

LEGISLATIVE COMMITTEE MINUTES

HB1605

Bill as Introduced

HB 1605-FN - AS INTRODUCED

2014 SESSION

14-2568
03/05

HOUSE BILL ***1605-FN***

AN ACT relative to audit recounts.

SPONSORS: Rep. Till, Rock 6; Rep. Levesque, Hills 26; Rep. Whittemore, Rock 5;
Rep. Horrigan, Straf 6; Rep. Massimilla, Graf 1; Rep. M. Mann, Rock 32;
Rep. Perry, Straf 3; Sen. Soucy, Dist 18; Sen. Gilmour, Dist 12

COMMITTEE: Election Law

ANALYSIS

This bill requires the secretary of state to perform audit recounts of towns and wards representing 5 percent of the votes cast after each general election.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to audit recounts.

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

1 1 New Chapter; Audit Recounts. Amend RSA by inserting after chapter 660 the following new
2 chapter:

3 CHAPTER 660-A
4 AUDIT RECOUNTS

5 660-A:1 Application. The secretary of state shall publicly choose a random process to select
6 towns and wards using optical scan equipment to count votes that equal at least 5 percent of the
7 votes cast in the most recent primary or general election for the purpose of an audit recount. For
8 each town or ward selected, the office to be recounted shall be publicly and randomly selected from
9 the offices of president, United States senator, representative to Congress, governor, executive
10 councilor, state senator, and all constitutional questions on the ballot. As used in this chapter,
11 "audit recount" means a recount of ballots counted by an optical scan machine or other ballot
12 counting device pursuant to this chapter, and does not serve as a recount of any particular office or
13 ballot question under RSA 660, in that only those ballots that were counted by the machine being
14 audited are included in an audit recount.

15 660-A:2 Time and Notice. The secretary of state shall begin the process of audit recounts on the
16 Monday following the deadline for requesting a recount. If a recount is requested for the same town
17 and office chosen for an audit recount, additional towns and wards shall be chosen consistent with RSA
18 660-A:1 to replace those also chosen for a recount. A recount shall take place at any suitable state
19 facility in the city of Concord as may be designated by the secretary of state. The secretary of state
20 shall give notice thereof to each of the candidates involved in an audit recount and post notice of time
21 and place and offices to be audited on the website of the secretary of state at least at least 48 hours
22 before the audit recount begin. The secretary of state shall also prepare and distribute to each of the
23 candidates the rules and procedures governing the audit recount at the time and place of the recount.

24 660-A:3 Conduct of Audit Recount. Audit recounts shall be conducted in a manner consistent
25 with RSA 660:5 except, however, candidates involved with the audit recount may not protest ballots
26 being counted.

27 660-A:4 Posting Results. Results of the audit recounts shall be announced following the recount
28 and made available to the public. Any candidate involved in an audit may, notwithstanding
29 RSA 660, request a formal recount of the candidate's entire district within 48 hours of the announced
30 outcome of the audit if the results vary significantly from the declared results. Fees for a requested
31 recount under this provision shall be the same as in RSA 660:2.

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- Page 2 -

1 660-A:5 Discrepancies. Any discrepancy between the audit recount and the optical scan count
2 shall be accompanied by the secretary of state's analysis of the reason for the discrepancy. For any
3 unexplained discrepancy in excess of 0.5 percent, the memory card from the optical scan equipment
4 involved shall be forwarded to the secretary of state, following procedures described in RSA 660:5,
5 for examination and testing.

6 660-A:6 Resolution of Discrepancies. The secretary of state shall investigate all unexplained
7 discrepancies in excess of 0.5 percent, compile the reasons for all discrepancies, summarize findings,
8 and make recommendations regarding how to correct or improve the accuracy of the optical scan
9 equipment and software or audit recount process in a written report to be provided to the ballot law
10 commission and to the house standing committee with jurisdiction over election law within 3 months
11 of the election. The secretary of state shall simultaneously publish the report on the website of the
12 secretary of state.

13 660-A:7 Recounts by Moderator. Because the moderator is legally responsible for insuring the
14 accuracy of the vote count from his or her polling place under RSA 659:77, the moderator may, at his
15 or her discretion, conduct of audit recount of the machine-counted ballots for races on the ballot in
16 his or her polling place. Under no circumstances shall the moderator conduct an audit recount at the
17 request of any candidate on the ballot. Such candidates shall request a recount in accordance with
18 RSA 660.

19 2 Effective Date. This act shall take effect September 1, 2014.

1605-FN - FISCAL NOTE

AN ACT relative to audit recounts.

FISCAL IMPACT:

The Department of State states this bill, as introduced, will increase state general fund expenditures by \$98,227 in FY 2015, \$83,913 in FY 2016, \$104,790 in FY 2017, and \$91,744 in FY 2018. There will be no impact on county and local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Department of State states this bill requires it to conduct "audit recounts" following state primary and general elections in randomly selected towns and wards that use optical scan equipment for vote counting. The Department states that in order to execute this bill, it will need to hire part-time ballot counting staff every even-numbered election year, incurring the following costs totaling \$8,530 per election:

- Five counting teams of two counters each, for three days at eight hours per day, at a rate of \$12 per hour = \$2,880;
- Multiple administrative staff at a combined total of approximately \$100 per hour, for 30 hours = \$3,000;
- A van with two drivers at \$100 per hour, for 20 hours = \$2,000; and
- Retrieving memory cards from cities and towns in the event of unexplained discrepancies between election results and audit recount results will necessitate renting/hiring a car and driver for 10 hours at \$65 per hour, totaling \$650.

The above costs will be incurred for each election, therefore since the bill contemplates an audit recount for primary elections as well as general elections, these costs will total \$17,060 each even-numbered election year. In addition to part-time costs, the Department anticipates it will need to hire one full-time Program Specialist IV (LG 25) to train local election officials on uniform standards necessary to conduct recounts. The position will also be responsible for overseeing the investigations and reports required by the bill. The Department projects the bill's total fiscal impact will be as follows:

	FY 2015	FY 2016	FY 2017	FY 2018
Expenditures:				
Program Specialist IV (LG 25, with annual steps)	\$46,980	\$49,582	\$51,764	\$54,047
Benefits	\$26,687	\$28,331	\$29,966	\$31,697
Current Expenses	\$5,000	\$5,000	\$5,000	\$5,000
Other (equipment, travel, etc.)	\$2,500	\$1,000	\$1,000	\$1,000
Total Full-time Position Costs:	\$81,167	\$83,913	\$87,729	\$91,744
Part-time costs, primary election	\$8,530		\$8,530	
Part-time costs, general election	\$8,530		\$8,530	
Total Cost to State:	\$98,227	\$83,913	\$104,789	\$91,744

The New Hampshire Municipal Association states that the bill authorizes, but does not require, moderators to conduct audit recounts of machine-counted ballots. If a moderator chooses to conduct such a recount, and if election workers are paid on an hourly basis, there may be a small increase in municipal expenditures, incurred at the moderator's discretion.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1605-FN Date 1/21/14
Committee Election Law

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

[illegible]

Hearing Minutes

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: 1/21/14

LOB ROOM: 308 **Time Public Hearing Called to Order:** 10:01 am

Time Adjourned: 11:50 am

(please circle if present)

Committee Members: Reps. Cote, Knowles, Perry, Moody, Levesque, Ward, Connor, Gage, Till, G. Richardson, Jasper, Marston, Souza, Gray, Comerford, J. Sweeney, Birdsell and Hoelzel.

Bill Sponsors: Rep. Till, Rock 6; Rep. Levesque, Hills 26; Rep. Whittemore, Rock 5; Rep. Horrigan, Straf 6; Rep. Massimilla, Graf 1; Rep. M. Mann, Rock 32; Rep. Perry, Straf 3; Sen. Soucy, Dist 18; Sen. Gilmour, Dist 12

TESTIMONY

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

*Rep. Mary Till – Prime Sponsor – Written testimony attached.

*Rep. Robert Perry – Supports – Reported on the committee report cited in Rep. Till's testimony. Written testimony attached.

*Deborah Sumner – Opposed the bill – Written testimony attached.

*Alexander Shuartsman, Professor University of Connecticut – Supports the bill. Became involved in electronic voting machines in 2005. Written testimony attached.

*Pamela Smith – Supports the bill – Written testimony to follow. Representing "verified voting", California.

Mr. Walter Fries, Danville, N.H. Moderator for a quarter of a century. He has done a hand count at the end of each election as a matter of practice; as a self-imposed audit. He neither supports or opposes the bill. He just wishes to impart his knowledge and experience. He has never found a discrepancy in the counts, between hand counts and machine counts. Suspicion of machines is because electronics and machines may fail from time to time.

David Scanlan, Deputy Secretary of State – Not opposed to audit recounts.
Problems with bill: Resources needed to implement; Fiscal Note.

1. Very short time to do recounts and send out ballots under the MOVE act.
2. Effective Date – Not enough time to implement. No money in budget.
3. Page 2 – Discrepancies would not be a problem.
4. Would need time to resolve the procedure for conducting the audits.

Respectfully submitted,

Kathleen M. Hoelzel

Kathleen M. Hoelzel, Clerk

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE:

1/31/14

LOB ROOM:

308

Time Public Hearing Called to Order:

10⁰¹ am.

Time Adjourned:

11⁵⁰

(please circle if present)

Committee Members: Reps. Cote, Knowles, Perry, Moody, Levesque, Ward, Connor, Gage, Till, O. Richardson, Jasper, Marston, Souza, Gray, Comerford, J. Sweeney, Birdsell and Hoelzel.

Bill Sponsors: Rep. Till, Rock 6; Rep. Levesque, Hills 26; Rep. Whittemore, Rock 5; Rep. Horrigan, Straf 6; Rep. Massimilla, Graf 1; Rep. M. Mann, Rock 32; Rep. Perry, Straf 3; Sen. Soucy, Dist 18; Sen. Gilmour, Dist 12

TESTIMONY

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

- * Rep. Mary Till - prime sponsor - written testimony attached
- * Rep. Bob Perry - ^{supports} reported on the committee report cited in Rep. Till's testimony. written testimony attached
- * Deborah Sumner - opposes the bill - written testimony attached
- * Mr. Alexander Shwartsman ^{supports the bill} ^{the bill} ^{university of Connecticut} ^{professor} ^{in electronic voting machines} became involved in electronic voting machines in 2005. - written testimony attached
- * Pamela Smith - supports the bill - written testimony to follow representing "verified voting", California.
- Mr. Walter Gries - Danville N.H. Moderator for a quarter of a century. He has done a handcount at the end of each election as a matter of practice. As a self imposed audit. He neither supports or opposes the bill. He just wishes to impart his knowledge and experience. He has never found a discrepancy in the counts, between hand counts and machine counts. (over)

Suspicion of machines is because electronic and machines may ~~follow~~ fail from time to time.

David Scanlan - Deputy Secretary of State -
Not opposed to audit recounts.

Problems with bill: Resources needed to implement: Fiscal note

- ① Very short time to do recounts and send out ballots under the MOVE act.
- ② - Effective date -
Not enough time to implement
No money in budget for this year
- ③ page 2 - discrepancies would not be a problem.
- ④ Would need time to resolve the procedure for conducting the audits

Sub-Committee Actions

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: 1/30/14

Subcommittee Members: Reps. Knowles, Richardson, Moody, Hoelzel, Jasper

Comments and Recommendations: The bill has merit. There are issues such as the procedure to be followed, the financial impact, time frames and the issue of the MOVE Act.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Hoelzel

Seconded by Rep. G. Richardson

Vote: 3-0 Unanimous

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. MaryAnn Knowles
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: 1/30/14

Subcommittee Members: Reps. Knowles, Richardson, Moody, Hoelzel, Jasper

Comments and Recommendations: The bill has merit. There are issues such as the procedure to be followed, the financial impact, time frames and the issue of the MOVE Act.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Hoelzel

Seconded by Rep. G. Richardson

Vote: 3-0 unanimous

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. MaryAnn Knowles
Subcommittee Chairman Clerk

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: August 28, 2014

Subcommittee Members: Reps. Till, Perry, Moody, Comerford, and Marston

Comments and Recommendations: The committee recommends that future post-election audit legislation follow the guidelines described in "Principles and Best Practices for Post-Election Audits" available at electionaudits.org.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Moody

Seconded by Rep. Perry

Vote: 4-0

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Bob Perry
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ELECTION LAW
SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: August 28, 2014

Subcommittee Members:

(Reps. Till) (Perry) (Moody) Comerford, and (Marston)

Comments and Recommendations: *The committee recommends that future past-election audit legislation should follow the guidelines described (over)*

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:

(Recommended) or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. *moody*

Seconded by Rep. *PERRY*

Vote: *4-0*

Motions:

Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. *Bob Perry*
Subcommittee Chairman/Clerk

in "Principles and Best Practices for Post-Election Audits" . .
available at electionaudits.org -

August 28, 2014
Meeting of the Interim Study Committee
HB 1605 - relative to audit recounts

Chairperson Till read into the record the evolution of the Electronic Ballot Counting Device Advisory Committee (EBCDAC).

She then read Section 6.1.6 of the final report of the EBCDAC committee, which details its recommendation for statewide post-election hand-counted audits of randomly selected jurisdictions and randomly selected races.

The Chair then referred to the HB 1605 majority committee report. Rep. Marston expressed skepticism that corruption exists in the present system and certified election results. There was general discussion regarding the ability of auditors to conduct meaningful results in a short time frame. The Chair cited the California audit example.

A document entitled Principles and Best Practices for Post-Election Audits, as published by ElectionAudits.org, Sept., 2008, was made available for discussion. General discussion followed, including the topics of regulating the conduct of recounts.

After preliminary general discussion concluded, the following motions and their results were made part of this record.

1) Motion was made by Rep. Moody recommending future legislation establishing audit recounts, consistent with the intent of H.B. 1605.

Second was made by Rep. Perry.

Unanimous vote in the **affirmative** of 4 - 0.

2) Motion was made by Rep. Perry to include in the drafting of future legislation, the suggestions offered in the document entitled Principles and Best Practices for Post-Election Audits, as referred to above.

Second was made by the Chair of the committee.

Unanimous vote in the **affirmative** of 4 - 0.

3) Motion was made by Rep. Marston that, in drafting future legislation, the recount process be comprehensive and not allow implementation of guidelines by the Secretary of States Office.

Second was made by Rep. Moody.

Unanimous vote in the **affirmative** of 4 - 0.

4) Motion was made by the Chair that she forward to members a formal recommendation motion for approval, consistent with the Best Practices document.

Second was made by Rep. Marston.

Unanimous vote in the **affirmative** of 4 - 0.

The committee heard the illuminating testimony of Denise Morrisette, employed as a computer programmer since 1978, who warned members that hacking of our current generation of voting machines can occur at any point, from storage of the machines to use of the machines, and back to storage. She suggested members secure a meaningful compilation of service calls from LHS Associates, the programmers and servicing agency for the State of New Hampshire. Review of such list would reveal the number and type of services/repairs required over time. Ms. Morrisette also stressed that programmers make mistakes in software design, which result in tally or report inaccuracies.

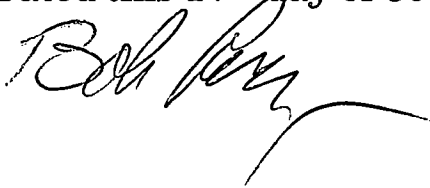
Ms. Morrisette's written presentation, containing specific examples of malfunctions and the ease of creating software to change the results of an election with just a few lines of code, was submitted to the file.

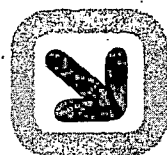
Discussion turned to whether a future meeting is required. Rep. Marston indicated he would like one. A decision was made that the Chair would forward to members the exact wording of the recommendation motion for approval, that if anyone objected to the wording, the Chair would schedule another meeting.

Motion was made by Rep. Marston to Adjourn.

Second was made by the Chair.
Unanimous vote in the affirmative of 4 - 0.

Respectfully submitted,
Bob Perry, Clerk
Dated this 17th day of October, 2014.

A handwritten signature in cursive script, appearing to read "Bob Perry", with a long, sweeping horizontal flourish extending to the right.

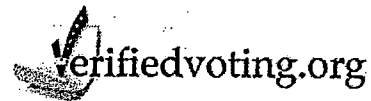


Principles and Best Practices for Post-Election Audits

ElectionAudits.org
September 2008

Endorsed by the following organizations: Brennan Center for Justice, Citizens for Election Integrity Minnesota, Coloradoans for Voting Integrity, Common Cause, CTVotersCount.org, Florida Voters Coalition, Iowans for Voting Integrity, Michigan Election Reform Alliance, Verified Voting, Citizens for Election Integrity Massachusetts.

Statistical portions, principles 5-7 and their best practices, endorsed by the American Statistical Association.



BRENNAN
CENTER
FOR JUSTICE

Citizens for
Election
Integrity
MA



SOURCE: electionaudits.org

Best Practices:



1. TRANSPARENCY:

Elections belong to the public. The public must be allowed to observe, verify, and point out procedural mistakes in all phases of the audit without interfering with the process. The following conditions must be met:

- a. Detailed auditing procedures are developed well in advance of elections, with reasonable opportunities for public comment. These include procedures for selecting audit units,^[5] sorting the paper records and counting the votes, and determining when more units need to be audited and when the audit can end. There is adequate notice to allow the public to witness and verify each phase of the audit.
- b. The public is given sufficient access to witness and verify the random selection of the audit as well as the manual count with reasonable opportunities for public comment. Election officials have the authority to prevent the public from hampering the proceedings.
- c. Final results are reported to the public immediately and posted on the Web. The results include an analysis of all discrepancies as well as recommendations for improvement. The data on the frequency and source of discrepancies can provide jurisdictions with benchmarks for improvement in future elections.^[6]
- d. Ideally, a public archive of the audit documents, reports and results is maintained indefinitely in the case of electronic records and for at least two years in the case of paper records.

[5] In post-election audits, each ballot (or paper record) is assigned to an audit unit - a group of paper records from a precinct, counting machine, or batch of ballots. On batches, see the discussion in Best Practice 5e.

[6] In addition to the number of miscounts per machine and the analysis of the source of these discrepancies, it is important to collect and report the number of spoiled ballots, canceled VVPATs, unreadable VVPATs, overvotes, undervotes and voter-mismarked paper ballots (for instance, if the candidate's name is circled but the oval is left blank).

2. INDEPENDENCE:

The authority and regulation of post-election audits should be independent of officials who conduct the elections. The actual work of post-election audits may be best performed by the officials who conduct the elections and their designees.

- a. The independence of authority and regulation may be satisfied from resources inside or outside state government.
- b. The actual work of post-election audits—i.e. the handling and counting of ballots and reporting the results—may be best performed by the officials who conduct the elections.

3. PAPER RECORDS:

Ideally, post-election audits use hand-to-eye counts of voter-marked, voter-verified paper ballots. Where such paper ballots are not available, other forms of voter-verifiable paper records should be used.

- a. The paper records must be easy to read and handle.
- b. The paper records must reliably reflect the intent of the voters. Care must be taken to urge voters to confirm the record of their votes.

4. CHAIN OF CUSTODY & BALLOT ACCOUNTING:

Robust ballot accounting and secure chain of custody of election materials and equipment are prerequisites for good post-election audits. The following conditions must be met:

- a. There are strict written accounting procedures for paper records to prevent the addition, subtraction, substitution, or alteration of paper records.
- b. To safeguard the ballots and audit records from loss and tampering, paper records and electronic equipment are fully secured^[7] at all times when a breach could adversely affect the integrity of the records including from the time the votes are cast until all audit or recount activity is completed and election results are finalized.^[8]
- c. The audit begins as soon as possible after the random selection of audit units, which commences as soon as possible after the initial tallies recorded by the voting system are reported. (In some circumstances the audit may be conducted in phases as discussed in Best Practice 5e.)
- d. The secrecy of the ballot is preserved; the order of the votes cast is never compared to the order in which the voters signed in.
- e. There is a reconciliation to ensure that all votes from all audit units are correctly tabulated in the election totals.

[7] Procedures regulating access to ballots and equipment could include requiring signatures for access and documenting the reason for it, preventing access by a single person, requiring that access be observed by members of opposing parties, or the use of surveillance cameras to guard storage areas.

[8] This includes the expiration of all legal recourse to challenge or correct the election.

5. RISK-LIMITING AUDITS:

Post-election audits reduce the risk of confirming an incorrect outcome. Audits designed explicitly to limit such risk (risk-limiting audits) have advantages over fixed-percentage or tiered audits, which often count fewer or more ballots than necessary to confirm the outcome.

a. Risk-limiting audits have a large, pre-determined minimum chance of leading to a full recount whenever a full recount would show a different outcome.^{[9][10]} (Correct preliminary outcomes are never overturned.^[11]) After any audit, this chance should be calculated and published as part of the audit results to promote continuous improvement.

margin of victory and other factors; these other factors may include the number of ballots in each precinct and the overall number of ballots in the contests.^[13] In general, smaller margins of victory and smaller contest require auditing a larger percentage of the audit units.

b. Audit units (precincts, machines, batches of paper records) should be selected using appropriate random sampling methods.^[12] In a risk-limiting audit, the sample size will depend on the

continued on following page

[9] "Outcome" refers to which candidates or ballot propositions won or lost, not necessarily a specific vote tally. Here we refer to the outcome as "correct" or "incorrect" depending on whether it corresponds with what would be the outcome from a complete manual recount. Note that the outcome from a complete manual recount may not always match the will of the voters. To ensure that outcomes reflect the will of the voters, additional conditions must be met including rigorous ballot accounting, accurate registration data, elimination of unreasonable delays at the polls, good ballot design, and controls on chain of custody for all election equipment and materials.

[10] Fixed-percentage samples are inadequate for risk-limiting audits, because the audit size needed to verify an election outcome depends on the apparent margin of victory, as well as the number of audit units and the amount of error each audit unit can harbor. However, auditing some minimum percentage of votes or audit units regardless of jurisdictional size or election margin may be useful to monitor election accuracy. Generally, requiring a smaller chance of error (e.g. 1% versus 5%) will entail auditing more ballots.

[11] If audit results indicate that the initial outcome is incorrect, ultimately a full recount would be required to determine the final outcome. Preliminary outcomes cannot be overturned based on audit samples alone.

[12] In the selection, some units may be weighted more than others based on their size and the amount of error they could harbor. Random sampling is unnecessary if all audit units will be manually counted, or if so many audit units are counted that the remaining units cannot change the outcome.

[13] Discrepancies found during the audit can also affect the sample size, as discussed in 6a.

5. RISK-LIMITING AUDITS: *continued*

- c. To reduce the burden of counting ballots while still auditing a variety of contests, it may be appropriate to use different rules for auditing some contests than others. For example, it may be appropriate to allow more risk for non-statewide contests.^[14] Jurisdictions may require audits in some contests and randomly select others to be audited, so that every contest has some possibility of being audited. For smaller contests, it may also be appropriate to use alternative audit methods such as targeted sampling (see Best Practice 8) or random sampling based on a fixed number or percentage of audit units.
- d. The selected audit units must be fully and manually counted.^[15] For each selected audit unit, the audit must compare vote count subtotals from the preliminary reported election results with hand-to-eye counts of the corresponding paper records.
- e. For efficiency, large groups of ballots can be divided into batches, each comprising an audit unit. In this case, the subtotals for each batch must be reported prior to the audit as part of the election results. For instance, absentee ballots (if not sorted and counted by precinct) can be divided into batches.

[14] All else being equal, contests spanning fewer audit units – for instance, local contests as opposed to statewide contests – require proportionally larger audits to ensure that the chance of confirming an outcome that is incorrect is low.

[15] “Manual counting” or “hand counting” refers to human visual inspection of paper records to interpret voter intent, followed by a tabulation of the individual vote interpretations. Only the tabulation portion is sometimes assisted by independent and well-trusted equipment such as calculators and spreadsheets. All hand counts should be done blind to the expected result.

6. ADDRESSING DISCREPANCIES and CONTINUING THE AUDIT:

When discrepancies are found, additional counting and/or other investigation may be necessary to determine the election outcome or to find the cause of the discrepancies.

- a. Audit protocols must clearly state what will result in counting more audit units. Such factors might include the number of discrepancies and their distribution across the sample. Protocols must also specify the method to determine how many additional audit units will be selected and under what circumstances a full recount will be conducted. For a risk-limiting audit, the decision of whether to count more audit units is based on a calculation of the risk; the number of additionally selected audit units depends crucially on the discrepancies that have been uncovered.
- b. The plan for continuing the audit must ensure that all stages in counting take place before reporting final results. Moreover, the plan should aim to control the cost of post-election audits while achieving any specified risk limit.

7. COMPREHENSIVE:

All jurisdictions and all ballot types, including absentee, mail-in and accepted provisional ballots, should be subject to the selection process.

- a. Ballots from different jurisdictions and ballot types can be divided into distinct groups that are audited in separate phases. In each phase, the random selection of units to audit must not commence until preliminary results for each audit unit in that group have been reported to the public.
- b. All types of ballots, even those used by few voters, should be subject to the selection process.^[16] These might include overseas or military ballots, faxed ballots, telephone ballots, ballots transmitted over the Internet, ballots cast through accessible interfaces “voter-verified paper audit trail” ballot images, and ballots cast using any other future technology.^[17]

[16] When auditing less common ballot types or very small precincts, care must be taken to preserve voter anonymity and the secrecy of the individual voter's ballot. Also, it may be possible to confirm the election outcome without sampling some types of ballots, if these types do not contain enough ballots to alter the outcome (see footnote 12). However, for fairness and to provide valuable information about the quality of the election process, all ballot types should be routinely audited.

[17] In all cases, voter-verified paper ballots or records must be available for the audit. Auditability — the ability to conduct reliable and efficient audits — should be a crucial criterion when selecting voting technologies.

8. ADDITIONAL TARGETED SAMPLES:

Including a limited number of additional targeted samples of ballots can increase audit effectiveness and public confidence. Such samples may be selected by candidates, issue committees, parties, election administrators, or others as provided by regulation.

- a. This type of sample can be used either in conjunction with a random audit, or by itself for a contest not required by regulation to be audited using a random method.^[18]
- b. Targeted audit units might be chosen based on such factors as major election day problems or preliminary results that deviate significantly from historical voting patterns.

9. BINDING ON OFFICIAL RESULTS:

Post-election audits must be completed prior to finalizing official election results and must either verify the outcome or, through a 100% recount, correct the outcome.

- a. The audit procedures and timing must be integrated with recount law. For each contest, an audit unit normally should be counted only once, even if it is included in both an audit and a recount. If there are unexplained discrepancies in the vote count, a manual count may need to be repeated to reduce the likelihood of a counting error.

[18] One way to contain the cost of targeted samples is to require that the requesting candidate or group pay for the additional ballots to be audited. Such a law was passed in Minnesota in the 2008 legislative session; under this law, the requesting candidate would be refunded by the jurisdiction conducting the recount if the recount leads to the initial result being overturned.

Testimony

Testimony to Introduce HB 1605 (Rep Mary Till)

Thank you Mr Chairman. As many of you already know, my name is Mary Till and I am a State Representative from Rockingham 06, Derry. As I look around at the members on this committee, many of whom are current or previous moderators or town clerks, it strikes me that you are serving on this committee because you recognize the importance of open and fair elections. As Thomas Paine put it, "The right to vote is the primary right by which other rights are protected." I would go on to say, that the right to vote is meaningless unless you can be assured that your vote is counted accurately.

Let me give a brief refresher on vote counting in recent elections. Then I will go into the contents of this bill.

We all remember sitting on the edges of our seats in November, 2000, hanging on hanging chads. The Presidential election that year was ultimately decided by five justices of the Supreme Court. Concern that 5 people could decide who would be President of the United States set off a flurry of activity with Congressional hearings and Special Election Commission investigations on just what went wrong in 2000. This activity resulted in the Help America Vote Act of 2002, a copy of which can be found on the Secretary of State's website. One key recommendation of HAVA was to retire punch card or lever voting machines. It backed up this recommendation with payments to states to accomplish this goal.

This opened the door to electronic counting machines which were ubiquitous by the 2004 election. But a funny thing happened on election night in 2004. I direct your attention to a chart in your hand out called % Difference between Exit Polls and Final Tallies. It lists 12 battleground states in 2004. All the bars with the exception of Wisconsin, indicate a shift of votes from Kerry to Bush. The height of the bar indicates the percentage that the predicted results based on exit polls differed from the announced results. You can see that NH led the way with nearly a 10% discrepancy. Whether this is a reflection of vulnerabilities in electronic voting or simply one more conspiracy theory, what really matters is that if there had been a post election audit, we would not be left to guess what the true outcome should have been.

In your handouts you have an excerpt from the 2006 the Brennan Report, entitled "The Machinery of Democracy." The Brennan study reviewed the three most popular electronic count machines and identified significant vulnerabilities in all three. The three are DRE without VVPT (that is Direct Recording Electronic device without voter verifiable paper trail); DRE with VVPT, and PCOS(Precinct Count Optical Scan), which best describes the machines used in NH.

I direct you to the second last paragraph on your handout in which the report concludes: "The voter verified paper record, by itself, is of questionable security value. The paper record has significant value only if an automatic routine audit is performed along with a

well-designed chain of custody procedure." In other words, having a hard copy of the voting results is of no value if no one ever looks at them.

In 2007 in NH, two bills were introduced and heard before this committee to require some kind of post election audit.

HB 186 called for recounts by the Secretary of State of three randomly selected NH House districts using electronic ballot counting machines. On February 8, 2007, the Election Law Committee held the public hearing. In March, the committee voted 12 to 2 to send the bill to interim study over the summer. In November, 2007, the subcommittee, working in conjunction with the Secretary of State's office, proposed an amendment very similar to the bill you have before you today. As best I can determine from the committee record, the subcommittee voted 4 to 1 to adopt the amendment, full committee voted 9 to 8 to adopt the subcommittee amendment. They then voted down an OTP/A on the full bill by a vote of 8 to 9. The motion of ITL on the bill then passed 9 to 8 and was upheld by the full House.

HB 192 required vote counting by election officials at polling places using vote counting machines for at least one contested office. On February 14, 2007, about a week after the first bill was heard, the Election Law Committee held the public hearing on this second bill. Later that same day, aware that this bill covered the same territory as HB 186, the committee recommended ITL by a vote of 12-2 which was upheld by the full House.

In 2008, the Legislature passed HB 285 which established the Electronic Ballot Counting Device Advisory Committee. Between August 2008 and October 2009 this committee held 15 meetings hearing expert testimony and discussing recommendations among themselves. In November, 2009, the Committee issued its Final Report.

In your packet you have a summary of the six recommendations put forth by the committee. Of those 6 recommendations all but one have been implemented. That one is Recommendation 6.1.6 Random Audits. "The Committee recommended a statewide post-election hand-counted audit of randomly selected jurisdictions and randomly selected races (focusing on those contests not covered by recounts), with sufficient statistical power to confirm that not enough error exists to change election outcomes. In terms of resource allocation, this deserves the highest priority." A link to the full Committee report is provided on your handout.

In 2012, the Verified Voting Foundation issued a report as a follow-up to the Brennan study, entitled "Counting Votes 2012: A State by State Look at Voting Technology Preparedness." Pamela Smith, President of the Foundation, is here to testify today. However, I want to point out a key finding in the report. The report lists 5 categories of system preparedness: 1) Use of a voting system with paper ballots or a voter verifiable paper record; 2) Have contingency plans for the polling place to ensure that adequate hardware is available in case of malfunction; 3) Provide paper ballots for military and

HB 1605 (T: 11)

overseas voters; 4) Conduct a post-election audit of paper ballots or voter verifiable paper records; and 5) Have sound ballot accounting and reconciliation requirements.

And excerpt represented in the chart on page 3 of your handout shows New Hampshire's readiness score. On the first criteria, paper ballots, NH received a plus for using paper ballots. On the second criteria, contingency plans, NH received a N/A because a machine breakdown would not cause a halt to voting. The election could be completed in a timely manner just using the paper ballots. However, it could delay the count. In reviewing records of status calls to LHS during pre-election testing and on election day, it is clear to me that NH has replacement equipment for the optical scanner and the memory card readily available.

On the third criteria, paper ballots for military and overseas voters, NH received an Excellent rating. On the fifth criteria, Ballot Accounting and Reconciliation, NH received an Excellent rating.

However, on the fourth criteria, Post Election Audits, we received an Inadequate Rating, actually a zero because NH has no Post Election Audit process.

HB 1605 will go a long way toward addressing this one deficiency. If NH wants to continue to be the first in the nation Presidential Primary, it should strive to have Excellent ratings in all 5 categories. I can think of no greater legacy our Secretary of State could leave NH than to have a 5 Star rating on Election Procedures.

What the bill will do.

- a) This bill requires the Secretary of State to publicly perform a hand recount of machine counted ballots from randomly selected towns and wards representing 5 percent of the votes cast after each primary and general election.
- b) For each of the towns and wards selected, the SOS shall then select one contest on the ballot to be audited from among the offices of President, U S Senator, U S Congressperson, Governor, Executive Council, State Senator, or any constitutional question.
- c) The audit process shall begin on the Monday following the deadline for requesting a recount with the proviso that if the audit reveals significant discrepancies, the candidate may, within 48 hours, request a full recount.
- d) The audit will take place in Concord.
- e) The SOS shall notify candidates involved and post timely notice on its website of the specifics of the audit and the results of the audit.
- f) The SOS shall investigate any discrepancies found through the audit and will file a report with the Ballot Law Commission and the House Election Law Committee with recommendations on how to address any problems that were identified. This report shall also be published on the SOS website.
- g) Finally, since under RSA 659:77 the moderator is legally responsible for the accuracy of the vote count at the polling place, he or she may conduct an audit recount, if desired.

On the Fiscal Note. In the fiscal note for this bill, the Department of State estimates that the cost of the physical recount will total \$17,060 each even-numbered year. Based on the experience of the SOS with NH elections, the Department estimates that there will be sufficient anomalies identified that they will need to hire a full-time Program Specialist to provide training to local election officials on uniform standards to conduct recounts and to investigate and report on issues identified in the recount and make recommendations on how to correct and improve the vote counting process.

Although the Department of State's fiscal analysis implies that the need for a full-time Program Specialist will go on indefinitely, I am optimistic that as the vote counting process and equipment are improved, the issues requiring the attention of a Program Specialist will decrease. In any case, the cost to fund this position is money well spent if it improves the integrity of the election outcome. Such audits are arguably the most economical component of a quality voting system, adding a very small cost for a large set of benefits.

It is time we step back from faith based voting and do what President Reagan advised, "Trust, but verify."

file copy

1-21-2014

submitted by
Rep. Mary FILL

Excerpts from: COUNTING VOTES 2012: A State by State Look at Voting Technology Preparedness

Pamela Smith
Verified Voting Foundation

Michelle Mulder
Rutgers School of Law - Newark Constitutional Litigation Clinic

Susannah Goodman
Common Cause Education Fund

CATEGORIES OF SYSTEM PREPAREDNESS

Verified Voting, the Rutgers Law School Newark Constitutional Litigation Clinic and Common Cause have evaluated the laws, regulations and procedures of all 50 states and the District of Columbia in five key areas to assess states' preparedness for voting system failures:

• **Use of a Voting System with Paper Ballots or a Voter Verifiable Paper Record**

Nearly every state in the country counts its votes on some form of electronic voting system. However, 16 states use machines as the standard polling place equipment in some or all counties that neither require the use of voter-marked paper ballots nor produce a voter verifiable paper audit trail (VVPAT). VVPATs are paper records, similar to ATM receipts, printed contemporaneously by a VVPAT-equipped DRE and verifiable by the voter. Such ballots and records serve as an important check to ensure that corrupt software or programming errors do not result in an incorrect machine total, and should be required in every county in every state. Such ballots should be treated as the vote of record in all counts, audits and recounts.

Note: NH uses what are referred to as *Precinct Count Optical Scan (PCOS)* where the voter completes a paper ballot and then inserts it into an optical scanner to be counted. From a security perspective, they are similar to VVPATs.

• **Polling Place Contingency Plans** Twenty-three states have at least some counties that use DRE voting machines (whether equipped with VVPATs or not) as their primary voting system on Election Day. If these machines break, or fail to start up, voters may have to wait in long lines while election workers scramble to repair them. Another problem with DRE voting machines is that at peak hours many are needed to accommodate a high level of voter turnout. Shortages of equipment in DRE jurisdictions can easily lead to long lines and disenfranchised voters. The best solution to problems posed by machine failures and shortages in the number of machines is good contingency plans. We have reviewed the contingency plans in the 23 states using DREs as the standard polling place equipment. Machines should be repaired and replaced quickly, and polling places should be required to have enough emergency paper ballots on hand and provide them promptly to voters who are waiting to vote.

Note: Although the report considered this requirement as not being applicable to NH, NH does provide backup memory cards and optical scanners

• **Paper Ballots for Military and Overseas Voters** The majority of states have moved to require or otherwise use paper ballots and/or DREs equipped with VVPATs in the polling place. This is essential to ensure that polling place voting is independently verifiable. However, at the same time, there has been a push towards allowing Internet, e-mail and facsimile transmission of completed ballots from voters voting under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which is undermining the accuracy, integrity and security of remote voting. Votes transmitted this way in 32 states this year constitute electronic ballots which lose the fundamental property of independent auditability, unlike other forms of remote voting. We note the 19 states which require voters' original ballots to be returned. Of the 32 allowing electronic return, we note the six states which seek to contain the risk by making electronic return of voted ballots available only to a restricted group of voters (e.g. military voters in combat zone). One state, New Jersey, allows electronic return but also requires the return of the hard copy paper ballot. Finally, we note the 25 states that currently permit electronic return of votes for military and overseas voters without any restrictions.

• **Conduct Post-Election Audit of Paper Ballots and Voter Verifiable Paper Records** It is critical to note that simply using a paper ballot voting system, in and of itself, does not ensure the accuracy and integrity of election results. In order to do that, the voter-marked paper ballots (including all absentee ballots) or voter verifiable paper records must be used to independently audit the vote count. Mandatory comparison of a random sampling of the paper ballots to electronic totals is one of the best ways to ensure that the reported outcomes are accurate. Twentytwo states both have paper based voting systems and conduct such audits; four more require audits but do not use paper based voting systems statewide. We note which states conduct no audits at all, which conduct some audits but could improve, and which are conducting robust statewide audits regularly.

• **Requirements for Sound Ballot Accounting and Reconciliation**

Independent audits of electronic tallies using paper ballots or records are necessary to ensure the accuracy and integrity of electronically reported results, and ballot accounting and reconciliation do not and cannot replace this function. However, good ballot accounting and reconciliation practices are required to catch basic errors such as the failure to account for all ballots cast at the polling place or to upload all memory cards, which may result in incorrect totals. We have reviewed the ballot accounting and reconciliation practices in all 50 states and the District of Columbia. Good ballot accounting and reconciliation practices include accounting for all voters and all types of ballots at the polling place, reconciling discrepancies between the number of voters who signed in and the number of ballots cast, reconciling precinct totals to county totals, accounting for and reconciling all memory cards, and making results public. To the extent that tally servers are used, as a security measure that protects the ballot accounting function, no system or device upon which ballots are programmed or votes are cast or tabulated should be connected to the Internet at any time.

Chart of State Rankings

State	Overall Rating	Paper Ballots and Records	Polling Place Contingency Plans	Voted Ballot Return for UOCAVA Voters	Post Election Audits	Ballot Accounting and Reconciliation
NH	Good	Paper Ballots	N/A	Excellent	Inadequate	Excellent

CONCLUSION

For the past few years, Common Cause and Verified Voting have worked closely with election officials across the country to improve their voting system procedures, and the Rutgers Law School Newark Constitutional Litigation Clinic has fought tirelessly to discontinue the use of paperless DRE voting machines in New Jersey. There is no question that, in that time, states and counties have made dramatic improvements that make it much less likely that voting system failures will disenfranchise voters. As evidenced by this report, however, there is still much work to be done.

We urge states to do what they can to improve their voting procedures in the remaining weeks before the election. In the longer term, states should enact laws that will allow election officials to adequately deal with potential voting system failures.

- In all jurisdictions with paper ballots or records for every vote cast, it means passing laws that require officials to audit their electronic vote tallies using those paper ballots and records (including military and overseas ballots) after every election to ensure that the machine counts are accurate. For all states, and although this is not a substitute and cannot substitute for using paper ballots and records in audits to confirm the accuracy of electronic tallies, it means strengthening voting system security and requiring ballot accounting and reconciliation procedures that will give us greater confidence that all votes have been counted and only counted once.

Every national election since 2000 has shown us the same thing: voting systems frequently fail. When they fail, votes are lost. Voters in jurisdictions without paper ballots or records for every vote cast, including military and overseas votes, do not have the same protections for the accuracy and integrity of the vote count as states that use paper ballot systems. This is not acceptable. The right to vote is the most fundamental of all of our constitutional rights. As this report makes clear, laws, practices and the technology exists that can ensure that every vote is counted as intended by the voters. Those laws, practices and technology should be implemented in every state and every county in the nation.

You can review the entire report at <http://www.countingvotes.org/>

FINAL REPORT

Electronic Ballot Counting Device Advisory Committee

HB 285, Chapter 134, Laws of 2008

November 30, 2009

6.0 RECOMMENDATIONS

The following is a summary of previous recommendations.

6.1 Existing Tabulator

6.1.1 Fail-Safe. Train election officials in best practices of reconciliation and hand counting, which is the alternative if tabulators fail or are unavailable.

6.1.2 Memory Card Retention and Review. The Committee recommends the development of guidelines for the retention of original memory cards used during elections for a period of time sufficient to deter tampering. The committee favors conducting a review of memory cards, but recognizes that it requires resources and vendor cooperation. A separate fund aimed at testing and security might achieve this purpose.

6.1.3 Physical Security. The Committee supports ongoing (a) training and risk assessment efforts, (b) review of chain of custody procedures for tabulator security, and (c) periodic review of tabulator and memory card storage and records.

6.1.4 Disable Serial Port. The Committee recommends permanently disabling the current Accuvote® - OS serial port, with 3 witnesses attesting that the operation was completed.

6.1.5 Upgrade AccuVote® Firmware Chip. The Committee recommends that the Ballot Law Commission rescind the approval of the AccuVote® Version 1.94w firmware chip and tabulators with non-lucid read heads and approve the AccuVote® 1.96.13 AVOS firmware chip and the accompanying GEMS 1.21.5 22

election programming software. The Committee recommends that the manufacturer represent and certify that the foregoing software and hardware have been installed.

6.1.6 Random Audits. The Committee recommends a statewide post-election hand-counted audit of randomly selected jurisdictions and randomly selected races (focusing on those contests not covered by recounts), with sufficient statistical power to confirm that not enough error exists to change election outcomes. In terms of resource allocation, this deserves the highest priority.

You can review the entire report as well as minutes of the various hearings at <http://sos.nh.gov/ballotcountdev.aspx> on the NH Secretary of State Elections website.

The Machinery of Democracy: Protecting Elections in an Electronic World

June 27, 2006

Brennan Center Task Force on Voting System Security
Lawrence Norden, Chair

On June 28, 2006, the Brennan Center released a report by its Voting System Security Task Force on the security of electronic voting systems. The Task Force was composed of internationally renowned government, academic, and private-sector scientists, voting machine experts and security professionals; together, they conducted the nation's first systematic analysis of security vulnerabilities in the three most commonly purchased electronic voting systems. The Task Force spent more than a year conducting its analysis and drafting its report, *The Machinery of Democracy: Protecting Elections in an Electronic World*.

In advance of its release, the report and its methodology were endorsed by many of the nation's leading security experts, computer scientists and election officials. Some of those endorsements can be found [here](#).

Most broadly, the report found:

- **All three voting systems have significant security and reliability vulnerabilities**, which pose a real danger to the integrity of national, state, and local elections.
- **The most troubling vulnerabilities of each system can be substantially remedied** if proper countermeasures are implemented at the state and local level.
- **Few jurisdictions have implemented any of the key countermeasures** that could make the least difficult attacks against voting systems much more difficult to execute successfully.

Fortunately, the steps necessary to make electronic voting systems substantially more secure are not particularly complicated or cumbersome. For the most part, they do not involve significant changes in system architecture.

[A recommendation proposed for jurisdictions using Voter Verifiable Paper Trails (VVPT) and Precinct Count Optical Scan (PCOS),

For DREs w/VVPT and PCOS:

The voter-verified paper record, by itself, is of questionable security value. The paper record has significant value only if an Automatic Routine Audit is performed (and a well-designed chain of custody and physical security procedures is followed). Of the 26 states that mandate voter-verified paper records, only 12 require regular audits.

You can review the complete report at <http://www.brennancenter.org/publication/machinery-democracy-protecting-elections-electronic-world-0>

% Difference between Exit Polls and Final Tallies

10.0%

7.5%

5.0%

2.5%

0%

IN

MI

IL

CA

TX

OH

PA

NY

FL

VA

CO

MO

% Shift towards Bush

% Shift towards Kerry

Trile Copy
1-21-2014
from Mary Tell

% Difference between Exit Polls and Final Tallies



Source: Prof Dr Steven J. Freeman, Univ of Pennsylvania
Via Stealing America Vote by Vote

HB 1605

Random Audits

Rm. 308

January 21, 2014, 10:00 A.M.

During the 2008 session of our legislature, then State Representative David Pierce sponsored HB 285, relative to electronic voting machines. The bill passed both chambers with amendment on a voice vote, and was signed by Gov. Lynch. It became effective June 4, 2008. As is chronicled in the Final Report, dated November 30, 2009, the first of 16 meetings occurred on August 6, 2008. I acknowledge for the record the professionalism with which the committee was conducted, and applaud the technical assistance provided by our own Anthony Stevens and Dan Cloutier. Although the report lists the Honorable Donald Stritch as committee member, Mr. Stritch fell ill after the first or second meeting, and it was Assistant Secretary of State Tom Manning who conducted the meetings and kept the Minutes. His work was superb. A sincere tip of the hat to the now semi-retired Tom Manning.

Background: In December of 2005, an AccuVote optical-scan voting machine was hacked in Tallahassee, Florida under controlled conditions, resulting in an election whose outcome was reversed without a trace. It made national news. A documentary was released in March of 2006 centered around that hack, and that hacker sat in this room in September of 2007 and explained how he did it.

In March of 2006, despite hours of testimony in opposition, our Ballot Law Commission approved the use of the identical hardware and the identical firmware that did not prevent the demonstrated hack in Florida just four months before, and the Commission members were mindful that 16 identified vulnerabilities remained inside the machine. Put another way, our Ballot Law Commission approved the use of the same hardware and the same firmware that had been successfully hacked without a trace just four months before.

It is important to note here that it was then, and continues to be against federal and state law, for anyone to know how our machines are programed. In effect, the machines continue to be programed in complete secret by a private corporation. And unlike the State of Connecticut, which has become the laboratory for technical innovation, New Hampshire remains unable to verify the accuracy of its machines, because even if given permission by the owners of the firmware to download the memory cards, it has no effective way of doing so.

This quote from our NH Constitution - Part Second, Article 32: The meetings for the choice of governor, council and senators, shall be warned by warrant from the selectmen, and governed by a moderator, who shall, in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and wards present, and qualified to vote for senators; and shall, in said meetings, in presence of the said selectmen and of the town or city clerk, in said meeting, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person ..." RSA 659:63 could also be cited for the same principle.

To determine whether use of our voting machines passes Constitutional muster would require an expensive and protracted court challenge.

However, as early as our fourth meeting of January 26, 2009, an alternative to court challenge is described in the following quote: "The discussion covered a wide range of topics, including the risks associated with the ballot tabulating technology currently in use and risk mitigation strategies, including approaches to random audits." Along the way, other experts recommended random audits. And as late as our last meeting of October 30, 2009, Andrew Appel, Chair of the Princeton University Computer Science Department, strongly recommended use of random audits.

~~Unfortunately, this is a second attempt to follow through on the advice of those experts and to heed that recommendation~~

expressed in the final report. In 2008, HB 186, a bill similar to this one was recommended ITL 9 to 8. Following a floor debate, the ITL was upheld by a vote of 253 to 72.

Although our committee made many recommendations to upgrade optical-scan security and those recommendations were approved by the Secretary of State's Office, and implemented by the Ballot Law Commission in time for Election 2010, the programming of the machines and some of its vulnerabilities were not resolved. My concern is this: It has been four years since the final report, and although I held out hope that the many individuals and organizations working to improve the security and transparency of our elections would have made their progress known by now, it has not happened. It is apparent the random audit recommendations made by the experts and reflected in the final report need to be implemented, given the national obsession with voter fraud, and the lack of attention being paid to the actual problem, election fraud. The difference between the two is the difference between retail and wholesale, ineffective and very effective.

During the public meeting on the photo I.D. bill, I asked the senate sponsor if he could recite any cases of voter fraud in New Hampshire to justify his bill. He said he could not. I then asked why he sponsored the photo I.D. bill. He said it was to prevent fraud. I suggest to this committee that if the prevention of voter fraud is a legitimate reason to propose a bill, then it follows that this bill, useful in discouraging election fraud, is also legitimate.

Further, under Article 6.1.6 of the Final Report's heading of Recommendations, I quote the following:

"The Committee recommends a statewide post-election hand-counted audit of randomly selected jurisdictions and randomly selected races (focusing on those contests not covered by recounts), with sufficient statistical power to confirm that not enough error exists to change election outcomes. In terms of resource allocation, this deserves the highest priority."

We know that over the years, optical-scan machines produced results showing hundreds more votes than there were voters. We know that in Election 2000, Al Gore received a minus 160022 votes. We know that in a Rochester ward in a previous election cycle, optical-scan machines failed to report votes in its first 18 minutes of operation. And the words "I can make a computer do anything" echo in my mind, that opinion rendered by a member of the public during a meeting on a relevant bill in this committee several years ago.

We learned over the weekend that a 17-year old is responsible for hacking into the Target Department Store computers affecting at least 100 million innocent shoppers.

I make no accusations that our machines have ever been manipulated. How could I know? Only exit polling and/or a complete audit of every candidate's race over many cycles could conclusively determine whether fraud was committed. You will hear that we conduct more recounts than any other state. I counter by stating that perhaps 90 percent of those recounts are for state representatives. Nobody is going to jail or willing to lose their right to vote by attempting to skew the vote of a state representative. The purpose of this bill is two-fold: to discourage election fraud, and to have the opportunity to discover it, should it occur.

NH is but one of 50 states. Election fraud in any other state affects all of us here.

I urge this committee's support for this bill, consistent with the specific recommendation for random audits, made more than four years ago, November 30, 2009.

Bob Perry
State Representative District #3
Strafford and New Durham

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file
1-21-2014

Testimony to House Election Law Committee re: HB 1605 Jan. 21, 2014

My name is Deborah Sumner. I live in Jaffrey. I am a former teacher, reporter, editor of education publications and have served as a ballot clerk in my town. My family has deep roots in NH, before it was NH. My NH ancestors fought in the Revolutionary War and relatives have served in every possible public office in this state at both the town and state level. Public service is part of my DNA and our state tradition. I thank you for YOUR public service.

Although I believe random checks of the technology are essential and appreciate that the sponsors have brought this bill forward for discussion, I speak in opposition. Here's why:

I was in the House gallery in Jan. 2008 when an earlier version of this bill was debated on the House floor. At that time I thought it was a good idea. I don't now. I know more about the gap between the "official story" of our NH elections and what is really happening in the trenches. And, I now know what our constitution requires, public vote counts on election night, and that our constitution has been ignored since electronic voting was first approved in NH in 1987.

That Jan. 2008 debate changed my life. I witnessed the courage of three legislators, Reps. Claudia Chase, Betty Hall and Bob Perry who dared to tell the truth to what I believed at the time was Concord "group think." They need citizens' help, I remember thinking then.

I no longer believe it's group think. And I'm here to tell you it's okay to stop pretending. We citizens WANT you to be honest about the vulnerabilities of our current election system and we WANT you to work with us to ensure fair elections in NH in a way that is consistent with the spirit and intent of our constitution.

In Jan. 2008, Rep. Jasper spoke for the committee majority. He began: "This bill seeks a solution for a problem which does not exist in NH."

From my six years of attention to this and citizen's perspective, the PROBLEM is we are not following our constitution; it has been replaced with state policy that is contrary to it AND arbitrarily enforced. I had confidence in our elections when I listened to the debate in Jan. 2008. I have zero confidence now.

We citizens often hear how accurate recounts are. So I researched the recounts conducted in 2006 and 2008 (mostly state rep races) and found most in computer count towns were within 12 votes for a single candidate in a single town, but overall ranged from one candidate losing 121 votes in one town to two others gaining 51

votes. One significant error occurred in a hand count town. Looked like a stack of ballots didn't get counted initially. Your researchers could verify that information and also look at any discrepancies in 2010 and 2012 recounts.

Other research I conducted prior to the Nov. 2010 election is attached to the end of this testimony and was shared with five moderators in my area before that election.

We citizens wanted to know how accurate the computers actually were on election night, especially for the high profile, high stakes races the 2009 advisory committee had recommended for special attention. The report said moderators should retain the option of hand counting those on election night to verify the count. It seemed to us Moderator Wally Fries, a member of the advisory committee, had come up with a REAL solution to the problem. We use the technology; moderators fulfill their legal duty to ensure an accurate count on election night, the public can observe, and any discrepancies between the two counts were reconciled before the official count was recorded. Check and balance. He always counted 1-3 contests, didn't cost his town any extra money and he showed the public there was a reason to have confidence in their elections.

My Jaffrey moderator was planning on choosing one of the Nov 2010 federal races at random and hand counting ballots to verify the computer's accuracy.

Three other moderators in our area checked with the SoS and decided not to do this. My moderator was beginning to feel a bit nervous out there on the limb all by himself. This Oct. 27 communication (attached) from Mr. Scanlan convinced him to change his mind. Since then, we have collected more than 100 signatures on petitions, with more than 50 people in Jaffrey volunteering to help count ballots if needed. But my moderator believes he needs to do what the SoS wants him to do. Meanwhile, other moderators are doing this election night count and did them for the Nov. 2010 election with no objection from the SoS office.

Mr. Scanlan said there's no law requiring moderators to do the election night counts. I disagree. Our constitution requires it, RSA 659:63. "[The counting of votes shall be public.....] requires it. But current state policy is against some moderators fulfilling their legal responsibility to ensure accurate vote counting and reporting on election night.

Back to Jan. 2008: Majority ELC Opinion stated: "If we were to pass this legislation, it would give credibility to the theory that our machines cannot be trusted..." I'm here to tell you, elected officials are NOT the people you need to convince that all is fine with our NH elections. It's the rest of us who need to be convinced. That number continues to grow as citizens meet one stone wall after another.

Summary: The Legislature either needs to develop legislation consistent with the spirit and intent of our constitution (your legal duty) or take a constitutional amendment forward that is consistent with your current policy. This bill is NOT consistent with our constitution and THAT is the problem I hope you will begin to consider and fix. Thank you.

NOTE: Prior to the November 2010 election, this information was shared with five moderators in the Monadnock Region along with the request to hand count a federal race chosen at random (which all moderators have the authority to do) to check the accuracy of the computer. Four moderators said no (three of them first talked with the Secretary of State). The fifth moderator initially said yes but the Secretary of State convinced him to change his mind. Moderators in Brookline and Hollis conducted hand count checks for this election.

Why NH Needs to Conduct Hand Count Checks of AccuVote Computers

To Ensure:

- Electronic totals are accurate.
- Citizens can make informed decisions about how to count votes in their city/town.
- Compliance with state law: votes will be sorted and counted in open meeting (NH Constitution Article 32); counting of votes shall be public (RSA 659:63); tampering with electronic ballot counting devices or software is a felony (RSA 659:42).

Manual counting may reveal attacks such as counter or candidate swapping, error in totals, election data, and ballot layout. It can also counter an attack timed to prevent detection during pre-election testing¹

Some Discrepancies Since 2006

- *State Representative* recounts ranged from one candidate losing 121 votes (Rockingham 4, 2008) to two gaining 51 votes each (Merrimack 9, 2006)². **NOTE:** 5 of 26 candidates in Rockingham 4 contest lost more than 100 votes in single town in recount (more than 1% of total)
 - 2006 *US Representative* race in Amherst: hand count added 58 votes for Bass, 33 for Hodes. (more than 4,635 ballots cast).
 - *Presidential Primary* 2008
 - New Ipswich: 1,316 computer vs. 1,190 hand count total for listed Republican candidates. Democratic votes matched except Richardson (27 computer, 77 hand)³
- NOTE:** Public Information Request showed Republican numbers reported were only off by 1. This discrepancy appears to be an error on the Secretary of State's page.
- Manchester, Ward 11 reported 1,341 Democratic votes for president, 1,268 votes for vice president. Totals = sum of votes cast + write-ins + undervotes/overvotes. Totals for these two races on the same ballot should be equivalent.
 - Manchester (Democratic, 12 wards) reported 148 ballots with no vote. Difference between ballots cast and total votes indicate 243 ballots recorded no vote (129 from Ward 3). Two wards reported 23 more votes than voters.
 - Manchester, Ward 3 reported 1,292 Democratic votes, 1,360 voters and 1,403 ballots cast. It reported two numbers for ballots received, 1,299 and 1,612. Recount=1,282 votes.⁴
 - Manchester (Republican, 12 wards): Difference between ballots cast and total votes indicate 197 recorded no vote (98 from Ward 3). Three wards reported 32 more votes than voters.

Poll Discrepancies

- 2008 Presidential Primary: Average of polling preceding week predicted McCain winning by 3.6% (actual 5.5%) and Obama winning by 8.3% (Clinton won by 2.6%). Obama won in hand count towns 53.25%-46.75% and Clinton won in computer count towns 52.73%-47.27%.⁵

- 2008 General Election (presidential, US Senate and two contested congressional races): Election Defense Alliance conducted an exit poll at three computer and one hand count polling places. Disparities between official totals and exit poll data, adjusted to account for party affiliation, ranged from 4.2% to 10.4% in congressional races, 4.0% to 11.0% in Senate race, and 6.0% to 15.6% in presidential election.⁶

Connecticut Audits

Connecticut uses the AccuVote serviced by the same vendor, LHS. It conducts pre-and post- election checks on memory cards and random recounts of ballots.

- Nov. 2008 memory card audits showed more "junk data" than acceptable.⁷
- A coalition of citizens groups reported "Connecticut's November 2008 Post-Election Audits Report Large Differences from Optical Scanner Totals" that varied by as much as 366 votes in one race and by 46% in another.⁸

¹ <http://voter.engr.uconn.edu/voter/reports/> "State-wide Elections, Optical Scan Voting Systems, and the Pursuit of Integrity" (2009)

² http://www.sos.nh.gov/2006_general_election_recounts.htm
<http://www.sos.nh.gov/recount%20agenda.htm>

³ <http://www.sos.nh.gov/recount hillsrep.htm>
<http://www.sos.nh.gov/recount hills.htm>

⁴ <http://www.bbvforums.org/forums/messages/157/69431.html?1227454203>

⁵ http://electiondefensealliance.org/new_hampshire_2008_primary_analysis

⁶ <http://electiondefensealliance.org/EDA-Exit-Polls-2008>

⁷ <http://voter.engr.uconn.edu/voter/audit-reports/>

⁸ <http://www.ctelectionaudit.org/?p=40>

Resources:

Advisory Committee Report and Minutes:<http://sos.nh.gov/ballotcountdev.aspx>

November 2012 Harper's Article by Victoria Collier (Click "How to Rig an Election" link at bottom of summary): <http://harpers.org/blog/2012/11/on-victoria-colliers-how-to-rig-an-election/>

2005 Article by Doug Jones:<http://homepage.cs.uiowa.edu/~jones/voting/aaas2005.shtml>

Sent: Wednesday, October 27, 2010 3:27 PM

To: Linda Guyette; townclerk@town.rindge.nh.us; chamberlainm@townoffrey.com;

lbelletete@town.swanzey.nh.us

Cc: bud.fitch@doj.nh.gov; Mavrogeorge, Matthew

Subject: Requests to have moderators hand count ballots

@ doj.nh.gov

Runyam 2:46

Exhibit A

Michael Delaney

atty

271 - 1223 asst,

Mavrogeorge - 271-3650

Dear Town Clerk:

Within the last few days, we have been fielding inquiries from local election officials about citizens and interest groups requesting the moderator conduct a hand count of ballots after they have been counted by an electronic ballot counting device. Our thoughts on this matter follow. Please share with other election officials in your town.

There is no provision in state law that provides a mechanism requiring moderators to conduct a hand count of any contest on ballots that have already been counted by an electronic ballot counting device. If a moderator suspects a problem with the security or functioning of an electronic ballot counting device, the moderator is authorized to take the device out of service (RSA 656:42). Similarly, the moderator at his or her discretion may count any race on the ballot by hand if, for a specific reason, they feel a need to verify the result of the electronic ballot counting device.

Pressure from special interest groups for a moderator to conduct an election in a certain way is inappropriate. The decision of whether or not to use an electronic ballot counting device is made at town meeting by a majority vote of the voters present, and that is the appropriate forum to have the discussion on use of electronic ballot counting devices in a specific town. If there is a general interest in conducting audit type hand counts to verify electronic ballot counting device results, the state legislature would be the more appropriate venue to have that discussion. The moderator is in many ways an election judge, an impartial arbiter at the polling place, who is elected on the basis of being able to run an election fairly and impartially. Moderators should not be placed in the potential position of being a lightning rod for the agenda of a special interest group.

In the specific instance where special interest groups are maneuvering to pressure moderators into conducting hand count verification of electronic ballot counting devices without specific instances of concerns, caution should be used. Some of the pressure comes with offers from the special interest groups to count the ballots themselves. Letting members of these groups count ballots could result in serious chain of custody issues, and loss of the integrity of the election itself.

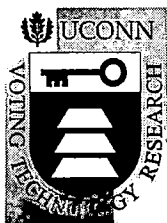
10/28/2010

Page 2 of 2

Sincerely,

David Scanlan,

Deputy Secretary of State



University of Connecticut Center for Voting Technology Research

Alexander. A. Shvartsman, Director

file copy
1-21-2014
testimony of
Alexander A. Shvartsman
VoTeR Center *Shvartsman*

Prepared Remarks: Election Law Committee Hearing, New Hampshire, January 21, 2014

In exercising their right to vote, the citizens increasingly have to rely on the electronic voting technology. Since Help America Vote Act (HAVA) was signed into law in 2002, most voting districts have deployed electronic voting equipment for use by the constituents. Coming from several vendors, the electronic voting equipment in use today forms a diverse landscape of offerings. As in other cases of newly deployed technology, the current industry practices fall short of ensuring adequate reliability and dependability, in turn leading to questionable or nonexistent guarantees regarding the integrity and security of electronic voting systems.

The security of electronic voting equipment is at the apex of concerns dealing with the integrity of elections conducted using such equipment. Computer systems in general have a notoriously poor record in being resistant to a variety of attacks as aptly demonstrated by the spread of viral threats and malicious intrusions. The reports from the banking industry indicate that up to 2% of the electronic banking commerce revenue is lost to fraud. Turning specifically to electronic voting systems, it has been demonstrated numerous times that the equipment can be subverted. Reports by the independent experts and researchers, including those by the VoTeR Center, have pointed to a number of serious vulnerabilities that enable an attacker to take control of the voting equipment. The flexibility of casting a ballot and speed of tallying enjoyed by the current equipment stems from complex digital logic. In the hands of an attacker, the complexity of the logic enables methods of subversion and tampering entirely unheard of before, and resulting, for example, in commandeering the equipment to bias an election without leaving a visible forensic trace. Such vulnerabilities were discovered in all voting equipment that was made available for independent evaluation. In some cases it takes only a few minutes to compromise a voting system or its removable media.

Thankfully, a growing number of districts is using paper ballots that are voter-marked and voter-verified; here the intent of the voter is captured and recorded independently of the electronic voting equipment used. This opens the unique opportunity of harnessing all the benefits of the electronic voting technology while mitigating the possible risks by instituting independent technological oversight and establishing audit procedures to ensure that no technological subversion or tampering occurs. (We remark that for the touch-screen DRE election systems, with or without computer-generated paper trail, software-independent audits are highly problematic, if not impossible.) Also consider that while the banks may tolerate losing 2% of the revenue to electronic fraud as a cost of doing business, losing or misplacing 2% of the votes due to electronic malfunction or nefarious tampering is unacceptable. Given the relative immaturity and lacking integrity guarantees of the extant electronic voting equipment, it is crucially important that comprehensive auditing is implemented for all significant elections.

Audits can run the gamut from pre-election testing of voting equipment and removable media (e.g., memory cards), post-election forensics of the same media containing recorded election results and activity logs, to direct auditing of the tabulators through independent manual or technology-assisted recounts (we note that recounts performed on the same type of equipment as used in the elections, or by completely automated means, are inadequate for many good reasons). Audits are effective in uncovering potential misconfiguration, foul play, subtle, yet significant equipment failures as well as deviations from prescribed electoral procedures. In essence, audits offer validation checkpoints throughout the electoral process that improve reliability and resilience, and ultimately increase confidence in the entire process.

Realizing the severity of the concerns, the State of Connecticut in 2007 has implemented a law requiring post-election hand-count audits in 10% of randomly selected districts, where 100% of the ballots for selected races (specific races plus randomly chosen races) are counted. The purpose of the audits is to detect malfunctions of or malicious tampering with the voting equipment. The State also put in place strict chain-of-custody procedures for the electronic equipment used in the elections.

Since 2006, working with the Connecticut Secretary of the State (SOTS) Office, the VoTeR Center has invested extensively in the development of comprehensive auditing of equipment used in the elections and in the design of safe election procedures. Starting in 2008 the Center, on the request from the SOTS Office, has performed technological audits and assisted in the hand-counted audit procedures in all statewide elections in Connecticut, doing this in a cost-efficient and robust manner.

Proper auditing not only dramatically increases the confidence of the voters that elections are run in an exemplary fashion, but it also helps uncover procedural failings of the election process, enabling voting districts to fine tune their operation and better serve their constituents.

The technological audits also had the benefit of documenting frequent failures of the removable media used with the voting equipment. Prior to our findings only anecdotal evidence existed, while the vendor(s) repeatedly dismissed the problem. Subsequently, the (current) vendor has been succeeding in designing an engineering solution for this problem (a new memory card).

Technological audits revealed certain deviation from proper electoral procedures. For example, it was determined that districts sometimes duplicated memory cards (instead of having them programmed by the authorized supplier). Doing so masks systemic problems and introduces the risk of propagating wrong or tampered data from one card to another. Technological audits also revealed timing deviations (elections conducted on a wrong date, or started or ended too early/late). The forensic follow up in such cases aims to explain the situation and find causes (e.g., clocks may have been set incorrectly, or election may have started using one tabulator, then moved or recounted on another). Doing so helps identify malfunctioning equipment, confirm that all ballots were counted, and helps improve adherence to the proper electoral procedures. Audits also detected cases where elections may have been started with non-zero counters (as the result of incorrect pre-election testing). Follow up with the districts, fortunately, determined that the counters were cleared in all cases on the Election Day. (Our public reports document additional issues.)

We firmly judge that independent audits are necessary: they increase the public confidence in the correctness of election outcomes, point out procedural deviations from established processes, identify technological issues with the equipment, can identify tampering and fraud, and serve as a deterrent. We stress that the audits must be independent: relying on vendor-supplied pre-election testing procedures is completely inadequate (plus, there exists a conflict of interest, cf. a corporation performing self-audit instead of an independent financial audit). In doing audits since 2007 we have identified a number of technical issues, however, where hand-counts deviated from the tabulator-reported counts the follow up found no cases where this was due to tabulator miscounts. Nevertheless, continued audits are necessary as the voting systems are electro-mechanical devices and as any such device they can fail or be tampered with (cf. a town disbanding its fire department because there were no fires last year). Lastly, it is important to capitalize on the overwhelming advantage of paper ballot systems: they can be audited in a software-independent fashion by means of a manual count.

In continuing to work with the Connecticut SOTS Office, our goals are to ensure, from the technical standpoint, the integrity of the election outcomes conducted with electronic voting systems, and to continuously assess the security and dependability of such systems. We believe that the overall approach implemented in Connecticut, encompassing safe-use procedures, and hand-count and technological audits, is practical and effective, and we are continuing to refine and enrich the auditing procedures that are now routinely used in the State.

Broader coverage of the topics discussed here and the results of the audits in the State of Connecticut can be found on our web site at URL <http://voter.engr.uconn.edu/>. Our overall view of auditing can be found at URL <http://voter.engr.uconn.edu/voter/wp-content/uploads/ieee.pdf>.

Source: <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>

The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration, January 2014.

Page 66

Recommendation: Audits of voting equipment must be conducted after each election, as part of a comprehensive audit program, and data concerning machine performance must be publicly disclosed in a common data format.

Post-election audits are a best practice of election administration in general, and especially so when it comes to the performance of voting technology.²¹⁴ The Commission recommends that jurisdictions audit their election machinery following each election to ensure both that the vote totals match the votes cast and that any problems related to machinery are reported and resolved. A critical component of this audit must be public reporting of machine performance so that jurisdictions using similar equipment become aware of any problems before they cause an election crisis.

Different types of audits perform different functions. The Commission endorses both risk-limiting audits that ensure the correct winner has been determined according to a sample of votes cast,²¹⁵ and performance audits that evaluate whether the voting technology performs as promised and expected. Too often the shortfalls of voting technology are discovered in the heat of a recount once the damage has already been done. Performance of voting equipment can and must be evaluated when election outcomes do not depend on it.

The full benefit of election audits of voting technology can only be realized if jurisdictions publicize their results. It is imperative that jurisdictions using similar machines be able to learn about problems each is experiencing.²¹⁶ The voting machine market is dominated by a relatively small number of manufacturers. It is very likely that a problem experienced by one jurisdiction is one soon to be experienced by another using the same or similar equipment. Whether the voting equipment performs as promised or fails in one or another respect, the jurisdiction must publicize the results of its audit so that all similarly situated jurisdictions can promptly learn about and fix any problems.²¹⁷

Culberson, Kay

From: Cote, David
Sent: Tuesday, January 21, 2014 9:16 AM
To: Culberson, Kay
Subject: Fwd: Public Hearing today 10:00 a.m. HB 1605
Attachments: My name is Kenneth Sevene.doc; ATT00001.htm; Testimony in Concord HB 1605 1.21.14 1.doc; ATT00002.htm; Letter from Swanzey Moderator.jpg; ATT00003.htm

Please print and distribute. Thanks.

Rep. David E. Cote (Nashua- Ward 4)

Begin forwarded message:

From: jsevene <jan7e@myfairpoint.net>
Date: January 21, 2014 at 9:10:55 AM EST
To: <david.cote@leg.state.nh.us>
Cc: <mary.till@leg.state.nh.us>
Subject: Public Hearing today 10:00 a.m. HB 1605

Dear David,

My husband Ken, and myself were most anxious to testify at this morning's public hearing. Unfortunately, a health issue makes it impossible to do so.

As concerned citizens, we realize the importance of expressing our opinions, so I am attaching both our testimonies, and a letter supporting my testimony, that we had planned to present. Because we are new at this, I am hoping it would be possible for someone to read each of these during the public session, so both the public and the committee can hear our thoughts. If so, it would be greatly appreciated.

If there are any questions, we can be reached at this email, or 603-352-3939.

Thank you for your assistance.

Regards,

Jan Sevene
jan7e@myfairpoint.net

My name is Kenneth Sevene. I am pleased that you are here willing and able to listen to concerned citizens.

I have been a resident of New Hampshire over 40 years, currently a resident of Swanzey. For eighteen years, I worked for a corporation with international ties, and served as a Technical Service Representative. Involving world travel, I was exposed to many different cultures. It remains with me to this day, how the various people I met were always quick to comment on the rights I had as a U.S. citizen. We were admired and respected for those rights.

I have always been proud of the New Hampshire Constitution, but I am now saddened by the current ballot counting method. By that, I mean conducted without any transparency, for the citizens to verify the count for themselves in open meeting. We seem to be headed for a complete disenfranchisement of the citizens, and their election officials to carry out their responsibilities, in line with the Constitution.

I have read Deborah Sumner's original draft, as submitted to Rep. Mary Till. It is my opinion that it would have helped keep the responsibility of an accurate and honest vote count in the hands of the local moderators, with citizen oversight within the Chain of Custody, where it rightfully belongs. Instead, HB 1605 takes all the local control away from the citizens and directs it to the state, not the people.

I don't believe this is what the NH Constitution is about.

A final word on transparency:

Around 500 B.C., the Greeks had the first Democratic elections. Each voter would take one stone, either a white for "yes" or a black for "no", and cast that stone representing their vote, in full public view. Compare that with today's cast in secret, counted in secret, and kept in secret.

Where is the transparency?

Without it, where is the democracy?

In conclusion, technology is a great thing, but what are we giving up with its use, and at whose expense? I cannot, as it stands, support HB 1605 for the reasons mentioned above.

Thank you.

Testimony regarding HB 1605, January 21, 2014

I am pleased to be here today, to have the opportunity to express my opinion regarding HB 1605. I appreciate your hard work, and thank you for your willingness to listen to and fairly weigh what I have to say.

My name is Janice Sevene. I have been a resident of Swanzey, NH for 42 years. During those years, I served as Deputy Town Clerk, and worked as a teacher and a journalist. I am a registered voter; however, during those years I must confess I usually cast my vote, and like many, simply waited to hear the election results.

When Swanzey began using electronic voting machines in 1996, I did not question it, and gave little thought to what happened to my vote once it slid into the machine. It seemed like an efficient use of modern technology. However, that impression came to a screeching halt, when one night I watched a documentary that described the questionable vulnerabilities of the very computerized voting machine Swanzey was using. I was shocked! I asked, why had I not known this?

I later learned the machine's problems were numerous, and that although many were discussed in the Electronic Ballot Counting Device Advisory Committee Final Report, dated Nov. 30, 2009, the following major problems associated with computerized voting machines still exist:

- the method of counting is not consistent with the NH Constitution, being that votes are not sorted and counted in open public meeting, but rather inside a machine, completely out of public view.
- it is illegal to examine its software, as it is proprietary
- no one can know if the computer printout results were calculated correctly in the machine...this includes our town clerks, and especially the moderators--the very people responsible for assuring an accurate count
- our paper ballots, the traceable means to determine the accuracy of the election results, were exempted from the Right to Know law in 2003

I have come to realize that the monumental problem that ties all of this together, is the failure of computerized voting systems to conform to the voting rights spelled out by the NH Constitution. This, and having, three times, been denied a request that our moderator conduct a random parallel hand count to check the accuracy of the machine count, has brought me here today.

Personally, I believe we should return to a doable, less expensive, and Constitutional, totally transparent hand count, but in the meantime, a bill such as HB 1605, would help establish a checks and balance, which we do not currently have. Sadly instead, with this bill, supposedly intended to help restore public confidence in this flawed process, I envision just the opposite.

This bill takes what should be a simple process, and not only complicates it, but further erodes our community's control of local elections. I can think of no reasonable explanation for parallel hand-count

(or audit recount) ballots being removed from the community and counted elsewhere after the election, when election night at the polls is precisely where a discrepancy can be easily investigated.

HB 1605, increases the chance of tampering, by removing ballots from (public view) the local Chain of Custody. And, it denies moderators, accountable to the people who elected them, the ability to do their jobs, by transferring their responsibilities to the State. (see local elections "governed by moderators", NH Constitution, Article 32).

Indeed, most election officials are honest and hard-working. I firmly believe, if allowed, our elected moderators are capable of and should be making decisions, with the authority they have been given, to instill voters' confidence in the machines. In 2010, our moderator denied my oral request for a parallel hand count on election night, after he spoke with the Secretary of State. The second request by petition, signed by approximately 125 registered voters, went unanswered for weeks, his response came only after an open letter request to the media. The answer was again "no".

The third request, also accompanied by a petition, was also denied by a new moderator. Her written response (see copy) parroted Dep. Sec. of State Scanlan's email dated Oct. 27, 2010, sent to four local towns, Swanzey being one of them. He informed the towns there was no state provision requiring moderators to conduct a hand count of any ballots that had been counted by a computerized machine, but failed to inform them there is no provision that said they could not.

As you can see, there was very little good, according to Dep. Scanlan, to allowing concerned citizens a means of simply checking the computerized machine's accuracy with a random, non-partisan parallel hand count on election night. Strangely, I learned later that at this same time, other towns in New Hampshire were conducting parallel hand counts, some on a regular basis, with no ramifications from Dep. Scanlan, who was aware they were taking place.

In conclusion, Election Integrity Strategist Eva Waskell, who has researched electronic voting for decades, concluded: "We have public elections where the counting is concealed and hidden so public observation and scrutiny is impossible." According to Waskell, problems with electronic voting had been prevalent for years, "taboo" to discuss; therefore kept from the public because if known, she was told, the public would lose confidence in the machines and not vote. She advised: "Trust but verify, must be the guiding principle behind every critical step in a democratic election."

Because this bill does not allow verification our own election results, on election night, counted under the watchful eyes of our moderators, by friends and neighbors in our communities that have a vested interest in honest election outcomes, I must oppose HB 1605.



TOWN OF SWANZEY

620 OLD HOMESTEAD HIGHWAY

P.O. BOX 10009

SWANZEY, NH 03446-0009

TOWN HALL (603) 352-7411 FAX (603) 352-6250

WWW.TOWN.SWANZEY.NH.US

October 29, 2012

Mr. and Mrs. Kenneth Sevene
77 Old Leonard Farm Road
Swanzy, NH 03446

Dear Mr. and Mrs. Sevene,

This quote comes from a letter Mr. Scanlan, Deputy Secretary of State wrote on October 27, 2010, and is still in effect, according to Mr. Scanlan. I quote; "There is no state provision in state law that provides a mechanism requiring moderators to conduct a hand count of any contest on any ballots that have already been counted by an electronic ballot counting device." As you are aware, the voters of Swanzy gave no indication that they wanted a hand count done during an election in the town. Therefore, I will not give you and the petitioners the option of a parallel hand count for November 6, 2012.

We have done a thorough count of the ballots prior to the election, with three people doing the count, and one selectwoman observing the trial runs of the machines as indicated by the state. I have two moderators working the polls, all of the ballot clerks have had experience with this type of election, and we have two inspectors from each party with us during the election. We will have enough to do without worrying about a parallel hand count—especially checking for identifications with all who come through the polls.

Also, there would be an expense to the town, since the checkers would be the ones who had to do the recount, since "letting members of the community who have not been assign to count ballots could result in serious chain of custody issues and loss of the integrity of the election itself" Another quote from Mr. Scanlan's October 27, 2010 letter. We also have to consider the place where we vote might not want us to avail ourselves of the building any later than we do.

I have talked with the selectmen and it would be our suggestion that if you want to pursue this issue, you put an article on the 2013 town warrant, explaining your ideas.

If you still wish a meeting with us, we can, but that might be a bit difficult, since the election is only a few days away. I think this letter explains our reasons for the "no parallel hand count" this year.

Sincerely,

Patricia Harellson

Copies to: Deputy Sec. Of State, Dave Scanlan
Swanzy Selectmen-Ken Colby, Nancy Carlson, Debbie Davis
Town Administrator-Shane Powell

Culberson, Kay

From: Cote, David

Sent: Thursday, January 23, 2014 4:20 PM

To: Culberson, Kay

Subject: Fwd: In support of the testimony of Jan and Kenneth Sevene and Deborah Sumner re HB 1605
Please print, distribute & file. Thanks.

Rep. David E. Cote (Nashua- Ward 4)

Begin forwarded message:

From: Barbara Glassman <barbara.glassman@gmail.com>

Date: January 23, 2014 at 2:24:36 PM EST

To: <david.cote@leg.state.nh.us>

Cc: Deborah Sumner <dsumner@myfairpoint.net>

Subject: In support of the testimony of Jan and Kenneth Sevene and Deborah Sumner re HB 1605

Dear Rep. Cote:

I would like to register my opposition to HB 1605 for all the reasons so logically presented by Jan and Kenneth Sevene and Deborah Sumner in their testimony. As they point out, it actually compounds the current problem of lack of local control and oversight. It is a costly fig leaf--not a solution.

Thank you very much for your attention.

Sincerely,

Barbara Glassman
50 Barrington Ave., Unit 504
Nashua, NH 03062-4224

Culberson, Kay

From: Cote, David
Sent: Thursday, February 06, 2014 6:24 AM
To: Culberson, Kay
Subject: Fwd: HB 1605-FN

File please.

Rep. David E. Cote (Nashua- Ward 4)

Begin forwarded message:

From: "Lothrop, Carroll" <clothrop@keene.edu>
Date: February 6, 2014 at 12:35:24 AM EST
To: <david.cote@leg.state.nh.us>
Subject: HB 1605-FN

Representative Cote,
Protecting the integrity of election vote totals is an admirable goal, and is, I believe, the goal of HB 1605-FN. I am concerned that the public be present whenever votes be counted or audited. Please add a provision to this bill that any audits done by the Secretary of State be done in open, public session.

Carroll Lothrop
Surry NH--where we gladly vote with pencil and paper ballot



HOUSE COMMITTEE RESEARCH OFFICE

New Hampshire House of Representatives

4th Floor, Legislative Office Building

Concord, NH 03301

Tel: (603) 271-3600

Fax: (603) 271-6689

Pam Smarling, Committee Researcher

(603) 271-3387

Pam.Smarling@leg.state.nh.us

To: David E. Cote, Chairman, House Election Law Committee

From: Pam Smarling, Committee Researcher
House Committee Research Office

Date: January 17, 2014

RE: HB 1605, relative to audit recounts

You asked:

What is the history of legislation to require audit recounts of ballots in New Hampshire?

HB 1605 establishes a process for conducting audit recounts in towns and wards that use electronic devices to count ballots. The bill requires the Secretary of State to recount votes representing at least 5% of the votes cast in the most recent state primary or general election.

HB 1605 is similar to HB 186 introduced in 2007. The earlier bill was referred to the House Election Law Committee, retained for review and then killed by the House.

2007 Legislative Session

HB 186-FN, relative to random recounts.

Sponsors: Rep. C. Chase, Rep. Clemons, Rep. Ryan, Rep. Morrison, Rep. B. Richardson, Sen. Burling, Sen. Cilley

Referred to House Election Law Committee

Summary as Introduced:

- Required the Secretary of State to conduct 3 recounts in House districts after each state general election
- Required the districts to be randomly selected from those districts using electronic ballot counting machines and conducted in accordance with RSA 660:5.
- Required the Secretary of State to report the results of the random recounts to the Attorney General.

HB 186 was retained for further work over the summer of 2007. After 11 subcommittee work sessions, the committee recommended that the bill be found Inexpedient to Legislate by a narrow margin. A minority of the committee supported an amendment to the bill.

Committee Report: Majority: Inexpedient To Legislate, Vote 9-8.
Minority: Ought To Pass With Amendment.

Rep. Shawn N Jasper for the Majority of Election Law: This bill seeks a solution for a problem which does not exist in New Hampshire. Time and time again recounts have demonstrated the accuracy of our voting machines. The changes which occur, as a result of recounts, are all the result of human error: incorrect marking of ballots (which only a hand count can determine) or other factors such as misplaced ballots. In the last presidential election, a candidate stopped his recount when the accuracy of the machine count was shown in precinct after precinct. If we were to pass this legislation it would give credibility to the theory that our machines can not be trusted, when in fact there has never been a recount in New Hampshire which has done anything but prove their accuracy. We have a process in place that allows for any candidate who doubts the validity of the outcome to have a recount. There is no reason to add the expense of random recounts or to question our election results.

Rep. Claudia A Chase for the Minority of Election Law: The minority of the committee believes that due to the many vulnerabilities of the optical scanners used to count 85% of the vote in New Hampshire, it is expedient to install a random recount to prove to the voters of New Hampshire that vote counting in New Hampshire is accurate. Although we believe in the integrity of elections in New Hampshire, such a recount would protect us from future possible corruption of the vote.

2007-2598h

Amendment to HB 186-FN

Proposed by the Minority of the Committee on Election Law - R

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

AN ACT relative to audit recounts.

Amend the bill by replacing section 1 with the following:

1 New Chapter; Audit Recounts. Amend RSA by inserting after chapter 660 the following new chapter:

CHAPTER 660-A
AUDIT RECOUNTS

660-A:1 Application. The secretary of state shall choose a random process to select towns and wards using optical scan equipment to count votes that equal at least 5 percent of the votes cast in the most recent general election for the purpose of an audit recount. For each town or ward selected, the office to be recounted shall be randomly selected from the offices of president, United States senator, representative to Congress, governor, and state senator.

660-A:2 Time and Notice. The secretary of state shall begin the process of audit recounts on the Monday following the deadline for requesting a recount. If a recount is requested for the same town and office chosen for an audit recount, additional towns and wards shall be chosen consistent with RSA 660-A:1 to replace those also chosen for a recount. A recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state. The secretary of state shall give notice thereof to each of the candidates involved in an audit recount. The secretary of state shall also prepare and distribute to each of the candidates the rules and procedures governing the audit recount at the time and place of the recount.

660-A:3 Conduct of Audit Recount. Audit recounts shall be conducted in a manner consistent with RSA 660:5 except, however, candidates involved with the audit recount may not protest ballots being counted.

660-A:4 Posting Results. Results of the audit recounts shall be announced following the recount and made available to the public. Any candidate involved in an audit may, notwithstanding RSA 660, request a formal recount of the candidate's entire district within 48 hours of the announced outcome of the audit if the results vary significantly from the declared results. Fees for a requested recount under this provision shall be the same as in RSA 660:2.

AMENDED ANALYSIS

This bill requires the secretary of state to perform audit recounts of towns and wards representing 5 percent of the votes cast after each general election.

House vote: Inexpedient to Legislate, Roll Call vote 253-72; January 16, 2008

Final Action: Killed by the House

Laws in Other States

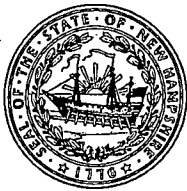
According to the Verified Voting Foundation, 28 states have adopted some form of audit recount law.

New Jersey adopted a law to require audit recounts but it is not in effect because the voting machines currently in use are paperless.

	Manual Audit required in:
Alaska	One precinct accounting for at least 5% of the ballots in that district
Arizona	Greater of 2% of precincts in county or two precincts.
California	At least 1% of the precincts.
Colorado	Not less than 1% of the voting devices
Connecticut	10% of voting districts
Florida	At least 1% of precincts
Hawaii	Not less than ten per cent of the precincts employing the electronic voting system
Illinois	5% of the precincts
Kentucky	precincts representing 3% to 5% of the total ballots cast in each election
Minnesota	sliding scale based on population of county; county with fewer than 50,000 registered voters at least 2 precincts county with 50,000 - 100,000 registered voters at least 3 precincts county with over 100,000 registered voters at least 4 precincts
Missouri	Not less than 1 precinct per 100 precincts (at least 1%)
Montana	A minimum of 5% of precincts in each county, and at least one federal office, one statewide office, one state legislative office, and one statewide referendum.
Nevada	All counties; county with population over 100,000, 2% of voting machines or at least 20 machines; county with less than 100,000, 3% of voting machines, at least 4 machines

	Manual Audit required in:
New Mexico	audit is conducted for specific offices (all federal offices, the governor, and the statewide office unofficially won by the smallest margin), and can lead to a full recount
New York	3% of machines in the jurisdiction of each board of elections
North Carolina	randomly selecting the sample precincts for each election; not defined as specific percentage
Ohio	Audits of the November 2008 general election were required by the Secretary of State under directive specific to that election; audit process adopted as permanent directive in 2010
Oregon	varies by margin of victory
Pennsylvania	The lesser of 2% of votes cast, or 2000 votes.
Tennessee	At least 3% of the ballots cast and at least 3% of the precincts, and at least the top race in a federal, state, county, or municipal election.
Texas	All races in the greater of three precincts or 1 % of precincts which an electronic voting system was used. The Secretary of State may waive the requirement.
Utah	At least 1% of machines chosen randomly by the Office of the Lieutenant Governor; policy directive of Lt. Governor
Vermont	Audits not required, Secretary of State may order and conduct a post-election audit of any polling place results from a primary or general election within 30 days of the election
Virginia	Pilot program authorized in 2008; no requirement for audits
Washington	up to 4% of voting machines
West Virginia	5% of precincts
Wisconsin	5% of voting units

Source: Verified Voting Foundation



HOUSE COMMITTEE RESEARCH OFFICE

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Pam Smarling, Committee Researcher

(603) 271-3387

Pam.Smarling@leg.state.nh.us

To: David E. Cote, Chairman, House Election Law Committee

From: Pam Smarling, Committee Researcher
House Committee Research Office

Date: January 17, 2014

RE: HB 1459, relative to domicile for voting purposes during a temporary absence.

You asked:

What are the provisions in the New Hampshire addressing domicile for voting purposes specific to members of the armed services?

RSA 654:2 states that a person is not deemed to have lost domicile by a temporary absence with the intention of returning to the domicile. This section specifically includes people who are absent from the state while employed in the armed services. HB 1459 adds language to this section providing that the spouse of an active member of the armed services shall not lose his or her domicile.

Definition of Domicile; RSA 654:1, I

“An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.”

Provisions addressing Members of the Armed Services

In addition to the provision addressing members of the armed services in RSA 654:2, there are further provisions in RSA 654:3. This section describes the conditions under which absent uniformed services voters and absent voters temporarily residing outside of the United States are permitted to vote in New Hampshire. This section does not include the spouse of a member of the armed services who may reside in another state in the United States.

654:3 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Voters. –

I. Absent uniformed services voters. An absent uniformed services voter, being a citizen of the United States and being at least 18 years of age as provided in Article 11 of Part First of the constitution of New Hampshire, shall have the right to vote absentee in any state election in the town or city in New Hampshire in which he or she had his or her domicile immediately prior to service, even though he or she no longer maintains domicile in said town or city and even though his or her intent to return thereto is uncertain, provided:

- (a) He or she complies with all other applicable requirements and qualifications of the state of New Hampshire,
- (b) He or she is not registered to vote in any other state or election district of a state, or in any territory or possession of the United States.

II. Absent voters temporarily residing outside the United States. An absent voter temporarily residing outside the United States, being a citizen of the United States and being at least 18 years of age as provided in Article 11 of Part First of the constitution of New Hampshire shall have the right to vote absentee in any election in the town or city in New Hampshire in which he or she had his or her domicile immediately prior to his or her departure provided:

- (a) He or she complies with all other applicable requirements and qualifications of the state of New Hampshire; and
- (b) He or she is not domiciled and is not registered to vote in any other state or election district of a state, or in any territory or possession of the United States; and
- (c) He or she has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.

III. Federal ballot only voters domiciled outside the United States. Any United States citizen, being at least 18 years of age as provided in Article 11 of Part First of the constitution of New Hampshire, who is domiciled outside the United States, shall have the right to register absentee and to vote for federal offices in the town or city in New Hampshire in which he or she, or a parent or legal guardian of said voter, had his or her domicile immediately prior to his or her departure from the United States, even though he or she no longer maintains domicile in said town or city and even though his or her intent to return thereto is uncertain, provided:

- (a) He or she complies with all other applicable requirements and qualifications of the state of New Hampshire; and
- (b) He or she is not domiciled in and is not registered to vote in any other state or election district of a state, or in any territory or possession of the United States; and
- (c) He or she has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.



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Pam Smarling, Committee Researcher

(603) 271-3387

Pam.Smarling@leg.state.nh.us

To: David E. Cote, Chairman, House Election Law Committee

From: Pam Smarling, Committee Researcher
House Committee Research Office

Date: January 17, 2014

RE: HB 1322, relative to the definition of "party" for election purposes.
HB 1497, relative to the definition of "party" and relative to nomination papers.

You asked:

What is the history of the definition of "party" in New Hampshire?

What is the history of recent attempts to revise the definition?

Ballot Access Laws in New Hampshire

Under current law, only political organizations that meet the definition of party may nominate candidates through the state primary election. 'Party' is defined as "any political organization which at the preceding state general election received at least 4 percent of the total number of votes cast for any one of the following: the office of governor or the offices of United States senators." [RSA 652:11]

Candidates in New Hampshire can obtain access to the general election ballot in one of the following ways:

1. receive a party's nomination in a state primary election

party limited to political organizations that have received 4% of the total number of votes cast for governor or US senate

2. submit the required number of candidate nomination papers [RSA 655:40 and 655:42]
 - 3,000 registered voters, 1,500 from each congressional district for candidates for president, United States senator, or governor.
 - 1,500 voters registered in the district for candidates for US representative
 - 750 voters registered in the district for candidates for councilor or state senator
 - 150 voters registered in the district for candidates for state representative or county officer.
3. belong to a political organization that has submitted the required number of nomination papers; [RSA 655:40-a and 655:42, III]
 - 3% of the total votes cast at the previous state general election

HB 1322 (2014)

This bill would decrease the number of votes necessary for a political organization to attain party status in RSA 652:11 from **4% to 3%** of the total number of votes cast for governor or US senate.

HB 1497 (2014)

This bill would decrease the number of votes necessary for a political organization to attain party status in RSA 652:11 from **4% to 1%** of the total number of votes cast for governor or US senate.

It reduces the number of signatures required to obtain ballot access by nomination papers:

- 200 registered voters, for candidates for president, United States senator, or governor.
- 100 voters registered in the district for candidates for US representative
- 50 voters registered in the district for candidates for councilor
- 20 voters registered in the district for candidates for state senator
- 150 voters registered in the district for candidates for state representative or county officer.

Adds a new alternative permitting a candidate to obtain access to the ballot by paying a fee:

- \$100 for candidates for president, United States senator, or governor.

- \$50 in the district for candidates for US representative
- \$25 voters registered in the district for candidates for councilor
- \$20 voters registered in the district for candidates for state senator
- \$10 voters registered in the district for candidates for county officer
- \$2 voters registered in the district for candidates for state representative

Revisions to RSA 652:11. adopted 1997

The last time the definition of party was amended was in 1997 (effective January 1, 1999). At that time the requirements under the definition were changed from:

- at least **3%** of the total number of votes cast for the office of **governor**
- to:
- at least **4%** of the total number of votes cast for the office of **governor or the offices of United States senators**

Libertarian Party on Ballot, 1992-1996

The only political organization to attain party status in New Hampshire in recent years is the Libertarian Party. In the 1990 general election, Miriam Luce ran for governor and received 14,348 votes. This equated to 4.86% of the total votes cast for governor. The Libertarians retained party status by garnering 4% of the votes cast for governor in 1992 (Miriam Luce) and 4.4% of the votes cast for governor in 1994 (Winter). They subsequently lost party status when in 1996, the Libertarian candidate for governor received 1.2% of the votes. A Libertarian candidate for U.S. Senate received 4.53% of the vote in 1996 (Ken Blevens). The law at that time granted party status only through votes for governor, however, and the Libertarians lost party status. In the following year, the law was amended to include votes cast for US Senate and the percentage was increased from 3% to 4%.

Legislation to Amend the Definition of Party, 1999-2011

A number of bills has been introduced to amend the definition of "party" since the 1997 revision was adopted. These bills have not been identical, but they all have had the common goal of expanding access to the ballot for third parties.

Proponents have noted that it is difficult for third parties to meet the definition of party in RSA 652:11 and that the provisions of this section are discriminatory. They feel that a change in the definition would make it easier for third parties to establish themselves in New Hampshire and that this would lead to greater choice for voters in elections. They believe that new ideas and new voices should be encouraged.

Opponents noted that an increasing number of parties on the ballot would incur new costs on the state. Representatives from the Secretary of State's office, although taking no position on the bills, testified that the primary ballots printed for the Libertarian Party when they had ballot status cost \$30,000 - \$40,000. It was also noted that municipalities would incur expenses for validating the petitions.

1. HB 293 (1999), relative to the definition of "party" for election purposes.

Sponsor: Rep. Brewster

This bill added an alternative to meeting the 4% threshold, by granting party status to organizations that:

- Had a chairperson, a secretary, and a treasurer, each of whom is a separate individual legally registered to vote in this state; and
- Had submitted to the secretary of state a request for party recognition for the biennium signed by 50 persons from each county legally registered to vote in this state before the second Monday in January of the year in which the state general election is to be held.

Disposition

Referred to House Election Law Committee

Committee Report: Inexpedient to Legislate, 16-0, Consent Calendar

Rep. Paul Gibbons for Election Law: HB 293 expands the circumstances under which a political organization qualifies as a party for election purposes. As the definition of "party" was written last session and just went into effect 1/1/99, the Committee found no need to redefine or expand the definitions at this time.

House vote: Inexpedient to Legislate, Division vote 259-26

Killed by the House

2. HB 1158 (2002), relative to the definition of "party".

Sponsor: Rep. Brewster

Summary

- Changed the 4% threshold to 3% of votes cast for Governor or US Senate

Referred to House Election Law Committee

Committee Report: Inexpedient to Legislate, vote 11-5, Regular Calendar

Rep. Steve Vaillancourt for Election Law: This bill would lower the threshold for "third parties" obtaining ballot status from four percent of the total number of votes cast in the preceding election to three percent. The majority believes that access is important but that some percentage of support must be shown. It then becomes a question of which percent. Some in the minority actually favored an increase to five percent which would, of course, have made ballot access more difficult. In opting to keep the number at four percent, the committee took into account that a change down to three percent would not have made a difference for the Libertarian Party in the post election cycles when it failed to achieve ballot status. In other words, it failed to attain three percent as well as four percent. Current legislation also allows for the office of governor and US senate to be considered in attaining the four percent. There was some consideration to go up to the three percent but of having only the office of governor be considered. This, however, would seem to provide less of a chance of "third party" ballot access, so the status quo option seemed best.

House Vote: Inexpedient to Legislate, voice vote

Killed in the House

3. *HB 408 (2003), relative to the definition of political "party".*

Sponsor: Rep. Marple

Summary

- Repealed the definition of "party" in RSA 652:11
- Amended the definition of "Political party" or "party" in RSA 664:2, IV to read "any political organization or number of persons which can nominate candidates in any manner prescribed by law and has done so for the current election".

Referred to House Election Law Committee

Committee Report: Inexpedient to Legislate, 13-4, Consent Calendar

Rep. Richard B. Drisko for Election Law: The intent of this bill is to repeal the current definition of what constitutes a "political party". This repeal would relax the requirements now in statute. The majority of the committee felt that the current definition is fair and adequate. Presently, 4% of the last general election

votes for governor or senator is required. This is fair and should be continued. This bill would eliminate all political parties and allow all groups to petition for the general election.

House Vote: Inexpedient to Legislate, voice vote

Killed in the House

4. *HB 1385 (2006), relative to nomination papers and the definition of "party."*

Sponsors: Rep. Bicknell, Rep. Cady, Rep. Mirski, Rep. Ingbertson, Rep. Kennedy

Summary:

- Changed the 4% threshold to 2% of votes cast for Governor or US Senate
- Decreased the number of nomination papers required for candidates and political organizations
- Permitted a filing fee in lieu of nomination papers

Referred to House Election Law Committee

Committee Report: Inexpedient to Legislate, 14-0, Consent Calendar

Rep. Richard B. Drisko for Election Law: The intent of this bill was to lower the requirement necessary for a party to qualify for ballot status. The percentage of vote necessary from the previous election would be lowered from 4 percent to 2 percent. The number of signatures necessary for nomination petitions was reduced. In addition, a candidate may substitute payment of a fee per petition signature for the filing of a nomination paper. The committee felt that this bill violated the intent of current statutes.

House Vote: Inexpedient to Legislate, voice vote

Killed in the House

5. *HB 48 (2008), relative to the definition of "party" for election purposes.*

Sponsors: Rep. Davis, Rep. Greco, Rep. S. Kelly

Summary

- Changed the 4% threshold to 2% of votes cast for Governor or US Senate

Referred to House Election Law Committee

Retained in 2007.

Committee Report: Inexpedient to Legislate, vote 15-2

Rep. David M. Pierce for Election Law: The committee intends to submit its own bill in the 2008 session to address the issue of encouraging ballot access by political parties other than the Republican and Democratic parties. For this reason, the committee voted to recommend inexpedient to legislate on this bill.

House Vote: Inexpedient to Legislate, voice vote

Killed in the House

1. HB 1264 (2010), relative to the definition of "party" for election purposes.

Sponsors: Rep. Winters

Summary

- established alternative methods for political organizations to be recognized as parties *for election purposes other than primary elections.*

Referred to House Election Law

Referred for Interim Study 2010; Recommended for Future Legislation, vote 9-2

Committee Report

Rep. Kevin D. Hodges for House Election Law: The committee recommends further action on the issues presented in this bill. We support the principle of easier ballot access because it encourages a multitude of viewpoints in representation. This bill makes ballot access easier by lowering the thresholds by which a political organization becomes a party and have its candidates printed on the ballot. The bill also allows voters to register with the secretary of state with any political organization, rather than just choose between the two major parties.

Recommended for Future Legislation in the House

2. HB 152 (2012), relative to the definition of "party" for election purposes other than primary elections.

Sponsors: Comerford, Rep. Pierce, Rep. Scala, Rep. DeJong, Rep. Itse

Referred to House Election Law

Retained in 2011

Committee Report: Inexpedient to Legislate, vote 19-0, Consent Calendar

Rep. Regina M. Birdsell for Election Law: This bill modified the definition of "party" for election purposes other than primary elections. This modification would have lowered the requirement from 4% of the vote to 2% of the vote in an election for governor or U.S. senator for a party to retain ballot access. Alternatively, a party would be defined as such by submitting nomination papers. The secretary of state's concern with this bill was that it would increase the costs of printing ballots because of a necessity to add party columns and create the potential for multiple page ballots. The committee will be reviewing a comprehensive ballot reform bill that would help to answer some of the concerns expressed by members of the committee and the secretary of state.

House Vote: Inexpedient to Legislate, voice vote

Killed in the House



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(603) 271-3387

Pam.Smarling@leg.state.nh.us

To: David E. Cote, Chairman, House Election Law Committee

From: Pam Smarling, Committee Researcher
House Committee Research Office

Date: January 21, 2014

RE: HB 1322, relative to the definition of "party" for election purposes.
HB 1497, relative to the definition of "party" and relative to nomination papers.

Total Votes Cast for Governor

General Election	Total	4%	2%	1%
2012	693,877	27,756	13,878	6,939
2010	456,588	18,264	9,132	4,566

Total Votes Cast for US Senate

General Election	Total	4%	2%	1%
2010	454,710	18,189	9,095	4,548
2008	694,357	27,775	13,888	6,944

Voting Sheets

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: 2/11/14

LOB ROOM: 308

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Knowles

Seconded by Rep. Jasper

Vote: 16-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

Vote: (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,

Rep. Kathleen M. Hoelzel, Clerk

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: 2/11/14

LOB ROOM: 308

Amendments:

Sponsor: Rep.

OLS Document #:

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OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Knowles

Seconded by Rep. Jasper

Vote: (Please attach record of roll call vote.) 16-0

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

Moved by Rep.

Seconded by Rep.

Vote: (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,
Rep. Kathleen M. Hoelzel
Rep. Kathleen M. Hoelzel, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2014 11:35:45 AM
Roll Call Committee Registers
Report

2014 SESSION

ELECTION LAW

Bill #: HB 1605

Title: Relative to audit recounts

PH Date: 01/21/2014

Exec Session Date: 02/11/2014

Motion: Interim Study

Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	✓	
Knowles, Mary Ann , V Chairman	✓	
Perry, Robert J	✓	
Levesque, Melanie A	✓	
Gage, Ruth E	✓	
Moody, Marcia G	✓	
Richardson, Gary B	✓	
Connor, Evelyn M	✓	
Till, Mary L	✓	
Ward, Gerald W.R.	✓	
Jasper, Shawn N	✓	
Hoelzel, Kathleen M, Clerk	✓	
Comerford, Timothy P	✓	
Birdsell, Regina M	✓	
Souza, Kathleen F	✓	
Gray, James P	✓	
Marston, Dick	absent	
Sweeney, Joe	absent	
TOTAL VOTE:	16	0

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: October 21, 2014

LOB ROOM: 308

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Till

Seconded by Rep. Levesque

Vote: 10-2 (Please attach record of roll call vote.)

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Kathleen M. Hoelzel, Clerk

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: relative to audit recounts.

DATE: October 21, 2014

LOB ROOM: 308

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. *Till*

Seconded by Rep. *Levesque*

Vote: *10-2* (Please attach record of roll call vote.)

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Kathleen M. Hoelzel
Rep. Kathleen M. Hoelzel, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/14/2014 1:20:22 PM
Roll Call Committee Registers
Report

2014 SESSION

ELECTION LAW

Bill #: HB 1605 Title: _____

PH Date: ____/____/____ Exec Session Date: 10 / 21 / 2014

Motion: Recommend for future legislation Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	✓	
Knowles, Mary Ann, V Chairman	✓	
Perry, Robert J	✓	
Levesque, Melanie A	✓	
Gage, Ruth E	_____	_____
Moody, Marcia G	_____	_____
Richardson, Gary B. <i>Weber</i>	✓	
Connor, Evelyn M	✓	
Till, Mary L	✓	
Ward, Gerald W.R. <i>Schmitt</i>	✓	
Jasper, Shawn N		✓
Hoelzel, Kathleen M, Clerk		✓
Comerford, Timothy P	_____	_____
Birdsell, Regina M	_____	_____
Souza, Kathleen F	_____	_____
Gray, James P	✓	
Marston, Dick	✓	
Sweeney, Joe	_____	_____
TOTAL VOTE:	<u>10</u>	<u>2</u>

Committee Report

CONSENT CALENDAR

February 11, 2014

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on ELECTION LAW to which was referred HB1605-FN,

AN ACT relative to audit recounts. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. Mary Ann Knowles

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	ELECTION LAW
Bill Number:	HB1605-FN
Title:	relative to audit recounts.
Date:	February 11, 2014
Consent Calendar:	YES
Recommendation:	REFER TO COMMITTEE FOR INTERIM STUDY

STATEMENT OF INTENT

The committee agrees unanimously that this bill has much merit and addresses an issue of growing concern. It would require the Secretary of State to perform audit recounts of towns and wards, representing 5 percent of the votes cast after each general election. The purpose of the audit would be to check for any signs of ballot manipulation. It would require a good deal of preparation, and there is a question of the cost involved. The committee feels that Interim Study is the most appropriate recommendation at this time.

Vote 16-0.

Rep. Mary Ann Knowles
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

ELECTION LAW

HB1605-FN, relative to audit recounts. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Mary Ann Knowles for ELECTION LAW. The committee agrees unanimously that this bill has much merit and addresses an issue of growing concern. It would require the Secretary of State to perform audit recounts of towns and wards, representing 5 percent of the votes cast after each general election. The purpose of the audit would be to check for any signs of ballot manipulation. It would require a good deal of preparation, and there is a question of the cost involved. The committee feels that Interim Study is the most appropriate recommendation at this time. **Vote 16-0.**

HB 1605-FN

Interim Study

16-0 – Consent Calendar

The committee agrees unanimously that this bill has much merit and addresses an issue of growing concern. It would require the Secretary of State to perform audit recounts of towns and wards, representing 5 percent of the votes cast after each general election. The purpose of the audit would be to check for any signs of ballot manipulation. It would require a good deal of preparation, and there is a question of the cost involved. The committee feels that Interim Study is the most appropriate recommendation at this time.

Rep. Mary Ann Knowles for the Committee

OK - [Signature]

COMMITTEE REPORT

COMMITTEE: Electoral Law

BILL NUMBER: HB 1605 FN

TITLE: Relative to audit recounts

DATE: 02-11-2014 CONSENT CALENDAR: YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☒ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

The committee agrees unanimously that this bill has much merit and addresses an issue of growing concern. It would require the Secretary of State to perform audit recounts of towns and wards, representing 5 percent of the votes cast after each general election. The purpose of the audit would be to check for any signs of ballot manipulation. It would require a good deal of preparation, and there is a question of the cost involved. The committee feels that Interim Study is the most appropriate recommendation at this time.

COMMITTEE VOTE: 16-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Mary Ann Knowles
For the Committee

OK-OK

INTERIM STUDY COMMITTEE REPORT

COMMITTEE: ELECTION LAW
BILL NUMBER: HB 1605-FN
TITLE: Relative to audit recounts.
DATE: October 21, 2014

☒ **RECOMMENDED FOR FUTURE LEGISLATION**

☐ **NOT RECOMMENDED FOR FUTURE LEGISLATION**

STATEMENT OF INTENT: (May be handwritten)

The committee determined that this bill has merit and deserves further consideration. The committee also recommended that future legislation be guided by "Best Practices for Post-Election Audits" endorsed by a coalition of ten organization that have been studying this issue for over a decade. The "Best Practices" can be found at ["electionaudits.org"](http://electionaudits.org).

COMMITTEE VOTE: 10-2 (Attach Committee Voting Sheet)

Rep. Mary Till

INTERIM STUDY COMMITTEE REPORT

COMMITTEE: Election Law
BILL NUMBER: HB 1605
TITLE: Relative to audit accounts
DATE: 10-21-2014

☒ RECOMMENDED FOR FUTURE LEGISLATION

☐ NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

The ~~com~~ Interim Study Committee determined that this bill has merit and deserves further consideration. The Interim Study committee also recommended that future legislation be guided by "Best Practices for Post-Election Audits" Endorsed by a coalition of 10 organization that have been studying this issue for over a decade. The "Best Practices" can be found at "electionaudits.org"

COMMITTEE VOTE: 10-2 (Attach Committee Voting Sheet)

Rep. Marjorie Hill
For the Committee