

SB 89 - AS INTRODUCED

2021 SESSION

21-0999

11/05

SENATE BILL **89**

AN ACT adopting omnibus legislation relative to election procedures and registers of probate.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Election Law and Municipal Affairs

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ANALYSIS

This bill adopts legislation relative to:

I. The city chief elections officer.

II. Prohibiting the taking of certain photographs within the guardrail.

III. Allowing the opening of the absentee ballot outer envelopes and the preprocessing of absentee ballots.

IV. Establishing a committee to study post election audit counting devices.

V. The duties of the registers of probate.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT adopting omnibus legislation relative to election procedures and registers of probate.

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

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I. LSR 21-0999, relative to the city chief elections officer, sponsored by Sen. Gray,  
3 Prime/Dist. 6.

4 Part II. LSR 21-1002, prohibiting the taking of certain photographs within the guardrail,  
5 sponsored by Sen. Gray, Prime/Dist. 6.

6 Part III. LSR 21-1004, allowing the opening of absentee ballot outer envelopes and the  
7 preprocessing of absentee ballots, sponsored by Sen. Gray, Prime/Dist. 6.

8 Part IV. LSR 21-1051, establishing a committee to study post election audit counting devices,  
9 sponsored by Sen. Gray, Prime/Dist. 6.

10 Part V. LSR 21-0998, relative to the duties of the registers of probate, sponsored by Sen. Gray,  
11 Prime/Dist. 6.

12 2 Legislation Enacted. The general court hereby enacts the following legislation:

13 PART I

14 Relative to the City Chief Elections Officer.

15 1 Chief Elections Officer; City Clerk. Amend RSA 659:9-a to read as follows:

16 659:9-a City [~~Chief Elections Officer Duties~~] **Clerk Uniform Practices**. The city [~~chief~~  
17 ~~elections officer~~] **clerk** shall establish uniform practices and procedures that conform to state and  
18 federal law for the conduct of elections at all polling places within the city. The moderators and  
19 other election officials who conduct elections at the individual polling places within the city shall  
20 comply with the uniform procedures established for the city by the city [~~chief elections officer~~] **clerk**.  
21 The secretary of state shall resolve any conflicting interpretations of state and federal laws arising  
22 between the [~~chief elections officer~~] **city clerk** and other election officials. The legislative body of  
23 any city may vote to have the duties of the ward officers relative to the selection and equipping of  
24 polling places assigned to the city [~~chief elections officer~~] **clerk**.

25 2 Repeal. RSA 652:14-a, relative to city chief elections officers, is repealed.

26 3 Effective Date. Part I of this act shall take effect 60 days after its passage.

27 PART II

28 Prohibiting the Taking of Certain Photographs within the Guardrail.

29 1 New Section; Election Procedure; Prohibited Acts; Photography. Amend RSA 659 by inserting  
30 after section 45 the following new section:

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1       659:45-a Certain Photography Prohibited. No person shall take or cause any photograph to be  
2 taken within the guardrail that captures another voter or another voter's ballot.

3       2 Effective Date. Part II of this act shall take effect 60 days after its passage.

4                                   PART III

5       Allowing the Opening of Absentee Ballot Outer Envelopes and the Preprocessing of Absentee Ballots.

6       1 Processing Absentee Ballots. Amend RSA 659:49, II to read as follows:

7               II. Notwithstanding the provisions of paragraph I, ~~upon the written challenges of 10 or~~  
8 ~~more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the~~  
9 ~~processing of all absentee ballots until after the polls close and prior to the counting of all ballots~~  
10 ~~cast in the election.] the moderator, or his or her designee, shall post the time at which the~~  
11 processing of absentee ballots shall begin at the polling place and one other public location at least  
12 24 hours before the polls open. In addition, when the polls open the moderator shall announce the  
13 time at which the processing of absentee ballots shall begin.

14       2 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as  
15 follows:

16       659:49-b Opening Absentee Ballot Outer Envelopes.

17               I. The town and city clerks or their designee shall open outer envelope of all absentee ballots  
18 received prior to 5:00 pm on the day prior to election day. The envelope containing the ballot shall  
19 not be removed from the outer envelope at such time.

20               II. The clerk shall establish a policy identifying when the outer envelopes will be opened and  
21 the review of the affidavit conducted. When election day is within 2 weeks the opening of the  
22 envelopes and review of the affidavit shall occur not later than the next business day after the clerks  
23 receive the returned absentee ballot.

24               III. The affidavit shall be reviewed pursuant to RSA 659:50.

25               IV. If errors are identified during this review that would cause the ballot to be rejected the  
26 town or city clerk or their designee shall attempt to contact the voter to notify them of the errors and  
27 possible methods to correct the error using the telephone or email information, if provided, on the  
28 application. The clerk shall make a record that notice was provided to the voter on the clerk's list of  
29 absentee ballots.

30       3 New Section; Processing Absentee Ballots; Pre-processing of Absentee Ballots. Amend RSA  
31 659 by inserting after section 49-b the following new section:

32       659:49-c Pre-processing of Absentee Ballots.

33               I. The moderator or the moderator's designee may authorize the pre-processing of absentee  
34 ballots as described below provided that the pre-processing occurs in public with notice of the time  
35 and place.

36               II. After the corrected checklist to be used at the election has been posted, and based on the  
37 reviews conducted per RSA 659:49-b, notations may be made on the checklist to help facilitate

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1 processing of the ballot on election day. The ballot shall remain secure in the unopened affidavit  
2 envelope until final processing on election day.

3 III. The moderator or moderator's designee shall not initiate compliance with RSA 659:51  
4 and RSA 659:52 until the time specified in RSA 659:49 on election day.

5 4 Processing Absentee Ballots; Challenges. Amend RSA 659:51, I to read as follows:

6 I. All absentee ballots are subject to challenge after the moderator publicly announces the  
7 name of the absentee voter, except for voters provided for in RSA 7:46, but not after ***the checklist is***  
8 ***marked with the red "A.V." or*** the ballot is removed from the envelope. No challenge to an  
9 absentee ballot may be asserted except in conformity with the requirements of RSA 659:27-a.

10 5 Processing Absentee Ballots; Opening Envelope; Depositing Ballot. Amend RSA 659:52 to  
11 read as follows:

12 659:52 Opening Envelope; Depositing Ballot. If the absentee ballot is not challenged, the  
13 moderator shall, after announcing the name of the voter, open the envelope containing the ballot so  
14 the affidavit is not destroyed. The moderator shall then take the ballot out of the envelope without  
15 unfolding the ballot or without permitting the ballot to be examined, and he or she shall preserve the  
16 affidavit with the ballots cast at the election as provided in RSA 659:101. The moderator shall then  
17 ~~[have a checkmark placed beside the name of the absentee voter on the checklist and write~~  
18 ~~therewith]~~ ***mark the checklist in such a way as to indicate the voter has voted, and write*** the  
19 letters "A.V." in red ink and shall then deposit the ballot in the ballot box.

20 6 Effective Date. Part III of this act shall take effect August 1, 2021.

21 **PART IV**

22 **Establishing a Committee to Study Post Election Audit Counting Devices.**

23 1 Committee Established. There is established a committee to study post election audit  
24 counting devices.

25 2 Membership and Compensation.

26 I. The members of the committee shall be as follows:

27 (a) Two members of the senate, appointed by the president of the senate.

28 (b) Three members of the house of representatives, appointed by the speaker of the  
29 house of representatives.

30 II. Members of the committee shall receive mileage at the legislative rate when attending to  
31 the duties of the committee.

32 3 Duties. The committee shall determine what ballot counting equipment is available which  
33 would support a post election audit in New Hampshire, and shall study the feasibility, time  
34 constraints, and cost of conducting a post election audit using any vote counting equipment  
35 identified. The committee may use ballots cast in prior elections to test ballot counting equipment,  
36 provided that such use is in conjunction with the secretary of state and with the approval of the  
37 ballot law commission.

1 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from  
2 among the members. The first meeting of the committee shall be called by the first-named senate  
3 member. The first meeting of the committee shall be held within 45 days of the effective date of this  
4 section. Three members of the committee shall constitute a quorum.

5 5 Report. The committee shall report its findings and any recommendations for proposed  
6 legislation to the president of the senate, the speaker of the house of representatives, the senate  
7 clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library  
8 on or before November 30, 2021.

9 6 Effective Date. Part IV of this act shall take effect upon its passage.

10 PART V

11 Relative to the Duties of the Registers of Probate.

12 1 Establishing Compensation; Register of Probate. Amend RSA 23:7 to read as follows:

13 23:7 Establishing Compensation. Every county convention shall have the power to establish  
14 salaries, benefits, and other compensation paid to elected county officers including the county  
15 attorney, sheriff, register of deeds, *register of probate*, treasurer, and county commissioners. For  
16 the purposes of this section, *except for the register of probate*, "compensation" shall include  
17 salary, longevity pay, vacation and sick pay, allowances, and all other payments made by the county  
18 to its officers, plus the fair market value of any compensation paid in kind if reportable as income for  
19 federal income tax purposes, plus all fringe benefits that may be provided including health insurance  
20 and retirement, and may also include an upper limit on the amount of mileage and out-of-pocket  
21 expenditures reimbursable to each officer. Said compensation shall be established biennially by the  
22 county convention prior to the filing date required under RSA 655:14 for the elected offices listed in  
23 this section, upon recommendation of the executive committee which shall remain in effect during  
24 their term of office. Notwithstanding any other provision of law to the contrary, in counties in which  
25 any of the officers listed in this section receive fees or mileage, or both, for services performed by  
26 them as part of their compensation, the county convention may put such officer on a salary and  
27 expenses basis. Such officer may be required to continue to collect the usual fees and mileage for the  
28 service performed and to pay over all such fees and mileage to the county treasurer for the use of the  
29 county. In such event, the amount such officer received in fees and mileage, less expenses, shall be  
30 included in determining the minimum at which his *or her* salary may be established unless a lesser  
31 amount is agreed upon by the incumbent officer at that time. In no case, *except for the register of*  
32 *probate*, shall the salary or other compensation of any of such officers be established at a lesser  
33 amount than that which was in effect December 31, 1972.

34 2 Salaries for Counties; Register of Probate. Amend RSA 23:8 to read as follows:

35 23:8 Salaries for Counties.

36 *I.* Every county shall establish the salary for its register of deeds at a fixed dollar value.  
37 Said salaries may not be established either in part or in total as a percentage of fees or other charges

1 or payments collected by said register. Said salaries shall be established not less than biennially by  
2 the county convention, upon recommendation of the executive committee. In no case shall the salary  
3 of any of said registers of deeds be a lesser amount than the salary which said register was receiving  
4 on January 1, 1974.

5 ***II. Every county shall establish the salary for its register of probate at a fixed dollar***  
6 ***value. Said salaries may be established either in part or in total as a percentage of fees or***  
7 ***other charges or payments collected by the county treasurer or the state and consistent***  
8 ***with RSA 548:17. Said salaries shall be established not less than biennially by the county***  
9 ***convention, upon recommendation of the executive committee.***

10 3 Supreme Court; Entry Fees. RSA 490:24, I is repealed and reenacted to read as follows:

11 I. For the benefit of the state and counties, there shall be paid to the clerk for the entry of  
12 every reserved case, bill of exceptions, petition, appeal, or other action, for the filing of every motion  
13 or other document supplementary to the entered case, and for any service rendered by the clerk,  
14 such fees as shall from time to time be established by the court. The clerk shall determine the total  
15 amount of probate entry fees collected in each county. The clerk shall set aside 10 percent of each  
16 probate entry fee paid to the probate division of the circuit court for allocation to the counties for the  
17 salary, benefits, and other compensation costs of the registers of probate as set forth in RSA 490:27.  
18 From the remaining entry fees, 6 percent shall be set aside for deposit into a special escrow account  
19 established under RSA 490:26-c and 30 percent for deposit into the judicial branch information  
20 technology fund established under RSA 490:26-h. The proceeds of fees for motions to appear in court  
21 pro hac vice shall be paid into the law library revolving fund established in RSA 490:25, III.

22 4 Escrow Fund for Court Facility Improvements. Amend RSA 490:26-c to read as follows:

23 490:26-c Escrow Fund for Court Facility Improvements.

24 I. [~~Six~~] ***From the entry fees remaining after the deductions required under RSA***  
25 ***490:24, I, 6*** percent of each entry fee collected in the supreme, superior, and circuit courts shall be  
26 deposited in escrow for judicial branch facility improvements. Moneys in the escrow fund shall be  
27 used for improvements to judicial branch facilities by the department of administrative services as  
28 recommended and approved by the supreme court.

29 II. The state treasurer shall establish procedures for deposits to and expenditures from the  
30 ***judicial*** escrow fund for court facilities. The ***judicial*** escrow fund shall be a dedicated capital  
31 reserve fund for the improvement of existing court facilities, or those facilities acquired pursuant to  
32 an act of the general court.

33 III. The funds on deposit in the ***judicial*** escrow fund for court facility improvements shall  
34 be invested by the state treasurer in obligations of the United States government, in government  
35 agency obligations, in obligations which are legal investments for savings banks and trust  
36 companies, and in all types of savings accounts or certificates of deposit of both state or federally  
37 chartered institutions.

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1 5 Judicial Branch Information Technology Fund. Amend RSA 490:26-h, I(a) to read as follows:

2 (a) ~~[Thirty]~~ ***From the entry fees remaining after the deductions required under***  
3 ***RSA 490:24, I, 30*** percent of each entry fee collected in the supreme, superior, and circuit courts and  
4 16.67 percent of the penalty assessment collected pursuant to RSA 106-L:10 shall be deposited in the  
5 judicial branch information technology fund.

6 6 Supreme Court; Probate Division of the Circuit Court Fees. Amend RSA 490:27 to read as  
7 follows:

8 490:27 Probate Court Fees.

9 I. Probate ***division of the circuit*** court fees as established by the supreme court under RSA  
10 490:26-a shall be paid to the clerk of the applicable circuit court established in RSA 490-F for the  
11 benefit of the state ***and counties***.

12 II. The sum of \$5 shall be added to each entry fee collected in the probate ***division of the***  
13 ***circuit*** courts and shall be deposited in the mediation and arbitration fund established under RSA  
14 490-E:4. ***Probate entry fees shall be set to allow for the allocation to the counties of up to 10***  
15 ***percent of the fees collected for the salary, benefits, and other compensation costs of***  
16 ***registers of probate in eligible counties having established such compensation pursuant to***  
17 ***RSA 23:7 and RSA 23:8. Such costs shall only be reimbursed to counties that have***  
18 ***established compensation pursuant to RSA 23:7 and RSA 23:8, and only to the extent***  
19 ***covered by 10 percent of the probate entry fees collected. No later than 30 days after each***  
20 ***calendar quarter, eligible counties shall report the salary, benefits, and other***  
21 ***compensation costs for the register of probate to the administrative office of the courts.***  
22 ***The office shall distribute up to 10 percent of the probate entry fees collected in the***  
23 ***preceding quarter based on each county's share of total statewide probate cases filed.***

24 7 Circuit Court Clerks; Appointment. Amend RSA 490-F:13 to read as follows:

25 490-F:13 Circuit Court Clerks; Appointment. The administrative judge of the circuit court shall  
26 appoint a clerk with responsibility for each circuit court site. In the interest of the effective  
27 administration of justice, any such clerk may have responsibility for one or more circuit court  
28 locations. Circuit court clerks shall have the same duties as clerks of the former district court ~~[and~~  
29 ~~judicial branch family division and as registers of probate with the exception of RSA 15-B, RSA 456-~~  
30 ~~B, RSA 548, RSA 653, RSA 655, and RSA 661 which shall remain as duties of the registers of~~  
31 ~~probate. Circuit court clerks shall hold office at the pleasure of the administrative judge of the~~  
32 ~~circuit court].~~

33 8 Judicial Conduct Commission; Definitions; Clerk. Amend RSA 494-A:2, I to read as follows:

34 I. "Clerk" means a clerk of court or a deputy clerk, ~~[a register of probate or deputy register,]~~  
35 a court stenographer or reporter, and any person performing the duties of a clerk~~[-register,]~~ or  
36 reporter.

37 9 Judges and Their Jurisdiction; Records. Amend RSA 547:27-b, I to read as follows:

1 I. The probate *division of the circuit* court shall [~~appropriately retain all wills and their~~  
2 ~~probate; all proceedings with regard to real estate; all accounts settled, and all orders, decisions, and~~  
3 ~~appointments from which an appeal may be claimed~~] **provide system access to the electronic**  
4 **probate files to check on activities related to probate matters.**

5 10 Judges of Probate and Their Jurisdiction; Probate Division of the Circuit Court Entry Fees.  
6 Amend RSA 547:27-c to read as follows:

7 547:27-c Probate Court Entry Fees.

8 I. **Probate division of the circuit court** entry fees as established by the supreme court  
9 under RSA 490:26-a shall be paid to the clerk of each applicable circuit court established in RSA 490-  
10 F for the benefit of the state **and counties.**

11 II. **The clerk shall determine the total amount of probate entry fees collected by**  
12 **each county. From the entry fees remaining after the deductions required under RSA**  
13 **490:24, I**, the clerk shall set aside 6 percent of each entry fee paid into the court for deposit into a  
14 special escrow account established under RSA 490:26-c and 30 percent [~~of each entry fee paid into~~  
15 ~~the court~~] for deposit into the judicial branch information technology fund established under RSA  
16 490:26-h. The proceeds of fees for motions to appear in court pro hac vice shall be paid into the law  
17 library revolving fund established in RSA 490:25, III.

18 11 Registers of Probate; Residence. Amend RSA 548:1 to read as follows:

19 548:1 Residence, etc. The register of probate shall [~~dwell~~] **reside** in the county in which [~~the~~  
20 ~~probate records are required to be kept~~] **he or she is elected.** If a register shall [~~dwell~~] **reside** in  
21 any other county and continue so [~~dwelling~~] **residing** for 30 consecutive days, the office shall be  
22 deemed vacant.

23 12 New Sections; Registers of Probate; Authority: Deputy Registers of Probate. Amend RSA 548  
24 by inserting after section 1 the following new sections:

25 548:1-a Authority.

26 I. Pursuant to the New Hampshire constitution, the elected register of probate shall have  
27 access to and oversee the filings in the probate division, of the circuit court, which shall be known as  
28 the probate court, in the county for which they are elected. The register of probate shall have an  
29 office collocated with the county resister of deeds or located in the probate court in the county for  
30 which they were elected. The register of probate shall have "read only" access to all probate records  
31 remotely and matters to assist county residents. The register of probate shall have access to court  
32 personnel and authority to request processes necessary to further all probate matters. The  
33 administrative judge of the circuit court shall appoint staff to provide individualized training and  
34 instruction to each register of probate on the current electronic and telephonic systems in the  
35 probate court.

36 II. The authority and responsibility of the register of probate, as contained in the New  
37 Hampshire constitution and state law shall include but not be limited to access to all probate court



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1 filings governed under state statute. The authority of the register of probate shall include, but not  
2 be limited to, access to all probate division filings under RSA 5, RSA 15-B, RSA 87, RSA 151-A:15,  
3 RSA 456-B, RSA 490-F, RSA 547, RSA 548, RSA 553, RSA 554, and RSA 661. The register of  
4 probate shall work with court personnel to resolve all probate issues presented to the register of  
5 probate by the public.

6 548:1-b Deputy Registers of Probate. The county commissioners may appoint a deputy to  
7 perform the duties of the register of probate in case of sickness, temporary absence, disability, or  
8 other cause. Such appointment shall be made in writing and shall be for a length of time not  
9 exceeding the register of probate's remaining term of office. The deputy shall be qualified in the  
10 same manner as the appointing officer and perform the duties of the register of probate under  
11 statute, until such time as the appointment is no longer necessary. The appointed deputy shall be  
12 compensated from the register of probate's salary or as otherwise directed by the county delegation.

13 13 Registers of Probate; Records. RSA 548:5 is repealed and reenacted to read as follows:

14 548:5 Records. The register of probate shall have access to the electronic probate files in order  
15 to view the recordings of all wills and their probate; all proceedings with regard to real estate; all  
16 accounts settled; and all orders, decisions, and appointments from which an appeal may be claimed.  
17 The judicial branch and the secretary of state, division of archives and records management shall  
18 make available on their websites links to all available electronically scanned New Hampshire  
19 probate records including those created or maintained by any nongovernmental entity until such  
20 time as the state has the capability to make all such records available through state resources.  
21 Beginning on July 1, 2020, all paper probate records older than 35 years shall be kept in the state  
22 archives.

23 14 New Section; Registers of Probate; Record of Decedent's Real Estate. Amend RSA 548 by  
24 inserting after section 7-a the following new section:

25 548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other  
26 instrument pertaining to real estate filed with the probate court in connection with the  
27 administration of any estate that the estate contains real estate located in another county within the  
28 state, the probate court, shall notify within 15 days, the register of deeds of the county in which the  
29 real estate lies of the name and date of death of the decedent. A register of deeds who receives such  
30 a notice shall record in the grantor's index the name of the decedent, his or her date of death, and  
31 the county in which the estate is being probated. The cost for filing said notice shall be assigned to  
32 the estate.

33 15 Probate Division of the Circuit Courts and Estates; Publication of Notice. RSA 550:10 is  
34 repealed and reenacted to read as follows:

35 550:10 Publication and Notice in Newspaper. Whenever notice is required to be published in a  
36 newspaper by any provision of this title, the probate division of the circuit court shall cause such  
37 notice to be made available to the public on the New Hampshire judicial branch website or by other

1 electronic media not less than 2 weeks before the date for which notice is given, unless otherwise  
2 ordered by the judge.

3 16 County Officers; Registers of Probate. Amend RSA 661:9 to read as follows:

4 661:9 County Officers.

5 I. If a vacancy for a period of one year or longer occurs in the office of county sheriff, county  
6 attorney, register of deeds, *register of probate*, or county treasurer, the members of the county  
7 convention shall fill the vacancy for the unexpired term by a majority of the ballots cast. If a  
8 vacancy for a period of less than a year occurs in any such office, the members of the county  
9 convention shall, by majority vote of the county convention, vote to either fill the vacancy or to leave  
10 the office vacant.

11 II.(a) If a vacancy occurs in the office of a county commissioner, the members of the county  
12 convention, or, if the vacancy occurs in Hillsborough county, the members of the county convention  
13 representing the cities and towns in the commissioner's district, shall fill the vacancy by a majority  
14 of the ballots cast until the next biennial election of county officers. If the term filled is less than the  
15 unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district  
16 filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by  
17 the voters of the county for a 2-year term.

18 (b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no  
19 later than 30 days preceding the printing of the ballots for the primary election.

20 (c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate  
21 party committees for vacancies in an office on a primary or general election ballot, respectively, shall  
22 apply to vacancies to be filled under this paragraph.

23 III. If any person holding a county office enumerated in paragraph I or II becomes  
24 temporarily absent or incapacitated, the county convention may, upon application of the [~~county~~  
25 ~~attorney or~~] county commissioners, declare a temporary absence and fill the same for a limited  
26 period of time expressed in the appointment.

27 IV. Any officer of a county [~~, including the register of probate,~~] may be removed by the county  
28 convention for official misconduct. Any removal under this paragraph shall be initiated by petition  
29 of a majority of the county commissioners, of the county attorney, or of a superior court judge. No  
30 officer of a county may be removed without notice of the allegations supporting the petition for  
31 removal and an opportunity to be heard by the county convention.

32 17 Repeal. The following are repealed:

33 I. RSA 548:28, relative to the penalty for registers of probate.

34 II. RSA 661:9-a, relative to vacancies in office of register of probate.

35 18 Effective Date. Part V of this act shall take effect January 1, 2022.