

Senate Election Law and Municipal Affairs Committee

Jessica Bourque 271-2104

HB 270, requiring the preservation of electronic ballot counting device memory chips.

Hearing Date: April 29, 2025

Time Opened: 10:05 a.m.

Time Closed: 10:14 a.m.

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

Members of the Committee Absent: Senator Lang

Bill Analysis: This bill requires preservation of electronic ballot counting device memory chips with other election material until the contest is settled and all appeals have expired or at least 22 months after elections, whichever is longer.

Sponsors:

Rep. Burnham

Rep. Ankarberg

Rep. DeRoy

Rep. Potenza

Rep. Wherry

Rep. Wood

Rep. Berry

Who supports the bill: Rep. Ross Berry, Rep. Alvin See, Al Brandano

Who opposes the bill: No one

Summary of testimony presented:

Representative Ross Berry on behalf of the prime sponsor, Hillsborough-District 24

- This bill aims to ensure that NH complies with federal law, requiring that the electronic memory chips be held for 22 months after an election.
- The House committee discussed that the memory chips for older machines are becoming increasingly difficult to obtain, and the committee also considered that as the new machines are used more often, a new supply will become available.
- The voter integrity community is particularly interested in this bill, as they want to ensure that if the chips were tampered with, they will be available after the election for the Secretary of State and Attorney General to investigate. However, if they are returned to the programmer, there is no way of knowing if anything happened to them.

Senator Gray asked if he knew that the Secretary of State would like to change the words about memory chips to “electronic ballot counting device external storage devices” because the machines also have internal memory chips.

- Rep Berry responded that he would believe it.

Al Brandano, Kensington

- One of the more critical parts of the bill is the algorithm found on the memory card.
- Mr. Brandano would like to see an amendment referencing federal law regarding electronic records.
- They think it would be a good addition in case the law changes from 22 months to something else; then at least it is recorded.
- The second thing they want is that the counting device and memory logs are made available to citizens in a right-to-know situation. The language now says those are only available to the Secretary of State and the Attorney General.
- Local records are only being held for 60 days, and the federal government is asking for the federal ones to be held for 22 months because of the algorithm.
- In local elections, the records are held for 60 days, but if someone asks for an exact copy of the card, you cannot get an exact copy of the card; you only get a copy of the data on it, not the algorithm.

Senator Gray asked if he could clarify why they should reference the federal statute, as the federal law would supersede state law in the case of a federal election.

- One issue in the past was that the statutes had not referred to federal law for the federal elections held in NH. If this changes now, at least there will be a reference to federal law.

Senator Gray stated that ballots are unavailable to the public under RSA 91-A. Although it could be possible to make the information on the device available, Senator Gray doesn't understand making the actual device available.

- Mr. Brandano said that if there were a lawsuit between LHS and the government, LHS would claim it has a private right to the data.
- Thinks there would need to be a lawsuit to get the full data.
- The calculator is not included in the 60 days; however, it is included in the 22-month period.

Senator Gray asked for clarification on why LHS would be involved. Senator Gray said that, as he understands it, LHS will not have the chips that the local municipality would.

- The state only has the chips for 60 days.

- There are two different rules for state and federal elections.
- If someone wanted an exact copy, they could not get it because the algorithms are only in the original chip, not in the copy.

jab

Date Hearing Report completed: May 1, 2025