

LEGISLATIVE COMMITTEE MINUTES

HB204

Bill as
Introduced

HB 204 - AS INTRODUCED

2015 SESSION

15-0987
06/09

HOUSE BILL **204**

AN ACT relative to incompatibility of town offices.

SPONSORS: Rep. Rowe, Hills 22

COMMITTEE: Election Law

ANALYSIS

This bill adds cemetery trustee to those offices that may not be held simultaneously.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to incompatibility of town offices.

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

1 1 Incompatibility of Offices. Amend RSA 669:7, I to read as follows:

2 I. No person shall at the same time hold any 2 of the following offices: selectman, treasurer,
3 moderator, trustee of trust funds, collector of taxes, auditor, *cemetery trustee*, and highway agent.
4 No person shall at the same time hold any 2 of the following offices: town treasurer, moderator,
5 trustee of trust funds, *cemetery trustee*, selectman and head of the town's police department on full-
6 time duty. No person shall at the same time hold the offices of town treasurer and town clerk. No
7 full-time town employee shall at the same time hold the office of selectman. No official handling
8 funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town
9 clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No
10 selectman, town manager, school board member except a cooperative school board member, full-time
11 town, village district, school district except a cooperative school district, or other associated agency
12 employee or village district commissioner shall at the same time serve as a budget committee
13 member-at-large under RSA 32.

14 2 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Rep. Rowe, Hills. 22
January 20, 2015
2015-0029h
06/09



*NOT
ADOPTED*

Amendment to HB 204

- 1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
 - 2 read as 3:
 - 3
 - 4 2 Repeal. RSA 289:6, II-a, relative to board of selectmen serving as cemetery trustees, is
 - 5 repealed.
-

Speakers

Hearing Minutes

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 204

BILL TITLE: relative to incompatibility of town offices.

DATE: 1/20/15

LOB ROOM: 308 **Time Public Hearing Called to Order:** 2:10 pm

Time Adjourned:

(please circle if present)

Committee Members: Reps. Hoelzel, Gray, Souza, J. Sweeney, Luther, Schroadter, R. Christie, Hogan, Silva, D. Brown, Gannon, B. Griffin, Cote, Moody, G. Ward, Burton, Moynihan, Bennett, DiFranco and Pearson.

Bill Sponsors: Rep. Rowe, Hills 22

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Rowe** – Prime Sponsor – This adds to 669:7 that the cemetery trustee is an incompatible office. We had an individual who was cemetery trustee ; was also trustee of trust funds. As a cemetery trustee need to be beyond reproach, and deals with trust funds that trustee of trust funds also manage. We also need to repeal 289 regarding selectmen. Written amendment submitted.

Rep. Moynihan – Question: Is there an issue with people available to serve, especially in small communities? And if so how do you address in that case. Answer: Agree this is an issue but is a matter of legal principal.

Brad Galinson – On the BOS in Amherst – In support – This bill prevents the same person asking for the money being the same person giving the money.

Rep. Cote – Question – What if the person recused himself? Answer: We might still have quorum but individual does not. Further question: - Have you asked him to recuse? Answer: Yes – The individual has chosen not to.

Rep. Moynihan – Question –Doesn't money come from _____? Answer: More to it - _____ to be in guidelines and interpreted.

Dwight Brew – Amherst BOS – Agree with comments made. Separating roles will help with clarity and accountability. Also transparency an issue if perhaps the Chair is same on both committees.

Rep. Hoelzel – Question: Is this a perception? Answer: Yes, but if you go back to what was done, there could be no record or minutes as it was the same person handling both halves of the transaction.

Terry Knowles from Charitable Trusts Division of Attorney General's Office. Here to answer questions.

Rep. Cote – Question: Is this a controversy or not? Answer: I can be both and all of one board and can be all of other board. Have private money and public money. Cemetery trustees do not manage money. To our knowledge in the Attorney General's office nothing has gone wrong but the statute as it is does not have the balance built in.

Rep. Moynihan – Question: Is it always three persons? Answer: Usually, can be five. Question: Doesn't the three provide the oversight? Answer: Depends on how they act.

Rep. DiFranco – Question: Do you have a position? Answer: Attorney General's office does not have a position.

***Barbara Reid** of New Hampshire Municipal Association – Here to express comments and concerns. Written testimony submitted. We do training and have concerns on checks and balances. However, this could cause a problem with having people serve. Communities just don't have enough people. Our communities get audited and controls are looked at. Regarding 289 and amendment – Selectmen have flexibility as to trustee position.

Respectfully submitted,

Barbara Griffin, Clerk

1/4

HOUSE COMMITTEE ON ELECTION LAW

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(please circle if present)

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MISSUE Sweeney, Brown, Burton

Bill Sponsors: Rep. Rowe, Hills 22

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

① Rep. Rowe - Prime Sponsor - This adds to 66A:7 The Cemetery Trustee as an incompatible office. We had an individual who was cemetery trustee was also trustee of trust funds. As a cem. trustee need to be beyond reproach, and deals with trust funds that trustees of trust funds also manage. We also need to repeal 289 regarding Selectmen also be considered. ~~Written~~ amendment submitted

? Rep Moynihan - Is there an issue with people available to serve, especially in small communities

24

So how do you address in that case.

(A) Agree this is an issue, but is a matter of legal principal.

(2) Brad Galinson
BOS in Amherst - In support of -

This bill prevents the same person asking for the \$ is the same person giving the \$

? Rep Cote - what if person recused himself.

(A) - We would still have quorum but individual does not

further? - Have you asked him

(A) yes. The individual has chosen not to.

? Rep Mayhew - doesn't money come from operations

(A) - more to it. Requires to be in guidelines and interpretations

(3) Dwight Brew - Amherst Selectman - Agree with comments made. Separating roles will help with clarity and accountability

Also transparency an issue if perhaps
the Chem is same on both committees

> Chem Hazel - Is this a perception

(A) Yes - but also if go back to what was done, there could be no record ~~or~~ or minutes as it was the same person handling both halves.

WILL BE
SUBMITTING
~~QUESTIONS~~
WRITTEN
TESTIMONY

(4) Terry Knowles

? Rep Cole - Is this a
conflict of interest or not

(A) I can be both and all
of one board can be all of other
board. Have private \$ and
public \$. Cemetery trustees
do not manage \$. To our knowledge
in AG's office, ~~nothing~~ has gone wrong
but it ~~is~~ does not have the
balance sheet in

? R. Maguire is it always 3 people

(A) Usually, can be 2

just? - Doesn't the 3 provide the
oversite

(A) Depends on how often

> DeFranco - do you have a position?

(A) A.G.'s office does
not have a position

(5)

B. Reid w/ NHMA -

here to express comments & concerns

* Written testimony submitted

We do frame up and have
concerns on checks & balances

However, this could cause

a problem w/ having people serve
committees just don't have enough people

Can committees get audited &
controls are locked out.

Re. 289 + Amendment - Selectmen
have flexibility as to trustee positions

Sub-Committee Actions

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 204

BILL TITLE: relative to incompatibility of town offices.

DATE: 1/29/15

Subcommittee Members: Reps. Gray, Luther, Schroadter, Cote, Moynihan

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Moynihan

Seconded by Rep. Luther

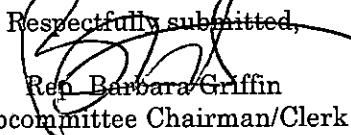
Vote: 4-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Barbara Griffin
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 204

BILL TITLE: relative to incompatibility of town offices.

DATE: 1/29/15

Subcommittee Members: Reps. Gray, Luther, Schroeder, Cote, Moynihan

Comments and Recommendations: See notes

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Moynihan

Seconded by Rep. Luther

Vote: 4-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Subcommittee Minutes – HB 204

Rep Cote – why do we have this bill, not clear for the reason; regarding incompatibility of offices; later clarified as to whether new information as this seemed to be targeted to a particular individual and we have not heard from

Rep Gray – reviewed who testified on the bill and the comments

Rep Moody – discussed the conflict issue

Rep Pearson – discussed comments made on titles and roles

Rep Griffin – clarified roles of trustees

Rep Gray – towns and cities may be different as to how this are functioning. Trying to get sense of how the committee want to proceed

Rep Moynihan – I understood the trustees is more of a caretaker function as compared to holding the money. Up north there are cemetery conservators. In some towns you can eliminate the function and go to BOS. So my sense is that trustee is not really a trustee. I didn't see a strong need for the bill.

Rep Souza- testimony about not having a lot of volunteers

Rep DiFranco – you can have a bos be a trustee-

Rep. Burton – on cemetery and town council. Durham has a town council I know we have council reps to the board given the difficulty of filling position.

Rep. Moynihan – came 5 trustees are not bonded per ag's office so they don't really have a function

Motion made

Rep Souza – can a town pass an ordinance to avoid a conflict

Rep Cote – I think people can recuse themselves. So is bill really necessary

Testimony



Jane F. Taylor, JD
Office of the City Solicitor
58 Opera House Square
Claremont, New Hampshire 03743
Ph: 603-542-7043
Fax: 603-542-7014
Email: jtaylor@claremontnh.com

January 19, 2015

Honorable Kathleen Hoelzel, Chair
House Election Law Committee
Room 308
Legislative Office Building
Concord, New Hampshire 03301

Re: House Bill 204, relative to incompatibility of town offices

Dear Madam Chair and Members of the Committee:

I am writing in opposition to the passage of House Bill 204, relative to incompatibility of town offices, as passage of this proposal in its current form will create issues for the City of Claremont.

In 2007, we determined that the City's board of cemetery trustees was not properly constituted under our local ordinance. After consultation with the Charitable Trusts Division of the Attorney General's Office, and with its concurrence, the City amended its Code to allow for a combined single board to serve both functions, as there is no conflict between the responsibilities of the two types of trustees. If this bill is adopted as written, the City would have to re-create separate boards (and perhaps more problematic, find additional members). I've attached a copy of the local code provisions for your information.

I understand that the sponsor is concerned about potential conflict between municipal trustees (both types) and most of the other positions listed in RSA 669:7, but with proper recordkeeping and annual audits there is little opportunity for conflict between the Trustees of Trust Funds and Cemetery Trustees. While it is important to minimize conflict among public offices and those who serve, efforts to do so should not create more issues than they solve.

I apologize for being unable to attend the January 20th public hearing in person and thank the Committee for its consideration of Claremont's position in opposition to House Bill 204.

Sincerely,

A handwritten signature in black ink that reads "Jane F. Taylor". The signature is written in a cursive style with a large, prominent "J" and "T".

cc: Guy A. Santagate, City Manager

CHAPTER 2, Article II, DIVISION 8. - TRUSTEES OF TRUST FUNDS AND BOARD OF CEMETERY TRUSTEES

Sec. 2-131. - Creation; membership.

Pursuant to RSA 31:22 and RSA 289:6, IV, there is created a Board of Trustees of the Trust Funds and a Board of Cemetery Trustees comprised of (3) three members, one (1) of whom shall be appointed by the mayor each year for a term of three (3) years. Appointment to the board of trustees for the trust fund shall mean concurrent appointment to the board of cemetery trustees. The mayor shall appoint an interim trustee to complete the unexpired term in the event of a vacancy for the position of trustee.

(Ord. No. 481, § 1, 3-14-07)

Sec. 2-132. - Powers and duties.

It shall be the duty of the boards to accept, take and hold in trust all gifts, legacies and devises for any public purpose, including those for the care of cemeteries and burial lots when the terms of the gift, legacy or devise does not impose any liability upon the city beyond the amount of the gift, legacy or devise and the income thereof. The trustees shall invest, administer, expend, distribute and account for all funds held in trust and perform all other duties as may be required by state law.

(Ord. No. 481, § 1, 3-14-07)

Sec. 2-133. - Establishment of funds.

The trustees shall establish, maintain and operate one (1) or more trust funds for the purpose of facilitating investments, providing diversification and obtaining reasonable income. The trustees may establish a cemetery capital reserve fund from a portion of the sums received from the sale of burial lots for the purpose of maintenance and enlargement of public cemeteries within the city, from which expenditures are to be approved upon the request of the trustees by resolution of the city council.

(Ord. No. 481, § 1, 3-14-07)

Secs. 2-134—2-140. - Reserved.

14 B 204
Jan 20, 2015

3

My name is Dwight Brew and I am here
as an Amherst selectman

I agree we need volunteers who step up and fill
the many roles needed to make town government
work and do not want to make things unnecessarily difficult

There are a number of existing checks and balances
already in place to help make sure that town
government runs in an orderly manner

Separating the role of trustees that request the
expenditure of funds from the role of trustees
who approve the disbursement of funds would
help with the checks and balances

RSA's can be complex and have ample
opportunity to be misunderstood by volunteer
trustee or board members

Separating the role of expending money
and that of approving the expenditure will
~~help~~ be a positive step to ensure
the necessary checks and balances are in place

Voting Sheets

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 204

BILL TITLE: relative to incompatibility of town offices.

DATE: 2/12/15

LOB ROOM: 308

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Burton

Seconded by Rep. Souza

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Barbara Griffin, Clerk

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 204

BILL TITLE: relative to incompatibility of town offices.

DATE: 2/12/15

LOB ROOM: 308

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Burton*

Seconded by Rep. *Soza*

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: *YES*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
[Signature]
Rep. Barbara Griffin, Clerk



2015 SESSION

ELECTION LAW

Bill #: HB 204

Title: RL to Incompatibility of Town Offices

PH Date: 1/1/1

Exec Session Date: 2/12/2015

Motion: TTL

Amendment #: _____

MEMBER	YEAS	NAYS
Hoelzel, Kathleen M., Chairman	✓	
Gray, James P, V Chairman	✓	
Souza, Kathleen F.	✓	
Sweeney, Joe	NIP	
Luther, Robert A.	✓	
Schroadter, Adam R.	✓	
Christie, Rick G.	✓	
Hogan, Edith A	✓	
Silva, Peter L.	NIP	
Brown, Duane R.	✓	
Gannon, William M.	✓	
Griffin, Barbara J., Clerk	✓	
Cote, David E.	✓	
Moody, Marcia G.	✓	
Ward, Gerald W.R.	✓	
Burton, Wayne M.	✓	
Moynihan, Wayne T.	✓	
Bennett, Travis	✓	
DiFranco, Debbie	✓	
Pearson, William A.	✓	
TOTAL VOTE:	18-0	

Hc

Committee Report

CONSENT CALENDAR

February 18, 2015

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on ELECTION LAW to which was referred HB204,

AN ACT relative to incompatibility of town offices.

Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Wayne M. Burton

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	ELECTION LAW
Bill Number:	HB204
Title:	relative to incompatibility of town offices.
Date:	February 18, 2015
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill inserts "cemetery trustee" into the list of town appointments that can only be held one at a time. Other positions incompatibility with cemetery trustee are: town treasurer, moderator, trustee of the trust funds, selectman, and head of the town's police department on a full-time basis. Absent compelling testimony in support of this bill and any discussions in committee that would cause us concern, the vote for Inexpedient to Legislate was unanimous.

Vote 18-0.

Rep. Wayne M. Burton
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

ELECTION LAW

HB204, relative to incompatibility of town offices. **INEXPEDIENT TO LEGISLATE.**

Rep. Wayne M. Burton for **ELECTION LAW**. This bill inserts "cemetery trustee" into the list of town appointments that can only be held one at a time. Other positions incompatibility with cemetery trustee are: town treasurer, moderator, trustee of the trust funds, selectman, and head of the town's police department on a full-time basis. Absent compelling testimony in support of this bill and any discussions in committee that would cause us concern, the vote for Inexpedient to Legislate was unanimous. **Vote 18-0.**

HB 204

ITL

Consent Calendar 18-0

This bill inserts "cemetery trustee" into the list of town appointments that can only be held one at a time. Other positions incompatibility with cemetery trustee are: town treasurer, moderator, trustee of the trust funds, selectman, and head of the town's police department on a full-time basis. Absent compelling testimony in support of this bill and any discussions in committee that would cause us concern, the vote for Inexpedient to Legislate was unanimous.

Rep. Wayne Burton for the Committee

Rep. Kathleen M. Healy

HB 204, Relative to incompatibility of town offices. INEXPEDIENT TO LEGISLATE

Rep. Wayne M. Burton for Election Law. This bill inserts "cemetery trustee" into the list of town appointments that can only be held one at a time. Other positions incompatibility with cemetery trustee are: town treasurer, moderator, trustee of the trust funds, selectman, and head of the town's police department on a full-time basis.

Absent compelling testimony in support of this bill and any discussions in committee that would cause us concern, the vote for ~~SP~~ was unanimous. Vote 18-0.

ITL

Culberson, Kay

From: Larivee, Kathy
Sent: Wednesday, February 25, 2015 3:14 PM
To: Culberson, Kay
Subject: HB204-Majority.doc

~~credited report~~

CONSENT CALENDAR

February 18, 2015

<p>HOUSE OF REPRESENTATIVES REPORT OF COMMITTEE</p>

The Committee on ELECTION LAW to which was referred HB204,

AN ACT relative to incompatibility of town offices.

Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

<p>Rep. Wayne M. Burton FOR THE COMMITTEE</p>

COMMITTEE REPORT

Committee:	ELECTION LAW
Bill Number:	HB204
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Date:	February 18, 2015
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

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This bill inserts "cemetery trustee" into the list of town appointments that can only be held one at a time. Other positions incompatible with cemetery trustee are: town treasurer, moderator, trustee of the trust funds, selectman, and head of the town's police department on a full-time basis. Absent compelling testimony in support of this bill and any discussions in committee that would cause us concern, the vote for inexpedient to legislate was unanimous.

Vote 18-0.

Rep. Wayne M. Burton
FOR THE COMMITTEE

CONSENT CALENDAR

)
ELECTION LAW

HB204, relative to incompatibility of town offices. **INEXPEDIENT TO LEGISLATE.**

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