

Senate Finance Committee

Deb Martone 271-4980

SB 58, relative to the authority of the department of state.

Hearing Date: January 24, 2017

Time Opened: 1:51 p.m.

Time Closed: 2:00 p.m.

Members of the Committee Present: Senators Daniels, Reagan, Morse, D'Allesandro and Feltes

Members of the Committee Absent: Senator Giuda

Bill Analysis: This bill provides that the term "department" as defined in RSA 9:1 shall not include the office of the secretary of state when the office is executing its constitutional duties.

Sponsors:

Sen. D'Allesandro

Sen. Bradley

Sen. Soucy

Who supports the bill: Senators D'Allesandro and Soucy; Secretary of State William Gardner.

Summary of testimony presented in support:

Senator D'Allesandro, Prime Sponsor:

- The Secretary of State has 18 specific Constitutional Duties. Others who fall into this category such as the Justice Department, the Attorney General's Office and the Governor's Office are all exempt.
- This bill has either been introduced or acted on in the last 3 bienniums. It is currently in statute. However, it sunsets at the end of this biennium. SB 58 would make it permanent.
- Specifically, it is the Department of State in the execution of the Constitutional Duties of the Office of the Secretary of State. This bill would make it consistent with the other departments that have this in place.
- Secretary of State Bill Gardner's competency in running his department has been extraordinary over the years. He receives nationwide recognition for the work he does.

Secretary of State William Gardner:

- Of all the state departments, there are 3 that are included in the New Hampshire Constitution. These include the Attorney General, the Treasurer and the Secretary of State. Of those 3, only one has additional Articles in the Constitution mandating that person to perform certain duties. For the Secretary

of State there are 18 Constitutional Duties. There are no others for either the Treasurer or the Attorney General. For the Governor there are 22. For the entire Judicial Branch there are 19. For the Senate there are 36. For the House of Representatives there are 29.

- This bill only affects those duties that the Secretary of State is accountable directly to the people, because the people have placed this in the Constitution.
- A half dozen years ago during Governor Lynch's tenure, there was an Executive Order that would centralize many of the functions of the departments directly under the Governor, because they are the Governor's appointees. It then got placed into statute. Secretary Gardner requested some exemptions due to the nature of some of the functions, i.e., hiring, the "RIF" list and recount personnel. All of those would go through a different department, and would have that department make some of those decisions. This wasn't appropriate for an office that had Constitutional Duties.
- There were provisions in the budget every two years. But after the last budget, a letter on New Hampshire Senate stationery was sent to the United States Election Assistance Commission in Washington, signed by 2 Senators and 2 House members. The letter was about the state-specific program dealing with taking pictures in the polling place of people who did not display IDs. These legislators did not believe that funds to pay for such action should be paid out of federal funds. They were critical and believed it didn't apply to the federal law. The Secretary of State would be spending federal funds to do this.
- At the time, when the Secretary of State submitted its budget to the Governor, it had indicated the funds would be spent out of the General Fund. The Governor's Office changed the appropriation to federal funds. Thus, when the letter was sent, it was in the budget as federal funds. The Governor, however, ended up vetoing that budget.
- The Secretary of State had the obligation in September to supply the cities having municipal elections with the photography equipment. They used the General Fund because of the vetoed budget. The Secretary of State was using funds they had originally requested from the General Fund.
- In Chapter 9 there are certain parts of state government that don't have it apply. It is those parts that are Constitutional.
- If the Secretary of State used federal funds and it was wrong, the Secretary of State would have been liable. He would be accountable. But if the Secretary of State is going to be responsible to the people to ensure elections are held at the appropriate time, there should not be other influences in the Executive Branch that are contrary to decisions that a Constitutional Officer would make.

Future Action: Ought to Pass

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Date Hearing Report completed: January 26, 2017