

Senate Election Law and Internal Affairs Committee

Kelly Flathers 271-3093

HB 552-FN, relative to investigation of voter verification letters.

Hearing Date: April 4, 2017

Time Opened: 9:31 a.m.

Time Closed: 10:08 a.m.

Members of the Committee Present: Senators Birdsell, Gray, Sanborn, Soucy and Woodburn

Members of the Committee Absent: None

Bill Analysis: This bill requires the secretary of state to investigate a letter of identity verification or driver's obligation if the letter is returned as undeliverable or if the recipient fails to respond.

Sponsors:

Rep. Ohm

Rep. Twombly

Rep. Seidel

Rep. Christensen

Rep. Azarian

Sen. Carson

Who supports the bill: Sen. Sharon Carson - District 14; Rep. Norman Silber - Belmont 2; David Scanlan - Deputy Secretary of State; Rep. Bill Ohm - Hillsborough 36; Rep. Timothy Twombly - Hillsborough 34

Who opposes the bill: Darryl W. Perry - Liberty Lobby LLC; Alvin See - Self; Huck Montgomery - America Votes; Gilles Bissonnette - ACLU NH

Who is neutral on the bill: Ann Rice - Deputy Attorney General

Summary of testimony presented in support:

Rep. Bill Ohm – Hillsborough 36

- Under RSA 654:12, if no ID is presented when registering to vote for the first time, an ID verification letter is sent out by the Secretary of State. That letter must be returned within 45 days. Letters that are returned as undeliverable are referred to the Attorney General's office and they are tasked with investigation. However, these investigations are not taking place.
- The last report was on the 2010 election. There were no reports on the 2012 or 2014 elections. This lack of activity by the Attorney General is despite having a half time person in the office working on election law.

- This bill as amended gives the Secretary of State's office the ability to investigate these returned letters.
- If the Secretary of State finds that improper voting has occurred, they will forward the information to the Attorney General's office for further investigation and prosecution. This is meant to make better use of our resources across departments.

Rep. Norman Silber – Belmont 2

- I am speaking in support.
- This bill does not convert the Secretary of State's office into a criminal investigation unit. It asks the office to do a preliminary review.
- The situation now is absurd. Statute says these letters are to be investigated, yet they're sitting in boxes in the Attorney General's office because they say they don't have the resources to do the work.
- This bill allows the Secretary of State's office to do the preliminary investigations, which may be as simple as phone calls, to winnow down the list to a more manageable size. Then they will give this information to the Attorney General's office for further investigation and prosecution if necessary.
- This is long overdue; it's ridiculous that we're at the fourth election cycle where nothing has been done about this.

Sen. Woodburn

- (Q) Are you aware of a bill the Senate passed to fund these investigations?
 - (A) **Rep. Silber:** My understanding is that the Attorney General's office has a position to do these investigations, but they've basically said that there's no voter fraud in NH and they don't have the time to look into it. They haven't done their duty under the law. The Secretary of State's office knows what they're doing and would easily be able to add this to their list of duties.

David Scanlan – Deputy Secretary of State

- I am speaking in support.
- Rep. Ohm and Rep. Silber did a good job expressing the need for this. We have a long history of working with the Attorney General's office.
- The accusation that the Secretary of State will investigate and prosecute is a red herring; I don't see that language in this bill.
- This will help winnow down the list for the Attorney General's office.
- The Secretary of State's office does have experience with investigating. We have a division that does investigations, prosecutes, and takes civil action every year. It's not like we're an agency with no experience in these procedures.
- This bill would enhance the process and winnow the volume that we hand over to the Attorney General's office, allowing them to be a lot more effective.

- I passed out an amendment that would add another responsibility. NH joined the interstate crosscheck program and we expect to get matches back. We felt it's appropriate to pre-screen those lists as well.

Sen. Woodburn

- (Q) Is that list of returned envelopes public or shared in any way?
 - (A) **David Scanlan:** The actual list is shared with the Attorney General's office. We are communicating with local Supervisors of the Checklist to clean up that list. Beyond that, the list is not public. We report the aggregate numbers.
- (Q) Is it possible to release it by community or region?
 - (A) **David Scanlan:** We could release aggregate numbers broken down to the point where we're not identifying voters.
- (Q) Is there anything you could share to help us tighten up this information and make more use of it?
 - (A) **David Scanlan:** The letters that we send out go to any voter who used an affidavit to register to vote or obtain a ballot. The qualified voter affidavit and challenged voter affidavit are sent with a postcard that the voter is supposed to sign and mail back to us. In terms of the domicile affidavit, there isn't a required response from the voter. We simply compile a list of any letters that come back as undeliverable and hand it off to the Attorney General's office. If we didn't receive a postcard back or if a letter came back undeliverable, this process helps us make sure that they were legitimate voters. This process wouldn't help us identify if someone is voting in two locations at one time. That's more likely to show up when we review our database, which is a separate process.
- (Q) Is there guidance from other states whether this could be outsourced to a company that specializes in this type of work? Are there other tools that we should consider to clean up this list?
 - (A) **David Scanlan:** I'm not aware of any states that outsource this type of procedure. I would be cautious of doing that. One of the charges of our office is keeping this information confidential.
- (Q) There is some disagreement as to the enthusiasm with which the Attorney General's office is choosing not to pursue these investigations. What is your opinion?
 - (A) **David Scanlan:** I think the Attorney General's office has a heavy workload. They receive hundreds of complaints that they need to follow up on, which doesn't include any of this. Their resources are stretched, especially around the time of the election. Having this information would be very helpful in future discussions regarding election fraud.

Sen. Gray

- (Q) Would you believe that picking a statistical sample and following up on those would be the best use of our limited resources to give us confidence in our data?
 - (A) **David Scanlan:** That's an interesting approach. It would be great to follow through on everything, but a sampling would help us understand what fraud might be taking place.

Summary of testimony presented in opposition:

Gilles Bissonnette – ACLU of NH

- I am speaking in opposition.
- Our concerns are technical in nature, specifically the language that gives the Secretary of State the ability to investigate crimes.
- One argument is that the Secretary of State needs to do pre-screening, which we think is a great idea. However, we think this bill goes farther than that, into crime investigation. These are tasks best reserved to the Attorney General's office.
- The legislature passed SB 509 last year, which gave the Secretary of State the chance to revise the list based on input from the Supervisors of the Checklist, which we did not oppose. This lessens the workload for the Attorney General's office.
- The fiscal note contemplates the idea that this bill would require the creation of a new investigator position within the Secretary of State's office, costing over \$200,000 over four years. If you're going to do that, they should be housed within the Attorney General's office, which is equipped to investigate voting offenses.

Sen. Soucy

- (Q) Is the concern not the investigation, but the judgment made by the Secretary of State's office prior to forwarding the information to the Attorney General's office?
 - (A) **Gilles Bissonnette:** We were more concerned about that with the original bill, which used the term "prosecution". The Attorney General's office still has the independent authority to make that decision. I think the Attorney General's office would probably have the obligation to conduct their own investigation, regardless of what the Secretary of State's office does, so this bill is duplicative. If the idea is to enable to Secretary of State's office to pre-screen, we have no objection. We're concerned about the use of the language "investigate", and that it contemplates hiring an investigator within the Secretary of State's office instead of the Attorney General's office.

Sen. Birdsell

- (Q) In lines 9-11, doesn't that show they're doing a pre-investigation to winnow it down before it gets to the Attorney General?
 - (A) **Gilles Bissonnette:** I know that's the intent, but using the term "investigation" creates ambiguity in the language. I think the ability to do pre-screening already exists in current law.
- (Q) Why would it be improper to have an investigator in the Secretary of State's office?
 - (A) **Gilles Bissonnette:** We're concerned with who is the appropriate entity to engage in criminal investigations. In cases where there is a credible issue of fraud, we think it should be investigated. The Attorney General's office is under-resourced to do it, but they have career prosecutors trained to investigate crimes and protect the constitutional rights of defendants. They are the experts and historically we've given these powers exclusively to this branch.

Neutral Information Presented:

Ann Rice – Deputy Attorney General

- I am providing information.
- The investigative part of this bill is great. However, if you don't locate people, you have to put investigators out on the street, knocking on doors. If you can't locate people, you can't prosecute.
- If you pass this bill, you need to understand that the much more resource-heavy part is still not addressed. We have repeatedly asked for election investigators to help us with this.

Sen. Birdsell

- (Q) The Senate has passed a bill to fully fund one investigator. Is that enough? Will you continue to keep the half time person on?
 - (A) **Ann Rice:** Yes, we need to keep the half time person on. He's an attorney, not an investigator. He provides legal advice for the Secretary of State's office and for towns. It's a very different function than going out onto the street. I'd like to say that one investigator is enough. It depends on how much pre-screening gets done at the Secretary of State's office. We'd have to see what the results are.

Sen. Woodburn

- (Q) As someone who writes notes and sees many come back, is there any way to analyze this by region to see if it has anything to do with the delivery of mail?
 - (A) **Ann Rice:** When we initially looked, a lot of them were from college communities because students move on. Other than that, I'm not sure.

We could look into doing an analysis of that with the Secretary of State's office.

- (Q) As we saw with the Celina Cass incident in the North Country, our investigatory staff is limited and possibly inadequate. Are you being required to do more things with fewer resources?
 - (A) **Ann Rice:** When this was originally passed, we testified that we couldn't do it unless there was an appropriation to the office. It has continued to be one of those situations.

Sen. Birdsell

- (Q) You stated that many returned letters are from students. We got 458 letters back from 2016. Have those students moved on since then?
 - (A) **Ann Rice:** I don't have any statistics on 2016. I was referring to 2014.

Sen. Gray

- (Q) Were you referring to the situation where letters were sent out during winter break?
 - (A) **Ann Rice:** I don't know enough about the details to answer that.

Future Action: Pending

KEF

Date Hearing Report completed: April 4, 2017