

HB 392-FN - AS AMENDED BY THE HOUSE

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2023 SESSION

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06/04

HOUSE BILL

392-FN

AN ACT relative to constitutional convention procedures for delegates.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This bill enacts procedures to choose, regulate, and bind delegates to an amendment proposing convention under Article V of the United States Constitution.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to constitutional convention procedures for delegates.

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

1 1 Constitutional Conventions and State Party Conventions; General Provisions; Election of
2 Delegates. Amend RSA 667:1 to read as follows:

3 667:1 Election of Delegates.

4 ***I.*** Whenever the qualified voters of the state under the provisions of the *New Hampshire*
5 constitution shall determine that there is necessity for the calling of a convention to revise the *New*
6 *Hampshire* constitution, the general court shall, as is required by the *New Hampshire*
7 constitution, call such convention and shall set the day for the election of delegates and the day and
8 time for the assembly of said delegates in the capitol at Concord.

9 ***II.*** *Whenever a Convention is called to propose amendments to the U.S. Constitution*
10 *pursuant to Article V of the Constitution of the United States, the general court shall set*
11 *the day for the election of federal delegates and alternate federal delegates.*

12 ***III.*** *Whenever a Convention is called to ratify amendments to the U.S. Constitution*
13 *pursuant to Article V of the Constitution of the United States, the general court shall set*
14 *the day for the election of state ratifying delegates and alternate state ratifying delegates.*

15 2 Constitutional Conventions and State Party Conventions; General Provisions; Numbers.
16 Amend RSA 667:2 to read as follows:

17 667:2 Number.

18 ***I.*** Representation in the *New Hampshire constitutional* convention is on the basis of
19 representative districts of the state. Representative districts are entitled to the same number of
20 delegates to the *New Hampshire constitutional* convention as they are entitled to representatives
21 to the general court.

22 ***II.*** *Representation in the federal proposing convention is on the basis of*
23 *representative districts of the Congress. Representative districts shall be entitled to 2*
24 *delegates for each Congressional district and 1 state-wide at-large delegate for a total of 5*
25 *delegates.*

26 ***III.*** *Representation in the state ratifying convention is on the basis of representative*
27 *districts of the state. Representative districts are entitled to the same number of delegates*
28 *and the same number of alternate delegates to the state ratifying convention as they are*
29 *entitled to representatives to the general court.*

30 3 Constitutional Conventions and State Party Conventions; General Provisions; Compensation.
31 Amend RSA 667:5 to read as follows:

HB 392-FN - AS AMENDED BY THE HOUSE

- Page 2 -

667:5 Compensation. Each delegate shall receive [~~\$3~~]**\$100** per day for [~~his~~] **their** attendance at the convention and the same allowance for mileage as is provided for members of the general court.

4 Constitutional Conventions and State Party Conventions; General Provisions; Amendments. Amend RSA 667:6 to read as follows:

667:6 Amendments. The amendments to the **New Hampshire** constitution as are agreed to by such **New Hampshire** constitutional convention shall be submitted so that they can be voted on by the qualified voters either separately or by groups as the **New Hampshire** constitutional convention may determine. The **New Hampshire** constitutional convention shall provide for ascertaining the voters' decisions and the publication of the same by executive proclamation which shall be the effective date unless otherwise determined by the New Hampshire Constitutional convention, and may do any and all other things necessary to carry out the purposes of the **New Hampshire** Constitutional convention.

5 Constitutional Conventions and State Party Conventions; Filing; Eligibility. Amend RSA 667:7 to read as follows:

667:7 Eligibility. Any person who by the laws of this state is a qualified voter in the town, ward, or unincorporated place from which he may be elected is eligible to be a delegate to the constitutional convention[.] **except that no person shall be eligible to be a delegate to constitutional convention who:**

I. Is registered or required to be registered as a lobbyist under RSA 15 or under 2 U.S.C. section 1603, or rules or regulations adopted under such laws; or

II. Holds any office or position within the government of the United States of America, including members of Congress, the Federal Judiciary, or the Federal Executive Branch.

6 Constitutional Conventions and State Party Conventions; Filing; Declaration of Candidacy. Amend RSA 667:10 to read as follows:

667:10 Declaration of Candidacy **and Pledge.**

I. On or before the closing date for filing declarations of candidacy with the town or city clerk as provided by RSA 667:8, any candidate for delegate **to the New Hampshire** constitutional convention shall file with the town or city clerk a declaration of candidacy in substantially the following form, which shall be prepared and furnished by the secretary of state:

I, _____, candidate for office of delegate to the **New Hampshire** constitutional convention from District No. _____ of _____ county hereby certify that I am at least 18 years of age; that I am domiciled in ward _____ of the city of _____ (or town or unincorporated place of _____) county of _____ state of New Hampshire; that I am a voter in District No. _____ of _____ county.

II. On or before the closing date for filing declarations of candidacy with the town or city clerk as provided by RSA 667:8, any candidate for delegate **to the state ratifying convention** shall

file with the town or city clerk a declaration of candidacy in substantially the following form, which shall be prepared and furnished by the secretary of state:

I, _____, candidate for office of delegate to the **state ratifying** constitutional convention from District No. _____ of _____ county hereby certify that I am at least 18 years of age; that I am domiciled in ward _____ of the city of _____ (or town or unincorporated place of _____) county of _____ state of New Hampshire; that I am a voter in District No. _____ of _____ county. ***I do solemnly swear or affirm that I will vote _____ (in favor or against) the proposed amendment to the Constitution of the United States. I will accept and act in accordance to the limits of the authority as a delegate granted to me by New Hampshire law. I understand penalties and consequences that may be imposed under New Hampshire law for violation of this oath.***

III. On or before the closing date for filing declarations of candidacy with the town or city clerk as provided by RSA 667:8, any candidate for delegate **to the state ratifying convention** shall file with the town or city clerk a declaration of candidacy in substantially the following form, which shall be prepared and furnished by the secretary of state:

I, _____, candidate for office of delegate to the **federal proposing** constitutional convention from District No. _____ of _____ county hereby certify that I am at least 18 years of age; that I am domiciled in ward _____ of the city of _____ (or town or unincorporated place of _____) county of _____ state of New Hampshire; that I am a voter in District No. _____ of _____ county. ***I do solemnly swear or affirm that to the best of my abilities, I will, as a delegate to a federal proposing Convention, uphold the Constitution and laws of the United States of America and the state of New Hampshire. I will accept and act in accordance to the limits of the authority as a delegate granted to me by New Hampshire law, and I will not vote to consider or approve any unauthorized amendment or policy proposal introduced by the Convention as prohibited by New Hampshire law. I understand penalties and consequences that may be imposed under New Hampshire law for violation of this oath.***

7 Constitutional Conventions and State Party Conventions; Ballots; Forms. Amend RSA 667:12 to read as follows:

667:12 Form.

I. Every ballot for the election shall contain the name and domicile of each candidate who has filed a declaration of candidacy for delegate.

II.(a) The names of candidates upon the ballot for delegate to the New Hampshire Constitutional Convention shall be arranged in perpendicular columns under the title "For Delegate to the **New Hampshire** Constitutional Convention." ***Below each such phrase shall be printed in small but easily legible letters "Vote for not more than ____ (here insert a number designating how many persons are to be voted for)."***

(b) The names of candidates upon the ballot for delegate to the federal proposing Convention shall be arranged in perpendicular columns under the title "For Delegate to the Federal Proposing Convention." Below each such phrase shall be printed in small but easily legible letters "Vote for not more than two."

(c) The names of candidates upon the ballot for delegate to the federal ratifying Convention shall be arranged in perpendicular columns under the title "For Delegate IN FAVOR of Ratification" for candidates who pledge to vote in favor of ratification or "For Delegate OPPOSED to Ratification" for candidates who pledge to vote against ratification. Below each such phrase shall be printed in small but easily legible letters "Vote for not more than ____ (insert a number designating how many persons are to be voted for)."

III. ~~[Below the title shall be printed in easily legible type the words "Vote for" followed by a spelled number designating the number of persons to be elected to such office.]~~ At the right of the name of each candidate and on the same line, there shall be a square. Following the names there shall be as many blank lines as there are persons to be elected. Whenever there are 2 or more candidates, the names shall be printed upon the ballot in alphabetical order of their surnames according to the alphabetization procedure established in RSA 656:5-a.

8 Constitutional Conventions and State Party Conventions; Election Procedure; Plurality; Ties. Amend RSA 667:17 to read as follows:

667:17 Plurality; Ties. ~~[In all elections hereunder, a plurality shall elect; and, in case of a tie vote, the tie shall be determined by lot by the secretary of state in the presence of the candidates who are tied if, upon notice from him, they elect to be present.]~~

I.(a) In the election for delegates to the state ratifying convention, the leading side shall be either all candidates who pledged to vote for ratification or all candidates who pledged to vote against ratification, whichever has the highest vote total among all candidates so pledged. In the case of a tie, the leading side shall be the side to which the candidate with the plurality of votes has pledged. From among the total number of delegates to which a district is entitled, the leading side shall be entitled to the smallest possible proportion of delegates not less than the proportion of the total vote received by the leading side with the remaining delegates chosen from among the other side. Within each side, the highest vote totals shall elect the number of delegates to which that side is entitled.

(b) For every delegate to the state ratifying convention elected to each side, an alternate delegate shall also be selected from among the remaining candidates on the same side. Within each district, within each side, the highest vote totals among those candidates who were not elected delegate shall elect the number of alternate delegates to which that side is entitled.

(c) In elections for delegate to the federal proposing convention, the plurality shall elect. Among the remaining candidates, the plurality shall elect the alternate delegate to the federal proposing convention.

II. Except as provided in paragraph I, in all elections hereunder, a plurality shall elect; and, in case of a tie vote, the tie shall be determined by lot by the secretary of state in the presence of the candidates who are tied if, upon notice from ~~him~~ the secretary of state, they elect to be present. This provision shall also apply to determine the leading side in an election for delegates to the state ratifying convention if the procedure in subparagraph I(a) fails to determine a winner.

9 Constitutional Conventions and State Party Conventions; Vacancies; Filling Vacancies. Amend RSA 667:19 to read as follows:

667:19 Filling Vacancies.

I. A vacancy caused by the death, resignation or removal from a district of a delegate to a New Hampshire constitutional convention may be filled by a special election held in the district. The special election may be held on the same day on which another meeting of the town or ward is held or at a different time. However, if the special election is held in a representative district having more than one town, ward or unincorporated place, the election must be held on the same day throughout the district. An article for the election of a delegate shall be inserted in the warrants calling the meeting. All laws relating to the election of representatives to the general court, so far as they are applicable, apply to the special election to fill the vacancy in the office of delegate.

II. Vacant seats in a state ratifying convention shall be filled by the alternate delegate who received the most votes in the same district as the delegate whose seat has been vacated who pledged to vote in the same manner as said delegate. If no such alternate delegate is available, the speaker of the house of representatives of the state of New Hampshire shall choose an alternate delegate to serve in the vacated seat from among the alternate delegates who pledged to vote in the same manner as the delegate from the vacated seat. The secretary of state shall issue new credentials to an alternate delegate immediately upon being notified of the vacancy.

III. Vacant seats in a federal proposing convention shall be filled by the alternate delegate from the same district as the delegate whose seat was vacated. If no such alternate delegate is available, the alternate delegate shall be chosen by the oversight committee pursuant to RSA 667:25. The secretary of state shall issue new credentials to an alternate delegate immediately upon being notified of the vacancy.

10 New Sections; Constitutional Conventions and State Party Conventions; Delegates; Delegate Instructions. Amend RSA 667 by inserting after section 23 the following new sections:

667:24 Delegate Instructions.

1 I. If a convention is called to propose amendments to the U.S. Constitution pursuant to
2 Article V of the Constitution of the United States on the basis of applications that include an
3 application from the legislatures of state of New Hampshire, the text of said application of the
4 legislature of the state of New Hampshire shall be considered binding instructions upon the New
5 Hampshire delegates to the federal proposing convention.

6 II. The general court may adopt, by joint resolution, instructions that are binding upon
7 delegates to a federal proposing convention and said instructions may alter or supersede previous
8 instructions including instructions created pursuant to paragraph I.

9 III. Notwithstanding other provisions of law, delegates to a federal proposing convention
10 shall not have the authority to allow consideration, support, or approve an amendment that is not
11 authorized by the application of the several states. Nor may delegates allow consideration, support,
12 or approval of measures to restrict or delay public access to information concerning the proceedings
13 of the convention. Improper consideration, support, or approval shall include, but not be limited to,
14 making or seconding a motion, voting for, or otherwise taking any formal action in favor of an
15 unauthorized Amendment to the United States Constitution.

16 IV. A delegate to a New Hampshire constitutional convention who pledges to vote in FAVOR
17 of a proposed Amendment to the Constitution of the United States pursuant to RSA 667:12, II(c)
18 shall vote in favor of said amendment. A delegate to a New Hampshire constitutional convention
19 who pledges to vote AGAINST a proposed Amendment to the Constitution of the United States
20 pursuant to RSA 667:12, II(c) shall vote against said amendment.

21 667:25 Penalties and Enforcement.

22 I. Whenever a Convention is called to propose amendments to the U.S. Constitution
23 pursuant to Article V of the Constitution of the United States, the general court shall form an
24 oversight committee with membership selected as follows:

25 (a) Four members of the delegation shall be selected by the New Hampshire house of
26 representatives; one member shall be appointed by the speaker of the house of representatives and 3
27 members shall be elected by a majority vote of the house of representatives.

28 (b) Three members shall be selected by the New Hampshire senate; one member shall be
29 appointed by the senate president and 2 members shall be elected by a majority vote of the senate
30 members.

31 (c) Not more than 4 members of the oversight committee shall be of the same political
32 party.

33 (d) No person shall serve as a member of the oversight committee unless they are
34 eligible to serve as a delegate to the amendment proposing convention pursuant to RSA 667:6. No
35 person shall serve as a member of the oversight committee if they are a delegate or an alternate
36 delegate to the amendment proposing convention.

II. Any vote taken by a delegate from New Hampshire at a federal proposing convention in violation of RSA 667:24 or other provision of law shall be null and void. Any delegate making this vote shall be immediately disqualified from serving as a delegate to the convention in question. Any delegate or member of the oversight committee who has reason to believe that any other delegate from New Hampshire has taken such disqualifying action shall immediately report such action to the full oversight committee and to the New Hampshire secretary of state. Upon receipt of written or other recorded evidence of unauthorized consideration, support, or approval by a delegate the New Hampshire secretary of state shall:

(a) Take immediate action to revoke the credentials of the offending delegate and immediately fill the vacancy in accordance with RSA 667:19, III.

(b) Notify the official organizers of the federal proposing convention in question and all appointed delegates to such convention of the automatic revocation of any delegate's certification should the delegate violate their oath to act only within the limits of the authority granted by the state of New Hampshire.

III. The oversight committee shall:

(a) Aid the delegates to the federal proposing convention including, but not limited to, ensuring that they properly understand the requirements of them in accordance with the law and any instructions provided by the general court.

(b) Regularly hold public hearings to ascertain the views of the citizens of the state of New Hampshire and shall use that information to better advise the delegates of the convention.

(c) Fill, by majority vote, any vacancy that may occur on the oversight committee with an acting member of the committee who shall serve until a permanent replacement is appointed in the same manner as the committee member whose seat has been vacated.

(d) Create, update, and transmit to the secretary of state a list of alternate delegates to be appointed if necessary pursuant to RSA 667:19, III.

IV. A delegate to a state ratifying convention who knowingly refuses to cast that delegate's vote as prescribed in RSA 667:24 is no longer eligible to hold the office of delegate and that office is deemed and declared vacant by operation of law. The chairperson of the convention shall immediately seat an alternate in their place in accordance with RSA 667:19, II. The alternate delegate shall cast the delegate's vote as prescribed by this section.

11 Criminal Code; Falsification in Official Matters; False Swearing. Amend RSA 641:2 to read as follows:

641:2 False Swearing.

I. A person is guilty of a misdemeanor if:

~~[I.—He makes]~~ **(a) *Such person makes*** a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and ~~[he does]~~ ***he or she does*** not believe the statement to be true if:

[~~(a)~~] **(1)** The falsification occurs in an official proceeding, as defined in RSA 641:1, II, or is made with a purpose to mislead a public servant in performing [~~his~~] **their** official function; or

[~~(b)~~] **(2)** The statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or

[~~II. He makes~~] **(b) Such person makes** inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by [~~him~~] **such person** to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

I-a.(a) A person shall be guilty of a class B felony if such person purposefully acts in violation of instructions required due to their official role as a delegate to a federal proposing convention authorized pursuant to article V of the Constitution of the United States. A person found guilty under this section who has purposefully attempted to alter, amend, or supercede the Constitution of the United States in contradiction to the laws of the state of New Hampshire or of the United States may be barred from holding public office pursuant to Section III of the Fourteenth Amendment to the Constitution of the United States.

(b) A person shall be guilty of a class A misdemeanor if such person knowingly acts in violation of instructions required due to their official role as a delegate to a federal proposing convention authorized pursuant to article V of the Constitution of the United States. A person found guilty under this section who has knowingly attempted to alter, amend, or supercede the Constitution of the United States in contradiction to the laws of the state of New Hampshire or of the United States may be barred from holding public office pursuant to Section III of the Fourteenth Amendment to the Constitution of the United States.

[~~III.~~] **II.** No person shall be guilty under this section if [~~he retracts~~] **such person retracts** the falsification before it becomes manifest that the falsification was or would be exposed.

12 Effective Date. This act shall take effect January 1, 2024.

HB 392-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0452h)

AN ACT relative to constitutional convention procedures for delegates.

FISCAL IMPACT: ☐ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	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	\$0	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

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 Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Complex Felony Case	\$3,195	\$3,244	\$3,366
Routine Criminal Case	\$644	\$657	\$779
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.
Contract Attorney - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee		\$825/Case \$105 administrative fee \$200 incarceration fee

	(If applicable)	(If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
Contract Attorney - Major Crimes (aggravated felonious sexual assault, felonious sexual assault and first degree assault)	\$2,490/Case \$140 administrative fee \$200 incarceration fee (If applicable)	\$2,490/Case \$140 administrative fee \$200 incarceration fee (If applicable)
Assigned Counsel - Felony. Homicide including capital cases. Travel time to court does not count toward the cap.	\$125/Hour up to \$20,000	\$125/Hour up to \$20,000
Assigned Counsel - Major Crimes. Aggravated felonious sexual assault, felonious sexual assault, first degree assault, class A felony robbery and felony arson. Travel time to court does not count toward the cap.	\$125/Hour up to \$12,500	\$125/Hour up to \$12,500
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
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 of 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 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688
The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

AGENCIES CONTACTED:

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