

Senate Election Law and Municipal Affairs Committee

Jessica Bourque 271-2104

SB 104-FN, requiring the performance of a machine count at the request of 10 residents who have cast a ballot in the election.

Hearing Date: February 4, 2025

Time Opened: 9:39 a.m.

Time Closed: 10:07 a.m.

Members of the Committee Present: Senators Gray, Rochefort, Perkins Kwoka and Long

Members of the Committee Absent : Senator Lang

Bill Analysis: This bill requires the performance of a machine count at the request of 10 residents who have cast a ballot in the election.

Sponsors:

Sen. Avard

Rep. Flanagan

Who supports the bill: Senator Avard, Al Fulchino

Who opposes the bill: Dave Nelson, David Scanlan, Dan Healey, Tina Guilford, Olivia Zink

Summary of testimony presented in support:

Senator Avard, Prime Sponsor

- This is a constituent request.
- This bill would require performance verification of a machine count at the request of 10 residents who have cast a ballot in the election.
- Folks want a say in the audits of their voting machines.
- Open to changing the number of voters required to request.

Senator Perkins Kwoka said that the committee heard concerns with SB 44 about training staff to conduct a recount, the standards for a recount, and the timeline for a recount and asked how the concerns with this bill differ from those in SB 44.

- The hope is that the Secretary of State will be the one to conduct the performance verification if there are enough signatures.
- He imagines that this would be done in the same timeframe as the Secretary of State currently does random audits.

Senator Long said he understands that these machines would have to be verified by 10:00 a.m. on election day. Are those counting ballots closed for voters as this happens?

- Senator Avard believes that the Secretary of State would be better to answer that.
- It would be the same type of performance audit that the Secretary of State does at random.

Senator Gray reads the bill's language stating that the request must be submitted by 10:00 a.m. on election day. Is that fair?

- Senator Avard said yes.

Senator Gray said that the current process for authorizing the machine goes through the governing body and asked why ten people in the town should be able to overturn that vote.

- Senator Avard said it is because they have concerns.

Senator Gray asked whether allowing a person to request a hand count of their own ballot would satisfy Senator Avard and the constituent who requested the bill.

- Senator Avard thought he had requested 100 voters from OLS and thinks that 10 might be a typo.
- Senator Avard believes this bill would encourage people to have faith in their election.

Al Fulchino, Hollis

- This bill is about transparency; we do not want any distrust in our elections.
- This bill eliminates the idea that anyone from the outside could interfere with our elections.
- Corroboration of results builds trust, and to fear corroboration breeds mistrust.
- Germany and other nations hand count their entire nations' results.

Summary of testimony presented in opposition:

David Scanlan, NH Secretary of State

- The Secretary of State is the only one authorized in the statutes to conduct recounts. When they do that, they have uniform standards. There are no standards in this bill, which leads him to have concerns about the integrity of the ballots that were cast if the State were to end up having to receive those ballots for the purpose of an official recount.
- Concerned about lines 17 or 18 where it says, "If the verification results are found to deviate by plus or minus 0.2 percent from the machine count, all races on the ballot shall be hand counted". Secretary Scanlan said this effectively forces a hand count of all races. Because .2 percent is 2 votes per 1,000 ballots. There is always a difference between the way machines count votes and a person hand counts votes, so it is his opinion that the deviation will be met more often than not.

Senator Gray clarified Mr. Scanlan's point by saying that if someone comes in and votes for "Charlie Paneris" then writes in "Charlie Paneris" and fills in both ovals, then that ballot would be marked as an overvote and not counted. Therefore, if two or three people did that, it would cause that 0.2 percent.

- That is correct. He has seen where someone who is vision impaired missed the oval down the ballot, and if the mark is not in the oval, then that vote will not be counted even though it is clear what that voter wanted to do with that ballot.

Senator Perkins Kwoka asked if she was correct that she heard Mr. Scanlan say that without standards for the municipal staff to conduct a recount, this bill could potentially be creating less secure elections.

- Mr. Scanlan said that Senator Perkins Kwoka is correct, and that is his concern.

Senator Rochefort said he saw a public notice in Littleton before the last election that the town was going to test their voting machines. Is that standard?

- The State statutes require that ballot counting devices that will be used in an election be tested before election day.
- Legislature is moving towards more thorough audits of ballot counting devices.
- The new ballot counting devices approved by the Ballot Law Commission use open-source software, which allows anyone with the desire and ability to look at the code to see how it is programmed to count the ballots.

Senator Rochefort stated that one could conceivably conclude that what is being asked for in this bill is already being done.

- Secretary Scanlan said yes, it is being done uniformly and, in some ways, more aggressively.
- Understands why people question what happens in the devices and says that the Secretary of State's Office wants transparency and confidence in elections, and they continue to take measures to improve that confidence.

Senator Gray clarified that one reason audits are done after the election is that a routine could be tied in with the clock or the date on the machine and, therefore, perform differently on election day than it did during the test before election day.

- Secretary Scanlan said that Senator Gray was correct and added that we have a good process:
 - We test the machines before the election.
 - The moderator has the authority to get to the bottom of it if they think something went wrong with the count.
 - Easy to request a recount.
 - There is an appeal process to the Ballot Law Commission.
 - The Courts could come into play.

Senator Gray asked if there is a provision in State law that a person can request that their ballot be hand-counted.

- Secretary Scanlan said no. Currently, the law says that if a town decides to use a ballot-counting device, then that device shall be used to count the ballots.

Senator Gray asked Secretary Scanlan if he is aware that some people are purposely marking their ballots as overvotes to ensure that their votes are hand-counted.

- Secretary Scanlan said he is aware that is happening.

Senator Long asked if all of the tests and results were public information.

- Secretary Scanlan said that all of the events are public and they are required to be publicly noticed and minutes are kept.

Senator Long then asked if someone could ask the Town Clerk or Moderator for the testing results.

- Secretary Scanlan said yes.

Dave Nelson, Derry Town Moderator

- He has a concern that the Secretary of State didn't address. This could be a complicated process if the request is received and validated by 10:00 a.m. After the machine is closed and voting has ended, but before tabulation can begin, they would have to audit two races.
 - They would need additional guidance and procedures.
 - Believes this would add significant time to the tabulation process.
- Doesn't think that given all of the safeguards that are already in place, it would add any more confidence in the process.

Dan Healey, Nashua City Clerk

- The Secretary of State already does random audits of the tabulators after the election.
- Suggested to the committee that if the committee moves forward on this legislation, they use a percentage of voters needed instead of 10 voters.
- NH is a continuous state, which means that poll workers cannot go home until the results are tabulated. This bill would add a few hours to an already long election day for workers. For locations at schools, it could run into the school day the day after the election.

Tina Guilford, Derry Town Clerk

- One of the biggest issues with this bill is that a new rule that says the results must be posted within 60 minutes of the last ballot being run through the machine. This would make it very difficult to post results within 60 minutes.
- Audits and recounts before and after elections are already happening.
- It is her experience that people don't attend or look at the testing results.

Olivia Zink, Open Democracy

- Asked who would be responsible for paying for this. Is this going to be the Secretary of State or the local communities?
- Invite folks into the process.

- The Primary Election in September is very close to the General Election. This would create delays, making it difficult to send General Election ballots to our military overseas.
- Voters care about election results and delaying results might create more controversy.

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Date Hearing Report completed: February 7, 2025