

SB 79-FN - AS INTRODUCED

2021 SESSION

21-1008

11/10

SENATE BILL **79-FN**

AN ACT relative to the authority of the moderator to verify the device count.

SPONSORS: Sen. Sherman, Dist 24; Sen. Perkins Kwoka, Dist 21; Sen. D'Allesandro, Dist 20;
Rep. Wuelper, Straf. 3; Rep. Porter, Hills. 1

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill authorizes a moderator to conduct a verification count of machine-counted ballots.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the authority of the moderator to verify the device count.

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

1 1 New Section; Duty of Moderator to Verify the Device Count. Amend RSA 659 by inserting
2 after section 60 the following new section:

3 659:60-a Authority of Moderator to Verify the Device Count.

4 I. Pursuant to RSA 659:60 and RSA 659:73, it is the duty of the moderator to ensure that
5 votes are accurately counted, not only by hand but also by machine, and to submit the moderator's
6 worksheet to the town or ward clerk within 48 hours of the closing of the polls certifying the
7 accuracy of the count. To fulfill this duty, the moderator may at his or her discretion conduct a
8 verification count of ballots processed in one or more federal or statewide races or constitutional
9 questions by one or more electronic ballot counting devices used in his or her jurisdiction. The
10 verification count shall be conducted publicly in accordance with RSA 659:63 and following the
11 procedures in RSA 659:64 through 659:67 and RSA 659:69.

12 II. After the polls are closed, but before the results are announced in accordance with RSA
13 659:70 and in a time frame consistent with RSA 659:75, if the moderator chooses to conduct a
14 verification count, the moderator shall publicly and randomly select at least one electronic ballot
15 counting device in use for at least 90 percent of the time on election day and in at least one contested
16 federal or statewide election or constitutional question for inclusion in the verification count. If
17 there is only one ballot counting device in use in the district over which the moderator has
18 jurisdiction, that device shall be used. If no device was in use at least 90 percent of the time at the
19 polling place, then combined devices totaling at least 90 percent usage shall be included in the
20 verification count. All ballots tallied by the electronic ballot counting device that is randomly
21 selected for the verification count shall be segregated in a box or boxes provided by the secretary of
22 state.

23 III. The moderator, with his or her assistants and with the aid of the selectmen and clerk, in
24 open meeting, shall visually inspect each ballot counted by the electronic ballot counting device and
25 count the number of votes cast for each candidate for the selected federal or statewide office or
26 constitutional question. The moderator shall then compare the verification vote count with the vote
27 count generated by the electronic ballot counting device.

28 IV. If the moderator finds discrepancies between the electronic ballot count device count and
29 the verification count, the moderator shall announce the results of both the verification count and
30 the electronic ballot counting device count and shall direct the clerk to use the verification count
31 when completing the election return. The clerk shall inform the candidates for the office involved of

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1 the discrepancies identified, and the candidates shall have the opportunity to request a recount
2 under RSA 660. The moderator shall report discrepancies greater than one percent to the secretary
3 of state.

4 V. After the completion of the verification counts, the ballots shall be sealed and transported
5 to the clerk for storage in accordance with RSA 659:95.

6 VI. The secretary of state shall develop a procedure for investigating discrepancies, oversee
7 the investigation of discrepancies reported under paragraph IV, and, if necessary to address the
8 reason for the discrepancy, review the contents of the memory cards used during the vote count for
9 the office or constitutional question. The secretary of state shall determine if changes in the ballot
10 design, the voting instructions, or the electronic ballot counting device programming are needed to
11 remedy the identified discrepancies, and shall publicly report and publish on the department of
12 state's website the results of the investigation and provide a copy of the report to the standing
13 committees of the house and senate with jurisdiction over election law and to the attorney general
14 for consideration of possible legal action. Investigations and reports conducted pursuant to this
15 paragraph shall be completed within 90 days of the election.

16 VI. No person who is disqualified under RSA 658:24 or RSA 659:58 from the handling of
17 marked ballots and the counting of votes shall be eligible to participate in the verification count.

18 2 Effective Date. This act shall take effect 60 days after its passage.

**SB 79-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the authority of the moderator to verify the device count.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Interminable	Indeterminable	Indeterminable
Funding Source:	☒ General	☐ Education	☐ Highway	☐ Other

METHODOLOGY:

This bill authorizes a town or ward moderator to conduct a verification count of ballots in those towns using ballot counting devices.

The Department of State indicates this language is inconsistent with the process for conducting recounts pursuant to RSA 660. The Department would be required to investigate and report on voting discrepancies in excess of one percent found by moderators in this process. There are no uniform standards for performing the verification count and the Department cannot predict how many such counts will result in investigations and reports that will need to be performed by the Department. The Department states their expenditures will increase by an indeterminable amount.

The New Hampshire Municipal Association states that if a moderator chooses to conduct such a verification count, there may be expenses incurred for any hourly wages payable to those performing such work. Since this process is voluntary and at the moderator's discretion, any municipal expenditure is also discretionary. There is no impact on municipal revenues.

It is assumed this bill will be effective July 1, 2021.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association