal of time and money has been spent making sure that polling places are accessible to the disabled. Mr. Bullouc responded that this bill was intended for unforeseen cases where the people wouldn't have known beforehand that they would need to request an absentee ballot.
  - Senator Hassan suggested that "temporary physical incapacity" may be a better way to describe the cases that Mr. Bullouc is referring to.
- Senator Flanders asked what the test would be to determine if someone's situation required a ballot to be carried to their car. Mr. Bullouc responded that poll workers would have to have faith in voters requesting the service. Also, if there is a permanent problem these people should be requesting absentee ballots. This bill is only intended for unexpected situations.
- Rep. Hawkins and Rep. Christensen and other supporters noted that a variety of situations come up that can not be predicted. If someone wants to vote we should find a way for them to do so.
- Rep Christensen also suggested some changes in wording. "Curbside" should be changed to "outside." The requirement of one worker from each party should be changed to an "election official" because in SB2 towns the town meeting votes are nonpartisan.

#### **In opposition:**

- There is concern about having enough poll workers available to provide the service of curbside voting. Some towns and cities have a hard time finding enough workers already. Also, additional workers may mean additional costs.
- Additional absentee ballots would have to be provided to all polling places for use with this program.
- There is a concern that curbside voting could be too time consuming and disruptive if someone pulls up and wants to vote from their car during a very busy time. There would also have to be some method for alerting poll workers to the presence of someone waiting to vote "curbside."
- The State Constitution, the Help America Vote Act and the ADA all require that polling places be accessible to people with disabilities. Towns, cities, and disability groups have been working hard to make this happen. There is a great deal of concern that this bill will be a step backwards. Curbside voting should in no way be allowed to take the place of having accessible polling places.
- Curbside voting will continue to segregate a portion of the population.

#### **Other Testimony:**

- Bud Fitch of the Attorney General's Office noted that the Constitution requires that polling places be accessible to disabled voters. If the legislature does decide to pass this bill, it will **not** remove the constitutional requirements for access to polling places.
- It was suggested that if this bill passes it would be better to make curbside voting something that towns can elect to do rather than something they are required to do.

**Funding:** This bill has no financial impact.

**Future action:** The committee voted the bill Inexpedient to Legislative, 5-1. Senator Boyce will take the bill to the floor.

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February 11, 2005.

RSB

Date: February 9, 2005  
Time: 3:15 p.m.  
Room: LOB, Room 103

The Senate Committee on Internal Affairs held a hearing on the following:

SB 136-L relative to curbside voting at polling places by persons with disabilities.

Members of Committee present: Senator Boyce  
Senator Bragdon  
Senator Flanders  
Senator Roberge  
Senator Hassan  
Senator Larsen

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The Chair, Senator Robert K. Boyce, opened the hearing on SB 136 and invited the prime sponsor, Senator Roberge, to introduce the legislation.

Senator Sheila Roberge, D. 9: Good afternoon, Mr. Chairman and members of the Committee. I'm Sheila Roberge, representing District 9. I am introducing SB 136-LOCAL, relative to curbside voting at polling places by persons with disabilities. I am introducing this for a constituent who will follow me and explain the details.

Senator Robert K. Boyce, D. 4: Any questions? Ryk Bullock?

Ryk Bullock: Thank you, Mr. Chairman and members of the Committee. Again, I'm Ryk Bullock, School District Moderator in Bedford, Assistant Town Moderator in Bedford. And, for thirty-four years, I have had the pleasure of serving Bedford in elections.

I asked Senator Roberge to introduce the bill. I would like to correct one word before we get into this. In the analysis, it says persons with disabilities. Strictly speaking, that is not the grouping of people we had hoped to serve. In Bedford, we have been very proactive in working with both the Secretary of State's Office and the Attorney General's Office, the Commission on the



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Handicapped in insuring that Bedford does comply with AWA. We have done that willingly, we continue to do it, and we will also work in that element in the future.

Basically, and as I just mentioned, in fact March will be my thirty-fifth year of doing elections in the Bedford. For those thirty-four years we have already had elections, we were doing something illegal. It wasn't until a conversation with Bud that we found out we were doing something illegal. I will go back even a bit further because my father was running the show for twenty years before I started in, and we were doing it in Bedford then. That was very simple. If we had a constituent who, for any of a number of reasons, extremely pregnant comes to mind. We had this in the past election just having been released from a hospital that morning. A person who had taken a fall and was walking with two canes. We, in the past, have simply taken a ballot out to them with the town clerk or the moderator, had allowed them the privacy of their vehicle to mark their ballot, and have returned and crossed their name off on the checklist appropriately and deposited their ballot in the ballot box. Again, Mr. Fitch was kind enough to tell me that we were in a world of trouble for having done that, which, of course, with my great respect, we will stop doing it. Really, that brought forth some problems for us in the November election. It brought home how many people we were able to serve with this and, without exaggeration, I would say, in the November election, there were a good eighteen people that, if we were unable to serve and there were probably another twelve or thirteen that did come in and go through the lines, but at great personal cost to themselves.

Again, I feel very bad about the fact that it is persons with disabilities. I think that is coloring this entirely wrong. I did, in fact, in an effort to gain some support with this, call several of my friends who moderate across the state. I do have a letter here from the moderator/speaker from Jaffrey, who faxed a letter in to you, Senator Roberge. I do have it to have it read into the record. If you already did, that's fine.

**Please see letter from Marc P. Tieger, Moderator, Town of Jaffrey, New Hampshire, attached hereto and referred to as Attachment #1.**

The problem that I was running into was, and the reaction from every moderator I spoke with was, but we do that anyway. I said, that's fine, but it's a no no. There weren't too many who wanted to come here today and tell you that they have been doing something wrong all these years. So, I would say that, while admittedly, the parties that would be served by this are small in number, they are no less important to the overall picture of having every citizen vote that has a desire to vote. In all of the instances that occurred to us on election day, there was not a single one that could have applied under

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their particular circumstances for an absentee ballot and returned it to us prior to the cut-off date, the cut-off time of the night before.

So, again, I know this is serving a very small segment of the population, but it does have a certain distinction I suspect in the fact that it might be one of the few bills this year that isn't going to cost anything to implement. So, I would be glad to answer any questions, but I do appreciate everyone's time and patience.

Senator Robert K. Boyce, D. 4: Thank you. Questions?

Senator Robert B. Flanders, D. 7: I have been moderator in Antrim for about thirty-eight years and I know what you are saying. But, isn't this why we passed absentee ballots in town voting? Let me finish please. Isn't this also why we spent hundreds of thousands of dollars making all of our town halls accessible? And, lastly, my last question is, what is the reason these eighteen people could not have gotten an absentee ballot?

Mr. Bullock: Okay, to go first. Yes, we have spent a lot of time on absentee ballots and the absentee process. The issues, as I mentioned, in each instance these were people who, due to unforeseen circumstances, except I suppose the pregnancy, were not in the position to have filed for an absentee ballot or obtained one in the necessary time frame to return it to us. An example, one lady who showed up was released from the hospital the day of the election. She had planned to come to the election. She had fallen in her home on Saturday, been taken to the hospital by an ambulance, was kept and was released election day. She came wanting to vote. There was another woman who was literally on her way to the hospital to give birth. She had planned on coming to vote, but apparently her baby was unaware of the scheduling that we had. She wanted to stop and vote but, with the lines that were there, was unable to.

You're right, Senator, in the fact that we spent an enormous amount of money across the state modifying our buildings so that they are accessible. But, that's only part of it. You are going to run into a small group of people where accessibility is not necessarily the issue, nor the time frame that is allowed for absentee ballots.

Senator Robert B. Flanders, D. 7: Thank you.

Senator Robert K. Boyce, D. 4: Thank you. Any questions?

Senator Sylvia B. Larsen, D. 15: In the beginning, you indicated maybe that you weren't sure that this language covered the situations of disability

that you were contemplating. The language says voters with disabilities that would make it difficult for voters to enter the polling place. So, some of the instances you gave sound like that language covers it, but is there something wrong with...?

Mr. Bullock: I believe it is perhaps too broad a paint brush indicating that conceivably this could be utilized as a way to disenfranchise our population with acknowledged disabilities, other than perhaps these temporary ones that I'm bringing forth. I don't like that word being there, Senator, but I don't have a better one to suggest that we substitute. That's perhaps what I am trying to do, is define those elements I'm talking about as opposed to trying to categorize them. I'm just searching for the right term.

Senator Robert K. Boyce, D. 4: Any other questions?

Senator Margaret Wood Hassan, D. 23: Are you really trying to get at people who have some sort of temporary, physical incapacity as opposed to somebody who has been somehow categorized as someone with some sort of legal status of disability? Is that what you're getting at?

Mr. Bullock: Yes, Senator. Basically, again, what we're trying to do with this is those who are in a temporary circumstance that their situation was unavoidable, yet was unable to be determined in time for them to apply, as Senator Flanders suggested, for an absentee ballot. But, in a way, as I mentioned once before, we have gone to great lengths, as so many towns have, with the assistance of the Secretary of State's Office and the Attorney General's Office to bring our polling places into compliance with the AWA and there is absolutely nothing wrong with that because it is working. We are fine with that. It is working great for us. The issue is this one little segment of the population.

Senator Margaret Wood Hassan, D. 23: Thank you.

Senator Robert B. Flanders, D. 7: Out of curiosity, what are you going to do as moderator? If a car drives up and somebody comes in and says, "I've got somebody in the car", what kind of a test are you going to run to make sure that this is the type of person that should be able to vote from their car?

Mr. Bullock: I would suggest, Senator, that in most instances which we have been discussing with the possible voter fraud, we have to have some faith in our constituents. If we're going to have someone... If someone is going to pull up in a car and say, "I have fallen and my ankle is swollen twice its size. Look at my ace bandage", I don't think it is our purview to get down there and unwrap the ace bandage to make sure that their ankle is swollen. I'm

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sure, in Antrim as we have in Bedford, you have to have to faith in your constituents. If you don't have that, then we are all working for a process that really has no bearing.

Senator Robert B. Flanders, D. 7: Thank you.

Senator Robert K. Boyce, D. 4: Senator Bragdon?

Senator Peter E. Bragdon, D. 11: Thank you, Mr. Chairman. As I look to the language of this, I don't see anything that would restrict this from people who should have been able to apply for an absentee ballot. It says really anybody with a disability that would make it difficult to enter the polling place. But, if someone has that disability and had that disability within a reasonable time to apply for an absentee ballot, this bill seems to allow anyone to do this, which might be burdensome.

Mr. Bullock: I certainly can't disagree with you, Senator, but I would suggest going back to what I said before. If you make people aware of this and the purpose for it, I believe that people will utilize it accordingly and fairly. I think everything from same day registration to domicile certificates, if someone wants to play the game, then they are going to play it. I prefer to look on the other side of it and say, if we're able to come up with something that is negligible as far as cost goes, but that can't be utilized to serve our people, our constituents. Again, I'm not looking for something on a permanent basis where constituent A is going to come to every election from now on and be using this, because that's exactly what I believe Senator Flanders is pointing out and that is wrong. They should be using an absentee ballot if they have a situation which prevents them from coming. This is solely for those people that, under whatever circumstance, find themselves in a difficult position on election day and that period of block where they weren't able to get an absentee ballot.

Senator Peter E. Bragdon, D. 11: One more, if I may?

Senator Robert K. Boyce, D. 4: Follow up.

Senator Peter E. Bragdon, D. 11: As I read this, it is at the moderator's discretion as to whether to allow this in any given town.

Mr. Bullock: Yes, Senator.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Robert K. Boyce, D. 4: Further questions?

Senator Margaret Wood Hassan, D. 23: Sir, if we amended this language to say, instead of voters, I'm looking at line 11, permit voters with disabilities, permit voters with unanticipated temporary physical incapacity. Something like that? Would that begin to get at what you want to do?

Mr. Bullock: Absolutely. Absolutely, Senator.

Senator Margaret Wood Hassan, D. 23: Thank you.

Senator Robert K. Boyce, D. 4: Thank you. Any further questions? Seeing none, thank you very much.

Mr. Bullock: Thank you very much for your time.

Senator Robert K. Boyce, D. 4: I will again recognize Bud Fitch.

Assistant Attorney General Bud Fitch: Mr. Chairman and members of the Committee, I appear for the Attorney General's Office, neither in support of nor in opposition to this bill, but to provide what we hope will be helpful information and answer any questions that you may have. If I can start just where we left off in terms of the proposed changing of the wording, I think that the unanticipated is a policy matter and it is the will of the Legislature that this be available only to people who have an unanticipated need as opposed to as it is currently written. I think Senator Bragdon correctly identified that it will allow anybody to do it year in and year out, that's fine. I would suggest that temporary or permanent nature of the disability really isn't part of the analysis. So, if you break a leg or...

Senator Margaret Wood Hassan, D. 23: I think you're right.

Attorney Fitch: In New Hampshire, Part 1, Article 11 of our Constitution was amended in 1980 to require all polling places to be easily accessible to persons with disabilities and the elderly. This law would not change that constitutional requirement. Although I disfavor, I favor the New Hampshire Constitution. There is also federal law called the ADA, which imposes certain requirements as well. Our understanding of the state constitutional requirement and the current federal statute and regulations, I think are very parallel. We currently rely on the federal Department of Justice checklist for accessibility as a guideline because they put a lot of effort into doing it and it appears very much consistent with our state requirements.

So, as a starting point, I think it is very important to understand that, if the Legislature in New Hampshire chooses to allow voters one additional way to

vote, which is curbside or outside voting, that does not relieve towns of the duty that Senator Flanders has referred to and a lot of towns have put a lot of money into and continue to work on having fully accessible polling places.

I was asked by Senator Roberge and did, at her request, did help draft some of the language that is before you. It is intended to be something that is optional and I present that as a double-edged sword because it means voters in the state and some towns would have a chance to have it if you keep it as drafted, and others might not. But, the positive side is that we often like to give as much local option as we can. I can assure you that we are aware that there are many communities that have historically allowed this practice. Our advice to people is that, with election day ballots, it is not permissible.

Currently, the law makes it a misdemeanor to remove an election day ballot from within the rail during the time from when the polls first open until after the count is complete, the results are announced, and the ballots are sealed in a box. As the law enforcer, I think that is a very good law and I would encourage you not to change it in any way. It is part of the way any of you and anybody here can go to their polling place and, if they have the stamina, they can be there all day and know for certain that nobody has stuffed the ballot box; no shenanigans have gone on with the ballots and that sort of thing.

So, the drafted language proposes using absentee ballots. Currently, the law allows, but does not require, clerks to take an absentee ballot, either directly or through a designee on election day, to someone who unexpectedly finds themselves in the hospital, for example. Many clerks in the state do yeoman's duty because somebody will get into a car accident or have a heart attack the night before, but be well enough and still desire to cast their vote. They or one of the deputies or someone they find who is not a partisan activist will drive to a hospital, sometimes two or three towns away, and take them an absentee ballot and affidavit and those sort of things and let them vote. So, in some respects, this change is letting happen things outside the polling place something that may be happening anyhow five or thirty miles away.

With that said, I will be happy to answer any questions you may have.

Senator Robert K. Boyce, D. 4: Questions?

Senator Peter E. Bragdon, D. 11: Thank you, Mr. Chairman. My town, I know, for a number of years has provided wheelchairs for people who need assistance. Are you aware, do many towns do that? Is that something common that towns are doing?

Attorney Fitch: Mr. Chairman, Senator Bragdon, I'm not aware of many towns that do that. Certainly, the ADA and state constitutional requirements, as we understand them, require that there be a ramp, if necessary, with an increased height going into the building. I won't give you the details. Cheryl Killam, I think is going to testify, and we rely on her expertise from the Governor's Commission of Disability to do those assessments. The answer is, I do not think that is very common; she might have a better answer than I.

Senator Robert B. Flanders, D. 7: Just for the record, a year ago every polling place in the state was checked out and measured and your handicapped booth was measured and everything was checked to make sure that every town was in abeyance.

Attorney Fitch: Mr. Chairman, Senator Flanders, that is correct. The Attorney General's Office, with tremendous assistance from the Secretary of State and the Governor's Commission on Disability, hired deputy sheriffs from around the state. The sheriffs were very cooperative. Every polling place but, I think, ten or fifteen, were checked. Those inspections were done by the sheriffs. Since that time, almost all have been rechecked by Tom Manning, Assistant Secretary of State, and Cheryl Killam, who I think you will hear from in a few minutes, and particular issues were addressed. In most instances, we were able, through Tom and Cheryl, to provide common sense solutions that were not particularly expensive to finding accessible polling places or fixing them around the state.

Senator Robert K. Boyce, D. 4: Thank you. Seeing no further questions. Next, Representative Ken Hawkins.

Representative Ken Hawkins: Thank you, Senator. For the record, my name is Ken Hawkins and I represent Hillsborough County District 18, which is the Town of Bedford. I am here to speak in favor of this bill. It has worked very, very well for us in the past and one of the things that we talked about is March election day, town meeting. We're an SB 2 town. Ice storms, etc., etc. Some of the older folks were not considering an ice storm and the same way with the presidential primary. So those are a couple of the examples where someone might have a problem. My mother-in-law is ninety-three years old and has a walker. I have gone to vote every time. I am never going to vote absentee ballot. You get down there after an ice storm. I really wouldn't like to see her fall.

I will take any questions.

Senator Robert K. Boyce, D. 4: Thank you. Questions? If not, thank you very much. Representative Chris Christensen?

Representative Chris Christensen: Thank you, Mr. Chairman and members of the Committee. For the record, my name is Chris Christensen. I represent Merrimack, New Hampshire, which is Hillsborough County District 19.

In the past, I have been an elected official in a variety of capacities, as ballot inspector, as an assistant moderator, as a selectman and all the other related things. I would like to point out, as I think is evident from some of the previous testimony, that towns, the voting districts, give great respect to the moderators and their ability to make appropriate decisions in a wide variety of cases. In fact, we have a Senator here who has been a moderator for thirty-eight years and a civilian who has been a moderator for many, many years. My wife has been moderator for something like twenty years, I think. It is hard to remember. But, there are a variety of situations that come up that can't be predicted, can't be covered by an all in one situation. I think trusting the moderator to make some of those decisions is the right way to go, if you will.

I do have one another anecdotal experience. I, too, found out that for some years I was voting illegal. This is the size paper I normally read. I am visually impaired. When I get into the voting booth, there is not enough light in there for me to read. I have to walk across the room and use the bleachers. I have to vote in the morning when the sunlight is coming in that side of the building or I have to ask an assistant moderator to squeeze into the booth and read the ballot to me. I prefer to vote on my own. I think it is a long-standing New Hampshire tradition that people like to be independent. Those people who may be temporarily or otherwise less than a healthy status that they would like to be in, still want to vote in person and I think we have all sat here and said, to be a little contradictory to Mr. Bullock, there may be small numbers, but I think we have all sat here and seen some close votes and some close elections where one vote, or two votes, or three votes was a very big number. So, the other end of this is, if you are making it a little bit easier for somebody to call up and say, "I just did this. Can I still vote today?" The moderator or town clerk has the opportunity to say, "Sure". It may bring a few more people into the process and any time we can do that, I think that is important.

I do have a couple of suggested word changes. One is where it says, "curbside", I have changed to "outside" just to give a little bit more flexibility because not every polling place is going to be a curbside situation and it extends perhaps to the situations described earlier where a town clerk or other election official might take a ballot to a different location.



I would change the "inspector to election" phrase to "an election official" and I would delete some references to where it is suggested two people, one from each party, participate in carrying the ballot out to the curb. Particularly in SB 2 towns or voting at town meeting, there is no one from each party because it is a non-partisan election. It should be sufficient to say an election official, which could be a moderator, assistant moderator, town clerk, selectman, what have you, in accordance with the general law.

With that, for simplicity sake, rather than the long text copy of my testimony, I just have one copy of the bill that I marked up with those changes and I would be happy to answer any questions in my limited capacity.

**Please see Representative Chris Christensen's prepared testimony, attached hereto and referred to as Attachment #2.**

Senator Robert K. Boyce, D. 4: Questions? Seeing none, thank you very much.

Representative Christensen: Thank you very much.

Senator Robert K. Boyce, D. 4: I would like to note that we do have several people signed up to speak, several, I think three from the Commission on Disability, and also someone from the Granite State Independent Living and also from the Disabilities Rights Center. I am hoping that some of this won't be repetitive. We do have another bill following this. I will go ahead and work through these and, as I said for the last bill, if you were here, if you can repeat something that has already been said, just quickly say what it is you want to agree with and we will move on. If you have something new, we would love to hear it and we will go through these as quickly as we can. Roy Stewart?

Roy Stewart: Thank you, Mr. Chairman and members of the Committee. For the record, I am Roy Stewart, Bedford Taxpayers Association.

First of all, I would like to turn over to you what Mr. Bullock forgot to turn over to you. It is a letter from the moderator for the Town of Jaffrey, who supports this bill. There are three copies; you probably can make more so that everybody has one. He admits that he also has been doing this for a number of years. He at least came forward and said so, as Mr. Bullock said he has.

RFB

We support this bill because it allows more people to vote. As has been said, it doesn't affect a great number, but it does affect some and those few would become disenfranchised. This bill corrects that deficiency.

Senator Flanders, like you, my initial reaction to this bill was that it wasn't needed because voters could vote by absentee ballot. But, I'm not sure that those with disabilities are eligible to vote by absentee ballot. You have to be in a hospital, or you have to be in some other way incapacitated that you can't get to the polls by yourself. That is why you are required to have all these handicapped accessible features in your polling place.

There are other reasons also. Mr. Bullock mentioned one. Just yesterday, I was told by a young mother that he referred to that her son was born on presidential election day on November 2<sup>nd</sup>. That morning, at 7:15 a.m., she stopped by the polling place, her husband was driving her to the hospital, she was going to vote. She figured she could skip in and skip out. She saw the line. She knew immediately that there was no way that she was going to delay this delivery by one to two hours.

Senator Robert K. Boyce, D. 4: Excuse me. I think we have already heard this story, so if you could not repeat.

Mr. Stewart: She is very upset.

Senator Robert K. Boyce, D. 4: I understand.

Mr. Stewart: Had this outside voting been available, she could have done it in fifteen minutes or less. I urge to pass the bill and the suggested changes, I think, are very sensible. They make the bill better. It makes legal what some moderators have been doing for years. It costs nothing to the taxpayers and it will allow more people to vote.

Thank you.

Senator Robert K. Boyce, D. 4: Thank you. Any questions?

Senator Robert B. Flanders, D. 7: I would just like to make one comment. I think you're incorrect on your statement on people getting absentee ballots. If they put oi their affidavit, they could get an absentee ballot.

And, I want to make one more statement, if I may, Mr. Chairman. If there is a line, like this lady that you're referring to, if there is a line outside and everybody is busy in that poll, they are not going to drop what they're doing to take a ballot out to somebody sitting in a car. It would have taken

RAB

probably just as long for her to be in line as it would have been to wait to get to the car.

Mr. Stewart: I think you will find that Mr. Bullock would tell you they would do it immediately. I have seen it happen.

Senator Robert B. Flanders, D. 7: Well, some towns can't do that. We don't have the luxury of having that many people at a polling place.

Senator Robert K. Boyce, D. 4: Okay. We don't want to get into a debate. Thank you. Tricia from Manchester. I still can't make out your last name, but that's okay. We have it on the record.

Tricia Piecuch: Thank you, Mr. Chairman and members of the Committee. Let me introduce myself. I didn't really introduce myself last time. I apologize for that. I am the Deputy Clerk in the City of Manchester and I do specialize in the elections in the city. I am also a member of the Executive Board of the New Hampshire City and Town Clerks' Association and, at this time, the board has not met to take a position on this bill. Currently, the City of Manchester does have some concerns with the way this is worded.

For municipalities that have multiple polling locations, we feel that the town and city clerks should determine whether or not to allow the curbside voting rather than the moderator. It could prove difficult for the moderator. If the moderator fails to notify us in that deadline period and then we would have some polling places that would be allowed and other polling locations that would not be allowed. By allowing city or town clerks to do this, it would insure uniformity across the municipality.

Also, regarding having a sufficient number of inspectors at election, the law currently sets forth how many inspectors. I know in the City of Manchester, we currently have a hard time finding the number required under the law for us to have. I know that the moderators find it an undue burden trying to find those workers in order to have work a regular election, never mind trying to hire additional ones. Also, I have heard no cost factors. There could be a cost factor if we were looking at hiring additional inspectors at the election or ballot inspectors for those municipalities.

In regards to giving out absentee ballots, the law is very clear that the absentee ballots, you need to have a form, it needs to be signed, it needs to be certified by the city clerk. Also, the absentees currently under state law cannot be processed until after 1:00 p.m. and they cannot be accepted after 5:00 p.m. So, if this went forward, we would have to look at changing some of the election laws relating to the absentee ballots.

Senator Robert K. Boyce, D. 4: We have a bill dealing with that already.

Ms. Piecuch: Yes, we do. You're correct on that.

Also, on election day, the moderators are not provided with absentee ballots. So, if the Secretary of State's Office was looking forward to doing this bill, as it is drafted now, they would also have to provide us with additional ballots. Also, it would require additional reporting by the city and town clerks or the moderator on election night.

Something else to be taken into consideration would be those voters that are currently not registered that appear at that polling location that would like to vote, but cannot make it inside the polling location. You would then need a supervisor of the checklist or a registrar to go out and register those individuals prior to them receiving their ballot.

I know that a lot of talk has been done about the absentee ballots and everything and I know that we do strongly urge and we have gone to the hospitals on election day if somebody went to the hospital and everything that morning. We have had people who were pregnant that have said, "Well, it is around my due date. Can I get an absentee ballot? I'm not sure" They will hold off at times until the last minute before sending that in.

In the present form, we cannot support the bill as it is currently worded. We request you find it inexpedient to legislate or that you send it to a study committee for further discussion to deal with the clerks and listen to the moderators and city and town clerks and also include individuals from the Governor's Disability Commission.

At this time, I will answer any questions you may have.

**Please see Tricia Piecuch's prepared testimony, attached hereto and referred to as Attachment #3.**

Senator Robert K. Boyce, D. 4: Thank you. Seeing none, thank you very much. Now, I do notice that there are, as I said before, there are three people from the Commission on Disabilities. If you would like to testify together, or if one of you could maybe testify for all three, that would speed things up. I'm just suggesting that.

Terri Voth: I can just submit mine in writing. I'm Terri Voth from Independent Living.

2-14-13

Please see Terri Voth's prepared testimony, attached hereto and referred to as Attachment #4.

Senator Robert K. Boyce, D. 4: Thank you. That would be great. We always appreciate that. We are trying to speed things along if we can. And, you are?

Cheryl Killam: I am Cheryl Killam, disability specialist from the Governor's Commission on Disabilities. I will submit to you my testimony and I will not go through the whole thing, but I am going to go through some of it. Thank you for this opportunity to speak, Senators. I am offering to you my testimony in opposition to SB 136.

As it is worded, it is in conflict with the New Hampshire state Constitution and the federal law, the Help America Vote Act. As this bill reads, if a voter has a disability that would "make it difficult for the voter to enter the polling place", they have the option of voting from the vehicle that they are in. The Help America Vote Act ensures that all voters with disabilities nationwide will be able to vote privately and independently at their polling place. According to the New Hampshire State Constitution, polling places must be easily accessible. But, I do not understand why a polling place would be difficult to enter. It is not acceptable to expect people with disabilities solely as those who should be voting absentee ballots while in their vehicles.

As Bud mentioned to you, I have been reviewing polling places and, in the past year, have evaluated about a hundred and fifty of them. I have not seen all of them; it is not possible for one person and one car. But, of those hundred and fifty, I would say twenty were deemed to be seriously in violation of accessibility codes. Of those, renovations were made to two of them, several have been relocated to another accessible facility, and there are many that will provide additional assistance at the polling place while they are going to town warrants and budgets to be approved. Over ninety remaining municipalities have made or will be making access improvements to their polling places. Of all the ones, there was only one that I could not get into and that was a ramp and, at the top of the ramp, they had a four-inch step. I wasn't quite sure what they were thinking.

Just, also for the record, when I did visit the Bedford polling place, there is one issue there and that is the width of the doors. They have two doors that open and neither was open. You have to open both doors at once, which is an access issue.

Near and dear to my heart is this constitutional amendment because, in 1984, I was one of the two delegates who spoke on this. I worked with

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delegate Toni Papas to amend the Constitution and you have that entire amendment in your packet. In 1984, New Hampshire took a stand to protect the rights of its citizens with disabilities. As most of you know, the federal government passed the ADA in a civil rights law in 1990, so we were very much ahead of the game. I believe that allowing curbside, as this bill is written, would be a step backward for the state.

Citizens with disabilities have fought for equal access and the right to vote for too long. Municipalities had twenty years to comply and some still have not. I fear that municipalities will use this curbside voting option as yet another excuse for not making their polling place conform with the guidelines set forth in our election laws.

Ironically, the very date that this is to become effective, January 1, 2006, is the date by which all polling places nationwide are to be in compliance with the Help America Vote Act. This mandates full access, private and independent, to voting for all individuals who have disabilities.

New Hampshire has made tremendous progress in providing access to its citizens with disabilities at polling places across the state. I believe that passing this bill as it is worded would remove providing access as a priority.

**Please see Cheryl Killam's prepared testimony, attached hereto and referred to as Attachment #5.**

Senator Robert K. Boyce, D. 4: Thank you. Any questions of the Committee? Seeing none, thank you very much. Next I will call Maura Carroll. I'm just going down the list as everyone signed up in order now.

Maura Carroll: Thank you very much, Mr. Chairman and members of the Committee. My name is Maura Carroll and I am here representing the New Hampshire Municipal Association and I would first state that we clearly are in support of having as many people able to vote as possible. But, having said that, we share the concerns that have just been expressed by Cheryl Killam and that have been expressed by others about the way that the bill is drafted.

The way it is drafted, it talks about it being optional. However, the decision is made by the moderator or the clerk and the way we also read it is that there is a potential that you will need additional poll workers. If that is the case, there is an additional cost entailed to that. If there is an additional cost, the decision ought to be made by the legislative body. So, if that isn't allowed, then you could run into Part 1, Article 28-a and a cost that is

required without adequate discussion at the legislative body issue. So, we have that concern.

We share the concerns that communities have tried to comply with all of the ADA requirements and we have a concern that this could disrupt the voting process if in fact individuals are coming to the polls at a very busy time when it is difficult to accommodate all of them and we don't know that there will be a lot of people who come or no people at all. But, it does say, if you are going to have this option, you have to have people available at the time to accommodate the voter. So, we're just concerned about the administration of this and, if there is a way that we can work with the Committee to assist in accomplishing the goal of allowing all disabled voters or temporarily disabled or unable to get to the polling place get to vote, then we're happy to do that. With that, I think you for the opportunity to speak.

Senator Robert K. Boyce, D. 4: Thank you. Any questions? Seeing none, thank you. Ross Doerr? Welcome.

Ross Doerr: Is there a microphone? My name is Ross Doerr. I work for the New Hampshire Association for the Blind where I am an ADA accessibility consultant. I'm also the adaptive technology consultant there. I am also an attorney. I come from a good home, but anybody can end up in law school. I also am part of the Governor's Commission on Disability and I am also part of the Help American Vote Act Technology Access Committee. Part of my job and part of what I do as a volunteer for the State of New Hampshire is to review and look at voting machines for people just like me, people like Ms. Killam, and individuals who are deaf and individuals with paraplegia and quadriplegia and that sort of thing.

In view of the way this bill is currently drafted, or even with the moderate changes in the language that I have currently seen, I would suggest, and I urge the Committee, to either hold this bill inexpedient to legislate or to send it to study committee so that you can get a heck of a lot more information than what you're currently dealing with. I have been a resident of this state for a long time. I am a property owner; I pay taxes in tax free New Hampshire. I apologize.

For the whole time that I have been here, particularly since 1984, I have been wanting to vote unassisted and I would like to be able to do that.

I have heard a heck of a lot of testimony here and I have heard a lot of confessions. Mr. Bullock, I am very impressed with him for the time that he admits, not only him, but his father, have been violating law. That took courage. We ought to give him a round of applause when this is over. But, I

Feb

don't see how passing this bit of legislation to legalize that behavior is going to advance the cause of Article 11, Part First or the Help America Vote Act. Frankly, you have an excellent opportunity here to remedy a bad self-image and to improve things for the way the disabled population of this state looks at you, you the Legislature, the Attorney General's Office, the Secretary of State's Office, because, since 1984, we have been waiting for the polling places to be made accessible so we can vote.

Finally, the Help America Vote Act is in place and funding is coming in from the federal government to make that happen, to make that a reality. Do you know how we voted prior to the constitutional amendment in 1984? Curbside voting. Let's not turn the clock back, please.

Now, I speak with a lot more force here for the blind of the state of New Hampshire than I do for the Governor's Commission, simply because I'm blind and I work for the New Hampshire Association for the Blind. I suppose I'm a cynic the way Ambrose Pierce defined it in the devil's dictionary when he wrote a cynic is a braggart who insists on seeing things as they really are instead of the way they ought to be. Hence, the custom among the ancient of plucking out the eyes of the cynic to improve the vision. Well, I don't have any eyes and I really don't want to see this bill enacted as it is currently written.

There's a lot of information that is out there. A lot of people put a heck of a lot of hard work in to make the Help America Vote Act a reality, to make things truly accessible for individuals with disabilities in this state. At least once, before I die, I would like to be able to vote just like everybody else. I won't cover a lot of the information that Attorney General Fitch has handled and that all the moderators and Ms. Killam have already covered. So, with that, I'm done. Any questions?

Senator Robert K. Boyce, D. 4: Any questions? Seeing none, thank you very much.

Mr. Doerr: Thank you.

Senator Robert K. Boyce, D. 4: We only have one other person who has signed up to speak and that is James Fox from the Disabilities Rights Center. I hope you will be brief. We do have another bill we are trying to get at least open today so we can hear the people who are here to testify.

Attorney James Fox: Thank you. My name is James Fox. I am an attorney with the Disabilities Rights Center. We have taken a look at this and we have done some research on the various commentators who have addressed



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this issue and it seems that there are two schools of thought. One school of thought is that you will increase the likelihood that anyone with a disability will vote. The other school of thought is that you could segregate individuals and end up making them second class citizens if you require them to use curbside voting. So, with that kind of background.

Senator Robert K. Boyce, D. 4: Can you hold up for just a second while we change the tape?

Tape change.

Attorney Fox: With that background, I think we need to look at the various federal statutes. I won't go into the federal constitution because I think everyone is aware of the state constitution and how it is applied.

There's two basic statutes that apply. The Americans With Disabilities Act requires program access. The Department of Justice has indicated that program access can be accomplished through curbside voting. However, the HAVA sets a little bit higher standard in that it is actually equal access under HAVA and that would be that the individual with disabilities must be provided the same access and participation as any other voter. So, it actually sets a higher standard. So, curbside voting could satisfy the ADA, but it probably, almost certainly, would not satisfy HAVA.

But, with the backdrop, if you look at the statute as written, it kind of has this very permissive and it is not written in terms of requiring people to participate in curbside voting. So, I think with some fairly substantial changes you could accomplish a system where an individual with disabilities wanting to elect to do curbside voting but was not required to curbside voting, I think that might solve of the concerns, the valid concerns of some of the other people that have testified. So, that is kind of the position we're taking and I think that is how provisions to the statute is drawn up.

A couple of the more specific issues are the alert obligation. It is kind of written up that a person would have to arrive at the voting place and somehow try to alert the moderator of their presence. I don't think is a viable option, or it would be very difficult, I think, in most instances for the person to actually do that on voting day. So, Texas, for instance, has a curbside voting system where you call ahead of time and kind of explain your situation and they do have to do curbside voting. I think this kind of ties in with what the Senior Assistant Attorney General mentioned about people in the hospital, that they could, a clerk goes out and provides an absentee ballot, the absentee ballot is completed and then brought back.

I think, with curbside voting, as long as it is completely permissive, you could have a situation where you just have an election official. I don't think you need to have two inspectors go through this cumbersome process. Just have an election official bring out the absentee ballot, fill out the absentee ballot itself and the affidavit and then return it back in and it can be handled like any other absentee ballot as far as counting goes, etc. So, I think there is a way to streamline the process.

I don't think if you made it mandatory that it would be sufficient and I think it would be struck down as violating HAVA. But, I think if you made it completely permissive, it would pass HAVA in the sense that, if a person wants to do that, I think they should be allowed to. You said you want to expand it to people with unanticipated capacities, but I think that would implicate disability issues.

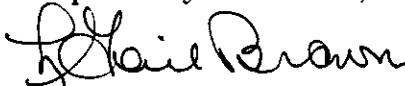
So, with that, I think we would say we have kind of a qualified, we understand the concept and we agree with kind of the concept with several reservations which are drawn out in the language provided.

**Please see Attorney Fox's prepared testimony, attached hereto and referred to as Attachment #6.**

Senator Robert K. Boyce, D. 4: Questions? Seeing none, thank you very much. With that, I will close the hearing on SB 136.

Hearing concluded.

Respectfully submitted,



Recorded by Connie Silver

Transcribed by L. Gail Brown

Senior senate Secretary

3/8/05

6 Attachments

**TOWN OF JAFFREY, NEW HAMPSHIRE**  
**TOWN OFFICE BUILDING**  
10 Goodnow Street  
Jaffrey, NH 03452

*Attachment*

Marc P. Tieger, Moderator

February 8, 2005

Senator Sheila Roberge  
By Fax: 271-3027

Re: SB136

Dear Senator Roberge,

I would like to offer my opinion and testimony by facsimile relative to SB136.

I have been the Moderator of Jaffrey since 1990. Since being elected to that office I have striven to enfranchise and help our citizens realize the importance of our local government. I have spoken to classes, formed a Moderators Committee to enhance awareness, and have tried to make the voting process educational and pleasant.

There have been several situations over the years when some of our elderly or disabled voters could not leave the vehicle in which a friend or relative has driven them to the polls. When notified, I have procured a ballot for these people and assisted them in completing it and then cast it for them. I realize this is against the law. But I also realize how very much voting means to these people and, rightly or wrongly, that is what I have done. I guess that without consciously thinking about it I put myself in their position and acted accordingly.

The Moderator is entrusted with the responsibility of ensuring that the voting and all attendant responsibilities are carried out in a manner befitting the process and the will of the citizenry, the voters. To be able to legally assist a voter in their vehicle outside the polling place would not, in my opinion, adversely affect the intent of the process at all; it would enhance it.

I respectfully request that this bill be favorably considered and request that this letter be a part of the official transcript of your hearing.

Thank you for your attention to this matter.

Respectfully submitted,

  
Marc P. Tieger, Moderator  
Town of Jaffrey

Ryk Bullock by Fax: 472-3700

**SB 136-LOCAL – AS INTRODUCED**

2005 SESSION

05-1035

03/01

**SENATE BILL 136-LOCAL**

ACT relative to curbside voting at polling places by persons with disabilities.

SPONSORS: Sen. Roberge, Dist 9; Rep. Graham, Hills 18; Rep. Hawkins, Hills 18; Rep. D.L. Christensen, Hills 19

COMMITTEE: Internal Affairs

**ANALYSIS**

This bill authorizes, and establishes procedures for, curbside voting at polling places by persons with disabilities.

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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.

05-1035

03/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Five*

∨ ACT relative to curbside voting at polling places by persons with disabilities.

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

1 Assistance in Voting; Curbside Voting. Amend RSA 659:20 to read as follows:

659:20 Assistance in Voting.

***I.*** Any voter who declares to the moderator under oath that said voter cannot read or that, because of disability, is unable to mark his or her ballot shall, upon the voter's choice and request, receive the assistance of one or both of the inspectors of election detailed for that purpose by the moderator or of a person of the voter's choice provided that the person is not the voter's employer or union official. Such person so assisting shall be sworn, shall mark the ballot as directed by said voter, and shall thereafter give no information regarding the same. Such person so assisting shall leave the space within the guardrail with the voter.

***II.*** *The moderator of any town or school district and the clerk of any city may for any election permit*

**voters with disabilities that would make it difficult for the voters to enter the polling place and vote inside the rail, to vote from a vehicle parked in a parking space directly adjacent to the polling place, subject to the following restrictions:**

**(a) The moderator or city clerk shall determine whether curbside voting will be permitted in his or her municipality prior to the posting of the warrant for the election. If the moderator determines that curbside voting will be permitted, the moderator shall provide written notice to the town clerk no less than 10 days prior to the deadline for the posting of the warrant. If a city clerk determines that curbside voting will be permitted or if a town or school clerk receives notice that curbside voting will be permitted, the clerk shall post a notice that curbside voting will be permitted with the warrant for the election and in any communications giving notice to voters of the election.**

**(b) The moderator or city clerk shall ensure that sufficient inspectors of election are appointed so that one inspector of elections from each party is available to provide curbside voting service at all times when the polls are open.**

**(c) A voter who has a disability that permits the voter to drive or be driven to the polls, but which would make it difficult for the voter to enter the polling place to vote within the rail, may, upon arrival at the polling place cause the moderator to be alerted to**

***the voter's desire to vote curbside. The moderator, an assistant moderator, or deputy moderator shall determine the person's eligibility to vote and if found eligible shall assign 2 inspectors of election, one from each political party, to take an absentee ballot and an envelope to the voter.***

***(d) The inspectors of election assigned to assist a voter with disabilities to vote curbside shall provide the voter with the appropriate absentee ballots for the election and an appropriate marking device. The voter shall mark the ballots without exhibiting them to the inspectors of election or any other person, unless the voter qualifies for assistance in marking the ballot as provided in paragraph 1, in which case the voter may have the assistance of a person of his or her own choosing as provided in paragraph 1, or one inspector of election shall mark the ballot as instructed by the voter in full view of the second inspector of election. Once the ballot has been marked, it shall be sealed in an envelope. The voter shall be instructed to remain at the polling place until notified that his or her vote has not been challenged and that it has been cast.***

***(e) The inspectors of election shall take the ballot, sealed in the envelope, to the ballot clerk and cause the voter's name to be marked on the checklist as having voted by absentee ballot. Any person qualified to do so may challenge the voter when the voter's name is announced by the ballot clerk. If the***

***voter is challenged, the moderator, an assistant, or deputy moderator shall process the challenge in accordance with law, provided, however, that the process shall be conducted curbside to the extent necessary.***

***(f) If the voter is not challenged or if the moderator determines as a result of the challenge process that the voter's ballot is to be cast, the sealed envelope shall be taken by the inspectors to the moderator. The moderator shall open the envelope and cast the ballot in a manner that does not display how the ballot is marked. The moderator shall cause the voter to be notified that his or her vote has been cast.***

2 Election Procedure; Prohibited Acts; Removing Ballot; Exception Added. Amend RSA 659:38 to read as follows:

659:38 Forgery; Removing Ballot. No person shall forge or falsely make the official endorsement on any official ballot, or furnish to any voter a ballot with the intent that such voter shall use the same in voting instead of the ballot given him ***or her*** by the ballot clerk, or take or remove any ballot, ***except as provided in RSA 659:20***, outside the guardrail before the close of the polls, or knowingly delay the delivery of any ballots. Whoever knowingly violates this provision shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.



3 Effective Date. This act shall take effect January 1, 2006.

change "curbside" to "outside"

change "inspector of election" to  
"election official"

delete reference to "from each party"  
to recognize non-partisan elections  
such as town meeting.



*Attachment #3*

**CITY OF MANCHESTER**  
**Office of the City Clerk**



Leo R. Bernier  
City Clerk

Carol A. Johnson  
Deputy City Clerk

Paula L-Kang  
Deputy Clerk  
Administrative Services

Matthew Normand  
Deputy Clerk  
Licensing & Facilities

Patricia Piecuch  
Deputy Clerk  
Financial Administration

Memo To: Internal Affairs Committee

From: Tricia Piecuch  
Deputy Clerk, Manchester

Date: February 9, 2005

Re: SB136-Local An Act relative to curbside voting at polling places

Honorable Senators, for the record my name is Tricia Piecuch. I am the Deputy Clerk of Financial Administration specializing in elections for the City of Manchester and would like to offer some comments regarding SB 136 relating to Curbside Voting at Polling Places.

I am a member of the Executive Board of the NH City and Town Clerk's Association and at this time we have not met to take a position on this bill. Although the concept of this bill has its merits the Manchester City Clerk's Office has concerns with how this bill is currently worded.

For municipalities that have multiple polling locations, we feel that the city or town clerk should determine whether to allow the curbside voting rather than the moderator. It could prove difficult if the moderator in those municipalities fail to notify the city or town clerk of their wishes prior to the deadline set forth. By allowing the city or town clerk to make that decision, will insure uniformity across the municipality.

Regarding having a sufficient number of inspectors of election, the law (RSA 658:2) currently sets forth the number available to a polling location with the caveat that additional ballot inspectors can be appointed. But, currently some of our moderators find it difficult to find workers willing to be ballot inspectors to cover their polling place during a regular election, so trying to find additional inspectors may place an additional burden on them or the city or town clerk. Also, it may cost municipalities additional monies in hiring these inspectors.

In reference to giving these voters absentee ballots it should be noted that in order for a voter to receive an absentee ballot they need to complete a signed request (RSA 657:4) and it needs to be certified by the city or town clerk (RSA 657:12). Also, under current law absentees can only be processed after 1:00 PM (RSA 654:49) and can not be accepted after 5:00 PM (RSA 657:22), so changes

would need to be made to the respected RSA's. Also, on election day, moderators are not provided with absentee ballots as they only receive the official ballots to hand out to voters appearing before them. If the Secretary of State's Office supports this bill as drafted, it would require them to provide additional absentee ballots for delivery on election day as well as the requirement of city and town clerks to do additional reporting.

Something else to be taken into consideration would be the voters who are not currently registered in the ward that would require this service. This would then require the voter to still appear before a supervisor of the checklist or a registrar to register to vote prior to receiving a ballot in their vehicle.

Not to discriminate against these voters, but these voters could also request an absentee ballot prior to any election(s) that would afford them the same right as going to the polls to cast their vote.

In its present form, we can not support the bill and respectfully request you find it inexpedient to legislate or send it to a study committee to be further defined with the involvement of other city and town clerks as well as moderators.

I will be happy to answer any questions you may have.

Granite State  
Independent Living



*Tools for Living  
Life on Your Terms*

Attachment #4  
Concord Main Office

21 Chenell Drive, Concord, NH 03301  
603.228.9680 800.826.3700  
888.396.3459 (tty) 603.225.3304 (fax)

[www.gsil.org](http://www.gsil.org)

Concord

Iron Works Road  
603.224.1130

North Country  
800.588.5772

Monadnock Region  
877.680.4826

Manchester  
603.624.0600

Nashua  
603.881.7144

February 9, 2005

RE: Testimony on SB136-L

Good morning, my name is Terri Voth and I am here on behalf of Granite State Independent Living. While the concept of encouraging people with disabilities to vote has long been part of the work of GSIL, including trying to assure that all polling places comply with our state constitution which mandates that all polling places shall be accessible. But even now nearly twenty five years after that constitutional provision was passed, there still are polling places that do not comply.

Our concern is that the passage of this bill will send mixed signals to local election officials -- that rather than assuring polling places are accessible they will claim curb side voting as an alternative. At a minimum there must be language added to this bill that will not diminish the municipalities' obligation to make polling places accessible.

We do have additional concerns about the implementation of this bill on a practical level. The language in the bill states "the voter will cause to notify the moderator". What does a voter do if they are the only one out at the curb, or if the only other person has no interest in assisting the person who drives up? If this bill were to be in effect then there needs to be an obligation on the moderator to have someone stationed in the doorway to assist in complying with this provision.

Finally, voting is a responsibility of all citizens and we do need to encourage policies that encourage inclusion in civic participation. We are concerned that this bill will unintentionally continue the isolation that many with disabilities experience.

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#### GSIL Board of Directors

John Irwin, President, Laconia • Christopher Dube, 1st VP, Henniker • Patti Martin-Brown, 2nd VP, Concord • Lee Bezanson, Secretary, Laconia • Mark Lore, Treasurer, Manchester • Corey Belobrow, Concord • Peter Callahan, Concord • Ray Giroux, Manchester • Angela Greene, Concord • Don Penn, Manchester • Norma Ramirez, Manchester • Mel Severance, Concord • Chip Sullivan, Laconia • Ken Traum, Contoocook • Janet Zeller, Dunbarton

Senate Committee on Internal Affairs, Room 103, LOB

Hearing on SB 136-L  
February 9, 2005

Testimony of  
Cheryl L. Killam, Accessibility Specialist  
Governor's Commission on Disability

Thank you Senator Boyce, Senator Bragdon, Senator Flanders, Senator Roberge, Senator Hassan, Senator Larsen.

On behalf of the Governor's Commission on Disability, I am offering to you my testimony in opposition to SB 136-L.

First of all, SB 136-L, as it is worded, is in conflict with the New Hampshire State Constitution and the federal Help America Vote Act. As this bill reads, if a voter has a disability that "*would make it difficult for the voter to enter the polling place*", they have the option of voting from the vehicle that they are in. According to the NH State Constitution, polling places must be easily accessible, so I do not understand why a polling place would be difficult to enter.

The Help America Vote Act ensures that all voters with disabilities, nationwide, will be able to vote privately and independently at their polling place.

As the Accessibility Specialist for the state, in the past year I have evaluated approximately 150 polling places for compliance with Election Laws (Chapter 658, Pre-Election Procedure, Preparation Of Polling Place) - specifically NH RSA 658:9, Arrangement and NH RSA 658:9-a, Accessibility. Of those I visited, less than 20 were deemed to have serious accessibility code violations. Renovations were made at some, several have been relocated to accessible locations and additional assistance is being provided at the remaining sites until budgets and warrants are voted on. Over 90 remaining municipalities have made or will be making access improvements to their polling places. All offer assistance to voters with disabilities.

In 1984 I served as a delegate to the New Hampshire Constitutional Convention for the towns of Hampstead and Plaistow. I worked with Delegate Toni Pappas on Resolution 63, to amend the Constitution, Article 11, Part First, to mandate that all polling places and places of voter registration in the state be made easily accessible for the elderly and for people with disabilities.

I have provided this amendment below:

<http://www.state.nh.us/constitution/billofrights.html>

**Art.] 11. [Elections and Elective Franchises.]** *All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the*

*purposes of voting in the town, ward, or unincorporated place where he has his domicile. No person shall have the right to vote under the constitution of this state who has been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States; but the supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses. The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election. The right to vote shall not be denied to any person because of the non-payment of any tax. Every inhabitant of the state, having the proper qualifications, has equal right to be elected into office.*

This resolution was overwhelmingly approved (266 yeas to 44 nays) by the convention and the amendment was ultimately approved by the citizens of New Hampshire. Election Laws to address the accessibility requirements became effective on September 1, 1987.

The state of New Hampshire took a stand in 1984 to protect the rights of its citizens with disabilities. As most of you know, the federal government passed the Americans with Disabilities Act – a civil rights law – in 1990. New Hampshire has always been a state that is a step ahead of the times. I believe that allowing curbside voting would be a large step backwards for this state.

Citizens with disabilities have fought for the right to vote for too long. Municipalities have had 20 years to comply and some still have not. I fear that, ~~as~~ ~~has been happening~~, municipalities will use this curbside voting option as an “excuse” for not making their polling place fully compliant with accessibility guidelines set forth in the Election Laws.

Ironically, the very date that this bill is to become effective, January 1, 2006, is the date by which all polling places nationwide are to be in compliance with the Help America Vote Act, which mandates full access - private and independent - to voting, for all individuals who have disabilities.

New Hampshire has made tremendous progress in providing access to its citizens with disabilities at polling places across the state. I believe that passing this bill would remove providing access as a priority.

Thank you for your time. I would be happy to answer any questions you may have.

Cheryl L. Killam, Accessibility Specialist  
Governor's Commission on Disability  
[Cheryl.killam@nh.gov](mailto:Cheryl.killam@nh.gov) ; 271-4177

Senate Committee on Internal Affairs, Room 103, LOB

Hearing on SB 136-L

February 9, 2005

Testimony of

Cheryl L. Killam, Accessibility Specialist

Governor's Commission on Disability

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Cheryl L. Killam, Accessibility Specialist  
Governor's Commission on Disability  
[Cheryl.killam@nh.gov](mailto:Cheryl.killam@nh.gov) ; 271-4177



# DISABILITIES RIGHTS CENTER, Inc.

Attachment # 6

18 Low Avenue Concord, NH 03301-4971 • advocacy@drcnh.org • drcnh.org  
(603) 228-0432 • (800) 834-1721 voice or TTY • Fax: (603) 225-2077

## **BULLETS/COMMENTS for SB 136-LOCAL: An Act Relative to Curbside Voting at Polling Places by Persons with Disabilities**

February 9, 2005

To: Members Senate Internal Affairs Committee  
From: James Fox, Esq., Staff Attorney, Disabilities Rights Center, Inc.

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- I. **Intent:** The act permits towns and cities to adopt curbside voting. More specifically, subsection c indicates that an individual with a disability who would have difficulty entering a polling place may elect to utilize curbside voting. Thus, the intent appears to be to permit certain individuals to elect to use curbside voting. That said, the DRC suggests that this well-intentioned concept could be viewed as a means for substituting curbside voting for meeting the accessibility standards required in other state and federal laws such as HAVA and the ADA.

HAVA requires that State and Local government provide accessibility “in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” Title II of the ADA requires program access with respect to older facilities and facilities access with respect to post 1992 construction. Requiring individuals to use curbside voting as an alternative to affording them the same “opportunity” for access and participation that is provided to other voters, i.e., full access and participation would violate the provisions of HAVA.

- II. **Alert Obligation:** Subsection c of Section II provides that a voter seeking to use curbside voting must “upon arrival at the polling place cause the moderator to be altered to the voter’s desire to vote curbside” This provision could be improved by providing details on how a voter should go about alerting the moderator. The DRC further suggests the language be changed to permit a voter to contact the polling place by phone in advance to make arrangement to vote from a vehicle.

- III. **Required Privacy:** Subsection d provides that the “voter shall mark the ballots without exhibiting them to the inspectors of election or any other person.” The DRC suggests that this language be changed to indicate that it is solely the voter’s choice whether to exhibit the ballot to any person and that the inspectors of election are not to request that the voter exhibit the ballot to them or any other person.

In view of the foregoing, the DRC respectfully suggest the committee adopt the following language:

II. The moderator of any town or school district and clerk of any city must for any election comply with the accessibility requirements of Help America Vote Act, 42 U.S.C. 15301 *et. seq.* The moderator or clerk may, upon request by a voter with a disability, permit such voter to vote from a vehicle in a parking space directly adjacent to the polling place in instances where the voter’s disability would make it difficult for the voter to enter the polling place and vote inside the rail. Curbside voting shall only be considered a lawful accommodation to enable a voter to vote when requested by a voter. Curbside voting is subject to the following process.

(a) A voter whom has a disability that permits the voter to drive or be driven to the polls, but which would make it difficult for the voter to enter the polling place to vote within the rail, may, upon arrival at the polling place or in advance cause the moderator to be alerted to the voter’s desire to vote curbside. The moderator, an assistant moderator, or deputy moderator shall determine the person’s eligibility to vote and if found eligible shall provide the voter with an absentee ballot, an appropriate marking device, clipboard, and an affidavit envelope to the voter to enable the voter to vote at curbside in his or her vehicle.

(b) The voter shall complete the absentee ballot and affidavit envelope and return it to the moderator, an assistant moderator, or deputy moderator. Should the voter qualify for assistance in marking the ballot as provided under RSA 659:20, I, the voter shall be entitled to the rights specified in paragraph RSA 659:20, I at the curbside in his/her vehicle.

(c) It is solely the voter’s choice whether to exhibit the ballot to any person. The moderator, an assistant moderator, or deputy moderator shall not request to have the ballot exhibited.

(d) The voter’s name shall be marked on the voter’s list as having voted by absentee ballot. Any person qualified to do so may challenge the ballot consistent the process for challenging absentee ballots under RSA 659:51.

# Speakers



# Voting Sheets

# Senate Internal Affairs Committee

## EXECUTIVE SESSION

Bill # 136 LOCAL

Hearing date: 2/9/05  
 Executive session date: 2/9/05  
 Motion of: ITL

Room: LOB - Room 103

VOTE: 5-1

Made by Boyce   
Senator: Bragdon   
 Flanders   
 Roberge   
 Hassan   
 Larsen

Seconded Boyce   
by Senator: Bragdon   
 Flanders   
 Roberge   
 Hassan   
 Larsen

<u>Committee Member</u>	<u>Present</u>	<u>Vote</u> (Y/N)	<u>Reported out by</u>
Senator Boyce, Chairman	<input checked="" type="checkbox"/>	Y	
Senator Bragdon, Vice-Chair	<input checked="" type="checkbox"/>	Y	✓
Senator Flanders	<input checked="" type="checkbox"/>	Y	
Senator Roberge	<input checked="" type="checkbox"/>	No	
Senator Hassan	<input checked="" type="checkbox"/>	Y	
Senator Larsen	<input checked="" type="checkbox"/>	Y	

\*Amendments: \_\_\_\_\_

NOTES: \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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# Committee Report



STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: February 10, 2005

THE COMMITTEE ON Internal Affairs

to which was referred Senate Bill 136-LOCAL

AN ACT                      relative to curbside voting at polling places by persons  
with disabilities.

Having considered the same, the committee recommends that the Bill:

**INEXPEDIENT TO LEGISLATE**

BY A VOTE OF:    5-1

Senator Peter Bragdon  
For the Committee

[Home](#)

[Bill Status](#) ◆

[Members](#) ◆

[Calendars/Journals](#) ◆

[Miscellaneous](#) ◆

# **SB136 Docket**

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**Bill Title:** relative to curbside voting at polling places by persons with disabilities.

<b><u>Date</u></b>	<b><u>Body</u></b>	<b><u>Description</u></b>
1/27/2005	S	Introduced and Referred to Internal Affairs
2/4/2005	S	Hearing; February 9, 2005, Room 103, LOB, 3:15 p.m.; SC6
2/10/2005	S	Committee Report; Inexpedient to Legislate [02/17/05]; SC7
2/17/2005	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; SJ 6, Pg.70

[Next](#)|[Prev](#)|[Results List](#)|[Main](#)|[Bill Status](#)

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[Docket Abbreviations](#)

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB136 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMMITTEE SECRETARY WILL CONFIRM ALL ENTRIES CHECKED AND SIGN THIS INVENTORY.
5. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT (For calendar and floor)

HEARING REPORT (Written summary of hearing testimony, if produced)

HEARING TRANSCRIPT (Verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: 1-6

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_ - AMENDMENT # \_\_\_      \_\_\_ - AMENDMENT # \_\_\_  
\_\_\_ - AMENDMENT # \_\_\_      \_\_\_ - AMENDMENT # \_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED      \_\_\_ AS AMENDED BY THE HOUSE  
\_\_\_ FINAL VERSION      \_\_\_ AS AMENDED BY THE SENATE

\_\_\_ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: \_\_\_\_\_

EXECUTIVE SESSION REPORT

\_\_\_ OTHER (Anything else deemed important but not listed above):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A NEW FILE FOLDER WITH THE CHAIRMAN'S COPY OF THE BILL AND THE LATEST DOCKET AND KEEP THOSE FILES IN YOUR OFFICE. PLEASE KEEP YOUR MASTER SHEET CURRENT AS YOU CLOSE OUT YOUR FILES AND PROVIDE THE SECRETARIAL SUPERVISOR WITH A COPY WHEN COMPLETED.

DATE DELIVERED TO SENATE CLERK 3/22/05

H. Blair Brown  
COMMITTEE SECRETARY