

# **GRANITE STATE TAXPAYERS**

**Election Law Committee**

**HB105 & HB 106 Hearings**

**January 10, 2019**

## **GRANITE STATE TAXPAYERS**

Granite State Taxpayers, is non-partisan, non-profit with a Mission to inform, educate and motivate New Hampshire taxpayers and to lobby the legislature on their behalf. We advocate for low taxes, balanced budgets, frugal, limited government that works within its constitutional authority, and local control.

Granite State Taxpayers has studied election law and advocated for improvements for over 5 years. Informed voters acting through the ballot box provide a check on government. That relies on voters having to live with the legislators and governance they elect. Accountability is undermined when people who do not actually have to live with the results of an election can vote and affect the outcome.

Election law should ensure that only *bona fide* New Hampshire resident voters can exercise the right to vote in the state. No New Hampshire voter should have their vote cancelled by an out-of-state voter. The integrity of the voting process requires that laws protect against that potential.

The status of current New Hampshire election law, along with various court decisions and interpretations, gives rise to several practices illustrating a lack of integrity.

## **WHAT WE ARE TRYING TO ACHIEVE**

A revision of New Hampshire voter law to make our voting system simple to understand and execute, resistant to fraud, and available exclusively to residents of New Hampshire

## **WHAT IS THE ISSUE WITH CURRENT LAWS**

People are able to vote without presenting any identification or proof of US citizenship.

People are able to vote without being a resident (or proving that they are) in New Hampshire.

Known residents of other states are able to vote in New Hampshire and affect our elections.

**New Hampshire is unique in the country in allowing people to vote who are residents of other states.**

**New Hampshire is unique in allowing people to vote here without documenting a presence in state.**

## **PROGRESS MADE IN 2017 – 2018 LEGISLATIVE SESSION**

HB 1264 established equivalency between Domicile and Residency, consistent with prior Court rulings

Defined residency so as to close the loophole allowing residents of other states to vote here

Found constitutional (a compelling State interest) by the NH Supreme Court

Effective date mid 2019

Subject to challenge after taking effect

SB 3 requires registrants to provide documentation showing a presence in state

Obligated registrants to provide proof of presence, established sanctions for failing to do so

Voting still allowed with affidavits as an alternative to providing proof of domicile at polls

Grace period of 10 to 30 days after the election to bring proof of domicile

Involved in a court challenge due to lawsuit brought by NH Democratic Party

**Granite State Taxpayers Opposes Bills to Eliminate the Reforms of Senate Bill 3 and House Bill 1264.**

House Bills 105 would overturn the reforms of SB 3 and HB 106 would overturn the reforms of HB 1264.

**Arguing against HB 105 and HB 106 requires presenting and defending changes in SB 3 and HB 1264.**

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## HB 105 would overturn the changes effected in SB 3

### **SB 3 required registrants to provide documentation showing a presence in state.**

SB 3 requires voters to provide documentation that they are domiciled in New Hampshire. It provides a mechanism for following up on voters who are unable to provide such documentation in a timely manner, and penalties for those who fail to provide the required documentation.

### **Requiring voters be *bona fide* residents, and prove that they are, is common in other states.**

The United States Supreme Court, in DUNN v. BLUMSTEIN, March 21, 1972, stated: *"We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision."*

Requiring residency, and providing proof thereof, is the expectation in 49 other states and the District of Columbia. Of those, 47 states and the District of Columbia require proof of duration of actual residency before being able to vote. Of those jurisdictions, 27 require 30 days of residency.

### **New Hampshire is unique in allowing people to vote here without documenting a presence in state.**

Massachusetts requires registrants to document residency with proof of their name and address. They must present proof of residency before the polls close in order to vote. The illegal registration penalty is *"a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both."*

### **Today in New Hampshire, domicile, and the right to vote, is based upon intent, defined by registrants.**

Currently, individuals can vote in our elections by merely asserting they are domiciled here without proving they live in New Hampshire and in the voting precinct where they want to vote. The registrant presently has no obligation to provide proof of actualizing that intent.

Follow up on whether people actually move here after registering to vote in the state is nearly non-existent. Except for double voting, prosecuting for voter fraud is impossible due to the practical inability to prove intent or the lack thereof. ("When I voted, I planned to move here but I changed my mind.")

### **SB 3 shifts responsibility in proving one's domicile back to the registrant.**

Prior to SB 3, those who do not show proof of domicile have no obligation to provide it, and can vote by signing an affidavit. Voters are able to cast their ballot without proving that they live here.

### **SB 3 doesn't prevent anyone from voting, but requires they subsequently document eligibility.**

Under SB 3, if someone can register and vote on the same day of the election without proof of their domicile, but they are then required to return to the Town Clerk's office within a period of 10 or 30 with their proof of domicile. Those who do not return to the clerk's office with the proper proof of domicile will have their domicile verified through a series of municipal level inquiries and rising to investigations through the Attorney General's office if the issue is not resolved at a lower level.

SB 3 provides penalties for those who do not provide the required proof of their presence in state, including a \$5,000 fine for voting illegally. This penalty is not unusual, as Massachusetts and Vermont each carry a \$10,000 fine and up to five and 15 years in jail for illegal voter registration.

## Granite State Taxpayers Opposes HB 105

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## HB 106 would overturn the changes effected in HB 1264

**HB 1264 defined residency to close the loophole allowing residents of other states to vote here.**

HB 1264 rectified issues in current law that enables non-residents to vote and hold office in New Hampshire. HB 1264 clarified definitions of the terms "resident," "inhabitant," "residence," and "residency." in state law. It eliminates the phrase "for the indefinite future," enabling a residency requirement compliant with previous court decisions.

**Requiring voters be *bona fide* residents, and prove that they are, is common in other states.**

The United States Supreme Court, in DUNN v. BLUMSTEIN, March 21, 1972, stated: "*We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision.*"

Requiring residency, and providing proof thereof, is the expectation in 49 other states and the District of Columbia. Of those, 47 states and the District of Columbia require proof of duration of actual residency before being able to vote. Of those jurisdictions, 27 require 30 days of residency.

Maine, Massachusetts, and Vermont all require first-time voters to show identification in order to vote. Massachusetts requires registrants to document residency with proof of their name and address. They must present proof of residency before the polls close in order to vote. The illegal registration penalty is "*a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both.*"

**HB 1264 provides equal protection under law**

The Constitution guarantees the right to vote, and not to have the votes by validly registered voters negated. The 14th Amendment provides that representation is based upon census and that no person's vote should be less effective than another person. Currently, certain groups are accorded the privilege of voting alongside New Hampshire residents, but at the same time, being non-residents, they are freed from undertaking the obligations to the State that are expected from New Hampshire residents.

HB 1264 provides that all voters in New Hampshire must meet the expectations of residency and domicile as established under the New Hampshire Constitution, and could be obliged to present proof that they meet those requirements.

**On July 12, 2018, the Supreme Court issued their Opinion finding House Bill 1264 to be constitutional.**

*"The fundamental issue posed by the questions submitted is whether the State or Federal Constitution requires the State of New Hampshire to permit persons to vote in this state who seek to claim residency here only for voting purposes while eschewing this status for other purposes. We have no hesitancy in opining that not only does New Hampshire have no such constitutional obligation but, quite the contrary, it has a compelling state interest not to do so."*

**HB 1264 makes election law more easily understood**

The current body of statute and case law is incomprehensible to average voters.

The ability of people to vote here with out of state licenses is particularly problematic.

This lower perception of integrity reduces voter commitment and faith in election results.

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**New Hampshire is unique in the country in allowing people to vote who are residents of other states.** While an out of state driver's license provides proof of identity, it also proves residency in another state.

The Secretary of State reported that, in 2016, 6,540 people used an out of state driver's license to register to vote in New Hampshire. Not all were people who just moved and were not yet able to get a New Hampshire license. Of that total, 491 used an out of state driver's license to change registration from one town to another town within New Hampshire, and 146 people used an out of state driver's license to re-register on the voter rolls after being previously removed.

Detailed information from the Secretary of State supporting that summary showed that in 2016, out of 5,903 new registrants using out-of-state drivers' licenses, 2,246 of those used a Massachusetts license. Obtaining a Massachusetts driver's license requires proving residency with documentation showing an address in Massachusetts. Consequently, 2,246 persons registered to vote in New Hampshire in 2016 by using a Massachusetts driver's license proving they were actually residents of Massachusetts.

**Requiring that students be residents in order to vote is common in other states.**

New Hampshire statutes (Title LXIII, Chapter 654:1, I-a) provide that *"a student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution."*

Other states require students to declare residency or domicile in order to vote. For example, a student can vote in Maryland if it is *"the place that you consider to be your 'official' or 'permanent' home."*, *"the address you use most frequently on tax returns or other government documents, driver's license, bank accounts, and so forth."*

**HB 1264 will not disenfranchise voters**

Requiring that New Hampshire voters must be *bona fide* residents of the state will not disenfranchise anyone. The same requirement when applied in other states has not been perceived as disenfranchising their voters. A variety of organizations offer guidance and assistance in how and where to vote. Internet access and State voter websites make the process of absentee voting simple. Federal law provides a period for people moving to vote absentee in their prior district. Those temporarily in New Hampshire (including students) are able to vote absentee.

**HB 1264 does not constitute, create or implement a poll tax**

HB 1264 makes residency a pre-requisite for voting in New Hampshire. Residency exposes one to subsequent obligations (licenses, taxes) by statute, but none of those requirements are conditions precedent to registering to vote. Since current residents of New Hampshire are not subject to any poll taxes, neither could newly registered voters be.

## **Granite State Taxpayers Opposes HB 106**