Bill as Introduced

SB 320- AS AMENDED BY THE SENATE

3/09/00 3608s
3/09/00 3699s

2000 SESSION

00-2629
04/10

SENATE BILL ***320***

AN ACT relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

SPONSORS: Sen. Krueger, Dist 16; Sen. Johnson, Dist 3; Sen. Roberge, Dist 9

COMMITTEE: Education

AMENDED ANALYSIS

This bill provides that in cooperative school districts the ballots from each constituent town in the cooperative school district shall be counted and recorded prior to being added to the cumulative vote count within the cooperative school district. This bill also ratifies all acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district meeting held on March 8, 2000.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 320- AS AMENDED BY THE SENATE

3/09/00 3608s
3/09/00 3699s

00-2629
04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

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

1 Counting Ballots; Cooperative School Districts. Amend RSA 671:26 to read as follows:

671:26 Counting Ballots. The town election officials shall act in like capacity for the school district in conducting the school district election. After the close of the polls, the town election officials shall turn all school district ballots over to the moderator of the school district, who shall then proceed to count the ballots publicly with the assistance of such legal voters of the district as the moderator of the school district shall appoint. Provided, however, that, in the case of cooperative school districts, the town election officials, ***or the school district officials,*** immediately after the close of the polls, shall count the ballots for school district officers***, and all articles on the ballot, from ballots cast in each town of the cooperative school district*** and, within 24 hours, forward to the school district clerk a list of the number of votes received by each candidate for school district office ***as well as all articles on the ballot***. The list shall be signed by the town clerk and witnessed by the town moderator. Upon receipt of the list, the cooperative school district clerk shall record the results from each town and shall, when the results from all towns within the district have been recorded, determine and announce the names of the winning candidates ***and the results of the ballot votes. The results shall be available to the public after the final count from all polling places has been determined.***

2 Ratification of the March 8, 2000 Inter-Lakes Cooperative School District Annual Meeting. All acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district annual meeting held on March 8, 2000 are hereby legalized, ratified, and confirmed.

3 Effective Date. This act shall take effect 60 days after its passage.

Amendments

House Education
April 12, 2000
2000-4098h
04/01

Amendment to SB 320

Amend the title of the bill by replacing it with the following:

AN ACT relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000; and relative to ratifying the Plainfield school district annual meeting held on March 10, 2000.

Amend the bill by replacing all after the enacting clause with the following:

1 Ratification of the March 8, 2000 Inter-Lakes Cooperative School District Annual Meeting. All acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district annual meeting held on March 8, 2000 are hereby legalized, ratified, and confirmed.

2 Ratification of the March 10, 2000 Plainfield School District Annual Meeting. All acts, votes, notices, and proceedings of the Plainfield school district annual meeting held on March 10, 2000, and the related public hearing held on February 15, 2000, are hereby legalized, ratified, and confirmed.

3 Effective Date. This bill shall take effect upon its passage.

2000-4098h

AMENDED ANALYSIS

This bill also ratifies all acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district meeting held on March 8, 2000 and the Plainfield school district meeting held on March 10, 2000.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB320 Date 4-4-00

Committee Education

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro (check one)	Con (check one)
Sheila Roberge	SH 9	271-3080	NH Senate Dist 9	✓	

Hearing Minutes

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON SB 320

BILL TITLE: relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

DATE: April 4, 2000

LOB ROOM: 207 **Time Public Hearing Called to Order:** 10:00 a.m.

Time Adjourned: 10:45 a.m.

Committee Members: Reps. O'Hearn, Durham, Searles, Dearborn, Henderson, Larrabee, Weber, Hoadley, Flint, McKinley, P. Davis, Alger, Cox, Ward, Sullivan, Guest, Riley, Yeaton, Snyder, C. Jean, A. Pelletier, Estabrook and J. White.

Bill Sponsors: Sens. Krueger, Johnson and Roberge

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

SEN. PAT KRUEGER (Sponsor): I support this bill. The constituents of these districts had ballots all put into one ballot box and it prevented individual districts from knowing what their towns thought.

REP. PETER BURLING: I support this bill. I represent Plainfield and they had a bond issue of $875,000 for repairs. The bond passed with 100+-200+, meeting the 2/3 majority required. The hearing only had six days notice instead of 7. The articles were in the incorrect order. The bond article precedes the general business article. It needs to be moved expeditiously.

REP. ROBERT MCKINLEY: Did anyone bring it up from the floor?

REP. BURLING: This is to correct a technical error.

JERE R. BECKMAN: I support this bill. From 1964-1994, Lee has had individual town balloting. We are trying to stop co-mingling of ballots. The moderator and the 671-26 school council attorney said we have to go to the legislature to get the wording changed. I will submit the attorney's opinion.

REP. JOHN ALGER: I think this might be an Election Law Committee issue.

MR. BECKMAN: The bill was brought before the Senate who thought the amendment would clarify the issue.

Respectfully submitted,

Bruce L Dearborn

Rep. Bruce Dearborn, Clerk

Testimony

MEMBERS OF
NEW HAMPSHIRE BAR

DAVID H. BRADLEY
BLAIR C. WOOD
JOHN STORRS STEBBINS
NICHOLAS D. N. HARVEY, JR.
JOHN L. PUTNAM
ANNE S. DUNCAN COOLEY
CATHRYN C. NUNLIST
DAVID R. PUTNAM
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OF COUNSEL
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(1916-1997)

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TELEPHONE 802-295-3454

March 22, 2000

FAX/MAIL

Rep. Peter Hoe Burling
Lang Road, RR3, Box 194
Cornish, NH 03745-9710

Rep. Constance A. Jones
PO Box 975
Grantham, NH 03750

Re: Legalization of Plainfield School District Meeting

Dear Peter and Connie:

On behalf of the Plainfield School District, I am requesting your help in getting legislation passed to legalize the annual meeting of the Plainfield School District which was held on March 10, 2000. As you probably know, that meeting voted to authorize a bond issue for $875,000 towards the construction of an addition to and renovation of the Plainfield Elementary School. The bond issue passed by a vote of 290 in favor to 108 against, well more than the 2/3rds required.

The contractor for the project who has been engaged by the District hopes to begin construction in May. The deadline for getting all the paperwork in to bond counsel and the bond bank is late April.

Two legal problems have come to light in connection with the proceedings leading up to the bond issue vote.

First, the statute (RSA 33:8-a) requires there to be a public hearing on the proposed bond issue at least 15, but not more than 60, days prior to the District meeting. Notice of this so called bond hearing has to be published in the paper at least 7 days before the hearing. In this case, the hearing was held on Tuesday, February 15, but the notice of the hearing was published only 6 days earlier on Wednesday, February 9, 2000.

The second legal problem is that the statute requires that the bond issue be acted upon "prior to other business except the election of officers and zoning matters or as otherwise determined by the voters at the meeting." In fact, the first item of business at the meeting was the usual perfunctory motion under Article I "to accept the reports of Agents, Auditors, Committees and other officers." There was no debate on this motion and the motion was passed by a voice vote. The entire business under Article I probably took no more than a minute. The meeting then moved directly to the bond issue under Article II. Since Plainfield has a long-standing tradition of accepting the reports of officers before dealing with any substantive business, and since no one objected to the order of business, I suppose an argument could be made that the voters "otherwise determined" that the bond issue would be the second item of business. However, it makes more sense to legalize this problem while we are taking care of the first problem.

I am assuming that the language in House Bill 744 from the 1999 Session relating to the Gilford School District Annual Meeting is a sufficient and appropriate guide. Therefore, I would propose the following language for the Bill:

> "Ratification of the March 10, 2000 Plainfield School District Annual Meeting. All acts, votes, notices and proceedings of the Plainfield School District annual meeting held on March 10, 2000 and the related public hearing held on February 15, 2000 are hereby legalized, ratified, and confirmed."

I have talked with Betsy Miller who thinks there is a Senate bill that this could be tacked on to so that you could get the legislation passed in the next few weeks. I promised her that Peter would get her a copy of this letter as soon as it is faxed to him.

SB320 12-12-97

Mr. Dale T. Swanson, Moderator
Oyster River Cooperative School District
36 Coe Dr.
Durham, NH 03824

Dear Moderator Swanson:

This memorandum is to support my complaint (discussed at Lee Selectmen's mtg. of Nov. 24, 1997) as regards to ballot counting of votes cast at the forthcoming second session of the Oyster River Cooperative School District 1998 annual meeting.

You may recall that I stated that I believe that commingling of ballots for counting purpose and reporting after the polls close, without maintaining the towns of origin appears to run contrary to state law and may even be illegal. In addition the commingling of the ballots denies the voters of the respective towns any knowledge of the town's preferences on the various warrant articles. The peoples right to know is denied.

The counting of ballots by machine may also be contrary to state law unless the school district has voted to do so. I do not recall that the district ever took such a vote.

Some folks say that we are a cooperative school district and therefore all votes should be counted as a district, NOT by towns. This position finds no support in statutes as far as I have been able to determine.

The fact that the town is a person's domicile, not the school district, gives that person inhabitant status, therefore qualifying that person to vote. Since the town is the important factor in qualifying to vote, the ballots cast in each town should be an official record for that town and the counting of ballots by town in a cooperative school district is supported by statutes.

HISTORY

It is understood that the Oyster River School Board has approved dispersed voting for the second session of the 1998 annual meeting. The Oyster River Cooperative School District

now conducts its annual meeting as set forth in RSA 40:13.

At the 1997 annual meeting the voters approved a non-binding amended Warrant Article #9 which asks the question "Shall voters of the district favor the establishment of additional polling places in Lee and Madbury for the official ballot referendum in 1998 provided that the ballots from all polling places are commingled for counting and reporting?"

The first part on Article #9 was placed on the warrant by the school board to test the desires of the voters in regards to their preference of where to vote in 1998. This part of the article was perfectly legal and supported by statutes. The second part of Art. #9 underlined in this text, was the amendment added at the first session in 1997. In my humble opinion the amendment was in conflict with state statutes and appears to have been illegal.

If Warrant Art. #9 had been a binding article as amended, I would have challenged the legality of the amendment.

THE LAW

In support of my complaint I submit to you the following statutory references and language.

Pt.1.[Art.]11t NH Constitution

[Elections and Elective Franchises]

"All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile."

There is nothing that I can find in our NH Constitution which says that a school district qualifies a person to vote.
The people have a right to vote because they are inhabitants of their domicile which is either a town, ward or unincorporated place, not a school district or a cooperative school district even though we are all in it together.

Pt. 1, Art. 8th NH Constitution

[Accountability of Magistrates and Officers; Public's Right to Know]

"All power residing originally in, being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open accessible, accountable and responsive. To that end, the public' s right of access to governmental proceedings and records shall not be unreasonably restricted".

RSA 91-A: 1 Preamble.

Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to insure both the greatest public access to the actions, discussion and records of all public bodies and their accountability to the people.

Purpose

This chapter was intended to increase public access to governmental proceedings in order to augment popular control of government and encourage administrative agency responsibility. Society for Protection of NH Forest v. Water Supply and Pollution Control Commission (1975) 115 NH 192, 337 A 2d 788.

Main purpose of this chapter is based upon theory that public knowledge of the consideration upon which governmental action is based and of the decisions taken is essential to the democratic process. Carter v.City of Nashua (1973) 113 NH 407, 308 A 2d 847.

RSA 91-A: 1-a IV Public Proceeding.

Any board, commission, agency or authority of any county, town, municipal corporation, school district or other political subdivision.

RSA 91-A: 5 Exemptions.

Exemptions in Right to Know Law are generally interpreted restrictively in order to further purpose of law.
Union Leader Corp. v. Fenniman (1993) 139 N.H. 624, 620 A 2d 1039.

RSA 40:12 Political Subdivision.

Local political subdivision means any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting.

RSA 40:13 Use of Official Ballot.

Any local political subdivision as defined in 40:12 which has adopted the subdivision shall utilize the Official Ballot for voting on all issues before the voters.

RSA 40:13 XII Second Session Voting Procedures.

Voting at the second session shall conform to the procedures for the non-partisan ballot system as set forth in RSA 669: 19-29, RSA 670: 5-7 and RSA 671: 20-30 including all requirements pertaining to absentee voting, polling places and polling hours.

RSA 40:15 III Official Ballot Voting Procedures.

The school district shall place the questions on the warrant of the annual meeting under the procedures set out in RSA 197:6 and the question shall be voted on by Official Ballot in accordance with the procedures established in RSA 671:20-30, including all requirements pertaining to absentee voting, polling places and polling hours.

CONDUCT OF ELECTION: COORDINATION WITH TOWN ELECTION

RSA 671:22

I. As used in this section, the words, any school district" shall mean (b) a cooperative school district composed of pre-existing districts which were each coextensive with the towns in which they are located.

III. Nothing herein shall preclude other appropriate coordination of school district and town elections consistent with all the applicable requirements of law where school district and town meetings are simultaneously in session and school districts have duly voted to adopt as official for school district purposes the town check list, polling place and election machinery.

RSA 671:26 Counting ballots.

In the case of cooperative school districts, the town election officials, immediately after the close of the polls, shall count the ballots for school district officers and, 24 hours, forward to the school district clerk a list of the number of votes received by each candidate for school district office. The list shall be signed by the town clerk and witnessed by the town moderator. Upon receipt of the list, the cooperative school district clerk shall record the results from each town and shall, when the results from all towns within the district have been recorded, determined and announced the names of the winning candidates.

RSA 666:3 Official misconduct.

Any public officer upon whom a duty relating to elections is imposed who shall knowingly fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects thereof shall be guilty of a misdemeanor if no other penalty is provided by law.

CONCLUSION

I urge yourself and all other district officials, whose responsibility it is to conduct the 1998 annual meeting, to abandon any plans to commingle the second session ballots prior to counting. If the district has never voted to use counting machines, they should not be used.

If the voters of Durham have voted to use the town's counting machines for cooperative school business, it cannot stand since there are two other towns in the cooperative district who, to my knowledge, have not made the choice to use counting machines.

I believe it is important and proper for the voters of Durham, Lee and Madbury to know how their respective towns vote on every article on the school district warrant. Their voting preferences for school board officials should also be known.

It is important to the democratic process that the people know the YEAS and NAYS on all warrant articles. The people's position and actions on future issues are often influenced by their knowledge of voting preferences. To hold the people of a town in the dark by not allowing vote counts of their town to be disclosed is contrary to law, undemocratic and denies the inhabitants their RIGHT TO KNOW.

To my knowledge, nowhere in this state are the vote counts of towns, wards or unincorporated places withheld or hidden from their inhabitants. The exceptions, the Oyster River Cooperative School District and possibly some other cooperative districts. **DO THE RIGHT THING, OBEY THE LAW!**

Respectfully,

Jere R. Beckman DVM

Jere R.Beckman, DVM
90 Harvey Mill Rd.
Lee, NH 03824
12/12/97

Copies to Lee Selectmen

868-5100
868-1000

SB3 20

JAN 05 1998

SOULE, LESLIE, KIDDER, ZELIN, SAYWARD & LOUGHMAN

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December 31, 1997

CONFIDENTIAL
Attorney-Client Communication
Not A Public Record

Dr. Thomas J. Carroll
Superintendent of Schools
SAU#5
36 Coe Drive
Durham, NH 03824

RE: December 12, 1997 Letter from Dr. Jere R. Beckman
To Moderator, Dale Swanson

Dear Tom:

I am responding to your request for advice regarding the issues raised by Jere Beckman, in his December 12 letter to the School District Moderator, Dale Swanson. Dr. Beckman believes that commingling the ballots for purposes of tabulating and reporting the election and official ballot voting results, without maintaining the towns of origin, may be illegal.

Before getting into specifics, I have a couple of preliminary comments. First, until enactment of Senate Bill 2, all votes of the Oyster River School District, except for the election of officials and the few other matters for which the law required vote by official ballot, were "commingled", for the reason that all votes were taken at a single deliberative meeting. In addition, although the Oyster River School District previously had coordinated its election with the town election, pursuant to RSA 671:22, in my opinion, that statute is no longer operative, for a cooperative school district, which has voted,

NOT TRUE THIS BEGAN AROUND 1993 ??

We Have Not Voted

Rec 2-6-98 FROM SAU #5

pursuant to RSA 40:15, to establish additional polling places for second session (official ballot) voting.

Dr. Beckman has pointed out in his letter that RSA 671:22 authorizes coordination of cooperative school district elections with the town election. He has also pointed out that RSA 671:26, Counting Ballots, provides that town election officials count the ballots for school district officers and forward the results to the school district clerk. However, RSA 671:26 applies only to school districts which have voted to coordinate the school district election with the town election.

During the 1997 legislative session, the legislature adopted two statutes applicable only to multi-town school districts that have adopted Senate Bill 2, including special provisions for coordinating town and school district elections. It is my understanding that the voters of Oyster River approved a nonbinding warrant article to establish dispersed second session voting. The statute allowing the school district meeting to vote to establish additional polling places for second session voting (RSA 40:15) was enacted during the 1997 legislative session, and became effective August 22, 1997. Therefore, the 1997 vote was advisory only. I recommend that you place an article in your warrant for the 1998 annual meeting, asking to establish additional polling places for second session voting, under RSA 40:15, to allow dispersed second session voting for the 1999 and future annual district meetings.

For the 1997 and 1998 annual meetings, the School Board was given the authority, by 1997, Chapter 3, to vote to establish dispersed second session voting. If your School Board has not already voted to have dispersed second session voting for the 1998 annual meeting, it should do so, as soon as possible (before you post your warrant).

In addition, RSA 40:15 allows multi-town school districts, which have adopted Senate Bill 2, to establish additional polling places for second session voting.

RSA 40:15 is incompatible with RSA 671:22 and particularly with RSA 671:26. A cooperative school district cannot comply with both RSA 40:15 and RSA 671:22 and :26, for the reason that, under RSA 40:15, school district officials run the election, and count the election ballots, while, under RSA 671:22 and :26, town election officials count the ballots for the school district election in a cooperative school district. As a general rule of statutory construction, where two inconsistent statutes both may apply, and where one is general and one is specifically applicable to your situation, the specific statute will govern. Furthermore, the statute more recently enacted, particularly where it is a specific statute, will take priority, over a previous general enactment.

Finally, RSA 40:14-a, also enacted by the 1997 Legislature sheds some light on the matter. RSA 40:14-a allows towns which have not adopted Senate Bill 2, but whose school districts have, to vote to coordinate town elections with school district elections. Where the town meeting adopts RSA 40:14-a, the "joint elections shall be held at a time and place determined by, and shall be supervised by, the election officials of the town, as provided in RSA 671:26." This contrasts with RSA 40:15 which expressly provides that school officials will conduct school official ballot sessions, in cooperative districts adopting this statute.

If a cooperative school district is following the dispersed voting procedure, under RSA 40:15, it is no longer governed by the requirements of RSA 671:22, which establishes a procedure to be followed, when a school district has voted to elect its officers at the town election. RSA 671:26 provides that, for cooperative school districts,

the town election officials count the ballots for school district officers and forward them to the school district clerk within 24 hours. (For school districts which are not cooperative school districts, but which have voted to coordinate the school election with the town election, under RSA 671:22, RSA 671:26 provides that town election officials turn all school district ballots over to the moderator of the school district who then counts them.) However, there is no provision, under RSA 671:22 through :26, for having town officials, count voting results, other than election results, for the school district.

RSA 40:15 provides a different procedure, where a cooperative school district operating under Senate Bill 2, has voted to establish additional polling places for second session voting.

Although RSA 40:15 provides that the additional polling places "shall be the regular polling places for town or city elections in each member town and city of the district", there is nothing in RSA 40:15 providing that town election officials, run the election, on behalf of the school district, or count the ballots. Under RSA 40:15, the school district moderator "shall supervise the election process." "The powers and duties of the assistant moderator and the assistant clerk (in the additional polling place) shall be the same as those of the moderator and the clerk at the central polling place except as otherwise provided in the election laws." RSA 40:15. The school district moderator and school district clerk appoint an assistant moderator and an assistant clerk, to serve at each additional polling place. Each assistant must be a resident of the town in which the additional polling place is located.

Aside from RSA 40:15, there are only two possibilities in the statutes for School District elections. The first, is election of school district officers at the town election,

under RSA 671:22 through :26. As previously discussed, the requirements of RSA 671:26, under which town election officials run the election, and, for cooperative school districts only, count the ballots are, inconsistent with RSA 40:15. The other provisions for cooperative school district elections, are set forth in RSA 671:27 through :31, and apply to school districts which elect their officers at the school district meeting, not at the town election.

In my opinion, since RSA 40:15 requires the school district moderator and clerk, and the assistants appointed by them, to conduct the election, the election should be conducted, also, in compliance with the requirements of RSA 659:58 through :65, which prescribe the requirements for counting votes in elections. RSA 659:59, Optional Counting of Votes at Additional Polling Places, provides that the moderator "may order the assistant moderator in writing to process absentee ballots and to count the votes cast at the additional polling place in the presence of and with the assistance of the assistant town clerk and election officials in the manner prescribed by this chapter." The assistant moderator then puts the counted ballots in the ballot box, seals it, and, after additional formalities, delivers the ballot box, checklists, absentee envelopes, unused and spoiled ballots, and a written report of his count signed by him and the assistant town clerk, to the moderator at the central polling place.

Where the moderator does not order the assistant moderator to count the votes at the additional polling place, the procedure set forth in RSA 659:62, Return of Materials From Additional Polling Place, applies. Under that statute, when the polls are closed, the assistant moderator seals the ballot box and, again with additional formalities, delivers the ballot box, the duplicate checklists, and the unused and spoiled ballots, to the moderator

at the central polling place, who then counts the ballots.

Based on the above, in my opinion the procedure proposed for counting this year's official ballot results, in the Oyster River School District, where all the ballots will be counted, in Durham, using the electronic counter, is lawful.

I have carefully reviewed the constitutional and statutory provisions quoted by Dr. Beckman in his letter. While recognizing the governmental policy that favors openness in the conduct of government affairs and dissemination of information to the public, I can find nothing in those provisions, or elsewhere, mandating that the election results, in a cooperative school district which has adopted RSA 40:15, or whose school board has voted for dispersed second session voting under 1997 Chapter 3, be counted separately in each town or tabulated on a per town basis.

Use of Electronic Counters. Another question that has been raised is the use of machines for counting ballots. RSA 656:40 allows the selectmen of any town, subject to the approval of the Ballot Law Commission, to authorize "the use of one or more voting machines or devices for computerized casting and counting of ballots in such city or town on a trial basis for any regular or special election and pay the expense for such trial from any available funds...any town or the mayor and alderman of any city, may vote to lease or purchase voting machines or devices for the elections held in said town or city."

In my opinion, there is no requirement for a district meeting vote, where the district continues to use paper ballots, and uses a computer or some other electronic device to count the ballots. Voting machines and devices for computerized casting and counting of ballots, do not involve the use of paper ballots. When paper ballots are used, there is always a record of the votes which can be counted manually, in the event of any

dispute. When voting is by machine or computer, without paper ballots, there is no opportunity to check the count manually. I have discussed this question with the Deputy Secretary of State, Robert Ambrose. He agrees that there is no requirement for a vote by the school district meeting to authorize the use of the counter. According to him, the use of these counters is widespread and no one has interpreted the voting machine statute as requiring a vote of the town or school district meeting, to authorize the use of computerized or electronic counters.

Please call with any questions.

Very truly yours,

Barbara F. Loughman

BFL/lap
F:\WPDOCS\OYSTER\carroll12.ltr.wpd

Date: **January 12, 2000**
Time: **9:32 A.M.**
Room: **105-A - SH**

The Senate Committee on **Education** held a hearing on the following:

SB 320 **relative to ballot counting in cooperative school districts.**

Members of Committee present: ***Senator McCarley***
Senator D'Allesandro
Senator Disnard
Senator Gordon
Senator Johnson
Senator Squires

The Chair, **Senator Caroline McCarley,** opened the hearing by calling on the prime sponsor of the bill, Senator Krueger, as the first speaker.

Senator Patricia Krueger, D. 16: I was asked to submit this bill. It basically provides that ballots from each of the constituent towns in cooperative school districts will be counted in that town and recorded. The results wouldn't be given until after all the towns had been counted.

But, the main reason being that the school officials and the town officials somewhat had been separated and that it was felt by the good people who are going to follow me and give you much more history on this, that there was a loss of control at the local level – relative to these elections.

So, that's the history of this and without further adieu, I am going to pass this chair to a gentleman who will tell you exactly where this came from and why.

Senator Caroline McCarley, D. 6: Thank you.

I will call on Jerry Beckman.

Jerry Beckman: This is a problem that has developed in my school district starting about 1994 or 1995. Prior to that time.....Oh, incidentally, I'm from the **Town of Lee** and my school district is the **Oyster River** and it is composed of the **Towns** of **Lee, Durham** and **Madbury.**

Around 1994 or 1995.....Prior to that time, anytime there was a ballot vote, it was always taken in the communities.....at that time, we were meeting in the traditional system – not the **Senate Bill 2** type thing.....And, we would meet in the school and we would vote in our different town polling places. They would tally the votes and then they would report the total.

But, the individual community votes were always on the record. So, if you went to the record, you could see the people in **Lee** voted this way on this question.

Around 1994 or 1995 – for some reason, the school department decided that they were not going to do it that way and they were just going to vote and co-mingle all the ballots and there was going to be one tally.

So, over the years, I've tried to talk to the moderator to try to get that back to the system so that we would know what is going on in our own communities – relative to the people's preference on the different articles that we were voting on.

So, I feel there is a violation here of some of our statutes. I wrote a long dissertation to the moderator, the school department.....handed it over to the school attorney. She wrote a long dissertation back and nothing's changed.

So, finally I thought that there are only two avenues left: Either go through the legislature and ask them to codify the right language in the law so that we can have it straightened out, or go to a court and ask a judge who is right! Well, I get tired going to the courts. And, it's expensive and there's no need of it!

So, that's sort of what's behind why the bill is here.

I guess the crowning problem that just occurred recently was our selectman, in the **Town of Lee** are not happy with the fact that we can't get the information. So, they went to the moderator. We had a special meeting scheduled November 16th this year for a vote on a bond.

Now, the selectmen asked the moderator, "would you please break out the votes by communities." He said, "well, if you get a ballot counting machine and use it in the town where we're polling, we will do it!" So, the selectmen brought the ballot machine and prior to the election, the school department said, "no, we're going to co-mingle!"

So, the selectmen....I went to their meeting on the 10th to reaffirm that statement I just made and they are very definitely upset about that. So, I would urge you to approve this bill.

I have a few suggestions, here. I think there needs to be some language in here to amend it a little bit. One of the problems – and, it's in the school attorney's response to what I had written back in 1997 – that the statutes, as they exist – which I was claiming they should be giving us the information – refer to town officials counting ballots for elections.

I think that some language should be added that school officials should also be included in that language. It also refers in this bill.....It talks about the election of candidates. It doesn't say anything about the information of the votes on the articles of the warrant, so some language should be in there.....We want to know how votes are cast for candidates and we want to know what the people's purposes were for all the articles on the warrant. So, that needs to get in there somehow.

I guess that basically covers my thought there.

Actually, to me, it flies in the face of **91-A,** if anyone wanted to talk about that. We can't get information that a governmental body does. Okay?

Senator James W. Squires, D. 12: That's a very interesting story. I sympathize with you and I think you're right in theory. My question is, why wouldn't the communities have forced the issue.....I mean, you could have done that by petition – putting an article on the warrant saying, "we the voters of the **Madbury School District** want our ballots counted that way."

That would have solved the problem without necessitating the intervention of the legislature.

Jerry Beckman: Well, I have an answer for you. This is my complaint to our moderator – and, I'll read it to you. I said, "At the 1997 annual meeting, the voters approved a non-binding amended warrant article which asks the question, 'shall the voters of the district favor the establishment of additional polling places in **Lee** and **Madbury** for the official ballot referendum in 1998?'

That got amended from the floor. Some folks stood up and said, "provided that the ballots from all polling places are co-mingled for counting and reporting." That was a non-binding vote.

What happens – particularly now .....and, there are other bills that will come forward here in February.....Petition articles that are going to these deliberative sessions under the official ballot form of government, are being amended to change the entire meaning. What happens is that the petitioners end up non-petitioners.

Senator James W. Squires, D. 12: All three districts **Senate Bill 2** or is it...

Jerry Beckman: We're one cooperative district – **Lee, Madbury** and **Durham**.....

Senator James W. Squires, D. 12: .....operating under **Senate Bill 2.**

Jerry Beckman: That's correct.

Senator James W. Squires, D. 12: So, this is as much a **Senate Bill 2** problem.....You can't get a straight question to the deliberative session. Is that correct?

Jerry Beckman: That's correct.

There is a bill here to try to deal with that problem. Since **Senate Bill 2** has been put in place, there's been a number of instances – not only in my district.....Many of the other districts have used that system – whereas our

citizens' petitions are just being trashed. I mean, you wouldn't recognize what comes out on the other end.

So, you can't get a question to the voters on the ballot.

Senator Edward M. Gordon, D. 2: I'm just trying to understand, too. Do you have 3 separate polling places?

Jerry Beckman: We do.

Senator Edward M. Gordon, D. 2: What you're telling me.....The way this bill is currently written, it only applies to the election of offices.

So, are you telling me that right now, that each of those 3 separate polling places are not calculating the election results in those areas?

Jerry Beckman: What's happening is, when the polls close – the ballot boxes are closed and its taken to **Durham** and **Durham** runs it through a counting machine.....When the numbers come out, the results are announced.

Now, 2 years ago, I came up here and sat down with **Deputy Secretary Ambrose** – with a selectman friend of mine from **Deering**, and we spent about an hour discussing this with him – which was whether it was proper or improper. In the analysis, I've been told by the moderator in my district, "well, when we use that machine, we can't separate these ballots by town!"

So, **Deputy Ambrose** picked up the phone – he called the company where they get the machine from, and the guy on the other end said that they can! All they do is they take the box from **Lee** – run it through the machine – tally it – reset the machine – do the next town – reset it and do the next town and they can do it! But, they refuse to.

So, then they said that if **Lee** gets a machine and puts it in Lee, they can count them in **Lee** and then send the results over. Whether **Madbury** does or not, that's up to **Madbury**.

Senator Edward M. Gordon, D. 2: I'm a school district moderator. We operate under **Senate Bill 2**. My understanding under the law was that in fact, they were voting on school district issues, that I was to appoint a

moderator for each of the 3 communities, or in my case, 7 communities – which I do. I appoint a moderator who oversees the counting at the completion at the polling place. I guess not knowing – having the statutes in front of me – I guess what you're saying is, there's no obligation in the law that those things be counted directly after the election.

Jerry Beckman: The best I can find is the statute that's cited in the bill – **671:26** – counting ballots. It doesn't really zero in on the problem I'm talking about. All I'm asking is to just get a little bit of the language changed then the process gets done.

Now, as best as I can find out in talking to my friends that I run into throughout the state.....I don't know of any place in the state that this is done like we're doing it where I live. As a matter of fact, if you were in a city and all of a sudden somebody says, "we're not going to tell you what the wards are doing," I think something would happen. It's the same kind of an argument to me.

Senator Edward M. Gordon, D. 2: In our district, even though they're represented (inaudible) – all 7 towns get to vote on the representatives. Is that the same case in your area and would it be possible for a town like **Lee** to vote for its representative, but because of the other votes for the other towns, they might elect someone other than the town's choice?

Jerry Beckman: I'm glad that you brought that up, because that happens. All our people, I believe, are at large and in fact, a number of years ago, it was changed because of the constitution – one man/one vote rule. **Durham** has about not quite 6,000 voters. We have about 2,000 and **Madbury** has a little over a thousand. So, things can get skewed a little bit.

My feeling is that if the people know what's happening within their community and get a little strength toward a given issue to get a little more strength and you keep coming back.....It helps to solve our problems. But, in this way, we're all in the dark.

The issue about whether town election officials or school district – that came up (I think) in **Newfields** last year. The **Newfields** town officials said, "we're not going to count these school ballots." They sent them back to **Exeter.**

Senator Caroline McCarley, D. 6: Thank you.

Senator Krueger, did you want to follow up before we close the hearing?

Senator Patricia Krueger, D. 16: Yes, thank you. One thing I failed to tell you about was that I did speak to the **Secretary of State's Office** regarding this particular bill and he supported it and he gave me an example in **Salem** and he was sorry that **Deputy Secretary** of **State Bob Ambrose** was not around or I could have had him appear today.

But, he gave me the example in **Salem** where there was concern out of certain wards that they didn't exactly know what direction those wards and those numbers come in all as one. There was starting to be a little bit of problems even within the city. So, I just wanted to pass that on.

He was in support of this legislation and I wanted to let you know I would be in support of this legislation as amended and as proposed earlier, because then that too would broaden its scope and make it a little clearer.

Senator George F. Disnard, D. 8: I don't know if I should be asking you or not, but why do the town officials count the votes in these co-op's instead of the school officials? I don't know who to ask.

Senator Patricia Krueger, D. 16: I would just as soon defer to one of the people who are involved.....

Jerry Beckman: What actually happens like in our town.....You know, they ask for people to volunteer – the moderator gets names and says, "would you act as selection of officials?" They're usually town people – not necessarily the officials.

Senator George F. Disnard, D. 8: Would it help your situation if that part in the law said "town election officials" or "school election officials" should count the ballots? Would that help you at all?

Jerry Beckman: Well, it might, but I can see a problem because the school elected officials – we have a board of, what – 5. In our case, I think we have 1 board member from **Lee** and the others are from the **Town of Durham**.....

Senator George F. Disnard, D. 8: I was just thinking of the locals. I apologize.

Senator Caroline McCarley, D. 6: Okay. We have no one else who wishes to testify. So, at this time, I will close the hearing on **Senate Bill 320.**

Hearing adjourned at 9:54 a.m.

Respectfully submitted,
Rosalie Brooks Patch, secretary

Voting Sheets

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 320

BILL TITLE: **relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.**

DATE: April 12, 2000

LOB ROOM: 207

Amendments:

Sponsor: House Education — OLS Document #: 4098h — Adopted

Motions: (OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)
(ON AMENDMENT # 4098h)

Moved by Rep. Phil Weber

Seconded by Rep. Robert Guest

Vote: 17-1 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A,) ITL, Re-Refer, Interim Study (Please circle one.)
(SB 320 WITH AMENDMENT # 4098h)

Moved by Rep. Warren Henderson

Seconded by Rep. Gordon Flint

Vote: 18-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Yes

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Susan B Durham

Rep. Susan B. Durham, Acting Clerk

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on SB 320

BILL TITLE: **relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.**

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LOB ROOM: 207

Amendments:

Sponsor: Rep. House Education — OLS Document #: 4098 h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP) OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. Guest

Vote: 18-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Henderson

Seconded by Rep. Flint

Vote: 18-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: -4

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Susan B Dunham

Rep. ~~Bruce L. Dearborn, Clerk~~

OFFICE OF THE HOUSE CLERK 2000 SESSION

EDUCATION

Bill #: SB328 **Title:**

PH Date: / / **Exec Session Date:** 4 / 12 / 2000

Motion: OTP **Amendment #:** 4098h

MEMBER	YEAS	NAYS
O'Hearn, Jane E, Chairman	✓	
Durham, Susan B, V Chairman	✓	
Searles, Stanley N	A	
Dearborn, Bruce L, Clerk	A	
Henderson, Warren C	✓	
Larrabee, David E	✓	
Weber, Phil A	✓	
Hoadley, Elizabeth K	✓	
Flint, Gordon B	✓	
McKinley, Robert E	✓	
Davis, Perley E	✓	
Alger, John R M		✓
Cox, Russell N	✓	
Ward, Brien L	A	
Sullivan, P Judith	A	
Guest, Robert H	✓	
Riley, William A	✓	
Yeaton, Charles B	✓	
Snyder, Clair A	✓	
Jean, Claudette R	✓	
Pelletier, Arthur J	A	
Estabrook, Iris W	✓	
White, John M	✓	
TOTAL VOTE:	18	1

Printed: 12/30/1999

OFFICE OF THE HOUSE CLERK 2000 SESSION

EDUCATION

Bill #: SB320 **Title:** relative to ballot counting

PH Date: ___/___/___ **Exec Session Date:** 4/12/2000

Motion: OTP-A **Amendment #:**

MEMBER	YEAS	NAYS
O'Hearn, Jane E, Chairman	✓	
Durham, Susan B, V Chairman	✓	
Searles, Stanley N	A	
Dearborn, Bruce L, Clerk	A	
Henderson, Warren C	✓	
Larrabee, David E	✓	
Weber, Phil A	✓	
Hoadley, Elizabeth K	✓	
Flint, Gordon B	✓	
McKinley, Robert E	✓	
Davis, Perley E	✓	
Alger, John R M	✓	
Cox, Russell N	✓	
Ward, Brien L	A	
Sullivan, P Judith	A	
Guest, Robert H	A	
Riley, William A	✓	
Yeaton, Charles B	✓	
Snyder, Clair A	✓	
Jean, Claudette R	✓	
Pelletier, Arthur J	A	
Estabrook, Iris W	✓	
White, John M	✓	
	18	0

TOTAL VOTE:
Printed: 12/30/1999

Committee Report

COMMITTEE REPORT

COMMITTEE: **Education**

BILL NUMBER: **SB 320**

TITLE: relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

DATE: April 12, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

As amended, SB 320 ratifies the March 8, 2000 Inter-Lakes School District annual meeting and the March 10, 2000 Plainfield School District annual meeting. A substantial element of the original bill, requiring co-operative school districts to count ballots and report results for each town within the co-operative district separately, was eliminated when the committee could not get a clear sense of the current state of the law or the demonstrated need for that portion of the bill.

Vote 18-0.

Rep. Warren C. Henderson
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Education

SB 320, relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000. OUGHT TO PASS WITH AMENDMENT

Rep. Warren C. Henderson for Education: As amended, SB 320 ratifies the March 8, 2000 Inter-Lakes School District annual meeting and the March 10, 2000 Plainfield School District annual meeting. A substantial element of the original bill, requiring co-operative school districts to count ballots and report results for each town within the co-operative district separately, was eliminated when the committee could not get a clear sense of the current state of the law or the demonstrated need for that portion of the bill. Vote 18-0.

COMMITTEE REPORT

COMMITTEE: **Education**

BILL NUMBER: **SB 320**

TITLE: relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

DATE: April 13, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Vote 18-0

Rep. [signature]
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

AS AMENDED, SB320 RATIFIES THE MARCH 8, 2000 INTER-LAKES SCHOOL DISTRICT ANNUAL MEETING AND THE MARCH 10, 2000 PLAINFIELD SCHOOL DISTRICT ANNUAL MEETING. A SUBSTANTIAL ELEMENT OF THE ORIGINAL BILL, REQUIRING COOPERATIVE SCHOOL DISTRICTS TO COUNT BALLOTS AND REPORT RESULTS ~~ON~~ FOR ~~EACH~~ EACH ~~COMMUNITY~~ town WITHIN ~~THE~~ the COOPERATIVE ~~TOWN~~ district SEPARATELY, WAS ELIMINATED WHEN THE COMMITTEE COULD NOT GET A CLEAR SENSE OF THE CURRENT STATE OF THE LAW OR THE DEMONSTRATED NEED FOR THAT PORTION OF THE BILL.