

LEGISLATIVE COMMITTEE MINUTES

SB405

Bill as
Introduced

SB 405-FN - AS INTRODUCED

2022 SESSION

22-3052

11/04

SENATE BILL

405-FN

AN ACT

relative to fines and penalties for election law violations.

SPONSORS:

Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Rep. J. MacDonald, Carr. 6; Rep. Lang, Belk. 4

COMMITTEE:

Election Law and Municipal Affairs

ANALYSIS

This bill modifies penalties for certain offenses related to elections.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to fines and penalties for election law violations.

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

1 1 New Section; Election Procedure; Prohibited Acts; Intimidation of Election Officers. Amend
2 RSA 659 by inserting after section 40-a the following new section:

3 659:40-b Intimidation of Election Officers.

4 I. No person shall use or threaten force, violence, or any tactic of coercion or intimidation to
5 knowingly discourage, interfere with, or compel any election officer, as defined in RSA 652:14, and
6 other appointed individuals assisting at the polling place, such as ballot clerks and greeters, from
7 engaging in or completing duties related to an election.

8 II. Whoever violates the provisions of this section or who conspires to violate the provisions
9 of this section shall be guilty of a class B felony.

10 2 New Subdivision; Penalties. Amend RSA 659 by inserting after section 103 the following new
11 subdivision:

12 Penalties

13 659:104 Penalties.

14 I. Where no other penalty is provided, whoever violates any provision of this chapter shall be
15 subject to a civil penalty not less than \$250 nor more than \$1,000.

16 II. The attorney general shall notify persons subject to this section of the state's intention to
17 seek a civil penalty, and of the ability to negotiate with and to settle with such suspected violators
18 without court action, provided that any civil penalty paid as settlement shall be paid to the secretary
19 of state for deposit into the general fund.

20 3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V(a) to read as
21 follows:

22 V.(a) Whoever violates any of the provisions of RSA 664:16-a or the provisions of RSA 664:17
23 relative to removing, defacing, or destroying political advertising on private property shall be subject
24 to a civil penalty ~~[not to exceed \$1,000]~~ **in accordance with subparagraph VIII(a)**.

25 4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA 664:21 by
26 inserting after paragraph VII the following new paragraphs:

27 VIII.(a) Whoever violates or orders, aids, or abets a violation of any provision of this section
28 or RSA 664:14 or 664:17 shall be subject to a civil penalty of \$250 for each piece of political
29 advertising removed, up to a maximum of \$2,000.

30 (b) The attorney general shall notify suspected violators of this section of the state's
31 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the

SB 405-FN - AS INTRODUCED

- Page 2 -

1 civil penalty limits established in this section without court action, provided any civil penalty paid as
2 settlement shall be paid to the secretary of state for deposit into the general fund.

3 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
4 payment of restitution for damages.

5 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
6 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
7 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
8 offenses.

9 5 Effective Date. This act shall take effect January 1, 2023.

SB 405-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to fines and penalties for election law violations.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill modifies penalties for certain offenses related to elections. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of	\$54,386	\$54,386

Incarcerating an Individual		
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

The Department of Justice indicates this bill would increase the work of the Election Law Unit as there would be additional prosecutions for the actions of intimidation of election officials and destroying political signs. There would also be additional actions taken against organizations and individuals who file illegible reports. At this time, the Department cannot determine the fiscal impact as the number of additional prosecutions is not known. The Department expects the Election Law Unit could manage the number of prosecutions with its current attorneys. The Department states there may be a need for additional investigative resources, however, this potential impact not known at this time.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

SB 405-FN - AS AMENDED BY THE SENATE

03/24/2022 1101s

2022 SESSION

22-3052

11/04

SENATE BILL **405-FN**

AN ACT relative to fines and penalties for election law violations.

SPONSORS: Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Rep. J. MacDonald,
Carr. 6; Rep. Lang, Belk. 4

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill modifies penalties for certain offenses related to elections.

Explanation: Matter added to current law appears in *bold italics*.
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

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

1 1 New Section; Election Procedure; Prohibited Acts; Intimidation of Election Officers. Amend
2 RSA 659 by inserting after section 40-a the following new section:

3 659:40-b Intimidation of Election Officers.

4 I. No person shall use or threaten force, violence, or any tactic of coercion or intimidation to
5 knowingly discourage, interfere with, or compel any election officer, as defined in RSA 652:14, and
6 other appointed individuals assisting at the polling place, such as ballot clerks and greeters, from
7 engaging in or completing duties related to an election.

8 II. Whoever violates the provisions of this section or who conspires to violate the provisions
9 of this section shall be guilty of a class B felony.

10 2 New Subdivision; Penalties. Amend RSA 659 by inserting after section 103 the following new
11 subdivision:

Penalties

12 659:104 Penalties.

13 I. Where no other penalty is provided, whoever violates any provision of this chapter shall be
14 subject to a civil penalty not less than \$250 nor more than \$1,000.

15 II. The attorney general shall notify persons subject to this section of the state's intention to
16 seek a civil penalty, and of the ability to negotiate with and to settle with such suspected violators
17 without court action, provided that any civil penalty paid as settlement shall be paid to the secretary
18 of state for deposit into the general fund.

19 3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V to read as follows:

20 V.(a) Whoever violates any of the provisions of RSA 664:16-a [~~or the provisions of RSA~~
21 ~~664:17 relative to removing, defacing, or destroying political advertising on private property~~] shall be
22 subject to a civil penalty not to exceed \$1,000.

23 (b) *Whoever violates, or orders, aids, or abets a violation of RSA 664:17, relative*
24 *to removing, defacing, or destroying political advertising on private property, shall be*
25 *subject to a civil penalty of \$250 for each piece of political advertising removed, defaced, or*
26 *destroyed, up to a maximum of \$2,000.*

27 (c) The court, upon petition of the attorney general, may levy upon any person who
28 violates the provisions of RSA 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing,~~
29 ~~defacing, or destroying political advertising on private property~~] a civil penalty in an amount not to
30 exceed \$1,000 per violation. ~~All penalties assessed under this paragraph shall be paid to the~~
31

SB 405-FN - AS AMENDED BY THE SENATE

- Page 2 -

1 ~~secretary of state for deposit into the general fund] the civil penalties under subparagraphs (a)~~
2 ~~and (b).~~

3 ~~[(e)] (d)~~ The attorney general shall ~~[have authority to]~~ notify suspected violators of RSA
4 664:16-a or ~~[the provisions of]~~ RSA 664:17 ~~[relative to removing, defacing, or destroying political~~
5 ~~advertising on private property]~~ of the state's intention to seek a civil penalty, to negotiate, and to
6 settle with such suspected violators without court action~~[-, provided any civil penalty paid as~~
7 ~~settlement shall be paid to the secretary of state for deposit into the general fund].~~

8 4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA 664:21 by
9 inserting after paragraph VII the following new paragraphs:

10 VIII.(a) Except as otherwise provided in this section, whoever violates, or orders, aids, or
11 abets a violation of any provision of this section or RSA 664:14 shall be subject to a civil penalty of
12 \$250 for each piece of political advertising removed, up to a maximum of \$2,000.

13 (b) The attorney general shall notify suspected violators of this section of the state's
14 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the
15 civil penalty limits established in this section without court action.

16 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
17 payment of restitution for damages.

18 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
19 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
20 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
21 offenses.

22 5 Effective Date. This act shall take effect January 1, 2023.

SB 405-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-1101s)

AN ACT relative to fines and penalties for election law violations.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill modifies penalties and fines for certain offenses related to elections. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
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It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
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The Department of Justice indicates this bill would increase the work of the Election Law Unit as there would be additional prosecutions for the actions of intimidation of election officials and destroying political signs. There would also be additional actions taken against organizations and individuals who file illegible reports. At this time, the Department cannot determine the fiscal impact as the number of additional prosecutions is not known. The Department expects the Election Law Unit could manage the number of prosecutions with its current attorneys. The Department states there may be a need for additional investigative resources, however, this potential impact not known at this time.

AGENCIES CONTACTED:

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SB 405-FN - AS AMENDED BY THE HOUSE

03/24/2022 1101s
21Apr2022... 1512h

2022 SESSION

22-3052
11/04

SENATE BILL **405-FN**

AN ACT relative to fines and penalties for election law violations and relative to consequences resulting from election official misconduct.

SPONSORS: Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Rep. J. MacDonald, Carr. 6; Rep. Lang, Belk. 4

COMMITTEE: Election Law and Municipal Affairs

AMENDED ANALYSIS

This bill modifies penalties for certain offenses related to elections and allows the attorney general to seek a civil penalty against the local government entity in which an election official was found to have negligently engaged in misconduct.

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SB 405-FN - AS AMENDED BY THE HOUSE

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

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7 engaging in or completing duties related to an election.

8 II. Whoever violates the provisions of this section or who conspires to violate the provisions
9 of this section shall be guilty of a class B felony.

10 2 New Subdivision; Penalties. Amend RSA 659 by inserting after section 103 the following new
11 subdivision:

12 Penalties

13 659:104 Penalties.

14 I. Where no other penalty is provided, whoever violates any provision of this chapter shall be
15 subject to a civil penalty not less than \$250 nor more than \$1,000.

16 II. The attorney general shall notify persons subject to this section of the state's intention to
17 seek a civil penalty, and of the ability to negotiate with and to settle with such suspected violators
18 without court action, provided that any civil penalty paid as settlement shall be paid to the secretary
19 of state for deposit into the general fund.

20 3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V to read as follows:

21 V.(a) Whoever violates any of the provisions of RSA 664:16-a [~~or the provisions of RSA~~
22 ~~664:17 relative to removing, defacing, or destroying political advertising on private property~~] shall be
23 subject to a civil penalty not to exceed \$1,000.

24 (b) *Whoever violates, or orders, aids, or abets a violation of RSA 664:17, relative*
25 *to removing, defacing, or destroying political advertising on private property, shall be*
26 *subject to a civil penalty of \$250 for each piece of political advertising removed, defaced, or*
27 *destroyed, up to a maximum of \$2,000.*

28 (c) The court, upon petition of the attorney general, may levy upon any person who
29 violates the provisions of RSA 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing,~~

1 ~~defacing, or destroying political advertising on private property a civil penalty in an amount not to~~
2 ~~exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the~~
3 ~~secretary of state for deposit into the general fund] *the civil penalties under subparagraphs (a)*~~
4 ~~*and (b).*~~

5 ~~(e)~~ (d) The attorney general shall ~~[have authority to]~~ notify suspected violators of RSA
6 664:16-a or ~~[the provisions of]~~ RSA 664:17 ~~[relative to removing, defacing, or destroying political~~
7 ~~advertising on private property]~~ of the state's intention to seek a civil penalty, to negotiate, and to
8 settle with such suspected violators without court action~~[, provided any civil penalty paid as~~
9 ~~settlement shall be paid to the secretary of state for deposit into the general fund].~~

10 4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA 664:21 by
11 inserting after paragraph VII the following new paragraphs:

12 VIII.(a) Whoever violates any provision of RSA 664:14, or a provision of RSA 664:17 not
13 related to removing, defacing, or destroying political advertising as provided for in paragraph V of
14 this section, shall be subject to a civil penalty not to exceed \$1,000.

15 (b) The attorney general shall notify suspected violators of this section of the state's
16 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the
17 civil penalty limits established in this section without court action.

18 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
19 payment of restitution for damages.

20 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
21 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
22 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
23 offenses.

24 5 Provisions for Purity of Elections; Official Misconduct; Consequences. Amend RSA 666:3 to
25 read as follows:

26 666:3 Official Misconduct.

27 I. Any public officer upon whom a duty relating to elections is imposed who shall knowingly
28 fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects
29 thereof shall be guilty of a misdemeanor if no other penalty is provided by law.

30 II. *Any public officer upon whom a duty relating to elections is imposed who shall*
31 *negligently fail to perform such duty or who shall negligently perform it in such a way as*
32 *to hinder the objects thereof, as found pursuant to RSA 666:2, shall cause the county, city,*
33 *town, school district, village district, or other political subdivision, where such conduct*
34 *occurred to be subject to a civil penalty of not less than \$250 nor more than \$1000 for each*
35 *act.*

36 III. *The attorney general shall notify the county, city, town, school district, village*
37 *district, or other political subdivision that is subject to this section of the state's intention*

1 *to seek a civil penalty, and of the ability to negotiate with and to settle with such county,*
2 *city, town, school district, village district, or other political subdivision without court*
3 *action, provided that any civil penalty paid as settlement shall be paid to the attorney*
4 *general for deposit into the general fund.*

5 *IV. If an entity is subject to a civil penalty under this section, the entity shall also*
6 *be subject to the payment of restitution damages.*

7 6 Effective Date.

8 I. Sections 1-4 of this act shall take effect January 1, 2023.

9 II. The remainder of this act shall take effect 60 days after its passage.

SB 405-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2022-1512h)

AN ACT relative to fines and penalties for election law violations and relative to consequences resulting from election official misconduct.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill modifies penalties and fines for certain offenses related to elections. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023

FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

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AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

LBA
22-3052
Amended 4/25/22

**SB 405-FN FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2022-1512h)**

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County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

The Department of Justice indicates this bill would increase the work of the Election Law Unit as there would be additional prosecutions for the actions of intimidation of election officials and destroying political signs. There would also be additional actions taken against organizations and individuals who file illegible reports. At this time, the Department cannot determine the fiscal impact as the number of additional prosecutions is not known. The Department expects the Election Law Unit could manage the number of prosecutions with its current attorneys. The Department states there may be a need for additional investigative resources, however, this potential impact not known at this time.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

CHAPTER 234
SB 405-FN - FINAL VERSION

03/24/2022 1101s
21Apr2022... 1512h

2022 SESSION

22-3052
11/04

SENATE BILL

405-FN

AN ACT

relative to fines and penalties for election law violations and relative to consequences resulting from election official misconduct.

SPONSORS:

Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Rep. J. MacDonald, Carr. 6; Rep. Lang, Belk. 4

COMMITTEE:

Election Law and Municipal Affairs

AMENDED ANALYSIS

This bill modifies penalties for certain offenses related to elections and allows the attorney general to seek a civil penalty against the local government entity in which an election official was found to have negligently engaged in misconduct.

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.

CHAPTER 234
SB 405-FN - FINAL VERSION

03//2022 1101s
21Apr2022... 1512h

22-3052
11/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to fines and penalties for election law violations and relative to consequences resulting from election official misconduct.

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

1 234:1 New Section; Election Procedure; Prohibited Acts; Intimidation of Election Officers.

2 Amend RSA 659 by inserting after section 40-a the following new section:

3 659:40-b Intimidation of Election Officers.

4 I. No person shall use or threaten force, violence, or any tactic of coercion or intimidation to
5 knowingly discourage, interfere with, or compel any election officer, as defined in RSA 652:14, and
6 other appointed individuals assisting at the polling place, such as ballot clerks and greeters, from
7 engaging in or completing duties related to an election.

8 II. Whoever violates the provisions of this section or who conspires to violate the provisions
9 of this section shall be guilty of a class B felony.

10 234:2 New Subdivision; Penalties. Amend RSA 659 by inserting after section 103 the following
11 new subdivision:

12 Penalties

13 659:104 Penalties.

14 I. Where no other penalty is provided, whoever violates any provision of this chapter shall be
15 subject to a civil penalty not less than \$250 nor more than \$1,000.

16 II. The attorney general shall notify persons subject to this section of the state's intention to
17 seek a civil penalty, and of the ability to negotiate with and to settle with such suspected violators
18 without court action, provided that any civil penalty paid as settlement shall be paid to the secretary
19 of state for deposit into the general fund.

20 234:3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V to read as
21 follows:

22 V.(a) Whoever violates any of the provisions of RSA 664:16-a [~~or the provisions of RSA~~
23 ~~664:17 relative to removing, defacing, or destroying political advertising on private property~~] shall be
24 subject to a civil penalty not to exceed \$1,000.

25 (b) *Whoever violates, or orders, aids, or abets a violation of RSA 664:17, relative*
26 *to removing, defacing, or destroying political advertising on private property, shall be*
27 *subject to a civil penalty of \$250 for each piece of political advertising removed, defaced, or*
28 *destroyed, up to a maximum of \$2,000.*

CHAPTER 234
SB 405-FN - FINAL VERSION
- Page 2 -

1 (c) The court, upon petition of the attorney general, may levy upon any person who
2 violates the provisions of RSA 664:16-a or ~~[the provisions of] RSA 664:17 [relative to removing,~~
3 ~~defacing, or destroying political advertising on private property a civil penalty in an amount not to~~
4 ~~exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the~~
5 ~~secretary of state for deposit into the general fund]~~ *the civil penalties under subparagraphs (a)*
6 *and (b).*

7 ~~(e)~~ (d) The attorney general shall ~~[have authority to]~~ notify suspected violators of RSA
8 664:16-a or ~~[the provisions of] RSA 664:17 [relative to removing, defacing, or destroying political~~
9 ~~advertising on private property]~~ of the state's intention to seek a civil penalty, to negotiate, and to
10 settle with such suspected violators without court action~~[- provided any civil penalty paid as~~
11 ~~settlement shall be paid to the secretary of state for deposit into the general fund].~~

12 234:4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA
13 664:21 by inserting after paragraph VII the following new paragraphs:

14 VIII.(a) Whoever violates any provision of RSA 664:14, or a provision of RSA 664:17 not
15 related to removing, defacing, or destroying political advertising as provided for in paragraph V of
16 this section, shall be subject to a civil penalty not to exceed \$1,000.

17 (b) The attorney general shall notify suspected violators of this section of the state's
18 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the
19 civil penalty limits established in this section without court action.

20 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
21 payment of restitution for damages.

22 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
23 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
24 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
25 offenses.

26 234:5 Provisions for Purity of Elections; Official Misconduct; Consequences. Amend RSA 666:3
27 to read as follows:

28 666:3 Official Misconduct.

29 I. Any public officer upon whom a duty relating to elections is imposed who shall knowingly
30 fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects
31 thereof shall be guilty of a misdemeanor if no other penalty is provided by law.

32 II. *Any public officer upon whom a duty relating to elections is imposed who shall*
33 *negligently fail to perform such duty or who shall negligently perform it in such a way as*
34 *to hinder the objects thereof, as found pursuant to RSA 666:2, shall cause the county, city,*
35 *town, school district, village district, or other political subdivision, where such conduct*
36 *occurred to be subject to a civil penalty of not less than \$250 nor more than \$1000 for each*
37 *act.*

CHAPTER 234
SB 405-FN - FINAL VERSION
- Page 3 -

1 *III. The attorney general shall notify the county, city, town, school district, village*
2 *district, or other political subdivision that is subject to this section of the state's intention*
3 *to seek a civil penalty, and of the ability to negotiate with and to settle with such county,*
4 *city, town, school district, village district, or other political subdivision without court*
5 *action, provided that any civil penalty paid as settlement shall be paid to the attorney*
6 *general for deposit into the general fund.*

7 *IV. If an entity is subject to a civil penalty under this section, the entity shall also*
8 *be subject to the payment of restitution damages.*

9 234:6 Effective Date.

10 I. Sections 1-4 of this act shall take effect January 1, 2023.

11 II. The remainder of this act shall take effect 60 days after its passage.

Approved: June 17, 2022

Effective Date:

I. Sections 1-4 effective January 1, 2023

II. Remainder effective August 16, 2022

Amendments

Amendment to SB 405-FN

1 Amend the bill by replacing sections 3 and 4 with the following:

2

3 3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V to read as follows:

4 V.(a) Whoever violates any of the provisions of RSA 664:16-a [~~or the provisions of RSA~~
5 ~~664:17 relative to removing, defacing, or destroying political advertising on private property~~] shall be
6 subject to a civil penalty not to exceed \$1,000.

7 (b) *Whoever violates, or orders, aids, or abets a violation of RSA 664:17, relative*
8 *to removing, defacing, or destroying political advertising on private property, shall be*
9 *subject to a civil penalty of \$250 for each piece of political advertising removed, defaced, or*
10 *destroyed, up to a maximum of \$2,000.*

11 (c) The court, upon petition of the attorney general, may levy upon any person who
12 violates the provisions of RSA 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing,~~
13 ~~defacing, or destroying political advertising on private property a civil penalty in an amount not to~~
14 ~~exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the~~
15 ~~secretary of state for deposit into the general fund]~~ *the civil penalties under subparagraphs (a)*
16 *and (b).*

17 [(e)] (d) The attorney general [~~shall have authority to~~] *may* notify suspected violators of
18 RSA 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing, defacing, or destroying~~
19 ~~political advertising on private property~~] of the state's intention to seek a civil penalty, to negotiate,
20 and to settle with such suspected violators without court action[~~, provided any civil penalty paid as~~
21 ~~settlement shall be paid to the secretary of state for deposit into the general fund~~].

22 4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA 664:21 by
23 inserting after paragraph VII the following new paragraphs:

24 VIII.(a) Except as otherwise provided in this section, whoever violates, or orders, aids, or
25 abets a violation of any provision of this section or RSA 664:14 shall be subject to a civil penalty of
26 \$250 for each piece of political advertising removed, up to a maximum of \$2,000.

27 (b) The attorney general shall notify suspected violators of this section of the state's
28 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the
29 civil penalty limits established in this section without court action.

30 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
31 payment of restitution for damages.

1 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
2 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
3 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
4 offenses.

UNAPPROVED

Amendment to SB 405-FN

1 Amend the bill by replacing sections 3 and 4 with the following:

2

3 3 Political Expenditures and Contributions; Penalties. Amend RSA 664:21, V to read as follows:

4 V.(a) Whoever violates any of the provisions of RSA 664:16-a [~~or the provisions of RSA~~
5 ~~664:17 relative to removing, defacing, or destroying political advertising on private property~~] shall be
6 subject to a civil penalty not to exceed \$1,000.

7 (b) *Whoever violates, or orders, aids, or abets a violation of RSA 664:17, relative*
8 *to removing, defacing, or destroying political advertising on private property, shall be*
9 *subject to a civil penalty of \$250 for each piece of political advertising removed, defaced, or*
10 *destroyed, up to a maximum of \$2,000.*

11 (c) The court, upon petition of the attorney general, may levy upon any person who
12 violates the provisions of RSA 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing,~~
13 ~~defacing, or destroying political advertising on private property a civil penalty in an amount not to~~
14 ~~exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the~~
15 ~~secretary of state for deposit into the general fund] *the civil penalties under subparagraphs (a)*
16 *and (b).*~~

17 (e) (d) The attorney general shall [~~have authority to~~] notify suspected violators of RSA
18 664:16-a or [~~the provisions of~~] RSA 664:17 [~~relative to removing, defacing, or destroying political~~
19 ~~advertising on private property~~] of the state's intention to seek a civil penalty, to negotiate, and to
20 settle with such suspected violators without court action[~~, provided any civil penalty paid as~~
21 ~~settlement shall be paid to the secretary of state for deposit into the general fund].~~

22 4 New Paragraphs; Political Expenditures and Contributions; Penalties. Amend RSA 664:21 by
23 inserting after paragraph VII the following new paragraphs:

24 VIII.(a) Except as otherwise provided in this section, whoever violates, or orders, aids, or
25 abets a violation of any provision of this section or RSA 664:14 shall be subject to a civil penalty of
26 \$250 for each piece of political advertising removed, up to a maximum of \$2,000.

27 (b) The attorney general shall notify suspected violators of this section of the state's
28 intention to seek a civil penalty, to negotiate, and to settle with such suspected violators within the
29 civil penalty limits established in this section without court action.

30 (c) Whoever is subject to a civil penalty under this paragraph shall also be subject to the
31 payment of restitution for damages.

Amendment to SB 405-FN

- Page 2 -

1 IX. Any individual, committee, or organization responsible for reporting under RSA 664:6,
2 664:6-a, and 664:7 that files a report with illegible material content shall receive a written warning
3 for a first offense and shall be charged a civil penalty of \$1,000 per offense for any subsequent
4 offenses.

Committee Minutes

SENATE CALENDAR NOTICE
Election Law and Municipal Affairs

Sen James Gray, Chair
Sen Regina Birdsell, Vice Chair
Sen Ruth Ward, Member
Sen Donna Soucy, Member
Sen Rebecca Perkins Kwoka, Member

Date: January 5, 2022

HEARINGS

Thursday

01/20/2022

Election Law and Municipal Affairs	State House 100	1:00 p.m.
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(Name of Committee)	(Place)	(Time)
---------------------	---------	--------

1:00 p.m.	SB 400-FN	relative to training and procedures for zoning and planning boards and relative to financial investments and incentives for affordable housing development.
1:30 p.m.	SB 239-FN	relative to noncompliance with municipal audit requirements.
2:00 p.m.	SB 405-FN	relative to fines and penalties for election law violations.
2:30 p.m.	SB 418-FN	relative to verification of voter affidavits.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 400-FN

Sen. Bradley
Sen. Watters
Sen. Cavanaugh
Sen. Kahn
Rep. Sweeney

Sen. Whitley
Sen. Perkins Kwoka
Sen. Sherman
Rep. DiLorenzo
Rep. Porter

Sen. Hennessey
Sen. Rosenwald
Sen. Prentiss
Rep. Umberger

Sen. D'Allesandro
Sen. Avard
Sen. Soucy
Rep. Alexander Jr.

SB 239-FN

Sen. Giuda

Rep. Major

Rep. Umberger

SB 405-FN

Sen. Giuda

Sen. Avard

Sen. Birdsell

Rep. J. MacDonald

Rep. Lang

SB 418-FN

Sen. Giuda

Sen. Bradley

Sen. French

Sen. Gannon

Rep. Howard

Tricia Melillo 271-3077

James P. Gray
Chairman

Senate Election Law and Municipal Affairs Committee
Tricia Melillo 271-3077

SB 405-FN, relative to fines and penalties for election law violations.

Hearing Date: January 20, 2022

Members of the Committee Present: Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

Members of the Committee Absent : None

Bill Analysis: This bill modifies penalties for certain offenses related to elections.

Sponsors:

Sen. Giuda
Rep. J. MacDonald

Sen. Avard
Rep. Lang

Sen. Birdsell

Who supports the bill: Senator Bob Giuda, Senator Regina Birdsell, Senator Kevin Avard, Margaret Byrnes, Cristin Guilford, Julie Smith, Eric Pauer, Rod Towne, Patricia Anastasia, Margaret Sweeney, Joan Dargie

Who opposes the bill: Karl Pruter, Yasmin

Summary of testimony presented in support:

Senator Bob Giuda

- There are many laws in the state in which acts that are committed in the public sector are prohibited but there are no repercussions for violations.
- Many of those are the election laws.
- He gave an example of a moderator in his district who asked a police officer to remove the lawfully placed signs of a candidate he opposed.
- Virtually no penalty was imposed.
- He believes they need to put teeth to the election laws.
- It there is not a disincentive for people to misbehave than they will.
- The removal of a sign is an infringement of the first amendment rights of the candidate and the property owner.
- They need make it clear that the if you violate election law there will be consequences.

Margaret Byrnes – NH Municipal Association

- They are specifically in support of the first section of the bill.
- This section would create a new provision in 659 for intimidation of election officers.
- She has not heard any complaints or scenarios relative to this concern but providing a deterrent so that election officials can run the elections has good intent and they will support it.

Summary of testimony presented in opposition: None

TJM

Date Hearing Report completed: January 21, 2022

Speakers

Senate Remote Testify

Election Law and Municipal Affairs Committee Testify List for Bill SB405 on 202 Support: 8 Oppose: 2

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Birdsell, Senator Regina	An Elected Official	Senate District 19	Support
Avard, Senator Kevin	An Elected Official	SD 12	Support
Smith, Julie	A Member of the Public	Myself	Support
Pauer, Eric	A Member of the Public	Myself	Support
Towne, Rod	A Member of the Public	Myself	Support
Anastasia, Patricia	A Member of the Public	Myself	Support
Sweeney, Margaret	A Member of the Public	Myself	Support
Dargie, Joan	An Elected Official	Town of Milford	Support
Pruter, Karl	An Elected Official	Myself	Oppose
..., Yasmin	A Member of the Public	Myself	Oppose

Voting Sheets

**Senate Election Law
& Municipal Affairs Committee
EXECUTIVE SESSION RECORD
2022 Session**

Bill SB 405

Hearing date: 1/20/22

Executive Session date: 3/14/22

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: OTP 08565 MOVS
line 17 change May to Shall Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTP/A Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Birdsell

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Monday, March 14, 2022

THE COMMITTEE ON Election Law and Municipal Affairs

to which was referred SB 405-FN

AN ACT

relative to fines and penalties for election law
violations.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1101s

Senator Regina Birdsall
For the Committee

Tricia Melillo 271-3077

General Court of New Hampshire - Bill Status System

Docket of SB405

Docket Abbreviations

Bill Title: (New Title) relative to fines and penalties for election law violations and relative to consequences resulting from election official misconduct.

Official Docket of SB405.:

Date	Body	Description
12/23/2021	S	To Be Introduced 01/05/2022 and Referred to Election Law and Municipal Affairs; SJ 1
1/5/2022	S	Hearing: 01/20/2022, Room 100, SH, 02:00 pm; SC 2
3/15/2022	S	Committee Report: Ought to Pass with Amendment #2022-1101s , 03/24/2022; Vote 5-0; CC; SC 12
3/24/2022	S	Committee Amendment #2022-1101s , AA, VV; 03/24/2022; SJ 6
3/24/2022	S	Ought to Pass with Amendment 2022-1101s, MA, VV; OT3rdg; 03/24/2022; SJ 6
3/28/2022	H	Introduced 03/28/2022 and referred to Election Law
3/30/2022	H	Public Hearing: 04/06/2022 11:15 am LOB 306-308
4/14/2022	H	Executive Session: 04/08/2022 01:00 pm LOB 306-308
4/14/2022	H	Committee Report: Ought to Pass with Amendment #2022-1512h(NT) (Vote 20-0; CC) HC 15 P. 7
4/21/2022	H	Amendment # 1512h: AA VV 04/21/2022 HJ 10
4/21/2022	H	Ought to Pass with Amendment 1512h: MA VV 04/21/2022 HJ 10
5/12/2022	S	Sen. Gray Moved to Concur with the House Amendment, MA, VV; 05/12/2022; SJ 12
6/7/2022	H	Enrolled (in recess of) 05/26/2022 HJ 14
6/6/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); SJ 13
6/22/2022	S	Signed by the Governor on 06/17/2022; Chapter 0234
6/22/2022	S	I. Sections 1-4 Effective 01/01/2023
6/22/2022	S	II. Remainder Effective 08/16/2022

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 405 Senate Committee: ELMA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: (Legislative Aides)

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

N/A Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: (Legislative Aides)

All amendments considered in committee (including those not adopted):

- amendment # 08565 - amendment # _____

- amendment # 11015 - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: (Clerk's Office)

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) (Clerk's Office)

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: (Clerk's Office)

as amended by the senate

as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Tricia Merullo
Committee Aide

6/21/20
Date

Senate Clerk's Office

PK