

## Senate Judiciary Committee

*Jennifer Horgan 271-3092*

**CACR 8**, relating to eliminating registers of probate. Providing that part II, article 71 be amended to eliminate registers of probate.

**Hearing Date:** January 26, 2017

**Time Opened:** 10:00 a.m.

**Time Closed:** 11:00 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, French, Gannon and Hennessey

**Members of the Committee Absent :** None

**Bill Analysis:** This Constitutional amendment concurrent resolution provides that registers of probate be eliminated.

**Sponsors :**

Sen. Carson  
Rep. Sytek

Sen. Bradley  
Rep. Wall

Sen. Birdsell  
Rep. Keans

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**Who supports the bill:** Senator Carson; Senator Birdsell; Representative Wuelper; Representative Keane; The Honorable Donna Sytek, Register of Probate for Rockingham; Judge David King, NH Judicial Branch

**Who opposes the bill:** Senator Gray; Representative Itse; Secretary Gardner, Secretary of State's Office; Alan Glassman, Register of Probate for Belknap; Cathy Stacey, NH Association of Counties

**Summary of testimony presented in support:**

**Honorable Donna Sytek** (provided written testimony)

- Register of probate for Rockingham County.
- Ran on the promise of eliminating the position.
- The Register of Probate is a state employee and part of the Judicial Branch.
- Historically, the register of probate served as the clerk for the probate court.
- The probate court was part of the county until 1984.
- There were municipal courts paid for by the municipalities, district courts were paid for by the municipalities they served, and the probate courts were paid for by the county.
- Legislation in 1984 unified the court system under the state umbrella and moved the probate court under the state.
- In 2011, there was a re-organization of the district and probate court in the Judicial Branch Family Division, which resulted in the formation of a new court called the circuit court.
- The Constitution only mentions the superior and the supreme court.
- All other courts are creatures of the legislature.
- Within the reorganization in 2011, the legislature stripped away the responsibilities from the elected register of probate and moved them to a court employee.

- The register of probate is now only responsible for the preservation of files.
- The election of the register of probate is in the Constitution and that is why the position still exists.
- There are a few typos in the bill. The bill analysis says “resisters” when it should say “registers” and on line 16 of the bill, the reference should be article 71, not article 18.
- Provided the letter registers of probate receive when elected that outline the duties and privileges for the position.
- The Rockingham County judge said that all records are held on site and there is no intention to move them, which means there is nothing for the register of probate to do.
- There is HB476 in the House that seeks to restore the duties of the register of probate in the fashion that they were in 1984, under the county.
- That bill raises questions as to whether or not it is an unfunded mandate.
- All of the courts are integrated now.
- Thinks it would be a mistake to go back functionally.
- This is a constitutional office that does not describe any duties.
- There was a court case on the position of sheriff and whether or not the legislature can change those duties and the ruling stated that they can increase or decrease the duties.
- Senator Lasky asked if the courts need the register of probate to assist them in their duties.
  - All duties have already been transferred to court employees, and they have kept up with the work for five years. The result of the reorganization reduced the staff by 59 positions, but they got more efficient and saved about \$3million.
- Senator Gannon asked what the feelings of the other registers of probate are.
  - They are split on this.
- Senator French asked about the salary.
  - It is the \$100 a year and the registers of probate get paid in advance whether they show up or not. The salary had been reduced by SB2.

#### **Representative Keane**

- Those opposed to this bill say that there is a constitutional issue, but this is a CACR to address that.
- Since the writing of the Constitution, a lot of agencies have changed.
- Thinks the courts have successfully taken on more duties and that the controversy will go away after this change.
- Has not heard any complaints on Strafford County.
- However, the historical records are significant and they should be addressed somehow.

#### **Judge David King** (provided written testimony)

- Has been a probate judge for 27 years.
- The register of probate position goes back as far as 1694.
- No court employees worked for the state until 1984.
- Elected registers are a big problem.
- It would be like trying to run a business and the managers are being replaced every two years.
- There have been multiple CACRs in the past that tried to address this.
- The registers used to get paid a full salary and benefits, but some did not feel as though they needed to show up for work, as they were elected.

- There was a register of probate that lived in a nursing home.
- In 2011 there were 52 clerks and courts felt that they could get down to 18.
- In March 2011 the legislature said they wanted the reduction to be completed by June.
- Requested at that time that the registers be addressed as well, as they could not have 18 managers, 10 of which could be replaced every two years.
- Of the ten registers, eight of them got jobs in the circuit court and the other two did not apply.
- This process was all very transparent and started meeting with the registers as early as September 2010 to discuss the process.
- Following this change during the first round of elections, there was a challenge from the register of Hillsborough County, Joe Kelly Levasser, who filed a motion that this was unconstitutional.
- The case was dismissed because he filed it in the wrong court and it has not been challenged since.
- This year, in Sullivan and Grafton no one signed up for the primaries.
- In 2014, there was a vote in Grafton where a fraternity brother from Dartmouth got 20 votes and the runner-up was Keggy McKegger who got 8 votes.
- The courts have electronic filing for small claims and guardianship.
- About to go live with e-court filing for estates and it will become a paperless process soon.
- Only about 4% of estate cases need a hearing.
- It makes no sense to have an elected official to deal with paper, when the courts are not going to be using paper.
- Working with their IT folks to ensure these documents are secure.

#### **Summary of testimony presented in opposition :**

##### **Senator Gray**

- Has been involved with the registers of probate for three years.
- Does not believe the current situation is constitutional.
- The Constitution clearly says the courts may appoint all of their clerks except the register of probate.
- Right now the duties of the register of probate are being done by employees, which is against the Constitution.
- If this bill moves forward, it is necessary to eliminate all of the references to the position within the Constitution.
- Tried to bring this bill forward last year and got so much feedback from people that things were not being taken care of at the probate court.
- The call center is great, but it does not provide a lot of customer feedback.
- Has heard that it takes six months to get an executor established.
- This question will not go on the ballot until two years from last November.
- There is a need to ask first if this is constitutional.

##### **Alan Glassman (provided written testimony)**

- Register of probate for Belknap.
- Speaking on behalf of six of the ten registers.
- Ran for the office because had heard there were problems with it.
- Learned that there are problems and some constitutional inconsistencies.
- After a lot of research and discussion with those on both sides of this issue, determined that this position should be turned back to what it was before.

- The bill in 2011 has created problems.
- Nancy Sirios (Register of Probate for Strafford) stated that the position has had some of the longest serving registers, who know their jobs and they are continually being reelected because of their efforts.
- The Honorable Paul Merski (Register of Probate for Grafton) states that removing the duties was unconstitutional and the current system needs to be reverted.
- The responsibilities of the register of probate may have been eliminated and the salary dropped to \$100, but the archival process is still a responsibility of the register.
- Jane Bradstreet (Register of Probate for Merrimack) pointed out that 50% of the responsibility of the register is the archival process, which has not seen much activity since 2011. This is a concern for everyone who wants to preserve the information.

**Secretary Gardner** (provided written testimony)

- The state archives are part of the secretary of state's office under Article 68.
- RSA 5 defines what a state record is. It is any record of a department, office, commission, board, or other agency, however designated, of the state government; any record of the state legislature; any record of any court of record, whether of statewide or local jurisdiction; or any other record designated or treated as a state record under state law.
- Records are now housed in the state archives.
- When someone transfers land, it is by deed or inheritance.
- In Sullivan County over the last 75 years, there have only been two registers.
- Provided a list of all of the registers there have been in the state and it has one of the lowest turnovers.
- This office has been on the state ballot since the very first state printed ballot.
- The House Committee sent a bill on this to interim study last year and in November 2016 they reported in favor restoring the duties of the register of probate as they were outlined in the Constitution.
- The change to the salary was done in two lines of a 136 page trailer bill.
- The register from Rockingham challenged that change and won, and two of the registers had to be paid the original salary.
- There have been four CACRs that have failed in trying to eliminate this position.
- Wants the branches of government to be close to the people and removing the duties of the register of probate moves the branch further away.
- The legislature has the power to modify the mode of election, but not so as to deprive the people of the right they now have of electing them.
- This is very important to the people of the state because these records are family records.
- Individuals are supposed to get the reference number for files from the register of probate to bring to the state archive.
- State law says that if the registers don't perform their duties, it is a misdemeanor under RSA 548:28.

**Future Action:** Pending